September 14, 2015

MREC Classic Promontory LLC
Douglas M. Stimple
6385 Corporate Drive
Colorado Springs, CO 80919

RE: Compliance Order on Consent, Number: SC-150912-1

Dear Mr. Stimple:

Enclosed for MREC Classic Promontory LLC's ("Classic") records, is Classic's copy of the Compliance Order on Consent ("Order") with original signatures. Please remember that this agreement is subject to a thirty-day public comment period (Order, paragraph 41). The division will contact your office to discuss any comments received during this period. Please be advised that the first page of the Order was revised to reflect the assigned Order Number.

If you have any questions, please do not hesitate to contact me at (303) 692-2271 or lindsay.ellis@state.co.us. We appreciate Classic's time and efforts in resolving this matter.

Sincerely,

Lindsay Ellis

Lindsay Ellis, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Natasha Davis, EPA Region VIII
Tom Gonzales, El Paso County Public Health EH Division
Nicole Rowan, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Bret Icenogle, Engineering Section, CDPHE
Kelly Jacques, Field Services Section, CDPHE
Lillian Gonzalez, Permits Unit 1, CDPHE
Nathan Moore, Clean Water Compliance Unit, CDPHE
Rik Gay, Clean Water Compliance Unit, CDPHE
Michael Harris, Clean Water Enforcement Unit, CDPHE
Tania Watson, Compliance Assurance, CDPHE

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

DIVISION OF ADMINISTRATION

WATER QUALITY CONTROL DIVISION

COMPLIANCE ORDER ON CONSENT **NUMBER: SC-150912-1**

IN THE MATTER OF: **MREC CLASSIC PROMONTORY LLC**
CDPS PERMIT NO. COR-030000
CERTIFICATION NOS. COR-03I205 AND COR-03L613
EL PASO 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 (Act) §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of MREC Classic Promontory LLC (MREC Classic). The Division and MREC Classic 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-140903-1 (NOV/CDO) that the Division issued to MREC Classic on September 3, 2014.

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 makes the following determinations regarding MREC Classic and MREC Classic's compliance with the Act and a permit issued pursuant to the Act.

3. At all times relevant to the alleged violations identified herein, MREC Classic was a Delaware limited liability company in good standing and registered to conduct business in the State of Colorado.

4. MREC Classic is a "person" as defined by 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 November 14, 2011, MREC Classic initiated construction activities of a single family residential development at or near Baptist Road and Gleneagle Drive, in or near the city of Monument, El Paso County, Colorado (Project).

6. On September 19, 2011, the Division received an application from MREC Classic for coverage under the Colorado Discharge Permit System (CDPS) General Permit Number COR-030000, for Stormwater Discharges Associated with Construction Activity (Permit) for a planned disturbance of 67.45 acres of land within the Project.

7. On September 20, 2011, the Division provided MREC Classic with Certification Number COR-03I205 authorizing MREC Classic to discharge stormwater from construction activities associated with the Project to Jackson Creek and Black Forest Creek under the terms and conditions of the Permit. Certification Number COR-03I205 took effect September 20, 2011.

8. On January 10, 2014, the Division received an application from MREC Classic for coverage under the Permit for an additional planned disturbance of 48.63 acres of land within the Project.

9. On January 14, 2014, the Division provided MREC Classic with Certification Number COR-03L613 authorizing MREC Classic to discharge stormwater from construction activities associated with the Project to waters of the State of Colorado, including Jackson Creek, under the terms and conditions of the Permit. Certification Number COR-03L613 took effect January 14, 2014 and has been administratively continued until a new Permit and associated certification is issued, or until MREC Classic inactivates Permit coverage.

10. Pursuant to 5 CCR 1002-61, §61.8, MREC Classic must comply with all the terms and conditions of the Permit, and violations of such terms and conditions may make MREC Classic subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

11. Jackson Creek and Black Forest Creek are "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(102).

12. On December 18, 2013 and March 6, 2014, a representative from the Division (Inspector) conducted on-site inspections of the Project pursuant to the Division's authority under §25-8-306, C.R.S., to determine MREC Classic's compliance with the Water Quality Control Act and the Permit. During the inspections, the Inspector interviewed Project representatives, reviewed the Project's stormwater management system records, and performed a physical inspection of the Project.

