California Regional Water Quality Control Board
North Coast Region
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Agency Secretary

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Arnold Schwarzenegger
Governor

November 16, 2005

Mr. Kevin Pohlson
Vast Oaks Properties
500 Lagonda Way, Suite 100
Danville, CA 94526

Dear Mr. Pohlson:

Subject: Issuance of Clean Water Act Section 401 Certification (Water Quality Certification) for the Vast Oaks Properties, Anderson 48 Mitigation Project, Sonoma County

File: Vast Oaks Properties, Anderson 48 Mitigation Project
Sonoma County, WDID No. 1B004058WNSO

This Order by the California Regional Water Quality Control Board, North Coast Region (Regional Water Board), is being issued pursuant to Section 401 of the Clean Water Act (33 USC 1341). It is being issued in response to Vast Oaks Properties' May 19, 2004 request for a Clean Water Act, Section 401, Water Quality Certification. On May 19, 2004, the Regional Water Board received an application from Mr. Kevin Pohlson, on behalf of Vast Oaks Properties, requesting a Water Quality Certification and/or Waste Discharge Requirements (Dredge/Fill Projects) for the Anderson 48 Mitigation Project located at Petaluma Road & Rohnert Park Expressway, Rohnert Park, Sonoma County. The Regional Water Board received an application and processing fee in the amount of $500 on May 19, 2004 and an additional $8,385.00 received on May 25, 2004. Information describing the proposed project was noticed for public comment for a 21-day period on the Regional Water Board's website. No comments were received. The proposed project causes disturbances to waters of the state associated with seasonal wetland habitat and Hinebaugh Creek, Laguna Hydrologic Subarea 114.21, Russian River Hydrologic Unit 114.00.

Project Description: The proposed project is located approximately 1,400 feet east of Petaluma Hill Road, between its intersections with Rohnert Park Expressway to the south and Keiser Avenue to the north, just below the headwaters of Hinebaugh Creek, Sonoma County, California. The project will involve the restoration and construction of vernal pools, and the connecting of swales and other seasonal wetlands. The purpose of the project is to perform seasonal wetland and riparian restoration efforts on the 48-acre site, in order to mitigate for a portion of the project impacts resulting from the development of the Vast Oaks Project (WDID No. 1B03004WNSO). The Vast Oaks development will result in

unavoidable direct and indirect impacts on approximately 23.75 acres of wetland and creek habitat, consisting of 17.25 acres of seasonal, artificial, and farmed wetlands, 0.02 acres of Hinebaugh Creek, 0.26 acres of jurisdictional ditch, and 6.22 acres of waters of the state.

The proposed Anderson 48 project consists of the filling of 1.28 acre of Hinebaugh creek, its tributaries and seasonal wetlands and the excavation of 2.61 acres of low-quality seasonal wetlands, isolated wetlands, and tributaries to Hinebaugh Creek, to enhance the hydrology within those features, resulting in high-quality habitat. Enhancement will include excavating the 2.53 acres as described above, in addition to enhancement of an additional 2.58 acres, for a total of 5.11 acres of enhanced wetland habitat.

The proposed project will also result in the creation of approximately 8.60 acres of vernal pools, seasonal wetlands and connecting swales in existing upland habitat as well as restoring approximately 2.03 acres of wetland habitat and 0.72 acres of channel bank. In addition, restoration of 10.86 acres of riparian habitat along Hinebaugh Creek will be performed.

Swales will be reestablished within the alignments of existing incised channels by backfilling upstream of an energy dissipater constructed in Hinebaugh Creek just above the western end of the project site. The structure will be constructed of rock and concrete in such a manner as to permit establishment of willow and other riparian species within the structure. It will span the channel and be approximately 90 – 100 feet long. The spillway elevation will be 164.0 ft. Approximately 150 cubic yards of rock material will be imported to construct the energy dissipater.

The channel will be backfilled immediately behind the energy dissipater. The soil used to backfill the channel will be soil excavated from the site, similar in texture (clay loam to clay) and will be compacted to bring the rough grade of the surface to an elevation of approximately 163.0 ft. Topsoil salvaged prior to construction from the channel and the terraces will be re-spread over the rough grade soils to bring the final swale surface elevation to 163.5 ft. Two terraces that currently stand between the main channel and the pair of tributaries would be lowered in conjunction with the swale restoration to produce a broad flat seasonal wetland that spans the area into which the tributaries extend. A soil cement water-restricting horizon will not be used.

