



San Diego Regional Water Quality Control Board

March 2, 2016

In reply refer to:

R9-2016-0066:788045:dbradford

Mr. Rick Wood
LS Terracina, LLC
355 East Rincon, Suite 300
Corona, CA 92879

Certified Mail – Return Receipt Requested

Article Number: 7011 0470 0002 8961 9764

Subject: Notice of Violation No. R9-2016-0066

Mr. Rick Wood:

Enclosed is Notice of Violation (NOV) No. R9-2016-0066 issued to you for violations of Clean Water Act Section 401 Water Quality Certification No. R9-2012-0008. As described in the NOV, the violations may subject you to further enforcement pursuant to the California Water Code (WC). The San Diego Water Board reserves the right to take any enforcement action authorized by law.

The State of California largely relies on Section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) to regulate discharges of dredged or fill material to waters of the State. Section 401 requires an applicant to obtain "water quality certification" from California that the project will comply with State water quality standards before certain federal licenses or permits may be issued. The permits subject to section 401 include permits for the discharge of dredged or fill materials (CWA section 404 permits) issued by the U.S. Army Corps of Engineers (Corps).

In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

Please submit all responses and information to this NOV in electronic format via e-mail to SanDiego@waterboards.ca.gov. Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to the San Diego Water Board, 2375 Northside Drive, San Diego, CA 92108. Each electronic document must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures

will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: R9-2016-0066:788045:dbradford

For questions pertaining to the subject matter, please contact Darren Bradford at (619) 521-3356 or darren.bradford@waterboards.ca.gov.

Respectfully,

A handwritten signature in cursive script that reads "Eric Becker".

Eric Becker, P.E.
Senior Water Resources Control Engineer
San Diego Water Board

EB:DB:dlb

Enclosures:

Notice of Violation R9-2016-0066 with attachments

CC (by email with enclosures):

Barry Jones
Helix Environmental Planning
BarryJ@helixepi.com

Peggy Bartels
U.S. Army Corps of Engineers
Peggy.J.Bartels@usace.army.mil

Kim Freeburn
California Department of Fish and Game
Kim.Freeburn@wildlife.ca.gov

David Barker
San Diego Water Board
David.Barker@waterboards.ca.gov

U.S. EPA, OWOW, Region 9
R9-WTR8-Mailbox@epa.gov

State Water Resources Control Board, Division of Water Quality
401 Water Quality Certification and Wetlands Unit
Stateboard401@waterboards.ca.gov

Notice of Violation No.	R9-2016-0066
401 Certification No.	R9-2012-0008
WDID	9000002530
Reg. Measure ID	388169
Place ID	788045
Party ID	548732
Violation ID	1003261



San Diego Regional Water Quality Control Board

March 2, 2016

**NOTICE OF VIOLATION
No. R9-2016-0066**

Mr. Rick Wood
LS Terracina, LLC
355 East Rincon, Suite 300
Corona, CA 92879

Terracina Project
North eastern intersection of Via Puebla
and Monte Verde Road
Riverside County, California

**Violations of Clean Water Act Section
401 Water Quality Certification
No. R9-2012-0008**

LS Terracina, LLC is in violation of Clean Water Act Section 401 Water Quality Certification No. R9-2012-0008 (Certification) for the Terracina Project (Project).

Such violation subjects LS Terracina, LLC to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board), including administrative enforcement orders requiring you to cease and desist from violations, or to clean up waste and abate existing or threatened conditions of pollution or nuisance; administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

A. Background

Terracina Project

On July 1, 2014, the San Diego Water Board issued Certification No. R9-2012-0008 to LS Terracina, LLC for the Project that proposes to construct single-family houses on 93.5 acres. The Project is located adjacent to the City of Temecula in unincorporated Riverside County, California at the north eastern intersection of Via Puebla and Monte Verde Road. The Project center reading is located at latitude 33.46361 and longitude 117.07916. The development includes: 206 residential lots; associated infrastructure and utilities; a sewer lift station; parks and open space; and stream channel impacts. Stream channel impacts include lowering and widening the existing channel, a combination of earthen and hardened side slopes, access roads, and maintenance ramps.

