

**Executive Summary – Enforcement Matter – Case No. 41287**  
**Forestar (USA) Real Estate Group Inc.**  
**RN106056518**  
**Docket No. 2011-0423-EAQ-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

EAQ

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Westside Preserve at Buttercup Creek, Buttercup Creek at South LakeLine, Cedar Park,  
Williamson County

**Type of Operation:**

Land development site

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** July 1, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$7,500

**Amount Deferred for Expedited Settlement:** \$1,500

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$3,000

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$3,000

Name of SEP: Bunny Run Preserve Restoration

**Compliance History Classifications:**

Person/CN - Average

Site/RN - N/A

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 41287**  
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**RN106056518**  
**Docket No. 2011-0423-EAQ-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** December 15, 2010  
**Date(s) of NOE(s):** February 16, 2011

***Violation Information***

Failed to receive approval of a Contributing Zone Plan ("CZP") before beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the investigator observed that the Respondent had begun construction of Phase V of the Buttercup Creek project. A total of approximately 200 acres of land had been disturbed, which consisted of construction of infrastructure, including utilities, sewage and drainage, paving and clearing of land [30 TEX. ADMIN. CODE § 213.23(a)(1)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)
2. The Order will also require the Respondent to:
  - a. Within 30 days, submit a CZP for review and approval; and
  - b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision No. 2.a.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

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***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Harvey Wilson, Enforcement Division,  
Enforcement Team 3, MC 149, (512) 239-0321; Laurie Eaves, Enforcement Division,  
MC 219, (512) 239-4495

**TCEQ SEP Coordinator:** Phillip Hampsten, SEP Coordinator, Enforcement Division,  
MC 219, (512) 239-6732

**Respondent:** Ryan Gray, Manager, Forestar (USA) Real Estate Group Inc., 6300 Bee  
Cave Road, Building 2, Suite 500, Austin, Texas 78746-5149

Darlene L. Louk, Vice President, Forestar (USA) Real Estate Group Inc., 6300 Bee Cave  
Road, Building 2, Suite 500, Austin, Texas 78746-5149

**Respondent's Attorney:** N/A

**Attachment A**  
**Docket Number: 2011-0423-EAQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Forestar (USA) Real Estate Group Inc.  
**Penalty Amount:** Six Thousand Dollars (\$6,000)  
**SEP Offset Amount:** Three Thousand Dollars (\$3,000)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Hill Country Conservancy  
**Project Name:** Bunny Run Preserve Restoration  
**Location of SEP:** Travis County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Hill Country Conservancy** for the *Bunny Run Preserve Restoration* project. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to purchase native plants, seeds, and equipment in order to restore the native habitat of the preserve as more fully described below. Third-Party Recipient shall also use the SEP Offset Amount for labor, material, and equipment costs directly associated with the clearance of brush from the small stream to revitalize the natural wetlands on the property.

The project consists of two major components: 1) rangeland enhancement, and 2) wetland enhancement. Due to the scope and nature of this project, these objectives would be accomplished over five years.

**Range Enhancement**—Food and cover will be provided for ground nesting birds and small mammals and reptiles through a combination of clearing invasive grass and brush species and reseeding of native range plants on 10 acres of the preserve. In addition, selective brush sculpting will allow a mix of native trees and understory species to become established and thrive.

**Wetland Enhancement and Re-vegetation**—Improved wetlands, rich in organic matter and nutrients, support diverse vegetation and insect life rarely seen near urban riparian areas

Forestar (USA) Real Estate Group Inc.  
Agreed Order - Attachment A

because of development and poor land management. Shorebirds, wintering and migratory waterfowl, reptiles, and amphibians depend on wetland areas for breeding, shelter and food. Wetlands also serve to prevent flooding and erosion.

The two-acre wetland (seep/marsh) area to the east of the restored spring will be planted with native wetland species after exotic and invasive species have been removed. In addition, exclosure fencing will provide protection from grazing and browsing animals while new plants become established.

