

**CALIFORNIA WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

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**TENTATIVE Order No. R9-2020-0003**

**WASTE DISCHARGE REQUIREMENTS  
FOR  
MAKENA MURRIETA LLC**

**MAKENA HILLS PROJECT  
RIVERSIDE COUNTY**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**TABLE 1. DISCHARGER INFORMATION**

|   |  |
|---|--|
| <b>Discharger</b>                       | Makena Murrieta LLC  |
| <b>Name of Project</b>                  | Makena Hills Project   |
| <b>Project Address</b>                  | South of Loma Linda University Medical Center and southeast of the intersection of Baxter Road and Antelope Road, City of Murrieta, Riverside County, CA |
| <b>Project Contact, Title and Phone</b> | Douglas E. Barnhart, (858) 592-6500  |
| <b>Mailing Address</b>                  | 10895 Thornmint Road, Suite 200, San Diego, CA 92127   |
| <b>Type of Project</b>                  | Housing Development  |
| <b>CIWQS Party Number</b>               | 582488   |
| <b>CIWQS Place Number</b>               | 849986   |
| <b>WDID Number</b>                      | 9000003343   |

**TABLE 2. DISCHARGE LOCATION**

| <b>Discharge Point</b>                                     | <b>Discharge Description</b> | <b>Discharge Point Latitude</b> | <b>Discharge Point Longitude</b> | <b>Receiving Water</b>                            |
|--|------------------------------|---------------------------------|----------------------------------|---|
| Refer to Attachment A for a map of all discharge locations | Clean Fill                   | 33.612067                       | -117.169284                      | Isolated unnamed tributary to Warm Springs Creek. |

**TABLE 3. ADMINISTRATIVE INFORMATION**

|   |                   |
|---|-------------------|
| This Order was adopted by the California Regional Water Quality Control Board, San Diego Region on: | February 12, 2020 |
| This Order shall become effective on:   | February 12, 2020 |

I, David W. Gibson, Executive Officer, do hereby certify that this order is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, San Diego Region, on February 12, 2020.

Tentative

David W. Gibson  
Executive Officer

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## **I. PROJECT INFORMATION**

Information describing the Makena Hills Project is summarized in Table 1 and in section 2 of the Fact Sheet. Section 3 of the Fact Sheet also includes information regarding the Report of Waste Discharge for the Project.

## **II. FINDINGS**

The California Regional Water Quality Control Board, San Diego Region (hereinafter San Diego Water Board) finds:

### **A. Report of Waste Discharge.**

Makena Murrieta LLC submitted a Report of Waste Discharge (ROWD) to construct the Makena Hills Project (Project), located in Riverside County on August 8, 2018. Additional information to complete the ROWD application was received on November 26, 2018, January 22, 2019, and June 5, 2019. The ROWD was deemed complete on August 21, 2019. The Discharger proposes to discharge fill material to waters of the State associated with construction activity at the Project site.

### **B. Project Location.**

The project is located on Assessor's Parcel Numbers (APNs) 392-290-001 and 384-252-015, south of Loma Linda University Medical Center and southeast of the intersection of Baxter Road and Antelope Road, Riverside County, in the northern extent of the City of Murrieta. The project site is within Sections 26 and 36 of Township 6 South, Range 3 West of the U.S. Geological Survey (USGS) 7.5-minute Murrieta quadrangle map. Attachment A of this Order provides the location of the Project and compensatory mitigation sites.

### **C. Receiving Waters.**

The Project site contains a total of 0.084 acres and 732 lineal feet of surface waters of the State. The receiving water is an isolated ephemeral tributary to Warm Springs Creek and currently serves as compensatory mitigation for impacts to an ephemeral stream bed necessary for the buildout of Fire Station 4 (Clean Water Act Section 401 Water Quality Certification No. 05C-022, dated August 9, 2005). See Drainage Location Map in Attachment A of this Order. The Project area lies within the Murrieta Hydrologic Area (HA), French Hydrologic Subarea (HSA) (902.33).

### **D. Overall Project Purpose.**

The purpose of the Project is to construct two medical office buildings, two hotels, and restaurant space to support the adjacent Loma Linda University Medical Center. The Project requires approval of a tentative parcel map to subdivide a 14.48-acre parcel (APN 392-290-001) into four lots. An adjacent 2.44-acre parcel (APN 384-252-015) is also included within the Project area.

The Project site will be developed with a mixture of uses generally intended to provide supporting land uses to the adjacent Loma Linda Medical Center. More details about the Project and Project impacts are described in the Fact Sheet in Attachments B of this Order.

**E. Project Impacts.**

This Order authorizes the discharge of fill material with a total of 0.084 acre (732 linear feet) of permanent impacts to ephemeral streambed waters of the State in the Murrieta HA. An existing swale feature was constructed as mitigation for impacts to waters of the United States and/or State in compliance with Water Quality Certification No. O5C-002. The existing swale will be filled in order to create the access road necessary for the Makena Hills Project. No other waters of the State occur onsite.

