

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the Matter of:

ORDER R4-2023-0310 (Proposed)

**AUBURN OAK BUILDERS, INC.
OAKCREST ESTATES;**

**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 Auburn Oak Builders, Inc. (individually the Discharger, and collectively the Parties) and is presented to the Regional Board, or its delegee, for adoption as an order by settlement, pursuant to California Water Code section 13323 and Government Code section 11415.60.

II. Site Background

2. Auburn Oak Builders, Inc. was, at all relevant times, the owner and developer of the Oakcrest Estates construction project (Project). The Project involved construction activities on and around certain lands in the area of Ventura County Assessor's Parcel Numbers 032-0-221-265, 032-0-222-105, and 032-0-221-275, commonly known as 11583 Oakcrest Avenue, 11571 Oakcrest Avenue, 2571 Bonmark Drive, and 11586 Oakcrest Avenue in Ventura County in Ojai, California (Site).
3. On September 2, 2009, the California State Water Resources Control Board (State Water Board) adopted Order No. 2009-0009-DWQ (as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ), National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit). The General Permit regulates storm water discharges to waters of the United States from construction sites that disturb one or more acres of land surface or that are part of a larger common plan of development or sale of one or more acres of disturbed land surface.
4. On January 30, 2019, Richard Pratt, Jr. principal and Chief Executive Officer of Auburn Oak Builders, Inc. and the designated Legally Responsible Person (LRP), submitted a Notice of Intent (NOI) to comply with General Permit requirements to the State Water Board's Stormwater Multiple Application and

Report Tracking System (SMARTS) and was issued Waste Discharge Identification (WDID) 4 56C383177 upon permit enrollment.

5. General Permit section V.A.2. requires the implementation of best management practices (BMPs), using best available technology economically achievable (BAT) and best conventional pollutant control technology (BCT) to reduce pollution from storm water runoff from construction sites. The General Permit prohibits all discharges except for storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. (General Permit, III.B.)
6. Runoff from the Site flows to Skyline Drain and ultimately to the area between San Antonio Creek and Camino Cielo Road, which is part of Ventura River, Reach 4. The pollutants in the runoff from the Site have the potential to impact the beneficial uses of Ventura River, Reach 4.
7. The beneficial uses of Ventura River Reach 4 (San Antonio Creek to Camino Cielo Road) include body and non-body contact recreation; municipal and domestic supply; industrial service supply; industrial process supply; agricultural supply; groundwater recharge; freshwater replenishment; warm freshwater habitat; cold freshwater habitat; wildlife habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; preservation of rare, threatened, or endangered species (specifically for condor refuge); and wetland habitat.
8. On November 26, 2019, Regional Board staff conducted a Site inspection and observed the following General Permit violations: ineffective perimeter control best management practices (BMPs), inactive soil stockpiles without berm and cover, and a lack of good housekeeping measures for waste management. On November 26, 2019, Regional Board staff also reviewed reports submitted for the Site through SMARTS and found that Annual Reports were missing for reporting years 2017-2018, 2018-2019, and 2019-2020. On December 5, 2019, Regional Board staff conducted a Site inspection following a rain event and observed an unauthorized discharge of sediment-laden water from the Site as well as continued lack of effective perimeter controls, failure to cover and berm loose stockpiled materials, and failure to implement good housekeeping measures for waste management. On August 17, 2020, Regional Board staff conducted another inspection and observed ongoing noncompliance, including ineffective perimeter control BMPs and inadequate housekeeping measures for waste management.
9. On January 15, 2020, Regional Board staff issued a Notice of Violation to the Discharger describing the General Permit violations observed at the November 26, 2019 Site inspection. Additional inspections were conducted in December 2019 and August 2020.

10. Construction of a single-family residence at the Site concluded by September 29, 2020, and the Project's coverage under the General Permit was administratively terminated on May 3, 2023.
11. The Discharger removed all the BMPs to meet Final Site Stabilization with no BMPs by Friday, February 24, 2023.

III. General Permit Violations

12. Violation 1—Discharge of Sediment-Laden Stormwater on December 4, 2019: The General Permit prohibits all discharges except for storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. (General Permit, III.B.) On December 4, 2019, during a rain event, sediment-laden storm water discharged from the Site onto a neighboring property south of the Site and towards Oakcrest Avenue. This discharge was not specifically authorized by the General Permit, a waiver, or other waste discharge requirements.
13. Violation 2—Ineffective Perimeter Controls: The General Permit requires dischargers at Risk Level 2 sites to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the Site. (General Permit, Attachment D, section E.1.) Overall, Regional Board staff observed ineffective perimeter controls at various locations on the Site for at least three days.
14. Violation 3—Failure to Cover and Berm Inactive Stockpiled Construction Materials: The General Permit requires dischargers at Risk Level 2 sites to implement good housekeeping measures for construction materials, including covering and berming stockpiled construction materials that are not actively being used (i.e., soils, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.). (General Permit, Attachment D, section B.1.b.) The Discharger failed to cover and berm soil stockpiles at the Site for at least two days.
15. Violation 4—Failure to Implement Good Housekeeping Measures for Waste Management: The General Permit requires that dischargers implement good housekeeping measures for waste management (General Permit, Attachment D, section B.2.). Section B.2.a. requires that dischargers prevent disposal of any rinse or wash materials on impervious or pervious site surfaces or into the storm drain system; section B.2.b. requires that dischargers ensure containment of sanitation facilities (e.g., portable toilets) to prevent discharges of pollutants to the storm water drainage system or receiving water; and section B.2.f. requires that dischargers contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used. The Discharger failed to implement good housekeeping measures for trash and debris, and failed to provide secondary containment for a portable toilet, for at least three days.

16. Violation 5—Failure to Submit Annual Reports: The General Permit requires that dischargers submit Annual Reports by September 1 of each year. (General Permit, section XVI.A.) The Discharger failed to submit Annual Reports for 2017-2018, 2018-2019, and 2019-2020. For purposes of settlement only, the days of violation have been alleged as one day for each missing report, for a total of three days.
17. Pursuant to Water Code section 13385(a)(2) and (c), a person that violates an NPDES permit requirement is subject to administrative civil liability in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs, as well as a per gallon assessment when discharges are alleged.
18. Pursuant to Water Code section 13385(e), in determining the amount of civil liability, the regional board shall take into consideration the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on the ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.
19. The *State Water Board's Water Quality Enforcement Policy* (Enforcement Policy) was adopted on April 4, 2017. The Enforcement Policy's effective date is October 5, 2017. The use of the Enforcement Policy's penalty methodology addresses the factors required to be considered when imposing administrative civil liability.
20. The details of these alleged violations, including the factors required to be considered by Water Code section 13385(e), are set forth in full in the accompanying Attachment A, which is incorporated herein by reference as if set forth in full.
21. To resolve the alleged violations in Section III, paragraphs 12 through 16, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **one hundred eleven thousand eight hundred and fourteen dollars (\$111,814)** against the Discharger as described in Section II, paragraph 2. The settlement amount is less than the liability the Prosecution Team calculated using Steps 1 through 10 of the Enforcement Policy, as shown in Attachment A. Pursuant to Enforcement Policy section VI.B, the final proposed liability was reduced by ten percent (\$12,424) in consideration of hearing and/or litigation risks.
22. The Parties have engaged in settlement negotiations and have agreed to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as an order by settlement pursuant to Water Code section 13385 and Government Code section 11415.60.

