Attachment A – Specific Factors Considered
Administrative Civil Liability Stipulated Order No. R4-2024-0325
Fountainwood Estates
JBR Management Company LLC
WDID: 4 56C386799

JBR Management Company LLC (Settling Respondent) is alleged to have violated the requirements of the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009-DWQ, as amended by Order 2010-0014-DWQ and 2012-0006-DWQ, NPDES No. CAS000002 (General Permit or Permit), while conducting construction work on the Fountainwood Estates project, WDID 4 56C386799, located west of Denton Street at Summit Avenue, in Simi Valley, California 93063 (Site).

- Factors required to be considered in determining the amount of administrative civil liability pursuant to Water Code section 13385, subdivision (e) and the State Water Resources Control Board's Water Quality Enforcement Policy effective October 5, 2017 (Enforcement Policy) are discussed for each violation below. The Enforcement Policy can be found at https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final%20adopted%20policy.pdf.

This 4-acre Site was enrolled under the General Permit in April 2019 and was listed at that time in the Storm Water Pollution Prevention Plan (SWPPP) as a Risk Level 2 site that anticipated completion of the construction project on November 1, 2021. On January 24, 2022, the Settling Respondent submitted a Change of Information (COI) extending its construction completion date to October 31, 2022, and updating the Risk Level to Risk Level 3. This change in risk level comes with increased monitoring requirements. Discharge from the Site flows directly into the Marr Diversion Channel, which flows into Las Llajas Canyon, which flows into Arroyo Simi, which flows into Reach 7 of Calleguas Creek. The beneficial uses of Calleguas Creek Reach 7 and Arroyo Simi include municipal and domestic water supply, industrial service supply, groundwater recharge, freshwater replenishment, warm freshwater habitat, contact and non-body contact recreation, and wildlife habitats, including for rare, threatened or endangered species.

On December 30, 2021, the Los Angeles Regional Water Quality Control Board (Los Angeles Water Board) inspected the Site and observed numerous alleged violations of the General Permit, including the following: an allegedly unauthorized sediment-laden discharge of stormwater; an updated construction schedule needing to be uploaded to the Stormwater Multiple Application Reporting and Tracking System (SMARTS); and potentially numerous BMPs missing across the Site. Follow-up inspections on January 6, 11, 19, and 25, 2022, revealed that the Settling Respondent had not corrected all of these potential violations. On February 9, 2022, the Los Angeles Water Board issued a Notice

of Violation (NOV) to Settling Respondent. Los Angeles Water Board staff conducted additional inspections on May 12, June 2, August 9, 23, 31, and November 3 and 8, 2022, and observed continued potential violations of numerous General Permit requirements.[1]

This Attachment A summarizes the agreement reached after multiple settlement meetings and exchange of documents between Settling Respondent and the Los Angeles Water Board.

Violation 1: Unauthorized Discharge of Sediment-Laden Stormwater from the Site

The General Permit prohibits all discharges except for storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. (General Permit, III.B.) On December 30, 2021, Los Angeles Water Board staff inspected the Site during a qualifying storm event (QSE) and observed sediment-laden stormwater discharging from the south side of the Site directly into the Marr Diversion Channel. According to the Ventura County Public Works Watershed Flood Warning System website, which provides historical precipitation data using rain gauge information in Ventura County, the Las Llajas Canyon Rain Gauge station, located approximately 0.75 miles from the Site, recorded 0.66 inches of rainfall precipitation on December 29, 2021, and 2.22 inches of rainfall precipitation on December 30, 2021. Stormwater that fell on the southern portion of the Site was discharged directly into the Marr Diversion Channel. Stormwater that fell across the Site and flowed into the storm drains on Site was routed to the onsite basin, where it was discharged from the overflow protection inlet directly into the Marr Diversion Channel. This discharge was not specifically authorized by the General Permit, a waiver, or other waste discharge requirements.[2]

Step 1. Potential for Harm for Discharge Violations

Factor 1: Degree of Toxicity of the Discharge

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 generally. A score between 0 and 4

[1] JBR contends that many of the matters identified in this Attachment A giving rise to the violations identified herein were caused or contributed to by the actions, omissions, and abandonment of the Fountainwood Project by its original general contractor. Nothing contained in this Attachment is to be construed as an admission of any liability or wrongdoing whatsoever by JBR.

[2] 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.)

is assigned based on a determination of the risk and threat of the discharged material.

Sediment-laden stormwater and non-stormwater is opaque to sunlight; a reduction in light transmitted to underwater plants impairs the ability of the underwater plants to produce energy and dissolved oxygen through photosynthesis.[3] 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.

Factor 2: Harm or Potential for Harm to Beneficial Uses

The evaluation of the actual or potential harm to beneficial uses factor considers the harm to beneficial uses in the affected receiving water body that may result from exposure to the pollutants or contaminants in the discharge, consistent with the statutory factors of the nature, circumstances, extent, and gravity of the violation. The Los Angeles Water Board may consider actual harm or potential harm to human health, in addition to harm to beneficial uses. The harm or potential harm to beneficial uses ranges from 0 to 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).

