

California Regional Water Quality Control Board
North Coast Region

CLEANUP AND ABATEMENT ORDER NO. R1-2003-0039

FOR

NAUTICAL HEIGHTS, LLC

Del Norte County

The California Regional Water Quality Control Board, North Coast Region (hereinafter Regional Water Board) finds that:

1. Nautical Heights, LLC, 997 Krista Lane, Brookings, Oregon (hereinafter Discharger), is subdividing unimproved land and constructing roads and building pads on a parcel of land located north of Crescent City, California (APN #101-020-58) in the NW ¼ S 4, T18N, R1W, HB&M. The subdivision consists of approximately 23 graded lots leveled out of a steep hillside on the east side of State Highway 101 near the Oregon border. The Nautical Heights main access road continues up the hill making several steep switchbacks up the hillside and terminates at a lot on the top of the hill. Driveways to the hillside lots spur off the main road. Reeves Road runs alongside the southern edge of the property at the bottom of the hillside. Gilbert Creek is located across Reeves Road from the subdivision and runs west to the ocean.
2. Construction activities at the site are regulated by State Water Resources Control Board Order No. 99-08 DWQ (NPDES Permit No. CA000002), General Permit to Discharge Storm Water Runoff Associated with Construction Activity (General Permit). The General Permit requires the Discharger to submit a Notice of Intent (NOI) and have a copy of the Storm Water Pollution Prevention Plan (SWPPP) on-site before beginning construction activity. Construction of the subdivision began on or about March 19, 2001. The intended completion date was September 1, 2002, but completion has been delayed.
3. Regional Water Board staff received a complaint on October 4, 2001, from the Del Norte County Building Department notifying staff of construction work proceeding without a permit at the site. Regional Water Board staff requested submission of an NOI, which was received on January 12, 2002. Regional Water Board staff inspected the site on April 30, 2002, in response to complaints from neighbors. Upon inspection, it was evident that drainage and erosion control plans were needed for the site. Many heavily eroded spots exist on the property. A steep access road had been bulldozed above Reeves Road straight up the hillside. Eroded soil had been running off this access road and was deposited on Reeves Road and most likely had run across the road into Gilbert Creek located about 200 feet away. The Discharger submitted a SWPPP as specified in the General Permit on June 28, 2002.

4. The SWPPP contained drainage and erosion control plans. The plans were designed by Stover Engineering and reviewed by Winzler and Kelly Engineering. They called for the construction of a storm water collection and conveyance system consisting of ditches and culverts. Drainage ditches collect all the runoff from one mile of road crossing down the coastal hillside and conveys it to an energy dissipater at the bottom. The energy dissipater is adjacent to the riparian area of Gilbert Creek. It is a depressed area fed by twin culverts and outfitted with rocks to dissipate energy and drop out sediment before discharging to the riparian area. Other Best Management Practices (BMPs) included placing rock check dams in the drainage ditch and placing straw and seed on exposed areas. The plan was carried out to specifications and verified during an inspection by Regional Water Board staff on October 10, 2002.
5. On December 17, 2002, staff reinspected the subdivision to see how the storm water system had performed during recent rains. The energy dissipater was not designed to accommodate the volume of sediment that eroded off the hillside in the first rains. The rocked dissipater was completely filled in with sediment, and large amounts of sediment spilled over the dissipater and settled in the riparian area of Gilbert Creek. A small stream of silty water was discharging sediment into Gilbert Creek from the mass of sediment in the riparian area. Staff observed sediment in lower velocity sections of the creek.
6. In January 2003, staff spoke with representatives of the California Department of Fish and Game (DFG) on several occasions about the sediment discharges. DFG conducted an inspection of the facility on January 30, 2003, and confirmed the continued existence of on-site erosion. DFG also observed that more silt had been deposited into Gilbert Creek and its riparian area.
7. As a minor coastal stream, the beneficial uses of Gilbert Creek, as designated in the Water Quality Control Plan for the North Coast Region (Basin Plan), include:
 - a. Municipal and Domestic Supply
 - b. Agricultural Supply
 - c. Industrial Supply
 - d. Groundwater Recharge
 - e. Water Recreation
 - f. Noncontact Water Recreation
 - g. Commercial and Sport Fishing
 - h. Cold Freshwater Habitat
 - i. Wildlife Habitat
 - j. Migration of Aquatic Organisms
 - k. Spawning, reproduction, and/or Early Development
 - l. Estuarine Habitat
 - m. Aquaculture

