

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 2:17-cv-04346
)	
NVR, Inc.,)	
)	
Defendant.)	
)	

CONSENT DECREE

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Whereas, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), has filed the Complaint in this matter alleging that NVR, Inc., (“NVR”) has violated the Clean Water Act, 33 U.S.C. §§ 1251-1331, by discharging pollutants without permit coverage under the New York General Permit for Stormwater Discharges from Construction Activity (“NY CGP”) and the New Jersey Construction Activity Storm Water General Permit (“NJ CGP”) and/or failed to comply with conditions of those permits;

Whereas, NVR states that it does not generally develop raw land (“horizontal development”), but does obtain a contractual option to purchase finished lots from horizontal developers, which it may later choose to exercise on an individual finished lot basis for home construction on such lot. If it exercises its option to purchase a finished lot, NVR may conduct home construction activities (“vertical development”) on that lot;

Whereas, NVR states that prior to the initiation of this matter in 2009, NVR implemented practices that reflect the terms of prior homebuilder consent decrees, and during the course of discussions with the government has maintained and enhanced those practices, including lot-specific operations within a site in accordance with both the general principles of this agreement, and with the general permit in the states in which it operates.

Whereas, NVR does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

Whereas, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will

avoid litigation among the Parties and that this Consent Decree is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law except as provided in Section II, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. DEFINITIONS

1. Definitions. Except as specifically provided in this Consent Decree (“Decree”), the terms used in this Decree shall be defined in accordance with definitions in the Clean Water Act and the regulations promulgated pursuant to the Clean Water Act. Whenever the terms listed below are used in this Decree, the following definitions apply:

a. Action Item -- a condition that requires action to be taken to achieve or maintain compliance with Storm Water Requirements with respect to Builder Construction Activity.

b. Applicable Permit -- whichever of the following permits is applicable to a particular Site: (i) the Federal General Permit for Storm Water Discharges from Construction Activities; or (ii) in the case of an Authorized State, the Authorized State’s National Pollutant Discharge Elimination System (“NPDES”) construction general permit; or (iii) an individual NPDES permit issued by EPA or an Authorized State for storm water discharges associated with construction. This term applies to that permit in its current form or as it may be amended in the future.

c. Authorized State -- a state with an NPDES Program that has been authorized by EPA under Section 402(b) of the CWA, 33 U.S.C. § 1342(b), and 40

C.F.R. Part 123 to issue individual or general NPDES permits including those for stormwater discharges associated with construction activity.

d. Best Management Practices (“BMPs”) -- the definition in 40 C.F.R. § 122.2, in its current form or as it may be amended in the future. That definition currently is “schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ‘waters of the United States.’ BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.”

e. Builder -- NVR, its successors and assigns, as well as any subsidiaries of NVR that engage in Construction Activity.

f. Builder Construction Activity -- shall include Construction Activity on lots owned by the Builder within a Site. The term shall also include stockpiling or staging by Builder and, if applicable, other Construction Activity Builder engages in, on other portions of a Site that Builder does not own. This defined term does not cover horizontal development of raw land by NVR, to which the terms and conditions of this Consent Decree do not apply, unless otherwise indicated herein. Should NVR own and develop raw land, it shall obtain the appropriate permits as an owner or operator.

g. Business Day -- any day other than a Saturday, Sunday, or State or Federal legal holiday. If a stated time period in the Decree expires on a Saturday, Sunday, or State or Federal legal holiday, it shall be extended to include the next Business Day.

h. Clean Water Act (“CWA”) -- the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.

i. Complaint -- shall mean the Complaint filed by the United States in this action.

j. Consent Decree or Decree -- shall mean this Decree and all Appendices attached hereto (listed in Section XXI).

k. Construction Activity - shall include “construction activity” and “small construction activity” as those terms are defined in 40 C.F.R. 122.26(b)(14), 122.26(b)(14)(x) and (15).

l. Date of Entry -- the date the court-approved Decree is entered in the civil docket under Fed. R. Civ. P. 79(a).

m. Designee -- a Builder employee who is Storm Water Trained, pursuant to Paragraph 15 (Storm Water Training Program).

n. Division -- Builder’s mid-level management unit, between national management and Site-level management, which manages multiple Sites. Builder may modify its corporate structure, including its mid-level management unit, to meet its business needs.

o. Division Storm Water Compliance Representative -- a Builder employee designated pursuant to Paragraph 5.b (Designation of Storm Water Compliance Representatives) to oversee storm water compliance activities for a Division (or for a comparable business unit if Builder or Division renames or reorganizes its internal structure).

p. Electronic Signature -- an electronic verification in which a person (1) accesses Builder's internal network via a secure log-in and a password that is unique to that person and that has not been divulged to any other individual and (2) indicates that he or she adopts the content of such record and certification therein.

q. EPA -- the U.S. Environmental Protection Agency.

r. Federal General Permit -- the federal "NPDES General Permit for Storm Water Discharges from Construction Activities" issued by EPA on February 16, 2012 (77 Fed. Reg. 12286) and any subsequent amendments or modifications thereto or other permits subsequently issued by EPA to implement the requirements of 40 C.F.R. Parts 122, 123 and 124 for storm water discharges from construction activities.

s. Government Inspection -- a local, state or federal inspection conducted to evaluate compliance with Storm Water Requirements.

t. List of Sites -- a list of Sites as required by Paragraph 6 (Notice to EPA of List of Sites).

u. Lot Purchase Agreement ("LPA") -- a lot purchase agreement entered into between Builder and a horizontal site developer or site land owner regarding Builder's non-binding option to purchase lots within a Site.

v. National Compliance Summary Report -- a report as described and required by Paragraph 14 (National Compliance Summary Report).

w. National Reporting Period (or "NRP")-- the time periods set out in the Table in Paragraph 14.

x. National Storm Water Compliance Representative -- a Builder employee designated pursuant to Paragraph 5.c (Designation of Storm Water Compliance Representatives).

y. Notice of Intent (“NOI”) -- a written request for coverage under an Applicable Permit, no matter what term for such request is utilized in the applicable State or federal stormwater permit or regulations. Depending on the State where the Site is located, the term used for this written request may include (a) Notice of Intent, (b) Request for Authorization, (c) request for coverage as co-permittee, or (d) any other State-specific term for the document constituting the request for coverage under the Applicable Permit in that State.

z. Notice of Termination (“NOT”) -- notification that coverage under an Applicable Permit is ready for termination.

aa. Paragraph -- shall mean a portion of this Decree identified by an arabic numeral.

bb. Parties -- the United States and the Builder.

cc. Plaintiff -- the United States of America, acting on behalf of EPA.

dd. Pre-Construction Inspection and Review -- the inspection and review required by Paragraph 9 (Pre-Construction Inspection and Review).

ee. Pre-Construction Inspection and Review Form (“PCIR Form”) -- the form attached at Appendix C and as required by Paragraph 9 (Pre-Construction Inspection and Review).

ff. Quarterly Compliance Inspection -- an inspection as described and required by Paragraph 12 (Site Storm Water Compliance Review and Oversight).

gg. Quarterly Compliance Inspection and Review Form -- the form attached at Appendix E and as required by Paragraph 12 (Site Storm Water Compliance Review and Oversight).

hh. Quarterly Compliance Review -- a compliance review as described and required by Paragraph 12 (Site Storm Water Compliance Review and Oversight).

ii. Quarterly Reporting Period (or "QRP") -- the first Quarterly Reporting period shall be at least three (3) calendar months (a "Quarter") from the Date of Entry until the end of whichever of the following calendar months concludes the first full calendar Quarter following the Date of Entry: March, June, September, December. Thereafter, the Quarterly Reporting Period shall be each successive Quarter. The tenth Quarterly Reporting Period will end on the "30 month Anniversary," as defined in Paragraph 71.

jj. Responsive Action -- an action taken or that is necessary to be taken to achieve or maintain compliance with Storm Water Requirements. Such an action may also be referred to as a Corrective Action.

kk. Section -- shall mean a portion of this Decree identified by a Roman numeral.

ll. Site -- any land development, such as a community or subdivision, where Builder engages in Builder Construction Activity and where coverage under an Applicable Permit is required for storm water discharges associated with construction activity.

mm. Site Inspection -- an inspection of required stormwater controls and practices regarding Builder Construction Activity at a Site, as required by Paragraph 10 (Inspections).

nn. Site Inspection Form -- a form attached at Appendix D or as otherwise required by Paragraph 10 (Inspections).

oo. Site Storm Water Compliance Representative -- a Builder employee assigned pursuant to Paragraph 5.a (Storm Water Compliance Representatives) to oversee Builder storm water compliance activities at a Site.

pp. Storm Water Compliance Representatives -- Site Storm Water Compliance Representatives, Division Storm Water Compliance Representatives, and a National Storm Water Compliance Representative.

qq. Storm Water Consultant -- a person or company that provides professional or expert assistance to Builder in complying with Storm Water Requirements. Each person who is a Storm Water Consultant: (i) shall possess the skills to assess conditions at a Site that could impact the quality of storm water and non-storm water discharges and compliance with Storm Water Requirements; and (ii) shall be knowledgeable in the principles and practices of sediment and erosion control and other BMPs. The term Storm Water Consultant does not include, for example, third parties hired exclusively to install, maintain, or repair BMPs. Such third parties are not Storm Water Consultants. For purposes of conducting Site Inspections, the Storm Water Consultant shall meet the qualifications of the Applicable Permit.

rr. Storm Water Pollution Prevention Plan (“SWPPP”) -- a plan for controlling pollutants in storm water discharges and managing non-storm water discharges that meets Storm Water Requirements.

ss. Storm Water Record -- any record, report, or documents required to be created or maintained pursuant to Storm Water Requirements.

tt. Storm Water Requirements -- the terms and conditions of this Decree and the Applicable Permit governing storm water discharges associated with Builder Construction Activity at a Site, as well as the laws and regulations that apply to, interpret, or enforce the Applicable Permit for storm water discharges associated with Builder Construction Activity at a Site.

uu. Storm Water Trained -- an individual who: (i) is certified under the Storm Water Training Program pursuant to Paragraph 15(a) (Storm Water Training Program); or (ii) is certified by CPESC, Inc. under the Certified Professional in Erosion and Sediment Control (“CPESC”) program, maintains a current CPESC certification, and receives Builder-specific training on the compliance requirements of this Consent Decree; or (iii) is certified under another training program agreed to by the Plaintiff after a request made to the Region II representative(s) listed in Section XIII (Notices); or (iv) is a Storm Water Consultant pursuant to paragraph 1.qq.

vv. Storm Water Training Program -- this term includes all of the training required by Paragraph 15 (Storm Water Training Program).

ww. United States -- shall mean the United States of America, acting on behalf of EPA.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367, and Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b) and over the Parties. For purposes of this Decree, or any action to enforce or interpret this Decree, Builder consents to the Court's jurisdiction over Builder, this Decree, and any action to interpret or enforce this Decree. Builder also consents to venue in this judicial district for this action and any action to interpret or enforce this Decree.

III. APPLICABILITY

3. Parties Bound. The obligations of this Decree apply to and are binding upon the United States and upon Builder.

IV. BUILDER'S COMPLIANCE PROGRAM

4. Compliance. Builder shall comply with all applicable Storm Water Requirements, and shall not violate the prohibition in Section 301(a) of the Clean Water Act by discharging pollutants in storm water without, or in violation of, an Applicable Permit, or by making prohibited non-storm water discharges, to waters of the United States at any Site.

