

# LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the Matter of:

ORDER R4-2020-0080 (Proposed)

**Moorpark Hospitality, Inc.**

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

## **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, Los Angeles Region (Regional Board), on behalf of the Regional Board Prosecution Team (Prosecution Team), and Moorpark Hospitality, Inc. (Discharger) (collectively known as the Parties) and is presented to the Regional 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. The Discharger owns property located at 14350 White Sage Road in the City of Moorpark, California (Site) that it is developing as a Fairfield Inn.
3. On July 3, 2017, the Discharger filed a Notice of Intent (NOI) with the State Water Resources Control Board (State Water Board) to comply with the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges associated with Construction and Land Disturbance Activities (General Permit) Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ, NPDES No. CAS000002, WDID No. 4 56C380423, for a construction project located at the Site. The NOI was approved by the State Water Board on July 13, 2017. The NOI identifies the Project as Risk Level 2. Attachment D to the Construction General Permit details the requirements with which a Risk Level 2 discharger must comply.
4. The Prosecution Team alleges that the Discharger violated the General Permit, Water Code section 13376, and Clean Water Act section 301 by discharging sediment-laden stormwater to a water of the United States, and violated the General Permit by failing to implement covers and berms for soil stockpiles not in use, by failing to implement effective perimeter sediment controls, by failing to implement effective perimeter controls, by having concrete debris near and in the desilting basin, by failing to implement erosion control and linear sediment control best management practices (BMPs), and by failing to maintain records onsite.

5. Water Code section 13385 provides that any person who violates Water Code section 13376, Clean Water Act section 301, and/or the General Permit may be subject to administrative civil liability of up to ten thousand dollars (\$10,000) for each day the violation occurs.
6. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations summarized above, and specifically identified in Attachment A, herein incorporated by reference, without administrative or civil litigation and by presenting this Stipulation to the Regional Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
7. Pursuant to the State Water Resource Control Board's (State Board) 2010 Water Quality Enforcement Policy section VI.B. (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to reduce the administrative civil liability amount contained in the penalty methodology included as Attachment A to this Stipulated Order in consideration of hearing and/or litigation risks.
8. 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 Moorpark Hospitality, Inc. in the amount of one hundred eighty-six thousand two hundred and seventy-four dollars (\$186,274).
9. 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:

10. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
11. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **one hundred eighty-six thousand two hundred and seventy-four dollars (\$186,274)** to the Regional Board to resolve the violations specifically alleged herein.
  - a. No later than 30 days after the Regional Board, or its delegee, signs this Order, the Discharger shall submit a check for **one hundred eighty-six thousand two hundred and seventy-four dollars (\$186,274)** made payable to the "State Water Pollution Cleanup and Abatement Account," reference the Order number on page one of this Order, and mail it to:

Stipulated ACLO R4-2020-0080  
Moorpark Hospitality, Inc.

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

- b. The Discharger shall provide a copy of the check via email to: the State Water Resources Control Board, Office of Enforcement ([Kailyn.Ellison@waterboards.ca.gov](mailto:Kailyn.Ellison@waterboards.ca.gov)) and the Regional Board ([Pavlova.Vitale@waterboards.ca.gov](mailto:Pavlova.Vitale@waterboards.ca.gov)).
12. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands 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 it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
13. **Party Contacts for Communications Related to Stipulated Order:**
  - a. **For the Regional Board:**

Pavlova Vitale  
Senior Environmental Scientist  
Los Angeles Regional Water Quality Control Board  
320 West 4<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90013  
(213) 576-6751  
[Pavlova.Vitale@waterboards.ca.gov](mailto:Pavlova.Vitale@waterboards.ca.gov)
  - b. **For the Discharger:**

Peter Bhakta  
Chief Financial Officer  
Moorpark Hospitality, Inc.  
16912 Gridley Place  
Cerritos, CA 90703  
(562) 412-1307  
[peter@phmgrs.com](mailto:peter@phmgrs.com)
14. **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.

15. **Matters Addressed by This Stipulated Order:** Upon the Regional Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of the violation alleged above and in Attachment A, as of the effective date of this Stipulated Order. 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 11.
16. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional 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 Regional Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
17. **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.
18. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional 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 Regional 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 Regional 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.
19. **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 Regional Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
20. **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.
21. **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 and approved by the Regional Board or its delegee.

22. **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.
23. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Regional Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Board, or its delegee, or is vacated in whole or in part by the State Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional 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 Regional 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 Regional 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.
24. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Regional Board, hereby waives its right to a hearing before the Regional Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Board or State Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
25. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Board, the Discharger hereby waives the right to petition the Regional Board's adoption of the Stipulated Order as written for review by the State Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

26. **Covenant Not to Sue:** The Discharger covenants 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 Stipulation and Order.
27. **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.
28. **Necessity for Written Approvals:** All approvals and decisions of the Regional Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
29. **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.
30. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
31. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
32. **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.**

Stipulated ACLO R4-2020-0080  
Moorpark Hospitality, Inc.

California Regional Water Quality Control Board, Los Angeles Region Prosecution Team

By: Original Signed By Hugh Marley  
\_\_\_\_\_  
Hugh Marley  
Assistant Executive Officer

July 15, 2020  
\_\_\_\_\_  
Date

Stipulated ACLO R4-2020-0080  
Moorpark Hospitality, Inc.

Moorpark Hospitality, Inc.

By: Original Signed by Peter Bhakta  
Peter Bhakta  
Chief Financial Officer

August 3, 2020  
Date

Stipulated ACLO R4-2020-0080  
Moorpark Hospitality, Inc.

**HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:**

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Board. The Regional 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.
3. The Executive Officer of the Regional Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails 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, Los Angeles Region.

