

## Attachment B

### Fox Hollow NOV/13267 Order

#### Compliance History at the Site<sup>1</sup>

- A. On October 5, 2016, Regional Water Board staff (Staff) notified the Discharger's Legally Responsible Person (LRP) for the Site, Mr. Matthew Jansen, via email of sediment being tracked from the Site onto Fulton Road, and requested that additional entrance/exit stabilization measures be implemented immediately. Mr. Jansen responded by directing Discharger staff, Mr. Robert Fortney, and the Discharger contractor, Mr. Don Neff, of LJP Construction Services, to address Staff's concern.
- B. On October 13, 2016, Staff again notified Mr. Jansen, the LRP, via email of sediment being tracked onto Fulton Road. Staff noted that rains were forecast to begin within the following 24 hours, and inquired about how the Site was going to be protected to prevent sediment from discharging to surface waters. Staff stated that they had observed no erosion controls onsite, and that it was vital that the Site be adequately protected to prevent sediment and other pollutants from discharging into Peterson Creek. Mr. Jansen responded, indicating that additional wattles, silt fences, and sand bags were to be delivered that day, and that Fulton Road was scheduled to be swept. He also stated that the contracted Qualified Storm Water Practitioner (QSP), Gary Morris, was satisfied with the Site's perimeter control to prevent discharges of sediment.
- C. On November 2, 2016, Bob Oller, of the City of Santa Rosa (City), notified Staff via email of a post-storm inspection that City staff conducted on October 31, 2016. Mr. Oller stated that City staff observed five locations where sediment had discharged from the Site (**Attachment C, Photo 1**). As a result, the City issued a Correction Notice, dated October 31, 2016, that described the discharges and required that the deficiencies that contributed to the discharges be corrected prior to the next rain event. Also included in Mr. Oller's email were two other Correction Notices dated September 26, 2016, and October 17, 2016, which had been issued by the City to the Discharger. The Correction Notices identified administrative and best management practices (BMP) deficiencies and requested that the Discharger correct the noted deficiencies.
- D. On November 3, 2016, Staff inspected the Site with representatives for the Discharger, its contractors (LJP Construction Services and Carlile Macy) and the City. During the inspection, Staff observed pooled sediment-laden water that had discharged from the Site during a recent rain event (**Attachment C, Photo 2**),

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<sup>1</sup> Summaries of inspections conducted by Regional Water Board staff may be located on SMARTS, using the Discharger's WDID No. 1 49C377076

widespread areas of bare soil lacking erosion control throughout the twenty acres of disturbed area (**Attachment C, Photos 3 and 4**), and BMPs that needed to be maintained immediately in order to be effective at preventing sediment from discharging from the Site (**Attachment C, Photo 5**). During and at the conclusion of the inspection, Staff informed the Discharger and its contractors of the areas where they had observed evidence of sediment transport offsite and of the areas where additional BMPs were needed and/or existing BMPs required maintenance. Staff directed the Discharger to immediately implement erosion control measures to prevent sediment from discharging from the Site.

- E. On November 20, 2016, Staff observed and documented evidence that sediment had discharged from the western boundary of the Site to Peterson Creek (**Attachment C, Photos 6-12**). Staff emailed the LRP, Mr. Jansen, and also copied contractor staff, to notify him that the discharges occurred as a result of mass grading of 20 acres on the Site in the rainy season with inadequate erosion and sediment controls. In the November 20, 2016, email, Staff again stated that BMPs needed to be improved and all discharges of sediment must cease immediately. Staff informed Mr. Jansen that the Discharger could incur liabilities of up to \$10 per gallon and/or \$10,000 per day per violation, pursuant to Water Code sections 13385. In response, Mr. Jansen directed Mr. Robert Fortney, the Site superintendent, to resolve the issue. Mr. Andrew Davies of LJP Construction Services also responded by submitting to Staff a temporary plan for BMP implementation, which included sediment controls such as gravel bag berms, silt fences, and wattles, and creation of detention areas to contain runoff.
- F. On November 22, 2016, the City issued a 'stop work notice' via email to the Discharger. The stop work notice stated, *Please stop all work under the project's grading and encroachment permits until appropriate BMP corrections are completed.*
- G. On December 1, 2016, Staff inspected the Site with Mr. Bob Oller of the City. Also in attendance were the Site Superintendent, Mr. Fortney; the contracted Qualified Storm Water Practitioner (QSP), Mr. Gary Morris; and the contracted Qualified Storm Water Developer (QSD), Mr. Pete Crudo. During the inspection, Staff observed that conditions on the Site had not changed much since the last inspection or since the November 20, 2016, email to Mr. Jansen. While Staff noted that sediment controls and a containment area had been added, the Site remained largely unprotected, with large areas of bare, exposed soil lacking erosion controls, despite the fact that Staff had previously directed Discharger representatives to install erosion controls. During the inspection, Staff and Mr. Oller of the City reiterated to the Discharger representatives of the importance of covering exposed areas with erosion controls in order to minimize or prevent sediment from discharging into surface waters.

Mr. Oller stated that in order for the City to release the stop work notice, the Discharger would need to submit a work plan describing how it would prevent

further sediment discharges from the Site to surface water. The QSP, Mr. Morris, and the QSD, Mr. Crudo, recommended to Mr. Fortney, the Site Superintendent, that the Discharger select a small section to work on and stabilize the rest of the site; after some discussion, Mr. Fortney agreed. Mr. Fortney, Mr. Morris, and Mr. Crudo agreed that they would develop a work plan describing proposed area of work and areas to be stabilized for winter, and then submit the work plan to the City for review/approval and to the Regional Water Board for input.

