

California Regional Water Quality Control Board  
North Coast Region

Cleanup and Abatement Order and Water Code Section 13267  
Order R1-2015-0060

for  
Ben VanZutphen  
The Meadows at Oakmont  
6525 and 6535 Oakmont Drive, Santa Rosa  
WDID 1B14060WNSO

Sonoma County

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

1. Ben VanZutphen, (hereinafter Discharger) owns land located at 6525 and 6535 Oakmont Drive, Santa Rosa, identified as Sonoma County Assessor's Parcel Numbers 016-100-006 and 016-090-013 (hereinafter Site).
2. The Discharger is constructing the Meadows at Oakmont on the Site, which includes 39 lots (36 single family, 1 multifamily, and 2 commercial) on 7 acres, at the corner of Oakmont Drive and Highway 12, in Santa Rosa (Project). There is an active construction general stormwater permit (CGP) for the Project, permit number (WDID 149C368238).
3. The Discharger has conducted the unauthorized dredge and fill activities in Laurel Creek, which is tributary to the Middle Russian River (114.22) via Oakmont Creek and Santa Rosa Creek, a water of the State and water of the United States. The unauthorized dredge and fill activities occurred in or around April and May of 2014.
4. Unauthorized dredge and fill activities consist of the removal of riparian vegetation, excavation of the stream channel, and installation of a 150-foot long pipe into the former creek to convey water from Laurel Creek into an existing downstream pipe.
5. Project documents identify Laurel Creek as a drainage ditch through the Site. The drainage originates in the hills east of Highway 12, flows through a box culvert under Highway 12, across the northeast part of the project area, into an existing 72" pipe adjacent to a neighboring apartment complex, and emerges on the southwest side of Oakmont Drive into a concrete-lined channel. As part of this project, the 72" pipe is being extended by 150 feet.

6. The Santa Rosa Citywide Creek Master Plan Update, which was adopted by the City Council of Santa Rosa in August 2013, shows the drainage through the property identified as Laurel Creek. Additionally, LiDAR imagery from the Sonoma County Vegetation Mapping and LiDAR Consortium confirms the hydrologic connectivity of Laurel Creek from upstream of the project area to Oakmont Creek along Woodgreen Street.
7. On April 28, 2014, Regional Water Board staff received a complaint from a member of the public reporting that a creek was being filled on the Site.
8. **Unauthorized Activities:** On May 15, 2014, Regional Water Board staff inspected the Site to evaluate whether waters of the State have been or are being filled as part of the Project. Regional Water Board staff observed that vegetation had been removed from Laurel Creek where a new pipe was to be placed. Pipe installation was underway, involving the excavation of soil within the channel, placement of a concrete culvert, and back-filling around the culvert with soil and gravel. Laurel Creek did not daylight again until it reached the other side of Oakmont Drive, outside of the project area, where the channel is concrete lined and linear. The Discharger has dredged within a stream, installed a pipe within a stream, and placed soil/sediments where they could enter the stream in quantities deleterious to fish, wildlife, and other beneficial uses.

### **Legal and Regulatory Authority**

9. This Order conforms to, and implements policies and requirements of, the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000) including: (1) Water Code sections 13267 and 13304; (2) applicable state and federal regulations; (3) all applicable provisions of statewide Water Quality Control Plans adopted by the State Water Resources Control Board (State Board) and the Water Quality Control Plan for the North Coast Region, (hereafter "Basin Plan") adopted by the Regional Water Board including beneficial uses, water quality objectives, and implementation plans; (5) State Board policies and regulations, including State Board Resolution No. 68-16 (Statement of Policy with Respect to Maintaining High Quality of Waters in California) (Resolution 68-18), and Resolution No. 92-49 (Policies and Procedures for Investigation and Cleanup and Abatement of Discharges under Water Code section 13304) (Resolution 92-49); and (6) relevant standards, criteria, and advisories adopted by other state and federal agencies.
10. Resolution 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California," applies to this discharge and mandates that existing high quality waters be maintained unless the State finds that any change in quality is "consistent with [the] maximum benefit to the people of the State, will not unreasonably affect present and anticipated beneficial use of such water and will not result in water quality less than that prescribed in the policies." (Resolution No. 68-16 at p 1.) Second, if an activity results in the discharge of waste into existing high quality waters, the activity

must meet requirements that “will result in the best practicable treatment or control of the discharge.” (Resolution No. 68-16 at p 2.)