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Renee Purdy  
Executive Officer  
Los Angeles Regional Water Quality  
Control Board

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Date

Attachment A: Specific Factors Considered for Stipulated ACLO R4-2020-0080

Stipulated ACLO R4-2020-0080  
Moorpark Hospitality, Inc.

Attachment A – Specific Factors Considered  
Settlement Agreement and Stipulated Order. R4-2020-0080  
Moorpark Hospitality, Inc.  
Fairfield Inn  
WDID 4 56C380423

Moorpark Hospitality, Inc. (Discharger) failed to implement the requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit) Order 2009-0009-DWQ, as amended by Order 2010-0014-DWQ and 2012-0006-DWQ, NPDES No. CAS000002, WDID 4 56C380423, while conducting construction work on the Fairfield Inn Project located at 14350 White Sage Road in the City of Moorpark, California (Site).

Factors required to be considered in determining the amount of administrative civil liability pursuant to Water Code section 13385, subdivision (e) and the State Water Resources Control Board's 2017 Water Quality Enforcement Policy (Enforcement Policy) are discussed for each violation below. The Enforcement Policy can be found at [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: Unauthorized discharge of sediment-laden storm water**

The Discharger violated General Permit section III.B., section V.A.2. and Attachment D section A.1.b; California Water Code<sup>1</sup> section 13376; and Clean Water Act section 301 (33 U.S.C. § 1311) by discharging sediment-laden stormwater to Arroyo Simi, a water of the United States, on March 21, 2018.

Section III.B of the General Permit prohibits discharges of storm water associated with construction activity except for the storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. Discharges associated with construction activity are authorized only if dischargers comply with all requirements, provisions, limitations, and prohibitions in the General Permit.

Section V.A.2 and Attachment D section A.1.b. of the General Permit require the Discharger to minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges using controls, structures, and management practices that achieve best available technology economically achievable (BAT) for toxic and non-conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants.

On March 20, 2018, a City of Moorpark (City) consultant inspected the Site. The City consultant noted several deficiencies in the implementation of Best Management Practices (BMPs) on the Site, such as sediment tracked off-site onto White Sage Road;

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<sup>1</sup> All subsequent references to the Water Code refer to the California Water Code unless otherwise noted.

concrete debris in soil that was upstream of a storm drain inlet; a sub-contractor conducting concrete pumping without secondary containment under their equipment; and unprotected disturbed areas were not stabilized, despite the forecast of a significant storm event. After the inspection, the City consultant emailed the Discharger's Qualified Storm Water Pollution Prevention Plan Practitioner (QSP) to notify them of the deficiencies.

On March 21, 2018, the City consultant conducted another inspection of the Site and noted that sediment-laden water was discharging from the site in excess of the numeric action limit (NAL) of 250 Nephelometric Turbidity Units (NTUs). The City consultant also observed that no work had been performed to address deficiencies noted during the March 20, 2018 inspection. Because the Discharger failed to properly implement BMPs as required by the General Permit, all discharges from the site were prohibited and therefore, the discharge of sediment-laden water was unauthorized.

### **Step 1. Potential for Harm for Discharge Violations**

#### **a. Factor 1: Degree of Toxicity of the Discharge**

A score between 0 and 4 is assigned based on a determination of the risk and threat of the discharged material. A score of 2 is assigned for this violation. A score of 2 is defined as "Discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate risk or threat to potential receptors)."

A score of 2 was selected because discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, and smothering aquatic habitat and spawning areas. Sediment can also transport other materials such as nutrients, metals, and oils and grease which can cause toxicity to aquatic organisms. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life.

#### **b. Factor 2: Actual Harm or Potential Harm to Beneficial Uses**

The evaluation of the actual or potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Water Boards may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. The score evaluates direct or indirect actual harm or potential for harm from the violation. The Actual Harm or Potential Harm to Beneficial Uses ranges between 0 and 5 based on a determination of

whether the harm or potential for harm to beneficial uses is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

On March 21, 2018, sediment-laden stormwater discharged indirectly from the Site into Arroyo Simi through a storm water drain on White Sage Road and a storm water drainage pipe on the Site. The beneficial uses of Arroyo Simi include body and non-body contact recreation, municipal and domestic supply, industrial service supply, groundwater recharge, freshwater replenishment, warm freshwater habitat, wildlife habitat, and preservation of rare and endangered species.

For this violation, the Actual Harm or Potential Harm to Beneficial Uses is characterized as Moderate (3). The Enforcement Policy defines Moderate as impacts that are observed or reasonably expected potential impacts, but harm or potential harm to beneficial uses is moderate and likely to attenuate without appreciable medium or long term acute or chronic effects.

The Discharger failed to implement necessary BMPs to reduce or eliminate sediment in the storm water discharge. This failure resulted in an unauthorized discharge of sediment-laden water into Arroyo Simi. As described above, excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm beneficial uses such as warm freshwater habitat, wildlife habitat, and preservation of rare and endangered species. Specifically, discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impeded navigation. Sediment can also transport other materials such as nutrients, metals, and oil and grease which can also negatively impact aquatic life. Additionally, sediment discharges are likely to attenuate without appreciable medium or long term acute or chronic effects. Therefore, a score of Moderate (3) is assigned for this violation, as excess sediment in the receiving water posed a moderate threat to beneficial uses.

c. Factor 3: Susceptibility to Cleanup or Abatement

The Susceptibility to Cleanup or Abatement factor is assessed as either 0 or 1. A score of 0 is assigned if the discharger cleans up 50 percent or more of the discharge within a reasonable amount of time, whereas a score of 1 is appropriate where less than 50% of the discharge is susceptible to cleanup or abatement, or if 50% or more of the discharge is susceptible to cleanup or abatement but the Discharger failed to cleanup up 50 percent or more of the discharge within a reasonable

amount of time. For this violation, the storm water discharged from the Site into Arroyo Simi. Because the discharge dispersed and likely dissipated in the watershed, cleanup or abatement of the sediment was not possible. Therefore, Susceptibility to Cleanup or Abatement is assigned a score of 1.

d. Final Score – “Potential for Harm”

The scores of the factors are added to provide a Potential for Harm score for the violation. Here, the Potential for Harm score is 6.

