



COLORADO

Department of Public
Health & Environment

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

October 19, 2016

Frank Walker, Division President
Lennar Colorado, LLC
9781 S. Meridian Blvd. #120
Englewood, CO 80112

Certified Mail Number: 7014 2870 0000 7699 7119

RE: Compliance Order on Consent, Number: SC-161019-1

Dear Mr. Walker:

Enclosed for Lennar Colorado, LLC's records, you will find Lennar Colorado LLC's copy, with original signatures, of the recently executed Compliance Order on Consent. Please be advised that the first page of the Compliance Order on Consent was changed to place the assigned Order Number on the final document.

If you have any questions, please don't hesitate to contact Andrea Beebout of this office at (303) 692-6498 or by electronic mail at andrea.beebout@state.co.us.

Sincerely,

Kelly Morgan, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s): Compliance Order on Consent Number SC-161019-1-1

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Gary Hartzell, Elbert County Health Department
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Amy Zimmerman, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Section, CDPHE
Tania Watson, Data Management, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Rik Gay, Clean Water Compliance Unit, CDPHE





COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT

NUMBER: SC-161019-1

IN THE MATTER OF: LENNAR COLORADO, LLC
 CDPS PERMIT NO. COR-030000
 CERTIFICATION NO. COR-03L242
 ELBERT COUNTY, COLORADO

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 §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act (“the Act”) §§25-8-101 to 803, 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-150714-1 (NOV/CDO), that the Division issued to Lennar on July 14, 2015.

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, the Facility and Lennar’s compliance with the Act and a permit issued pursuant to the Act.
3. At all times relevant to the violations cited herein, 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 approximately October 15, 2013, Lennar initiated construction activities of a single family residential development at or near County Road 194 and Coal Creek Street, near the town of Park, Elbert County, Colorado (“Project”).



6. On October 1, 2013, the Division received an application from Lennar for coverage under the Colorado Discharge Permit System (“CDPS”) General Permit Number COR030000, for Stormwater Discharges Associated with Construction Activity (“Permit”) for a planned disturbance of 148.7 acres of land within the Project.
7. On October 8, 2013, the Division provided Lennar with Certification Number COR03L242 authorizing Lennar to discharge stormwater from construction activities associated with the Project to Coal Creek under the terms and conditions of the Permit. Certification Number COR03L242 became effective October 8, 2013 and has been administratively continued until a new Permit and associated certification is issued, or until Lennar inactivates Permit coverage.
8. Pursuant to 5 CCR 1002-61, §61.8, Lennar must comply with all terms and conditions of the Permit, and violations of such terms and conditions may be subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.
9. On February 12, 2015, a representative from the Division (“Inspector”) conducted an on-site inspection of the Project 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 Project representatives, reviewed the Project’s stormwater management system records, and performed a physical inspection of the Project.

Failure to Install, Maintain, or Properly Select Best Management Practices

10. Pursuant to Part I.B.3. of the Permit, Lennar must implement the provisions of the Project SWMP as written and updated, from commencement of construction activity until final stabilization is complete.
11. Pursuant to Part I.D.2. of the Permit, Lennar must select, install, implement and maintain appropriate BMPs, following good engineering, hydrologic and pollution control practices. BMPs implemented at the site must be adequately designed to provide control for all potential pollutant sources associated with construction activity at the Project.
12. Pursuant to Part I.D.1. of the Permit, concrete washout water shall not be discharged to state surface waters or storm sewer systems, and all site wastes must be properly managed to prevent potential pollution of state waters.
13. Pursuant to Part I.D.7. of the Permit, all erosion and sediment control practices and other protective measures identified in the SWMP must be maintained in effective operating condition. BMPs that are not adequately maintained in accordance with good engineering, hydrologic and pollution control practices, including removal of collected sediment outside the acceptable tolerances of the BMPs, are considered to be no longer operating effectively and must be addressed.
14. During the February 12, 2015 inspection, the Inspector identified the following deficiencies related to BMP selection, design, installation, implementation and maintenance at the Project, as described in Paragraphs 14 (a-m) below:
 - a. Control measures on lot 85 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:

- i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 85 despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 85 flowed generally east to Coal Creek.
 - ii. The concrete washout pit on lot 85 was undersized and did not have adequate containment features such as compacted berms. Additionally, the concrete washout pit was not 8' by 10' in size and did not have a vehicle tracking pad installed at the access as required by Project SWMP specifications. These deficiencies impaired the ability of the concrete washout control measure to contain concrete waste. No additional control measures were implemented down gradient of the concrete washout pit (refer to paragraph 14ai) and stormwater runoff flowed generally east to Coal Creek.
- b. Control measures on lot 117 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
 - i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 117, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 117 flowed generally northwest and northeast towards drainage ditches, eventually draining to Coal Creek.
 - ii. A portable toilet was installed outside of lot 117 within the natural drainage way along the road. Project SWMP specifications require portable toilet facilities to be protected from off-site discharges and installed away from waterways. As a result of this deficiency, there was a potential for stormwater discharges to come in contact with sanitary waste. Stormwater within the natural drainage way flowed generally northwest eventually draining to Coal Creek.
 - iii. The concrete washout pit on lot 117 was undersized and did not have adequate containment features such as compacted berms. Additionally, the concrete washout pit was not 8' by 10' in size and did not have a vehicle tracking pad installed at the access point as required by Project SWMP specifications. These deficiencies impaired the ability of the concrete washout control measure to contain concrete waste. No additional control measures were implemented down gradient of the concrete washout (refer to paragraph 14bi) and stormwater runoff flowed generally northeast towards drainage ditches, eventually draining to Coal Creek.
 - iv. Two access points were being utilized at lot 117; however, neither of the access points had vehicle tracking control measures in place despite Project SWMP specifications requiring that a vehicle tracking control measure be installed at all access points. As a result of this deficiency, sediment tracking was observed onto the roadway on the west side of lot 117. No additional control measures were implemented down gradient of the access points and stormwater runoff from lot 117 flowed towards drainage ditches, eventually draining to Coal Creek.
- c. No erosion or sediment control measures were implemented down gradient of the

disturbed areas on lot 135, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 135 flowed generally west towards Coal Creek.

- d. Control measures on lot 144 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
- i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 144, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 144 flowed to drainage ditches, eventually draining to Coal Creek.
 - ii. A culvert was installed within the access point to lot 144; however, it was not installed according to Project SWMP specifications. Specifically, no erosion control measures were installed on the banks surrounding the culvert despite Project SWMP specifications requiring erosion control measures to be installed around the culvert location. As a result of this deficiency, the culvert was filled with sediment and there was an additional erosive pollutant source contributing to the drainage ditch. No additional control measures were implemented down gradient of the culvert and stormwater runoff flowed within drainage ditches to Coal Creek.
 - iii. A portable toilet was installed on uneven ground up gradient of the drainage ditch, despite Project SWMP specifications requiring portable toilet facilities to be installed on level surfaces away from waterways. As a result of this deficiency, there was a potential for stormwater to come in contact with sanitary waste. Stormwater from the portable toilet on lot 144 flowed towards the drainage ditch, eventually draining to Coal Creek.
 - iv. The concrete washout pit on lot 144 was undersized and did not have adequate containment features such as compacted berms. Additionally, the concrete washout pit was not 8' by 10' in size and did not have a vehicle tracking pad installed at the access point as required by Project SWMP specifications. The sign for the concrete washout was broken and laying on the ground next to the washout pit, despite Project SWMP specifications requiring signage to remain in good repair. These deficiencies impaired the ability of the concrete washout control measure to contain concrete waste. No additional control measures were implemented down gradient of the concrete washout (refer to paragraph 14di) and stormwater runoff flowed towards drainage ditches, eventually draining to Coal Creek.
 - v. No vehicle tracking control measures were in place at the access to lot 144 despite Project SWMP specifications requiring that a vehicle tracking control measure be installed at all access points. As a result of this deficiency, sediment tracking was observed onto the roadway on the north side of lot 144. No additional control measures were implemented down gradient of the access point and stormwater runoff flowed to drainage ditches eventually draining to Coal Creek.