5. Storm Water Compliance Representatives.

a. Builder shall have at least one Site Storm Water Compliance Representative for each Site prior to signing the Pre-Construction Inspection and Review Form for that Site or within thirty (30) days of the Date of Entry, whichever is later. Builder may have the same Site Storm Water Compliance Representative for a number of Sites. Builder acknowledges that each Site Storm Water Compliance Representative

must fulfill all responsibilities as set forth below, regardless of the number of Sites for which that individual is the Site Storm Water Compliance Representative. Each Site Storm Water Compliance Representative shall:

(i) be a Builder employee;

(ii) be Storm Water Trained;

(iii) be authorized by Builder and have the responsibility to supervise all work necessary to meet Storm Water Requirements pertaining to Builder Construction Activity at the Site, including work performed by employees, contractors, sub-contractors, and Storm Water Consultants;

(iv) be authorized by Builder and have the responsibility to order employees, contractors, sub-contractors, and Storm Water Consultants to take appropriate Responsive Action to address a failure to comply with Storm Water Requirements pertaining to Builder Construction Activity at the Site, including requiring any such person to cease or correct a violation of Storm Water Requirements, and to order or recommend such other actions or sanctions as necessary to meet Storm Water Requirements pertaining to Builder Construction Activity.

(v) be familiar with and have the authority and responsibility to update and amend the Site's SWPPP relating to Builder Construction Activity at the Site;

(vi) be the point of contact for the Site for regulatory officials and Builder employees, contractors, sub-contractors, and Storm Water Consultants regarding Storm Water Requirements pertaining to Builder-owned lots and Builder Construction Activity; and

(vii) report to a Division Storm Water Compliance

Representative regarding Builder's compliance with Storm Water Requirements.

b. Builder shall have one Division Storm Water Compliance

Representative for each Site within a Division prior to signing the Pre-Construction Inspection and Review Form for that Site or within thirty (30) days of the Date of Entry, whichever is later. Builder may have the same Division Storm Water Compliance Representative for more than one Site or Division or multiple such Representatives for a single Division. The Division Storm Water Compliance Representative shall:

(i) be a Builder employee;

(ii) be Storm Water-Trained;

(iii) be authorized by Builder and have the responsibility to supervise all work necessary to meet Storm Water Requirements pertaining to Builder Construction Activity in the Division, including work performed by employees, contractors, sub-contractors, and Storm Water Consultants;

(iv) be authorized by Builder to order employees, contractors, sub-contractors, and Storm Water Consultants to take appropriate Responsive Action to address a failure to comply with Storm Water Requirements pertaining to Builder Construction Activity, including requiring any such person to cease or correct a violation of such Storm Water Requirements, and to order or recommend to Builder such other actions or sanctions as necessary to meet Storm Water Requirements pertaining to Builder Construction Activity;

(v) be familiar with and have the authority to amend portions of the Site's SWPPP pertaining to Builder Construction Activity at the Site; and

- (vi) report to the National Storm Water Compliance

Representative regarding Builder's compliance with Storm Water Requirements.

- c. Builder shall designate one National Storm Water Compliance

Representative within seven (7) days of the Date of Entry. The National Storm Water

Compliance Representative shall:

- (i) be a Builder employee;
- (ii) be Storm Water Trained;
- (iii) oversee the development and maintenance of the List of

Sites established pursuant to Paragraph 6 (Notice to EPA of List of Sites);

- (iv) submit the National Compliance Summary Report to the

Plaintiff pursuant to Paragraph 14 (National Compliance Summary Report); and

- (v) serve as Builder's point of contact for the Plaintiff for

Builder-wide compliance matters related to Storm Water Requirements.

- d. If a Storm Water Compliance Representative must be replaced,

another Storm Water Compliance Representative shall be assigned.

- e. Except as expressly provided in the Decree, Storm Water

Compliance Representatives may delegate the performance of storm water compliance

duties required under this Decree to Designees. Any such delegation does not relieve

Builder or its Storm Water Compliance Representatives of responsibility for the proper

performance of any delegated task or for compliance with Storm Water Requirements.

- (i) Designees shall have sufficient authority to perform the

delegated tasks; and

(ii) The Quarterly Compliance Inspection shall not be conducted by the same person who conducted a Site Inspection under Paragraph 10 (Inspections) during the QRP.

f. Storm Water Compliance Representatives may also hire contractors to install, maintain or repair BMPs required for Builder Construction Activity under the Applicable Permit. Such contractors need not be Designees to perform such tasks. Any such use of contractors does not relieve Builder or its Storm Water Compliance Representatives of responsibility for the proper performance of any delegated task or for compliance with Storm Water Requirements.

g. Builder shall post the contact information for the Division office at a conspicuous location at the Site, such as at the Builder's construction office, or at an entrance or exit if the Builder does not have a construction office at the Site.

6. Notice to EPA of List of Sites.

a. Within sixty (60) days after the Date of Entry, Builder shall provide a List of all Sites ("the List") to the EPA representatives listed in Section XIII (Notices) in searchable electronic form, in the format attached as Appendix A as described below.

(i) The initial List shall include all Sites where Builder has initiated Builder Construction Activity and where Builder's coverage under the Applicable Permit has not been terminated, as of the Date of Entry. The initial List shall also include and identify Builder owned Sites that comprise raw land, as of the Date of Entry.

(ii) The List shall provide: (A) the Site name(s); (B) the State and County in which the Site is located; (C) the Site address; (D) the date that the Builder's Pre-Construction Inspection and Review Form was signed, for Sites where Builder commenced Builder Construction Activity after the Date of Entry; and (E) whether the Builder has prepared a SWPPP or SWPPP supplement for Builder Construction Activity at the Site and obtained coverage under the Applicable Permit. The Builder may also note on the List where Builder Construction Activity has temporarily ceased. The Builder shall also provide a list of the estimated number of lots available to be purchased by the Builder at each Site (the "List of Available Lots").

b. Builder shall provide to the EPA representatives listed in Section XIII (Notices), an updated List on or before the 30th day after the end of each calendar half year thereafter. The updated List shall include the information provided in Paragraph 6(a) for each Site, including new Sites. New Sites are those where the Pre-Construction Inspection and Review Form for the Site was signed after the period covered by the previous List, or Sites that comprise raw land which were acquired by the Builder after the period covered by the previous List. Builder may remove Sites from the updated List as of the date Builder's coverage is terminated under the Applicable Permit pursuant to a NOT, if required.

7. Permits. a. Prior to commencing Builder Construction Activity at a Site, Builder will make reasonable efforts to determine whether the horizontal site developer or site land owner party to the LPA has obtained coverage required under the Applicable Permit with respect to the Site (including obtaining a copy of the coverage acceptance letter or, if applicable, other supporting documentation that establishes the

entity's coverage), and if Builder cannot obtain reasonable confirmation of the existence of such coverage, Builder shall not commence construction.

b. Prior to commencing Builder Construction Activity at a Site, Builder shall obtain coverage required under the Applicable Permit by submitting a Notice of Intent ("NOI") under the applicable Storm Water Requirements, unless the provisions of Paragraph 7.c. are applicable.

c. If Builder seeks to obtain Applicable Permit coverage for Builder Construction Activity at a Site by submitting an NOI under the applicable Storm Water Requirements, but the state authorized to implement the Clean Water Act's National Pollutant Discharge Elimination System ("Authorized State") refuses to accept Builder's NOI for Builder Construction Activity at the Site because the Authorized State does not require NOIs from Builder to cover Builder Construction Activity within a common plan of development that has existing coverage under the Applicable Permit, then Builder will take the following steps:

- (i) Builder will comply with the Authorized State's Applicable Permit;
- (ii) Builder will otherwise comply with the requirements of this Decree;
- (iii) In the List required under Paragraph 6 (Notice to EPA of List of Sites), Builder will provide the information in Paragraph 6.a.(ii) for each Site in the Authorized State and will indicate for Item 6.a.(ii)(E), where applicable, the reason the State refuses to accept Builder's NOI. Builder will also include documentation, such as Applicable Permit language and copies of correspondence with the Authorized State,

in support of its finding that an Authorized State refuses to accept Builder's NOI for Builder Construction Activity at the Site.

8. SWPPP and Storm Water Records

a. For each Site, prior to commencing Builder Construction Activity at a Site, Builder shall prepare and thereafter implement a Site-specific SWPPP, or other similar document(s) required by, and compliant with, the Storm Water Requirements. Builder may use the SWPPP prepared by the horizontal site developer, but if so, Builder shall attach:

(i) Builder-specific Erosion & Sediment Control BMPs, the Erosion & Sediment Control Plans for the Site, or the state issued list of approved BMPs under the Applicable Permit;

(ii) a BMP map addressing Builder's operations at the Site, with identification of the initial types and locations of the Builder BMPs; and

(iii) a lot ownership log documenting, for each lot purchased by Builder, the dates of lot purchase by Builder, stabilization, and transfer to a homebuyer. Builder may also prepare a standalone SWPPP, that includes the Builder-specific Erosion & Sediment Control BMPs, the BMP map, and the lot ownership log referred to above, along with any other requirements of the Applicable Permit for a standalone SWPPP.

b. All SWPPPs and SWPPP amendments shall comply with the terms and conditions of the Applicable Permit, any applicable regulations and this Decree.

With respect to Builder, each SWPPP shall:

(i) be Site specific;

(ii) identify the Builder BMPs that will be used;

- (iii) incorporate the Builder inspection frequency and routine maintenance deadlines under the Applicable Permit, or attach a copy of the Applicable Permit; and
 - (iv) include clear, concise descriptions of Site-specific Builder BMPs to implement the requirements of the Applicable Permit and to guide those responsible for overseeing implementation of the SWPPP (which may be provided via a copy of the Erosion & Sediment Control Plans for the Site or may reference Builder BMPs in the state issued list of approved BMPs under the Applicable Permit). The selection and design specifications of the Site-specific BMPs must comply with the Applicable Permit and any applicable regulations.
- c. SWPPPs shall be revised or amended in accordance with the applicable Storm Water Requirements.
- d. Builder shall, at least weekly, update the lot ownership log to reflect the dates for specific lots that Builder purchases, stabilizes, or transfers to a homebuyer.
- e. All SWPPPs and SWPPP amendments shall be certified if, and as required, by the Applicable Permit.
- f. A Site Storm Water Compliance Representative for the Builder shall review the SWPPP, and such review shall not be delegated.

g. The SWPPP shall be maintained at the Builder's Site construction office if the Site has one. The records or documents required under Paragraphs 9 (Pre-Construction Inspection and Review), 10 (Inspections), and 11 (Installation and Maintenance) shall also be maintained, or electronically accessible, at the Builder's Site construction office if the Site has one. If there is no Builder construction office at the Site, the SWPPP and these records and documents shall be maintained at the Division office.