## **Step 2. Assessment for Discharge Violations**

### Deviation from Requirement

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. The violation is characterized as either a Minor, Moderate, or Major Deviation from Requirement. In this case, the Deviation from Requirement is considered Major because all discharges are prohibited except for storm water and non-storm water discharges specifically authorized by the General Permit. Only discharges that have been controlled with BMPs that achieve BAT and BCT are authorized. Because the Discharger did not implement BMPs that achieved BAT and BCT, the discharge was unauthorized rendering the requirements in the General Permit, Water Code section 13376, and Clean Water Act section 301 ineffective in their essential functions.

### Per Gallon Assessments for Discharge Violations

When there is a discharge, the Regional Board shall determine an initial liability amount on a per gallon basis using the Potential for Harm Score and Deviation from Requirement. The Prosecution Team does not have enough information to determine the volume of the discharge and therefore, a per gallon assessment is not applicable for this violation.

### Per Day Assessments for Discharge Violations

When there is a discharge, the Regional Board is to determine the initial liability on a per day basis using the Potential for Harm score from Step 1 and the Deviation from Requirement. The Per Day Assessment is calculated as (per day factor) x (number of days of violation) x (per day statutory maximum liability).

Table 2 of the Enforcement Policy (p. 15) is used to determine a “per day factor” for discharge violations based on the total score from Step 1 (a score of 6) and the Deviation from Requirement (Major). The per day factor is 0.28. The

number of days of violation is one. The per day statutory maximum liability under Water Code section 13385, subdivision (c) is \$10,000.

Per Day Liability =  $0.28 \times 1 \text{ day} \times \$10,000 = \$2,800$

The Per Day Liability of \$2,800 is the Initial ACL Amount for this violation.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

This factor does not apply to this violation.

### **Step 4. Adjustment Factors**

- a. Degree of Culpability: The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. A multiplier of 1.3 is assigned for this violation because the Discharger did not take corrective action, despite the City consultant notifying them of the BMP deficiencies and the upcoming rain event. A reasonably prudent person who applies for coverage under the General Permit would have necessary oversight and accountability measures in place to ensure that all workers involved in construction activities adhere to the requirements of the General Permit. The Discharger should have prepared and implemented a Rain Event Action Plan (REAP) to ensure that erosion and sediment control BMPs would achieved BAT and BCT prior to the forecasted storm event. The Discharger also should have conducted visual inspections prior to and during the storm event to ensure that BMPs had been properly implemented.
- b. History of Violations: Where the discharger has no prior history of violations, this factor should be neutral or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is appropriate.
- c. Cleanup and Cooperation: The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A multiplier of 1.2 is assigned for this violation because Regional Board staff observed the failure to properly implement erosion and sediment control BMPs during several inspections following the unauthorized discharge. Therefore, the Discharger did not take corrective action that would prevent a discharge in the future.

### **Step 5. Total Base Liability**

\$2,800 (Initial ACL Amount) X 1.3 (Degree of Culpability) X 1.0 (History of Violations) X 1.2 (Cleanup and Cooperation) = \$4,368

### **Violation 2: Failure to implement covers and berms for soil stockpiles not in use**

Attachment D, section B.1.b. of the General Permit requires the Discharger to cover and berm loose stockpiled construction materials that are not actively being used (i.e. soils, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).

On April 13, May 4, May 9, May 23, and August 16, 2018, Regional Board staff inspected the Site. Regional Board staff observed soil stockpiles without covers or berms while not in use. During each inspection, Regional Board staff observed different soil stockpiles without covers or berms while not in use.

### **Step 1. Potential for Harm for Discharge Violations**

This factor does not apply to this violation.

### **Step 2. Assessment for Discharge Violations**

This factor does not apply to this violation

### **Step 3. Per Day Assessment for Non-Discharge Violations**

#### **a. Potential for Harm: Moderate**

The Enforcement Policy defines Moderate potential for harm as “The characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, the discharges from the Site discharge indirectly from the Site into Arroyo Simi through a storm water drain on White Sage Road and a storm water drainage pipe on the Site. The beneficial uses of Arroyo Simi are listed in Violation 1.

During Regional Board staff inspections, Regional Board staff observed that the Discharger failed to implement covers or berms for loose stockpiled soil that was not actively being used. Failure to provide covers or berms for loose stockpiled soil could lead to sediment discharges in storm water. Discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas.

