

**ORDER NO. R5-2019-0522**  
**ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING**  
**FOR**  
**PALOS VERDES PROPERTIES INC.**  
**CROSSINGS PHASE 2 ROUGH GRADING**  
**EL DORADO COUNTY**

By signing below and returning this *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* to the Central Valley Water Board, Palos Verdes Properties Inc. and LLL&A, LLC (Discharger) hereby accepts the Settlement Offer described in the letter dated 31 May 2019 and titled *Offer to Settle Administrative Civil Liability, Palos Verdes Properties Inc., Crossings Phase 2 Rough Grading, El Dorado County, WDID 5S09C385255* and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of **one hundred seventy thousand nine hundred seventy-six dollars (\$170,976)** by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the Crossings Phase 2 Rough Grading construction project.

The Discharger understands that by signing this *Acceptance and Waiver*, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the *Acceptance and Waiver* shall be returned to the following address:

Central Valley Regional Water Quality Control Board  
Attention: Michael Fischer, Enforcement Section  
11020 Sun Center Drive, Suite 200  
Rancho Cordova, CA 95670

The Discharger understands that federal regulations require the Prosecution Team to publish notice of and provide at least 30 days for public comment on any proposed resolution of an

enforcement action for violations of an NPDES permit, such as the General Permit. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the Central Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed and an Order Number is inserted, then the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

PALOS VERDES PROPERTIES INC. and L L L & A, LLC

By: Original signed by Leanord Grado

Title: President and Manager

Date: 10-28-2019

IT IS SO ORDERED, pursuant to California Water Code section 13385.

By: Original signed by  
PATRICK PULUPA, Executive Officer

Date: 12-06-2019

**PENALTY CALCULATION METHODOLOGY  
FOR  
PALOS VERDES PROPERTIES INC. AND L L L & A, LLC  
CROSSINGS PHASE 2 ROUGH GRADING  
EL DORADO COUNTY**

The State Water Resources Control 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 nine-step approach is discussed below, as is the basis for assessing the corresponding score. The Enforcement Policy can be found at: [Enforcement Policy](#).

**SUMMARY**

Palos Verdes Properties Inc. and L L L & A, LLC (Discharger) obtained coverage under the State Water Resources Control Board's *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities*, Order 2009-0009 DWQ (Construction General Permit) in November 2018 for the Crossings Phase 2 Rough Grading construction project (Project) in El Dorado County. This Project enrolled for Construction General Permit as a Risk Level 1 site under the terms of the Construction General Permit.

Central Valley Regional Water Quality Control Board (Board) staff conducted an inspection of the Project on 18 January 2019 and observed that the Project did not have adequate erosion control Best Management Practices (BMPs) on inactive areas, perimeter sediment control BMPs were not installed in all required areas, and a retention basin was nearly full and was installed without the required spillway. In addition, significant erosion and evidence of sediment discharge was observed. A review of the Project's Permit Registration Documents showed that the risk level had been calculated using post-construction conditions and not the pre-construction conditions as specified by the Construction General Permit. Board staff issued a Notice of Violation on 4 February 2019 requesting a response to the violations observed during the 18 January 2019 inspection, as well as a re-evaluation of the Project's Risk Level by 28 February 2019.

Board staff re-inspected the Project on 4 February 2019 during a rain event to evaluate the freeboard in the retention basin. During the inspection, Board staff observed turbid storm water being pumped from a retention basin to an adjacent hillside and discharging from the Project site. Board staff measured the turbidity of the storm water discharge at the bottom of the hillside. After mixing with clear runoff from other portions of the property, the discharge had a turbidity of 870 Nephelometric Turbidity Units (NTU), above the 250 NTU Numeric Action Level (NAL) in the Construction General Permit. During the inspection, Board staff spoke with the construction crew operating the pump and requested that it be shut off. According to the crew, they had been pumping storm water from the retention basin all day the previous day, 3 February 2019, and had resumed pumping earlier on the morning of 4 February 2019. Board staff issued a second NOV on 7 February 2019 for violations

observed during the 4 February 2019 inspection. The 7 February 2019 NOV requested a response by 28 February 2019.

