

**CONFIDENTIAL SETTLEMENT COMMUNICATION**

**LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD**

**In the Matter of:**

**Sugar Pine Housing Partners LP  
Deacon Construction, LLC  
Sugar Pine Village  
El Dorado County**

**ORDER R6T-2024-0004**

**SETTLEMENT AGREEMENT AND  
STIPULATION FOR ENTRY OF  
ADMINISTRATIVE CIVIL LIABILITY  
ORDER; ORDER**

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**I. Introduction**

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Lahontan Region (Lahontan Water Board), on behalf of the Lahontan Water Board Prosecution Team (Prosecution Team), and Sugar Pine Housing Partners LP and Deacon Construction, LLC (Dischargers) (all collectively known as the Parties) and is presented to the Lahontan Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

**II. Recitals**

2. On June 21, 2022, Sugar Pine Housing Partners LP submitted a Notice of Intent for coverage under Order No. R6T-2016-0010, the *General Waste Discharge Requirements and National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction Activity in the Lake Tahoe Hydrologic Unit, Counties of Alpine, El Dorado, and Placer* (General Permit) for the Sugar Pine Village Phase I construction project.
3. The Prosecution Team has determined that Sugar Pine Housing Partners LP and Deacon Construction, LLC are both liable for violations of the General Permit at the Sugar Pine Village construction site. Sugar Pine Housing Partners LP is the Legally Responsible Party (LRP) under the General Permit and hired Deacon Construction, LLC as the contractor to complete the project. Operators are liable under the Clean Water Act if they have responsibility for or control over the activities that caused the violations. Deacon Construction, LLC, as the operator, had responsibility for and control over the activities that caused the violations.

4. Sugar Pine Village will consist of 248 affordable housing units in nine apartment buildings and two community buildings. Construction will take place in four phases. Phase I began in late 2022 and consists of three apartment buildings with associated parking and infrastructure. The project is located at 1888 Lake Tahoe Blvd, 1860 Lake Tahoe Blvd, and 1029 Tata Lane, all within the City of South Lake Tahoe. Storm water from the site flows to the City of South Lake Tahoe's stormwater infrastructure, which discharges into the Upper Truckee River about one mile east of the site.
5. **Violation 1:** The Prosecution Team alleges that the Dischargers violated Sections VIII.A.13, IX.M, and IX.D of the General Permit by failing to have a written spill response plan and a spill response kit onsite on September 27, 2023, for a total of one day of alleged violation.
6. **Violation 2:** The Prosecution Team alleges that the Dischargers violated Section VIII.A.10 and Attachment F, Section F.5 of the General Permit by failing to remove trash and properly secure waste stockpiles on September 27, October 3, and October 17, 2023 for a total of three days of alleged violation.
7. **Violation 3:** The Prosecution Team alleges that the Dischargers violated Sections VIII.A.11 and VIII.B.15 of the General Permit by failing to adequately protect stockpiles of earthen materials on September 27, October 3, and October 9, 2023 for a total of three days of alleged violation.
8. **Violation 4:** The Prosecution Team alleges that the Dischargers violated Section VIII.B of the General Permit by failing to install best management practices (BMPs) at the perimeter of the site and/or failing to correctly install BMPs on September 27, October 3, October 9, and October 17, 2023 for a total of four days of alleged violation.
9. **Violation 5:** The Prosecution Team alleges that the Dischargers violated Section VII.A.4 of the General Permit by failing to store chemicals in watertight containers and with secondary containment on September 27, October 3, and October 9, 2023 for a total of three days of alleged violation.
10. **Violation 6:** The Prosecution Team alleges that the Dischargers violated Section VII.B.5 of the General Permit by failing to prevent off-site tracking of sediment on September 27, October 3, and October 17, 2023 for a total of three days of alleged violation.
11. **Violation 7:** The Prosecution Team alleges that the Dischargers violated Section VIII.B.4 of the General Permit by failing to protect not yet connected storm drain

inlets on September 27 and October 17, 2023 for a total of two days of alleged violation.

12. These alleged violations constitute violations of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c).
13. On April 4, 2017, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2017-0020, which adopted the *2017 Water Quality Enforcement Policy* (Enforcement Policy). The Enforcement Policy was approved by the Office of Administrative Law and became effective on October 5, 2017.
14. The Enforcement Policy establishes a methodology for assessing administrative civil liability. Use of the methodology incorporates Water Code sections 13327 and 13385(e) that require the Lahontan Water Board to consider specific factors when determining the amount of civil liability to impose, including "...the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require." The amount of administrative civil liability imposed pursuant to this Stipulated Order comports with the Enforcement Policy as discussed in Attachment A, the terms of which are incorporated herein by reference.
15. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations alleged in this Stipulated Order and Attachment A, without administrative or civil litigation and by presenting this Stipulated Order to the Lahontan Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
16. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against the Dischargers in the amount of **\$79,690 (seventy nine thousand six hundred ninety dollars)**. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

### III. Stipulations

The Parties stipulate to the following:

1. **Jurisdiction:** The Parties agree that the Lahontan Water Board has regulatory jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
2. **Administrative Civil Liability:** The Dischargers hereby agree to the imposition of an administrative civil liability in the amount of **\$79,690 (seventy nine thousand six hundred ninety dollars)** to resolve the violations specifically alleged in this Stipulated Order as follows:
  - a. No later than 30 days after the Effective Date of this Order, the Dischargers shall submit a check for **\$4,690 (four thousand, six hundred ninety dollars)** to the State Water Board. The check shall be made payable to the "State Water Pollution Cleanup and Abatement Account," shall reference Order No. R6T-2024-0004, and shall be mailed to:

State Water Resources Control Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

The Dischargers shall provide a copy of the check via email to the State Water Board, Office of Enforcement (Carson.Capps@waterboards.ca.gov) and to the Lahontan Water Board (Shelby.Barker@waterboards.ca.gov).

- b. The Parties agree that the remaining **\$75,000 (seventy-five thousand dollars)** (SEP amount) of the administrative civil liability shall be conditionally suspended pending completion of the Barton Basin Excavation portion of the Tahoe Valley Stormwater and Greenbelt Improvement Project (Barton Basin Supplemental Environmental Project [SEP]) as described herein and in Attachment B, which is hereby incorporated by reference. The Barton Basin SEP is designed to allow storm water to spread out, infiltrate, and reduce sediment and nutrients, thus improving the quality of the storm water that enters Lake Tahoe. The Barton Basin SEP is one portion of a larger project which is designed to help meet the sediment and nutrient reductions mandated by the Lake Tahoe Total Maximum Daily Load (TMDL) program.

