

# STATE OF COLORADO

Bill Ritter, Jr., Governor  
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department  
of Public Health  
and Environment

March 19, 2009

John Filipoff  
Regional Director of Land Development  
Lennar Communities  
25 Enterprise  
Aliso Viejo, California 92656

Frances E. Phillips  
Gardere Wynne Sewell LLP  
1601 Elm Street, Suite 3000  
Dallas, TX 75201

**RE: Compliance Order on Consent, Number: SC-090319-2**

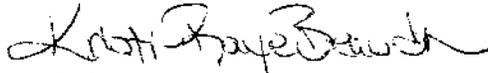
Dear Mr. Filipoff and Mr. Phillips:

Enclosed for Lennar Colorado, LLC records you will find your copy, with original signatures, of the recently executed Compliance Order on Consent.

Please remember that this agreement is subject to a thirty-day public comment period (paragraph 52). Upon initiation, if the Division receives any comments during this period we will contact your office to discuss. Also, please be advised that the first page of the Order was changed in order to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Mike Harris at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,



**Kristi-Raye Beaudin, Legal Assistant  
Water Quality Protection Section  
WATER QUALITY CONTROL DIVISION**

**cc: Tri-County Health Department  
El Paso County Department of Health and Environment  
MS-3 File**

**ec: Aaron Urdiales, EPA Region VIII  
Paul Kim, Engineering Section, CDPHE  
Dave Knope, Engineering Section, CDPHE  
Tim Vrudny, Engineering Section, CDPHE  
Dick Parachini, Watershed Program, CDPHE  
Gary Beers, Permits Unit, CDPHE  
Carolyn Schachterle, OPA**

*Enclosure(s)*



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
WATER QUALITY CONTROL DIVISION**

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: SC-090319-2**

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**IN THE MATTER OF:   LENNAR COLORADO, LLC  
                          d/b/a LENNAR COLORADO, INC.  
                          CDPS PERMIT NO. COR-030000  
                          CERTIFICATION NOS. COR-038749 & COR-039716  
                          ADAMS & EL PASO COUNTIES, COLORADO**

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The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §25-8-605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§ 25-8-101 to 703, C.R.S., and its implementing regulations, with the express consent of Lennar Colorado, LLC ("Lennar"). The Division and Lennar may be referred to collectively as "the Parties."

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are to resolve, without litigation, the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-061227-3) that the Division issued to Lennar on December 27, 2006.

**DIVISION'S FINDINGS OF FACT AND DETERMINATION OF VIOLATIONS**

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Lennar and Lennar's compliance with the Act, its implementing permit regulations and Lennar's permit certifications.
3. At all times relevant to the alleged violations identified herein, Lennar Colorado, LLC ("Lennar") was a Colorado limited liability company in good standing and registered to conduct business in the State of Colorado.
4. Lennar is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).

5. On or about August 29, 2005, Lennar initiated construction activities to build a residential housing development on property located at or near 160<sup>th</sup> Avenue and Quebec Street, in or near the City of Brighton, Adams County, Colorado (the "Eagle Shadow Project").
6. On August 9, 2005, the Division received an application from Lennar for Eagle Shadow Project coverage under the Colorado Discharge Permit System ("CDPS") General Permit, Number COR-030000, for Stormwater Discharges Associated with Construction Activity (the "Permit").
7. On August 16, 2005, the Division provided Lennar Certification Number COR-038749 authorizing Lennar to discharge stormwater from the construction activities associated with the Eagle Shadow Project to Todd Creek and the South Platte River under the terms and conditions of the Permit. Certification Number COR-038749 became effective August 16, 2005 and remains in effect until June 30, 2007 or until Lennar inactivates Permit coverage.
8. Todd Creek and the South Platte River are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).
9. In or about April, 2006, Lennar initiated construction activities to build a residential housing development on property located at or near Cross Creek Avenue and Sheffels Street, in or near the Town of Fountain, El Paso County, Colorado (the "Mesa Ridge Project").
10. On March 16, 2006, the Division received an application from Lennar for Mesa Ridge Project coverage under the Permit.
11. On March 21, 2006, the Division provided Lennar Certification Number COR-039716 authorizing Lennar to discharge stormwater from the construction activities associated with the Mesa Ridge Project to Jimmy Camp Creek under the terms and conditions of the Permit. Certification Number COR-039716 became effective March 21, 2006 and remains in effect until June 30, 2007 or until Lennar inactivates Permit coverage.
12. Jimmy Camp Creek is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).
13. Pursuant to 5 CCR 1002-61, §61.8, a permittee must comply with all the terms and conditions of a permit and violators of the terms and conditions specified in a permit may be subject to civil and criminal liability pursuant to §§25-8-601 through 612, C.R.S.
14. On June 8, 2006, a representative from Kleinfelder, Inc. (the "Inspector") conducted an on-site inspection of the Mesa Ridge Project on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Lennar's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Mesa Ridge Project representatives, conducted a review of the Mesa Ridge Project's stormwater management system records, and performed a physical inspection of the construction site.

