

ATTACHMENT A – PENALTY CALCULATION METHODOLOGY

**SETTLEMENT AGREEMENT AND STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R4-2024-0166**

IN THE MATTER OF

**JAMES S. RASMUSSEN AND JEANNE T. RASMUSSEN, AS TRUSTEES OF THE
RASMUSSEN LIVING TRUST**

James S. Rasmussen and Jeanne T. Rasmussen, as trustees of the Rasmussen Living Trust (collectively, Dischargers), are alleged to have violated Clean Water Act section 301, Water Code section 13376, and State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit) while conducting construction work at the Oxnard Project development (Project), located at 700 West Doris Avenue in Oxnard, California (Site). The Site covers 1.33 acres and was enrolled under the General Permit in May 2020, having a Risk Level of 1.

The Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) Prosecution Team derived the proposed administrative civil liability for each alleged violation in accordance with the factors required to be considered pursuant to Water Code section 13385, subdivision (e) and the State Water Resources Control Board's Water Quality Enforcement Policy effective October 5, 2017 ([2017 Enforcement Policy](#)).

Violation 1: Unauthorized Discharge of Sediment-Laden Stormwater

The Dischargers violated Clean Water Act section 301 (33 U.S.C. § 1311), Water Code section 13376, General Permit sections III.B. and V.A.2., and General Permit, Attachment C, section A.1.b., on March 28, 2022, by discharging 10,629 gallons of sediment-laden stormwater to a water of the United States, not otherwise specifically authorized by a permit.

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.) Discharges associated with construction activity are authorized only if dischargers comply with all requirements, provisions, limitations, and prohibitions in the General Permit, including implementation of best management practices (BMPs). General Permit section V.A.2. and General Permit, Attachment C, section A.1.b., require dischargers to minimize or prevent pollutants in stormwater discharges and authorized non-stormwater 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 28, 2022, the City of Oxnard, Public Works Department staff inspected the Site during a qualifying storm event (QSE) and observed sediment-laden stormwater discharging from the Site onto West Doris Avenue. The National Oceanic and Atmospheric Administration's (NOAA) "Oxnard Ventura CO Airport, Ca US Rain Gauge," located approximately 1.2 miles from the Site, recorded 1.1 inches of rainfall precipitation on March 28, 2022. Photos from the City of Oxnard, Public Works Department's inspection show there were no perimeter controls at the Site. Sediment-laden stormwater was discharging from the Site both along Doris Avenue and in the alleyway that flows onto Doris Avenue. Discharges from the Site flow towards Ventura Road into the open channel drain on Channel Islands Boulevard, which flows into the Channel Islands Harbor, a water of the United States.

Previously, on March 11, 2024, Los Angeles Water Board staff had inspected and observed the lack of BMPs at the Site. The perimeter controls had been removed because the Dischargers were working on curbs and sidewalks at the Site. There were no perimeter control BMPs observed on the Site. The rain on March 28, 2022, was in the forecast for over a week; the perimeter controls should have been reinstalled prior to the forecasted rain event to prevent sediment-laden water from leaving the Site.

This discharge was not specifically authorized by the General Permit or another NPDES permit; only discharges that have been controlled with BMPs that achieve BAT and BCT are authorized. Perimeter controls BMPs were not present on March 28, 2022 and therefore, did not achieve BAT or BCT. Because the Dischargers failed to properly implement perimeter control BMPs as required by the General Permit, all discharges from the Site were prohibited.

Step 1. Actual or Potential for Harm for Discharge Violations

Step 1 considers the actual harm or potential harm to the water body's beneficial uses caused by the violation by considering the degree of toxicity of the discharge, the actual harm or potential harm to beneficial uses, and the discharge's susceptibility to cleanup or abatement.

a) Factor 1: Degree of Toxicity of the Discharge: 2

The evaluation of the degree of toxicity considers the physical, chemical, biological, and/or thermal characteristics of the discharge, waste, fill, or material involved in the violation or violations and the risk of damage the discharge could cause to the receptors or beneficial uses. A score between 0 and 4 is assigned based on a determination of the risk and threat of the discharged material.

For this violation, a score of 2 is assigned. A score of 2 is defined in the 2017 Enforcement Policy as "[d]ischarged 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 level of threat to potential receptors).”

A score of 2 was assigned for this factor because discharges of sediment-laden stormwater can cloud the receiving water, thereby reducing the amount of sunlight transmitted to underwater plants impairing the ability of the underwater plants to produce energy and dissolved oxygen through photosynthesis. Sediment discharged to surface waters can also clog fish gills and bury fish eggs, and contribute to high turbidity in the water, which also results in reduced sunlight. Sediment can also transport materials such as nutrients, metals, and oils, which can be toxic to aquatic organisms. Thus, the discharge of sediment-laden stormwater is detrimental to the aquatic community, reducing biological productivity, degrading habitat quality, and harming wildlife. Sediment in water poses a moderate threat because of the likelihood that the discharged material will harm aquatic life. Therefore, a score of 2 is appropriate.

b) Factor 2: Actual Harm or Potential Harm to Beneficial Uses: Moderate (3)

The evaluation of the actual harm 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 Los Angeles Water Board may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. Direct or indirect actual harm or potential for harm may be considered under this factor. The score for this factor ranges from 0 and 5 based on a determination of whether the harm or potential for harm is negligible (0), minor (1), below moderate (2), moderate (3), above moderate (4), or major (5).

Discharge from the Site flows toward Ventura Road into the open channel drain on Channel Islands Boulevard, which flows into the Channel Islands Harbor. As described in the Water Quality Control Plan: Los Angeles Region Basin Plan for the Coastal Watershed of Los Angeles and Ventura Counties ([Basin Plan](#)), the existing beneficial uses of the Channel Islands Harbor include contact and non-contact water recreation, industrial service water supply, navigation, commercial and sport fishing, and marine and wildlife habitats that provide homes for fish species like the bass, rockfish, yellow tail, salmon, mackerel, leopard shark, and California halibut.

For this violation, a score of Moderate (3) is assigned. A score of Moderate (3) is defined in the 2017 Enforcement Policy as “moderate harm or potential harm to beneficial uses. A score of moderate is typified by 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.”