- c. The State Water Board's *Policy on Supplemental Environmental Projects* (SEP Policy) states that that the Director of the Office of Enforcement may approve a SEP in an amount greater than 50% of the administrative civil liability in certain cases, including when the SEP is located in, or benefits, a Disadvantaged Community. The Barton Basin SEP is located in, and will benefit a Disadvantaged Community and therefore the Director has allowed 100% of the liability to fund the SEP.
3. **SEP Requirements:** The Parties agree that the SEP Amount specified in Section III, paragraph 2.b. is for the Barton Basin SEP as identified in Attachment B. Upon completion of the Barton Basin SEP, the SEP Amount shall be treated as a permanently suspended administrative civil liability. The Lahontan Water Board is entitled to recover any SEP funds that are not expended in accordance with this Stipulated Order, to be paid consistent with Section III, paragraph 2.a., above. Detailed project descriptions, including milestones, budgets, and performance measures are attached hereto as Attachment B.
4. **Representation of the Dischargers:** As a material consideration for the Lahontan Water Board's acceptance of this Order, the Dischargers represent that they will utilize the SEP Amount to implement the Barton Basin SEP in accordance with terms and conditions described in this Stipulated Order and Attachment B. The Dischargers understand that their commitment to fund the Barton Basin SEP in accordance with the schedule and deliverables for implementation is a material condition of this settlement of liability between the Parties.
5. **Nexus to the Violation:** The SEP Policy requires that a SEP have a nexus to the alleged violation. (SEP Policy, section VIII.F.) The violations alleged in this Stipulated Order relate to storm water management at the Sugar Pine Village construction site, which is located within the same watershed as the Barton Basin SEP. Potential impacts to the beneficial uses of Lake Tahoe will be directly ameliorated as a result of the SEP.
6. **SEP Categories:** The SEP Policy provides for seven categories of SEPs. (SEP Policy, section V.) The Barton Basin SEP falls under the Pollution Reduction and Environmental Restoration and Protection categories.
7. **SEP Oversight:** The City of South Lake Tahoe, the SEP Recipient, will implement the Barton Basin SEP on behalf of the Dischargers. The Lahontan Water Board will provide additional oversight of the Barton Basin SEP which includes, but is not limited to, updating regulatory and records databases, reviewing and evaluating

progress, conducting site inspections, reviewing the final completion report, and verifying appropriate expenditure of the SEP Amount. The Dischargers are responsible for any charged costs for any reasonable and necessary Lahontan Water Board staff oversight, which is not included in the SEP Amount.

**SEP Completion Date:** As shown in Attachment B, the SEP will be completed within thirty-six (36) months after the Effective Date of this Agreement.

8. **Reporting Requirements for the SEP:** The Dischargers and/or the SEP Recipient will provide the following reports to the Lahontan Water Board:
  - a. **Quarterly Reports:** Quarterly Reports must be submitted in accordance with the schedule provided in Attachment B (i.e., by May 1, August 1, November 1, and February 1 each year). **The first Quarterly Report is due on November 1, 2024** and is to cover the period of July through September, 2024. The Quarterly Reports must describe the tasks completed and funds expended during the previous quarter, and proposed work for the following quarter. In addition, the Quarterly Reports must describe whether the Dischargers have complied with the milestones and deadlines contained in Attachment B, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with this Stipulated Order. The Quarterly Reports may also include descriptions and photos of activities completed during the previous quarter and an analysis of the Barton Basin SEP's progress. Quarterly reports shall be submitted to Shelby Barker at [Shelby.Barker@waterboards.ca.gov](mailto:Shelby.Barker@waterboards.ca.gov).
  - b. **Certification of SEP Completion:** No later than **four months** after the SEP Completion Date, the Dischargers and/or the SEP Recipient must submit a final report that documents completion of the SEP and provides a certified statement (Certification of SEP Completion), signed under penalty of perjury, that documents the following:
    - i. Certification of completion in accordance with the terms of this Stipulated Order, addressing how the expected outcome(s) for the project were met,
    - ii. Certification documenting the expenditures by the City of South Lake Tahoe during the completion period for the Barton Basin SEP, and
    - iii. Certification that the City of South Lake Tahoe followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act, Porter-Cologne Water Quality Control Act, and federal Clean Water Act.

Documentation of SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Lahontan Water Board to evaluate completion of the SEP and the costs incurred.

9. **Publicity Associated with the SEP:** If the Dischargers, or their agents, publicize one or more SEP elements, they shall state in a prominent manner that the project was undertaken as part of a settlement of a Lahontan Water Board enforcement action against the Dischargers.
10. **Site Inspections:** The Dischargers and/or SEP Recipient shall permit Lahontan Water Board staff to inspect the Barton Basin SEP implementation locations during normal business hours as well as review any documents associated with Barton Basin SEP implementation at any time without notice.
11. **SEPs are Above and Beyond the Dischargers' Obligations:** The Barton Basin SEP included in this Stipulated Order contains only measures that go above and beyond the Dischargers' obligations. The Barton Basin SEP is not part of the Dischargers' normal business nor are the Dischargers otherwise legally required to implement any portion of the Barton Basin SEP.
12. **No Benefit to Lahontan Water Board Functions, Members, or Staff:** The Barton Basin SEP provides no direct fiscal benefit to the Lahontan Water Board's functions, its members, its staff, or any family member of staff.
13. **Lahontan Water Board Not Liable:** The Lahontan Water Board and its members, staff, attorneys, and representatives shall not be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Dischargers or their directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
14. **Request for Extension of Completion Date:** If the SEP Recipient cannot complete the Barton Basin SEP by the SEP Completion Date due to circumstances beyond the control of the SEP Recipient and/or Dischargers or their agents and which could not have been reasonably foreseen and prevented or minimized by the exercise of due diligence, the SEP Recipient and/or Dischargers shall notify the Executive Officer in writing within thirty (30) days of the date that the Dischargers first knew of the event or circumstance that caused or would cause a violation of this Order. The notice shall describe the reason for the non-compliance and specifically refer to this Paragraph. The notice shall describe the anticipated length of time the delay may persist, the cause or causes of the delay, the measures taken or to be taken to minimize the delay, the schedule by which the measures

will be implemented, and the anticipated date of compliance. The Dischargers shall adopt all reasonable measures to avoid and minimize such delays.

The determination as to whether the circumstances were beyond the reasonable control of the Dischargers and their agents will be made by the Executive Officer. Where the Executive Officer concurs that compliance was or is impossible, despite timely good faith efforts, due to circumstances beyond the Dischargers' control that could not have been reasonably foreseen and prevented by the exercise of reasonable diligence by the Dischargers or their agents, a new compliance deadline shall be established. The Executive Officer will endeavor to grant a reasonable extension of time if warranted. Any approval of extension by the Executive Officer (or their designee) must be in writing.

