

In the Matter of:  
Discharges of Waste From Individual  
or Community Sewage Disposal  
Systems in the Los Osos/Baywood  
Park Prohibition Zone,  
(CCRWQCB Resolution No. 83-13  
Basin Plan, p. IV-67)

SETTLEMENT AGREEMENT AND  
ORDER

The undersigned Parties stipulate and agree as follows:

1. Doug & Paula Dishen own and operate an on-site wastewater treatment and disposal system (Septic System) at 1755 12<sup>th</sup> Street (Site) in Los Osos, California. The Site is a residence located within the prohibition zone established by Resolution No. 83-13. The Septic System consists of a septic tank that discharges wastewater to an on-site subsurface disposal facility. Doug & Paula Dishen are referred to in this Order as "Discharger."
2. The Site has no wastewater disposal facility other than the Septic System. Waste generated at the Site includes human waste and wastewater from toilets and from domestic activities such as bathing, laundry, dishwashing and disposal of garbage. This waste is discharged to the Septic System. The Central Coast Regional Water Quality Control Board's prosecution staff (Staff Prosecution Team) contends that liquid waste then discharges from the Septic System and eventually to groundwater.
3. The Staff Prosecution Team has recommended enforcement actions in the form of cease and desist orders pursuant to Water Code section 13301 be taken against the Discharger and others based on the requirements applicable to the Septic System set forth in the Water Quality Control Plan, Central Coast Basin (Basin Plan).
4. The Discharger has entered into this Settlement Agreement (Agreement) with the Staff Prosecution Team to address the recommended enforcement action for the Site and to cooperate with the Staff Prosecution Team. The Discharger and the Staff Prosecution Team are referred to collectively as the "Parties". The Discharger agrees to waive any right to a hearing with regard to the execution of the Agreement by the Executive Officer of the Central Coast Regional Water Quality Control Board (Executive Officer).
5. Nothing in this Agreement shall be deemed an admission of liability on the part of the Discharger.
6. The Parties acknowledge that pursuant to AB 2701, as of January 1, 2007, the County of San Luis Obispo (County) will be authorized to undertake any efforts necessary to construct and operate a community wastewater collection and treatment system to serve the territory which is subject to the wastewater discharge prohibition imposed by the Central Coast Regional Water Quality Control Board (Water Board) pursuant to Resolution No. 83-13. That territory includes the Site. The Parties acknowledge that  
Item No. 5 Attachment 4  
May 10-11, 2007 Meeting  
Consideration of Panel Hearing  
Recommendation. to adopt C&D  
Orders R3-2006-1008 &1041

if the Site is connected to a community wastewater collection and treatment system as contemplated by AB 2701, that the Site will comply with the applicable waste discharge prohibition in the Basin Plan

7. This Agreement results from action being taken for the protection of natural resources and the environment and as such is exempt from the provisions of the California Environmental Quality Act (Sections 15307, 15308, and 15321, Chapter 3, Division 6, Title 14, California Code of Regulations, "CEQA"). In addition, the Septic System is an existing facility and this Agreement allows no expansion of use beyond that previously existing system so the actions required herein are exempt from the provisions of CEQA (Section 15301, Chapter 3, Division 6, Title 14, California Code of Regulations).
8. The language of this Agreement has been reviewed and approved by the Central Coast Regional Water Quality Control Board (Water Board). The Parties acknowledge that Government Code section 11415.60 authorizes the terms of this Agreement.

The Discharger shall comply with the following requirements:

#### **A. CESSATION OF DISCHARGE**

1. In the event that the County is successful in approving a benefits assessment by July 1, 2008, to finance the construction of a community wastewater collection and treatment system after providing the owners of the subject property with notice and an opportunity to protest the assessment in accordance with Article XIII D of the California Constitution, and, thereafter, the County completes a timely due diligence review for the construction of a community wastewater collection and treatment system, and constructs a community wastewater collection and treatment system in accordance with a schedule approved by the Regional Board;
  - a. The Discharger shall cease all unpermitted discharges (discharges not approved or permitted by the Water Board) from the Septic System no later than 60 days after the availability of a community wastewater collection and treatment system is available for connection to the Site;
  - b. After the Water Board provides notice of the expected availability date to the Discharger and no later than 90 days before the expected availability date, the Discharger shall submit the following information; either:
    - i. A statement that the Discharger agrees to connect to the community wastewater treatment plant and sewer system within 60 days after the community wastewater collection and treatment system becomes available for connection to the Site; or
    - ii. A technical report proposing an alternative method of ceasing all unpermitted discharges from the Septic System. The proposed

alternative must be adequate to cease unpermitted discharges from the Septic System within 60 days after the date on which the approved schedule anticipates that the community wastewater collection and treatment system will be available, and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. "Waters of the State" is defined in Water Code Section 13050(e). "Report of waste discharge" means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376. In the event that the proposed alternative is not approved by the Water Board, Discharger will be required to cease all unpermitted discharges from the Septic System no later than 60 days after the availability of a community wastewater collection and treatment system is available for connection to the Site in accordance with Paragraph A.1.a.

