

LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD

In the matter of:

ORDER R4-2021-0112 (Proposed)

CLG Hollywood, LLC

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
ADMINISTRATIVE CIVIL LIABILITY
ORDER; ORDER**

I. Introduction

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order or Order) is entered into by and between the Assistant Executive Officer of the California Regional Water Quality Control Board, Los Angeles Region (Regional Water Board), on behalf of the Regional Water Board Prosecution Team (Prosecution Team), and CLG Hollywood, LLC (Discharger) (collectively known as the Parties) and is presented to the Regional Water Board, or its delegee, for adoption as an order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

II. Recitals

2. The Discharger is alleged to have failed to file a Report of Waste Discharge prior to commencement of construction activities and to have failed to implement best management practices (BMPs) required by State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit), while conducting land disturbance work on the G8 Apartments project located at 4040 Del Rey Avenue in Marina del Rey, California (Site).
3. On September 1, 2017, the City of Los Angeles Department of Building and Safety issued the Discharger a grading permit for the Site. The Discharger began land disturbance activities on or around September 29, 2017 without first filing a Report of Waste Discharge (ROWD) and obtaining the requisite coverage under the General Permit. The City of Los Angeles inspected the Site on September 29, 2017 during active excavation activities.
4. On March 19, 2019, Regional Water Board staff observed active construction at the Site. Regional Water Board staff reviewed the State Water Board's Stormwater Multiple Applications and Report Tracking System (SMARTS) and found that the Site was previously enrolled under the General Permit and was assigned Waste Discharger Identification Number (WDID) 4 19C372516 on March 26, 2015. The Discharger filed a Notice of Termination on November 4, 2015, which was

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approved on November 17, 2015. The Discharger disputes receiving notice that coverage was terminated.

5. On April 9, 2019, Regional Water Board staff conducted a non-filer inspection of the Site and determined that it disturbed approximately 2.3 acres, requiring enrollment under the General Permit.
6. On April 19, 2019, the Regional Water Board issued a Notice of Violation (NOV) to the Discharger for failure to obtain coverage under the General Permit. The Discharger filed a Notice of Intent (NOI) for General Permit coverage on April 30, 2019. General Permit Section II.B.5. states that a discharger is only considered covered by the General Permit upon receipt of a WDID. The State Water Board processed the Discharger's NOI on May 3, 2019 and assigned the Site WDID 4 19C386768.
7. On July 16, 2019, Regional Water Board staff conducted an inspection and observed missing and ineffective BMPs throughout the Site.
8. On August 15, 2019, the Regional Water Board issued the Discharger an NOV for the violations observed during the Regional Water Board inspection on July 16, 2019.
9. On January 10, 2020, Regional Water Board staff conducted an inspection and again observed missing and ineffective BMPs throughout the Site.
10. The Prosecution Team alleges that the Discharger failed to file a ROWD prior to commencement of construction activities as required under Water Code section 13376. This violation is subject to administrative civil liability of up to ten thousand dollars (\$10,000) for each day the violation occurred. (Wat. Code, § 13385(a)(1), (c).)
11. The Prosecution Team also alleges that the Discharger violated the General Permit by failing to implement BMPs on July 16, 2019 and January 10, 2020, as described in Violations 2-9 of Attachment A, herein incorporated by reference. These violations are subject to administrative civil liability of up to ten thousand dollars (\$10,000) for each day the violation occurred. (Wat. Code, § 13385(a)(2), (c).)
12. The Parties have engaged in confidential settlement negotiations and agree to fully settle the violations summarized above, and specifically identified in Attachment A without administrative or civil litigation and by presenting this Stipulation to the Regional Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.

13. Pursuant to the State Water Board's 2010 Water Quality Enforcement Policy section VI.B. (Settlement Considerations), the Prosecution Team agreed during settlement negotiations to reduce the administrative civil liability amount for Violation 1 from \$105,600 to \$10,000 in consideration of hearing and/or litigation risk due to evidentiary issues with proving the Discharger received the Notice of Termination approval in 2015. No reductions were given for Violations 2-9.
14. To resolve the violations by consent and without further administrative or civil proceedings, the Parties have agreed to the imposition of an administrative civil liability against the Discharger in the amount of ninety-two thousand five hundred and ninety-five dollars (\$92,595).
15. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged herein, and that this Stipulated Order is in the best interest of the public.

III. Stipulations

The Parties stipulate to the following:

16. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulation.
17. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability in the amount of **ninety-two thousand five hundred and ninety-five dollars (\$92,595)** by the Regional Water Board to resolve the violations specifically alleged herein. No later than 30 days after the Regional Water Board, or its delegee, signs this Order, the Discharger shall submit a check for **ninety-two thousand five hundred and ninety-five dollars (\$92,595)** made payable to the "State Water Pollution Cleanup and Abatement Account," reference the Order number on page one of this Order, and mail it to:

State Water Resources Control Board Accounting Office
Attn: ACL Payment
P.O. Box 1888
Sacramento, CA 95812-1888

The Discharger shall provide a copy of the check via email to the State Water Board, Office of Enforcement (Kailyn.Ellison@waterboards.ca.gov) and the Regional Water Board (Pavlova.Vitale@waterboards.ca.gov).

18. **Compliance with Applicable Laws and Regulatory Changes:** The Discharger understands that payment of an administrative civil liability in accordance with the

terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liabilities. Nothing in this Stipulated Order shall excuse the Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

19. Party Contacts for Communications Related to Stipulated Order:

For the Regional Water Board:

Pavlova Vitale
Senior Environmental Scientist
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013
(213) 576-6751
Pavlova.Vitale@waterboards.ca.gov

For the Discharger:

Patrick A. Roberts
Executive Vice President
CLG Hollywood, LLC
10600 Santa Monica Blvd.
Los Angeles, CA 90025
(310) 234-8880
patrick@californialandmark.com

20. Attorneys' Fees and Costs: Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

21. Matters Addressed by This Stipulated Order: Upon the Regional Water Board's or its delegee's adoption, this Stipulated Order represents a final and binding resolution and settlement of the violations alleged above and in Attachment A, as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadline specified in section III, paragraph 17.

22. No Admission of Liability: In settling this matter, the Discharger does not admit to any of the allegations stated herein, or that it has been or is in violation of the Water Code, or any other federal, State, or local law or ordinance, with the understanding that in the event of any future enforcement actions by the Regional

Board, the State Water Board, or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code section 13327 and/or section 13385, subdivision (e).

23. **Public Notice:** The Discharger understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegee, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board, or its delegee. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
24. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Order, will be adequate. In the event procedural objections are raised prior to this Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
25. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure of the Prosecution Team or Regional Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The Regional Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.
26. **Effect of Stipulated Order:** Except as expressly provided in this Stipulated Order, nothing in this Stipulated Order is intended nor shall it be construed to preclude the Regional Water Board or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
27. **Interpretation:** This Stipulated Order shall not be construed against the party preparing it but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
28. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by the Regional Water Board

or its delegee.

29. **Integration:** This Stipulated Order constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Stipulated Order.
30. **If Order Does Not Take Effect:** The Discharger's obligations under this Stipulated Order are contingent upon the entry of the Order of the Regional Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess an administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154; California Government Code section 11415.60; Rule 408, Federal Rules of Evidence; and any other applicable privilege under federal and/or state law. The Parties also agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period that the Order or decision by settlement may be subject to administrative or judicial review.
31. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and, if the settlement is adopted by the Regional Water Board, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the Regional Water Board or State Water Board for hearing, the Discharger does not waive the right to a hearing before an order is imposed.
32. **Waiver of Right to Petition:** Except in the instance where the settlement is not adopted by the Regional Water Board, the Discharger hereby waives the right to

petition the Regional Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waives the right, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

33. **Covenant Not to Sue:** The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulation and Order.
34. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that they are authorized to execute this Order on behalf of and to bind the entity on whose behalf the Order is executed.
35. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Discharger in writing. No oral advice, guidance, suggestions, or comments by employees or officials of the Regional Water Board regarding submissions or notices shall be construed to relieve the Discharger of its obligation to obtain any final written approval required by this Stipulated Order.
36. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligation on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
37. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.
38. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.
39. **Counterpart Signatures:** This Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability
Order R4-2021-0112
CLG Hollywood, LLC

IT IS SO STIPULATED.

