

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

TECHNICAL ANALYSIS

**Proposed Administrative Civil Liability
Order No. R9-2007-0107
Dakota Ranch Development Co., LLC
Dakota Ranch Subdivision
Santee, California**

**Noncompliance with
California Regional Water Quality Control Board
San Diego Region
Clean Water Act Section 401 Water Quality Certification
No. 02C-064
Issued on
January 30, 2003**

July 18, 2007

1. INTRODUCTION

This technical analysis provides a summary of factual and analytical evidence supporting administrative assessment of civil liability in the amount of \$300 per day of violation against Dakota Ranch Development Co., LLC (Dakota Ranch). Dakota Ranch is alleged to have violated its Clean Water Act Section 401 Water Quality Certification (401 Certification), No. 02C-064. **See Exhibit No. 1, ACL Complaint No. R9-2005-0176.** The California Regional Water Quality Control Board, San Diego Region (Regional Board) may assess liability pursuant to California Water Code (Water Code) section 13385 for violation of a 401 Certification.

2. BACKGROUND

No federal license or permit without 401 Certification

Section 401 of the federal Clean Water Act requires that any person applying for a federal permit or license that may result in a discharge of pollutants into Waters of the United States must obtain a 401 Certification. Section 401 further requires that the activity complies with all applicable water quality standards, limitations, and restrictions (i.e., beneficial uses, water quality objectives, and the anti-degradation policy). No license or permit may be issued by a federal agency until a 401 Certification has been granted.

Army Corps of Engineers 404 Permits require 401 Certification

Clean Water Act Section 404 Permits (404 Permits) are required for projects that discharge dredge or fill material to waters of the United States. The United States Army Corps of Engineers issues 404 Permits. These permits cannot be issued until the project receives 401 Certification from the state.

Dakota Ranch Project included fill, therefore it needed 404 Permit and 401 Certification

The Dakota Ranch Subdivision project proposed to fill 0.26 acre of unvegetated ephemeral streambed, therefore it required a 404 Permit, and a 401 Certification. The Regional Board added specific conditions to Dakota Ranch's 401 Certification to ensure that the project would be implemented as proposed, and would not adversely impact water quality standards. Specifically, Dakota Ranch must create 0.26 acre of unvegetated stream channel offsite to mitigate the destruction of 0.26 acre of ephemeral streambed onsite. **See Exhibit No. 2, Dakota Ranch Subdivision 401 Certification, File No. 02C-064.**

Change of Ownership

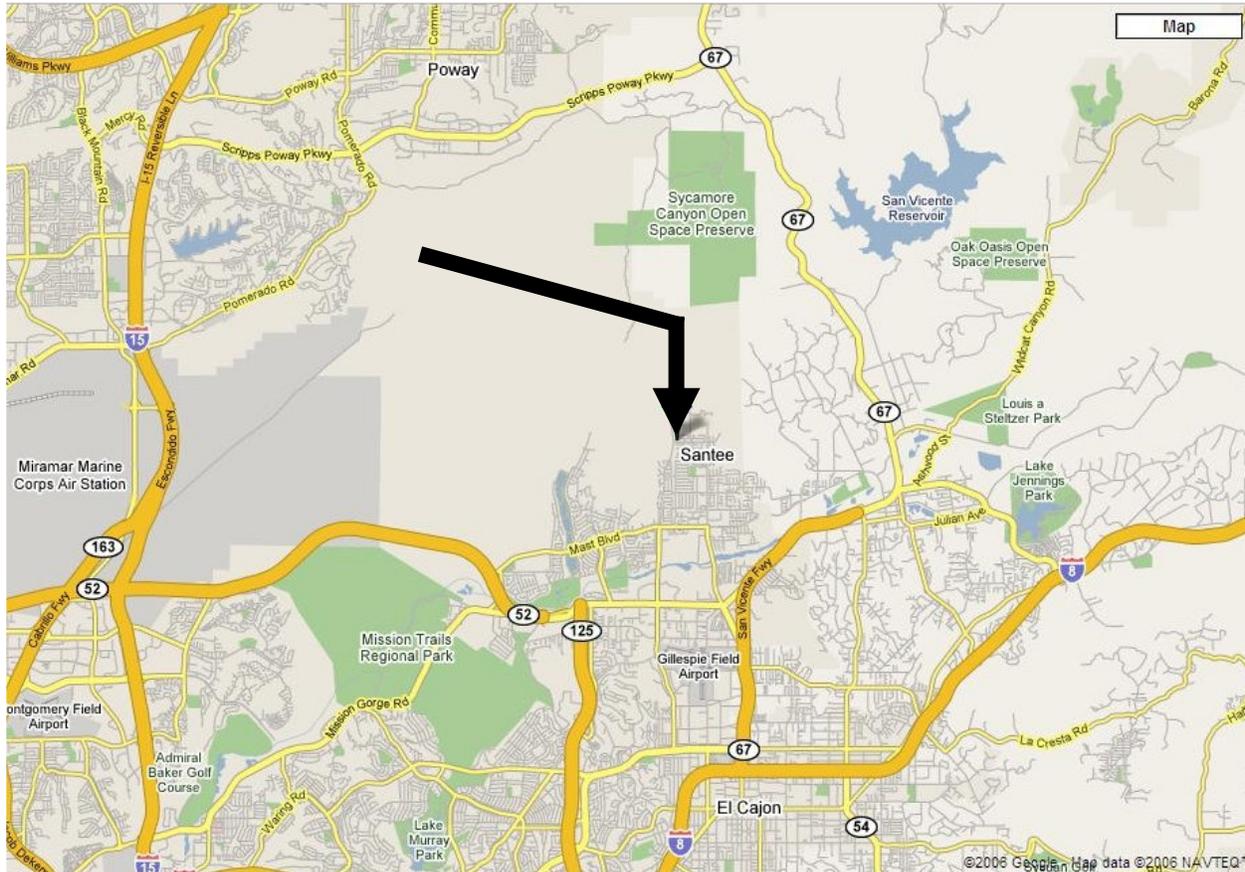
On June 14, 2002, Dakota Ranch Partners, the original owner, applied for 401 Certification of the Dakota Ranch Subdivision project. The 401 Certification was granted on January 30, 2003. The following day, Dakota Ranch Development Co., LLC notified the Regional Board that it was the new owner, and that it

“understands the permit requirements and shall implement them.” Dakota Ranch also stated that grading for the project would begin on “February 9, 2003 or shortly thereafter.” **See Exhibit No. 3, Marquez & Associates Letter, January 31, 2003.**

Project Description

The Dakota Ranch Subdivision project included grading and construction of 20 single family homes and associated infrastructure on approximately 6.17 acres within the City of Santee, California. From February to May 2004, homes within Dakota Ranch Subdivision sold for \$529,000 to \$618,000. All construction has been completed and the homes are occupied.

The following map shows the location of the site within the Region.



3. ALLEGATION

Dakota Ranch failed to satisfy condition No. 7 of its 401 Certification. Condition No. 7 requires Dakota Ranch to mitigate impacts to waters of the United States by September 30, 2004. This allegation is the basis for assessing administrative civil liability pursuant to Water Code section 13385. The allegation also appears

in ACL Complaint No. R9-2005-0176. Dakota Ranch has yet to complete the required mitigation, therefore, the violation is 1,021 days and counting.

4. DETERMINATION OF ADMINISTRATIVE CIVIL LIABILITY

Water Code section 13385 (a) states in part,

Any person who violates any of the following shall be liable civilly in accordance with this section:

1. Section 13375 or 13376.
2. Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160.

Furthermore, Water Code section 13385 (c) provides in part that

Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

- (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

Water Code section 13385 (e) requires the Regional Board to consider several factors when determining the amount of civil liability to impose. These factors include: "...the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation."

