

DESILVA GATES
CONSTRUCTION

504101

11555 Dublin Boulevard
P.O. Box 2909
Dublin, California 94568-2909
925/829-9220

CONTRACTORS LICENSE NO. 704185 A

August 10, 2004

DGC Letter No. 504101-381

City of Oakland
Public Works Agency
250 Frank Ogawa Plaza, Suite 4314
Oakland, CA 94612-2033

Attn: Marcel Uzegbu

Re: Leona Quarry
DGC Job No. 504-101
Alleged Water Quality Violations

Marcel,

We are in receipt of letters dated August 4th, 5th, and 6th from Mr. Ward, of the City of Oakland, Public Works Agency. These letters allege violations of City Municipal Code, and assess a daily fine, as provided in the project Grading Permit. We disagree with the representation that any alleged discharges constitute a violation, and that there are grounds for assessing a penalty. It is our opinion the project EIR, MMRP, and COA's all acknowledge the likelihood of potential discharges and as you are aware, the project has mitigated for these occurrences. We ask that the City reconsider its' position on these allegations after reviewing all project documents.

We will continue to maximize our efforts to mitigate against these potential events. If the City wishes to pursue the viewpoint that the recent events constitute violations, we would appreciate scheduling a meeting with the appropriate parties who are knowledgeable of the project, and all project documents.

Please contact me if it is necessary to continue to pursue this matter.

Sincerely,

DESILVA GATES CONSTRUCTION, LP

KENT PEYTON
PROJECT MANAGERcc: B. Cole, P. Helsoth, TAGUS
504101 - City of Oakland - Alleged Water Quality Violations

CITY OF OAKLAND



PROJECT DELIVERY DIVISION
Public Works Agency
FAX: (510) 238-6603

• 250 Frank Ogawa Plaza, Suite 4344 • OAKLAND, CALIFORNIA 94612
(510) 238-3051

August 6, 2004

DeSilva Gates Construction, LP
11555 Dublin Boulevard
Dublin, CA 94568
Attn: Kent Peyton, Project Manager

Re: Leona Quarry Grading Permit #GR0400019
Special Conditions Third Fine Imposition

Mr. Peyton,

City Staff observed and verified continuous illegal discharge to the City's storm drain system at 8:20 am today, August 6, 2004. The temporary sediment pond located at the south side of the project site is discharging turbid water into the City's storm drain. The source of the turbidity is the upper basin currently being graded. DeSilva Gates is required to divert any turbid water such that it does not enter the City's storm drain system. Your proposal to divert turbid water for use in your water trucks is an acceptable solution to this problem.

DeSilva Gates is in violation of Chapter 13.16 of the Oakland Municipal Code, "Creek Protection Ordinance, Storm Water Management and Discharge Control".

Article 13.16.080, "Discharge in Violation of Permit", states: "Any non-storm-water discharge or increase in flow that would result in or contribute to a violation of NPDES Permit No. CA0029831, and any amendment, revision or re-issuance thereof, either separately considered or when combined with other non-storm-water discharges, is prohibited." As stated on DeSilva Gates' Grading Permit No. GR 040019, violations are subject to a \$5,000 per day penalty. You are hereby directed to pay \$5,000 to the City of Oakland for the illegal discharge occurring on August 6, 2004.

Additional violations or continuation of the current violation beyond 12:01 am, August 7, 2004 will be subject to additional penalties.

Sincerely,

Ronald Ward
Supervising Civil Engineer
Public Works Agency, Project Delivery Division

Cc: David Lau, PWA
Jun Osalbo, PWA
Lesley Estes, PWA

CITY OF OAKLAND



PROJECT DELIVERY DIVISION
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(510) 238-3051

August 5, 2004

DeSilva Gates Construction, LP
11555 Dublin Boulevard
Dublin, CA 94568
Attn: Kent Peyton, Project Manager

Re: Leona Quarry Grading Permit #GR0400019
Special Conditions 2nd Fine Imposition

Mr. Peyton,

City Staff observed and verified continuous illegal discharge to the City's storm drain system at 8:15 am today, August 5, 2004. The temporary sediment pond located at the south side of the project site is discharging turbid water into the City's storm drain. This sediment pond was addressed in a letter to you dated July 1, 2004. The improvements requested in that letter have not been implemented. This discharge could have been avoided with prudent attention to the matter by DeSilva Gates.

