



California Regional Water Quality Control Board San Diego Region



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**Certified Mail Nos. 7005 1160 0004 6026 6697 and
7004 2890 0002 6407 5480
(return receipts requested)**

October 4, 2005

In reply, refer to:
WPN:18-2004043.02:haasj

Jason Michael
Dendy Real Estate & Investment Company, Inc.
27368 Via Industria, Suite 105
Temecula, CA 92590

And

Thomas Williams, Manager
Palmilla, LLC
41975 Winchester Road
Temecula, Ca 92590

**CLEANUP AND ABATEMENT ORDER NO. R9-2005- 0259
PALMILLA, LLC (CITY OF MURRIETA CONDITIONAL USE PERMIT NO. 02-401)
PROJECT LOCATION: NORTHWEST CORNER OF JACKSON AVENUE AND NUTMEG
STREET, CITY OF MURRIETA, CALIFORNIA, APN 949-020-037**

Dear Sirs:

Enclosed is California Regional Water Quality Control Board, San Diego Region (Regional Board) Cleanup and Abatement Order (CAO) No. R9-2005-0259 concerning unauthorized discharges of fill material into an unnamed waters of the State in the City of Murrieta (Santa Margarita Hydrologic Unit).

The CAO is issued pursuant to California Water Code section 13304 and directs you to clean up all wastes and abate the effects associated with the discharges from the proposed project known as Palmilla, LLC, City Of Murrieta Conditional Use Permit No. 02-401. The project is located at the northwest corner of Jackson Avenue and Nutmeg Street in the City of Murrieta, California, APN 949-020-037. Please note the deadlines contained within the CAO. Failure to meet the deadlines may subject you to further enforcement action by the California Regional Water Quality Control Board, San Diego Region, including administrative or judicial proceedings for the assessment of civil liability in amounts of up to \$10,000 per day; referral to the State Attorney General for injunctive relief; and, referral to the District Attorney for criminal prosecution.

California Environmental Protection Agency

You may contest the issuance of this CAO by requesting a public hearing on the matter before the Regional Board. In order to schedule a hearing meeting, this office must receive a written request no later than 5 PM on October 14, 2005. The next scheduled meeting of the Regional Board is November 9, 2005. Be aware that a request for a hearing does not stay any of the deadlines in the CAO.

I strongly urge a prompt and complete response to each directive in the CAO. Please contact Jeremy Haas at (858) 467-2735 or jhaas@waterboards.ca.gov if you have any questions regarding 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
San Diego Regional Water Quality Control Board

JHR:rwm:jch

CIWQS Party ID Nos. 35332 and 53085

cc:

Robert Smith, U.S. Army Corps of Engineers; San Diego Field Office
Jeff Brandt, California Department of Fish and Game; Eastern Sierra Inland Deserts Region (R6);
3602 Inland Empire Boulevard, Suite C-220; Ontario, CA 91764
Samuel Reed, Principal, Teracor Resource Management; 28999 Old Town Front Street, Suite
202; Temecula, CA 92590
Jim Holston, City of Murrieta; 26442 Beckman Court; Murrieta, CA 92562
Kelli Jones; Dendy Real Estate & Investment Company, Inc.; 27368 Via Industria, Suite 105
Temecula, CA 92590

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

CLEANUP AND ABATEMENT ORDER NO. R9-2005-0259

FOR

**PALMILLA, LLC
41975 WINCHESTER ROAD
TEMECULA, CA 92590**

AND

**DENDY REAL ESTATE AND INVESTMENT COMPANY, INC.
27368 VIA INDUSTRIA, SUITE 105
TEMECULA, CA 92590**

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

1. Palmilla, LLC owns a 14-acre parcel located in the County of Riverside, within the municipality of Murrieta. The site is located at the northwest corner of Jackson Avenue and Nutmeg Street (APN 949-020-037), within the incorporated boundaries of the City of Murrieta (Conditional Use Permit No. 02-401). The site is located in the Murrieta Hydrologic Area (902.30) of the Santa Margarita Hydrologic Unit (902) as described in the "Water Quality Control Plan, San Diego Basin (9)" (hereinafter Basin Plan).
2. An unnamed creek and unnamed tributary are identified on the parcel described in Finding No. 1 in biological surveys conducted on the parcel in 2000 by TeraCor Resource Management (*Presence/Absence Report for the Quino Checkerspot Butterfly, June 2000* and *Presence/Absence Report for the Coastal California Gnatcatcher, November 2000*) and in the *Borrow Site Grading Plan* submitted to the State Water Resources Control Board with a Notice of Intent (dated May 24, 2000) for coverage under the Statewide General Construction NPDES stormwater permit (Order No. 99-08-DWQ). 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), Industrial Process Supply (PROC), Ground Water Recharge (GWR), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Wildlife Habitat (WILD), and the following potential beneficial use: Contact Water Recreation (REC-1).