On July 2, 2015, at the request of Helix Environmental Planning, Inc., on behalf of the Applicant, the San Diego Water Board amended the Certification to allow for additional permanent impacts to 0.26 acre (400 linear feet) of unvegetated streambed. The original Certification designated 0.31 acre of unvegetated streambed that would be avoided as part of the channel grading. In requesting the amendment the Applicant reported that the existing topography was several feet higher than the base topography used for the grading plans. Therefore, most of the 0.31 acre (0.26 acre) could not be avoided. The Certification was amended to establish the remaining 0.05 acre of streambed as an avoidance area that would remain ungraded.

On January 13, 2016, Barry Jones of Helix Environmental, notified the San Diego Water Board that the 0.05 acre of streambed to be avoided had been graded. The area was graded to the same elevation as the rest of the channel, resulting in the removal of the vegetation. The unauthorized impacts reportedly took place during the last week of October 2015.

B. Summary of Violations of CWA Section 401 Water Quality Certification R9-2012-0008

1. Failure to Comply with General Conditions

- a. **Condition II.B of the Certification states:** "The Applicant must comply with all conditions and requirements of this Certification. Any Certification noncompliance constitutes a violation of the Water Code and is grounds for enforcement action or Certification termination, revocation and reissuance, or modification."

Observation: LS Terracina, LLC did not comply with several conditions of the Certification as described in this Notice of Violation.

- b. Condition II.D of the Certification states:** "All water quality protection measures and BMPs described in the application and supplemental information for water quality certification are incorporated by reference into this Certification as if fully stated herein. Notwithstanding any more specific conditions in this Certification, the Applicant shall construct, implement and comply with all water quality protection measures and BMPs described in the application and supplemental information. The conditions within this Certification shall supersede conflicting provisions within the application and supplemental information submitted as part of this Certification action."

Observation: LS Terracina, LLC did not implement the water quality protection measures and BMPs designed to protect and avoid the 0.05 acre of remaining streambed that were described in the application and supplemental information submitted as part of this Certification action.

2. Failure to Implement Appropriate Best Management Practices (BMPs)

- a. Condition III.D of the Certification states:** "Prior to start of Project construction, the Applicant must, as applicable, obtain coverage under, and comply with, the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activity, (General Construction Storm Water Permit) and any reissuance. If Project construction activities do not require coverage under the General Construction Storm Water Permit, the Applicant must develop and implement a runoff management plan (or equivalent construction BMP plan) to prevent the discharge of sediment and other pollutants during construction activities."

Observation: Pursuant to Provision III.B of Order No. 2009-0009-DWQ: All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by this General Permit or another NPDES permit. LS Terracina, LLC discharged fill (earthen material, sediment) into 0.05 acre of the streambed to be avoided constituting an unauthorized discharge of fill to waters of the United States and/or State.

- b. Condition III.F of the Certification states:** "Except for a discharge permitted under this Certification, the dumping, deposition, or discharge of trash, rubbish, unset cement or asphalt, concrete, grout, damaged concrete or asphalt, concrete or asphalt spoils, wash water, organic or earthen material, steel, sawdust or other construction debris waste from Project activities directly into waters of the United States and/or State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited."

Observation: LS Terracina, LLC discharged fill (earthen material) into 0.05-acre of the streambed to be avoided. This discharge constitutes an unauthorized discharge of fill material to waters of the United States and/or State that is prohibited by section III.F of the Certification.

- c. **Condition III.N of the Certification states:** “The Applicant shall clearly define the limits of Project disturbance to waters of the United States and/or State using highly visible markers such as flag markers, construction fencing, or silt barriers prior to commencement of Project construction activities within those areas.”

Observation: LS Terracina, LLC failed to clearly define the limits of Project disturbance to waters of the United States and/or State. As described in the memorandum provided by HELIX Environmental Planning, Inc. (dated February 10, 2016) (Helix Memo), “The initial avoidance area was fenced with orange construction fencing; however the fencing was not revised for the 0.05-acre avoidance area.”