- e. Control measures on lot 145 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
 - i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 145, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 145 flowed to drainage ditches and generally west draining to Coal Creek.
 - ii. A culvert was installed within the access point to lot 145; however, it was not installed according to Project SWMP specifications. Specifically, no erosion control measures were installed on the banks surrounding the culvert despite Project SWMP specifications requiring erosion control measures to be installed around the culvert location. As a result of this deficiency, the culvert was surrounded by eroded soils and there was an additional erosive pollutant source contributing to the drainage ditch. No additional control measures were implemented down gradient of the culvert and stormwater runoff flowed generally west towards Coal Creek.
 - iii. Two construction dumpsters on lot 145 were full of waste and overflowing, despite Project SWMP specifications requiring waste containers to be emptied before they are full and overflowing. As a result of this deficiency, construction waste had the potential to be displaced offsite of the construction site.

- f. Control measures on lot 146 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
 - i. The concrete washout pit on lot 146 was undersized and did not have adequate containment features such as compacted berms. Additionally, the concrete washout pit was not 8' by 10' in size and did not have a vehicle tracking pad installed at the access as required by Project SWMP specifications. In addition, concrete waste was observed on the ground without containment next to two stockpiles on the south side of lot 146. As a result of these deficiencies, there was a potential for concrete waste to comingle with stormwater and be discharged offsite. Stormwater from lot 146 flowed to drainage ditches, eventually draining to Coal Creek.
 - ii. No vehicle tracking control measures were installed at the access to lot 146, despite Project SWMP specifications requiring that a vehicle tracking control be installed at all access points. As a result of this deficiency, sediment tracking was observed onto the public roadway. No additional control measures were implemented down gradient of the access point and stormwater flowed within drainage ditches to Coal Creek.

- g. Control measures on lot 203 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
 - i. Perimeter control measures were not installed or properly maintained to manage stormwater runoff from disturbed areas on lot 203. Specifically, silt fence throughout lot 203 was not installed at the edge of disturbance despite Project SWMP specifications requiring the installation of perimeter BMPs prior

- to commencement of major construction. In addition, a major tributary to Coal Creek had evidence of use as an access to lot 203. Although the access was blocked off by silt fence, no surface stabilization measures were in place within the tributary. As a result of these deficiencies, there was no erosion or sediment control method in place to control pollutant contributions to stormwater from lot 203. No additional control measures were implemented down gradient of lot 203 and stormwater flowed within drainage ditches to an adjacent tributary to Coal Creek.
- ii. A culvert was installed within the access to lot 203; however, it was not installed according to Project SWMP specifications. Specifically, no erosion control measures were installed on the banks surrounding the culvert despite Project SWMP specifications requiring erosion control measures to be installed around the culvert location. As a result of this deficiency, the culvert was filled with sediment and contributing additional pollutants to the drainage ditch. No additional control measures were implemented down gradient of the culvert and stormwater flowed to an adjacent tributary to Coal Creek.
 - iii. Concrete washout waste was discharged directly to the ground without containment on the west side of the lot 203. In addition, no concrete washout control measure was installed on lot 203, despite Project SWMP specifications requiring the installation of a designated concrete washout prior to commencement of concrete activities. As a result of this deficiency, there was a potential for concrete washout waste to discharge offsite. Silt fence was installed down gradient of the concrete washout waste; however, it would not be capable of containing concrete- contaminated stormwater. Stormwater flowed generally northeast towards a major tributary to Coal Creek.
 - iv. Various construction wastes were found in the culvert within the access to lot 203. Project SWMP specifications indicate that wastes should be kept away from streets, gutters, watercourses, and stormdrains. As a result of this deficiency, the capacity of the culvert could be reduced and lead to failure during a rain event and additional pollutant contributions to the drainage ditch. At the very least, the waste could be carried offsite in stormwater flows. No additional control measures were implemented down gradient of the culvert and stormwater flowed to adjacent tributary to Coal Creek.
- h. Control measures on lot 204 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
- i. A culvert was installed within the access point to lot 204; however, it was not installed according to Project SWMP specifications. Specifically, no erosion control measures were installed on the banks surrounding the culvert despite Project SWMP specifications requiring erosion control measures to be installed around the culvert location. As a result of this deficiency, the culvert was surrounded by eroded soils, and there was an additional erosive pollutant source contributing to the drainage ditch. No additional control measures were implemented down gradient of the culvert and stormwater runoff flowed through drainage ditches to a major tributary to Coal Creek.
 - ii. The concrete washout pit on lot 204 was undersized and did not have adequate containment features such as compacted berms. Additionally, the concrete washout pit was not 8' by 10' in size and did not have a vehicle tracking pad installed at the access as required by Project SWMP

specifications. In addition, concrete waste was observed on the ground without containment near the house on lot 204. As a result of these deficiencies, there was a potential for concrete waste to comingle with stormwater and be discharged offsite. Stormwater from lot 204 flowed to drainage ditches, eventually draining to Coal Creek.