**F. Project Mitigation.**

The Discharger reports that compensatory mitigation for the permanent loss of 0.084 acre (732 linear feet) of jurisdictional waters will be achieved through the purchase of 0.168 acre of re-established river credits from the San Luis Rey Mitigation Bank (SLRMB) and 0.672 acre of vernal pool wetland preservation credits from the Barry Jones Mitigation Bank (BJMB). Mitigation credits purchased from the SLRMB are required to be protected and maintained in perpetuity by Wildlands according to the conditions of Water Quality Certification No. R9-2013-0050. Mitigation credit parcels, purchased from the Bank to satisfy compensatory mitigation requirements, are required to be protected, monitored and maintained in perpetuity by the Bank pursuant to a federal and State approved bank enabling instrument and a recorded conservation easement. Compensatory mitigation options within the watershed were deemed inadequate. No waters of the United States and/or State will receive temporary discharges of fill associated with the Project. Mitigation for discharges of fill material to waters of the United States and/or State will be completed by the Discharger at San Luis Rey River Mitigation Bank located in the Bonsall hydrologic sub-area (HSA 903.12) at a minimum compensation ratio of 2:1 (area mitigated:area impacted), and at the Barry Jones Mitigation Bank located in the Gertrudis hydrologic sub-area (HSA 902.42) at a minimum conservation ratio of 8:1 (area mitigated:area impacted). The higher 10:1 total mitigation ratio to offset Project impacts is required to account for differences between the functions lost at the impact site, the functions expected to be produced at the mitigation bank, the distance between the impact site and the mitigation bank site, and the Project impacts are to a streambed that currently serves as compensatory mitigation.

**G. Regulatory Authority and Reason for Action.**

By email, dated January 18, 2019, the U.S. Army Corps of Engineers (USACE) determined that the proposed Project activities will not result in the discharge of dredged or fill material to waters of the United States. Therefore, the Project is

not subject to USACE jurisdiction under section 404 of the Clean Water Act (CWA) and a section 404 permit and section 401 water quality certification are not required for the Project.

However, surface waters affected by the Project are waters of the State, as defined by section 13050 (e) of the Water Code, which includes any surface or groundwater, including saline waters, within the boundaries of the State, including, but not limited to: wetlands and ephemeral, intermittent, and perennial stream channels, in all flow conditions, and which may be effluent dominated and seasonally dry. Waste discharges to these waters are subject to State regulation under division 7 of the Water Code (commencing with section 13000). This Order is issued pursuant to Water Code section 13263, and establishes waste discharge requirements for the discharge of fill material, including structural material and/or earthen wastes from Project construction activities, to waters of the State. The waste discharge requirements of this Order are necessary to adequately address potential and anticipated impacts to waters of the State, and to ensure compliance with applicable water quality control plans and polices.

#### **H. Statement of Basis.**

The San Diego Water Board developed the requirements in this Order based on information submitted as part of the ROWD and other available information. The Fact Sheet in Attachment B of this Order contains background information and the supporting rationale for the requirements of this Order and is hereby incorporated into this Order and constitutes part of the findings for this Order.

#### **I. Water Quality Control Plan.**

The San Diego Water Board adopted the Water Quality Control Plan for the San Diego Basin (hereinafter Basin Plan) on September 8, 1994 that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for Warm Springs Creek and other receiving waters addressed through the Plan.<sup>1</sup> Subsequent revisions to the Basin Plan have also been adopted by the San Diego Water Board and approved by the State Water Resources Control Board (State Water Board). Beneficial uses applicable to the unnamed tributaries of Warm Springs Creek specified in the Basin Plan are as follows:

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<sup>1</sup> The Basin Plan is accessible on-line at:  
[https://www.waterboards.ca.gov/sandiego/water\\_issues/programs/basin\\_plan/](https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/)

**TABLE 5. BASIN PLAN BENEFICIAL USES OF TEMECULA CREEK**

| <b>Discharge Points</b>                   | <b>Receiving Water Name</b>               | <b>Beneficial Use(s) (check these)</b>   |
|---|---|--|
| Refer to Attachment A for a location map. | Isolated tributary to Warm Springs Creek. | Municipal and Domestic Supply; Industrial Service Supply; Agricultural Supply; Industrial Process Supply; Contact Water Recreation (Potential); Non-Contact Water Recreation; Warm Freshwater Habitat; and Wildlife Habitat. |

This Order specifies waste discharge requirements that are necessary to adequately address effects on, and threats to, applicable water quality standards resulting from discharges attributed to the Project. Through compliance with the waste discharge requirements of this Order, the Project will not cause or contribute to an exceedance of State water quality standards.

