

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER No. R2-2025-00XX

WASTE DISCHARGE REQUIREMENTS for:

**BERRYESSA PROPERTIES
BERRYESSA MIXED-USE DEVELOPMENT PROJECT
SAN JOSE, SANTA CLARA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter the Water Board, finds that:

1. Berryessa Properties (Discharger) has applied to the Water Board for authorization to construct a mixed-use project consisting of up to 850 residential units, 480,000 square feet of commercial space, and 0.9-acre of open space, as part of the Berryessa Mixed-Use Development Project (Project). Streets, stormwater facilities, and other associated supporting infrastructure will also be constructed.
2. The Project site is within the Berryessa BART Urban Village Plan area. The site (Assessor's Parcel Numbers [APNs] 241-03-023, -024, and -025) is surrounded by the BART/Union Pacific Railroad (UPRR) tracks to the east, Berryessa Road, the San José Flea Market and surface parking lot to the south, and residential uses to the west and north (Latitude 37.373737, Longitude -121.877300).
3. The Project will construct stormwater collection and conveyance infrastructure that will convey post-construction stormwater to a regional treatment facility for the North Flea Market Development Area. Currently, the Project site is mostly barren earth used to store vehicles and equipment, and there are also a few small structures onsite.
4. The Project site has waters of the State subject to regulation by the Water Board. A delineation of jurisdictional waters at the site was completed based on field work conducted on January 18, 2022. The U.S. Army Corps of Engineers (Corps) issued an Approved Jurisdictional Determination for the site on August 23, 2022. The Corps determined that the aquatic features present on the site are in the form of open water and isolated wetland. The Corps determined that these features are not subject to regulation under Clean Water Act (CWA) section 404 based on their isolation from other waters of the U.S. The Approved Jurisdictional Determination confirmed that the Project site did not contain jurisdictional waters of the U.S. subject to regulation under CWA section 404. The Water Board is issuing Waste Discharge Requirements (WDRs) pursuant to California Water Code (Water Code) section 13263 to authorize the Project, including its fill of waters.
5. On November 14, 2022, the Discharger submitted a Report of Waste Discharge to the Water Board pursuant to Water Code section 13260. The Discharger submitted supplemental information for the Report of Waste Discharge, ~~and the Water Board deemed the application complete on February 27, 2025.~~ through July 1, 2025.
6. Project Construction will permanently impact the following quantities of waters of the State: 0.34 acres of pond (open water) and 0.26 acres of seasonal wetland (Attachment A).

7. To mitigate for the permanent fill of 0.34 acres of pond (open water) and 0.26 acres of seasonal wetland, this Order requires the Discharger to create 0.7 acres of open water and fringing wetland at the Project site, which is identified in Project documents as the Mitigation Wetland Pond (Mitigation Area). The mitigation waters to be created include a seasonal wetland (0.34 acres) and pond (0.36 acres) with a total surface area of 0.70 acres (30,501 sq ft). The design of the Mitigation Area, as well as the protocols for the monitoring and maintenance of the mitigation waters, are described in the *Mitigation & Monitoring Plan for the Berryessa Road Project, Santa Clara County, California* (Olberding Environmental, Inc., July 2024, updated June 2025). The requirements for long-term management of the Mitigation Area are provided in the *Long Term Resource Management Plan for the Berryessa Mixed Use Development Project, San Jose, California* (LTMP) (Olberding Environmental, Inc. April 2025, revised May 2025). To verify the successful establishments this Order requires the Discharger to monitor the created pond and seasonal wetland for a minimum of five years.
8. This Order requires the Discharger to record a deed restriction with Santa Clara County that includes appropriate restrictions to ensure the Mitigation Area is maintained in perpetuity. The deed restriction is required to support the finding that there will be no net loss of wetland acreage or value.
9. The Discharger will establish a Homeowners Association (HOA) for the Project Site to ensure the long-term maintenance and management of the Mitigation Area and stormwater conveyance infrastructure. The HOA will be responsible for implementing the *Long Term Resource Management Plan for the Berryessa Mixed Use Development Project, San Jose, California* (LTMP) (Olberding Environmental, Inc. April 2025, revised May 2025), and for the operation and maintenance of the Project's stormwater conveyance infrastructure that directs runoff to the regional treatment measures as shown on the approved Facchino Master Planned Development Permit (PD21-009). The HOA's responsibilities will be documented in the Covenants, Conditions, and Restrictions (CC&Rs) for the HOA and will be recorded with Santa Clara County. No later than 120 days following recordation of the final subdivision map for the first individual neighborhood, the Discharger will record the CC&Rs with Santa Clara County. No later than 30 days prior to recording the CC&Rs with Santa Clara County, the Discharger will submit a copy of the final CC&Rs to the Executive Officer of the Water Board for review and approval. The Executive Officer may accept the establishment of a Community Facilities District (CFD) as an alternative to the HOA, which would name the City as the management entity for the Project's onsite mitigation and stormwater conveyance infrastructure. A CFD may be accepted if the enabling documents for the CFD are submitted to the Executive Officer for review and acceptance within six months of the Order's adoption and the CFD is established within one year of the Order's adoption.
10. It has been determined through regional, State, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the State's "no net loss" wetland policy, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, this Order requires that the Discharger use the digital interactive mapping tool called

