



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

North Coast Regional Water Quality Control Board

March 25, 2016

Mr. Will Oswald
2 Fifer Avenue, Suite 110
Corte Madera, CA 94925

Mr. Sean McGlynn, City Manager
100 Santa Rosa Ave, Room 10
Santa Rosa, CA 95404

Dear Mr. Oswald and Mr. McGlynn:

Subject: **Notice of Violation** of State Water Resources Control Board Order No. 2009-0009 DWQ, as amended by Orders 2010-0014 DWQ & 2012-0006 DWQ, *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit) and section 401 of the Clean Water Act; Santa Rosa, Sonoma County

File: Kawana Meadows Subdivision Unit 1 Petaluma Hill Road and Yolanda Road, City of Santa Rosa, WDID No. 1 49C374058, and City of Santa Rosa Farmers Lane Extension (Site),

Kawana Meadows Development Corporation (Permittee) is hereby given notice that it has violated the Construction General Permit for discharging storm water from the Site to waters of the state with turbidity levels exceeding the Construction General Permit's numeric action level for turbidity, and for its failure to stabilize construction entrances, maintain effective perimeter controls, adequately cover stockpiles, manage run-on, and adequately stabilize soil in inactive and open areas throughout the Site.

The Permittee and the City of Santa Rosa are hereby given notice that they have also violated section 401 of the Clean Water Act by filling or destroying wetlands and linear watercourses, waters of the state and of the United States.

This Notice of Violation is supported by observations made by North Coast Regional Water Quality Control Board (Regional Water Board) staff during site inspections on January 6, 15, and 27, 2016 (see Attachments 3 and 4). Unless corrective actions are implemented,

JOHN W. CORBETT, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

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the Permittee continues to violate the Construction General Permit by failing to ensure that storm water discharges will not contain pollutants in quantities that threaten to cause pollution and by allowing discharges not authorized by the Construction General Permit. Corrective actions are also necessary to remediate violations of section 401 of the Clean Water Act.

I. Background

The Permittee owns and operates the Site, located east of the intersection of Petaluma Hill Road and Yolanda Road, and south of Kawana Springs Road and Kawana Terrace, in Santa Rosa, California (Attachment 1). The City of Santa Rosa owns and is responsible for the Farmers Lane Extension portion of the Site. According to information contained in the Storm Water Pollution Prevention Plan (SWPPP) for the Site, proposed development of the Site will result in the disturbance of 15.33 acres of a 19-acre project size; however, the total Site area appears to be approximately 42 acres. According to the file for the Site on the Storm Water Multiple Application and Report Tracking System (SMARTS) database, construction commenced on September 21, 2015, with an estimated completion by August 31, 2016. The Project is listed as a Risk Level 2 in SMARTS.

As noted above, on January 6, and January 15, 2016, Regional Water Board staff (Staff) inspected the Site. Staff observed minimal sediment and erosion controls throughout most of the Site and discharge of turbid storm water runoff from the Site to waters of the state (Attachment 2, Photos 4 and 5). Best Management Practices (BMPs) deployed onsite to contain/control Site runoff were overwhelmed by the volume of storm water runoff, allowing turbid runoff to enter an unnamed tributary to Todd Creek, thence to Bellview/Wilfred Channel, thence to Laguna de Santa Rosa, thence to Mark West Creek, thence to the Russian River.

Staff also observed approximately 2,700 linear feet of disturbed or destroyed watercourse channel and associated linear wetland from the eastern portion of the Site near Taylor Mountain Regional Park that flowed to the western boundary of the Site near Petaluma Hill Road, approximately 60 linear feet of disturbed or destroyed watercourse channel along the access road on the northwest portion of Site, evidence of unauthorized dredge/fill in a possible wetland area near the construction trailer adjacent to Franz Kafka Avenue, and evidence of unauthorized dredge/fill in delineated wetlands at the southwest portion of the Site at the future connection to Yolanda Avenue.

II. Applicable Legal Authority and Requirements

Section 301 of the Clean Water Act (33 U.S.C. § 1311) prohibits the discharge of pollutants to waters of the United States except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

Water Code section 13376 prohibits discharges of dredge or fill material to waters of the state and United States unless authorized by a permit issued by the Regional Water Board or State Water Board. A person who discharges dredge or fill material to waters of the state and United States must file a report of discharge in compliance with Water Code section 13260. Water Code section 13260 requires "[a] person discharging waste, or

proposing to discharge waste, within any region that could affect the quality of the waters of the state" to submit a report of waste discharge." All waters of United States are waters of the state.

