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## North Coast Regional Water Quality Control Board

January 17, 2020

Certified Mail No. 7016 0750 0001 0048 6559

Enclave LP  
Attn: Daniel Morgan  
150 Gate 5 Road #100  
Sausalito, CA 94965  
dan@gfcgroup.net

Dear Mr. Morgan:

**Subject: Notice of Violation and Transmittal of Inspection Reports for December 16, 19, and 22, 2019, Inspections of Marlow Commons Subdivision, 2199 Marlow Road, Santa Rosa, CA 95403**

**File: Construction General Permit Inspections, Sonoma County, 2019; SMARTS WDID: 1 49C388330 Marlow Commons Subdivision (Site)**

This letter is to notify you of observed violations of the requirements listed below for the above-referenced Property:

1. The Construction General Permit (State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ & 2012-0006-DWQ)
  - Attachment B, Provision J.2, Permit Registration Site Map
  - Attachment D, Provision D.2, Soil Cover Erosion Control
  - Attachment D, Provision E.1, Perimeter Controls

This letter directs you to comply with the Construction General Permit. In addition, this letter directs you to contact Regional Water Board staff by email, within 10 days, to advise of your plan to implement recommendations in the attached report.

### A. Background

On December 16, 19, and 22, 2019, staff from the Regional Water Board inspected the subject Property.

The purpose of the inspections was to evaluate onsite development and conditions, and to identify and assess any impacts or threatened impacts to the quality and beneficial uses of waters of the state. In addition, staff assessed compliance with requirements of the Construction General Permit (State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ & 2012-0006-DWQ)

Attached are copies of the water quality inspection reports from December 16, 19, and 22, 2019. Please review the inspection reports carefully and completely. The reports contain recommendations for correcting observed violations on the Property; Section E., below, summarizes these recommendations.

## **B. Relevant Requirements**

During the inspections, Regional Water Board staff observed features and conditions on the Property that represent violations of water quality requirements and regulations. Attachment A – Regulatory Citations, provides references to these and other relevant requirements and regulations.

## **C. Observed Violations**

As documented in the December 16, 19, and 22, 2019 inspection reports, and discussed below, Regional Water Board staff observed violations of the Construction General Permit (State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ & 2012-0006-DWQ).

- Construction General Permit Attachment D, Provision D.2. requires effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.

On December 17, 2019, contractor Richard Hayden advised staff, via email, that there had been no construction activity on the Property for the past two weeks. However, on both December 19, 2019, and December 22, 2019, staff observed uncovered, disturbed soils in areas that drained toward Marlow Road and Guerneville Road. Recent rainfall had carried sediment from the uncovered inactive area through perimeter wattles onto the sidewalk on Marlow Road, where it threatened to discharge into the nearby storm drain. In addition, staff observed uncovered, disturbed soils in an area draining toward a large puddle that extended nearly to the edge of the Property. It appeared likely that with further storms, additional constructed-related storm water runoff would accumulate in the puddle, causing it to overflow and discharge onto Guerneville Road.

- Attachment D, Provision E.1. to the Construction General Permit requires effective perimeter controls and stabilized construction entrances and exits to

control erosion and sediment discharges from the site.

On December 16, 19, and 22, 2019, Regional Water Board staff observed at least one construction access point that was not stabilized.

- Finally, in comparing documents in SMARTS with observed conditions on the Property, staff determined that the site map in the SWPPP does not identify the entrance to the site used for construction access. This violates requirements of Construction General Permit Attachment B, Provision J.2.

#### **D. Additional Potential Liabilities**

The Regional Water Board is in the process of considering whether these violations warrant further enforcement. We encourage you to take steps, to correct the violations as soon as possible. Please note that the existing conditions, as observed and documented in the inspection reports, may represent continuing violations of the Construction General Permit, Water Code, and or Basin Plan.

Please note that correcting the conditions of non-compliance at the Site does not preclude enforcement for the violations alleged in this notice. Enclave LP may be subject to up to \$10,000 per day of violation and \$10 per gallon discharged over 1,000 not cleaned up pursuant to Water Code section 13385. As noted above, the Regional Water Board may take enforcement actions such as a cleanup and abatement order, time schedule order, administrative civil liabilities, and referral to the California Attorney General's office. The Regional Water Board reserves the right to take any enforcement action authorized by law.