11. Resolution 92-49 and the Basin Plan establish the cleanup levels to be achieved. Resolution 92-49 requires the waste to be cleaned up to background, or if that is not reasonable, to an alternative level that is the most stringent level that is economically and technologically feasible in accordance with California Code of Regulations, title 23, section 2550.4 . Any cleanup level alternative to background must (1) be consistent with the maximum benefit to the people of the state; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Board.
12. **Basin Plan:** Laurel Creek is tributary to the Middle Russian River, all of whose beneficial uses are designated in the Water Quality Control Plan for the North Coast Region (Basin Plan). The potential and existing beneficial uses identified in the Basin Plan for the Santa Rosa Hydrologic Subarea of the Russian River (114.22) include:
  - a. Municipal and domestic supply (MUN)
  - b. Agriculture (AGR)
  - c. Industrial (IND)
  - d. Industrial Process Supply (PRO)
  - e. Groundwater recharge(GWR)
  - f. Navigation (NAV)
  - g. Hydropower Generation (POW)
  - h. Water contact recreation (REC1)
  - i. Non-contact water recreation (REC2)
  - j. Commercial and sport fishing (COMM)
  - k. Warm freshwater habitat (WARM)
  - l. Cold freshwater habitat (COLD)
  - m. Wildlife habitat (WILD)
  - n. Rare and endangered species (RARE)
  - o. Migration of aquatic organisms (MIGR)
  - p. Spawning, reproduction, and/or early development (SPWN)
  - q. Shellfish Harvesting (SHELL)
  - r. Aquaculture (AQUA)

Beneficial uses of any specifically identified water body generally apply to all its tributaries and hydrologically connected wetlands, which are critical habitat and important filtering systems for removing pollutants in stormwater runoff.

13. Section 3 of the Basin Plan contains water quality objectives that specify limitations on certain water quality parameters not to be exceeded as a result of waste discharges. The water quality objectives (pages 3-2.00 and 3-3.00) that are considered of particular importance in protecting the beneficial uses of Laurel Creek and the Middle Russian River include the following:

- Color: Waters shall be free of coloration that causes nuisance or adversely affects beneficial uses.
- Suspended Material: Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Settleable Material: Waters shall not contain substances in concentrations that result in deposition of material that causes nuisance or adversely affect beneficial uses.
- Sediment: The suspended sediment load and suspended discharge rate of surface waters shall not be altered in such a manner as to cause nuisance or adversely affect beneficial uses.
- Turbidity: Turbidity shall not be increased more than 20 percent above naturally occurring background levels. Allowable zones within which higher percentages can be tolerated may be defined for specific discharges upon the issuance of discharge permits or waivers thereof.

14. The beneficial uses of State waters have been unreasonably affected by the dredge and fill of Laurel Creek including the diversion of Laurel Creek into a culvert, destruction of stream and riparian habitat, and elimination of beneficial uses. Laurel Creek is tributary to the Middle Russian River (114.22) via Oakmont Creek and Santa Rosa Creek, which is identified as impaired due to sediment and temperature, under Clean Water Act Section 303(d). Stirring up sediment can contribute to the sediment impairment. Suspended solids concentrations and sediment loads could form objectionable bottom deposits, which adversely affect beneficial uses. The removal of riparian vegetation can contribute to temperature impairment

15. Water Code section 13304, subdivision (a), provides: "Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the state and creates, or threatens to create a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts."

16. Section 13050 of the Water Code defines the term "pollution" to include "an alteration of the quality of the waters of the state by waste to a degree which unreasonable affects the waters for beneficial uses." Additionally, sediment, when discharged to waters of the state, constitutes a "waste" as defined in the Water Code section 13050 to include "sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive,

associated with human habitation, or human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.”