Additionally, The Basin Plan prohibits the following under the Action Plan for Logging, Construction, and Associated Activities (page 4-29.00):

1. *"The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited."*
2. *"The placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature at locations where such material could pass into any stream or watercourse in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited."*

Construction General Permit

The following Construction General Permit provisions are relevant to this Site.

Section VI.B:

The discharger shall ensure that storm water discharges . . . will not contain pollutants in quantities that threaten to cause pollution or a public nuisance.

Attachment D, Provision A.1.a:

Dischargers shall minimize or prevent pollutants in storm water . . . through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.

Attachment D, Provision B.1.e:

Dischargers shall implement BMPs to prevent the off-site tracking of loose construction and landscape materials.

Attachment D, Provision E.1:

Dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

Attachment D, Provision B.1.b:

Dischargers shall cover and berm loose stockpiled construction materials that are not actively being used.

Attachment D, Provision F:

Dischargers shall effectively manage all run-on, all runoff within the site, and all runoff that discharges off the site. Run-on from offsite shall be directed away from all disturbed areas or shall collectively be in compliance with the effluent limitations in this General Permit.

Attachment D, Provision D.2:

Dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.

Section 401 Clean Water Act

Section 401 of the Clean Water Act requires a certification from the state for construction which may result in any discharge to waters of the United States certifying that any such discharge will comply with applicable provisions of sections 301, 302, 303, 306, and 307. If a proposed project has the potential to impact waters of the State and requires either a U.S. Army Corps of Engineers CWA section 404 or other federal permit, then the Regional Water Quality Control Board will regulate the project and associated activities through a Water Quality Certification (section 401).

III. Alleged Violations

Construction General Permit

The Permittee violated Section VI.B of the Order and Provision A.1a. of Attachment D by failing to ensure that storm water discharges from the Site did not exceed the Construction General Permit's numeric action level of 250 NTU for turbidity. The Permittee reported turbidity values of 682 NTU on December 21, 2015, 542 NTU on January 5, 2016, 642 NTU on January 6, 2016, 556 NTU on January 13, 2016, 628 NTU on January 14, 2016, and 732 NTU on January 19, 2016, to the Project's SMARTS file.

The Permittee violated Provisions B.1.e and E.1 of Attachment D of the Construction General Permit by failing to construct and/or maintain a stabilized construction entrance/exit on the Site's access road, located at the intersection of Kawana Terrace and Franz Kafka Avenue (Attachment 2, Photo 1). Staff observed that the entrance from Franz Kafka Avenue onto the Project was also not maintained in a stabilized condition (Attachment 2, Photo 2). The SWPPP states that, "a stabilized construction entrance/exit will be constructed and maintained at construction site entrances and exits" (SWPPP, Section 500.3.3-TC-1). In addition, the Permittee violated Attachment D, Provision E.1 of the Construction General Permit by failing to maintain effective perimeter controls to prevent sediment discharges from leaving the Site (Attachment 2, Photos 3, 4, and 5).

The Permittee violated Provision B.1.b of Attachment D of the Construction General Permit by failing to cover and adequately berm the stockpile of what appeared to be asphalt concrete (AC) grindings, located on the southern boundary of the Site (Attachment 2, Photo 6). Staff observed a partial berm constructed of wattles, but noted that the wattles did not entirely encircle the base of the stockpile (Attachment 2, Photo 7). The SWPPP states that, *"temporary covers shall be placed on all small exposed soil areas or stockpiles for all inactive areas or prior to rain events"* (SWPPP, Section 500.3.1-EC-7). The Permittee did not abide by its SWPPP, resulting in ineffective perimeter controls in violation of the Construction General Permit.

The Permittee violated Provision F of Attachment D by failing to manage all run-on from offsite, runoff within the Site, and runoff that discharges off the Site. The failure to manage run-on from upslope of the Site contributed to erosion onsite (Attachment 2, Photo 8). Water entering the Site from adjacent properties increased the volume of runoff flowing to onsite storm water treatment and control measures, likely contributing to the failure of the western silt fence perimeter control and ultimately contributed to the discharge of sediment to waters of the state (Attachment 2, Photo 5).

The Permittee violated Provision D.2 of Attachment D by failing to provide adequate soil cover on inactive areas on the Site (Attachment 2, Photos 9 and 10). As a result, runoff contacting the exposed soil entrained and transported sediment, adding to the overall sediment discharges from the Site to waters of the state. The SWPPP states that, *"soil stabilization will occur one day prior to all predicted rain events"* (SWPPP, Section 500.3.1.3). At the time of the inspections, several predicted rain events had occurred during the previous weeks, yet staff observed significant areas of exposed soil on the Site with no stabilization measures in place.