The Site discharges directly into the Marr Diversion Channel, which flows into Las Llajas Canyon, which flows into Arroyo Simi, which flows into Reach 7 of Calleguas Creek. The beneficial uses of Calleguas Creek Reach 7 and Arroyo Simi include municipal and domestic water supply, industrial service supply, ground water recharge, freshwater replenishment, warm freshwater habitat, contact and non-body contact recreation, and wildlife habitats, including for rare, threatened, or endangered species.

A discharge of sediment has potential to deleteriously impact aquatic plants, fish, macroinvertebrates and other aquatic organisms in the short term.[4] As

[3] Stormwater Runoff, Learn the Issues, Chesapeake Bay Program, available at https://www.chesapeakebay.net/issues/stormwater_runoff; https://www.nature.com/scitable/blog/saltwater-science/runoff_how_activities_near_and/.
[4] Impact of Sedimentation on Biological Resources: A Sediment Issue White Paper Report prepared for

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. Thus, the discharge of sediment from the Site had the potential to negatively impact wildlife habitat and contact and non-body contact recreation beneficial uses. The sediment discharged from the Site poses a **moderate** threat to beneficial uses supporting aquatic life but is likely to attenuate without appreciable medium or long term acute or chronic illnesses. Therefore, a score of **3** is appropriate.

Factor 3: Susceptibility to Cleanup or Abatement

The susceptibility to cleanup or abatement factor is assessed as either 0 or 1. A score of 0 is assigned if the Settling Respondent 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 Settling Respondent failed to clean up 50 percent or more of the discharge within a reasonable time. For this violation, because sediment-laden storm water discharged from the Site into the Marr Diversion Channel, where it dispersed, cleanup or abatement was not possible. Therefore, the Prosecution Team assigned a score of 1.

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

Step 2. Assessment for Discharge Violations

Per Gallon Assessment for Discharge Violations

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.

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. The Enforcement Policy (p.16) defines a major Deviation from Requirement as follows: “The requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

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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/datalibrary/assets/library/KBSreports/KBSRept146_sediment.pdf.

The General Permit prohibits all discharges except storm water and non-storm water discharges specifically authorized by the General Permit or another NPDES permit. Only discharges that have been controlled with BMPs that achieve Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) are authorized. Here, Los Angeles Water Board staff observed sediment-laden water discharging from the Site on December 30, 2021. At this inspection, perimeter control BMPs, sediment control BMPs and erosion control BMPs were missing. This resulted in the discharge of sediment-laden water off the Site. Therefore, the General Permit's requirements were rendered ineffective in their essential functions, and a **major** Deviation from Requirement is appropriate.

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

Regional Water Board staff estimated that on December 29-30, 2021, approximately 101,760 gallons of sediment-laden stormwater discharged off the Site, resulting in the discharge of sediment directly into the Marr Diversion Channel, which flows into Las Llajas Canyon, which flows into Arroyo Simi, which flows into Reach 7 of Calleguas Creek. Water Code section 13385(c) provides that the civil liability "may be imposed…in an amount not to exceed the sum of both of the following: (1) $10,000 per day for each day in which the violation occurs. (2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed $10 multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons."

Per Gallon Assessment = 0.28 (Per Gallon Factor) x 100,760 (spill volume - 1,000 gallons) x $10 per gallon = $282,128

Per Day Assessment for Discharge Violations

When there is a discharge, the Los Angeles Water Board must 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. As discussed above, here the Deviation from Requirement is **major**.

Table 2 of the Enforcement Policy (p. 15) is used to determine a "Per Day Factor" based on Step 1 (Potential for Harm) and the Deviation from Requirement. Using a Potential for Harm score of 6 and a moderate Deviation from Requirement, the Per Day Factor is **0.28**. This Per Day Factor value is then multiplied by the statutory maximum per day of violation ($10,000).

Per Day Assessment = .28 (Per Day Factor) x 2 days x $10,000 per day of violation = $5,600

Initial Liability Amount

$282,128 (Per Gallon Assessment) + $5,600 (Per Day Assessment) = $287,728

Step 3. Per Day Assessment for Non-Discharge Violations

This factor does not apply to this violation.

Step 4. Adjustment Factors

Degree of Culpability:

For culpability, the Enforcement Policy prescribes an adjustment using a multiplier between 0.75 to 1.5. A lower multiplier applies to accidental incidents and a higher multiplier applies to intentional or negligent behavior. On December 30, 2021, during the rain event, Los Angeles Water Board staff observed that the Settling Respondent did not have any perimeter control BMPs, sediment control BMPs, or erosion control BMPs at the Site. The Settling Respondent's SWPPP lists perimeter control BMPs, sediment control BMPs and erosion control BMPs that should have been installed and maintained throughout the duration of their project, demonstrating negligence on the part of the Settling Respondent. Therefore, a multiplier of 1.3 was assessed.