**J. Anti-Degradation Policy.**

The State Water Resources Control Board established California's anti-degradation policy in State Water Board Resolution No. 68-16 (Policy) which requires that existing quality of waters be maintained unless degradation is justified based on specific findings. Minimal water quality degradation may be allowed under the Policy only if any change in water quality is consistent with the maximum benefit to the people of the State; the degradation will not unreasonably affect present and anticipated beneficial uses; and the degradation will not result in violation of any applicable Water Quality Control Plan. Discharges must meet requirements that will result in the best practicable treatment or control to avoid pollution or a condition of nuisance. Consistent with the Policy, any degradation must provide for the maximum benefit to the people of the State. Construction of the development not only promotes jobs and provides a necessary accommodation to growth in Riverside County, it will also provide a mixture of land uses generally intended to support the adjacent Loma Linda Medical Center. This Order contains waste discharge requirements to ensure present and future beneficial uses are maintained or enhanced through compensatory mitigation and monitoring requirements for authorized impacts to waters of the State. The waste discharge requirements employ best practicable treatment and control of any discharges to ensure and verify that the highest level of water quality is maintained consistent with the maximum benefit to the people of the State.

**K. No Net Loss Policy.**

In 1993, the Governor of California issued the California Wetlands Conservation Policy (Executive Order W-59-93). Commonly referred to as the “No Net Loss Policy” for wetlands, the Executive Order requires state agencies to “ensure no overall net loss [of wetlands] and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship and respect for private property.” This

Order meets the objectives of Executive Order W-59-93 by requiring that the Project first avoid and then minimize adverse impacts on aquatic resources to the maximum extent practical. Any remaining unavoidable adverse impacts on aquatic resources are offset by compensatory mitigation requirements which protect and restores the abundance, types and conditions of aquatic resources and supports their beneficial uses.

**L. California Environmental Quality Act.**

The City of Murrieta is the lead agency (Lead Agency) under the California Environmental Quality Act (Public Resources Code section 21000, et seq., (CEQA)). The Lead Agency certified a Final Mitigated Negative Declaration (MND) for the Makena Hills – Tentative Parcel Map 2017-1314 and Environmental Assessment 2017-1315 Project, under CEQA Guidelines Title 14, California Code of Regulations. The Lead Agency determined the Project will not have a significant effect on the environment.

The Lead Agency adopted a mitigation monitoring and reporting program pursuant to Public Resources Code section 21081.6 and CEQA Guidelines section 15097 to ensure that mitigation measures and revisions to the Project identified in the Final MND are implemented. The Mitigation Monitoring and Reporting Program (MMRP) is included and incorporated by reference in Attachment E to this Order. The Discharger shall implement the Lead Agency's MMRP described in the MND, as it pertains to resources within the San Diego Water Board's purview.

The San Diego Water Board is a responsible agency under CEQA for the purposes of issuing this Order. As a Responsible Agency, the San Diego Water Board is "responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve." Pub. Resources Code, section 21002.1(d). The San Diego Water Board has reviewed and considered impacts to water quality in the Lead Agency's Final MND. The San Diego Water Board concludes that impacts to water quality are less than significant with mitigation.

This Order requires implementation of waste discharge requirements and mitigation measures, including the purchase of compensatory mitigation credits. The San Diego Water Board finds that compliance with the conditions in this Order will reduce effects to water quality to less than significant because implementation of BMPs, compensatory mitigation, and monitoring requirements will ensure that the Project is in compliance with applicable water quality objectives. The San Diego Water Board will file a Notice of Determination in accordance with CEQA Guidelines section 15096 subdivision (i).



**M. Executive Officer Delegation of Authority.**

The San Diego Water Board by prior resolution has delegated all matters that may legally be delegated to its Executive Officer to act on its behalf pursuant to Water Code section 13223. Therefore, the Executive Officer is authorized to act on the San Diego Water Board's behalf on any matter within this Order unless such delegation is unlawful under Water Code section 13223 or this Order explicitly states otherwise.

**N. Public Notice.**

The San Diego Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. The San Diego Water Board has also provided an opportunity for the Discharger and interested agencies and persons to submit oral comments and recommendations at a public hearing. Details of the notification are provided in the Fact Sheet provided in Attachment B of this Order.

**O. Public Hearing.**

The San Diego Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet provided in Attachment B of this Order.

**THEREFORE, IT IS HEREBY ORDERED** that, in order to meet the provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, the Discharger shall comply with the requirements in this Order.

**III. DISCHARGE PROHIBITIONS**

**A. Project Conformance with Application.**

The discharge of waste, in a manner or location other than as described in the Report of Waste Discharge or findings of this Order, and for which valid waste discharge requirements are not in force is prohibited.

**B. Waste Management.**

Unless authorized by this Order, the discharge of sand, silt, clay, or other earthen materials from any activity in quantities which cause deleterious bottom deposits, turbidity, or discoloration in waters of the State or which unreasonably affect, or threaten to affect, beneficial uses of such waters is prohibited.

**C. Waste Management.**

The treatment, storage, or disposal of waste in a manner causing, or threatening to cause or create a condition of pollution, contamination or nuisance, as defined by Water Code section 13050, is prohibited.

**D. Waste Management.**

The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit it's being transported into the waters, is prohibited unless authorized by the San Diego Water Board.