Excess sediment in surface waters poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material could harm aquatic life. A discharge of sediment has potential to deleteriously impact aquatic plants, fish, macroinvertebrates, and other aquatic organisms in the short term. As discussed above, sediment in water bodies can lead to fish population loss caused by loss of oxygen, toxicity, and degradation of spawning areas and other habitat. Sediment can also transport other materials such as nutrients, metals, and oil and grease, which can also negatively impact aquatic life. Thus, the discharge of sediment had the potential to negatively impact wildlife habitat. Sediment laden water affects body contact recreation because the sediment and any pollutants bound to it can be ingested. Sediment laden water affects non-body contact recreation because the water becomes visually unappealing. Therefore, the sediment discharged from the Site posed a moderate threat to beneficial uses supporting aquatic life and recreation, however, it was likely to attenuate without appreciable medium or long term acute or chronic effects. Therefore, a score of Moderate (3) is appropriate for this factor.

c) Factor 3: 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 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent 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 time. Because the discharge likely dispersed and dissipated in the watershed, cleanup or abatement of sediment was not possible. Therefore, a score of 1 is assigned for this factor.

d) Potential for Harm Score: 6

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

Potential for Harm Score = 2 (Degree of Toxicity) + 3 (Actual Harm or Potential Harm to Beneficial Uses) + 1 (Susceptibility to Cleanup or Abatement) = 6

Step 2. Assessments for Discharge Violations

Step 2 addresses per gallon and per day assessments 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 General Permit prohibits all discharges except stormwater 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 Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) are authorized. Such unauthorized discharges also violate Clean Water Act section 301 and Water Code section 13376. On March 28, 2022, there were no perimeter control BMPs present to prevent sediment-laden stormwater from discharging from the Site. Because the Dischargers did not effectively implement BMPs to achieve BAT and BCT, the discharge rendered the requirements in Clean Water Act section 301, Water Code section 13376, and the General Permit, ineffective in their essential function of protecting water quality. Thus, a score of a major Deviation from Requirement is assigned for this factor.

b) Per Gallon Assessments for Discharge Violations: \$26,961

When there is a discharge, the Los Angeles Water Board determines the initial liability on a per gallon basis using the Potential for Harm score from Step 1 and the Deviation from Requirement of the violation.

Table 1 of the 2017 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.

Los Angeles Water Board staff calculated that over the course of a storm on March 28, 2022, approximately 10,629 gallons of sediment-laden stormwater discharged off the Site, resulting in the discharge of sediment into Channel Islands Harbor.

Water Code section 13385, subdivision (c) provides that an administrative civil liability of up to \$10 per gallon shall apply to volumes of waste discharged but not cleaned up in excess of 1,000 gallons.

This Per Gallon Factor is multiplied by the volume of the discharge to determine the per gallon assessment of liability, as described below.

Per Gallon Assessment = 0.28 (Per Gallon Factor) x (10,629 spill volume – 1,000 gallons) x \$10 per gallon = \$26,961

c) Per Day Assessments for Discharge Violations: \$2,800

When there is a discharge, the Los Angeles Water Board shall determine the Initial Liability Amount on a per day basis using the Potential for Harm score from Step 1 and the Deviation from Requirement score.

Table 2 of the 2017 Enforcement Policy (p. 15) is used to determine a “Per Day Factor” based on the Potential for Harm score and the Deviation from Requirement. Using a Potential for Harm score of 6 and a major Deviation from Requirement, the Per Day Factor is 0.28. The discharge occurred for 1 day on March 28, 2022. Water Code section 13385, subdivision (c)(1) provides for liability of up to \$10,000 per day of violation for each violation.

The Per Day Factor is multiplied by the statutory maximum per day of violation to determine the per day assessment of liability, as described below.

Per Day Assessment = 0.28 (Per Day Factor) x 1 day x \$10,000 per day of violation = \$2,800

d) Initial Liability Amount: \$29,761

The Initial Liability Amount is determined by adding the Per Gallon Assessment and Per Day Assessment, as described below.

Initial Liability Amount = \$26,961 (Per Gallon Assessment) + \$2,800 (Per Day Assessment) = \$29,761

Step 3. Per Day Assessment for Non-Discharge Violations

This factor does not apply to this violation.

Step 4. Adjustment Factors

The 2017 Enforcement Policy states three additional factors must be considered for potential modification of the Initial Liability Amount: the violator’s degree of culpability, the violator’s prior history of violations, and the violator’s voluntary efforts to cleanup, or its cooperation with regulatory authorities after the violation.

a) Degree of Culpability: 1.4

The 2017 Enforcement Policy states that higher liability should result from intentional or negligent violations as opposed to accidental violations. The

culpability multiplier ranges between 0.75 to 1.5, with a higher multiplier applied to intentional misconduct or gross negligence.

On March 11, 2022, Los Angeles Water Board staff inspected the Site and noted that there were no perimeter control BMPs installed. The perimeter controls had been removed because the Dischargers were working on placing the curbs and sidewalks at the Site. Staff emailed the Dischargers' representatives on March 14, 2022 and noted the perimeter control BMP violation. The rain on March 28, 2022, was in the forecast for over a week; at a minimum, the perimeter controls should have been reinstalled by March 27, 2022, to prevent sediment-laden water from leaving the Site. A reasonable and prudent permittee would have perimeter controls in place prior to a forecasted rain event to prevent discharges of sediment-laden stormwater from the Site, as such a discharge would be highly foreseeable with a lack of such BMPs. The Dischargers' failure to implement perimeter control BMPs, despite being informed of the BMP violation, demonstrates an intent to fail to exercise due care. Therefore, a multiplier of 1.4 was assessed.

b) History of Violations: 1.0

Where a discharger has no prior history of violations, this factor should be a neutral, or 1.0. Where the discharger has a prior history of 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 a multiplier of above 1.1.

Since the Dischargers have no prior history of violations, a neutral multiplier of 1.0 is assigned.

c) Cleanup and Cooperation: 1.3

This factor considers a discharger's voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance after the violation. A multiplier between 0.75 and 1.5 is to be used, 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. As mentioned above, the discharge likely dispersed and dissipated in the watershed, making cleanup of the sediment not possible. To Los Angeles Water Board staff's knowledge, no perimeter controls in the impacted area following the discharge event were immediately implemented. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability Amount: \$54,165

The Total Base Liability Amount is determined by multiplying the following: the Initial Liability Amount, the degree of culpability score, the history of violations score, and the cleanup and cooperation score.

