

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER 99-060

WASTE DISCHARGE REQUIREMENTS FOR:

**WINDEMERE DEVELOPMENT, A PLANNED RESIDENTIAL COMMUNITY
WINDEMERE RANCH PARTNERS
DOUGHERTY VALLEY, CONTRA COSTA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Board, finds that:

1. Windemere Ranch Partners, a limited partnership with general partners Somerset Homes, Inc. and CWL Windemere Group, a limited partnership. The general partners of CWL Windemere Group are F. Allan Chapman and John O. Wilson. All of these entities and individuals are referred to as Dischargers.
2. The Dischargers has agreed to sell the property to Windemere BLC Land Company LLC. Windemere BLC Land Company LLC consists of Brookfield Bay Area Holdings Inc., Centex Homes, a general partnership with Centex Real Estate Corporation as managing general partner, and Lennar Homes of California Inc. These entities are referred to as Prospective Dischargers. When the property is transferred to the Prospective Dischargers, it will become responsible for compliance with this Order.
3. Windemere Ranch Partners (hereinafter Dischargers) proposes to construct a master planned residential community, known as "Windemere" (hereinafter project), which will impact 5.36 acres of jurisdictional waters of the United States. The proposed project is located on an unincorporated 2,320 acre site in the south central part of Contra Costa County, about 4 miles east of the City of San Ramon. The community would include 5,170 dwelling units, two elementary schools, one junior high school, one high school, a community college, regional parks, and other facilities. Construction will occur in four phases over a ten year period, with open space, mitigation lands, and other areas of the project being deeded to the City of San Ramon and/or its Geologic Hazard Abatement District (hereinafter GHAD.)
4. This Order regulates the discharge of dredged and fill material to surface waters and does not apply to storm water discharges associated with construction activities. The Dischargers are responsible for obtaining and complying with the rules and regulations of National Pollutant Discharge Elimination System (NPDES) permit requirements.

5. The Dischargers have applied to the Board for Water Quality Certification under Section 401 of the Clean Water Act. On January 15, 1998, the U. S. Army Corps of Engineers (hereinafter Corps) issued a Public Notice for an Individual Section 404 permit. The public comment period for the Public Notice closed on February 15, 1998.
6. State authority to regulate the discharge, and threatened discharge of waste to Waters of the State, including surface water, groundwater, and wetlands was granted to the State Water Resources Control Board in the Porter-Cologne Water Quality Act (Act). Water Quality Control Plans implement the Act by designating the beneficial uses to be protected, and the water quality objectives reasonably required for that purpose.
7. The Board, on June 21, 1995, adopted, in accordance with Section 13244 et. seq. of the California Water Code, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). This updated and consolidated revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters. This order is in compliance with the Basin Plan.
8. The project site is located within the South Bay Basin as identified in the Basin Plan. Alamo Creek and Tassajara Creek are located within the Alameda Creek Basin. The following existing beneficial uses are identified in the Basin Plan: Agricultural Supply, Cold Freshwater Habitat, Groundwater Recharge, Fish Migration, Water Contact Recreation, Noncontact Water Recreation, Fish Spawning, Warm Freshwater Habitat, Preservation of Rare and Endangered Species, and Wildlife Habitat.
9. The Basin Plan Wetland Fill Policy establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, wherever possible, as the project. The Policy further establishes that wetland disturbances should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered. The Dischargers have submitted documentation to show that appropriate effort was made to avoid and then to minimize wetland disturbance, as required by the Basin Plan. The Board concurs with this finding.
10. To protect the water quality at and in the vicinity of the site for the duration of project construction, to adequately address proposed project impacts and mitigation to waters of the State, to meet the objectives of the California Wetland Conservation Policy, to require appropriate changes over the life of the project and its construction, and to address public safety concerns in an environmentally responsible way, the Board has determined to regulate discharge of dredged and fill material to surface waters by issuance of Waste Discharge Requirements (WDRs).

