CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. R2-2022-XXXX

WASTE DISCHARGE REQUIREMENTS for:

GONSALVES & SANTUCCI, INC.
CONCO INDUSTRIAL SUBDIVISION
UNINCORPORATED CONTRA COSTA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds that:

1. This Order serves as Waste Discharge Requirements (WDRs) for construction of the Conco Industrial Subdivision Project (Project) on 66.57 acres of vacant land located along the western boundary of the Walnut Creek channel approximately 0.74 miles south of the Waterfront Road bridge crossing (latitude 38.018344, longitude -122.076297; APNs 159-250-018, 159-250-019, 159-250-021, and 159-250-022) (Site). The Site is zoned for heavy industrial use.
2. The Project proponent, Gonsalves & Santucci, Inc. (Discharger), owns the 66.57 acres of vacant land and has submitted a Report of Waste Discharge to the Regional Water Board for authorization to construct the Project and is hereafter referred to as the Discharger.
3. The Project encompasses the construction of six industrial lots along with internal roads and utilities. The Project, once completed, will provide five lots dedicated to contractor yard uses and one centrally located hub. The road network will consist of paved roadways up to 24 feet in width with four-foot gravel shoulders. A private sewer facility will consist of grinder/ejector pumps, lift stations, wet wells, force mains, and extension of existing sanitary sewer lines. Up to approximately 155,580 cubic yards (CY) of material, including imported soil and lightweight cement-based cellular concrete, will be used to raise ground elevations across the Site, on average, by about three or four feet. The Project will be developed in phases.
4. The centrally located hub in the southwest corner of Lot 2 will provide for an office trailer, metal shop, truck scale, the common sewer lift station, fire water storage tanks and pump delivery system to provide necessary water to each of the lots, and an electric transfer location to provide for transition of existing overhead electric to underground vaults. The hub location is situated to avoid conflict with existing large diameter pipes serving local water and sewer utilities, and to front

directly on the planned internal roads serving the industrial lots to receive the private utilities.

5. The area surrounding the Site primarily consists of large industrial-zoned properties ranging in size between approximately 3.5 and 196 acres in area. Existing land uses include the Martinez Gun Club, the Republic Services Transfer Station, the Reliable Trucking truck yard, the closed IT-Baker and Acme landfills, and various oil and petroleum refining facilities. The area within and surrounding the Site historically appears to have supported fringe tidal marshes, and land use over time has modified the landscape to current conditions.

6. The Site encompasses portions of the former Baker site, which was part of the Vine Hill Complex facility that was used for management of hazardous wastes including used oils, oil reprocessing, and the treatment of chemical waste until the facility was closed in 1989. The Baker site was primarily used for the solar evaporation of liquid wastes through use of surface impoundment ponds that were separated by dikes. The majority of the Site lies within the footprint of former Ponds A and B. The current topography was created when the Baker site was closed by removing dikes between the former ponds and placing fill to raise the site to its existing grade. The fill placed at the Site ranges between 7.5 and 12.5 feet in thickness and is a mixture of various soil materials including sandy lean clay, clayey sand, fat clay, gravel, and concrete. San Francisco Bay (Bay) mud lies below the fill, stiff clay and silty clay underlie the Bay mud, and sedimentary rock is below these materials over most of the Site.

7. Under the purview of the Department of Toxic Substances Control (DTSC), hazardous wastes remaining in the Baker site impoundments were solidified and consolidated into the Baker landfill located southwest of and immediately adjacent to the Site. Groundwater control systems and associated infrastructure include surface and subsurface features that comprise, but are not limited to, groundwater collection/interceptor trenches, groundwater extraction and monitoring wells, collection pipes, sumps, pumps, a slurry wall, and a landfill cover system. Some of these features are located off of the Baker site and within the Project Site. These facilities are required for the operation and maintenance of the closed hazardous waste landfill and are managed by IT Environmental Liquidating Trust (ITELT). The DTSC granted the closure of the Baker site in 1999 and noted that the Site property had been remediated to levels that allow unrestricted future land use.

8. The majority of the Site consists of uplands, with vegetation dominated by non-native grasses. The Site also contains 9.8 acres of seasonal and tidal wetlands. Most of the seasonal wetlands are situated within east-west aligned linear utility corridors that pass through the Site, and

along the northern perimeter as shown on Figure 3 in the Attachment. Other seasonal wetlands are located along the west and east perimeter, and one is situated within the west-central portion of the Site. Several tidal wetland areas are situated east of the recently re-aligned Walnut Creek levee on the eastern border of the Site. The seasonal wetlands include unvegetated salt flats and native and non-native hydrophytes. Pacheco Creek and associated levees are located immediately north and west of the site, Walnut Creek and associated levees are located immediately east of the site. Suisun Bay is located approximately 1.8 miles to the north.

9. The seasonal wetlands have developed on the Site over time since closure of the waste ponds. Wetlands within the east-west utility corridors, which host major water and power line transmission mains for the Contra Costa Water District (CCWD) and Pacific Gas & Electric Company, developed in lower lying lands that retain stormwater during the rainy season. A 1.13-acre seasonal wetland has developed on fill in the west-central portion of the Site due to consolidation and subsidence of underlying Bay Mud, which likely resulted from the import fill activities associated with the prior remediation work. The area subsided over time and now retains stormwater runoff. Although the regional area historically appears to have supported fringe tidal wetlands, the area is not currently within a larger hydrologic unit that could provide a continuous source of hydrology for the seasonal wetlands.

