

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

In the matter of:	)	
	)	
<b>LENNAR HOMES OF</b>	)	<b>SETTLEMENT AGREEMENT AND</b>
<b>CALIFORNIA, INC., ALAMEDA</b>	)	<b>STIPULATION FOR ENTRY OF</b>
<b>COUNTY</b>	)	<b>ADMINISTRATIVE CIVIL LIABILITY</b>
	)	<b>ORDER</b>
<b>Unauthorized Discharge of</b>	)	
<b>Domestic Sewage to Chabot</b>	)	<b>ORDER NO. R2-2022-1002</b>
<b>Canal</b>	)	
	)	
	)	
	)	
	)	

**Section I: INTRODUCTION**

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Stipulated Order) is entered into by and between the California Regional Water Quality Control Board, San Francisco Bay Region Prosecution Team (Prosecution Team), and Lennar Homes of California, Inc. (Settling Respondent) (collectively, Parties), and is presented to the California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), or its delegate, for adoption as an Order by settlement pursuant to California Water Code (Water Code) section 13323 and Government Code section 11415.60. This Stipulated Order resolves the violation alleged herein by the imposition of administrative civil liability against the Settling Respondent in the amount of **\$212,300**.

**Section II: RECITALS**

1. From June 21, 2019, through February 11, 2021 (602 days), the Settling Respondent allegedly discharged without authorization approximately 148,000 gallons of domestic sewage to Chabot Canal, a water of the United States, from two sewer laterals that were misconnected to the storm drain system at the Boulevard housing development project in Dublin.
2. Some of the solids and floating materials in the domestic sewage were retained in Silva Cells (a biofiltration component of the storm drain system) and settled within the stormwater detention system. The captured solids and floating materials were removed and disposed of at an offsite disposal facility.

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During wet weather, the domestic sewage also comingled with storm runoff prior to discharge.

3. The domestic sewage discharges violated Water Code section 13376, federal Clean Water Act section 301, and Prohibition 15 of the *San Francisco Bay Basin Water Quality Control Plan* (Basin Plan).
4. The Settling Respondent is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivisions (a)(1) and (a)(5).
5. To resolve the alleged violation in Section II, paragraph 1, by consent and without further administrative proceedings, the Parties agree to the imposition of an administrative civil liability of **\$212,300** against the Settling Respondent. The Prosecution Team calculated the proposed liability using Steps 1 through 10 of the State Water Resources Control Board's (State Water Board's) *Water Quality Enforcement Policy* (Enforcement Policy) (October 2017) as shown in Attachment A, which is incorporated herein by reference.
6. The Parties have engaged in settlement negotiations and agree to settle this matter without administrative or civil litigation, and to present this Stipulated Order to the Regional Water Board or its delegate for adoption as an Order by settlement, pursuant to Water Code section 13323 and Government Code section 11415.60.
7. The Prosecution Team contends that the resolution of the alleged violation is fair and reasonable, and fulfills all of its enforcement objectives; that no further action is warranted concerning the violation, except as provided in this Stipulated Order; and that this Stipulated Order is in the public's best interest.

**Section III: STIPULATIONS**

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

1. **Administrative Civil Liability:** The Settling Respondent hereby agrees to the imposition of an administrative civil liability of **\$212,300** to resolve the alleged violation set forth in section II as follows:
  - a. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Settling Respondent shall mail a check for **\$106,150**, made payable to "State Water Pollution Cleanup and Abatement Account," referencing the Order number on page one of this Stipulated Order, to:

State Water Resources Control Board Accounting Office  
Attn: ACL Payment  
P.O. Box 1888  
Sacramento, CA 95812-1888

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The Settling Respondent shall email a copy of the check to the State Water Board, Office of Enforcement ([paul.ciccarelli@waterboards.ca.gov](mailto:paul.ciccarelli@waterboards.ca.gov)), and to the Regional Water Board ([habte.kifle@waterboards.ca.gov](mailto:habte.kifle@waterboards.ca.gov)).