15. On June 13, 2006, the Inspector conducted an on-site inspection of the Eagle Shadow Project on behalf of the Division, pursuant to the Division's authority under §25-8-306, C.R.S., to determine Lennar's compliance with the Water Quality Control Act and the Permit. During the inspection, the Inspector interviewed Eagle Shadow Project representatives, conducted a review of the Eagle Shadow Project's stormwater management system records, and performed a physical inspection of the construction site.
16. Pursuant to Part I. B. of the Permit, Lennar is required to prepare a Stormwater Management Plan ("SWMP") for each project that identifies Best Management Practices ("BMPs") that, when implemented, will meet the terms and conditions of the Permit. Each SWMP is required to identify potential sources of pollution, which may be reasonably expected to affect the quality of stormwater discharges associated with construction activity from each project. In addition, each plan is required to describe and ensure the implementation of BMPs, which will be used to reduce the pollutants in stormwater discharges associated with construction activity.
17. Pursuant to Part I. B. of the Permit, each SWMP shall include, at a minimum, the following items:
  - a. Site Description - Each plan shall provide a description of the following:
    - i. A description of the construction activity.
    - ii. The proposed sequence for major activities.
    - iii. Estimates of the total area of the site, and the area of the site that is expected to undergo clearing, excavation or grading.
    - iv. An estimate of the runoff coefficient of the site before and after construction activities are completed and any existing data describing the soil, soil erosion potential or the quality of any discharge from the site.
    - v. A description of the existing vegetation at the site and an estimate of the percent vegetative ground cover.
    - vi. The location and description of any other potential pollution sources, such as vehicle fueling, storage of fertilizers or chemicals, etc.
    - vii. The location and description of any anticipated non-stormwater components of the discharge, such as springs and landscape irrigation return flow.
    - viii. The name of the receiving water(s) and the size, type and location of any outfall or, if the discharge is to a municipal separate storm sewer, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).
  - b. Site Map - Each plan shall provide a generalized site map or maps which indicate:
    - i. Construction site boundaries.
    - ii. All areas of soil disturbance.
    - iii. Areas of cut and fill.
    - iv. Areas used for storage of building materials, soils or wastes.
    - v. Location of any dedicated asphalt or concrete batch plants.
    - vi. Location of major erosion control facilities or structures.
    - vii. Springs, streams, wetlands and other surface waters.
    - viii. Boundaries of 100-year flood plains, if determined.

- c. **BMPs for Stormwater Pollution Prevention** - The plan shall include a narrative description of appropriate controls and measures that will be implemented before and during construction activities at the facility.
    - i. **Erosion and Sediment Controls** - A description of structural site management controls (Structural Practices) which will minimize erosion and sediment transport and a description of interim and permanent stabilization practices (Non-Structural Practices), including the site-specific scheduling of the implementation of the practices.
    - ii. **Material Handling and Spill Prevention** - The SWMP shall identify any procedures or significant materials handled at the site that could contribute pollutants to runoff.
  - d. **Final Stabilization and Long-Term Stormwater Management** - Description of the measures used to achieve final stabilization and measures to control pollutants in stormwater discharges that will occur after construction operations have been completed.
  - e. **Other Controls** - Description of other measures to control pollutants in stormwater discharges, including plans for waste disposal and limiting off-site soil tracking.
  - f. **Inspection and Maintenance** - Description of procedures to inspect and maintain in good and effective operating condition the vegetation, erosion and sediment control measures and other protective measures identified in the SWMP.
18. The Division has determined that Lennar failed to prepare and maintain a complete and accurate SWMP for the Mesa Ridge Project as described in paragraphs 18(a-c) below:
- a. During the June 8, 2006 inspection, the Inspector reviewed the SWMP for the Mesa Ridge Project and determined that the SWMP did not clearly describe the relationship between the phases of construction and the implementation and maintenance of controls and measures, as required in the Permit.
  - b. During the June 8, 2006 inspection, the Inspector reviewed the SWMP for the Mesa Ridge Project and determined that the site map did not identify the same construction site boundary that was observed during the onsite inspection.
  - c. During the June 8, 2006 inspection, the Inspector reviewed the SWMP for the Mesa Ridge Project and determined that the site map did not identify all areas of soil disturbance at the Project, as required in the Permit.
19. The Division has determined that Lennar failed to prepare and maintain a complete and accurate SWMP for the Eagle Shadow Project as described in paragraphs 19(a-b) below:
- a. During the June 13, 2006 inspection, the Inspector reviewed the SWMP for the Eagle Shadow Project and determined that the SWMP did not clearly describe the relationship between the phases of construction and the implementation and maintenance of controls and measures, as required in the Permit.