- iii. No vehicle tracking control measures were installed at the access to lot 204, despite Project SWMP specifications requiring that a vehicle tracking control measure be installed at all access points. As a result of this deficiency, sediment tracking was observed onto the public roadway. No additional control measures were implemented down gradient of the access point and stormwater flowed within drainage ditches to Coal Creek.
 - iv. Three dumpsters were located within the drainage ditch along lot 204, despite Project SWMP specifications requiring waste-collection areas to be located away from streets, gutters, watercourses, and storm drains. As a result of this deficiency, the dumpsters were blocking the flow path of the drainage ditch and would likely lead to additional erosion within the channel. No additional control measures were implemented down gradient and stormwater flowed within drainage ditches to Coal Creek.
- i. Control measures on lot 209 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
- i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 209, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 209 flowed generally southwest discharging to a major tributary to Coal Creek.
 - ii. A culvert was installed within the access point to lot 209; however, it was not installed according to Project SWMP specifications. Specifically, no erosion control measures were installed on the banks surrounding the culvert despite Project SWMP specifications requiring erosion control measures to be installed around the culvert location. As a result of this deficiency, the culvert was filled with sediment and there was an additional erosive pollutant source contributing to the drainage ditch. No additional control measures were implemented down gradient of the access point and stormwater flowed within drainage ditches to Coal Creek.
- j. Control measures on lot 210 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
- i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 210, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 210 flowed to drainage ditches and eventually to Coal Creek.
 - ii. A culvert was installed within the access point to lot 210; however, it was not



- installed according to Project SWMP specifications. Specifically, no erosion control measures were installed on the banks surrounding the culvert despite Project SWMP specifications requiring erosion control measures to be installed around the culvert location. As a result of this deficiency, the culvert was filled with eroded sediment and there was an additional erosive pollutant source contributing to the drainage ditch. No additional control measures were implemented down gradient of the culvert and stormwater flowed within drainage ditches to Coal Creek.
- iii. Concrete washout waste was discharged to ground without containment on the south side of lot 210. In addition, no concrete washout control measure was installed on lot 210, despite Project SWMP specifications requiring the installation of a designated concrete washout prior to the commencement of concrete activities. No additional control measures were implemented down gradient of the concrete waste and stormwater flowed to drainage ditches and directly to a tributary to Coal Creek.
 - iv. No vehicle tracking control measures were installed at the access to lot 210 despite Project SWMP specifications requiring that a vehicle tracking control measure be installed at all access points. As a result of this deficiency, sediment tracking was observed onto the public roadway. No additional control measures were implemented down gradient of the access point and stormwater flowed within drainage ditches to Coal Creek.
- k. Control measures on lot 212 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
- i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 212, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, significant erosion was observed from lot 212 as well as heavy sedimentation within the vegetation down gradient of lot 212. No additional control measures were implemented down gradient of the disturbed areas on lot 212 and stormwater flowed to drainage ditches and eventually to Coal Creek.
 - ii. A culvert was installed within the access point to lot 212; however, it was not installed according to Project SWMP specifications. Specifically, no erosion control measures were installed on the banks surrounding the culvert despite Project SWMP specifications requiring erosion control measures to be installed around the culvert location. As a result of this deficiency, there was an additional erosive pollutant source contributing to the drainage ditch. No additional control measures were implemented down gradient of the culvert and stormwater flowed within drainage ditches to Coal Creek.
 - iii. Concrete waste was observed within the drainage ditch on the north side of the access point to lot 212 despite Project SWMP specifications requiring designated washout areas to be used for washing of concrete trucks or equipment. No additional control measures were implemented down gradient of the concrete waste and stormwater flowed within the drainage ditches to Coal Creek.
- l. Control measures on lot 213 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:

- i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 213, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 213 flowed to drainage ditches and eventually to Coal Creek.
 - ii. Concrete and masonry waste was observed on the ground without containment throughout lot 213 and a large pile of concrete waste was discovered to be partially buried. In addition, no concrete washout control measure was installed on lot 213, despite Project SWMP specifications requiring the installation of a designated concrete washout prior to the commencement of concrete activities. No additional control measures were implemented down gradient of the concrete and masonry wastes and stormwater flowed to drainage ditches and eventually to Coal Creek.