- b. The Parties agree that the remaining **\$106,150** of the administrative liability shall be paid to the Regional Monitoring Program, care of the San Francisco Estuary Institute (SFEI), for implementation of a Supplemental Environmental Project (SEP) named “Characterizing Per- and Polyfluoroalkyl Substances (PFAS) and Chlorinated Paraffins in San Francisco Bay Sediment,” as follows:
- i. **\$106,150** (SEP Amount) shall be paid in the manner described in Section III, paragraph 1.b.ii, solely for use toward the SEP Fund for the “Characterizing Per- and Polyfluoroalkyl Substances (PFAS) and Chlorinated Paraffins in San Francisco Bay Sediment,” project. Funding this project will allow the assessment of PFAS concentrations in San Francisco Bay sediment samples to improve understanding of the occurrence and risks associated with PFAS in the Bay. Some of the sediment samples will also be analyzed for short-, medium-, and long-chain chlorinated paraffins (individually and as sums) to inform RMP management strategy. A complete description of this project is provided in Attachment B, incorporated herein by reference.
- ii. No later than 30 days after the Regional Water Board or its delegate signs this Stipulated Order, the Settling Respondent shall mail a check for **\$106,150**, made payable to “Regional Monitoring Program,” referencing the Order number on page one of this Stipulated Order, to:

Regional Monitoring Program  
c/o San Francisco Estuary Institute  
4911 Central Avenue  
Richmond, CA 94804

The Settling Respondent shall email a copy of the check to the State Water Board, Office of Enforcement ([paul.ciccarelli@waterboards.ca.gov](mailto:paul.ciccarelli@waterboards.ca.gov)), and to the Regional Water Board ([habte.kifle@waterboards.ca.gov](mailto:habte.kifle@waterboards.ca.gov)).

2. **The SEP and Suspended Liability:** In accordance with the State Water Board’s *Policy on Supplemental Environmental Projects* (May 2018) and State Water Board Resolution No. 2018-0015, the Parties agree that the Settling Respondent’s payment of the SEP Amount to fund the “Characterizing Per- and Polyfluoroalkyl Substances (PFAS) and Chlorinated Paraffins in San Francisco Bay Sediment” project is a SEP, and that the SEP Amount shall be treated as a permanently suspended administrative civil liability for purposes of this Stipulated Order. The Settling Respondent’s SEP

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obligations shall be satisfactorily completed, and the SEP Amount will be permanently suspended, upon SFEI's written notification to the Regional Water Board and the Settling Respondent acknowledging that the Regional Monitoring Program received payment of the SEP Amount from the Settling Respondent and that the payment will be spent on the project described in Section III, paragraph 1.b.i, and Attachment B in accordance with the terms of this Stipulated Order. SFEI's annual and quarterly financial reports to the Regional Water Board shall be considered a final post-project accounting of expenditures.

3. **Publicity Associated with the SEP:** Whenever the Settling Respondent or its agents or subcontractors publicize one or more elements of the SEP, they shall state in a prominent manner that the project is undertaken as part of a settlement to a Regional Water Board enforcement action against the Settling Respondent.
4. **Regional Water Board Not Liable:** The Regional Water Board and its members, staff, attorneys, and representatives shall not be liable for any injury or damage to persons or property resulting from negligent or intentional acts or omissions by the Settling Respondent or its corporate affiliates, directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order. The Regional Water Board, its members, and its staff shall not be held as parties to, or guarantors of, any contract entered into by the Settling Respondent or its corporate affiliates, directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
5. **Compliance with Applicable Laws:** The Settling Respondent understands that payment of administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged herein may subject it to further enforcement, including additional administrative civil liability.

**6. Party Contacts for Communications related to this Stipulated Order:**

**For the Regional Water Board:**

Habte Kifle  
San Francisco Bay Regional Water  
Quality Control Board  
1515 Clay Street, 14th Floor  
Oakland, CA 94612  
[habte.kifle@waterboards.ca.gov](mailto:habte.kifle@waterboards.ca.gov)  
(510) 622-2371

**Counsel:**

Paul Ciccarelli  
State Water Resources Control Board  
Office of Enforcement  
801 K Street, 23rd Floor  
Sacramento, CA 95814  
[paul.ciccarelli@waterboards.ca.gov](mailto:paul.ciccarelli@waterboards.ca.gov)  
(916) 322-3227