DeSilva Gates is in violation of Chapter 13.16 of the Oakland Municipal Code, "Creek Protection Ordinance, Storm Water Management and Discharge Control".

Article 13.16.080, "Discharge in Violation of Permit", states: "Any non-storm-water discharge or increase in flow that would result in or contribute to a violation of NPDES Permit No. CA0029831, and any amendment, revision or re-issuance thereof, either separately considered or when combined with other non-storm-water discharges, is prohibited." As stated on DeSilva Gates' Grading Permit No. GR 040019, violations are subject to a \$5,000 per day penalty. You are hereby directed to pay \$5,000 to the City of Oakland for the illegal discharge occurring on August 5, 2004.

Additional violations or continuation of the current violation beyond 12:01 am, August 6, 2004 will be subject to additional penalties.

Sincerely,

Ronald Ward
Supervising Civil Engineer
Public Works Agency, Project Delivery Division

*Rec'd TO KENT PEYTON
8-5-04
5:30 pm*

Cc: David Lau, PWA
Jun Osalbo, PWA
Lesley Estes, PWA

CITY OF OAKLAND



PROJECT DELIVERY DIVISION
Public Works Agency

• 250 Frank Ogawa Plaza, Suite 4344 • OAKLAND, CALIFORNIA 94612
(510) 238-3051
FAX: (510) 238-6603

August 4, 2004

DeSilva Gates Construction, LP
11555 Dublin Boulevard
Dublin, CA 94568
Attn: Kent Peyton, Project Manager

Re: Leona Quarry Grading Permit #GR0400019
Special Conditions Fine Imposition

Mr. Peyton,

DeSilva Gates personnel and City Staff observed and verified an illicit discharge to the Chimes Creek at 11:15 am today, August 4, 2004. The temporary sediment pond located at the south side of the project site overflowed and carried sediment into the city's storm drain system.

As specified in DeSilva Gates' Grading Permit No. GR040019, violations of the Creek Protection, Storm Water Management and Discharge Control (Chapter 13.16 of the Oakland Municipal Code) are subject to a \$5,000 per day penalty. You are hereby directed to pay \$5,000 to the City of Oakland for today's illicit discharge.

Additional violations or a continuation of the current violation beyond 12:01 am, August 5, 2004 will be subject to additional penalties.

Sincerely,

A handwritten signature in black ink that reads "Ronald Ward". The signature is written in a cursive, flowing style.

Ronald Ward
Supervising Civil Engineer
Public Works Agency, Project Delivery Division

Cc: Raul Godinez, II, PWA
Claudia Cappio, CEDA
David Lau, PWA
Jun Osalbo, PWA
Lesley Estes, PWA

WHITE: CITY (Original)
CANARY: ENGINEER-IN-CHARGE
GOLDENROD: APPLICANT

GRADING PERMIT

- 1. JOB ADDRESS: 7100 MOUNTAIN BLVD
- 2. APPLICANT (PROPERTY OWNER)
NAME THE DESILVA GROUP PHONE: 925-828-7999
ADDRESS 11555 DUBLIN BLVD
- 3. CONTRACTOR: DESILVA GATES CONST.
LICENSE# _____ PHONE: 925-828-7999
ADDRESS: 11555 DUBLIN BLVD 925 829 9220
- 4. CIVIL ENGINEER IN CHARGE CBG
RCE # _____ PHONE: 925 866-0322
ADDRESS: 2603 CANINE RAMBL
- 5. GRADING PLAN PREPARED BY: CBG
RCE # SAME PHONE: SAME
- 6. TESTING & INSPECTION BY: BERLOGAR
RCE # 62536 PHONE: 925 484-0220
ADDRESS: 5587 Sunol Blvd Pleasanton 94566
- 7. PURPOSE OF GRADING: RESIDENTIAL DEVELOPMENT/RECLAMATION
- 8. GRADING OPERATING:
 EXCAVATION: 2,700,000 ± CUBIC YARDS
 FILL 2,700,000 ± CUBIC YARDS
- 9. EQUIPMENT TO BE USED: SCRAPERS, DOZERS, EXCAVATORS, TRUCKS, WATER TRUCKS
- 10. EXCELL MATERIAL HAULED TO: UNKNOWN MAYBE N/A

