



**California Regional Water Quality Control Board
North Coast Region
Geoffrey M. Hales, Chairman**



Matt Rodriguez
Secretary for
Environmental Protection

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

Edmund G. Brown Jr.
Governor

November 30, 2011

**In the Matter of
Water Quality Certification
For
Sonoma Gardens Apartments
Sonoma County
WDID No. 1B11162WNSO**

APPLICANT: Pacific West Communities, Sonoma Gardens Apartments
RECEIVING WATER: Season wetlands and Todd Creek
HYDROLOGIC AREA: Laguna de Santa Rosa Hydrologic Subarea No. 114.21,
Russian River Hydrologic Area No. 114.00
COUNTY: Sonoma County
FILE NAME: Sonoma Garden Apts, Pacific West Communities

BY THE EXECUTIVE OFFICER:

1. On August 25, 2011, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from Mr. Ken Koss, of TK Development, LLC, on behalf of Pacific West Communities (applicant), requesting Federal Clean Water Act, section 401, Water Quality Certification (certification) and/or Waste Discharge Requirements (Dredge/Fill Projects) for activities associated with the Sonoma Gardens Apartments (Project). The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations, section 3858 on November 4, 2011, and posted information describing the project on the Regional Water Board's website. No comments were received.
2. The proposed project site is located at 3330 and 3336 Santa Rosa Avenue, in the City of Santa Rosa, latitude 38.39600°N, longitude 122.71154°W.
3. The proposed project, on a lot of 3.88 acres, includes construction of six residential buildings totaling 60 residential apartment units and one clubhouse/office building, open space with gardens, picnic areas, community plaza, children's playground,

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and 120 parking spaces. Also included is the associated infrastructure. The primary purpose of the proposed project is to provide affordable rental housing. The project property is contained within two assessor's parcels. The site is primarily undeveloped, containing a residence, old building foundations with no structures, and asphalt driveways. Proposed construction is estimated to begin approximately April 2012, and is expected to take one year.

4. Compensatory mitigation for impacts to 0.12 acres of wetlands will be through purchase of wetland creation credits at an approved mitigation bank. Additional compensatory mitigation for endangered plants and the California Tiger Salamander will be through purchase of appropriate credits at approved mitigation bank(s), by March 31, 2012. There shall be no ground disturbance at the project site until the receipts for the mitigation credits have been received and acknowledged by the Regional Water Board. The following types of mitigation credits and amounts will be purchased: Sonoma Sunshine, 0.36 acres; Sebastopol Meadowfoam, 0.24 acres; California Tiger Salamander, 3.18 acres; Wetland Creation, 0.12 acres.
5. Non-compensatory mitigation for this project includes the use of stormwater construction best management practices (BMPs) and Low Impact Development stormwater treatment and retention features within the project. The use of three bioretention beds will be employed to treat and retain the 85th percentile storm water before the storm water enters the underground drainage system. These LID features will remove pollutants and limit channel forming discharge to Todd Creek by capturing, infiltrating, and slowly releasing storm drainage from the project site. The outfall to Todd Creek is pre-existing. Connection to the outfall will be beyond top of bank of the creek. Details, including a maintenance plan, are included within the Storm Water Mitigation Plan for Sonoma Gardens Apartments prepared by Civil Design Consultants, Inc., Santa Rosa, CA. Additionally, applicant shall abide by the "STORM DRAINAGE" section of Exhibit "A", City of Santa Rosa Department of Public Works Engineering Development Services, July 13, 2011, Sonoma Gardens Apartments, UC11-001.
6. The Sonoma County Permit and Resource Management Department, as the lead California Environmental Quality Act (CEQA) agency, has produced a Mitigated Negative Declaration, and has filed a Notice of Determination with the Office of Planning and Research (State Clearinghouse Number 2011052048). The Regional Water Board has considered the environmental document and any proposed changes incorporated into the project or required as a condition of approval to avoid significant effects to the environment.
7. The Applicant has received authorization on August 1, 2011, from the U.S. Army Corps of Engineers (File No. SPN-2006-30306-N) to perform the project pursuant to Clean Water Act, section 404, under NWP-29, *Residential Developments*.

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: Seasonal wetlands and Todd Creek within, Laguna de Santa Rosa Hydrologic Subarea No. 114.21, Russian River Hydrologic Area No. 114.00.

Filled or Excavated Area: Permanent impacts to 0.12 acres of seasonal wetland.

Latitude/Longitude: 38.39600°N, 122.71154°W

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Sonoma Gardens Apartments Project (WDID No. 1B11162WNSO), 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:

All conditions of this order apply to the Applicant (and all their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project as related to this Water Quality Certification.