**For the Settling Respondent:**

Bridgit Koller  
Lennar Homes of California  
2603 Camino Ramon, Suite 525  
San Ramon, CA 94583  
[Bridgit.Koller@lennar.com](mailto:Bridgit.Koller@lennar.com)  
(925) 327-8343

**Counsel:**

Gordon E. Hart  
Paul Hastings LLC  
101 California St.  
San Francisco, CA 94111  
(415) 856-7000

7. **Attorney Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorney fees and costs incurred pursuant to this Stipulated Order.
8. **Matters Addressed by this Stipulated Order:** Upon the Regional Water Board's or its delegate's adoption, this Stipulated Order represents a final and binding resolution and settlement of any alleged violation of Water Code section 13376, federal Clean Water Act section 301, and Prohibition 15 of the Basin Plan by Settling Respondent or its corporate affiliates, directors, officers, employees, agents, representatives, or contractors, associated with the discharge described in Section II, paragraph 1, as of the effective date of this Stipulated Order. The provisions of this paragraph are expressly conditioned on the full payment of the administrative civil liability by the deadlines specified in Section III, paragraph 1.
9. **Public Notice:** The Settling Respondent understands that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board or its delegate for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. The Settling Respondent agrees that it may not rescind or otherwise withdraw its approval of this proposed Stipulated Order.
10. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for public review of this

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Stipulated Order and the Regional Water Board's or its delegate's adoption of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board or its delegate has the authority to require a public hearing on this Stipulated Order. If procedural objections are raised and the Regional Water Board or its delegate requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust this Stipulated Order as necessary or advisable under the circumstances.

11. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.
12. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.
13. **If the Stipulated Order Does Not Take Effect:** If this Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or because the State Water Board or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liability for the underlying alleged violation, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing, or in any other administrative or judicial proceeding. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to objections related to prejudice or bias of any of the Regional Water Board members or their advisors, or any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulated Order and, therefore, may have formed impressions or conclusions prior to any contested evidentiary hearing on the violation alleged herein in this matter. The Parties also agree to waive any and all objections based on laches, delay, or other equitable defenses related to the period for administrative or judicial review to the extent such period has been extended by these settlement proceedings.
14. **Waiver of Hearing:** The Settling Respondent has been informed of the rights Water Code section 13323, subdivision (b), provides and, if the settlement is adopted by the Regional Water Board or its delegate, hereby waives its right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption. However, if the settlement is not adopted, or if the matter proceeds

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to the Regional Water Board or State Water Board for hearing, the Settling Respondent does not waive its right to a hearing before an order is imposed.

15. **Waiver of Right to Petition or Appeal:** Except in the instance where the Stipulated Order is not adopted by the Regional Water Board or its delegate, the Settling Respondent hereby waives its right to petition the Regional Water Board's or its delegate's adoption of the Stipulated Order for review by the State Water Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate court. This explicit waiver of rights includes potential future decisions by the Regional Water Board or its delegate directly related to this Stipulated Order, including but not limited to time extensions, SEP completion, and other terms contained in this Stipulated Order.
16. **Covenant Not to Sue:** The Settling Respondent covenants not to sue or pursue any administrative or civil claims against the State of California, any State agency, or its officers, Board members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order or the SEP.
17. **No Admission of Liability/No Waiver of Defenses:** In settling this matter, the Settling Respondent does not admit to any of the allegations stated herein or admit to any violations of the Water Code, or any other federal, State, or local law or ordinance, but recognizes that this Stipulated Order may be used as evidence of a prior enforcement action consistent with Water Code sections 13327 and 13385, subdivision (e). By entering into this Stipulated Order, the Settling Respondent does not waive any defenses or arguments related to any new enforcement action the Regional Water Board may bring in the future.
18. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board or its delegate under the terms of this Stipulated Order shall be communicated to the Settling Respondent in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondent of its obligation to obtain any final written approval this Stipulated Order requires.
19. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of, and to bind, the entity on whose behalf he or she executes the Stipulated Order.
20. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any right or obligation on any third party, and no third party shall have any right of action under this Stipulated Order for any cause whatsoever.

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21. **Severability:** This Stipulated Order is severable; if any provision is found to be invalid, the remainder shall remain in full force and effect.
22. **Counterpart Signatures; Facsimile and Electronic Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulated Order may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.
23. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Regional Water Board or its delegate enters the Order incorporating the terms of this Stipulated Order.