Total Base Liability Amount = \$29,761 (Initial Liability Amount) x 1.4 (Degree of Culpability) x 1.0 (History of Violations) x 1.3 (Cleanup and Cooperation) = \$54,165.

Violation 2: Failure to Update the SWPPP with a List of Contractors, Subcontractors, and Individuals who will be Directed by the Qualified SWPPP Practitioner (QSP)

The Dischargers violated General Permit section VII.B.5. by failing to include, in the storm water pollution prevention plan (SWPPP), a list of names of all contractors, subcontractors and individuals who would be directed by the Qualified SWPPP Practitioner (QSP) for a total of six (6) days on December 21, 2021, January 6, January 11, January 19, January 25, and March 11, 2022.

Section VII.B.5. of the General Permit requires all dischargers to include, in the SWPPP, a list of all contractors, subcontractors, and individuals who will be directed by the QSP. The list is required to include telephone numbers, work addresses, emergency contact numbers, and the specific areas of responsibility for each subcontractor.

On December 21, 2021, Los Angeles Water Board staff inspected the Site and noted that the Dischargers needed to update the list of contractors and include it in the SWPPP that was present at the Site. The Dischargers were notified of the alleged violation at the inspection and in an inspection follow up email. The list was ultimately submitted via the Stormwater Multiple Application and Report Tracking System (SMARTS) on March 7, 2023. For purposes of settlement, the Prosecution Team has elected to assess 1 day of violation, associated with the December 21, 2021 inspection where the Los Angeles Water Board staff observed this deficiency.

Step 1. Actual or 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

An Initial Liability Amount for each non-discharge violation is determined by considering the Potential for Harm and extent of deviation from applicable requirements for each violation.

a) Potential for Harm: Minor

The Potential for Harm score is either Minor, Moderate, or Major. A score of Minor was assigned for this violation. A score of Minor is defined in the 2017 Enforcement Policy as, “[t]he 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 characteristics of the violation indicate a minor potential for harm.”

A site’s list of contractors and subcontractors is a list of the workers at the Site that are under the supervision of the QSP. The QSP is in charge of ensuring that the Site remains in compliance with the General Permit and implement BMPs to prevent pollutants from leaving the Site. It is important for the list of contractors and subcontractors to be listed in the SWPPP because these contractors and subcontractors conduct work that can potentially pollute receiving waters and they need to be known to the QSP in order for the QSP to effectively complete its responsibilities. However, the failure to include the list of the contractor and subcontractors in and of itself poses a minor threat to beneficial uses because it does not directly lead to a physical impact to the waterbody. Thus, the Potential for Harm score for this violation is Minor.

b) Deviation from Requirement: Major

The Deviation from Requirement is either Minor, Moderate, or Major. A score of Major is assigned for this violation. A score of Major is defined in the 2017 Enforcement Policy as, “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The General Permit requires permittees to have an up-to-date list of contractors and subcontractors in the SWPPP. The Dischargers failed to update the list of contractors and subcontractors until March 7, 2023. Therefore, a major Deviation from Requirement is appropriate.

c) Per Day Factor: 0.35

The Per Day Factor is determined based on the Potential for Harm and Deviation from Requirement scores using Table 3 in the 2017 Enforcement Policy. For a Minor Potential for Harm and Major Deviation from Requirement, the Per Day Factor is 0.35.

d) Initial Liability Amount: \$21,000

The Initial Liability Amount is the Per Day Factor multiplied by the days of violation and the daily statutory maximum liability. Here, the Initial Liability Amount is

determined by multiplying the Per Day Factor of 0.35 by 1 day of violation, by the statutory maximum of \$10,000 per day of violation under Water Code section 13385, subdivision (c)(1).

Initial Liability Amount = 0.35 (Per Day Factor) x 1 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$3,500.

Step 4. Adjustment Factors

The 2017 Enforcement Policy states three additional factors must be considered for potential modification of the Initial Liability Amount: the violator's degree of culpability, the violator's prior history of violations, and the violator's voluntary efforts to cleanup, or its cooperation with regulatory authorities after the violation.

a) Degree of Culpability: 1.3

The 2017 Enforcement Policy states that higher liability should result from intentional or negligent violations as opposed to accidental violations. The culpability multiplier ranges between 0.75 to 1.5, with a higher multiplier applied to intentional misconduct or gross negligence.

The Construction General Permit requires the SWPPP to include the list of contractors, subcontractors and individuals who would be directed by the QSP. As an enrollee under the Construction General Permit, the Dischargers should have known of their obligations under the permit and included in the list in the original SWPPP dated May 12, 2020. Furthermore, Los Angeles Water Board staff told the Dischargers that the list of contractors and subcontractors needed to be updated in the SWPPP at inspections occurring on December 21, 2021, January 6, January 11, January 19, January 25, and March 11, 2022, and in follow-up emails regarding those inspections. Los Angeles Water Board staff also sent a Notice of Violation (NOV) on January 12, 2022 notifying the Dischargers that the list of contractors and subcontractors needed to be updated in the SWPPP. In contrast to what is expected of a reasonable and prudent permittee, the Dischargers knew about this requirement and repeatedly violated it. A multiplier of 1.3 is assigned for this violation.

b) History of Violations: 1.0

Where a discharger has no prior history of violations, this factor should be a neutral, or 1.0. Where the discharger has a prior history of 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 a multiplier of above 1.1.

Since the Dischargers have no prior history of violations, a multiplier of 1.0 is assigned.

c) Cleanup and Cooperation: 1.4

This factor considers a discharger's voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance after the violation. A multiplier between 0.75 and 1.5 is to be used, 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.

Los Angeles Water Board staff told the Dischargers that the list of contractors and subcontractors needed to be updated in the SWPPP at inspections occurring on December 21, 2021, January 6, January 11, January 19, January 25, and March 11, 2022, and in follow-up emails regarding those inspections. Los Angeles Water Board staff also sent a Notice of Violation (NOV) on January 12, 2022 notifying the Dischargers that the list of contractors and subcontractors needed to be updated in the SWPPP. Despite this knowledge, the Dischargers did not update the list of contractors and subcontractors in the SWPPP until March 7, 2023, over a year after receiving the NOV. Therefore, due to the severe lack of cooperation in returning to compliance, a multiplier of 1.4 is assigned for this violation.

