

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2004-0531

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

TERRA NOVA DEVELOPMENT, LLC
THE VISTAS SUBDIVISION
SHASTA COUNTY

This complaint is issued to the Terra Nova Development, LLC, (hereafter Discharger), based on a finding of violations of Clean Water Act Sections 301 and 401, California Water Code (CWC) Section 13376, California Code of Regulations (CCR) Section 3831(k), and the National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 Order No. 99-08-DWQ, pursuant to the provisions of Section 13385 of the CWC, which authorizes the imposition of an Administrative Civil Liability, and of CWC Section 13323, which authorizes the Executive Officer to issue this complaint.

The Executive Officer of the Regional Water Quality Control Board, Central Valley Region (hereafter Regional Board) finds, with respect to the Discharger's acts, or failure to act, the following:

1. The Discharger is the owner and developer of a 127-acre residential development known as the Vistas Subdivision. The site is being developed into approximately 117 single-family residences with utilities, roads and open space located along Quartz Hill Road in the City of Redding. (Assessor Parcel Numbers 113-01-005, and 007; 113-19-003, and 008).
2. Runoff from the site discharges to Sulphur Creek along the east side of the site and an unnamed creek along the west side of the site. Both creeks are tributaries to the Sacramento River. Sulphur Creek supports spawning activities for Chinook salmon and rainbow trout downstream from the project site. The existing beneficial uses of the Sacramento River designated in the Regional Board Water Quality Control Plan for the Sacramento and San Joaquin Rivers - 4th Edition 1998 (Basin Plan) are municipal supply; agricultural supply; industrial service supply; hydropower generation; recreation; fresh water habitat; migration of aquatic organisms; spawning, reproduction, and/or early development of fish; wildlife habitat; and navigation. Based on the Clean Water Act, the Porter-Cologne Water Quality Control Act (California Water Code Division 7), and the Basin Plan, the beneficial uses of Sulphur Creek include recreation; fresh water habitat; migration of aquatic organisms; spawning, reproduction, and/or early development of fish; and wildlife habitat.
3. On 19 August 1999, the State Water Resources Control Board adopted "NPDES General Permit For Storm Water Discharges Associated with Construction Activity (General Permit), Water Quality Order No. 99-08-DWQ, implementing the Waste Discharge Requirements for storm water discharges associated with construction activity. The General Permit requires that dischargers of storm water to surface waters associated with construction activity, including clearing, grading, and

excavation activities, file a Notice of Intent (NOI) to obtain coverage under the General Permit, and requires dischargers to implement best management practices (BMPs) to implement Best Available Technology Economically Achievable and Best Conventional Control Technology (BAT/BCT) to prevent storm water pollution or reduce it to the maximum extent practicable.

4. The Discharger submitted an NOI for coverage under the General Permit in December 2002 and was issued an identification number, WDID No. 5R45S319707, on 30 December 2002.
5. The subdivision currently consists of four units: Unit 1 is the southern most unit and includes 27 lots and Detention Basin 1; Unit 2 is immediately north of Unit 1 and consists of 25 lots and Detention Basin 2; Unit 3 is located just north of Unit 2 and consists of 34 lots and Detention Basin 3; and Unit 4 is the northern most unit and includes 31 lots. The natural topography of the site is steep with some slopes exceeding 20 percent. Prior to the 2003-2004 rainy season, the Discharger denuded and mass graded over 40 acres of the 127-acre site. The Discharger failed to implement an effective combination of erosion and sediment controls as required by the General Permit, caused violations of water quality standards, and caused other violations of the General Permit. In addition, the Discharger reconfigured the natural drainage system and excavated extensive utility trenches. Most of the storm drain inlets were not functional during the beginning of the rainy season. Subsequently, much of the storm water runoff from the site concentrated in the utility trenches rather than the storm drain system and eventually discharged over fill slopes. The concentrated flows resulted in eroded soils and the discharge of sediment-laden water to the unnamed tributaries and to Sulphur Creek.
6. The Discharger failed to obtain a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers or a water quality certification pursuant to Clean Water Act Section 401 from the Regional Board for the placement of fill in waters of the United States and the State. The Discharger partially filled a portion of four main tributaries to Sulphur Creek on the east side of the site for construction of roads, detention basins, and the development of residential lots. Each of these watersheds was greatly disturbed. The Discharger placed culverts in the bottom of several of the channels in order to convey storm water; however, the tributaries in Unit 4 were filled without providing any conveyance for storm water. Therefore, storm water run-on and run-off from Unit 4 resulted in large amounts of soil erosion that discharged directly in Sulphur Creek.
7. The Discharger is alleged to have violated provisions of law for which the Regional Board may impose liability under CWC Section 13385(c).
8. General Order No. 99-08-DWQ states, in part, the following:

“A. DISCHARGE PROHIBITIONS:

3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.

B. RECEIVING WATER LIMITATIONS:

1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.”
2. The SWPPP developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized nonstorm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable RWQCB’s Basin Plan.

C. SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITY:

2. All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT performance standard.

SECTION A: STORM WATER POLLUTION PREVENTION PLAN

5. b(1) Runoff from off-site areas should be prevented from flowing through areas that have been disturbed by construction unless appropriate conveyance systems are in place...

6. At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season ...

7. All disturbed areas of the construction site must be stabilized.

SECTION C: STANDARD PROVISIONS FOR CONSTRUCTION ACTIVITIES

5. Proper Operation and Maintenance of the General Permit, The discharger shall at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with the conditions of this General Permit and with the requirements of the Storm Water Pollution Prevention Plans (SWPPP)...”

9. Clean Water Act Section 301 and CWC Section 13376 prohibit the discharge of pollutants to surface waters except in compliance with an NPDES permit.
10. Clean Water Act Section 401(a)(1) and Title 23 CCR Section 3831(k) require any applicant for a Federal license or permit conducting any activity which may result in any discharge into navigable waters, to obtain a certification from the state that any such discharge will comply with the applicable provisions of Clean Water Act Sections 301, 302, 303, 306, and 307.
11. The Discharger is alleged to have violated Discharge Prohibitions A.3; Receiving Water Limitation B.1 and B.2; Special Provisions for Construction Activity C.2; Storm Water Pollution Prevention Plan, Section A.5.b.1, A.6 and A.7; and Standard Provision for Construction Activities C.5 of the General Permit. These violations were caused by the failure of the Discharger to properly implement and maintain effective BMPs using BAT/BCT performance standards, which led to the discharge of pollutants to waters of the United States from the subject construction site. Pursuant to CWC Section 13385 (a)(2), civil liability may be imposed based on the following facts:
 - On 7 October 2003, City of Redding staff inspected the site and sent a letter to the Discharger regarding the inadequacies of the erosion control measures and the failure to meet the erosion control requirements of the City of Redding Municipal Code. City staff also pointed out that the storm drain system was not in place and that silt fence had been installed incorrectly. On 17 October 2003, City of Redding staff sent a follow-up letter to the Discharger regarding the continued inadequacies of the erosion control measures and the failure to provide an updated Erosion Control Plan. Once again the Discharger was in violation of the City of Redding Municipal Code. The lack of erosion and sediment control measures observed by the City of Redding staff indicated violations of Special Provision C.2 and Storm Water Pollution Prevention Plan, Sections A.6 and A.7 of the General Permit.
 - On 9 and 10 December 2003, Regional Board staff received two separate citizen complaints regarding the discharge of turbid water from the Vistas Subdivision into Sulphur Creek. Based on the first complaint, Sulphur Creek was observed flowing red with sediment on 6 December 2003. The second complainant observed the site on 9 December 2003 and provided digital photographs of the discharges from the site. The complainant said that approximately 5-10 cubic feet per second of very muddy water was discharging from the southern most drainage at the Vistas. In addition, the complainant noted that water was being pumped over the side slope and that N&T Digmire (the contractor) was setting up a second pump at Detention Basin 1. Both complainants observed considerable sediment in the storm water discharge and a lack of appropriate erosion and sediment controls. These observations indicated significant sediment discharges in violation of Discharge Prohibition A.3; Receiving Water Limitations B.1 and B.2; Special Provision C.2; Storm Water Pollution Prevention Plan, Sections A.5.b.1, A.6 and A.7; and Standard Provision for Construction Activities C.5 of the General

Permit. As described below, Regional Board staff inspected the site as the result of the complaints and observed evidence of the violations as described by the complainants.