#### **E. Inspection Report Recommendations**

As mentioned above, the December 16, 19, and 22, 2019, inspection reports provide the following recommendations to correct violations, as well as to address features and conditions that threaten to impact water quality:

1. Cover inactive areas as appropriate to comply with Attachment D, Provision D.2, which requires, in part, that dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.
2. Stabilize the construction entrance as appropriate to comply Attachment D, Provision E.1, which requires, in part, that dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
3. Update the SWPPP site map to comply with Attachment B, Provision J.2 and upload the map to SMARTS. Specifically, ensure that the map reflects the current site conditions, including the construction entrance location.

Within 10 days, please advise Joshua Luders by email of your intentions, plan, and schedule to implement recommendations in the inspection report. Joshua can be reached by email at [Joshua.Luders@Waterboards.ca.gov](mailto:Joshua.Luders@Waterboards.ca.gov).

Future correspondence regarding this matter will be sent to you, the president of Enclave LP, at this address unless an alternate address is provided to the Regional Water Board. Failure to accept mail from the Regional Water Board is not a valid excuse for non-compliance with any future enforcement orders, and a failure to respond or otherwise appear at a future enforcement proceeding could subject you to a default order and the imposition of administrative civil liability.

If you have any questions regarding this matter, please contact Joshua Luders at the telephone number or email above. You may also contact me at [Heaven.Moore@Waterboards.ca.gov](mailto:Heaven.Moore@Waterboards.ca.gov) or by telephone at (707) 576-2753. Additionally, we are available to meet with you if you wish to discuss this letter, the inspection report, the Construction General Permit, or our waste discharge regulatory programs in further detail.

Sincerely,

Heaven Moore, P.E.  
NPDES Unit

200117\_JAL\_er\_Marlow Commons Subdivision\_NOV

Attachments: Attachment A – Regulatory Citations  
December 20, 2019, Water Quality Inspection Report

**cc:**

**North Coast Regional Water Quality Control Board**

[Diana.Henrioulle@waterboards.ca.gov](mailto:Diana.Henrioulle@waterboards.ca.gov)  
[Charles.Reed@waterboards.ca.gov](mailto:Charles.Reed@waterboards.ca.gov)

**City of Santa Rosa**

[JFernandez@srcity.org](mailto:JFernandez@srcity.org)  
[NSudano@srcity.org](mailto:NSudano@srcity.org)

**Dischargers Related Emails**

[dan@marinerslandingllc.com](mailto:dan@marinerslandingllc.com)  
[richardcndhomes@gmail.com](mailto:richardcndhomes@gmail.com)

### Attachment A – Regulatory Citations

Regulatory Section	Citation
<p>Construction General Permit: Attachment B, Provision J.2</p>	<p>Requires, in part that</p> <p>“Site Map(s) Includes:</p> <ul style="list-style-type: none"> <li>a. The project’s surrounding area (vicinity)</li> <li>b. Site layout</li> <li>c. Construction site boundaries</li> <li>d. Drainage areas</li> <li>e. Discharge locations</li> <li>f. Sampling locations</li> <li>g. Areas of soil disturbance (temporary or permanent)</li> <li>h. Active areas of soil disturbance (cut or fill)</li> <li>i. Locations of all runoff BMPs</li> <li>j. Locations of all erosion control BMPs</li> <li>k. Locations of all sediment control BMPs</li> <li>l. ATS location (if applicable)</li> <li>m. Locations of sensitive habitats, watercourses, or other features which are not to be disturbed</li> <li>n. Locations of all post-construction BMPs</li> <li>o. Locations of storage areas for waste, vehicles, service, loading/unloading of materials, access (entrance/exits) points to construction site, fueling, and water storage, water transfer for dust control and compaction practices</li> </ul>
<p>Construction General Permit: Attachment D, Provision D.2</p>	<p>Requires, in part that “Risk Level 2 dischargers shall provide effective soil cover for inactive<sup>1</sup> areas and all finished slopes, open space, utility backfill, and completed lots.’</p>
<p>Construction General Permit: Attachment D, Provision E.1</p>	<p>Requires, in part that dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.</p>

