

**State of California  
California Regional Water Quality Control Board  
San Francisco Bay Region**

IN THE MATTER OF:

Param and Amandeep Dhillon )  
2225 Ralmar Avenue )  
East Palo Alto, California 94303 )

Complaint No. )  
R2-2020-1028 )  
for )

**Failure to Submit Technical Reports )  
Assessor's Parcel Number 0052-160-090 )  
Vallejo, California )  
Solano County )**

This Administrative Civil Liability Complaint (Complaint) alleges that Param and Amandeep Dhillon (collectively, the Dischargers) failed to submit required reports in violation of section 13267 of the California Water Code (Water Code). The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board) is authorized to assess administrative civil liability under Water Code sections 13323 and 13268 for the alleged violations. The proposed liability for the alleged violations is \$81,700.

The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. The Dischargers violated provisions of law for which the Regional Water Board may impose liability under Water Code section 13268(b)(1).
2. Unless waived, a hearing concerning this Complaint will be held before the Regional Water Board at its regular meeting on November 18, 2020. Due to COVID-19 and the Governor's Executive Orders, including Executive Orders N-29-20, N-33-20, and N-63-20, the Regional Water Board is conducting its meetings electronically, with appearances solely by video and teleconference. Instructions for participating in the Regional Water Board meeting are available at the following link: [Participating in San Francisco Bay Regional Water Board Meetings during the COVID-19 Emergency](#).<sup>1</sup> The Dischargers will have an opportunity to appear and be heard to contest the allegations in this Complaint and potential imposition of a monetary penalty by the Regional Water Board. An agenda for the meeting will be provided to the Dischargers not less than 10 days before the hearing date. A meeting agenda will also be available on the internet at the following link: [San Francisco Bay Regional Water Board Meeting Agendas](#).<sup>2</sup> Anyone wishing to submit comments and written evidence concerning this Complaint to the Regional Water Board must do so not later than 5:00 p.m. on September 28, 2020, so such comments may be considered. Any written evidence submitted

<sup>1</sup> [https://www.waterboards.ca.gov/sanfranciscobay/board\\_info/remote\\_meeting/](https://www.waterboards.ca.gov/sanfranciscobay/board_info/remote_meeting/)

<sup>2</sup> [https://www.waterboards.ca.gov/sanfranciscobay/board\\_info/agendas/](https://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/)

to the Regional Water Board after this date and time will not be accepted or responded to in writing. The Regional Water Board hearing will be conducted in accordance with procedures available at the following link: [Pending Enforcement Case Documents](#).<sup>3</sup>

3. The Dischargers can waive their right to a hearing to contest the allegations contained in this Complaint by signing and submitting the enclosed waiver and paying the liability in full or taking other actions described in the form.
4. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed penalties and assessment of costs pursuant to Water Code section 13268(b)(1), or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

### **FACTUAL BASIS**

5. The Dischargers own the property identified as Solano County Assessor's Parcel Number 0052-160-090 in the city of Vallejo, Solano County (Property). According to a deed dated June 20, 2019, and recorded on June 25, 2019, the Dischargers purchased the Property at public auction on June 11-12, 2019.
6. The Dischargers purchased the Property after it was designated as part of the White Slough, a protected area for preservation of wetlands and associated aquatic and upland habitats.
  - a) In 1990, the State of California enacted the "White Slough Protection and Development Act" (AB 719). The legislature declared the need for permanent protection by local agencies of tidal wetlands and tidally influenced areas of White Slough, adjacent wetlands, and upland habitat areas to preserve the integrity of, and ensure the continued wildlife use of, White Slough; to provide adequate flood protection; to reduce air pollution; and to complete a necessary transportation facility.
  - b) In 1996 (last amended in 2010), the City of Vallejo (City) and Solano County produced a local agency permanent protection plan titled the "White Slough Specific Area Plan." The area covered by this plan included five acres of brackish and mixed water identified as the "East Lagoon," which is located on the Property (see Exhibit B). The plan for the East Lagoon included increasing tidal action and changing City zoning to Resource Conservation (zoned RC) to provide the maximum protection of wetland habitat while still allowing uses compatible with natural open space.
  - c) In 1999, the City rezoned the East Lagoon from retail use (zoned R) to wetlands (zoned W).<sup>4</sup>
  - d) In 2001, the U.S. Army Corps of Engineers (Army Corps) and Vallejo Sanitation and Flood Control District drafted a "White Slough Flood Control Study, Draft Environmental Impact Statement, Environmental Impact Report." This study documented an estimated 4.9 acres of total seasonal wetlands area in the East Lagoon, and a

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<sup>3</sup> [https://www.waterboards.ca.gov/sanfranciscobay/public\\_notices/enforcement\\_db.html](https://www.waterboards.ca.gov/sanfranciscobay/public_notices/enforcement_db.html)

<sup>4</sup> Documentation in the 2001 "White Slough Flood Control Study" prepared by Army Corps.

moderately high habitat value for many waterbirds and other habitat benefits in the East Lagoon.