17. Observations made by Regional Water Board staff during the April 28, 2014, inspection confirm that the Discharger has caused or permitted soil and pipe material to be discharged or deposited into, or where it could enter Laurel Creek, a water of the state and a water of the United States. “Waste” is defined broadly<sup>1</sup> enough to include soil, sediment, and pipe material and the siltation and resulting turbidity from the construction and installation of pipe within the stream. Additionally, the Discharger created, or threatened to create, a condition of pollution or nuisance. Removing vegetation from Laurel Creek, dredging soil and sediment to install a pipe in Laurel Creek, and back-filling the culvert with soil, all have created or threaten to create a condition of pollution by unreasonably affecting the beneficial uses of the creek. All of these activities have the potential to displace and/or eliminate aquatic habitats. The dredging and stirring of sediment can be deleterious to fish and other aquatic species. The installation of a permanent fixture such as a culvert likely changes the quantity and velocity of surface water flows that could affect beneficial uses. In sum, the Discharger’s activities have unreasonably affected beneficial uses and therefore, created a condition of pollution. Accordingly, the Discharger is subject to this Order pursuant to section 13304.
18. Water Code section 13267, subdivision (a) provides that the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in conducting an investigation, may require a discharger to furnish, under penalty of perjury, technical or monitoring program reports. The reports and workplans required by this Order, pursuant to Water Code section 13267, are necessary to ensure that the prior harm and future threat to water quality created by activities on the Site, which resulted in the discharges described above, are properly assessed, abated and controlled. Due to the importance of protecting water resources as explained herein, the costs associated with developing the requested reports and work plans bear a reasonable relationship to the benefits that will be obtained from having the necessary information for the Regional Water Board to properly regulate and monitor the activities that have caused or have threatened to cause a condition of pollution in Laurel Creek.
19. Issuance of this Order is being taken by a regulatory agency for the protection of the environment and as such is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code, section 21000 et seq.), in accordance with California

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<sup>1</sup> The California Court of Appeal ruled that silt or sediment released from a dam was “waste” associated with human habitation because the dam was built by humans. (Lake Madrone Water District v. State Water Resources Control Board (1989) 209 Cal.App. 3d, 163, 256, fn. 1.)

Code of Regulations, title 14, sections 15308 and 15321. This Order generally requires the Discharger to submit plans for approval prior to implementation of cleanup and abatement activities at the Site. Mere submittal of plans is exempt from CEQA as submittal will not cause a direct or indirect physical change to the environment and/or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative, as there is simply not enough information concerning the Discharger's proposed remedial activities and possible associated environmental impacts from those activities. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Regional Water Board will conduct the necessary and appropriate environmental review prior to the Executive Officer's approval of the applicable plan. The Discharger will bear the costs, including the Regional Water Board's costs, of determining whether implementation of any plan required by this Order will have a significant effect on the environment, and if so, in preparing and handling any documents necessary for environmental review. If necessary, the Discharger and a consultant acceptable to the Regional Water Board shall enter into a memorandum of understanding with the Regional Water Board regarding such costs prior to undertaking any environmental review.

THEREFORE, IT IS HEREBY ORDERED that, pursuant to Water Code section 13304 and 13267, the Discharger shall provide the following information and perform the following cleanup and abatement actions:

1. Prohibitions

- a. Removal of vegetation within waters of the State, or within riparian areas that provide benefit to these waters, without authorization from the Regional Water Board and other applicable resource agencies is prohibited.
- b. Discharge of sediment-laden runoff to wetlands and other surface waters is prohibited.
- c. Discharge of settleable material that causes waters of the State to contain substances in concentrations that result in the deposition of material that causes nuisance or adversely affects beneficial uses is prohibited.

2. Cleanup and Abatement Tasks

**a. Baseline Information**

**Compliance Date:** September 30, 2015

A technical report assessing the impacts to the creek from the unauthorized activities, including but not limited to the activities outlined in paragraph 8 of this Order. The assessment shall include the following:

- i. A full, technically accurate description of the dredge and fill activity and associated environmental impacts and a chronology of actions taken.
- ii. An analysis of the affected area, including a determination of the extent of wetland and riparian impacts. The analysis of impacts should include the volume and type, acreage, and linear feet of fill; the types of vegetation and wildlife in the area; and the extent of impacts to those species.
- iii. A list and description of erosion control best management practices employed to avoid and minimize impacts to waters of the state.
- iv. A list and description of other projects implemented within the past 5 years or planned within the next 5 years that are related to the proposed project, or that may impact the same watershed.

**b. Restoration Work Plan and/or Mitigation Plan**

**Compliance Date:** October 30, 2015

A restoration work plan and/or mitigation plan shall be submitted to the Regional Water Board, acceptable to the Executive Officer, which includes the following:

- i. A detailed description of how the Discharger proposes to restore wetland and riparian function or mitigate for unavoidable impacts to all affected waters of the state impacted by dredge and fill activities.
- ii. A complete delineation of waters of the state and/or U.S. impacted by the project.
- iii. An engineering and biological design for all restoration/mitigation components.
- iv. A time schedule for restoration/mitigation activities.
- v. Criteria to judge the success of the restoration/mitigation project.