3. On May 30, 2000 Palmilla LLC, submitted a Notice of Intent with the State Water Resources Control Board for coverage under the Statewide General Construction NPDES stormwater permit (Order No. 99-08-DWQ) for the parcel described in Finding No. 1.
4. Prior to April 5, 2004, Palmilla LLC and Dendy Real Estate & Investment Company, Inc., caused and/or permitted the clearing of vegetation, grading and the discharge of fill into the unnamed creeks. These activities have realigned and reduced area available for surface flows and eliminated the ability of the creek to support water quality functions impacting beneficial uses in violation of Waste Discharge Prohibition No. 1 of the Basin Plan.
5. Prior to April 5, 2004, Palmilla LLC and Dendy Real Estate & Investment Company, Inc., caused and/or permitted the discharge of pollutants and/or fill to waters of the United States without authorization of a dredged or fill material permit (subject to the exemption described in California Water Code Section 13376) in violation of Waste Discharge Prohibition No. 3 of the Basin Plan.
6. Palmilla LLC and Dendy Real Estate & Investment Company, Inc., failed to file a report of waste discharge and 401 Water Quality Certification application with the Regional Board prior the discharge of wastes/pollutants to waters of the United States/waters of the state in violation of California Water Code Section 13376. Section 13376 states in part that any person discharging pollutants or fill material to navigable waters of the United States shall file a report of the discharge in compliance with Section 13260 requirements. Section 13260 requires that any person discharging waste that could affect the quality of waters of the state shall file a report of the discharge.
7. On April 5, 2004 the California Regional Water Quality Control Board, San Diego Region, received an application for Section 401 Water Quality Certification from Teracor Resource Management acting as agent to Dendy Real Estate & Investment Company, Inc., for activities involving the permanent discharges of fill to 0.09 acres of jurisdictional waters associated with a project referred to as Palmilla, LLC, City Of Murrieta Conditional Use Permit No. 02-401 on the parcel described in Finding No. 1. This application noted that the on-site waters of the U.S./State were filled and realigned subsequent to receipt of a Grading Permit from the City of Murrieta in June 2000.
8. On April 9, 2004 the Regional Board issued Notice of Violation No. R9-2004-0109 to Dendy Real Estate, Inc. for violations of California Water Code Section 13260 & 13376 and the water quality control plan, San Diego Basin, for failure to file a report of waste discharge and 401 Water Quality Certification application with the Regional Board prior to the discharge of wastes/pollutants to waters of the United States/waters of the state on the parcel described in Finding No. 1.

9. On June 10, 2004 supplemental information provided to support the application for Section 401 Water Quality Certification for the proposed project revised the estimated impacted drainage length on site to 1,045 linear feet (0.05 acre).
10. On June 23, 2004, pursuant to 23 CCR § 3836(b) and (c), the application for Section 401 Water Quality Certification for the proposed project was denied without prejudice for lack of supplying supplemental information that had been requested and for lack of a final CEQA documentation.
11. On April 6, 2005 the Regional Board inquired by email correspondence to Dendy Real Estate & Investment Company, Inc., and its agents regarding the status of the proposed project and a timeline for providing supplemental information and completing proposed mitigation.
12. On August 8, 2005 the Regional Board notified by email correspondence to Dendy Real Estate & Investment Company, Inc. and its agent that no project revision submittals had been provided since September 7, 2004, and that the Regional Board would consider the existing section 401 application as effectively expired on September 15, 2005 unless project deficiencies had been satisfactorily addressed. No response has been received to date.
13. The State Water Resources Control Board has notified Palmilla, LLC that it is delinquent in submitting annual fees related to the General Construction NPDES Storm Water requirements for the subject site (WDID no. 9 33C31307, invoice no. 0432118 dated April 7, 2005).
14. An active restoration effort is needed to restore water quality functions and beneficial uses and to protect the unnamed creek and its tributary from long-term, adverse consequences of the discharge and related earth-moving and vegetation clearing activities on the parcel described in Finding No. 1.
15. 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.
16. 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 and Section 13267 of Division 7 of the California Water Code:

1. Palmilla LLC and Dendy Real Estate & Investment Company, Inc. shall forthwith initiate efforts to cleanup and abate the effects of the unauthorized discharge of waste to waters of the State by restoring the beneficial uses associated with the impacted waters of the State on the site (parcel located at the northwest corner of Jackson Avenue and Nutmeg Street (APN 949-020-037), City of Murrieta, California.
2. Palmilla LLC and Dendy Real Estate & Investment Company, Inc. shall forthwith comply with all requirements of the General Permit for Storm Water Discharges Associated with Construction Activity, Order No. 99-08-DWQ.
3. By January 31, 2006 Palmilla LLC and Dendy Real Estate & Investment Company, Inc. shall have completed on-site restoration of no less than 1,045 linear feet of wetlands/waters of the State.
4. By March 1, 2006, in addition to the on-site restoration required by this Order, Palmilla LLC and Dendy Real Estate & Investment Company, Inc. shall provide no-less than 0.50 acres of off-site waters of the State mitigation (restoration or creation) within the Santa Margarita Hydrologic Unit.
5. By January 31, 2006 Palmilla LLC and Dendy Real Estate & Investment Company, Inc. shall submit a report that documents that the required on-site abatement actions have been taken and that all necessary approvals for the on-site cleanup and restoration work were obtained, provide a description of actions taken to achieve directive no. 4, 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.

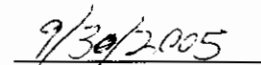
The "Certification of Completion" shall include the following signed statement:

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



Date