Deficient and/or Incomplete Stormwater Management Plan

13. Pursuant to Part I. B. of the Permit, MREC Classic is required to prepare and maintain a Stormwater Management Plan (SWMP) in accordance with good engineering, hydrologic, and pollution control practices. The SWMP shall identify all potential sources of pollution that may reasonably be expected to affect the quality of stormwater discharges associated with construction activity from the Project. In addition, the SWMP shall describe the Best Management Practices (BMPs) that will be used to reduce the pollutants in stormwater discharges associated with construction activity at the Project.

14. Pursuant to Part I. C. of the Permit, the SWMP shall include, at a minimum, the following items:

    a. Site Description – The SWMP shall clearly describe the construction activity, including:

        i. The nature of the construction activity at the site.
        ii. The proposed sequence for major activities.
        iii. Estimates of the total area of the site, and the area and location expected to be disturbed by clearing, excavation, grading, or other construction activities.

iv. A summary of any existing data used in the development of the site construction plans or SWMP that describe the soil or existing potential for soil erosion.
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 all potential pollution sources, including ground surface disturbing activities, vehicle fueling, storage of fertilizers or chemicals, etc.
vii. The location and description of any anticipated allowable sources of non-stormwater discharge at the site, such as uncontaminated springs, landscape irrigation return flow, construction dewatering, and concrete washout.
viii. The name of the receiving water(s) and the size, type and location of any outfall(s). If the stormwater discharge is to a municipal separate storm sewer system, the name of that system, the location of the storm sewer discharge, and the ultimate receiving water(s).

b. Site Map – The SWMP shall include a legible site map(s), showing the entire site, identifying:

i. Construction site boundaries.
ii. All areas of ground surface disturbance.
iii. Areas of cut and fill.
iv. Areas used for storage of building materials, equipment, soil, or waste.
v. Locations of dedicated asphalt or concrete batch plants.
vi. Locations of all structural BMPs.
vii. Locations of non-structural BMPs as applicable.
viii. Locations of springs, streams, wetlands and other surface waters.

c. Stormwater Management Controls – The SWMP must include a description of all stormwater management controls that will be implemented as part of the construction activity to control pollutants in stormwater discharges, including:

i. SWMP Administrator – The SWMP shall identify a specific individual(s), position or title responsible for developing, implementing, maintaining, and revising the SWMP.
ii. Identification of Potential Pollutant Sources – The SWMP shall identify and describe those sources determined to have the potential to contribute pollutants to stormwater discharges.
iii. BMPs for Stormwater Pollution Prevention – The SWMP shall identify and describe appropriate BMPs that will be implemented at the Project to reduce the potential of pollution sources to contribute pollutants to stormwater discharges. The SWMP shall clearly describe the installation and implementation specifications for each BMP identified in the SWMP.

(1) Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate all structural practices implemented at the site to minimize erosion and sediment transport. Practices may include, but are not limited to: straw bales, wattles/sediment control logs, silt fences, earth dikes, drainage swales, sediment traps, subsurface drains, pipe slope drains, inlet protection, outlet protection, gabions, and temporary or permanent sediment basins.
(2) Non-Structural Practices for Erosion and Sediment Control – The SWMP shall clearly describe and locate, as applicable, all non-structural practices implemented at the site to minimize erosion and sediment transport.

Description must include interim and permanent stabilization practices, and site-specific scheduling for implementation of the practices. Non-structural practices may include, but are not limited to: temporary vegetation, permanent vegetation, mulching, geotextiles, sod stabilization, slope roughening, vegetative buffer strips, protection of trees, and preservation of mature vegetation.

(3) Phased BMP Implementation – The SWMP shall clearly describe the relationship between the phases of construction, and the implementation and maintenance of both structural and non-structural stormwater management controls. The SWMP must identify the stormwater management controls to be implemented during the project phases, which can include, but are not limited to, clearing and grubbing; road construction; utility and infrastructure installation; vertical construction; final grading; and final stabilization.