7. On June 13, 2019, Pascale Soumoy of the San Francisco Bay Conservation and Development Commission (BCDC) notified the Dischargers by email of the “White Slough Specific Area Plan.” He informed the Dischargers that agencies, including the Regional Water Board, may have jurisdiction over the Property and suggested contacting these agencies about any plans to modify the Property.
8. On October 29, 2019, a member of the public notified City staff of activities on the Property, including the import and grading of soil. On the same day, the City issued a “Stop Work Notice” to “the person directing the trucks” for grading without a permit. By email on October 31, 2019, the City’s Dana Blatner notified Regional Water Board staff of these activities at the Property.
9. Regional Water Board staff inspected the Property to check whether grading and fill activities threatened beneficial uses of waters of the State and United States. The Property was undeveloped and bounded by roadways, condominiums, and shopping/business centers. Field observations supported that grading and fill activities were a threat to wetlands.
  - a) On November 12, 2019, Regional Water Board staff observed the Property before significant rains and saw that earthwork had been conducted in wetlands. The inspection report noted the following: (1) the entire Property was below the elevation of Sonoma Boulevard; (2) most of the land at the Property had been disked and graded; (3) fill containing concrete rubble and other debris had been imported to the Property; and (4) wetland vegetation (e.g., saltgrass, pickleweed, and tule) was growing on the Property.
  - b) On March 12, 2020, Regional Water Board staff observed the Property later in the wet season and saw ponded water in direct contact with the piles of imported fill.
10. On November 18, 2019, Regional Water Board staff issued a Notice of Violation to the Dischargers for placing fill in waters of the State and United States. Enclosed with this notice was the inspection report for the November 12, 2019, Regional Water Board staff inspection. In the notice, the Dischargers were required to obtain approval to remove the imported fill material and notified that they will be required to perform corrective actions to mitigate the effects of this violation.
11. Between November 2019 and January 2020, the City, Army Corps, and BCDC notified the Dischargers of violations for unauthorized activities conducted at the Property, which were related to violations identified in the November 18, 2019, Notice of Violation.
  - a) On November 18, 2019, the City issued an “Administrative Notice – Warning” for the following violations: (1) grading without a permit; (2) depositing soil on private land so that it might become a pollutant; and (3) performing construction work without minimum best management practices, including erosion and run-on/run-off controls.
  - b) On November 29, 2019, the Army Corps issued a “Notice of Alleged Violation” for discharge of fill material and grading in wetlands adjacent to White Slough. The Army

Corps included with its notice a request to provide the information specified in an enclosed Investigation Questionnaire (which included details of activities at the Property and permits obtained) within 15 days of receipt of the letter.

- c) On December 9, 2019, the City issued an “Administrative Citation” to the Dischargers for \$200 for grading without a permit.
  - d) On January 8, 2020, BCDC issued a “Notice of Alleged Violation of Section 66681 of the White Slough Protection and Development Act & Directive to Stop Work Immediately at Assessor’s Parcel No. 0052-16-090 in the City of Vallejo, Solano County” for unpermitted construction through a protected wetland under its jurisdiction.
12. Between January 2020 and early February 2020, Regional Water Board staff, along with staff from other agencies, corresponded and met with Param Dhillon on multiple occasions to discuss agency jurisdictions, violations, and compliance with agency requirements. Communications included the following:
- a) On January 13, 2020, Regional Water Board staff emailed the Dischargers noting they had not yet submitted the Investigation Questionnaire the Army Corps requested (Finding 11.b). In the email, Regional Water Board staff noted that Param Dhillon agreed during a phone call with staff on December 2, 2019, to submit the questionnaire to the Army Corps and the Regional Water Board as soon as possible. The questionnaire would provide information on the type of activities performed at the site and help to inform potential corrective actions to resolve the violations that the Regional Water Board can authorize by issuing Clean Water Act section 401 Water Quality Certification. In the email, staff requested the information by close of business on January 16, 2020. To date, Regional Water Board staff has not received a completed questionnaire.
  - b) On January 28, 2020, Regional Water Board staff, along with BCDC and Army Corps staff, met with Param Dhillon. During the meeting, agency representatives encouraged Param Dhillon to seek qualified professionals to assist him comply with agency requirements, and he agreed to hire a consultant to delineate wetlands at the Property as soon as possible.<sup>5</sup>
  - c) On February 12, 2020, William Conner of the Army Corps sent an email to respond to Param Dhillon about BCDC jurisdiction and connectivity of water at the Property to White Slough. Mr. Conner explained that the Army Corps, BCDC, and the Regional Water Board have separate jurisdictions and authorities, and that Param Dhillon’s claim that the waters on the Property were not wetlands but instead were illegal diversions of stormwater from upland properties was likely immaterial to determining jurisdiction. Mr. Connor stated that the waters on the Property would likely be considered adjacent to White Slough and jurisdictional as waters of the United States.
13. On February 7, 2020, the Regional Water Board issued a “Notice of Violation and 13267 Directive to Submit Technical Reports” (13267 Order) to the Dischargers for failing to

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<sup>5</sup> This agreement was documented in an email from BCDC to the Regional Water Board and Army Corps on January 29, 2020.

adequately respond to the Notice of Violation sent on November 18, 2019. The 13267 Order directed the Dischargers to immediately obtain coverage under the Construction Stormwater General Permit<sup>6</sup> due to the apparent extent of the earthwork, and to submit the following four technical reports to the Regional Water Board to inform future regulatory actions related to permitting, corrective actions, and mitigation for loss of wetlands:

- a) A description of the unauthorized activities conducted at the Property, due not later than February 21, 2020.
- b) A jurisdictional delineation of the extent of wetlands on the Property, due not later than May 8, 2020.
- c) A work plan of corrective actions to restore the Property, due not later than June 8, 2020.
- d) A monitoring and reporting plan to monitor the success of corrective actions, due not later than June 8, 2020.