History of Violations:

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

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. Los Angeles Water Board staff inspected the Site 4 times after the storm event, January 6, 11, 19, and 25, 2022, and sent an NOV to the Settling Respondent on February 9, 2022. It was not until January 26, 2022 that the Settling Respondent implemented some perimeter control BMPs, sediment control BMPs and erosion control BMPs. Therefore, a multiplier of 1.4 was assessed. Furthermore, after several inspections by board staff, the risk level of the project was modified. This change was necessary due to the extension of the construction period. Despite this risk level change, and the repeated inspections, corrective action, even in the form of iterative improvement, was not taken.

Step 5. Total Base Liability

Violation 1

$287,728 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.4 (Cleanup and Cooperation) = $523,664. The statutory maximum penalty is $1,027,600.

Violation 2: Failure to Implement Perimeter Controls

The Settling Respondent violated Attachment D and E, section E.1 of the General Permit by failing to employ BMPs for perimeter controls throughout the Site.

Attachment D and E, Section E.1 of the General Permit states that Risk Level 2 and Risk Level 3 dischargers shall establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from a site.

On December 30, 2021, Los Angeles Water Board staff observed that work areas at the Site were lacking perimeter controls, allowing a sediment-laden discharge. The south side of the Site is located along the Marr Diversion Channel. At follow-up inspections on January 6, 11, 19 and 25, 2022, the Site was still observed without perimeter controls. On February 9, 2022, the Los Angeles Water Board issued an NOV to the Settling Respondent, informing it of the missing perimeter controls measures at the Site. The Settling Respondent notified the Los Angeles Water Board that silt fence was installed around the perimeter of the Site on January 26, 2022. In a follow-up inspection on May 12, 2022, Los Angeles Water Board staff observed silt fence installed, but noted that additional perimeter control measures were needed along the channel. On June 2, 2022, Los Angeles Water Board staff observed that the silt fence was broken, and additional perimeter control measures were needed along the channel. On August 9, 2022, Los Angeles Water Board staff observed adequate perimeter controls along the channel,

however, additional perimeter control measures were needed at the entrance near the stockpiles. During additional follow up inspections on August 23 and August 31, 2022, Los Angeles Water Board staff observed the same area near the entrance without perimeter controls. On November 8, 2022, Los Angeles Water Board staff observed the silt fence along the fence line near the channel was broken, torn and knocked over in some areas. The installation of the silt fencing was an improvement but ineffective to serve the objective of the General Permit requirement for perimeter controls because the BMP was not repaired or updated given Site conditions. This violation was assessed as a continuous violation from December 30, 2021, to January 26 (27 days), from the first day the violation was observed to the date that BMPs were implemented, on May 12, June 2, August 9, August 23, August 31, and November 8, 2022. Therefore, this violation is assessed for 33 days.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

The Site is adjacent to the Marr Diversion Channel. Stormwater that flows into the Marr Diversion Channel flows into Las Llajas Canyon, which flows into Arroyo Simi, which flows into Reach 7 of Calleguas Creek.

Failure to implement effective perimeter control BMPs to limit the pollutants discharged from the Site results in the direct discharge of sediment-laden stormwater during storm events. Furthermore, sediment discharged from the Site can reduce the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation in waterways. Sediment also transports other pollutants such as nutrients, metals, and oils and greases. All of these factors are detrimental to habitat for aquatic life. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Major

The Settling Respondent did not implement effective perimeter controls at the Site on Inspection occurring on December 30, 2021, January 6, 11, 19 and 25, 2022. The Settling Respondent installed perimeter control BMPs after receipt

on January 26, 2022. However, additional Perimeter control deficiencies were observed on May 12, June 2, August 9, August 23, August 31 and November 8, 2022. The requirement was rendered ineffective for at least four months, when there were no perimeter controls at the Site, and therefore, the Deviation from Requirement was characterized as major.

Per Day Factor

For a moderate Potential for Harm and major Deviation from Requirement, the per-day factor range is 0.4-0.7. For Violation 2, the mid-range per day factor of 0.55 has been selected.

Initial Liability Amount

0.55 (Per Day Factor) x 33 (days of violation) x $10,000 (Statutory Maximum Liability) = $181,500.