23. Based on the information in the record, the Prosecution Team has determined that the above resolution of the alleged violations is fair and reasonable, and fulfills the enforcement objectives of Water Code sections 13000 et seq., and the Water Quality Enforcement Policy, and satisfies the objectives and requirements of the federal Clean Water Act as implemented by the foregoing, and that no further action is warranted concerning the alleged violations except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

IV. Stipulations

The Parties stipulate to the following:

24. **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.

25. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an Administrative Civil Liability (ACL) in the amount of **one hundred eleven thousand eight hundred and fourteen dollars (\$111,814)** to resolve the violations alleged in Attachment A to this Order.

- a. The Discharger agrees to pay **ten thousand nine hundred and eighteen dollars (\$10,918)** as reimbursement of the Regional Board's investigative and enforcement costs, to the *State Water Board's Cleanup and Abatement Account* and shall indicate this Order number on the check. The check shall be submitted within 30 days of execution of this Order by the Regional Board or its designee. The Discharger shall send the original check referencing this Order number to the following address:

Division of Administrative Services
ATTN: Accounting, State Water Resources Control Board
1001 I Street 18th Floor
Sacramento, California 95814

The Discharger shall provide a copy of the check via email to the State Water Board, Office of Enforcement (**David.Boyers@waterboards.ca.gov**) and the Regional Water Board (**Lydia.Kim@waterboards.ca.gov**).

- b. The State Water Board's May 3, 2018 Policy on Supplemental Environmental Projects (SEP Policy), section VIII.B. provides:

The Director of OE may approve a proposed settlement to fund a SEP in an amount greater than 50 percent of the total adjusted monetary assessment in cases where the SEP is located in or benefits a disadvantaged community, an environmental justice community, a

community that has a financial hardship, or where the SEP substantially furthers the human right to water.

Pursuant to the Director of OE's April 30, 2021 memorandum on approving disadvantaged community and environmental justice SEPs greater than 50 percent of the total adjusted monetary assessment (SEP Memo), more than 50 percent to the total adjusted monetary assessment may be dedicated to the SEPs because they are located in and/or benefit a disadvantaged community as shown in Attachment B, herein incorporated by reference. The Prosecution Team provided written notification of the SEPs to the Director of OE and obtained approval for the SEPs to exceed 50 percent of administrative civil liability. Therefore, one hundred thousand eight hundred and ninety-six dollars (\$100,896) of the administrative civil liability is directed to the SEPs identified in paragraph 24.c. below.

- c. The Parties agree that **one hundred thousand eight hundred and ninety-six dollars (\$100,896)** (SEP Amount) of the administrative civil liability shall be paid to the Rose Foundation for Communities and the Environment (Rose Foundation) for implementation of the Newhall Creek Community Watershed Education and Restoration SEP described in Attachment B.
- d. The Santa Clarita Organization for Planning and the Environment shall be referred to as the SEP Implementing Party.
- e. No later than 30 days after the Regional Board, or its delegee, signs this Order, the Discharger shall submit a check for **one hundred thousand eight hundred and ninety-six dollars (\$100,896)** to the Rose Foundation. The check shall be made payable to the "Rose Foundation for Communities and the Environment", reference the Order number on page one of this Order, and be mailed to:

Rose Foundation for Communities and the Environment
Attn: Tim Little
201 4th Street, Suite 102
Oakland, California 94607

The Discharger shall provide a copy of the check via email to the State Water Board, Office of Enforcement (**David.Boyers@waterboards.ca.gov**) and the Regional Board (**Lydia.Kim@waterboards.ca.gov**).

26. **SEP Requirements:** The Parties agree that the SEP Amount specified in paragraph 25.c. is for the SEP identified in Attachment B and that the SEP Amount shall be treated as a suspended administrative civil liability until the time of project completion for purposes of this Stipulated Order. The Regional Board

is entitled to recover any SEP funds that are not expended in accordance with this Stipulated Order. Detailed project descriptions, including milestones, budgets, and performance measures are attached hereto as Attachment B.

27. **Nexus to the Violation:** The SEP Policy requires that a SEP have a nexus to the alleged violation. (SEP Policy, section VIII.F.) The SEP included in this Stipulated Order has a nexus to the location of the alleged violation because the primary benefits to be attained from the SEP are located within a 50-mile radius of the location of the violations.
28. **SEP Categories:** The SEP Policy provides for seven categories of SEPs. (SEP Policy, section V.) The Newhall Creek Community Watershed Education and Restoration SEP falls under the “Environmental Restoration and Protection” and Assessment and Audits” categories.
29. **SEP Oversight:** The Rose Foundation will oversee SEP implementation in lieu of Regional Board staff oversight. The Discharger shall not have any implementation or oversight role for the SEP. The Rose Foundation’s oversight costs are included in the direct costs of the SEP as allowed under section VIII.G. of the SEP Policy since the SEP directly benefits disadvantaged communities. Oversight costs are within the 10 percent limit for SEPs performed by third party administrators. (SEP Policy, section VIII.G.)
30. **Reporting Requirements for the SEPs:** The Rose Foundation has agreed, on the Discharger’s behalf, to submit the following reports on SEP implementation to the Regional Board:
 - a. **Quarterly Reports:** Quarterly Reports must be submitted in accordance with the schedule provided in Attachment B. The Quarterly Reports must describe the tasks completed during the previous quarter, whether the SEP Implementing Party is in compliance with the milestones and deadlines contained in Attachment B, and if not, the cause(s) of the delay(s) and the anticipated date of compliance with this Stipulated Order. The Quarterly Reports may also include descriptions and photos of activities completed during the previous quarter and an analysis of the SEP’s progress.
 - b. **Certification of SEP Completion:** No later than the deadlines contained in Attachment B, the Rose Foundation, on the Discharger’s behalf, must submit a final report that documents SEP completion and provides a certified statement of SEP completion (Certification of SEP Completion), signed under penalty of perjury, that documents the following:
 - i. Certification of completion in accordance with the terms of this Stipulated Order, addressing how the expected outcome(s) for the project were met,

- ii. Certification documenting the expenditures by the SEP Implementing Party during the completion period for the SEP, and
- iii. Certification that the SEP Implementing Party followed all applicable environmental laws and regulations in implementing the SEP, including the California Environmental Quality Act, Porter-Cologne Water Quality Control Act, and federal Clean Water Act.

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

31. **Publicity Associated with the SEP:** Whenever the Discharger, or its agents, publicizes one or more SEP elements, it shall state in a prominent manner that the project is undertaken as part of a settlement of a Regional Board enforcement action against the Discharger.
32. **SEP is Above and Beyond the Discharger's Obligations:** The SEP included in this Stipulated Order contain only measures that go above and beyond the Discharger's obligations. The SEP is not part of the Discharger's normal business nor is the Discharger otherwise legally required to implement any portion of the SEP.
33. **No Benefit to Regional Board Functions, Members, or Staff:** The SEP provides no direct fiscal benefit to the Regional Board's functions, its members, its staff, or any family member of staff.
34. **Regional Board Not Liable:** Neither the Regional Board members, nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or its respective directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Order, nor shall the Regional Board, its members, staff, attorneys, or representatives be held as parties to or guarantors of any contract entered into by the Discharger, or its directors, officers, employees, agents, representatives, or contractors, and any third party in carrying out activities pursuant to this Order.
35. **Third Party Audit:** If the Regional Board obtains information reasonably indicating that the Discharger, Rose Foundation, and/or the SEP Implementing Party has not expended money in the amounts claimed, or the SEP Implementing Party has not adequately completed the work in the SEP, the Regional Board or its delegee may require, and the Discharger must submit, at its sole cost, a report prepared by an independent third party(ies) acceptable to the Regional Board or its delegee, stating that in its professional opinion, the Discharger, Rose Foundation, and/or the SEP Implementing Party has or has not expended money in the amounts claimed. In the event of such an audit, the Discharger agrees that the third-party auditor will be provided with access to all

documents that the auditor requests. Such information must be provided to the Regional Board within three months of the date on which the Regional Board or its delegee requires the audit.

