

**Attachment A to Administrative Civil Liability Order No. R8-2021-0031
Specific Factors Considered for Civil Liability
Exeter Property Group, LLC and Exeter Alessandro Land, LLC Riverside County**

This document provides the penalty calculation methodology for Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order No. R8-2021-0031, which alleges violations of *Order No. 2010-0014-DWQ, NPDES Permit No. CAS000002, General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (General Permit) against Exeter Property Group LLC and Exeter Alessandro Land, LLC (Dischargers). The alleged violations occurred while the Dischargers were covered under the General Permit for the Alessandro Commerce Center located southwest of the intersection of Alessandro Boulevard and Brown Street, in Riverside, California (Site). The State Water Board's Water Quality Enforcement Policy (Enforcement Policy) establishes a methodology for determining administrative civil liability by addressing the factors that are required to be considered under California Water Code section 13385(e). Each factor of the ten-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at:

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

Violations 1 Through 4

Violation 1: Discharges of Sediment-Laden Stormwater and Non-Stormwater on April 13, 14, and 21, 2020

The General Permit prohibits all discharges except for storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. (General Permit, III.B.) On April 13, 2020, during a rain event, sediment-laden storm water discharged from the Site. On April 14, 2020, sediment-laden storm water was again discharged from the Site during the pumping of two excavations, for which controls were missing or ineffective. On April 21, 2020, the Dischargers pumped sediment-laden non-storm water from a utility excavation, which discharged from the Site without the requisite controls. None of these discharges were specifically authorized by the General Permit, a waiver, or other waste discharge requirements.¹

Step 1 – Actual or Potential for Harm for Discharge Violation

Factor 1 – Degree of Toxicity of the Discharge

¹ The General Permit requires that all dischargers minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. (General Permit, V.A.2, Narrative Effluent Limitations.) Additional measures to control discharges during construction are required at Risk Level 2 sites. (General Permit, Attachment D.)

The Enforcement Policy requires an evaluation of the degree of toxicity of the discharges. This evaluation is based on the physical, chemical, biological, and/or thermal nature of the material discharged. A score between 0 and 4 is assigned based on a determination of the risk or threat of the discharged material.

Sediment-laden storm water and non-storm water is opaque to sunlight.² Reduced light transmitted to underwater growing plants reduces the ability of the underwater plants to produce energy and dissolved oxygen through photosynthesis.³ This reduces the biological productivity of the aquatic community, degrades habitat quality, and harms wildlife. Additionally, the sediment suspended in the water column of sediment-laden storm water has many clay platelets with negatively charged surfaces. As a result, the storm water has a higher chemical affinity for metals and organics compounds.⁴ Clay platelets and other particles in sediment can adsorb bacteria, metals, and organic contaminants. Sediment then acts as a carrier and exposes human and wildlife receptors to adsorbed toxicants. These characteristics pose a moderate level of threat to potential receptors. Thus, a score of 2 is assigned.

Factor 2 – Actual Harm or Potential Harm to Beneficial Uses

The Enforcement Policy requires an evaluation of the harm or potential for harm of the waste discharged on the beneficial uses of the impacted waters. A score of 0 to 5 is assigned based on a determination of whether the harm or potential harm is negligible, minor, below moderate, moderate, above moderate, or major.

Runoff from the Site flows to an ephemeral pond on the adjacent property and then to Sycamore Creek by way of several tributaries that are a combination of storm drains and natural drainage. Sycamore Creek then becomes Tequesquite Arroyo, which then flows to the Santa Ana River, Reach 3. The pollutants in the runoff from the Site have the potential to impact the beneficial uses of the ephemeral pond; Sycamore Creek; Tequesquite Arroyo; the Santa Ana River, Reach 3; and those in the tributaries upstream to the river.