10. Adjacent to the Discharger's property is land owned by the Contra Costa County Flood Control and Water Conservation District (County Flood Control District) where tidal wetlands have been restored as part of the Lower Walnut Creek restoration project. As a local stakeholder, the Discharger participated on the advisory committee responsible for providing guidance and feedback on the restoration project. As a result, the Discharger agreed to the relocation of the Walnut Creek flood control levee onto their property, thus increasing an area that is being converted to tidal wetlands. The final levee realignment required five acres of the Discharger's land to be conveyed to the County Flood Control District as right-of-way. The additional right-of-way dedication required major revisions to the planned Project's circular access road to avoid wetland impacts adjacent to the new levee. This revision resulted in relocation of the Project's access to the westerly portion of the Site. The Discharger continues to maintain fee ownership along, and adjacent to the east side of the realigned levee. Portions of this fee owned property have been converted to tidal wetlands.

11. Two culverts were installed as part of the Walnut Creek restoration project to convey stormwater runoff from the west through the levees to Walnut Creek, thus maintaining the historic drainage patterns for the area. The new culverts were installed with flap gates to prevent flood

waters from inundating the Site. The culvert inlets were constructed approximately 0.5-foot above existing ground grades west of the realigned levee to enhance retention of excess storm flows for continued wetland support along the toe of the Pacheco Creek levee.

12. The CCWD plans to upgrade the water pipeline within the northern utility alignment. After the water pipeline upgrade is complete, the last section of the Walnut Creek levee will be realigned onto the Discharger's property and additional tidal wetlands will be created east of the new levee.

13. The sewer pump facility and all other essential backbone utilities within the central hub area will be elevated above the current 100-year floodplain elevation. Typically, pad elevations will be set at the computed 100-year flood elevation with finish flood and manhole rim elevations set a minimum of one foot above the computed 100-year water surface elevation.

14. The Site is potentially vulnerable to sea level rise (SLR), extreme storm events, king tides, and groundwater rise which can occur when higher sea levels cause shallow water tables to rise. Localized flooding from extreme storm events, particularly in combination with high groundwater conditions, could threaten the long-term integrity of existing wetlands on, and surrounding the Site, and planned mitigation wetlands (see Findings 17 and 18). Water quality and wildlife habitat within the wetlands could be impacted from the release of debris, soil, trash, chemicals, and other materials from the developed industrial lots. The Discharger is required by this Order to conduct a vulnerability assessment for flood protection, and to update the assessment every five years.

Project Impacts and Mitigation

15. Approximately 1.40 acres of seasonal wetlands within the west-central and western and eastern portions of the Site will be permanently impacted through direct filling with clean fill as part of the industrial lot construction. The impacted wetlands include three that total 1.28 acres in size where Bay Mud fill material within the former industrial ponds has subsided. The remaining 0.12 acres of seasonal wetlands are located along the Project's southeastern fringe.

16. Avoidance and minimization of the wetland impacts is not practicable because of their location. It would not be possible to avoid filling wetlands without eliminating essential Project elements, such primary and internal access roads and important utility infrastructure. The elimination of these development elements would make the Project impracticable.

17. To compensate for permanent impacts to 1.4 acres of seasonal wetlands,

the Discharger will implement the *Conco Industrial Subdivision Aquatic Resource Mitigation and Monitoring Plan* (Salix Consulting, Inc., September 7, 2022) (MMP). The MMP will provide onsite mitigation through creation of 2.8 acres of seasonal and tidal wetlands. The development of seasonal and tidal wetlands will accomplish the goal of the California Wetlands Conservation Policy ("No Net Loss Policy;" Executive Order W-59-93) to "ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property."

18. The mitigation wetlands will be created in three areas: Area 1 will be 1.74 acres of non-tidal seasonal wetlands in the northern extent of the property. This area is on the land side of the new Walnut Creek levee and south of existing wetlands that adjoin the Pacheco Creek levee; Area 2 consists of 0.77 acres of tidal wetlands along the east side of the new Walnut Creek levee (to the north of the CCWD pipeline corridor); and Area 3 consists of 0.38 acres of tidal wetlands along the east side of the new Walnut Creek levee (to the south of the CCWD pipeline corridor). In Area 1 the existing seasonal wetlands along the toe of the slope near the intersection of the Pacheco Creek levee and the new Walnut Creek setback levee will be expanded. A transitional upland area will also be established in Area 1 to serve as a native vegetation buffer between industrial facilities and the mitigation wetlands. The Area 1 seasonal wetland will be planted with native species including Pacific swampfire (*Salicornia pacifica*), Saltmarsh bulrush (*Bolboschoenus maritimus* ssp. *Paludosus*), and Baltic rush (*Juncus balticus*). The transitional area will be planted with Coyote bush (*Baccharis pilularis*), California sagebrush (*Artemisia californica*), and California buckwheat (*Eriogonum fasciculatum*). For Areas 2 and 3, tidal wetlands were recently created in areas opened to tidal inundation through setback of the levees onto the Discharger's property. No significant active revegetation efforts are planned for the mitigation tidal wetlands because native plant communities are expected to establish through passive recolonization. The Area 1 wetlands will be developed concurrently with Project construction.