Clean Water Act

The Permittees did not apply for and obtain Clean Water Act section 401 Water Quality Certification and/or Waste Discharge Requirements prior to conducting dredge, excavation or fill activities that resulted in a discharge to waters of the state and United States.

Unauthorized discharges of fill identified in the Site inspection memo (Attachment 3) include, but are not limited to, the following areas:

1. Site 1, probable water of the state and/or United States: depressional wetland approximately 50 square feet.
2. Site 2, jurisdictional water of the United States: defined channel, approximately 60 linear feet.
3. Site 3, jurisdictional water of the United States: delineated wetland at least 0.036 acres.
4. Site 4, jurisdictional water of the United States: defined channel graded/eroded/rerouted, at least 2,700 linear feet.

IV. Future Regional Water Board Actions

We intend to issue an Order to require the following actions:

1. A complete wetland and waters of the state delineation shall be submitted if it was completed prior to construction. If no such delineation was conducted (which is a requirement of a 401 Water Quality Certification application), then conduct a delineation forensically to determine the extent of impacts to wetlands and waters. This delineation shall be conducted physically using the USACE 1987 delineation manual and appropriate supplemental guidelines as well as through forensic historical ecology of the Site, by a wetland professional subject to approval by Regional Water Board staff. Delineation shall also include those waters that would meet the definition of waters of the state of California. A report shall be submitted indicating all areas of work on the Site that have impacted waters of the state.

No further ground disturbing activities shall be conducted at the Site, other than application of storm water or erosion control best management practices, as more waters of the state may be inadvertently damaged until their locations are known. Impacts to damaged/destroyed waters of the state must be restored, mitigated, or appropriate permits must be applied for and issued before work may restart on this Site.

2. During the duration of the wet season (until May 15, 2016, or when flow stops) temporarily divert water from flowing onto the disturbed soil at site 4 (Attachment 3). This would reduce erosion and active discharge of sediment. If this channel has been rerouted off the property to the north, but previously flowed to the south toward the Farmers Lane extension, the diversion shall be routed along the original course using an appropriately sized dewatering diversion to ensure the channel does not flow across disturbed soils.
3. Submit a workplan for restoration and mitigation to address all unpermitted impacts to waters of the state and United States, with the goal of restoration of all acreage, linear feet and functions of the waters of the state and United States, and mitigation of temporal loss of functions. This workplan shall include monitoring and reporting as well as measurable success criteria to ensure functions are fully restored and or adequately mitigated.

Please be advised that until the Permittee implements corrective actions to ensure that storm water discharges will not contain pollutants in quantities that threaten to cause pollution and until the Permittee ceases any discharges not authorized by the Construction General Permit, the Permittee will remain in violation of the Construction General Permit. Additionally, the Permittee and the City have violated the Clean Water Act by failing to obtain a 401 Certification prior to discharging fill material into waters of the state and United States. Activities at the Site that may further detrimentally impact waters of the

state or United States shall cease. The Permittee and the City are subject to administrative civil liability, beginning with the date that a violation first occurred, in an amount up to \$10,000 per day per violation and \$10 per gallon discharged over 1,000 gallons.

The Regional Water Board reserves its rights to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cease and desist order, cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's Office. We are continuing to review this matter and may take or recommend that the Board take additional enforcement action. In the meantime, we recommend that you take steps forthwith to avoid further destruction of waters of the state and the United States and that you apply best management practices as necessary to prevent and/or minimize further discharge of pollutants from the Site into waters of the state and the United States.

Please contact Ms. Mona Dougherty regarding stormwater issues, at Mona.Dougherty@waterboards.ca.gov or (707) 570-3761, or Mr. Stephen Bargsten regarding Clean Water Act Section 401 issues, at Stephen.Bargsten@waterboards.ca.gov or (707) 576-2653. Please contact either one of them no later than **April 1, 2016**, to schedule a meeting to discuss your plans and any efforts underway to correct these violations.

Should you have any other questions, please contact me by email (preferred) at Shin-Roei.Lee@waterboards.ca.gov or at (707) 570-3769.

Sincerely,

Shin-Roei Lee
Assistant Executive Officer

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Certified Return Receipt Requested

Attachments:

1. Project location map
2. Supporting photographs from January 15, 2016 Staff inspection
3. January 15, 2016 Inspection Report
4. January 27, 2016 Staff Inspection Report

cc: Holly Costa, Army Corps of Engineers, Holly.N.Costa@usace.army.mil
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John Sawyer, Mayor, City of Santa Rosa, jsawyer@srcity.org