Step 5. Total Base Liability Amount: \$6,370

The Total Base Liability Amount is determined by multiplying the following: the Initial Liability Amount, the degree of culpability score, the history of violations score, and the cleanup and cooperation score.

Total Base Liability Amount = \$3,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1.0 (History of Violations) x 1.4 (Cleanup and Cooperation) = \$6,370.

Violation 3: Failure to Establish and Maintain Perimeter Controls

The Dischargers violated Attachment C, section E.1 of the General Permit by failing to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the Site for a total of seven (7) days on December 21, 2021, January 6, January 11, January 19, January 25, and March 11, 2022.

Attachment C, section E.1 of the General Permit states that Risk Level 1 dischargers shall establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from a site.

On December 21, 2021, Los Angeles Water Board staff inspected the Site and observed that work areas at the Site did not have adequate perimeter controls. The Dischargers installed silt fence around the perimeter of the Site that was not trenched in and contained gaps. On January 12, 2022, Los Angeles Water Board staff issued an NOV to the Dischargers stating that there were inadequate perimeter controls at the Site, in violation of the General Permit. During follow-up inspections on January 6, January 11, January 19, and January 25, 2022, Los Angeles Water Board staff continued to observe

inadequate perimeter controls at the Site. On March 11, 2022, the perimeter controls were removed and missing from the Site to pour concrete. This violation is assessed for the six days it was observed.

Step 1. Actual or 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

An Initial Liability Amount for each non-discharge violation is determined by considering the Potential for Harm and extent of deviation from applicable requirements for each violation.

a) Potential for Harm: Moderate

The Potential for Harm score is either Minor, Moderate, or Major. A score of Moderate is assigned for this violation. A score of Moderate is defined in the 2017 Enforcement Policy as, “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.”

As described above, the Site discharges flow into the open channel drain on Channel Islands Boulevard, which flows into the Channel Islands Harbor. Per the Basin Plan, the existing beneficial uses of the Channel Islands Harbor include contact and non-contact water recreation, industrial service water supply, navigation, commercial and sport fishing, and marine and wildlife habitats that provide homes for fish species like the bass, rockfish, yellow tail, salmon, mackerel, leopard shark, and California halibut.

Failure to correctly install and maintain perimeter control BMPs, and then to remove them on March 11, 2022, presents a threat to beneficial uses of the Channel Islands Harbor. A lack of effective perimeter controls can result in the discharge of construction activity related pollutants, and here did in fact result in the discharge of sediment from the Site into the street and eventually the Channel Island Harbor on March 28, 2022. Sediment can clog fish gills, bury fish eggs, fill the channel, and contribute to high turbidity in the water, which results in low sunlight. All these factors are detrimental to habitat for aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

b) Deviation from Requirement: Major

The Deviation from Requirement is either Minor, Moderate, or Major. A score of Major is assigned for this violation. A score of Major is defined in the 2017 Enforcement Policy as, “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The Dischargers failed to install and maintain adequate perimeter controls, as evidenced by the discharge of sediment-laden water on March 28, 2022 and observed on each day of the seven inspections. The effectiveness of this requirement was rendered ineffective in its essential function of protecting water quality. Therefore, the Deviation from Requirement is characterized as Major.

c) Per Day Factor: 0.55

The Per Day Factor is determined based on the Potential for Harm and Deviation from Requirement scores using Table 3 in the 2017 Enforcement Policy. For a Moderate Potential for Harm and Major Deviation from Requirement, the Per Day Factor is 0.55.

d) Initial Liability Amount: \$33,000

The Initial Liability Amount is the Per Day Factor multiplied by the days of violation and the daily statutory maximum liability. Here, the Initial Liability Amount is determined by multiplying the Per Day Factor of 0.55 by 6 days of violation, by the statutory maximum of \$10,000 per day under Water Code section 13385, subdivision (c)(1).

Initial Liability Amount = 0.55 (Per Day Factor) x 6 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$33,000.

Step 4. Adjustment Factors

The 2017 Enforcement Policy states three additional factors must be considered for potential modification of the Initial Liability Amount: the violator’s degree of culpability, the violator’s prior history of violations, and the violator’s voluntary efforts to cleanup, or its cooperation with regulatory authorities after the violation.

a) Degree of Culpability: 1.3

The 2017 Enforcement Policy states that higher liability should result from intentional or negligent violations as opposed to accidental violations. The culpability multiplier ranges between 0.75 to 1.5, with a higher multiplier applied to intentional misconduct or gross negligence.

Los Angeles Water Board staff told the Dischargers of the perimeter control deficiencies during inspections on December 21, 2021, January 6, January 11, January 19, January 25, and March 11, 2022, and in follow-up emails regarding those inspections. Los Angeles Water Board staff also sent a Notice of Violation (NOV) on January 12, 2022 notifying the Dischargers of the deficiencies. In contrast to what is expected of a reasonable and prudent permittee, the Dischargers knew of this requirement and repeatedly violated it. Therefore, a multiplier of 1.3 is assigned for this violation.

b) History of Violations: 1.0

Where a discharger has no prior history of violations, this factor should be a neutral, or 1.0. Where the discharger has a prior history of 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 a multiplier of above 1.1.

Since the Dischargers have no prior history of violations, a multiplier of 1.0 is assigned for this violation.

c) Cleanup and Cooperation: 1.1

This factor considers a discharger's voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance after the violation. A multiplier between 0.75 and 1.5 is to be used, 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.

Los Angeles Water Board staff notified the Dischargers of the need to establish and maintain effective perimeter controls during inspections on December 21, 2021, and January 6, January 11, January 19, January 25 and March 11, 2022. The Dischargers also received an NOV on January 12, 2022 notifying the Dischargers of the perimeter control deficiencies. The Dischargers made corrections to their deficient perimeter controls after each inspection, but the Site was still observed with silt fences that contained tears, gaps and were not properly trenched in at each of these inspections. On March 11, 2011, perimeter controls were removed to pour concrete, and were not reinstalled prior to the March 28, 2022 rain event. Therefore, a multiplier of 1.1 was assessed.

Step 5. Total Base Liability Amount: \$47,190

The Total Base Liability Amount is determined by multiplying the following: the Initial Liability Amount, the degree of culpability score, the history of violations score, and the cleanup and cooperation score.

