

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**TENTATIVE ORDER No. R2-2024-00XX**

**WASTE DISCHARGE REQUIREMENTS for:**

**KB HOME – SOUTH BAY, INC.  
COMMUNICATIONS HILL 2, PHASES 3 & 4 AND INDUSTRIAL  
SAN JOSE, SANTA CLARA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter the Water Board, finds that:

1. KB Home – South Bay, Inc, (Discharger) has applied to the Water Board for authorization to construct a mixed-use project consisting of the buildout of Phases 3 and 4 and future buildout of an industrial park on 172 acres of Communications Hill (Project), as part of the Communications Hill 2 development. Phases 3 and 4 include construction of 1,305 residential units and a Village Center. Residential units will consist of a combination of detached and attached townhouses, detached row houses, podium condominiums, and apartments. The Village Center, which is part of the Phase 3 development area, will include up to 67,500 square feet of commercial and retail space for restaurants, shops, entertainment, and small offices. The Phase 3 development area will also include a school and adjacent playfields. The Project includes development of 55 acres of industrial park uses in the eastern portion of the site, near the base of Communications Hill, adjacent to Old Hillsdale Avenue. Streets, stormwater facilities, and other associated supporting infrastructure will also be constructed. The Project also includes the construction of parklands and trails.
2. The Project site is four miles south of downtown San Jose and is generally bounded by the Caltrain/Union Pacific railroad tracks on the north, Old Hillsdale Avenue to the east, the Tuscan Hills development to the south, and the Millpond and Dairy Hill neighborhoods to the west (Latitude 37.289733; Longitude -121.857500) (Att. A, Fig. 1).
3. The abandoned Hillsdale Mercury Mine is located on the Project site. Initial excavation and grading activities associated with the Project will eliminate much of the former mercury mine. However, in some locations, mine shafts will be backfilled by injecting a flowable sand and foam or concrete-based slurry prior to site grading to reduce the potential of mine collapse during construction. The backfill materials will be injected from surface portals or mine openings. Some of these areas may ultimately be graded during construction. The Discharger has prepared the *Soil Management Plan, Communications Hill 2, Phase III/IV San Jose* (Soil Management Plan) (McCloskey Consultants, Inc., November 4, 2021). The Soil Management Plan describes measures for protecting future residents and workers at the Project site from naturally occurring asbestos and residual mercury contamination. On December 23, 2022, the Water Board provided a Letter of Concurrence for the Soil Management Plan.
4. To protect residents and workers at the Project Site from exposure to naturally occurring asbestos and residual mercury contamination, the Soil Management Plan

specifies that the current site surface will be placed under clean fill that will range in depth from 3 feet to 10 feet.

5. The Project will implement post-construction stormwater treatment for the Project site that is consistent with the requirements of the Water Board's Municipal Regional Stormwater NPDES Permit (Order No. R2-2022-0018, as amended by Order No. R2-2023-0019; NPDES Permit No. CAS612008). The proposed post-construction stormwater treatment design for the Project is included in Order Attachment B.
6. The Project site has waters of the state subject to regulation by the Water Board. A delineation of jurisdictional waters at the site was completed based on field work conducted on December 10, 2012, and March 12, April 22, and July 1, 2013. The U.S. Army Corps of Engineers (Corps) issued a jurisdictional determination for the site on March 22, 2016. The Corps determined that jurisdictional waters are present on the site in the form of an intermittent stream channel, in-stream wetlands, and wetland and non-wetland seeps. The Corps determined that these features are not subject to regulation under Clean Water Act (CWA) section 404, based on their isolation from other waters of the U.S. The Discharger prepared an updated delineation in 2021 and submitted it to the Corps, which issued an Approved Jurisdictional Determination (AJD) on July 20, 2022. The AJD confirmed that the Project site did not contain jurisdictional waters of the U.S. subject to regulation under CWA section 404. The Water Board is issuing Waste Discharge Requirements (WDRs) pursuant to California Water Code (Water Code) section 13263 to authorize the Project, including its fill of waters.
7. The Soil Management Plan specifies the placement of clean fill material on the surface of the Project site at depths ranging from 3 to 10 feet. The existing waters of the state at the Project site are located in areas that must be covered with clean fill soil for compliance with the Soil Management Plan. Therefore, impacts to waters of the state are not avoidable.
8. On February 27, 2024, the Discharger submitted a Report of Waste Discharge to the Water Board pursuant to Water Code section 13260.

### ***Impacts***

9. Project construction will permanently impact the following quantities of waters of the state: 612 linear feet (LF), comprising 1,481 square feet (0.034 acre) of intermittent stream channel; 37,887 square feet (0.87 ac) of seeps, consisting of two wetlands seeps and one non-wetland seep; and 66,533 square feet (1.53 ac) of a quarry pond (Att. A, Fig. 2). The intermittent stream channel and non-wetland seep are identified as OW-IS and OW-S, respectively, in Att. A, Fig. 2. The two wetland seeps are identified as WS #1 and WS #2 in Att. A, Fig. 2. The quarry pond is identified as IM in Att. A, Fig. 2.

### ***Compensatory Mitigation Plan***

10. Mitigation for the Project's impacts to waters of the State will be provided on a 4.42-acre parcel at the Project site that is identified in Project documents as the Habitat

Management Lands (HML). The design of the mitigation waters in the HML, as well as the protocols for the monitoring and maintenance of the mitigation waters, are described in the *Communications Hill Phases 3 & 4 and Industrial, Habitat Mitigation and Monitoring Plan, San Jose, California* (HMMP) (LOA, March 19, 2024). The requirements for long-term management of the HML are provided in the *Communication Hill Phases 3 & 4 And Industrial, Wetland Mitigation Long-Term Management Plan, San Jose, California* (LTMP) (LOA, March 19, 2024). The mitigation waters to be created at the HML include: a 758-foot-long intermittent stream channel; a seasonal wetland with a surface area of 1.3 acres; and a 1.53-acre pond.. The mitigation features will be constructed in series. Water that passes through the mitigation channel will discharge to the wetland mitigation pond, which will discharge to the mitigation pond. The Project’s impacts to waters of the State and the mitigation to be provided for those impacts are summarized in Table 1 and illustrated in Att. A, Fig. 3.