9. Pre-Construction Inspection and Review.

a. For Sites where Builder commences Builder Construction Activity more than thirty (30) days after the Date of Entry, a Storm Water Compliance Representative shall perform a Pre-Construction Inspection and Review prior to Builder's commencement of Builder Construction Activity at that Site.

b. For purposes of this Paragraph, the commencement of Builder Construction Activity does not include geotechnical investigations, surveying, environmental testing, plant (vegetation) salvage, or the initial installation of BMPs that are not sediment basins, provided none of these activities involve significant soil disturbance.

c. The Pre-Construction Inspection and Review shall be conducted promptly upon purchase of the first lot or group of lots to determine whether the lots have unstabilized soils. If the Pre-Construction Inspection and Review identifies unstabilized soils on Builder-owned lots, Builder shall promptly take necessary actions to implement, or maintain existing, appropriate erosion and sediment control BMPs and other stormwater controls that address unstabilized soils. The Pre-Construction Inspection and

Review shall be completed prior to the commencement of Builder Construction Activity at a Site and shall include the completion of the Pre-Construction Inspection and Review Form (example attached at Appendix C).¹ Prior to the commencement of Builder's Construction Activity, a Responsive Action shall be completed for each Action Item on the Pre-Construction Inspection and Review Form, identified during the Pre-Construction Inspection and Review. As part of the Pre-Construction Inspection and Review, Builder will (i) make reasonable efforts to determine whether the horizontal site developer or site land owner party to the LPA has obtained coverage required under the Applicable Permit with respect to the Site (including obtaining a copy of the coverage acceptance letter or, if applicable, other supporting documentation that established the entity's coverage), (ii) determine whether Builder has obtained permit coverage under the Applicable Permit (including whether a Notice of Intent has been submitted in Builder's name and, if applicable, a copy of the coverage acceptance letter has been obtained), (iii) determine whether the horizontal developer's SWPPP has been obtained, and (iv) determine whether Builder's additions to the SWPPP, or a standalone SWPPP, are in place.

d. A Storm Water Compliance Representative shall review and sign the Pre-Construction Inspection and Review Form, a task that may not be delegated. For purposes of this provision, signature may be an Electronic Signature. The Pre-Construction Inspection and Review Form may be completed, filed, and retained

¹ Builder may modify the example Pre-Construction Inspection and Review Form attached at Appendix C, as necessary, to meet the requirements of the Applicable Permit or Authorized State/Federal General Permit Program for stormwater discharges associated with construction activity. If Builder modifies the example form, Builder shall provide a copy of the modified example form(s) to EPA with the annual National Compliance Summary Report.

electronically. The Pre-Construction Inspection and Review Form shall be kept or made electronically accessible at the Site or other location as provided in Paragraph 8(g).

e. Following Builder's commencement of Builder Construction Activity at each Site, Builder shall implement, per the applicable Storm Water Requirements, all required stormwater controls and practices for Builder Construction Activity at the Site.

f. Where Builder purchases additional lots at the Site that were not addressed in the initial Pre-Construction Inspection and Review, Builder shall determine promptly upon purchase whether those lots have unstabilized soils. If so, Builder shall promptly take necessary actions to implement, prior to commencing construction on the lot(s), appropriate erosion and sediment control BMPs and other stormwater controls that address unstabilized soils.

10. Inspections.

a. At a minimum, the Site Storm Water Compliance Representative, Designee, and/or Storm Water Consultant shall inspect Builder Construction Activity at the frequency required by the Applicable Permit (but no less frequently than weekly). In states where no inspection form is mandated, the Site Inspections must cover, at a minimum, the information set forth in the sample Site Inspection Form attached as Appendix D. Commencing thirty (30) days after the Date of Entry, a Site Inspection Form (example attached as Appendix D)² or a state-mandated form shall be completed

² Builder may modify the example Site Inspection Form attached at Appendix D, as necessary, to meet the requirements of the Applicable Permit or Authorized State/Federal General Permit Program for stormwater discharges associated with construction activity.

for each inspection. Each Site Inspection Form shall be reviewed by the Site Storm Water Compliance Representative or Designee. Site Inspection Forms will be signed by the Site Storm Water Compliance Representative or Designee, and state-mandated forms will be signed as required by the Applicable Permit. For purposes of this provision, signature may be an Electronic Signature. Site Inspection Forms may be completed, filed, and retained electronically. The Site Inspection requirements for each Site shall go into effect on the date the Builder's first lot is purchased, or on the date required by the Applicable Permit with respect to Builder, whichever is earlier.

b. Responsive Actions shall be identified on the Site Inspection Form.

c. The Site Inspection Forms shall be kept with the SWPPP, or shall be electronically accessible at the Site.

11. Installation and Maintenance.

a. Builder shall install and maintain, per the applicable Stormwater Requirements, all required stormwater controls and practices for Builder Construction Activity at each Site, including all Builder BMPs identified in the SWPPP.

b. For every Responsive Action documented during a Site Inspection required by Paragraph 10 (Inspections) or during a Quarterly Compliance Inspection and Review as required by Paragraph 12 (Site Storm Water Compliance Review and Oversight), the Site Storm Water Compliance Representative, a Designee, or a contractor whose work is supervised by the Site Storm Water Compliance Representative, shall record the information required on the Site Inspection Form (example attached as

If Builder modifies the example form, Builder shall provide a copy of the modified example form(s) to EPA with the annual National Compliance Summary Report.

Appendix D) or another single, identifiable document or database. The information required includes: the date of the site inspection required pursuant to Paragraphs 10 (Inspections) or 12 (Site Storm Water Compliance Review and Oversight) that the Responsive Action was identified, the location and a description of the Responsive Action proposed, and the date the Responsive Action was completed. The Site Inspection Forms or other single identifiable document or database referenced above shall be kept on Site or other identified location as provided for in Paragraph 8(g).

12. Site Storm Water Compliance Review and Oversight.

a. Builder shall provide for Site oversight and review at the Division level by following the procedures in the subparagraphs below.

b. At least once during each Quarterly Reporting Period, beginning on the first full QRP after the Date of Entry or the first full QRP after the date that the first lot is purchased at a Site, whichever is later, the Division Storm Water Compliance Representative, or his or her Designee, shall conduct a Quarterly Compliance Inspection and Review of each Site in its Division, which will include a visual inspection of BMPs for Builder Construction Activity, a review of Site Inspection Forms completed since the last Quarterly Compliance Inspection and Review for the Site, and a review of all other required Storm Water Records, including the SWPPP and documentation of coverage under the Applicable Permit. The results shall be recorded on a Quarterly Compliance Inspection and Review Form (example attached at Appendix E),³ which may be

³ Builder may modify the example quarterly Compliance Inspection and Review Form attached at Appendix E, as necessary, to meet the requirements of the Applicable Permit or Authorized State/Federal General Permit Program for stormwater discharges associated with construction activity. If Builder modifies the example form, Builder shall

completed, filed and maintained electronically by Builder. The Quarterly Compliance Inspection and Review shall not be conducted by the same person who conducted a Site Inspection under Paragraph 10 (Inspections) at the Site during that QRP.

c. No later than seven (7) days after the Quarterly Compliance Inspection and Review, the Division Storm Water Compliance Representative shall provide a copy of the completed Quarterly Compliance Inspection and Review Form to the Site Storm Water Compliance Representative(s) and review the results with the Site Storm Water Compliance Representative(s). In this process, the Division Storm Water Compliance Representative shall: (i) summarize appropriate management steps to be taken or that have been taken, on the Quarterly Compliance Inspection and Review Form, and (ii) sign the completed form. For purposes of this provision, signature may be an Electronic Signature. A Storm Water Compliance Representative, or Designee, shall be responsible for managing the completion of a Responsive Action identified during the Quarterly Compliance Inspection and Review in the same manner as required under Paragraph 11 (Installation and Maintenance).

d. If a Quarterly Compliance Inspection and Review is missed, then the next Quarterly Compliance Review must also include the information required by the Review for the missed Quarterly Reporting Period.

provide a copy of the modified example form(s) to EPA with the annual National Compliance Summary Report.

13. Quarterly Review of Division Information.

A National Storm Water Compliance Representative shall retrieve and review the information included in the Division Quarterly Inspection and Review Forms on a quarterly basis.

14. National Compliance Summary Report.

a. The National Storm Water Compliance Representative shall submit a National Compliance Summary Report to the EPA representatives listed in Section XIII (Notices), in accordance with the form attached as Appendix F. The National Storm Water Compliance Representative, or a Builder executive at a higher corporate level, shall certify the report in accordance with 40 C.F.R. § 122.22

b. The National Compliance Summary Report must contain, at a minimum, a completed Appendix F for the period covered by the report, copies of modified example forms referenced in Paragraphs 10, 11, 12, and 69, and, if NVR has updated its Storm Water Training syllabus, a copy of the updated version of the Storm Water Training syllabus.

c. The National Compliance Summary Report shall be due as set forth in the following table:

National Compliance Summary Report	Report Coverage Period (the "National Reporting Period" or "NRP")	Report Due Within 60 Days after the Last Day of the Following Period
1	1 st , 2 nd , 3 rd & 4 th Quarterly Reporting Periods	4 th Quarterly Reporting Period
2	5 th , 6 th , 7 th & 8 th Quarterly Reporting Periods	8 th Quarterly Reporting Period
3	9 th & 10 th Quarterly Reporting Periods	10 th Quarterly Reporting Period

15. Storm Water Training Program.

a. Builder shall implement the Storm Water Training Program attached as Appendix G. Training implemented pursuant to this Paragraph may be conducted in person or provided through electronic media.

(i) Within sixty (60) days from the Date of Entry, Builder shall certify that it has previously provided Storm Water Training to existing Storm Water Compliance Representatives, any Designees of such representatives, and Builder employees who, in the field at a Site, primarily and directly supervise (or who primarily and directly assist in the supervision of) construction activity at a Site (“Site Supervisory Employees”), who were in those positions as of the Date of Entry. A copy of the current Storm Water Training syllabus is attached as Appendix G-1. Builder shall update its training program annually, as necessary, based on current Storm Water Requirements pursuant to subparagraph (c) below.

(ii) Following the Date of Entry, all new Storm Water Compliance Representatives, Designees of such representatives, and Site Supervisory Employees must complete Storm Water Training pursuant to Paragraph 15 and must be certified as Storm Water Trained by passing a written exam that tests the understanding of the concepts covered in the training. A copy of the topical syllabus for the Storm Water Training, following the Date of Entry, is attached as Appendix G-2. An employee must be certified under this Paragraph prior to being assigned as a Storm Water Compliance Representative.

(iii) Following the Date of Entry, on a quarterly basis, the company will provide Storm Water Training pursuant to Paragraph 15 for new non-supervisory Builder employees who, in the field at a Site, participate in, or assist with, construction activity at the Site (“Site Employees”). A copy of the topical syllabus for the Storm Water Training is attached as Appendix G-2. Such new Site Employees must complete Storm Water Training and be certified pursuant to Paragraph 15.a.ii before they can be a Designee and conduct Site Inspections.

(iv) To maintain certification as Storm Water Trained under this subparagraph, all Storm Water Compliance Representatives, Designees, and Site Supervisory Employees must complete an annual refresher Storm Water Training (pursuant to the topical syllabus attached as Appendix G-3) and pass a written exam that tests the understanding of the concepts covered in the training. Existing Storm Water Compliance Representatives, Designees, and Site Supervisory Employees, as of the Date of Entry, shall receive initial annual refresher Storm Water Training no later than one hundred and eighty (180) days after the Date of Entry. The certification shall be valid for up to fifteen (15) months. Storm Water Compliance Representatives and Designees shall maintain a current certification in order to continue performing their duties under this Decree.