14. On April 30, 2020, Regional Water Board staff issued a “Notice of Ongoing Violations and Pending Deadlines to Submit Reports” to the Dischargers. In this notice, Regional Water Board staff provided the Dischargers with an opportunity to demonstrate their willingness to comply with the 13267 Order and avoid enforcement by submitting the first two technical reports and applying for coverage under the Construction Stormwater General Permit by May 8, 2020. As set forth below, the Dischargers did not submit the two reports by that date.

15. After the matter was referred to enforcement, Regional Water Board staff had multiple communications with Param Dhillon about the Regional Water Board’s jurisdiction and authority, the actions needed to comply with the 13267 Order, and the professional assistance he could seek.

- a) On May 7 and 13, 2020, Param Dhillon sent emails to Regional Water Board staff reiterating claims that the Property is not wetlands and that he has the right to “cultivate” his land “and harvest whatever grows” on the Property. He stated that water at the Property is “not connected” to any coastal, tidal, or State water and is instead the result of rainwater or runoff from neighboring properties.
- b) On May 19, 2020, Regional Water Board enforcement staff discussed violations and compliance opportunities with Param Dhillon during a phone call. Staff responded to Param Dhillon’s emails, reiterating Regional Water Board authority and jurisdiction over the Property and encouraging him to seek professional legal and technical assistance, as needed. Staff informed Param Dhillon that matters pertaining to his Property had been referred to enforcement and that days of violation continued to accrue. Staff encouraged Param Dhillon to (1) submit the information required about activities conducted at the Property by February 21, 2020, to stop the accrual of days of violation, and (2) provide a schedule for completing the wetland delineation required by May 8, 2020.<sup>7</sup> Param

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<sup>6</sup> General Permit for Storm Water Discharges Associated with Construction Activities (Stormwater Construction General Permit), NPDES No. CAS000002, Order 2009-0009-DWQ amended by 2010-0014-DWQ and 2012-0006-DWQ.

<sup>7</sup> The May 19, 2020, phone call discussion was summarized in an email from Regional Water Board staff to the Dischargers on May 20, 2020.

Dhillon agreed that he would provide the information and a schedule by May 20, 2020, and that he would contact qualified professionals about completing a wetlands delineation and report.

- c) On May 21, 2020, Param Dhillon sent an email with inadequate and incomplete information about the activities conducted at the Property and did not send a schedule for completing the wetland delineation (further discussed in an email Regional Water Board staff sent to the Dischargers on May 29, 2020).
16. On June 17, 2020, Regional Water Board staff emailed to the Dischargers requesting access to the Property on June 18, 2020, for a site inspection to document the nature and extent of grading and fill conducted and to assess wetland impacts. The Dischargers responded by email, denying Regional Water Board staff access to the Property.

### **ALLEGED VIOLATIONS**

17. **Violation 1:** The Dischargers failed to submit by February 21, 2020, an acceptable report on the activities conducted at their Property as required in the 13267 Order. As of the date of this Complaint, the technical report is 182 days past due.
18. **Violation 2:** The Dischargers failed to submit by May 8, 2020, a report for a wetland delineation at the Property as required in the 13267 Order. As of the date of this Complaint, the technical report is 105 days past due.

### **LEGAL AUTHORITY**

19. Water Code section 13323 authorizes the Regional Water Board to issue an administrative civil liability complaint under its statutory authority. This Complaint alleges the Dischargers' acts, or failures to act, constitute violations of law authorizing administrative civil liability.
20. Issuance of this Complaint is an enforcement action and is therefore exempt from the provisions of the California Environmental Quality Act (Pub. Res. Code Section 21000 et seq.) pursuant to Title 14, California Code of Regulations sections 15308 and 15321, subdivision (a), paragraph (2).
21. Notwithstanding the issuance of this Complaint, the Regional Water Board and/or the State Water Board shall retain the authority to assess additional penalties against the Dischargers for other violations of the 13267 Order for which a liability has not yet been assessed or for violations that may subsequently occur.
22. Any person failing or refusing to furnish a technical report as required by Water Code section 13267 is guilty of a misdemeanor and subject to penalties under Water Code section 13268(a)(1).

23. The Regional Water Board may impose administrative civil liability for non-discharge violations of a 13267 Order on a daily basis. The maximum civil liability for each violation is \$1,000 per day of violation pursuant to Water Code section 13268(b)(1).

### **PROPOSED CIVIL LIABILITY**

24. **Minimum Liability:** The minimum administrative civil liability for the violations is \$15,000. This is based on the upper range estimate of the economic benefit realized by the Dischargers for their failure to submit an acceptable technical report of activities at the Property and a technical report for a wetland delineation at the Property, plus 10 percent.
25. **Maximum Liability:** The total maximum administrative civil liability for Violations 1 and 2 is \$287,000, based on the maximum allowed by Water Code section 13268(b)(1) of \$1,000 for each day in which the violation occurred. The maximum administrative civil liability for Violation 1 is \$182,000, and the maximum administrative civil liability for Violation 2 is \$105,000.
26. **Proposed liability:** The Regional Water Board Assistant Executive Officer proposes that administrative civil liability be imposed in the amount of \$81,700 (\$63,000 penalty and \$18,700 in staff costs). Exhibit A to this Complaint (incorporated herein by this reference) explains the factors considered and the values assessed to calculate the proposed liability in accordance with the Water Quality Enforcement Policy effective October 5, 2017, and Water Code section 13327. The proposed liability is above the minimum and below the maximum liability allowed by statute and policy.