Sediment can also transport other materials such as nutrients, metals, and oils and grease which can cause toxicity to aquatic organisms. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

b. Deviation from Requirement: Major

The Enforcement Policy defines a Major Deviation from Requirement as “The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The Discharger failed, and did not attempt, to implement covers and berms of soil stockpiles not in use as required by the General Permit. Therefore, the Deviation from Requirement for these violations is characterized as Major.

c. Per Day Factor

Table 3 of the Enforcement Policy (p. 16) is used to determine a per day factor for non-discharge violations based on the Potential for Harm and the Deviation from Requirement. For this violation, in accordance with Table 3, the per day factor is 0.55.

d. Initial ACL Amount

The Initial ACL Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability). For this violation, the per day factor is 0.55, days of violation is 5, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

$$\text{Initial ACL Amount} = 0.55 \times 5 \text{ days} \times \$10,000/\text{day} = \$27,500$$

#### **Step 4. Adjustment Factors**

- a. Degree of Culpability: The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. A multiplier of 1.3 is assigned for this violation because the Discharger failed to implement covers and berms on several occasions after Regional Board staff informed them of the deficiencies during inspections that occurred on April 13, 2018 and on May 4, 9, and 23, 2018. A reasonably prudent person who applies for coverage under the General Permit would have necessary oversight and accountability measures in place to ensure that all workers involved in construction activities adhere to the requirements of the General Permit.

- b. History of Violations: Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned.
- c. Cleanup and Cooperation: The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A multiplier of 1.3 is assigned because Regional Board staff continued to observe similar violations after the initial observation.

#### **Step 5. Total Base Liability**

\$27,500 (Initial ACL Amount) X 1.3 (Culpability) X 1.0 (History of Violations)  
X 1.3 (Cleanup and Cooperation) = \$46,475

#### **Violations 3-4: Failure to implement effective perimeter sediment controls**

Attachment D, section E of the General Permit requires the discharger to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

Violation 3: During the March 20, 2018 City consultant inspection, the City consultant observed loose sediment tracked onto White Sage Road. At the entrance to the site, the Discharger had implemented a stabilized construction entrance. The stabilized construction entrance consisted of rumble racks underlain by a layer of aggregate and filter cloth. These BMPs were inadequate and failed to prevent loose sediment from being tracked onto White Sage Road.

Violation 4: During the April 13, 2018 Regional Board staff inspection, Regional Board staff observed loose sediment tracked onto White Sage Road. At the entrance to the site, the Discharger had implemented a stabilized construction entrance. The stabilized construction entrance consisted of rumble racks underlain by a layer of aggregate and filter cloth. At the time of the inspection, the Discharger was not sweeping the sediment that had been tracked past the stabilized construction entrance onto White Sage Road. These BMPs were inadequate and failed to prevent loose sediment from being tracked onto White Sage Road.

#### **Step 1. Potential for Harm for Discharge Violations**

This factor does not apply to these violations.

## **Step 2. Assessment for Discharge Violations**

This factor does not apply to these violations.

## **Step 3. Per Day Assessment for Non-Discharge Violations**

### a. Potential for Harm: Moderate

The Enforcement Policy defines Moderate potential for harm as “The characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, the discharges from the Site discharge indirectly from the Site into Arroyo Simi through a storm water drain on White Sage Road and a storm water drainage pipe on the Site. The beneficial uses of Arroyo Simi are listed in Violation 1.

During the City and Regional Board staff inspections, inspectors observed that sediment control BMPs for the access gate had not been effectively implemented at the Site. As a result, sediment was tracked onto the street. Failure to provide proper sediment control at the access gate could lead to sediment discharge in storm water. Discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. Sediment can also transport other materials such as nutrients, metals, and oils and grease which can cause toxicity to aquatic organisms. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for Violations 3-4 is characterized as Moderate.

### b. Deviation from Requirement: Moderate

The Enforcement Policy defines a Moderate Deviation from Requirement as “The intended effectiveness of the requirement was partially compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).”

The Discharger implemented a stabilized construction entrance, but did not sweep the sediment that had been tracked onto White Sage Road. Therefore, the Deviation from Requirement for these violations is characterized as Moderate.

c. Per Day Factor

Table 3 of the Enforcement Policy (p. 16) is used to determine a “per day” factor for non-discharge violations based on the Potential for Harm and Deviation from Requirements.

For these violations, in accordance with Table 3, the per day factor is 0.35.

d. Initial ACL Amount

The Initial ACL Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability). For these violations, the per day factor is 0.35, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial ACL Amount = 0.35 x 1 day x \$10,000/day = \$3,500 per violation.

**Step 4. Adjustment Factors**

- a. Degree of Culpability: The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence.

Violation 3: A multiplier of 1.1 is assigned for this violation. The Discharger knew of the requirement as evidenced by having some perimeter sediment controls in place, but it failed to have the necessary oversight and accountability measures in place to ensure effectiveness that are expected of a reasonably prudent person who applies for coverage under the General Permit.

Violation 4: A multiplier of 1.2 is assigned for this violation because the City consultant had informed the Discharger of issues with sediment tracking as early as March 20, 2018. A reasonably prudent person who applies for coverage under the General Permit would have corrected the problem after notification and had necessary oversight and accountability measures in place to ensure that all workers involved in construction activities adhere to the requirements of the General Permit. The Discharger should have implemented additional BMPs, such as street sweeping, after the City informed them of their deficiencies.

- b. History of Violations: Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of

violations, a neutral multiplier of 1.0 was assigned.

- c. Cleanup and Cooperation: The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not.

A multiplier of 1.1 is assigned for these violations because the Discharger had implemented additional BMPs in the form of street sweeping as confirmed by Regional Board staff during the May 4, 2018 inspection.

**Step 5. Total Base Liability**

Violation 3  
\$3,500 (Initial ACL Amount) X 1.1 (Culpability) X 1.0 (History of Violations) X 1.1 (Cleanup and Cooperation) = \$4,235

Violation 4  
\$3,500 (Initial ACL Amount) X 1.2 (Culpability) X 1.0 (History of Violations) X 1.1 (Cleanup and Cooperation) = \$4,620

**Violations 5: Failure to implement effective perimeter controls**

The violation related to failure to implement effective perimeter controls is as follows:

- The silt fence along the project perimeter on White Sage Road was observed in disrepair with sediment spilling onto the sidewalk from beneath it between March 21, April 13, and May 4, 2018.
- The silt fence along the project perimeter on White Sage Road was observed in disrepair on May 9, 2018.
- The silt fence along the project perimeter on White Sage Road was observed in disrepair on May 23, 2018.
- Check dams with ruptured gravel bags were observed along the curb along White Sage Road on April 13, 2018.