(v) Builder shall maintain records of each Storm Water Compliance Representative’s, Designee’s, and Site Supervisory Employee’s certification. Builder shall provide such records to the Plaintiff within thirty (30) days of its receipt of Plaintiff’s written request, or within a longer period of time agreed to by the Builder and Plaintiff in light of the size of the request.

b. Every instructor for Builder's Storm Water Training Program shall be a Storm Water Trained Builder employee or qualified consultant.

c. The National Storm Water Compliance Representative shall annually evaluate Builder's Storm Water Training Program and determine whether any changes are necessary.

16. Corporate Acquisition. In the event that Builder acquires the business or all or substantially all of the assets of another company by purchase or merger after the Date of Entry, Paragraphs 5-15 of the Consent Decree shall apply to all of the acquired Sites owned or operated by the acquired company. Builder's obligation to comply with Paragraphs 5-15 of this Consent Decree with respect to Sites owned or operated by the acquired company shall begin 180 days from the date of closing the transaction, or after a longer period of time if agreed to in writing by the Builder and Federal Plaintiff in light of the size of the acquisition. If a Site already has an existing SWPPP, then Builder will attach the materials listed in Paragraphs 8.a.(i)-(iii) to such SWPPP for Builder Construction Activity. If Builder Construction Activity has commenced (as defined in Paragraphs 1.f. and 9.b.) at a Site of the acquired company, then Builder need not comply with the requirements of Paragraph 9 (Pre-Construction Inspection and Review) at that Site. Nothing in this Paragraph shall affect Builder's obligation to comply with Applicable Permits at the newly acquired Sites.

17. Submission of Records.

a. Within thirty (30) days of its receipt of a written request for a Storm Water Record or Applicable Permit by Plaintiff, or within a longer period of time agreed to in writing by the Builder and Plaintiff in light of the size of the request, Builder

shall provide a copy to Plaintiff at the address set forth in the request. This Paragraph does not apply to requests for Records concerning a specific Site made during or following a Government Inspection of the Site.

b. The submittal to EPA of the documents required under Paragraph 6 (Notice to EPA of List of Sites), Paragraph 14 (National Compliance Summary Report), and in response to a request made pursuant to Paragraph 17(a) shall be accompanied by a certification that meets the requirements of 40 C.F.R. § 122.22.

c. In submitting information to EPA, Builder may assert that the information submitted is protected as “Confidential Business Information” using the procedures set forth in 40 C.F.R. Part 2.

V. CIVIL PENALTY

18. Within thirty (30) days after the Date of Entry, Builder shall pay the sum of \$425,000 as a civil penalty to the United States. Failure to pay the civil penalty shall subject Builder to interest accruing from the first day after the 30-day period has run until the date payment is made, at the rate specified in 28 U.S.C. § 1961.

19. Builder shall pay the civil penalty by FedWire Electronic Funds Transfer (“EFT”) to the U.S. Department of Justice in accordance with written instructions to be provided to Builder following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney’s Office for the District of New Jersey. At the time of payment, Builder shall send a copy of the EFT authorization form and the EFT transaction record, together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in *U. S. v. NVR, Inc.*, and shall reference the civil action number and DOJ case number (90-5-1-1-10429), to EPA and

the United States Department of Justice in accordance with Section XIII of this Decree (Notices); by email to acctsreceivable.CINWD@epa.gov; and by mail to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

20. Builder shall not deduct the civil penalty paid under this Section in calculating its federal income tax.

VI. REPORTING REQUIREMENTS

21. The reporting requirements of this Consent Decree do not relieve Builder of any reporting obligations required by the Clean Water Act or implementing regulations, or by any other federal, state, or local law, regulation, permit, or other requirement.

VII. STIPULATED PENALTIES

22. Liability for Stipulated Penalties. Builder shall be liable for stipulated penalties to the United States for violations of this Consent Decree as specified in Paragraphs 23 to 31 below, unless excused under Section VIII (Force Majeure). Builder shall identify violations listed in this Section VII (Stipulated Penalties) in the National Compliance Summary Reports required by Paragraph 14 (National Compliance Summary Report). Plaintiff may also use other information obtained by Plaintiff to identify violations for which stipulated penalties may be assessed by Plaintiff under this Section. Except for Paragraphs 23 (Payment of Civil Penalty), 24 (Permits), 25 (Discharge without Permit), 27 (Lists of Sites) and 28 (SWPPPs), stipulated penalties under this Section shall not apply to violations reported, or otherwise detected, that occur prior to the end of the first QRP following the Date of Entry. Plaintiff may make written demand

for stipulated penalties pursuant to this Section within one (1) year after a violation is reported to the Plaintiff, or otherwise detected, or within six (6) months after termination of this Consent Decree, whichever is earlier.

23. Payment of Civil Penalty. If the Builder fails to pay the civil penalty required to be paid under Section V (Civil Penalty) when due, the Builder shall pay a stipulated penalty of \$2,000 for each day that the payment is late.

24. Permits. If Builder commences construction at a Site prior to complying with the requirements of Paragraph 7.a. and Paragraph 7.b., the Builder shall pay a stipulated penalty of \$1,500 per day per Site for each failure to comply with Paragraph 7.a. or Paragraph 7.b.

25. Discharge without Permit. If the discharge of any pollutant from Builder Construction Activity at a Site to a water of the United States occurs prior to Builder obtaining coverage as required under an Applicable Permit, the Builder shall pay a stipulated penalty of \$2,500.00 per discharge.

26. Stormwater Compliance Representatives.

a. If the Builder fails to have a Site Storm Water Compliance Representative as required by Paragraph 5.a., Builder shall pay a stipulated penalty of \$500 per Site.

b. If the Builder fails to have a Division Storm Water Compliance Representative as required by paragraph 5.b., Builder shall pay a stipulated penalty of \$250 per Site.

c. If the Builder fails to have a National Storm Water Compliance Representative as required by Paragraph 5.c., Builder shall pay a stipulated penalty of \$1,500.

27. List of Sites. If the Builder fails to submit the initial List of Sites or the updated List of Sites as required by Paragraph 6, Builder shall pay a stipulated penalty as follows:

<u>Penalty per violation per day</u>	<u>Period of Noncompliance</u>
\$500.00	1 st through 30 th day
\$1,000.00	31 st day and beyond

28. SWPPPs. If the Builder fails to prepare a SWPPP for a Site as required by Paragraph 8, at the time of a Pre-Construction Inspection and Review, Builder shall pay a stipulated penalty per violation of \$3,000 per SWPPP.

29. Inspections.

a. If the Builder fails to perform, or, if performed, materially fails to document, a Pre-Construction Inspection and Review as required by Paragraph 9, Builder shall pay a stipulated penalty of \$2,500 per Site.

b. If the Builder fails to perform, or, if performed, materially fails to document, a Site Inspection as required by Paragraph 10, Builder shall pay a stipulated penalty as follows:

<u>Percentage of Inspections Missed/Undocumented Per National Reporting Period</u>	<u>Stipulated Penalty Per Period</u>			
	<u>2nd QRP</u>	<u>3rd & 4th QRP</u>	<u>5th -8th QRP</u>	<u>9th & 10th QRP</u>
0.01 to 5%	0	0	0	0
5.01 to 8%	\$1,000	\$2,500	\$10,000	\$15,000
8.01 to 12%	\$3,000	\$6,750	\$25,000	\$30,000

12.01 to 20%	\$6,000	\$12,500	\$50,000	\$100,000
20.01 to 25%	\$10,000	\$25,000	\$100,000	\$200,000
>25%	\$30,000	\$62,000	\$250,000	\$500,000

c. If the Builder fails to perform, or, if performed, materially fails to document a Quarterly Compliance Inspection and Review as required by Paragraph 12, Builder shall pay a stipulated penalty as follows:

<u>Penalty Per NRP</u>	<u>% Missed/Undocumented Quarterly Inspections/Reviews</u>
\$200	For each missed/undocumented Quarterly Inspection and Review from 0.01 to 5% of required inspections
\$400	For each missed/undocumented Quarterly Inspection and Review from 5.01% to 10% of required inspections
\$600	For each missed/undocumented Quarterly Inspection and Review from > 10% of required inspections

30. National Compliance Summary Report. If the Builder fails to prepare and submit to EPA a National Compliance Summary Report as required by Paragraph 14, Builder shall pay a stipulated penalty per violation for each day of noncompliance as follows:

<u>Penalty per violation per day</u>	<u>Period of Noncompliance</u>
\$250.00	1 st through 30 th day
\$750.00	31 st through 60 th day
\$1,500.00	61 st day and beyond

31. Stormwater Training Program. If the Builder fails to provide storm water training to the Storm Water Compliance Representatives and other employees referred to

in Paragraph 15 as required under Paragraph 15, Builder shall pay a stipulated penalty of \$250.00 for each employee.

32. Stipulated penalties shall accrue as provided in Paragraphs 23 through 31 above. For stipulated penalties that are assessed “per day,” penalties shall begin to accrue on the day after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of the Consent Decree. Penalties shall accrue regardless of whether Plaintiff has notified Builder of a violation, but need not be paid until a written demand is received.

33. Stipulated penalties shall be due and payable within thirty (30) days of Builder’s receipt from Plaintiff of a written demand for payment of stipulated penalties, unless Builder invokes the procedures under Section IX (Dispute Resolution). If Builder invokes the procedures under Section IX (Dispute Resolution), stipulated penalties shall be due and payable as provided in Paragraph 35. Builder shall make payment of stipulated penalties in the manner set forth and with the confirmation notices required by Paragraph 19, except that the transmittal letter shall state that the payment is for stipulated penalties and shall include a reference to the demand letter under this Paragraph or the resolution under Paragraph 35.

34. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

35. Stipulated penalties shall continue to accrue as provided in Paragraph 32, above, during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of the Plaintiff that is not appealed to the Court, Builder shall pay penalties agreed upon or accepted to the Plaintiff within thirty (30) days of the effective date of the agreement or the receipt of Plaintiff's decision or order.

b. If the dispute is appealed to the Court, and the Plaintiff prevails in whole or in part, Builder shall pay all penalties awarded by the Court within sixty (60) days of receiving the Court's decision or order, except as provided in subparagraph c, below.

c. If any Party appeals the District Court's decision, Builder shall pay all penalties awarded by the Court, and affirmed by the appellate court, together with interest running from the 61st day after the District Court's decision within fifteen (15) days of receiving the final appellate court decision.

d. Notwithstanding Paragraph 35, during judicial review by this Court under Section IX (Dispute Resolution) of this Decree, stipulated penalties shall not accrue with respect to the disputed violation during the period, if any, beginning on the 31st day after the Court's receipt of the motion provided for by Paragraph 46.c until the date that the Court issues a final decision regarding such dispute.

36. Builder shall not deduct stipulated penalties paid under this Section in calculating its federal income tax.

37. If Builder fails to pay stipulated penalties according to the terms of this Decree, Builder shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due pursuant to Paragraph 33 or Paragraph 35.

38. Subject to the provisions of Paragraph 55 (Effect of Settlement) and except as provided in this Paragraph, the United States expressly reserves the rights to pursue any other remedies for violations of this Consent Decree or the Clean Water Act, including civil or administrative penalties under the Clean Water Act for violations of the Act (including for discharges without applicable permit coverage and violations of Applicable Permits) and injunctive relief for violations of the Decree or the Act. With respect to a violation that is a violation of both the Decree and the Act and which is subject to stipulated penalties under the Decree, if the United States collects stipulated penalties for that violation pursuant to a written demand under the Decree, the United States will not also seek civil or administrative penalties under the Act for the same violation.