North Coast Regional Water Quality Control Board

**Construction General Permit Basic Inspection**

<b>FACILITY INFORMATION</b>	
<b>Facility Name:</b>	Marlow Commons Subdivision
<b>Facility WDID:</b>	1 49C388330
<b>Facility Address:</b>	2199 Marlow Road, Santa Rosa, CA 95403
<b>Construction General Permit Type and Level:</b>	Sediment Risk: Medium; Receiving Water Risk: High; Risk Level: 2
<b>Legally Responsible Party:</b>	Enclave LP; President Daniel Morgan
<b>Primary Developer:</b>	Enclave LP; President Daniel Morgan
<b>Name of QSD:</b>	Kevin Kruizenga, QSD 25262; ASP Inc.
<b>Name of QSP:</b>	Kevin Kruizenga and delegated staff at ASP Inc.
<b>History of Compliance:</b>	No known history prior to this winter
<b>INSPECTION INFORMATION</b>	
<b>Inspection Date:</b>	December 16, 2019
<b>Inspection Time of Arrival:</b>	1400
<b>Inspection Time of Departure:</b>	1415
<b>Was the Entire Site Inspected:</b>	No: Inspected from sidewalk and walked to office trailer
<b>Weather:</b>	Sunny, wet season
<b>Type of Inspection:</b>	Inspection from vehicle
<b>Purpose of Inspection:</b>	Drive by introduction
<b>Parties Present During Inspection:</b>	Office staff: Full name not known Regional Water Board: Joshua Luders
<b>Was Consent Provided for Inspection:</b>	No. Inspection was conducted from public sidewalk
<b>Is the SWPPP Onsite:</b>	Office staff showed staff a copy
<b>Inspector's Name:</b>	Regional Board Staff: Joshua Luders

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

WDID: 1 49C388330

Inspection Date: December 16, 2019

### **Inspection Findings**

On December 16, 2019, I stopped by the Marlow Commons Subdivision to introduce myself to onsite personnel. As the North Coast Regional Water Board staff person assigned to oversee implementation of and compliance with the CGP, it is my regular practice to stop by and introduce myself to parties in the industry whenever I am near a site that I have not yet visited or where I have not yet met with parties associated with the CGP permit. On my December 16 visit, I drove by the site and knocked on the trailer door. An office representative answered the door and told me that the contractor/developer was not there. The office representative mentioned that someone else had been to the site to do a water inspection, and I explained that the site is subject to both City and State requirements, so it was possible that both City and State staff might inspect the project. The office representative went into the trailer and got the SWPPP for the site, to confirm that was the State permit I was referring to. I did not review the SWPPP, but thanked her for showing it to me, and confirmed that the CGP requires that the SWPPP be kept on the site. I requested that the office representative leave a note for the developer to indicate that I had been at the site, that I had stopped by to introduce myself, and that I would be back in the future to inspect the site.

Before leaving the site, I stopped on the sidewalk and took a photograph of the construction entrance (Photo 1). I observed large puddles of turbid water leading towards the entrance. According to the site SWPPP on SMARTs, there is no construction entrance at this location (Figure 1).

### **Conclusion**

The construction site had a SWPPP on site, Regional Water Board staff requested that the on-site office staff leave a note to the Discharger to inform them that Regional Water Board staff would return for a future inspection. I observed that the construction entrance was not fully stabilized and it is not depicted on the SWPPP uploaded to SMARTS

### **Recommendations**

1. Update the SWPPP to reflect the location of the construction entrance and upload to SMARTS.
2. Stabilize the construction entrance as appropriate to comply Attachment D, Provision E.1, which requires, in part, that dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.