(4) Materials Handling and Spill Prevention – The SWMP shall clearly describe and locate all practices implemented at the site to minimize impacts from procedures or significant materials that could contribute pollutants to runoff. Such procedures or significant materials could include: exposed storage of building materials; paints and solvents; fertilizers or chemicals; waste material; and equipment maintenance or fueling procedures.

(5) Dedicated Concrete or Asphalt Batch Plants – The SWMP shall clearly describe and locate all practices implemented at the site to control stormwater pollution from dedicated concrete or asphalt batch plants.

(6) Vehicle Tracking Control – The SWMP shall clearly describe and locate all practices implemented at the site to control potential sediment discharges from vehicle tracking.

(7) Waste Management and Disposal, Including Concrete Washout – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from all construction site wastes, including concrete washout activities.

(8) Groundwater and Stormwater Dewatering – The SWMP shall clearly describe and locate the practices implemented at the site to control stormwater pollution from the dewatering of groundwater or stormwater from excavations, wells, etc.

d. Final Stabilization and Long-Term Stormwater Management – The SWMP shall clearly describe the practices used to achieve final stabilization of all disturbed areas at the site, and any planned practices to control pollutants in stormwater discharges that will occur after construction operations have been completed at the site.

e. Inspection and Maintenance – The SWMP shall clearly describe the inspection and maintenance procedures implemented at the site to maintain all erosion and sediment control practices, and other protective practices identified in the SWMP, in good and effective operating condition.

15. Pursuant to Part I. D. 3. (c) of the Permit, discharges to the ground of concrete washout water from washing of tools and concrete mixer chutes may be authorized, provided that the source is identified in the SWMP, BMPs are included in the SWMP to ensure that the activities do not result in the contribution of pollutants associated with the washing activity to stormwater runoff, BMPs are included in the SWMP to prevent pollution of groundwater, and the discharges do not leave the site as surface runoff or to surface waters.

16. Pursuant to Part I. D. 5. (c) of the Permit, the permittee shall amend the SWMP when there is a change in design, construction, operation, or maintenance of the site, which would require the implementation of new or revised BMPs, or if the SWMP proves to be ineffective in achieving the general objectives of controlling pollutants in stormwater discharges associated with construction activity, or when BMPs are no longer necessary and are removed.

17. During the December 18, 2013 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 17(a-g) below:

    a. The SWMP did not identify and describe all potential pollution sources. The SWMP stated that potential pollutants were to be added to the site map as needed, but no pollutants were identified on the site map.

    b. The SWMP did not identify and describe all anticipated allowable sources of non-stormwater discharges. Specifically, the SWMP did not describe the concrete washout observed in the field.

    c. The site map included with the SWMP did not identify the locations of all BMPs implemented at the Project to reduce the potential of pollutants in stormwater discharges. Specifically, the site map did not identify the locations of curb cuts, a detention basin, and surface roughening.

    d. The SWMP did not identify and describe all BMPs implemented at the Project to reduce the potential of pollutants in stormwater discharges. Specifically, the SWMP did not describe curb cuts, straw wattle check dams, surface roughening, specific materials handling procedures, spill prevention and response procedures, waste management and disposal procedures, and concrete washouts observed in the field.

    e. The SWMP did not describe the installation and implementation specifications for each BMP identified in the SWMP. Specifically, the SWMP did not describe specifications for curb cuts, straw wattles and inlet protections.

    f. Certain installation and implementation specifications included in the SWMP were not designed according to good engineering, hydrologic and pollution control practices. First, specifications for portable sanitary facilities did not include directions for securing the facilities to the ground. Second, the dimensions of stockpile earthen berms, and the resulting capture areas surrounding the stockpiles, were incapable of preventing sediment transport from the stockpiles.

    g. Inspection procedures described in the SWMP did not comply with the required minimum inspection schedule. Specifically, a December 13, 2013 amendment to the SWMP stated that "post precipitation inspection will be accomplished when weather event produces a minimum of 0.5 inches of water." However, the Permit mandates that post-storm inspections be conducted within twenty-four hours after the end of any precipitation or snowmelt event that causes surface erosion. Surface erosion may occur during storm events producing less than 0.5 inches of precipitation, therefore, the SWMP amendment did not comply with the required minimum inspection schedule in the Permit.