VIII. FORCE MAJEURE

39. A “force majeure event,” for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Builder, its contractors, or any entity controlled by Builder that prevents or delays the performance of any obligation of this Consent Decree despite all reasonable efforts by Builder to fulfill the obligation. The requirement that Builder exercise “all reasonable efforts to fulfill the obligation” includes using reasonable efforts to anticipate any potential force majeure event (where such event can be anticipated) and using all reasonable efforts to address the effects of any such event: (i) as it is occurring; and (ii) after it has occurred, to prevent or minimize any resulting failure to perform or delay in performing any obligation of this Consent Decree. “Force Majeure event” does not include Builder’s financial inability to perform any obligation under this Consent Decree.

40. Builder shall retain all rights granted under the Applicable Permit concerning a force majeure event.

41. Builder shall provide notice to the EPA representatives listed in Section XIII (Notices) orally or by electronic or facsimile transmission (“initial notice”) as soon as practicable, but not later than ten (10) days after the time Builder first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. Builder shall also provide written notice (“subsequent written notice”), as provided in Section XIII of this Consent Decree (Notices), within thirty (30) days of the time Builder first knew of, or by the exercise of due diligence, should have known of, the event. The Plaintiff may, in its unreviewable discretion, extend the time within which initial notice or subsequent written notice must be given. No such extension shall be effective unless in writing. The subsequent written notice shall state the anticipated duration of any failure to comply or delay in compliance with any obligation of this Consent Decree; the cause(s) of such failure or delay; Builder’s past and proposed actions to prevent or minimize such failure or delay; a schedule for carrying out those actions; and Builder’s rationale for attributing any failure to comply or delay in compliance to a force majeure event. Failure to provide initial notice and subsequent written notice as required by this Paragraph or the Applicable Permit shall preclude Builder from asserting any claim of force majeure.

42. If the Plaintiff agrees that a force majeure event, as defined by this Section, has occurred, the Plaintiff shall agree to extend the time for Builder to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not,

by itself, extend the time to perform any unaffected obligation. Failures resulting from a force majeure event shall not be considered a breach of this Consent Decree, and Builder shall not be liable for any stipulated penalties occurring as a direct result of the event, provided Builder complies with the terms of this Section.

43. If the Plaintiff does not agree that a force majeure event, as defined by this Section, has occurred, or does not agree to the length of the extension of time sought by Builder, the Plaintiff's position shall be binding, unless Builder invokes Dispute Resolution under Section IX of this Consent Decree. In any such dispute, Builder bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that Builder gave the notice required by Paragraph 41, that the force majeure event caused any failure to comply or delay in compliance with an obligation of this Consent Decree that Builder claims was attributable to that event, and that Builder exercised all reasonable efforts to prevent or minimize any failure or delay in compliance caused by the event.

IX. DISPUTE RESOLUTION

44. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve a dispute arising under or with respect to this Consent Decree.

45. Dispute Resolution.

a. Any dispute subject to Dispute Resolution shall first be the subject of informal negotiations. The period of informal negotiations shall not exceed sixty (60) days from the date that the Builder serves a written notice of a dispute on Plaintiff, unless that period is modified by written agreement.

b. A dispute subject to dispute resolution procedures arises when Builder serves on the Plaintiff a written notice regarding the dispute, in accordance with Section XIII of this Consent Decree (Notices). The notice shall include, but need not be limited to, a concise statement of the dispute, the Builder's position, and an explanation of that position.

c. The Plaintiff shall serve on Builder a written position within thirty (30) days of receipt of Builder's Statement of Position, in accordance with Section XIII of this Consent Decree (Notices). The Plaintiff's written position shall include, but need not be limited to, a concise statement of the dispute, the Plaintiff's position, and an explanation of that position.

c. If the Parties cannot resolve the dispute by informal negotiations, then the written position advanced by the Plaintiff shall be binding on Builder, unless, within 30 days after the conclusion of informal negotiations or Builder's receipt of the written position advanced by the Plaintiff, whichever is later, Builder invokes formal dispute resolution procedures in accordance with the following Paragraph.

46. Formal Dispute Resolution.

a. Builder shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the Plaintiff a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Builder's position and any supporting documentation relied upon by Builder.

b. The Plaintiff shall serve its Statement of Position within 60 days of receipt of Builder's Statement of Position, unless otherwise extended by mutual

agreement of the Plaintiff and Builder. The Plaintiff's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting the Plaintiff's position and any supporting documentation relied upon by the Plaintiff. The Plaintiff's Statement of Position shall be binding on Builder, unless Builder files a motion for judicial review of the dispute in accordance with Paragraph 46(c).

c. Builder may seek judicial review of the dispute by filing with the Court and serving on the United States, in accordance with Section XIII of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within 30 days of Builder's receipt of the Plaintiff's Statement of Position pursuant to Paragraph 46(b). The motion shall contain, but need not be limited to, a written statement of Builder's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

d. The Plaintiff shall respond to Builder's motion within the time period allowed by the Local Rules of this Court. Builder may file a reply memorandum, to the extent permitted by the Local Rules.

47. Builder shall bear the burden of demonstrating that its position complies with this Consent Decree by a preponderance of the evidence.

48. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Builder under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of

noncompliance, but payment shall be stayed pending resolution of the dispute as set forth in Paragraph 35. If Builder does not prevail on the disputed issue, stipulated penalties awarded by the Court shall be paid as provided in Section VII (Stipulated Penalties).

X. INFORMATION COLLECTION AND RETENTION

49. The Plaintiff and its authorized representatives acting on its behalf, upon presentation of credentials and at all reasonable times, shall have the right of entry onto all Sites and shall have the right to access Storm Water Records located at Sites or at any offsite location where Storm Water Records pertaining to a Site are located, for the purpose of assessing Builder's compliance with this Consent Decree and verifying any information submitted pursuant to this Decree.

50. Until one (1) year after the termination of this Consent Decree, Builder shall retain all non-identical copies of all Storm Water Records, whether in hard copy or electronic form, in its possession. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures.

51. At any time during the retention period specified in the preceding Paragraph and upon request by the Plaintiff, Builder shall provide to Plaintiff a copy of any Storm Water Record required to be maintained under this Section. Builder shall provide Storm Water Records requested by Plaintiff pursuant to this Paragraph consistent with the procedures set forth in Paragraph 17.

52. Builder may assert that certain documents, records or other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Builder asserts a privilege, it must identify the privilege being asserted and describe the nature of the documents, records, or other information not being

disclosed or produced in a manner that, without revealing information itself privileged or protected, will enable the Plaintiff to assess the application of the privilege. However, no documents, records or other information required to be created or maintained by this Consent Decree shall be withheld on grounds of privilege.

53. With respect to any documents, records or other information provided to Plaintiff, Builder may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2. As to any information that Builder seeks to protect as CBI, Builder shall follow the procedures set forth in 40 C.F.R. Part 2.

54. Nothing in this Consent Decree shall be construed to limit any right of entry or access or other information gathering authority held by Plaintiff pursuant to any federal, state or local law, permit, or regulation, nor shall it be construed to limit any duty or obligation of Builder to maintain documents, records, or other information imposed by applicable federal or state laws, regulations or permits.

XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

55. Effect of Settlement. In consideration of the payment of the penalty required by Paragraph 18, Plaintiff hereby releases its claims and covenants not to sue or take administrative action against Builder for civil violations or alleged civil violations of the Clean Water Act, the Act’s implementing regulations, and Applicable Permits at the Sites listed in Appendix H, through the date of lodging of this Decree. The provisions of this Paragraph shall survive termination of this Decree.

56. Plaintiff's Reservation of Rights.

a. The United States reserves all rights and remedies not expressly waived in this Decree.

b. The United States reserves all rights and remedies, legal and equitable, available to enforce the provisions of this Decree.

c. The United States reserves the right to seek and obtain criminal sanctions against any person, including Builder.

d. The United States reserves the right to undertake any action against any person, including Builder, in response to conditions which may present an imminent and substantial endangerment to the public health or welfare or the environment.

57. Builder's Reservation of Rights: Except as expressly stated herein, Builder reserves all defenses and all rights and remedies, legal and equitable, available to it in any action brought by Plaintiff under this Decree, an Applicable Permit, the Clean Water Act or any other federal, state or local statute, regulation or rule. This Decree shall not be construed as a waiver of any defenses or remedies that Builder may have to any future actions regarding alleged violations of an Applicable Permit, or of the federal and state laws and regulations governing an Applicable Permit.

58. Not a Permit Modification. This Consent Decree is neither a permit, nor a modification of any permit, under any federal, state, or local laws or regulations, and this Decree does not relieve Builder of its responsibilities to comply with all applicable federal, state, and local laws, regulations, and permits. The Plaintiff does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Builder's compliance with any aspect of this Consent Decree will result in compliance with

provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq., or with any other provisions of federal, state, or local laws, regulations, or permits.

59. Third Parties. This Consent Decree does not limit or affect the rights of Builder or of the Plaintiff against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Builder, except as otherwise provided by law. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

60. No Admission. Builder does not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint.

XII. COSTS

61. The Parties shall bear their own costs of this action, including attorneys' fees.

XIII. NOTICES

62. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To United States/Plaintiff (send to both USDOJ and EPA):

As to USDOJ by email: eescasemanagement.enrd@usdoj.gov
Re: DJ# 90-5-1-1-10429

As to USDOJ by mail: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DJ# 90-5-1-1-10429

As to USDOJ by overnight delivery: EES Case Management Unit
Environment and Natural Resources Division
U.S. Department of Justice
601 D Street NW
Room 2121
Washington, DC 20004
Re: DJ# 90-5-1-1-10429

As to EPA: Chief, Water Compliance Branch
Division of Enforcement & Compliance Assistance
U.S. EPA Region 2
290 Broadway, 20th Floor
New York, New York 10007

Chief, Water and General Law Branch
Office of Regional Counsel
U.S. EPA Region 2
290 Broadway, 16th Floor
New York, New York 10007

Director, Water Enforcement Division
U.S. EPA OECA
Mail Code 2243A
Room 3102
1200 Pennsylvania Ave., NW
Washington, D.C.20460

To Builder:

Eugene Bredow
Vice President, Chief Accounting Officer, & Controller
NVR, Inc.
11700 Plaza America Drive Suite 500
Reston, Virginia 20190
P: (703) 956-4000
gbredow@nvrinc.com

With a copy to:

Adam Sachs
Director of Production Compliance
NVR, Inc.

11700 Plaza America Drive Suite 500
Reston, Virginia 20190
P: (703) 956-4000
asachs@nvrinc.com

James M. Sack
Vice President and General Counsel
NVR, Inc.
8270 Greensboro Drive, Suite 810
McLean, Virginia 22102
(703) 883-0102
jms@sacklaw.com

Steven Solow
Katten Muchin Rosenman LLP
2900 K Street NW, North Tower, Suite 200
Washington, D.C. 20007
P: (202) 625-3573
steve.solow@kattenlaw.com

63. Any Party may, by written notice to the other Party, change its designated notice recipient or notice address provided above.

64. Notices provided pursuant to this Section will be deemed to have been submitted: (1) on the date sent if provided by email; (2) on the date postmarked if provided by mail; and (3) on the date picked up by the overnight delivery service if provided by overnight delivery. The Parties may, by written mutual agreement, provide for an alternative method of delivery of notice.