**E. Basin Plan Prohibitions.**

The Discharger must comply with all applicable Discharge Prohibitions contained in Chapter 4 of the Basin Plan. All such prohibitions are incorporated by this reference into this Order as if fully set forth herein and summarized in section 5.0 of the Fact Sheet in Attachment B of this Order.

**IV. CONSTRUCTION BEST MANAGEMENT PRACTICES**

**A. Approvals to Commence Construction.**

The Discharger shall not commence Project construction until all necessary federal, State, and local approvals are obtained.

**B. Personnel Education.**

Prior to the start of the Project, and annually thereafter until construction is completed, the Discharger must educate all personnel on the requirements in this Order, including pollution prevention measures, spill response, and BMPs implementation and maintenance.

**C. Spill Containment Materials.**

The Discharger must, at all times, maintain appropriate types and sufficient quantities of materials on-site to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reach waters of the United States and/or State.

**D. General Construction Storm Water Permit.**

Prior to start of Project construction, the Discharger must, as applicable, obtain coverage under, and comply with, the requirements of State Water Resources Control Board Water Quality Order No. 2009-0009-DWQ, the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activity, (General Construction Storm Water Permit) and any reissuance. If Project construction activities do not require coverage under the General Construction Storm Water Permit, the Discharger must develop and implement a runoff management plan (or equivalent construction BMP plan) to prevent the discharge of sediment and other pollutants during construction activities

**E. Waste Management.**

The Discharger must properly manage, store, treat, and dispose of wastes in accordance with applicable federal, State, and local laws and regulations. Waste

management shall be implemented to avoid or minimize exposure of wastes to precipitation or storm water runoff.

**F. Downstream Erosion.**

Discharges of concentrated flow during construction or after completion of the Project must not cause downstream erosion or damage to properties or stream habitat.

**G. Construction Equipment.**

All equipment must be washed prior to transport to the Project site and must be free of sediment, debris, and foreign matter. All equipment used in direct contact with surface water shall be steam cleaned prior to use. All equipment using gas, oil, hydraulic fluid, or other petroleum products shall be inspected for leaks prior to use and shall be monitored for leakage. Stationary equipment (e.g., motors, pumps, generator, etc.) shall be positioned over drip pans or other types of containment.

**H. Process Water.**

Water containing mud, silt, or other pollutants from equipment washing or other activities, must not be discharged to waters of the United States and/or the State or placed in locations that may be subjected to storm flows. Pollutants discharged to areas within a stream diversion area must be removed at the end of each workday or sooner if rain is predicted.

**I. Surface Water Diversion.**

All surface waters, including ponded waters, must be diverted away from areas undergoing grading, construction, excavation, vegetation removal, and/or any other activity which may result in a discharge to the receiving waters. Diversion activities must not result in the degradation of beneficial uses or exceedance of water quality objectives of the receiving waters. Any temporary dam or other artificial obstruction constructed must only be built from materials such as clean gravel which will cause little or no siltation. Normal flows must be restored to the affected stream immediately upon completion of work at that location.

**J. Cofferdams or Water Barriers.**

Cofferdams and water barrier construction shall be adequate to prevent seepage into or from the work area. Cofferdams or water barriers shall not be made of earth or other substances subject to erosion or that contain pollutants. When dewatering is necessary to create a temporary dry construction area, the water shall be pumped through a sediment-settling device before it is returned to the water body. The enclosure and the supportive material shall be removed when the work is completed, and removal shall proceed from downstream to upstream.

**K. Re-vegetation and Stabilization.**

All areas that will be left in a rough graded state must be stabilized no later than two weeks after completion of grading. The Discharger is responsible for implementing and maintaining BMPs to prevent erosion of rough graded areas. Hydroseed areas must be revegetated with native species appropriate for the area. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at <http://www.cal-ipc.org/ip/inventory/>. Follow-up seed applications must be made as needed to cover bare spots and to maintain adequate soil protection.

**L. Hazardous Materials.**

Except as authorized by this Order, substances hazardous to aquatic life including, but not limited to, petroleum products, raw cement/concrete, asphalt, and coating materials, must be prevented from contaminating the soil and/or entering waters of the United States and/or State. BMPs must be implemented to prevent such discharges during each Project activity involving hazardous materials.

**M. Vegetation Removal.**

Removal of vegetation must occur by hand, mechanically, or using United States Environmental Protection Agency (USEPA) approved herbicides deployed using applicable BMPs to prevent impacts to beneficial uses of waters of the State. Use of aquatic pesticides must be done in accordance with State Water Resources Control Board Water Quality Order No. 2013-0002-DWQ, General Permit No. CAG990005, *Statewide General National Pollutant Discharge Elimination System (NPDES) Permit For Residual Aquatic Pesticide Discharges to Waters Of The United States From Algae and Aquatic Weed Control Applications*, and any subsequent revisions or reissuance thereto.

**N. Limits of Disturbance.**

The Discharger shall clearly define the limits of Project disturbance to waters of the State using highly visible markers such as flag markers, construction fencing, or silt barriers prior to commencement of Project construction activities within those areas.