- On the afternoon of 10 December 2003, Regional Board staff inspected the subject site to determine compliance with the General Permit. During the inspection, staff observed inadequate erosion and sediment control measures that led to the discharge of sediment-laden storm water to Sulphur Creek. Regional Board staff collected water samples from Sulphur Creek immediately above Unit 3, below Unit 1, and also the discharge from the subdivision (below Units 1 and 2). Basic Laboratory, Inc. in Redding analyzed the water samples. The water samples below the subdivision indicated a 311 % increase in turbidity and a 550 % increase in total suspended solids, as compared with the samples above the subdivision. The amount of sediment in the discharge and the lack of erosion and sediment controls indicated a significant sediment discharge in violation of Discharge Prohibition A.3; Receiving Water Limitations B.1 and B.2; Special Provision C.2; Storm Water Pollution Prevention Plan, Sections A.5.b.1, A.6 and A.7; and Standard Provision for Construction Activities C.5 of the General Permit.
- On 11 December 2003, City of Redding staff inspected the site and sent another letter to the Discharger documenting the lack of erosion and sediment control measures and the discharge of fill material from the site. The lack of BMPs observed by the City of Redding staff indicated violations of Special Provision C.2 and Storm Water Pollution Prevention Plan, Sections A.5.b.1, A.6 and A.7 of the General Permit.
- On 1 March 2004, Regional Board staff inspected the subject site to determine compliance with the General Permit. During the inspection, staff observed additional erosion and sediment control measures in-place; however, these control measures were still inadequate and there were discharges of sediment-laden storm water to Sulphur Creek. Regional Board staff collected water samples from Sulphur Creek immediately above Unit 4, below Unit 1, and also the discharges from the subdivision (combined discharge from Units 1 and 2 and the discharge below Unit 3). The water samples were analyzed by Basic Laboratory, Inc. in Redding. The water samples below the subdivision indicated a 211 % increase in turbidity and a 167 % increase in total suspended solids, as compared with the samples above the subdivision. The amount of sediment in the discharge and the lack of erosion and sediment controls indicated a significant sediment discharge in violation of Discharge Prohibition A.3; Receiving Water Limitation B.1 and B.2; Special Provision C.2; Storm Water Pollution Prevention Plan, Section A.5.b.1, A.6 and A.7; and Standard Provision for Construction Activities C.5 of the General Permit.

12. The Discharger is alleged to have violated Clean Water Act Section 301 and Title 23 CCR Section 3831(k). Pursuant to CWC Section 13350, civil liability may be imposed based on the following facts:

- On 23 May 2002, prior to any construction activities at the site, Regional Board staff mailed a letter to Harvey Kaden, one of the owners of the Vistas Subdivision, notifying

him that the proposed development would require several permits. The letter explained that if the developer intended to fill any waters of the United States the owner would need to obtain a Clean Water Act Section 404 permit from the U.S. Army Corps of Engineers and a Clean Water Act Section 401 water quality certification from the Regional Board. In the summer of 2003, the Discharger placed fill material in several of the unnamed tributaries for the development of roads, detention basins, and residential lots. However, the Discharger failed to obtain either a Clean Water Act Section 404 permit or a Clean Water Act Section 401 water quality certification for the fill material placed in the tributaries.

13. The Discharger is alleged to have violated provisions of law for which the Regional Board may impose liability under CWC Section 13385(c)(2).

14. CWC Section 13385 states, in part:

“(a) Any person who violates any of the following shall be liable civilly in accordance with this section:

(1) Section 13375 or 13376

(2) Any waste discharge requirements or dredged and fill material permit.