11. In 1992, the Contra Costa County Board of Supervisors approved the General Plan Amendment and Dougherty Valley Specific Plan (DVSP) that allowed for the development of a master planned community in Dougherty Valley, located in the south central portion of Contra Costa County, with up to 11,000 dwelling units.
12. Contra Costa County has approved Windemere, which is a part of the 6,000 acre Dougherty Valley Specific Planning Area. The Windemere project includes 2,320 acres within the DVSP and another 15 acres to the east where Windemere Parkway will extend to Camino Tassajara Road. The DVSP has approved 1,166 of Windemere's 2,320 acres for development.
13. As a result of requirements of the Board and other regulatory agencies, the Dischargers' proposed development plan reduces the developed acreage to 1,042 acres. Approximately 77 acres of greenbelts will be created and/or preserved: 41 acres of greenbelts within the development and 36 acres of greenbelt along Alamo Creek. The remainder of the site, 1,201 acres, will be preserved as open space habitat.
14. The total delineated jurisdictional waters of the U.S. on the project site are 12.59 acres. The proposed project would impact 5.36 acres of waters of the U.S. These include 3.21 acres (37,295 linear feet) of impacts along creek channels. The remaining 2.15 acres include impacts to ponds, seasonal wetlands and seeps.
15. The Dischargers have proposed a draft mitigation plan, "Mitigation and Monitoring Plan", revised August 14, 1998, as a part of its proposal, to offset the loss of beneficial uses of waters of the State. The Board concurs with the proposed draft mitigation plan.
16. The draft mitigation plan proposes, at a minimum, to create 4.47 acres of stream beds (21,680 linear feet), 3.85 acres of seasonal wetlands, and 3.26 acres of open water ponds on the project site. Additional mitigation includes the preservation of 976 acres known as Hidden Valley, the restoration/revegetation of 10,000 linear feet of the Main Branch of Alamo Creek, and the implementation of a demonstration seep re-creation program. Mitigation will occur in each of the four phases of construction. Each phase will be monitored for a five-year period from implementation.
17. To assure that unavoidable impacts to the waterbodies of the United States are successfully mitigated, the Dischargers will post a performance bond. The performance bond, in the amount of \$4,500,000 will be held by Contra Costa County and will name the Board as a beneficiary. The bond will be held for the duration of the project construction and is based on the cost estimates for construction of mitigation waterbodies in phase I. The Dischargers will be obligated to maintain all mitigation measures until such time as the mitigation performance criteria are met. The Dischargers will not be able to transfer title to the City of San Ramon for open space areas that contain mitigation if mitigation performance criteria are not met.

18. Discharges other than storm water from the project site will have the potential to enter the surface waters of the Main and East Branch of Alamo Creek, several unnamed ephemeral drainages, seeps, seasonal wetlands, ponds, and stock ponds.
19. Storm water discharges to surface waters associated with construction activities and post project construction will occur.
20. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (EIR or Negative Declaration) for such projects. An EIR for the project was prepared in 1992 and a Supplemental EIR was prepared in 1996: both were certified by Contra Costa County. Potential significant impact to water quality and proposed mitigation measures to avoid or lessen significant impacts were identified in these EIR documents, and are summarized in the accompanying staff report. These mitigation measures are incorporated as requirements of this Order.
21. Pursuant to Title 23, California Code of Regulations Section 3857, the Board is issuing WDRs and will not act on the Dischargers' application for Water Quality Certification.
22. By letter dated December 31, 1998, the Board notified the Army Corps of Engineers, the Dischargers and interested agencies and persons of its intent to prescribe WDRs for this discharge and will take no action on the Dischargers' Section 401 application for Water Quality Certification.
23. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that the Dischargers, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

A. Discharge Prohibitions

1. The direct discharge of wastes to surface waters or surface water drainage courses is prohibited.
2. The discharge of oil, gasoline, diesel fuel, any petroleum derivative, any toxic chemical, or hazardous waste is prohibited.
3. The discharge of waste shall not cause a pollution or nuisance as defined in Section 13050 of the California Water Code.
4. At no time shall surplus or waste earthen materials be placed in surface drainage courses, or in such a manner as to allow the discharge of such materials to adjacent undisturbed land or to any surface water drainage course except as authorized by the Order and

described in Findings 14 and 16, above, and as described in the Dischargers' application/Report of Waste Discharge and supporting materials.

5. Discharges of materials other than storm water, which are not otherwise regulated by a NPDES permit or allowed by this Order to waters of the State are prohibited.
6. The groundwater shall not be degraded as a result of project construction and related activities.

B. Provisions

1. The Dischargers shall comply with all the Prohibitions and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Dischargers shall immediately notify the Board by telephone whenever an adverse condition occurs as a result of this discharge. An adverse condition includes, but is not limited to, a violation or of the conditions of this Order, significant spill of petroleum products or toxic chemicals, or damage to control facilities that could cause noncompliance. Pursuant to Section 13267(b) of the California Water Code, a written notification of the adverse condition shall be submitted to the Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Board, for the remedial actions.
3. The Dischargers shall notify the Board in writing 30 days prior to actual start dates for each phase of construction.
4. The Dischargers shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with the Dischargers application for water quality certification and the completed report of waste discharge.
5. To reduce the potential impacts to water quality, the Dischargers will divert any flow around construction and/or restoration work within waterbodies using a low flow channel, pipe, or other practices such that the flow does not flow across the work area and no equipment operates in areas of flowing or standing water.
6. All reports pursuant to these Provisions shall be prepared under the supervision of a suitable professional in the State of California.
7. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 27, Division 2, Subdivision 1, Chapter 2 of the California Code of Regulations shall be conducted in accordance with applicable state and federal regulations.
8. The Dischargers shall remove and relocate any wastes which are discharged at any sites in violation of this Order.