- d. **Condition III.O of the Certification states:** “The Applicant shall designate an on-site qualified biologist to monitor Project construction activities within or adjacent to waters of the United States and/or State to ensure compliance with the Certification requirements. The biologist shall be given the authority to stop all work on-site if a violation of this Certification occurs or has the potential to occur. Records and field notes of the biologist’s activities shall be kept on-site and made available for review upon request by the San Diego Water Board.”

Observation: LS Terracina, LLC failed to have a biological monitor on-site during Project construction activities within the stream. The Helix Memo states, “A biological monitor was on-site during initial grading but was not on-site when the avoidance area was impacted.”

3. Failure to Avoid and Minimize Project Impacts

- a. **Condition V.A of the Certification states:** “The Project must avoid and minimize adverse impacts to waters of the United States and/or State to the maximum extent practicable.”

Observation: LS Terracina, LLC failed to avoid and minimize adverse impacts to waters of the United States and/or State by conducting excavation and grading activities which caused impacts to waters of the United States that were not authorized under the terms and conditions of the Certification.

b. Condition V.B of the Amended Certification states: "Unavoidable Project impacts to unnamed tributaries to Temecula Creek within the Santa Margarita Watershed must not exceed the type and magnitude of impacts described in the table below. At a minimum, compensatory mitigation required to offset unavoidable temporary and permanent Project impacts to waters of the United States and/or State must be achieved as described in the table below:"

	Impacts (acres)	Impacts (linear ft.)	Mitigation for Impacts (acres)	Mitigation Ratio (area mitigated :area impacted)	Mitigation for Impacts (linear ft.)	Mitigation Ratio (linear feet mitigated :linear feet impacted)
Streambed (Permanent Impacts)	1.80 <u>2.06</u>	5,562 <u>5,962</u>	0.49 Establishment ¹	0.27:1 Establishment	3,050 Establishment	0.55:1 Establishment
			1.80 <u>2.06</u> Re- establishment ²	1:1 Re- establishment	1,810 <u>2,210</u> Re- establishment	0.33:1 <u>0.37:1</u> Re- establishment
			3.11 <u>3.63</u> Preservation ³	1.73:1 <u>1.76:1</u> Preservation		

1. Streambed establishment on-site.
2. Streambed re-establishment on-site.
3. Vernal pool wetland preservation at the Barry Jones Mitigation Bank.

Observation: LS Terracina, LLC conducted Project construction activities which exceeded the type and allowable magnitude of impacts described in the table. The Helix Memo states, "impacts to streambed waters of the United States and/or State were exceeded in the type and magnitude by conducting unauthorized grading of the 0.05 acre avoidance area."

A. Summary of Potential Enforcement Options

Failure to address these violations may subject LS Terracina, LLC to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of \$10,000 per day of violation (Water Code section 13385) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Technical or Investigative Order	Sections 13267
Cleanup and Abatement Order	Section 13304 (Amendment of existing CAO No. R9-2005-0259)
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

In addition, the San Diego Water Board may consider revising or rescinding applicable waste discharge requirements, if any, referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and/or referral to the municipal or District Attorney for criminal prosecution.

In the subject line of any response, please include the reference number R9-2016-0066:788045:dbradford. Questions pertaining to this Notice of Violation should be directed to Darren Bradford at (619) 521-3356 or darren.bradford@waterboards.ca.gov.



Eric Becker P.E.
Senior Water Resources Control Engineer
San Diego Water Board

DB:EB:dlb

Attachments: Amendment No. 1 to Clean Water Act section 401 Water Quality Certification No. R9-2012-0008 for the Terracina Project

Unauthorized Impacts for the Terracina Project Memorandum,
Helix Environmental Planning, Inc., dated February 10, 2016

Tech Staff Info & Use	
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401 Certification No.	R9-2012-0008
WDID	9000002530
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