March 7, 2017

Mr. Matthew Jansen
City Ventures Homebuilding Inc.
3121 Michelson Drive, Suite 150
Irvine, CA 92612

Dear Mr. Jansen:

Subject: **Notice of Violation (NOV)** of the *Water Quality Control Plan for the North Coast Region* (Basin Plan), State Water Resources Control Board Order No. 2009-0009 DWQ as amended by Orders 2010-0014 DWQ & 2012-0006 DWQ *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit), and Section 401 of the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. 1341), Water Quality Certification WDID No. 1B16026WNSO, for discharges of sediment to Peterson Creek, Forestview Creek, and other waters of the United States and state; and **Requirement for Information** Pursuant to California Water Code Section 13267 for City Ventures Homebuilding Inc.
(NOV/13267 Order)

File: Fox Hollow (Site), 1615 Fulton Road, City of Santa Rosa, Sonoma County
WDID Nos. 1 49C377076 and 1B16026WNSO

City Ventures Homebuilding Inc. (Discharger) is hereby given notice that by discharging sediment from the above-referenced Site to Peterson Creek and Forestview Creek, and other waters of the United States and state, it has violated:

- The Basin Plan, Action Plan for Logging, Construction, and Associated Activities, Prohibitions 1 and 2
- The Construction General Permit, Discharge Prohibitions A and B
- The Construction General Permit, Attachment D, Provisions B.1 (b), B.1 (e), E.1, E.3, I.4 (b), I. 5 (a) and (b) of, and

- The Clean Water Act, section 401, Water Quality Certification WDID No. 1B16026WNSO, Standard Condition Nos. 11, 12, and 14

Pursuant to Water Code section 13267, this letter requires that the Discharger prepare and submit to the Regional Water Board the reports, by their corresponding due dates, as defined in the *Information Required* section of this NOV/13267 Order (page 9).

I. Background

The Discharger is conducting construction activities at the Site, located on Fulton Road, around a half-mile north of Guerneville Road and a half-mile south of Piner Road, in the city of Santa Rosa, California (**Attachment A**). According to the Storm Water Pollution Prevention Plan (SWPPP) prepared for the Site, construction activities will disturb 20.55 acres of a total of 22.31 acre property. According to the Site's file on the Storm Water Multiple Application and Report Tracking System (SMARTS) database, construction commenced on August 1, 2016, and is expected to be completed by October 15, 2018. The Site is enrolled as a Risk Level 2 project due to the combination of a 'Medium' sediment risk factor and a 'High' receiving water risk factor.

The Site contains 0.37 acres of wetland that is to be preserved in perpetuity, pursuant to the Discharger's Water Quality Certification, issued by the Regional Water Board on July 23, 2016. The United States Army Corps of Engineers claimed jurisdiction of these wetlands.

Storm water runoff from the western portion of the Site discharges to Peterson Creek and storm water runoff from the eastern portion discharges to Forestview Creek via an inlet to the municipal separate storm sewer system (MS4). Peterson Creek, Forestview Creek, and the preserved wetlands onsite are waters of the United States and state (hereinafter referred to individually or collectively as surface waters). Peterson and Forestview Creeks are tributaries to the Laguna de Santa Rosa watershed. The Laguna de Santa Rosa watershed is identified on the Clean Water Act section 303(d) list as an impaired water body due to pollutants including sediment/siltation, temperature, nutrients, and dissolved oxygen.

Attachment B is a timeline and summary of events related to compliance at the Site.

II. Applicable Legal Authority and Requirements

A. California Water Code section 13267 subdivision (b)(1) states, in part:

In conducting an investigation, the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the

report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

B. The Discharger violated the following Basin Plan prohibitions:

   a. Action Plan for Logging, Construction, and Associated Activities (page 4-29.00):

      1. *The discharge of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever nature into any stream or watercourse in the basin in quantities deleterious to fish, wildlife, or other beneficial uses is prohibited.*

      2. The *placing or disposal of soil, silt, bark, slash, sawdust, or other organic and earthen material from any logging, construction, or associated activity of whatever* nature at locations where such material could pass into any stream or watercourse *in the basin in quantities which could be deleterious to fish, wildlife, or other beneficial uses is prohibited.*

C. The Discharger violated the following Construction General Permit requirements:

   a. Section III, Discharge Prohibitions:

      Prohibition A, in part:

      Dischargers shall not violate any discharge prohibitions contained in applicable Basin Plans or statewide water quality control plans.