18. During the March 6, 2014 inspection, the Inspector reviewed the Project's SWMP and identified the following deficiencies, as described in paragraphs 18(a-d) below:

    a. The SWMP did not identify and describe BMPs to reduce all potential pollutants sources. Specifically, the SWMP did not describe structural or non-structural practices to minimize erosion and sediment transport from large disturbed areas in Phases 4 and 5 of the Project.

    b. The site map included with the SWMP did not identify the locations of all ground surface disturbance or waste storage. Specifically, the site map did not identify the locations of ground surface disturbance in the northeast portion of Phases 4 and 5 of the Project or the locations of dumpsters used to store waste materials.

    c. The site map included with the SWMP was not revised to reflect the selection of appropriate BMPs for site conditions. Specifically, the site map depicted installation of silt fence continuously along the western border of Phases 4 and 5 of the Project. However, silt fence observed in the field did not extend along the entire boundary. The site map was not updated to reflect this installation pattern.

    d. The SWMP did not describe installation and implementation specifications for each BMP identified in the SWMP. Specifically, the SWMP did not describe specifications for a detention basin located west of the intersection of Gleneagle Drive and Transcontinental Drive.

19. The Division has determined that MREC Classic failed to prepare and maintain a complete and accurate SWMP for the Project.

20. MREC Classic's failure to prepare and maintain a complete and accurate SWMP for the Project constitutes violations of Part I. B., Part I. C., Part I. D. 3. (c) and Part I. D. 5. (c) of the Permit.

Failure to Perform and/or Document Inspections of Stormwater Management System

21. Pursuant to Part I. D. 6. (a) of the Permit, for active sites where construction has not been completed, MREC Classic is required to make a thorough inspection of the Project's stormwater management system at least once every fourteen calendar days and within twenty-four hours after the end of any precipitation or snowmelt event that causes surface erosion.

22. During the December 18, 2013 inspection, the Inspector reviewed the available inspection records for the period from July 31, 2013 – December 4, 2013 and identified that MREC Classic failed to perform any post-storm inspections. Data from the National Climatic Data Center station "Gleneagle 0.4 WNW, CO US (GHCND:US1COEP0061)" indicates that forty-four days of measurable precipitation occurred between July 31, 2013 and December 4, 2013. Of those days, thirteen were recorded with rain and/or snow levels at or above 0.25 inches, as listed in the table below:

YEAR	MONTH	DAY	24-HOUR AMOUNTS ENDING AT OBSERVATION TIME	
			RAIN, MELTED SNOW, ETC. (IN)	SNOW, ICE PELLETS, HAIL (IN)
2013	8	14	0.32	0.00
2013	8	23	2.57	0.00
2013	9	2	0.25	0.00
2013	9	11	0.52	0.00
2013	9	12	0.72	0.00
2013	9	13	2.05	0.00
2013	9	14	0.44	0.00
2013	9	16	0.28	0.00
2013	9	17	0.48	0.00
2013	9	23	0.46	0.00
2013	10	18	0.11	2.20
2013	11	21	0.14	1.70
2013	11	25	0.04	0.60

Source: Record of Climatological Observations; National Oceanic & Atmospheric Administration

MREC Classic failed to perform and/or document inspections of the Project following these events.

23. MREC Classic's failure to properly perform inspections constitutes a violation of Part I. D. 6. (a) of the Permit.

Failure to Maintain Required Records and/or Documents

24. Pursuant to Part I. D. 6. (b) of the Permit, MREC Classic is required to keep a record of inspections. The record must identify any incidents of non-compliance with the terms and conditions of the permit and must include the locations of BMPs that need to be maintained. The record must also include a signed statement indicating the site is in compliance to the best of the signer's knowledge and belief.

25. During the December 18, 2013 inspection, the Inspector reviewed the available inspection records for the period from July 31, 2013 – December 4, 2013 and identified that the inspection records did not include the locations of BMPs requiring maintenance and did not contain a signed compliance statement.

26. MREC Classic's failure to properly maintain required inspection records constitutes a violation of Part I. D. 6. (b) of the Permit.