- 36. Failure to Expend the SEP Amount on the Approved SEP:** If the Discharger is not able to demonstrate to the reasonable satisfaction of the Executive Officer that the entire SEP Amount was spent on the completed SEP(s), the Discharger shall pay the difference between the SEP Amount and the amount the Discharger can demonstrate was actually spent on the SEP(s) (the Difference). The Executive Officer shall issue a "Notice of Violation" that will require the Discharger to pay the Difference to the State Water Pollution Cleanup and Abatement Account within 30 days of the Notice of Violation's issuance date. The Discharger shall submit payment consistent with the payment method described in paragraph 25.e. Payment of the Difference shall satisfy the Discharger's obligations to implement the SEP.
- 37. Failure to Complete the SEP:** If the SEP is not fully implemented by the SEP Completion Date listed in Attachment B, or if there has been a material failure to satisfy a project milestone, the Executive Officer shall issue a "Notice of Failure to Complete SEP." The amount of suspended liability owed shall be determined via a Motion for Payment of Suspended Liability before the Regional Board or its delegee. The Discharger shall be liable to pay the entire SEP Amount, or, if shown by the Discharger, some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing, or as determined by the Motion for Payment of Suspended Liability. Unless the Regional Board or its delegee determines otherwise, the Discharger shall not be entitled to any credit, offset, or reimbursement from the Regional Board for expenditures made on the SEP prior to the issuance date of the Notice. Within 30 days of the Regional Board's or its delegee's determination of the suspended liability amount assessed for the Discharger to pay, the Discharger shall submit payment consistent with the payment method described in paragraph 25.e. Payment of the assessed amount shall satisfy the Discharger's obligations to implement the SEP.
- 38. Replacement SEP:** If there is a material failure, in whole or in part, to perform the SEPs described in paragraph 25.c., due to circumstances beyond the control of the Discharger, Rose Foundation, and/or the SEP Implementing Party, and the Regional Board does not move to collect the Payment of Suspended Liability amount as provided in paragraph 36, above, the Parties agree that the Discharger may propose a Replacement SEP. Whether there is a material failure to perform the SEP(s) described in paragraph 25.c. shall be determined by the Executive Officer. The Discharger shall have 60 days from the date of the Executive Officer's determination to propose a Replacement SEP(s). The cost of the Replacement SEP shall be for the entire SEP Amount, or, some portion thereof less the value of any completed milestones as stipulated to by the Parties in writing and shall be treated as a suspended liability subject to the same

conditions provided for the SEP being replaced. The terms and conditions of the Replacement SEP shall be memorialized in a Supplemental Agreement to this Stipulated Order, signed by both Parties and approved by the Regional Board or its delegee. The Replacement SEP shall meet the criteria in the SEP Policy, and shall be completed within 36 months of the Regional Board's or its delegee's approval of the Supplemental Agreement (Replacement SEP Completion Date). The Executive Officer may grant an extension for good cause shown as to why the Replacement SEP cannot be completed by the Replacement SEP Completion Date. The Parties agree that, unless requested by the Executive Officer, the Supplemental Agreement will not be subject to public notice and comment so long as the initial notice and comment period complied with federal and/or state requirements. If there is a material failure to perform a Replacement SEP, then the Executive Officer shall issue a "Notice of Failure to Complete SEP" as described in paragraph 37. The Discharger shall not have an opportunity to propose a second Replacement SEP should it fail to complete the Replacement SEP for any reason.

- 39. Regional Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulated Order, the completion of the SEP, and any audits, the designated Regional Board or its delegee shall issue a "Satisfaction of Order." The issuance of the Satisfaction of Order will terminate any further obligation of the Discharger under this Stipulated Order and permanently suspend the SEP Amount.
- 40. 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.
- 41. Party Contacts for Communications Related to Stipulated Order:**

For the Regional Board:
Lydia Kim, Environmental Scientist
Lydia.Kim@waterboards.ca.gov
213-620-2695

For the Discharger:
Richard Pratt
Auburn Oak Builders, Inc.
200 New Stine Road, Suite 220
Bakersfield, CA 93309

Dan Raytis
Belden Blaine Raytis
5016 California Ave, Ste 3
Bakersfield, CA 93309
661-447-4226
dan@bbr.law

42. **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.
43. **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.
44. **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.
45. **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.
46. **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.


47. **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.
48. **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 Regional Board or its delegee.
49. **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.
50. **If Order Does Not Take Effect:** 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 Water 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, including this Stipulated Order, 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. Except as set forth in this section 50, 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.
51. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Board.

52. **Waiver of Right to Petition:** The Discharger hereby waives the right to petition the Regional Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.
53. **Covenant Not to Sue:** Upon the effective date of this Stipulated Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against any State Agency or the State of California, its officers, agents, directors, employees, attorneys, representatives, for any and all claims or causes of action, which arise out of or are related to this action.
54. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Order on behalf of and to bind the entity on whose behalf he or she executes the Order.
55. **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.
56. **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.
57. **Severability:** This Stipulated Order is severable; should any provision be found invalid the remainder shall remain in full force and effect.
58. **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.
59. **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.

IT IS SO STIPULATED.

Settlement Agreement and Stipulated Order R4-2023-0310
Auburn Oak Builders, Inc.

Los Angeles Regional Water Quality Control Board Prosecution Team

By: **Hugh Marley**  Digitally signed by Hugh Marley
Date: 2023.10.13 13:15:59 -07'00'

Hugh Marley
Assistant Executive Officer

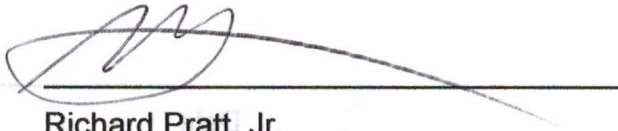
10/13/2023

Date

Settlement Agreement and Stipulated Order R4-2023-0310
Auburn Oak Builders, Inc.

Auburn Oak Builders, Inc.

By:



Richard Pratt, Jr.
Principal, Chief Executive Officer

10/9/23

Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD, BY AND THROUGH ITS EXECUTIVE OFFICER, 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 Dischargers fail to perform any of their 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.

Susana Arredondo
Executive Officer
Los Angeles Regional Water Quality
Control Board

Date

Attachment A: Penalty Methodology
Attachment B: Newhall Creek Community Watershed Education and Restoration
SEP

Attachment A - Specific Factors Considered
Settlement Agreement and Stipulated Order No. R4-2023-0310
Auburn Oak Builders, Inc.
WDID 4 56C383177

The State Water Board's *Water Quality Enforcement Policy* (Enforcement Policy) established a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

Background

On April 20, 2018, Auburn Oak Builders, Inc. (Discharger) submitted a Notice of Intent to obtain coverage under the National Pollutant Discharge Elimination System (NPDES) *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2009-0009-DWQ* (General Permit) for the Oakcrest Estates construction project located in Ojai (Site). On November 26, 2019, Los Angeles Regional Water Quality Control Board (Regional Board) staff inspected the Site to determine if the project was in compliance with the requirements of the General Permit. During that inspection, Regional Board staff documented multiple violations. At subsequent inspections that took place between December 5, 2019 and August 17, 2020, Regional Board staff continued to observe violations of the General Permit documented during the November 26, 2019 inspection.

Violation 1: Unauthorized discharge of sediment

General Permit section III.B prohibits all discharges except for stormwater and non-stormwater 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.