- b. During the June 13, 2006 inspection, the Inspector reviewed the SWMP for the Eagle Shadow Project and determined that the site map did not include the material storage and stockpile area that was observed during the onsite inspection. Additionally, the site map did not identify the location of the hay bale dike that the Inspector observed at the northeast corner of Lot 26 Block 3 at the Project.
20. Lennar's failures to prepare and maintain complete and accurate SWMPs for the Mesa Ridge Project and the Eagle Shadow Project constitute violations of Part I. B. of the Permit.
21. Pursuant to Part I. B. 3. a. (1) of the Permit, Lennar is required to minimize erosion and sediment transport from each project. The Permit specifies that structural site management practices may include, but are not limited to: straw bales, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
22. Pursuant to Part I. B. 3. a. (2) of the Permit, Lennar is required to implement interim and permanent stabilization practices at each project, including site-specific scheduling of the implementation of the practices. The Permit specifies that site plans should ensure existing vegetation is preserved where possible and that disturbed areas are stabilized. The Permit specifies that non-structural practices may include, but are not limited to: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees and preservation of mature vegetation.
23. Pursuant to Part I. B. of the Permit, Lennar is required to implement the provisions of each project's SWMP as a condition of the Permit.
24. The Division has determined that Lennar failed to implement and/or maintain functional BMPs at the Mesa Ridge Project as described in paragraphs 24(a-f) below:
  - a. During the June 8, 2006 inspection, the Inspector observed straw wattles in place as perimeter controls near Lots 20 and 23. The straw wattles were not trenched and, thus, were not acting as functional BMPs to control sediment discharges.
  - b. During the June 8, 2006 inspection, the Inspector observed straw wattles in place as perimeter controls along Lot 53. The straw wattles were not trenched or properly staked and, thus, were not acting as functional BMPs to control sediment discharges.
  - c. During the June 8, 2006 inspection, the Inspector observed straw wattles in place as perimeter controls near Lot 50. Building materials had been placed on top of the wattles and, thus, the wattles were not acting as functional BMPs to control sediment discharges.
  - d. During the June 8, 2006 inspection, the Inspector observed storm sewer inlets located on the north and south side of Dobbs Drive near Lot 53. The SWMP for the Mesa Ridge Project stated that the inlet protections would utilize support backers and a 2x4 plank. However, those items were not observed in place.

- e. During the June 8, 2006 inspection, the Inspector observed straw wattles in place as perimeter controls near Lot 16. The straw wattles were not trenched and showed signs of wear and tear from vehicles driving over them. Thus, the wattles were not acting as functional BMPs to control sediment discharges.
  - f. During the June 8, 2006 inspection, the Inspector observed straw wattles in place as perimeter controls near Lot 22. The straw wattles were not trenched and, thus, were not acting as functional BMPs to control sediment discharges. Consequently, stormwater had undercut the wattles and sediment discharge was observed beyond the area of soil disturbance.
25. The Division has determined that Lennar failed to implement and/or maintain functional BMPs at the Eagle Shadow Project as described in paragraphs 25(a–e) below:
- a. During the June 13, 2006 inspection, the Inspector observed a silt fence in place near Lot 7, Block 6. The support stakes for the silt fence were installed on the up gradient side of the fencing fabric and, thus, the silt fence was not acting as a functional BMP to control sediment discharges.
  - b. During the June 13, 2006 inspection, the Inspector observed a silt fence in place near Lots 25 and 26, Block 6. The silt fence had fallen down and, thus, was not acting as a functional BMP to control sediment discharges.
  - c. During the June 13, 2006 inspection, the Inspector observed a silt fence in place near Lot 6, Block 5. Gaps were observed under the silt fence and, thus, the silt fence was not acting as a functional BMP to control sediment discharges.
  - d. During the June 13, 2006 inspection, the Inspector observed a hay bale dike located at the northeast corner of Lot 26, Block 3. The SWMP for the Eagle Shadow Project stated that each hay bale in the dike would be anchored with two rebar stakes. However, the Inspector observed that only one rebar stake had been used in each hay bale.
  - e. During the June 13, 2006 inspection, the Inspector observed an erosion control blanket in place near Lots 6 and 7, Block 5. The erosion control blanket was torn and was not fully anchored. Therefore, the erosion control blanket was not acting as a functional BMP to control erosion.
26. Lennar's failures to implement and maintain functional BMPs to protect stormwater quality during construction activities at the Mesa Ridge Project and the Eagle Shadow Project constitute violations of Part I. B. and Part I. B. 3. a. of the Permit.
27. Pursuant to Part I. C. 5. a. of the Permit, for active sites where construction has not been completed, Lennar is required to make a thorough inspection of each project's stormwater management system at least every 14 days and after any precipitation or snowmelt event that causes surface erosion.
28. During the June 13, 2006 inspection of the Eagle Shadow Project, the Inspector reviewed the site's inspection records and determined that Lennar failed to conduct inspections of the Eagle Shadow Project's stormwater management system from the period of August 29, 2005 to January 18, 2006.