- 15. Failure to Expend All Suspended Funds or Complete the Approved SEP:** If the SEP is not fully implemented within 36 months of this Order's adoption (SEP Completion Date) and no extension is granted by the Executive Officer (or his/her designee) within the 5-year statutory period, if the Discharger is unable to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP amount was spent on the completed SEP by the SEP Completion Date, or if there has been a material failure to satisfy a project milestone, Regional Water Board staff shall issue a "Notice of Violation" to the Discharger. As a consequence, the Discharger shall be liable to pay the entire SEP Amount, less any amount that has been permanently suspended or excused based on the timely and successful completion of any interim project milestone that has an identifiable and stand-alone environmental benefit. Unless the Regional Water Board or its delegate determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Water Board for expenditures made on the SEP prior to the Notice of Violation's issuance date. The amount of the suspended liability owed shall be determined via a written, stipulated agreement between the Parties or, if the Parties cannot reach an agreement on the amount owed, via a "Motion for Payment of Suspended Liability" before the Regional Water Board or its delegate. Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability assessed, the Discharger shall pay the amount owed to the "State Water Pollution Cleanup and Abatement Account." Within 30 days of the Regional Water Board's or its delegate's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in Section III, paragraph 2. Payment of the assessed amount shall satisfy the Discharger's obligation to implement the SEP.



16. **Replacement SEP:** If there is a material failure, in whole or in part, to perform the Barton Basin SEP described in Section III, paragraph 2.b. and Attachment B, due to circumstances beyond the control of the Dischargers, and the Lahontan Water Board does not move to collect the Payment of Suspended Liability amount as provided in Section III, paragraph 2, above, the Parties agree that the Dischargers may propose a Replacement SEP. Whether there is a material failure to perform the Barton Basin SEP described in Section III, paragraph 2.b. and Attachment B shall be determined by the Executive Officer. The Dischargers shall have 60 days from the date of the Executive Officer's determination to propose a Replacement SEP(s). The cost of the Replacement SEP shall be for the entire SEP Amount, or some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing and shall be treated as a suspended liability subject to the same conditions provided for the SEP being replaced. The terms and conditions of the Replacement SEP shall be memorialized in a Supplemental Agreement to this Stipulated Order, signed by both parties and approved by the Lahontan Water Board or its delegee. The Replacement SEP shall meet the criteria in the SEP Policy and shall be completed within 36 months of the Lahontan Water Board's or its delegee's approval of the Supplemental Agreement (Replacement SEP Completion Date). The Executive Officer may grant an extension for good cause shown as to why the Replacement SEP cannot be completed by the Replacement SEP Completion Date. The Parties agree that, unless requested by the Executive Officer, the Supplemental Agreement will not be subject to public notice and comment so long as the initial notice and comment period complies with federal and/or state requirements. If there is a material failure to perform a Replacement SEP, then the Executive Officer shall issue a "Notice of Violation" as described in Section III, paragraph 15. The Dischargers shall not have an opportunity to propose a second Replacement SEP should it fail to complete the Replacement SEP for any reason.
17. **Lahontan Water Board Acceptance of Completed SEP:** Upon the Dischargers' satisfaction of its obligations under this Stipulated Order, the completion of the Barton Basin SEP and any audits, the Lahontan Water Board or its delegee shall issue a "Satisfaction of Order." The issuance of the Satisfaction of Order will terminate any further obligation of the Dischargers under this Stipulated Order and permanently suspend the SEP Amount.
18. **Compliance with Applicable Laws and Regulatory Changes:** The Dischargers understand that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional

violations of the type alleged may subject them to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Dischargers from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

**19. Party Contacts for Communications Related to Stipulated Order:**

For the Lahontan Water Board:

Shelby Barker, Enforcement Coordinator  
Lahontan Water Quality Control Board  
(760) 241-7307  
Shelby.Barker@waterboards.ca.gov

For the Dischargers:

Ann Silverberg  
Sugar Pine Housing Partners LP  
(510) 610-9777  
asilverberg@related.com

Brett Mykrantz  
Deacon Construction, LLC  
(916) 417-9138  
brett.mykrantz@deacon.com

20. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.
21. **Covered Matters:** Upon the Lahontan Water Board's adoption of this Order, this Order presents a final and binding resolution and settlement of the alleged violations in this Stipulated Order and all associated Reports of Inspection and Notices of Violation that were prepared by Lahontan Water Board staff. The provisions of this Paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in Section III, paragraph 2.a. and the successful completion of the Barton Basin SEP as outlined in this Stipulated Order and Attachment B, or full payment of the associated SEP Amount.
22. **Public Notice:** The Dischargers understand that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by

the Lahontan Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Lahontan Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Lahontan Board, or its delegee. The Dischargers agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order once executed.

23. **Public Comment Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
24. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Lahontan Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Lahontan Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Lahontan Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
25. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Lahontan Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
26. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
27. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All

modifications must be made in writing, signed by all Parties, and approved by the Lahontan Water Board or its delegee.

28. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
29. **If Order Does Not Take Effect:** The Dischargers' obligations under this Stipulated Order are contingent upon the entry of the Order of the Lahontan Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Lahontan Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Lahontan Water Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
  - a. Objections related to prejudice or bias of any of the Lahontan Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Lahontan Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
  - b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review to the extent this period has been extended by these settlement proceedings.
30. **Waiver of Hearing:** The Dischargers have been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Lahontan Water Board, hereby waive their right to a hearing before the Lahontan Water Board prior to the Stipulated Order's adoption. However, the Dischargers

may appear at any Regional Water Board hearing where approval of this settlement is discussed. If the settlement is not adopted and the matter proceeds to the Lahontan Water Board or State Water Board for hearing, the Dischargers do not waive the right to an adjudicatory hearing before any order other than the Stipulated Order is imposed.

31. **Waiver of Right to Petition or Appeal:** Except in the instance where the settlement is not adopted by the Lahontan Water Board, the Dischargers hereby waive the right to petition the Lahontan Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waive the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
32. **Covenant Not to Sue:** The Dischargers covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order, except that this covenant is not intended to, and does not, limit the Dischargers' right to sue over other Lahontan Water Board orders or limit the Dischargers' rights to defend against any other taken by the Lahontan Water Board or its employees, representatives, agents, or attorneys, and shall not release any claims or complaints against any state agency, or the State of California or its officers, Lahontan Water Board members, employees, representatives, agents, or attorneys to the extent such covenant would be prohibited by California Business and Professions Code section 6090.5 or by any other statute, rule, regulation, or legal principle of similar effect.
33. **No Admission of Liability/ No Waiver of Defenses:** In settling this matter, the Dischargers do not admit to liability, admit to the truth of the findings or allegations made by the Prosecution Team, or admit to any of the findings in this Stipulation and Order or Attachment A, or admit to any violations of the Clean Water Act, the Water Code, any Regional or State Water Board order, or any other federal, state or local laws or ordinances, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385(e), and the State Water Board's Water Quality Enforcement Policy. By entering into this agreement, Dischargers do not waive any defenses or arguments related to any new enforcement action that may be brought by the Lahontan Water Board.

34. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
35. **Necessity for Written Approvals:** All approvals and decisions of the Lahontan Water Board under the terms of this Stipulated Order shall be communicated to the Dischargers in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Lahontan Water Board regarding submissions or notices shall be construed to relieve the Dischargers of their obligation to obtain any final written approval required by this Stipulated Order.
36. **No Third Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
37. **Severability:** The provisions of this Stipulated Order are severable; should any provision be found invalid, the remainder shall remain in full force and effect.
38. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Lahontan Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
39. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

**IT IS SO STIPULATED.**


**California Regional Water Quality Control Board Prosecution Team  
Lahontan Region**

By:  6/11/24  
Ben Letton, Assistant Executive Officer Date

**Sugar Pine Housing Partners LP**

By: See page 16 \_\_\_\_\_  
Ann Silverberg, Authorized Signatory Date

**Deacon Construction, LLC**

By:  5/30/24  
Brett Mykrantz, Vice President Date

Settlement Agreement Order R6T-2024-0004  
Sugar Pine Housing Partners LP and Deacon Construction, LLC

**IT IS SO STIPULATED.**

**California Regional Water Quality Control Board Prosecution Team  
Lahontan Region**

By: \_\_\_\_\_  
Ben Letton, Assistant Executive Officer

\_\_\_\_\_ Date

**Sugar Pine Housing Partners LP**

By: \_\_\_\_\_  
Ann Silverberg, Authorized Signatory

\_\_\_\_\_ 5/30/2024  
Date

**Deacon Construction, LLC**

By: \_\_\_\_\_  
Brett Mykrantz, Vice President

\_\_\_\_\_ Date



**HAVING CONSIDERED THE PARTIES' STIPULATIONS, THE LAHONTAN REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:**

1. The foregoing Stipulation, including Attachments A and B, is fully incorporated herein and made part of this Order.
2. In accepting the foregoing Stipulation, the Lahontan Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Lahontan Water Board's consideration of these factors is based upon information obtained by the Lahontan Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Lahontan Water Board.
3. This is an action to enforce the laws and regulations administered by the Lahontan Water Board. The Lahontan Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
4. The Executive Officer of the Lahontan Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Dischargers fail to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Lahontan Region.



for \_\_\_\_\_  
Michael Plaziak  
Executive Officer  
Lahontan Regional Water Quality Control Board

9/25/24

\_\_\_\_\_  
Date

Attachment A: Penalty Calculation Methodology  
Attachment B: Barton Basin SEP Workplan

## ATTACHMENT A TO STIPULATED ORDER R6T-2024-0004

### PENALTY CALCULATION METHODOLOGY FOR SUGAR PINE HOUSING PARTNERS LP AND DEACON CONSTRUCTION, LLC SUGAR PINE VILLAGE SOUTH LAKE TAHOE, EL DORADO COUNTY

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy)<sup>1</sup> establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the nine-step approach is discussed below, as is the basis for assessing the corresponding score. Sugar Pine Housing Partners LP and Deacon Construction, LLC are individually referred to as "Sugar Pine" or "Deacon" or jointly referred to as "Discharger."

The Lahontan Water Board's September 27 and October 17, 2023 Inspection Reports identify numerous alleged violations of the *General Waste Discharge Requirements and National Pollutant Discharge Elimination System General Permit for Stormwater Discharges Associated with Construction Activity in the Lake Tahoe Hydrologic Unit, Counties of Alpine, El Dorado, and Placer* (General Permit) at the Sugar Pine Village construction site. Additional alleged violations are described in the Discharger's Qualified SWPPP Practitioner's (QSP's) inspection reports dated October 3 and October 9, 2023.

For this Settlement Offer, the Prosecution Team has chosen to (a) allege only the violations which have the greatest potential to impact water quality, and (b) only allege that violations occurred on the four days covered by the aforementioned four inspection reports. This Settlement Offer assesses penalties for:

1. Spill response: lack of a spill response plan and spill response kit onsite.
2. Construction waste: failure to pick up trash throughout site and failure to properly secure waste stockpiles.
3. Stockpiles of earthen materials: failure to protect stockpiles such that sediment is prevented from leaving the site.
4. Sediment control: failure to fully deploy BMPs (best management practices) at the perimeter of the site and/or failure to correctly install BMPs.
5. Chemicals: failure to store in watertight containers and with secondary containment.
6. Off-site tracking of sediment: failure to install tracking controls at all site entrances/exits and failure to remove sediment from the public roadway.
7. Drain inlets: failure to protect drain inlets.

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<sup>1</sup>[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final%20adopted%20policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf)

Violation 1 – Lack of a spill response plan and spill response kit onsite.

Section VIII.A.13 of the General Permit states that a discharger shall develop a spill response plan prior to commencement of construction, and that the plan must include a description of the spill response equipment that will be kept onsite. Section IX.M states that the Stormwater Pollution Prevention Plan (SWPPP) shall include procedures for responding to spills and that vehicles must carry an emergency spill kit. Section IX.D states that the SWPPP shall be kept onsite during construction.

Lahontan Water Board staff’s September 27, 2023 inspection found that there was no written spill response plan or appropriate spill response kit onsite. Although the Discharger has stated that an electronic spill response plan was available, Staff’s review finds it was only a template version with a title for a different site and portions that were not filled out. Staff’s inspection also found that the “spill kit” did not meet the template spill response plan’s statement that petroleum and chemical absorbent materials were to be available onsite, nor did it meet the General Permit’s direction that vehicles carry an emergency spill kit.

The Discharger’s October 30, 2023 submittal states that the Discharger (a) purchased an Allwik 55-gallon spill kit on October 13, 2023, (b) updated the template spill response plan and made a hard copy available onsite, and (c) conducted spill response training on October 19, 2023.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge Violations	n/a	This step is not applicable.
Potential for Harm	moderate	The inability to properly respond to spills resulted in a substantial threat to the beneficial uses of Lake Tahoe, which include municipal supply, contact and non-contact recreation, commercial and sportfishing, cold freshwater habitat, wildlife habitat, migration, and spawning.
Deviation from Requirement	major	The Discharger failed to have a spill response plan and appropriate spill response kit onsite, rendering the General Permit’s requirement to do so ineffective.
Per Day Factor	0.4	Determined from Table 3 in the Enforcement Policy.
Days of Violation	1	September 27, 2023

Initial Liability	\$4,000	Per day factor x number of days x maximum liability of \$10,000/day.
<i>Adjustments for Discharger Conduct</i>		
<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Cleanup and Cooperation	1.0	The Discharger responded in a reasonable and prudent manner by purchasing a spill kit, updating the spill response plan, and making it available onsite.
History of Violations	1.0	There is no known history of adjudicated violations.
Total Base Liability	\$5,200	Initial liability x Culpability x Cleanup x History

Violation 2 – Failure to pick up trash throughout site and to properly secure waste stockpiles. Attachment F, Section F.5 of the General Permit states “*The discharge of garbage or other solid waste to lands within the Lake Tahoe Basin is prohibited.*” Section VIII.A.10 states that dischargers shall “*Contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.*”

Lahontan Water Board staff’s September 27, 2023 inspection found that waste and trash was located at various locations throughout the site (see inspection report photos 11, 31, 36, 42) and that waste stockpiles were not contained or securely protected (photos 17, 27). The QSP’s October 3, 2023 inspection includes four photos with the statement “consolidate and remove waste throughout site.” The QSP’s October 9, 2023 inspection report does not mention trash, other than to cover dumpsters prior to rain. Lahontan Water Board staff’s October 17, 2023 inspection found unconsolidated trash in the East Village.