On December 5, 2019, Regional Board staff inspected the Site after a rain event on December 4, 2019 and observed that sediment had discharged from the Site onto the neighboring property south of the Site and to Oakcrest Avenue, which has storm drains that lead to Ventura River Reach 4 (San Antonio Creek to Camino Cielo Road). Staff estimated that approximately 5,087 gallons of stormwater was discharged from the Site during the rain event. This discharge was not authorized by the General Permit, a waiver, or other waste discharge requirements.¹ Therefore, the Discharger violated General

¹ The General Permit requires that all dischargers minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management

Permit section III.B.

Step 1. Potential for Harm for Discharge Violations

a. Degree of Toxicity of the Discharge: 2

The degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics 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 defined as follows: "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)."

Discharges of sediment to surface waters can cloud the receiving water, reducing the amount of sunlight reaching aquatic plants, clog fish gills, and 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 will harm aquatic life. Therefore, a score of 2 was selected.

b. Actual Harm or Potential Harm to Beneficial Uses: Moderate (3)

The evaluation of the actual or potential harm to beneficial uses considers the harm to beneficial uses in the affected receiving waterbody that may result from exposure to the pollutants or contaminants in the discharge. 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 December 5, 2019, Regional Board staff observed sediment discharged onto Oakcrest Avenue. Storm drain inlets on Oakcrest Avenue and a stormwater drainage pipe on the Site lead to Ventura River Reach 4 through Skyline Drain. The beneficial uses of Ventura River Reach 4 (San Antonio Creek to Camino Cielo Road) include body and non-body contact recreation; municipal and domestic supply; industrial service supply; industrial process supply; agricultural supply; groundwater recharge; freshwater replenishment; warm freshwater habitat; cold freshwater habitat; wildlife habitat; migration of aquatic organisms; spawning, reproduction, and/or early development; preservation of rare,

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 (General Permit, V.A.2, Narrative Effluent Limitations). Additional measures to control discharges during construction are required at Risk Level 2 sites (General Permit, Attachment D).

threatened, or endangered species (specifically for condor refuge); and wetland habitat.

Discharges of sediment can cloud the receiving water, reduce the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oil and grease which can negatively impact aquatic life and ecosystems. Thus, the discharge of sediment-laden water has the potential to substantially harm beneficial uses of Ventura River Reach 4 (San Antonio Creek to Camino Cielo Road) such as warm and cold freshwater habitat, wildlife habitat, migration of aquatic organisms, spawning, reproduction, and/or early development, and preservation of rare and endangered species. Because recreational beneficial uses of waterbodies are highly sensitive to increased turbidity, excess sediment also renders a waterbody unsuitable for body and non-body contact recreation. Sediment discharges are, however, likely to attenuate without appreciable medium or long term acute or chronic effects. Excess sediment in water poses a moderate level of concern to beneficial uses. Therefore, a score 3 is assigned.

c. Susceptibility to Cleanup or Abatement: 1

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 clean up 50 percent or more of the discharge within a reasonable amount of time. Because the sediment may have dispersed from the point of discharge and likely dissipated in the watershed, cleanup or abatement of the sediment was not possible. Therefore, a score of 1 is assigned.

d. Final Score – “Potential for Harm”: 6

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 (2 + 3 + 1).

Step 2. Assessment for Discharge Violations

a. Deviation from Requirement: Major

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. The General Permit prohibits all discharges except storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. Only discharges that have been controlled with BMPs that achieve BAT and BCT. In this case, the Deviation from Requirement is major because the Discharger violated the General Permit's prohibition on the discharge of stormwater and non-storm water unless specifically authorized,

rendering the requirement in the General Permit section III.B ineffective in its essential functions. Here, there was clear evidence that sediment was discharged off the Site, based on Regional Board staff's December 5, 2019 observations of inadequate perimeter controls and sediment observed outside the Site.

b. Per Gallon Assessments for Discharge Violation

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.

Table 1 of the Enforcement Policy (p. 14) is used to determine a "Per Gallon Factor" using the Potential for Harm score and the Deviation from Requirement. Using a Potential for Harm score of 6 and a Deviation from Requirement of major, the "Per Gallon Factor" is **0.28**. This Per Gallon Factor is then multiplied by the volume of the discharge and the per gallon assessment of liability, as described below.

Regional Board staff estimated that on December 4, 2019, approximately 5,087 gallons of sediment-laden stormwater discharged off the Site, resulting in the discharge of sediment into the impaired Los Angeles River Reach 4. Water Code section 13385(c) provides that the civil liability "may be imposed...in an amount not to exceed the sum of both of the following: (1) \$10,000 per day for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed \$10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."

Per Gallon Assessment = 0.28 (Per Gallon Factor) x 4,087 (spill volume – 1,000 gallons) x \$10 per gallon = \$11,444

c. 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 Assessment = 0.28 x 1 day x \$10,000/day = \$2,800

Initial Liability Amount = \$11,444 (Per Gallon Assessment) + \$2,800 (Per Day

Assessment) = \$14,244

Step 3. Per Day Assessment for Non-Discharge Violations

This factor does not apply to this violation.

Step 4. Adjustment Factors

a. Culpability: 1.3

This factor considers a discharger's degree of culpability prior to the violation. Higher liabilities should result from intentional or negligent violations as opposed to accidental violations. Under the 2017 Enforcement Policy, the culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence. A neutral assessment of 1.0 should be used when a discharger is determined to have acted as a reasonable and prudent person would have.

A reasonable and prudent person who applies for coverage under the General Permit should have understood that the primary stormwater pollutant at construction sites is excess sediment, and thus would have ensured necessary oversight and accountability measures were in place to and maintained best management practices (BMPs) to prevent the discharge of sediment. Because the Site should have been designated as Risk Level 2, the Discharger also should have prepared and implemented a Rain Event Action Plan (REAP) to ensure that erosion and sediment control BMPs were properly installed to prevent sediment discharge 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. Regional Board staff also notified the Discharger by phone of BMP deficiencies after the inspection on November 26, 2019 and prior to the rain event. Because the Discharger negligently failed to comply with General Permit requirements that would prevent the discharge of sediment during a rain event, a multiplier of 1.3 is assigned.

b. History of Violations: 1.0

The 2017 Enforcement Policy states that if a discharger has a prior history of violations within the last five years, the Water Boards should use a multiplier of 1.1. Where a discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.3

This factor reflects the extent to which a discharger voluntarily cooperates with regulatory authorities in returning to compliance and correcting environmental damage after the violation. The cleanup and cooperation multiplier ranges from 0.75 to 1.5, using the lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher

multiplier where there is not.

After the inspection on December 5, 2019, Regional Board staff notified the Discharger of the BMP deficiencies that resulted in the unauthorized discharge of sediment-laden water. Because the Discharger did not send evidence of corrective actions following the observed unauthorized discharge as a reasonable and prudent person would have, a multiplier of 1.3 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$24,071.68

$\$14,244$ (Initial Liability Amount) X 1.3 (Degree of Culpability) X 1.0 (History of Violations) X 1.3 (Cleanup and Cooperation) = $\$24,071.68$

Violation 2: Failure to implement effective perimeter controls throughout the Site.

The Discharger violated General Permit Attachment D, sections B.1.e and E.1 by failing to implement effective perimeter control BMPs across the Site.

General Permit Attachment D, section B.1.e requires that a discharger implement BMPs to prevent the off-site tracking of loose construction and landscape materials, and section E.1 requires Risk Level 2 dischargers to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from their sites.