<b>TABLE 1. IMPACTED WATERS AND PROPOSED MITIGATION.</b>		
<b>Feature</b>	<b>Linear Feet or Area of Impacts</b>	<b>Linear Feet or Area of Creation Mitigation</b>
Intermittent Stream Channel	612 ft*	758 ft**
Wetland and Non-Wetland Seeps	37,887 sq. ft. (0.87 acre)	56,628 sq. ft. (1.30 acre)
Quarry Pond	66,533 sq. ft. (1.53 acre)	66,647 sq. ft. (1.53 acre)

\*1,481 sq. ft. (0.034 acre)

\*\*8,717 sq. ft. (0.2 acres)

sq. ft. = square feet

11. A mitigation channel will be constructed at the toe of a graded hillslope on the north side of Communications Hill. It will receive water from two sources: 1) natural groundwater and 2) surface runoff from a 4.2-acre area of the hillslope. The natural groundwater in the hill is intercepted within the subdrain system that was installed with the mass grading performed for earlier phases of development at Communications Hill. The subdrain will convey an intermittent to perennial flow of water into the channel via a rock outfall at the approximate midpoint of the channel. Existing concrete ditches on the hill slope capture surface runoff and will direct it into the channel via rock outfalls at the upstream end of the channel, west of the subdrain outfall. The channel will have a 2.5-foot-wide bed and 11.5-foot-wide banks that rise 1.5 feet from the channel bottom along a 3:1 bank slope. The area of the channel, top-of-bank to top-of-bank, will be at least 8,717 sq. ft. (0.2 acres). The channel bed and banks will be seeded with a native mix of hydrophytic species. The channel will gently meander through a 31.5-foot-wide upland corridor along the toe of the hillslope. This upland buffer will have an average 10-foot width on either side of the channel. The buffer area will be seeded with a native mix of upland species (Att. A, Fig. 4) and planted with a variety of native trees and shrubs that are adapted to mesic conditions (Att. A, Figs. 5a and 5b).
12. The mitigation wetland pond will be graded at the toe of a north-facing hillslope between Communications Hill Boulevard and the Caltrain/Union Pacific railroad tracks

(Att. A, Fig. 3). The created wetland area will receive stormwater directly from a 4.4-acre watershed on the northern slope of Communications Hill, directly south of the mitigation area, via two outfalls. This watershed is comprised of annual grassland habitat. The wetland will also receive water from the created mitigation channel. Water from the channel will be the wetland pond's primary source of hydrology. The wetland will have a 1.30-acre bottom and 3:1 side slopes. The bottom of the wetland will be constructed with microtopographic "islands." The resulting variability of saturation and inundation conditions will allow for a relatively broad suite of native hydrophytic species to be planted within the pond. The wetland islands and pond margins will be planted with native hydrophytic vegetation. About 20 percent of the pond bottom will be planted with native hydrophytic vegetation to create a mosaic of vegetated and open water areas within the pond (Att. A, Fig. 4).

13. Overflow from the mitigation wetland will be the 1.53-acre mitigation pond's primary water source. The pond will have a maximum water depth of 3.5 feet, with an additional 1 foot of freeboard. Plantings are not proposed for the pond, although hydrophytic vegetation is expected to naturally recruit around the pond margins. The pond will have a riser at 3.5-foot water depth to route overflow water into the storm drain system.
14. The mitigation waters and adjacent upland buffers will be vegetated as described in HMMP Section 4. Native plants will be locally sourced species and will be planted via direct seeding or container planting. Seeding is designed in two formulations: 1) a seed mix for the wetland pond, channel bed, and lower channel banks; and 2) a seed mix for the upper channel banks and upland channel buffer (Att. A, Fig. 4). The wetland and wetland margins will be planted with wetland monocot groupings. Container planting in the uplands and upper banks of the wetland and channel will include trees and shrubs (Att. A, Figs. 5a and 5b). The seed mix for the wetland pond, channel bed, and lower channel banks consists of grasses, graminoids, and herbs that are adapted to wetland conditions (Table 2). The seed mix for the upper channel banks and upland buffer consists of native grasses and forbs that are adapted to both mesic and arid conditions (Table 3). This latter seed mix will also be used for any areas outside of the mitigation area that are temporarily impacted by construction of the mitigation features.

<b>TABLE 2. RECOMMENDED SEED MIX FOR THE WETLAND POND, CHANNEL BED, AND LOWER CHANNEL BANKS.</b>		
<b>Species</b>	<b>Common Name</b>	<b>Application Rate (pounds of pure live seed/acre)</b>
<i>Cyperus eragrostis</i>	Tall flatsedge	4
<i>Elymus triticoides</i>	Beardless wildrye	2
<i>Erythranthe guttata</i>	Yellow monkey flower	1
<i>Festuca rubra</i>	Red fescue	2
<i>Hordeum brachyantherum</i>	Meadow barley	12
<i>Juncus balticus</i>	Baltic rush	1
<i>Phalaris californica</i>	Canary grass	2
<i>Scrophularia californica</i>	Beeplant	1
<b>Total</b>		<b>25 lbs./acre</b>

<b>TABLE 3. RECOMMENDED SEED MIX FOR THE UPPER CHANNEL BANKS AND UPLAND BUFFER.</b>		
<b>Species</b>	<b>Common Name</b>	<b>Application Rate (pounds of pure live seed/acre)</b>
<i>Bromus carinatus</i>	California brome grass	5
<i>Claytonia perfoliata</i>	Miner’s lettuce	0.5
<i>Elymus glaucus</i>	Blue wild rye	4
<i>Elymus triticoides</i>	Beardless wildrye	6
<i>Eschscholzia californica</i>	California poppy	8
<i>Festuca microstachys</i>	Small fescue	0.5
<i>Lotus wrangelianus</i>	California lotus	6
<i>Lupinus bicolor</i>	Bicolor lupine	9
<i>Melica torreyana</i>	Torrey’s melic	2
<i>Plantago erecta</i>	California plantain	1
<i>Stipa pulchra</i>	Purple needlegrass	2
<i>Triticum X Elymus ‘Regreen’</i>	Regreen™ sterile wheat	10
<b>Total</b>		<b>54</b>

The wetland pond will be planted with native hydrophytic vegetation after the seed mix has been applied (Table 4; Att. A, Figs. 5a and 5b).