Los Angeles Regional Water Quality Control Board Prosecution Team

By: Original signed by Hugh Marley
Hugh Marley
Assistant Executive Officer

October 25, 2021
Date

Settlement Agreement and Stipulation for Entry of Administrative Civil Liability
Order R4-2021-0112
CLG Hollywood, LLC

CLG Hollywood, LLC

By: Original signed by Ken Kahan
Ken Kahan, Manager

October 25, 2021
Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Water Code section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

By: _____
Renee Purdy
Executive Officer
Los Angeles Regional Water
Quality Control Board

_____ Date

Attachment A: Specific Factors Considered for Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order R4-2021-0112

Attachment A
Specific Factors Considered Settlement Agreement and Stipulation for Entry of
Administrative Civil Liability Order R4-2021-0112
CLG Hollywood, LLC
G8 Apartments
WDID 4 19C386768

CLG Hollywood, LLC (Discharger) is alleged to have failed to file a Report of Waste Discharge prior to commencement of construction activities and to have failed to implement the requirements of State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Order No. 2010-0014-DWQ and 2012-0006-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit), while conducting land disturbance work on the G8 Apartments project located at 4040 Del Rey Avenue in Marina del Rey, California (Site).

The Los Angeles Water Quality Control Board (Regional Water Board) Prosecution Team derived the proposed administrative civil liability for these alleged violations in accordance with the State Water Resources Control Board's (State Water Board) 2017 Water Quality Enforcement Policy (Enforcement Policy).

Violation 1: Failure to Timely File a Report of Waste Discharge

On September 1, 2017, the City of Los Angeles Department of Building and Safety issued the Discharger a grading permit for the construction site at 4040 Del Rey Avenue in Marina del Rey. The Discharger began land disturbance activities on or around September 29, 2017 without first filing a Report of Waste Discharge and obtaining the requisite coverage under the General Permit in violation of Water Code section 13376. The City of Los Angeles inspected the Site on September 29, 2017 during active excavation activities.

On March 19, 2019, Regional Water Board staff observed an active construction site located at 4040 Del Rey Avenue in Marina del Rey, California. Regional Water Board staff reviewed the State Water Board's Stormwater Multiple Applications and Report Tracking System (SMARTS) and found that the Site was previously enrolled under the General Permit and assigned a Waste Discharger Identification Number (WDID) 4 19C372516 on March 26, 2015. The Discharger filed a Notice of Termination on November 4, 2015, which was approved on November 17, 2015 by Regional Water Board staff on the basis that construction activities would not commence until August 2016.

On April 9, 2019, Regional Water Board staff conducted a non-filer inspection of the Site and determined that it disturbed approximately 2.3 acres, requiring enrollment under the General Permit. The Prosecution Team is using the date of this inspection as the start date for the violation.

On April 19, 2019, the Regional Water Board issued a Notice of Violation (NOV) to the Discharger for failure to obtain coverage under the General Permit. The Discharger filed

a Notice of Intent (NOI) for General Permit coverage on April 30, 2019. General Permit Section II.B.5 states that a discharger is only considered covered by the General Permit upon receipt of a WDID. The State Water Board processed the Discharger's NOI on May 3, 2019 and assigned the Site WDID 4 19C386768. For purposes of settlement, the Prosecution Team is using April 20, 2019, the date the Discharger submitted the NOI as end date of the violation. The Discharger is subject to administrative civil liability for this violation pursuant to Water Code section 13385, subdivision (a)(1).

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 Enforcement Policy defines a Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

The Site is located within Reach 2 of the Ballona Creek Watershed. However, stormwater at the Site drains to the Marina del Rey Harbor. The Storm Water Pollution Prevention Plan (SWPPP) states that the Project does not have on-site storm drain infrastructure, therefore, stormwater runoff from the Site is conveyed to curbs/gutters along Del Rey Avenue or Glencoe Avenue. Runoff is then intercepted via Los Angeles County drainage culverts located southeast and southwest of the Site that drain to the Marina del Rey Harbor. The Marina del Rey Harbor is a coastal feature within Los Angeles County and a water of the United States and state. Existing beneficial uses of the Marina del Rey Harbor include navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting.

Failure to enroll under the General Permit substantially impaired the Regional Water Board from performing its statutory and regulatory function of protecting water quality. The primary functions of the General Permit are to ensure that measures are taken to prevent pollutants in storm water discharges and to prevent potential impacts to the beneficial uses of receiving waterbodies. The Discharger's failure to timely enroll under the

General Permit resulted in not complying with the requirements in the General Permit. Therefore, the Potential for Harm score is Moderate.

Deviation from Requirement: Major

The Deviation from Requirement reflects the extent to which the violation deviates from the specific requirement that was violated. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement was rendered ineffective (e.g., the requirement was rendered ineffective in its essential functions).”

The Discharger failed to enroll under the General Permit prior to the start of construction activities as required by Water Code section 13376. During the April 9, 2019 non-filer inspection, Regional Water Board staff observed a lack of adequate best management practices (BMPs) and sediment tracked onto public streets. By failing to obtain coverage under the General Permit and being required to implement appropriate BMPs, the requirement was rendered ineffective in its essential function of protecting water quality. Therefore, the Deviation from Requirement for this violation is characterized as Major.

Per Day Factor: 0.4

Table 3 of the Enforcement Policy (p. 16) is used to determine a “per day factor” for non-discharge violations based on the Potential for Harm and the extent of the Deviation from Requirements. For this violation, in accordance with Table 3, the per day factor can range from 0.4 to 0.7. The Prosecution Team selected the low end of the range, 0.4, as the per day factor for this violation.

Initial Liability Amount: \$137,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 1, the per day factor is 0.4, days of violation is 22, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = 0.4 x 22 day x \$10,000/day = \$88,000

Step 4. Adjustment Factors

Culpability: 1.2

The culpability multiplier ranges between 0.75 and 1.5, with a higher multiplier for intentional misconduct and gross negligence, and a lower multiplier for more simple negligence.

A multiplier of 1.2 is assigned for this violation. The Discharger should have known of the need to file a Report of Waste Discharge based on its previous experience of enrolling under the General Permit. The Discharger previously obtained coverage under the General Permit on November 4, 2015, but then terminated coverage on November 17, 2015 on the basis that the commencement of construction activities would be delayed until August 2016. Despite knowledge of the requirement, the Discharger failed to re-enroll under the General Permit when it resumed construction activities in 2017. However, the Discharger produced emails demonstrating that it asked its consultant if it was covered under the General Permit and the consultant erroneously informed the Discharger that it had the necessary permit coverage.

History of Violations: 1.0

Where the discharger has no prior history of violations, this factor should be neutral, or 1.0. Where the discharger has prior violations within the last five years, the Water Boards should use a multiplier of 1.1. Where the discharger has a history of similar or numerous dissimilar violations, the Water Boards should consider adopting a multiplier above 1.1. Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned.

Cleanup and Cooperation: 1.0

The cleanup and cooperation multiplier ranges from 0.75 to 1.5, with a lower multiplier where there is exceptional cleanup and cooperation compared to what can reasonably be expected, and a higher multiplier where there is not.

A multiplier of 1.0 is assigned for this violation. The Discharger filed a NOI application under the General Permit on April 30, 2019, after verbal notification of the requirement on April 9, 2019 during a Regional Water Board inspection and receiving an NOV on April 19, 2019. The State Water Board processed the Discharger's NOI and assigned WDID 4 19C368768 on May 3, 2019. Thus, a multiplier of 1.0 is assigned for cooperation and

cleanup because the Discharger enrolled in a reasonable amount of time after receiving notice of the violation.

Step 5. Total Base Liability

\$88,000 (Initial Liability Amount) x 1.2 (Culpability) x 1.0 (History of Violation) x 1.0 (Cleanup and Cooperation) = \$105,600

Violations 2-3: Failure to implement adequate perimeter sediment controls

Attachment C, Section E.1 of the General Permit requires Risk Level 1 dischargers to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the Site.