EcoAtlas. EcoAtlas is a web-based tool that integrates maps, project plans, site conditions, restoration efforts, and other elements on a project-by-project basis based on data inputs.

11. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and the U.S. Environmental Protection Agency, where required. This Order implements the Basin Plan and takes into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and Water Code section 13241.
12. The Project is located in the Lower Coyote Creek-Frontal San Francisco Bay Hydrologic Sub-Area of the San Francisco Bay Hydrologic Unit. The receiving waterway of the Project site is Coyote Creek. The Basin Plan states that "the beneficial uses of any specifically identified waterbody generally apply to all of its tributaries." The Basin Plan designates the following existing beneficial uses for Coyote Creek:
 - a. Cold Freshwater Habitat (COLD)
 - b. Commercial and Sport Fishing (COMM)
 - c. Groundwater Recharge (GWR)
 - d. Fish Migration (MIGR)
 - e. Preservation of Rare and Endangered Species (RARE)
 - f. Water Contact Recreation (REC-1)
 - g. Non-contact Water Recreation (REC-2)
 - h. Fish Spawning (SPWN)
 - i. Warm Freshwater Habitat (WARM)
 - j. Wildlife Habitat (WILD)
13. The Santa Clara Valley Groundwater Basin, Santa Clara Sub-Basin, underlies the Project site and has the following beneficial uses:
 - a. Agricultural Supply (AGR)
 - b. Industrial Service Supply (IND)
 - c. Industrial Process Supply (PROC)
 - d. Municipal and Domestic Supply (MUN)