Monitoring and Reporting

19. All mitigation wetlands will be monitored to document successful achievement of the performance criteria included in the MMP and this Order and managed over the long-term to protect and preserve the wetland functions.

20. Regional, state, and national studies have determined that tracking of mitigation/restoration projects must be improved to assess the performance of these projects. In addition, to effectively carry out the

"No Net Loss Policy," the state needs to track both wetland losses and mitigation/restoration project success closely. Therefore, this Order requires the Discharger to submit the California Wetlands Form to provide project information related to impacts and mitigation measures. An electronic copy of the form and instructions can be downloaded at: http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml. Project information concerning impacts and mitigation/restoration will be made available at the web link: http://www.ecoatlas.org/regions/ecoregion/bay-delta/projects.

Post-Construction Stormwater Management

21. Stormwater discharges from urban and developing areas in the San Francisco Bay Region are significant sources of certain pollutants that cause or may be causing or threatening to cause or contribute to water quality impairment in waters of the Region. San Francisco Bay is impaired by numerous pollutants including mercury, PCBs, furans, dieldrin, chlordane, DDT, trash, and selenium. Runoff from impervious surfaces at the developed Site could contribute to water quality impairment in the Region.

22. This Order, therefore, requires the Discharger to implement stormwater treatment best management practices (BMPs) for post-construction stormwater runoff from the Project's impervious surfaces. Stormwater management practices will be implemented pursuant to the Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, (NPDES Permit No. CAS612008) (MRP), Provision C.3, and any amendments thereto and any reissuances of the MRP. Treatment will be consistent with the concepts shown on the plans *Tract 9459, Fire Exhibit – All Utilities, Sewer Pump Station, Fire Water Storage Tanks and PG&E Substation Locations, Lands of Conco Companies* (Milani & Associates, March 2022). Stormwater treatment controls must be constructed concurrently with each phase of the Project so that treatment is provided for each completed phase. Treatment control designs are conceptual at the time of Order adoption because detailed lot plans and the extent of impervious surfaces on each lot are yet to be determined. This Order requires a final version of the plan, including measures to appropriately control trash, to be submitted to the Executive Officer for review and approval at least 90 days before construction starts on the phase of the Project that will be treated by the plan. Treated stormwater runoff will be discharged to the various wetland features that border the Site.

Regional Water Board Jurisdiction

23. The Regional Water Board has authority to regulate the proposed discharge of fill materials into waters of the state by issuance of WDRs pursuant to section 13263 of the California Water Code (Water Code).

The Regional Water Board considers WDRs necessary to adequately address discharges, impacts, and mitigation to beneficial uses of waters of the state from the Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require changes to the Project as described and allowed herein.

24. The Discharger is required to pay annual fees pursuant to Water Code section 13260(d), Cal. Code Regs., tit. 23 (23 CCR), § 2200 et seq., and in accordance with Provision D.23.

Regulatory Framework

25. Pursuant to Water Code section 13263, the Regional Water Board is issuing WDRs for discharges associated with the Project, including wetland fill. In accordance with Water Code section 13263(a), the Regional Water Board, after considering this matter at a public hearing, has prescribed requirements as to the nature of the proposed discharge. These requirements implement the Water Board's relevant water quality control plans and policies and take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and Water Code section 13241.

26. The *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the state, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and U.S. Environmental Protection Agency, where required.

27. The Basin Plan lists the following existing and potential beneficial uses for groundwater within the Ygnacio Valley Basin (Basin Number 2-6), which underlies the Project site:

    a. Municipal and Domestic Water Supply (MUN)

    b. Industrial Process Supply (PROC)

    c. Industrial Water Supply (IND)

    d. Agricultural Water Supply (AGR)

28. The Basin Plan lists the following existing and potential beneficial uses for seasonal palustrine wetlands:

    a. Agricultural Water Supply (AGR)

b. Cold Freshwater Habitat (COLD)
c. Freshwater replenishment (FRESH)
d. Groundwater Recharge (GWR)
e. Water Contact Recreation (REC1)
f. Non-contract Water Recreation (REC2)
g. Warm Freshwater Habitat (WARM)
h. Wildlife Habitat (WILD)
i. Preservation of Rare and Endangered Species (RARE)