- 11. MATERIAL IMPORTED FROM: UNKNOWN MAYBE N/A
- 12. HAUL ROUTE: SEE CONST. MGMT. PLAN SAME AS UNDER CURRENT MINING OPERATION
- 13. REQUESTED STARTING DATE: 4/5/04
DATE OF COMPLETION: 9/05
- 14. TOTAL ESTIMATED COST OF GRADING WORK: ATTACHED \$ 14,840,000 (ATTACH ESTIMATE SHEET)
- 15. EROSION CONTROL PROTECTION TO BE USED: SEE SWPPP
- 16. ADDITIONAL INFORMATION SUBMITTED
FULL GRADING PLANS, EIR, VTM PWD SEE ATTACHMENTS, DUST ABATEMENT PROGRAM.
- 17. BONDS SEE ATTACHED

<input checked="" type="checkbox"/> PERFORMANCE:	\$	<u>14,840,000</u>	DATE	<u>4/14/04</u>
<input type="checkbox"/> LABOR AND MATERIALS:	\$			
<input checked="" type="checkbox"/> EROSION CONTROL:	\$			
- 18. APPROVALS:

ENGINEERING SERVICES:	BY	DATE
PLANNING DEPT:	<u>MLU</u>	<u>4/23/04</u>
OTHERS:	<u>CPW</u>	<u>4/23/04</u>

This permit issued pursuant to all provisions of Chapter 6, Article 2 of the Oakland Municipal Code, "Grading, Excavations and Fills." Any work within the dedicated public right of way, construction in a watercourse, building construction or blasting is subject to additional permits. This permit is granted upon the express condition that the permittee shall be responsible for all claims and liabilities arising out of work performed under the permit or arising out of permittee's failure to perform the obligations with respect to this permit. The permittee shall, and by acceptance of the permit agrees to, defend, indemnify, save and hold harmless the City, its officers and employees, from and against any and all suits, claims or actions brought by any person for or on account of any bodily injuries, disease or illness or damage to persons and/or property sustained or arising in the construction of the work performed under the permit or in consequence of permittee's failure to perform the obligations with respect to this permit.

CARLSON, BARSEE AND GIBSON 3/24
CIVIL ENGINEER - CHARGE: _____ Date

DAVID CHAPMAN 3/24/04
Owner or Owner's Agent: _____ Date

APPROVED BY THE DEPUTY DIRECTOR OF PLANNING & BUILDING

By Calvin Wong Date: 4/23/04

- City is authorized to mitigate the violation if not done by developer.
- CONDITIONS OF PERMIT
- a. This permit is valid only when signed by the Deputy Director of Planning & Building or his authorized representative.
 - b. No final inspection and no certificate of occupancy shall be issued before the final statement(s) of the Engineer(s) in charge is/are accepted by the Deputy Director of Planning & Building.
 - c. This permit shall be available at the grading site at all times during the grading operation.
 - d. Areas to be graded shall be prepared by stripping and removal of unsuitable and unstable materials, and existing slip surfaces shall be destroyed by benching, where applicable.
 - e. Grading operations shall be conducted in such manner as to minimize spillage on public streets, and dust and noise. Permittee shall be responsible for cleaning and repair of damage to public rights of way resulting from the grading work.
 - f. Site to be graded for safe and adequate drainage; and men and equipment shall be provided at the site during storms to prevent damage to other property from flooding or deposition of material washed from site.
 - g. No grading shall be done which will cause sloughing from or onto adjoining property.
 - h. This permit void unless work is commenced within 60 days from the granting of this permit or 30 days after the completion date shown on item 13 above, whichever is earlier.
 - i. Special conditions shall apply as noted on the grading plan dated _____
 - j. No trees shall be cut without a tree removal permit from Parks and Recreation.

- k. Remedial grading shall be performed first.
- l. Unless otherwise approved, no grading work will be allowed from October 15 to April 15.
- m. Special Conditions
 - Grading shall conform to recommendations in soils report prepared by Berlogar
 - Grading shall conform to conditions of approval for the subdivision (attached)
 - Grading hours shall be from 7am to 7pm unless approved in writing by City.
 - Separate Building Permit is required for all walls.
 - P-tob permit required for storm drain system and other public improvements.
 - Apply the BMP's during construction
 - Contractor shall pay city \$5000 per day for any violation of dust, noise requirements
 - No work on National Holidays.
 - Contractor shall observe city noise ordinance.