14. The Basin Plan implementation plan for wetland protection and management, including wetland fill, provides that the Water Board will evaluate a wetland fill project and proposed mitigation together to ensure that there will be no net loss of wetland acreage and no net loss of wetland value, and that mitigation for wetland fill projects will be located in the same area of the Region, whenever possible, as the project. The Basin Plan further establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impact should mitigation for lost wetlands be considered.
15. In its evaluation of the Project, the Water Board considered the California Wetlands Conservation Policy (Governor's Executive Order W-59-93, signed August 23, 1993), Senate Concurrent Resolution No. 28, and Water Code section 13142.5.
 - a. The goals of the California Wetlands Conservation Policy include ensuring no "overall loss," and achieving a "long-term net gain in the quantity, quality, and permanence of wetlands acreage and values...."
 - b. Senate Concurrent Resolution No. 28 states, "It is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and multiple resources which depend on them for the benefit of the people of the State."
 - c. Water Code section 13142.5 requires that "Highest priority shall be given to improving or eliminating discharges that adversely affect ... wetlands, estuaries, and other biologically sensitive areas."
16. With the successful implementation of the mitigation measures described in these findings and the provisions, the Water Board finds that the Project will be consistent with the Basin Plan implementation plan for wetland protection and management, including wetland fill, and the California Wetlands Conservation Policy, Senate Concurrent Resolution No. 28, and Water Code section 13142.5.
17. The Discharger has submitted an alternatives analysis showing that the Project appropriately avoids and minimizes wetland disturbances, as the Basin Plan requires. The Water Board concurs with the conclusions in the analysis.
18. Project construction and land disturbance activities will result in the disturbance of one or more acres of land. The Discharger is required to obtain coverage for the Project under the General Permit for Discharges of Storm Water Associated with Construction and Land Disturbance Activities, State Water Board Order No. 2022-0057-DWQ; NPDES No. CAS000002 (Construction General Permit).
19. To obtain coverage under the Construction General Permit, the Discharger must submit the specified Permit Registration Documents, including a Stormwater Pollution Prevention Plan (SWPPP). The Discharger shall prepare and implement a site-specific Stormwater Pollution Prevention Plan (SWPPP) for the construction of each phase of the Project, in accordance with the requirements, provisions, limitations, and prohibitions of the Construction General Permit.
20. The Project will result in the creation or replacement of 9.1 acres of impervious

surfaces, which may impact water quality by increasing erosion and sedimentation through hydromodification and by generating, collecting, concentrating, and discharging pollutants in runoff.

21. To prevent water quality impacts from hydromodification and pollutants in runoff from the Project's impervious areas, the Order requires the Discharger to implement post-construction stormwater treatment as described in the Master Planned Development Permit (PD21-009) Stormwater Control Plan (Stormwater Control Plan) and the City of San Jose Green Infrastructure Field Maintenance Guide, which are currently being utilized for the North Flea Market Development Area regional stormwater treatment facility. The Stormwater Control Plan is consistent with the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (Order No. R2-2015-0049, NPDES Permit No. CAS612008), which was the permit in place when the San Jose Flea Market Property Outfall Structures Replacement Project (RM 396828) was certified; the certification established a single stormwater treatment system for the entire developed area, including the area of this Project site.
22. The Discharger, or its successors, will ensure that the post-construction stormwater conveyance infrastructure that directs runoff to the regional treatment measures described in the Stormwater Control Plan and the City of San Jose Green Infrastructure Field Maintenance Guide are constructed and appropriately maintained for the life of the Project.
23. The California Environmental Quality Act (CEQA) requires government agencies to consider the potential environmental impacts of their actions before approving a project. The City, as the lead agency, reviewed the potential environmental impacts of the project and certified a final *Berryessa Road Mixed Use Development Project Environmental Impact Report* (EIR) (State Clearinghouse No. 2021070467) and filed a Notice of Determination (NOD) with the State Clearinghouse on June 13, 2023. The Water Board, acting as a responsible agency, has reviewed and considered the environmental impacts to water quality related to the issuance of this Order as analyzed in the EIR. The requirements of this Order, including the mitigation measures, mitigate or avoid the impacts to water quality related to the portion of the project that the Water Board is approving by issuing this Order. The Water Board finds that compliance with this Order, including the mitigation measures that have been incorporated, will reduce the impacts to water quality to a less than significant level.
24. Tribal cultural resources are defined in California Public Resources Code (PRC) section 21074. This Order does not authorize any activity adversely impacting a tribal cultural resource. The Discharger is responsible for ensuring that actions taken to implement the compensatory mitigation measures specified in this Order and to comply with the Provisions of this Order are made in compliance with all applicable local, state, and federal laws and regulations related to the discovery and protection of tribal cultural resources and human remains, including PRC sections 5097.98 and 5097.99, and California Health and Safety Code section 7050.5.
25. The Project will permanently impact 0.60 acres of waters of the State, and the application fee based on these impacts is \$22,526. The application fee was paid in full on July 8, 2025.