Failure to Implement Required Mitigation

Dakota Ranch has not mitigated the impacts to Waters of the United States caused by construction of the Dakota Ranch Subdivision project. This failure to complete the mitigation is in violation of Condition No. 7 of 401 Certification No. 02C-064, which requires completion of mitigation construction by September 30, 2004. On January 25, 2005, the Regional Board issued Notice of Violation No. R9-2005-0042 to Dakota Ranch notifying them of the violation and that they were

subject to possible enforcement action including the issuance of administrative civil liability. **See Exhibit No. 4, NOV No. R9-2005-0042.**

Nature, Circumstances, Extent, and Gravity of the Violation

On or about February 9, 2003, Dakota Ranch began grading the project site. The site lies within the Santee Hydrologic Subarea (HSA). During grading, two ephemeral streambeds, constituting 0.26 acre of area, were filled with soil. The filling destroyed the useful function and beneficial uses of the streambeds. Ephemeral streambed functions include:

1. Flood protection;
2. Groundwater recharge;
3. Pollutant trapping;
4. Nutrient recycling;
5. Wildlife shelter
6. Wildlife movement; and
7. Wildlife reproduction.

In addition to the elimination of these functions, the following designated beneficial uses of the streambeds were also lost:

1. Municipal and Domestic Supply (MUN);
2. Agricultural Supply (AGR);
3. Industrial Service Supply (IND);
4. Contact Water Recreation (REC-1);
5. Non-Contact Water Recreation (REC-2);
6. Warm Freshwater Habitat (WARM);
7. Cold Freshwater Habitat (COLD); and
8. Wildlife Habitat (WILD).

To mitigate the losses of the two streambeds, Dakota Ranch was required to create 0.26 acre of unvegetated stream channel offsite by September 30, 2004. The mitigation was to occur adjacent to the San Diego River at Mast Park in the City of Santee, which is roughly five miles from the project site and within the Santee HSA. The Regional Board inspected the mitigation site on December 22, 2004, and documented that the mitigation had not been completed. **See Exhibit No. 5, December 22, 2004, RB Inspection Report.** To date, mitigation has not been constructed, resulting in a loss of beneficial uses in the Santee HSA for 1,021 days and counting.

Discharge's Susceptibility to Cleanup and Abatement, and Degree of Toxicity

It is infeasible to cleanup and abatement the filling of the streambeds because residential homes were built on top of the filled streambeds.

Discharger's Ability to Pay and Ability to Continue Its Business

During meetings with representatives of Dakota Ranch, they stated that Dakota Ranch has the funds necessary to complete the mitigation.

Degree of Culpability and Voluntary Cleanup Efforts

When Dakota Ranch Development Co., LLC, was originally contacted by the Regional Board on January 11, 2005, regarding their failure to implement the required mitigation, Dakota Ranch Development Co., LLC, claimed that it was not responsible for the mitigation implementation. Only after they were provided with a letter containing their signature identifying them as the responsible party did Dakota Ranch Development Co., LLC, acknowledge its responsibility to implement the required mitigation.

Following issuance of Notice of Violation No. R9-2005-0042 on January 25, 2005, for failure to implement the required mitigation, Dakota Ranch provided the Regional Board with updates of its activities regarding the mitigation over the course of three months. These updates exhibited little effort and provided no evidence that construction of the mitigation was imminent. As a result, on May 27, 2005, the Regional Board issued Complaint No. R9-2005-0176 for Administrative Civil Liability to Dakota Ranch and scheduled a hearing for the August 2005 Regional Board meeting. Prior to and following issuance of the complaint, the Regional Board met four times with Dakota Ranch to discuss and provide guidance on the mitigation. Based on discussions with representatives of the Army Corps of Engineers and the City of Santee, it is also clear that these entities have collaborated with Dakota Ranch regarding the mitigation issue.

On July 21, 2005, Dakota Ranch requested a postponement of the ACL hearing. **See Exhibit No. 6, July 21, 2005, Luce Forward Letter.** On July 27, 2005, the Regional Board granted Dakota Ranch's request to allow them to focus their efforts on completing the mitigation project instead of defending against a Regional Board enforcement action. In September 2006, the Regional Board notified Dakota Ranch that an ACL hearing had been scheduled for the November 2006 Regional Board Meeting. On October 23, 2006, Dakota Ranch requested that the hearing be postponed. **See Exhibit No. 7, October 23, 2006, Luce Forward Letter.** On October 24, 2006, the Regional Board met with representatives of Dakota Ranch and granted their postponement request. During the meeting Dakota Ranch agreed to give the Regional Board updates of their efforts to complete the mitigation on the 1st and 15th of the month, however none have been forthcoming. As a result of Dakota Ranch's inaction, the Regional Board has contacted Dakota Ranch's Vice President of Operations, Jeff Schieferstein, or its attorney Steve Marsh of Luce Forward to obtain the updates.

In January 2007, the Regional Board tentatively scheduled an ACL hearing for Dakota Ranch for the March 2007 Regional Board meeting. At Dakota Ranch's

request the hearing was again postponed after assurances that it would have the mitigation completed shortly. **See Exhibit No. 8, Dakota Ranch Letter, January 29, 2007.** Within the last month there have been no responses to Regional Board attempts to obtain updates from Mr. Schieferstein. On July 11, 2007, attorney Steve Marsh responded to a Regional Board update request notifying the Regional Board that he is no longer representing Dakota Ranch. In a telephone conversation with Kevin Mallory, City of Santee on July 17, 2007, he informed the Regional Board that Dakota Ranch has not responded to his telephone messages and that his last meeting with Dakota Ranch was in March 2007.

Dakota Ranch's culpability is high given the long-standing violation, lack of progress in rectifying the violation, and failure to meet previous commitments to implement the mitigation. Dakota Ranch's actions are considered to be consistently negligent conduct.

Prior History of Violations

The Regional Board has not previously regulated Dakota Ranch.

Economic Benefit or Savings

Pursuant to the State Board's *Guidance to Implement the Water Quality Enforcement Policy*, assessments should at a minimum take away whatever economic savings a discharger gains as a result of those violations. Compliance with 401 Water Quality Certifications has associated costs and developers that are currently in compliance are at an economic disadvantage compared to developers that are not. These costs include: mitigation construction and installation, mitigation maintenance, mitigation monitoring, and mitigation reporting.

In Dakota Ranch's submitted Required Technical Report of March 8, 2005, it is estimated that the purchase price of the 0.27 acre site from the City of Santee to be \$8,640, and \$3,000 for the Property Analysis Record (PAR). The PAR analysis estimates that the up front cost for the long term management and maintenance of the mitigation site is \$148,655. A description of the activities and cost breakdown is contained in the PAR analysis. **See Exhibit No. 9, PAR Analysis.** This data was inserted into the U.S. EPA's model for calculating a violator's economic savings from delaying or avoiding pollution control expenditures. Dakota Ranch enjoyed an economic advantage of \$197,349 for failing to construct the mitigation, however if Dakota Ranch constructs the wetland, then they will have enjoyed an economic benefit of \$34,594.

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Other Matters That Justice May Require

Over the course of trying to resolve this matter with Dakota Ranch, the Regional Board invested an estimated 115 hours to investigate, prepare enforcement documents, and consider action at a cost of \$12,348.09 to the State of California.

4. Maximum Civil Liability Amount

Pursuant to CWC section 13385 the maximum civil liability that the Regional Board may assess is (a) ten thousand dollars (\$10,000) per day of violation (per violation); and (b) ten dollars (\$10) for every gallon discharged, over one thousand gallons discharged, that was not cleaned up. Section 13385(e) requires that, when pursuing civil liability under CWC section 13385, "At a minimum, liability shall be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute the violation."

Failure to Implement Required Mitigation

Mitigation was required to be constructed by September 30, 2004. To date, the mitigation has not been constructed. Therefore, the maximum liability that the Regional Board may assess for 1,021 days of violation and counting is \$10,210,000 (through July 18, 2007).

6. Proposed Civil Liability Per Violation

The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors listed in Water Code section 13385, as well as the maximum civil liability that the Regional Board may assess.

Failure to Implement Required Mitigation

The proposed liability is \$300 per day for 1,021 days and counting of violation resulting in a liability of \$306,300 and counting. However, if Dakota Ranch can complete the mitigation by September 6, 2007, then it is recommended that \$250 per day of liability be waived, resulting in a liability of \$50 per day of violation.

7. Total Proposed Administrative Civil Liability

The total proposed civil liability in this matter is \$306,300 and counting.