Step 4. Adjustment Factors

Degree of Culpability:

The Settling Respondent's SWPPP states that gravel bags and silt fencing would be used to intercept soil particles that are being transported by stormwater. However, the Site did not have any perimeter controls during the December 30, 2021, and January 6, 11, 19 and 25, 2022 inspections. Los Angeles Water Board staff notified the Settling Respondent of the need to install perimeter controls at those 5 inspections, and in the February 9, 2022 NOV, before the Settling Respondent implemented the most basic of perimeter control measures at the Site. Inadequate perimeter controls were also observed on May 12, June 2, August 9, 23, 31 and November 8, 2022. Settling Respondent failed to implement adequate perimeter controls at the Site entrance showing a lack of due care by the Settling Respondent. Therefore, a multiplier of 1.3 was assessed. This reflects the Settling Respondent's failure to fulfill its intentions in the SWPPP, as well as respond to multiple staff directives, and only partially achieve compliance after an NOV was issued. These type of BMPs can often prevent or lessen the impacts of sediment-laden stormwater leaving construction sites and their absence had a direct impact on the discharge alleged in violation 1.

History of Violations:

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

Cleanup and Cooperation:

After several notifications on inspections on December 30, 2021, January 6, 11, 19 and 25, 2022, and the February 9 NOV, the Settling Respondent installed some silt fencing and gravel bags as perimeter controls. After these perimeter controls were installed however, there were deficiencies observed on May 12, June 2, August 9, August 23, August 31, and November 8, 2022. Failure to implement and maintain effective perimeter controls at the Site has the potentially allow the discharge of sediment into the Marr diversion channel. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability for Violation 2

$181,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.3 (Cleanup and Cooperation) = $306,735. The Statutory Maximum Penalty is $330,000.

Violation 3: Failure to Implement Adequate Sediment and Erosion Control BMPs Throughout the Site

The Settling Respondent violated Attachment D and E, Section D and E of the General Permit by failing to implement appropriate erosion and sediment control BMPs to prevent the discharge of sediment.

Attachment D and E, Section D.1 of the General Permit states that Risk Level 2 and Risk Level 3 dischargers shall implement effective wind erosion control.

Attachment D and E, Section E.3 states that Risk Level 2 and Risk Level 3 dischargers shall implement appropriate erosion control BMPs in conjunction with sediment control BMPs for areas under active construction.

Attachment D Section E.4 of the General Permit states that Risk Level 2 and Risk Level 3 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths.

On December 30, 2021, Los Angeles Water Board staff inspected the Site and observed a lack of sediment and erosion control BMPs implemented throughout the Site during a rain event. During follow up inspections on January 6, 11, 19, and 25, 2022, the Site was still observed without sediment and erosion control measures. On February 9, 2022, the Los Angeles Water Board issued the NOV to the Settling Respondent, informing it of the failure to implement adequate sediment and erosion control BMPs throughout the Site. The Settling Respondent notified the Los Angeles Water Board that additional sediment and erosion control BMPs were implemented at the Site on January 26, 2022. In follow-up inspections on May 12, June 2, and August 9, 2022, Los Angeles Water Board staff

observed adequate sediment and erosion controls at the Site. This violation was assessed as a continuous violation from December 30, 2021, to January 26, 2022 (27 days), from the first day the violation was observed to the date that BMPs were implemented.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

The Site is adjacent to the Marr Diversion Channel. Stormwater that flows into the Marr Diversion Channel flows into Las Llajas Canyon, which flows into Arroyo Simi, which flows into Reach 7 of Calleguas Creek.

Failure to implement sediment and erosion control BMPs to limit the pollutants discharged from the Site, may result in the direct discharge of sediment-laden stormwater during storm events. Furthermore, sediment discharged from the Site can reduce the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas, and impede navigation in waterways. Sediment also transports other pollutants such as nutrients, metals, and oils and greases. All of these factors are detrimental to habitat for aquatic life. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Moderate

The Settling Respondent did not implement sediment and erosion controls at the Site as observed during inspections occurring on December 30, 2021, January 6, 11, 19 and 25, 2022. The Settling Respondent did not implement sufficient sediment and erosion controls for at least four months. Therefore, the requirement was rendered partially ineffective and the Deviation from Requirement was characterized as moderate.

Per Day Factor

For moderate Potential for Harm and major Deviation from Requirement, the per-day factor ranges from 0.3-0.4. For Violation 3, the mid-range per-day factor of 0.35 has been selected.

Initial Liability Amount

0.35 (Per Day Factor) x 27 (days of violation) x $10,000 (Statutory Maximum Liability) = $94,500.

Step 4. Adjustment Factors

Degree of Culpability:

The Settling Respondent's SWPPP lists hydraulic mulch, velocity dissipation devices, soil preparation-roughening, non-vegetated stabilization linear sediment controls and wind erosion controls as sediment and erosion control BMPs to prevent sediment from leaving the Site. Despite these promised BMPs, the Site did not have any sediment and erosion controls during the December 30, 2021, and January 6, 11, 19 and 25, 2022 inspections. Los Angeles Water Board staff notified the Settling Respondent of the need to install sediment and erosion controls at the inspections, and in the February 9, 2022 NOV, before the Settling Respondent implemented adequate sediment and erosion control measures at the Site, demonstrating negligence on the part of the Settling Respondent. Therefore, a multiplier of 1.3 was assessed.