During the inspections on November 26, 2019, December 5, 2019, and August 17, 2020, Regional Board staff observed inadequate sediment control BMPs along the perimeter of the Site bordering Oakcrest Avenue. Fiber rolls and silt fences were not installed in accordance with the California Stormwater Quality Association (CASQA) Construction BMP Online Handbook, and Regional Board staff observed sediment passing under the fiber rolls, tracking out to Oakcrest Avenue and the driveway that led to the street.

Step 1. Potential for Harm for Discharge Violation. Inapplicable to non-discharge violation.

Step 2. Assessments for Discharge Violation. Inapplicable to non-discharge violation.

Step 3. Per Day Assessment for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

Ineffective and missing perimeter controls present a substantial threat to beneficial uses, because they can lead to discharges of sediment from the Site into Ventura River Reach 4 through stormwater drain inlets on Oakcrest Avenue and a stormwater drainage pipe on the Site. Discharges of sediment can negatively impact aquatic habitat and life, impede navigation, and render a waterbody unsuitable for recreation. Therefore, the Potential for Harm is moderate.

b. Deviation from Requirement: Major

General Permit Attachment D, sections B.1.e and E.1 require dischargers to prevent the off-site tracking of loose construction and landscape materials and establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from a site. The Discharger had not adequately installed perimeter control BMPs at three inspections, rendering the essential functions of the requirement ineffective. Thus, the Deviation from Requirement is major.

Per Day Factor

The Per Day Factor utilizing a moderate Potential for Harm and major Deviation from Requirement ranges from 0.4-0.7. The mid-range Per Day Factor of 0.55 has been selected.

Initial Liability

Initial Liability: \$10,000/day X 3 days X 0.55 = \$16,500.

Step 4. Adjustment Factors

a. Culpability: 1.3

A reasonable and prudent person would have ensured that perimeter control BMPs, such as fiber rolls and silt fencing, were properly installed along the entire perimeter of the Site in accordance with the CASQA construction standards. Additionally, a reasonable and prudent person would have observed the sediment passing under the fiber rolls as an indication that the current perimeter controls were not effective and responded by correcting installation of perimeter control BMPs to follow CASQA construction standards. The Discharger's failure to install perimeter controls according to these construction standards demonstrates a negligent deviation from the standard of care. Therefore, a multiplier of 1.3 is assigned.

b. History of Violations: 1.0

Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.3

Regional Board staff first notified the Discharger of this violation at the November 26, 2019 inspection and continued to observe violations at subsequent inspections on December 5, 2019 and August 17, 2020. On December 5, 2019, the Discharger stated it would correct the BMP issues. On January 15, 2020, the Regional Board issued an NOV identifying the perimeter control violations and requiring a written response with photographic evidence showing that the Discharger implemented appropriate perimeter control BMPs throughout the Site. To date, the Regional Board has not received a response to the NOV. Construction of a single-family residence at the Site concluded by September 29, 2020, and the Project's coverage under the General Permit was administratively terminated on May 3, 2023. Because the Discharger failed to promptly take

corrective action despite multiple notices about the violation, a multiplier of 1.3 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$27,885

$\$16,500$ (Initial Liability) \times 1.3 (Culpability Multiplier) \times 1.0 (History of Violations Multiplier) \times 1.3 (Cleanup and Cooperation Multiplier) = $\$27,885$ (Total Base Liability)

Violation 3: Failure to cover and berm inactive stockpiled construction materials

The Discharger violated General Permit Attachment D, section B.1.b by failing to cover and berm loose stockpiled construction materials that were not being actively used. General Permit Attachment D, section B.1.b requires that dischargers implement good housekeeping measures for construction materials, including covering and berming stockpiled construction materials that are not actively being used (i.e., soils, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).

On November 26, 2019 and December 5, 2019, Regional Board staff observed inactive soil stockpiles on the Site without cover.

Step 1. Potential for Harm for Discharge Violation. Inapplicable to non-discharge violation.

Step 2. Assessments for Discharge Violation. Inapplicable to non-discharge violation.

Step 3. Per Day Assessments for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

The Discharger's failure to adequately cover all inactive stockpiles substantially threatens beneficial uses. For instance, uncovered soil stockpiles may easily erode by wind or water, resulting in the discharge of sediment from the Site and into Ventura River Reach 4 through stormwater drain inlets on Oakcrest Avenue and a stormwater drainage pipe on the Site. Discharges of sediment can negatively impact aquatic habitat and life, impede navigation, and render a waterbody unsuitable for recreation. Thus, the Potential for Harm is moderate.

b. Deviation from Requirement: Major

General Permit Attachment D, Section B.1.b. requires that all stockpiled construction materials that are not actively being used must be covered and bermed. Because the Discharger did not have covered and bermed loose stockpiles at two inspections, the requirement was rendered ineffective in its essential functions. Thus, the Deviation from Requirement is major.

Per Day Factor

The Per Day Factor utilizing a moderate Potential for Harm and major Deviation from

Requirement ranges from 0.4-0.7. The mid-range Per Day Factor of 0.55 has been selected.

Initial Liability

Initial Liability: \$10,000/day X 2 days X 0.55 = \$11,000.

Step 4. Adjustment Factors

a. Culpability: 1.2

A reasonable and prudent person would have ensured effective soil cover and berm such as plastic sheeting and gravel bags were implemented for all inactive stockpiled construction materials at the Site, including soil stockpiles. The Discharger was inconsistent in their efforts to provide soil cover and appropriate BMPs for all inactive stockpiles, which demonstrates a negligent exercise of due care. Therefore, a multiplier of 1.2 is assigned.

b. History of Violations: 1.0

Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.1

On December 5, 2019, Regional Board staff observed that the Discharger corrected some, but not all, of the uncovered stockpiles that were in violation of the General Permit on November 26, 2019. On January 15, 2020, the Regional Board issued an NOV identifying exposed construction materials at the Site and requiring from the Discharger a written response with photographic evidence of corrective actions. The Regional Board has not received a response to date. The Discharger corrected the violation by the August 17 inspection, as construction was nearing completion. Because the Discharger partially corrected the violation before the December 5, 2019 inspection, a multiplier of 1.1 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$14,520

$$\$11,000 \text{ (Initial Liability)} \times 1.2 \text{ (Culpability Multiplier)} \times 1.0 \text{ (History of Violations Multiplier)} \times 1.1 \text{ (Cleanup and Cooperation Multiplier)} = \$14,520 \text{ (Total Base Liability)}$$

Violation 4: Failure to implement good housekeeping measures for waste management

The Discharger violated General Permit Attachment D, section B.2 by failing to implement good housekeeping measures for waste management. General Permit, section B.2 requires that dischargers implement good housekeeping measures for waste management. The Discharger failed to prevent disposal of any rinse or wash materials on impervious or pervious site surfaces, in violation of section B.2.a; failed to ensure containment of sanitation facilities (e.g., portable toilets) to prevent

discharges of pollutants to the storm water drainage system or receiving water, in violation of section B.2.b; and failed to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used, in violation of section B.2.f.

On November 26, 2019 and December 5, 2019, Regional Board staff observed trash, debris, and concrete scattered throughout the construction Site and a portable toilet without secondary containment. On August 17, 2020, Regional Board staff observed ripped bags of construction materials with material spilling out.

Step 1. Potential for Harm for Discharge Violation. Inapplicable to non-discharge violation.

Step 2. Assessments for Discharge Violation. Inapplicable to non-discharge violation.