Exhibit No. 1
ACL Complaint No. R9-2005-0176



California Regional Water Quality Control Board San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
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May 27, 2005

CERTIFIED - RETURN RECEIPT REQUESTED
70042890000257992480

Mr. Russ Earnshaw
Dakota Ranch Development Co., LLC
2533 South Highway 101, Suite 240
Cardiff by the Sea, CA 92007

In reply refer to:
WPS:18-2002064:hammp

Dear Mr. Earnshaw:

Complaint No. R9-2005-0176 For Administrative Civil Liability Against Dakota Ranch Development Company, LLC for Violation of Section 401 Water Quality Certification, Dakota Ranch Subdivision, Santee, California

Enclosed find Administrative Civil Liability Complaint No. R9-2005-0176 (Complaint) against Dakota Ranch Development Company, LLC (Dakota Ranch) for the Dakota Ranch Subdivision located in Santee, California. The complaint in the amount of \$140,500 is for violation of the Section 401 Water Quality Certification issued January 30, 2003 for the Dakota Ranch Subdivision.

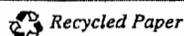
Be aware that Dakota Ranch may waive its right to a hearing before the California Regional Water Quality Control Board, San Diego Region (Regional Board). Waiver of the hearing constitutes admission of the validity of the allegation of the violation in the Complaint and acceptance of the recommended assessment of civil liability in the amount of \$140,500 as set forth in the Complaint. Please note that any waiver will not be effective until reasonable opportunity for public participation has been provided. The Regional Board will notify interested persons of any proposed settlement for the recommended liability and will solicit comments on the settlement for a period of thirty (30) days. In order for the Regional Board to accept the waiver of your right to a public hearing, Dakota Ranch must submit the following by 5:00 p.m., June 27, 2005:

1. The enclosed waiver form signed by an authorized agent of Dakota Ranch; and
2. A cashier's check for the full amount of civil liability of \$140,500.

Waivers submitted after June 27, 2005 will not be accepted.

If Dakota Ranch does not elect to waive its right to a public hearing, a hearing is tentatively scheduled to be held at the Regional Board meeting on August 10, 2005, at the Regional Board.

California Environmental Protection Agency



An agenda, with procedures for the hearing will be mailed to you not less than ten days before the hearing date. The meeting is scheduled to begin at 9:00 a.m.

If Dakota Ranch intends to present any written exculpatory evidence, or written evidence in mitigation at the hearing in response to Complaint No. R9-2005-0176, it must be received by 5:00 p.m., Wednesday July 27, 2005 in order to be considered by the Regional Board at the public hearing. Please submit twenty (20) copies of any response, including evidentiary exhibits. Copies of material submitted will be forwarded to the Regional Board members prior to the public hearing.

Please contact Phil Hammer at 858-627-3988 or phammer@waterboards.ca.gov or Stacey Baczkowski at 858-637-5594 or sbaczkowski@waterboards.ca.gov if you have questions concerning this matter.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:". In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Respectfully,


John H. Robertus
Executive Officer

Enclosures: 1. ACL Complaint No. R9-2005-0176
2. Waiver of Hearing Form

cc: John Richards, Office of Chief Council, State Water Resources Control Board, Sacramento
Oscar Balaguer, Section 401 Water Quality Certification, State Water Resources Control Board
Jeannette Baker, Army Corps of Engineers, San Diego
Douglas Williford, Director, Department of Development Services, City of Santee

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

IN THE MATTER OF:

DAKOTA RANCH DEVELOPMENT CO.,
LLC
DAKOTA RANCH SUBDIVISION
NONCOMPLIANCE WITH SECTION 401
WATER QUALITY CERTIFICATION

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COMPLAINT NO. R9-2005-0176
FOR
ADMINISTRATIVE CIVIL LIABILITY

May 27, 2005

**DAKOTA RANCH DEVELOPMENT CO., LLC IS HEREBY GIVEN NOTICE
THAT:**

1. Dakota Ranch Development Co., LLC (Dakota Ranch) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region may impose civil liability under section 13385 of the California Water Code.

ALLEGATION

2. Dakota Ranch failed to implement mitigation as required by Section 401 Water Quality Certification issued on January 30, 2003. To date, Dakota Ranch has not implemented the required mitigation. Dakota Ranch is in violation of Section 401 Water Quality Certification for 239 days as of May 27, 2005.

PROPOSED CIVIL LIABILITY

3. Based on consideration of the factors listed in section 13385 of the California Water Code, civil liability should be imposed on Dakota Ranch in the amount of \$140,500 for their violation.

Dated this 27th day of May 2005



John H. Robertus
Executive Officer



California Regional Water Quality Control Board San Diego Region



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WAIVER OF RIGHT TO A PUBLIC HEARING

Mr. Russ Earnshaw
Dakota Ranch Development Co., LLC
2533 South Highway 101, Suite 240
Cardiff by the Sea, CA 92007

Complaint No. R9-2005-0176
For
Administrative Civil Liability
\$140,500

Dakota Ranch Subdivision, Santee, California

By signing below, I agree to waive Dakota Ranch Development Co., LLC's right to a public hearing before the California Regional Water Quality Control Board, San Diego Region with regards to the violation alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I am authorized to give up Dakota Ranch Development Co., LLC's right to be heard, and to argue against the allegations made by the Executive Officer in the Complaint, and against the imposition of, or the amount of, the civil liability proposed. I have enclosed a cashier's check made payable to the State Water Resources Control Board for the civil liability imposed.

Signature

Title

Date

Print your name

Send this signed form and check to:
John H. Robertus, Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

California Environmental Protection Agency



Exhibit No. 2
Dakota Ranch Subdivision
401 Certification
File No. 02C-064



California Regional Water Quality Control Board

San Diego Region



Winston H. Hickox
Secretary for
Environmental
Protection

Internet Address: <http://www.swrcb.ca.gov/~rwqcb9/>
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972

Gray Davis
Governor

Action on Request for
Clean Water Act Section 401 Water Quality Certification
for Discharge of Dredged and/or Fill Materials

PROJECT: Dakota Ranch Subdivision (File No. 02C-064)

APPLICANT: Mr. Ken Gotthelf
Dakota Ranch Partners
1040 Loma Avenue
Coronado, CA 92118

ACTION:

1. Order for Standard Certification
2. Order for Technically-Conditioned Certification
3. Order for Denial of Certification

STANDARD CONDITIONS:

The following three standard conditions apply to all certification actions, except as noted under Condition 3 for denials (Action 3).

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 section 3867 of Title 23 of the California Code of Regulations (23 CCR).
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 subsection 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 non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

ADDITIONAL CONDITIONS:

1. Dakota Ranch Partners shall, at all times, fully comply with the engineering plans, specifications and technical reports submitted with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification.
2. Dakota Ranch Partners shall comply with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ (the NPDES General Permit for Storm Water Discharges Associated with Construction Activity) and implement the Stormwater Pollution Prevention Plan for Dakota Ranch dated January 20, 2003.
3. Each of the 20 residential properties shall contain biofilter swales located and constructed consistent with the Landscape Plan of Lots 8, 9, 10, 11 provided January 30, 2003 and Appendix A of the Stormwater Management, Stormwater Maintenance Plan and Drainage Report dated January 22, 2003. At a minimum, the biofilter swales shall be vegetated for their lengths which are located in the rear and front yards. All rooftop runoff shall be routed to the biofilter swales prior to discharge from the residence property to the street. Each biofilter swale shall be adequately sized so as to treat the runoff generated by the 85th percentile storm event for its tributary area. To ensure the continued existence of the biofilter swales after occupation of residences, the Codes, Covenants, and Restrictions (CC&Rs) for the residence properties shall prohibit alteration of drainage patterns on the residence properties.
4. All storm drain inlets on the project site shall contain Suntree Technologies catch basin insert baskets outfitted with storm boom hydrocarbon absorption devices. The baskets shall be adequately sized so as to treat the runoff generated by the 85th percentile storm event for their tributary areas. The baskets shall be installed per the manufacturer's specifications. Maintenance and cleaning of the baskets shall be conducted by the City of Santee.
5. Dakota Ranch Partners shall notify the San Diego Regional Water Quality Control Board (Regional Board) in writing at least 10 days prior to actual start dates for grading, mitigation installation, and completion of mitigation installation.
6. Dakota Ranch Partners shall submit a report (including topography maps) to the Regional Board within 90 days of completion of mitigation site preparation, describing as-built status of the mitigation project. If the site grading and hydroseeding are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.
7. The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if impacts occur in June 2001, construction of mitigation for all impacts must be completed no later than September 2002).