29. State Water Board Resolution No. 68-16, "Statement of Policy with Respect to Maintaining High Quality of Waters in California" (Antidegradation Policy), which incorporates the federal antidegradation policy where it applies, states that discharges to existing high quality waters will be required to meet WDRs that will result in the best practicable treatment or control of the discharge necessary to assure that (a) a condition of pollution or nuisance will not occur, and (b) the highest water quality consistent with maximum benefit to the people of the state will be maintained. This Order is consistent with Resolution No. 68-16 because implementation of the proposed activities in accordance with the Order's requirements will not lead to degradation of water quality or unreasonably affect beneficial uses.
30. Project implementation would permanently impact the beneficial uses of the seasonal wetlands at the Project site and this Order requires mitigation to offset this impact and protect beneficial uses.
31. The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be reviewed in compliance with requirements of CEQA. In 2019, the Contra Costa County Department of Conservation and Development, acting as the CEQA lead agency, prepared an Initial Study/Mitigated Negative Declaration (IS/MND) for the Project. A Notice of Determination was filed with the State Office of Planning and Research on November 20, 2019 (State Clearinghouse Number 2019079103).
32. The Regional Water Board, as a responsible agency under CEQA, has independently considered the IS/MND and finds that the proposed Project's significant environmental effects that are within the Regional Water Board's purview and jurisdiction have been identified and will be mitigated to less-than-significant levels. Specifically, significant impacts pertaining to wetland and aquatic habitat and water quality will be mitigated to less-than-significant levels through implementation of mitigation measures required in this Order (See 14 CCR § 15096(g)).
33. Under Water Code § 106.3, the State of California's policy is that every human being has the right to safe, clean, affordable, and

accessible water adequate for human consumption, cooking, and sanitary purposes. (Wat. Code, § 106.3; see also State Water Board Resolution No. 2016-0010.) The human right to water extends to all Californians, including disadvantaged individuals and groups and communities in rural and urban areas. This order promotes the human right to water by requiring discharges to meet levels designed to protect human health.

34. The Regional Water Board provided public notice of this Order pursuant to Water Code section 13167.5 on September 13, 2022, posted the Order on the Regional Water Board's website and provided notice of that posting to the Discharger and all interested persons.

35. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

36. On May 28, 2021, the U.S. Army Corps of Engineers (Corps) provided an Approved Jurisdictional Determination (AJD) (Corps File Number SPN-2003-282290S) for the Site and claimed no jurisdiction over any of the on-site aquatic resources. This AJD was issued under the Navigable Waters Projection Rule, which has been rescinded. The Corps conducted a site visit on July 12, 2022, to verify conditions under current regulations. A new draft AJD was issued on August 17, 2022, and it includes a change in status for one wetland feature. The Corps claims no jurisdiction over any wetlands that will be impacted by the Project. Therefore, fill of seasonal wetlands at the Site does not require authorization pursuant to a CWA section 404 permit. The discharge of fill to waters of the state at the Site is regulated under Water Code section 13263 and 23 CCR.

37. Water Code section 13267 states that the Regional Water Board may require that any person who proposes to discharge waste that could affect the quality of waters shall furnish, under penalty of perjury, technical or monitoring program reports with the Regional Water Board. The burden, including costs, of the reports required by this Order bears a reasonable relationship to the need for the report and the benefits to be obtained. The reports are necessary to ensure protection of beneficial uses and the environment.

38. Pursuant to Water Code section 13263, the Regional Water Board is issuing WDRs for the Project.

IT IS HEREBY ORDERED that the Discharger, their agents, successors, and assigns, in order to meet the provisions contained in Division 7 of the Water code and regulations adopted thereunder, shall comply with the following, pursuant to authority under the Water Code sections 13263 and 13267:

A. *Discharge Prohibitions*

1. The direct or indirect discharge of wastes, as defined in Water Code section 13050(d), within or outside of the Site, to surface waters or surface water drainage courses is prohibited, except as authorized in this Order.

2. The discharge shall not cause degradation of any water supply.

3. The wetland fill activities subject to this Order shall not cause a nuisance as defined in Water Code § 13050(m).

4. The discharge of materials other than stormwater, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the state is prohibited.

5. The groundwater in the vicinity of the Project shall not be degraded as a result of the placement of fill for the Project.

6. No debris, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or petroleum products or other organic or earthen material shall be allowed to enter or be placed where they may be washed by rainfall or runoff into waters of the state. When operations are completed, any excess material shall be removed from the work area and any adjacent areas where such materials could be washed into waters of the state.

7. Maintenance activities at the Site under post-construction conditions shall not cause a condition of pollution or nuisance as defined in Water Code section 13050.

B. *Discharge Specifications*

1. Appropriate soil erosion control measures shall be implemented and maintained to prevent the discharge of sediment to surface waters, including wetlands within and surrounding the Site.

2. Stockpiled soil for Site development shall be fully contained to prevent any wind transport, surface runoff or erosion into waters of the state.

3. In accordance with Water Code section 13260, the Dischargers shall file with the Regional Water Board a report of any material changes in the character, location, or quantity of this waste discharge that is beyond the scope of this Order. Any proposed material changes in the discharge requires approval by the Regional Water Board.

4. The Dischargers shall notify the Regional Water Board promptly by telephone or email, and in all cases within 24 hours, of an adverse condition that results from a discharge. An adverse condition includes, but is not limited to, a violation or threatened violation of the conditions of this amended Order, spill of petroleum products or toxic chemicals, or damage to control facilities that could affect compliance. A written notification of the adverse condition shall be submitted to the Regional Water Board within five days of occurrence. The written notification shall identify the adverse condition, describe the actions taken or planned to remedy the condition, and specify a timetable, subject to approval by the Executive Officer, for the remedial actions that follow any initial response to the adverse condition.