26. Pursuant to Water Code section 13260, the Discharger is required to pay annual fees for WDRs in a timely manner.
27. The Water Board notified the Discharger and interested parties of its intent to issue WDRs for the Project and provided 30 days to submit written comments on the Order.
28. The Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that Berryessa Properties, in order to meet the provisions contained in division 7 of the Water Code and regulations adopted thereunder, shall comply with the following:

A. Discharge Prohibitions

1. The direct or indirect discharge of wastes, as defined in Water Code section 13050(d), within or outside of the active Project, to surface waters or surface water drainage courses is prohibited, except as authorized in this Order.
2. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, concrete, asphalt, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
3. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
5. The wetland fill activities subject to these requirements shall not cause a nuisance as defined in Water Code section 13050(m).
6. The discharge of decant water from active dredging or fill sites and dredged material/wet sediment stockpile or storage areas to surface waters or surface water drainage courses is prohibited, except as conditionally allowed following the submittal of a discharge plan or plans as described in the Provisions.
7. The groundwater in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.
8. The discharge of drilling muds to waters of the State, or where such muds could be discharged to waters of the State, is prohibited.

B. Receiving Water Limitations

1. The discharges shall not cause the following conditions to exist in waters of the State at any place:

- a. Floating, suspended, or deposited macroscopic particulate matter or foam in concentrations that cause nuisance or adversely affect beneficial uses;
 - b. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
 - c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
 - d. Visible, floating, suspended, or deposited oil or other products of petroleum origin; or
 - e. Toxic or other deleterious substances to be present in concentrations or quantities that will cause deleterious effects on wildlife, waterfowl, or other aquatic biota or which render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.
2. The discharges shall not cause nuisance or adversely affect the beneficial uses of the receiving water.

C. Provisions

1. The Discharger shall comply with all Prohibitions, Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Project shall be constructed as described in the Report of Waste Discharge submitted by the Discharger on November 14, 2022, as supplemented through ~~February 27~~ July 1, 2025. Any changes to the Project design shall be submitted to the Executive Officer. Project modifications may require an amendment of this Order. Any changes that do not require an amendment of the Order must be accepted in writing by the Executive Officer before they may be implemented.
3. The Discharger shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with the completed Report of Waste Discharge.
4. To mitigate for the Project's 0.6 acres of permanent impacts to a pond (open water) and seasonal wetland, the Discharger shall create an onsite pond (0.36 acres; 15,721 sq. ft.) surrounded by seasonal wetland (0.34 acres; 14,780 sq. ft.) for a total of 0.7 acres of creation, in accordance with the *Mitigation & Monitoring Plan for the Berryessa Road Project, Santa Clara County, California* (Olberding Environmental, Inc., July 2024, updated June 2025) and incorporated herein by reference.
5. The Discharger shall implement the mitigation measures described in *Mitigation & Monitoring Plan for the Berryessa Road Project, Santa Clara County, California*, including construction of the onsite mitigation pond and wetland, no later than one year after the Project's first impacts to waters of the State at the Project site.
6. The Discharger shall input Project information into EcoAtlas within 14 days from the date of this Order. The Project information shall be added to the Project Tracker tool in EcoAtlas online at <https://ptrack.ecoatlas.org>. Instructions for adding information to

EcoAtlas are available at <https://ptrack.ecoatlas.org/instructions>, or by contacting the San Francisco Estuary Institute by email at ptrackadmin@sfei.org, or Water Board staff. The Executive Officer may grant an extension to the 14-day deadline if the Discharger submits a request in writing to the Water Board. The extension request may be submitted via electronic mail. If any changes to the project occur, the Discharger shall revise EcoAtlas information for the Project, accordingly. In cases when EcoAtlas must be revised, the Discharger shall meet the same schedule and notification requirements required for the initial EcoAtlas information.