      Prohibition B:

      All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by this General Permit or another NPDES permit.

   b. Section V.B, Numeric Action Levels (NALs):

      3. *Whenever the results from a storm event daily average indicate that the discharge is below the lower NAL for pH, exceeds the upper NAL for pH, or exceeds the turbidity NAL (as listed in Table 1[1]), the discharger shall conduct a construction site and run-on evaluation to determine whether pollutant source(s) associated*

[1] Table 1 – Numeric Action Levels, Test Methods, Detection Limits, and Reporting Units for pH and turbidity, section V. Effluent Standards & Receiving Water Monitoring, subsection A Narrative Effluent Limitations, page 28 of the Construction General Permit.

with the site's construction activity may have caused or contributed to the NAL exceedance and shall immediately implement corrective actions if they are needed.

4. *The site evaluation shall be documented in the SWPPP and specifically address whether the source(s) of the pollutants causing the exceedance of the NAL:*

   a. *Are related to the construction activities and whether additional BMPs are required to (1) meet BAT/BCT requirements; (2) reduce or prevent pollutants in storm water discharges from causing exceedances of receiving water objectives; and (3) determine what corrective action(s) were taken or will be taken and with a description of the schedule for completion.*

      AND/OR:

   b. *Are related to the run-on associated with the construction site location and whether additional BMPs measures are required to (1) meet BAT/BCT requirements; (2) reduce or prevent pollutants in storm water discharges from causing exceedances of receiving water objectives; and (3) what corrective action(s) were taken or will be taken with a description of the schedule for completion.*

c. Attachment D, Risk Level II Requirements:

   Provision B. Good Site Management "Housekeeping," in part:

   1.b. *Cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.)*

   1.e. *Implement BMPs to prevent the off-site tracking of loose construction and landscape materials.*

   Provision E. Sediment Controls, in part:

   1. [D]ischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

   3. [D]ischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active[2] construction.[3]

[2] "Active areas of construction are areas undergoing land surface disturbance. This includes construction activity during the preliminary stage, mass grading stage, streets and utilities stage and the vertical construction stage."

Provision I. Risk Level 2 Monitoring and Reporting Requirements:

5. Risk Level 2 - Storm Water Discharge Water Quality Sampling Locations, in part:

    a. [D]ischargers shall perform sampling and analysis of storm water discharges to characterize discharges associated with construction activity from the entire project disturbed area.

    b. [D]ischargers shall collect effluent samples at all discharge points where storm water is discharged off-site.

D. The Discharger violated the following conditions in its Water Quality Certification issued pursuant to Clean Water Act section 401:

    a. Standard Conditions:

        11. *BMPs shall be implemented as proposed in the application materials. 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. Severe and unseasonal rain events are becoming more frequent due to the effects of climate change. Therefore, BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.*

        12. *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 certification, 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.*

        14. *If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers or streams) occurs, or any water quality problem arises, the associated Project activities shall cease immediately until adequate BMPs are implemented including stopping work. 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.*

(footnote continued from previous page)

[3] Appendix 5 (Glossary) of the Construction General Permit defines Active Areas of Construction as all areas subject to land surface disturbance activities related to the project including, but not limited to, project staging areas, immediate access areas and storage areas. All previously active areas are still considered active areas until final stabilization is complete.

III. Alleged Violations

A. Basin Plan

a. Construction activities from the Site have resulted in multiple discharges of sediment to surface waters in violation of Basin Plan Action Plan for Logging, Construction, and Associated Activities (page 4-29.00). These discharges were documented by Staff and City of Santa Rosa staff on October 31, November 20, December 15, and December 23, 2016 (**Attachment C**).

B. Construction General Permit

a. Section III, Discharge Prohibitions

The Discharger violated Provision A by violating the discharge prohibitions set forth in the Basin Plan. (See above, III.A.a.)

b. Attachment D, Risk Level II Requirements

i. The Discharger violated Provision B.1.b by failing to cover and berm all stockpiles on the Site. During the December 20, 2016, inspection, Staff verified that two stockpiles lacked both coverage and a berm (**Attachment C, Photo 24**).

ii. The Discharger violated Provisions B.1.e and E.1 by failing to adequately stabilize the construction entrance to prevent tracking of sediment from the Site. Staff notified the Discharger of sediment tracking on Fulton several times, and the Discharger failed to implement corrective actions. The QSP, Mr. Morris, documented discharges of sediment from the entrance to Fulton Road during his December 15, 2016, inspection (**Attachment C, Photos 20 and 21**).