29. The Division has determined that Lennar failed to conduct at least ten (10) permit-required inspections of the Eagle Shadow Project's stormwater management system during the period from August 29, 2005 to January 18, 2006.
30. Lennar's failure to conduct inspections of the Eagle Shadow Project's stormwater management system constitutes violations of Part I. C. 5. a. of the Permit.
31. The Division acknowledges that Lennar timely and satisfactorily performed all of the actions required under the December 27, 2006 Notice of Violation/Cease and Desist Order (Number: SO-061227-3).

#### **Lennar's Position on Alleged Violations**

32. With respect to the alleged findings in paragraph 18 concerning the SWMP for the Mesa Ridge Project, Lennar states as follows:
  - a. The SWMP for the Mesa Ridge Project described the relationship between the phases of construction and the implementation and maintenance of controls and measures as it contained: 1) a table indicating which control measures would be used during the phases of construction; 2) a table describing the BMPs to be used at the site, along with specific information regarding their design capacity, design velocity, permanent life, and the item each BMP was designed to address; and 3) a site map and table indicating specific BMPs to be used on individual lots.
  - b. Lennar complied with Part I.B. of the Permit and indicated construction site boundaries on its site map by outlining in green the lot numbers for those lots within Lennar's permitted area. Only those lots whose numbers were outlined in green were within Lennar's construction site boundaries.
  - c. Lennar complied with Part I.B. of the Permit and identified areas of soil disturbance by shading yellow those lots where active construction was occurring and shading green lots that had been stabilized. Lennar also noted on the site map that "[a]ll lots in plan are disturbed unless noted otherwise" to further clarify that any lot not shaded green was disturbed.
33. With respect to the alleged findings in paragraph 19 concerning the SWMP for the Eagle Shadow Project, Lennar states as follows:
  - a. The SWMP for the Eagle Shadow Project described the relationship between the phases of construction and the implementation and maintenance of controls and measures as it contained: 1) a table indicating which control measures would be used during the phases of construction; 2) a table describing the BMPs to be used at the site, along with specific information regarding their design capacity, design velocity, permanent life, and the item each BMP was designed to address; and 3) a site map and table indicating specific BMPs to be used on individual lots.

- b. Although the site map in the Eagle Shadow SWMP did not include the material storage and stockpile areas at the time of the Division's inspection on June 13, 2006, Lennar did not violate the Permit as it had until "as soon as practicable" after its next SWMP inspection on June 19, 2006 to discover and correct the issues with the site map. Lennar corrected the issues with the site map on June 13, 2006.
34. With respect to the alleged findings in paragraph 24 concerning the implementation and maintenance of BMPs at the Mesa Ridge Project, Lennar states that the Mesa Ridge BMPs complied with Part I.B.3. of the Permit by minimizing erosion and sediment transport, as there is no evidence that discharge of sediment occurred from the Mesa Ridge Project.
35. With respect to the alleged findings in paragraph 25 concerning the implementation and maintenance of BMPs at the Eagle Shadow Project, Lennar states that the Eagle Shadow BMPs complied with Part I.B.3. of the Permit by minimizing erosion and sediment transport, as there is no evidence that discharge of sediment occurred from the Eagle Shadow Project.
36. The Division does not agree with or accept any of Lennar's positions on the alleged violations described or referenced herein.