On 12 February 2019, Board staff met with the Discharger and Qualified Storm Water Pollution Plan Developer/Practitioner (QSD/P) onsite. During the meeting, the QSD/P described plans to install a sprinkler system to disperse and infiltrate turbid storm water on the hillsides of the Project to dewater the retention basins. Board staff cautioned the Discharger that any turbid water that did not infiltrate and discharged due to the Project's dewatering activities would not meet the Construction General Permit's effluent standards, which require Dischargers to *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*. Board staff were assured that the hillside would be closely monitored during any dewatering activities and if any discharge was observed, the pumps would be stopped.

On 13 February 2019, Board staff inspected the dewatering operations at the Project and observed turbid storm water with a turbidity over 2,400 NTU discharging from the Project, in violation of the Construction General Permit's effluent standards. In addition, Board staff did not observe anyone monitoring for discharge on the hillside.

Following a phone call on 15 February 2019 between Board staff and the Discharger, the Discharger installed an Active Treatment System (ATS), which was operational and discharging water below 10 NTU during the first week of March 2019.

Board staff issued an NOV on 12 March 2019 for the violations observed during the 13 February 2019 inspection. The NOV required the Discharger to provide a summary of all pumping from the retention basins prior to installation of the ATS. In addition, the NOV required the submittal of a revised Risk Level calculation, which was originally required by the 4 February 2019 NOV but was not submitted by the Discharger. The 12 March 2019 NOV required a response by 22 March 2019.

On 14 April 2019, the QSD/P submitted a revised Risk Level calculation into the State Water Board's Storm Water Multiple Application and Report Tracking System (SMARTS) using the required pre-construction site conditions. The revised calculation showed that the Project was a Risk Level 2 project. A Change of Information (COI) was initiated in SMARTS to revise the Project's Risk Level by the QSD/P on 2 May 2019. The information, however, could not be used to change the Project's Risk Level until it was certified and submitted by the Discharger. Board staff contacted the QSD/P and Discharger by email on 24 April 2019 and 10 May 2019 to have the COI certified and submitted.

As of 10 June 2019, over three months since Board staff first notified the Discharger of the Risk Level miscalculation, the COI had not been certified and submitted in SMARTS and the Project remains enrolled as in Risk Level 1 instead of Risk Level 2. The Risk Level designation makes a significant difference in the applicable storm water requirements for a project. In comparison to Risk Level 1 projects, Risk Level 2 projects have more robust BMP requirements, require more frequent inspections by the project's QSP, and are required to sample storm water discharge during rain events.

On 2 May 2019, the QSD/P submitted a summary of pumping from the retention basins prior to implementing the ATS. The summary did not include the requested volume of discharge but did report that turbid storm water was pumped from the retention basins on 22 January 2019, 24 January 2019, sporadically between 25 January and 1 February 2019, 4 February 2019, 11 February 2019, 13 February 2019, and 14 February 2019. According to the NOV response, no discharge at the base of the hillside was observed during these pumping activities with the exception of the discharges observed by Board staff on 4 and 13 February 2019.

Based on pumping flow rates provided by the QSD/P in the response to the 7 February 2019 NOV of 300 gallons per minute and estimated start and stop times of pumping on 4 and 13 February 2019, Board staff estimated that approximately 45,000 gallons of turbid storm water was disposed of on the hillside adjacent to the basin. Board staff provided this estimate to the QSD/P and Discharger by email on 10 May 2019. The QSD/P responded that the times and flow rates "make sense" but disputed that all pumped water discharged from the site. Board staff inspections and NOAA precipitation data show that these dates had significant rainfall. Staff alleges that the ground was saturated during this period and very little of the pumped storm water infiltrated into the ground. Assuming that 20% of the pumped storm water infiltrated, at least 36,000 gallons of turbid storm water discharged from the Project on the two days when Board staff observed discharges from the site.