2. In the event that the benefits assessment is not approved by the County before July 1, 2008, the Discharger shall cease all discharges from the Septic System no later than January 1, 2011, unless the Water Board has approved an onsite system for discharge from the Site. By June 30, 2010, the Discharger shall submit a technical report proposing a method of complying with the January 1, 2011 discharge prohibition date. The proposed alternative must be adequate to cease unpermitted discharges from the Septic System by January 1, 2011, and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. "Waters of the State" is defined in Water Code Section 13050(e). "Report of waste discharge" means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376.
3. In the event that after the benefits assessment is approved by the County, there is a material cessation of the work, as determined by the Water Board, which prevents the implementation, completion, or availability of a community wastewater collection and treatment system to the Site, the Discharger shall cease all discharges from the Septic System by the later of January 1, 2011 or two years following written notice by the Executive Officer of the material cessation. Six months prior to that discharge cessation date, the Discharger shall submit a technical report proposing a method of complying with the discharge cessation date. The proposed alternative must be adequate to cease unpermitted discharges from the Septic System by the discharge cessation date and must include a proposed monitoring and reporting plan. If the alternative involves a discharge of waste that could affect waters of the State, the report shall be in the form of a report of waste discharge. "Waters of the State" is defined in Water Code Section 13050(e). "Report of waste discharge" means a report that complies with Water Code Section 13260 and, if applicable, Water Code Section 13376.

4. Nothing in this Agreement authorizes discharges from the Septic System at any time, whether before or after January 1, 2011.

## **B. INTERIM COMPLIANCE REQUIREMENTS**

By three months after the entry of this Agreement, the Discharger shall (1) have the contents of the Septic System pumped or certify that the Septic System has been pumped within the previous three years, and (2) obtain and submit to the Water Board a report by the County of San Luis Obispo or a septic tank pumper with a C42 contractor's license on the San Luis Obispo County Septic Tank Inspection Form and Septic Verification Form (a copy of which is attached as Exhibit "A") that either describes recommended repairs to the Septic System or states that no repairs are necessary. If the Discharger disagrees with any repair recommendation, the Discharger shall provide justification to the Executive Officer no later than four months after the entry of this Agreement explaining why the repairs are not necessary. Unless the Staff Prosecution Team agrees, in writing, that any recommended repair is not necessary, the Discharger shall provide documentation no later than the first day of the next full calendar month following 180 days after the entry of this Agreement, that the Discharger has complied with these pumping, inspection and repair requirements. Until the community wastewater collection and treatment system is available to the Site and/or all unpermitted discharges from the Septic System cease, the Discharger shall have three months from every third anniversary of the entry of this Agreement to satisfy the same pumping, inspection and repair requirements.

For the purposes of this Agreement, "entry of this Agreement" shall mean the date that the Executive Officer executes this Agreement. The Staff Prosecution Team agrees that it will notify the Discharger of the date of entry and serve the Discharger by mail with a copy of the fully executed Agreement after execution by the Executive Officer.

## **C. PROVISIONS**

1. All reports, receipts, notifications and other documents the Discharger submits pursuant to this Agreement (including Paragraph A.2 of this Agreement) shall be accompanied by a statement from the Discharger stating: "I certify under penalty of perjury that the attached documents were prepared at my request or under my supervision, and to the best of my knowledge are true, accurate and complete. I understand that there are significant penalties for providing false or incomplete information, including the possibility of criminal fines or imprisonment."
2. If more than one person or entity is a "Discharger" subject to this Agreement, compliance by any of those persons or entities with the submission requirements of this Agreement on behalf of those dischargers constitutes compliance by all such Dischargers. Multiple submissions are not required. However, all named Dischargers are responsible for compliance with all requirements of this Agreement, and will be subject to enforcement for any non-compliance. Arrangements among and/or between dischargers as to how they will comply with

the Agreement's requirements are not binding on the Staff Prosecution Team or the Water Board and do not protect any discharger from enforcement actions.

3. Discharger shall inform any subsequent owner or occupant at the Site of this Agreement and provide a copy of the Agreement. For the purposes of this Agreement, the Discharger understands that he or she is liable for the use of the Septic System, while the Discharger owns the Site, including but not limited to use of the Septic System by any tenant or any other person occupying the Site.
4. The Discharger, if a property owner, shall notify the Executive Officer and the Staff Prosecution Team in writing of any transfer of ownership of the Site within 30 calendar days following close of escrow or transfer of record title after transfer of ownership.
5. The property owner shall notify the Executive Officer and the Staff Prosecution Team in writing of the name of any new occupant of the Site within 30 days after the new occupant takes occupancy.
6. Compliance dates may be extended by the Executive Officer provided there is reasonable progress in implementing a wastewater collection and treatment system for the community. The Executive Officer may also extend the due date for any interim or reporting requirements for circumstances beyond the Discharger's reasonable control. In the event that the Water Board or the Executive Officer issues any order to the County of San Luis Obispo or the Los Osos Community Services District which includes a time schedule for the construction and operation of a community wastewater collection and treatment system (Time Schedule Order) which is intended to serve the Site, the Executive Officer will revise the compliance dates in this Agreement to be consistent with any compliance dates in such Time Schedule Order.

