

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**CLEANUP AND ABATEMENT ORDER NO. R9-2002-0016
FOR**

**BUEI COMMUNITIES
11260 EL CAMINO REAL, SUITE 200
SAN DIEGO, CA 92130**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds that:

1. Buie Communities owns a 70-acre parcel located in the County of San Diego, within the municipality of Vista. The parcel is bounded by Green Oak Road to the north, Sycamore Avenue to the east and La Mirada Drive to the south. The site is located in the Agua Hedionda Hydrologic Area (904.30) of the Carlsbad Hydrologic Unit (904) as described in the "Water Quality Control Plan, San Diego Basin (9)" (hereinafter Basin Plan).
2. Agua Hedionda Creek runs through the northern portion of the parcel described in Finding No. 1. The Basin Plan has established the following designated beneficial uses for this inland surface water: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Contact Water Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD).
3. On or before January 3, 2002, Buie Communities caused and/or permitted the clearing of vegetation, grading and the discharge of fill into Agua Hedionda Creek. These activities have obstructed the natural surface flow and eliminated the ability of Agua Hedionda Creek to support water quality functions and WARM and WILD beneficial uses in violation of the Basin Plan Water Quality Objectives.
4. At some time between January 3, 2002, and January 11, 2002, Buie Communities caused and/or permitted the discharge of sediment laden storm water directly into Agua Hedionda Creek via a plastic lined spillway installed in a constructed slope adjacent to the creek. The discharge of material other than storm water into waters of the nation is prohibited by Discharge Prohibition A.2 of General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ.



5. Buie Communities has not implemented effective sediment and erosion control Best Management Practices (BMPs) on site to minimize the impact of sediment discharges to Agua Hedionda Creek, in violation of "SWPPP" section A.6 & A.8 of Order No. 99-08-DWQ.
6. Buie Communities has not implemented good housekeeping practices on site to properly manage and dispose of construction waste, hazardous materials, and petroleum products, to eliminate the exposure of storm water to these materials, in violation of "SWPPP" section A.5.b.5, of Order No. 99-08-DWQ.
7. An active restoration effort is needed to protect Agua Hedionda Creek from long-term, adverse consequences of the discharge and cleanup activities, as well as abate the effects of increased erosion and a discharge of sediment downstream, and to restore water quality functions and beneficial uses.
8. Pursuant to CWC Section 13304, the Regional Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
9. This enforcement action is being taken for the protection of the environment and, as such, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Section 2100 Et seq.) in accordance with Section 15108, Chapter 3, Title 14, California Administrative Code.

IT IS HEREBY ORDERED that, pursuant to Section 13304 of Division 7 of the California Water Code:

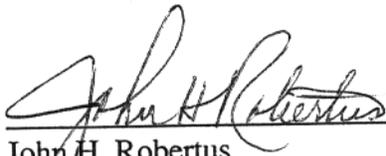
1. Buie Communities shall forthwith initiate efforts to cleanup the waste and abate all effects of the discharge of wastes into and near Agua Hedionda Creek, and take any other remedial actions, which may be necessary to abate the effects of the discharged wastes.
2. By March 1, 2002, Buie Communities shall develop and submit to this Board a restoration plan, by a qualified biologist, that will minimize channel erosion and increased sedimentation, and shall mitigate for unauthorized temporal and spatial impacts to waters of the U.S. A restoration plan must include, but not be limited to, the following:
 - a. A figure showing the proposed plant layout and plant palette.
 - b. Cross-sections and plan views of the proposed mitigation areas that show how they will be integrated into upstream and downstream areas and adjacent upland areas.
 - c. A time schedule for restoration activities, mitigation implementation (e.g., initial planting, submittal of "as-built" documents, monitoring and reporting periods).

- d. A discussion of maintenance and monitoring activities and duration.
 - e. Proposed success criteria for the mitigation area(s).
 - f. A conceptual mitigation plan prepared to the Army Corps of Engineers guidelines may be submitted in lieu of the above items.
3. Upon Regional Board approval of the restoration plan, Buie Communities shall implement the plan in accordance with the time schedule.
 4. The discharger shall dispose of all removed waste in a manner that complies with applicable codes and regulations.
 5. The discharger shall obtain all necessary approvals from the California Department of Fish and Game, the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and other applicable federal, state, and local authorities for any streambed cleanup work.
 6. The discharger shall immediately comply with all requirements of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ, this shall include, but not be limited to:
 - a. Implementation of an effective combination of erosion and sediment controls on all disturbed areas during the rainy season. These disturbed areas include rough graded roadways, slopes and building pads.
 - b. Implementation of BMPs to prevent the discharge of sediment laden water into Agua Hedionda Creek.
 - c. Implementation of BMPs to minimize or eliminate the exposure of storm water to construction materials, equipment, vehicles, waste storage areas, or service areas.
 - d. Proper disposal and clean up of all hazardous materials on site including, but not limited to, empty petroleum product containers and contaminated soil.
 7. By February 15, 2002, the Buie Communities shall provide the Regional Board with a copy of the amended Storm Water Pollution Prevention Plan (SWPPP) for the subject site. This SWPPP shall include all items in Section A of Order 99-08-DWQ.
 8. By May 1, 2002, the discharger shall submit a report that documents that the required abatement actions have been taken and that all necessary approvals for the cleanup and restoration work were obtained, and provide under penalty of perjury under the laws of California a "Certification of Completion" statement to the Regional Board identifying that directives of this Order have been met.

The "Certification of Completion" shall include the following signed 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.

Pursuant to California Water Code section 13350, any person who intentionally or negligently violates a cleanup and abatement order may be liable civilly in an amount which shall not exceed five thousand dollars (\$5,000), but shall not be less than five hundred dollars (\$500), for each day in which the cleanup and abatement order is violated.



John H. Robertus
Executive Officer

29 January, 2002
Date