Total Base Liability Amount = \$33,000 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1.0 (History of Violations) x 1.1 (Cleanup and Cooperation) = \$47,190.

Violation 4: Failure to Stabilize Construction Entrance and Exit

The Dischargers violated Attachment C, section E.1 of the General Permit by failing to stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the Site for a total of six (6) days, December 21, 2021, January 6, January 11, January 19, January 25, and March 11, 2022.

Attachment C, section E.1 of the General Permit states that Risk Level 1 dischargers shall stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

On December 21, 2021, Los Angeles Water Board staff inspected the Site and observed that the construction entrance and exit on F Street did not have adequate stabilization BMPs. The Dischargers had some rocks on the driveway, but sediment was observed on the rocks, on the concrete driveway, and on the street. At follow-up inspections on January 6, 11, 19, and 25, 2022, the construction entrance and exit on F Street was observed to have additional rock and gravel but was still inadequate because sediment was observed to have mobilized and discharged onto the driveway and in the street at each of those inspections. On January 12, 2022, the Los Angeles Water Board issued an NOV stating the F Street entrance and exit did not have the proper stabilization BMPs. During the March 11, 2022, inspection, the construction entrance and exit on F Street was removed to pour concrete for the sidewalk, curb and gutter. However, the Dischargers had opened an additional entrance and exit to the alleyway that leads to Doris Avenue, that did not have any stabilization BMPs. This violation is assessed for a total of 6 days.

Step 1. Actual or 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

An Initial Liability Amount for each non-discharge violation is determined by considering the Potential for Harm and extent of deviation from applicable requirements for each violation.

a) Potential for Harm: Moderate

The Potential for Harm score is either Minor, Moderate, or Major. A score of Moderate is assigned for this violation. A score of Moderate is defined in the 2017 Enforcement Policy as, “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.”

Failure to implement stabilized construction entrances and exits substantially threatens beneficial uses. Without properly stabilized entrance and exit BMPs, pollutants, including sediment, are tracked from the Site into the street, where they will mobilize when it rains and flow into storm drains before reaching Channel Islands Harbor. As discussed in detail in Violation 1, sediment can reduce sunlight and clogs gill, harming the aquatic community and degrading habitat quality. Therefore, the Potential for Harm for this violation is Moderate.

b) Deviation from Requirement: Moderate

The Deviation from Requirement is either Minor, Moderate, or Major. A score of Moderate is assigned for this violation. A score of Moderate is defined in the 2017 Enforcement Policy as, “[t]he 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 General Permit requires that a discharger implement stabilized construction entrances and exits to prevent the discharge of sediment from the site. Here, the Dischargers put down rock and gravel in an attempt to stabilize the construction entrance and exit but did not effectively stabilize the entrance and exit and sediment left the Site, partially compromising the effectiveness of the General Permit requirement designed to protect water quality. Therefore, a Moderate Deviation from Requirement is appropriate.

c) Per Day Factor: 0.35

The Per Day Factor is determined based on the Potential for Harm and Deviation from Requirement scores using Table 3 in the 2017 Enforcement Policy. For a Moderate Potential for Harm and Moderate Deviation from Requirement, the Per Day Factor is 0.35.

d) Initial Liability Amount: \$21,000

The Initial Liability Amount is the Per Day Factor multiplied by the days of violation and the daily statutory maximum liability. Here, the Initial Liability Amount is determined by multiplying the Per Day Factor of 0.35 by 6 days of violation, by the statutory maximum of \$10,000 per day under Water Code section 13385, subdivision (c)(1).

Initial Liability Amount = 0.35 (Per Day Factor) x 6 (days of violation) x \$10,000
(Statutory Maximum Liability) = \$21,000.

Step 4. Adjustment Factors

The 2017 Enforcement Policy states three additional factors must be considered for potential modification of the Initial Liability Amount: the violator's degree of culpability, the violator's prior history of violations, and the violator's voluntary efforts to cleanup, or its cooperation with regulatory authorities after the violation.

a) Degree of Culpability: 1.2

The 2017 Enforcement Policy states that higher liability should result from intentional or negligent violations as opposed to accidental violations. The culpability multiplier ranges between 0.75 to 1.5, with a higher multiplier applied to intentional misconduct or gross negligence.

The General Permit expressly requires that dischargers stabilize all construction entrances and exits. During the December 21 2021 inspection, there were no stabilized BMPs at the entrance and exit of the Site on F Street. At follow up inspections on January 6, January 11, January 19, and January 25, 2022, the Dischargers installed rock and gravel in an attempt to stabilize the entrance and exit. The added gravel did not sufficiently prevent sediment track out from the Site on the sidewalk and into the street. At each of these inspections, Los Angeles Water Board staff notified the Dischargers that the stabilization BMPs were not adequate for the driveway on F street. At the March 11, 2022, inspection, the Dischargers were observed to have opened the other entrance and exit into the alleyway that leads to West Doris Avenue and had not installed any stabilization BMPs on the entryway. The Dischargers' noncompliance with this General Permit requirement fell below the standard of care expected of a reasonable and prudent permittee. Therefore, a multiplier of 1.2 was assessed.

b) History of Violations: 1.0

Where a discharger has no prior history of violations, this factor should be a neutral, or 1.0. Where the discharger has a prior history of 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 a multiplier of above 1.1.

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

c) Cleanup and Cooperation: 1.3

This factor considers a discharger's voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance after the violation. A multiplier between 0.75 and 1.5 is to be used, 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.

This violation was observed at Site inspections on December 21, 2021, and January 6, January 11, January 19, January 25, and March 11, 2022. Los Angeles Water Board staff notified the Dischargers of the violation at each of these inspections. Notice was again provided in follow up emails sent on December 21, 2021, January 6, 11 and 26, 2022, and in the January 12, 2022, NOV. Los Angeles Water Board staff observed during the January 6 and 11, 2022 inspections that the Dischargers made some effort to supplement the stabilization BMPs by placing additional rocks, but the entrance and exit stabilization still was not sufficient, as evidenced by sediment track out on the sidewalk and into the street. On March 11, 2021, when the alleyway entrance and exit was created, Dischargers did not implement any stabilization BMPs, but they claim to have cleaned the alley way at the conclusion of work days. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability Amount: \$32,760

The Total Base Liability Amount is determined by multiplying the following: the Initial Liability Amount, the degree of culpability score, the history of violations score, and the cleanup and cooperation score.