General Permit Attachment D, section E requires dischargers to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the site. Risk Level 2 dischargers have additional requirements which include, but are not limited to, ensuring that all storm drain inlets and perimeter controls, runoff control BMPs, and pollutant controls at entrances and exits are maintained and protected from activities that reduce their effectiveness.

During the March 21, 2018 City consultant inspection, the City consultant observed a portion of the silt fence in disrepair with sediment spilling onto the sidewalk from beneath it.

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During the April 13, May 4, May 9, and May 23, 2018 Regional Board staff inspections, Regional Board staff identified portions of the silt fence in disrepair.

During the April 13, 2018 Regional Board staff inspection, Regional Board staff observed that gravel bags used for check dams along the curb on White Sage Road were ruptured.

**Step 1. Potential for Harm for Discharge Violations**

This factor does not apply to this violation.

**Step 2. Assessment for Discharge Violations**

This factor does not apply to this violation.

**Step 3. Per Day Assessment for Non-Discharge Violations**

a. Potential for Harm: Moderate

The Enforcement Policy defines Moderate potential for harm as “The characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.

As mentioned above, the discharges from the Site discharge indirectly from the Site into Arroyo Simi through a storm water drain on White Sage Road and a storm water drainage pipe on the Site. The beneficial uses of Arroyo Simi are listed in Violation 1.

During Regional Board staff inspections, Regional Board staff observed that the Discharger failed to effectively implement perimeter controls. Failure to properly implement sediment controls could lead to sediment discharge in storm water. Discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. Sediment can also transport other materials such as nutrients, metals, and oils and grease which can cause toxicity to aquatic organisms. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

b. Deviation from Requirement: Moderate

The Enforcement Policy defines a Moderate Deviation from Requirement as “The intended effectiveness of the requirement was partially

compromised (e.g., the requirement was not met, and the effectiveness of the requirement was only partially achieved).”

The Discharger implemented a silt fence for perimeter control but failed to properly maintain it by repairing or replacing torn, weathered, or undercut portions. The implementation of the silt fence was only partially effective because the failure to effectively maintain it resulted in the discharge of sediment-laden water from the Site. Therefore, the Deviation from Requirement for this violation is characterized as Moderate.

c. Per Day Factor

Table 3 of the Enforcement Policy (p. 16) is used to determine a “per day factor” for non-discharge violations based on the Potential for Harm and the extent of the Deviation from Requirements. For this violation, in accordance with Table 3, the per day factor is 0.35.

d. Initial ACL Amount

The Initial ACL Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability). For this violation, the per day factor is 0.35, days of violation are 5, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial ACL Amount = 0.35 x 5 days x \$10,000/day = \$17,500

#### **Step 4. Adjustment Factors**

- a. Degree of Culpability: The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. A multiplier of 1.3 is assigned for this violation because the Discharger failed to ensure effective implementation of site perimeter controls and knew of the requirement as evidenced by having some perimeter control BMPs in place. A reasonably prudent person who applies for coverage under the General Permit would have necessary oversight and accountability measures in place to ensure that all workers involved in construction activities adhere to the requirements of the General Permit. The Discharger should have identified the deficiencies in perimeter controls during their weekly inspections and addressed them accordingly.
- b. History of Violations: The history multiplier is either 1.0 if the Discharger has no prior history of violations or 1.1 if the Discharger has prior violations within the last five years. Where the discharger has a history of similar or numerous dissimilar violations, the Regional Board considers adopting a multiplier above 1.1. Since the Discharger does not have a history of repeat violations, a multiplier of 1.0 is appropriate.

- c. Cleanup and Cooperation: The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A multiplier of 1.2 is assigned because Regional Board staff observed during several inspections that the Discharger had repaired portions of the silt fence, but also noted additional deficiencies during the same inspections.

#### **Step 5. Total Base Liability**

\$17,500 (Initial ACL Amount) X 1.3 (Culpability) X 1.0 (History of Violations)  
X 1.2 (Cleanup and Cooperation) = \$27,300

#### **Violations 6-7: Concrete debris near and in the desilting basin**

The violations related to concrete debris in the desilting basin are as follows:

- Violation 6 – Concrete debris was observed on the soil, upstream of a desilting basin that leads to Arroyo Simi on March 20, 2018
- Violation 7 – Concrete debris was observed in the desilting basin that leads to Arroyo Simi on April 13, 2018 and May 4, 2018

Attachment D, section B of the General Permit requires the discharger to implement good site management (i.e., “housekeeping”) measures for waste management. Waste management includes, but is not limited to, the prevention of disposal of any rinse or wash waters or materials on impervious or pervious site surfaces or into the storm drain system.

During the March 20, 2018 City consultant inspection, the City consultant observed concrete debris on the soil, upstream of the desilting basin that discharges to Arroyo Simi.

During the April 13, 2018 Regional Board staff inspection, Regional Board staff observed concrete debris in the desilting basin that discharges to Arroyo Simi.

During the May 4, 2018 Regional Board staff inspection, Regional Board staff observed that there was still concrete debris in the desilting basin that leads to Arroyo Simi.

#### **Step 1. Potential for Harm for Discharge Violations**

This factor does not apply to these violations.