C. *Receiving Water Limitations*

1. With the exception of the fill of waters of the state authorized by this Order, the discharge shall not cause the following conditions to exist in waters of the state at any place:

    a. Waters shall not contain floating materials, including solids, liquids, foams, and scum, in concentrations that cause nuisance or adversely affect beneficial uses.

    b. Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or that otherwise adversely affect beneficial uses.

    c. Waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth cause nuisance or adversely affect beneficial uses.

    d. Waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life.

    e. The natural receiving water temperature of inland surface waters shall not be altered unless it can be demonstrated to the satisfaction of the Executive Officer that such alteration in temperature does not adversely affect beneficial uses.

    f. The temperature of any cold or warm freshwater habitat shall not be increased by more than 5°F (2.8°C) above the natural receiving water temperature.

2. The discharge shall not cause nuisance, or adversely affect the beneficial uses of the receiving water.
3. With the exception of the fill of waters of the state authorized by this Order, the discharge shall not cause the following limits to be exceeded

in waters of the state at any point:

a. Dissolved Oxygen:	5.0 (WARM) or 7.0 (COLD) mg/l minimum. When natural factors cause lesser concentrations, then this discharge shall not cause further reduction in the concentration of dissolved oxygen.
b. pH:	A variation of natural ambient pH by more than 0.5 pH units.
c. Turbidity	Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where ambient turbidity is greater than 50 NTU. Where ambient turbidity is less than 50 NTU, activities authorized by this Order shall not increase turbidity by more than 5 NTU.
d. Toxicity	All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
e. Salinity	The Project shall not increase total dissolved solids or salinity to a degree that the increase adversely affects beneficial uses or water quality.
f. Chlorine	The Project shall not discharge water to waters of the state with residual chlorine levels (free chlorine plus chloramines) that exceed the instantaneous limit of 0 mg/L in Table 4-2 of the Basin Plan. Chlorine residual levels that are non-detect at a reporting limit of 0.08 mg/L will be considered to be incompliance with the instantaneous limit in Table 4-2 in the Basin Plan.

4. The Project activities shall not cause a violation of any water quality standard for receiving waters adopted by the Regional Water Board or the State Water Board as required by the CWA and regulations adopted thereunder. If more stringent applicable water quality standards are promulgated or approved pursuant to CWA section 303, or amendments thereto, the Regional Water Board may revise and modify this amended Order in accordance with more stringent standards.

D. *Provisions*

1. The Project shall be constructed as described in the Report of Waste Discharge received by the Regional Water Board on February 2, 2022, as supplemented by information received by the Regional Water Board on March 22, April 15, August 10, and September 7,

2022.

2. Precipitation forecasts shall be considered when planning construction activities. The Discharger shall monitor the 72-hour forecast from the National Weather Service at http://www.nws.noaa.gov. When there is a forecast of more than 40% chance of rain, or at the onset of unanticipated precipitation, the Discharger shall implement erosion and sediment control measures (e.g., jute, straw, coconut fiber erosion control fabric, coir logs, straw) to prevent the discharge of soil and debris to state waters.

3. The Discharger shall submit a Commencement of Construction Report acceptable to the Executive Officer. The Commencement of Construction Report shall be submitted no later than seven days prior to start of initial ground disturbance activities within wetlands. Notification may be via telephone, email, delivered written notice, or other verifiable means. The Commencement of Construction shall be submitted in the same timeframe specified herein for multiple construction seasons, if necessary, and shall include reference to **SOC_446882_Conco Industrial Subdivision** and be sent to RB2-401Reports@waterboards.ca.gov or by mail to the attention of 401 Certifications Reports;

4. Prior to the start of construction, the Discharger shall establish a minimum of twelve (12) photo-documentation points where mitigation wetlands will be created, to document pre-Project conditions. The photo-documentation points shall be selected to provide representative views of these areas before, and after construction and during the mitigation monitoring period. The Discharger shall prepare a site map with the photo-documentation points clearly marked. Prior to and following construction, the Discharger shall photographically document the pre- and post-construction conditions at the established photo-documentation points. The photographs shall be used to track the Project's construction impacts and mitigation success. These post-construction photographs and map shall be submitted, along with the as-built report (see Provision 9). Once mitigation monitoring begins, the photographs shall be updated annually and submitted with the annual monitoring reports (see Provision 14).

5. *Fill Import and Quality Assurance Project Plan*: No later than 60 days prior to placing any imported soil at the Project area, including any stockpiling or placement of fill on uplands, roads, and any other location where the fill is a discharge to, or has the potential to discharge to any waters of the U.S. or state, the Discharger shall submit a Quality Assurance Project Plan (QAPP) acceptable to the Executive Officer. The QAPP shall provide procedures and

screening guidelines to reuse imported fill at the Project site. The Discharger shall characterize the quality of all fill material proposed for use prior to placement at the Project area. Not later than 20 days prior to placing any imported fill material at the Project area, the Discharger shall submit a technical report, acceptable to the Executive Officer. The report shall demonstrate that the chemical concentrations in the imported or excavation soil fill comply with the protocols specified in the QAPP.

6. Use of the prepared industrial lots shall not adversely affect the integrity of the mitigation wetlands, or other wetlands within, and surrounding the site. Wetland hydrology in existing wetlands that will not be filled under this Order shall be maintained in a manner that mimics pre-Project conditions, and Site grading and use shall not result in the modification of wetland topography or wildlife habitat.