8. Dakota Ranch Partners shall notify the Regional Board of any change in ownership of the project area. Notification shall include, but not be limited to, a statement that the property owner has provided the purchaser with a copy of the Section 401 Water Quality Certification and that the purchaser understands the permit requirements and shall implement them; the seller and purchaser shall sign and date the notification. Notification shall be provided within 5 days of the sale of the property.
9. Mitigation monitoring reports shall be submitted annually until mitigation has been deemed successful. Monitoring reports shall be submitted no later than 30 days following the end of the monitoring period. Monitoring reports shall include, but not be limited to, the following:
 - a. Names, qualifications, and affiliations of the persons contributing to the report;
 - b. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
 - c. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
 - d. Photo-documentation from established reference points; and
 - e. Other items specified in the draft and final Conceptual Wetlands Mitigation and Monitoring Plan.
10. In the event the Army Corps of Engineers determines that waters of the United States are isolated, this certification is revoked and the Applicant will be required to submit a Report of Waste Discharge to the Regional Board, and receive Waste Discharge Requirements prior to project implementation.
11. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.
12. In response to a suspected violation of any condition of this certification, the Regional Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
13. In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

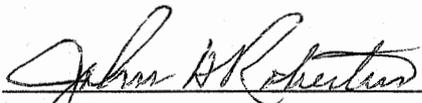
REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Phil Hammer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
858-627-3988

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Dakota Ranch Subdivision project (File No. 02C-064) 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. Although we anticipate no further regulatory involvement, should new information come to our attention that indicates a water quality problem, we may issue waste discharge requirements at that time.

Except insofar 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 applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).



John H. Robertus
Executive Officer
Regional Water Quality Control Board

1-30-03
Date

Attachments 1 and 2

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant: Mr. Ken Gotthelf
Dakota Ranch Partners
1040 Loma Avenue
Coronado, CA 92118
Phone: 858-455-1515 FAX: 858-546-9146
Email: KenGotthelf@Colliers.com

Applicant Representatives: Viviane Marquez
Marquez and Associates Biological Consultants
505 North Willowspring Drive
Encinitas, CA 92024
Phone: 760-633-3066 FAX: 760-633-3066
Email: ymarquez@cts.com

Project Name: Dakota Ranch Subdivision

Project Location: ✓ North of Princess Joann Road, east of the future extension of Cuyamaca Street, west of Keith Street in the City of Santee, CA. USGS El Cajon Quad at UTM: 11S:502,200mE; 3,363,000mN

Type of Project: ✓ Residential housing subdivision

Project Description: ✓ The project consists of brushing, grading, and filling to contour 6.17 acres and construction of 20 single family residences, including associated infrastructure.

Federal Agency/Permit: U.S. Army Corps of Engineers, Nationwide Permit 39, Rob Lawrence

Other Required Regulatory Approvals: Streambed Alteration Agreement, California Department of Fish and Game

California Environmental Quality Act (CEQA) Compliance: The City of Santee issued a Mitigated Negative Declaration (SCH # 2002081039) for the project on November 21, 2002.

Receiving Waters: ✓ Two unnamed tributaries to the San Diego River

Impacted Waters of the United States: ✓ Implementation of the proposed project will permanently impact 0.26 acres of unvegetated ephemeral streambed.

Dredge Volume: None

Related Projects Implemented/to be Implemented by the Applicant(s): None

Avoidance/Minimization Measures: None

Compensatory Mitigation: Impacts to waters of the U.S. will be mitigated as described in the Conceptual Wetlands Mitigation and Monitoring Plan for Dakota Ranch Partners Project, dated December 2002. The mitigation site is located within the project watershed adjacent to the San Diego River. Mitigation shall occur at a 1:1 ratio with creation of 0.26 acre of ephemeral stream channel.

Maintenance and monitoring of mitigation measures shall be conducted as described in the Conceptual Wetlands Mitigation and Monitoring Plan for Dakota Ranch Partners Project, dated December 2002.

Mitigation for upland impacts also includes preservation of riparian areas of the South Fork of the Sweetwater River.

Best Management Practices:

Erosion and sediment control best management practices (BMPs) shall be implemented during all construction activities in compliance with the General Statewide Construction Storm Water Permit (Order No. 99-08-DWQ) and the Stormwater Pollution Prevention Plan for Dakota Ranch dated January 20, 2003. Erosion and sediment control may include, but is not limited to, use of hydroseeding, mulching, matting, gravel bags, straw wattles, and silt fencing, and may involve gully repair, collection/retrieval of sediment, and re-seeding and/or replanting of disturbed areas.

Each of the 20 residential properties shall contain biofilter swales located and constructed consistent with the Landscape Plan of Lots 8, 9, 10, 11 provided January 30, 2003 and Appendix A of the Stormwater Management, Stormwater Maintenance Plan and Drainage Report dated January 22, 2003. At a minimum, the biofilter swales shall be vegetated for their lengths which are located in the rear and front yards. All rooftop runoff shall be routed to the biofilter swales prior to discharge from the residence property to the street. Each biofilter swale shall be adequately sized so as to treat the runoff generated by the 85th percentile storm event for its tributary area. To ensure the continued existence of the biofilter swales after occupation of residences, the Codes, Covenants, and Restrictions (CC&Rs) for the residence properties shall prohibit alteration of drainage patterns on the residence properties.

All storm drain inlets on the project site shall contain Suntree Technologies catch basin insert baskets outfitted with storm boom hydrocarbon absorption devices. The baskets shall be adequately sized so as to treat the runoff generated by the 85th percentile storm event for their tributary areas. The baskets shall be installed per the manufacturers specifications. Maintenance and cleaning of the baskets shall be conducted by the City of Santee.

**ATTACHMENT 2
DISTRIBUTION LIST**

Army Corps of Engineers
Regulatory Branch
16885 West Bernardo Drive Suite 300A
San Diego, CA 92127

Viviane Marquez
Marquez & Associates Biological Consultants
505 North Willowspring Drive
Encinitas, CA 92024

State Water Resources Control Board
Division of Water Quality

Exhibit No. 3
Marquez & Associates Letter
January 31, 2003

**MARQUEZ & ASSOCIATES
BIOLOGICAL CONSULTANTS**

505 North Willow Spring Drive - Encinitas, CA 92024 - (760) 633-3066

January 31, 2003

Mr. Phil Hammer

California Regional Water Quality Control Board
San Diego Region

9174 Sky Park Court, Suite 100
San Diego, CA 92123

Subject: Dakota Ranch Site: File # 02C-064 Section 401 Water Quality Technically-
Conditioned Certification

Dear Mr. Hammer:

Marquez & Associates Biological Consultants (Marquez & Associates) is writing to you on behalf of Dakota Ranch Development Co. LLC regarding the Dakota Ranch Subdivision (Dakota Ranch Site) File # 02C-064, Section 401 Water Quality Technically-Conditioned Certification.

We would like to inform you of a change in ownership of the Dakota Ranch Site. The new owner is

^{Dev.?}
Dakota Ranch Co. LLC
Stefan LaCasse
Vice-president
2533 South Highway 101, Suite 240
Cardiff by the Sea, 92007 CA
(760) 633-1050

The new owner has received a copy of the Section 401 Water Quality Certification, understands the permit requirements and shall implement them.

In addition we would like to provide notification of intent to conduct grading on the Dakota Ranch Property on February 9, 2003 or shortly thereafter. Thank you for your continued help on this project; if you have any questions or need further information, please call me at (760)633-3066.