7. Not later than 60 days prior to initiating construction of any Project component, the Discharger shall submit a final SWPPP, prepared pursuant to the Construction General Permit, that is acceptable to the Executive Officer to address impacts associated with Project construction.
8. Disturbance or removal of vegetation shall be minimized. The site shall be stabilized through the incorporation of appropriate BMPs, including the successful reestablishment of native vegetation to enhance wildlife habitat values, and to prevent and control erosion.
9. No equipment shall be operated in waters of the State where there is flowing or standing water. Fueling, cleaning, or maintenance of vehicles or equipment during construction shall not occur within any areas where an accidental discharge to waters of the State may occur.
10. No unauthorized construction-related materials or wastes shall be allowed to enter into or be placed where they may be washed by rainfall or runoff into waters of the State. When construction is completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be discharged to waters of the State.
11. The Discharger shall prepare an as-built report acceptable to the Executive Officer. The as-built report shall be submitted to the Water Board no later than 60 days after completing Project construction activities, including revegetation. The report shall include a description of the areas of actual disturbance during Project construction. The report shall clearly identify and illustrate the Project Site, and the locations of permanent and temporary impacts in waters of the State. The report shall include as-built plans for stormwater treatment BMPs constructed with the Project. The as-built report shall reference **AsBuilt_454228_BerryessaMixedUse** and be submitted via email to rb2-401reports@waterboards.ca.gov.
12. The Discharger shall implement stormwater treatment best management practices (BMPs) for post-construction stormwater runoff from the Project's impervious surfaces, consistent with the *Stormwater Treatment Operations and Maintenance Plan for the North Flea Market Development* as shown on the approved Facchino Master Planned Development Permit (PD21-009). The Discharger, or its successors, shall ensure that the post-construction stormwater conveyance infrastructure that directs runoff to the regional treatment measures described in the Stormwater Control Plan and the City of San Jose Green Infrastructure Field Maintenance Guide are constructed and

appropriately maintained for the life of the Project. Stormwater treatment controls shall be constructed concurrently with the Project, so that treatment is provided for all new and recreated impervious surfaces at the Project site.

13. The Discharger shall submit a Notice of Project Construction Completion (NOC) acceptable to the Executive Officer no later than 60 days after completing Project construction activities. The NOC shall reference **NOC_454228_BerryessaMixedUse** and shall include the as-built report, the date of the first Project-related disturbance of waters of the State occurred, and the date construction was completed. The NOC shall be sent via email to rb2-401reports@waterboards.ca.gov.
14. The Discharger shall monitor and maintain the created pond and seasonal wetland (Mitigation Area) annually for a minimum of five years to verify that ~~impacts are avoided~~ mitigation is created as described in the *Mitigation & Monitoring Plan for the Berryessa Road Project, Santa Clara County, California* (Olberding Environmental, Inc., July 2024, updated June 2025). The Discharger shall establish at least six photo points in the Mitigation Area. The location and direction of the photo points shall be such that representative coverage of the mitigation features is achieved. The photo points shall be finalized and mapped with a Global Positioning System during the Year 0 planting verification for replication over the course of the monitoring period. Photographs shall be taken at each photo location every year during the monitoring visits from the same elevation and facing in the same compass directions to ensure comparability between monitoring years. Photographs from each photo location shall be included in each monitoring report, along with map(s) showing the location of the photo points. Trash and other undesirable debris shall be removed from the mitigation features at least twice per year throughout the initial monitoring period. At the end of the five-year monitoring period, the Project shall meet the following performance criteria:

Open Water and Wetland Hydrology Monitoring Performance Criteria

- Years 1 through 5: To demonstrate that the created pond has open water feature hydrology, the created open water feature shall show evidence of full inundation during a normal water year (measured as the 20-year average of a nearby weather station). This may be documented through site photos, aerial imagery, or evidence such as scour or other ordinary high-water mark indicators. To demonstrate that the created wetland has wetland hydrology, data shall be collected by direct observation, photo documentation, and/or water measurement devices (staff-gauges) placed in the wetland feature. The created wetland habitat shall show evidence of ponding and/or saturation for a minimum of 14 continuous days per year in photographs, aerial imagery, or other field observations.
- Year 3: A wetland delineation shall be conducted with a sufficient number of paired sampling points to differentiate the boundary between upland and wetland.
- Year 5 Final Success Criteria: A wetland delineation shall demonstrate that at least 0.34 acres of open water and 0.26 acres of seasonal wetland occur within the mitigation area.

