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BEFORE THE
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the Matter of Petitioner Cedarwood Capital Partners La Cienega LLC's Petition for Review of Action by the California Regional Water Quality Control Board, Los Angeles Region, in Issuing, Pursuant to California Water Code Section 13267, Investigative Order No. R4-2022-0135 to Provide a (1) Questionnaire for Information on Hazardous Materials and Waste Uses or Storage; (2) Phase 1 Environmental Site Assessment Report; and (3) Technical Report for Subsurface Investigation.

VIA: Electronic Submission with Hardcopy to Follow

PETITION FOR REVIEW AND RESCISSION OF REGIONAL BOARD ACTION; REQUEST FOR STAY

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1 **I INTRODUCTION**

2 Pursuant to Section 13320 of the California Water Code and Section 2050 of Title 23
3 of the California Code of Regulations (“CCR”), Cedarwood Capital Partners La Cienega
4 LLC (“Petitioner”) petitions the State Water Resources Control Board (“State Board”) to
5 review and vacate Investigative Order No. R4-2022-0135, California Water Code Section
6 13267 Order To Provide A Questionnaire for Information on Hazardous Materials and
7 Waste Uses or Storage and Phase 1 Environmental Site Assessment Report and Technical
8 Report for Subsurface Investigation, issued August 25, 2022 (“Order”) by the California
9 Regional Water Quality Control Board for the Los Angeles Region (“Regional Board”).

10 The Order concerns the suspected environmental contamination of the real property
11 owned by Petitioner, located at 3211 South La Cienega Boulevard, Los Angeles, California
12 90016 (“Property”). The Order directs Petitioner, as a “suspected discharger” of alleged
13 hazardous and toxic materials, (1) to submit, by October 28, 2022, a technical report
14 containing (a) a Chemical Storage and Use Questionnaire; (b) a Phase 1 environmental site
15 assessment report; and (c) a conceptual site model that evaluates the fate and transport of
16 contamination in the subsurface, distribution of contamination, exposure pathways, sensitive
17 receptors and other relevant information, based on known and available information; and (2)
18 to submit, by October 28, 2022, a work plan for a subsurface investigation that shall include
19 sampling protocols for collecting soil gas, soil, and groundwater samples, and laboratory
20 analytical methods for VOCs.

21 Here, the Order should be vacated and dismissed because the Regional Board
22 exceeded its statutory authority in concluding that Petitioner – the affiliated real estate
23 holding company for a small business that produces movie trailers – is a “suspected
24 discharger” of hazardous and/or toxic materials under Water Code Section 13267. Petitioner
25 has never owned the Property while hazardous and/or toxic materials were used, discharged,
26 stored, created, or transported on the Property, whether by Petitioner or any invitee or leasee.
27 Moreover, Petitioner already has environmental documentation, submitted herewith,
28 showing (1) the historical uses of the Property, and (2) the minimal extent of environmental

1 contamination on the Property at the time it purchased the Property in 2016. The
2 overwhelming weight of the evidence does not support the conclusion – made by the
3 Regional Board – that Petitioner’s mere ownership of the Property is enough to make
4 Petitioner a “suspected discharger” that would subject Petitioner to the Order issued pursuant
5 to Water Code Section 13267.

6 For these reasons, Petitioner respectfully requests that the State Board (1) consider
7 the evidence submitted by Petitioner; and (2) rescind the Regional Board’s Order.

8 Pursuant to Section 13321 of the California Water Code and Section 2053 of Title 23
9 of the CCR, Petitioner independently requests that the State Board stay the Regional Board’s
10 Order during the pendency of this appeal to the State Board. Without the implementation
11 of a stay, Petitioner will incur tens of thousands, and perhaps hundreds of thousands, of
12 dollars during the pendency of this appeal to the State Board. Indeed, the Regional Board
13 estimates in its Order that complying with this Order may cost anywhere between \$50,000
14 and \$175,000. By contrast, there is no evidence of substantial harm to other interested
15 persons and to the public if the stay is granted, because there is no evidence that the alleged
16 environmental contamination will even remotely affect any human activities on the Property
17 or near the Property. Finally, there is both a substantial question of fact and a substantial
18 question of law regarding the Order. For these reasons, a stay should be issued for the
19 duration of this appeal.