Violation 2: During the July 16, 2019 Regional Water Board inspection, perimeter controls were observed as missing and/or inadequate at the Site. At the time of the inspection loose sediment was stockpiled along the northern perimeter, facing Beach Avenue, and accumulated sediment was discharged onto the sidewalk and street; perimeter controls were not installed to prevent mobilization of such construction materials. Regional Water Board staff observed a chain linked fence at the western perimeter, facing Del Rey Avenue, which is not a perimeter control. Perimeter control BMPs were not in place at the time of the inspection and Regional Water Board staff observed loose construction wastes along the perimeter. Additionally, at the Site's eastern perimeter, facing Glencoe Avenue, there was a chain linked fence with wind screen material. However, this is not a perimeter control BMP.

Violation 3: During the January 10, 2020 Regional Water Board inspection, perimeter controls were missing along Del Rey Avenue. Regional Water Board staff observed loose stockpiles of sediment and sand, and construction wastes along the western perimeter of the Site without perimeter control BMPs. Sediment and sand from the Site were observed discharged off-site, past a chain linked fence, and onto Del Rey Avenue. Additionally, Regional Water Board staff observed the lack of perimeter controls along the eastern perimeter facing Glencoe Avenue.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to these violations.

Step 2. Assessment for Discharge Violations

This factor does not apply to these violations.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violations 2 and 3 are characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During Regional Water Board inspections on July 16, 2019 and January 10, 2020, Regional Water Board staff observed missing and ineffective perimeter control BMPs throughout the Site that resulted in sediment discharge onto nearby streets; such discharge had the potential to come in contact with stormwater during precipitation events and reach surface waters.

As mentioned above, stormwater at the Site drains indirectly to the Marina del Rey Harbor. Discharges of sediment to surface waters impact beneficial uses of Marina del Rey including commercial and sport fishing, wildlife habitat, and shellfish harvesting. Sediment discharges can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. High concentrations of sediment accumulation along coastal areas can affect suitable habitat for shellfish harvesting by partially or completely burying some shellfish colonies and can interfere with shellfish filter-feeding. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can cause toxicity to aquatic organisms and biotoxin accumulation in shellfish. Such bioaccumulation causes shellfish to be unsuitable for human consumption and thereby affecting the beneficial use. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

Violations 2 and 3 are characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., the requirement is rendered ineffective in its essential functions).”

The Discharger failed to implement effective perimeter controls at the Site necessary to prevent potential discharges of construction materials. During the July 16, 2019 Regional Water Board staff inspection, perimeter control

BMPs were not installed at the northern, western, and eastern perimeters of the Site, resulting in sediment discharges off-site. During the January 10, 2020 Regional Water Board staff inspection, perimeter control BMPs were not installed at the western and eastern perimeters of the Site, resulting in sediment discharges off-site. The Discharger rendered the requirement ineffective in one of its essential functions of preventing discharges of sediment off-site.

The Discharger continued to inadequately install BMPs at the western perimeter of the Site and caused off-site track-out of construction materials. BMP inspection reports by the QSP between October 18, 2019 to January 9, 2020 identified a failure to install sediment controls at the Site's perimeter. During the January 10, 2020 Regional Water Board staff inspection, perimeter controls were observed at the northern regions of the Site, where construction was mostly completed. However, at the western and eastern perimeters of the Site, Regional Water Board staff observed the absence of perimeter controls where active construction activities were being conducted. There were loose stockpiles of sand and sediment and scattered construction waste materials at the west side of the Site that were unprotected by perimeter control BMPs. Therefore, the Deviation from Requirement for these violations is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violations 2 and 3 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violations 2 and 3, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = $0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$

Step 4. Adjustment Factors

Culpability:

Violation 2: 1.4

A multiplier of 1.4 is assigned for this violation because the Discharger knew of the requirement as evidenced by SWPPPs that were submitted and certified on SMARTS on March 25, 2015 and April 30, 2019. Each SWPPP referenced the requirements of Attachment C, Section E.1 to establish and maintain effective perimeter controls and provided BMPs to fulfill the requirement. BMPs identified in Section 3.5 Sediment Control of the Site's SWPPPs to comply with such requirement were installation of check dams, gravel bag berms, street sweeping, and storm drain inlet protection.

BMP inspection reports completed by the Site's Construction General Permit Qualified SWPPP Practitioner (QSP) on May 8 and 28, 2018, and June 7 and 20, 2018 included a checklist for site inspection conditions and identified failures to install sediment controls at the Site's perimeter. The May 8, 2018 BMP inspection report stated that BMPs at the Site's perimeter were not present. Moreover, the June 7 and 20, 2018 BMP inspection reports stated that fiber rolls installed at the Site were not adequately installed because they were not staked in place. Such reports emphasized that failure to implement effective perimeter controls at the Site were a recurring issue for, at minimum, a year prior to obtaining coverage under the General Permit. The QSP continuously documented concerns regarding missing and/or ineffective perimeter controls around the Site, indicating the Discharger's prior knowledge of the requirement.

Furthermore, BMP inspection reports completed by the QSP on February 7, February 20, March 14, and March 27 identified failures to install sediment controls at the Site's perimeter. The February 7 and 20, 2019 BMP inspection reports stated that most sandbags at the Site were broken and not functioning. Additionally, BMP inspection reports from March 14 and 27, 2019 stated that there were no functioning BMPs at the Site and that the north side of the Site was in terrible condition.

On April 9, 2019, Regional Water Board staff conducted a non-filer inspection and observed lack of perimeter controls at the Site. Failure to implement perimeter controls at the Site caused sand and sediment to discharge onto Glencoe Avenue, Beach Avenue, and Del Rey Avenue. Regional Water Board staff observed accumulated sediment, waste materials, broken sandbags, and turbid water at a curb and gutter, along a chain-linked fence on Beach Avenue without perimeter controls. Regional Water Board staff informed the Project Superintendent of the perimeter control concern and on April 9, 2019 the Project Superintendent emailed Regional Water Board staff projected corrective actions such as cleaning the Site's perimeter within the subsequent five days and ordering waddles or fiber rolls for installation within 48 hours. On April 11, 2019, the Project

Superintendent emailed photographs showcasing areas where cleanup activities were conducted.

The QSP's April 26, 2019 BMP inspection report stated some controls were installed along Glencoe Avenue and Del Rey Avenue. However, the QSP documented no perimeter control BMPs along Beach Avenue in the July 15, 2019 BMP inspection report. The report also stated that there was an absence of, and some inadequate installation of, BMPs at the Site's western perimeter and off-site tracking where BMPs were not installed at the eastern perimeter of the Site. Additionally, the QSP specifically stated that the northern perimeter reportedly did not have any BMPs installed and that it was very messy as a result. The QSP noted that water was observed leaving the Site without any BMPs in place. The Discharger was therefore aware of requirement to install perimeter controls and the QSP repeatedly documented poor Site conditions from ineffective perimeter controls.

During the Regional Water Board's July 16, 2019 inspection, Regional Water Board staff observed perimeter control deficiencies at the northern, western, and eastern perimeters of the Site and informed the Project Superintendent. The Project Superintendent informed Regional Water Board staff that perimeter controls were recently removed along Beach Avenue, the northern perimeter, in order to begin work on the sidewalk. Regional Water Board staff informed the Project Superintendent that removal of BMPs to conduct work on the sidewalk still required, at minimum, a phase out plan for the installation of BMPs.

Additionally, maintaining perimeter controls at a construction Site is a standard industry practice; therefore, the Discharger should have implemented necessary measures to prevent potential sediment discharges. The Discharger was repeatedly informed of the requirement, but it failed to have the necessary oversight and accountability measures in place to ensure effectiveness that is expected of a reasonably prudent person who applies for coverage under the General Permit.

Violation 3: 1.4

A multiplier of 1.4 is assigned for this violation because the Discharger knew of the requirement based on the project's SWPPPs, prior notification by the Regional Water Board, and QSP inspection findings on BMP inspection reports from May 2018 through January 2020. The Discharger was issued an NOV by the Regional Water Board on August 15, 2019, informing the Discharger of the same violation observed during the Regional Water Board inspection on July 16, 2019. The Discharger's NOV response included corrective actions, photos, and a training log from August 23, 2019. However, the violation persisted at the Site as evidenced by BMP inspection

reports from October 18, October 31, November 8, November 15, November 26, December 6, December 12, December 20, and December 26, 2019, and January 3, and January 9, 2020 completed by the QSP. The reports identified a failure to install sediment controls at the Site's perimeter. The BMP inspection reports between October 18 and November 15, 2019 also stated that there were no BMPs along Del Rey Avenue.