<b>TABLE 4. RECOMMENDED SPECIES PALETTE FOR THE WETLAND POND.</b>			
<b>Species</b>	<b>Common name</b>	<b>Approximate Plant Totals</b>	<b>Container Size</b>
<i>Cyperus eragrostis</i>	Tall flatsedge	152	5" pots, 6" tubes, or similar
<i>Eleocharis macrostachya</i>	Spike rush	463	5" pots, 6" tubes, or similar
<i>Juncus effusus</i>	Common bog rush	713	5" pots, 6" tubes, or similar
<i>Juncus mexicanus</i>	Mexican rush	86	5" pots, 6" tubes, or similar
<i>Juncus patens</i>	Spreading rush	251	5" pots, 6" tubes, or similar
<i>Juncus xiphioides</i>	Iris-leaved rush	986	5" pots, 6" tubes, or similar
<i>Schoenoplectus acutus</i>	Tule	730	Onsite transplants; 5" pots, 6" tubes, or similar
<i>Schoenoplectus californicus</i>	California bulrush	713	5" pots, 6" tubes, or similar
<i>Typha latifolia &amp; T. domingensis</i>	Cattail	761	Onsite transplants; 5" pots, 6" tubes or similar.
<i>Salix lasiolepis &amp; S. laevigata</i>	Willow (pole plantings)	122	Pole cuttings from within Communications Hill or greater watershed
<b>Total</b>		<b>4,977</b>	

Plants listed in Tables 4 and 5, as well as any alternate species that are approved by a qualified restoration specialist, will be grown from source plants located within the Coyote Creek and/or Guadalupe River watersheds to the maximum extent practicable. If such source plants are unavailable due to project timing, plants can be obtained from the closest available watersheds that experience similar climates.

<b>TABLE 5. TREE AND SHRUB PLANTING PALETTE.</b>				
<b>Species</b>	<b>Scientific Name</b>	<b>Form</b>	<b>Plant Total</b>	<b>Plant Container Size</b>
<b>Trees</b>				
Coast live oak	<i>Quercus agrifolia</i>	Tree	17	Mix of 5-gal, 15-gal and 24" box
Blue oak	<i>Quercus douglasiana</i>	Tree	4	Mix of 5-gal, 15-gal and 24" box
Valley oak	<i>Quercus lobata</i>	Tree	17	Mix of 5-gal, 15-gal and 24" box
California buckeye	<i>Aesculus californica</i>	Medium tree	14	5-gallon or larger
Blue elderberry	<i>Sambucus nigra caerulea</i>	Small tree	21	5-gallon or larger
Red willow	<i>Salix laevigata</i>	Medium tree	6	Container grown 5-gallon or larger, or pole cuttings
Arroyo willow	<i>Salix lasiolepis</i>	Medium tree	6	Container grown 5-gallon or larger, or pole cuttings
<b>Subtotal (Trees )</b>			<b>85</b>	
<b>Shrubs</b>				
Mule fat	<i>Baccharis salicifolia</i>	Shrub	17	Deepot or 1 gal
Coyote brush	<i>Baccharis pilularis</i>	Shrub	27	Deepot or 1 gal
Coffeeberry	<i>Frangula californica</i>	Shrub	8	Deepot or 1 gal
Common Blackberry	<i>Rubus ursinus</i>	Shrub	165	Deepot or 1 gal
California rose	<i>Rosa californica</i>	Shrub	63	Deepot or 1 gal
<b>Subtotal (Shrubs)</b>			<b>263</b>	
<b>Tree and Shrub Totals</b>			<b>348</b>	

15. Vegetation in the HML will be maintained during the initial 10-year monitoring and maintenance period as described in HMMP Section 5. Vegetation management will include control of invasive species rated by the California Invasive Plant Council (Cal-IPC) as a “high” or “moderate” ecological impact species (at <https://www.cal-ipc.org/plants/inventory/>), with the exception of the following six plant species that are common throughout annual grasslands in the county: Italian rye grass (*Festuca perennis*), Mediterranean barley (*Hordeum marinum*), foxtail barley (*H. murinum*), slender oat (*Avena barbata*), wild oats (*Avena fatua*), and ripgut brome (*Bromus diandrus*).
16. The mitigation channel will be assessed with respect to the performance monitoring criteria in Table 6.

<b>TABLE 6. CHANNEL PERFORMANCE MONITORING CRITERIA.</b>			
<b>Area</b>	<b>Monitoring Task</b>	<b>Performance Standard</b>	<b>Remedial Action</b>
Channel Performance and Longitudinal Profiles	Monitor evidence of channel bed incision, including knickpoints/headcuts and the initiation and/or growth of gullies	The longitudinal profile of the channel system should remain consistent, without excessive scour, erosion, or deposition. The longitudinal slope of 1.5 percent should be maintained.	Any significant deviation from the 1.5 percent channel slope should be reported and addressed as necessary. Evidence of channel erosion observed during monitoring visits will be addressed by a fluvial hydrologist who will develop a remedial repair plan.
Bank Performance	Monitor channel and wetland banks for obvious signs of vertical and horizontal displacement, seepage, or erosion.	Significant displacement, seepage or erosion should not occur along the channel banks.	Any excessive slope displacement, seepage or erosion will be reported. A fluvial geomorphologist will be consulted on bank repairs.
Sediment Movement	Monitor evidence of excessive deposition in channel, including active channel width to depth ratios.	The channel width-to-depth ratio is to be monitored for changes that could affect the channel function	Any excessive deposition or erosion in the creek channel causing channel width-to-depth ratio to change by more than 10 percent will be reported. A fluvial geomorphologist will be consulted on channel repairs.
Vegetation Performance	Channels and banks should be monitored for obstructing vegetation.	No vegetation should obstruct flows.	Vegetation found to be obstructing flows may be trimmed or removed in consultation with a qualified restoration specialist.

17. Vegetation monitoring will compare assessments of mitigation planting to the performance targets and final success criteria in Tables 7 and 8.



<b>TABLE 7. TREE AND SHRUB PERFORMANCE TARGETS AND FINAL SUCCESS CRITERIA FOR THE WETLAND POND AND CHANNEL.</b>									
<b>Class</b>	<b>Yr. 0</b>	<b>Yr. 1</b>	<b>Yr. 2</b>	<b>Yr. 3</b>	<b>Yr. 4</b>	<b>Yr. 5</b>	<b>Yr. 6</b>	<b>Yr. 8</b>	<b>Year 10 (Final Success Criteria)</b>
Tree survival	100%	83%	90%	90%	83%	78%	76%	74%	<b>70%</b>
Shrub survival*	100%	83%	90%	90%	85%	<b>75%</b>	<b>75%</b>	<b>70%</b>	<b>70%</b>

<b>TABLE 8. VEGETATION PERCENT COVER PERFORMANCE CRITERIA FOR THE WETLAND POND.</b>						
	<b>Yr. 0</b>	<b>Yr. 1</b>	<b>Yr. 2</b>	<b>Yr. 3</b>	<b>Yr. 4</b>	<b>Year 5 (Final Success Criteria)</b>
Relative cover of species with wetland indicator status	N/A	>30%	>40%	>45%	>50%	<b>&gt;50%</b>
Invasive species cover of Cal-IPC high and moderate list species	<5%	<5%	<5%	<5%	<5%	<b>&lt;5%</b>
Minimum absolute vegetation cover	N/A	≥30%	≥30%	≥35%	≥35%	<b>≥40%</b>

