



**California Regional Water Quality Control Board  
North Coast Region  
Bob Anderson, Chairman**



**Linda S. Adams**  
Secretary for  
Environmental Protection

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**Arnold  
Schwarzenegger**  
Governor

October 16, 2008

In the Matter of

**Notice of Coverage, Waiver of Waste Discharge Requirements for  
Minor Dredging and Fill Activities**

for the

**Wendt Berm Removal and Wetland Restoration Project  
Strongs Creek Residential Subdivision  
Fortuna, Humboldt County  
Cleanup and Abatement Order No. R1-2007-0104  
WDID No. 1B08146WNHU**

APPLICANT:	Dennis Wendt / W.W.W. Perssard, Inc.
RECEIVING WATER:	Strongs Creek
HYDROLOGIC AREA:	Eel River Hydrologic Area No. 111.00 Ferndale Hydrologic Sub Unit 111.11
COUNTY:	Humboldt County
FILE NAME:	Strongs Creek Residential Subdivision, Dennis Wendt

BY THE EXECUTIVE OFFICER:

1. This Notice of Coverage provides notice that certain activities are covered by the Waiver of Waste Discharge Requirements for Minor Dredging and Fill Activities (Waiver), which was adopted pursuant to California Water Code Section 13269 by the California Regional Water Quality Control Board, North Coast Region, (Regional Water Board) in Resolution 2007-0098. On October 16, 2008, Mr. Dennis Wendt / W.W.W. Perssard, Inc. (Applicant), filed an application for water quality certification under section 401 of the Clean Water Act (33 U.S.C. § 1341) and/or Waste Discharge Requirements for dredge/fill activities, with the North Coast Regional Water Quality Control Board (Regional Water Board) for activities associated with the Wendt Berm Removal and Wetland Restoration project (Project) Humboldt County. A fee in the amount of \$779.50 was paid on October 16, 2008.
2. The latitude and longitude of the Project is 40° 34' 52.80"N and 124° 08' 31.67"W. The Project includes the Assessors Parcels Numbers (APNs) 202-121-006 and

**California Environmental Protection Agency**

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202-121-078. As described in the application, the Project is comprised of removing a portion of the unauthorized berm at top of bank on the south side of Strongs Creek and abutting the north side of an on-site wetland swale. The berm is being removed to prevent its possible breaching into Strongs Creek caused by impounding more water than it was designed to handle.

3. The Project includes removal of a section of berm, 81 feet long (on the center line of the berm) by 50 feet wide at the base and 81 feet long by 28 feet wide by 4 feet deep at the top of the berm. This section of berm was placed/discharged by the applicant and is one of a number of unauthorized discharges of dredged and fill material to Waters of the State and Waters of the U.S. at the site that are subject of enforcement actions. The Regional Water Board, U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency have each issued separate enforcement orders related to these violations. This Notice of Coverage applies only to work necessary to remove the section of berm described in this paragraph and to complete the restoration work described in the paragraph below, and does not authorize any other restoration work for other violations at or in the vicinity of the Strongs Creek Residential Subdivision or give authorization for other actions already undertaken by the applicant.
4. The Project includes a wetland restoration workplan (Workplan) for the section of berm removal as described above in paragraph 3. The Workplan details the area of excavation, slope and depth of the work area. Additionally it describes the use of erosion control methods, native grass species to be planted, wetland vegetation and tree species to be planted. Monitoring and reporting and survival/growth coverage requirements for the revegetated area are detailed within the Workplan.
5. The Project shall employ construction stormwater best management practices (BMPs) as detailed within the Workplan.
6. This project is considered to be part of restoration work that the U.S. EPA, U.S. Army Corps of Engineers, and the Regional Water Board will require as part of their enforcement action against Mr. Wendt for unpermitted discharges of dredged and fill material into waters of the State and U.S. Additional restoration and/or mitigation for loss of wetlands within the area and in nearby areas will be also be required by the U.S. EPA and Regional Water Board. This Notice of Coverage does not address the additional restoration within this or nearby areas that will be required in the future by the Regional Water Board, U.S. EPA, or other federal, state, or local agencies.
7. As this Project is also subject to an existing Army Corps of Engineers enforcement action, a Clean Water Act Section 404 Permit is not being issued. Army Corps of Engineers has verbally authorized the Project. A water quality certification under section 401 of the Clean Water Act is, therefore, not required from the Regional Water Board. Because the restoration work involves discharging waste that could

affect the quality of the waters of the state, Mr. Wendt was required to submit a report of waste discharge and obtain coverage under the waiver of waste discharge requirements (Order No. R1-2007-0098).