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

27. Pursuant to Part I. B. 3. of the Permit, MREC Classic must implement the provisions of the Project's SWMP as written and updated, from commencement of construction activity until final stabilization is complete.

28. Pursuant to Part I. D. 2. of the Permit, MREC Classic 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.

29. Pursuant to Part I. D. 1. of the Permit, concrete washout water shall not be discharged to state surface waters or to storm sewer systems, and all site wastes must be properly managed to prevent potential pollution of state waters.

30. 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.

31. During the December 18, 2013 inspection, the Inspector identified the following deficiencies related to BMP selection, design, installation, implementation and maintenance at the Project, as described in Paragraphs 31(a-n) below:

    a. Inlet protection measures in Phase 2 of the Project were not implemented and maintained according to good pollution control practices. Specifically, gravel bags installed at storm drain inlets on Old Post Drive were torn and crushed, and, therefore, could not prevent sediment-laden stormwater from bypassing the inlet protections and entering storm drains without treatment. In addition, installation and implementation specifications in the Project's SWMP designated the use of concrete blocks to prevent gravel bags from falling into inlets; however, wire fencing was used in the field. The more permeable nature of the wire fencing provided less sediment retention and contributed to the bypassing of sediment-laden stormwater. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.

    b. Inlet protection measures in Phases 4 and 5 of the Project were not designed according to good pollution control practices. Specifically, inlet protection measures were designed with recessed concrete slots that served as open pathways into the storm drain. As a result, sediment-laden stormwater runoff bypassed the inlet protection and entered the storm drain. Stormwater runoff from this portion of the Project flowed through a storm sewer system to a detention basin that ultimately discharged stormwater runoff to Jackson Creek.

    c. Control measures installed at a stockpile located in Phase 3 of the Project were not implemented according to good pollution control practices. Specifically, an earthen berm control measure constructed at a stockpile on Reading Way Lots 22 and 23 did not extend completely around the downgradient side of the stockpile, despite specifications in the Project's SWMP describing a continuous stockpile perimeter. This deficiency created a pathway through which stormwater could carry sediment from the stockpile. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.

d. No control measures were implemented to manage stormwater runoff from certain disturbed lots in Phase 3 of the Project. Specifically, no control measures were implemented to minimize erosion and sediment transport at Reading Way Lot 16 and Transcontinental Drive Lots 9, 10, 25 and 39, despite a variety of measures to control sediment from disturbed lots listed in the Project's SWMP. Stormwater runoff from the disturbed lots collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.

e. Control measures observed in certain disturbed lots in Phase 3 of the Project were not installed, implemented and maintained according to good pollution control practices. Specifically, straw wattle check dams installed in drainageways between Transcontinental Drive and Reading Way were not entrenched or staked in and were not the required length for the drainage area. In addition, the check dams were buried by sediment and, therefore, required maintenance. These deficiencies impaired the ability of the check dams to reduce stormwater flow velocity, and, therefore, minimize erosion in the drainageway. Stormwater runoff from the disturbed lots collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.

f. Control measures observed in certain disturbed lots in Phase 3 of the Project were not installed and implemented according to good pollution control practices. Specifically, straw wattle erosion logs at the perimeter of Reading Way Lots 18 and 19 were not entrenched or staked in. This deficiency impaired the ability of the straw wattles to intercept stormwater sheet flows from the upgradient disturbed lots, and, therefore, minimize the transportation of sediment. Stormwater runoff from the disturbed lots collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.

g. Control measures observed on a disturbed slope in Phase 3 of the Project were not implemented according to good pollution control practices. Specifically, surface roughening used to stabilize a slope south of Reading Way was not performed parallel to the slope contour. This deficiency impaired the ability of the surface roughening variations to minimize wind and water erosion on the slope. In addition, the Project's SWMP only identified the use of straw and crimp control measures in this area. Stormwater runoff from the disturbed slope collected in a storm sewer system on Gleneagle Drive that discharges stormwater runoff to Jackson Creek.

