

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD

LAHONTAN REGION

In the matter of:)	
)	
The Palisades Development, LLC)	Order No. R6T-2023-0008 (Proposed)
Palisades at Squaw)	
)	Settlement Agreement and
Administrative Civil Liability)	Stipulation for Entry of Order; Order
)	(Proposed)

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the Lahontan Regional Water Quality Control Board (Regional Water Board) Prosecution Staff (Prosecution Team) and The Palisades Development, LLC (Discharger) (collectively, the Parties) and is presented to the Lahontan Regional Water Quality Control Board (Regional Water Board) for adoption as an Order (Order), by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Discharger is the owner of the Palisades at Squaw residential development located off Creeks End Court, at the eastern edge of Olympic Valley, near Highway 89 in Placer County, California (Site). The total size of the construction area is 19.9 acres, and includes 63 single-family homes, associated infrastructure, access roads, and landscaping. The Site was enrolled on March 6, 2017, in coverage under the State Water Resources Control Board’s General Permit to Discharge Storm Water Associated with Construction Activity, State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ (Construction General Permit). Storm water from the Site discharges to Squaw Creek, a tributary of the Truckee River, as well as the Truckee River itself, both waters of the United States.
2. **Violation 1:** The Prosecution Team alleges that the Discharger violated Construction General Permit section XIV.A by failing to ensure that the Storm Water Pollution Prevention Plan (SWPPP) for the Site was revised by a Qualified SWPPP Developer (QSD) to reflect vertical construction activities from May 15, 2018, through July 29, 2021, for a total of 1,172 days of alleged violation.
3. **Violation 2:** The Prosecution Team alleges that the Discharger violated Construction General Permit section VII.B.3 by failing to ensure that all best management practices (BMPs) required by the Permit were implemented by a Qualified

SWPPP Practitioner (QSP) from July 1, 2020, to May 10, 2021, for a total of 314 days of alleged violation.

4. **Violation 3:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section G.2 by failing to perform weekly inspections by a QSP, or person trained by a QSP, to identify and record BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended. In addition, or in the alternative, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section I.10.a.ii by failing to conduct one visual inspection in each quarterly period: January-March, April-June, July-September, and October-December. From July 1, 2020, through May 10, 2021, the Prosecution Team alleges that the Discharger failed to complete 44 weekly inspections and three quarterly inspections. Since two of the quarterly inspections should have been completed concurrently with weekly inspections, a total of 45 days of violation are alleged.

5. **Violation 4:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section H by failing to ensure that a QSP developed a Rain Event Action Plan (REAP) 48 hours prior to any likely precipitation event. From July 1, 2020, through May 10, 2021, the Prosecution Team alleges there were 25 precipitation events requiring REAPS, for a total of 25 days of alleged violation.

6. **Violation 5:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section I.3(a), (e) and (g) by failing to ensure that a QSP visually observe (inspect) the Site within two business days (48 hours) after each qualifying rain event and inspect within two business days (48 hours) prior to each qualifying rain event. The post rain event inspections are to identify whether BMPs were adequately designed, implemented, and effective, and to identify additional BMPs needed and revise the SWPPP. In addition, or in the alternative, the Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section I.4 by failing to collect storm water grab samples from locations defined in Attachment E, section I.5, that were representative of the discharge, analyze the effluent samples, and electronically submit all sampling results to the State Water Board. From July 1, 2020, to May 10, 2021, the Prosecution Team alleges there were 18 qualifying rain events, each of which required a pre-storm, during storm, and post-storm inspection resulting in 54 inspections the Discharger allegedly failed to perform and may have required water quality sampling and analyses.

7. **Violation 6:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section B.1 by failing to implement good site management (housekeeping) measures for construction materials that could be a threat to water quality if discharged. From April 29, 2021, through December 3, 2021, this violation was observed during 23 inspections, for a total 23 days of alleged violation.

8. **Violation 7:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section B.2 by failing to implement good

housekeeping measures for waste management. From April 29, 2021, through December 3, 2021, this violation was observed during 29 inspections, for a total of 29 days of alleged violation.

9. **Violation 8:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, section B.3 by failing to implement good housekeeping measures for vehicle storage and maintenance. From April 29, 2021, through December 3, 2021, this violation was observed during 12 inspections, for a total of 12 days of alleged violation.

10. **Violation 9:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, sections D.1 and D.2 by failing to provide effective wind erosion control and effective soil cover for inactive areas and all finished slopes. From April 29, 2021, through December 3, 2021, this violation was observed during 30 inspections, for a total of 30 days of alleged violation.

11. **Violation 10:** The Prosecution Team alleges that the Discharger violated Construction General Permit Attachment E, sections E.1, E.4, E.5, E.6, and E.7 by failing to:

- a. Establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges,
- b. Apply linear sediment controls on slopes,
- c. Ensure traffic to and from the Site is limited to entrances and exits that employ effective controls to prevent offsite tracking of sediment,
- d. Ensure that all storm drain inlets and perimeter controls, runoff control BMPs, and pollutant controls at entrances and exits are maintained and protected, and
- e. Remove any sediment or other construction activity-related materials from roadways (by vacuuming or sweeping).