**O. Beneficial Use Protection.**

The Discharger must take all necessary measures to protect the beneficial uses of waters of Warm Springs Creek and its unnamed tributaries. This Order requires compliance with all applicable requirements of the Basin Plan. If at any time, an unauthorized discharge to waters of the State occurs or monitoring indicates that the Project is violating, or threatens to violate, water quality objectives, the associated Project activities shall cease immediately, and the San Diego Water Board shall be notified in accordance with Reporting Requirement

VIII.B of this Order. Associated Project activities may not resume without approval from the San Diego Water Board.

## **V. POST- CONSTRUCTION BEST MANAGEMENT PRACTICES**

### **A. Post-Construction Discharges.**

The Discharger shall not allow post-construction discharges from the Project site to cause or contribute to on-site or off-site erosion or damage to properties or stream habitats.

### **B. Storm Drain Inlets.**

All storm drain inlet structures within the Project boundaries must be stamped and/or stenciled with appropriate language prohibiting non-storm water discharges.

### **C. Post-Construction BMP Design.**

The Project must be designed to comply with the most current Standard Storm Water Mitigation and Hydromodification Plans for the City of Murrieta.

### **D. Post-Construction BMP Design.**

Bridges, culverts, dip crossings, or other stream crossing structures shall be designed and installed so they will not cause scouring of the stream bed and erosion of the banks. Storm drain lines/culverts and other stream crossing structures shall be designed and maintained to accommodate at least a 100-year, 24-hour storm event, including associated bedload and debris with a similar average velocity as upstream and downstream sections. Bottoms of temporary culverts shall be placed at stream channel grade and bottoms of permanent culverts shall be open bottom or embedded and backfilled below the grade of the stream greater than or equal to a depth of 1 foot.

### **E. Post-Construction BMP Implementation.**

The Project adds approximately 2.22 acres of impervious surface. The Discharger must install and implement the post construction BMPs for the Project described in the *Project Specific Water Quality Management Plan Project Title: Makena Medical Facility*, dated February 28, 2017. Post-construction BMPs must be installed and functional within 30 days of Project completion.

### **F. Post-Construction BMP Maintenance.**

All post-construction structural treatment BMPs, including, but not limited to, vegetated swales and media filters, must be regularly inspected and maintained in perpetuity per manufacturers' specifications for proprietary structural devices, and at frequencies no less than those recommended by the California Storm

Water Quality Association (CASQA)<sup>2</sup> guidance, or equivalent if approved by the Executive Officer, for non-proprietary measures. At a minimum, the Discharger must comply with the following:

1. Final maintenance plans for the vegetated swales must be developed and implemented based on CASQA guidance (or equivalently effective practices).
2. Flow-based treatment BMPs (e.g., media filters and vegetated swales) must be inspected at a minimum monthly from October through April and at least twice from May through September each year.
3. Retention basins must be maintained as necessary to prevent nuisance conditions, including those associated with odors, trash, and disease vectors. Such maintenance shall not compromise the ability of the basins to perform water quality treatment required by this Order.
4. Records must be kept regarding inspections and maintenance in order to assess the performance of the systems and determine whether adaptations are necessary to protect receiving waters.

## **VI. PROJECT IMPACTS AND COMPENSATORY MITIGATION**

### **G. Project Impact Avoidance and Minimization.**

The Project must avoid and minimize adverse impacts to waters of the State to the maximum extent practicable.

### **H. Project Impacts and Compensatory Mitigation.**

Unavoidable Project impacts to the unnamed tributaries to Warm Springs Creek must not exceed the type and magnitude of impacts described in the table below. At a minimum, compensatory mitigation required to offset unavoidable permanent Project impacts to waters of the State must be achieved as described in the table below:

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<sup>2</sup> California Storm Water Quality Association (*California Storm Water BMP Handbook, New Development and Redevelopment 2003*), available on-line at: <http://www.cabmphandbooks.org/> [Accessed on January 15, 2012]

| Permanent Impacts | Impacts (acres) | Impacts (linear ft.) | Mitigation for Impacts (acres)   | Mitigation Ratio (area mitigated :area impacted) | Mitigation for Impacts (linear ft.) | Mitigation Ratio (linear feet mitigated :linear feet impacted) |
|-------------------|-----------------|----------------------|--|--|-------------------------------------|--|
| Stream Channel    | 0.084           | 732                  | 0.168 Re-establishment <sup>1</sup><br>0.672 Preservation <sup>2</sup> | 2:1<br>8:1                                       | NA <sup>3</sup>                     | NA   |

1. Purchase of 0.168-acre of re-established river credits. Mitigation purchased from the San Luis Rey Mitigation Bank (SLRMB) is required to be protected and maintained in perpetuity by Wildlands according to the conditions of Water Quality Certification No. R9-2013-0050. The mitigation provided for Project impacts contributes to the net gain of wetlands per the State of California No Net Loss Policy (Executive Order W-59-93) referenced in Finding II.K of this Order.
2. Purchase of 0.672-acre of vernal pool preservation credits from the Barry Jones Mitigation Bank (BJMB).
3. Compensatory mitigation is being provided in a contiguous area at the Mitigation Bank (approximately 55.8 acres) therefore, compensatory mitigation for linear feet is not being calculated on a project by project basis.