h. Control measures observed downgradient of a disturbed slope on the west side of Phase 4 of the Project were not selected and implemented according to good pollution control practices. First, no control measures to minimize erosion on the slope were observed, despite slope stabilization techniques listed in the Project's SWMP. Sediment from the disturbed slope was transported downgradient to a series of rock check dams installed offsite at the access road behind lots on Split Creek Drive. However, rock check dams are not recognized in the industry for use as primary sediment trapping measures. Stormwater runoff from the disturbed slope collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.

i. No control measures were implemented to manage stormwater runoff from approximately ten acres of a disturbed slope in Phase 5 of the Project. Specifically, a silt fence originally identified in the Project's SWMP as a perimeter control was no longer in place and no other control measures to minimize erosion and sediment transport from the disturbed slope were observed. As a result, sediment was observed downgradient on a paved surface at Walters Creek Drive. The storm sewer system on Walters Creek Drive discharges stormwater runoff to Jackson Creek.

j. Vehicle tracking control measures in Phases 2 and 3 of the Project were not implemented and maintained according to good pollution control practices. Specifically, sediment transported to roadways from disturbed lots was not removed, despite specifications in the Project's SWMP describing removal practices. Additionally, the scheduled frequency of street sweeping was insufficient to prevent discharges of sediment to roadways. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.

k. Vehicle tracking control measures in Phase 4 of the Project were not implemented and maintained according to good pollution control practices. Specifically, a vehicle tracking control pad at the transition point between a disturbed area and the paved area at Gleneagle Drive was laden with sediment, despite specifications in the Project's SWMP describing removal practices. As a result, the pad's functionality was restricted and sediment was transported to the roadway. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek.

l. A concrete washout control measure west of the intersection of Gleneagle Drive and Transcontinental Drive in Phase 3 of the Project was not implemented and maintained according to good pollution control practices. Specifically, concrete washout waste exceeded the receiving capacity of the concrete washout structure and the waste was not removed from the structure. As a result, discharges of concrete washout water had the potential to flow off disturbed lots and collect in a storm sewer system that discharges stormwater runoff to Jackson Creek.

m. No control measures were implemented to manage concrete and masonry waste exposed to stormwater runoff on lots north of Transcontinental Drive in Phase 3 of the Project. Stormwater runoff from this portion of the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.

n. Sanitary waste control measures were not installed and implemented according to good pollution control practices. Specifically, numerous portable sanitary facilities located throughout Phases 3 and 4 of the Project were not secured to the ground and/or were not located more than ten feet from the flow line as recommended by industry publications. Stormwater runoff from these locations in the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.

32. During the March 6, 2014 inspection, the Inspector identified the following deficiencies related to BMP selection, installation, implementation and maintenance at the Project, as described in Paragraphs 32(a-k) below:

a. Control measures installed at a stockpile located in Phase 4 of the Project were not implemented according to good pollution control practices. Specifically, an earthen berm installed at the toe of a stockpile on the southwestern side of Midland Valley Way was not compacted, despite specifications in the Project's SWMP directing earthen berms to be wheel rolled or compacted in order to avoid blowouts. As a result, the stockpile was not stabilized and was exposed to stormwater runoff. Stormwater runoff from this portion of the Project flowed to a storm sewer system connected to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

b. Control measures observed on Reading Way Lot 19 in Phase 3 of the Project were not implemented and maintained according to good pollution control practices. Specifically, surface roughening used to stabilize disturbed slopes on the lot was not performed in accordance with the Project's SWMP specifications. First, the surface roughening was not performed parallel to the slope contour. Next, groove cutting on slopes at gradients of 2:1 to 3:1 was not at least three inches deep and fifteen inches apart. Finally, the surface roughening was not repeated often enough to maintain the SWMP specifications. These deficiencies impaired the ability of the surface roughening variations to minimize wind and water erosion on the slopes. Furthermore, without stabilization, the disturbed slope exceeded the receiving capacity of a downgradient straw wattle perimeter control and violated the maximum tributary drainage area of 0.25 acre per 100 linear-feet of wattle that is recommended by industry publications. Stormwater runoff from this portion of the Project flowed to a storm sewer system connected to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

