

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
NORTH COAST REGION

In the matter of:)	
)	
Enclave L.P.)	Order No. R1-2023-0052 (Proposed)
Marlow Commons Subdivision)	
2199 Marlow Road)	Settlement Agreement and Stipulation for
Santa Rosa, CA 95403)	Entry of Order; Order (Proposed)
)	
Administrative Civil Liability)	

Section I: Introduction

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulation) is entered into by and between the North Coast Regional Water Quality Control Board (Regional Water Board) Prosecution Staff (Prosecution Staff) and Enclave L.P. (Discharger) (collectively, the Parties) and is presented to the North Coast Regional Water Quality Control Board (Regional Water Board) for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: Recitals

1. The Discharger is the owner of the Marlow Commons Subdivision, located at 21999 Marlow Road in Santa Rosa, Sonoma County, California (Site). The Site is enrolled in coverage under the State Water Resources Control Board's General Permit to Discharge Storm Water Associated with Construction Activity, State Water Resources Control Board Order No. 2009-0009-DWQ, as amended by Orders 2010-0014-DWQ and 2012-0006-DWQ (Construction General Permit), which prohibits discharges of waste or unauthorized non-stormwater to waters of the United States.

2. On December 16, 19, and 22, 2019, Regional Water Board staff inspected portions of the Site, each time observing features and conditions that it contends violated provisions of the Construction General Permit that remained unchanged/uncorrected from visit to visit. During each inspection, Regional Water Board staff observed conditions indicating to staff that the Discharger failed to have effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and complete lots as required by the Permit. The conditions comprising these alleged violations were all corrected voluntarily by the Discharger some time before January 15, 2020.

3. The Prosecution Staff alleges the Discharger violated Construction General Permit Attachment D, Provision D.2 when it failed to install and maintain effective ground cover each day from December 18, when the Site became inactive, until December 22, 2019, the last day the violation was observed. This alleged act constitutes a violation of Water Code section 13385, subdivision (a), for which discretionary penalties may be assessed pursuant to Water Code section 13385, subdivision (c).

4. To resolve the alleged violation in Section II, paragraph 3, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of \$46,200 against the Discharger.

5. The amount of administrative civil liability imposed pursuant to this Stipulation and Order comports with the State Water Resources Control Board Water Quality Enforcement Policy methodology as discussed in Attachment A, the terms of which are incorporated herein.

6. The Parties have engaged in settlement negotiations and agree to settle the violation alleged herein without further administrative or civil litigation and by presenting this Stipulation to the Regional Water Board for adoption as an Order pursuant to Government Code section 11415.60. The Prosecution Staff contends that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the specific violation alleged except as provided in this Stipulation, and that this Stipulation is in the best interests of the public.

Section III: Stipulations

The Parties incorporate the foregoing Recitals and stipulate to the following:

1. **Administrative Civil Liability:** The Discharger hereby agrees to the imposition of an administrative civil liability totaling **\$46,200** to resolve the alleged violation set forth in Section II, paragraph 3, as follows:

- a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulation and Order, the Discharger shall mail a check for \$26,200, made payable to "State Water Pollution Cleanup and Abatement Account," referencing the Order number on page one of this Stipulation and Order, to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office, ACL Payment
1001 I Street, CA 95814

The Discharger shall provide a copy of the check sent via mail and email at the time the payment is made to:

Jeremiah Puget
Senior Environmental Scientist/Enforcement Coordinator
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403-1072
Jeremiah.Puget@waterboards.ca.gov

- b. The Parties agree that the remaining **\$20,000** of the administrative civil liability shall be paid to the San Francisco Estuary Institute (SFEI) for implementation of a Supplemental Environmental Project (SEP) named "Russian River Regional Monitoring Program (R3MP) Project A.1.b. Data Compilation Study: Laboratory Results of Basic Water Quality Monitoring Data," (R3MP Project A.1.b.). No later than 30 days after the Regional Water Board or its delegate signs this Stipulation and Order, the Discharger shall mail a check for \$20,000, made payable to "San Francisco Estuary Institute," referencing R3MP SEP for the Order number on page one of this Stipulated Order, to:

San Francisco Estuary Institute
R3MP SEP Administrator
4911 Central Avenue
Richmond, CA 94804

The Discharger shall provide a copy of the check sent via mail and email at the time the payment is made to:

Jeremiah Puget
Senior Environmental Scientist/Enforcement Coordinator
North Coast Regional Water Quality Control Board
5550 Skylane Blvd., Ste. A
Santa Rosa, CA 95403-1072
Jeremiah.Puget@waterboards.ca.gov

2. **Description of the SEP:** R3MP Project A.1.b. (or the SEP) is a subpart of the R3MP SEP aiming to develop a collaborative approach to restore and maintain the health of the Russian River watershed. SFEI staff will compile existing laboratory analyzed water quality nutrient monitoring data including nitrogen, nitrate, nitrite, phosphorus, and orthophosphate for SFEI to initially summarize spatial and temporal conditions across the watershed and identify data gaps. The SEP will deliver compiled water quality data sets and a summary of the collected data, all readily publicly available. SFEI will provide quarterly invoices and a final project report within one year of completion. The R3MP SEP Project Concepts are contained in Attachment B, incorporated herein, with stand-alone Project A.1.b. on pages 16 and 17. Unless an extension is provided pursuant to Section II, paragraph 7, the SEP must be completed no later than one year from the effective date of this Stipulation and Order (SEP Completion Date).