- m. Control measures on lot 223 were not implemented and/or maintained according to good engineering, hydrologic and pollution control practices. Specifically:
 - i. No erosion or sediment control measures were implemented down gradient of the disturbed areas on lot 223, despite specifications in the Project's SWMP requiring the installation of perimeter BMPs prior to the commencement of major construction. As a result of this deficiency, there were no mechanisms in place to reduce sediment transport offsite of the Project. Stormwater runoff from the disturbed areas on lot 223 flowed to drainage ditches and eventually to Coal Creek.
 - ii. A culvert was installed within the access point to lot 223; however, it was not installed according to Project SWMP specifications. Specifically, no erosion control measures were installed on the banks surrounding the culvert despite Project SWMP specifications requiring erosion control measures to be installed around the culvert location. As a result of this deficiency, there was an additional erosive pollutant source contributing to the drainage ditch and the culvert was filled with eroded soils. No additional control measures were implemented down gradient of the culvert and stormwater flowed within drainage ditches to Coal Creek.
 - iii. A portable toilet was installed on uneven ground up gradient of the drainage ditch despite Project SWMP specifications requiring portable toilet facilities to be installed on level surfaces away from waterways. As a result of this deficiency, there was a potential for stormwater discharges to come in contact with sanitary waste. Stormwater from the portable toilet on lot 223 flowed into the drainage ditch, draining to Coal Creek.
 - iv. The concrete washout pit on lot 223 was undersized and did not have adequate containment features such as compacted berms. Additionally, the concrete washout pit was not 8' by 10' in size and did not have a vehicle tracking pad at the access as required by Project SWMP specifications. These deficiencies impaired the ability of the concrete washout control measure to contain concrete waste. Stormwater from lot 223 flowed to drainage ditches, eventually draining to Coal Creek.

15. The Division has determined that Lennar failed to implement and/or maintain functional BMPs for

all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.

16. Lennar's failure to implement and/or maintain functional BMPs to protect stormwater quality during construction activities at the Project constitutes violations of Part I.B.3., Part I.D.2., and Part I.D.7. of the Permit.
17. The Division acknowledges that Lennar timely and satisfactorily performed all actions required under the July 14, 2015 Notice of Violation/Cease and Desist Order (Number SO-150714-1).

Lennar's Position on Alleged Violations

18. With respect to the alleged findings in paragraph 14 concerning deficiencies related to BMP selection, design, implementation and maintenance at the Elkhorn Ranch project in which the Division alleged that control measures were not implemented or maintained according to good engineering and pollution control standards, Lennar states that the BMPs complied with I.D.2. of the Permit by minimizing erosion and sediment transport as the Division produced no evidence that discharge of sediment occurred from the Elkhorn Ranch project.
19. With respect to subparagraphs 14.a.i, 14.b.i, 14.c, 14.d.i, 14.e.i, 14.h.i, 14.l.i, 14.j.i, 14.k.i, 14.l.i, and 14.m.i in which the Division identified specific lots that allegedly had no erosion or sediment controls, Lennar states as follows:
 - a. Lennar submitted evidence to the Division in the form of a Professional Engineer's memorandum indicating that erosion and sediment controls were used downstream of each lot identified by the Division.
 - b. The Professional Engineer's memorandum concluded that each measure was adequate and had characteristics that were in accordance with good engineering, hydrological, and pollution control practices.
 - c. Lennar complied with I.D.2. of the Permit.
20. With respect to subparagraphs 14.b.iii, 14.d.iv, 14.f.i, 14.h.ii, and 14.m.iv in which the Division alleged that concrete washouts were undersized and had deficiencies which impaired the ability of the concrete waste control to contain concrete waste, Lennar states as follows:
 - a. There were no deficiencies in the design of the concrete washouts.
 - b. The control measures were not deficient.
 - c. The ability to contain concrete washout was not impaired at any of the locations.
 - d. The concrete washouts complied with Section I.D.3.c. of the Permit as no overfilling was observed and no washout was allowed to leave the site as surface runoff or to surface waters.
21. Although Lennar requested a Public Hearing concerning the alleged violations on August 14, 2015, Lennar has consented to issuance of this Compliance Order on Consent as the most appropriate means of settling the Division's allegations without any adjudication of issues of law or fact.
22. The Division does not agree with or accept any of Lennar's positions on the alleged violations described or referenced herein.