(5) Any requirements of Sections 301, 302, 306, 307, 308, 318, or 405 of the Federal Water Pollution Control Act as amended.”

“(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) times the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.”

“(e) In determining the amount of liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation, or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefits or saving, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.”

15. The discharge of sediment-laden storm water from the subject site was either directly observed or reported on four separate days and was estimated at 697,000 gallons. Runoff from the site for each day of discharge was conservatively estimated using the Rational Method with a runoff coefficient of 0.30, rainfall from the Redding airport, and a watershed of 40 acres (area lacking appropriate

erosion and sediment control measures). Additional days of discharge most likely occurred based on precipitation data; however, these days were not considered in the calculation.

16. Pursuant to CWC Section 13385(c), the Discharger has a total maximum civil liability of \$7,410,000, which includes daily permit violations and the volume of discharge. The daily permit violations include 7 and 17 October 2003; 6, 9, 10, and 11 December 2003; and 1 March 2004 (\$440,000 for 44 violations at \$10,000 per violation per day). An additional \$6,970,000 liability is based on the estimated storm water discharge (698,000 gallons minus 1,000 gallons at \$10 per gallon) for the 4 days of discharge on 6, 9, and 10 December 2003 and 1 March 2004.
17. The economic benefit for failure to comply with the General Permit and other regulations is \$32,500. The Discharger saved an estimated \$20,000 by not installing adequate erosion and sediment control measures on approximately 10 acres. In addition, the Discharger saved an estimated \$9,000 by not diverting runoff from off-site areas at the beginning of the rainy season. Finally, the Discharger saved an estimated \$3,500 by failing to obtain water quality certification for the discharge of fill material to waters of the United States. The Discharger saved additional expenses that were not included in this estimate by failing to make the storm drain system functional and by failing to fill the open utility trenches.
18. Regional Board staff spent a total of 60 hours investigating this incident and preparing this Complaint. The total cost for staff time is \$4,800 based on a rate of \$80 per hour.
19. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000, et. seq.), in accordance with Section 15321(a)(2), Title 14 of the California Code of Regulations.

TERRA NOVA DEVELOPMENT, LLC IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Board proposes the assessment of an Administrative Civil Liability in the amount of **eighty five thousand dollars (\$85,000)**. The amount of the liability proposed is based on a review of the factors cited in CWC Section 13385 presented in Finding No. 14 above, and the State Water Resources Control Board's water quality enforcement policy.
2. A hearing on this matter will be scheduled within 90 days unless the Discharger agrees to waive its right to a hearing and pay the proposed civil liability in full.
3. If a hearing in this matter is held, the Regional Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.
4. The Discharger may waive the right to a hearing, in which case, the Regional Board may not hold a hearing. If the Discharger wishes to waive the hearing, sign the attached waiver form and return it with a check made payable to the State Water Resources Control Board in the amount of

the civil liability, to the Regional Board's Redding office by **4 August 2004**. Any waiver will not be effective until 30 days from the date of this complaint to allow interested persons to comment on this action.

THOMAS R. PINKOS, Executive Officer

Date

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Terra Nova Development, LLC (Discharger) in connection with Administrative Civil Liability Complaint No. R5-2004-0531 (hereinafter the "Complaint").
2. I am informed of the right provided by Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of issuance of the Complaint.
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region.
4. I understand that I am giving up the Discharger's right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, civil liability proposed.
5. I agree to remit payment for the civil liability imposed in the amount of eighty five thousand dollars (\$85,000) by check, which contains a reference to "ACL Complaint No. R5-2004-0531" and is made payable to the "State Water Resources Control Board Cleanup and Abatement Account."
6. I understand the payment of the above amount constitutes a settlement of the Complaint that will not become final until after a public comment period.
7. I understand that the Executive Officer has complete discretion to modify or terminate this settlement during the 30-day public comment period, which began on the date of the Complaint.
8. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

Date

Name and Title (Print)

Signature