Observations from BMP inspection reports were further affirmed during the Regional Water Board's January 10, 2020 inspection; Regional Water Board staff observed the recurring perimeter control violation at the western perimeter resulting in sediment and sand onto Del Rey Avenue. The Project's Superintendent stated that BMPs such as fiber rolls were removed to begin curbside work. Similarly, during the Regional Water Board's July 16, 2019 inspection, Regional Water Board staff informed the Project Superintendent that if BMPs were to be removed for work at perimeters of the Site, a phase out plan for the installation of BMPs was necessary. However, the same issue occurred during the January 10, 2020 inspection. Therefore, the Discharger knew of the requirement but continually failed to install effective perimeter controls at the Site. Additionally, maintaining perimeter controls at a construction Site is a standard industry practice; therefore, the Discharger should have implemented necessary measures to prevent potential sediment discharges. A reasonably prudent person who applies for coverage under the General Permit would have corrected the problem after notification and had necessary oversight and accountability measures in place to comply with the requirements of the General Permit.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for Violations 2 and 3.

Cleanup and Cooperation:

Violation 2: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger repeatedly failed to have effective perimeter control BMPs in place following the violation. On September 4, 2019, the Discharger emailed Regional Water Board staff a response to the NOV and stated temporary sediment perimeter controls along the drainage perimeter were to be installed. The Discharger's NOV response included photographs with temporary BMPs at the north perimeter and a training log for August 23, 2019. The training log identified discussion topics including sediment controls. However, BMP inspection reports completed by the QSP during October, November, and December 2019 identified additional perimeter control BMPs deficiencies.

Furthermore, BMP inspection reports completed by the QSP on October 18, October 31, November 8, November 15, November 26, December 6, December 12, December 20, and December 26, 2019 identified failures to install sediment controls at the Site's perimeter. These deficiencies were documented prior to the Regional Water Board's second inspection on January 10, 2020. The October 18, October 31, November 8, and November 15, 2019 BMP inspection reports stated that BMPs were not installed along Del Rey Avenue, the western side of the Site. The QSP stated that the Site's conditions along Del Rey Avenue continued to be a problem in the December 20, 2019 BMP inspection report. BMP inspection reports completed by the QSP on January 3, and January 9, 2020 identified failure to install that sediment controls at the Site's perimeter and stated that the area along Del Rey Avenue continued to be an issue.

Violation 3: 1.0

A multiplier of 1.0 is assigned for this violation. In the afternoon following a Regional Water Board inspection on January 10, 2020, the Project Superintendent emailed Regional Water Board staff photos that reflected cleanup activities along Del Rey Avenue, the perimeter of most concern, and stated that waddles were placed around a pile of sand with plastic and areas along the curb were cleaned. Regional Water Board staff determined that the response was sufficient information of the Discharger's effort to address perimeter control BMP deficiencies.

Step 5. Total Base Liability

Violation 2: \$10,000

$\$5,500$ (Initial Liability Amount) x 1.4 (Culpability) x 1.0 (History of Violation) x 1.3 (Cleanup and Cooperation) = $\$10,010$

The Enforcement Policy (p. 21) states that "[w]here the amount proposed for a particular violation exceeds to statutory maximum, the amount must be reduced to that maximum." Therefore, the Total Base Liability for Violation 2 is reduced to \$10,000.

Violation 3: \$7,700

$\$5,500$ (Initial Liability Amount) x 1.4 (Culpability) x 1.0 (History of Violation) x 1.0 (Cleanup and Cooperation) = $\$7,700$

Violation 4: Failure to stabilize construction entrances and exits to sufficiently control erosion and sediment discharges from the Site

Attachment C, Section E.1 of the General Permit requires dischargers to stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site. Attachment C, Section B.1.e of the General Permit requires Risk Level 1 dischargers to implement BMPs to prevent the off-site tracking of loose construction and landscape materials

During the July 16, 2019 Regional Water Board inspection, the construction entrance and exit at the northern side of the Site was not stabilized with proper BMPs and caused sediment track-out onto the nearby street. Regional Water Board staff observed the absence of BMPs at the primary construction entrance/exit, which caused sediment track-out onto Beach Avenue and accumulation of sediment along the northern perimeter of the Site.

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

Violation 4 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During the July 16, 2019 Regional Water Board inspection, Regional Water Board staff observed failures to stabilize the construction entrance and exit to sufficiently control erosion and sediment discharges from the Site. Such BMP deficiencies could have led to discharges of sediment to surface waters.

As mentioned above, stormwater at the Site drains indirectly to the Marina del Rey Harbor. Existing beneficial uses of the Marina del Rey Harbor include navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Discharges of sediment to surface waters impact

beneficial uses of Marina del Rey Harbor including, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Sediment discharges can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. High concentrations of sediment accumulation along coastal areas can affect suitable habitat for shellfish harvesting by partially or completely burying some shellfish colonies and can interfere with shellfish filter-feeding. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can cause toxicity to aquatic organisms and biotoxin accumulation in shellfish. Such bioaccumulation causes shellfish to be unsuitable for human consumption and thereby affecting the beneficial use. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for this violation is characterized as Moderate.

Deviation from Requirement: Major

Violation 4 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger failed to stabilize the construction entrance and exit and to install off-site tracking controls of loose construction materials, as necessary to prevent potential discharge of construction materials to stormwater and harming beneficial uses of Marina del Rey Harbor.

During the July 16, 2019 Regional Water Board staff inspection, sediment control BMPs were not installed to stabilize the construction entrance at the northern side of the Site. Furthermore, BMPs were not in place to prevent track-out of loose stockpiled sediment and debris from the north side of Site. The failure to install BMPs resulted in sediment track-out and accumulation onto Beach Avenue. The Discharger disregarded the purpose of the requirement to sufficiently control potential sediment discharges from the Site that could harm beneficial uses of receiving waters. Therefore, the Deviation from Requirement is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 4 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violation 4, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = $0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$

Step 4. Adjustment Factors

Culpability: 1.4

A multiplier of 1.4 is assigned for this violation because the Discharger knew of the requirement as evidenced by SWPPPs that were submitted and certified on SMARTS on March 25, 2015 and April 30, 2019. Each SWPPP referenced the requirements of Attachment C, Section E.1 to stabilize all construction entrances and exits to sufficiently control erosion and provided BMPs to fulfill the requirement. BMPs identified in Section 3.5 Sediment Control of the Site's SWPPPs to comply with such requirement included installation of check dams, gravel bag berms, street sweeping, and storm drain inlet protection. Additionally, BMPs identified in Section 3.7 Tracking Controls of the Site's SWPPPs include street sweeping and/or vacuuming and stabilized construction entrances to prevent sediment track-out from traffic to and from the Site. These BMPs were selected to ensure that traffic to and from the Site are limited to entrances and exits that have such BMPs employed to prevent off-site tracking of sediment.

BMP inspection reports completed by the QSP on May 8 and 28, 2018, and June 7 and 20, 2018 identified failures to install off-site tracking controls. Tracking controls are typical for stabilizing construction entrances and exits to prevent off-site track-out of construction materials. The May and June 2018 BMP inspection reports stated that tracking controls were continuously missing at the Site. Such documented failures indicated that this violation was a recurring issue at the Site and that the Discharger had prior knowledge of the requirement.

Furthermore, BMP inspection reports completed by the QSP on February 7, February 20, March 14, March 27, April 26, and July 15, 2019 identified failures to install off-site tracking controls. Each of these reports stated that rumble plates, which are BMPs to prevent off-site tracking from vehicles and equipment, were rendered ineffective because they were filled with wood. Additionally, reports on March 14 and 27, 2019 stated that there were no

functioning BMPs at the Site and that the front, which has been interpreted to be the north side of the Site, was progressively in worse condition and looked terrible.