WDID: 1 49C388330

Inspection Date: December 16, 2019



*Photo 1: Construction entrance off Marlow Road.*

Construction General Permit 2009-0009-DWQ

WDID: 1 49C388330

Inspection Date: December 16, 2019

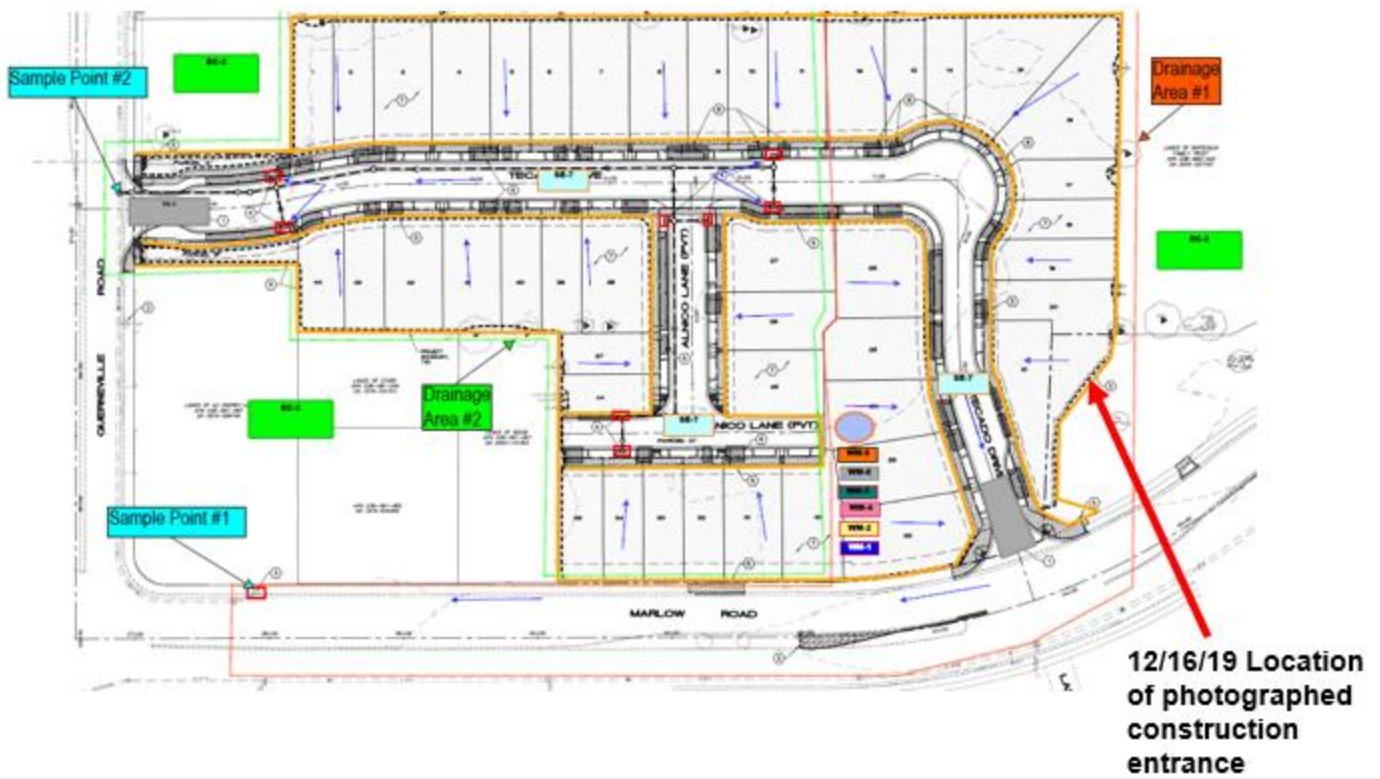


Figure 1: The red arrow points to the location of the observed construction entrance in Photo 1. This figure was obtained from the site SWPPP, SMARTS Attachment ID 2520264 and was edited by Joshua Luders to indicate a location of interest.

North Coast Regional Water Quality Control Board

**Construction General Permit Basic Inspection**

FACILITY INFORMATION
<b>Facility Name:</b> Marlow Commons Subdivision
<b>Facility WDID:</b> 1 49C388330
<b>Facility Address:</b> 2199 Marlow Road, Santa Rosa, CA 95403
<b>Construction General Permit Type and Level:</b> Sediment Risk: Medium; Receiving Water Risk: High; Risk Level: 2
<b>Legally Responsible Party:</b> Enclave LP; President Daniel Morgan
<b>Primary Developer:</b> Enclave LP; President Daniel Morgan
<b>Name of QSD:</b> Kevin Kruizenga, QSD 25262; ASP Inc.
<b>Name of QSP:</b> Kevin Kruizenga and delegated staff at ASP Inc.
<b>History of Compliance:</b> No known history prior to this winter
INSPECTION INFORMATION
<b>Inspection Date:</b> December 19, 2019
<b>Inspection Time of Arrival:</b> 1000
<b>Inspection Time of Departure:</b> 1100
<b>Was the Entire Site Inspected:</b> No: Inspected from sidewalk and walked to office trailer
<b>Weather:</b> Overcast; wet weather
<b>Type of Inspection:</b> Type B
<b>Purpose of Inspection:</b> Checking status of compliance efforts
<b>Parties Present During Inspection:</b> Regional Water Board: Joshua Luders and Brian Fuller Richard Hayden, Contractor, CND Homes; Contractor's License No. 1054670 (on-site; staff met with Mr. Hayden at the office trailer following sidewalk inspection).
<b>Was Consent Provided for Inspection:</b> No. Inspection was conducted from public sidewalk
<b>Is the SWPPP Onsite:</b> Not requested during 12/19 inspection. Office staff showed staff a copy on 12/16/19.
<b>Inspector's Name:</b> Regional Board Staff: Joshua Luders and Brian Fuller

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

WDID: 1 49C388330

Inspection Date: December 19, 2019

## **Inspection Findings**

On December 19, 2019, I visited the project site with fellow Regional Water Board staff member Brian Fuller, and we observed the site from the sidewalk on Marlow Road, which runs along the eastern parcel boundary. I observed uncovered disturbed soils that sloped towards the sidewalk on Marlow Road (Photo 1). The soils were wet from recent rain, and I could see ponding in the center of the pad. I observed erosional rills on an uncovered south-facing slope, with sediment deposits leading toward Marlow Road (Photo 2). The direction of sediment travel indicates that the site drains towards Marlow Road and the City's stormwater conveyance system.