20

21 **II NAME, ADDRESS, TELEPHONE NUMBER AND EMAIL ADDRESS OF**
22 **THE PETITIONER.**

23 Cedarwood Capital Partners La Cienega, LLC
24 1223 Wilshire Blvd, #877
25 Santa Monica, CA 90403
26 Attn: Shawn Yashar
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8 **III THE SPECIFIC ACTION OR INACTION OF THE REGIONAL BOARD**
9 **WHICH THE STATE BOARD IS REQUESTED TO REVIEW**

10 Petitioner seeks review and rescission of the Regional Board’s Investigative Order
11 No. R4-2022-0135, California Water Code Section 13267 Order To Provide A
12 Questionnaire for Information on Hazardous Materials and Waste Uses or Storage and Phase
13 I Environmental Site Assessment Report and Technical Report for Subsurface Investigation,
14 issued August 25, 2022 (“Order”).

15 A copy of the Order is attached to the Declaration of Shawn Yashar, filed
16 concurrently herewith, as Exhibit A. According to the plain terms of the Order, Petitioner
17 is compelled – without relief from the State Board – to:

18 (1) Submit by October 28, 2022, a technical report containing items (a) through (d)
19 listed below:

- 20 a. Complete the attached Chemical Storage and Use Questionnaire.
- 21 b. A Phase I environmental site assessment report that meets the standards
22 of American Society for Testing and Materials (ASTM) E1527-21 “Standard
23 Practice for Environmental Site Assessments: Phase I Environmental Site
24 Assessment Process.”
- 25 c. A conceptual site model (CSM) that evaluates the fate and transport of
26 contamination in the subsurface, distribution of contamination, exposure
27 pathways, sensitive receptors and other relevant information, based on known
28 and available information.

1 d. The CSM and/or Phase 1 environmental site assessment report shall include
2 the following:

3 i. A brief summary of the Site history, a description of current and
4 historical business and facility operations at the site, and current Site
5 and operational status;

6 ii. Location of historical, current, and proposed buildings and/or
7 structures (if applicable); previous investigation, remediation, and/or
8 field assessment locations, including borings, groundwater monitoring
9 wells, excavations, soil sampling points, removal actions of
10 construction/demolition debris, etc.; and, any potential historical source
11 areas, including, but not limited to, clarifiers, sumps, chemical storage
12 areas, paint booths, plating, aboveground or underground storage tanks,
13 tank lines, treatment lines, and any waste treatment or discharge areas.
14 These locations and building(s) (or structures) must be presented on an
15 accurately scaled Site map;

16 iii. Any historical spill and mitigation records;

17 iv. Tables including all historic analytical data from current and
18 previous investigations of soil, soil vapor, wastewater, and/or
19 groundwater; and,

20 v. Scaled figures/maps showing plain and cross-section views of soil
21 lithology and laboratory analytical results of soil, soil vapor, and
22 groundwater sampling borings/points from the current and all previous
23 site investigations.

24 (2) Submit by October 28, 2022, a work plan for a subsurface investigation that shall
25 include sampling protocols for collecting soil gas, soil, and groundwater samples, and
26 laboratory analytical methods for VOCs. At minimum, samples shall be collected at
27 the locations of any potential source areas, if known, or at several representative
28 locations throughout the Site if potential source areas are unknown. The locations of

1 sampling locations must be presented on a scaled site map.”
2 (*See* Declaration of Shawn Yashar (“Yashar Decl.”), ¶ 3 and Exh. A.) The Order identified
3 Petitioner as “a suspected discharger because [Petitioner] owns the property on which the
4 waste is or has discharged.” (Yashar Decl., Exh. A, ¶ 5.) In other words, the Regional Board
5 concluded that it could issue a Water Code Section 13267 order to Petitioner because
6 Petitioner owns the Property, without any consideration of countervailing evidence that
7 clearly indicates that Petitioner has had no involvement in the creation, use, discharge,
8 storage, or transportation of hazardous materials.