On April 9, 2019, Regional Water Board staff conducted a non-filer inspection and observed no BMPs at construction entrances and exits to prevent off-site track-out of loose construction materials. The entrance and exit at the northern perimeter of the Site was without sufficient BMPs to stabilize it. Rumble plates were not observed at the time of the inspection. Regional Water Board staff documented accumulated sediment, turbid water, broken sandbags, and trash at the construction entrance on Beach Avenue. Regional Water Board staff informed the Project Superintendent of the BMP deficiencies. However, the July 15, 2019 BMP inspection report stated that no BMPs were installed along Beach Avenue. The report also stated that the absence of BMPs at the northern side of the Site caused it to be very messy. Reports and communication with Regional Water Board staff demonstrate that the Discharger was aware of the missing and/or ineffective implementation of BMPs to stabilize the construction entrance and exit and to prevent off-site tracking of loose construction materials.

During the Regional Water Board's July 16, 2019 inspection, Regional Water Board staff observed an unstable construction entrance and exit, without erosion control BMPs at the northern side of the Site and missing BMPs necessary to prevent off-site track-out. Regional Water Board staff informed the Project Superintendent of the deficiencies. Additionally, maintaining stabilized construction entrances and exits is a standard industry practice; therefore, the Discharger should have implemented necessary measures to prevent potential sediment discharges. The Discharger knew of the requirement and was repeatedly informed of deficiencies, but it failed to have the necessary oversight and accountability measures in place to ensure the necessary BMPs were in place, as is expected of a reasonably prudent person who applies for coverage under the General Permit.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for this violation.

Cleanup and Cooperation: 1.2

A multiplier of 1.2 is assigned for this violation. On August 15, 2019, the Regional Water Board issued an NOV informing the Discharger of the violation and required a written response by September 16, 2019. On September 4, 2019, the Discharger emailed Regional Water Board staff a

response to the NOV and stated sediment track-out onto Beach Avenue was cleared and included photos of rumble plates at the construction entrance on the north side of the Site. The Discharger's NOV response included a training log for August 23, 2019. The training log identified discussion topics were non-storm water management, sediment control, tracking control, and waste management and material pollution controls. However, BMP inspection reports completed by the QSP during subsequent months, October, November, and December of 2019 and January 2020, identified off-site tracking control deficiencies. This violation was not observed during the Regional Water Board's subsequent inspection on January 10, 2020.

Step 5. Total Base Liability

$\$5,500$ (Initial Liability Amount) x 1.4 (Culpability) x 1.0 (History of Violation)
x 1.2 (Cleanup and Cooperation) = $\$9,240$

Violations 5-6: Failure to clean streets to prevent unauthorized non-storm water discharges

Attachment C, Section C.3 of the General Permit requires Risk Level 1 dischargers to clean streets in such a manner as to prevent unauthorized non-storm water discharges from reaching surface water or MS4 drainage systems.

Violation 5: During the July 16, 2019 inspection, Regional Water Board staff observed off-site tracking and accumulation of sediment onto Beach Avenue, north of the Site, and sediment discharge onto Del Rey Avenue, west of the Site. At the time of the inspection, the Discharger was not sweeping or vacuuming the sediment that had been tracked past the perimeter and construction entrance/exit onto Beach Avenue and sediment tracked along the perimeter onto Del Rey Avenue.

Violation 6: During the January 10, 2020 inspection, Regional Water Board staff observed discharge of sediment and sand onto Del Rey Avenue and sediment along Beach Avenue. At the time of the inspection, the Discharger was not sweeping or vacuuming such construction materials.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to these violations.

Step 2. Assessment for Discharge Violations

This factor does not apply to these violations.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violations 5 and 6 are characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During Regional Water Board inspections on July 16, 2019 and January 10, 2020, Regional Water Board staff observed sediment track-out off-site onto nearby streets; such track-out could have led to sediment discharge in stormwater.

As mentioned above, stormwater at the Site drains indirectly to the Marina del Rey Harbor. Existing beneficial uses of the Marina del Rey Harbor include navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Discharges of sediment to surface waters impact beneficial uses of Marina del Rey Harbor including navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Sediment discharges can cloud the receiving water, thereby reducing the amount of sunlight reaching aquatic plants, clog fish gills, smother aquatic habitat and spawning areas. High concentrations of sediment accumulation along coastal areas can affect suitable habitat for shellfish harvesting by partially or completely burying some shellfish colonies and can interfere with shellfish filter-feeding. Sediment can also transport other materials such as nutrients, metals, and oils and grease, which can cause toxicity to aquatic organisms and biotoxin accumulation in shellfish. Such bioaccumulation causes shellfish to be unsuitable for human consumption and thereby affecting the beneficial use. Excess sediment in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for Violations 5 and 6 is characterized as Moderate.

Deviation from Requirement: Major

Violations 5 and 6 are characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger failed to clean streets on Beach Avenue and Del Rey Avenue in such a manner as to prevent unauthorized non-storm water discharges to Marina del Rey Harbor.

During the July 16, 2019 Regional Water Board staff inspection, BMPs were not installed at the northern, western, and eastern perimeters of the Site. As a result, sediment was tracked off-site. At the time of the inspection, Regional Water Board staff did not observe measures in place to clean the streets. The Discharger continued to inadequately install BMPs at the western perimeter of the Site and caused off-site track-out of construction materials. BMP inspection reports by the QSP between October 18, 2019 to January 9, 2020 identified deficient off-site tracking controls and failures to clean sediment, debris, or mud from public roads where they intersect with the Site's access roads.

During the January 10, 2020 Regional Water Board staff inspection, Regional Water Board staff observed sediment and sand on Del Rey Avenue and some sediment on Beach Avenue. BMPs were not implemented to clean the streets and to remove off-site track-out of sediment and sand. The Discharger disregarded the requirement and its essential function of preventing potential discharges from the Site that could harm beneficial uses of receiving waters. Therefore, the Deviation from Requirement for these violations is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violations 5 and 6 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violations 5 and 6, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

$$\text{Initial Liability Amount} = 0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$$

Step 4. Adjustment Factors

Culpability:

Violation 5: 1.4

A multiplier of 1.4 is assigned for this violation because the Discharger knew of the requirement as evidenced in SWPPPs that were submitted and certified on SMARTS on March 25, 2015, and April 30, 2019. Each SWPPP

referenced the requirements of Attachment C, Section C.3 to clean streets in a manner that prevents discharge to surface water or MS4s and provided BMPs to fulfill the requirement.

BMP inspection reports completed by the QSP on May 8 and 28, 2018, and June 7 and 20, 2018 identified failures to clean sediment, debris, or mud from public roads where they intersect with site access roads. The QSP continuously documented such issues at the Site indicating the Discharger's knowledge of the requirement.

Furthermore, BMP inspection reports completed by the QSP on February 7, February 20, March 14, March 27, April 26 and July 15, 2019 identified failures to clean sediment, debris, or mud from public roads. BMP inspection reports from March 14 and 27, 2019 stated that there were no functioning BMPs at the Site. Additionally, BMP inspection reports on March 14 and March 27, 2019 documented no functioning BMPs at the Site and that the front was in terrible condition. November 8 and 15, 2019 BMP inspection reports also reported that additional cleaning of Del Rey Avenue needed to be done.

On April 9, 2019 Regional Water Board staff conducted a non-filer inspection and observed sand and sediment track-out on Glencoe Avenue, Beach Avenue, and Del Rey Avenue. Regional Water Board staff observed accumulated sediment, waste materials, broken sandbags, and turbid water at a curb and gutter, along a chain-linked fence on Beach Avenue, without perimeter controls. Sand and sediment were observed accumulated and tracked onto Glencoe Avenue. Regional Water Board staff informed the Project Superintendent of the track-out concerns and on April 9, 2019 the Project Superintendent emailed Regional Water Board staff projected corrective actions such as cleaning the Site's perimeter within the subsequent five days and ordering waddles or fiber rolls for installation within 48 hours. On April 11, 2019, the Project Superintendent emailed photographs showcasing areas where cleanup activities were conducted. However, the QSP's April 26, 2019 BMP inspection report documented dirt tracked off-site in areas along Del Rey Avenue where BMPs were not installed and no BMPs along Beach Avenue in the July 15, 2019 BMP inspection report. The Discharger was therefore aware of requirement to address track-out where it could enter MS4s and/or surface water.