XIV. EFFECTIVE DATE

65. The Effective Date of this Consent Decree shall be the Date of Entry.

XV. RETENTION OF JURISDICTION

66. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or

entering orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XVI. MODIFICATION

67. Minor modifications, as set forth in Paragraph 69 below, may be made by a written agreement signed by Builder and Plaintiff, without approval of the Court.

68. Any modification which constitutes a material change to the terms of the Consent Decree, including any material change to an Appendix, shall be effective only upon approval by the Court.

69. Minor scheduling changes agreed to by the Parties shall not be deemed material. Builder also may propose minor modifications to the Appendices to this Consent Decree for the purposes of adding information or changing formatting as necessary to align the Appendices with the requirements of an Applicable Permit or Builder's management needs ("Minor Appendix Modification"). This requirement does not apply to modifications of the Pre-Construction Inspection and Review Form, the Site Inspection Form, and the Quarterly Compliance Inspection and Review Form, which solely add state-specific requirements. If Plaintiff determines that a Minor Appendix Modification does not comply with the terms of this Consent Decree, it shall notify Builder in writing of the list of changes required to bring the submitted Appendix into compliance with this Decree. Builder has thirty (30) days after receipt of the list to decide whether to retain the existing Appendix or to incorporate Plaintiff's list of changes into a new modified Appendix. If Builder incorporates the list of changes into a new

modified Appendix, this new modified Appendix shall supersede the original form or report and be considered a minor modification.

70. Any disputes concerning modification of this Decree shall be resolved pursuant to Section IX of this Consent Decree (Dispute Resolution), provided, however, that instead of the burden of proof provided in Paragraph 47, the Party seeking modification bears the burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XVII. TERMINATION

71. The following requirements are the exclusive requirements for termination of this Decree and all of Builder's obligations hereunder: (i) Builder has complied with the requirements of Section IV of this Consent Decree (Builder's Compliance Program) for a minimum of two and half years (30 months) following the Date of Entry ("30 month Anniversary"), (ii) Builder has submitted a minimum of three National Compliance Summary Reports, (iii) Builder has paid the civil penalty and any accrued stipulated penalties as required by this Consent Decree, and (iv) Builder has no unresolved matters subject to dispute resolution pursuant to Section IX (Dispute Resolution). Other than the obligation to submit the third and final National Compliance Summary Report under Paragraph 14.c., the requirements of Section IV of this Consent Decree (Builder's Compliance Program) will end on the 30 month Anniversary, unless otherwise ordered by the Court under Paragraph 72.e.

72. The following procedures for terminating this Decree shall govern (and the Parties intend that this process shall be resolved at the earliest possible time):

a. Any time subsequent to the date forty-five (45) days prior to the 30 month Anniversary, Builder may submit to the Plaintiff a proposed motion to terminate the Decree (“Proposed Motion”). The Proposed Motion shall include a draft certification, pursuant to 40 C.F.R. § 122.22, that Builder has satisfied the requirements under Paragraph 71.

b. Following receipt by the Plaintiff of the Builder’s Proposed Motion, the Parties shall confer informally concerning the Proposed Motion and any disagreement that the Parties may have as to whether the Builder has satisfactorily complied with the requirements for termination of this Decree as set forth under Paragraph 71.

c. No sooner than forty-five days (45) days following delivery to the Plaintiff of the Proposed Motion, Builder may file a motion to terminate this Decree. The motion shall contain a final certification, pursuant to 40 C.F.R. § 122.22, that Builder has met the requirements under Paragraph 71.

(i). If the Plaintiff agrees that Builder has met the requirements set forth in Paragraph 71, Plaintiff shall join in the motion to terminate. In that event, the Court shall enter an order terminating this Decree effective as of the filing of said motion.

(ii). If the Plaintiff does not agree that Builder has met the requirements set forth set forth in Paragraph 71, it shall serve its opposition to the motion in accordance with the local rules of the Court. Builder may reply in accordance with the local rules of the Court. If the Court finds based upon the preponderance of the evidence that Builder has

met the requirements set forth in Paragraph 71, it shall order this Decree terminated effective as of the date of filing the motion to terminate.

(iii). If Plaintiff neither joins in the motion to terminate nor files a timely opposition, upon Builder's request the Court shall enter an order terminating this Decree effective as of the date of filing the motion to terminate.

d. If the initial motion to terminate is denied by the Court, one or more renewed motion(s) to terminate may be filed.

e. The requirements of Section IV of this Consent Decree (Builder's Compliance Program) will end on the 30 month Anniversary unless the Court determines, in an order to deny a motion to terminate by Builder, that Builder materially failed to meet the requirements for termination under Paragraph 71 of this Decree. The requirements of Section IV will remain in effect only from the date of such order until the Court approves a motion to terminate this Decree.

73. After the Consent Decree has been terminated, this Court shall retain jurisdiction over this Decree only for the following purposes:

a. to resolve any dispute concerning unresolved matters subject to dispute resolution pursuant to Section IX (Dispute Resolution).

b. to resolve any enforcement action pending on the termination date under this Decree; and

c. to resolve any outstanding stipulated penalties demanded and owing based on the National Compliance Summary Reports;

provided that this Paragraph applies only to matters arising prior to termination: it does not authorize the reopening of this Decree or any extension of the compliance program imposed by this Decree.

XVIII. PUBLIC PARTICIPATION

74. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The Plaintiff reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Builder consents to entry of this Consent Decree in its present form without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the Plaintiff has notified Builder in writing that it no longer supports entry of the Decree.

XIX. SIGNATORIES/SERVICE

75. Each undersigned representative of Builder and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is authorized to execute this Consent Decree and to legally bind the Party he or she represents.

76. This Consent Decree may be executed in any number of counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

77. Builder agrees to waive summons and the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court and agrees to accept service of the complaint by mail.

XX. INTEGRATION

78. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree. The Parties further acknowledge that the Appendices may be modified pursuant to Section XVI (Modification).

XXI. APPENDICES

79. The following appendices are attached to and incorporated into this Consent Decree:

- | | |
|---------------|--|
| Appendix A-1: | Format for List of Sites |
| Appendix A-2: | Format for List of Estimated Lots Available for Purchase |
| Appendix B: | [Intentionally blank] |
| Appendix C: | Example Pre-Construction Inspection and Review Form |
| Appendix D: | Example Site Inspection Form |
| Appendix E: | Example Quarterly Compliance Inspection and Review Form |

- Appendix F: National Compliance Summary Report Form
- Appendix G-1: Storm Water Training Program Syllabus (Existing Training - As of Date of Entry)
- Appendix G-2: Storm Water Training Program Syllabus (Following Date of Entry)
- Appendix G-3: Storm Water Training Program Syllabus (Annual Refresher)
- Appendix H: List of Sites Subject to Covenant Not to Sue

XXII. FINAL JUDGMENT

80. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Federal Rules of Civil Procedure 54 and 58.

IT IS HEREBY SO ORDERED this _____ day of _____, ____.

UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NVR, Inc.

FOR THE UNITED STATES OF AMERICA:

Dated: 6/15/17



ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

Dated: 6/15/17



PETER M. FLYNN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
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WILLIAM E. FITZPATRICK
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District of New Jersey

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U.S. Attorney's Office
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Newark, NJ 07102
(973) 297-2079
Allan.urgent@usdoj.gov

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NVR, Inc.

FOR THE UNITED STATES OF AMERICA (cont.):

Dated:

6/9/17



ERIC SCHAAF


Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

CHRISTOPHER SAPORITA
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 2
290 Broadway, 17th Floor
New York, NY 10007-1866

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. NVR, Inc.

FOR THE UNITED STATES OF AMERICA (cont.):

Dated: 5-18-17




MARK POLLINS
Director
Water Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

THE UNDERSIGNED PARTY enters into this Consent Decree in United States v. NVR, Inc.

FOR THE DEFENDANT.:

Dated: 5/10/17



EUGENE BREDOW
Vice President,
Chief Accounting Officer and Controller
NVR, Inc.

APPENDIXES A through H

Appendix C: Example Pre-Construction Inspection & Review Form



Appendix C: Example Pre-Construction Inspection & Review Form

** This inspection must be performed by and signed by a NVR Storm Water Compliance Representative and cannot be delegated.*

Name of Person Performing Inspection: Enter Name

Division: Enter Division

Date: Enter date

Community Name: Enter Community

Designator: Community Designator

Expected Date of Start of Construction (including model homes): Enter date

City: Enter City

County: Enter County

State: State

Will or does NVR own land other than our standard lot purchase? Yes No N/A

Will or are there other builders present in the community? Yes No N/A

Site Binder

*Confirm that all of the following items have been placed on site and/or in the Erosion and Sediment Control Binder prior to start of **any NVR** clearing, grading, or excavation activity resulting in land disturbance on lots owned by NVR or other areas of the site, and **any NVR** stockpiling or staging activity on lots owned by NVR or other areas of the site ("NVR construction").*

1. Permits

- a. NVR Permit Application (NOI) (where required by CGP) Yes No N/A
- b. NVR Coverage Acceptance Letter Yes No N/A
- c. Site Developer's Permit Application (NOI) Yes No N/A
(where required by CGP)
- d. Site Developer's Coverage Acceptance Letter Yes No N/A

2. Current State General Permit ("CGP") Yes No

3. Site Developer's SWPPP (where required by CGP) Yes No N/A

4. Site Developer's Approved E&S Plans (where required by CGP) Yes No N/A

Appendix C: Example Pre-Construction Inspection & Review Form

- 5. Obtained a BMP map that includes elevations Yes No
- 6. Completed NVR Stormwater Pollution Prevention Support Plan Yes No
- 7. Community Contractors List Yes No
- 8. Lot Ownership Log
 - a. Are all NVR owned lots present on the Lot Ownership Log Yes No
- 9. Certification of State Required Training (if applicable) Yes No N/A
- 10. Land Contract and/or Responsibility Checklist (tab 10) Yes No
- 11. Site posting required by the CGP Yes No
- 12. Site posting of Division Office Contact Information Yes No

For "Site Binder" item 1.c. marked "No" above, the Storm Water Compliance Representative will make reasonable efforts to obtain the documentation prior to the start of any NVR construction. For all other "Site Binder" items marked "No" above, the Storm Water Compliance Representative will obtain the documentation prior to the start of any NVR construction.

Site Binder Completion Log	
Item	Date Obtained

Site Information

Confirm that BMPs for NVR-owned lots are implemented or maintained.

- 1. Are all sediment barriers installed and operating properly? Yes No N/A
 List any and all items that are concerns: Enter any issues you feel are out of compliance

- 2. Are all non-sediment controls installed and operating properly? Yes No N/A
 (i.e. tree protection fencing, historical landmark protection)
 List any and all items that are concerns: Enter any issues you feel are out of compliance

- 3. Are all construction entrances installed in locations where vehicles are entering and exiting disturbed areas? Yes No N/A
 List any and all items that are concerns: Enter any issues you feel are out of compliance

Appendix C: Example Pre-Construction Inspection & Review Form

4. Have inlet protections been installed and are operating properly? Yes No N/A
 List any and all items that are concerns: Enter any issues you feel are out of compliance
5. Is the site clean of debris and other waste? Yes No N/A
 List any and all items that are concerns: Enter any issues you feel are out of compliance
6. Are there unstabilized soils present on NVR-owned lots? Yes No N/A
7. Are waste management controls installed and operating properly? Yes No N/A
8. List any other concerns you may have with the site. Yes No N/A
 List any and all items that are concerns: Enter any issues you feel are out of compliance

For each "Site Information" item marked "No" above, the Storm Water Compliance Representative will remedy the item prior to the start of vertical construction by NVR at the Site.