Sincerely,

Viviane Marquez
Viviane Marquez

Stefan LaCasse
Stefan LaCasse

1/31/03
Date
1/31/03
Date

18-20020064

Exhibit No. 4
NOV No. R9-2005-0042



California Regional Water Quality Control Board San Diego Region



File

Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold
Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

January 25, 2005

Certified Mail: 7004 2510 0004 5831 1315

Mr. Russ Earnshaw
Dakota Ranch Development Co. LLC
2533 South Highway 101, Suite 240
Cardiff by the Sea, CA 92007

In reply refer to:
WPS:18-2002064.02:hammp

mg

RE: NOTICE OF VIOLATION AND REQUIRED TECHNICAL REPORT

Dear Mr. Earnshaw,

Enclosed is **Notice of Violation (NOV) No. R9-2005-0042** for the Dakota Ranch Subdivision project located in the City of Santee. The violations specified were identified by the California Regional Water Quality Control Board, San Diego Region (Regional Board) during an inspection of the Dakota Ranch Subdivision mitigation site on December 22, 2004. Mitigation requirements should be implemented immediately to address these violations.

Pursuant to California Water Code (CWC) section 13267, the Regional Board directs you to submit a Required Technical Report (RTR) to this office before 5:00 PM on March 8, 2005. The RTR is required due to the violation noted in the enclosed NOV and to ensure that impacts that were previously authorized and that have occurred are appropriately mitigated in a timely manner. The RTR will be reviewed to assess the need for further possible enforcement actions. The RTR shall include the following:

1. A detailed description (including photos) of the current status of the required mitigation for impacts which occurred to waters of the United States as part of the Dakota Ranch Subdivision project.

The submitted RTR shall include the following signed certification:

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.

California Environmental Protection Agency

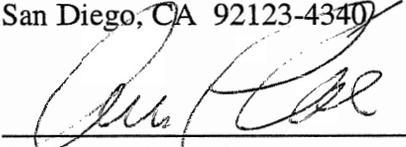
Recycled Paper



Failure to submit the above information by the date requested may result in the imposition of administrative civil liability pursuant to CWC sections 13268 and 13385. Questions pertaining to this Required Technical Report and the enclosed Notice of Violation should be directed to Phil Hammer at (858) 627-3988 or phammer@waterboards.ca.gov.

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to." In order to assist us in the processing of your correspondence, please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter. Written correspondence should be directed to the following address:

John H. Robertus
Executive Officer
Attn: Phil Hammer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340



John H. Robertus
Executive Officer

1125105

DATE

Attachments: Notice of Violation No. R9-2005-0042
Photos of Subject Site

CC: Ms. Jeanette Baker
United States Army Corps of Engineers
16885 West Bernardo Drive, Suite 300A
San Diego, CA 92127

Ms. Kelly Fisher
California Department of Fish and Game
4949 Viewridge Drive
San Diego, CA 92123

Mr. Kevin Mallory
City of Santee
10601 Magnolia Avenue
Santee, CA 92071



California Regional Water Quality Control Board San Diego Region



Alan C. Lloyd, Ph.D.
Secretary for
Environmental
Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
<http://www.waterboards.ca.gov/sandiego>

January 25, 2005

IN THE MATTER OF:)	NOTICE OF VIOLATION
)	NO. R9-2005-0042
Mr. Russ Earnshaw)	
Dakota Ranch Development Co. LLC)	CWA § 401 Water Quality
2533 South Highway 101, Suite 240)	Certification No.
Cardiff by the Sea, CA 92007)	02C-064
)	

Subject Site: Dakota Ranch Subdivision (File No. 02C-064)

YOU ARE HEREBY NOTIFIED THAT:

You are in violation of Clean Water Act § 401 Water Quality Certification No. 02C-064 for the Dakota Ranch Subdivision.

Such violation subjects you to possible enforcement action by the California Regional Water Quality Control Board, San Diego Region (Regional 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 or judicial proceedings for the assessment of civil liability; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

California Water Code (CWC) Section 13385 states, in part, "(a) Any person who violates any of the following shall be liable civilly in accordance with this section: (2) Any waste discharge requirements or dredged or fill material permit issued pursuant to this chapter or any water quality certification issued pursuant to Section 13160; (5) Any requirements of Section ... 401 ... of the Clean Water Act, as amended. (c) Civil liability may be imposed administratively by the state board or regional board pursuant to Article 2.5 of Chapter 5 in an amount not to exceed... (1) Ten thousand dollars (\$10,000) for each day in which the violation occurs."

On December 22, 2004, Regional Board staff inspected the mitigation area for the Dakota Ranch Subdivision project and observed, documented, and photo-documented that the required mitigation for the Dakota Ranch Subdivision project has not been constructed. Telephone conversations with Mr. Russ Earnshaw of Dakota Ranch Development Co. LLC, Ms. Jeanette Baker of the United States Army Corps of Engineers, and Mr. Kevin Mallory of the City of Santee further confirmed that the required mitigation for the Dakota Ranch Subdivision has not been constructed.

I. SUMMARY OF VIOLATION

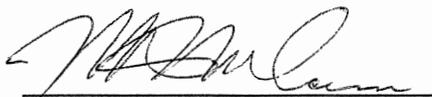
A. Failure to Implement Compensatory Mitigation

You failed to implement Additional Condition No. 7 of CWA § 401 Water Quality Certification No. 02C-064, which states: "The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if impacts occur in June 2001, construction of mitigation for all impacts must be completed no later than September 2002)."

Observation: According to the January 31, 2003 letter from Viviane Marquez, Ken Gotthelf, and Stefan LaCasse, impacts for the Dakota Ranch Subdivision project began in February of 2003. Therefore, pursuant to Additional Condition No. 7, the mitigation should have been completed by September 2004. Mitigation is currently not complete and has not yet begun.

Questions pertaining to the issuance of this Notice of Violation should be directed to Mr. Phil Hammer at 858-627-3988. If you feel you received this Notice of Violation in error or need clarification on any of the above violations, please contact our office immediately. Written correspondence pertaining to this Notice should be directed to the following address:

Michael P. McCann
Supervising Engineer
Attn: Phil Hammer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123



Michael P. McCann
Supervising Water Resource Control Engineer

STREET 1453
TELEPHONE 4000
STREET 1453
TELEPHONE 4000
STREET 1453
TELEPHONE 4000

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OFFICIAL USE

Postage	\$ 1.60
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 4.65

Postmark
Here

Sent To Russ Earnshaw
 Street, Apt. No.,
 or PO Box No. 2533 South Highway 101, Ste 101
 City, State, ZIP+4 Cardiff by the Sea, CA 92027

PS Form 3800, June 2002
See Reverse for Instructions

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
 Addressee

B. Received by (Printed Name) _____ C. Date of Delivery _____

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

W sp Co. LLC

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

Restricted Delivery? (Extra Fee) Yes

2510 0004 5831 1315



Home

Track & Confirm

Current Status

You entered 7004 2510 0004 5831 1315

Your item was delivered at 11:00 am on January 28, 2005 in CARDIFF BY THE SEA, CA 92007.

Notification Options

▶ Track & Confirm by email [What is this?](#) [Go >](#)

Track & Confirm

Enter label number:

[Go >](#)

[Track & Confirm FAQs](#) [Go >](#)



POSTAL INSPECTORS
Preserving the Trust

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P. Hammer

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p><i>[Signature]</i></p>	
<p>1. Article Addressed to:</p> <p>Mr. Russ Earnshaw Dakota Ranch Devlp Co. LLC 2533 South Highway 101 Ste. 240 Cardiff by the Sea CA 92027</p>	<p>B. Received by (Printed Name)</p> <p><i>PAISOPP</i></p>	<p>C. Date of Delivery</p> <p><i>1-28</i></p>
<p>2. Article Number (Transfer from service label)</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>PS Form 3811, February 2004</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>	
<p>7004 2510 0004 5831 1315</p>		

* Letter not in basket

Exhibit No. 5
December 22, 2004
RB Inspection Report

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD SAN DIEGO REGION
WATERSHED MANAGEMENT PROGRAM

FACILITY INSPECTION REPORT

INSPECTION DATE: 12/22/04 TIME: 1030 WDID: 02C-064

FACILITY REPRESENTATIVE(S) PRESENT DURING INSPECTION: NONE

DAKOTA RANCH CO. LLC
NAME OF OWNER, AGENCY OR PARTY RESPONSIBLE FOR DISCHARGE

STEFAN LACASSE
OWNER CONTACT NAME AND PHONE #

DAKOTA RANCH SUBDIVISION
FACILITY OR DEVELOPER NAME (if different from owner)