8. At a minimum, the following construction Best Management Practices (BMPs) will be incorporated into the final project plans in order to reduce and control soil erosion: Installation of construction barrier fencing to preclude equipment entry into sensitive areas; installation of silt fencing or fiber rolls to prevent sediment loss from immediate work area; topsoil salvage and reapplication; and seeding and mulching. Additionally, all required BMPs shall be on-site and ready for timely deployment, before start of the wet season.
9. The Regional Water Board may add to or modify the conditions of this Notice of Coverage, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
10. Any change to the operation of the Project that would have a significant or material effect on the findings, conclusions, or conditions of this Notice of Coverage must be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.
11. The Regional Water Board, as the lead California Environmental Quality Act (CEQA) agency for Resolution 2007-0098, has adopted Categorical Waivers for Resolution 2007-0098, on December 6, 2007, pursuant to CEQA.
12. The Regional Water Board has determined that this project is categorically exempt from California Environmental Quality Act (CEQA) review (Section 15333 – Small Habitat Restoration Projects). Based on a review of the project information submitted to date, Regional Water Board staff determined that this Project is categorically exempt from CEQA review and anticipate filing a Notice of Exemption for the Project.

Receiving Water:                    Strongs Creek

Hydrologic Area:                    Eel River Hydrologic Area No. 111.00  
   Ferndale Hydrologic Sub Unit No. 111.11

Filled or Excavated Area:    Area permanently impacted: 0.1 Acres

Latitude/Longitude:                40° 34' 52.80"N / 124° 08' 31.67"W

Expiration:                            December 1, 2009

ACCORDINGLY, BASED ON ITS INDEPENDENT REVIEW OF THE RECORD, THE REGIONAL WATER BOARD FINDS THAT THE WENDT BERM REMOVAL AND WETLAND RESTORATION PROJECT (FACILITY NO. 1B08146WNHU), as described in the Application, is hereby covered under the Waiver of Waste Discharge Requirements (Order No. R1-2007-0098) provided that Project complies with the following terms and conditions:

1. The Eel River watershed is identified on the State of California Clean Water Act Section 303(d) list as impaired for sediment and temperature. Total Maximum Daily Load (TMDL) analyses have been completed for the lower Eel River watershed, by the U.S. EPA, for sediment and temperature listings. Activities that impact the riparian zone and riparian vegetation are identified as sources contributing to increased stream temperatures and sediment. If a TMDL implementation plan is adopted prior to the expiration date of this Notice of Coverage, the Regional Water Board may revise the provisions of this Notice of Coverage to address actions identified in such action plans.
2. Because the Project involves construction that involves the discharge of waste that may adversely affect waters of the State, the Regional Water Board has regulatory jurisdiction under Water Code sections 13260, 13263 to issue waste discharge requirements. Pursuant to Water Code section 13269, the Regional Water Board may waive waste discharge requirements for some types of discharges if it determines that the waiver is consistent with the Water Quality Control Plan for the North Coast Region (Basin Plan) and is in the public interest. The Regional Water Board, in Order No. R1-2007-0098, waived waste discharge requirements for "Minor Dredging and Fill Operations," which are defined as short-term discharges that do not result in net loss of wetlands or beneficial uses, spoil or fill in non-toxic and discharged to land, and operations are not governed by General WDRs.
3. This Notice of Coverage is contingent on compliance with all applicable requirements of R1-2007-0098 and the Basin Plan, except as may be modified by the specific conditions of the Notice of Coverage.
4. The Applicant shall construct the Project in accordance with the conditions described in the application and the findings herein, and shall comply with all applicable water quality standards.
5. Applicant shall provide Regional Water Board staff access to the project site to document compliance with this Notice of Coverage.
6. The Applicant shall provide a copy of this Notice of Coverage and attachments to the contractor and all subcontractors conducting the work, and require that copies remain in their possession at the work site. The Applicant shall be responsible for work conducted by its contractor or subcontractors.