| Temporary Impacts <sup>1</sup> | Impacts (acres) | Impacts (linear ft.) | Mitigation for Impacts (acres) | Mitigation Ratio (area mitigated :area impacted) | Mitigation for Impacts (linear ft.) | Mitigation Ratio (linear feet mitigated :linear feet impacted) |
|--------------------------------|-----------------|----------------------|--------------------------------|--|-------------------------------------|--|
| NA                             | NA              | NA                   | NA                             | NA   | NA                                  | NA   |

1. No waters of the United States and/or State shall receive temporary discharges of fill associated with the Project.

**A. Compensatory Mitigation for Permanent Impacts.**

The Discharger shall provide compensatory mitigation for impacts to waters of the State attributable to the Project in accordance with the Report of Waste Discharge dated August 8, 2018 and incorporated herein by reference. Any deviations from, or revisions to the Report of Waste Discharge must be pre-approved by the San Diego Water Board. The terms and conditions of this Order shall supersede conflicting provisions within the Report of Waste Discharge.

**B. Compensatory Mitigation Credit Purchase.**

Prior to the start of Project construction, the Discharger must provide documentation to the San Diego Water Board verifying the purchase of at least 0.168-acre of mitigation bank credits applicable to the establishment and/or re-establishment of wetlands from the SLRMB, and 0.672 acre of vernal pool

wetland preservation credits from the BJMB. The documentation shall also include the transfer agreement between the Discharger and the bank sponsor demonstrating acceptance and understanding of the obligation to comply with compensatory mitigation and long-term mitigation management requirements of this Order in perpetuity.

The use of an alternate mitigation bank to provide required compensatory mitigation must be approved by the San Diego Water Board before the credits are secured and is subject to the following conditions:

1. The Discharger must identify the USACE approved mitigation bank and submit documentation demonstrating that:
  - a. The permitted Project impacts are located within the service area of the mitigation bank; and
  - b. The mitigation bank has the appropriate number and resource type of credits available.
2. If the San Diego Water Board approval of the use of the alternate mitigation bank is obtained, the Discharger must provide documentation verifying that the appropriate number and resource type of credits have been secured from the mitigation bank prior to the start of construction.

### **C. Temporary Project Impacts.**

The Discharger must restore areas of temporary disturbance which could result in a discharge or a threatened discharge to waters of the State. Restoration must include grading of disturbed areas to pre-Project contours and revegetation with native species. The Discharger must implement all necessary BMPs to control erosion and runoff from areas associated with this Project. The revegetation palette must not contain any plants listed on the California Invasive Plant Council Invasive Plant Inventory, which can be found online at <http://www.cal-ipc.org/ip/inventory/>. Follow-up applications shall be made, as needed, to cover bare spots and to maintain adequate soil protection.

## **VII. RECEIVING WATER LIMITATIONS**

- A. The receiving water limitations set forth below for Warm Springs Creek and its unnamed tributaries are based on applicable water quality standards contained in the Basin Plan and applicable federal regulations and are a required part of this Order. Project activities shall not cause or contribute to violation of these receiving water limitations.
  1. **Water Quality Objectives.** Water Quality Objectives applicable to Warm Springs Creek and its unnamed tributaries are established in Chapter 3 of the San Diego Water Board's Water Quality Control Plan for the San Diego Basin (Basin Plan) and shall not be exceeded.
  2. **Priority Pollutant Criteria.** Priority pollutant criteria applicable to the Warm Springs Creek and its unnamed tributaries are promulgated by the USEPA through the a) National Toxics Rule (NTR) (40 CFR 131.36 promulgated on December 22, 1992 and amended on May 4, 1995) and b) California Toxics Rule (CTR) (40 CFR 131.38, (65 Fed. Register 31682-31719), adding Section



131.38 to Title 40 of the Code of Federal Regulations, on May 18, 2000), and shall not be exceeded.

## **VIII. REPORTING REQUIREMENTS**

### **A. Discharge Commencement Notification.**

The Discharger must notify the San Diego Water Board in writing at least 5 days prior to the start of initial Project construction ground disturbance activities.

### **B. Project Completion Report.**

Within 30 days of Project completion, the Discharger must submit a Project Completion Report to the San Diego Water Board containing the following information:

1. The dates for initiation of Project construction and completion of Project construction;
2. An evaluation, interpretation and tabulation of Project activities detailing the completion of construction and compliance with all requirements of this Order and all applicable mitigation measures contained in the Project's certified Final Environmental Impact Report;
3. As-built Project drawings no bigger than 11" x 17"; and
4. Photos of the completed Project including post-construction BMPs.