During the Regional Water Board's July 16, 2019 inspection, Regional Water Board staff observed sediment tracked onto Beach Avenue and Del Rey Avenue. BMPs were not in place to have prevented track-out and the Discharger was not actively cleaning impacted streets. Regional Water Board staff informed the Project Superintendent of the concern to clean

sediment track-out. The Discharger knew of the requirement as evidenced by BMP inspection reports, SWPPP requirements, and Regional Water Board staff notification, but it failed to have the necessary oversight and accountability measures in place to ensure the necessary BMPs were in place, as is expected of a reasonably prudent person who applies for coverage under the General Permit. Additionally, maintaining clean streets is a standard industry practice; therefore, the Discharger should have implemented necessary measures to prevent potential sediment discharges.

Violation 6: 1.4

A multiplier of 1.4 is assigned for this violation because the Discharger knew of the requirement based on the project's SWPPP, prior notification by the Regional Water Board, and QSP inspection findings on BMP inspection reports from May 2018 through January 2020. The Discharger was issued an NOV by the Regional Water Board on August 15, 2019, informing the Discharger of BMP deficiencies leading to construction material track-out observed during the Regional Water Board inspection on July 16, 2019. However, BMP deficiencies persisted at the Site as evidenced by BMP inspection reports from October 18, October 31, November 8, November 15, 2019 completed by the QSP. The reports identified a failure to install off-site tracking controls at the Site's perimeter. The BMP inspection reports stated that there were no BMPs along Del Rey Avenue and required additional cleaning. These observations were further affirmed during the Regional Water Board's January 10, 2020 inspection; Regional Water Board staff observed the recurring BMP deficiencies at the western perimeter resulting in sediment, sand, and debris track-out onto Del Rey Avenue. Therefore, the Discharger continuously failed to install controls necessary to clean streets adjacent to the Site where track-out could enter surface water and/or MS4s. Additionally, maintaining clean streets is a standard industry practice; therefore, the Discharger should have implemented necessary measures to prevent potential sediment discharges. A reasonably prudent person who applies for coverage under the General Permit would have corrected the problem after notification and had necessary oversight and accountability measures in place to ensure the necessary BMPs were in place, as is expected of a reasonably prudent person who applies for coverage under the General Permit.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for Violations 5 and 6.

Cleanup and Cooperation:

Violation 5: 1.3

A multiplier of 1.3 is assigned for this violation. On August 15, 2019, the Region Board issued an NOV informing the Discharger of the violation. On September 4, 2019, the Discharger emailed Regional Water Board staff a response to the NOV and stated sediment track-out onto Beach Avenue was cleared but did not include photos of Del Rey Avenue. The Discharger's NOV response included photos and a training log for August 23, 2019. The training log identified discussion topics were non-storm water management, sediment control, tracking control, and waste management and material pollution controls. However, BMP inspection reports completed by the QSP during subsequent months, October and November of 2019, stated that no BMPs were in place at the west side of the Site. The reports stated that although sweeping was conducted every evening that it required additional cleaning of Del Rey Avenue. These deficiencies were documented prior to the Regional Water Board's inspection on January 10, 2020.

Violation 6: 1.0

A multiplier of 1.0 is assigned for this violation. In the afternoon following the Regional Water Board's January 10, 2020 inspection, the Project Superintendent emailed Regional Water Board staff photos that reflected cleanup activities along Del Rey Avenue and stated that areas along the curb were cleaned. Regional Water Board staff determined that the response was sufficient information of the Discharger's effort to address street cleaning deficiencies.

Step 5. Total Base Liability

Violation 5: \$10,000

$\$5,500$ (Initial Liability Amount) x 1.4 (Culpability) x 1.0 (History of Violation) x 1.3 (Cleanup and Cooperation) = $\$10,010$

The Enforcement Policy (p. 21) states that "[w]here the amount proposed for a particular violation exceeds to statutory maximum, the amount must be reduced to that maximum." Therefore, the Total Base Liability for Violation 5 is reduced to \$10,000.

Violation 6: \$7,700

$\$5,500$ (Initial Liability Amount) x 1.4 (Culpability) x 1.0 (History of Violation) x 1.0 (Cleanup and Cooperation) = $\$ 7,700$

Violation 7: Failure to contain concrete washout areas and concrete waste

Attachment C, Section B.2.i of the General Permit requires Risk Level 1 dischargers to ensure the containment of concrete washout areas and other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas.

During the July 16, 2019 Regional Water Board inspection, a concrete washout area was observed without any BMPs to contain discharges into the underlying soil.

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

Violation 7 is characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During the Regional Water Board’s July 16, 2019 inspection, Regional Water Board staff observed that the Discharger did not contain concrete washout areas. As a result, there were discharges of concrete onto the underlying soil.

As mentioned above, stormwater at the Site drains to the Marina del Rey Harbor. Existing beneficial uses of the Marina del Rey Harbor including navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Concrete washout water spills onto underlying soil at the site could be mobilized during precipitation events to stormwater runoff from the Site. Discharges of concrete washout to surface waters impact beneficial uses of Marina del Rey Harbor including commercial and sport fishing, wildlife habitat, and shellfish harvesting. Concrete washout water discharges are caustic, which can harm fish gills, eyes, and reproduction. They can also increase the pH in the receiving water; a high pH can increase the toxicity of other substances in surface waters and soils.

Concrete washout water can cloud the receiving water and cause decreased levels of dissolved oxygen, which is harmful to aquatic life and shellfish harvesting. Concrete waste in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for these violations is characterized as Moderate.

Deviation from Requirement: Major

Violation 7 is characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger did not have any BMPs in place to contain concrete washout areas and Regional Water Board staff observed wet soil indicating the discharge of concrete wastes into the underlying soil. Therefore, the requirement was rendered ineffective in its essential function for preventing discharges of concrete waste. Therefore, the Deviation from Requirement for this violation is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violation 7 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For this violation, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

$$\text{Initial Liability Amount} = 0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$$

Step 4. Adjustment Factors

Culpability: 1.3

A multiplier of 1.3 is assigned for this violation because the Discharger knew of the requirement and failed to effectively address the deficiency onsite. The Discharger submitted and certified SWPPPs via SMARTS on March 25, 2015 and April 30, 2019. Each SWPPP referenced the requirements of Attachment C, Section B.2.i to containment of concrete washout areas and

other washout areas that may contain additional pollutants so there is no discharge into the underlying soil and onto the surrounding areas. BMPs identified in 3.2 Good Site Management of the Site's SWPPPs to comply with such requirement included concrete waste management.

During the Regional Water Board's April 9, 2019 inspection, Regional Water Board staff observed inadequate concrete washout areas that resulted in concrete spills throughout the Site. Regional Water Board staff informed the Project Superintendent of the concrete washout concerns. Such evidence indicates poor Site conditions prior to enrollment under the General Permit on May 3, 2019. During the July 16, 2019 Regional Water Board inspection, Regional Water Board staff observed there were no BMPs at the concrete washout areas, which resulted in concrete spills at the Site. Additionally, maintaining containment of concrete washout areas is a standard industry practice; therefore, the Discharger should have implemented necessary measures to prevent potential discharges from the concrete use activities. A reasonable and prudent person would have ensured proper SWPPP implementation to prevent concrete spills onto underlying soil and surrounding areas at the Site.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for this violation.

Cleanup and Cooperation: 1.2

A multiplier of 1.2 is assigned for this violation. On August 15, 2019, the Region Board issued an NOV informing the Discharger of the violation. On September 4, 2019, the Discharger emailed Regional Water Board staff a response to the Regional Water Board's NOV that stated concrete washing and waste management was discussed during a tailgate training regarding non-stormwater BMPs. The Discharger also stated that its contractor committed to providing compliant washout procedures. The washout procedures were not provided to Regional Water Board staff or uploaded to SMARTS This violation was not observed during the Regional Water Board's subsequent inspection on January 10, 2020.

Step 5. Total Base Liability

\$5,500 (Initial Liability Amount) x 1.3 (Culpability) x 1.0 (History of Violation)
x 1.2 (Cleanup and Cooperation) = \$8,580

Violations 8-9: Failure to implement and maintain good housekeeping measures for waste management

Attachment C, Section B.2 of the General Permit requires Risk Level 1 dischargers to implement good housekeeping measures for waste management.