ORDER AND AGREEMENT

23. 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 NOV/CDO, the Division orders Lennar to comply with all provisions of this Consent Order, including all requirements set forth below.
24. 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.
25. Notwithstanding the above, Lennar does not agree with or 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 shall not constitute evidence of fault and liability by Lennar with respect to the conditions of the Project. Lennar expressly reserves its rights to deny any of the Division's factual or legal determinations or defend itself in any other third party proceeding relating to the information identified in this Consent Order.

CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECT

26. Lennar shall pay Sixty-Nine Thousand Nine Hundred and Fifty Dollars (\$69,950.00) in the form of civil penalties and expenditures on a Supplemental Environmental Project ("SEP") in order to achieve settlement of this matter.
27. Based upon factors set forth in §25-8-608(1), C.R.S., and consistent with Departmental policies for violations of the Act, Lennar shall pay Eight Thousand One Hundred and Ninety Dollars (\$8,190.00) in civil penalties. The Division intends to petition the Executive Director, or his designee, to impose the Eight Thousand One Hundred and Ninety Dollar (\$8,190.00) civil penalty for the above violation(s) and Lennar agrees to make the payment within thirty (30) calendar days of the issuance of an Order for Civil Penalty by the Executive Director or his designee. Method of payment shall be by certified or cashier's check draw to the order of the "Colorado Department of Public Health and Environment" and delivered to:

Andrea Beebout
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

28. Lennar shall also perform the SEP identified below. Lennar's total expenditure for the SEP shall be not less than Sixty-One Thousand Seven Hundred and Sixty Dollars (\$61,760.00). 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 alleged violations of the Colorado Water Quality Control Act.”

29. Lennar shall undertake the following SEP, which the Parties agree is intended to secure significant environmental or public health protection and improvements:
- a. Lennar shall donate Sixty-One Thousand Seven Hundred and Sixty Dollars (\$61,760.00) to the Energy Resource Center (“ERC”). ERC will assist low-income families in Elbert County by conducting energy audits, providing insulation and high-efficiency appliances, and teaching clients how to save energy in their homes, as further described in Attachment A. ERC’s work will reduce wasted electricity and gas usage by an average of 20% in addition to mitigating carbon monoxide problems in a large percentage of homes. Lennar shall make the payment of Sixty-One Thousand Seven Hundred and Sixty Dollars (\$61,760.00), 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, as follows: “Energy Resource Center”, to the attention of Howard Brooks, Executive Director, Energy Resource Center, 114 W Rio Grande, Colorado Springs, Colorado 80903. 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.
 - b. Lennar shall not deduct the payment of the SEP donation described above for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
 - c. 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 Sixty-One Thousand Seven Hundred and Sixty Dollars (\$61,760.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of demand for payment by the Division. Method of payment shall be as specified in paragraph 21 above.
 - d. Lennar shall submit a SEP Completion Report to the Division within eighteen (18) months of the effective date of this Consent Order. The SEP Completion Report shall contain the following information:
 - i. A detailed description of the SEP as implemented;
 - ii. A description of any operating problems encountered and the solutions thereto;
 - iii. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
 - iv. Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and
 - v. 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).
 - e. Failure to submit the SEP Completion Report with the required information, or any periodic report, shall be deemed a violation of this Consent Order.

30. All SEPs must be completed to the satisfaction of the Division no later than seventeen (17) months of the effective date of this Consent Order, and must be operated for the useful life of the SEP. In the event that Lennar fails to comply with any terms or provisions of this Consent Order relating to the performance or payment of the SEP donation, Lennar shall be liable for penalties as follows:
- a. Payment of a penalty in the amount of Sixty-One Thousand Seven Hundred and Sixty Dollars (\$61,760.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by 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 21 above.