History of Violations:

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

Cleanup and Cooperation:

After several notifications during inspections on December 30, 2021, January 6, 11, 19 and 25, 2022, the Settling Respondent failed to take steps to achieve compliance. Two months after the February 9 NOV, the Settling Respondent installed adequate sediment and erosion control measures at the Site on April 27, 2022. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability for Violation 3

$94,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.3 (Cleanup and Cooperation) = $159,705. The Statutory Maximum Penalty is $270,000.

Violation 4: Failure to Implement Good Housekeeping Measures for Concrete, Trash and Debris

The Settling Respondent violated Attachment D and E, Section B.2 and B.6 of the General Permit by failing to implement good housekeeping measures for concrete, trash and debris.

Attachment D and E, Section B.2 subsection f of the General Permit states that Risk Level 2 and Risk Level 3 dischargers shall implement good housekeeping measures for waste management, including, but not limited to containing and securely protecting stockpiled waste material from wind and rain at all times. Attachment D and E, section B.2 subsection h.i states that equipment and materials for cleanup of spills shall be available on site and that spills and leaks shall be cleaned up immediately and disposed of properly. Section B.2 subsection i of the General Permit states that dischargers should ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge to the underlying soil and onto the surrounding areas.

Attachment D and E, Section B.2.f requires that Risk Level 2 and Risk Level 3 dischargers shall 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.

Attachment D and E, Section B.6 further states that Risk Level 2 and Risk Level 3 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 January 25, 2022, Los Angeles Water Board staff inspected the Site and observed piles of concrete waste, trash and debris on the ground without proper containment BMPs. At follow up inspections on May 12, June 2, August 9, August 23, August 31, November 3, and November 8, 2022, Los Angeles Water Board staff observed additional piles of concrete waste, trash and debris around the Site. Los Angeles Water Board staff observed this violation on January 25, May 12, June 2, August 9, August 23, August 31, November 3, and November 8, 2022. Therefore, this violation is assessed for 8 days.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Failure to exercise good housekeeping could result in the discharge of pollutants from the Site into Marr Diversion Channel, which flows into Las Llajas Canyon, which flows into Arroyo Simi, which flows into Reach 7 of Calleguas Creek. This poses a threat to existing and potential beneficial uses. Concrete spills are pollutant sources, and when not properly contained and cleaned up, have the potential to be discharged from the Site and pollute the receiving waters. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Major

The General Permit requires dischargers to implement good housekeeping measures to clean up concrete spills immediately, and to contain and protect debris piles from wind and rain. However, Los Angeles Water Board staff observed concrete spills at six different inspections. Therefore, the Deviation from Requirement was characterized as major.

Per Day Factor

For moderate Potential for Harm and major Deviation from Requirement, the per-day factor ranges from 0.4-0.7. For Violation 4, the mid-range per-day factor of 0.55 has been selected.

Initial Liability Amount

0.55 (Per Day Factor) x 8 (days of violation) x $10,000 (Statutory Maximum Liability) = $44,000.

Step 4. Adjustment Factors

Degree of Culpability:

The Settling Respondent did not implement good housekeeping measures on the Site after enrolling in the General Permit, failing to contain and clean up and dispose of stucco and concrete spills, concrete debris, and trash and debris

piles properly. Los Angeles Water Board staff notified the Settling Respondent of this violation at inspections occurring on January 25, May 12, June 2, August 9, August 23, August 31, November 3, and November 8, 2022. Despite the numerous notifications, wet concrete spills, dry concrete piles, and trash and debris piles were observed at eight different inspections, demonstrating negligence on the part of the Settling Respondent. A multiplier of 1.3 was assessed.

History of Violations:

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

Cleanup and Cooperation:

The Settling Respondent was notified of the requirement to implement good housekeeping measures for concrete, trash and debris during the inspections on January 25, May 12, June 2, August 9, August 23, August 31, November 3, and November 8, 2022. Waste piles were observed at each of these eight inspections without proper BMPs. Therefore, a multiplier of 1.3 was assessed.

Step 5. Total Base Liability for Violation 4

$44,000 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.3 (Cleanup and Cooperation) = $74,360. The Statutory Maximum Penalty is $80,000.

Violation 5: Failure to Implement Stabilized Construction Entrance and Exit

The Settling Respondent violated Attachment D and, section E.1 of the General Permit by failing to stabilize construction entrances/exits.