I observed sediment deposition at several locations along the sidewalk (Photo 3), adjacent to the outer edge of the site perimeter control wattles. I observed sediment accumulations along in the inner edge of the wattles that appeared to correlate with the sediment on the sidewalk (Photo 4), suggesting that stormwater runoff from a recent rainfall event had carried sediment from the project area over to and through the perimeter wattles onto the sidewalk.

After looking at the site from the sidewalk, Mr. Fuller and I walked up to the on-site office trailer through the same construction entrance documented on December 16, 2019 (Photo 5), where we met and introduced ourselves to Richard Hayden, with whom I had corresponded by email on December 17. In our email correspondence, Mr. Hayden had advised me that he would be the person to contact if someone wanted to inspect any of the Morgan Properties construction sites and that the construction site has been inactive for two weeks.

I told Mr. Hayden that we had observed sediment deposition on the sidewalk, that had come from the uncovered construction site, and I offered to show him the location(s) of concern. Mr. Hayden declined the offer and advised me that the project stormwater consultant had said this was not an issue. I asked Mr. Hayden about his role on the project, noting that the NOI for the project identifies Daniel Morgan as the contact for the property owner and contractor/developer, but provides Mr. Hayden's email address. Mr. Hayden stated that Daniel Morgan, who is the site developer and is listed as the Legally Responsible Person in SMARTS, would refer CGP-related correspondence to Mr. Hayden.

## **Conclusion**

Disturbed soil areas were uncovered, there was evidence of erosion and sediment transport from the near towards Marlow Road, the construction entrance is not stabilized, and the construction entrance leading to the trailer where Regional Water Board staff meet the contractor Richard Hayden is not on the site SWPPP uploaded to SMARTS. These conditions do not comply with provisions of the CGP.

## **Recommendations**

1. Cover inactive areas as appropriate to comply with Attachment D, Provision D.2: requires in part that dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.

WDID: 1 49C388330

Inspection Date: December 19, 2019

2. Stabilize the construction entrance as appropriate to comply Attachment D, Provision E.1: requires, in part that dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
3. Improve and/or maintain BMPs as needed to prevent sediment from leaving the site and entering the storm drain system.
4. Update the SWPPP site map to reflect the current site conditions, like the construction entrance location and upload to SMARTS.

### Inspection Photos



*Photo 1: Uncovered disturbed soils sloping towards Marlow Road. Photo taken and edited by Joshua Luders.*

WDID: 1 49C388330

Inspection Date: December 19, 2019



*Photo 2: The red arrows indicate locations where erosion had already occurred. Sediment deposition from these rills can be seen leading towards Marlow Road. Photo taken and edited by Joshua Luders.*

WDID: 1 49C388330

Inspection Date: December 19, 2019



*Photo 3: The red arrows show sediment deposition from the uncovered disturbed soils on the other side of the fence. Sediment buildup was seen at numerous locations along the sidewalk. Photo taken and edited by Joshua Luders.*

WDID: 1 49C388330

Inspection Date: December 19, 2019



*Photo 4: Sediment deposition was found along the sidewalk near the City's storm drain system. Sediment deposition(s) seen on the side walk could be correlated to the deposition seen along the fence line and near the wattles, like that depicted in Photo 3. Photo taken and edited by Joshua Luders.*

WDID: 1 49C388330

Inspection Date: December 19, 2019



*Photo 5: Construction entrance near Marlow Road. Photo taken by Joshua Luders during inspection on December 16, 2016.*