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**IT IS SO STIPULATED.**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION, PROSECUTION TEAM**

Proposed tentative order  
signed on *2/25/2022*

By: \_\_\_\_\_  
Thomas Mumley  
Assistant Executive Officer

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**IT IS SO STIPULATED.**

**LENNAR HOMES OF CALIFORNIA, INC.**

Proposed tentative order  
signed on 2/25/2022  
\_\_\_\_\_

By: \_\_\_\_\_  
Bridgit Koller  
Vice President  
Lennar Homes of California, LLC  
(successor-in-interest)

**ORDER OF THE REGIONAL WATER BOARD**

1. This Order incorporates the foregoing Sections I through III by this reference as if set forth fully herein.
2. In accepting this Stipulated Order, the Regional Water Board or its delegate has considered, where applicable, each of the factors prescribed in Water Code section 13385, subdivision (e), and has applied the State Water Board's Enforcement Policy, which is incorporated herein by reference. The consideration of these factors and application of the Enforcement Policy are based on information the Prosecution Team obtained in investigating the allegation set forth in the Stipulated Order or otherwise provided to the Regional Water Board.
3. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board or its delegate finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, § 21000 et seq.) in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations. Additionally, this Order generally accepts the plans proposed for the SEP prior to implementation. Mere submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment.
4. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondent fails to perform any of its obligations under this Stipulated Order.

**IT IS HEREBY ORDERED** pursuant to Water Code section 13323 and Government Code section 11415.60, on behalf of the California Regional Water Quality Control Board, San Francisco Bay Region.

\_\_\_\_\_  
Lisa Horowitz McCann  
Assistant Executive Officer  
California Regional Water Quality Control Board  
San Francisco Bay Region

\_\_\_\_\_  
Date

## **ATTACHMENT A**

### **Factors in Determining Administrative Civil Liability**

#### **LENNAR HOMES OF CALIFORNIA, INC. DOMESTIC SEWAGE DISCHARGE, JUNE 21, 2019 – FEBRUARY 11, 2021 DUBLIN, ALAMEDA COUNTY**

The State Water Resources Control Board's *Water Quality Enforcement Policy* (April 2017) (Enforcement Policy) establishes a methodology for assessing administrative civil liability. Use of the methodology addresses the factors required by California Water Code (Water Code) section 13385, subdivision (e). Each factor in the Enforcement Policy and its corresponding category, adjustment, and amount for the alleged violation is presented below. The Enforcement Policy should be used as a companion document in conjunction with this administrative civil liability assessment since the penalty methodology and definition of terms may not be replicated herein. The Enforcement Policy is at:

[https://www.waterboards.ca.gov/board\\_decisions/adopted\\_orders/resolutions/2017/040417\\_9\\_final\\_adopted\\_policy.pdf](https://www.waterboards.ca.gov/board_decisions/adopted_orders/resolutions/2017/040417_9_final_adopted_policy.pdf)

### **ALLEGED VIOLATION**

From June 21, 2019, through February 11, 2021 (602 days), Lennar Homes of California, Inc. (Discharger) allegedly discharged without authorization approximately 148,000 gallons of domestic sewage to Chabot Canal from two sewer laterals that were misconnected to the storm drain system at the Boulevard housing development project in Dublin as follows:

- From June 21, 2019, through February 3, 2021 (594 days), the Discharger allegedly discharged approximately 96,000 gallons of domestic sewage from the misconnected sewer lateral at 5879 Beechwood Loop, Dublin.
- From February 19, 2020, through February 11, 2021 (359 days), the Discharger allegedly discharged approximately 52,000 gallons of domestic sewage from the misconnected sewer lateral at 5882 Beechwood Loop, Dublin.

The combined 148,000-gallon discharge originated from two single family units, passed through a closed-bottom stormwater detention structure, and entered Chabot Canal, a tributary to Arroyo Mocho Canal and a water of the State and United States. Although one discharge lasted 594 days and the other lasted 359 days, 350 days of discharge overlapped, resulting in 602 consecutive discharge days. These domestic sewage discharges violated Water Code section 13376, Clean Water Act section 301, and Basin Plan Discharge Prohibition 15.