Site Information Tracking Log	
Item	Date Completed

Appendix C: Example Pre-Construction Inspection & Review Form

Important

NVR construction, including model homes, must not start until this form has been completed and the required documentation has been retained.

A copy of the fully completed Pre-Construction Form must be maintained on site located behind the Table of Content in the Erosion and Sediment Control Binder.

Certification Statement

[Certification statement under applicable state law]

Signature of Storm Water Compliance Representative

Date

Name of Storm Water Compliance Representative

Date

Signature of Division or Area Manager

Date

Name of Division or Area Manager

Date

Appendix D: Example Erosion & Sediment Control Self Inspection Form



Appendix D: Example Erosion & Sediment Control Self Inspection Form

Section I - General

Type of Inspection being conducted:
 Date of Inspection: _____ Time of Inspection: _____
 Division Name: _____
 Community Name: _____ Community Designator: _____
 Permit: _____
 Inspected By: _____ Title of Inspector: _____
 Phone Number: _____ Certification Number: _____

Section II - Weather

Description of the weather/soil conditions at the time of the inspection: (dry, rain, snow, icy, other)
 Weather conditions, including rainfall quantities since the last inspection?

Section III - Field Paperwork (To be maintained on site)

- 1. Are all applicable coverage letters, general permits, SWPPPs and approved E&S plans located on site? _____
- 2. Are all NVR Site stormwater controls shown on the BMP Site Map? _____
- 3. Has the Community Contractors list been updated within the last 90 days? _____
- 4. Has the Lot Ownership Log been updated to reflect all changes in ownership and stabilization? _____

Section IV - Erosion and Sediment Controls

- 1. Are all sediment barriers installed, functioning and not in need of repair? _____
- 2. Are all construction entrances properly located and not in need of maintenance? _____
- 3. Are all NVR owned areas stabilized as required? _____
- 4. Are all NVR used stockpiles stabilized and protected? _____
- 5. Are all roads/gutters free of excessive sediment? _____
- 6. Are all inlet protections installed, functioning and not in need of repair? _____
- 7. Is all trash, construction debris and other solid wastes managed as required? _____
- 8. Are all portable toilets provided and properly located? _____
- 9. Are washouts properly located, in working condition and no repairs necessary? _____
- 10. Are all storage areas, construction trailers and other NVR used areas being properly managed? _____

Section V - Points of Discharge

Did any discharge of sediment occur from NVR owned or used property?
 If yes, describe in detail, the location, cause of failure and corrective actions taken to prevent a reoccurrence?

Appendix D: Example Erosion & Sediment Control Self Inspection Form

Community:

Date:

Section VI - Corrective Actions Log

Action Reference Log	Date	Location	Corrective Action(s) Needed	Correcting Contractor	Date to be Completed	Date Completed	Photo Reference (in applicable states)
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Section VII - Notes

Section VIII - Signature

Signature of Site Storm Water Compliance Representative, or Designee:

Appendix E: Example Quarterly Compliance Inspection & Review Form



Appendix E: Example Quarterly Compliance Inspection & Review Form

Section I - General

Type of Inspection being conducted:
 Date of Inspection: Time of Inspection:
 Division Name:
 Community Name: Community Designator:
 Permit:
 Inspected By: Title of Inspector:
 Phone Number: Certification Number:

Section II - Weather

What are the weather conditions at the time of this inspection?

Section III - Field Paperwork (To be maintained on site)

- 1. Completed Pre-Construction form signed by Division Manager? Yes No
- 2. Copy of NVR Permit Application (NOI) Yes No
- 3. Copy of NVR Coverage Acceptance Letter Yes No
- 4. Developers Permit Application (NOI) Yes No
- 5. Developers Coverage Acceptance Letter Yes No
- 6. Current State General Permit ("CGP") Yes No
- 7. Developer's SWPPP (where required by CGP) Yes No
- 8. Developer's Approved E&S Plans Yes No
- 9. Completed NVR Stormwater Pollution Prevention Support Plan Yes No
- 10. Community Contractors List Yes No
- 11. BMP map reflects NVR's current lot ownership and details all current BMPs that are in place on NVR owned or used property? Yes No
- 12. Current version of the Lot Ownership Log, reflecting the most recent land ownership, maintained? Yes No
- 13. Are all Weekly and Post Precipitation Inspections forms printed and timely completed and include photo references where required by the Applicable Permit? Yes No
- 14. Are all corrective actions either scheduled for completion or timely completed? Yes No
- 15. Are there copies of certification of State Required Training (if applicable) Yes No
- 16. Has a Notice of Termination (NOT) been submitted for completed permitted areas under NVR coverage, which meet the State's requirements for temporary/permanent stabilization and are transferred to the homeowner? Yes No
- 17. All memos have been retained? Yes No
- 18. Land Contract and/or Responsibility Checklist? Yes No
- 19. Site posting required by the CGP? Yes No
- 20. Site posting of Division Office Contact Information? Yes No

Appendix E: Example Quarterly Compliance Inspection & Review Form

Section IV - Erosion and Sediment Controls

Sediment Barriers. -

- 1-a. Are sediment barriers installed to protect areas owned or used by NVR, from sediment leaving the property? Yes No
- 1-b. Are sediment barriers properly installed according to applicable state standards? Yes No
- 1-c. Sediment barriers have been properly maintained and sediment build up has not exceeded 25% height of the barrier? Yes No

Construction Entrance. -

- 2-a. Are construction entrances installed in locations where vehicles are entering non- stabilized areas? Yes No
- 2-b. Are all construction entrances installed according to applicable state specifications? Yes No
- 2-3. Are all construction entrances being properly maintained? Yes No

Stabilization. -

- 3-a. Have all areas, disturbed by NVR, been stabilized within 7 days of inactivity? Yes No

Stockpiles. -

- 4-a. Are all stockpiles, utilized by NVR, stabilized? (within 7 days of inactivity) Yes No
- 4-b. Are all stockpiles protected with sediment controls and given proper access? Yes No

Road, Street and Inlets. -

- 5-a. Are all inlet protections installed and functioning as required? Yes No
- 5-b. Have all inlet protection been maintained and sediment removed? Yes No
- 5-c. Are all roads and streets free of mud and debris? Yes No

Portable Toilets. -

- 6-a. Are all portable toilets placed the proper 15' to 50' distance away from any stormwater inlet or water body? Yes No
- 6-b. Are all portable toilets kept off the streets and roadways? Yes No

Trash & Debris. -

- 7-a. Is all NVR created trash and debris placed in a designated container? Yes No
- 7-b. Is debris & trash, contained in a dumpster, stored in a manner to prevent the material from spilling or blowing out? Yes No
- 7-c. Has all washout been properly discarded in a washout and all extra materials disposed of on ploy or a nonporous material? (i.e. concrete, mortar) Yes No

Washout. -

- 8-a. Has the washout been constructed with one piece of 10 mil poly attached to the sides to prevent the ploy from falling in? Yes No
- 8-b. Is the washout placed in a location that keeps it a minimum of 50' from any storm water drain, water body or wetland and 15' from the roadway? Yes No
- 8-c. Is the washout in need of maintenance? Yes No
- 8-d. Has a sign been posted at the washout? Yes No

Appendix E: Example Quarterly Compliance Inspection & Review Form

Other. -

9-a. Are all storage areas, construction trailers and other NVR used areas being properly maintained?

Yes No

Points of Discharge

Did any discharge of sediment occur from NVR owned or used property?

If yes, describe in detail the location, cause of failure and corrective actions taken to prevent a reoccurrence?

Appendix E: Example Quarterly Compliance Inspection & Review Form

Community:

Date:

Section VI - Corrective Actions Log							
Action Reference Log	Date	Location	Corrective Action(s) Needed	Correcting Contractor	Date to be Completed	Date Completed	Photo Reference (in applicable states)

Section VII - Notes

Include any appropriate management steps to be taken or that have been taken.

Section VIII - Signature

The Division Storm Water Compliance Representative shall review the completed form with the Site Storm Water Compliance Representative within 7 days.

Signature of Division Storm Water Compliance Representative or Designee:

Appendix F - National Compliance Summary Report

**Appendix F
NVR, Inc.
National Compliance Summary Report**

I. Overview

[PROVIDE A BRIEF AND GENERAL DISCUSSION OF THE DATA PRESENTED IN THIS REPORT.]

II. Information for Categories of Self-Reported Stipulated Penalties (For first report, list by Quarter)

_____ Discharges of pollutants from a Site to a water of the United States prior to obtaining coverage under an Applicable Permit.

[ATTACH A LIST WITH THE NAME AND ADDRESS OF EACH SITE FROM WHICH THERE WERE DISCHARGES WITHOUT A PERMIT.]

_____ Days of construction on a Site prior to obtaining coverage under an Applicable Permit.

[ATTACH A LIST WITH THE NAME AND ADDRESS OF EACH SITE FROM WHERE CONSTRUCTION COMMENCED WITHOUT A PERMIT.]

_____ Failures to have a Site Storm Water Compliance Representative.

_____ Failures to have a Division Storm Water Compliance Representative.

_____ Failures to have a National Storm Water Compliance Representative.

_____ List of Sites submitted 1-30 days after the deadline.

_____ List of Sites submitted 31 days or more after the deadline.

_____ Failures to have a Builder-SWPPP for a Site at the time of a Pre-Construction Inspection and Review.

_____ Failures to perform, or if performed, a material failure to document, a Pre-Construction Inspection and Review.

_____ Missed or undocumented Site Inspections.

_____ Percentage failure to perform or, if performed, a material failure to document a required Site Inspection.

_____ Missed or undocumented Quarterly Compliance Inspection and Reviews.

Appendix F - National Compliance Summary Report

- _____ Percentage failure to perform or, if performed, a material failure to document a required Quarterly Compliance Inspection and Review.
- _____ Storm Water Compliance Representatives that are not Storm Water Trained and certified (pursuant to Paragraph 15 of the Consent Decree).
- _____ Site Supervisory Employees that are not Storm Water Trained and certified (pursuant to Paragraph 15 of the Consent Decree).
- _____ Failures to conduct a quarterly training session (pursuant to Paragraph 15 of the Consent Decree) for new Site Employees.

III. Training Program

[WRITTEN EVALUATION OF NVR STORMWATER TRAINING PROGRAM AND A DESCRIPTION OF ANY SIGNIFICANT PROPOSED CHANGES.]

IV. Signature and Certification

I hereby certify that the foregoing information was prepared under my direction or supervision. I certify that the responses are, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

By: [Name]
National Stormwater
Compliance Representative

Signature

Date

**Appendix G-1 - Storm Water Training Syllabus:
Existing Training - As of Date of Entry**

Appendix G-1

NVR, Inc.