### **VIOLATION 1 – FAILURE TO IMPLEMENT BAT/BCT BMPS**

Dischargers are required to minimize or prevent pollutants in storm water using controls, structures and management practices that achieve best available technology economically achievable (BAT) for toxic pollutants and non-conventional pollutants and best conventional pollutant control technology (BCT) for conventional pollutants, also referred as the BAT/BCT standard. During Board staff site inspections on 18 January 2019, 4 February 2019, 12 February 2019, and 13 February 2019, Board staff observed large disturbed areas of the project that were inactive and did not have erosion control BMPs installed, as required by the Construction General Permit. The Discharger constructed two retention basins to capture turbid storm water from the unprotected disturbed soil areas; however, these basins did not have adequate capacity to store storm water through the winter and impounded storm water

needed to be removed to avoid a failure of the basin’s berms and an uncontrolled discharge of turbid storm water.

Board staff observed turbid storm water being pumped from a retention basin to an adjacent hillside and discharging from the Project site during 4 February 2019 and 13 February 2019 inspections. No additional BMPs were implemented to reduce the turbidity of the pumped discharges. The turbidity of the storm water discharge was measured by Board staff at the bottom of the hillside, after mixing with clear runoff from other portions of the hillside, at 870 Nephelometric Turbidity Units (NTU), above the 250 NTU NAL in the Construction Storm Water General Permit. Board staff measured the turbidity of pumped storm water to be over 2,400 NTU during the 13 February 2019 inspection. Following the 13 February 2019 inspection, the Discharger initiated the installation of an Active Treatment System, which was operational and discharging water below 10 NTU during the first week of March 2019.

The Discharger did not implement appropriate erosion and sediment controls to minimize or prevent pollutants in storm water. Discharge of storm water from a construction site without implementation of BMPs that meet the BAT/BCT standard is a violation of the Construction General Permit. The Effluent Standards in Attachment C, section A.1.b of the Construction General Permit state: *Dischargers shall 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.*

**Table 1: Violation 1 Penalty Factors and Discussion**

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Physical, chemical, biological, or thermal characteristics of the discharge	2	Discharges of sediment can cloud the receiving water (which reduces the amount of sunlight reaching aquatic plants), clog fish gills, smother aquatic habitat and spawning areas, and impede navigation. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can also negatively impact aquatic life and aquatic habitat.
Harm or potential for harm to beneficial uses	1	The Project is located within a Low-Risk receiving-water watershed without Cold, Spawn and Migratory beneficial uses. In addition, the discharge comingles with several other storm water drainages prior to reaching the receiving water. Therefore, the discharge presented a “minor” potential for harm to beneficial uses.
Susceptibility to cleanup or abatement	1	The turbidity discharged was dispersed by storm water over a long distance and cleanup or abatement of 50% or more of the material would not be possible.

Per gallon and per day factor for discharge violations	0.08	The "Deviation from Requirement" is major because the Discharger did not implement several requirements of the General Permit rendering the permit's BAT/BCT effluent standard ineffective. The Discharge exceeded the Construction General Permit's NALs on multiple occasions before effective BMPs were implemented. The value of 0.08 was determined from Table 1 of the Enforcement Policy.
Volume discharged	36,000	The volume discharged corresponds to dewatering discharges on 4 and 13 February 2019. It was calculated using the estimated minimum run-time of the dewatering pump at a rate of 300 gallons per minute with an 80% runoff coefficient. The rate of the discharge was obtained from the Notice of Violation (NOV) response prepared on 7 February 2019 by the Project's QSD/P.
Adjustment for high volume discharges	n/a	Discharge volume does not meet the minimum 100,000 gallons discharge for high volume consideration.
Days of discharge	2	Although there were likely additional days of discharge, the Prosecution Team is only considering the two days of dewatering activities that were observed by Board staff. The Prosecution Team reserves the right to propose additional days of violation should this matter proceed to hearing.
<b>Initial Liability for Violation #1</b>	\$29,600	The liability is calculated as per day factor (0.08) multiplied by the number of days (2 days) multiplied by the maximum liability per day (\$10,000/day) plus the number of gallons discharged in excess of 1,000 gallons (35,000 gallons) multiplied by \$10 dollars per gallon.
Adjustments for Discharger Conduct Culpability	1.3	The Discharger has applied for and received permit coverage under the Construction General Permit for numerous construction sites in California. The Discharger also retained a QSD/P that is aware of the Construction General Permit's BMP requirements. Therefore, the Discharger should be aware of, and complied with, the Construction General Permit's requirements. In addition, the Discharger initiated grading activities in late November, after the onset of the rainy season, and intentionally pumped turbid water without appropriate BMPs for disposal. Therefore, Board staff are applying a culpability factor of 1.3 to this violation.
Adjustments for Discharger Conduct History of Violations	1	Board staff is not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.
Adjustments for Discharger Conduct	1.2	The Discharger was issued three NOVs for violations of the Construction General Permit. Responses to each of