Step 3. Per Day Assessments for Non-Discharge Violations: 0.55

a. Potential for Harm: Moderate

The Discharger's failure to implement good housekeeping measures for waste management substantially threatens beneficial uses, because it increases the chance that trash, leaks, or spills from sanitation facilities as well as residual construction materials that could threaten water quality will be discharged from the Site. Trash impairs the beneficial uses of Ventura River Reach 4 (San Antonio Creek to Camino Cielo Road) by creating hazards to recreational use and transporting pollutants, such as nutrients, into the water, which can promote eutrophic conditions harmful to aquatic organisms. Discharges of sewage from portable toilets can contain bacteria and pathogens that are hazardous to human health, are toxic to aquatic organisms, and may remove oxygen from waterbodies. Discharges of residual construction materials such as concrete can change the pH of receiving waters, which can harm sensitive aquatic organisms. Therefore, the Potential for Harm is moderate.

b. Deviation from Requirement: Major

General Permit Attachment D, Section B.2 requires that a discharger implement good housekeeping measures for waste management. At three inspections on November 26, 2019, December 5, 2019, and August 17, 2020, the Site lacked adequate housekeeping measures to prevent the disposal of rinse or wash waters or materials on impervious or pervious site surfaces, ensure containment of sanitation facilities, and protect inactive stockpiled waste material from wind and rain, rendering the essential functions of the requirement ineffective. Thus, the Deviation from Requirement is major.

Per Day Factor

The Per Day Factor utilizing a moderate Potential for Harm and major Deviation from Requirement ranges from 0.4-0.7. The mid-range Per Factor of 0.55 has been

selected.

Initial Liability

Initial Liability: \$10,000/day X 3 days X 0.55 = \$16,500

Step 4. Adjustment Factors

a. Culpability: 1.3

A reasonable and prudent person would have implemented good housekeeping measures across the Site by preventing disposal of trash and debris on Site surfaces, using plastic sheeting and gravel bags to cover all inactive stockpiled waste material from rain, and ensuring the containment of sanitation facilities. The Discharger's failure to do so demonstrates negligence. The Discharger's failure to implement good housekeeping in accordance with General Permit requirements demonstrates a negligent deviation from the standard of care. Therefore, a multiplier of 1.3 is assigned.

b. History of Violations: 1.0

Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.3

Regional Board staff first notified the Discharger of this violation at the November 26, 2019 inspection and observed continued violations at subsequent inspections on December 5, 2019 and August 17, 2020. On January 15, 2020, the Regional Board issued an NOV identifying inadequate housekeeping measures and lack of secondary containment around sanitation facilities. The Regional Board also requested a written response with photographic evidence showing appropriate BMPs were installed. The Regional Board has not received a response to the NOV to date. Therefore, a multiplier of 1.3 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$27,885

$$\$16,500 \text{ (Initial Liability)} \times 1.3 \text{ (Culpability Multiplier)} \times 1.0 \text{ (History of Violations Multiplier)} \times 1.3 \text{ (Cleanup and Cooperation Multiplier)} = \$27,885 \text{ (Total Base Liability)}$$

Violation 5: Failure to submit Annual Reports

The Discharger violated General Permit section XVI.A by failing to submit Annual Reports by no later than September 1 of each year.

On November 26, 2019, Regional Board staff reviewed reports submitted for the Site on SMARTS and found that the Annual Reports were missing for reporting years 2017-2018, 2018-2019, and 2019-2020. The Annual Reports for those reporting years were due on September 1, 2018, September 1, 2019, and September 1, 2020, respectively.

For purposes of settlement, total days of violation are alleged as 1 day for each missing Annual Report, for a total of 3 days.

Step 1. Potential for Harm for Discharge Violation. Inapplicable to non-discharge violation.

Step 2. Assessments for Discharge Violation. Inapplicable to non-discharge violation.

Step 3. Per Day Assessments for Non-Discharge Violations: 0.35

a. Potential for Harm: Minor

Annual Reports provide summaries and evaluations of sampling and analyses, corrective actions taken during the year, and information about the SWPPP. Failure to submit the Annual Reports does not substantially impair the Water Boards' regulatory functions and poses a low threat to beneficial uses of waterbodies around the Site. Therefore, the Potential for Harm for this violation is characterized as minor.

b. Deviation from Requirement: Major

The Deviation from Requirement is Major because the Discharger failed to submit any Annual Reports, which rendered the requirements in the General Permit section XVI.A ineffective in their essential functions.

Per Day Factor

The Per Day Factor utilizing a minor Potential for Harm and major Deviation from Requirement ranges from 0.3-0.4. The mid-range Per Factor of 0.35 has been selected.

Initial Liability

Initial Liability: $\$10,000/\text{day} \times 3 \text{ days} \times 0.35 = \$10,500$

Step 4. Adjustment Factors

a. Culpability: 1.3

A reasonable and prudent person would have known key due dates associated with the General Permit and would have ensured that all required reports were completed and submitted via SMARTS in a timely manner. The Discharger's failure to submit any Annual Reports demonstrates a negligent deviation from the standard of care. Therefore, a multiplier of 1.3 is assigned.

b. History of Violations: 1.0

Since the Discharger has no prior history of violations, a multiplier of 1.0 has been assigned.

c. Cleanup and Cooperation: 1.3

Regional Board staff notified the Discharger of the missing 2018-2019 Annual

Report at inspections on November 26, 2019 and December 5, 2019, and in the NOV issued on January 15, 2020. On August 17, 2020, Regional Board staff informed the Discharger that the 2017-2018 and 2018-2019 Annual Reports were also missing. Yet, the Discharger has still not submitted any of the missing Annual Reports. Therefore, a multiplier of 1.3 is appropriate.

Step 5. Determination of Total Base Liability Amount: \$17,745

$$\$10,500 \text{ (Initial Liability)} \times 1.3 \text{ (Culpability Multiplier)} \times 1.0 \text{ (History of Violations Multiplier)} \times 1.3 \text{ (Cleanup and Cooperation Multiplier)} = \$17,745 \text{ (Total Base Liability)}$$

Total Liability for All Violations

Violation Number	Total Days of Violation	Maximum Liability	Proposed Liability
1	1 day	\$50,870	\$24,071.68
2	3 days	\$30,000	\$27,885
3	2 days	\$20,000	\$14,520
4	3 days	\$30,000	\$27,885
5	3 days	\$30,000	\$17,745
TOTAL	-	\$160,870	\$112,106.68

Note: Steps 6 through 10 apply to all violations, so they are performed only once.

Step 6. Ability to Pay and Ability to Continue in Business: No Adjustment

Based on publicly available information, the Discharger has the ability to pay the proposed liability without affecting its ability to stay in business. Based on tax assessor records, the Discharger owns 47 real property assets valued at over \$16 million. According to Ventura County Tax Assessor records, the Site, identified as Ventura County Assessor Parcel Number (APN) 032-0-221-285, is valued at \$900,782.

Step 7. Economic Benefit:

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. Information on the violations provided by the Regional Water Board staff identified avoided expenses that have benefited the Discharger. The alleged violations of the General Permit are identified above.

For Violation 1, the General Permit prohibits all discharges except for storm water and non-storm water discharged specifically authorized by the General Permit or another NPDES permit. For the purpose of this economic benefit analysis, it is assumed that the unauthorized discharge would have been prevented by proper BMPs and is

therefore included in the subsequent violations.

For Violation 2, the General Permit requires that the Discharger implement perimeter control BMPs. The SWPPP identified the use of gravel bag check dams would be used as perimeter control during the entirety of the project. On November 26, 2019 and December 5, 2019, Regional Water Board staff observed that there were inadequate perimeter controls at the Site, specifically along the cul-de-sac driveway road leading to Oakcrest Avenue. Based on the photographic documentation in the Regional Board's inspection reports, the Discharger showed the use of fiber rolls instead of the gravel bag check dams. Per these photographs, the fiber rolls were ineffective barriers where they were placed and in other places, they were missing. As such, the Discharger should have installed the gravel bag check dams as specified in the SWPPP. The total length of perimeter control needed is approximately 200 feet. The economic benefit is the avoided cost of implementing adequate perimeter controls since they never installed the gravel bag check dams. The cost to implement the gravel bags resulted in an avoided cost of \$1,958.