#### **Step 2. Assessment for Discharge Violations**

This factor does not apply to these violations.

### **Step 3. Per Day Assessment for Non-Discharge Violations**

#### a. Potential for Harm

As mentioned above, the discharges from the Site discharge indirectly from the Site into Arroyo Simi through a storm water drain on White Sage Road and a storm water drainage pipe on the Site. The beneficial uses of Arroyo Simi are listed in Violation 1.

##### Violation 6: Minor

The Enforcement Policy defines Minor potential for harm as “The characteristics of the violation have little or no potential to impair the Water Boards’ ability to perform their statutory and regulatory functions, present only a minor threat to beneficial uses, and/or the circumstances of the violation indicate a minor potential for harm.”

During the March 20, 2018 inspection, the City consultant observed a small amount of concrete material located greater than 50 feet above the inlet pipe of the desilting basin. The disposal of concrete material on impervious or pervious site surfaces upstream of a storm drain could lead to the discharge of concrete waste in storm water. However, due to the small amount of concrete material and the distance to the desilting basin, there was only a minor threat to beneficial uses, and it is unlikely the concrete waste would have been discharged to a receiving water. Therefore, the Potential for Harm for violation 6 is characterized as Minor.

##### Violation 7: Moderate

The Enforcement Policy defines Moderate potential for harm as “The characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During inspections by Regional Board staff, inspectors observed that the Discharger failed to implement necessary BMPs to prevent the disposal of concrete material on impervious or pervious site surfaces or into the storm drain. The disposal of concrete material on impervious or pervious site surfaces upstream of a storm drain could lead to the discharge of concrete waste in storm water. Discharges of concrete waste in stormwater can increase the pH in the receiving water, which can harm fish gills and eyes and interfere with their reproductive system. A high pH can also increase the toxicity of other substances in surface waters and soils. Concrete waste in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for violation 7 is characterized as Moderate.

b. Deviation from Requirement: Major

The Enforcement Policy defines a Major Deviation from Requirement as “The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The Discharger allowed the disposal of concrete waste on impervious and pervious Site surfaces, thereby rendering the requirement ineffective in its essential function. Therefore, the Deviation from Requirement for these violations is characterized as Major.

c. Per Day Factor

Table 3 of the Enforcement Policy (p. 16) is used to determine a “per day” factor for non-discharge violations based on the Potential for Harm and the extent of the Deviation from Requirements.

Violation 6: For this violation, in accordance with Table 3, the per day factor is 0.35.

Violation 7: For this violation, in accordance with Table 3, the per day factor is 0.55.

d. Initial ACL Amount

The Initial ACL Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

Violation 6: For this violation, the per day factor is 0.35, days of violation are 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c). Initial ACL Amount =  $0.35 \times 1 \text{ day} \times \$10,000/\text{day} = \$3,500$ .

Violation 7: For this violation, the per day factor is 0.55, days of violation are 2, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c). Initial ACL Amount =  $0.55 \times 2 \text{ days} \times \$10,000/\text{day} = \$11,000$ .

**Step 4. Adjustment Factors**

- a. Degree of Culpability: The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. A multiplier of 1.2 is assigned for these violations because a reasonably prudent person who applies for coverage under the General Permit would have necessary oversight and accountability measures in place to ensure that all workers

involved in construction activities adhere to the requirements of the General Permit. The Discharger should have implemented good housekeeping BMPs to properly manage concrete waste.

- b. History of Violations: Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned.
- c. Cleanup and Cooperation: The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A multiplier of 1.3 is assigned because the Discharger had not cleared the concrete waste until the Regional Board's third inspection on May 9, 2018.

#### **Step 5. Total Base Liability**

Violation 6:

$\$3,500$  (Initial ACL Amount) X 1.2 (Culpability) X 1.0 (History of Violations) X 1.3 (Cleanup and Cooperation) =  $\$5,460$

Violation 7:

$\$11,000$  (Initial ACL Amount) X 1.2 (Culpability) X 1.0 (History of Violations) X 1.3 (Cleanup and Cooperation) =  $\$17,160$

#### **Violations 8-9: Failure to implement erosion control and linear sediment control BMPs**

General Permit Attachment D, section E.3. requires Risk Level 2 dischargers to implement erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.

Additionally, General Permit Attachment D, section E.4. requires Risk Level 2 dischargers to apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes.

Violation 8: During the April 13, May 4, May 9, and May 23, 2018 Regional Board inspections, Regional Board staff observed erosion at the bottom of the slopes along White Sage Road. There were no erosion control BMPs implemented on the slopes.

Violation 9: During the April 13, May 4, May 9, and May 23, 2018 Regional Board inspections, Regional Board staff observed erosion at the bottom of the slopes along White Sage Road. There were no linear sediment controls implemented on the slopes.

**Step 1. Potential for Harm for Discharge Violations**

This factor does not apply to these violations.

**Step 2. Assessment for Discharge Violations**

This factor does not apply to these violations.

**Step 3. Per Day Assessment for Non-Discharge Violations**

a. Potential for Harm: Moderate

The Enforcement Policy defines Moderate potential for harm as “The characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

As mentioned above, the discharges from the Site discharge indirectly from the Site into Arroyo Simi through a storm water drain on White Sage Road and a storm water drainage pipe on the Site. The beneficial uses of Arroyo Simi are listed in Violation 1.