7. The Discharger shall coordinate with ITELT and DTSC regarding access to, and protection of all Baker Landfill appurtenant structures located on the Site. During Site construction and future use, protective measures shall be implemented to prevent damage to Baker Landfill appurtenant structures on the Project Site, and discharge of flows from the pipeline. Project plans shall show the groundwater pipeline alignment and the proposed fill material types as well as any other pipeline protection measures. Coordination shall also include addressing any impacts to Baker Landfill Appurtenant Structures that are associated with differential settlement resulting from the Site fill loads.

Compensatory Mitigation

8. To provide mitigation for the Project's impacts to waters of the state, the Discharger shall implement the MMP as described in Findings 17 and 18.

9. For preparation of the Area 1 wetland, the Discharger shall implement the Area 1 Soil Sampling and Analysis Plan (Milani & Associates, September 7, 2022) to verify the underlying soil meets the wetland surface material screening criteria specified in the Regional Water Board May 2000 staff report *Beneficial Reuse of Dredged Materials*: *Sediment Screening and Testing Guidelines* (Beneficial Reuse Guidelines), or the most current revised version, to a depth of three feet below the wetland floor.

10. The Discharger shall prepare an as-built report, acceptable to the Executive Officer. The as-built report shall be submitted to the Regional Water Board no later than 60 days after completing mitigation construction activities, including mitigation plantings. The

report shall reference **As-Built_446882_Conco Industrial Subdivision** and be sent to RB2-401Reports@waterboards.ca.gov.

Monitoring and Reporting

11. EcoAtlas Form: The Discharger shall input Project information into *EcoAtlas* within 14 days from the Order adoption date. The Project information shall be added to the *Project Tracker* tool in *EcoAtlas* online at https://ptrack.ecoatlas.org/instructions, or by contacting the Regional Water Board staff. The Discharger shall notify the Regional Water Board and submit documentation demonstrating the Project has been successfully added to EcoAtlas via email to RB2-401Reports@waterboards.ca.gov, or by mail to the attention of 401 Certifications Reports and include **EcoAtlas_446882_Conco Industrial Subdivision**.
12. The Discharger shall monitor the Project's mitigation areas for a minimum period of five years, and longer if necessary to demonstrate the Project's impacts have been sufficiently mitigated and to determine if any adverse direct or indirect impacts to beneficial uses occur following Project completion. The mitigation areas shall be monitored and maintained in accordance with the schedule and procedures described in the MMP. The annual monitoring shall assess conditions at the Project Site as well as the overall mitigation success. If the monitoring indicates the mitigation efforts have not adequately compensated for the Project's impacts, the Discharger shall document these observations in the annual reports and make remedial action recommendations, as necessary. If adverse impacts to waters of the state are observed during the monitoring period, additional mitigation may be required by the Executive Officer, including but not limited to extension of the monitoring period, to ensure that impacts are no greater than authorized by this Order and mitigation measures achieve their intended functions.
13. *Mitigation Wetlands Performance Criteria*: The Discharger shall use the performance criteria established in the MMP for evaluation of mitigation success, to include establishment of 1.74 acres of seasonal wetlands with >80% cover by native hydrophytic plant species and 1.06 acres of tidal wetlands with 25-85% cover by native plants (extent of cover is expected to depend on tidal inundation conditions). No more than 5% absolute cover by invasive plant species designated as "high" or "moderate" by the California Invasive Plant Council (Cal-IPC) shall be present within the mitigation wetlands.
14. *Annual Mitigation Monitoring Reports*: The Discharger shall submit annual monitoring reports, acceptable to the Executive Officer, by

January 31 following each monitoring year. The first monitoring year commences in the calendar year after completing mitigation plantings. At the time of this Order, the Project impacts are anticipated to occur in 2022. Therefore, the first annual monitoring report shall be due on January 31, 2024, after a full year of monitoring, unless the mitigation construction is completed at a different time. The final monitoring report shall be submitted after the fifth year of monitoring, or later if additional monitoring years are necessary to demonstrate successful achievement of the performance criteria. Annual Monitoring Reports shall reference **AMR_446882_Conco Industrial Subdivision** and shall be submitted via email to rb2-401reports@waterboards.ca.gov and the Regional Water Board staff responsible for permits in Contra Costa County. Annual reports shall include, but not be limited to, the following:

a) Photographs – photographs taken during the monitoring year from the photo-documentation points specified in Provision 4. The photographs shall include captions that state the photograph's point of view, photo-documentation point location, and date photographed.

b) Environmental Drivers – each monitoring report shall describe precipitation events or periods of drought that occurred at the site during the monitoring year. The effects of the Project and environmental drivers (e.g., precipitation events, drought events) on site conditions, shall be described in reference to the monitoring year's precipitation events.

c) Cumulative Monitoring – each annual report shall summarize all data from previous monitoring reports in addition to the current year's monitoring data, including the need for, and implementation of, any remedial actions. Monitoring data may include all relevant qualitative and quantitative data necessary to determine whether the performance criteria specified in the MMP are being met. The final monitoring report shall document whether the final performance criteria were met.