18. The created channel, wetland, and pond will be maintained and monitored for a minimum 10-year period, as described in HMMP Sections 5 and 6, to ensure that they attain the Year 10 performance criteria specified in the Tables 6, 7, and 8.
19. The Discharger will ensure that the mitigation features are monitored and maintained in conformance with the LTMP. The Discharger will have initial responsibility for implementation of the LTMP, until a Homeowners Association (HOA) is established for the Project site by the Discharger. The Discharger will provide Covenants, Conditions, and Restrictions (CC&Rs) to guide the administration of the HOA. The CC&Rs will specify the HOA’s responsibility for long-term management of the channel, wetland, and pond and the post-construction stormwater treatment measures (See Provision E.15). Acceptable text for the portions of the CC&Rs addressing mitigation features and stormwater management are provided in Att. C.
20. The Discharger will establish an endowment to fund the HOA’s long-term management of the mitigation features, as specified in the LTMP. Based on the Property Analysis Record (PAR) in LTMP Att. 1, the endowment must be at least \$375,457.
21. After the Water Board’s Executive Officer determines that the mitigation channel, wetland, and pond have attained the Year 10 performance criteria specified in the HMMP, responsibility for management of the mitigation features may be transferred to

the HOA for the Project site, upon obtaining approval of the transfer of responsibility from the Executive Officer.

### ***Post-Construction Stormwater Management***

22. Stormwater at the Project Site currently flows to the Coyote Creek and Guadalupe River watersheds.
23. Stormwater discharges from urban and developing areas in the San Francisco Bay Region are significant sources of certain pollutants that cause or may be causing or threatening to cause or contribute to water quality impairment in waters of the Region. Furthermore, as delineated in the CWA section 303(d) list, the Water Board has found that there is a reasonable potential that municipal stormwater discharges cause or may cause or contribute to an excursion above water quality standards for the following pollutants: mercury, PCBs, furans, dieldrin, chlordane, DDT, trash, and selenium in San Francisco Bay segments. Runoff from impervious surfaces at the developed Site may contribute to water quality impairment in the Region.
24. This Order requires the Discharger to implement stormwater treatment best management practices (BMPs) for post-construction stormwater runoff from the Project's impervious surfaces, consistent with the *Stormwater Treatment Operations and Maintenance Plan, Communications Hill Coyote Creek Watershed, San Jose California* (Stormwater Plan) (HMH Engineers, November 2023) (Order Attachment B), as further described in the *Memorandum: Communications Hill Phase Water Quality Gravity Based System* (Memorandum) (Schaaf & Wheeler, July 2023, revised February 2024). Stormwater treatment controls will be constructed concurrently with the Project, so that treatment is provided for all new and recreated impervious surfaces at the Project site. Construction, as used in this finding, refers to work to create new impervious surfaces and does not refer to soil management per the Soil Management Plan that is necessary to isolate future occupants of the Project site from naturally occurring asbestos and residual mercury contamination in site soils.
25. The stormwater system contains 3 main components: 1) collection and conveyance, 2) water quality treatment, and 3) hydromodification mitigation (Att. A, Fig. titled *Gravity Stormwater Mitigation Concept and Revised Wetland Mitigation*). The collection system consists of numerous inlets and pipes that collect runoff from pavement, roofs, and landscape areas through catch basins and curb inlets. The branching network of pipes is consolidated into larger pipes in the public streets: Altino Drive, Communications Hill Boulevard, and Hillsdale Station Road. This network discharges through a concrete outfall structure into the water quality basin. Another network discharges into the water quality basin from a portion of Phase 2 of the Project and a third network will come from the future industrial site. The water quality treatment system is made up of two components: the water quality basin and the bioretention basin. The water quality basin collects and stores the runoff discharged by the three collection systems and discharges it into the bioretention basin at a regulated rate. It acts as pre-treatment for the bioretention basin and removes sediment that could clog the biotreatment soil mix. Both the Water Quality Basin and Bioretention Basin are also part of the overall hydromodification system and store water to attenuate the peak flows that flow into city storm drain system. The final component of

the stormwater facilities is the hydromodification mitigation basin. The purpose of this basin is to moderate the flow of water leaving the site to pre-development levels to minimize erosion and scour in the downstream creeks.

### ***Water Board Jurisdiction***

26. The Water Board has determined to regulate the proposed discharge of fill materials into waters of the State by issuance of WDRs pursuant to Water Code section 13263. The Water Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from the Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes to the Project.
27. The Water Board provided public notice of the application and this Order on April 3, 2024.
28. This Order is effective only if the Discharger pays all of the fees required under Title 23, California Code of Regulations (23 CCR) and in accordance with Finding 40.

### ***Property Ownership***

29. The current owner of the property that constitutes the Project site, including the HML, is MTA Hillsdale LP. The Discharger is in contract to acquire the property. The Discharger is the applicant for certain permits and authorizations required to develop the Project, including this Order. Prior to starting construction at the Project site, the Discharger will provide the Water Board with documentation that either: 1) the Discharger has acquired fee title to the Project site; or 2) the current holder of fee title of the Project site has provided the Discharger with written approval to commence work at the Project site. The Discharger is responsible to implement the Project's mitigation measures until the Water Boards' Executive Officer determines that the mitigation measures have attained their Year 10 Performance Criteria.

### **The Discharger's contact information is:**

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Contact: Blake Peters  
Phone: (650) 288-5970  
Email: bapeters@kbhome.com

The HML will be created as a legal parcel pursuant to the Subdivision Map Act. After acquiring fee title to the property, the Discharger will record a deed restriction for the HML with Santa Clara County. The deed restriction will include appropriate restrictions to ensure long-term conservation of the created mitigation features at the HML. Acceptable text for the deed restriction is in Att. D.

**California Wetlands Portal**

30. It has been determined through regional, State, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the State's "no net loss" wetland policy, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, this Order requires that the Discharger use the digital interactive mapping tool called EcoAtlas (See Order Provision E.24).<sup>1</sup> EcoAtlas is a web-based tool that integrates maps, project plans, site conditions, restoration efforts, and other elements on a project-by-project basis based on data inputs. Accordingly, we require the Discharger to upload their Project information to EcoAtlas with the Project Tracker tool at <https://ptrack.ecoatlas.org>. The California Wetlands Monitoring Workgroup developed EcoAtlas and maintains detailed instructions for Project Tracker on its website at <https://ptrack.ecoatlas.org/instructions>.