During Regional Board staff inspections, Regional Board staff observed that the Discharger failed to implement erosion control BMPs or linear sediment controls. Failure to implement erosion control BMPs or linear sediment controls could lead to sediment discharge in storm water. Discharges of sediment to surface waters can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. Sediment can also transport other materials such as nutrients, metals, and oils and grease which can cause toxicity to aquatic organisms. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for these violations is characterized as Moderate.

b. Deviation from Requirement: Major

The Enforcement Policy defines a Major Deviation from Requirement as “The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).” During the April 13, May

4, May 9, and May 23, 2018 Regional Board staff inspections, the Discharger failed to implement erosion control BMPs or linear sediment controls on slopes along White Sage Road. Therefore, the Deviation from Requirement for these violations is characterized as Major.

c. Per Day Factor

Table 3 of the Enforcement Policy (p. 16) is used to determine a “per day factor” for non-discharge violations based on the Potential for Harm and the Deviation from Requirement. For these violations, in accordance with Table 3, the per day factor is 0.55.

d. Initial ACL Amount

The Initial ACL Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

Violation 8-9: For these violations, the per day factor is 0.55, days of violation are 4, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c). Initial ACL Amount =  $0.55 \times 4 \text{ days} \times \$10,000/\text{day} = \$22,000$ .

#### **Step 4. Adjustment Factors**

- a. Degree of Culpability: The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence. A multiplier of 1.2 is assigned for these violations because a reasonably prudent person who applies for coverage under the General Permit would have necessary oversight and accountability measures in place to ensure that all workers involved in construction activities adhere to the requirements of the General Permit.
- b. History of Violations: Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned.
- c. Cleanup and Cooperation: The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not. A multiplier of 1.3 is assigned for these violations because the violations continued, despite being notified of the problem, until the installation of the retaining wall sometime between the

May 23, 2018 and August 15, 2018 Regional Board inspections.

**Step 5. Total Base Liability**

Violation 8:  
\$22,000 (Initial ACL Amount) X 1.2 (Culpability) X 1.0 (History of Violations)  
X 1.3 (Cleanup and Cooperation) = \$34,320

Violation 9:  
\$22,000 (Initial ACL Amount) X 1.2 (Culpability) X 1.0 (History of Violations)  
X 1.3 (Cleanup and Cooperation) = \$34,320

**Violation 10-11: Failure to maintain records onsite**

General Permit section XIV.C. requires dischargers to have current copies of the BMPs and map/drawing available onsite.

Attachment D, section H requires that dischargers ensure that a QSP begins implementation of and makes REAPs available onsite no later than 24 hours prior to the likely precipitation event.

Attachment D, section I.14. of the General Permit requires dischargers to retain records of all storm water monitoring information and copies of all reports for a period of at least three years.

Violation 10: During the April 13, 2018 Regional Board staff inspection, Regional Board staff observed that there were no current copies of the BMPs or map/drawing, copies of REAPs, or records of weekly inspections available onsite.

The drawings available in the Storm Water Pollution Prevention Plan (SWPPP) were not representative of site conditions, and the SWPPP itself was outdated, with construction start and end days of March 1, 2017 and March 1, 2018, respectively.

Violation 11: During the May 23, 2018 Regional Board staff inspections, Regional Board staff observed that records of weekly inspections of the Site after April 29, 2018 were not available.

**Step 1. Potential for Harm for Discharge Violations**

This factor does not apply to these violations.

**Step 2. Assessment for Discharge Violations**

This factor does not apply to these violations.

**Step 3. Per Day Assessment for Non-Discharge Violations**

a. Potential for Harm: Moderate

The Enforcement Policy defines Moderate potential for harm as “The characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

The failure to maintain records on-site substantially impairs the Regional Board’s ability to access and copy the records and determine overall compliance with the General Permit. Therefore, the Potential for harm for these violations is characterized as Moderate.

b. Deviation from Requirement: Major

The Enforcement Policy defines a Major Deviation from Requirement as “The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).” The discharger failed to maintain records of weekly inspections, copies of REAPs, and copies of BMPs and maps/drawings which is required by the General Permit. Therefore, the Deviation from Requirement for these violations is characterized as Major.

c. Per Day Factor

Table 3 of the Enforcement Policy (p. 16) is used to determine a “per day factor” for non-discharge violations based on the Potential for Harm and the extent of the Deviation from Requirements. For these violations, in accordance with Table 3, the per day factor is 0.55.

d. Initial ACL Amount

The Initial ACL Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability). For these violations, the per day factor is 0.55, days of violation are 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial ACL Amount = 0.55 x 1 day x \$10,000/day = \$5,500.

**Step 4. Adjustment Factors**

- a. Culpability: The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence.

Violation 10: A multiplier of 1.2 is assigned for this violation because the Discharger failed to maintain copies of records onsite and a reasonably

prudent person who applies for coverage under the General Permit would have necessary oversight and accountability measures in place to ensure that all workers involved in construction activities adhere to the requirements of the General Permit. The Discharger should have left current copies of the SWPPP on-site, accompanied by copies of current BMPs, maps, drawings and REAPs. Following each weekly inspection, the Discharger should have also left copies of the inspection report on-site.

Violation 11: A multiplier of 1.3 is assigned for this violation because the Discharger failed to maintain copies of weekly inspection reports despite having been informed of the requirement by Regional Board staff during the April 13, 2018 inspection. A reasonably prudent person who applies for coverage under the General Permit would have corrected the problem after notification and had necessary oversight and accountability measures in place to ensure that all workers involved in construction activities adhere to the requirements of the General Permit. The Discharger should have continued to leave copies of weekly inspection reports with the on-site SWPPP following each of their weekly inspections.

- b. History of Violations: Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 was assigned.
- c. Cleanup and Cooperation: The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not.

Violation 10: A multiplier of 1.1 is assigned for this violation because the Discharger had not corrected the violation by the May 23, 2018 Regional Board inspection.