-
FACILITY OR DEVELOPER CONTACT NAME AND PHONE #

END OF PRINCESS JOANNE ST.
FACILITY STREET ADDRESS

SANTEE, CA
FACILITY CITY AND STATE

APPLICABLE WATER QUALITY LICENSING REQUIREMENTS

- MS4 URBAN RUNOFF REQUIREMENTS NPDES NOS. CAS0108758, CAS0108740 or CAS0108766
- GENERAL PERMIT ORDER NO. 99-08-DWQ, NPDES NO. CAS000002 - CONSTRUCTION
- GENERAL PERMIT ORDER NO. 99-06-DWQ, NPDES NO. CAS000003 - CALTRANS
- GENERAL OR INDIVIDUAL WASTE DISCHARGE REQUIREMENTS
- GENERAL OR INDIVIDUAL WAIVER OF WASTE DISCHARGE REQUIREMENTS
- SECTION 401 WATER QUALITY CERTIFICATION
- CWC SECTION 13264

INSPECTION TYPE (Check One)

- A1 "A" type compliance--Comprehensive inspection in which samples are taken. (EPA Type S)
- B1 "B" type compliance--A routine nonsampling inspection. (EPA Type C)
- 02 Noncompliance follow-up--Inspection made to verify correction of a previously identified violation.
- 03 Enforcement follow-up--Inspection made to verify that conditions of an enforcement action are being met.
- 04 Complaint--Inspection made in response to a complaint.
- 05 Pre-requirement--Inspection made to gather info. relative to preparing, modifying, or rescinding requirements.
- 06 No Exposure Certification (NEC) - verification that there is no exposure of industrial activities to storm water.
- 07 Notice of termination request for industrial facilities or construction sites - verification that the facility or construction site is not subject to permit requirements (Type, NOT I or NOT C - circle one).
- 08 Compliance Assistance Inspection - Outreach inspection due to discharger's request for compliance assistance.

INSPECTION FINDINGS

- Y Were violations noted during this inspection? (Yes/No/Pending Sample Results)
- N Were samples taken? (N=no) If YES then, G= grab or C= Composite and attach a copy of the sample results/chain of custody form

I. COMPLIANCE HISTORY:

N/A

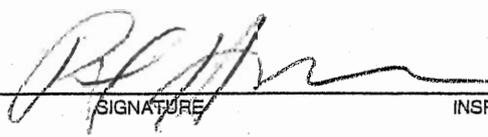
FACILITY: DAKOTA RANCH SUBDIVISION (WDID) 026-064 INSPECTION DATE: 12/22/04

II. FINDINGS

- ① VISITED MISTY PARK IN SANTEE, WHERE MITIGATION WAS TO OCCUR. FOUND ACCESS ROAD TO LOWE'S MITIGATION, WHICH IS ADJACENT TO PROPOSED MITIGATION AREA FOR DAKOTA RANCH. LOWE'S MITIGATION WAS IN PLACE & RELATIVELY HEALTHY. SEARCHED FOR DAKOTA RANCH MITIGATION ADJACENT TO LOWE'S MITIGATION. USING LANDMARKS SUCH AS LARGE TREES, PACED OFF DISTANCES TO IDENTIFY PROPOSED MITIGATION AREA. FOUND RUDERAL AREA WHERE MITIGATION WAS TO OCCUR. NO GRADING OR CHANNEL WAS OBSERVED. NO RE-VEGETATION WAS OBSERVED. MITIGATION DOES NOT APPEAR TO HAVE BEEN CONDUCTED.
- ② VISITED PROJECT SITE TO INSPECT POST-CONSTRUCTION BMPs. ALMOST ALL YARDS HAVE SWALES IN PLACE. MOST ROOFTOP RUNOFF DOWNSPOUTS DRAIN TO PERMITTED AREAS, THOUGH SOME SEEM TO HAVE BEEN CONNECTED TO YARD DRAINS BY RESIDENTS. CATCH BASIN INLET FILTERS IN STREET ARE IN PLACE & WELL-MAINTAINED. IMPACTS WERE RESTRICTED TO PERMITTED AREAS.

III. SIGNATURE SECTION

PAUL HAMMER
STAFF INSPECTOR


SIGNATURE

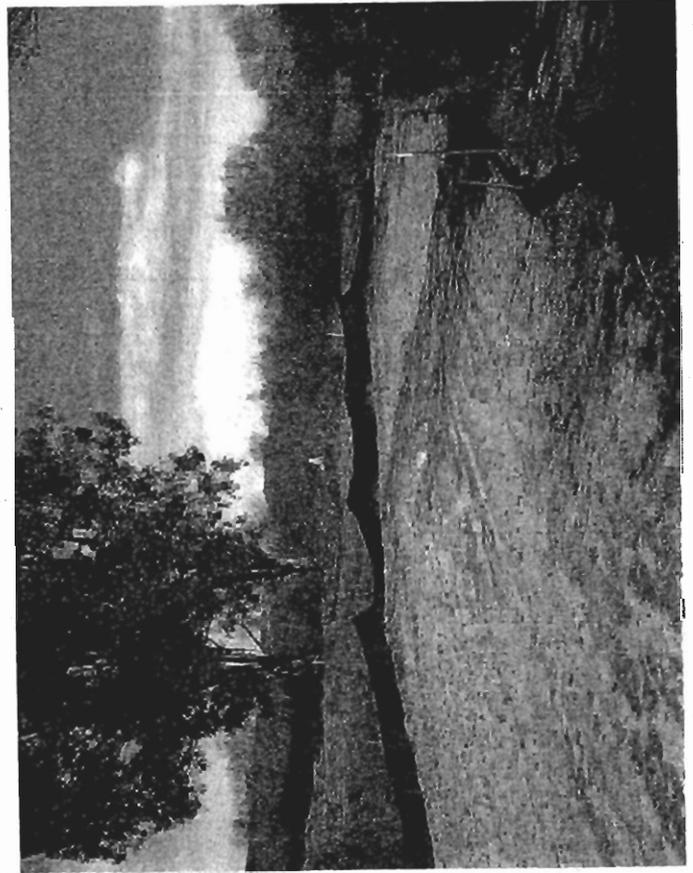
12/22/04
INSPECTION DATE

IV. (For internal use only)

Reviewed by Supervisor: <u>Shea/Roe/Leone</u>	Date <u>12/23/04</u>
cc: Jeremy Johnstone (EPA), John Norton (SWRCB), City	Storm Drain Enforcer
Inter-office Referral: 1) _____ 2) _____ 3) _____ 4) _____ 5) _____	



1. Lowe's mitigation area.



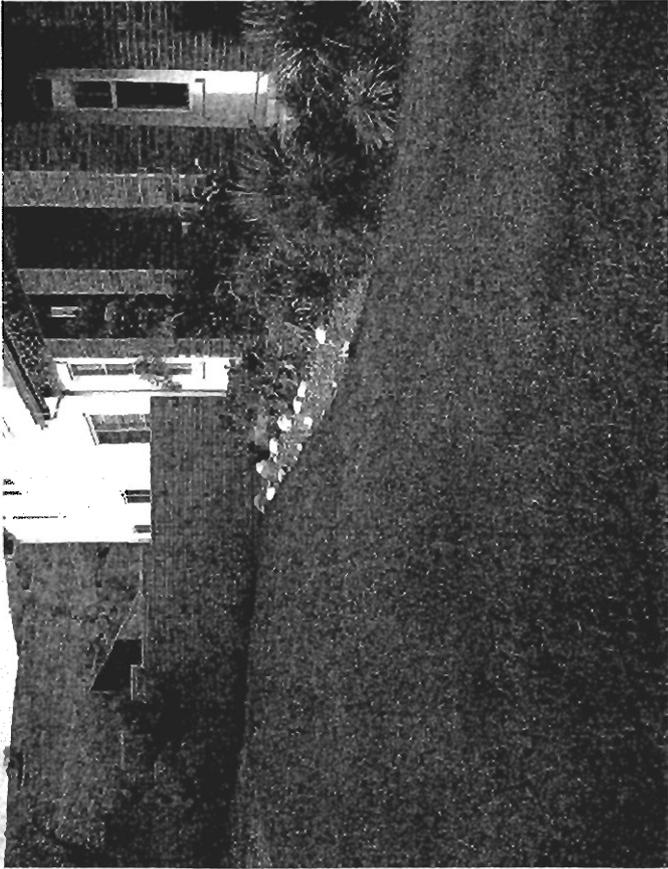
2. Access road to Lowe's mitigation area.