8. The Discharger has discharged waste into the waters of the state in violation of the prohibitions contained in the Basin Plan's Action Plan for Logging, Construction and Associated Activities by discharging dirt and debris while constructing the Nautical Heights Subdivision infrastructure. The Discharger has also caused or permitted, or threatens to cause or permit waste to continue to be discharged or deposited where it is, or probably will be, discharged to waters of the state and creates, or threatens to create, a condition of pollution or nuisance. The debris and dirt remaining from the construction threaten to discharge into Gilbert Creek, which may create a condition of pollution or nuisance as defined in Section 13050 of the California Water Code (CWC).
9. This enforcement action is being taken for the protection of the environment and, therefore, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 21000 et seq.) in accordance with Section 15321, Chapter 3, Title 14, California Code of Regulations (CCR).
10. Any person affected by this action of the Board may appeal by petitioning the State Water Resources Control Board (State Water Board) to review the action in accordance with Section 13320 of the CWC and Title 23, CCR, Section 2050. The petition must be received by the State Water Board within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request. In addition to filing a petition with the State Water Board, any person affected by this Order may request the Regional Water Board to reconsider this Order. To be timely, such request must be made within 30 days of the date of this Order. Note that even if reconsideration by the Regional Water Board is sought, filing a petition with the State Water Board within the 30-day period is necessary to preserve the petitioner's legal rights. If you choose to appeal the Order, be advised that you must comply with the Order while your appeal is being considered.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to CWC Sections 13267(b) and 13304, the Discharger shall:

1. On or before **March 28, 2003**, submit to the Executive Officer for concurrence a workplan, prepared by a California registered professional civil engineer or engineering geologist, which describes cleanup and abatement actions to be undertaken pursuant to provision 2 below. The workplan shall include a comprehensive time schedule for implementation of immediate and long-term cleanup and abatement activities.
2. As soon as practicable after receiving concurrence in the workplan by the Executive Officer, cleanup and abate the effects of waste earthen materials discharged into Gilbert Creek by removing remaining sediment and earthen material from Gilbert Creek, including the riparian area immediately adjacent to Gilbert Creek. The rocked dissipater shall be cleaned and maintained at a level does not threaten discharge to the riparian area. All cleanup and abatement work undertaken by the Discharger shall be conducted in a way that does not cause disturbance to wildlife habitat in and around Gilbert Creek. There shall be as little disturbance as possible to vegetation in the riparian area of Gilbert

Creek. After the cleanup and abatement activities are complete, Gilbert Creek and the riparian area shall be kept free of any additional accumulation of sediment and earthen material.

3. Within seven days of completing cleanup activities required in provision 2 above, submit a report describing the cleanup and abatement activities that have been taken at the site. The report shall also contain a description of all BMPs that have been employed at the site to control erosion. It also shall evaluate the effectiveness of the BMPs and specify a site inspection schedule to ensure BMPs are working effectively to prevent future discharges.
4. The cleanup and abatement activities specified above shall be inspected according to the time schedule by a registered professional civil engineer or engineering geologist experienced in erosion control activities.
5. If, for any reason, the Discharger is unable to perform any activity or submit any document in compliance with the schedule set forth herein or in compliance with any work schedule submitted pursuant to this Order and approved by the Executive Officer, the Discharger may request, in writing, an extension of time specified. The extension request must be submitted at least five days in advance of the due date and shall include justification for the delay including a description of good faith efforts performed to achieve compliance with the due date. The extension request also shall include a proposed time schedule with new performance dates for the due date in question and all dependent dates. An extension may be granted for good cause, in which case this Order will be revised accordingly.

Ordered by _____
Susan A. Warner
Executive Officer

March 13, 2003