**Regulatory Framework**

31. The *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan) is the Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and U.S. EPA, where required.
32. The Basin Plan lists the following existing and potential beneficial uses for the Guadalupe River and Coyote Creek:
- a. Cold Freshwater Habitat (COLD)
  - b. Commercial and Sport Fishing (COMM)
  - c. Groundwater Recharge (GWR)
  - d. Fish Migration (MIGR)
  - e. Preservation of Rare and Endangered Species (RARE)
  - f. Water Contact Recreation (REC-1)
  - g. Non-contact Water Recreation (REC-2)
  - h. Fish Spawning (SPWN)
  - i. Warm Freshwater Habitat (WARM)
  - j. Wildlife Habitat (WILD)
33. The Santa Clara Valley Groundwater Basin, Santa Clara Sub-Basin, underlies the Project site and has the following beneficial uses.
- a. Agricultural Supply (AGR)
  - b. Industrial Service Supply (IND)
  - c. Industrial Process Supply (PROC)
  - d. Municipal and Domestic Supply (MUN)

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<sup>1</sup> Source: California Wetlands Monitoring Workgroup (CWMW), 2019. *EcoAtlas*. Accessed May 14, 2019. <https://www.ecoatlas.org>. The California Wetland Monitoring Workgroup (CWMW) provides technical oversight on the development of content and functionality of EcoAtlas. As a member of CWMW, San Francisco Estuary Institute provides day-to-day support and management of EcoAtlas, and can be contacted by email to [ptrackadmin@sfei.org](mailto:ptrackadmin@sfei.org).

34. Stormwater runoff from the Project site will be discharged to Coyote Creek. Coyote Creek is identified as impaired on the CWA section 303(d) list for diazinon, trash, and total toxics.
35. Lower San Francisco Bay, which is a receiving water body for Coyote Creek, is identified as impaired on the CWA section 303(d) list and is listed as impaired for Chlordane, DDT, Diazinon, Dieldrin, Dioxin Compounds, Invasive Species, Furan Compounds, Mercury, PCBs, and Trash.
36. The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be reviewed in compliance with the requirements of CEQA. Development of the Project site was originally reviewed in compliance with the requirements of CEQA in the *Communications Hill Specific Plan (CHSP) Environmental Impact Report (CHSP EIR)*. The City of San José, acting as the CEQA lead agency, certified the CHSP EIR in 1992. The CHSP serves as the guide for development activities in the Plan Area, including the Project site. The Project site is within the boundaries of the approved Plan Area and will result in the construction of the remaining residential units included in the Specific Plan. Subsequent to the adoption of the CHSP EIR, the *Communications Hill 2 Project, Subsequent Environmental Impact Report (SEIR)* (State Clearing House Number 2001062119) was circulated for public review in June and July of 2014. The SEIR tiered off the CHSP EIR. The City of San José, acting as the CEQA lead agency, certified the SEIR in September 30, 2014. The City of San José filed a Notice of Determination (NOD) for the SEIR with the Santa Clara County Clerk on October 1, 2014. The Water Board, as a responsible agency under CEQA, has independently considered the SEIR and finds that significant environmental impacts of the Project to waters of the State have been identified and mitigated to less than significant levels by the mitigation requirements adopted in this Order (14 CCR section 15096(g)).
37. The goals of the California Wetlands Conservation Policy (Governor’s Executive Order W-59-93, signed August 23, 1993) include ensuring no “overall loss”, and achieving a “long-term net gain in the quantity, quality, and permanence of wetlands acreage and values....”
38. Senate Concurrent Resolution No. 28 states that, “It is the intent of the legislature to preserve, protect, restore, and enhance California’s wetlands and multiple resources which depend on them for the benefit of the people of the State.”
39. Water Code section 13142.5 requires that “Highest priority shall be given to improving or eliminating discharges that adversely affect ... Wetlands, estuaries, and other biologically sensitive areas.”
40. Pursuant to Water Code section 13260, the Discharger shall timely pay all fees associated with this Order. The fee amount for this Order shall be in accordance with the current fee schedule, per 23 CCR section 2200(a)(3). The fee payment shall indicate the Order number, the CIWQS Place ID No. 893084, the Regulatory Measure ID no. 456084, and the applicable year.

The Project will permanently impact 2.434 acres of waters of the State. The application fee for these impacts is \$64,657.

An annual fee shall also be paid to the Water Board in each year in which impacts to waters of the State that are authorized by this Order are implemented (Note: The annual fee may be changed by the State Water Board; at the time that this Order was adopted, it was \$2,509 per year). After construction is completed, the annual fee shall continue to be paid to the Water Board until the monitoring reports required pursuant to Provision E.13 have all been submitted to the Water Board. After the initial year, the annual fee shall be billed annually to the Discharger until all mitigation features required as mitigation for impacts to waters of the State have met their Year 10 success criteria and the attainment of Year 10 success criteria has been documented in a final monitoring report. Fee payments shall indicate the Order number, WDID number (2 CW 455707), and the Regulatory Measure ID number. **The Discharger must notify the Water Board at mitigation completion with a final report to request to terminate annual invoicing.** Notification shall reference **NOT\_456084\_CommunicationsHill** and should be sent to the staff listed at the bottom of this Order and to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov). Water Board staff will verify that the conditions of the Order have been met and may request a site visit at that time to confirm the Project's status and compliance with this Order. After the Project's mitigation obligations have been fulfilled, the Discharger may request that the Executive Officer rescind this Order (Provision E.41).

41. The Water Board has notified the Discharger and interested parties of its intent to issue WDRs for the Project.
42. The Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that KB Home – South Bay, Inc. (Discharger), in order to meet the provisions contained in CWC Division 7 and regulations adopted thereunder, shall comply with the following:

**A. Discharge Prohibitions**

1. The direct or indirect discharge of wastes, as defined in Water Code section 13050(d), within or outside of the active project site, to surface waters or surface water drainage courses is prohibited, except as authorized in this Order.
2. The discharge shall not cause degradation of water quality and beneficial uses.
3. Groundwater beneficial uses shall not be degraded as a result of routine maintenance activities.
4. No debris, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or petroleum products or other organic or earthen material shall be allowed to enter into or be placed where it may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into waters of the State.
5. Project-related discharges shall not cause a violation of any water quality standard for receiving waters adopted by the Water Board or State Water Board as required by the

CWA and regulations adopted thereunder. If more stringent water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Water Board may revise or modify this Order in accordance with the more stringent standards. Pond dewatering discharges, accumulated groundwater or stormwater removed during dewatering of excavations, and diverted pond and stormwater flows shall not be discharged to waters of the State without meeting the receiving water objectives in the Basin Plan.