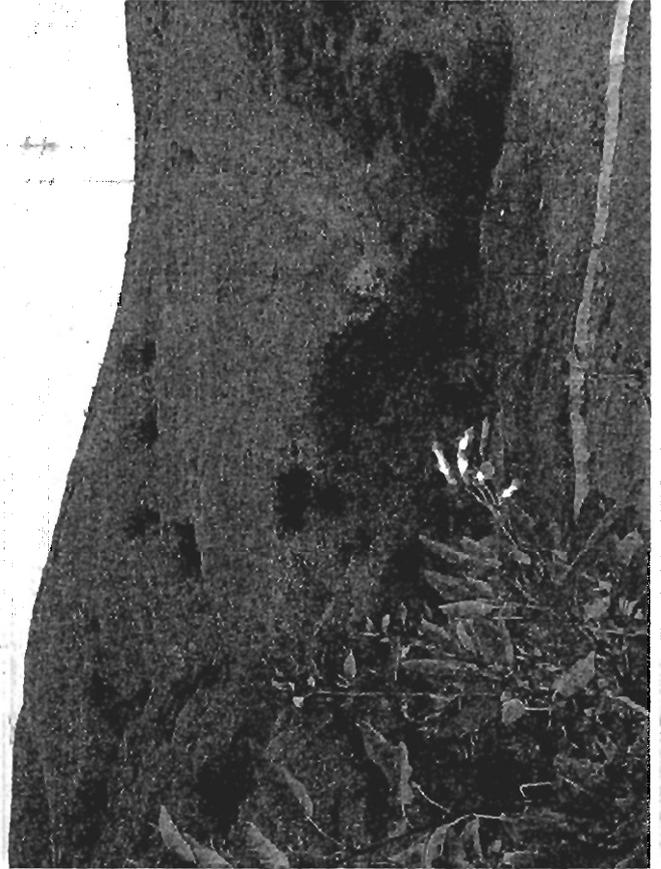
3. Ruderal area proposed for Dakota Ranch mitigation.



4. Ruderal area proposed for Dakota Ranch mitigation.



5. Swale at residence.



6. Creek upstream of impact area.

Exhibit No. 6
July 21, 2005
Luce Forward Letter

LUCE FORWARD

ATTORNEYS AT LAW • FOUNDED 1873
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

STEPHEN L. MARSH, PARTNER
DIRECT DIAL NUMBER 619.699.2418
DIRECT FAX NUMBER 619.645.5363
EMAIL ADDRESS SMARSH@LUCE.COM

600 West Broadway
Suite 2600
San Diego, CA 92101
619.236.1414
619.232.8311 fax
www.luce.com

29133-00013

July 21, 2005

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: *Dakota Ranch Development Company, LLC*
ACL Complaint No. R9-2005-0176
WPS: 18-2002064: hamm

Dear John:

I am writing on behalf of Dakota Ranch Development Company, LLC to request a continuance of the hearing on the above matter which is currently tentatively scheduled for August 10, 2005.

As was discussed during our meeting on Monday, July 18, 2005, with Stacey Baczkowski and Phil Hammer, the primary proposes for this request for continuance are to avoid the need for multiple hearings and to permit respondent to focus its limited resources on completing the requirements of the permit, first, before spending them on defense of this ACL proceeding.

As we explained to staff, this mitigation project originally planned to utilize the services of The Environmental Trust for the perpetual maintenance of the site following implementation of the five year Conceptual Wetlands Mitigation and Monitoring Plan previously approved. However, we are informed that The Environmental Trust has financial difficulties that has rendered it unable to accept the project.

Dakota Ranch is now in the process of seeking an acceptable alternative mechanism to endow the perpetual maintenance requirement of the permit. We seek a 30- to 60-day continuance of the hearing.

During the period of continuance, Dakota Ranch will perform the following steps:

1. Obtain proposals from one or more land management trusts to ensure the perpetual maintenance of the mitigation parcel. We expect to receive an updated Property Analysis Record ("PAR") from Helix Community Conservancy within ten days.

Mr. John H. Robertus
July 21, 2005
Page 2

2. Obtain confirmation from the U.S. Army Corps of Engineers that the new proposal is acceptable.
3. Coordinate with the City of Santee regarding transfer of the previously selected property.
4. Coordinate with owners of neighboring mitigation properties as necessary concerning easements, access and coordinated reporting.
5. Meet with Regional Board staff regularly to keep the Board informed of our progress.

It is our hope and intent to complete the required mitigation as expeditiously as possible. Once that is accomplished, we would like to meet with staff to attempt to negotiate and resolve the issue of penalties without the need for a formal hearing. If the continuance is granted, Dakota Ranch Development Company, LLC hereby waives its right to require that the hearing be held within 90 days of the issuance of the ACL Complaint pursuant to Water Code Section 13323(b).

Thank you for your cooperation in this matter. If you have any questions concerning any of the above, please do not hesitate to contact me.

Sincerely,



Stephen L. Marsh
of
Luce, Forward, Hamilton & Scripps LLP

SLM:rj

cc: Mr. Mark Alpert
John Richards, Esq.
Mr. Russ Earnshaw

2090206.1

Exhibit No. 7
October 23, 2006
Luce Forward Letter

LUCE FORWARD
ATTORNEYS AT LAW • FOUNDED 1873
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD
2006 OCT 24 A 11: 27

600 West Broadway
Suite 2600
San Diego, CA 92101
619.236.1414
619.232.8311 fax
www.luce.com

STEPHEN L. MARSH, PARTNER
DIRECT DIAL NUMBER 619.699.2418
DIRECT FAX NUMBER 619.645.5363
EMAIL ADDRESS SMARSH@LUCE.COM

29133-00013

October 23, 2006

Mr. John H. Robertus
Executive Officer
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123

Re: *Dakota Ranch Development Company, LLC*
ACL Complaint No. R9-2005-0176
WPS: 18-2002064

Dear John:

I am writing on behalf of Dakota Ranch Development Company, LLC to request a continuance of the hearing on the above matter which is currently tentatively scheduled for November 8, 2006.

As I discussed with Frank Melbourn during our telephone conversation of October 19, 2006, the primary decision maker for the company, Mr. Charlie Tourtellotte, will be out of the country until after November 9, 2006. Also, as was discussed during our previous meeting with staff, the reasons for this request for continuance include to avoid the need for multiple hearings and to permit respondent to focus its limited resources on completing the requirements of the permit, first, before spending them on defense of this ACL proceeding.

As we explained to staff, this mitigation project originally planned to utilize the services of The Environmental Trust for the perpetual maintenance of the site following implementation of the five year Conceptual Wetlands Mitigation and Monitoring Plan previously approved. However, we are informed that The Environmental Trust has financial difficulties that has rendered it unable to accept the project.

Dakota Ranch is now in the process of seeking an acceptable alternative mechanism to endow the perpetual maintenance requirement of the permit. We seek a 60- to 90-day continuance of the hearing.

During the period of continuance, Dakota Ranch will perform the following steps:

1. Complete management agreement with Helix Community Conservancy to ensure the perpetual maintenance of the mitigation parcel.

LUCE FORWARD

ATTORNEYS AT LAW • FOUNDED 1873
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

Mr. John H. Robertus

October 23, 2006

Page 2

2. Coordinate with the City of Santee regarding transfer of the previously selected property and completion of the conservation easement.
3. Coordinate with owners of neighboring mitigation properties as necessary concerning easements, access and coordinated reporting.
4. Meet with Regional Board staff regularly to keep the Board informed of our progress.