Cleanup and Cooperation		the NOVs were late and discharge from the Project was not in compliance with Construction General Permit requirements until the ATS system was operational in early March 2019. Therefore, Board staff are applying a cleanup and cooperation factor of 1.2 to this violation.
<b>Total Base Liability for Violation #1</b>	\$46,176	The base liability is calculated as the initial liability multiplied by each of the above three factors.

**VIOLATION 2 – FAILURE TO PROPERLY CALCULATE PROJECT RISK**

Dischargers are required to calculate a project’s sediment and receiving water risk in order to determine the Project’s overall Risk Level when applying for coverage under the Construction General Permit. Construction General Permit Section VIII. Risk Determination states: *The discharger shall calculate the site’s sediment risk and receiving water risk during periods of soil exposure (i.e. grading and site stabilization) and use the calculated risks to determine a Risk Level(s) using the methodology in Appendix 1.* Section C, LS Factor of Appendix 1 states: *Estimate the weighted LS for the site prior to construction.* During the Construction General Permit application process, the Discharger calculated the LS factor portion of the sediment risk using post construction conditions, which incorrectly reduced the site’s sediment risk from “medium” to “low”. This resulted in the Project registering as a Risk Level 1 project instead of a Risk Level 2 project. By incorrectly determining the Project’s Risk Level, the Discharger avoided the more stringent Risk Level 2 inspection, BMP, and monitoring requirements.

Board staff issued a Notice of Violation on 4 February 2019 requiring a re-evaluation of the Project’s Risk Level by 28 February 2019. The Discharger did not provide the requested evaluation. Board staff issued another NOV on 12 March 2019 which again required the submittal of a revised Risk Level calculation by 22 March 2019. On 14 April 2019, the QSD/P uploaded a revised Risk Level calculation, dated 11 April 2019, into SMARTS using the required pre-construction site conditions showing that the Project was a Risk Level 2 project. A Change of Information (COI) was initiated in SMARTS to revise the Project’s Risk Level by the QSD/P on 2 May 2019, but the information could not be used to change the Project’s Risk Level until it was certified and submitted by the Discharger. Board staff contacted the QSD/P and Discharger by email on 24 April 2019 and 10 May 2019 requesting that the COI be certified and submitted. As of 10 June 2019, over four months since Board staff first notified the Discharger of the Risk Level miscalculation, the COI had not been certified and submitted in SMARTS and the Project was still enrolled as a Risk Level 1 project.

**Table 2: Violation 2 Penalty Factors and Discussion**

<b>PENALTY FACTOR</b>	<b>VALUE</b>	<b>DISCUSSION</b>
Discharge violations	n/a	This step is not applicable because the violation is not a discharge violation.