Lisa Horowitz McCann  
Assistant Executive Officer

8/28/2020

Date

- Exhibits:            Exhibit A - Alleged Violations and Factors in Determining Administrative Civil Liability  
                          Exhibit B – Supporting Figures

## **EXHIBIT A**

### **Alleged Violations and Factors in Determining Administrative Civil Liability**

#### **PARAM AND AMANDEEP DHILLON FAILURE TO SUBMIT TECHNICAL REPORTS ASSESSOR PARCEL NUMBER 0052-160-090, VALLEJO, SOLANO COUNTY**

The State Water Resources Control Board Water Quality Enforcement Policy (Enforcement Policy), effective October 5, 2017, establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by Water Code sections 13327 and 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for each violation is presented below.

#### **ALLEGED VIOLATIONS**

On February 7, 2020, the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) issued a Notice of Violations with requirements for technical reports to Param Dhillon and Amandeep Dhillon (collectively, Dischargers) pursuant to California Water Code (Water Code) section 13267 (13267 Order). The 13267 Order required the Dischargers to submit two technical reports, one describing the unauthorized fill and grading activities conducted at Solano County Assessor's Parcel Number 0052-160-090 (Property), and one delineating the extent of wetlands and the extent of impacts to waters of the State and United States at the Property resulting from the unauthorized activities. The unauthorized activities report was due February 21, 2020, and the wetlands delineation report was due May 8, 2020. The Dischargers violated the 13267 Order by failing to submit these reports, as set forth in Administrative Civil Liability Complaint R2-2020-1028 (Complaint), and are subject to administrative civil liability as discussed below.

#### **Violation 1: Failure to Submit Technical Report on Activities Conducted at the Property**

The Dischargers failed to submit by February 21, 2020, an acceptable technical report on fill and grading activities at the Property that threatened waters of the State and United States as required pursuant to the 13267 Order. A total of 182 days of violation have accrued from the reporting deadline to issuance of the Complaint. This violation of Water Code section 13267 is subject to administrative liabilities of up to \$1,000 per day, pursuant to Water Code section 13268(b)(1).

#### **Violation 2: Failure to Submit Technical Report for a Wetland Delineation at the Property**

The Dischargers failed to submit by May 8, 2020, a technical report on a wetland delineation to determine wetlands and waters of the United States jurisdiction at the Property, as required pursuant to Water Code section 13267. A total of 105 days of violation have accrued from the reporting deadline to issuance of the Complaint. This violation of Water Code section 13267 is also subject to administrative liabilities of up to \$1,000 per day, pursuant to Water Code section 13268(b)(1).



## ADMINISTRATIVE CIVIL LIABILITY CALCULATION STEPS

### STEP 1 AND 2 – POTENTIAL FOR HARM AND ASSESSMENTS FOR DISCHARGE VIOLATIONS

These steps do not apply because the violations are non-discharge violations.

### STEP 3 – PER-DAY ASSESSMENTS FOR NON-DISCHARGE VIOLATIONS

For non-discharge violations, the Enforcement Policy specifies that an initial liability is to be determined from the maximum per-day liability multiplied by the number of days in violation and a per-day factor using a matrix that ranges from 0.1 to 1 depending on scoring for Potential for Harm and Deviation from Requirement. The Potential for Harm reflects the characteristics and/or the circumstances of the violation and its threat to beneficial uses. The Deviation from Requirement reflects the extent to which a violation deviates from the specific requirement violated.

#### **Potential for Harm**

The evaluation of Potential for Harm considers whether the characteristics and/or circumstances of the violation present a minor, moderate, or major threat to beneficial uses.

**Violations 1 and 2:** The Potential for Harm is **moderate**.

The Enforcement Policy specifies that a “moderate” Potential for Harm applies when the characteristics of the violations have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, the violations present a substantial threat to beneficial uses, and/or the circumstances of the violations indicate a substantial potential for harm. The Enforcement Policy specifies that most non-discharge violations should be considered to present a moderate potential for harm.

The potential for harm associated with Violations 1 and 2 is moderate based on similar harm to regulatory functions and threats to beneficial uses. By not submitting the technical reports due on February 21 and May 8, 2020, the Dischargers withheld information about the nature and extent of grading and fill activities and the extent of this earthwork in wetlands at the Property. The Regional Water Board has been unable to regulate an apparent unauthorized discharge and order actions, as may be needed, to cleanup and abate the discharge, restore impacts to waters of the State and United States, and restore and mitigate damaged wetlands.

Impairment to Regional Water Board functions substantially threatens protected wetlands at the Property and in the San Francisco Bay Estuary. The Property is part of the East Slough, which is wetland habitat protected by the White Slough Protection and Development Act (AB 719) enacted in 1990, and all wetlands in San Francisco Bay are to be preserved in accordance with the California Wetlands Conservation Policy (Executive Order W-59-93, Appendix E, commonly referred to as the “No Net Loss” policy). The primary goal of this policy is to ensure no overall net loss of wetlands and to achieve a long-term net gain in the quantity, quality, and permanence of wetlands in California

([https://www.waterboards.ca.gov/water\\_issues/programs/cwa401/wrapp.html](https://www.waterboards.ca.gov/water_issues/programs/cwa401/wrapp.html)).

### **Deviation from Requirement**

The evaluation of the Deviation from Requirement considers whether the characteristics of the violation present a minor, moderate, or major impact to the effectiveness of the requirement.

**Violation 1:** The Deviation from Requirement is **major**.

The Enforcement Policy specifies that a “major” Deviation from Requirement is one where the requirement has been rendered ineffective (e.g., the requirement is rendered ineffective in its essential functions).

