



Linda S. Adams
Secretary for
Environmental Protection

**California Regional Water Quality Control Board
North Coast Region
Bob Anderson, Chairman**

www.waterboards.ca.gov/northcoast
5550 Skylane Boulevard, Suite A, Santa Rosa, California 95403
Phone: (877) 721-9203 (toll free) • Office: (707) 576-2220 • FAX: (707) 523-0135



Arnold
Schwarzenegger
Governor

June 26, 2009

**In the Matter of
Water Quality Certification**

For

Mr. Charles Evans

Charles Evans Trust

Evans/Drew Industrial Subdivision

WDID No. 1B04128WNSO

APPLICANT: Charles Evans Trust
RECEIVING WATER: Unnamed Tributary to Russian River, and seasonal wetlands
HYDROLOGIC AREA: Mark West Hydrologic Sub Unit No. 114.23
COUNTY: Sonoma County
FILE NAME: Evans/Drew Industrial Subdivision

BY THE EXECUTIVE OFFICER:

1. On September 10, 2004, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from Charles Evans acting on behalf of Charles Evans Trust (Applicant), requesting a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects) for the Evans/Drew Industrial Subdivision Project (Project) in Windsor, Sonoma County. A fee in the amount of \$1000.00 was received on the same day (September 10, 2004), \$467.50 was received on May 2, 2006 and \$537.50 was received on May 4, 2006. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on February 23, 2009, and posted information describing the Project on the Regional Water Board's website and the comments have been reviewed and addressed.
2. The purpose of the Project is the development of eight industrial subdivision lots and the creation of public access roads. The Project is located at 900 Mitchell Lane in Windsor, Sonoma County, California, (APN. No. 164-014-008). The project is bounded to the north by Mitchell Lane, to the east by Conde Lane, to the west by Northwestern Pacific Railroad tracks, and to the south by wetlands that were created as mitigation for this and another project. The latitude and longitude is 38.532016°N

California Environmental Protection Agency

Recycled Paper

and 122.800593° W. The project causes permanent impacts to approximately 0.7 acres of seasonal wetlands, within the Mark West Creek Hydrologic Sub Area No. 114.23, Russian River Hydrologic Unit No. 114.00. The Project will involve the clearing and grading of eight lots intended for the sale and use by future industrial developers. Lot eight includes a 3.9 acre wetland mitigation preserve, created in 2004. The total size of the project will cover an area of approximately 20.6 acres.

3. The Project will be constructed in two phases. Phase 1, which has already been constructed, consisted of the grading of lots one and two and the construction of a portion of an access road. Construction was allowed on this portion of the property as there was no indication of the presence of wetlands, and under the premise that there would be no negative impacts to water quality resulting from grading or construction. Phase 2 of the Project will include the grading of the remaining lots for future sale (lots three through eight), the construction of the remainder of the access road, and the construction of the American Way public road. As part of Phase 2, bio-retention beds, planted with native species, will be constructed along American Way with a minimum surface area of 340 square feet, and around three sides of each lot, (lots three through eight), with a minimum surface area of 2,623 square feet. The beds use SUSMP (Standard Urban Storm Water Mitigation Plan) landscape-based features to detain the increase in onsite runoff as well as treat pollutants created by the increase in impervious surface and other activities associated with development and future use of the lots. To lower the peak flow exiting the property during storm events, the beds will also provide a detention time. A series of 4" pipes underneath the bio-retention beds will carry the onsite runoff into the underground storm drain system. Offsite runoff flowing into the property will be routed into a pair of 48 inch storm drains whose inlets will be just north of the intersection of American Way and Mitchell Lane. These dual underground pipes will have flow velocities of no more than 3.5 feet per second and will allow the runoff to traverse the property while collecting the onsite runoff from the bio-retention beds that will flow to these pipes. The offsite runoff, and the SUSMP treated onsite runoff will all discharge at virtually the same point into a forebay in the northeastern portion of the mitigation preserve. Here the water will flow southwest past the wetlands and exit the property prior to entering the railroad culvert.
4. Compensatory mitigation consists of 1.2 acres of created wetlands, which, combined with 0.5 acres of existing wetlands and 2.2 acres of uplands, will be preserved and protected by deed restrictions and/or easements or other methods so that there will be mechanisms in place to protect the mitigation site in perpetuity and make sure that it maintains all of the original ecological functions and beneficial uses for which it was created. Similar easements and/or deed restrictions or other methods shall be used to maintain, and keep in good working condition, the bio-retention beds around each lot and the vegetated buffer strip between the wetlands and the graded section of lot eight. The beds along American Way, in the public right of way, will be maintained by the City of Windsor under the Benefit Assessment Act of 1982. A Mitigation and Monitoring Plan has been created to offset temporary and permanent impacts to waters of the State and monitor the success of the restoration efforts.

Annual monitoring reports shall be submitted to the Regional Water Board. All monitoring results and photos will be provided in annual monitoring reports to the Regional Water Board, each year for the first five years. Survival rate for planted vegetation within the mitigation areas shall be at least 85% thriving survival rate at the end of five years. Native species shall be used for the revegetation. Final planting plans showing locations of all plantings and mitigation areas shall be included in the yearly reports. Maintenance of these facilities shall be the responsibility of the property owner.