Total Base Liability Amount = \$21,000 (Initial Liability Amount) x 1.2 (Degree of Culpability) x 1.0 (History of Violations) x 1.3 (Cleanup and Cooperation) = \$32,760.

Violation 5: Failure to Implement Good Housekeeping Measures for Concrete Spills

The Dischargers violated General Permit, Attachment C, sections B.2.g. and B.2.i. by failing to implement good housekeeping measures for concrete spills for a total of five (5) days on December 21, 2021, and January 11, January 19, January 25, and March 11, 2022.

Section B.2.g. of Attachment C of the General Permit requires that Risk Level 1 dischargers implement good housekeeping measures for waste management by implementing procedures that effectively address hazardous and non-hazardous spills. Similarly, section B.2.i. requires that Risk Level 1 dischargers implement good housekeeping measures for waste management to ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.

On December 21, 2021, Los Angeles Water Board staff observed a wet concrete spill directly on the ground without any cleanup measures or containment BMPs in place. In

follow up inspections on January 11, and January 19, 2022, Los Angeles Water Board staff observed a different concrete or drywall mix on the ground flowing down the slopes at the Site without proper BMPs in place. These spills were observed in the same areas at the Site. On January 25, 2022, Los Angeles Water Board staff observed new wet and dry concrete or drywall mix spills at the Site. On March 11, 2022, Los Angeles Water Board staff observed wet and dry concrete materials on the ground without any cleanup measures or adequate containment BMPs in place. Concrete mixing activities were also observed without any secondary containment BMPs at this inspection. The Discharger did not implement appropriate concrete washout areas at any of these inspections. The January 12, 2022, NOV informed the Dischargers of the violation and the requirement to clean and dispose of all wet and dried concrete for the remainder of the Project.

Step 1. Actual or 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

An Initial Liability Amount for each non-discharge violation is determined by considering the Potential for Harm and extent of deviation from applicable requirements for each violation.

a) Potential for Harm: Moderate

The Potential for Harm score is either Minor, Moderate, or Major. A score of Moderate is assigned for this violation. A score of Moderate is defined in the 2017 Enforcement Policy as, “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.”

Failure to implement good housekeeping measures potentially could result in the discharge of pollutants from the Site into the Channel Islands Harbor. Concrete spills are pollutant sources, and when not properly contained and cleaned up, could result in the discharge of concrete from the Site. Concrete waste and washout water are caustic, corrosive, contain toxic metals and have a pH near 12. Concrete-laden stormwater that is discharged can harm fish gills, eyes and interfere with reproduction. Concrete laden water affects body contact recreation because the pollutants from concrete can be ingested. Concrete laden water affects non-body contact recreation because the water becomes visually unappealing. This poses a substantial threat to beneficial uses listed in

the Basin Plan such as wildlife habitat and contact and non-body contact recreation. Therefore, the potential for harm for this violation is Moderate.

b) Deviation from Requirement: Major

The Deviation from Requirement is either Minor, Moderate, or Major. A score of Major is assigned for this violation. A score of Major is defined in the 2017 Enforcement Policy as, “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The General Permit requires dischargers to implement good housekeeping measures for waste management by implementing procedures that effectively address hazardous and non-hazardous spills. However, Los Angeles Water Board staff observed evidence of wet and dry concrete spills at five inspections without proper procedures to effectively address the spills, such as immediately cleaning up the spill, having containment measures in place or having the appropriate concrete washout areas; thereby, rendering the requirement ineffective in its essential function of protecting water quality. Therefore, the Deviation from Requirement is Major.

c) Per Day Factor: 0.55

The Per Day Factor is determined based on the Potential for Harm and Deviation from Requirement scores using Table 3 in the 2017 Enforcement Policy. For a Moderate Potential for Harm and Major Deviation from Requirement, the Per Day Factor is 0.55.

d) Initial Liability Amount: \$27,500

The Initial Liability Amount is the Per Day Factor multiplied by the days of violation and the daily statutory maximum liability. Here, the Initial Liability Amount is determined by multiplying the Per Day Factor of 0.55 by 5 days of violation, by the statutory maximum of \$10,000 per day under Water Code section 13385, subdivision (c)(1).

Initial Liability Amount = 0.55 (Per Day Factor) x 5 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$27,500.

Step 4. Adjustment Factors

The 2017 Enforcement Policy states three additional factors must be considered for potential modification of the Initial Liability Amount: the violator’s degree of culpability, the violator’s prior history of violations, and the violator’s voluntary efforts to cleanup, or its cooperation with regulatory authorities after the violation.

a) Degree of Culpability: 1.3

The 2017 Enforcement Policy states that higher liability should result from intentional or negligent violations as opposed to accidental violations. The culpability multiplier ranges between 0.75 to 1.5, with a higher multiplier applied to intentional misconduct or gross negligence.

The Dischargers did not implement good housekeeping measures on the Site to address concrete spills, such as the use of a washout area or containment bins for concrete waste. The Dischargers cleaned up the spills when notified, but five separate concrete spills were still observed during five different inspections. The Dischargers' noncompliance with this General Permit requirement fell below the standard of care expected of a reasonable and prudent permittee with specific knowledge of the General Permit requirement. Therefore, a multiplier of 1.3 was assessed.

b) History of Violations: 1.0

Where a discharger has no prior history of violations, this factor should be a neutral, or 1.0. Where the discharger has a prior history of 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 a multiplier of above 1.1.

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

c) Cleanup and Cooperation: 1.3

This factor considers a discharger's voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance after the violation. A multiplier between 0.75 and 1.5 is to be used, 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.

The Dischargers were notified of their failure to meet the requirement during the initial inspection on December 21, 2021, the January 12, 2022, NOV, and follow-up inspections on January 11, January 19, January 25, and March 11, 2022. The Dischargers were also notified in follow up emails on December 21, 2021, and January 11, 20 and 26, 2022 that concrete spills were observed without proper clean up measures in place and adequate BMPs. The Dischargers cleaned up each of the spills when notified, but new spills were observed at each of these inspections. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability Amount: \$46,475

The Total Base Liability Amount is determined by multiplying the following: the Initial Liability Amount, the degree of culpability score, the history of violations score, and the cleanup and cooperation score.