The Discharger’s October 30, 2023 submittal states that Deacon “will be diligent with garbage and debris collection and proper disposal” and that Deacon received additional training regarding solid waste on October 16, 19, and 26, 2023, as well as at all previous trainings. The submittal also states that the waste stockpiles identified by Lahontan Water Board staff were not waste but instead plastic “tarps” for use on inactive stockpiles. Staff understand that this plastic initially covered prefabricated materials delivered to the site. While it may be appropriate to reuse it in some circumstances, the inspection photos show that the plastic is a lighter-weight material that appears susceptible to photodegradation by sunlight and wind, leading to creation of microplastics. Because these piles of plastic were not actively being used, they needed to be protected from wind and rain.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge Violations	n/a	This step is not applicable.
Potential for Harm	moderate	The failure to pick up trash and to protect waste stockpiles resulted in the potential for these materials to be transported off-site in stormwater or non-stormwater discharges, which would negatively impact the beneficial uses of Lake Tahoe.
Deviation from Requirement	moderate	The Discharger had at least one dumpster onsite on September 27, 2023, indicating that there was some intent to comply with the requirement to pick up trash.
Per Day Factor	0.3	Determined from Table 3 in the Enforcement Policy.
Days of Violation	3	September 27, October 3, October 17, 2023
Initial Liability	\$9,000	Per day factor x number of days x maximum liability of \$10,000/day.
<i>Adjustments for Discharger Conduct</i>		
<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Cleanup and Cooperation	1.1	The Lahontan Water Board's October 17, 2023 inspection found scattered trash, even though (a) the Discharger had prior notice of this inspection, (b) the Lahontan Water Board's September 27, 2023 inspection found violations of the General Permit related to trash, and (c) Deacon received training regarding trash the day before the Lahontan Water Board's October 17, 2023 inspection. A reasonable discharger would have ensured that trash was picked up prior to the Lahontan Water Board's October 17, 2023 inspection.
History of Violations	1.0	There is no known history of adjudicated violations.
Total Base Liability	\$11,880	Initial liability x Culpability x Cleanup x History

Violation 3 – Failure to protect stockpiles of earthen materials.

Section VIII.A.11 of the General Permit states that dischargers shall *“Protect all loose piles of soil, silt, clay, sand, debris, or other earthen material such that sediment is prevented from leaving the site.”* Section VIII.B.15 of the General Permit states *“Wind erosion shall be controlled...to prevent the transport of dust and soil particles into the air...”*

Lahontan Water Board staff’s September 27, 2023 inspection found that soil stockpiles were not covered or otherwise protected. Several stockpiles that were described as active did not have sediment or erosion control BMPs staged nearby. Soil was inappropriately managed at the site, and was not always placed in easily protectable, distinct piles. Inspection photos 18, 25, 26, 28, 31, 38, 39, and 40 all show different soil stockpiles without BMPs. Many of these stockpiles appear to have not been used for some time. The QSP’s October 3 and October 9, 2023 inspection report contains photos of soil stockpiles that are not covered or otherwise protected. Lahontan Water Board staff’s October 17, 2023 inspection found that excess soil had been consolidated into two stockpiles, one of which had been hydro-mulched and the other covered with black plastic.

The Discharger’s October 30, 2023 submittal states that during the September 27, 2023 inspection, (a) grading was taking place and all stockpiles were active, and (b) stockpiles did not need to be covered because rain was not expected until two days later. The Prosecution Team disputes the statement that all stockpiles were active; even if they were, there were no BMPs staged nearby to cover the stockpiles and in several areas, the excess soil was not placed such that it could be easily and efficiently covered (see inspection photos listed above). In addition, the General Permit does not require that only inactive stockpiles be covered, or that stockpiles only be protected prior to rain. Instead, the General Permit requires that stockpiles be protected to ensure that sediment will not leave the site, either by stormwater or by wind erosion. The Discharger’s October 30, 2023 response also states that in the future stockpiled material will be protected from wind and rain, and that “all soil stockpiles will be contained, securely protected, or covered as needed.”

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge Violations	n/a	This step is not applicable.
Potential for Harm	moderate	The failure to protect against sediment discharges poses a substantial threat to beneficial uses. Stormwater runoff polluted with sediment is harmful to the receiving water ecosystem because it can contain material that is toxic to aquatic organisms, smother plants and wildlife, bury fish eggs, clog fish gills, and contribute to high turbidity in the water,

		which results in low sunlight and can damage aquatic life habitat.
Deviation from Requirement	major	Most soil stockpiles were not adequately protected, rendering the General Permit's requirement to do so ineffective.
Per Day Factor	0.4	Determined from Table 3 in the Enforcement Policy.
Days of Violation	3	September 27, October 3, October 9, 2023
Initial Liability	\$12,000	Per day factor x number of days x maximum liability of \$10,000/day.
<i>Adjustments for Discharger Conduct</i>		
<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Cleanup and Cooperation	1.0	The Lahontan Water Board's follow-up inspection on October 17, 2023 found that the Discharger had consolidated all loose piles of earthen material into two stockpiles. One stockpile was appropriately protected with hydro-mulch while the other stockpile was protected with black plastic (but was missing a fiber roll berm).
History of Violations	1.0	There is no known history of adjudicated violations.
Total Base Liability	\$15,600	Initial liability x Culpability x Cleanup x History

Violation 4 – Failure to install BMPs at perimeter of site and/or failure to correctly install BMPs.

Section VIII.B of the General Permit requires that dischargers implement sediment and erosion controls to prevent or minimize sediment discharges from the site. In addition, Section VIII.B.1 states that dischargers shall “*Install temporary sediment controls for the down-gradient perimeter of the project site, and/or any location where stormwater or authorized non-stormwater may discharge...*” Section VIII.B.9 states that dischargers shall “*Direct all run-on surface flows from offsite, to the maximum extent possible, away from all disturbed areas.*”

Lahontan Water Board staff's September 27, 2023 inspection found that perimeter controls (i.e., fiber rolls) were missing or incorrectly installed in numerous locations (see photos 12-15, 23, 31, 36, 37 for missing fiber rolls and photos 2 and 7 for incorrectly installed fiber rolls).