The project will involve the use of volunteers to plant native plants and seeds on the preserve. The project will also involve the clearing of upland brush from a small stream on the preserve to revitalize the natural wetlands on the property.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by restoring the native habitat of the preserve, which is located in a highly urban environment.

**C. Minimum Expenditure**

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Hill Country Conservancy  
Attention: Frank Davis, Project Manager  
PO Box 163125  
Austin, Texas 78716-3125

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating

Forestar (USA) Real Estate Group Inc.  
Agreed Order - Attachment A

full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
PO Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to “Texas Commission on Environmental Quality” and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the “Clean Texas” (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	7-Mar-2011	<b>Screening</b>	8-Mar-2011	<b>EPA Due</b>	
	<b>PCW</b>	16-Mar-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Forestar (USA) Real Estate Group Inc.				
<b>Reg. Ent. Ref. No.</b>	RN106056518				
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Major		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41287	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0423-EAQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Harvey Wilson
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts   
 Approx. Cost of Compliance  *\*Capped at the Total EB \$ Amount*

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

Screening Date 8-Mar-2011

Docket No. 2011-0423-EAQ-E

PCW

Respondent Forestar (USA) Real Estate Group Inc.

Policy Revision 2 (September 2002)

Case ID No. 41287

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106056518

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 0%

#### >> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

Screening Date 8-Mar-2011

Docket No. 2011-0423-EAQ-E

PCW

Respondent Forestar (USA) Real Estate Group Inc.

Policy Revision 2 (September 2002)

Case ID No. 41287

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106056518

Media [Statute] Edwards Aquifer

Enf. Coordinator Harvey Wilson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.23(a)(1)

Violation Description Failed to receive approval of a Contributing Zone Plan ("CZP") before beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone, as documented during an investigation on December 15, 2010. Specifically, the investigator observed that the Respondent had begun construction of Phase V of the Buttercup Creek project. A total of approximately 200 acres of land had been disturbed, which consisted of construction of infrastructure, including utilities, sewage and drainage, paving and land clearing.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (25%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 3 Number of violation days 87

Table for marking violation frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$7,500

Three monthly events are recommended, from the December 15, 2010 investigation until the screening date of March 8, 2011.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x), and Notes.

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$652

Violation Final Penalty Total \$7,500

This violation Final Assessed Penalty (adjusted for limits) \$7,500

## Economic Benefit Worksheet

**Respondent** Forestar (USA) Real Estate Group Inc.  
**Case ID No.** 41287  
**Reg. Ent. Reference No.** RN106056518  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$12,500	15-Dec-2010	31-Dec-2011	1.04	\$652	n/a	\$652
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to prepare, submit, and obtain approval of the CZP. Date Required is the date of the investigation. Final Date is the estimated date of compliance.

**Avoided Costs**

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$12,500

**TOTAL**

\$652

## Compliance History

Customer/Respondent/Owner-Operator:	CN603055799	Forestar (USA) Real Estate Group Inc.	Classification: AVERAGE	Rating: 4.28
Regulated Entity:	RN106056518	WESTSIDE PRESERVE AT BUTTERCUP CREEK	Classification:	Site:
ID Number(s):				
Location:	BUTTERCUP CREEK AT S LAKELINE			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	March 22, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 22, 2006 to March 22, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Harvey Wilson	Phone:	239 - 0321	

### Site Compliance History Components

- |  |     |    |
|--|-----|----|
| 1. Has the site been in existence and/or operation for the full five year compliance period?       | No  |    |
| 2. Has there been a (known) change in ownership/operator of the site during the compliance period? |     | No |
| 3. If Yes, who is the current owner/operator?  | N/A |    |
| 4. If Yes, who was/were the prior owner(s)/operator(s)?  | N/A |    |
| 5. When did the change(s) in owner or operator occur?  | N/A |    |
| 6.   |     |    |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 02/16/2011 886835
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>FORESTAR (USA) REAL ESTATE</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>GROUP INC.</b>	<b>§</b>	
<b>RN106056518</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