c. Control measures observed downgradient of a disturbed area extending southeast of Gleneagle Drive to approximately fifty to seventy-five yards south of Midland Valley Way, in Phase 4 of the Project, were not selected and implemented according to good pollution control practices. First, no control measures to minimize erosion on the disturbed area were observed. Stormwater runoff from the disturbed area was transported downgradient to three inlet protection measures. However, inlet protection measures are not recognized in the industry for use as primary sediment trapping measures. Furthermore, the thirteen-acre contributing area exceeded the receiving capacity of the three inlet protection measures. Stormwater runoff from this portion of the Project flowed through a storm sewer system to a detention basin that ultimately discharged stormwater runoff to Jackson Creek.

d. Control measures observed downgradient of a disturbed area in Phase 5 of the Project were not selected, implemented and maintained according to good pollution control practices. First, no control measures to minimize erosion on the disturbed area were observed. A temporary berm and silt fence existed downgradient of the disturbed area at the northwestern perimeter of Phase 5 of the Project; however, the nineteen-acre contributing area exceeded the receiving capacity of the berm and silt fence. Furthermore, the berm was no longer fully compacted and the silt fence was loose from its stakes and/or slumping in numerous areas. Therefore, both control measures required maintenance. These deficiencies impaired the ability of the downgradient berm and silt fence to intercept stormwater runoff from the disturbed area. Stormwater runoff from this portion of the Project flowed through the northern boundary of Phase 5 to offsite swales leading to Jackson Creek and through the western boundary of Phase 5 to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

e. No control measures were implemented to manage stormwater runoff from a disturbed area between Denver Pacific Drive and Kansas Pacific Drive in Phase 5 of the Project. A silt fence control measure was installed near the western boundary of this area; however, a section of surface disturbance existed between the silt fence and the offsite drainageway without additional control measures in place. Stormwater runoff from this portion of the Project flowed through the western boundary of Phase 5 to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

f. Control measures observed along the western boundary of Phase 5 of the Project were not implemented and maintained according to good pollution control practices. Specifically, a silt fence existed downgradient of disturbed areas along the western boundary; however, the size of the upgradient contributing area exceeded the maximum tributary drainage area of 0.25 acre per 100 linear-feet of silt fence that is recommended by industry publications. In addition, the silt fence required maintenance. The fence was loose from its stakes and accumulated sediment above one-half its exposed height, the maximum allowable point authorized by the Project's SWMP. These deficiencies impaired the ability of the silt fence to intercept stormwater runoff from the upgradient disturbed areas, and, therefore, minimize the transportation of sediment. Stormwater runoff from this portion of the Project flowed through the western boundary of Phase 5 to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

g. Control measures observed on the north side of Transcontinental Drive in Phase 3 of the Project were not maintained according to good pollution control practices. Specifically, a silt fence installed along a disturbed area behind the lots on Transcontinental Drive accumulated sediment above one-half its exposed height, the maximum allowable point authorized by the Project's SWMP. This deficiency impaired the ability of the silt fence to intercept stormwater runoff from the upgradient disturbed area, and, therefore, minimize the transportation of sediment. Stormwater runoff from this portion of the Project flowed to a storm sewer system connected to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

h. Control measures observed along Gleneagle Drive and Reading Way in Phase 3 of the Project were not maintained according to good pollution control practices. Specifically, a straw wattle erosion log installed at the perimeter of the area was overtopped by sediment, and, therefore, required maintenance. This deficiency impaired the ability of the straw wattle to intercept stormwater sheet flows from upgradient disturbed areas, and, therefore, minimize the transportation of sediment. In addition, the condition of the straw wattle conflicted with the Project's SWMP specification requiring removal of sediment deposits reaching one-third of a straw wattle's functional freeboard height and impairing the filtration capability of the wattle. Stormwater runoff from this portion of the Project flowed to a storm sewer system connected to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

i. No control measures were implemented to manage discharges of concrete washout water and waste in Phase 4 of the Project. Concrete washout waste was discharged both to the ground and to a soil stockpile, and, therefore, was outside of a concrete washout control measure, despite the Project's SWMP designating a concrete washout area. As a result, discharges of concrete washout water and waste had the potential to collect in storm sewers that discharge to Jackson Creek. Stormwater runoff from the eastern two-thirds of Phase 4 flowed through a storm sewer system to a detention basin that ultimately discharged stormwater runoff to Jackson Creek. Stormwater runoff from the western one-third of Phase 4 flowed to an adjacent subdivision with a storm sewer system that ultimately discharges stormwater runoff to Jackson Creek.

