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## North Coast Regional Water Quality Control Board

July 18, 2023

JC Construction Consulting, LLC  
Attn: Jay Clay  
1995 Bluebell Drive  
Santa Rosa, CA, 95403

GLS TRACKING No. 559773263

Attn: Jason and Kerry Jones  
2399 Valley West Drive  
Santa Rosa, CA, 95401

GLS TRACKING No. 559773381

Attn: Chunxu Fu and Menghan Guo  
1577 Ludwig Avenue  
Santa Rosa, CA, 95407

GLS TRACKING No. 559773438

Subject: Notice of Violation of Cleanup and Abatement and Investigative Order No. R1-2022-0020 for Sonoma County Assessor's Parcel Number (APN) 035-201-011-000

File: Enforcement, Sonoma County, JC Construction Consulting, LLC, CIWQS Place ID 860914

Dear Jay Clay, Jason and Kerry Jones, and Chunxu Fu and Menghan Guo:

This letter is to notify you that you are in violation of requirements listed below at the Property identified as Sonoma County Assessor's Parcel Number 035-201-011-000 (the Property):

1. North Coast Regional Water Quality Control Board (Regional Water Board) Cleanup and Abatement and Investigative Order R1-2022-0020 (the Order)
2. Water Quality Control Plan for the North Coast Region (Basin Plan) Section 4.2.1
3. California Water Code (Water Code) Sections 13267, 13260, 13264, and 13350

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HECTOR BEDOLLA, CHAIR | VALERIE QUINTO, EXECUTIVE OFFICER

5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | [www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)

## **Background**

On September 19, 2017, a consultant for JC Construction contacted the Regional Water Board requesting a permit to remove unauthorized fill to comply with a May 30, 2017, Notice of Violation (NOV) from the City of Santa Rosa. The NOV listed 29 violations on the Property including, "Grading of area at rear of property and import of soils (approximately 1,400 cubic yards), raising rear of property approximately 18-24 inches above natural grade."

Pinecrest Environmental Consulting, on behalf of JC Construction, performed a wetland delineation and a biotic assessment on the Property on December 7, 2017. The Pinecrest Environmental Consulting Delineation of Waters of the United States report contains wetland delineation and biotic assessment reports that document wetlands at the undisturbed corners of the northern region of the Property; describe the undisturbed perimeter of the Property as "high quality remnant wetland;" and report observations of a population of Sebastopol meadowfoam, *Limnanthes vinculans*. The assessment identifies "appropriate estivation habitat" for California Tiger Salamanders, but notes, in part, that "the majority of the site is covered in unsuitable fill."

On January 30, 2018, the U.S. Army Corps of Engineers issued a Notice of Alleged Violation to Jay Clay at 1577 Ludwig Avenue, for the grading of unauthorized fill material that may be within jurisdictional wetlands.

On February 22, 2018, staff from the California Department of Fish and Wildlife (CDFW) and Regional Water Board staff (Staff) inspected the Property and observed that the north-central portion of the Property was covered with earthen fill material. CDFW issued a Notice of Violation on May 15, 2018, citing Fish and Game Code 2080, which requires an Incidental Take Permit for impacts to endangered or threatened species.

On August 30, 2018, the Staff issued a Notice of Violation citing violations of the Basin Plan, California Water Code, and the federal Clean Water Act, due to discharges and/or threatened discharges, of earthen material into waters of the state and United States. The NOV directed the dischargers to engage an appropriately qualified professional with relevant experience in wetland restoration to prepare and submit a wetland restoration plan.

On April 18, 2019, Pinecrest Environmental Consulting submitted a Cleanup Restoration and Monitoring plan (CRMP) (April 2019 CRMP) to the Regional Water Board. On October 6, 2020, Pinecrest Environmental Consulting submitted a revised CRMP (October 2020 revised CRMP) following Staff comments and recommendations from the April 2019 CRMP. On January 28, 2021, Pinecrest Environmental Consulting responded to staff comments, submitting another revised CRMP (January 2021 revised CRMP).

On May 25, 2021, in response to staff comments on the January 2021 revised CRMP, Pinecrest Environmental Consulting submitted a revised CRMP that staff determined was adequate for implementation (May 2021 revised CRMP). Pinecrest's response indicated that restoration work was ready to begin following the issuance of all applicable local, state, and federal permits.

On June 22, 2021, Pinecrest Environmental Consulting staff notified Staff by phone call that its client, Jay Clay, was experiencing financial hardship and was not able to continue efforts on the CRMP process and restoration efforts.

On March 1, 2022, Staff provided the dischargers with a draft Cleanup and Abatement and 13267 Informational Order (draft Order). Staff requested comments on the draft Order by March 31, 2022. The draft Order directed the dischargers to take steps to clean up and abate the discharge of earthen material in waters of the state through the excavation and disposal of unpermitted fill material within an unnamed wetland on the Property. Excavation and disposal work within surface waters is subject to regulation under section 401 water quality certification and/or waste discharge requirements or waiver thereof. Additionally, the draft Order requires that the dischargers provide monitoring and technical reports to ensure and demonstrate adequate cleanup, restoration, and remediation measures, and to document and report on progress of site recovery.

On March 21, 2022, David Friedland of Oracle Consulting submitted written comments on the draft Order, including a Fill Removal Plan and associated fill volume estimates by Atterbury & Associates dated March 11, 2022. Volume estimates included in the plan were based on a site survey that included sampling of the depth of fill and a detailed topographic map showing the original and current contours, with the estimated fill volume calculated from the change in contour elevations. Atterbury & Associates estimated the total fill volume to be removed at 1,400 cubic yards. Staff provided responses to the written comments in a letter dated April 25, 2022.