### **Notifications**

All written submissions and notifications shall be provided to the parties as follows:

For the Staff Prosecution Team:

Los Osos Staff Prosecution Team  
895 Aerovista Place, Suite 101  
San Luis Obispo, California 93401

For the Discharger:

Doug & Paula Dishen  
1755 12<sup>th</sup> Street  
Los Osos, CA 93402

Any Party may change the designee or address for notifications but no such change is effective until it is actually received by the party sought to be charged with its contents.

### **Modifications**

This Agreement may be modified only upon written consent by the Parties hereto and the approval of the Executive Officer or as provided for by law.

In the event that the Staff Prosecution Team enters into a subsequent agreement with any discharger in the prohibition zone which is set forth on the Prohibition Boundary Map, Attachment A of Central Coast Water Board Resolution No. 83-13, *Revision and Amendment of Water Quality Control Plan by the Addition of a Prohibition of Waste Discharge from Individual Sewage Disposal Systems Within the Los Osos/Baywood Park Area, San Luis Obispo County* which contains terms which are materially different from those in this Agreement and which may be applicable to the Site or Discharger, the Discharger may request that this Agreement be amended to include those terms, and upon such request, the Staff Prosecution Team will make those modifications and submit them for approval and execution by the Executive Officer as a modification of the Agreement. This paragraph does not apply to terms in any subsequent agreements which are based on any unique personal circumstances applicable to the other discharger.

### **Remedies for Failure to Comply**

The Parties agree that the provisions of this Agreement shall be enforced as an order issued by the Executive Officer pursuant to California Water Code section 13304. The Parties acknowledge that pursuant to California Water Code section 13350, liability and remedies for violations of this Agreement are provided for including the authority of the Water Board to impose civil liability on a daily basis not to exceed \$5,000 against the Discharger for each day the violation occurs. However, the Parties agree that California Water Code section 13350(e)(1)(A) does not require the Water Board to impose a required minimum penalty of \$500 for each day of discharge in violation of this agreement. In the event the Water Board seeks to enforce this agreement pursuant to section 13350, the Water Board shall consider the factors set forth in California Water Code section 13327, pursuant to section 13350(f). Neither of the Parties waive any rights or defenses that they may have with regard to any action to enforce the terms of this Agreement.

In taking or recommending any action to enforce the terms of Section A of this Agreement or in taking any action with regard to the enforcement of the Basin Plan Prohibition, the Staff Prosecution Team agrees that it will consider the cooperation of the Discharger in

entering into this Agreement, as compared with any other discharger who has been issued a cease and desist order or any adjudicated order, or who is recalcitrant or non-cooperative, as a factor in such action including the timing of such action, and the amount of any liability that should be imposed through such enforcement action. Prior to the initiation of any formal action to enforce this Agreement or the Basin Plan Prohibition against the Discharger (except for actions to address an imminent or substantial threat to water quality or an emergency requiring immediate action to protect the public health, welfare or safety), the Staff Prosecution Team agrees that it will meet-and-confer with the Discharger or a group of other settling dischargers regarding such action, and the Parties will negotiate in good faith to try and resolve any proposed enforcement action. No negotiated resolution of any enforcement action is required or guaranteed by this provision.

The failure of the Staff Prosecution Team to enforce any provision of this Agreement shall neither be deemed a waiver of such provision nor in any way affect the validity of this Agreement. The failure of the Staff Prosecution Team to enforce any such provision shall not preclude it from later enforcing the same or any other provision of the Agreement or the Basin Plan. No oral advice, guidance, or suggestions or comments by employees or officials of any Party regarding matters covered by this Agreement shall be construed to relieve any Party of its obligations required by this Agreement.

#### **Termination of Agreement**

This Agreement shall terminate when the Discharger 1) connects the Site to a community wastewater collection and treatment system, or otherwise permanently ceases all discharges from the Septic System, or 2) is no longer the owner of the Site provided the Discharger has complied with Paragraph C.3 and C.4, above.

#### **Authority to Enter Agreement**

Each signatory to this Agreement certified that he or she is fully authorized by the Party that he or she presents to enter into this Agreement, and to execute it on behalf of the Party represented and to legally bind that party. The Agreement is binding on the Parties and each of their respective successors or assigns.

**Counterpart Signatures**

This Agreement may be executed by the Parties in counterpart, and when a copy is signed by the authorized representative of each Party, the stipulation shall be effective as if a single document were signed by all Parties.

IT IS SO AGREED:

*Doug Dishen, Paula Dishen*  
Doug & Paula Dishen

4/15/07  
Date

\_\_\_\_\_  
Harvey C. Packard  
On behalf of the Staff Prosecution Team

\_\_\_\_\_  
Date

IT IS SO ORDERED:

\_\_\_\_\_  
Michael J. Thomas  
Assistant Executive Officer  
Central Coast Regional Water Quality Control Board

\_\_\_\_\_  
Date