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## North Coast Regional Water Quality Control Board

May 31, 2018

Blake and Stephanie Alexandre  
Alexandre Ranches LLC  
8371 Lower Lake Road  
Crescent City, CA 95531

Alexandre Ranches LLC  
Attn: Vivian Imperial  
C T Corporation System  
818 W. Seventh St., Suite 930  
Los Angeles, CA 90017

Subject: Notice of Violation and California Water Code Section 13267 Order for Technical Report, Alexandre Ranches LLC, 2050 Fred Haight Drive, Smith River, CA, APN 103-020-082-000, Morrison Creek Watershed, Smith River Basin

Dear Mr. and Mrs. Alexandre,

You are receiving this Notice of Violation and order to submit information pursuant to California Water Code (Water Code) section 13267 (13267 Order) because, based on information available to North Coast Regional Water Quality Control Board (Regional Water Board) staff, Alexandre Ranches LLC is responsible for discharges of waste into waters of the state<sup>1</sup> in violation of the Water Code and federal Clean Water Act (Clean Water Act). The area of interest for this 13267 Order is the portion of Del Norte County Assessor's Parcel Number (APN) 103-020-082-000 that is bounded by South Fred Haight Drive to the east, Morrison Creek to the south and west, and the northern APN boundary to the north (hereinafter, the "Site").

On December 19, 2017, Regional Water Board and California Department of Fish and Wildlife (CDFW) staff observed piles of soil at the Site (see Attachment 1: December 19, 2017 Photos). On January 29, 2018, CDFW Game Warden Ted Pinnow provided Regional Water Board staff with photographs taken at the Site on December 29, 2017, which show

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<sup>1</sup> "Waters of the state" means "any surface water or groundwater, including saline waters, within the boundaries of the state." (Wat. Code, § 13050(e).) All "waters of the United States" in California are waters of the state. (See 33 C.F.R. § 328.3 (defining "waters of the United States," including wetlands for permitting decisions under federal Clean Water Act section 404).)

ditch excavation work and turbid water discharges from the ditch into Morrison Creek (see Attachment 2: CDFW Inspection Photos).

On January 11 and February 5, 2018, Regional Water Board staff shared the above information with Chris Howard of your staff. Mr. Howard agreed to a February 21, 2018 Site inspection with Regional Water Board and CDFW staff (see Attachment 3: Maps). Regional Water Board staff's inspection report is attached to this Order as Attachment 4. During the inspection, Regional Water Board staff observed an approximately 2,555 linear foot ditch excavated in wetlands, turbid water discharging from the ditch into Morrison Creek, and recently excavated piles of soil and sidecast soil in wetlands. Neither California Water Code waste discharge requirements nor Clean Water Act section 401 water quality certifications were issued by the Regional Water Board for these activities.

### **Violations**

Regional Water Board staff observed turbid water discharging into Morrison Creek from a recently excavated ditch. The excavated soil and turbid runoff discharged into Morrison Creek is defined as "waste" under California Water Code (Water Code) section 13050.<sup>2</sup> Water Code section 13264 states that no person shall initiate any new discharge of waste to waters of the state prior to filing a report of waste discharge with the Regional Water Board (see Wat. Code, § 13260 (explaining report of waste discharge procedures)). The Regional Water Board did not receive a report of waste discharge for the observed discharges of waste. These unpermitted discharges of waste to waters of the state are subject to penalties under Water Code section 13350, subdivision (e), authorizing the Regional Water Board to impose an administrative civil liability of up to \$5,000 per violation per day or \$10 per gallon of waste discharged.

The Water Quality Control Plan for the North Coast Region (Basin Plan) prescribes water quality objectives for the purposes of protecting beneficial uses and contains waste discharge prohibitions in the region. The Basin Plan prohibits point sources discharges of waste into the Smith River and its tributaries, which are waters of the United States. Morrison Creek is a tributary to the Smith River. The point source discharges of excavated soil and turbid water into Morrison Creek are in violation of the Basin Plan prohibition and are subject to penalties under Water Code section 13385, subdivision (c), authorizing the Regional Water Board to impose an administrative liability up to \$10,000 per violation per day and \$10 per gallon discharged and not cleaned up in excess of 1,000 gallons.