iii. The Discharger violated Provision E.3 by failing to implement erosion control to the 20 acres of disturbed soil on the Site from at least November 20, 2016, if not earlier, through December 23, 2016. (**Attachment C, Photos 3, 4, 18, 19 22, 23, and 28)**. On a number of occasions, Staff directed the Discharger to immediately implement adequate erosion control at the Site. Staff sent the Discharger three email notifications, dated November 22, December 9, and December 21, 2016, which directed the Discharger to implement erosion controls and to immediately cease discharges from the Site. It was not until December 21, 2016, that the Discharger attempted to control erosion by applying Binder Fiber Matrix (BFM). Due to the timing of the application, the BFM did not serve as effective erosion control and sediment discharged to receiving waters occurred from the Site on December 23, 2016.

iv. The Discharger violated Provisions I.5.a. and b. for failing to adhere to the sampling requirements and to collect and analyze samples of the runoff discharging from the Site during the December 15, 2016, rain event. Mr. Morris, the QSP, informed Staff via email that Site conditions were too dangerous to collect samples. While the Construction General Permit does exempt sample collection during dangerous conditions, Staff observed accessible sampling locations where samples could have feasibly been obtained. For example, Mr. Morris included a photograph in his inspection report on December 15, 2016, of storm water runoff flowing from the Site onto a bridge and into Peterson Creek. Mr. Morris was already at this location and could have collected a sample at the location where water was flowing off of the ledge of the bridge and into Peterson Creek.

v. During the December 23, 2016, rain event, Mr. Morris, the QSP, sampled discharge from the Site and reported the pH values listed in the Table 1. Sampling results indicate values below the numeric action level range for pH (6.5-8.5 SU). The Discharger did not verify that it conducted an evaluation to determine whether pollutant sources associated with the Site's construction activity may have caused or contributed to the pH NAL exceedance. Additionally, the Discharger did not prepare a SWPPP amendment discussing the evaluation findings and appropriate actions.

C. Clean Water Act Section 401 Water Quality Certification

a. The Discharger violated Standard Condition No. 11 by failing to implement erosion control and adequate sediment control to prevent the discharge of sediment from the Site to surface waters. In addition, the Discharger failed to store BMPs onsite for immediate deployment to prevent discharges of waste from the Site to surface waters.

b. The Discharger violated Standard Condition No. 12 by discharging sediment into the onsite preserved wetlands, a water of the United States and state. Staff of the City and the Regional Water Board observed evidence that sediment from the Site had been transported into the wetlands on October 31, 2016, Due to inadequate BMPs during the rain events on November 20, 2016, and December 15, 2016, it is likely that further discharges into the preserved wetlands occurred as well.

c. The Discharger violated Standard Condition No. 14 by failing to cease project-related activities until adequate BMPs were implemented, and by failing to notify the Regional Board of any of the waste discharges to receiving waters.

IV. Information Required

The Discharger is required to submit the reports and documentation listed below. All technical reports required in conjunction with this Order are required pursuant

to Water Code section 13267 and shall include a statement by the Discharger, or an authorized representative of the Discharger, certifying (under penalty of perjury in conformance with the laws of the State of California) that the signer has examined and is familiar with the report and that to his or her knowledge, that the report is true, complete, and accurate. The Discharger shall also state if it agrees with any recommendations/proposals and whether it approves implementation of said proposals. Any person signing a document submitted under this NOV/13267 Order shall make the following certification:

> I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my knowledge and on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

The Discharger shall submit reports, acceptable to the Assistant Executive Officer, as specified below:

1. **By March 31, 2017**, a timeline describing the approximate dates that each stage of land disturbance activities began (i.e. the initiation dates of clearing/grubbing, mass grading, etc.).

2. **By March 31, 2017**, a description and chronology of erosion and sediment controls that have been implemented, since the date initial land disturbance began (i.e. clearing/grubbing) to the date of your submittal in response to this NOV/13267 Order, to prevent the discharge of sediment to surface waters. This shall include, but is not limited to, the following:

    a. The approximate date, location, and purpose of each specific BMP that was applied to control erosion and/or sediment and other pollutants, and to prevent pollutants from discharging from the Site.
    b. A summary of inspections and/or monitoring activities conducted by the Discharger and/or its contractors or consultants to assess the effectiveness of each BMP.
    c. A summary of maintenance and/or repair activities conducted on each BMP.

3. **By March 31, 2017**, a summary of each qualifying rain event[4] that has occurred since initial land disturbance began to the date of your submittal. This shall include, but is not limited to, the following:

    a. Date of rain event.
    b. Duration of rain event.
    c. Amount of precipitation (in inches).
    d. Approximate area (in acres) of disturbed soil at the Site.
    e. A map and description of all erosion and sediment controls deployed on the Site prior to each rain event.