### **C. Noncompliance Reports.**

The Discharger must report to the San Diego Water Board any noncompliance which may endanger human health or the environment. Any information shall be provided orally within 24 hours from the time the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description of the incident and its cause, the period of the noncompliance including exact dates and times; and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The San Diego Water Board may waive the above-required written report under this provision on a case by case basis if an oral report has been received within 24 hours.

### **D. Hazardous Substance Discharge.**

Except as provided in Water Code section 13271(b), any person who, without regard to intent or negligence, causes or permits any hazardous substance or sewage to be discharged in or on any waters of the State, shall as soon as (a) that person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the County of San Diego in accordance with California Health and Safety Code section 5411.5 and the California Office of Emergency Services of the discharge in accordance with the spill reporting

provision of the State toxic disaster contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.17), and immediately notify the State Water Board or the San Diego Water Board of the discharge. This provision does not require reporting of any discharge of less than a reportable quantity as provided for under subdivisions (f) and (g) of section 13271 of the Water Code unless the Discharger is in violation of a Basin Plan prohibition.

**E. Oil or Petroleum Product Discharge.**

Except as provided in Water Code section 13272(b), any person who without regard to intent or negligence, causes or permits any oil or petroleum product to be discharged in or on any waters of the State, or discharged or deposited where it is, or probably will be, discharged in or on any waters of the State, shall, as soon as (a) such person has knowledge of the discharge, (b) notification is possible, and (c) notification can be provided without substantially impeding cleanup or other emergency measures, immediately notify the California Office of Emergency Services of the discharge in accordance with the spill reporting provision of the State oil spill contingency plan adopted pursuant to Government Code Title 2, Division 1, Chapter 7, Article 3.7 (commencing with section 8574.1). This requirement does not require reporting of any discharge of less than 42 gallons unless the discharge is also required to be reported pursuant to Clean Water Act section 311, or the discharge is in violation of a Basin Plan prohibition.

**F. Signatory Requirements.**

All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:

1. For a corporation, by a responsible corporate officer of at least the level of vice president; or
2. For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or
3. For a municipality, or a state, federal, or other public agency, by either a principal executive officer or ranking elected official.

**G. Duly Authorized Representative.**

Applications, reports, or information submitted to the San Diego Water Board may be signed by a duly authorized representative of that person described in Reporting Requirement F above if:

1. The authorization is made in writing by a person described above;
2. The authorization specifies either an individual or position having responsibility for the overall operation of the regulated activity; and
3. The written authorization is submitted to the San Diego Water Board.

If such authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the Project, a new authorization satisfying the above requirements must be submitted to the San

Diego Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative.

#### **H. Certification.**

All applications, reports, or information submitted to the San Diego Water Board must be signed and certified as follows:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

#### **I. Electronic Document Submittal.**

The Discharger must submit all reports and information required under this Certification in electronic format via e-mail to [SanDiego@waterboards.ca.gov](mailto:SanDiego@waterboards.ca.gov). Documents over 50 megabytes will not be accepted via e-mail and must be placed on a disc and delivered to:

California Regional Water Quality Control Board  
San Diego Region  
Attn: R9-2020-0003: 849986:dbradford  
2375 Northside Drive, Suite 100  
San Diego, California 92108

Each electronic document must be submitted as a single file, in Portable Document Format (PDF) format, and converted to text searchable format using Optical Character Recognition (OCR). All electronic documents must include scanned copies of all signature pages; electronic signatures will not be accepted. Electronic documents submitted to the San Diego Water Board must include the following identification numbers in the header or subject line: R9-2020-0003: 849986:dbradford.

### **IX. PROVISIONS**

#### **A. Duty to Comply.**

The Discharger must comply with all conditions of this Order. Any noncompliance with this Order constitutes a violation of the Water Code and is grounds for (a) enforcement action; (b) termination, revocation and reissuance, or modification of this Order; or (c) denial of a report of waste discharge in application for new or revised waste discharge requirements.

#### **B. Duty to Comply.**

The Discharger must, at all times, fully comply with the engineering plans, specifications and technical reports submitted to the San Diego Water Board) to support this Order and all subsequent submittals required under this Order and as described herein. The conditions within this Order shall supersede conflicting

provisions within such plans, specifications, technical reports and other submittals required under this Order.

**C. Anticipated Noncompliance.**

The Discharger shall give advance notice to the San Diego Water Board of any planned changes in the Project or the compensatory mitigation project which may result in noncompliance with the terms and requirements of this Order.

**D. Need to Halt or Reduce Activity Not a Defense.**

It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order.

**E. Duty to Mitigate.**

The Discharger shall take all reasonable steps to minimize or prevent any discharge in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment, including such accelerated or additional monitoring as may be necessary to determine the nature and impact of the noncompliance.

**F. Property Rights.**

This Order does not convey any property rights of any sort or any exclusive privileges. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

**G. Inspection and Entry.**

The Discharger must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to:

1. Enter upon the Discharger's premises, where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order;
2. Access and copy, at reasonable times, any records that must be kept under the conditions of this Order;
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this Order; and
4. Sample or monitor, at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code, any substances or parameters at any location.