Violation 8: During the July 16, 2019 Regional Water Board inspection, poor housekeeping was observed throughout the Site. Uncovered construction materials and trash without BMPs to prevent dispersion were observed during the inspection. Dried and wet stucco and concrete waste materials were observed directly on loose sediment throughout the Site without waste management measures in place. Broken wood and sandbags, plastic, cardboard, and trash were observed scattered and directly on the ground of the Site without BMPs. Additionally, waste bin containers were observed overflowing and without covers.

Violation 9: During the January 10, 2020 Regional Water Board inspection, poor housekeeping practices were observed along the western perimeter of the Site. Loose sand, gravel, stucco, and sediment were observed without containment. Plastic and cardboard wastes, trash bags, and miscellaneous debris were observed on Del Rey Avenue and without containment measures throughout the western side of the Site. A waste bin on Del Rey Avenue was full and without cover.

Step 1. Potential for Harm for Discharge Violations

This factor does not apply to these violations.

Step 2. Assessment for Discharge Violations

This factor does not apply to these violations.

Step 3. Per Day Assessment for Non-Discharge Violations

Potential for Harm: Moderate

Violations 8 and 9 are characterized as a Moderate Potential for Harm. The Enforcement Policy defines Moderate Potential for Harm as “[t]he characteristics of the violation have substantially impaired the Water Boards’ ability to perform their statutory and regulatory functions, present a substantial threat to beneficial uses, and/or the circumstances of the violation indicate a substantial potential for harm.”

During the July 16, 2019 Regional Water Board inspection, Regional Water Board staff observed poor housekeeping practices of waste management throughout the Site, necessary to prevent their mobilization by rain or wind.

As mentioned above, stormwater at the Site drains indirectly to the Marina del Rey Harbor. Existing beneficial uses of the Marina del Rey Harbor include navigation, commercial and sport fishing, wildlife habitat, and shellfish harvesting. Discharges of concrete and waste materials to surface waters impact beneficial uses of Marina del Rey Harbor including commercial and sport fishing, wildlife habitat, and shellfish harvesting. Discharges of trash, settleables and floatables, in receiving waters can contribute to sediment contamination and impede the growth of aquatic vegetation, decreasing spawning areas and habitats for fish and other living organisms. Wildlife, including shellfish, can be harmed by ingesting or becoming entangled in floating trash. Trash in receiving waters is not aesthetically pleasing and deters recreational uses. Trash accumulation in water poses a moderate level of concern to ecosystem health exposure pathways because of the likelihood that the discharged material would harm aquatic life. Therefore, the Potential for Harm for these violations is characterized as Moderate.

Deviation from Requirement: Major

Violations 8 and 9 are characterized as a Major Deviation from Requirement. The Enforcement Policy defines a Major Deviation from Requirement as “[t]he requirement has been rendered ineffective (e.g., discharger disregards the requirement, and/or the requirement is rendered ineffective in its essential functions).” The Discharger failed to install good housekeeping measures to prevent potential mobilization of loose construction wastes throughout the Site during the Regional Water Board’s July 16, 2019.

During the January 10, 2020 Regional Water Board inspection, the Discharger continued to fail to install site management controls to contain construction wastes at the western side of Site. Wastes were consequently unprotected and tracked off-site and onto Del Rey Avenue. Such unprotected wastes had the potential to be mobilized by winds and rain. The Discharger disregarded the requirement and rendered it ineffective in its essential function of preventing these materials from being discharged offsite and potentially reaching surface waters. Therefore, the Deviation from Requirement for these violations is characterized as Major.

Per Day Factor: 0.55

In accordance with Table 3 of the Enforcement Policy, the per day factor for Violations 8 and 9 is 0.55.

Initial Liability Amount: \$5,500

The Initial Liability Amount is the (per day factor) x (number of days of violation) x (per day statutory maximum liability).

For Violations 8 and 9, the per day factor is 0.55, days of violation is 1, and the per day statutory maximum liability is \$10,000 under Water Code section 13385, subdivision (c).

Initial Liability Amount = $0.55 \times 1 \text{ day} \times \$10,000/\text{day} = \$5,500$

Step 4. Adjustment Factors

Culpability:

Violation 8: 1.4

A multiplier of 1.4 is assigned for this violation because the Discharger knew of the requirement and failed to effectively address the deficiency onsite. The Discharger submitted and certified SWPPPs via SMARTS on March 25, 2015 on April 30, 2019. Each SWPPP stated that designated waste collection areas would be selected on-site, that there would be an adequate number of containers with lids or covers, and that trash would be collected on a daily basis, especially during windy conditions. The SWPPPs also stated that solid waste would be removed as often as practical, and that trash receptacles would be secured. Additionally, each SWPPP referenced the requirements of Attachment C, Section B.2.f to contain and securely protect stockpiled waste material and provided BMPs to fulfill the requirement. BMPs identified in Section 3.2 Good Site Management "Housekeeping" of the Site's SWPPPs were material delivery and storage, stockpile management, solid waste management, spill prevention and control, and concrete waste management.

QSP BMP inspection reports on February 7 and 20, 2019 stated that the front, which has been interpreted to be the north side of the Site, was very messy. The BMP inspection reports from March 14, and 27, 2019 stated that there were no functioning BMPs at the Site and that the northern perimeter of the Site looked terrible and was totally unacceptable, requiring cleanup. The Discharger was therefore aware of requirement to conduct good housekeeping practices.

On April 9, 2019 Regional Water Board staff conducted a non-filer inspection at the Site and observed construction waste materials including plastic, brick, cardboard, loose sediment, and dried concrete and stucco throughout the Site. BMPs were not observed around waste materials. Such

materials were located by a perimeter chain linked fence that did not have perimeter controls to prevent potential discharge of wastes to stormwater. On April 11, 2019, the Project Superintendent emailed photographs showcasing areas where cleanup activities were conducted including an unprotected wastes stockpile at the Site.

The QSP's July 15, 2019 BMP inspection report reported that the northern side of the Site, facing Beach Avenue, continued to be absent of BMPs and was still very messy. During the Regional Water Board inspection on July 16, 2019, Regional Water Board staff observed poor housekeeping practices of construction materials throughout the northern, eastern, and western areas of the Site. Scattered dried concrete and stucco wastes were observed throughout the Site and in the vicinity of areas without perimeter controls. Loose stockpiles of construction materials, and plastic and cardboard wastes with concrete and stucco residue were documented on the ground without BMPs and various areas of the project Site. Trash and debris were also observed on the ground throughout the Site without BMPs to contain such waste materials. Regional Water Board staff observed various waste uncovered waste bin containers and some containers that were overflowing. Additionally, maintaining good housekeeping measures is a standard industry practice; therefore, the Discharger should have implemented necessary measures to prevent potential discharges of construction materials. A reasonably prudent person who applies for coverage under the General Permit would have necessary oversight and accountability measures in place to ensure the necessary BMPs were in place, as is expected of a reasonably prudent person who applies for coverage under the General Permit.

Violation 9: 1.4

A multiplier of 1.4 is assigned for this violation because the Discharger knew of the requirement based on the project's SWPPPs, prior notification by Regional Water Board staff, and QSP inspection findings on BMP inspection reports between February 2019 and January 2020. The Regional Water Board issued the Discharger an NOV on August 15, 2019, informing the Discharger of poor housekeeping violations during the Regional Water Board inspection on July 16, 2019. The Discharger provided a response to Regional Water Board that stated waste collection and removal was improved and that trash receptacles were scheduled for regular off haul.

However, BMP inspection reports on October 18, and 31, November 8, and 15, 2019, stated that BMPs were absent along the western side, facing Del Rey Avenue, and required additional cleaning. BMP inspection reports on December 6, and 20, 2019 and January 3, and 9, 2020 stated that general

housekeeping at the Site continued to be an issue and required action. The QSP's inspection findings were further supported by a Regional Water Board inspection on January 10, 2020.