Attachment D and E, section E.1 of the General Permit states that Risk Level 2 and Risk Level 3 dischargers shall stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

On May 12, 2022, Los Angeles Water Board staff inspected the Site and observed that the construction entrance and exit of the Site was not stabilized. On June 2, 2022, Los Angeles Water Board staff observed that the entrance and exit at the Site was still not stabilized, as evidenced by sediment track-out in the street. On August 9, 2022, Los Angeles Water Board inspectors observed that the Site had a stabilized construction entrance and exit, but it was not adequately installed to prevent sediment track out. On August 23 and August 31, 2022, Los Angeles Water Board staff observed that the stabilized construction exit was inadequate, with sediment track out observed on the

driveway. This violation was observed on May 12, June 2, August 9, August 23 and August 31, 2022, for a total of 5 days.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Failure to implement stabilized construction entrances and exits to limit the pollutants discharged from the Site can negatively impact water bodies. Without stabilized entrance and exit BMPs, sediment from a site was tracked from the Site into the street, where it flows into storm drains and flows to receiving waters. Sediment that gets discharged to Calleguas Creek can 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. Therefore, the Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Moderate

Although the General Permit requires that a discharger implement a stabilized construction entrance and exit to prevent the discharge of pollutants, the Settling Respondent failed to stabilize the construction entrance and exit during inspections that occurred on May 12 and June 2, 2022, in any way and inadequately on August 9, August 23 and August 31, 2022. The requirement was not met, and the effectiveness of the requirement was only partially compromised, and therefore, moderate Deviation from Requirement is appropriate.

Per Day Factor

For moderate Potential for Harm and moderate Deviation from Requirement, the per-day factor ranges from 0.3-0.4. For Violation 5, the mid-range per-day factor of 0.35 has been assessed.

Initial Liability Amount

0.35 (Per Day Factor) x 5 (days of violation) x $10,000 (Statutory Maximum Liability) = $17,500.

Step 4. Adjustment Factors

Degree of Culpability:

The General Permit expressly requires that dischargers stabilize all construction entrances and exits. The Settling Respondent's SWPPP states that the Settling Respondent would implement a combination of metal track plates, gravel base or mulch to reduce sediment track out. On May 12 and June 2, 2022, Los Angeles Water Board staff did not observe any stabilized entrance and exit BMPs at the Site. On August 9, August 23 and August 31, 2022, the Site was observed with metal shaker plates, inadequately installed to prevent sediment track out. The Settling Respondent's noncompliance with this General Permit requirement is negligent, at best. Therefore, a multiplier of 1.3 was assessed.

History of Violations:

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

Cleanup and Cooperation:

This violation was observed at Site inspections on May 12 and June 2, 2022. It was at the following inspection, on August 9, August 23, and August 31, 2022, that Los Angeles Water Board inspector observed shaker plates at the Site's entrance, but they were not adequately installed as evidenced by sediment track out into the street. Therefore, a multiplier of 1.2 was assessed.

Step 5. Total Base Liability for Violation 5

$17,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.2 (Cleanup and Cooperation) = $27,300. The Statutory Maximum Penalty is $50,000.

Violation 6: Failure to Collect Stormwater Grab Samples During a Storm Event

The Settling Respondent violated Attachment E, section I of the General Permit by failing to collect stormwater grab samples during a storm event on December 30, 2021.

Attachment D, Section I.4.a states that Risk Level 2 dischargers shall collect stormwater grab samples from sampling locations that are representative of flow and characteristics of the discharge.

Attachment D, Section I.4.d further states that Risk Level 2 dischargers shall analyze their effluent samples for pH and turbidity.

Attachment D, Section I.4.e states that Risk Level 2 dischargers shall electronically submit all storm event sampling results to the State Water Board no later than 10 days after the conclusion of the storm event.

On December 30, 2021, Los Angeles Water Board staff inspected the Site during a storm event and collected turbidity measurements in the stormwater leaving the Site. The Settling Respondent did not collect samples on this date and did not submit any storm event sampling results on SMARTS. Therefore, this violation is assessed for 1 day.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Collecting grab samples during a storm event allows dischargers to assess the quality of the stormwater that is discharging from the Site. Collecting these samples allows dischargers to make the necessary adjustments to their BMPs when the NALs are not being met. At this event, the Settling Respondent did not collect these samples, so the Settling Respondent was not able to address the BMP deficiencies that failed to prevent the discharge of sediment-laden stormwater. The Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Major

The General Permit requires the Discharger to implement BMPs to prevent the discharge of polluted stormwater from leaving the Site. The Settling Respondent did not have perimeter controls or containment in place at the time of the storm event. Therefore, the Deviation from Requirement is characterized as major.

Per Day Factor

For moderate Potential for Harm and major Deviation from Requirement, the per-day factor ranges from 0.4-0.7. For Violation 6, the mid-range per-day factor of 0.55 has been selected.

Initial Liability Amount

0.55 (Per Day Factor) x 1 (days of violation) x $10,000 (Statutory Maximum Liability) = $5,500.