9 Petitioner requests that the State Board vacate the Order and its requirements imposed
10 upon the Petitioner.

11
12 **IV THE DATE ON WHICH THE REGIONAL BOARD ACTED OR REFUSED**
13 **TO ACT OR ON WHICH THE REGIONAL BOARD WAS REQUESTED TO**
14 **ACT.**

15 August 25, 2022.

16
17 **V A FULL AND COMPLETE STATEMENT OF THE REASONS THE ACTION**
18 **OR FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER.**

19 The Regional Board’s action in approving the Order was inappropriate or improper
20 because Petitioner cannot reasonably be interpreted to be a “discharger” or “suspected
21 discharger” under California Water Code Section 13267, subdivision (b)(1).

22 **A. Factual Background**

23 **1. Petitioner’s Purchase of the Property in February 2016 And Its**
24 **Environmental Due Diligence Before Completing The Purchase**

25 Petitioner is the owner of the real property located at 3211 South La Cienega
26 Boulevard Los Angeles, California 90016 (“Property”). (Yashar Decl., ¶ 4.) Petitioner
27 purchased the Property in February 2016 at a receivership sale. (*Ibid.*) Because it was a
28 receivership sale, the historical information about the Property – including its historical uses

1 – was limited at the time of the sale. (*Ibid.*) Before the February 2016 sale of the Property
2 to Petitioner was finalized, Petitioner received two environmental reports from the seller of
3 the Property. (Yashar Decl., ¶ 5.)

4 The first environmental report Petitioner received from the seller, before the February
5 2016 sale of the Property, was a Phase 1 Environmental Site Assessment Report, dated
6 February 3, 2015 (“Seller’s Phase 1 Report”), prepared by Partner Engineering and Science,
7 Inc. (“Partner”). (Yashar Decl., ¶ 6.) In the Seller’s Phase 1 Report, Partner made two
8 conclusions. First, Partner concluded that “[a] limited subsurface investigation should be
9 conducted in order to determine the presence or absence of soil and/or groundwater
10 contamination due to the historical use of the subject property.” (Yashar Decl., Exh. B, p.
11 iv.) Second, Partner concluded that “[a]n Operations and Maintenance (O&M) Program
12 should be implemented in order to safely manage the suspect ACMs and LBP located at the
13 subject property.” (*Ibid.*)

14 The second environmental report Petitioner received from the seller, before the
15 February 2016 sale of the Property, was a Subsurface Investigation Report, dated June 1,
16 2015 (“Seller’s Subsurface Investigation Report”), prepared by Roux Associates, Inc.
17 (“Roux”). (Yashar Decl., ¶ 7.) In the Seller’s Subsurface Investigation Report, Roux
18 concluded the following:

19 “Based on the historical information presented in the Phase I
20 ESA for the Site and the results of the subsurface investigation
21 conducted at the Site, Roux Associates concludes that VOC
22 constituents found in deep soil gas and groundwater, likely
23 originate to the west and north of the Site. There is no evidence
24 to suggest that the Site is a source of, or has contributed to,
25 subsurface releases of petroleum hydrocarbons or solvents.
26 Lastly, there is no evidence to suggest potential impacts to Site
27 occupants from vapor intrusion. **No additional investigations
28 are recommended for the Site at this time.**”

(Yashar Decl., Exh. C, p. 11 [emphasis added].) In short, the Seller’s Subsurface
Investigation Report from Roux found that no additional field work, investigative efforts, or
mitigation efforts were required on the Property.

Despite receiving these environmental reports from the seller, Petitioner conducted

1 its own due diligence and hired its own environmental consultant – Fulcrum Resources
2 Environmental (“FRE”) – to conduct both (1) a Phase I Environmental Site Assessment, and
3 (2) a Phase II Subsurface Investigation, before it completed the sale of the Property. (Yashar
4 Decl., ¶ 8.) Both the Phase I report and the Phase II report, published by FRE, are attached
5 to the declaration of Mr. Yashar as Exhibits D and E, respectively.