The Dischargers did not submit by February 21, 2020, a technical report on activities conducted at the Property, as required by the 13267 Order. Param Dhillon sent an email on May 21, 2020 (90 days later), but this communication did not contain sufficient information to constitute a good faith effort to comply with the 13267 Order. As discussed in a reply email to the Dischargers on May 29, 2020, the email did not respond to three of five elements required for the technical report and provided incomplete information for the other two elements. By not providing an acceptable response to any elements of the technical report, the requirement for this report was rendered ineffective.

**Violation 2:** The Deviation from Requirement is **major**.

The Enforcement Policy specifies that a “major” Deviation from Requirement is one where the requirement has been rendered ineffective in its essential functions.

The Dischargers did not submit a technical report on wetland delineation as required by May 8, 2020, pursuant to the 13267 Order. The failure to report the wetland delineation rendered the requirement ineffective.

### **Per-Day Factor**

The per-day factor is a multiplier selected from the matrix in Table 3 of the Enforcement Policy based on the Potential for Harm and Deviation from Requirement score for each violation.

The per-day factor is 0.4 for Violation 1 and 0.55 for Violation 2. While the Potential for Harm (moderate) and the Deviation from Requirement (major) assessments were the same for both violations, the lower end of the range specified for this assessment (0.4 to 0.7) was selected for Violation 1 based on receipt of the May 21 email with incomplete and deficient information. Absent similar circumstances for Violation 2, the mid-point of the range was selected.

**Initial Liability Amount**

For violations lasting more than 30 days, the Enforcement Policy allows adjustment of the per-day basis.

A multiday adjustment is appropriate for Violations 1 and 2 because these violations did not result in an economic benefit on a daily basis. For this adjustment, the Enforcement Policy provides that an initial liability shall be assessed for the first 30 days of the violation, plus each five-day period until the 60th day, plus each 30 days of violation thereafter. Thus, for assessment purposes, the total of 182 days of violation is adjusted to 41 days for Violation 1, and the total of 105 days of violation is adjusted to 38 days for Violation 2.

**Initial Liability:**

**Violation 1:** \$1,000/day x (0.4) x (41 days) = \$16,400

**Violation 2:** \$1,000/day x (0.55) x (38 days) = \$20,900

**STEP 4 – ADJUSTMENTS TO INITIAL LIABILITY**

The Enforcement Policy specifies that three additional factors should be considered for modification of the amount of initial liability: the violator’s degree of culpability, the violator’s voluntary efforts to clean up or cooperate with regulatory authorities, and the violator’s history of violations.

**Degree of Culpability**

The Enforcement Policy specifies that higher liabilities should result from intentional or negligent violations as opposed to accidental, non-negligent violations. It specifies use of a multiplier between 0.75 and 1.5, with a higher multiplier for intentional or negligent behavior.

**Violations 1 and 2:** The culpability multiplier is 1.3.

The Dischargers were notified about Regional Water Board jurisdiction on multiple occasions, and Regional Water Board staff assisted the Dischargers in understanding what needed to be done to comply with the 13267 Order. Communications with the Dischargers included the following:

- **June 13, 2019** – The San Francisco Bay Conservation and Development Commission (BCDC) informed the Dischargers in an email that the Regional Water Board and other agencies may have jurisdiction and suggested the Dischargers contact those agencies.
- **November 18, 2019** – Regional Water Board staff issued a Notice of Violations alleging unauthorized discharges and requiring the Dischargers to cease and desist activities and contact staff to seek Regional Water Board guidance.
- **January 28, 2020** – Regional Water Board staff discussed technical reporting requirements with Param Dhillon at a meeting that included Param Dhillon, BCDC, and the U.S. Army Corps of Engineers. During the meeting, Param Dhillon agreed to hire a consultant to perform a wetland delineation.

- **February 7, 2020** – Regional Water Board staff issued the 13267 Order with requirements to submit technical reports. Staff attached a fact sheet that explained requirements for submitting technical reports under section 13267 of the Water Code.
- **February 12, 2020** – The U.S. Army Corps of Engineers disputed concerns expressed by Param Dhillon about jurisdiction of the various agencies and wetlands definitions, and clarified the agency's authorities and definition of wetlands for the Property.
- **April 30 and May 7, 2020** – Regional Water Board staff notified the Dischargers of ongoing violations and referral to enforcement on April 30, 2020. Staff then contacted Param Dhillon by telephone to discuss noncompliance, Regional Water Board authorities, and the technical reporting requirements (summarized in a May 7, 2020, email).

The Dischargers' responses to staff communications leading up to both violations were denials that any action was required and challenges to Regional Water Board authority. The Dischargers withheld basic information about activities conducted at the Property and refused to acknowledge environmental regulations. A reasonable and prudent person with knowledge of reporting deadlines and awareness of the environmental concerns expressed by multiple agencies associated with jurisdictional authorities over grading and fill activities by wetlands would have taken steps to comply with statutory laws and regulatory requirements. The Dischargers' actions giving rise to the violations were not merely accidental or non-negligent.

### **Cleanup and Cooperation**

The Enforcement Policy provides for an adjustment to reflect the extent to which a violator voluntarily cooperated in returning to compliance and correcting environmental damage after the violation. The adjustment is a multiplier between 0.75 and 1.5, with a higher multiplier where there is a lack of cooperation.