On May 24, 2022, Staff transmitted the final Cleanup and Abatement and 13267 Order, No. R1-2022-0020 (Order). Following the issuance of the final Order, all requirements and deadlines became effective immediately. The Order includes a time schedule for compliance with the tasks set forth in the Order. The first task requires that the dischargers commence implementing the CRMP by July 8, 2022, and complete removal of the unauthorized fill wetland restoration by September 15, 2022.

On August 2, 2022, the City of Santa Rosa Planning and Economic Development, Building Division, issued building permit B17-3378 to Dave Harris of Oracle Consulting at 1577 Ludwig Ave. for the removal of fill material to address city code violation CE17 and requirements set forth in R1-2022-0020.

On September 2, 2022, Staff received an emailed extension request from Dave Harris of Oracle Consulting. The email stated that work had not yet begun due to a delayed

response from partner agencies regarding permit requirements for the Site. Following numerous discussions between September 2, 2022, through September 14, 2022, Staff confirmed the delay with partner agencies and confirmed that no further permitting is required for this Property and the restoration efforts as directed in the approved CRMP may proceed as scheduled. Staff noted that they would not pursue further enforcement at this time, and informally extended the deadline to complete cleanup and restoration work to November 15, 2022. The North Coast Regional Water Board reserved its right to enforce the original due date of September 15, 2022, should the restoration work not be completed by November 15, 2022.

Restoration work was scheduled to commence on October 10, 2022. Through email correspondence from October 5, 2022, through October 7, 2022, between Staff, former landowner Jay Clay, and current landowner Amy Guo, Ms. Guo expressed concerns regarding damage to the foundation of the household resulting from heavy loaded trucks accessing the property through the driveway on the Southwest corner of the property. Ms. Guo suggested accessing the site by other means including the Southeast corner of the property or through neighboring parcels as well as an agreement from the engineer supervising the work taking full responsibility for the remedy of potential damages caused by heavy loaded trucks accessing the property. As of the date of this letter, no agreement between the parties has been reached.

The December 7, 2017, wetland delineation and biotic assessment mentioned above describes the undisturbed perimeter of the Property as "high quality remnant wetland," and observed a population of Sebastopol meadowfoam (*Limnanthes vinculans*) in the southeast corner of the study area. Sebastopol meadowfoam was state listed as endangered in 1979 and federally listed as endangered in 1991. Therefore, accessing the property by other means as Ms. Guo suggested is not a viable method to avoid further threats to water quality and state and federal listed species.

As of the date of this letter, the dischargers have not completed Required Action no. 1: Implement the May 2021 revised CRMP, by July 8, 2022, and Required Action no. 3: complete mitigation and restoration by September 15, 2022.

### **Non-Compliance**

Required Actions No. 1 (Implement the May 2021 revised CRMP) and Required Actions No. 3 (Complete the Cleanup and Restoration) is a condition of the CAO required pursuant to Water Code section 13304. Violations of requirements imposed pursuant to Water Code section 13304 may result in administrative civil liability of up to \$5,000 per day pursuant to Water Code section 13350.

As of July 18, 2023, you have been in violation of CAO Required Actions No. 1 since July 9, 2022, a total of 374 days, and face potential administrative civil liability of up to \$1,870,000. You have been in violation of Required Actions No. 3 since September 15, 2022, a total of 306 days, and face potential administrative civil liability of up to

\$1,530,000. Your total maximum potential administrative civil liability thus far is \$3,400,000.

**Within 30 days of this letter**, please advise my staff member Jordan Filak of your intentions, plan, and schedule to implement restoration work and come into compliance with the CAO. If you have any questions about this letter or the actions required under the Order, Jordan Filak can be reached at 707-576-6743 or [Jordan.Filak@waterboards.ca.gov](mailto:Jordan.Filak@waterboards.ca.gov) or myself at 707-576-2835 or [Jeremiah.Puget@waterboards.ca.gov](mailto:Jeremiah.Puget@waterboards.ca.gov). We strongly encourage meeting on-site or in our office at your earliest convenience and will consider the timeliness and adequacy of your response in determining our next enforcement steps.

Sincerely,

Jeremiah Puget  
Senior Environmental Scientist  
Enforcement Unit

230717\_JF\_NOV\_For\_R1-2022-0020\_Requirements

**cc:**

**Department of Fish and Wildlife**

Timothy Dodson, [Timothy.Dodson@wildlife.ca.gov](mailto:Timothy.Dodson@wildlife.ca.gov)

**Sonoma County**

Amy Lyle, [Amy.Lyle@sonoma-county.org](mailto:Amy.Lyle@sonoma-county.org)

**City of Santa Rosa**

Jesse Oswald, [joswald@srcity.org](mailto:joswald@srcity.org)

**U.S. Army Corps of Engineers**

Bryan Matsumoto, [Bryan.T.Matsumoto@usace.army.mil](mailto:Bryan.T.Matsumoto@usace.army.mil)

**North Coast Regional Water Quality Control Board**

Jeremiah Puget, [Jeremiah.Puget@waterboards.ca.gov](mailto:Jeremiah.Puget@waterboards.ca.gov)

Kason Grady, [Kason.Grady@waterboards.ca.gov](mailto:Kason.Grady@waterboards.ca.gov)

1577 Ludwig Ave.  
Notice of Violation  
R1-2022-0020 Requirements

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July 18, 2023

Jordan Filak, [Jordan.Filak@waterboards.ca.gov](mailto:Jordan.Filak@waterboards.ca.gov)

**State Water Resources Control Board**

Nathan Jacobsen, [Nathan.Jacobsen@waterboards.ca.gov](mailto:Nathan.Jacobsen@waterboards.ca.gov)

David Boyers, [David.Boyers@Waterboards.ca.gov](mailto:David.Boyers@Waterboards.ca.gov)