6 According to FRE’s Phase I report, the Property “was historically utilized for
7 electronics manufacturing and automotive repair. Based on the long term industrial use of
8 the subject property, there is the risk of a release of contaminants of concern to the
9 subsurface.” (Yashar Decl., Exh. D, p. 41.) Additionally, the Phase I report identified “the
10 properties adjacent to the north and west of the subject property are undergoing an active
11 investigation and groundwater is known to be impacted with VOCs with the highest
12 concentrations of constituents located approximately 50 feet to the west-southwest of the
13 subject property.” (*Ibid.*) Accordingly, FRE recommended “additional assessment to
14 evaluate the risk of a release of contaminants of concern on the subject property.” (*Ibid.*)

15 FRE’s Phase II report represented this additional assessment recommended in the
16 Phase I report. FRE concluded that “[b]ased on the data obtained from the May 2015
17 assessment and this assessment, a potential point source release of VOCs was not identified
18 on the subject property at areas of concern assessed, and the impact of VOCs in groundwater
19 in the site area appears to be from an off-site source.” (Yashar Decl., Exh. E, p. 9.)
20 Moreover, FRE concluded that the Property “is not listed as a contributor to the
21 contamination” and that “the areas of concern assessed at the property do not indicate a
22 human health risk or a potential on-site point release source.” (Yashar Decl., Exh. E, p. 10.)
23 Based on these conclusions, FRE rendered its “professional opinion that **no further**
24 **assessment is warranted at this time.**” (*Ibid.* [emphasis added].)

25 In summary, by the time of Petitioner purchased the Property in February 2016,
26 Petitioner had two Phase I environmental reports, one Phase II environmental report, and a
27 Subsurface Investigation Report, all of which collectively lead to the conclusion that no
28

1 further remediation or monitoring efforts were necessary. All four reports are submitted to
2 the State Board herewith for its consideration.

3 **2. Petitioner’s Post-Purchase Use Of The Property Has Never**
4 **Involved The Creation, Use, Discharge, Storage, or**
5 **Transportation Of Hazardous Substances**

6 After February 2016, when Petitioner finally owned the Property, a long-time tenant
7 – a glass manufacturing company called “Pulp Studio” – was in the process of moving off
8 the Property. (Yashar Decl., ¶ 11.) Pulp Studio represented in its historical lease that it did
9 not use hazardous or toxic materials in the production of its products. (*Ibid.*) Pulp Studio
10 occupied the Property for approximately two months while Petitioner owned the Property.
11 (*Ibid.*) By May 2016, Pulp Studio completed its move off the Property. (*Ibid.*)

12 After Pulp Studio moved out, the Property sat unoccupied until June 2017, when
13 Petitioner commenced construction of a conversion of the building on the Property. (Yashar
14 Decl., ¶ 12.) The goal of the construction was to convert the existing building on the
15 Property into a building suitable for Petitioner’s office needs. (*Ibid.*) No hazardous or toxic
16 substances or materials were used in the process of converting the Property’s historical
17 building into a usable office space. (*Ibid.*)

18 Petitioner is a real estate holding company whose sole purpose is to lease the Property
19 to TRANSIT, LLC, a small business that produces movie trailers for movie and television
20 studios. (Yashar Decl., ¶ 13.) TRANSIT, LLC is the primary office tenant on the Property,
21 and formally leases space from Petitioner. (*Ibid.*) Petitioner is not a real estate developer;
22 it is simply a LLC holding company for the Property. (*Ibid.*)

23 Petitioner and TRANSIT, LLC’s office headquarters are located on the Property.
24 (Yashar Decl., ¶ 14.) Other than general office, administrative, and parking uses attendant
25 to TRANSIT, LLC’s movie trailer production business, Petitioner uses the Property to
26 sublease additional space to other office tenants. (*Ibid.*) None of Petitioner, TRANSIT,
27 LLC, or any other subleasees’ business activities even remotely involve the creation, use,
28 storage, transportation, disposal, or discharge of toxic or hazardous materials. (*Ibid.*)