**Violations 1 and 2:** The cleanup and cooperation multiplier is 1.3.

The Dischargers did not cooperate with Regional Water Board staff after missing the deadlines for technical reports. The Dischargers were generally responsive to Regional Water Board staff contacts (emails and calls) but recalcitrant in providing information the Regional Water Board required as noted below. Despite continued efforts to provide compliance assistance and encourage the Dischargers to seek professional assistance, no progress was made. The Dischargers continued to make the same types of claims and challenges to Regional Water Board jurisdiction and authority. When staff asked to inspect the Property, Param Dhillon refused to provide access. Interactions with the Dischargers included the following:

- After missing the first technical report deadline (February 21, 2020), Regional Water Board staff made multiple attempts to work with the Dischargers toward compliance. On April 30, 2020, staff issued the Dischargers a third Notice of Violations with notification that the matter was being referred for enforcement. In phone calls on May 6 and 19, 2020, and in emails on May 7, 20, and 29, 2020, Regional Water Board enforcement staff followed up with the Dischargers to further explain their obligations and possible enforcement consequences. The emails sent on May 7 and 29 encouraged the Dischargers to seek technical and legal professionals, as needed, to assist with their understanding of the 13267 Order requirements. The phone call on May 19 and email on May 20 encouraged the

Dischargers to e-mail information about the activities conducted to comply with the first technical report requirements.

- Param Dhillon responded to contacts by Regional Water Board enforcement staff in emails on May 7 and 13, 2020. Param Dhillon reiterated claims that his Property is not a wetland and that he has the right to cultivate the land and harvest whatever grows on the Property, despite multiple conversations about Regional Water Board jurisdiction and discussions that the issue was not use of the Property but the need for regulatory approvals for certain types of work threatening water quality and beneficial uses, including wetlands. During the phone call on May 19, 2020 (documented in a May 20, 2020, email to Param Dhillon), Param Dhillon agreed to send required information about activities conducted at the Property but, as discussed above under Deviation from Requirement, the information sent in the May 21 email was incomplete and wholly deficient. In this email, Param Dhillon indicated he had contacted a consultant to conduct a wetland delineation, but that person recommended someone else for the work. To date, the Dischargers have not provided any additional information demonstrating an intent to comply with the technical reporting requirements or to engage with Regional Water Board staff.
- In an email on June 17, 2020, Regional Water Board staff requested Property access for a site inspection on June 18, 2020, to assess the nature and extent of grading and fill activities and proximity to wetlands and waters of the State and United States. In an email dated June 17, 2020, Param Dhillon denied Regional Water Board staff access to the Property.

### **History of Violations**

The Enforcement Policy provides that where there is a history of repeat violations, a minimum multiplier of 1.1 should be used. Where there is no prior history of violations, a neutral factor of 1.0 should be used.

The history multiplier is 1.0 because the Dischargers have no similar past violations.

### **STEP 5 – DETERMINATION OF TOTAL BASE LIABILITY**

The Total Base Liability is determined by applying the adjustment factors from Step 4 to the Initial Liability Amount determined in Step 3.

**Violation 1:**

Total Base Liability = \$16,400 (Initial Liability) x 1.3 (Culpability Multiplier) x 1.3 (Cleanup and Cooperation Multiplier) x 1.0 (History of Violations Multiplier)

**Total Base Liability = \$27,716**

**Violation 2:**

Total Base Liability = \$20,900 (Initial Liability) x 1.3 (Culpability Multiplier) x 1.3 (Cleanup and Cooperation Multiplier) x 1.0 (History of Violations Multiplier)

**Total Base Liability = \$35,321**

## **COMBINED TOTAL BASE LIABILITY**

The combined Total Base Liability Amount for Violations 1 and 2 is:  $\$27,716 + \$35,321 =$  **\$63,037**.

## **STEP 6 – ABILITY TO PAY AND TO CONTINUE IN BUSINESS**

The Enforcement Policy provides that if there is sufficient financial information to assess the violator's ability to pay the Total Base Liability or to assess the effect of the Total Base Liability on the violator's ability to continue in business, then the Total Base Liability may be adjusted downward if warranted.

The Dischargers have assets and income to pay the proposed liability based on Regional Water Board staff's review of readily available public records for both Param Dhillon and Amandeep Dhillon. Records of property sales and property tax assessments identify the Dischargers as jointly owning three properties with a total value of approximately \$537,000, and Param Dhillon as the sole owner of 20 properties with a total value over \$2.8 million (values based on 2018 property tax assessments). The total combined value of these 23 properties is approximately \$3.4 million, of which approximately \$2.7 million is owed as mortgage debt. Therefore, the total estimated net value of all properties both jointly and individually owned by the Dischargers is approximately \$640,000. This net value is conservative in that it does not consider how much the mortgage debts have been paid down since property purchases. In addition to these assets, the Dischargers are associated with nine businesses: one real estate agency, six taxicab companies (one co-owned with another party), an LLC, and a for-profit company. The real estate agency has estimated annual sales of \$120,000. The Dischargers acquired the Property for \$73,800, which is in excess of the Total Base Liability.

## **STEP 7 – ECONOMIC BENEFIT**

The Enforcement Policy requires recovery of the Dischargers' economic benefit associated with the violations plus 10 percent. Economic benefit is any savings or monetary gain derived from the act or omission that constitutes the violations.

**Violation 1:** The requirement to submit a technical report regarding the activities conducted at the Property would not likely require the Dischargers to seek professional or technical assistance because they could have prepared the report with their own knowledge. The economic savings from not submitting the report was therefore minimal.