Regional Water Board staff also observed excavated dirt discharged to areas throughout the Site, including jurisdictional wetlands. Under Water Code section 13376, a person who discharges pollutants<sup>3</sup> or dredged or fill material to waters of the United States in the North Coast Region shall file a report of waste discharge pursuant to Water Code section 13260.

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<sup>2</sup> Water Code section 13050 defines "waste" as "sewage and any and all other waste substances, liquid, solid, or gaseous, or radioactive, associated with human habitation, or of human or animal origin . . ."

<sup>3</sup> Clean Water Act section 502(6) defines "pollutant" as "dredged spoil, solid waste . . . rock, sand, cellar dirt . . . and agricultural waste discharged into water."

Moreover, any person who discharges dredged or fill material to waters of the United States, including wetlands, must obtain a federal Clean Water Act (Clean Water Act) section 404 permit from the U.S. Army Corps of Engineers, and Clean Water Act section 401 water quality certification from the Regional Water Board. Unpermitted point source discharges of pollutants or dredged or fill materials to waters of the United States are violations of Clean Water Act section 301, subdivision (a).

The Regional Water Board has no evidence that Alexandre Ranches LLC obtained any permits or water quality certifications for the discharges discussed in this 13267 Order and the inspection report. Clean Water Act section 301 violations are also subject to penalties under Water Code section 13385, subdivision (c) (\$10,000 per violation per day and \$10 per gallon discharged and not cleaned up in excess of 1,000 gallons).

### **Required Information**

The Regional Water Board may investigate the quality of waters of the state within the North Coast Region. 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.*

For the reasons explained above and in the attached inspection report, Alexandre Ranches LLC, as owner of the Site, has discharged, discharges, or is suspected of having discharged waste into waters of the state within the North Coast Region.

The burdens, including cost, of the report required in this 13267 Order bears a reasonable relationship to the need for the report and the benefits to be obtained from the report. The report is required to obtain information that is necessary to: fully delineate the extent of actual and potential adverse impacts to water quality and beneficial uses caused by the unauthorized discharges; determine compliance with water quality objectives and prohibitions in the Water Quality Control Plan for the North Coast Basin (Basin Plan); and identify corrective actions, including the scope of restoration of surface waters and wetlands. The cost bears a reasonable relationship to the benefits because of the widespread potential for harm to beneficial uses that these unauthorized discharges have caused.

Pursuant to Water Code section 13267, you are hereby ordered to submit a technical report containing the following information by **July 31, 2018**:

1. **Wetland and Waters Delineation and Wetland Hydrology Analysis Report**

Provide a jurisdictional wetland delineation performed in accordance with the United States Army Corps of Engineers May 2010 *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (version 2.0)*. The report shall include maps of the entire site area, including a map of the newly excavated ditch area.

The ditch excavation activities have introduced a lower drainage elevation and may negatively impact jurisdictional wetland areas due to increased wetland drainage. Provide a Wetland Hydrology Analysis Report to determine likely changes to Morrison Creek and the adjacent wetlands as a result of ditch excavation. The report shall analyze:

- a. Topography;
- b. Land use;
- c. Extent and dimensions of ditch area prior to excavation;
- d. Drainage and runoff patterns; and
- e. Flooding patterns.

2. **Ditch Excavation Timeline**

Provide a timeline detailing the exact dates of ditch excavation in 2017.

3. **Discharge Volume Estimate**

Provide an estimate of the total volume of runoff discharged to Morrison Creek from the excavated drainage ditch for all dates between initial ditch excavation and the date of receipt of this Order. The methodology for determining the volume total shall be included and shall utilize local rainfall record analysis.

4. **Soil Excavation Volume Estimates**

Provide an estimate of the total volume of material excavated from the entire linear extent of the excavated ditch. Also provide separate estimates for both the volume of material excavated and placed in wetlands, as delineated by the jurisdictional wetland delineation, and the total volume of excavated material placed in upland locations. Provide the methodology used to calculate the excavated material volumes.

5. **Spoil Stabilization and Management Plan**

Provide a plan to temporarily stabilize the ditch excavation spoil piles and sidecast soil material to prevent discharge of sediment to the excavated ditch and Morrison Creek. Also, refer to the completed wetland delineation and provide a plan to move all excavated dirt to an upland (non-wetland) location after the Site has dried to a degree adequate to allow operation of heavy machinery and soil transport. The plan shall indicate that soils will be stabilized at the upland location to prevent discharge of sediment to wetlands and other waters of the state. An implementation timeline shall be provided for all of the above.