- H. On December 9, 2016, Staff sent an email to Mr. Jansen summarizing the outcome of the December 1, 2016, Site inspection. In that email, Staff stated that they had not yet received either a work plan or any verification that erosion controls have been implemented at the Site. Staff noted that it was raining in Santa Rosa and that rain was expected to continue for a couple of days. Staff stated that:

*The Regional Water Board remains significantly concerned that BMPs onsite are inadequate or will not be effective. There are also BMPs currently not used on the Site, such as advanced treatment, that may help improve the quality of storm water discharge from the Site. We urge you to ensure that the Site has adequate BMPs and implement all necessary measures to avoid discharges of sediment from the Site.*

Mr. Jansen responded that Discharger representatives and contractors had been working since the previous week to “exceed the current BMP requirements”.

- I. On December 15, 2016, Staff observed and documented a discharge of sediment from the Site into waters of the state (**Attachment C, Photos 13-19**). Specifically, Staff observed sediment-laden storm water runoff flowing from the western boundary of the Site into Peterson Creek. Staff also observed sediment-laden runoff from the Site entering a City storm water inlet near the eastern boundary of the Site on Fulton Road. Mr. Morris, the QSD, also documented sediment discharge to surface waters during an inspection. In addition to the discharges observed by Staff, Mr. Morris observed that sediment from the construction entrance had discharged from the Site due to lack of adequate BMPs (**Attachment C, Photos 20-21**).
- J. On December 21, 2016, Staff sent an email to the LRP, Mr. Jansen, notifying him of the sediment discharges observed on December 15, 2016, and reiterating the previous notifications sent to him regarding the need to cease discharges immediately. Staff also summarized another inspection that was conducted on December 20, 2016, with Mr. Oller of the City, Mr. Fortney, the Site Superintendent, and Mr. Crudo, the QSD.

During the December 20, 2016, inspection, Staff observed evidence of significant erosion that had occurred during the December 15, 2016, rain event, and since the last inspection. Staff observed large gullies, ranging from one to two feet wide and deep along the roads and housing pad slopes (**Attachment C, Photos 22 and 23**); stockpiled sediment that lacked coverage and a berm (**Attachment C, Photo 24**);

overwhelmed and incorrectly installed or maintained BMPs (**Attachment C, Photo 25**); a storm water containment area that was at capacity and likely to overflow during the next rain event (**Attachment C, Photo 26**); and evidence that sediment had discharged from the site into Forestview Creek via an inlet to the MS4 (**Attachment C, Photo 27**).

Staff also observed the remnants of deposited bonded fiber matrix erosion control (BFM) (**Attachment C, Photo 28**). Mr. Fortney, the Site Superintendent, stated that the contractor had applied BFM to portions of the Site prior to the December 15, 2016, rainfall event, in an attempt to provide erosion control to the Site. He stated that BFM was applied within several days leading up to the rain event and during the rain event. Consequently, there was not time for the BFM to dry sufficiently, and rainfall and storm water runoff dislodged and transported BFM, likely discharging it offsite. In addition, there was no evidence that the BFM had been applied at the appropriate rate to be rendered effective. Consequently, nearly all of the 20 acres of disturbed soil onsite remained exposed to a high volume (nearly five inches in 24-48 hours, according to Mr. Fortney) of storm water, resulting in significant discharges of sediment to surface waters on December 15, 2016. Mr. Fortney told Staff that the plan moving forward would be to apply a new mix of BFM to the entire Site as soon as possible. Staff told Mr. Fortney that the entire Site needed to be stabilized prior to the next rain event.

- K. On December 23, 2016, Staff observed and documented a discharge of sediment from the Site to Peterson Creek. Mr. Brendan Thompson, Environmental Scientist for the Regional Water Board's Non-Point Source Unit, inspected the Site and observed two, or possibly three, locations where sediment-laden water was actively flowing from the western boundary of the Site to Peterson Creek (**Attachment C, Photos 29-37**). Mr. Thompson reported observing that the sediment-laden water originated from several large impoundments of water along the project boundary, and that it subsequently either overwhelmed perimeter sediment controls or ponded at the top of the creek bank and seeped through the creek bank and into the creek (**Attachment D**). Mr. Thompson stated that it was apparent that the sediment control BMPs that he observed during this inspection had been deployed in response to an overall inadequate pollution prevention strategy and lack of proper wet weather planning prior to the wet season; Mr. Thompson reported observing several ineffective improvised detention basins and multiple layers of sediment controls.

During the December 23, 2016, rain event, Mr. Morris, the QSD, sampled discharge from the Site and reported the pH values listed in the Table 1. Sampling results indicate values below the numeric action level range for pH (6.5-8.5 SU). Mr. Morris did not provide an explanation for the low values, and storm water pollution prevention plan (SWPPP) was not submitted, as required by Section I.H.54 of the Construction General Permit.

**Table 1. Results of pH samples from December 23, 2016 rain event.**

Sampling Location Name	Location Description	Time	pH value
No.1- 'Back of site rock bed'	Along western boundary of project, north of foot bridge	10:15	3.4
No.1- 'Back of site rock bed'	Along western boundary of project, north of foot bridge	11:45	3.6
No. 5- 'Western property line, silt fence breach'	Along western boundary of Site, around 50 feet south of foot bridge	10:30	3.1

Subsequent sampling results in December, 2016, and January, 2017, were reported to be within the 6.5-8.5 SU numeric action level range in the Construction General Permit.