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 water quality certification (Enclosed).
5. Receipts for necessary mitigation credits shall be received, and acknowledgement of receipt shall be sent back to applicant, by the Regional Water Board, before

ground disturbing activities may commence. It is expected the mitigation credits will be purchased by March 31, 2012.

6. The Russian River is identified as impaired on the Clean Water Act Section 303(d) list. The Russian River is listed as impaired for sediment and temperature. At present, 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. Construction stormwater erosion is identified as a source contributing to the sediment impairment. Removal of vegetation is identified as a source contributing to temperature impairment. Actions authorized by this Order require implementation of BMPs for sediment control and planting of more shade vegetation at the project site. Accordingly, this Order is consistent with, and implements BMPs that would attenuate sediment and temperature adverse impacts.

The Laguna de Santa Rosa is identified as impaired on the Clean Water Act Section 303(d) list. The Laguna de Santa Rosa is listed as impaired for sediment, nitrogen phosphorous, dissolved oxygen, temperature and mercury. Total Maximum Daily Loads (TMDLs) for sediment and Nitrogen were established in 1995 by the North Coast Regional Water Quality Control Board in accordance with section 303(d) of the Clean Water Act, because the State of California determined that the water quality standards for the Laguna de Santa Rosa are exceeded due to excessive sediment and nitrogen. Construction stormwater erosion is identified as a source contributing to the sediment impairment. Actions authorized by this Order require implementation of BMPs for sediment control at the project site. Accordingly, this Order is consistent with, and implements portions of the Laguna de Santa Rosa TMDLs. At present, total maximum daily loads (TMDLs) have not been established for phosphorous, dissolved oxygen, temperature and mercury 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.

7. If groundwater is encountered during construction it will be discharged to an upland location where it cannot flow into Waters of the State. BMPs that may be used include: storage tanks, sediment desilting basins, water filters, or drainage to the sanitary sewer. Additionally, BMPs such as the use of washed gravel, sand bags, straw, and/or silt fences will be used as necessary to control velocity of the land discharge and erosion.
8. Pursuant to Regional Water Board Resolution R1-2004-0087, Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region (Sediment TMDL Implementation Policy), the Executive Officer is directed to "rely on the use of all available authorities,

including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”

9. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California’s antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board’s Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This Order is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater.
10. 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 and cement containment, to ensure that materials do not enter the waterway. All erosion control measures will be installed and in place by October 15, or during non-construction periods as necessary, and maintained thereafter by the contractor/Applicant. All disturbed soil will be revegetated with native species or seeded with native grasses. If vegetation cannot be reestablished before expected rainfall, mulching, erosion control fabric, or other sediment control measures will be implemented to prevent delivery of sediment to the drainages. All equipment will be maintained in good working order and spill kits will be on hand during construction. Equipment shall not be staged, or fueled, near waters of the State. Additionally, all required BMPs shall be on-site and ready for timely deployment before the start of construction activities.
11. Applicant shall prioritize use of wildlife-friendly 100% biodegradable erosion control products/BMPs wherever feasible. For purposes of this Order, photodegradable synthetic products are not considered biodegradable. Applicant shall not use or allow the use of erosion control products, that contain synthetic (e.g., plastic or nylon) netting or materials for permanent erosion control (i.e., erosion control materials to be left in place for two years or after the completion date of the project). If the Applicant finds that erosion control netting or products have entrapped or harmed wildlife, the Applicant shall remove the netting or product and replace it with wildlife-friendly biodegradable products. The Applicant shall not use or allow the use of soil stabilization products that contain synthetic materials within waters of the United States or waters of the State at any time. Applicant shall remove any remaining synthetic netting or materials remaining at the end of two years, or sooner.

12. The mitigation measures that are detailed in the Mitigated Negative Declaration (SCH No. 2011052048) are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification, the Applicant shall implement and comply with the mitigation measures for Biological Resources, and Hydrology and Water Quality identified in the Mitigated Negative Declaration.
13. 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.
14. 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.
15. 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. All activities and BMPs shall be implemented according to the submitted application and the conditions in this Order.
16. 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.
17. 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.
18. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete the project.
19. 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.

20. 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.
21. 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.
22. The Applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.
23. 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.

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.

24. 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.
25. 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).

26. The authorization of this certification for any dredge and fill activities expires on November 30, 2016. 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

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- Web link: 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 may be found at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf
- Original to: Mr. Mike Kelley, Pacific West Communities, 555 Capitol Mall, Suite 410, Sacramento, CA 95814
- Copy to: Mr. Ken Koss, TK Development, LLC, 6420 Via Del Cerrito, Rancho Murieta, CA 95683