7. In the event of any violation or threatened violation of the conditions of this Notice of Coverage, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. In response to a suspected violation of any condition of this Notice of Coverage, the Regional Water Board may require Mr. Wendt to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
8. If, at any time, an unauthorized discharge to surface waters occurs, or any situation arises that compromises water quality and its beneficial uses, Applicant shall immediately cease work on the project and notify the Regional Water Board.
9. The Regional Water Board may add to or modify the conditions of this Notice of Coverage, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
10. This Notice of Coverage is not transferable. In the event of any change in control of ownership of land presently owned or controlled by the applicant, the applicant shall notify the successor-in-interest of the existence of this Notice of Coverage by letter and shall forward a copy of the letter to the Regional Water Board. The successor-in-interest must send to the Regional Water Board Executive Office a written request for transfer of this Notice of Coverage to discharge dredged or fill material under this Notice of Coverage. The request must contain the following:
  - i. requesting entity's full legal name
  - ii. the state of incorporation, if a corporation
  - iii. address and phone number of contact person
  - iv. description of any changes to the project or confirmation that the successor-in-interest intends to implement the project as described in this Notice of Coverage.
11. Except as may be modified by any preceding conditions, this Notice of Coverage is contingent on: a) the discharge being limited and all work being completed in strict compliance with the applicant's project description, and b) compliance with all applicable requirements of the Basin Plan.
12. The authorization for minor dredging and fill operations given under this Notice of Coverage expires on December 1, 2009. Conditions and monitoring requirements outlined in this Notice of Coverage are not subject to the expiration date outlined above, and remain in full effect and are enforceable.
13. Any change to the operation of the Project that would have a significant or material effect on the findings, conclusions, or conditions of this Notice of Coverage must

be submitted to the Executive Officer of the Regional Water Board for prior review and written approval.

14. The construction activity meets the eligibility criteria for the Waiver and, if constructed as described in the Application and in compliance with the above-listed conditions, the Project will adhere to applicable water quality standards. A monitoring and reporting program will be conducted as described in the application.
15. The following are general conditions required for coverage under Resolution R1-2007-0098:
  - a. "The Applicant shall comply with all applicable provisions of the Water Quality Control Plan for the North Coast Region."
  - b. "The Applicant shall discharge only in accordance with the submitted Report of Waste Discharge or equivalent (i.e., the Application)."
  - c. "The Project shall not create a pollution contamination, or a nuisance, as defined by California Water Code Section 13050."
  - d. "There shall be no discharge of any waste not specifically regulated by waivers in Resolution R1-2007-0098."
  - e. "The Applicant shall allow Regional Water Board staff reasonable access onto the affected property for the purpose of performing an inspection to determine compliance with waiver conditions."
16. The following requirements from Resolution R1-2007-0098 apply specifically to dredge and fill activities.

"The Applicant shall comply with the following additional conditions:

  - a. Discharges shall be non-toxic, short term, discharges to land.
  - b. The Project shall not result in a net loss of wetlands or beneficial uses.
  - c. This Notice of Coverage is valid only if operations are not being covered by General Waste Discharge Requirements."
17. Please be aware that a failure to implement the Project according to the project description and other information submitted in the Application, or violation of any of the terms contained in the Waiver and this Notice of Coverage, may result in the revocation of coverage under the Waiver and the initiation of formal enforcement proceedings as authorized by California Water Code.

18. Enclosed is a copy of the Waiver Policy for Minor Dredging and Fill Activities.

Please contact Stephen Bargsten of our staff at (707) 576-2653 if you have any questions.

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Catherine Kuhlman  
Executive Officer

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Enclosure: Waiver Policy (Res. R1-2007-0098)

Original sent to: Mr. Dennis Wendt, Wendt Construction, 1660 Newburg Road,  
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