SCOPE AND EFFECT OF CONSENT ORDER

31. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the civil penalties associated with the violations cited herein and in the NOV/CDO.
32. This Consent Order is subject to the Division's "Public Notification on 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.
33. This Consent Order constitutes a final agency order or action upon the date when the Executive Director or his designee imposes the 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.
34. Notwithstanding paragraph 19 above, the violations described in this Consent Order will constitute part of Lennar's compliance history.
35. Lennar shall comply with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

36. 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 the specific instances of violations cited herein and in the NOV/CDO. 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.
37. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

38. Lennar reserves its rights and defenses regarding the Project other than proceedings to enforce this Consent Order.
39. Nothing in this Consent Order shall preclude the Division from imposing additional requirements necessary to protect human health or the environment and to effectuate the purposes of the Consent Order. Nor shall anything in this Consent Order preclude the Division from imposing additional requirements in the event that additional information is discovered that indicates such requirements are necessary to protect human health or the environment.
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41. 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 or for any injuries or damages to persons or property resulting from acts or omissions of Lennar, or those acting for or on behalf of Lennar, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to this Consent Order. Lennar shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Lennar in carrying out activities pursuant to this Consent Order. 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

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

For the Division:

Andrea Beebout
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-6498
E-mail: andrea.beebout@state.co.us

For Lennar Colorado, LLC:

Frank Walker
Division President
Lennar Colorado
9781 S. Meridian Blvd. #120
Englewood, CO 80112
Telephone: 303-754-0612
E-mail: frank.walker@lennar.com

John Filipoff
National Director of Environmental Compliance and Safety
25 Enterprise
Aliso Viejo, CA 92656
Telephone: 949-349-8111
E-mail: john.filipoff@lennar.com

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

44. 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 following closure of the public comment period referenced in paragraph 26.

BINDING EFFECT AND AUTHORIZATION TO SIGN

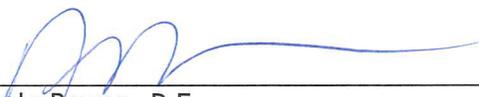
45. This Consent Order is binding upon Lennar and its corporate subsidiaries or parents, their officers, directors, employees, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. In the event that a party 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: 10/14/16
Frank Walker
Division President

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:



Date: 10/19/16
Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION

Attachment A

**SUPPLEMENTAL ENVIRONMENTAL PROJECT (SEP)
THIRD PARTY AGREEMENT**

Enforcement Action Information	Lennar Case No.: TBD	
Regulated Entity Contact Information	Frank Walker Division President Lennar Colorado 9781 S. Meridian Blvd. #120 Englewood, CO 80112 303-754-0612 (Direct) 303-257-6345 (Cell) All correspondence regarding this SEP will be copied to: John Filipoff National Director of Environmental Compliance and Safety 25 Enterprise Aliso Viejo, CA 92656 Office 949-349-8111 Cell 310-503-1609 John.Filipoff@lennar.com	
Third Party SEP Administrator Contact	Howard Brooks Executive Director Energy Resource Center 114 W Rio Grande Colorado Springs, CO 80903 719-200-5558 cell or 718-591-0772 office howardb@erc-co.org	Type of organization: Non-profit* <input checked="" type="checkbox"/> Government <input type="checkbox"/> *If non-profit, please attach a copy of your 501c(3) exemption to this SEP Agreement.
CDPHE Contact Person	Lauren McDonell , SEP Coordinator, CDPHE	
Geographical Area to Benefit Most Directly From Project	Elbert County	
Project Title	Pollution Prevention through Increased Energy Efficiency	
Project Type	Third Party SEP Payment	
SEP Category	Pollution Prevention	