- vi. A monitoring proposal to evaluate whether the restoration/mitigation is successful.
- vii. A mitigation plan for any waters that cannot be restored including compensatory mitigation for temporal losses with appropriate mitigation ratios.

**c. Completion of Restoration and/or Mitigation and Submittal of Technical Report**

**Compliance Date:** 180 days after the Executive Officer concurs with the Restoration Work Plan and/or Mitigation Plan

Following the Executive Officer's written concurrence, and consistent with the directives of and in compliance with any necessary approvals and/or permits from the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and other agencies, the Discharger shall implement the Restoration Work Plan and/or Mitigation Plan. Upon completion of the work and no later than 180 days after Executive Officer concurrence with the Restoration Work Plan and/or Mitigation Plan, the Discharger shall submit a technical report to the Regional Water Board documenting full implementation and compliance, in accordance with Task b above.

**d. Monthly Progress Reports**

**Compliance Date:** The first of each month starting November 1, 2015.

Submit an annual monitoring report to the Regional Water Board as required as part of the Restoration Work Plan and/or Mitigation Plan. Monitoring shall continue until at least five years after successful completion of the work described in the Restoration Work Plan and/or Mitigation Plan. Alternatively, monitoring shall continue until a report, acceptable to the Executive Officer, is submitted showing final performance criteria have been achieved.

**e. Annual Monitoring Reports**

**Compliance Date:** January 31<sup>st</sup> each year

Submit an annual monitoring report to the Regional Water Board as required as part of the Restoration Work Plan and/or Mitigation Plan. Monitoring shall continue until at least five years after successful completion of the work described in the Restoration Work Plan and/or Mitigation Plan.

Alternatively, monitoring shall continue until a report, acceptable to the Executive Officer, is submitted showing final performance criteria have been achieved.

3. **Compliance Dates Extension Request:** If the Discharger is delayed, interrupted, or prevented from meeting any compliance dates specified in this Order or as specified in an approved plan required by this Order, the Discharger may request in writing an extension for compliance dates to the Executive Officer. The written extension request shall explain the basis for its request and what new compliance dates it is requesting. The extension request must be received by the Regional Water Board no less than **15 calendar days** prior to the respective deadline.
4. **Contractor/Consultant Qualifications:** The Discharger's reliance on qualified professionals promotes proper planning, implementation, and long-term cost effectiveness of investigation, and cleanup and abatement activities. Professionals shall be qualified, licensed where applicable, and competent and proficient in the fields pertinent to the required activities. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgment be performed by or under the direction of licensed professionals.
5. **Report Any Changes in Ownership or Occupancy:** The Discharger shall file a written report on any changes in the Site's ownership. This report shall be filed with the Regional Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
6. **Cost Recovery:** The Discharger is and shall be liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board and associated agencies to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order. Such costs include, but are not limited to, staff time for investigation of the discharge, preparation of this Order, work to complete the directives specified in this Order, and communications between Regional Water Board staff and parties associated with the cleanup and abatement of the discharged waste, including the Discharger, interested members of the public, and other regulatory agencies. If the Discharge is enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Discharger over reimbursement amounts or methods used in that program shall be resolved consistent with the dispute resolution procedures for that program.
7. Failure to comply with the terms of this Order may subject the Discharger to administrative civil liability up to \$10,000 per violation per day in addition to ten dollars (\$10) per gallon of waste discharged, pursuant to Water Code section 13385. Failure to provide the technical reports required by this Order may also subject the

Discharger to administrative civil liability in the amount of up to one thousand dollars (\$1,000) per day pursuant to section 13268 of the Water Code.

8. Any person affected by this action of the Regional Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations, section 2050-2068. The State Water Board must receive the petition within 30 days of the date of this Order. Copies of the law and regulations applicable to filing petitions will be provided upon request.
9. This Order in no way limits the authority of this Regional Water Board to institute additional enforcement actions including for past violations or to require additional investigation and cleanup at the Site consistent with the California Water Code. This Order may be revised by the Executive Officer as additional information becomes available.
10. The Regional Water Board may review this Order and may revise when necessary.

Ordered by:

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Matthias St. John  
Executive Officer

August 24, 2015