1 Incidentally, the owner of the real property adjacent to the Property has had
2 monitoring wells installed on the Property and has been monitoring the subsurface water
3 quality. (Yashar Decl., ¶ 15.) To Petitioner’s knowledge, these wells have not shown
4 significant elevations of hazardous chemicals. (*Ibid.*)

5 **B. Argument**

6 Respondent abused its discretion in issuing the Order to Petitioner because (1) Water
7 Code Section 13267 only applies to dischargers or suspected dischargers, and not all
8 property owners, and the evidence above shows that Petitioner cannot be considered a
9 suspected discharger; (2) Petitioner already has several environmental reports from 2015
10 showing that any contamination that is present on the Property was caused by off-site
11 polluters; and (3) by failing to provide a hearing on the Order, Petitioner was denied due
12 process in violation of the Administrative Procedures Act, among other things.

13 **1. California Water Code Section 13267 Does Not Apply To**
14 **Petitioner Because The Statute Does Not Apply All Landowners**
15 **And Because The Evidence Shows That It Cannot Reasonably Be**
16 **Considered a Suspected Discharger**

17 California Water Code (CWC) Section 13267, subdivision (b)(1) states, in part: “In
18 conducting an investigation specified in subdivision (a), the regional board may require that
19 any person who has discharged, discharges, or is suspected of having discharged or,
20 discharging, or who proposes to discharge waste within its region” Here, the Regional
21 Board issued the Order under Water Code Section 13267 on the basis that because Petitioner
22 merely owns the Property, it is a “suspected discharger.” (*See* Yashar Decl., Exh. A, ¶ 5.)
23 Other than the fact that the Petitioner is the current owner of the Property, the Regional
24 Board provides no evidence, factual support, or justification for the conclusion that the
25 Petitioner is a “suspected discharger.”

26 Here, under the plain English meaning of the words “discharge” and “discharger,” as
27 used in Water Code Section 13267, Petitioner cannot reasonably be considered a “suspected
28

1 discharger” because it merely owns the Property. A discharger is not the same as an owner
2 of property, and a “suspected discharger” does not equate an owner of property.

3 But even if we accept the Regional Board’s assumed legal position that landowner
4 status is automatically enough to transform any landowner into a “suspected discharger,” the
5 actual factual evidence presented in this Petition removes every reasonable inference that
6 Petitioner could have been a “suspected discharger.” Petitioner, the owner of the Property
7 since February 2016, is a real estate holding company whose primary purpose is to lease
8 office space to a small, affiliated business that produces movie trailers for movie and
9 television studios. (Yashar Decl., ¶ 13.) None of Petitioner’s business activities, or
10 Petitioner’s tenants’ business activities, even remotely involve the creation, use, storage,
11 transportation, disposal, or discharge of toxic or hazardous materials. (Yashar Decl., ¶ 14.)
12 More evidence of Petitioner’s activities is necessary – beyond cursory land ownership – to
13 make Petitioner a “potential discharger” that would make it subject to an order from the
14 Regional Board under Water Code Section 13267.

15 For these reasons, the Order should be vacated.

16 **2. The Order Is Burdensome And Is An Abuse of Discretion Because**
17 **It Requires Duplicative Environmental Work Already Performed**

18 The Regional Board’s Order is further improper because it requires Petitioner to
19 spend, at minimum, tens of thousands of dollars to commission reports that have already
20 been recently done.

21 The Order estimates that the “technical report required by this Order may cost in the
22 range of \$50,000 to \$175,000, depending upon the number and depths of sampling
23 locations.” (Exh. A, p. 4, ¶ 5.) This estimated cost is not a small amount of money,
24 particularly for a small business like Petitioner or its affiliated movie trailer production
25 studio.