5. Non-compensatory mitigation measures include the use of Best Management Practices (BMPs) to be employed during construction to minimize sediment production and prevent the movement of loose soil off-site. A Stormwater Mitigation Plan has been created to minimize construction related disturbances to water quality. All erosion control measures will be installed and in place by October 15 and maintained thereafter by the contractor. Silt socks, filter dams, and/or silt fencing will be placed around and/or down slope of disturbed areas prior to construction and all exposed areas will be hydro-seeded by November 1 of the construction year. Most importantly, silt fencing shall be placed around wetlands and swales that drain to water courses. Additionally, all required BMPs shall be on-site and ready for timely deployment before the start of Phase 2 construction activities.
6. The U.S. Fish and Wildlife Service, by request of the U.S. Army Corps of Engineers, will regulate the project consistent with Endangered Species Act and may or may not require the purchase of credits at a mitigation bank, if the Department determines that such a purchase is required it will be to mitigate for impacts to Burke's goldfields, Sonoma Sunshine, and Sebastopol meadow foam.
7. The Applicant has applied for a permit from the United States Army Corps of Engineers, to perform the project pursuant to Clean Water Act, section 404 (USACE File # 224940N).
8. The Town of Windsor, as the lead California Environmental Quality Act (CEQA) agency, has filed a Negative Declaration, with the Office of Planning and Research, (State Clearinghouse No. 2002052072), pursuant to CEQA guidelines.
9. Because the Project involves construction that may adversely affect waters of the State, the Regional Water Board has regulatory jurisdiction under Water Code Section 13269.

Receiving Water: Unnamed tributary to the Russian River, and seasonal wetlands
Mark West Creek Hydrologic Sub Area No. 114.23
Russian River Hydrologic Unit No. 114.00

Filled or Excavated Area: 0.7 acres of permanent impacts

Latitude/Longitude: 38.532016° N and 122.800593° W

Expiration: June 26, 2014

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Evans/Drew Industrial Subdivision Project (WDID No. 1B04128WNSO), as described in the application, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

1. This certification action is subject to modification or revocation upon administrative or judicial review; including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. This certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 2200, and owed by the Applicant.
4. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Order (Enclosed).
5. The Russian River watershed is identified on the State of California Clean Water Act Section 303(d) list. The Russian River is listed as impaired for sediment and temperature. Activities that impact the riparian zone and riparian vegetation are identified as sources contributing to increased stream temperatures in the watershed. At present, there are no watershed specific total maximum daily loads (TMDLs) have not been established for this water body. If TMDLs are established and implementation plans are adopted for this watershed prior to the expiration date of this Order, the Regional Water Board may revise the provisions of this Order to address actions identified in such action plans.
6. The Regional Water Board shall be notified in writing at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to

allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the project.

7. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State. When operations are completed, any excess material or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream.
8. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other project activities that could result in erosion or sediment discharges to surface water.
9. All activities and BMPs shall be implemented according to the submitted application and the conditions in this certification.
10. A copy of this Order and the application documents submitted by the Applicant for this certification shall be provided to all contractors and subcontractors conducting the work, and shall be in their possession at the work site.
11. If, at any time, an unauthorized discharge to surface water (including wetlands, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
12. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
13. Prior to implementing any change to the project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer.
14. All project work shall be conducted as described in this Order and in the application submitted by the Applicant. If the Regional Water Board is not notified of a significant alteration to the project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.
15. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and

implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or Section 303 of the Clean Water Act.

16. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
17. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification. In response to a suspected violation of any condition of this certification, the Regional Water Board may require the holder of any federal permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.
18. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, and the address and telephone number of the person(s) responsible for contact with the Regional Water Board. The request must also describe any changes to the project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the project as described in this Order.

19. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's project description, and b) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).
20. Applicant shall record all required deed restrictions/legal documents with Town of Windsor and/or County of Sonoma to provide for responsibility of ongoing maintenance and monitoring of SUSMP features and mitigation wetland areas.

21. The authorization of this certification for any dredge and fill activities expires on June 26, 2014. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

If you have any questions or comments please call Stephen Bargsten at (707) 576-2653.

Catherine Kuhlman
Executive Officer

062609_MRB_Evans_Drew_Indust_Subdivision_401_Cert

Certified Return Receipt

Enclosure: State Water Resources Control Board Order No. 2003-0017-DWQ

Original to: Mr. Charles Evans, Charles Evans Trust, 703 Second Street, Suite 200, Santa Rosa, CA 95404

Copies sent to: Mr. David Clay, 5894 Sailing Hawk Ave., Santa Rosa, CA 95409
Mr. Bill Daida, Assistant Town Engineer, Town of Windsor, 8400 Windsor Road, Windsor, CA 95492
Ms. Kim Niemeyer, SWRCB, Office of the Chief Counsel
Mr. Bill Orme, SWRCB, 401 Program Manager, Clean Water Act Section 401 Certification and Wetlands Unit Program
Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Functions, 1455 Market Street, San Francisco, CA 94105-1398