Vegetation Monitoring and Performance Criteria

- Year 1: Invasive species cover of Cal-IPC high and moderate list species shall not exceed 10 percent.
 - Year 2: Invasive species cover of Cal-IPC high and moderate list species shall not exceed 10 percent. Absolute vegetation cover of the seasonal wetland shall be at least 50 percent.
 - Year 3: Invasive species cover of Cal-IPC high and moderate list species shall not exceed 10 percent. Absolute vegetation cover of the seasonal wetland shall be at least 60 percent.
 - Year 4: Invasive species cover of Cal-IPC high and moderate list species shall not exceed 10 percent. Absolute vegetation cover of the seasonal wetland shall be at least 70 percent.
 - Year 5 Final Success Criteria: Invasive species cover of Cal-IPC high and moderate list species shall not exceed 10 percent. Absolute vegetation cover of the seasonal wetland shall be at least 75 percent. Relative cover of species with wetland indicator status shall be at least 50 percent. Trees and shrubs shall have at least 75 percent survival.
15. The Discharger shall submit annual monitoring reports, acceptable to the Executive Officer, by January 31 following each monitoring year. The first monitoring year commences in the calendar year after completing the Project. At the time of this Order, the Project completion is anticipated in 2026. Therefore, monitoring shall begin in 2027 and the first annual monitoring report shall be due on January 31, 2028, unless the Project is completed at a different time. Each annual report shall summarize each year's monitoring results, including the need for and implementation of remedial actions to help meet the performance criteria. The annual reports shall compare data to previous monitoring years and describe progress towards meeting final performance criteria.
16. Annual monitoring reports (AMR) shall reference **AMR_454228_BerryessaMixedUse** and shall be submitted via email to rb2-401reports@waterboards.ca.gov.
17. The final monitoring report shall document if the Mitigation Area meets the final performance criteria. If the final criteria are not met, the Discharger shall, in consultation with the appropriate agencies, identify remedial measures to be undertaken, including the extension of the monitoring and reporting period until the criteria are met. The Discharger shall implement all remedial measures identified upon receiving written acceptance by the Executive Officer. Success of the mitigation shall be determined by, and acceptable to, the Executive Officer.
18. Within 30 days of successfully completing the required monitoring, the Discharger shall submit, acceptable to the Executive Officer, a Notice of Mitigation Monitoring Completion notifying the Water Board that monitoring has been completed. The Notice shall be submitted via email to rb2-401reports@waterboards.ca.gov, or by mail to the attention of 401 Certifications Reports. This notification shall include the date monitoring was completed, the Project Name, and reference **NMMC 454228_BerryessaMixedUse**.

19. Prior to conducting work in waters of the State, the Discharger shall provide the Executive Officer with evidence of payment of \$759,576.29 to the endowment for perpetual management and maintenance of the Mitigation Area and stormwater conveyance infrastructure at the Project site, or shall provide the Executive Officer with evidence that adequate security for the endowment has been provided, in the form of a letter of credit or other security approved by the Executive Officer. After the Homeowners Association (HOA) or CFD has been established, an authorized entity approved by the Executive Officer shall hold the endowment. The principal in the endowment shall generate sufficient revenue to cover the long-term management tasks described in the LTMP.
20. After the Executive Officer has confirmed that the mitigation features in the Mitigation Area have attained Year 5 performance criteria, the mitigation features shall be monitored and maintained in conformance with the *Long Term Resource Management Plan for the Berryessa Mixed Use Development Project, San Jose, California* (LTMP) (Olberding Environmental, Inc. April 2025, revised May 2025). The Discharger shall be responsible for implementation of the LTMP.
21. The Discharger shall record a deed restriction over the 0.7-acre Mitigation Area at the Site. The deed restriction shall limit land uses and management of the created pond and seasonal wetland to ensure the protection of biotic resources in perpetuity. The Discharger shall submit a final copy of the deed restriction to the Executive Officer for review and approval no later than 30 days prior to filing the final deed restriction with Santa Clara County. The Discharger shall record the deed restriction with Santa Clara County and shall submit documentation that the deed restriction has been successfully recorded no later than 120 days following recordation of the Final Maps that creates the parcel that contains the Mitigation Area or 2 years after adoption of this Order, whichever occurs first. All notifications regarding the deed restriction shall reference **DR_454228_BerryessaMixedUse** and be submitted via email to rb2-401reports@waterboards.ca.gov.
22. In accordance with Water Code section 13260(c), the Discharger shall file with the Water Board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of the proposed implementation of any change and must be approved by the Water Board prior to implementation. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, any change in drainage characteristics, or any proposed change in the boundaries of the area of wetland and waters of the State to be filled.
23. The Discharger shall immediately notify the Board staff by telephone whenever an adverse condition occurs as a result of this discharge. Such a condition includes but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause non-compliance. Pursuant to Water Code section 13267(b), a written notification of the adverse condition shall be submitted to the Water Board within 48 hours of occurrence. The written notification shall identify the adverse condition, describe the actions