SPECIAL CONDITIONS ADDENDUM

**I. SPECIAL CONDITIONS OF APPROVAL OF GRADING PERMIT GR0400019
LEONA QUARRY, 7100 Mountain Boulevard
TRACTS 7351 and 7493**

(The conditions set forth in this two page Special Conditions Addendum constitute Special Conditions of Approval that are in addition to all other Conditions of Permit: this addendum is a part of the Building Services Grading Permit issued for the above referenced project)

1. Contractor shall perform the remedial grading work first. The remedial grading work shall be performed under the supervision of a Geotechnical Engineer.
2. Restrict access and use of Altura Place shall be subject to the provisions of the Settlement Agreement (Attachment C below.)
3. The contractor shall comply with City Noise Ordinance.
4. Parking of equipments, workers and employee vehicles on public rights-of-way is prohibited. Parking shall be only within the project site.
5. There will be no delivery of materials to the project site other than during grading hours in item #11 below.
6. Equipment delivery is allowed after work hours subject to reasonable efforts to mitigate noise impacts. Equipment engines will not be allowed to idle during non-grading work hours.
7. Rock Catchment's fence shall be as recommended by the developer's Geotechnical Engineer. The developer's geotechnical Engineer shall provide the City with a letter recommending the appropriate time to install the fence.
8. The City is authorized to mitigate any project related violation and back-charge the developer if the developer or his representative fails to cure the violation at a reasonable time as determined by the City.
9. City and developer acknowledge that partial payment of \$788,562.00 toward the total grading permit fee has been received, and that the remaining balance (estimated to be \$526,093.00) shall be paid prior to April 23, 2005.
10. Grading shall conform to the recommendations in Soils Report prepared by Berloger Geotechnical Consultants and the provisions of Grading Ordinance.
11. Grading hours shall be from 7am to 7pm Monday through Friday. No work shall occur on Federal Holidays. There will no work on weekends unless approved in writing by the City.
12. Developer shall secure a minor encroachment permit for the walls encroaching within the public right-of-way along Altura Place at least 1 week prior to commencement of construction of the walls..
13. Developer shall secure building permits related to grading concurrently with the grading permit or at least one week prior to start of construction of building permit work.
14. Separate Building permits are required for all walls.
15. Obtain appropriate recycling permits as appropriate for all permitted work.

16. The Phase II of the SWPPP for amendment for Phase I shall be submitted no later than 5 working days from the issuance of this permit
17. Developer shall pay the City \$5000 per day for violation of Dust Mitigation Plan.
18. **The conditions of the following attachments listed below shall be complied with. Documents indicated as subject to revision may be changed and the grading permit is subject to approved revisions thereof. If there is any conflict between or within the conditions of the grading permit and the attached documents or approved revisions thereof, the more stringent shall apply to the grading permit.**

ATTACHMENTS-ESTABLISHED DOCUMENTS

- A. *EXHIBIT B CEQA Mitigation Monitoring and Reporting Program Oakland City Council Resolution, Leona Quarry Project, February 17, 2004*
- B. *EXHIBIT C, CONDITIONS OF APPROVAL FOR LEONA QUARRY PROJECT VESTING TENTATIVE MAP, PLANNED UNIT DEVELOPMENT APPROVAL AND DESIGN REVIEW LEONA QUARRY OAKLAND CITY COUNCIL RESOLUTION, FEBRUARY 17, 2004*
- C. *ATTACHMENT A, LEONA QUARRY SETTLEMENT AGREEMENT 10.11 CC, ORA/COUNCIL, JAN 6 2004*

ATTACHMENTS - DOCUMENTS SUBJECT TO REVISION

- D. *LEONA QUARRY DUST ABATEMENT PLAN (W/ATTACHMENTS) REVISED 4/20/04 with changes for grading permit.*
- E. *CONSTRUCTION MANAGEMENT AND PHASING PLAN (W/ATTACHMENTS) (undated) Received 4/21/2004 with changes for grading permit.*
- F. *SPECIAL STATUS SPECIES MITIGATION AND MONITORING PLAN LEONA QUARRY, OAKLAND CALIFORNIA prepared by Wetlands Research Associates, Inc. Revised April 2004/*
- G. *STORM WATER POLLUTION PREVENTION PLAN, FOR: PHASE I LEONA QUARRY, DATED 2/25, 2004 (AND PHASE II AMENDMENT THERETO, NOT YET RECEIVED, DUE 5 DAYS FROM GRADING PERMIT ISSUANCE*