Attachment A

Project Summary	<p>Low-income families live in the oldest and least energy-efficient housing stock. Energy Resource Center provides free efficiency upgrades that save 155 therms of gas and 636 kWh of electricity per home (on average). This cuts energy usage by 20% preventing all the pollution it takes to generate this energy.</p>																															
Project Description	<p>For 29 years the Energy Resource Center (ERC) has conducted energy audits, provided insulation and high-efficiency appliances, and taught clients how to save energy in their homes. ERC's clients are mainly elderly, disabled, or have very young children—they are poor yet have very high energy bills. The ERC's work in Elbert County will reduce wasted electricity and gas usage by an average of 20%. In the process they also mitigate carbon monoxide problems in a large percentage of homes, creating a major public health benefit.</p>																															
Expected Environmental and/or Public Health Benefits	<p>Each home will save an average of 155 therms of gas and 636 kilowatt hours of electricity, a savings of 20% per year. This prevents 20% of the homes energy generation pollution per year for next 20 years. This is significant short and long term impact.</p>																															
Project Budget	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%; text-align: center;">Budget Category</th> <th style="width: 50%; text-align: center;">Description</th> <th style="width: 30%; text-align: center;">SEP Funds</th> </tr> </thead> <tbody> <tr> <td rowspan="2" style="vertical-align: top;">Personnel (Salaries, Wages)</td> <td></td> <td style="text-align: right;">37,056</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td rowspan="2" style="vertical-align: top;">Materials and Supplies</td> <td>Insulation (\$1500)</td> <td style="text-align: right;">3,088</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td rowspan="2" style="vertical-align: top;">Major Equipment</td> <td>Furnace (\$3,000) Water heater (\$1,500)</td> <td style="text-align: right;">15,440</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td rowspan="2" style="vertical-align: top;">Contractors/ Subcontractors</td> <td></td> <td style="text-align: right;">3,088</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td rowspan="2" style="vertical-align: top;">Other Direct Costs</td> <td></td> <td style="text-align: right;">3,088</td> </tr> <tr> <td></td> <td></td> </tr> <tr> <td colspan="2" style="text-align: right;">Total:</td> <td style="text-align: right;">\$61,760</td> </tr> </tbody> </table>	Budget Category	Description	SEP Funds	Personnel (Salaries, Wages)		37,056			Materials and Supplies	Insulation (\$1500)	3,088			Major Equipment	Furnace (\$3,000) Water heater (\$1,500)	15,440			Contractors/ Subcontractors		3,088			Other Direct Costs		3,088			Total:		\$61,760
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Attachment A

Budget Discussion	Every home that ERC serves is unique in need. They first conduct an energy assessment to determine the most cost-effective energy improvements as well as necessary health and safety measures. The ERC will also be receiving funds from the Colorado Energy Office and all sources of funding are secured, applied for, and directly related to SEP.		
Project Schedule and Work Plan	Activities		
	Activities	Staff Responsible	Date
	SEP Payment from Regulated Entity to Third Party SEP Administrator	Lennar Colorado	Within 30 days of the effective date of the Compliance Order on Consent (COC)
	Outreach to Community	Energy Resource Center	within 90 days of the effective date
	Verification of Applications	Energy Resource Center	within 90 days of the effective date
	Status Report Due to CDPHE and Lennar	Energy Resource Center	within six months of effective date
	Energy Assessments	Energy Resource Center	within eight months of the effective date
	Status Report Due to CDPHE and Lennar	Energy Resource Center	within 12 months of effective date
	Projected Completion Date	Energy Resource Center	Within 17 months of effective date
	SEP Completion Report Due to CDPHE	Lennar and Energy Resource Center	within 18 months days of effective date
Reporting Requirements	<p><u>Biannual Status Reports</u></p> <p>The SEP Administrator will prepare and submit a biannual project status report to the department's SEP Coordinator and will send a copy to the regulated entity contact at the time of the submittal to the CDPHE. Status reports will include the following information:</p> <ul style="list-style-type: none"> • A description of activities completed to date; • A budget summary table listing funds expended to date by budget category; and • A discussion of any anticipated changes to the project scope or timeline. <p><u>Final SEP Completion Report</u></p> <p>The SEP Completion report will be submitted within 30 days of project completion and contain at a minimum:</p> <ul style="list-style-type: none"> • A detailed description of the SEP as implemented; • A description of any operating problems encountered and the solutions thereto; • Itemized costs, documented by copies of purchase orders and receipts or canceled checks; • Certification that the SEP has been fully implemented pursuant to the provisions of this Consent Order; and 		

Attachment A

	<ul style="list-style-type: none">• 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). <p>Optional items that are also encouraged include:</p> <ul style="list-style-type: none">• A summary table identifying project deliverables and tasks along with the associated completion date;• Examples of brochures, educational or outreach materials developed or produced as part of the SEP; and• Photographs documenting the project.
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