CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

In the matter of:	)	
	)	
OG Property Owner, LLC	)	**Order No. R2-2010-0085**
No. R2-2009-0017 for	)	**Settlement Agreement and Stipulation for**
Administrative Civil Liability	)	**Order; Order**
	)	

<u>Section I</u>: Introduction

This Settlement Agreement and Stipulation for Order ("Stipulation") and Administrative Civil Liability Order ("Order") are made and issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2009-0017, dated May 19, 2009 (the "Complaint"). The parties to this proceeding are the San Francisco Bay Regional Water Quality Control Board ("Regional Water Board") Prosecution Team ("Prosecution Team"), and OG Property Owner, LLC (the "Discharger")(collectively hereinafter the "Parties").

<u>Section II:</u> Recitals

1. The Discharger is the owner of the Wilder Project, located on property in the Gateway Valley in the City of Orinda, Contra Costa County, California (the "Property.") The Wilder Project is comprised of approximately 985 acres of land on the Property and involves the development of up to 245 lots for future residential units, associated infrastructure, and the establishment of dedicated open space lands. The Discharger is subject to the requirements set forth in Construction General Permit Water Quality Order No. 99-08-DWQ ("Construction General Permit"), Waste Discharge Requirements and Clean Water Act section 401 Water Quality Certification Order No. R2-2004-0049 ("WDR Order"), and the San Francisco Bay Basin Water Quality Control Plan ("Basin Plan").

2. The Complaint alleges a recommended administrative civil liability totaling $982,350 for alleged violations of the Construction General Permit, WDR Order, and Basin Plan. That amount includes estimated staff costs of $38,100.

3. To resolve by consent and without further administrative proceedings all alleged violations of the California Water Code ("CWC"), Construction General Permit, WDR Order, and the Basin Plan as set forth in the Complaint, the Discharger shall pay the amount of $530,000 ("Penalty Amount") to the State Water Resources Control Board Cleanup and Abatement Account, which includes $50,000 for staff costs. Payment shall be due no later than 30 days from the date on which the Order enforcing the terms of this Stipulation becomes final (i.e., 30 days after the public review period

identified in Paragraph 111 of this Stipulation and execution of the Order by the Regional Water Board or its delegee, the Executive Officer).

Section III: Stipulations

4. The Parties incorporate Paragraphs 1 through 3 by this reference as if set forth fully herein, stipulate to the entry of this Order as set forth below, and recommend that the Regional Water Board issue this Order to effectuate the settlement.

5. The Discharger hereby agrees to pay the administrative civil liability totaling $530,000 as set for the in Paragraphs 3 of Section II herein.

6. The Discharger understands that payment in accordance with this Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.

7. Should the Discharger enter into bankruptcy proceedings before all payments are paid in full, the Discharger agrees to not seek to discharge any of these penalties in bankruptcy proceedings.

8. Each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

9. In consideration of the Discharger's compliance with this Order, the Prosecution Team hereby agrees not to initiate any other administrative or judicial enforcement actions against the Discharger, affiliates, officers, employees, contractors, or agents for the violations alleged in the Complaint.

10. In settling this matter, the Discharger does not admit to any of the allegations of the Complaint, or that the Discharger has been or is in violation of the CWC, or any other federal, state, or local law or ordinance, provided that the Discharger agrees that in the event of any future enforcement actions by the Regional Water Board against the Discharger, this Order may be used as evidence of a prior enforcement action consistent with CWC section 13327, but in no event shall the settlement of this matter give rise to any inference of liability for the allegations set forth in the Complaint on the part of the Discharger or its affiliates, officers, employees, contractors, or agents.

11. The Discharger understands that this Order must be noticed for a 30-day public review period prior to consideration by the Regional Water Board or its delegee, the Executive Officer. In the event objections are raised during the public comment period for the Order, the Regional Water Board or the Executive Officer may, under certain circumstances, require a public hearing regarding the Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Order as necessary or advisable under the circumstances.

12. The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

13. The Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. Discharger is represented by counsel in this matter.

14. The Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board, or its delegee, the Executive Officer.

15. This Stipulation may be executed in counterparts and by facsimile signature.

16. In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in a hearing before the Regional Water Board. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

17. The Discharger has been informed of the rights provided by CWC section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

18. Provided that this Order becomes final as stipulated and agreed herein, the Discharger waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to any California Superior Court and/or any California appellate level court.

19. The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to the commencement and/or prosecution of the Complaint.

20. The Assistant Executive Officer warrants by signing below that he has the authority to execute the Stipulation on behalf of the Prosecution Team. The person signing on behalf of the Discharger warrants by signing below that he has the legal authority to bind the Discharger to the terms of this Order. The Parties hereto have caused this Stipulation to be executed by their respective officers on the dates set forth, and the Stipulation is effective as of the most recent date signed.

21. This Stipulation is effective and binding on the Parties upon the execution of this Order.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Francisco Bay Region

By: _____ Dyan C. Whyte for _____
Thomas Mumley, Assistant Executive Officer

Date: April 26, 2010

OG Property, LLC

By: _____
Steve Heath

Date: _____

18. Provided that this Order becomes final as stipulated and agreed herein, the Discharger waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to any California Superior Court and/or any California appellate level court.

19. The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to the commencement and/or prosecution of the Complaint.

20. The Assistant Executive Officer warrants by signing below that he has the authority to execute the Stipulation on behalf of the Prosecution Team. The person signing on behalf of the Discharger warrants by signing below that he has the legal authority to bind the Discharger to the terms of this Order. The Parties hereto have caused this Stipulation to be executed by their respective officers on the dates set forth, and the Stipulation is effective as of the most recent date signed.

21. This Stipulation is effective and binding on the Parties upon the execution of this Order.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Team
San Francisco Bay Region

By: _____
Thomas Mumley, Assistant Executive Officer

Date: _____

OG PROPERTY OWNER, LLC,
a Delaware limited liability company

By its parent or affiliate entities:

By: Orinda Gateway Holdings, LLC,
a Delaware limited liability company,
its Sole Member

By: Orinda Gateway, LLC,
a California limited liability company,
its Sole Member

By: Brookside Land Company, LLC,
a California limited liability company,
its Administrative Member

By: _____
Name: CHRIS YELICH
Title: MGR MEM

<u>Section IV:</u> Findings of the Regional Water Board

22. The Regional Water Board incorporates Paragraphs 1 through 21 by this reference as if set forth fully herein.

23. The Parties believe that settlement of this matter is in the best interest of the People of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Order.

24. This is an action to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

25. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under the Order.

26. Fulfillment of the Discharger's obligations under the Order constitutes full and final satisfaction of any and all liability for each claim in the Complaint in accordance with the terms of the Order.

27. The Regional Water Board finds that the Recitals set forth herein in Section I are true.

28. The terms of this Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

29. In accepting this settlement, the Regional Water Board has considered, where applicable, each of the factors prescribed in CWC sections 13327 and 13385(e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board. In addition to these factors, this settlement recovers the costs incurred by the staff of the Regional Water Board for this matter.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, San Francisco Region.

___ Bruce H. Wolfe ___ Digitally signed by Bruce Wolfe Date: 2010.06.15 17:52:41 -07'00' Date: June 15, 2010

Bruce Wolfe
Executive Officer