Total Base Liability Amount = \$27,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1.0 (History of Violations) x 1.3 (Cleanup and Cooperation) = \$46,475.

Violation 6: Failure to Implement Good Housekeeping Measures for Trash and Debris.

The Dischargers violated Attachment C, sections B.2.f and B.6 of the General Permit by failing to implement good housekeeping measures for trash and debris and stockpiling waste materials for a total of four (4) days on December 21, 2021, and January 6, January 12, and March 11, 2022.

Section B.2.f of Attachment C of the General Permit requires that Risk Level 1 dischargers implement good housekeeping measures for waste management, which, at a minimum, shall consist of containing and securely protecting stockpiled waste material from wind and rain at all times unless actively being used.

Section B.6 of Attachment C of the General Permit further states that Risk Level 1 dischargers shall implement good housekeeping measures on the construction site to control the air deposition of site materials and from site operations. Such particulates can include, but are not limited to, sediment, nutrients, trash, metals, bacteria, oil and grease, and organics.

On December 21, 2021, Los Angeles Water Board staff inspected the Site and observed poor housekeeping measures for trash and construction debris, with trash and debris observed throughout the Site, including in stockpiles. The Dischargers were notified of the violation and were told to follow the General Permit requirements to keep the Site clean. During follow-up inspections on January 6, January 11, and March 11, 2022, Los Angeles Water Board staff observed additional poor housekeeping violations at the Site, including trash and construction debris throughout the Site. Los Angeles Water Board staff sent an NOV on January 12, 2022, notifying the Dischargers of this violation.

Step 1. Actual or 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

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An Initial Liability Amount for each non-discharge violation is determined by considering the Potential for Harm and extent of deviation from applicable requirements for each violation.

a) Potential for Harm: Moderate

The Potential for Harm score is either Minor, Moderate, or Major. A score of Moderate is assigned for this violation. A score of Moderate is defined in the 2017 Enforcement Policy as, “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory or regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm. Most non-discharge violations should be considered to present a moderate potential for harm.”

The Site’s discharge flows to the Channel Islands Harbor. The Dischargers’ lack of good housekeeping measures to control the deposition of trash and debris poses a substantial threat to the beneficial uses of the Channel Islands Harbor. Trash and debris transport chemical pollutants which may cause harm to wildlife habitats, threaten aquatic life, and interfere with human use in the form of contact and non-contract recreation. Thus, the potential for harm for this violation is Moderate.

b) Deviation from Requirement: Major

The Deviation from Requirement is either Minor, Moderate, or Major. A score of Major is assigned for this violation. A score of Major is defined in the 2017 Enforcement Policy as, “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The General Permit requires permittees to implement housekeeping practices and BMPs to control trash or debris on Site. The Dischargers did not have controls or containment in place for trash and debris, resulting in the accumulation and migration of trash and debris on Site. Therefore, the Deviation from Requirement is characterized as Major.

c) Per Day Factor: 0.55

The Per Day Factor is determined based on the Potential for Harm and Deviation from Requirement scores using Table 3 in the 2017 Enforcement Policy. For a Moderate Potential for Harm and Major Deviation from Requirement, the Per Day Factor is 0.55.

d) Initial Liability Amount: \$22,000

The Initial Liability Amount is the Per Day Factor multiplied by the days of violation and the daily statutory maximum liability. Here, the Initial Liability

Amount is determined by multiplying the Per Day Factor of 0.55 by 4 days of violation, by the statutory maximum of \$10,000 per day under Water Code section 13385, subdivision (c)(1).

Initial Liability Amount = 0.55 (Per Day Factor) x 4 (days of violation) x \$10,000 (Statutory Maximum Liability) = \$22,000.

Step 4. Adjustment Factors

The 2017 Enforcement Policy states three additional factors must be considered for potential modification of the Initial Liability Amount: the violator's degree of culpability, the violator's prior history of violations, and the violator's voluntary efforts to cleanup, or its cooperation with regulatory authorities after the violation.

a) Degree of Culpability: 1.3

The 2017 Enforcement Policy states that higher liability should result from intentional or negligent violations as opposed to accidental violations. The culpability multiplier ranges between 0.75 to 1.5, with a higher multiplier applied to intentional misconduct or gross negligence.

On December 21, 2021, and January 6 and 11, and March 11, 2022, there was trash and construction debris throughout the Site. The Dischargers were told at each of these inspections that the trash and debris needed to be cleaned up, and that it was a General Permit requirement to implement good housekeeping measures for trash and construction debris. The Dischargers' noncompliance with this General Permit requirement fell below the standard of care expected of a reasonable and prudent permittee with specific knowledge of the General Permit requirement. Therefore, a multiplier of 1.3 was assessed.

b) History of Violations: 1.0

Where a discharger has no prior history of violations, this factor should be a neutral, or 1.0. Where the discharger has a prior history of 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 a multiplier of above 1.1.

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

c) Cleanup and Cooperation: 1.2

This factor considers a discharger's voluntary efforts to cleanup and/or cooperate with regulatory authorities in returning to compliance after the violation. A multiplier between 0.75 and 1.5 is to be used, 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.

On December 21, 2021, Los Angeles Water Board staff observed trash and debris along the north and south sides of the Site. The Dischargers were notified that this trash and debris needed to be cleaned up at the inspection and in a follow up email sent on December 21, 2021. On January 6 and 11, 2022, Los Angeles Water Board staff observed that there was still trash and debris piles on the south side of the Site, and new piles at other areas around the Site. The Dischargers cleaned the trash at the Site after receipt of the January 12, 2022, NOV. Therefore, a multiplier of 1.2 was assessed.

Step 5. Total Base Liability Amount: \$34,320

The Total Base Liability Amount is determined by multiplying the following: the Initial Liability Amount, the degree of culpability score, the history of violations score, and the cleanup and cooperation score.

Total Base Liability Amount = \$22,000(Initial Liability Amount) x 1.3 (Degree of Culpability) x 1.0 (History of Violations) x 1.2 (Cleanup and Cooperation) = \$34,320.

Combined Total Base Liability Amount: \$221,280

The Combined Total Base Liability Amount for Violations 1 – 6 is determined by adding the Total Base Liability Amount for each violation. The Combined Total Base Liability Amount is \$221,280, as detailed in Table 1 below.