Potential for harm	Minor	Incorrectly calculating project sediment risk and registering for Construction General Permit coverage with an incorrect Risk Level resulted in reduced inspection, BMP, and monitoring requirements for the Project. Not implementing Risk Level 2 erosion control BMPs led to turbid storm water being impounded in, and later discharged from, the Project's retention basins. However, the Project is located within a Low-Risk receiving-water watershed without Cold, Spawn and Migratory beneficial uses. In addition, the discharge comingles with several other storm water drainages prior to reaching the receiving water. Therefore, a "Minor" Potential for Harm is appropriate for this violation.
Deviation from requirement	Moderate	The "Deviation from Requirement" is moderate because the intended effectiveness of the requirement was partially compromised.
Per day factor	0.25	Moderate deviation and minor potential for harm determined from Table 3 in the Enforcement Policy. The middle value was chosen, but the value could be increased if this matter proceeds to hearing.
Days of violation	32	Board staff first notified the Discharger of the incorrect Risk Level calculation in an NOV dated 4 February 2019, which required a response by 28 February 2019. The Discharger was notified several more times following the initial notification. As of 2 May 2019, the Discharger has yet to certify and submit the required Change of Information into SMARTS to correct the Project's Risk Level. Using the NOV response date of 28 February 2019 and 11 April 2019 yields 43 days of violation. Water Board staff have the discretion to collapse multiple day violations in accordance with the method contained in the Enforcement Policy if certain conditions are met. Board Staff are electing to compress days using this method which reduces the days of violation to 32.
<b>Initial Liability for Violation #2</b>	\$80,000	The liability is calculated as per day factor (0.35) multiplied by the number of days (36 days) multiplied by the maximum liability per day (\$10,000/day).

Adjustment for Discharger Conduct Culpability	1.3	The Discharger has applied for and received permit coverage under the Construction General Permit for numerous construction sites in California. The Discharger also retained a QSD/P that was aware of the Construction General Permit's BMP requirements. Therefore, the Discharger should be aware of the General Permit's requirements and should have complied with the Construction General Permit's requirements.
Adjustment for Discharger Conduct History of Violations	1	Board staff is not aware of previous violations by the Discharger related to the General Permit. Therefore, a neutral factor of 1.0 is appropriate.
Adjustment for Discharger Conduct Cleanup and Cooperation	1.2	The Discharger was notified of this violation several times and had over four months to correct the Project's Risk Level. Board staff are applying a cleanup and cooperation factor of 1.2 to this violation but this value could be increased if this matter proceeds to hearing.
<b>Total Base Liability for Violation #2</b>	\$124,800	The base liability is calculated as the initial liability multiplied by each of the above three factors.

**OTHER FACTOR CONSIDERATIONS**

**Total Base Liability for all violations: \$170,976.** The Enforcement Policy states that five other factors must be considered before obtaining the final liability amount.

**Table 3: Other Factor Considerations for Final Liability Amount**

<b>OTHER FACTORS</b>	<b>VALUE</b>	<b>CONSIDERATIONS</b>
Ability to pay and continue in business	No adjustment	According to the Discharger's website, the Project is part of an \$85 million retail development and the Discharger is currently involved in more than \$160 million commercial, office, and residential projects. Board staff has no information suggesting that the Discharger has no ability to pay this liability and continue in business. The Prosecution Team will allow Palos Verdes Properties Inc. to present the argument of hardship if so desired.
Economic benefit	\$95,860	The economic benefit of not correctly identifying the correct Risk Level and not implementing the inspection, sampling, and BMP requirements of a Risk Level 2 project were estimated to be \$95,860. See the attached Economic Benefit spreadsheet for details.

Other factors as justice may require	No adjustment	The costs of investigation and enforcement are “other factors as justice may require” and could be added to the liability amount. The Central Valley Water Board has incurred over \$10,000 in staff costs associated with the investigation and enforcement of the alleged violations. While this amount could be added to the penalty, it is not added at this time.
Maximum liability	\$800,000	Based on California Water Code section 13385: \$10,000 per day per violation and \$10 per gallon.
Minimum liability	\$105,446	Based on California Water Code section 13385, civil liability must be at least the economic benefit of non-compliance. Per the Enforcement Policy, the minimum liability is to be the economic benefit plus 10%. (\$95,860 x 10% = \$105,446)
<b>Final Liability</b>	<b>\$170,976</b>	The final liability amount is the total base liability plus any adjustment for the ability to pay, economic benefit, and other factors. The final liability must be more than the minimum liability and less than the maximum liability.