The beneficial uses of Sycamore Creek and Tequesquite Arroyo include Groundwater Recharge; Water Contact Recreation and Non-contact Water Recreation; Warm Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species; and Spawning, Reproduction and Development. The Beneficial Uses of the Santa Ana River, Reach 3 include Agriculture Supply; Groundwater Recharge; Water Contact Recreation; Non-contact Water Recreation; Warm Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species; and Spawning, Reproduction and Development. As tributaries, the ephemeral pond and the upstream channels have the

² Stormwater Runoff, Learn the Issues, Chesapeake Bay Program, available at https://www.chesapeakebay.net/issues/stormwater_runoff.

³ https://www.nature.com/scitable/blog/saltwater-science/runoff_how_activities_near_and/.

⁴ <https://www.ncbi.nlm.nih.gov/pubmed/18377958>.

same beneficial uses as Santa Ana River, Reach 3.

The discharges of sediment had the potential to negatively affect aquatic plants, fish, macroinvertebrates and other aquatic organisms in the short term.⁵ As discussed, sediment can lead to fish population loss due to loss of oxygen, toxicity, and degradation of spawning areas and other habitat. The impacts have the potential to negatively impact Warm Freshwater Habitat; Wildlife Habitat; Rare, Threatened, or Endangered Species; and Spawning, Reproduction and Development beneficial uses.

Habitat for Least Bell's Vireo, Santa Ana Sucker, and Santa Ana River Woolly Star occur in waterbodies downstream from the Site. These species are rare, threatened, or endangered and their habitat is susceptible to degradation due to sediment discharges from the Site.

The discharges also had the potential to negatively impact the dam at Prado Flood Control Basin, which would, in turn, impact Groundwater Recharge beneficial uses. Some of the storm water is held in a water conservation pool at the dam so that its release is timed to maximize recharge into the Orange County Water District's Groundwater Replenishment System (GWRS) located downstream in the bed of the Santa Ana River and other locations. Sediment from the upstream watershed accumulates within Prado Basin and causes more of the water conservation pool's volume to be unavailable for use. As less volume is available, the management of Prado Basin must be modified so the infiltration, erosion, and habitat of the downstream reach can be managed. Fine sediment in discharges from the Site can plug downstream basins in the GWRS, impair Groundwater Recharge beneficial uses, and incrementally reduce water supplies in Orange County.

Sediment is likely to settle in riverbeds and forms mud bars where the public recreates. This reduces water quality and negatively impacts both Recreation and Non-contact Water Recreation beneficial uses. However, the overall volume of sediment discharged into the affected water bodies was likely low.

Given the above analyses, although the discharges are reasonably expected to have the potential to impact beneficial uses, the potential harm is below moderate because the harm is measurable in the short term, but it is not appreciable. Therefore, a factor of 2 is assigned.

Factor 3 – Susceptibility to Cleanup or Abatement

A score of 1 is assigned for this factor if less than 50 percent of the discharge is susceptible to cleanup or abatement, or if 50 percent or more of the discharge is

⁵ Impact of Sedimentation on Biological Resources: A Sediment Issue White Paper Report prepared for the State of Kansas, Central Plains Center for Bioassessment, Report No. 146 of the Kansas Biological Survey, August 2007, available at: http://cpcb.ku.edu/media/cpcb/data/library/assets/library/KBSreports/KBSRept146_sediment.pdf.

susceptible to cleanup or abatement, but the discharger failed to clean up 50 percent or more of the discharge within a reasonable time. Natural attenuation of discharged pollutants in the environment is not considered cleanup or abatement for purposes of evaluating this factor.

The conditions under which the discharges occurred made less than 50 percent of the discharges susceptible to cleanup and abatement. Much of the coarse sediment was deposited in natural areas downstream of the Site. Removal work there would result in damage to habitat. Fine sediment would travel further downstream and be distributed over a larger area where it would be nearly impossible to remove. Therefore, a score of 1 is assigned to this factor.

Final Score – Potential for Harm

The total “Potential for Harm” is the sum of the above three factors. That is, $2 + 2 + 1 = 5$.