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Table 1: Combined Total Base Liability Amount for all Violations				
Violation	Violation Description	Proposed Liability	Maximum Liability	No. of Days of Violation
1	Unauthorized Discharge of Sediment-Laden Stormwater	\$54,165	\$106,290	1
2	Failure to Update the SWPPP with a List of Contractors, Subcontractors, and Individuals who will be Directed by the QSP	\$6,370	\$10,000	1
3	Failure to Establish and Maintain Perimeter Controls	\$47,190	\$60,000	6
4	Failure to Stabilize Construction Entrance and Exit	\$32,760	\$60,000	6
5	Failure to Implement Good Housekeeping Measures for Concrete Spills	\$46,475	\$50,000	5
6	Failure to Implement Good Housekeeping Measures for Trash and Debris	\$34,320	\$40,000	4
Total		\$221,280	\$326,290	23

Step 6. Ability to Pay

Under the 2017 Enforcement Policy, the Combined Total Base Liability Amount may be adjusted if the Water Boards have sufficient financial information necessary to assess the violator's ability to pay or to assess the effect of the Combined Total Base Liability Amount on the violator's ability to continue in business. The ability of a discharger to pay the proposed administrative civil liability is determined by its income (revenues minus expenses) and net worth (assets minus liabilities).

In this case, the Dischargers asserted an inability to pay claim and voluntarily produced supportive financial documents. The Los Angeles Water Board Prosecution Team's financial expert reviewed federal and state tax returns, business income sheets, bank statements, county property tax records, and loan documents to evaluate the Dischargers' claim. The expert concluded the Dischargers lacks sufficient cash or other liquid assets to satisfy the proposed liability at this time. In addition, while it appears that the Dischargers may have equity in owned real estate, they lack sufficient cash flow from the rental operations that would likely be necessary to finance a substantial penalty using this equity as collateral. Based on review of the Dischargers' limited landlord history, the available net cash is likely less than \$100,000 per year and neglects other unforeseen business expenditures like variation in monthly expenses and future mortgage payment increases documented in their loan agreement. Therefore, the Prosecution Team agreed to reduce the Combined Total Base Liability Amount to \$40,000 under the Ability to Pay factor.

Step 7. Economic Benefit

The 2017 Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (U.S. EPA) Economic Benefit Model (BEN) program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. For this case, BEN was determined to be the appropriate method. The economic benefit was calculated using BEN Version 2022.0.0 (June 2022). Using standard economic principles 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.

It is assumed that Violation 1 would have been prevented or mitigated had the Discharger implemented appropriate best management practices (BMPs). Implementation of appropriate BMPs is captured in Violation 3 below.

Violation 2 would have been prevented had the Discharger listed the names of contractors in a timely manner. Cost associated with this compliance action is negligible and excluded from the analysis.

Violation 3 is the failure to establish and maintain perimeter controls. The Discharger implemented silt fencing; however, the silt fencing was not properly maintained. The Los

Angeles Water Board's inspections noted improper perimeter control in December 2021, January 2022, and March 2022. QSP inspections state that the silt fencing required repairs for the months of September 2020 through March 2021, and June 2021 through April 2022. The economic benefit is the avoided cost of maintaining the silt fencing, resulting in an economic benefit of \$4,246.

For Violation 4, the Discharger did not properly implement a stabilized construction entrance and exit at the Site. The Discharger brought in rock but it was not an effective stabilized entrance/exit. Therefore, the economic benefit is the avoided cost of properly implementing a stabilized entrance/exit, resulting in an economic benefit of \$2,338.

For Violation 5, Los Angeles Water Board staff noted concrete spills on five different days. It is assumed that proper BMPs for concrete waste would have prevented Violation 5. Proper BMPs include a designated concrete waste container and properly removing all spills. Therefore, the economic benefit is the avoided cost of having a concrete waste container and properly cleaning up spills, resulting in an economic benefit of \$357.

For Violation 6, Los Angeles Water Board staff noted trash and debris on four different days. It is assumed that proper BMPs for trash and debris would have prevented Violation 6. Proper BMPs include a designated container for trash and debris and properly cleaning up the trash and debris. Therefore, the economic benefit is the avoided cost of having a designated container and properly cleaning up the trash and debris, resulting in an economic benefit of \$357.

Based on specific assumptions within the model, the total economic benefit of non-compliance was determined to be \$7,298.

Step 8. Other Factors as Justice May Require

The 2017 Enforcement Policy allows for the costs of investigation and enforcement to be considered under other factors as justice may require. To date, the Los Angeles Water Board Prosecution Team has incurred \$11,952 in staff costs associated with this matter. This represents approximately 97 hours of staff time devoted to the investigation, preparation, and enforcement of the alleged violations. No attorneys' fees are included in this calculation. Since the Combined Total Base Liability Amount is being reduced under the Ability to Pay factor, the Los Angeles Water Board Prosecution Team has elected not to increase the Combined Total Base Liability Amount in consideration of the costs of investigation and enforcement costs incurred in prosecuting this matter.

Step 9. Maximum and Minimum Liability Amounts

- a) Minimum Liability Amount: Water Code section 13385, subdivision (e) requires that when pursuing civil liability under section 13385, "[a]t a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation." The 2017 Enforcement Policy further requires the Los Angeles Water Board to recover, at a minimum, the economic benefit plus 10%. The economic benefit for the violations is \$7,298. Therefore,

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the statutory minimum liability is \$7,298. The minimum liability that may be imposed under the 2017 Enforcement Policy is the economic benefit plus 10%, which is equal to \$8,027. The Final Liability Amount is above the minimum liability amount.

- b) Maximum Liability Amount: Pursuant to Water Code section 13385, subdivision (c), the statutory maximum administrative civil liability for each violation is \$10,000 per day of violation, plus \$10 for each gallon discharged and not cleaned up in excess of 1,000 gallons. The total maximum statutory liability for all six violations is \$326,290, as detailed in Table 1 above. The Final Liability Amount considers and is within the statutory maximum liability for each violation.

Step 10. Final Liability Amount: \$40,000

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided amounts are within the statutory minimum and maximum amounts. Based on the foregoing analysis, and consistent with the 2017 Enforcement Policy, the Final Liability Amount is \$40,000 based on a reduction under the Ability to Pay factor.