If monitoring indicates that beneficial uses have been, or have the potential to be, adversely affected, the Discharger shall, in consultation with the Executive Officer, identify remedial measures to be undertaken, including compensatory mitigation and extension of the monitoring and reporting period until the performance criteria are met. The Discharger shall implement all remedial measures necessary to adequately address the impacts to beneficial uses and meet the performance criteria.

15. The final mitigation monitoring report shall include a delineation of

the mitigation wetlands, conducted in accordance with current Corps standards.

16. The Discharger shall submit, within 60 days of this Order's adoption, acceptable to the Executive Officer, a long-term management plan for the mitigation wetlands. The long-term management plan shall include prohibited activities within the wetlands and support long-term preservation of the wetlands.

17. The mitigation wetlands and adjacent buffer areas shall be protected in perpetuity under a deed restriction. A deed restriction shall be recorded over the Site within one year of mitigation construction completion. The deed restriction shall include a list of prohibited activities within the mitigation areas. The Discharger shall submit, acceptable to the Executive Officer and no later than 60 days after adoption of this Order, a plan and time schedule for providing all necessary documents to secure long term preservation of the mitigation areas, to include arrangements for developing a draft deed restriction, acceptable to the Executive Officer, recording the deed restriction, and implementation of the long-term management plan.

Project Site Stormwater Management

18. The Discharger shall comply with the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit, Order No. 2009-0009-DWQ; NPDES Permit No. CAS000002), and any reissuances thereof, including the permit adopted by the State Water Board on September 8, 2022, which will become effective on September 1, 2023. The Discharger shall prepare and implement a site-specific Stormwater Pollution Prevention Plan (SWPPP) for the construction of each phase of the Project, in accordance with the requirements, provisions, limitations, and prohibitions of the Construction General Permit.

19. The Discharger shall ensure the post-construction stormwater treatment best management practices (BMPs) shown in concept on the plans *Tract 9459, Fire Exhibit – All Utilities, Sewer Pump Station, Fire Water Storage Tanks and PG&E Substation Locations, Lands of Conco Companies* (Milani & Associates, March 2022), and as described in the Report of Waste Discharge and this Order, are constructed and appropriately maintained for the life of the Project.

20. In addition, the Discharger shall comply with requirements of the Municipal Regional Stormwater NPDES Permit, Order No. R2-2022-0018, (NPDES Permit No. CAS612008) (MRP), Provision C.3, and any amendments thereto and any reissuances of the MRP.

21. Stormwater treatment controls must be constructed concurrently with each phase of the Project, so that treatment is provided for

each completed new area of impervious surfaces in the same year that new impervious surfaces are created. Final versions of treatment controls for each industrial parcel shall be submitted to the Executive Officer for review and approval at least 90 days before construction starts on the phase of the Project that will be treated by the plan. The plans shall provide final construction details, including measures sufficient to achieve full trash capture consistent with the requirements of MRP Provision 10. Construction of the stormwater management measures shall not commence until the Executive Officer has approved the BMP proposal (construction consists of any disturbance of the Site surface that results in the creation of new impervious surfaces).

22. As-built plans for the post-construction stormwater treatment measures for each phase of the Project shall be prepared and submitted to the Regional Water Board within six weeks of the completion of construction and planting of each post-construction stormwater treatment feature. As-built plans shall be accompanied by an as-built report that describes any changes to the approved plans that were necessary during construction of the stormwater treatment feature, as well as a technical justification for any design changes that were necessary in the field. The technical justification must demonstrate that the constructed treatment measures are consistent with the requirements of the MRP.

Sea Level Rise

23. The Discharger shall submit a climate change vulnerability assessment and adaptation plan acceptable to the Executive Officer. The plan shall identify strategies for the long-term protection of the Site's existing and mitigation wetlands from waste, debris, soil, trash, and/or other materials that could be mobilized from the industrial lots during flooding and inundation due to SLR, groundwater rise, and extreme climate/weather events. The plan shall be submitted not more than 180 days from the adoption of this Order and shall be updated every five years thereafter. The plan shall:

    a) Be prepared by qualified experts and consider and reference the most current official State of California climate change guidance documents, including but not limited to (1) the 2018 State of California Sea Level Rise Guidance developed by the Ocean Protection Council, as revised every five years; (2) the San Francisco Bay Shoreline Adaptation Atlas, prepared by the San Francisco Estuary Institute, to include the threat of shallow groundwater in potential flood hazard evaluation; (3) the Bay Conservation and Development Commission's Bay Plan Climate Change Amendment; and (4) the Coastal Storm Modeling

System (CoSMoS) developed by the United States Geological Survey (USGS).

b) Be based on providing protection from the estimated 100-year storm event, on top of the 2050 “medium-high” (0.5% probability of exceedance) or “extreme” risk aversion SRL scenarios as described in the most recent official State of California sea level rise guidance. The 100-year storm event shall take into account astronomical tides and storm surge as well as wave run-up, seasonal effects (e.g. El Niño conditions), and discharge from local tributaries (e.g. as modeled by the USGS CoSMoS tool).

c) Describe how vulnerable features and infrastructure will be protected prior to the protected timing of SLR, groundwater rise, and extreme storm event impacts (e.g. prior to projected flooding).