The QSP's October 3, 2023 inspection report includes the following in the Deficiency section: "Repair/maintain perimeter control throughout site to proper specifications" and includes a photo with this same caption showing a down-gradient perimeter without a fiber roll. The QSP's October 9, 2023 inspection includes a photo of a fiber roll that is incorrectly installed. Lahontan Water Board staff's October 17, 2023 inspection found that fiber rolls were missing or incorrectly installed in numerous locations (photos 5, 8, 9, 13, 34, 39, 40).

The Discharger's October 30, 2023 submittal states that appropriate sediment controls, including fiber rolls, were installed at the down-gradient perimeter of the site, and that the only areas without perimeter controls were areas that could not discharge stormwater. The Prosecution Team disagrees. The September 27, 2023 inspection report contains photographs with the notation that fiber rolls were improperly installed (i.e., not trenched). A fiber roll by itself is not a BMP; it must be correctly installed to function as intended. In addition, the Discharger had not installed fiber rolls in all down-gradient areas, as evidenced by the QSP's October 3, 2023 inspection report. The Lahontan Water Board inspection of October 17, 2023 found that the Discharger had not (a) installed fiber rolls, or other BMPs, to prevent run-on flows at numerous locations from entering disturbed soil areas, and (b) had not trenched numerous fiber rolls.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge Violations	n/a	This step is not applicable.
Potential for Harm	moderate	The failure to protect against sediment discharges poses a substantial threat to beneficial uses. Stormwater runoff polluted with sediment is harmful to the receiving water ecosystem because it can contain material that is toxic to aquatic organisms, smother plants and wildlife, bury fish eggs, clog fish gills, and contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat.
Deviation from Requirement	moderate	The Discharger had installed some fiber rolls.
Per Day Factor	0.3	Determined from Table 3 in the Enforcement Policy.
Days of Violation	4	September 27, October 3, October 9, October 17, 2023
Initial Liability	\$12,000	Per day factor x number of days x maximum liability of \$10,000/day.
<i>Adjustments for Discharger Conduct</i>		



PENALTY FACTOR	VALUE	DISCUSSION
Cleanup and Cooperation	1.1	The Discharger installed additional fiber rolls at various points along the perimeter of the site prior to the Lahontan Water Board’s October 17, 2023 inspection. However, most of the fiber rolls were not trenched and were therefore ineffective. <sup>2</sup> The Discharger submitted photographs on October 31, 2023 showing that fiber rolls had been trenched.
History of Violations	1.0	There is no known history of adjudicated violations.
Total Base Liability	\$17,160	Initial liability x Culpability x Cleanup x History

Violation 5 – Failure to store chemicals in watertight containers and with secondary containment.

Section VIII.A.4 of the General Permit states that dischargers shall “*Store chemicals in watertight containers with appropriate secondary containment to prevent spillage or leakage and protect them from precipitation and surface run-on. For hazardous liquids used in active work, place in appropriate secondary containment when not in use.*”

Lahontan Water Board staff’s September 27, 2023 inspection found that chemicals were not stored in watertight containers and were not within secondary containment (photos 16, 17, 33, 35-37, 41, 44). The QSP’s October 3, 2023 inspection report includes two photos with the text “place chemicals in secondary containment when not in use.” The QSP’s October 9, 2023 inspection report includes a photo with the text “place chemicals in secondary containment and cover prior to rain.”<sup>3</sup> Lahontan Water Board staff’s October 17, 2023 inspection found that chemicals were within an appropriate secondary containment of either the Conex shipping container (photo 1) or kiddie pools (photos 2, 10).

The Discharger’s October 30, 2023 submittal states that the General Permit requires that chemicals be stored within secondary containment only “at the end of the active workday.” This is not correct. Section VIII.A.4 requires that chemicals always be protected with secondary containment unless the chemical is hazardous and is actively being used. The inspection photos accompanying the September 27, October 3, and October 9, 2023 inspections show that chemicals were not being used at the time of the inspection and were

<sup>2</sup> The Discharger stated that the fiber rolls had been placed without trenching so that there would be some level of protection prior to proper installation.

<sup>3</sup> It is noted that the General Permit requires chemicals to be in secondary containment at all times, not just before rain.

not within secondary containment. The Discharger’s submittal also states that additional training on material storage was conducted on October 17, 2023.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge Violations	n/a	This step is not applicable.
Potential for Harm	moderate	The failure to properly store chemicals, coupled with the lack of a spill response plan and spill response kit, resulted in the potential for chemicals to be transported off-site in stormwater or non-stormwater discharges, which would negatively impact the beneficial uses of Lake Tahoe.
Deviation from Requirement	moderate	The QSP’s photos show that the Discharger had a Conex shipping container onsite as of May 2023, indicating that there was some intent to comply with the requirement appropriately store chemicals.
Per Day Factor	0.3	Determined from Table 3 in the Enforcement Policy.
Days of Violation	3	September 27, October 3, October 9, 2023
Initial Liability	\$9,000	Per day factor x number of days x maximum liability of \$10,000/day.
<i>Adjustments for Discharger Conduct</i>		
<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Cleanup and Cooperation	1.0	Compliance improved after the September 27, 2023 inspection.
History of Violations	1.0	There is no known history of adjudicated violations.
Total Base Liability	\$11,700	Initial liability x Culpability x Cleanup x History

Violation 6 – Failure to prevent off-site tracking of sediment.

Section VIII.B.5 of the General Permit states that dischargers shall “*Prevent off-site tracking of earthen materials onto adjacent roads... install stabilized entrances/exits...and implement sweeping as necessary where tracking prevention is not complete.*”

Staff's September 27, 2023 inspection found that several construction entrances/exits were not stabilized to prevent off-site tracking, that one entrance had been improperly stabilized because vehicles were able to circumvent the tracking control, and that sediment had been tracked onto Tata Lane (photos 1, 2, 4, 24, 47, 48). The QSP's October 3, 2023 inspection report includes a photo with the caption "sweep trackout." The QSP's October 9, 2023 inspection report does not mention the need to stabilize entrances/exits or to sweep off-site tracking. Staff's October 17, 2023 inspection found that only one of the four entrances/exits had been stabilized and that sediment was tracked onto Tata Lane (photos 25, 27, 28, 31).

The Discharger's October 30, 2023 submittal states that the September 27, 2023 inspection report does not identify the locations where sweeping was lacking. The Prosecution Team disagrees, and points to inspection photos 1, 2, 4, 24, 47, and 48, which show tracking onto Tata Lane. In addition, Lahontan Water Board staff thoroughly discussed<sup>4</sup> the off-site tracking with Deacon representatives during the inspection.