**H. Retention of Records.**

The Discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order,

and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. Records may be maintained electronically. This period may be extended during the course of any unresolved enforcement action or litigation regarding this discharge or when requested by the San Diego Water Board.

**I. Duty to Provide Information.**

The Discharger shall furnish to the San Diego Water Board, within a reasonable time, any information which the San Diego Water Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order. The Discharger shall also furnish to the San Diego Water Board, upon request, copies of records required to be kept by this Order.

**J. Duty to Provide Updated Information.**

When the Discharger becomes aware that it failed to submit any relevant facts in a Report of Waste Discharge or submitted incorrect information in a Report of Waste Discharge or in any report to the San Diego Water Board, it shall promptly submit such facts or information.

**K. Reopener Provision. This Order may be modified, revoked and reissued, or terminated for cause including, but not limited to, the following:**

1. Violation of any terms or conditions of this Order
2. Obtaining this Order by misrepresentation or failure to disclose fully all relevant facts.
3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

**L. Reopener Provision.**

The filing of a request by the Discharger for the modification, revocation, reissuance, or termination of this Order, or notification of planned changes or anticipated noncompliance does not stay any condition of this Order.

**M. Reopener Provision.**

The San Diego Water Board reserves the right to suspend, cancel, or modify and reissue this Order, after providing notice to the Discharger, if the San Diego Water Board determines that the Project fails to comply with any of the terms or requirements of this Order or if the results of the Project have unintended impacts to water quality.

**N. Transfers of Responsibility.**

This Order is not transferable in its entirety or in part to any person or organization except after notice to the San Diego Water Board in accordance with the following terms:

1. Transfer of Property Ownership The Discharger must notify the San Diego Water Board of any change in ownership of the Project area. Notification of change in ownership must include, at a minimum, a statement that the

Discharger has provided the purchaser with a copy of this Order and that the purchaser understands and accepts the Order requirements and the obligation to implement them or be subject to liability for failure to do so; the seller and purchaser must sign and date the notification and provide such notification to the San Diego Water Board within 10 days of the transfer of ownership.

2. **Transfer of Compensatory Mitigation Responsibility.** Any notification of transfer of responsibilities to satisfy the mitigation requirements set forth in this Order must include a signed statement from an authorized representative of the new party (transferee) demonstrating acceptance and understanding of the responsibility to comply with and fully satisfy the mitigation conditions and agreement that failure to comply with the mitigation conditions and associated requirements may subject the transferee to enforcement by the San Diego Water Board under Water Code section 13350. Notification of transfer of responsibilities meeting the above conditions must be provided to the San Diego Water Board within 10 days of the transfer date.
3. **Transfer of Post Construction BMP Maintenance Responsibility.** The Discharger assumes responsibility for the inspection and maintenance of all post-construction structural BMPs until such responsibility is legally transferred to another entity. At the time maintenance responsibility for post-construction BMPs is legally transferred the Discharger must submit to the San Diego Water Board a copy of such documentation and must provide the transferee with a copy of a long-term BMP maintenance plan that complies with manufacturer specifications. The Discharger must provide such notification to the San Diego Water Board within 10 days of the transfer of BMP maintenance responsibility.

**O. Hydroelectric Facility.**

This Order is not intended and shall not be construed to apply to any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent ROWD application was filed pursuant to Cal. Code Regs., title 23, section 3855, subdivision (b), and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

**P. Payment of Fees.**

This Order is conditioned upon total payment of any fee required under California Code of Regulations, Title 23 section 2200, and owed by the Discharger.

**Q. Order Availability.**

A copy of this Order, the application, and supporting documentation must be available at the Project site during construction for review by site personnel and agencies. A copy of this Order must also be provided to the contractor and all subcontractors working at the Project site.

## **R. Enforcement Authority.**

In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under State law.

## **S. Investigation of Violations.**

In response to a suspected violation of any condition of this Order, the San Diego Water Board may, pursuant to Water Code section 13267, require the Discharger to investigate, monitor, and report information on the violation. The only restriction is that the burden, including costs of preparing the reports, must bear a reasonable relationship to the need for and the benefits to be obtained from the reports.

## **X. NOTIFICATIONS**

- A. These waste discharge requirements have not been officially reviewed by the United States Environmental Protection Agency and are not issued pursuant to CWA section 402.
- B. The provisions of this Order are severable, and if any provision of this Order, or the application of any provision of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order, shall not be affected thereby.
- C. This Order becomes effective on the date of adoption by the San Diego Water Board.
- D. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Resources Control Board (State Water Board) to review the action in accordance with Water Code Section 13320 and the California Code of Regulations, title 23, sections 2050-2056 and following. The State Water Board must receive the petition by 5:00 p.m., 30 days after adoption of this order. Copies of the law and regulations applicable to filing petitions may be found on the Internet at:  
[https://www.waterboards.ca.gov/public\\_notices/petitions/water\\_quality](https://www.waterboards.ca.gov/public_notices/petitions/water_quality) or will be provided upon request