Step 2 – Assessments for Discharge Violations

For settlement purposes only, a per day assessment for the discharges, rather than both a per day assessment and a per gallon assessment, is being sought.

Per Day Assessments for Discharge Violations

Deviation from Requirement

The Deviation from Requirement score reflects the extent to which the violation deviates from the specific requirement violated. The General Permit only authorizes discharges for which the discharger has minimized or prevented pollutants in using controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.

The Dischargers violated the General Permit’s prohibition on discharges except those specifically authorized. In this case, there is clear evidence that sediment-laden discharges left the Site during the storm event on April 13, 2020. Sediment-laden water was also pumped from an outfall excavation on April 14, 2020 and from a utility excavation on April 21, 2020. Sediment was observed deposited in drainage features immediately adjacent to, or a short distance from, the Site. There were no effective erosion controls, sediment controls, or perimeter controls at discharge locations during Site inspections on April 14, 17, and 21, 2020. Santa Ana Regional Water Quality Control Board (Regional Board) staff discussed these violations with Site representatives at both the April 14 and April 21 inspections in person and in follow-up phone conversations. The General Permit’s requirements were rendered ineffective of its essential functions. Thus, the Deviation from Requirement is **major**.

Table 2 of the 2017 Enforcement Policy is used to determine a per day factor for the discharges based on the Potential for Harm and the Deviation from Requirement scores. This results in a Per Day Factor of 0.15. The Per Day Factor (0.15) is then multiplied by the maximum per day amount allowed under the California Water Code (\$10,000) and by the days of violation (3), which results in the initial liability amount of \$4,500.

Step 4 – Adjustment Factors

The Enforcement Policy then requires a consideration of the discharger's conduct, specifically, the discharger's culpability, degree of cleanup and cooperation, and compliance history.

Culpability

For culpability, the Enforcement Policy prescribes an adjustment using a multiplier between 0.75 to 1.5. The lower multiplier applies to accidental incidents and the higher multiplier for intentional or negligent behavior.

The April 21, 2020 discharge event demonstrates that a high culpability score is warranted. During the April 14, 2020 inspection, the Site superintendent explained that relocation of a water pipeline would involve pumping over a million gallons of water in the line across the easterly adjacent field to the ephemeral pond owned by March Joint Powers Authority. On May 5, 2020, Regional Board staff visited the pond and found additional indications that the work to drain the line had been planned and preparations put in place. Rigid pipelines had been placed across the field and a temporary outlet structure had been constructed to dissipate the energy of the discharge. In spite of the knowledge of the need to dispose of water in the pipeline and practice in preparing for disposal, the Dischargers failed to employ controls to reduce sediment during the April 21, 2020 discharge. At the time of the discharge, field crew staff stated to Regional Board staff that they had a sediment filter available to them, but they did not use it. The failure to employ controls was carried out, at best, negligently.

Similarly, if the Dischargers had exercised the due standard of care by implementing proper erosion, sediment, and perimeter controls, as required by the General Permit, the April 13 and April 14, 2020 unauthorized discharges could have been prevented.

A culpability factor of 1.4 applies.

History of Violations

The Dischargers have a history of violations. In 2019, the Dischargers failed to comply with General Permit reporting requirements in violation of Water Code section 13399.33, and entered into a settlement with the Regional Board. Therefore, a factor of 1.1 is applied.

Cleanup and Cooperation

This factor reflects the extent to which a discharger voluntarily cooperates in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation.

During the inspection of the pond on May 5, 2020, sediment that was deposited in the Alessandro Boulevard gutter during and after the rain event on April 13, 2020 was observed cleaned up. The sediment had been removed some time prior to May 5, 2020. In regard to the April 21, 2020 discharge event, field personnel recognized the violation and committed to pumping the water to a water truck for dust suppression. Given the circumstances, the Dischargers acted as expected in responding to the discharges. A factor of 1 is applied to Violation 1.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount for Violation 1 is determined by multiplying the Initial Liability Amount determined in Step 3 by the Step 4 adjustment factors.