For Violation 3, the General Permit requires the Discharger to cover and berm all loose stockpiled construction materials that are not actively being used. On November 26, 2019 and December 5, 2019, the Regional Board noted one larger stockpile (estimated to be 15 feet by 15 feet) that was never covered and three smaller stockpiles that were covered by the December 5, 2019 inspection. Violation 3 is considered negligible since the avoided and delayed cost to purchase and install the covers due to the size of the piles are minimal.

For Violation 4, the General Permit requires the Discharger to implement good housekeeping measures for waste management. On November 26, 2019 and December 5, 2019, the Regional Board observed concrete rinse or wash materials on impervious or pervious site surfaces, the portable toilet was missing secondary containment, and waste materials stockpiled on the ground. For the portable toilet, it is assumed that the Discharger would have purchased a containment pan for the duration of the project. However, since the Regional Board noted it was not present in its November 26, 2019 inspection report, the economic benefit assuming that start date is an avoided cost of \$116. For the containment and management of waste materials, it is assumed that the Discharger could have rented a 20-cubic yard dumpster to store trash and debris. The economic benefit is the avoided cost of not having a method to store trash and debris from the time it was noted on the November 26, 2019 inspection report, which amounts to \$404.

For Violation 5, the General Permit requires that the Discharger submit annual reports by September 1st of each year in SMARTS. However, the annual reports for 2017/2018, 2018/2019 and 2019/2020 were not submitted. The economic benefit is the avoided cost of submitting the annual reports. It is assumed it takes a minimum of two hours for a QSP to prepare the report. Writing the report and performing activities defined in the report resulted in an avoided cost of \$569 for all three reports.

For computational purposes, the penalty payment date was established as March 17, 2023. Changes to this date will affect the total economic benefit. Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be approximately \$3,048. The Enforcement Policy states (pg. 21) that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” Therefore, the minimum total liability associated with the economic benefit is approximately \$3,353.

Step 8. Other Factors as Justice May Require

In accordance with Step 8 of the Enforcement Policy, the Total Base Liability Amount may be adjusted under the provision for “other factors as justice may require” if express findings are made to justify this. Circumstances warranting an adjustment under this step include the cost of investigation and enforcement.

Here, the Regional Board accrued **\$12,132** in staff costs associated with the investigation and preparation of this Complaint. It is appropriate to increase the Total Base Liability Amount by **\$12,132**. This increase is in consideration of the costs of investigation and enforcement relative to the Total Base Liability Amount, is warranted given the totality of the circumstances, and is intended to serve as a sufficient general and specific deterrent against further violations. This increases the total liability to \$124,238.68.

Step 9. Maximum and Minimum Liability Amounts

Statutory Maximum under Water Code section 13385(c): \$160,870.

Mandatory Minimum required under the Enforcement Policy: The minimum liability for a discretionary penalty is equal to the economic benefit of noncompliance plus 10%. Using an economic benefit of \$3,048, the mandatory minimum liability amount is \$3,353.

Step 10. Final Liability Amount: \$124,238

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts were within the statutory minimum and maximum amounts. The final liability amount was calculated by adding the Total Base Liability for the violations with the Staff cost accrued by the Regional Board associated with the investigation, preparation, and enforcement of the violations. Therefore, the proposed final liability amount is **\$124,238**.

**LA Community Water Justice Grants Program
PROJECT PROPOSAL UPDATE**

Applicant: *Santa Clarita Organization for Planning and the Environment*

Contact: Lynne Plambeck, exec-scope@earthlink.net, (661) 255-6899
PO box 1182, Canyon Country, CA 91386

Project Title: Newhall Creek Community Watershed Education and Restoration Project

Amount requested: \$100,896

Project duration: 32 months

Project Description: Newhall Creek (Creek), a tributary of the Santa Clara River, runs through the community of Newhall and past the McGrath Elementary School in the largely Spanish speaking area and disadvantaged community of Santa Clarita. The Creek, still natural in some areas, and rip-rapped or soft-bottom hardscaped in others, is often called "the Wash." It is littered with trash and the native flora is sometimes dominated by the invasive *Arundo donax*. Several drinking water wells are located downstream from this section of the Creek.

Santa Clarita Organization for Planning and the Environment (SCOPE), in coordination with two elementary schools and the state-funded "Rise" after school program, will provide a 2.5- to 3-year creek education and restoration program. This education and restoration program is also referred to herein as the "supplemental environmental project" (SEP). The program will initially be integrated into the McGrath Elementary School after school enrichment program, and will then expand to Newhall Elementary School's after school curriculum. The work plan calls for implementation of the program at McGrath Elementary School in year 1, and then expanding it to the Newhall Elementary School enrichment program the following year, then providing the program in both schools again in year 3.

Activities in the watershed curriculum include the following:

- 1) Lessons on watershed issues and its connection to water supply and water quality through hands on demos and projects.
- 2) Supervised watershed related field trips.
- 3) Creek clean-ups to improve water quality, involving both parents and students.
- 4) Student-led water quality testing.
- 5) Inclusion and growth of native riparian plants in the school's garden project for re-vegetation.

The clean-ups and water quality testing projects will be documented on video; students will develop and produce public service announcements on water quality issues, and share these videos with the entire school, PTA, and at the local community center. "Rise" will provide bilingual and translation services as needed. Student activities during the project will be adjusted to comply with any COVID-related public health requirements.

The SEP will focus on surface water. The presence of plastic and other trash is a major problem in the Santa Clara River and its tributaries, including the Creek. Paint, oil, and other pollutants are also dumped in storm drains that flow to the River and the Creek. The prevalence of plastic trash and some pollutant disposal is due to a lack of awareness about the detrimental impacts such pollutants have on humans and animals, and a lack of education, which may in part be due to a language barrier, especially in the Spanish-speaking Newhall area.

Using SEP funds, SCOPE will provide a weekly watershed program presentation with at least one outdoor activity per month, including but not limited to the following: a Creek clean-up; a hike along the Santa Clara River trail or in another nearby state park creek area to aid in education about the watershed; a visit to the Nature Center or to the local water treatment plant; and planting native vegetation or removal of Arundo, as permitted. Four planned field trips will be watershed based.

Through this SEP, SCOPE aims to develop in students a "sense of place" and of stewardship for Newhall Creek and the Santa Clara River watershed that will be retained throughout their lives, and conveyed to their parents and their peers, thus benefiting the whole community. This program will also serve as a pilot program that could be incorporated in the future in schools throughout the Santa Clarita Valley as a part of the local elementary school curriculum.

Project Staff:

Senior Program Staff – Frank Rodriguez, Rise Program Manager, coordination, and oversight.

A "watershed enrichment coordinator" will be hired to work in the program for two hours on Thursdays and four hours on Fridays, and on days when field trips, clean ups and other longer events will occur (6 hours per week for 30 weeks). The program will be organized in learning blocks, allowing flexibility for weather, and trip scheduling, as well as ensuring that one block is completed before moving on to the next block. This coordinator will be chosen from 3rd or 4th year college students looking for part-time employment with a background in environmental science. Volunteers and/or experts will also participate in these programs. (See original timeline attachment for more details on the learning blocks).

Volunteers will help with field trips.