**Violation 2:** The assessment of economic benefit the Dischargers gained is estimated at \$13,000 or less. A wetland delineation would likely require technical expertise to conduct and professional assistance to report. We estimated the cost of such assistance to be in the range of \$10,000 to \$13,000 for the approximate size of wetlands at the Property. Since the Dhillons still must do this work, the only economic benefit gained would be the delayed expenditure of this money, which we estimate at less than \$1,000 using financial modeling software from U.S. EPA. However, if the Dhillons do not comply with State and federal law, costs for a technical report on a wetland delineation at the Property would be avoided. As an avoided cost, the Dhillons would save this money plus the value of that money over time starting from the first day of violation (May 8, 2020) until at least the date of the Board hearing (November 18, 2020).

The Total Base Liability from Step 5 is unchanged because it is more than ten percent higher than the estimated economic benefit.

### **STEP 8 – OTHER FACTORS AS JUSTICE MAY REQUIRE**

The Enforcement Policy allows the Regional Water Board to recover staff costs associated with imposing administrative civil liabilities. The Regional Water Board incurred \$18,726 in staff time to conduct a site visit, investigate this case, coordinate with other agencies, and prepare this analysis and supporting information. This required at least 136 hours of time spent by five enforcement staff members (an Environmental Scientist, an Engineering Geologist, a Senior Engineering Geologist, an Environmental Program Manager, and an Assistant Executive Officer). These staff costs are based on the low end of the salary range for each classification.

The Total Base Liability after adjusting for staff costs and other factors is **\$81,763**.

### **STEP 9 – MAXIMUM AND MINIMUM LIABILITY**

a) *Minimum Liability*

The minimum administrative civil liability for the violations is less than approximately \$15,000. This is the per range estimate of avoided cost, noted in Step 7, that would be realized by the Dischargers for not submitting acceptable technical reports. The \$15,000 estimate is based on nominal costs to submit a report of activities at the Property, up to \$13,000 plus the time value of this money to conduct and report a wetland delineation at the Property, and a multiplier of 10 percent in accordance with the Enforcement Policy so that the liability exceeds the cost of doing business and is a meaningful deterrent to future violations.

b) *Maximum Liability*

The maximum administrative civil liability is \$182,000 for Violation 1 and \$105,000 for Violation 2. This is based on the maximum allowed by Water Code section 13268(b)(1): \$1,000 for each day in which the violation occurred. The total number of days of violation is 182 days for Violation 1 and 105 days for Violation 2. For Violations 1 and 2, the adjusted Total Base Liability is within the maximum liability allowed by statute; thus, it is unchanged.

### **STEP 10 – FINAL LIABILITY**

The final liability proposed is **\$81,700** (rounded) for Violations 1 and 2, based on consideration of the penalty factors discussed above. It is within the minimum and maximum liabilities.

**EXHIBIT B**

**Supporting Figures**

**PARAM AND AMANDEEP DHILLON  
FAILURE TO SUBMIT TECHNICAL REPORTS  
ASSESSOR PARCEL NUMBER 0052-160-090, VALLEJO, SOLANO COUNTY**