$\$4,500 \times 1.4 \times 1.1 \times 1 = \$6,930.$

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

Violation 2: Missing and Ineffective Perimeter Controls

The General Permit requires dischargers at Risk Level 2 sites to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the Site. (General Permit, Attachment D, Section E.1.)

At Regional Board inspections conducted on April 14, 17, and 21, 2020, perimeter controls along Alessandro Boulevard, including at intersections at Brown Street and Gem Street, were missing, and there were gaps in perimeter controls along the eastern boundary of the Site leading to two natural drainage features. Regional Board staff conducted an inspection again on May 22, 2020. At this inspection, perimeter controls were present along Alessandro Boulevard but still missing along the east side of the Site. Overall, perimeter controls were missing at various locations on the Site for at least the 4 days on which inspections were conducted.

Steps 1 and 2 are Inapplicable for Non-Discharge Violations

Step 3 – Per Day Assessments for Non-Discharge Violations

Step 3 of the Enforcement Policy directs the Regional Board to calculate a per day factor for non-discharge violations by considering the Potential for Harm and Deviation from Requirement.

The categories for Potential for Harm for non-discharge violations are categorized as minor, moderate, or major depending on the harm to the regulatory program, the Regional Board's ability to perform its statutory and regulatory functions, and the harm to beneficial uses. The Deviation from Requirement for each non-discharge violation is categorized as either minor, moderate, or major.

The gaps in perimeter controls present a minor threat to beneficial uses, and a minor potential for harm since perimeter controls existed along parts of the side, which likely attenuated sediment loads in stormwater runoff. The potential for harm is **minor**.

The General Permit required the Dischargers to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the Site. At multiple locations, perimeter controls were missing and ineffective, which led to sediment-laden discharges and rendered the General Permit requirement ineffective. The Deviation from Requirement is **major**.

This results in a Per Day Factor of "0.35" using Table 3 of the Enforcement Policy. Multiplying the Per Day Factor (0.35) by the days of violation (4) by the statutory maximum (\$10,000) yields an initial amount of \$14,000.

Culpability

During the April 14, 2020 inspection, Regional Board staff discussed this violation with Site representatives. The Site superintendent and others discussed traffic safety concerns associated with the deployment of perimeter controls at the intersection of Alessandro Boulevard and Brown Street. To the extent that traffic safety concerns existed, the matter should have been resolved as part of development of the Stormwater Pollution Prevention Plan (SWPPP) at the start of construction and in consultation with the County of Riverside. Again, at the April 21, 2020 inspection, Regional Board staff discussed the violations with Site representatives. The Dischargers acted negligently in failing to apply perimeter controls. A culpability score of 1.3 is applied to reflect the failure to act with the due standard of care necessary to prevent the violations.

History of Violations

The Dischargers have a history of violations, as detailed above. Therefore, a factor of 1.1 is applied.

Cleanup and Cooperation

The Dischargers had only partially corrected the violation over a month after the violation was first observed by Regional Board staff. Perimeter controls at two locations along the east side of the Site were still missing at the May 22, 2020 inspection despite Regional Board staff discussing the violations at both the April 14 and April 21 Site inspections. The Dischargers made some effort to correct this violation, but did not come into full compliance even after the violation was noted. This falls below the due standard of care and warrants the application of a 1.2.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount for Violation 2 is determined by multiplying the Initial Liability Amount determined in Step 3 by the Step 4 adjustment factors ($\$14,000 \times 1.3 \times 1.1 \times 1.2 = \$24,024$).