Receiving Water:	Hinebaugh Creek and its tributaries
Federal Permit:	U.S. Army Corps of Engineers Nationwide Permit# 27 (File Number 28185N).
State and Local Approvals:	An application for a Lake and Streambed Alteration Agreement was submitted to California Department of Fish and Game on May 17, 2004 (Notification No 1600-2004-0344-3).
Filled or Excavated Area:	Total Area Impacted: 3.89 acres of Hinebaugh Creek, its tributaries and seasonal wetland habitat Area Temporarily Impacted: 2.61 acres Permanently Impacted: 1.28 acres
Compensatory Mitigation:	Compensatory mitigation for this project will not be required as the project will be self-mitigating by resulting in a net increase of the existing seasonal wetland habitat through creation of 8.60 acres of wetland habitat, restoration of 2.75 acres of seasonal wetland habitat, enhancement of 5.11 acres of seasonal wetland habitat. In addition, the project will involve 10.86 acres of restoration and 9.16 acres of enhancement of riparian habitat along Hinebaugh Creek. The created, restored and enhanced wetland habitat will be used to partially fulfill the mitigation obligations of the Vast Oaks Development, as discussed previously.
Non-compensatory Mitigation:	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. Erosion control BMPs will be incorporated into the project to reduce the potential for sediment and turbid discharges to surface waters.
Post Construction Storm Water Pollution Prevention:	Not Applicable
CEQA Compliance:	Sonoma County, as the lead California Environmental Quality Act (CEQA) agency, has determined that this project qualifies for a Mitigated Negative Declaration pursuant to the CEQA (November 2, 2004, File No. ZPE04-0130).

Standard Conditions: Pursuant to Title 23, California Code of Regulations, Section 3860 (23 CCR 3860), the following three standard conditions shall apply to this project:

1) This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the California Water Code and 23 CCR 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 23 CCR 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3) The validity of any nondenial certification action (actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR 3833, unless otherwise stated in writing by the certifying agency.

Additional Conditions: Pursuant to 23 CCR 3859(a), the applicant shall comply with the following additional conditions:

1) The Regional Water Board shall be notified in writing at least five working days (working days are Monday – Friday) prior to the commencement of grading work, with details regarding the construction schedule, in order to allow staff to be present on-site during construction, and to answer any public inquiries that may arise regarding the project.

2) 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 permit, 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.

3) Best Management Practices (BMPs) for sediment and turbidity control shall be implemented and in place prior to, during, and after construction in order to ensure that no silt or sediment enters surface waters.

4) All fill material used on the site shall be clean and free of contaminants. A characterization report for all imported fill materials shall be provided to the Regional Water Board prior to the commencement of grading work.

5) A copy of this permit must be provided to the Contractor and all subcontractors conducting the work, and must be in their possession at the work site.

6) If, at any time, a discharge to surface waters occurs, or any water quality problem arises, the project shall cease immediately and the Regional Water Board shall be notified promptly.

7) Monitoring Requirements – Construction and mitigation work will be implemented as proposed in the application and the following monitoring shall occur:

Wetland Mitigation: Yearly monitoring reports for the required compensatory mitigation shall be provided to the Regional Water Board by July 15 during each calendar year for a total of five years. Reports shall include photo documentation of the Anderson 48 Mitigation site. After five years have passed, the mitigation will be evaluated for successful attainment of the final wetland criteria as outlined in the U.S. Army Corps of Engineers 1987 Delineation Manual, and a decision will be made whether additional mitigation measures are necessary to insure that no net loss of wetland habitat occurs. Reports shall be prepared by a professional consultant with in-depth experience in wetland ecosystem creation and function, as well as wetland mitigation monitoring techniques. Reports shall be submitted to the attention of staff member Andrew Jensen.

8) Instream work shall not commence until June 15th and all work within the waterway shall be complete prior to October 15th.

9) This Order is not transferable. 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.

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, 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.

10) The Applicant shall provide photos of the completed work to the appropriate Regional Water Board staff person, in order to document compliance. The Applicant shall also provide photos of the completed work areas after the first significant rainfall event in order to ensure that erosion control has been successful.

Water Quality Certification:

I hereby issue an order [23 CCR Subsection 3831(e)] certifying that the authorized discharge from Anderson 48 Mitigation Project (Facility No. 1B04058WNSO) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act [33 USC Subsection 1341 (a)(1)] , and with other applicable requirements of State law. 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).

Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicant's project description, and b) compliance with all applicable

requirements of the Regional Water Board's Water Quality Control Plan for the North Coast Region (Basin Plan).

Expiration: The authorization of this certification for any dredge and fill activities expires on October 16, 2010. 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.

Please notify Andrew Jensen of our staff at (707) 576-2683 prior to construction (pursuant to Additional Condition No. 1 above) so that we can answer any public inquiries about the work.

Sincerely,

Catherine E. Kuhlman
Executive Officer

AJJ:clh/111605_AJJ_Anderson48_401Cert

Enclosure: 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.

cc: Mr. Oscar Balaguer, 401 Program Manager, Water Quality Certification Unit
State Water Resources Control Board, 1001 I Street, 15th Floor, Sacramento, CA 95814

Ms. Jane Hicks, U.S. Army Corps of Engineers, Regulatory Branch, 333 Market Street, San Francisco, CA 94105

Mr. Ted Winfield, Ted Winfield & Associates, 1455 Wagoner Drive, Livermore, CA 94550