Violation 11: A multiplier of 1.0 is assigned for this violation because the Discharger's QSP had provided electronic copies of the inspection report by email following the inspection.

## **Step 5. Total Base Liability**

Violation 10:  
\$5,500 (Initial ACL Amount) X 1.2 (Culpability) X 1.0 (History of Violations) X  
1.1 (Cleanup and Cooperation) = \$7,260

Violation 11:  
\$5,500 (Initial ACL Amount) X 1.3 (Culpability) X 1.0 (History of Violations) X  
1.0 (Cleanup and Cooperation) = \$7,150

Table 1: Liability Amounts and Number of Days of Each Violation

| <b>Violation</b> | <b>Violation Description</b>  | <b>Proposed Liability</b> | <b>Maximum Liability</b> | <b>No. of Days</b> |
|------------------|---|---------------------------|--------------------------|--------------------|
| 1                | Unauthorized discharge of sediment-laden stormwater                   | \$4,368                   | \$10,000                 | 1 day              |
| 2                | Failure to implement covers and berms for soil stockpiles not in use  | \$46,475                  | \$50,000                 | 5 days             |
| 3                | Failure to implement effective perimeter sediment controls            | \$4,235                   | \$10,000                 | 1 day              |
| 4                | Failure to implement effective perimeter sediment controls            | \$4,620                   | \$10,000                 | 1 day              |
| 5                | Failure to implement effective perimeter controls                     | \$27,300                  | \$50,000                 | 5 days             |
| 6                | Concrete debris near the desilting basin                              | \$5,460                   | \$10,000                 | 1 day              |
| 7                | Concrete debris in the desilting basin                                | \$17,160                  | \$20,000                 | 2 days             |
| 8                | Failure to implement erosion control and linear sediment control BMPs | \$34,320                  | \$40,000                 | 4 day              |
| 9                | Failure to implement erosion control and linear sediment control BMPs | \$34,320                  | \$40,000                 | 4 days             |
| 10               | Failure to maintain records onsite                                    | \$7,260                   | \$10,000                 | 1 day              |
| 11               | Failure to maintain records onsite                                    | \$7,150                   | \$10,000                 | 1 day              |
| <b>TOTAL</b>     |   | <b>\$206,971</b>          | <b>\$250,000</b>         | <b>26 days</b>     |

## **Total Base Liability for All Violations**

### **Step 6. Ability to Pay:**

The Enforcement Policy requires the Regional Board to analyze the Discharger's ability to pay the Total Base Liability and the effect paying the Total Base Liability may have on the Discharger's ability to continue in business. The Discharger has the ability to pay the Total Base Liability and continue in business because it owns the property subject to this enforcement action. According to 2017 Ventura County Tax Assessor Records, the property is worth \$2,266,370.

### **Step 7. Other Factors as Justice May Require**

Staff Cost: \$14,303

The Enforcement Policy allows for the costs of investigation and enforcement to be considered under other factors as justice may require. To date, the Regional Board has incurred \$14,303 in staff costs associated with the investigation, preparation, and enforcement of the violations. This represents approximately 145 hours of staff time devoted to inspecting the Site, meetings and communications, and drafting the enforcement documents. No attorneys' fees are included in this calculation. The Prosecution Team finds that it is appropriate to increase the Total Base Liability by \$14,303 in consideration of investigation and enforcement costs incurred in prosecuting this matter. Increasing the Total Base Liability in this manner serves to create a more appropriate deterrent against future violations.

### **Step 8. Economic Benefit: \$7,791**

The Enforcement Policy provides that the economic benefit of non-compliance should be calculated using the United States Environmental Protection Agency's (U.S. EPA) Economic Benefit Model (BEN)<sup>2</sup> penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 5.8.0. For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

In this case, the Discharger failed to implement adequate erosion and sediment controls across the site from at least March 2018 to May 2019. The actions taken by the Discharger were not consistent with standard industry

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<sup>2</sup> US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

practices described in the California Stormwater Quality Association's (CASQA's) Storm Water BMP Handbook for construction and failed to adequately prevent erosion and sediment loss. As a result, the Discharger avoided and/or delayed significant erosion and sediment control implementation costs over at least that period.

The Prosecution Team reviewed site conditions via inspection photos by Regional Board and City staff, BMP maps in the Site's SWPPP, and CASQA standards to identify compliance actions that would have mitigated the alleged violations. In summary, the Prosecution Team determined that a combination of soil stabilization, linear sediment controls, and tracking controls could have feasibly been implemented on the Site as minimum protective measures.

The BEN model was used to determine the economic benefit of the avoided and delayed expenditures described above to be approximately **\$7,791**.

#### **Step 9. Maximum and Minimum Liability Amounts**

The Enforcement Policy directs the Regional Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

- a. Statutory Maximum: The statutory maximum is \$10,000 per day for each violation pursuant to Water Code section 13385, subsection (c). The total base liability of \$40,040 for Violation 9 is above the statutory maximum. Therefore, Violation 9 will be lowered to the statutory maximum of \$40,000. All other violations are within the statutory maximum.
- b. Statutory Minimum: The Enforcement Policy requires the Regional Board to recover, at a minimum, 10% more than the economic benefit. Therefore, the statutory minimum is set at \$8,570.10

#### **Step 10. Final Liability Amount: \$206,971**

To determine the final liability amount, liabilities for each violation were summed together, provided the amounts were within the statutory minimum and maximum amounts. The total summed amount for liabilities of violations was added to total staff cost accrued by the Regional Board while it was pursuing compliance. Therefore, the final liability amount is assessed at \$206,971.