#### **ORDER AND AGREEMENT**

37. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the civil penalties associated with the alleged violations cited herein and in the Notice of Violation / Cease and Desist Order (Number: SO-061227-3), the Division orders Lennar to comply with all provisions of this Consent Order, including all requirements set forth below.
38. Lennar agrees to the terms and conditions of this Consent Order. Lennar agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Lennar also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Lennar against the Division:
  - a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
39. Notwithstanding the above, Lennar does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Lennar pursuant to this Consent Order or previously undertaken pursuant to the Notice of Violation/Cease and Desist Order (Number SO-061227-3) shall not constitute evidence of fault by Lennar with respect to the alleged violations at the Mesa Ridge and Eagle Shadow Projects.

## **CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS**

40. In addition to all other funds necessary to comply with the requirements of this Consent Order, Lennar shall pay One Hundred Fourteen Thousand Four Hundred Forty Seven Dollars (\$114,447.00) in the form of civil penalties and expenditures on Supplemental Environmental Projects (“SEPs”) in order to achieve settlement of this matter.
41. Based upon the application of the Division’s Stormwater Civil Penalty Policy (January 25, 2007), and consistent with Departmental policies for violations of the Act, Lennar shall pay Twenty One Thousand Eighty Nine Dollars (\$21,089.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Twenty One Thousand Eighty Nine Dollar (\$21,089.00) civil penalty for the above violation(s) and Lennar agrees to make the payment within thirty (30) calendar days of the issuance of a Penalty Order by the Executive Director or his designee. Method of payment shall be by certified or cashier’s check drawn to the order of the “Colorado Department of Public Health and Environment,” and delivered to:
- Michael Harris  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CADM-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530
42. Lennar shall also perform the SEP identified below. Lennar’s total expenditure for the SEP shall be not less than Ninety Three Thousand Three Hundred Fifty Eight Dollars (\$93,358.00).
43. Lennar shall undertake the following SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements:
44. Lennar shall donate Ninety Three Thousand Three Hundred Fifty Eight Dollars (\$93,358.00) to the Colorado Governor’s Energy Office (“GEO”). The funds will be used for two energy efficiency projects benefiting Adams and El Paso Counties, as further described in Attachment A. Lennar shall make the payment of Ninety Three Thousand Three Hundred Fifty Eight Dollars (\$93,358.00), and shall include with the donation a cover letter identifying the monies for the above-described project within thirty (30) days of the effective date of this Consent Order. Lennar shall provide the Division with a copy of the cover letter and check within thirty (30) calendar days of the effective date of this Consent Order. Lennar shall not deduct the payment of the SEP donation provided for in this paragraph for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
45. Lennar shall not deduct the expenses associated with the implementation of the above-described SEP for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.

46. Lennar hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEP. Lennar further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEP. In the event that Lennar has, or will receive credit under any other legal obligation for the SEP, Lennar shall pay Ninety Three Thousand Three Hundred Fifty Eight Dollars (\$93,358.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be as specified in paragraph 41 above.
47. All SEPs must be completed to the satisfaction of the Division within one year of the effective date of the Consent Order, and must be operated for the useful life of the SEP. In the event that Lennar fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEP, Lennar shall be liable for penalties as follows:
- a. Payment of a penalty in the amount of Ninety Three Thousand Three Hundred Fifty Eight Dollars (\$93,358.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEP.
  - b. Lennar shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 41 above.
48. Lennar shall submit a SEP Completion Report to the Division by July 1, 2010. The SEP Completion Report shall contain the following information:
- a. A detailed description of the SEP as implemented;
  - b. A description of any operating problems encountered and the solutions thereto;
  - c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks;
  - d. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
  - e. A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).
49. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.
50. Lennar shall include the following language in any public statement, oral or written, making reference to the SEP: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for violations of the Colorado Water Quality Control Act."

#### **SCOPE AND EFFECT OF CONSENT ORDER**

51. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations alleged herein and in the December 27, 2006 Notice of Violation / Cease and Desist Order (Number: SO-061227-3).

52. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Lennar each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
53. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the civil penalty following the public comment period. Any violation of the provisions of this Consent Order by Lennar, including any false certifications, shall be a violation of a final order or action of the Division for the purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.
54. Notwithstanding paragraph 39 above, the violations described in this Consent Order will constitute part of Lennar's compliance history for purposes where such history is relevant. This includes considering the violations described above in assessing a penalty for any subsequent violations against Lennar. Lennar agrees not to challenge the use of the cited violations for any such purpose.

#### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

55. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to civil penalties for the specific instances of violations cited herein and in the December 27, 2006 Notice of Violation / Cease and Desist Order (Number: SO-061227-3). The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
56. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
57. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
58. Upon the effective date of this Consent Order, Lennar releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the violations of the Act specifically addressed herein.
59. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

## NOTICES

60. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CADM-B2  
Attention: Michael Harris  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3598  
E-mail: michael.harris@state.co.us

For Lennar:

John Filipoff  
Regional Director of Land Development  
Lennar Communities  
25 Enterprise  
Aliso Viejo, California 92656  
Telephone: 310.503.1609  
john.filipoff@lennar.com

Frances E. Phillips  
Gardere Wynne Sewell LLP  
1601 Elm Street, Suite 3000  
Dallas, Texas 75201  
Telephone: 214.999.4803  
fphillips@gardere.com

## MODIFICATIONS

61. This Consent Order may be modified only upon mutual written agreement of the Parties.

## NOTICE OF EFFECTIVE DATE

62. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon the date when the Executive Director or his designee imposes the civil penalty. If the penalty as described in this Consent Order is not imposed, or an alternate penalty is imposed, this Consent Order becomes null and void.

**BINDING EFFECT AND AUTHORIZATION TO SIGN**

63. This Consent Order is binding upon Lennar and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

**FOR LENNAR COLORADO, LLC:**



Date: 3/13/09

\_\_\_\_\_  
David Bracht, Division President

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:**



Date: 3/17/09

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# **ATTACHMENT A**

## **SEP Donation to Governor's Energy Office**

### **El Paso and Adams Counties**

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#### **1) Residential Insulation Project for Adams County - \$53,358**

##### **Part A: Insulation Rebates**

The Governor's Energy Office (GEO) currently offers the Insulate Colorado Program for homeowners wishing to make energy efficiency improvements to their existing homes. Adams County would partner with GEO to offer rebates directly to qualifying homeowners for the installation of insulation and air sealing measures through the Insulate Colorado program. The program provides a rebate of up to \$300 to homeowners that insulate their attics and exterior walls to the recommended R-Values presented in the 2006 International Energy Conservation Code (2006 IECC).

##### **Part B: Insulation Installation for Low Income Commerce City Residents**

The Healthy Homes Initiative (a HUD funded program) addresses home health and safety issues for children. Through the initiative, several neighborhoods in the Commerce City area were surveyed. Many of the homes are owned by low income residents and are in need of insulation. The SEP funds would also cover 100% of the cost of the added insulation for a number of these low income residents.

**Project Duration:** 12 months

##### **Project Benefits:**

The project will provide significant savings of natural gas for winter heating and electricity for summer cooling needs for Adams County residents. A summary of environmental benefits will be included in the SEP completion report.

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#### **2) El Paso County - \$40,000**

The \$40,000 in SEP funds would go towards expanding Colorado Springs Utilities' (CSU) Energy Efficient Lighting Subsidy Program. The program would be expanded to include all national retailers located in El Paso County and would make Compact Fluorescent Lamps and LED lighting more cost competitive for consumers, saving residents money and decreasing energy use.

The Colorado Springs Utility (CSU- a municipal utility) has an existing Compact Fluorescent Light bulb (CFL) and Christmas light LED program where they make lower cost bulbs available to the community. The SEP funds could be used to help expand the program from 5 local retailers to include all of the national retailers in their service territory. By expanding the program to the national retailers, the utility will be able to leverage the already lower cost bulbs the large retailers offer with SEP dollars and CSU's money to buy down the bulbs to an even greater extent so that they are even more affordable to the general public.

The SEP dollars will be used to help buy down the cost of the bulbs as well as contribute to an education component. Each CFL bulb that replaces an incandescent will save 730 lbs. of carbon dioxide (since there will be a mix of bulbs wattages sold, this is an example of the potential savings).

**Project Duration:**

CSU will be contracting with a third party experienced in implementing this type of program, which will begin as soon as the SEP funds are received and will be completed 12 months after the receipt of funding .

**Project Benefits:**

These bulbs save the city's utility in energy demand- but as important, they save residents money. The bulbs will be available to all people shopping in the service territory whether they are a customer of CSU or not- so it will benefit El Paso residents broadly. CSU is seeking electricity savings between 4,000 mwh (megawatt hours) and 12,000 mwhs from this program. A summary of environmental benefits will be included in the SEP Completion Report.