3. **Representations and Agreements Regarding the SEP:**

- a. The Parties agree that the SEP Amount is a suspended liability that will be used to implement the SEP as set forth in Attachment B. The Discharger understands that its promise to implement the SEP, in its entirety and in accordance with the implementation schedule and budget set forth in Attachment B, represents a material condition of this settlement of liability.

- b. The Discharger agrees to (1) spend the SEP Amount as described in this Stipulated Order and (2) have certified, written reports provided to the Regional Water Board consistent with the terms of this Stipulation and Order detailing SEP implementation and completion.
- c. The Discharger further agrees that the Regional Water Board has the right to require a third-party audit of the funds expended to implement the SEP at the Discharger's cost, and that the Discharger bears ultimate responsibility for meeting all deadlines and requirements specified in Attachment B.

4. **Representation of the Implementing Party:** As a material consideration for the Regional Water Board's acceptance of this Stipulation and Order, SFEI has represented to the Parties that it will utilize the funds provided to it by the Discharger to implement and complete R3MP Project A.1.b. in its entirety and in accordance with Attachment B.

5. **Progress Reports:** SFEI has agreed to provide reports on behalf of the Discharger describing progress implementing the SEP to the Regional Water Board as described in Attachment B.

6. **Certification of SEP Completion:** Within 30 days of the SEP Completion Date, SFEI has agreed that a responsible office will submit on behalf of the Discharger, a final completion report that documents completion of the project deliverables identified in Attachment B and a certified statement, signed under penalty of perjury, that documents the following: (a) SFEI's receipt of the Discharger's payment of the SEP Amount; (b) SFEI's expenditures during the SEP completion period; and (c) SFEI's completion of the SEP in accordance with the terms of this Stipulated Order. The expenditures may include external payments to outside vendors, but may not include the normal, routine work undertaken by SFEI's staff. In making such certification, the signatories may rely on normal organizational project tracking systems that capture employee time expenditures and external payments to outside vendors, such as environmental and information technology contractors or consultants. Documentation of SEP completion may include photographs, invoices, receipts, certifications, and other materials reasonably necessary for the Regional Water Board to evaluate SEP completion and the costs incurred. SFEI has agreed to provide Regional Water Board staff with any additional information reasonably necessary to verify SFEI's SEP expenditures and SEP completion on behalf of the Discharger. The Discharger shall provide Regional Water Board staff with any additional information reasonably necessary to verify the Discharger's payment of the SEP Amount.

7. **Time Extension for SEP:** The Executive Officer of the Regional Water Board may extend the SEP deadlines contained in Attachment B of this Stipulated Order if SFEI demonstrates delays from unforeseeable circumstances, provided that the Discharger and SFEI continue to undertake all appropriate measures to meet their deadlines. Upon timely request by SFEI, the Discharger, or SFEI on the Discharger's behalf, shall make any deadline extension request in writing at least 30 days prior to the deadline. Any approval of an extension by the Executive Officer or its delegate must be in writing.

8. **Regional Water Board Acceptance of Completed SEP:** Upon the Discharger's satisfaction of its obligations under this Stipulation and Order, the completion of the SEP and any audits, Regional Water Board staff, with notice to the Regional Water Board Enforcement Coordinator, shall request that the Regional Water Board issue a Satisfaction of Order. The issuance of the Satisfaction of Order shall terminate any further obligations of the Discharger under this Stipulation and Order.

9. **Failure to Expend All Suspended Administrative Civil Liability Funds in Completing the SEP within One Year:** In the event that the Discharger is not able to demonstrate to the reasonable satisfaction of the Regional Water Board staff that it has spent the entire agreed SEP amount of \$20,000 for the completed SEP within one year from the date of issuance of this Stipulation and Order, the Discharger shall pay the difference between the \$20,000 suspended administrative civil liability and the amount the Discharger can demonstrate it actually spent on the SEP, as an administrative civil liability to the Cleanup and Abatement Account. Prosecution Staff shall issue a Notice of Violation and the Discharger shall pay the difference within 30 days of the Discharger's receipt of such notice. If the amount due cannot be agreed upon by the Parties, the Regional Water Board shall determine the amount of suspended liability owed via a Motion for Payment of Suspended Liability. The Regional Water Board may elect to add the reasonable costs of enforcement to the amount due to the Cleanup and Abatement Account. Payment of the assessed amount will satisfy the Discharger's obligations to implement the SEP.

10. **Publicity Associated with the SEP:** Whenever the Discharger or its agents publicize one or more elements of the SEP, they shall state in a prominent manner that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Discharger.