During the January 10, 2020 inspection Regional Water Board staff observed unprotected waste materials throughout the western region of the Site without site management controls. As a result, some waste materials were tracked onto Del Rey Avenue. Regional Water Board staff also observed an uncovered waste bin placed on Del Rey Avenue that was full. Additionally, maintaining good housekeeping measures is a standard industry practice; therefore, the Discharger should have implemented necessary measures to prevent potential discharges of construction materials. A reasonably prudent person who applies for coverage under the General Permit would have corrected the problem after receiving notification by the QSP and Regional Water Board staff and had necessary oversight and accountability measures in place to ensure the necessary BMPs were in place, as is expected of a reasonably prudent person who applies for coverage under the General Permit.

History of Violations: 1.0

Since the Discharger does not have a history of violations, a neutral multiplier of 1.0 is assigned for Violations 8 and 9.

Cleanup and Cooperation:

Violation 8: 1.3

A multiplier of 1.3 is assigned for this violation. On September 4, 2019 the Discharger emailed Regional Water Board staff a response to the August 15, 2019 NOV that stated improved on-site housekeeping was made a priority, which included collection and removal of material waste. The Discharger's response also stated that on-site trash receptacles were used to contain waste and were scheduled for regular off haul to an approved landfill. The Discharger provided a training log that discussed waste management and materials pollution control from August 23, 2019. The Discharger's NOV response also included a photo at the Site that did not reflect all areas of concern noted in the Regional Water Board's inspection and NOV. Moreover, BMP inspection reports from October, November, and December 2019 and January 2020, documented recurring concerns regarding general housekeeping throughout the Site. Therefore, the violation persisted months following the NOV issued by the Regional Water Board.

Violation 9: 1.0

A multiplier of 1.0 is assigned for this violation. In the afternoon following the Regional Water Board’s January 10, 2020 inspection, the Project Superintendent emailed Regional Water Board staff photos that reflected cleanup activities along Del Rey Avenue and stated that waddles were placed around a pile of sand with plastic and areas along the curb were cleaned. Regional Water Board staff determined that the response was sufficient information of the Discharger’s effort to address housekeeping concerns at the Site.

Step 5. Total Base Liability

Violation 8: \$10,000

$\$5,500$ (Initial Liability Amount) x 1.4 (Culpability) x 1.0 (History of Violation) x 1.3 (Cleanup and Cooperation) = $\$10,010$

The Enforcement Policy (p. 21) states that “[w]here the amount proposed for a particular violation exceeds to statutory maximum, the amount must be reduced to that maximum.” Therefore, the Total Base Liability for Violation 8 is reduced to $\$10,000$.

Violation 9: \$7,700

$\$5,500$ (Initial Liability Amount) x 1.4 (Culpability) x 1.0 (History of Violation) x 1.0 (Cleanup and Cooperation) = $\$7,700$

Table 1. Total Base Liability for All Violations

Violation	Violation Description	Proposed Liability	Maximum Liability	No. of Days
1	Failure to File a Report of Waste Discharge	\$105,600	\$220,000	22 days
2	Failure to implement adequate perimeter sediment controls on July 16, 2019	\$10,000	\$10,000	1 day
3	Failure to implement adequate perimeter sediment controls on January 10, 2020	\$7,700	\$10,000	1 day

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 CLG Hollywood, LLC

4	Failure to stabilize construction entrances and exits to sufficiently control erosion and sediment discharges from the Site on July 16, 2019	\$9,240	\$10,000	1 day
5	Failure to clean streets to prevent unauthorized non-storm water discharges on July 16, 2019	\$10,000	\$10,000	1 day
6	Failure to clean streets to prevent unauthorized non-storm water discharges on January 10, 2020	\$7,700	\$10,000	1 day
7	Failure to contain concrete washout areas on July 16, 2019	\$8,580	\$10,000	1 day
8	Failure to implement and maintain good housekeeping measures for waste management on July 16, 2019	\$10,000	\$10,000	1 day
9	Failure to implement and maintain good housekeeping measures for waste management on January 10, 2020	\$7,700	\$10,000	1 day
TOTAL		\$176,520	\$300,000	30 days

Step 6. Ability to Pay:

The Enforcement Policy requires the Regional 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. The Discharger has the ability to pay the Total Base Liability and continue in business. The Discharger owns property at 7928 Hollywood Boulevard in Los Angeles. Based on 2018 Tax Assessor records, this property has an assessed total value of \$26,935,812. The Discharger is also part of California Landmark Group, whose portfolio includes the G8 apartment complex

developed at the Site. The G8 apartment complex is a \$100 million complex containing 230 apartments that are rented for approximately \$2,700 to \$5,400 per month.

Step 7. Economic Benefit: \$38,981

The Enforcement Policy provides that the economic benefit of noncompliance should be calculated using the United States Environmental Protection Agency's (US EPA) Economic Benefit Model (BEN)¹ penalty and financial modeling program unless it is demonstrated that an alternative method of calculating the economic benefit is more appropriate. Economic benefit was calculated using BEN Version 5.8.0. For this case, BEN was determined to be the appropriate method. Using standard economic principals such as time-value of money and tax deductibility of compliance costs, BEN calculates a discharger's economic benefit derived from delaying or avoiding compliance with environmental statutes.

In this case, the Discharger conducted land disturbance activities at the Site at least between September 29, 2017 and May 3, 2019 without authorization by the State Water Board. The Discharger should have filed a Report of Waste Discharge/NOI with all permit registration documents (PRDs) to the State Water Board prior to land disturbance activities. Per the General Construction Permit Section II.B, the Legally Responsible Person (LRP) must prepare and electronically file the NOI, Risk Assessment, Site Map, SWPPP, Annual Fee, and Signed Certification Statement prior to commencement of construction activity. The economic benefit of non-compliance was \$360.

The Prosecution Team reviewed the Site conditions via inspection photos by Regional Water Board staff, QSP recommendations, SWPPPs, and CASQA standard practices to identify compliance actions that would have mitigated the alleged violations.

The Discharger failed to implement adequate perimeter sediment controls. The economic benefit of non-compliance associated with gravel bag check dams was \$1,508.

The Discharger's failure to provide stabilized the construction entrance/exit along Beach Avenue resulted in an economic benefit for non-compliance of \$190 related to installation and maintenance of the necessary BMPs.

The lack of street sweeping also resulted in an economic benefit of non-compliance of \$34,483.

The Discharger also failed to contain concrete washout areas and concrete waste at least from April 9, 2019 through July 16, 2020. The Site should have had a designated washout area and the estimated benefit of non-compliance was \$2,440.

Therefore, the total economic benefit for the alleged violations is \$38,981.

¹ US EPA Economic Benefit Model, or BEN. At the time this document was prepared, BEN was available for download at <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

Step 8. Other Factors As Justice May Require

If the Regional Water Board believes that the amount determined using the above factors is inappropriate, the amount may be adjusted under the provision for “other factors as justice may require,” but only if express findings are made to justify this adjustment.

Staff Cost: \$11,675

The Enforcement Policy allows for the costs of investigation and enforcement to be considered under other factors as justice may require. To date, the Regional Water Board has incurred \$11,675 in staff costs associated with the investigation, preparation, and enforcement of the violations. This represents approximately 100.45 hours of staff time devoted to inspecting the Site, meetings, communications, and drafting the enforcement documents. No attorneys’ fees are included in this calculation. The Prosecution Team finds that it is appropriate to increase the Total Base Liability by \$11,675 in consideration of investigation and enforcement costs incurred in prosecuting this matter. Increasing the Total Base Liability in this manner serves to create a more appropriate deterrent against future violations.

Step 9. Maximum and Minimum Liability Amounts

The Enforcement Policy directs the Regional Water Board to consider maximum and minimum liability amounts set forth in the applicable statutes.

- a. Statutory Maximum: The statutory maximum is \$10,000 per day for each violation pursuant to California Water Code section 13385. Therefore, the statutory maximum is set as \$300,000.
- b. Statutory Minimum: The Enforcement Policy requires the Regional Water Board to recover, at a minimum, 10% more than the economic benefit. Therefore, the statutory minimum is set at \$42,879.

Step 10. Final Liability Amount: \$188,195

To determine the final liability amount, liabilities for each violation were summed together, provided the amounts were within the statutory minimum and maximum amounts. The total summed amount for liabilities of violations was added to total staff cost accrued by the Regional Water Board. Therefore, the final liability amount is assessed at \$188,195.