## **B. Discharge Specifications**

1. Appropriate soil erosion control measures shall be undertaken and maintained to prevent discharge of sediment to surface waters or surface water drainage courses.
2. In accordance with Water Code section 13260, the Discharger shall file with the Water Board a report of any material change in the character, location, or quantity of this waste discharge. Any proposed material change in the discharge requires approval by the Water Board after a hearing under Water Code section 13263.
3. A responsible representative of the Discharger shall immediately, and in no case no more than 24 hours, notify Water Board staff by telephone whenever an adverse condition occurs as a result of this discharge. An adverse condition includes, but is not limited to, a violation or threatened violation of the requirements of this Order, significant spill of petroleum products or toxic chemicals, or damage to control facilities that could affect compliance. Pursuant to Water Code section 13267(b), a written notification of the adverse condition shall be submitted to the Water Board within five days of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Water Board, for the remedial actions.

## **C. Effluent Limitations**

Excavated material effluent (decant water) discharged from any permanent or temporary disposal site located on the project site or off the site shall not exceed the following numeric and narrative limits at any time:

1. Numeric Limits:
  - a. pH: 6.5 – 8.5
  - b. Settleable Matter: < 1.0 ml/l-hour
2. Narrative Limits:
  - a. Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses; and,
  - b. All water shall be free from dissolved sulfide concentrations above natural background levels.

**D. Receiving Water Limitations**

1. Work in and around the stream channel or Bay shoreline shall not cause the following conditions to exist in waters of the State at any place:
  - a. Waters shall not contain floating material, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses;
  - b. Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses;
  - c. Waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth cause nuisance or adversely affect beneficial uses;
  - d. Waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life;
  - e. There shall be no alteration of temperature, turbidity, or apparent color beyond present natural background levels;
  - f. Dissolved oxygen, with the beneficial use designations listed in D.1.g.a. below, shall not be reduced below the listed minimums in the receiving water from the point of discharge;
  - g. Routine maintenance activities shall not cause the following limits to be exceeded in waters of the State at any point:

- |                        |  |
|------------------------|--|
| a. Dissolved Oxygen:   | 5.0 (WARM) or 7.0 (COLD) mg/l minimum. When natural factors cause lesser concentrations, then this discharge shall not cause further reduction in the concentration of dissolved oxygen.   |
| b. Dissolved Sulfide:  | All water shall be free from dissolved sulfide concentrations above natural background levels. Concentrations of only a few hundredths of a milligram per liter can cause a noticeable odor or be toxic to aquatic life. Violation of the sulfide objective will reflect violation of dissolved oxygen objectives as sulfides cannot exist to a significant degree in an oxygenated environment. |
| c. pH:                 | A variation of natural ambient pH by more than 0.5 pH units.   |
| d. Toxicity:           | All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.   |
| e. Un-ionized Ammonia: | 0.025 mg/L as N, annual median; and 0.16 mg/L as N, maximum.   |



- f. Salinity: The project shall not increase total dissolved solids or salinity to adversely affect beneficial uses.
- g. Turbidity Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU, or greater than 5 NTU where natural turbidity is less than 50 NTU.

2. The discharge shall not cause a violation of any particular water quality standard for receiving waters adopted by the Water Board or the State Water Board as required by the CWA and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Water Board will revise and modify this Order in accordance with such more stringent standards.
3. Groundwater shall not be degraded as a result of maintenance activities or sediment disposal.

## **E. Provisions**

### ***General Water Quality***

1. The Project shall be constructed as described in the application materials submitted by the Discharger on February 27, 2024. Any changes to the Project design shall be submitted, acceptable to the Executive Officer, and accepted in writing prior to being implemented.
2. Prior to starting construction at the Project site, the Discharger shall provide the Water Board with documentation that either: 1) the Discharger has acquired fee title to the Project site; or 2) the current holder of fee title of the Project site has provided the Discharger with written approval to commence work at the Project site.
3. The Discharger shall comply with all the Prohibitions, Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided below.
4. The Discharger shall submit a Start of Construction Report at least seven days prior to the start of initial ground disturbance activities. The Report shall reference **SOC\_456084\_CommunicationsHill** and shall be sent via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead);
5. No later than 30 days after completing Project construction activities that impact waters of the State, including construction of Stormwater Treatment Facilities (See Provisions E.17 through E.20) and the mitigation features in the HML (See Provisions 6 through

16), the Discharger shall submit, acceptable to the Executive Officer, a Notice of Project Construction Completion. The Notice shall include the date Project construction activities (defined as construction of both the Project and any compensatory mitigation) were completed and reference **NOC\_456084\_CommunicationsHill**. The Notice shall be sent via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead).

**Compensatory Mitigation**

- 6. As mitigation for the Project’s impacts to waters of the State, the Project shall create an intermittent creek channel, a wetland, and a pond (See Table 9).

<b>TABLE 9. IMPACTED WATERS AND MITIGATION WATERS</b>		
<b>Impacted Feature</b>	<b>Linear Feet or Area of Impacts</b>	<b>Linear Feet or Area of Creation Mitigation</b>
Intermittent Stream Channel	612 linear feet*	758 linear feet of intermittent channel**
Wetland and Non-Wetland Seeps	0.87 acre	1.30 acre wetland
Quarry Pond	1.53 acre	1.53 acre pond

\*0.034 acre

\*\*0.2 acres

- 7. The Discharger shall implement the mitigation measures described in HMMP Sections 3 through 7 (See Findings 10 through 18), including construction of the onsite mitigation stream channel, mitigation wetland, and mitigation pond, no later than one year after the Project’s first impacts to waters of the State at the Project site. Documentation of the construction and planting of the required mitigation measures shall be included in the Project’s As-Built Report (See Provision E.9), including pre- and post-construction photographs from the photo-documentation points required in Provision 12. Survival of grasses, sedges, forbs, and shrubs shall be monitored for at least five years. Monitoring of channel stability and riparian tree survival shall continue for at least 10 years. Monitoring at the shall continue until the year 10 performance criteria in Tables 6, 7 and 8 are attained for the onsite mitigation features. Success of the mitigation program shall be determined by the Water Board’s Executive Officer.
- 8. The Discharger shall establish at least six photo points in the HML. The location and direction of the photo points shall be such that representative coverage of the mitigation features is achieved. Att. A, Fig. 4 shows proposed photo locations. The actual photo points shall be finalized and mapped with a Global Positioning System during the Year 0 planting verification for replication over the course of the monitoring period. Photographs shall be taken at each photo location every year during the monitoring visits and included in the monitoring reports. Photographs will be taken from the same elevation and facing in the same compass directions during each monitoring year to ensure comparability between monitoring years. Photographs from each photo location shall be included in each monitoring report (See Provision E.12), along with map(s) showing the location of the photo points.