26 Here, requiring Petitioner to expend this amount of money is unreasonable, excessive,
27 and an abuse of discretion because Petitioner already has in its possession four historical
28 environmental reports (two Phase I reports, a Phase II report, and a Subsurface Investigation

1 Report) identifying the history of the Property and documenting the results of subsurface
2 testing that ultimately led to the conclusion that no further action was necessary on the
3 Property.

4 Requiring Petitioner to comply with the Order would lead to duplicative work
5 product. Therefore, the State Board should rescind the Order.

6 **3. Due Process Violation**

7 By failing to provide a hearing before the Order was issued, Petitioner was denied
8 due process in violation of the Administrative Procedures Act, among other things.
9 Therefore, the Order should be rescinded.

10
11 **VI THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED.**

12 Petitioner is and will be adversely affected by the actions taken by the Regional
13 Board. Petitioner, as an aggrieved party, is challenging the Regional Board's Section 13267
14 Order directing the Petitioner to submit unnecessary, expensive technical reports in an
15 unreasonably short period of time. The short time will cause the Petitioner to incur high,
16 unnecessary costs, particularly when (1) Petitioner already has in its possession four
17 environmental reports detailing that no further action was necessary at the time Petitioner
18 took ownership and possession of the Property; and (2) since taking possession of the
19 Property, there is no competent evidence that would remotely suggest that Petitioner or its
20 tenants used, created, discharged, stored, or transported any hazardous or toxic materials
21 during the six and a half years Petitioner has owned the Property. Complying with this Order
22 is burdensome because it is both unnecessary and exceedingly costly in proportion to
23 Petitioner's complete lack of culpability.

24 Indeed, the Order estimates that the "technical report required by this Order may cost
25 in the range of \$50,000 to \$175,000, depending upon the number and depths of sampling
26 locations." (Exh. A, p. 4, ¶ 5.) This estimated cost is not a small amount of money,
27 particularly for a small business like Petitioner.

28

1 In conclusion, the Regional Board’s Order is (1) not supported by substantial
2 evidence; (2) contrary to the vast weight of the competent evidence, in the form of the
3 declaration of Shawn Yashar and the attachments thereto; (3) an abuse of discretion; and (4)
4 improper, inappropriate, arbitrary and capricious and contrary to state law.

5
6 **VII THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD WHICH**
7 **PETITIONER REQUESTS.**

8 Petitioner seeks an Order from the State Board to rescind and vacate the Regional
9 Board’s August 25, 2022 Investigative Order NO. R4-2022-0135, issued pursuant to
10 California Water Code Section 13267.

11
12 **VIII A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF LEGAL**
13 **ISSUES RAISED IN THE PETITION**

14 California Water Code section 13267 confers authority on Regional Boards to issue
15 orders only to “any person who has discharged, discharges, or is suspected of having
16 discharged or, discharging, or who proposes to discharge waste within its region” (Cal.
17 Water Code § 13267.) Here, the Regional Board wrote, in its Order, that Petitioner was a
18 “suspected discharger because [Petitioner] owns the property on which the waste is or has
19 discharged.” (Exh. A, p. 3, ¶ 5.)

20 The Regional Board’s overbroad interpretation of California Water Code section
21 13267 is bellied by basic rules of statutory construction.

22 The basic rules of statutory construction require that the scope and purpose of Water
23 Code Section 13267 be determined from the ordinary meaning of the language employed
24 therein. California courts’ primary task “in interpreting a statute is to determine the
25 Legislature’s intent, giving effect to the law’s purpose. [Citation.] We consider first the
26 words of a statute, as the most reliable indicator of legislative intent. [Citation.]” (*Tuolumne*
27 *Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029, 1037.) When
28 statutory language is clear and unambiguous, there is no need for construction and a court

1 should not indulge in it. (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 419.) The
2 unambiguous language must be given its plain meaning, and rules of statutory construction
3 are applied only if there is ambiguity or conflict in the statute’s provisions or if a literal
4 interpretation would lead to absurd consequences. (*Droeger v. Friedman, Sloan, & Ross*
5 (1991) 54 Cal.3d 26, 38.) The United States Supreme Court has consistently stated that
6 words in a statute should, unless otherwise clearly indicated, be given their usual, ordinary,
7 commonsense meaning. (*See, e.g., Mohamad v. Palestinian Auth.* (2012) 566 U.S. 449.)