**6. Long-Term Habitat Protection Management Strategy Work Plan**

Provide a long-term management strategy to protect the habitat of the newly excavated ditch. Strategies shall consider fencing, seasonal grazing restrictions, and a Site grazing management plan. The plan shall also include any proposed strategies to address Site drainage, including an analysis of the Site's possible integration into the ongoing Morrison Creek watershed restoration planning efforts funded by the California Coastal Conservancy Proposition 1 grants.

Any planned maintenance of the drainage ditch shall be described in the plan and consider that any ditch excavation or dredging will require waste discharge requirements and/or water quality certification from the Regional Water Board, a Clean Water Act section 404 permit from the United States Army Corps of Engineers, and a California Fish and Game Code section 1600 Streambed Alteration Agreement from the California Department of Fish and Wildlife.

You shall provide documentation that the technical reports required in this 13267 Order were prepared under the direction of appropriately qualified professional(s). In preparing the technical report required by this 13267 Order, any scientific, engineering or geologic evaluations and judgements must be performed by or under the direction of registered professionals pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. A statement of qualifications and registration numbers of the responsible lead professional shall be included in the submitted report. The lead professional shall sign and affix his or her registration stamp to the report.

Any report submitted in response to this Order shall include the following perjury statement:

*"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

All reports or notices required under this Order shall be submitted to:

- By email to: [NorthCoast@waterboards.ca.gov](mailto:NorthCoast@waterboards.ca.gov); ATTN: Joshua Curtis, Assistant Executive Officer
- Or by mail to: NCRWQCB, ATTN: Joshua Curtis, Assistant Executive Officer, 5550 Skylane Blvd. Suite A, Santa Rosa, CA 95403

Any modification to this 13267 Order shall be in writing and approved by the Assistant Executive Officer, including any potential deadline extensions. If you are unable to perform any activity or submit any document in compliance with the schedule set forth herein, you may request, in writing, an extension of the time specified. The written extension request shall include justification(s) for the delay and shall be submitted to the Assistant Executive Officer (contact information above) at least 30 days prior to the deadline that you are requesting to extend. The Assistant Executive Officer may grant an extension in writing for good cause.

Failure to submit complete and timely technical and monitoring reports required in this 13267 Order will subject you to further enforcement action(s) by the Regional Water Board. Pursuant to Water Code section 13268, any person failing or refusing to furnish technical or monitoring program reports required under Water Code section 13267, or falsifying any information provided therein, is guilty of a misdemeanor and subject to an administrative civil liability of up to one thousand dollars (\$1,000) for each day in which the violation occurs. The Regional Water Board reserves its right to take any enforcement action as authorized by law.

Any person affected by the technical and monitoring report requirements provided above may petition the State Water Resources Control Board (State Water Board) to review those requirements in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00 pm, 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions will be provided on request or may be found on the Internet at:

[https://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality/](https://www.waterboards.ca.gov/public_notices/petitions/water_quality/)

We appreciate your cooperation in this matter, and we look forward to working with you to help protect natural resources and improve water quality in the North Coast Region. If you have any questions, please contact:  
Cherie Blatt at (707) 576-2755 or by email at [Cherie.Blatt@waterboards.ca.gov](mailto:Cherie.Blatt@waterboards.ca.gov) or  
Brendan Thompson at (707) 576-2699 or [Brendan.Thompson@waterboards.ca.gov](mailto:Brendan.Thompson@waterboards.ca.gov).

Sincerely,

Joshua Curtis  
Assistant Executive Officer

- Attachments: 1. December 19, 2017 Photos, Regional Water Board  
2. December 29, 2017 Photos, CDFW  
3. Maps  
4. February 21, 2018 Inspection Report with Photos, Regional Water Board  
5. California Water Code Section 13267 Fact Sheet

Certified-Return Receipt Requested

cc:	Blake Alexandre	<a href="mailto:blake@ecodairyfarms.com">blake@ecodairyfarms.com</a>
	Stephanie Alexandre	<a href="mailto:stephanie@ecodairyfarms.com">stephanie@ecodairyfarms.com</a>
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