Section VII.B.5 of the General Permit requires that a discharger prevent off-site tracking through installation of stabilized entrances/exits. If the stabilization is insufficient to prevent tracking on roadways, then a discharger shall work with its QSP to modify the stabilization and/or increase sweeping. After the Water Board's October 17, 2023 inspection, the Discharger ordered a mechanical sweeper which was delivered to the site on October 19, 2023.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge Violations	n/a	This step is not applicable.
Potential for Harm	moderate	The failure to protect against sediment discharges poses a substantial threat to beneficial uses. Stormwater runoff polluted with sediment is harmful to the receiving water ecosystem because it can contain material that is toxic to aquatic organisms, smother plants and wildlife, bury fish eggs, clog fish gills, and contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat.
Deviation from Requirement	moderate	The Discharger had some intention to comply as Lahontan Water Board staff noted two stabilized entrances during the September 27, 2023 inspection (although both needed maintenance).

<sup>4</sup> Documented in the inspection report dated October 17, 2023.

Per Day Factor	0.3	Determined from Table 3 in the Enforcement Policy.
Days of Violation	3	September 27, October 3, October 17, 2023
Initial Liability	\$9,000	Per day factor x number of days x maximum liability of \$10,000/day.
<i>Adjustments for Discharger Conduct</i>		
<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Cleanup and Cooperation	1.1	The Lahontan Water Board’s October 17, 2023 inspection found that entrances/exits were not stabilized and sediment had been tracked onto Tata Lane, even though (a) the Discharger had prior notice of this inspection, (b) the Lahontan Water Board’s September 27, 2023 inspection found similar violations and staff discussed the violations with Deacon at that time, and (c) Deacon received training regarding sweeping the day before the Lahontan Water Board’s October 17, 2023 inspection. A reasonable discharger would have ensured that construction entrances/exits were stabilized, or if this was not possible due to construction, that Tata Lane was swept whenever sediment was tracked onto it.
History of Violations	1.0	There is no known history of adjudicated violations.
Total Base Liability	\$12,870	Initial liability x Culpability x Cleanup x History

Violation 7 – Failure to protect drain inlets

Section VIII.B.4 of the General Permit states that dischargers must “*Protect drain inlets and outfall structures with appropriate controls for erosion and to minimize sediment discharges.*”

Lahontan Water Board staff’s September 27, 2023 inspection found that most of the drain inlets were missing the BMPs needed to minimize sediment discharge, and in fact were covered in sediment or had accumulated sediment within the structure (photos 8-10,19-22, 25). Lahontan Water Board staff’s October 17, 2023 inspection found the same conditions (photos 36-38, 42). The QSP’s October 3 and October 9, 2023 inspections did not include this as an item needing correction, but it is clear from the Lahontan Water Board inspections that BMPs were not installed on those two dates. However, for purposes of settlement, these two days are not included in the penalty calculation.

The Discharger’s October 30, 2023 submittal states that there was no need to install BMPs at the drain inlets because they are not connected to the City of South Lake Tahoe’s MS4 and will not be connected until construction is complete. The Prosecution Team disagrees that BMPs are not necessary. Section VIII.B.4 of the General Permit requires that drain inlets be protected to “minimize sediment discharges.” The September 27, 2023 inspection found several of the drain inlets, especially in the East Village, covered with sediment; the contractor had taken no actions to prevent sediment from entering the drain inlets. In addition, the Prosecution Team discussed this issue with the City of South Lake Tahoe. The City’s representative stated that the City assumes drain inlets are clean, that they don’t enter private property to inspect drain inlets, and that they do not want to be responsible for cleaning them or ensuring a contractor cleans them. The Discharger was required by the General Permit to protect the drain inlets and should have done so. The Discharger has informed Water Board staff that consistent with its standard construction practices and its understanding of the Project’s conditions of approval, all drain lines will be vacuumed and cleaned prior to connection to the City system. This will reduce the risk of discharges but does not avoid the requirement to protect inlets.

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge Violations	n/a	This step is not applicable.
Potential for Harm	minor	The failure to protect against sediment discharges poses a threat to beneficial uses. Stormwater runoff polluted with sediment is harmful to the receiving water ecosystem because it can contain material that is toxic to aquatic organisms, smother plants and wildlife, bury fish eggs, clog fish gills, and contribute to high turbidity in the water, which results in low sunlight and can damage aquatic life habitat. Because the on-site inlets were not connected to the City’s MS4 system during the inspections, the potential for harm is reduced upon the understanding that the Discharger will thoroughly clean the inlets prior to connection.
Deviation from Requirement	moderate	The existing drain inlets on Tata Lane were protected, although BMPs were not always maintained. On-site inlets were not protected but were not connected to the City’s MS4 system.
Per Day Factor	0.2	Determined from Table 3 in the Enforcement Policy.

Days of Violation	2	September 27 and October 17, 2023
Initial Liability	\$4,000	Per day factor x number of days x maximum liability of \$10,000/day.
<i>Adjustments for Discharger Conduct</i>		
<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Cleanup and Cooperation	1.1	The failure to protect drain inlets was discussed during the Lahontan Water Board's September 27, 2023 inspection and included as a violation both in that inspection report and in the October 13, 2023 Notice of Violation. The Discharger should have reviewed the documents and installed protection prior to the Lahontan Water Board's follow-up inspection on October 17, 2023. However, the Discharger did not do so. The Discharger submitted photographs on October 31, 2023 showing that fiber rolls had been installed around drain inlets.
History of Violations	1.0	There is no known history of adjudicated violations.
Total Base Liability	\$5,280	Initial liability x Culpability x Cleanup x History

The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

<b>Total Base Liability for all violations: \$79,690</b>		
Other Factor Considerations		
<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Economic benefit	\$25,452	See attached document

Other factors as justice may require	Not included	The costs of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Lahontan Water Board Prosecution Team has incurred over 50 hours and over \$5,000 in staff costs associated with the investigation and enforcement of the alleged violations. While this amount could be added to the penalty, it is not added at this time but will be added if this matter is not settled.
Maximum liability	\$190,000	Based on California Water Code section 13385: \$10,000 per day per violation.
Minimum liability	\$27,997	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%.
<b>Final Liability</b>	<b>\$79,690</b>	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than the maximum liability.