j. No control measures were implemented to manage stormwater runoff from the materials storage area located near the water tower at the upper end of Phase 5 of the Project. Specifically, construction waste and broken asphalt were disposed of on the ground, despite a specification in the Project's SWMP directing all construction trash and debris (materials stockpiles) to be deposited in a dumpster. Stormwater runoff from this portion of the Project flowed through the northern boundary of Phase 5 to offsite swales leading to Jackson Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.

k. Sanitary waste control measures in Phase 3 of the Project were not installed according to good pollution control practices. Specifically, a portable sanitary facility located at 15806 Transcontinental Drive was not secured to the ground, despite a specification in the Project's SWMP directing all portable sanitary facilities to be staked down. Stormwater runoff from this location in the Project collected in a storm sewer system that discharges stormwater runoff to Jackson Creek. As a result, site wastes were not properly managed to prevent potential pollution of state waters.

33. The Division has determined that MREC Classic failed to select, design, install, implement and/or maintain BMPs for all potential pollutant sources at the Project, following good engineering, hydrologic, and pollution control practices.

34. MREC Classic's failure to select, design, install, implement and/or maintain BMPs at the Project constitutes violations of Part I. B. 3., Part I. D. 1., Part I. D. 2., and Part I. D. 7. of the Permit.

35. On April 3, 2015, the Division received a Construction Stormwater Inactivation Notice from MREC Classic seeking to terminate coverage under COR-03I205. The Division terminated Permit certification number COR-03I205 effective April 16, 2015.

ORDER AND AGREEMENT

36. 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 MREC Classic to comply with all provisions of this Consent Order.

37. MREC Classic agrees to the terms and conditions of this Consent Order. MREC Classic 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. MREC Classic also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by MREC Classic 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.

38. Notwithstanding the above, MREC Classic does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by MREC Classic pursuant to this Consent Order shall not constitute evidence of fault and liability by MREC Classic with respect to the conditions of the Project.

CIVIL PENALTY

39. 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, MREC Classic shall pay Ninety Thousand Dollars ($90,000.00) in civil penalties. MREC Classic 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:

    Lindsay Ellis
    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

SCOPE AND EFFECT OF CONSENT ORDER

40. 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.

41. 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 MREC Classic 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.

42. 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 MREC Classic, 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.

43. Notwithstanding paragraph 38 above, the violations described in this Consent Order will constitute part of MREC Classic's compliance history for purposes where such history is relevant.

LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY

44. 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 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.

45. This Consent Order does not grant any release of liability for any violations not specifically cited herein.

46. MREC Classic reserves its rights and defenses regarding the Project other than proceedings to enforce this Consent Order.

47. 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.

48. MREC Classic 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 MREC Classic, or those acting for or on behalf of MREC Classic, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys 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

49. 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-CWE-B2
Attention: Lindsay Ellis
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: 303-692-2271
E-mail: lindsay.ellis@state.co.us

For MREC Classic**:**

MREC Classic Promontory LLC
Attention: Douglas M. Stimple
6385 Corporate Drive
Colorado Springs, CO 80919
Telephone: 719-592-9333
Email: dstimple@classichomes.com

MODIFICATIONS

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

NOTICE OF EFFECTIVE DATE

51. 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 41. 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

52. This Consent Order is binding upon MREC Classic 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 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 MREC CLASSIC PROMONTORY LLC:

_____ Date: 9-4-15

MREC Classic Promontory LLC
By: Promontory Pointe LLC
a Colorado limited liability company
Its: Manager and Developer Member
By: Elite Properties of America, Inc.
Its: Manager
By: Douglas Stimple
Its: CEO

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:

_____ Date: 12 Sep 15

Patrick J. Pfaltzgraff, Director
WATER QUALITY CONTROL DIVISION