It is our hope and intent to complete the required mitigation as expeditiously as possible. Once that is accomplished, we would like to meet with staff to attempt to negotiate and resolve the issue of penalties without the need for a formal hearing. If the continuance is granted, Dakota Ranch Development Company, LLC hereby waives its right to require that the hearing be held within 90 days of the issuance of the ACL Complaint pursuant to Water Code Section 13323(b).

Thank you for your cooperation in this matter. If you have any questions concerning any of the above, please do not hesitate to contact me.

Sincerely,



Stephen L. Marsh

of

Luce, Forward, Hamilton & Scripps LLP

SLM:rj

cc: Mr. Frank Melbourn
Mr. Mark Alpert
John Richards, Esq.
Mr. Jeff Shieferstein

3756044.1

Exhibit No. 8
Dakota Ranch Letter
January 29, 2007

2533 S. HWY. 101, ST. 240
CARDIFF BY THE SEA, CA 92007
(760) 633-1050 – PH.
(760) 633-1018 - FAX

**DAKOTA RANCH
DEVELOPMENT
CO., LLC.**

Frank Melbourne
Water resource Control engineer
California regional Water Quality Control Board
San Diego region
9174 Sky Park Court, Suite 100
San Diego, Ca. 92123-4340

January 29, 2007

RE: NOTICE OF VIOLATION (NOV) No. R9-2005-0042

Dear Mr. Melbourne,

Please use this letter as a written request to postpone the hearing scheduled for March 14, 2007. We have made substantial progress in the past few months, and anticipate having everything wrapped up shortly.

1. We have acquired the right to access the mitigation site through a private home site by use of a temporary access easement. This easement will cost us \$3,500.00 and some brush removal from the existing homeowner's yard.
2. The City attorney has agreed to help us in gaining the grading permit prior to the Conservation Easement being accepted. Originally, the Conservation Easement was required to be completed prior to the release of the grading permit. The Grading permit number was required on the Conservation Easement prior to the City accepting it. This created a "catch 22" situation, which is now being pushed forward.
3. In the past, the City has required the endowment to be funded prior to the grading permit being issued, but Helix does not want to take control of the money until 2009, concurrent with the Lowe's Endowment funding. Both The Conservation Easement and the PAR have called for this funding in 2009, and Helix is adamant that this is to occur simultaneously. Our attorney is still in talks with the City attorney regarding this matter.

Once the grading permit is issued and the CE and MA have been approved by the City and Helix, we believe the physical work can be started and completed within 30 days. Please feel free to call me with any questions at (760) 633-1050 ext. 16.

Thank you,

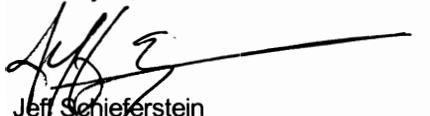

Jeff Schieferstein
Vice President, Managing Member,
Dakota Ranch Development Co., LLC

Exhibit No. 9
PAR Analysis

PROPERTY ANALYSIS RECORD (PAR) for
DAKOTA RANCH, SANTEE
Revised February 14, 2005

A Property Analysis Record (PAR) has been prepared for Dakota Ranch Development Company, LLC (Dakota Ranch), in accordance with the provisions in the February 3, 2004 PAR contract with the Helix Community Conservancy (HCC). The purpose of the PAR is to identify the tasks and costs associated with the long-term management and maintenance of a 0.27-acre conservation easement property located within the limits of Mast Park in the City of Santee.

This PAR includes Initial & Capital Tasks and Costs, as well as long-term Ongoing Tasks and Costs associated with managing the conservation easement (hereinafter referred to as "CE") in perpetuity. The costs were estimated utilizing the Center for Natural Lands Management PAR software, PAR System Version 2.0. The complete PAR data and cost sheets are provided in Attachment A. The sources utilized in preparing this PAR include the following:

- Mitigation Construction Plans for Dakota Ranch Co., LLC at Mast Park Santee, California, prepared by Dudek & Associates, (undated).
- Draft Conservation Easement document, January 13, 2004 (Template based upon the CE document being prepared for the adjacent Lowe's HIW conservation easement.)
- Draft Management Agreement (Template based upon the MA being prepared for the adjacent Lowe's HIW conservation easement.)
- Department of the Army (ACOE) 404 Permit 200201095-JMB, March 6, 2003.
- U.S. Fish and Wildlife Service 4(d)/HLP letter of concurrence, February 20, 2003.
- California Regional Water Quality Control Board 401 Water Quality Certification, January 30, 2003.
- California Department of Fish and Game 1603 Streambed Alteration Agreement R5-2002-0188, July 18, 2003.

The PAR has been organized into the following categories:

- Initial & Capital Tasks and Costs
- Ongoing Annual Tasks and Costs
- Financial Summary
- Additional PAR Assumptions

INITIAL & CAPITAL TASKS AND COSTS

\$14,083.00

The task and cost breakdown is provided in Attachment A, Section 8.

Assumptions for Initial & Capital Tasks and Costs

1. Property inspection to occur after wetlands mitigation phase is completed. HCC Executive Director of Land Stewardship and Habitat Manager to attend.
2. Legal Assistance for HCC attorney review of CE document.
3. Database Management: File set up in HCC file management system (Erlor's LandSteward).
4. Operations costs associated with CE document review, signature and recording, endowment processing and accounting file setup.
5. Includes costs for first year of active habitat management.
6. Contingency of 10%.
7. Administrative cost of 20%.

ONGOING ANNUAL TASKS AND COSTS

\$5,937.00

The task and cost breakdown is provided in Attachment A, Section 9.

Assumptions for Ongoing Tasks and Costs

1. The gate located at the primary construction access point off of Willow Grove Court will initially be installed by the restoration team for the adjacent Lowe's HIW conservation easement. Access to the Dakota Ranch CE will be from this primary access point.
2. Trash and debris removal, exotics removal, reseeding/cuttings labor included in hours for "Exotic Plant Control". Assumes five site visits per year, three hours per visit, and a team of five (Habitat Manager and four crew members). The site visits will occur in conjunction with site visits to the adjacent Lowe's HIW CE. HCC will install two CE signs around the easement to alert the public of the conservation efforts. Replacement of CE signs assumes two signs every two years and is included in yearly team visits. Trash and debris will be removed by hand and hauled by use of burlap bags. Five visits per year is based upon current knowledge of encampment history on the property and average climate conditions (e.g., unusually high use of property illegally for encampment purposes is not assumed and unusual climate conditions such as continuous years of heavy rain/flood conditions is also not assumed.)
3. One community outreach meeting per year attended by Habitat Manager, if deemed necessary. This meeting will be combined with the annual meeting proposed for the adjacent Lowe's HIW CE. The meeting will be held on-site with surrounding residence owners. Advertisement for the meeting will be accomplished by distribution of fliers to surrounding residences and limited to properties fronting Willowgrove Avenue, Willowgrove Court, Willowgrove Circle and Willowgrove Place.
4. Annual site survey by Habitat Manager to visually inspect site, conduct photo documentation, and prepare annual report for file (available to ACOE, USFWS or CDFG upon request).
5. Contingency of 10%.
6. Administrative cost of 20%.

FINANCIAL SUMMARY (Refer also to Attachment A, Section 10)

Initial Financial Requirements	\$ 14,083.00
Annual Ongoing Financial Requirements – \$5,937.00*	
Endowment to Provide Income of \$5,937.00**	\$131,933.00
Emergency and Legal Defense Fund (2%)	\$ 2,639.00
Total Contribution	\$148,655.00

- * The labor rates included in the Annual Ongoing Financial Requirements assume HCC receives the Endowment in approximately five years from now.
- ** Assumes a 4.5% capitalization rate.

ADDITIONAL PAR ASSUMPTIONS

1. The PAR may need to be revised based upon: the final, approved construction drawings for the wetlands mitigation; the final Conservation Easement document; and the final Management Agreement.
2. This PAR assumes some cost savings assuming stewardship tasks will occur in conjunction with the stewardship activities for the adjacent Lowe's HIW CE.