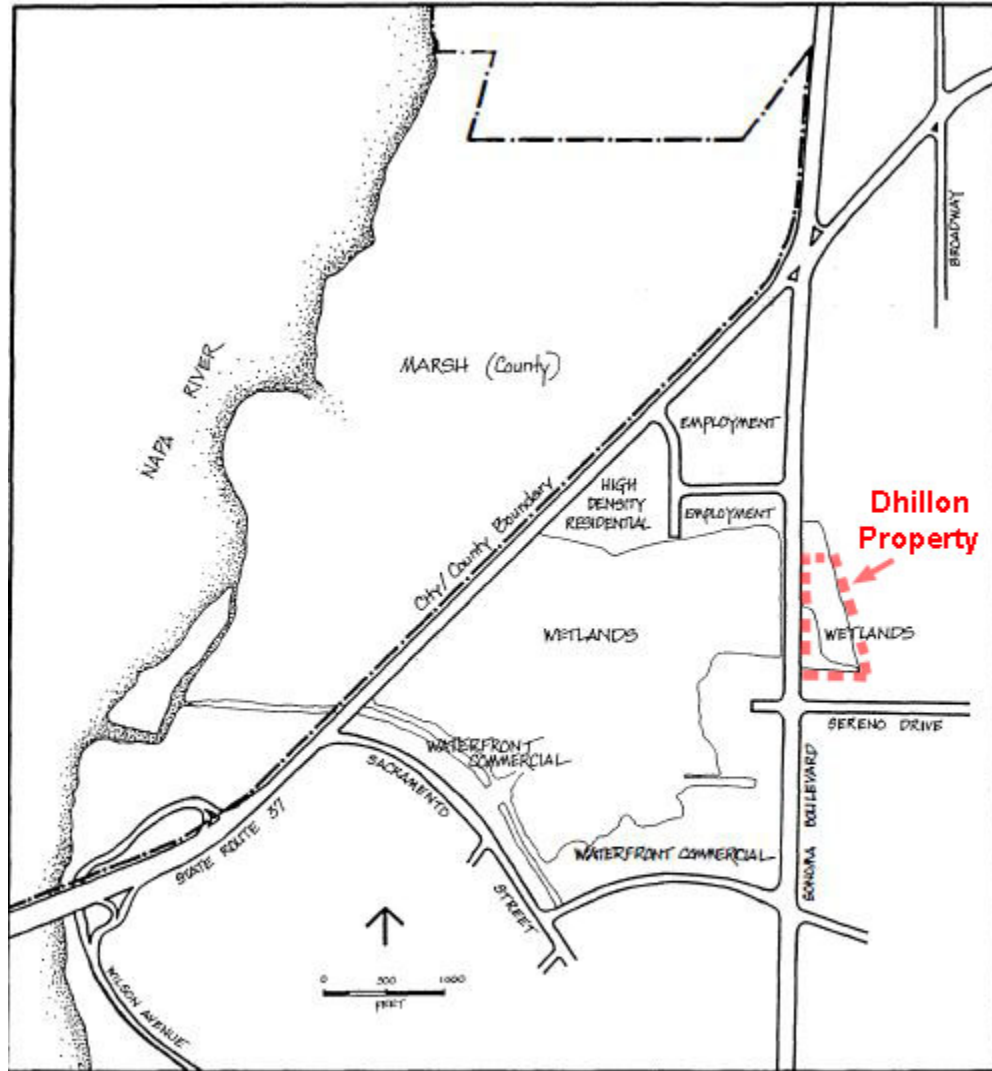


Dhillon Property Site Location

Google Earth imagery, aerial dated 9/1/2018, downloaded on 8/6/2020

Dhillon Property shown in red outline

White Slough and Dhillon Property label added to aerial



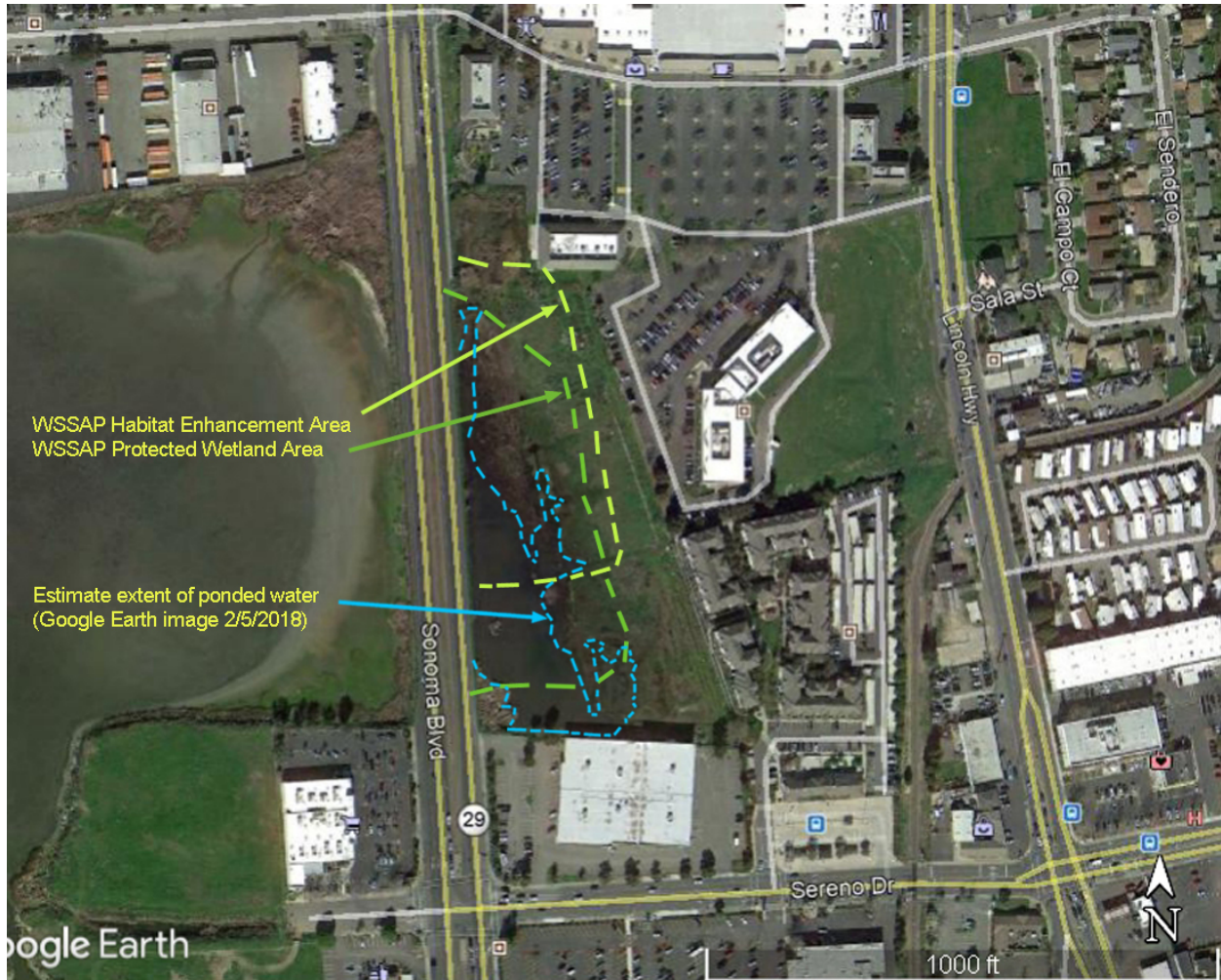
**Plan Illustration 7: General Plan Land Use Designations**

White Slough Specific Area Plan (2010), Illustration 7

General Land Use at Dhillon Property designated as wetlands

Dhillon Property label and approximate property boundary (dash line) added to illustration





Dhillon Property showing approximate eastern extent of White Slough Specific Area Plan (WSSAP) Habitat Enhancement Area (yellow) and Protected Wetland Area (green), and estimated extent of ponded water on 2/5/2018 (blue)

Google Earth imagery, aerial dated 2/5/2018, downloaded on 8/6/2020; labels (yellow), arrows and dashed lines added to aerial