**AGREED ORDER**  
**DOCKET NO. 2011-0423-EAQ-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Forestar (USA) Real Estate Group Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a land development site located on Buttercup Creek at South Lakeline in Cedar Park, Williamson County, Texas (the "Site").
2. The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 21, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Seven Thousand Five Hundred Dollars (\$7,500) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). The Respondent has paid Three Thousand Dollars (\$3,000) of the administrative penalty and One Thousand Five Hundred Dollars (\$1,500) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Three Thousand Dollars (\$3,000) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to receive approval of a Contributing Zone Plan ("CZP") before beginning construction of a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.23(a)(1), as documented during an investigation conducted on December 15, 2010. Specifically, the investigator observed that the Respondent had begun construction of Phase V of the Buttercup Creek project. A total of approximately 200 acres of land had been disturbed, which consisted of construction of infrastructure, including utilities, sewage and drainage, paving and clearing of land.

## III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Forestar (USA) Real Estate Group Inc., Docket No. 2011-0423-EAQ-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Three Thousand Dollars (\$3,000) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that the Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, submit a CZP for review and approval to:

Water Section Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S. IH 35, Suite 100  
Austin, Texas 78704-5700

- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or

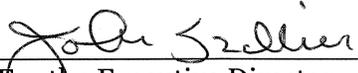
authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date 7/6/2011

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 6/1/2011

Darlene L. Louk  
Name (Printed or typed)  
Authorized Representative of  
Forestar (USA) Real Estate Group Inc.

Vice President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

**Attachment A**  
**Docket Number: 2011-0423-EAQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Forestar (USA) Real Estate Group Inc.  
**Penalty Amount:** Six Thousand Dollars (\$6,000)  
**SEP Offset Amount:** Three Thousand Dollars (\$3,000)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Hill Country Conservancy  
**Project Name:** Bunny Run Preserve Restoration  
**Location of SEP:** Travis County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Hill Country Conservancy** for the *Bunny Run Preserve Restoration* project. The contribution will be used in accordance with the Supplemental Environmental Project between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to purchase native plants, seeds, and equipment in order to restore the native habitat of the preserve as more fully described below. Third-Party Recipient shall also use the SEP Offset Amount for labor, material, and equipment costs directly associated with the clearance of brush from the small stream to revitalize the natural wetlands on the property.

The project consists of two major components: 1) rangeland enhancement, and 2) wetland enhancement. Due to the scope and nature of this project, these objectives would be accomplished over five years.

**Range Enhancement**—Food and cover will be provided for ground nesting birds and small mammals and reptiles through a combination of clearing invasive grass and brush species and reseedling of native range plants on 10 acres of the preserve. In addition, selective brush sculpting will allow a mix of native trees and understory species to become established and thrive.

**Wetland Enhancement and Re-vegetation**—Improved wetlands, rich in organic matter and nutrients, support diverse vegetation and insect life rarely seen near urban riparian areas

Forestar (USA) Real Estate Group Inc.  
Agreed Order - Attachment A

because of development and poor land management. Shorebirds, wintering and migratory waterfowl, reptiles, and amphibians depend on wetland areas for breeding, shelter and food. Wetlands also serve to prevent flooding and erosion.

The two-acre wetland (seep/marsh) area to the east of the restored spring will be planted with native wetland species after exotic and invasive species have been removed. In addition, exclosure fencing will provide protection from grazing and browsing animals while new plants become established.

The project will involve the use of volunteers to plant native plants and seeds on the preserve. The project will also involve the clearing of upland brush from a small stream on the preserve to revitalize the natural wetlands on the property.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by restoring the native habitat of the preserve, which is located in a highly urban environment.

**C. Minimum Expenditure**

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Hill Country Conservancy  
Attention: Frank Davis, Project Manager  
PO Box 163125  
Austin, Texas 78716-3125

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating

Forestar (USA) Real Estate Group Inc.  
Agreed Order - Attachment A

full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
PO Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. Respondent shall make the check payable to “Texas Commission on Environmental Quality” and shall mail it to:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the “Clean Texas” (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.