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June 30, 2008

Guy Childs
Engineering Geologist
Compliance and Enforcement
Title 27 and Non15 Programs
California Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, #200
Rancho Cordova, CA 95670-6114

Re: Tentative Order Amending Waste Discharge Requirements
Order No. R5-2002-0076 for DarkHorse Subdivision

Dear Mr. Childs:

On behalf of DarkHorse Golf Club, LLC, this letter provides comments on the Tentative Order Amending Waste Discharge Requirements Order No. R5-2002-0076 ("Tentative Order").

As described below, DarkHorse Golf Club objects to portions of the proposed Tentative Order, and asks that the Regional Board defer any consideration of the Tentative Order until DarkHorse Golf Club, the County of Nevada, and the DarkHorse Homeowners Association can reach an agreement regarding the interim operation of the Wastewater Treatment Facility ("WWTF").

Comment 1

Proposed Finding 3 implies that DarkHorse Golf Club took title to WWTF in February, 2008. DarkHorse Golf Club actually took title to the golf course and the WWTF on August 17, 2007, immediately after the foreclosure.

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Comment 2

Proposed Finding 6 states that the DarkHorse golf course kitchen discharges wastewater to the WWTF. This is incorrect. The kitchen discharges wastewater to a separate septic tank system and emitter field neither connected with the WWTF nor regulated under Order No. R5-2002-0076. The WWTF receives wastewater only from the 23 occupied homes in the subdivision and from the golf course restroom.

Comment 3

DarkHorse Golf Club requests that the proposed Findings reflect the fact that neither Owens Mortgage Investment Fund nor DarkHorse Golf Club maintained any operational or administrative control over the WWTF prior to August 17, 2007. The golf course restroom and the 23 occupied homes in the subdivision were connected to the WWTF prior to that date, and without any knowledge or consent from either Owens Mortgage Investment Fund or DarkHorse Golf Club.

Comment 4

The proposed Findings should also reflect that DarkHorse Golf Club has shouldered the entire burden for operating and maintaining the WWTF since the foreclosure, at significant cost, without seeking or receiving any assistance from the County or the homeowners. DarkHorse Golf Club has offered the WWTF for immediate dedication to the County, but the County has refused to accept dedication prior to completion of final construction. The County itself controls the construction timeline, and has been unwilling to involve DarkHorse Golf Club in the process. The County has not provided any expected completion date.

Comment 5

Provision No. 2 of the Proposed Order amends Discharge Prohibition No. A.2 in the WDRs Order No. R5-2002-0076 to read, in part, that "Discharge of wastewater to the WWTF or sanitary sewer system is prohibited until a ~~responsible public entity~~ Nevada County Sanitation District obtains administration and control of the WWTF."

It is unclear what the phrase "WWTF or sanitary sewer system" means in this language. Does the Regional Board intend that the Amended Order should cover facilities other than the WWTF? If so, DarkHorse Golf Club objects and asks that the phrase "or sanitary sewer system" be stricken.

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Comment 6

Provision No. 2 also provides that “Notwithstanding this prohibition, the WWTF and sanitary sewer system may be used to collect, treat and store wastewater from the golf course or from any home that was occupied and connected to the sanitary sewer system before 23 May 2008.” The phrase “and sanitary sewer system” should be stricken.

Comment 7

The quoted language from Provision No. 2 would impose a duty on DarkHorse Golf Club to prevent any new homes from being connected to the system. This duty is unacceptable because the County of Nevada – not DarkHorse Golf Club – controls permitting and occupancy of homes in the subdivision. To date, the County has been more than willing to allow homes to be connected to the WWTF despite Discharge Prohibition A.2. The County has provided no assurance that it will cease granting occupancy permits to homes in the subdivision while the WWTF remains in its current configuration.

Comment 8

Provision No. 5 of the Proposed Order would add Provision No. 25 to the WDRs Order No. R5-2002-0076, requiring regular progress reports describing the work accomplished to complete the WWTF, and the status of obtaining financial contributions by the homeowners.

DarkHorse Golf Club objects to this Provision because the County maintains control over the timeline for completing the WWTF. To date, the County has been reluctant to share any information regarding the process with DarkHorse Golf Club. In addition, the homeowners have not been willing to discuss sharing any financial obligations or liabilities regarding interim operation of the WWTF.

Comment 9

DarkHorse Golf Club requests that the Tentative Order list both the County and the homeowners as responsible parties. Barring that, however, DarkHorse Golf Club is attempting to work with the County and the homeowners to reach an agreement regarding sharing of the financial responsibilities and liability for the WWTF. DarkHorse Golf Club requests that the Regional Board defer any consideration of the Tentative Order until DarkHorse, the County, and the homeowners have resolved these issues.


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Thank you for considering these comments.

Very truly yours,

DIEPENBROCK HARRISON
A Professional Corporation

By 
Andrew P. Tauriainen

APT/sp

cc: Lori Okun, Regional Water Quality Control Board Counsel
Sue Horne, Nevada County Sanitation District Board of Supervisors, Nevada City
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