necessary to remedy the condition, and specify a timetable, subject to any modifications by the Water Board staff, for the remedial actions.

24. The Discharger has full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
25. The Discharger shall dispose of any hazardous, designated, or non-hazardous waste, as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, in accordance with applicable state and federal regulations.
26. The Discharger shall clean up and abate any wastes that are discharged at any sites in violation of this Order.
27. The Discharger shall maintain a copy of this Order at the Site, which shall be available at all times to operating personnel and agencies.
28. The Discharger shall permit the Water Board staff or its authorized representative, upon presentation of credentials:
 - a. Entry onto Project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d. Sampling of any discharge or surface water covered by this Order.
29. This Order does not authorize the commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
30. This Order is conditioned upon payment of any fee required under Title 23 of the California Code of Regulations (23 CCR).

In accordance with 23 CCR section 2200, the Discharger shall pay an annual fee to the Water Board each fiscal year (July 1 – June 30) until Project construction activities and until all remaining Project activities (e.g., monitoring, adaptive management) have been completed and an acceptable NOC and a Notice of Mitigation Monitoring Completion is received by the Water Board. Annual fees will be automatically invoiced to the Discharger. (Note: The annual fee may be changed by the State Water Board; at the time that this Order was adopted, the annual fee is \$3,540 per year. For more information on fees, visit

https://www.waterboards.ca.gov/resources/fees/water_quality, under Water Quality

Certification (WQC) Program Fees.¹) **The Discharger must notify the Water Board at Project and mitigation completion with a final report notice of termination (NOT) in order to request to terminate annual invoicing. The NOT shall reference NOT_454228_BerryessaMixedUse and should be sent to rb2-401reports@waterboards.ca.gov.** Water Board staff will verify that the provisions of the Order have been met and may request a site visit to confirm the Project's status and compliance with this Order.

31. This Order is not transferable in its entirety or in part to any person or organization except after notice to the Water Board in accordance with the following terms:
 - a. The Discharger must notify the Water Board of any change in ownership or interest in ownership of the Project area by submitting a Transfer of Property Ownership Report. The Discharger and new owner must sign and date the notification and provide such notification to the Water Board at least 10 days prior to the transfer of ownership. The new owner must also submit a written request to the Water Board to be named as the discharger in a revised permit.
 - b. Until such time as this Order has been modified to name the new owner as the discharger, the Discharger shall continue to be responsible for all requirements set forth in this Order.
32. The Water Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation required or otherwise permitted now or subsequently under this Order.

I, Eileen White, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on **September 10, 2025**.

Eileen M. White, P.E.
Executive Officer

Attachment A: *Figure 5, State Jurisdictional Features, Berryessa Road Project, Santa Clara County, California. A jurisdictional map of the project boundary with the 0.34 acres of pond (open water) and 0.26 acres of seasonal wetland.*

¹ Annual invoices are issued for projects active for any amount of time in the current fiscal year (July 1 – June 30).