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

Violation 3: Missing and Ineffective Erosion Control BMPs

The General Permit requires dischargers at Risk Level 2 sites to apply linear erosion controls along the toe, the faces, and at the grade breaks of exposed slopes. (General Permit, Attachment D, Section E.4.) Flow lengths are not to exceed the distances shown in Table 1 in the General Permit. For areas under active construction, the General Permit also requires dischargers at Risk Level 2 sites to implement appropriate erosion control best management practices (BMPs) in conjunction with sediment control BMPs. (General Permit, Attachment D, Section E.3.) The General Permit defines active construction as areas undergoing land surface disturbance. This includes construction activity during the preliminary stage, mass grading stage, streets and utilities stage, and the vertical construction stage.

On April 14, 17, and 21, 2020, erosion controls were missing in the parkway along Alessandro Boulevard. Regional Board staff brought this violation to the Discharger's attention at the May 22, 2020 inspection and in follow up correspondence, including the Notice of Violation (NOV) issued on May 19, 2020. Erosion patterns were observed on the ground on April 14, 2020, indicating that linear erosion controls were not deployed during the rain event that occurred the previous day. Similarly, appropriate erosion and sediment controls were missing in the Brown Street construction area. Furthermore, visual inspections on April 14, 2020 showed that detention basins in use during the storm event were ineffectively constructed, resulting in overtopping and the discharge of sediment-laden stormwater from the basins. The failure to implement appropriate erosion control BMPs in conjunction with sediment control BMPs is evidenced by the various locations from which sediment discharged from the Site. Regional Board staff

again inspected the Site on July 6, 2020, at which time effective erosion controls were still missing on slopes at the southeast corner of Alessandro Boulevard and Brown Street.

For at least 84 days, the Dischargers failed to apply erosion control BMPs from April 14, 2020 through July 6, 2020 at various locations at the Site.

Steps 1 and 2 – Inapplicable for Non-Discharge Violations

Step 3 – Per Day Assessments for Non-Discharge Violations

The failure to apply effective erosion control BMPs presents a low threat to beneficial uses, and a minor potential for harm since those BMPs are necessary to prevent sediment-laden stormwater from discharging offsite. The potential for harm is **minor**.

The failure to apply erosion control BMPs at multiple Site locations, including active areas, rendered multiple General Permit requirements ineffective and, therefore, is a **major** deviation from requirements.

A Potential for Harm score of moderate and a Deviation from Requirement score of major results in a Per Day Factor of “0.35” using Table 3 of the Enforcement Policy. Multiplying the Per Day Factor (0.35) by the days of violation 36 by the statutory maximum (\$10,000) yields an initial amount of \$126,000.

Culpability

Erosion control BMPs were missing or ineffective at multiple Site locations for months. The failure to implement erosion control BMPs at the Site, as required, falls below the standard of care that should have been exercised. A culpability score of 1.3 is applied to reflect the deviation from the due standard of care.

History of Violations

The Dischargers have a history of violations, as detailed above. Therefore, a factor of 1.1 is applied.

Cleanup and Cooperation

This Dischargers were not cooperative in their efforts to comply with the Permit. During the follow-up inspections on April 17 and April 21, 2020, erosion controls continued to be missing along Alessandro Boulevard. During the May 22, 2020 inspection, while some perimeter controls appeared along Alessandro Boulevard, erosion controls were still absent. On May 19, 2020, Regional Board staff issued a NOV to the Discharger, which discussed this violation, among others, and the need for corrective action. Despite this, during the July 6, 2020 inspection, erosion controls continued to be

effectively absent at the southeast corner of Alessandro Boulevard and Brown Street. Missing erosion controls in the paved portions of Brown Street and Alessandro Boulevard parkway were resolved through the normal progression of construction rather than by the implementation of controls; construction in these areas was completed. A factor of 1.3 is applied.

Multiple Day Violations

For violations that last more than thirty (30) days, the daily assessment can be less than the calculated daily assessment, provided that it is no less than the per day economic benefit, if any, resulting from the violation, if express findings are made. Here, the violations do not cause daily detrimental impacts to the environment and are not causing daily detrimental impacts to the regulatory program. Based on the application of the multiple day reduction, the total days of violation is 36.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount for Violation 4 is determined by multiplying the Initial Liability Amount determined in Step 3 by the Step 4 adjustment factors ($\$126,000 \times 1.3 \times 1.1 \times 1.3 = \$234,234$). This results in a total base liability amount of \$234,234.