Step 4. Adjustment Factors

Degree of Culpability:

The Settling Respondent's SWPPP includes a Rain Event Action plan that states that stormwater sampling will be conducted to monitor levels of turbidity and pH from each day that a qualifying rain event results in a discharge from the Site. The Settling Respondent has not collected and analyzed stormwater samples since December of 2019, showing a negligent standard of care. Therefore, a multiplier of 1.1 was assessed.

History of Violations:

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

Cleanup and Cooperation:

On December 30, 2021, the Settling Respondent failed to collect and analyze stormwater discharging from the Site. The Settling Respondent has not collected and analyzed stormwater events or uploaded monitoring results in SMARTS since December of 2019. Therefore, a multiplier of 1.2 was assessed.

Step 5. Total Base Liability for Violation 6

$5,500 (Initial Liability Amount) x 1.3 (Degree of Culpability) x 1 (History of Violation) x 1.2 (Cleanup and Cooperation) = $7,260. The Statutory Maximum Penalty is $10,000.

Violation 7: Failure to Meet Receiving Water Monitoring Requirements

The Settling Respondent violated Section V.B.2 of the General Permit by exceeding the Numeric Action Level (NAL) during the storm event on December 30, 2021.

General Permit Section V.B.2 states that Risk Level 2 and Risk Level 3 dischargers have a storm event daily average for turbidity of 250 NTU. It also states that dischargers need to take immediate corrective actions if the discharge is outside of the range of allowable turbidity values.

On December 30, 2021, Los Angeles Water Board staff inspected the Site during a storm event and collected turbidity measurements in the stormwater discharging from the Site directly into the Marr Diversion Channel. Los Angeles Water Board staff took 3 turbidity measurements of the stormwater discharging from the Site using a Hanna turbidity meter. The results were 678 NTU, 922 NTU and 944 NTU, respectively. The daily weighted average for turbidity was 848 NTU. Therefore, this violation is assessed for 1 day.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to this violation.

Step 2. Assessment for Discharge Violations

This factor does not apply to this violation.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

The south end of the Site borders the Marr Diversion Channel, which flows into Las Llajas Canyon, which flows into Arroyo Simi, which flows into Reach 7 of Calleguas Creek. The Settling Respondent's lack of implemented BMPs led to sediment-laden stormwater discharging from the Site into the Marr Diversion Channel and ultimately the Calleguas Creek. The Potential for Harm for this violation is characterized as moderate.

Deviation from Requirement: Major

The General Permit requires the Discharger to meet the NALs for turbidity and pH. The Settling Respondent did not meet the NALs for turbidity in the sediment-laden stormwater discharging from the Site. Therefore, the Deviation from Requirement is characterized as major.

Per Day Factor

For moderate Potential for Harm and major Deviation from Requirement, the per-day factor ranges from 0.4-0.7. For Violation 7, the mid-range per-day factor of 0.55 has been selected.

Initial Liability Amount

0.55 (Per Day Factor) x 1 (days of violation) x $10,000 (Statutory Maximum Liability) = $5,500.

Step 4. Adjustment Factors

Degree of Culpability:

The Settling Respondent did not collect stormwater grab samples, so they would not have known that they exceeded water quality standards on the day of the inspection. Therefore, a multiplier of 1.1 was assessed.

History of Violations:

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

Cleanup and Cooperation:

The Settling Respondent has not submitted ad hoc reports for any stormwater discharges that have occurred at the Site since December of 2019. Therefore, a multiplier of 1.2 was assessed.

Step 5. Total Base Liability for Violation 7

$5,500 (Initial Liability Amount) x 1.1 (Degree of Culpability) x 1 (History of Violation) x 1.2 (Cleanup and Cooperation) = $7,260. The Statutory Maximum Penalty is $10,000.

Table 1: Total Base Liability for all Violations				
Violation	**Violation Description**	**Proposed Liability**	**Maximum Liability**	**No. of Days**
1	Unauthorized discharge of sediment-laden stormwater from the Site	$523,664	$1,027,600	2
2	Failure to implement perimeter controls	$306,735	$33,000	33
3	Failure to implement sediment and erosion controls	$159,705	$270,000	27
4	Failure to implement good housekeeping measures for concrete, trash and debris	$74,360	$80,000	8
5	Failure to implement stabilized construction entrance/exit	$27,300	$50,000	5
6	Failure to collect stormwater samples	$7,260	$10,000	1
7	Failure to meet Numerical Action Levels listed in the General Permit	$7,260	$10,000	1
Total		$1,106,284	$1,777,600	77

Step 6. Ability to Pay

The Enforcement Policy requires the Los Angeles Water Board to analyze the Discharger's ability to pay the Total Base Liability and the effect paying the Total Base Liability may have on the Discharger's ability to continue in business. Upon entering into settlement discussions, the Settling Respondent presented financial information to the Prosecution Team

The liability amount proposed in the Stipulated Order is significantly reduced from the liability initially proposed based on a consideration of the Settling Respondent's ability to pay. The Prosecution Team's financial expert has determined that the Settling Respondent is unable to pay the liability initially proposed by the Los Angeles Water Board Prosecution Team, or any substantial amount beyond what is proposed in the Stipulated Order. As required by law, the proposed liability amount is greater than the economic benefit amount.