8 Indeed, the Legislature knows how to make landowners strictly liable for
9 environmental contamination when it intends to, regardless of their discharge culpability. A
10 rule of statutory construction is “*inclusio unius est exclusio alterius*,” or “inclusion of the
11 one is the exclusion of another.” Simply put, when a statute enumerates things on which it
12 is to operate, it is construed to exclude from its effect all those not expressly mentioned.
13 (*Haniff v. Superior Court* (2017) 9 Cal.App.5th 191, 201.) Here, the Legislature used the
14 words “any person who has discharged, discharges, or is suspected of having discharged or,
15 discharging, or who proposes to discharge” in Water Code Section 13267. The Legislature
16 did *not* include the words “property owner”, “landowner,” “owner of real property,” or any
17 similar language that would indicate that it intended for Water Code Section 13267 orders
18 to universally apply to all landowners, regardless of their discharge culpability.

19 By contrast, for example, California has state counterparts to many of the strict
20 liability provisions of the federal Superfund statute, the Comprehensive Environmental
21 Response, Compensation and Liability Act (CERCLA) [42 U.S.C. § 9601 et seq.]. This
22 California law is known as the Carpenter-Presley-Tanner Hazardous Substance Account Act
23 (HSAA). Both HSAA and CERCLA impose strict liability *specifically on property owners*,
24 showing a legislative intent to impose responsibility on property owners, regardless of
25 discharge culpability. Here, under the Porter-Cologne Water Quality Control Act, and
26 specifically, Water Code Section 13267, the Legislature imposed no similar strict liability
27 on property owners. Instead, it only imposed responsibility on dischargers or suspected
28

1 dischargers. If the Legislature intended to impose liability on property owners, or subject
2 property owners to Water Code Section 13267, it would have said so.

3 The State Board’s own precedent reveals that the Regional Board must have
4 “substantial evidence” to name a party as a discharger. (*See, e.g.*, WQ 86-16 (*Stinnes-*
5 *Western Chemical Corp.*) and WQ 85-7 (*Exxon.*) Here, the Regional Board’s only evidence
6 of its conclusion that Petitioner is a suspected discharger is the fact that Petitioner is the
7 current owner of the Property. Beyond that, the Regional Board has no factual support for
8 its contention that Petitioner is a “suspected discharger.” This fact alone does not meet the
9 “substantial evidence” standard to subject Petitioner to the Regional Board’s Order.

10
11 **IX A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE**
12 **APPROPRIATE REGIONAL BOARD AND TO THE DISCHARGER, IF NOT**
13 **THE PETITIONER**

14 A true and correct copy of this Petition and all supporting documentation were sent
15 via overnight delivery and electronically to:

16 Dave Bjostad
17 Los Angeles Regional Water Quality Control Board
18 320 West 4th Street, Suite 200
19 Los Angeles, CA 90013
20 Phone: (213) 576-6712
21 Email: dave.bjostad@waterboards.ca.gov

22 Petitioner is unaware of the true identity of the actual discharger or any suspected
23 dischargers that may have caused the environmental contamination at issue.

24 ///

26 ///

28 ///

1 X **A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS**
2 **RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL**
3 **BOARD, OR AN EXPLANATION OF WHY THE PETITIONER WAS NOT**
4 **REQUIRED OR WAS UNABLE TO RAISE THESE SUBSTANTIVE ISSUES**
5 **OR OBJECTIONS BEFORE THE REGIONAL BOARD.**

6 Petitioner was not given an opportunity to file with the Regional Board, before the
7 Order was issued, the evidence it now presents to the State Board. (*See* Yashar Decl., ¶ 16.)
8 This itself is a due process violation and a violation of the Administrative Procedures Act.
9 Despite the lack of opportunity to present this evidence to the Regional Board before it
10 issued its letter, Petitioner, through its counsel, has raised the issues set forth in this Petition
11 with staff members of the Regional Board, including but not limited to Dave Bjostad – the
12 agent of the Regional Board listed on page 6 of the Order.