d) Propose a phased adaption strategy that briefly describes the potential future projects that may be necessary to provide for protection from the 2100 “medium-high” or “extreme” risk aversion SLR scenarios as described in the most recent official State of California sea level rise guidance, as well as potential accompanying changes in groundwater rise and extreme storm events. The strategy shall allow for a range of future actions at different climate change thresholds to address uncertainty and allow for flexibility over the long term.

e) Provide technical justification for the selection of both the 2050 and 2100 SLR risk aversion scenarios.

f) Identify baseline conditions for the Site and show at a minimum the following on a map(s): sitewide elevations, vulnerable infrastructure (i.e., sewer collection systems, materials storage areas, wetlands, roads, buildings,), the degree of SLR, groundwater rise, and/or extreme storm event exposure already noted at the Site, sea level elevations at which flooding will impact the Site, and areas potentially vulnerable to groundwater rise.

g) Be updated and submitted every five years with the most recently available and credible information and climate change adaptation guidance at the time of the update, including observed changes in sea levels, groundwater levels, and flooding measured at or as near as possible to the Site, and any observed or potential changes in the adaptive capacity and risk tolerance of vulnerable infrastructure, including an implementation schedule with key milestones that have been or will be met in the future.

Fees

24. The fee amount for these WDRs shall be in accordance with the current fee schedule, per 23 CCR section 2200(a), based on the quantity of waters of the state impacted by discharges authorized by this Order. The Project will permanently impact 1.4 acres of waters of the state. The application and Project fee for these impacts is $30,162, which was paid in full on October 21, 2022. An annual discharge fee shall also be paid to the Regional Water Board in each year in which impacts to waters of the state that are authorized by this Order are implemented (note: the Annual Active Discharge Fee may be changed by the State Water Board; at the time that this Order was adopted, it was $2,031 per year). After the initial year, the Annual Active Discharge portion of the fee shall be billed annually to the Discharger. Fee payments shall indicate the Order number, RM Number in the header for this Order, and the applicable year.

Records Provisions

25. The Discharger shall retain records of all reports required by this Order for a period of at least five years from the date of the report. This period may be extended by request of the Executive Officer at any time. The Discharger shall submit electronic versions of any submitted reports or documents.

General Provisions

26. The Discharger shall comply with all the requirements of this Order immediately upon adoption of this Order.

27. All reports pursuant to these Provisions shall be prepared by professionals registered in the State of California.

28. The Discharger shall immediately notify the Regional Water Board by telephone and e-mail whenever an adverse condition occurs as a result of the discharges associated with the Project. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to Water Code §13267(b), a written notification of the adverse condition shall be submitted to the Regional Water Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Regional Water Board, for the remedial actions.

29. All work performed within waters of the state shall be completed in a manner that minimizes impacts to beneficial uses and habitat. Measures shall be employed to minimize disturbances that will adversely impact the water quality of waters of the state. Disturbance or removal of vegetation shall not exceed the minimum

necessary to complete Project implementation.

30. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste.

31. The discharge of any hazardous, designated, or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 shall be disposed of in accordance with applicable state and federal regulations.

32. The Discharger shall maintain a copy of this Order and all relevant plans and BMPs at the Site, so as to be available at all times to site operating personnel.

33. The Discharger shall permit the Regional Water Board staff or its authorized representative, upon presentation of credentials:

    a. Entry on to the premises on which maintenance activities are planned or underway, wastes are located, or in which records are kept;

    b. Access to copy any records required to be kept under the terms and conditions of this Order;

    c. Access to inspect any treatment equipment, monitoring equipment, or monitoring method required by this Order; and

    d. Access to sample any discharge or surface water covered by this Order.

34. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under applicable state laws and regulations. In response to a suspected violation of any condition of this Order, the Regional Water Board may require the Discharger to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.

35. In accordance with Water Code §13260, the Discharger shall file with the Regional Water Board a report of any proposed change in ownership or any material change in the character, location, or quantity of this waste discharge. Any proposed material change in the discharge requires approval by the Regional Water Board after a

hearing under Water Code §13263. Material change includes, but is not limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the state to be filled and mitigated.

36. Provided there is no material change in the operation of the site, this Order may be transferred to a new owner of the Site. The Discharger or new owner must request the transfer in writing and receive written approval from the Executive Officer. Such a request must be submitted to the Executive Officer at least 30 days prior to the transfer of ownership. The request must include a written agreement between the Discharger and the new owner containing a specific date for the transfer of this Order's responsibility and coverage between the Discharger and the proposed new owner. This agreement shall include an acknowledgment that the Discharger is liable for violations up to the transfer date and that the new owner is liable from the transfer date on (CWC sections 13267 and 13263). The request must contain the requesting entity's full legal name, the address and telephone number of the persons responsible for contact with the Water Board, and statement. The discharge of waste without waste discharge requirements is a violation of the CWC.
37. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
38. The Regional Water Board will consider rescission of this Order upon Project completion and the Executive Officer’s acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

I, Eileen White, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an amended Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on, and effective on _____.

_____

Eileen White
Executive Officer

Attachment A: Site Location & Surrounding Land Use Maps
Attachment B: Lot Development Plan
Attachment C: Wetland Mitigation & Monitoring Plan

ATTACHMENT A: Site Location & Surrounding Land Use Maps

ATTACHMENT B: Lot Development Plan

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