9. In accordance with Section 13260 of the California Water Code, the Dischargers shall file with the Board a report of any material change or proposed change in the character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of implementation of any proposal. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the project site. For the purpose of these requirements, this includes any proposed change in the boundaries of the project site.
10. The Dischargers shall maintain a copy of this Order at the project site so as to be available at all times to site operating personnel.
11. The Dischargers are considered to have full responsibility for correcting any and all problems which arise in the event of a failure which results in an unauthorized release of waste or wastewater.
12. The Dischargers shall permit the Board or its authorized representative, upon presentation of credentials:
 - a. Entry on to the project site or the premises in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d. Sampling of any discharge or surface water covered by this Order
13. The Dischargers shall submit a Final Mitigation and Monitoring Plan (MMP), subject to the approval of the Executive Officer, no less than 30 days prior to the initiation of construction-related ground disturbance activities. The Final MMP will include a Long Term Storm Water BMP Plan and Storm Water Management Pond Design: Approaches and Concepts. The Final MMP shall include specific performance criteria and final design criteria for re-creation of the East Branch of Alamo Creek, unnamed drainages, ponds, seasonal wetlands, and seeps, and the restoration of the Main Branch of Alamo Creek. The conceptual mitigation plan proposes, at a minimum, to create 4.47 acres of stream beds (21,680 linear feet), 3.85 of acres seasonal wetlands, and 3.26 acres of open water ponds on the project site. Additional mitigation includes the preservation of 976 acres known as Hidden Valley, the restoration/revegetation of 10,000 linear feet of the Main Branch of Alamo Creek, and the implementation of a demonstration seep re-creation program. Mitigation will occur in each of the four phases of construction. In each phase of construction, the Dischargers shall implement the mitigation plan at the same time as impacts to waterbodies occur. Each mitigation site will be monitored for a

five year period from creation. The Dischargers shall notify the Board in writing of the actual start dates of each phase of mitigation. Any substantive future changes to the Final MMP must be approved in writing in advance by the Executive Officer.

14. The Dischargers shall submit an as-built report within 60 days of installation of each mitigation site. Annual mitigation monitoring reports shall be submitted for a minimum of 5 years from the completion of each phase at the mitigation site(s). The first annual report shall be submitted one year after the preparation of the as-built report, subsequent reports shall be submitted on the anniversary date of the first annual report submittal.
15. When the Dischargers have determined that mitigation has achieved success criteria for each phase of mitigation implementation, they shall submit a notice of mitigation completion, acceptable to the Executive Officer. The notice of mitigation completion shall include a plan for long-term maintenance and management, acceptable to the Executive Officer, for each mitigation phase. After acceptance by the Executive Officer of the notice of completion, submittal of annual mitigation reports for the mitigation phase is no longer required.
16. The Dischargers shall submit a bond in the amount of \$4,500,000 for the development, operation, and long-term maintenance of mitigation waterbody areas. The Bond shall be held by Contra Costa County, with the Board named as a beneficiary of the bond. The bond shall terminate upon approval by the Executive Officer that the mitigation plan has been implemented and performance criteria have been met. The Board will take necessary action to recover the bond if the Dischargers fail to meet the mitigation requirements.
17. The Dischargers shall be considered to have a continuing responsibility for ensuring compliance with the prohibitions, limitations, and Provisions of this Order in the operations or use of the owned property. The Dischargers shall notify the Board when a change in ownership to the City of San Ramon occurs for open space and mitigation lands during construction phases.
18. These Requirements do not authorize commission of any act causing injury to the property of another or of the public; do not convey any property rights; do not remove liability under federal, state or local laws, regulations or rules of other programs and agencies nor do these Requirements authorize the discharge of wastes without appropriate permits from other agencies or organizations.
19. The Dischargers shall submit copies of all necessary approvals and/or permits for the project and mitigation projects from applicable government agencies, including the State Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Corps, prior to the start of construction.

Order 99-060

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on July 21, 1999.

A handwritten signature in cursive script, reading "Loretta K. Barsamian", written over a horizontal line.

Loretta K. Barsamian
Executive Officer