4. **By March 31, 2017**, a summary of results and a location map of all water quality samples obtained during each qualifying rain event that has occurred since initial land disturbance began to the date of your submittal. If samples were not collected during a qualifying rain event or at individual sampling locations, please provide a detailed justification.

5. **By March 31, 2017**, an estimate of the number of days that sediment or other pollutants discharged from the Site into surface waters, beginning from the date of initial land disturbance to the date of your submittal.

6. **By March 31, 2017**, product specifications for the soil binder and fiber matrix mix that was applied to the Site on December 21 and 22, 2016. This shall include, but is not limited to, the following:

    a. Specifications from the manufacturer.
    b. The volume ratio of soil binder to fiber matrix.
    c. The application rate applied to each acre and on how many areas.
    d. A map depicting the location(s) where BFM was applied.
    e. Photos of the Site after application.

7. **By April 14, 2017**, an NAL Exceedance Report that includes an analysis of the factors contributing to the low pH values (3.1, 3.4, and 3.6 SU) reported on December 23, 2016, by Mr. Morris. This shall include, but is not limited to, a description of what actions the Discharger has taken or will take and what BMPs the Discharger that has installed or will install to mitigate the low pH discharged from the Site. The Discharger shall revise the SWPPP accordingly to prevent and/or mitigate any discharges exceeding the NALs.

[4] The Construction General Permit defines *Qualifying Rain Event* as any event that produces 0.5 inches or more precipitation with a 48 hour or greater period between rain events.

8. **By April 14, 2017**, an estimate of the volume of sediment discharged to surface waters, beginning from the date of initial land disturbance to the date of your submittal. The estimated volume shall be based on site runoff estimates using soil type, steepness of slopes and rainfall data including a Revised Universal Soil Loss Equation (RUSLE)5 analysis as well as consideration of the presence and adequacy/inadequacy of functioning sediment and erosion control measures deployed on the Site at the time of each rainfall event.

9. **By April 14, 2017**, an estimate of the volume of BFM discharged to surface waters, beginning from the date of initial land disturbance to the date of your submittal.

V. Basis for Requirements in this Letter

The reports required are necessary for the Regional Water Board to determine the state of compliance at the Site, and if the Discharger has taken, or will take, necessary actions to protect water quality and the beneficial uses of surface waters. The burden, including costs of the reports, bears a reasonable relationship to the need for the reports and the benefits to be obtained from them. The reports required in this NOV/13267 Order are reasonable and would be required by point and non-point source dischargers in similar circumstances, including those at construction, dairy, commercial and industrial sites. The burden of preparing such a report bears a direct relationship to the benefits of protecting surface waters from waste discharges that could impair its beneficial uses.

VI. Future Enforcement Action

Please note that correcting the conditions of non-compliance at the Site does not preclude enforcement for the violations alleged in this notice. As noted above, the Regional Water Board reserves its right to fully enforce the law against any violation and threatened violation by taking enforcement actions such as a cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's office. Administrative liabilities may be assessed beginning with the date that a violation first occurred. The administrative liabilities can be up to $10 per gallon for each gallon over 1,000 gallons not cleaned up, and up to $10,000 per day per violation pursuant to Water Code section 13385. Violating this NOV/13267 Order may subject you to administrative liability up to $1,000 per day violation pursuant to Water Code section 13268.

[5] RUSLE is an erosion prediction technology or erosion model widely used to estimate rates of soil erosion caused by rainfall and associated overland flow. Please provide input and output data used to run the RUSLE analysis and to estimate the total volume of sediment discharged from the Site to surface waters

Should you have any questions regarding this matter, please contact Devon Jorgenson of my staff at Devon.Jorgenson@waterboards.ca.gov. Please direct questions regarding legal matters to Laura Drabandt at Laura.Drabandt@waterboards.ca.gov.

Sincerely,

Shin-Roei Lee
2017.03.07
10:40:09 -08'00'

Water Boards

Shin-Roei Lee, P.E.
Assistant Executive Officer

170307_DCJ_dp_FoxHollow_NOV

Attachments:

Attachment A- Location map
Attachment B- Compliance history
Attachment C- Photo log
Attachment D- Brendan Thompson's December 23, 2016, Inspection Memo
Attachment E- Fact Sheet- Requirements for Submitting Technical Reports Under Section 13267 of California Water Code

Certified Return Receipt Requested

cc: Robert Fortney, rfortney@cityventures.com
Charity Wagner, charity@cityventures.com
Bob Oller, roller@srcity.org
Nick Sudano, NSudano@srcity.org