Step 7. Economic Benefit

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The violations described by the Los Angeles Water Board and the NOV identified avoided and delayed expenses that have benefited the Settling Respondent. The violations are as follows:

1. Unauthorized discharge of sediment-laden stormwater from the Site
2. Failure to implement effective perimeter controls
3. Failure to implement effective sediment and erosion control BMPs
4. Failure to implement good housekeeping measures for concrete, trash, and construction debris
5. Failure to implement and stabilize construction entrance and exits
6. Failure to collect stormwater samples
7. Failure to meet Numerical Action Levels listed in the General Permit

The economic benefit elements are based on the requirements of the Construction General Permit (CGP), information provided by the Los Angeles Regional Water Quality Control Board (Regional Board), and documents submitted to the Storm Water Multiple Application & Report Tracking System (SMARTS), including the Settling Respondent's Stormwater Pollution Prevention Plan (SWPPP), documents submitted by the Settling Respondent and qualified SWPPP practitioner (QSP), and Regional Board inspection reports.

For this economic benefit analysis, seven violations were assessed and are listed below. Review of the information helped identify compliance actions that, if implemented at appropriate times, would have prevented or mitigated the violations. Failure to implement

the compliance actions in a timely manner resulted in delayed and avoided expenses that have benefited the Settling Respondent. A more detailed breakdown of the delayed and avoided costs, as well as the assumptions contained within each violation's analysis, is presented as Appendix A.

Violation 1: Unauthorized Discharge of Sediment-Laden Stormwater from the Site.

- Costs associated with the violation are considered as part of later violations for this analysis.

Violation 2: Failure to Establish and Maintain Perimeter Controls

- Installing and maintaining silt fence around the Site was an avoided cost.
- The total avoided cost to take actions to comply with the CGP requirements and prevent this violation is $5,063.13.

Violation 3: Failure to Implement Adequate Sediment and Erosion Control BMPs Throughout the Site.

- Installing and maintaining fiber rolls, the installation of inlet protection for the outlet box in the sedimentation basin, and the installation of silt fences could have complied with the CGP requirements and prevented this violation.
- The total avoided cost to take actions to comply with the CGP requirements and prevent this violation is $7,894.14.

Violation 4: Failure to Maintain Good Housekeeping Measures for Concrete, Trash, and Debris.

- Renting dumpsters to contain concrete debris and waste; renting a sweeper to control Site impacts due to construction activities, and employee time to walk the Site and dispose at the end of each day were avoided costs were costs avoided by the Settling Respondent which led to this violation.
- The total avoided cost to take actions to comply with the CGP requirements and prevent this violation is $5,398.

Violation 5: Failure to Implement Stabilized Construction Entrance and Exit.

- Costs associated with the violation are considered delayed. A stabilized construction entrance and exit should have been properly installed and maintained.
- The total cost to comply with this CGP requirement is $3,100.

Violation 6: Failure to Collect Stormwater Grab Samples During a Storm Event.

- Costs associated with the violation are considered avoided. Turbidity and pH test kits should have been purchased and utilized to collect samples.
- The total cost to comply with this violation is $186.23.

Violation 7: Failure to Meet Receiving Water Monitoring Requirements.

- Costs associated with compliance actions for this violation are minimal and considered negligible for this analysis.

The full breakdown for individual costs associated with each economic benefit component is attached as **Appendix A.**

Estimated Economic Benefit: ($5,063.13. + $7,894.14 + $5,398 + $3,100 + $186.23.) = $21.641.50.

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 Los Angeles Water Board accrued $ 12,687.56 in staff costs associated with the investigation and preparation of this enforcement action prior to commencing settlement discussions.

It is appropriate to increase the Total Base Liability Amount for the seven violations by $12,687.56. 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.

Staff costs are appropriately added to the total recommended penalty, but given the appropriate findings made related to the Settling Respondent's inability to pay and the subsequent reduction to the stipulated penalty, no specific differentiation between staff costs and penalties is necessary.

Step 9. Maximum and Minimum Liability Amounts

Minimum Liability Amount: Economic benefit plus 10% or $23,805

Maximum Liability Amount: $1,777,600

Step 10. Final Liability Amount

The final liability amount consists of the added amounts for each violation, with any allowed adjustments, provided the amounts were within the statutory minimum and maximum amounts. The final liability amount was calculated by adding the Total Base Liability for the violations with the staff costs accrued by the Los Angeles Water Board associated with the investigation, preparation, and enforcement of the violations. The final liability amount was then reduced given that sufficient information supported the Settling Respondent's claim of an inability to pay. Therefore, the proposed final liability amount is $300,000.