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

Violation 4: SWPPP Missing Sediment Controls for Brown Street Area

The General Permit requires dischargers to ensure that SWPPPs are designed so that all pollutants and their sources are controlled. (General Permit, XIV.A.1.) The Dischargers failed to specify erosion, sediment, or perimeter controls for the Brown Street construction area in the Site SWPPP.

A review of the SWPPP that was submitted with the Notice of Intent (NOI) showed that it does not specify erosion, sediment, or perimeter controls for the Brown Street construction area. This violation was first brought to the Discharger's attention in phone calls made on April 21 and 22, 2020. On May 21, 2020, a Site representative informed Regional Board staff that the SWPPP submitted with the NOI was still in place. This violation began on June 1, 2018, the construction start date reported by the Dischargers, and runs until at least May 21, 2020. Thus, there are 721 days of violation.

Steps 1 and 2 – Inapplicable for Non-Discharge Violations

Step 3 – Per Day Assessments for Non-Discharge Violations

The failure to include controls in the SWPPP for the Brown Street area presents a minor threat to beneficial uses, and a minor potential for harm. Failure to identify an effective combination of erosion and sediment control BMPs – including linear erosion controls – could contribute to sediment discharges during rain events. However, the presence of controls at other Site locations likely reduced the sediment discharged off the Site during rain events. Therefore, the potential for harm is **minor**.

While the SWPPP was missing sediment controls for the Brown Street Area, it did include plans for controls at other Site locations and, therefore, is a **moderate** deviation from requirements.

A Potential for Harm score of moderate and a Deviation from Requirement score of moderate results in a Per Day Factor of “0.25” using Table 3 of the Enforcement Policy. Multiplying the Per Day Factor (0.25) by the days of violation (58) by the statutory maximum (\$10,000) yields an initial amount of \$145,000.

Culpability

A culpability multiplier of 1.4 is assigned for this violation because the Dischargers were grossly negligent in failing to include BMPs for the Brown Street area in the SWPPP. The Dischargers demonstrated awareness of the need for BMPs by including them for the building sites on the project and by providing BMPs in some portions of the Brown Street area. The Dischargers also demonstrated that they knew that Brown Street was part of the project by including it in the NOI and SWPPP.

History of Violations

The Dischargers have a history of violations. Therefore, a factor of 1.1 is applied.

Cleanup and Cooperation

The Dischargers’ Qualified SWPPP Developer (QSD) was made aware that BMPs were not shown for the Brown Street area in the Site SWPPP in a telephone call on April 22, 2020. Yet, the Dischargers had not updated the SWPPP to include BMPs for Brown Street. A factor of 1.3 is applied.

Multiple Day Violations

Here, the violations do not cause daily detrimental impacts to the environment and are not causing daily detrimental impacts to the regulatory program. Based on the application of the multiple day reduction, the total days of violation is 58.

Step 5 – Determination of Total Base Liability Amount

The Total Base Liability Amount for Violation 5 is determined by multiplying the Initial Liability Amount determined in Step 3 by the Step 4 adjustment factors ($\$145,000 \times 1.4 \times 1.1 \times 1.3 = \$290,290$). This results in a total base liability amount of \$290,290.

Steps 6 through 10 are applied to the combined Total Base Liability Amount for all violations and will be discussed after the Total Base Liability Amount has been determined for the remaining violations.

Combined Base Liability Amount for All Violations

The combined Total Base Liability for Violations 1 through 4 is determined by adding the base liability amount of each violation. The combined Total Base Liability is \$555,478 ($\$6,930 + \$24,024 + \$234,234 + \$290,290$).