From April 29, 2021, through December 3, 2021, this violation was observed during 37 inspections, for a total of 37 days of alleged violation.

12. **Violation 11:** The Prosecution Team alleges that the Discharger violated Construction General Permit section XVI by failing to submit an Annual Report for the 2018-2019 and 2019-2020 reporting periods. Though this is an on-going violation because the Annual Reports have still not been submitted, in the interest of justice, the Prosecution Team is alleging that each report is one year late for a total of 731 days of

violation: 366 days for the 2018-2019 report (leap year), and 365 days for the 2019-2020 report.

13. These alleged acts constitute violations of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c). The Prosecution Team could have alleged many of the violations described above within a violation category separately but have elected to combine them as described above for purposes of settlement.

14. To resolve by consent and without further administrative proceedings the alleged violations of the Construction General Permit, the Parties have agreed to the imposition of **\$1,650,000** of liability against the Discharger, which includes \$24,988 in staff costs. Payment to the State Water Resources Control Board Cleanup and Abatement Account is due no later than 30 days following the Regional Water Board executing this Order.

15. The amount of administrative civil liability imposed pursuant to this Stipulation and Order comports with the State Water Resources Control Board Water Quality Enforcement Policy methodology as discussed in Attachment A, the terms of which are incorporated herein by reference.

16. The Parties have engaged in settlement negotiations and agree to settle the matter without further administrative or civil litigation and by presenting this Stipulation and proposed Order to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Team contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violations alleged except as provided in this Stipulation, and that this Stipulation is in the best interests of the public.

Section III: Stipulations

The Parties stipulate to the following:

17. **Administrative Civil Liability:** Without admitting the truth of any violations alleged in this Stipulation, the Discharger hereby agrees to pay the administrative civil liability totaling \$1,650,000 as set forth in Paragraph 14 of section II of this Stipulation. Payment of shall be due and payable by check to the State Water Resources Control Board Cleanup and Abatement Account due 30 days after the Order is signed and becomes final and mailed to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office, ACL Payment
1001 I Street, CA 95814

The check shall reference the Order number assigned to this Stipulation and the Order. The Discharger shall provide a copy of the check sent via mail and email at the time the payment is made to:

Shelby Barker, Enforcement Coordinator
Lahontan Regional Water Quality Control Board
15095 Amargosa Rd., Bldg. 2, Ste. 210
Victorville, CA 92394
Shelby.Barker@waterboards.ca.gov

The Discharger represents that it will not dissolve or file for bankruptcy before meeting its obligations in this Stipulation and Order, and further stipulates that the Regional Water Boards shall be entitled to payment from any affiliated entity such as a parent company should the Discharger become unable to meet its obligations in this Stipulation and Order.

18. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that future violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional administrative civil liability.

19. **Public Notice:** The Discharger understands that this Stipulation and proposed Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and proposed Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and proposed Order void and decide not to present it to the Regional Water Board or its delegate. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this Stipulation and proposed Order.

20. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, has the authority to require a public hearing to consider adoption of this Stipulation and proposed Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure for adoption of this Order as necessary or advisable under the circumstances.

21. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from such Party's own counsel in connection with the matters set forth herein.

22. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

23. **Modification:** This Stipulation and Order shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.

24. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegate, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation or the proposed Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

25. **No Admission of Liability:** In settling this matter, Discharger does not admit to any of the allegations herein, or that it has been or is in violation of the Water Code or any other federal, state, or local law or ordinance.

26. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

27. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to file a petition for review of the adoption of the Order to the Regional Water Board for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

28. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.

29. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulation and Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulation or Order.

30. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

31. **No Third-Party Beneficiaries:** This Stipulation and Order are not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation and Order for any cause whatsoever.

32. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

33. **Counterpart Signatures:** This Stipulation and Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation and Order may be executed by electronic signature, and any such electronic signature shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature was an original signature.

34. **Effective Date:** This Stipulation and Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulation.


IT IS SO STIPULATED.

**California Regional Water Quality Control Board Prosecution Team
Lahontan Region**

By: 
Ben Letton, Assistant Executive Officer

Date: 7/5/2023

The Palisades Development, LLC

By: 
Jon Corn, President, N4FL Development, Inc., Manager

Date: 6-30-23

Attachment A: Administrative Civil Liability Methodology Summary
Attachment B: Economic Benefit Analysis

Order of the Lahontan Regional Water Board

35. The foregoing Stipulation, including Attachments A and B, is fully incorporated herein and made part of this Order.

36. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board.

37. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

38. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Lahontan Region.

By: _____
Michael Plaziak
Executive Officer

Date: _____