11. **The Regional Water Board Is Not Liable:** Neither the Regional Water Board members, staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Discharger or SFEI, its directors, officer, employees, agents, representative, or contractors in carrying out activities pursuant to this Stipulation and Order. Nor shall the Regional Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Discharger, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, including the SEP. The Discharger shall not be liable for any injury or damage to persons or property resulting from acts or omissions by the Regional Water Board or SFEI, its directors, officer, employees, agents, representative, or contractors in carrying out activities pursuant to this Stipulation and Order. Nor shall the Discharger be held as parties to or guarantors of any contract entered into by the SFEI or the Regional Water Board, its directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulation and Order, including the SEP.

12. **Compliance with Applicable Laws:** The Discharger understands that payment of administrative civil liability in accordance with the terms of this Order or compliance with the terms of this Order is not a substitute for compliance with applicable laws, and that future violations of the type alleged in herein may subject the Discharger to further enforcement, including additional administrative civil liability.

13. **Denial of Liability:** In settling this matter, the Discharger does not admit that the Prosecution Staff allegations in Section II, paragraph 3, are true or correct or that it has violated the Permit or any applicable laws or regulations. This Stipulation and Order, and the negotiations and discussions leading up to this Stipulation and Order, effect the settlement of claims which are denied and contested, and do not constitute, nor shall they be construed as, an admission of liability by the Discharger. This Stipulation and Order is made solely for the purpose of avoiding the burden and expense of litigation, which would be imposed on the Parties if the disputes between them remained unsettled. This Stipulation and Order does not constitute an admission by the Discharger that it engaged in any unlawful act. The Discharger expressly denies that it has engaged in any unlawful act and denies liability for all claims any other Party had, has, or may have against them. The Discharger, however, understands that in the event of future enforcement actions by the Regional Water Board, this Stipulation and Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385, and the Enforcement Policy.

14. **Public Notice:** The Discharger understands that this Stipulation and Order will be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulation and Order to the Regional Water Board, or its delegate, for adoption, the Assistant Executive Officer may unilaterally declare this Stipulation and Order void and decide not to present it to the Regional Water Board or its delegate, provided it has notified the Discharger of its decision to do so within ten (10) days of making such decision. The Discharger agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulation and Order.

15. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the Regional Water Board and review of this Stipulation by the public is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, has the authority to require a public hearing to consider adoption of this Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure for adoption of this Order as necessary or advisable under the circumstances.

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

17. **Interpretation:** This Stipulation and Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Discharger is represented by counsel in this matter.

18. **Modification:** This Stipulation and Order shall not be modified by either of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.

19. **If Order Does Not Take Effect:** In the event that this Order does not take effect because it is not approved by the Regional Water Board, or its delegate, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation, unless the Parties agree otherwise. 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 the hearing. The Parties agree to waive any and all objections based on settlement communications in 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 that 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 as a consequence of reviewing the Stipulation or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the violations alleged herein; or
- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

20. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board prior to the adoption of the Order.

21. **Waiver of Right to Petition or Appeal:** The Discharger hereby waives its right to file a petition for review of the adoption of the Order to the Regional Water Board for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

22. **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 or the SEP.

23. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulation and 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 Stipulation or Order.

24. **Authority to Bind:** Each person executing this Stipulation in a representative capacity represents and warrants that he or she is authorized to execute this Stipulation on behalf of and to bind the entity on whose behalf he or she executes the Stipulation.

25. **No Third-Party Beneficiaries:** This Stipulation and Order are not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulation and Order for any cause whatsoever.

26. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.

27. **Counterpart Signatures:** This Stipulation and 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 Stipulation and Order may be executed by electronic signature, and any such electronic signature shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such electronic signature was an original signature.

28. **Effective Date:** This Stipulation and Order, including the obligations under Paragraph 6 and Attachment B, shall be effective and binding on the Parties upon the date the Regional Water Board, or its delegate, enters the Order incorporating the terms of this Stipulation.

(Continued on next page)

IT IS SO STIPULATED.

**California Regional Water Quality Control Board Prosecution Staff
North Coast Region**

By:   Digitally signed by Claudia E. Villacorta
Date: 2023.09.07 11:22:08
Claudia Villacorta, Assistant Executive Officer

Date: _____

Enclave L.P.

By: 
Morgan Properties, Inc., General Partner, Enclave L.P.

Date: 09/28/2023

Order of the North Coast Regional Water Board

1. The foregoing Stipulation, including Attachments A and B, is fully incorporated herein and made part of this Order.
2. In accepting the foregoing Stipulation, the Regional Water Board has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e). The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board' staff in investigating the allegations in the Complaint or otherwise provided to the Regional Water Board.
3. 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(a)(2), Title 14, of the California Code of Regulations.
4. 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, North Coast Region.

By: _____
Valerie Quinto
Executive Officer

Date: _____

Attachment A: Administrative Civil Liability Methodology Summary
Attachment B: Russian River Restoration Monitoring Program Project A.1.a. Data
Compilation Study: Field-Collected Basic Water Quality Monitoring Data