Step 6 – Ability to Pay and Ability to Continue in Business

Based on publicly available information, the Dischargers have the ability to pay the proposed liability without affecting its ability to stay in business. According to Exeter Property Group's website, the company owns and manages multiple Class A, income-oriented commercial and industrial properties. The company has been in business since 2006. Tax assessor records show that it owns real property assets valued at over \$67 million.

Step 7 – Economic Benefit

Estimated Economic Benefit: \$14,811

Pursuant to California Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The violations described identify several avoided expenses that have significantly benefited the Discharger. The violations of the General Permit were due to the failure to plan for, implement, and adequately oversee appropriate erosion and perimeter control BMPs.

Violation 1 does not have its own economic benefit component as it is a direct result of Violations 2 and 3. Additionally, the economic benefit for Violation 4 is de minimis and therefore not included. As for Violations 2 and 3, proper BMP implementation was estimated based on photographs and observations included in the inspections conducted by Regional Board staff on April 14, April 17, April 21, and May 22, 2020. In inspection photographs, it can be seen that fiber roll was installed along Alessandro Boulevard as a form of perimeter control, but was not installed properly, rendering it ineffective. It is estimated that approximately 1,362 feet of fiber roll required proper installation, which resulted in an economic benefit of approximately \$910. Photographs

show that this section along Alessandro Boulevard was the only portion with perimeter controls and the remainder of the perimeter did not have any perimeter controls installed. It is estimated that approximately 5,436 feet of silt fencing should have been installed per the SWPPP design plans, resulting in an economic benefit of approximately \$7,457.

It is also evident from the inspection photographs that erosion controls were not implemented. Fiber roll or gravel bag check dams should have been installed at minimum along the length of Alessandro Boulevard and fiber roll should have been installed along the toe, contour, and top of the hillsides throughout the Site. It is estimated that approximately 3,533 ft of fiber roll should have been installed as erosion controls, resulting in an economic benefit of approximately \$4,219. Gravel bag check dams should have been installed at the intersection of Alessandro Boulevard and Brown Street along the width of Brown Street. Based on the length and height of gravel check dams needed, approximately 1,050 gravel bags should have been used, which results in an economic benefit of \$1,082. Additionally, jute netting should have covered the surface area of the berm on the Northern side of the sediment basin on Brown St. Approximately 128 square yards of jute netting would have been required, resulting in an economic benefit of \$166. Finally, a hillside located at the corner of Alessandro Boulevard and Brown Street should have been cut back to a 1:1 slope. In order to achieve the 1:1 slope, the surface area of the hillside with the correct slope would have been approximately 1,191 square feet. This avoided grading results in an economic benefit of approximately \$977.

For computational purposes, the penalty payment date was established as January 31, 2021. Changes to this date will affect the total economic benefit. Based on specific assumptions within the model, the total economic benefit of noncompliance was determined to be approximately \$14,811. The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” Therefore, the minimum total liability associated with the economic benefit is approximately \$16,292.

Step 8 – Other Factors as Justice May Require

In accordance with Step 8 of the Enforcement Policy, the Total Base Liability Amount may be adjusted under the provision for “other factors as justice may require” if express findings are made to justify this. The cost of investigation and enforcement are considered “other factors as justice may require,” and are taken into account in the Total Base Liability Amount to further deterrence. Here, the Regional Board accrued \$9,826 in staff costs associated with the investigation and preparation of this Complaint.

It is appropriate to increase the Total Base Liability Amount for the four violations by **\$9,826**. This increase is in consideration of the costs of investigation and enforcement relative to the Total Base Liability Amount, is warranted given the totality of the

circumstances, and is intended to serve as a sufficient general and specific deterrent against further violations.

Step 9 – Maximum and Minimum Liability Amounts

Minimum Liability Amount: Economic benefit plus 10% or \$16,292.10.

Maximum Liability Amount: \$8,120,000.

Step 10 – Final Liability Amount

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 Enforcement Policy, the final proposed Administrative Civil Liability is \$565,304.