9. Not later than 60 days after completing construction and vegetation of the mitigation features at the HML, the Discharger shall submit an as-built report to the Water Board. The report shall include a description of the construction and planting of the mitigation features, as well as the photographs and map specified in Provision E.8. The as-built report shall include the 100 percent construction plans, marked with the contractor's field notes, that clearly depict any deviations from the design sheets that were made during mitigation feature construction. The as-built report shall provide a written explanation of the need for any deviations from the approved Project plans. The as-built report shall reference **AsBuilt\_456084\_CommunicationsHill** and shall be sent via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead).
10. The Discharger shall maintain the mitigation features as described in HMMP Section 5 and monitor the mitigation features as described in HMMP Section 6.
11. During the first five years of monitoring, the intermittent stream channel, mitigation wetland, mitigation pond, and associated upland buffers shall be surveyed for invasive plant species that are rated as "High" or "Moderate" by the California Invasive Plant Council (<http://www.cal-ipc.org/paf/>), and these species shall be removed. Invasive plant control activities may include mowing, cutting, hand-removal, and/or herbicide application. Trash and other undesirable debris shall be removed from the mitigation features at least twice per year throughout the initial monitoring period. Invasive plant control and debris management, including the names and quantities of any herbicides used at the Project site, shall be summarized in the monitoring report for that year (See Provision E.12);
12. Monitoring reports shall be submitted to the Water Board by January 31 following years 1, 2, 3, 4, 5, 6, 8, and 10 after construction and planting of the onsite mitigation features. The reports shall include information on the survival and overall condition of vegetation plantings, or naturally recruited vegetation, in the created channel, mitigation wetland, and mitigation pond, as well as the stability of the mitigation features. Reports shall summarize each year's monitoring results, including the need for any remedial actions (e.g. re-planting, invasive plant control, or channel stabilization), and including all information specified in HMMP Section 6.6. Reports shall describe any maintenance activities performed in the prior year, including, but not limited to: any removal of sediment from the mitigation pond, wetland and channel; any removal of debris from the pond, wetland and channel; any stabilization measures implemented in the wetland and channel; management of invasive plant species; and replanting or reseeding of vegetation. The reports shall compare data to previous years and detail progress towards meeting Year 10 performance criteria in Tables 6, 7, and 8. At the end of Year 10, a comprehensive final report shall be prepared that includes summaries of the monitoring data, representative photos, and maps. Monitoring reports and the comprehensive final report shall include photographs from the photo-documentation points specified in Provision E.8. The final report shall document if the created channel, created wetland, and created pond have attained the year 10 performance criteria. If a performance criterion is not met in any of the monitoring years, or if final performance criteria are not met at the end of Year 5 for grasses, sedges, forbs, and shrubs, or at the end of Year 10 for trees or channel

stability, the Discharger shall work with the Water Board to prepare an analysis of the cause of the failure. If deemed necessary by the Executive Officer, remedial actions shall be implemented, including extension of the monitoring period until the performance criteria are met. Success of mitigation shall be determined by the Executive Officer. Monitoring Reports shall be submitted via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead) and reference **AMR\_456084\_Communications Hill** in the subject line when sent electronically or in the cover letter for hard copy submissions.

13. The Discharger shall record a Deed Restriction over the HML at the Project site. The Deed Restriction shall limit land uses and management of the HML to ensure the protection of biotic resources. Att. D contains acceptable text for this Deed Restriction. No later than 120 days following recordation of the Final Maps that creates the parcel that contains the HM or two years after adoption of this Order, whichever occurs first, the Discharger shall record the deed restriction that covers the HML with Santa Clara County. No later than 30 days prior to filing the final Deed Restriction with Santa Clara County, the Discharger shall submit a copy of the final Deed Restriction, which must be consistent with the draft language included in Att. D, to the Executive Officer for review and approval;.
14. The Discharger shall ensure that the mitigation features are monitored and maintained in conformance with the LTMP (Finding 19) and that the stormwater treatment measures are operated and maintained in conformance with the Stormwater Management Plan (Findings 22 through 26 and Provisions E.17 through E.20) by establishing a Homeowners Association for the Project site (HOA). Among its responsibilities, the HOA will be responsible for implementing the LTMP and for operation and maintenance of the stormwater treatment measures. The HOA's responsibilities for the monitoring and maintenance of the mitigation features in the HML and for the operation and maintenance of the Project's stormwater treatment measures shall be documented in the Covenants, Conditions, and Restrictions (CC&Rs) for the HOA that will be recorded with Santa Clara County. The CC&Rs must contain the provisions related to onsite mitigation features and stormwater treatment measures that are included in Att. C. No later than 120 days following recordation of the final subdivision map for the first individual neighborhood, the Discharger shall record the CC&Rs with Santa Clara County. No later than 30 days prior to recording the CC&Rs with Santa Clara County, the Discharger shall submit a copy of the final CC&Rs, which must be consistent with the draft language included in Att. C, to the Executive Officer of the Water Board for review and approval
15. After the Executive Officer has confirmed that the mitigation features in the HML have attained Year 10 performance criteria, the mitigation features shall be monitored and maintained in conformance with the LTMP. The Discharger shall be responsible for implementation of the LTMP until the HOA has been established. After the HOA has been established and the Executive Officer has approved the transfer of ownership and long-term maintenance responsibilities, ownership of the HML may be transferred to the HOA and the HOA shall be responsible for implementing the LTMP.

16. Prior to conducting work in waters of the State, the Discharger shall provide the Executive Officer with evidence of payment of \$375,457 to the endowment for perpetual management and maintenance of the mitigation features in the HML or shall provide the Executive Officer with evidence that adequate security for the endowment has been provided, in the form of a letter of credit or other security approved by the Executive Officer. After the HOA has been established, an authorized entity approved by the Executive Officer shall hold the endowment. The principal in the endowment shall generate sufficient revenue to cover the long-term management tasks described in the LTMP.

### ***Stormwater Treatment***

17. The Discharger shall comply with the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, Order No. 2022-0057-DWQ; NPDES Permit No. CAS000002). The Discharger shall prepare and implement a site-specific Stormwater Pollution Prevention Plan (SWPPP) for the construction of each phase of the Project, in accordance with the requirements, provisions, limitations, and prohibitions of the Construction General Permit.
18. The Discharger shall provide post-construction stormwater treatment for the Project that is consistent with the requirements of the Water Board's Municipal Regional Stormwater NPDES Permit (Order No. R2-2022-0018, as amended by Order No. R2-2023-0019; NPDES Permit No. CAS612008). Post-construction stormwater treatment for the Project is described in the *Stormwater Treatment Operations and Maintenance Plan, Communications Hill Coyote Creek Watershed, San Jose California* (Stormwater Plan) (HMH Engineers, November 2023) (Attachment B), and further described in the *Memorandum: Communications Hill Phase Water Quality Gravity Based System* (Memorandum) (Schaaf & Wheeler, July 2023, revised February 2024).
19. The Discharger, or its successors, shall ensure that the post-construction stormwater treatment measures described in the *Stormwater Treatment Operations and Maintenance Plan, Communications Hill Coyote Creek Watershed, San Jose California* (Stormwater Plan) (HMH Engineers, November 2023) (Attachment B), and further described in the *Memorandum: Communications Hill Phase Water Quality Gravity Based System* (Memorandum) (Schaaf & Wheeler, July 2023, revised February 2024) are constructed and appropriately maintained for the life of the Project. Stormwater treatment controls must be constructed concurrently with the Project, so that treatment is provided for all new and recreated impervious surfaces at the Project site.