Payroll and payroll accounting will be managed through the Rise program, with invoices for salaries submitted to the SCOPE grant fund for payment.

Timeline & Deliverables: Please identify tasks and deliverables for 25%, 50% 75% and 100% completion milestones, and indicate a target completion date for each milestone. The target date may be expressed as number of months from project initiation. For example, if you expect to achieve your 25% milestone after three months, indicate “Completion Date Month 3.” Depending on your project workplan, project phases may not all be of equal length. Please express the timeline that will work best for your project. Provide a line-item budget for each task. **The maximum allowable project length is 36 months, and any funds not expended within the 36-month period must be returned. Therefore, we advise applicants to submit projects no longer than 32 months to allow space for unexpected delays which may extend the timeline.**

Timeline & Deliverables			
Milestone	Tasks	Deliverables	Budget Sub-total for Milestone
<p>25% Complete</p> <p>Completion Date: Month 1</p>	<p>Task 1: Purchase equipment (water test kits, binoculars, microscopes, video equipment, ipads) for first year McGrath program</p>	<p>Watershed Education programming pre-planning with instructors. Program readiness for start of the school year.</p> <p>Submit 25% Complete report (narrative & financial).</p>	<p>\$ Equipment purchase: 12B, \$208 (video microphones) 13B, \$2200 (Macbook Pro) 14B, \$4800 (8-IpadAirs) – filming/data 15B, \$893 (20 binoculars) 16B, \$1254 (20 microscopes) 17B \$2880 (water testing kits) Sub-total: \$ 12235</p>
<p>50% Complete</p> <p>Completion Date: Month 11</p>	<p>Task 2: McGrath Program 2.a) teach 30 sessions 2.b) 5 field trips or in-house science presentations as permitted by County or School Covid health requirements, and 4 creek cleanups 2.c) purchase supplies – paper, poster paper, pencils, work books, drawing supplies, trash bags, PPE 2.d) submit progress report to the Rose Foundation</p>	<p>Deliver curriculum to 80 McGrath Elementary enrichment program students. Students develop posters that outline how water gets to them (broken down by grade group). The posters outline the local watershed, the water cycle, how our water gets to us, how pollution can occur (broken down by grade group). Collect and test water from the Creek and other local water sources. Students create a video PSA that describes the importance of the Creek, which will be aired in other classes and on local media. Students will also begin planting restoration garden. Submit Quarterly reporting as required under SEP Policy Submit 50% Complete report (narrative & financial).</p>	<p>\$Supplies: 18B, \$500 (Lab materials) 19B, \$600 (Gardening equip.) 20B \$100 (Office supplies) Salaries/overhead: 3B, \$1080 (Prog. Mngr.) 5B, \$5120 (Instructor) 8B, \$2400 (Outside Experts) 9B \$2100 (SCOPE Admin.) Creek clean ups: 21B \$300 (Supplies & tools) 22B \$500 (Trash hauling) Field trips/presentations: 25B, \$2150 (Field trips/travel) 27B \$800 (Science labs) Sub-total: \$15650</p>

Santa Clarita Organization for Planning and the Environment

<p>75% Complete</p> <p>Completion Date: Month 22</p>	<p>Task 3. Add second school (Newhall Elementary). Repeat preparation and equipment purchase above for second school.</p> <p>Task 4. Repeat curriculum above for new set of students at McGrath (no new equipment purchase needed except for breakage) and additional new students at Newhall Elementary.</p>	<p>Deliver curriculum to approximately 80 McGrath Elementary enrichment program students. Add approximately 80 Newhall Elementary enrichment students. Students develop posters that outline how water gets to them (broken down by grade group). The posters outline the local watershed, the water cycle, how our water gets to us, how pollution can occur (broken down by grade group). Students will collect and test water from the Creek and other local water sources. Students create a video PSA that describes the importance of the Creek, which will air in other classes and on local media. Students at Newhall will begin planting restoration school garden.</p> <p>Report to Rose Foundation Submit Quarterly reporting as required under SEP Policy Submit 75% complete report (narrative & financial).</p>	<p>\$Equipment for 2nd school: 12D, \$208 (video microphones) 13D, \$2200 (MacBook Pro) 14D, \$4800 (8 IpadAirs) 15D, \$893 (20 binoculars) 16D, \$1254 (20 microscopes)</p> <p>Equipment (both schools): 17D \$5760 (Water Testing kits) 18D \$750 (Lab supplies) Gardening, classroom supplies (both schools): 19D \$1000 (tools, seeds, etc.) 20D \$200 (Office supplies) Salaries/overhead (incl. 2nd school): 3D/4D \$2160 (Prog. Mang.) 5D/6D \$8840 (Instructor) 8D, \$2400 (Outside experts) 9D \$2264 (SCOPE admin.) Creek clean ups (both schools): 21D \$450 (clean-up supplies/tools) 22D \$500 (Trash hauling) Field trips/presentations) 25D, \$2150 Field trips/travel) 27D \$1200 (Science labs)</p> <p>Sub-total: \$37029</p>
<p>100% Complete</p> <p>Completion Date: Month 32</p>	<p>Task 5. Repeat program for both schools for next school year. No new equipment purchase needed.)</p> <p>Task 6. Invite other schools to view program to lay groundwork for future expansion.</p>	<p>Watershed education to two school enrichment programs. Profile program to other local elementary schools. Final report to Rose Foundation.</p>	<p>Water Testing Kits (both schools): 17F \$5760 (Testing kits) 18F \$500 (Lab materials) Gardening, classroom supplies (both schools): 19F \$450 (tools, seeds, etc.)</p>

Santa Clarita Organization for Planning and the Environment

	Task 7. Provide final report to Rose Foundation	Submit Final Quarterly reporting as required under SEP Policy. Submit 100% Complete report (narrative & financial).	20F \$100 (Office supplies) Salaries/overhead both schools: 3F, \$2160 (Prog. Mngr.) 5F, \$9072 (Instructor) 8F, \$2500 (Outside experts) 9F \$2250 (SCOPE admin.) Creek clean ups both schools: 21F \$300 (Clean-up supplies/tools) 22F \$500 (Trash hauling) Field trips/in house presentations): 25F, \$1500 (Field trips/travel) 27F \$800 (Science labs) Sub-total: \$25892
Ongoing Tasks	SCOPE - SEP complete after three years, but hopefully other local elementary schools will continue the program of their own accord and with separate funding. <u>Rose Foundation:</u> Project administration, oversight and reporting to Regional Board: 1. Rose shall forward all 3-month quarterly reports to the Regional Board within 1 month of receipt from SCOPE (ie – submit periodic report to Regional Board by April 30, July 31, Oct. 31, Jan 31 of each year in which the project is active). 2. SCOPE will complete and Rose shall provide all milestone completion reports to the Regional Board as part of the June 1 and December 1 SEP Program reports required by the Regional Board SEP Policy. 3. Rose shall use <i>SCOPE'S</i> 100% completion report as the basis for a Certificate of Completion, and shall submit the Certificate of Completion to the Regional Board after the conclusion of the project.		SCOPE Sub-total: \$90,806 Rose Fdn. Sub-total: \$10,090
Total Project			Project Total equals \$100,896

Attach your line-item budget as an excel spreadsheet, and clearly relate all line items to the tasks in the chart. Once you submit your budget, the Rose Foundation will finalize to include our project administration costs. Please do not submit the Update Form or budget as PDFs. In order to meet Regional Board ADA requirements, and to allow the Rose Foundation to enter our information, we need these materials as word docs, excel sheet, or equivalent. Thank you!

Please Note: Once the project is approved, any line-item variation of more than 10% will require advance approval.