**North Coast Regional Water Quality Control Board**

**Construction General Permit Basic Inspection**

<b>FACILITY INFORMATION</b>	
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<b>Facility WDID:</b>	1 49C388330
<b>Facility Address:</b>	2199 Marlow Rd Santa Rosa CA 95403
<b>Construction General Permit Type and Level:</b>	Sediment Risk: Medium, Receiving Water Risk: High, Risk Level: 2
<b>Legally Responsible Party:</b>	Enclave LP; President Daniel Morgan
<b>Primary Developer:</b>	Enclave LP; President Daniel Morgan
<b>Name of QSD:</b>	Kevin Kruizenga, QSD 25262; ASP Inc.
<b>Name of QSP:</b>	Kevin Kruizenga, and delegated staff at ASP Inc.
<b>History of Compliance:</b>	Followup to corrective actions discussed on phone with Daniel Morgan
<b>INSPECTION INFORMATION</b>	
<b>Inspection Date:</b>	December 22, 2019
<b>Inspection Time of Arrival:</b>	0730
<b>Inspection Time of Departure:</b>	0800
<b>Was the Entire Site Inspected:</b>	No: Inspected from sidewalk
<b>Weather:</b>	Rained during the night of December 21; very light rain during inspection
<b>Type of Inspection:</b>	Inspection from vehicle
<b>Purpose of Inspection:</b>	Investigating compliance efforts
<b>Parties Present During Inspection:</b>	Regional Water Board: Joshua Luders
<b>Was Consent Provided for Inspection:</b>	No; inspection was from public sidewalk
<b>Is the SWPPP Onsite:</b>	Office staff showed staff a copy on 12/16/19.
<b>Inspector's Name:</b>	Regional Board Staff: Joshua Luders

VALERIE L. QUINTO, CHAIR | MATTHIAS ST. JOHN, EXECUTIVE OFFICER

5550 Skylane Blvd., Suite A, Santa Rosa, CA 95403 | [www.waterboards.ca.gov/northcoast](http://www.waterboards.ca.gov/northcoast)



WDID: 1 49C388330

Inspection Date: December 22, 2019

## **Inspection Findings**

On December 22, 2019 I visited the subject site to see if any corrective actions had been implemented since the December 19 inspection to cover inactive soils near Marlow Road . As shown in Photo 1, below, the disturbed area is still uncovered and wet. The gate at the construction entrance leading towards the office trailer was closed. It did not appear that anyone was working on the property.

From the sidewalk, I observed a section of the project that borders Guerneville Road (Photo 3 and Photo 4). I observed turbid waters ponding on what appears to be the property's future road system. I could see disturbed soils throughout the property. I also observed a pile of covered material visible from Marlow Road. Given the proximity of the ponding water's edge to Guerneville Road, I judged that it would not take much more rain before the ponding waters would drain off the property and into the City's stormwater conveyance system.

## **Conclusion**

Based on the site conditions visible from both Guerneville Road and Marlow Road, as depicted in the photos below,, the majority of the disturbed soils on the 5-acre construction site did not have any effective soil cover. A portion of the site drains towards Marlow Road, while the remainder appears to drain toward the property's road network, which acts as a detention basin. However, impounded water in this area is approaching the sidewalk on Guerneville Road, suggesting that the water presently impounded appears to be near capacity. The site entrance has not been stabilized and the SWPPP site map has not been updated in SMARTS to reflect the construction entrance.

## **Recommendations**

1. Cover inactive areas as appropriate to comply with Attachment D, Provision D.2: requires in part that dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.
2. Stabilize the construction entrance as appropriate to comply Attachment D, Provision E.1: requires, in part that dischargers shall establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
3. Improve and/or maintain BMPs as needed to prevent sediment from leaving the site and entering the storm drain system.
4. Update the SWPPP site map to reflect the current site conditions, like the construction entrance location and upload to SMARTS.
5. Review and consider the maximum capacity of the improvised detention basin used on site. If it discharges construction related stormwater, ensure that it meets the effluent limitations of the Construction General Permit.

WDID: 1 49C388330

Inspection Date: December 22, 2019

### Inspection Photos



*Photo 1: Pad adjacent to Marlow road still has no evidence of effective soil cover. Photo taken by Joshua Luders from public sidewalk.*

WDID: 1 49C388330

Inspection Date: December 22, 2019



*Photo 2: Construction entrance near Marlow road is closed. Photo taken by Joshua Luders.*

WDID: 1 49C388330

Inspection Date: December 22, 2019



*Photo 3: Ponding of turbid waters observed on the construction site near the sidewalk on Guerneville Road. Photo taken by Joshua Luders*

WDID: 1 49C388330

Inspection Date: December 22, 2019



*Photo 4: Ponding water extends in the background from Guerneville Road. Exposed soils are on the left and a pile of material is covered on the right. For perspective, a section of the covered pile can be seen from Marlow Road, near the left center of Photo 1. Photo taken by Joshua Luders*