Storm Water Training Syllabus: Existing Training - As of Date of Entry

I. Introduction

- A. History of Clean Water Act and EPA
- B. EPA Enforcement and delegation

II. NVR Program

III. Paperwork Requirements

- A. Pre-Construction Inspections
- B. Permitting
 - a. What needs to be permitted?
 - b. Types of Coverage (Individual/Co-Permittee/Lot by Lot)
 - c. Applications (NOI/RFA/Registration Statements)
 - d. Acknowledgement
- C. General Permits
 - a. What is Included
 - b. Frequency
- D. Erosion and Sediment Control Plans
 - a. What is required?
 - b. Approved verses Certified
- E. SWPPP
 - a. Identifies
 - b. State Required
 - c. NVR SWPPP addendum
- F. BMP Map
 - a. Overview
 - b. Legend
- G. Contractors List
 - a. Contractor Certification
- H. Lot Ownership Log
 - a. History
 - b. System Overview

**Appendix G-1 - Storm Water Training Syllabus:
Existing Training - As of Date of Entry**

- c. Dates
 - I. Inspections
 - a. System Overview
 - b. Inspection Breakdown
 - c. Inspection Frequency (by State)
 - d. Corrective Action Log options
 - J. Manager's Inspections
 - a. Frequency
 - b. Spill Kits
 - c. Signage
 - d. Rain Gauges
 - K. State Training
 - L. Land Contract
 - a. Responsibilities between NVR and Land Developer
 - M. Municipality and Internal Inspections
 - N. Vendor Enforcement
 - O. State BMP Guides
 - P. Notice of Termination
- IV. Erosion and Sediment Controls**
- A. Erosion versus Sediment Controls
 - a. Best Management Practices
 - 1. What is a BMP?
 - b. Sediment Barriers
 - 1. Silt Fence
 - 2. Fiber Rolls
 - 3. Sediment Socks
 - c. Stabilization Methods
 - 1. Temporary Stabilization
 - 2. Permanent Stabilization
 - d. Inlet Protections
 - 1. Drop Inlets
 - i. Excavation Method

**Appendix G-1 - Storm Water Training Syllabus:
Existing Training - As of Date of Entry**

- ii. Fabric Barrier Method
- iii. Block and Gravel Method
- iv. SOD Method
- 2. Curb Protection
 - i. Block and Gravel Method
 - ii. Gravel Method
- e. Construction Entrances
- f. Temporary Stockpiles
- g. Designated Areas
- h. Street Cleaning

V. Material Handling

- A. Paint
- B. Asphalt
- C. Landscape Products
- D. Vehicle Cleaning
- E. Debris
 - a. Wind Blow
 - b. Leakage
- F. Concrete/Paint Washouts
 - a. Options
 - b. Locations
 - c. Access
 - d. Signage
 - e. Installation
 - f. Variations
- G. Portable Toilets
 - a. Locations

VI. BMP Removal

- A. Removal of Temporary Structures

**Appendix G-2 - Storm Water Training Syllabus:
Following Date of Entry**

Appendix G-2

NVR, Inc.

Storm Water Training Syllabus: Following Date of Entry

I. Introduction

- A. History of Clean Water Act and EPA
- B. EPA Enforcement and delegation
- C. NVR Organization Breakdown
 - a. Community
 - b. Divisional
 - c. Corporate

II. NVR Training Requirements

- A. Initial certification
 - a. No access until completed
- B. Recertification
 - a. Initial Recertification - 6 months
 - b. Follow Up Recertification – 15 months
- C. State-specific Training Requirements

III. Pre-Construction

- A. Pre-Construction Inspections
- B. Permitting
 - a. State General Permits
 - 1. What is Included
 - 2. Frequency
 - b. What needs to be permitted?
 - 1. NVR
 - 2. Developer
 - c. Types of Coverage (Individual/Co-Permittee/Lot by Lot)
 - d. Applications (NOI/RFA/Registration Statements)
 - e. Acknowledgement
- C. Erosion and Sediment Control Plans
 - a. What is required?
 - b. Approved verses Certified

**Appendix G-2 - Storm Water Training Syllabus:
Following Date of Entry**

- D. SWPPP
 - a. Identifies
 - b. State Required
 - c. NVR SWPPP addendum
 - E. BMP Map
 - a. Overview
 - b. Legend
 - F. Lot Ownership Log
 - a. History
 - b. System Overview
 - c. Required Inputs/Dates
 - G. Contractors List
 - a. Contractor Certification
 - H. Site Postings
 - a. State-required
 - b. Division contact information
 - I. Land Contract
 - a. Responsibilities between NVR and Land Developer
- IV. Construction**
- A. Inspections
 - a. Training Requirement
 - b. System Overview
 - c. Inspection Breakdown
 - d. Inspection Frequency (by State)
 - e. Corrective Action Log options
 - 1. Timing for repairs
 - 2. Estimated completion adjustments
 - B. Managers Inspections
 - a. Frequency
 - b. Spill Kits
 - c. Signage
 - d. Rain Gauges

**Appendix G-2 - Storm Water Training Syllabus:
Following Date of Entry**

- C. Municipality and Internal Inspections
- D. Vendor Enforcement
- E. State BMP Guides
- F. Notice of Termination
- V. Overview of Erosion and Sediment Controls**
 - A. Erosion versus Sediment Controls
 - B. Best Management Practices
 - a. What is a BMP?
 - C. Sediment Barriers
 - a. Silt Fence
 - b. Fiber Rolls
 - c. Sediment Socks
 - D. Stabilization Methods
 - a. Temporary Stabilization
 - b. Permanent Stabilization
 - E. Inlet Protections
 - a. Drop Inlets
 - 1. Excavation Method
 - 2. Fabric Barrier Method
 - 3. Block and Gravel Method
 - 4. SOD Method
 - b. Curb Protection
 - 1. Block and Gravel Method
 - 2. Gravel Method
 - c. Construction Entrances
 - d. Temporary Stockpiles
 - e. Designated Areas
 - f. Street Cleaning
- VI. Material Handling**
 - A. Paint
 - B. Asphalt
 - C. Landscape Products

**Appendix G-2 - Storm Water Training Syllabus:
Following Date of Entry**

D. Vehicle Cleaning and Maintenance

E. Debris

a. Wind Blow

b. Leakage

F. Concrete/Paint Washouts

a. Options

b. Locations

c. Access

d. Signage

e. Installation

f. Variations

G. Portable Toilets

H. Locations

VII. BMP Removal

A. Removal of Temporary Structures

**Appendix G-3 - Storm Water Training Syllabus:
Annual Refresher**

Appendix G-3

NVR, Inc.

Storm Water Training Syllabus: Annual Refresher

- I. History**
 - A. Consent Decree
 - a. Background (History)
 - b. Settlement
- II. Organization Breakdown**
 - a. Community
 - b. Divisional
 - c. Corporate
- III. Training Requirements**
 - A. Initial Certification
 - a. No access until completed
 - B. Recertification
 - a. 6 months
 - b. 15 months retrain
 - c. Access removed if not completed
 - C. State Training
 - D. Penalties
- IV. Pre-Construction**
 - A. Permit Requirements
 - a. General Permit
 - 1. Expiration Date (State specific)
 - b. Developer
 - c. NVR
 - d. Penalties
 - B. Required Plans
 - C. BMP Maps
 - D. Lot Ownership Log
 - a. System Overview
 - b. Dates/Required Inputs

Appendix G-3 - Storm Water Training Syllabus:
Annual Refresher

E. Pre-Construction Inspections

- a. Penalties

V. Construction

A. NVR SWPPP Addendum

- a. Site Information
- b. Sequence and BMP Selection
- c. Pollution Prevention Plan
- d. Spill Procedures
- e. Dust Control
- f. SWPPP Log
- g. Certification Statement

B. Self-Inspections

- a. System Overview
- b. Inspection Breakdown
- c. Inspection Frequency (by State)
- d. Corrective Action Log
 - 1. Timing for repairs
 - 2. Estimated completion adjustments
- e. Penalties

C. Manager's Inspections

- a. Frequency
- b. Penalties

D. Vendor Enforcement

- a. Fining Structure
- b. Images

E. Site Posting

F. National Compliance Summary Report

- a. Penalties

VI. Regulatory Inspections

A. Inspection Procedures

B. Inspection Response

**Appendix G-3 - Storm Water Training Syllabus:
Annual Refresher**

VII. Notice of Termination

A. Retention

VIII. Lessons Learned

Appendix H - List of Sites Subject to Covenant Not to Sue

Appendix H

NVR, Inc.

List of Sites Subject to Covenant Not to Sue

Site No.	Community Name	State
1	Auburn Meadows Subdivision - Phase 1	NY
2	Auburn Meadows Subdivision - Phase 2	NY
3	Auburn Meadows Subdivision - Phase 3	NY
4	Bakers Highland	NY
5	Black Creek Woods	NY
6	Brandon Woods	NY
7	Country Meadows	NY
8	Country Oaks	NY
9	Galant Woods	NY
10	Graceland Estates	NY
11	Harbor Heights	NY
12	Heather Woods	NY
13	Kensington Woods	NY
14	Lawton Valley Hunt	NY
15	Lockport Patios (Whispering Winds)	NY
16	Minoa Farms	NY
17	Newbury Park - Phases V & VI	NY
18	Oak Ridge Knolls	NY
19	Old Brookside	NY
20	Old Orchard	NY
21	Pheasant Run Subdivision	NY
22	Riverton Knolls - Phase 1 & 2	NY
23	Riverwalk	NY
24	Rolling Ridge	NY
25	Roseland Park	NY
26	Shadow Hill at Stonegate Heights - Phase 2	NY
27	Skyland Meadows	NY
28	Stonewood	NY
29	Summerfield Farms	NY
30	Sun Meadows (Sorrell Hill)	NY
31	Tree Haven	NY
32	Waterford Commons	NY
33	Waterford Park	NY
34	Waterhouse Landing	NY
35	Wheatfield Lakes	NY
36	Wheatfield Patios	NY
37	Willow Creek	NY
38	Woodstream Estates	NY
39	Bella Vista	NJ

Appendix H - List of Sites Subject to Covenant Not to Sue

Site No.	Community Name	State
40	Cambridge Crossing (Fernwood North Major)	NJ
41	Carriage Estates	NJ
42	Cooper Crossing	NJ
43	Country Woods	NJ
44	Creekside at Delanco	NJ
45	Eaglesmere (Glen Eyre - Palette III)	NJ
46	Emerald Estates	NJ
47	Forest Walk	NJ
48	Greenwich Crossing	NJ
49	Hampton Ridge Estates	NJ
50	Harmony Glen	NJ
51	Hidden Oaks	NJ
52	High Pointe	NJ
53	Independence Walk	NJ
54	Legacy at Cape May	NJ
55	Legacy at Meadowcroft	NJ
56	Lennox Run	NJ
57	Middletown Crossing	NJ
58	Rolling Hills	NJ
59	Seapines (Silver Oaks)	NJ
60	Spring Hollow	NJ
61	The Manors at Crossroads	NJ
62	The Village at Cinnaminson Harbor	NJ
63	Villages at Amberleigh	NJ
64	Westfield Chase (Canyon Creck)	NJ
65	Winding Run	NJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

NVR, Inc.,

Defendant.

Civil Action No. 2:17-cv-04346

CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2017, a copy of the “Notice of Lodging of Consent Decree” and “Consent Decree” were filed electronically with the Clerk of Court using the CM/ECF system. I also certify that copies of these documents were mailed by United States Postal Service to counsel for Defendants:

Steven P. Solow
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/s/ Peter M. Flynn

PETER M. FLYNN

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