13
14 XI **PETITIONER’S REQUEST FOR A STAY**

15 Pursuant to Section 13321 of the California Water Code and Section 2053 of Title 23
16 of the CCR, Petitioner independently requests that the State Board stay the Regional Board’s
17 Order during the pendency of this appeal to the State Board.

18 There will be substantial harm to Petitioner if a stay is not granted, in the form of
19 Petitioner having to expend tens, and perhaps hundreds, of thousands of dollars on new
20 environmental reports ordered by the Regional Board, and that those reports would need to
21 be submitted in October 2022 – during the pendency of this appeal. Indeed, the Regional
22 Board estimates in its Order that complying with this Order may cost Petitioner anywhere
23 between \$50,000 and \$175,000. (*Yashar Decl.*, ¶ 17.)

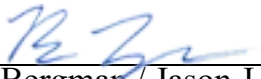
24 By contrast, there is no evidence of substantial harm to other interested persons and
25 to the public if the stay is granted, because there is no evidence that the alleged
26 environmental contamination will even remotely affect any human activities on the Property
27 or near the Property. (*Ibid.*)
28

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Los Angeles, California 90024
Telephone: (310) 470-6110, Facsimile: (310) 474-0931

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Finally, there is both a substantial question of fact and a substantial question of law regarding the disputed action. The issue of law is whether the status of being a property owner, by itself and without no other facts, is enough to make it a “suspected discharger” and fall under the authority of the Regional Board’s Order issued pursuant to Water Code Section 13267. (*Ibid.*) The issue of fact is that even if a property owner could automatically be considered a “suspected discharger” for purposes of Water Code Section 13267, the undisputed facts here show that Petitioner and its tenants have never come close to creating, using, discharging, storing, or transporting hazardous or toxic materials, and therefore, have rebutted the presumption that Petitioner could reasonably be considered a “suspected discharger.” (*Ibid.*) For these reasons, a stay should be issued for the duration of this appeal, pursuant to Water Code Section 13321 and California Code of Regulations, Title 23, Section 2053.

DATED: September 26, 2022 BDG LAW GROUP

By: 

Brian J. Bergman / Jason J. Barbato
Attorneys for Petitioner
CEDARWOOD CAPITAL PARTNERS LA
CIENEGA, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

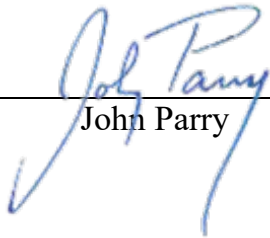
I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and not a party to the within entitled action; my business address is 10880 Wilshire Boulevard, Suite 900, Los Angeles, California 90024.

On September 26, 2022, I served the foregoing **“PETITION FOR REVIEW AND RESCISSION OF REGIONAL BOARD ACTION; REQUEST FOR STAY”** on the interested parties, as follows:

SEE ATTACHED SERVICE LIST

- (VIA ELECTRONIC SERVICE) Based on a court order, an agreement of the parties to accept service by electronic transmission, or notice of consent to electronic service, I caused the documents to be sent to the persons at the email addresses listed. My email address, as used for service, is jparry@bdgfirm.com
- (BY FIRST-CLASS MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States Mail at Los Angeles, California. I am “readily familiar” with the firm’s practice of collection and processing mail. Under that practice, it is deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter dates is more than one day after date of deposit for mailing in affidavit.
- (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Dated: September 26, 2022



John Parry

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Service List

Via E-Service

Waterqualitypetition@waterboards.ca.gov

Dave Bjostad
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
Tel: (213) 576-6712
dave.bjostad@waterboards.ca.gov

Courtesy Copy via First-Class Mail

State Water Resources Control Board
Office of Chief Counsel
Adrianna M. Crowl
P.O. Box 100
Sacramento, CA 95812-0100
Tel: (916) 341-5156

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