Attachment: Economic Benefit Analysis

<b>Economic Benefit Analysis</b>												
<b>Sugar Pine Village</b>												
Compliance Action	One-Time Non-Depreciable Expenditure				Annual Cost			Non-Compliance Date	Compliance Date	Penalty Payment Date	Discount Rate	Benefit of Non-Compliance
	Amount	Basis	Date	Delayed?	Amount	Basis	Date					
Violation 1A: Spill Kit	\$ 526	GDP	10/16/2023	Y				10/1/2022	10/16/2023	2/1/2024	7.40%	16
Violation 1B: Spill Response Plan	\$ 187	ECI	1/1/2023	Y				10/1/2022	10/20/2023	2/1/2024	7.40%	5
Violation 1C: Spill Response Training	\$ 4,050	ECI	1/1/2023	Y				10/1/2022	10/19/2023	2/1/2024	7.40%	116
Violation 2&3: Covering Disposal Containers, Stockpiles, and Construction Material; and Picking Up Waste	\$ 284	ECI	1/1/2023	N				9/27/2023		2/1/2024	7.40%	181
Violation 4: Perimeter Control - Labor	\$ 5,316	CCI	1/1/2023	Y				10/1/2022	10/31/2023	2/1/2024	7.40%	159
Violation 4: Perimeter Control - Material	\$ 2,954	CCI	11/1/2009	Y				10/1/2022	10/31/2023	2/1/2024	7.40%	139
Violation 5: Drain Inlet Control	\$ 800	CCI	11/1/2009	Y				10/1/2022	10/31/2023	2/1/2024	7.40%	38
Violation 6: Chemical Storage Containment	\$ 160	GDP	11/7/2023	Y				9/27/2023	10/17/2023	2/1/2024	7.40%	-
Violation 7: Track Out Control					\$ 37,037	GDP	10/18/2023	10/1/2022	10/18/2023	2/1/2024	7.40%	24,799
<b>Income Tax Schedule:</b> For-Profit (Other than C-Corporation) <b>USEPA BEN Model Version:</b> Version 2022.0.0 (June 2022) <b>Analyst:</b> German Myers <b>Date/Time of Analysis:</b> 12/5/23 13:25 <b>Assumptions:</b> See Appendix A											<b>Total Benefit:</b>	<b>\$ 25,452</b>



## **Attachment B to Stipulated Order R6T-2024-0004**

### **Tahoe Valley Stormwater and Greenbelt Improvement Project – Phase 2 – Barton Avenue/4<sup>th</sup> Street Water Quality Basin Excavation Supplemental Environmental Project (SEP) Workplan**

Project Title:

Barton Avenue/4<sup>th</sup> Street Water Quality Basin Excavation Supplemental Environmental Project (SEP Project)

Project Location:

City of South Lake Tahoe, El Dorado County

Project Description:

Tahoe Valley Stormwater and Greenbelt Improvement Project (TVSGI Project) is located in the vicinity of the “South Y” in the South Lake Tahoe (City) and consists of 320 acres of drainage area (Figure 1). The Project includes multi-benefit stormwater treatment to address the existing drainage system that has been impacted by upstream and downstream development, which has resulted in increased peak flows and flooding. As climate change predictions include more extreme weather, the TVSGI Project, implemented by the City of South Lake Tahoe, will provide improved flood mitigation, increase water supplies via groundwater discharge, and provide detention and infiltration to capture and treat urban runoff, ultimately improving the water quality. The City of South Lake Tahoe is implementing the TVSGI Project over two Phases using a combination of local funds and grant funding.

This SEP would specifically fund the excavation of the Water Quality Basin at Barton Avenue and 4<sup>th</sup> Street (Barton Basin; Figure 2). The drainage area of the TVSGI Project contains high pollutant load generating sources as identified in the Lake Tahoe Total Maximum Daily Load (TMDL). The watershed’s direct connection to Lake Tahoe makes this project a priority to address 303(d) sedimentation impairments. The Barton Basin is vital to the TVSGI Project to help meet sediment and nutrient reductions mandated by the Lake Tahoe TMDL program by allowing the water to spread out, infiltrate, and be treated.

The SEP funds will be utilized for the excavation of the Barton Basin during Phase 2 of the TVSGI Project. The SEP funds will be considered permanently suspended when the excavation of the Barton Basin is completed in entirety as designed and the Barton Basin is connected to the TVSGI Project.

Organization proposing the project:

City of South Lake Tahoe

Jason Burke, Complete Streets Program Manager

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and  
Brianna Greenlaw, Associate Civil Engineer  
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Project Readiness, including status of CEQA, permits, and landowner agreements:

The City of South Lake Tahoe adopted a Mitigated Negative Declaration (MND) for the entire TVSGI Project on May 9, 2019 (SCH# 20190292152) to satisfy the California Environmental Quality Act (CEQA). The California Tahoe Conservancy parcels, where the Barton Basin is proposed to be located, were added to the final initial study/MND as an addendum. Permitting from Tahoe Regional Planning Agency and Lahontan Regional Board has been completed and the SEP project is ready for construction

Total project cost, amount of SEP money requested, other funding sources:

SEP funds in the amount of \$75,000 will be used to complete the excavation of the Barton Basin. The estimated cost to construct the Barton Ave/4<sup>th</sup> Street Water Quality Basin and Appurtenances in Phase 2 is approximately \$845,268. The Barton Basin excavation portion is estimated to cost \$82,000. Any shortfall in funding for the Barton Basin excavation construction will be supplemented with City of South Lake Tahoe or grant funding for the TVSGI Project. If any SEP funds remain after final excavation construction is complete, the funds will be utilized for construction of additional infrastructure necessary to connect the Barton Basin to the remaining TVSGI Project. The suspended penalty will be considered permanently suspended after the Barton Basin is excavated and connected to the TVSGI Project.

Project Tasks, Schedules, Milestones

Excavation construction of the Barton Basin must be completed within thirty-six (36) months of the Stipulated Order becoming effective. Phase 2 of the TVSGI Project, including the SEP Project, is estimated to occur in the Summer 2025 field season.

Reporting:

The City will submit Quarterly reports to the Lahontan Water Board's Enforcement Coordinator with copies sent to Sugar Pine Housing Partners LP or Deacon Construction, LLC. The first report will be submitted on November 1, 2024 and will cover the period of July 1 – September 30, 2024. Reports will be submitted in accordance with the schedule below:

<u>Reporting Period</u>	<u>Report Submittal Date</u>
January – March	May 1
April - June	August 1
July - September	November 1
October – December	February 1

The Quarterly reports will include a list of all activities completed during the quarter, an accounting of funds expended, and the proposed work for the following quarter, and describe whether the SEP is compliant with milestone/deadline, and if not, the cause for delay and anticipated date of compliance.

Publicity

If Sugar Pine Housing Partners LP or Deacon Construction, LLC publicizes the SEP project, it will state in a prominent manner that the SEP project was undertaken as part of a Settlement Agreement with the Lahontan Water Board.

Nexus between the violations and the project:

The violations alleged in the Stipulated Order relate to stormwater management of the Sugar Pine Village construction site, which is located in South Lake Tahoe within the Lake Tahoe watershed. The TVSGI project is also located in South Lake Tahoe within the Lake Tahoe Watershed. Potential impacts to beneficial uses as a result of the alleged violations will be directly ameliorated as a result of the project.

Expected benefits or improvements to water quality or beneficial uses:

The project is expected to improve water quality by allowing storm water to spread out, infiltrate, and reduce sediment and nutrients, thus improving the quality of the storm water entering Lake Tahoe and helping to meet the sediment and nutrient reductions mandated by the Lake Tahoe TMDL program.

Figure 1: Tahoe Valley Stormwater Improvement Project Area Map