The Discharger shall submit a final version of the plan in Attachment C to the Executive Officer for review and approval at least 90 days before construction starts on the Project. The final version of the plan shall provide final construction details, including measures sufficient to achieve full trash capture consistent with the requirements of Order No. R2-2022-0018, as amended by Order No. R2-2023-0019 (NPDES Permit No. CAS612008), Provision C.10. Construction of the Project shall not commence until the Executive Officer has approved any altered treatment proposal (Construction consists of any disturbance of the site surface that results in the creation of new impervious surfaces). Any transfer of responsibility for this Provision's

requirements from the Discharger to another party must be approved by the Executive Officer before the responsibility may be transferred. To propose such a transfer, the Discharger shall submit the terms of such a transfer of responsibility to the Executive Officer for review and approval. Upon approval of any such transfer of responsibility, the Discharger may request this Order be amended to reflect the transfer.

20. As-built plans for the post-construction stormwater treatment measures for the Project shall be prepared and submitted to the Water Board within six weeks of the completion of construction and planting of the post-construction stormwater treatment features. As-built plans shall be accompanied by an as-built report that describes any changes to the approved plans that were necessary during construction of the stormwater treatment feature, as well as a technical justification for any design changes that were necessary in the field. The technical justification must demonstrate that the constructed treatment measures are consistent with the requirements of Order No. R2-2022-0018, as amended by Order No. R2-2023-0019 (NPDES Permit No. CAS612008). The as-built stormwater plans shall reference **AsBuiltSW\_456084\_CommunicationsHill** and shall be sent via email to [RB2-401Reports@waterboards.ca.gov](mailto:RB2-401Reports@waterboards.ca.gov), or by mail to the attention of 401 Certifications Reports (see address on the letterhead);

### ***Waste Management***

21. The Discharge of any hazardous, designated, or non-hazardous waste as defined in 27 CCR, Division 2, Subdivision 1, Chapter 2 or in Title 23, Division 3, Chapter 15 of the California Administrative Code shall be conducted in accordance with applicable State and federal regulations.
22. The Discharger shall remove and relocate any wastes that are discharged in violation of this Order. Waste shall be disposed of at a location in compliance with federal and State regulations and in such a way as to prevent impacts to waters of the State and their beneficial uses.

### ***EcoAtlas***

23. The Discharger shall input Project information to EcoAtlas within 14 days from the date of this Order. The Project information shall be added to the Project Tracker tool in EcoAtlas online at <https://ptrack.ecoatlas.org>. Instructions for adding information to EcoAtlas are available at <https://ptrack.ecoatlas.org/instructions>, or by contacting the San Francisco Estuary Institute by email at [ptrackadmin@sfei.org](mailto:ptrackadmin@sfei.org), or Water Board staff. The Executive Officer may grant an extension to the 14-day deadline if the Discharger submits a request in writing to the Water Board. The extension request may be submitted via electronic mail. If any changes to the project occur pursuant to Provision E.12, the Discharger shall revise EcoAtlas information for the Project, accordingly. In cases when EcoAtlas must be revised, the Discharger shall meet the same schedule and notification requirements required for the initial EcoAtlas information.

### ***Records Provisions***

24. The Executive Officer may request that data be provided to the Water Board at times outside of the reporting requirements specified in this Order.

25. The Discharger shall retain records of all reports required by this Order, and records of all information used to complete the application for this Order, for a period of at least ten years. This period may be extended by request of the Executive Officer at any time.

### **General Provisions**

26. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, State or local laws, regulations or rules of other programs and agencies nor does this Order authorize the discharge of waste without appropriate permits from other agencies or organizations
27. The Discharger shall comply with all necessary approvals and/or permits from applicable government agencies, including, but not limited to: the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, and local agencies. The Discharger shall submit copies of such approvals and/or permits to the Executive Officer.
28. The Discharger shall immediately notify the Water Board by telephone and e-mail whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to Water Code section 13267(b), a written notification of the adverse condition shall be submitted to the Regional Water Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Water Board, for the remedial actions.
29. All work performed within waters of the State shall be completed in a manner that minimizes impacts to beneficial uses and habitat. Measures shall be employed to minimize disturbances that will adversely impact the water quality of waters of the State. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete Project implementation.
30. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
31. These WDRs are subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC section 13330 and 23 CCR section 3867.
32. These WDRs are not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR section 3855, Subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.



33. The Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standard and implementation plans adopted or approved pursuant to the CWC or CWA section 303 and/or any new or revised TMDL requirements.
34. The Discharger shall maintain a copy of this Order and all relevant plans and BMPs at the Site, so as to be available at all times to site operating personnel.
35. The Discharger shall correct any and all problems that arise from Project implementation, including a failure to meet the conditions of this Order that results in an unauthorized release of pollutants, including sediment.
36. The Discharger shall permit the Water Board staff or its authorized representative, upon presentation of credentials:
  - a. Entry on to the Project site;
  - b. Access to copy any records required to be kept under the terms and conditions of this Order;
  - c. Access to inspect any treatment equipment, monitoring equipment or monitoring method required by this Order; and
  - d. Access to sample any discharge or surface water covered by this Order.
37. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable State or federal law. For the purposes of CWA section 401(d), the applicability of any State law authorizing remedies, penalties, process or sanctions constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this Order, the Water Board may require the Discharger to furnish, under penalty of perjury, any technical or monitoring reports the Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.
38. In accordance with Water Code section 13260, the Discharger shall file with the Water Board a report of any proposed change in ownership or any material change in the character, location, or quantity of this waste discharge. Any proposed material change in the discharge requires approval by the Water Board after a hearing under Water Code section 13263. Material changes include, but are not limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Project site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be filled and mitigated.
39. This Order is not transferable.
40. The Water Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation,



creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

I, Eileen White, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on June 12, 2024.

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Eileen White  
Executive Officer

Attachments:

*Attachments (Provided as a Separate Document)*

A: Project Figures

B: Stormwater Treatment Measures and Operations and Maintenance Agreement

C: CC&R Provisions Related to Stormwater Treatment and Mitigation Features

D: Draft Deed Restriction for Onsite Mitigation Features