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The Discharger is subject to administrative civil liability for the alleged violations pursuant to Water Code section 13385, subdivisions (a)(1) and (a)(5). The factors considered in determining the liability are described below:

Factor	Selection	Rationale
Degree of Toxicity of the Discharge Violation	2	<p>A score of 2 (moderate) is appropriate because the discharged material poses a moderate risk or threat to potential receptors (i.e., the chemical and/or physical characteristics of the discharged material have some level of toxicity or pose a moderate level of threat to potential receptors). (Enforcement Policy, p. 12.)</p> <p>Some of the solids and floating materials in the domestic sewage were captured in Silva Cells (a biofiltration component of the storm drain system installed by the Discharger) and settled within the stormwater detention system. The captured solids and floating materials were removed and disposed of at an offsite disposal facility by the Discharger. During wet weather, the domestic sewage also comingled with storm runoff prior to discharge. Therefore, unlike untreated domestic sewage, the discharged domestic sewage posed a moderate risk or threat to potential receptors because it contained reduced concentrations of bacteria, viruses, parasites, ammonia, and oxygen-depleting biochemical oxygen demand (BOD) compared to typical untreated domestic sewage. Microbial pathogens, including bacteria, viruses, and parasites, can cause disease in aquatic biota and illness or even death in humans. Low dissolved oxygen levels associated with elevated nutrients or BOD concentrations can be harmful or fatal to aquatic life.</p>
Actual Harm or Potential Harm to Beneficial Uses for the Discharge Violation	1	<p>A score of 1 (minor) is appropriate because there was no actual harm and low threat of harm to beneficial uses. (Enforcement Policy, p. 12.)</p> <p>Based on the low flow rate of the unauthorized sewage discharge, minor impacts to beneficial uses would be expected, particularly during wet weather, when raw sewage would mix with stormwater runoff from the 1,700-unit development complex. Neither the Discharger nor City of Dublin staff observed impacts to beneficial uses of the receiving water when the sewer lateral misconnections were discovered on February 2 and 9, 2021.</p>
Susceptibility to Cleanup or Abatement	1	<p>A score of 1 is appropriate because the discharge comingled with the receiving waters and was not susceptible to cleanup or abatement. (Enforcement Policy, p. 13.)</p>

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<b>Factor</b>	<b>Selection</b>	<b>Rationale</b>
Deviation from Requirement	Major	The violation is a major Deviation from Requirement because the discharge was not authorized by waste discharge requirements in violation of Water Code section 13376, Clean Water Act section 301, and Basin Plan Prohibition 15. Thus, the requirements were rendered ineffective in their essential function. (Enforcement Policy, p. 14.)
Per-Gallon and Per-Day Factors	0.08	This multiplier is based on the total Potential for Harm score of 4 (i.e., the sum of the above factors: 2+1+1) and the major Deviation from Requirement. (Enforcement Policy, Tables 1 and 2.)
Adjustment for High Volume Discharges	No adjustment	The statutory \$10 per gallon is appropriate.
Adjustment for Multiple Day Violations	54 days	The Enforcement Policy allows an alternate approach to penalty calculation for violations that last more than 30 days if, among other things, the violation occurred without the knowledge or control of the violator, who therefore did not take action to mitigate or eliminate the violation. (Enforcement Policy p. 18).  Although the discharge occurred for 602 days, the Discharger was unaware of the violation until it discovered the first sewer lateral misconnection on February 2, 2021. Thus, the alternative approach for multiple day violations is permissible. "Collapsing days" of violation reduces the days of violation to 54 days for purposes of penalty calculation.
<b>Initial Liability</b>	<b>\$160,800</b>	The initial liability is the per-gallon factor multiplied by the gallons discharged to surface water (minus 1,000 gallons) multiplied by the maximum per-gallon liability (\$10), plus the per-day factor multiplied by the maximum per-day liability (\$10,000) multiplied by the number of days of discharge (as adjusted above): $(0.08 \times 147,000 \text{ gal} \times \$10/\text{gal}) + (0.08 \times \$10,000/\text{day} \times 54 \text{ days})$ .
Culpability	1.2	A score of 1.2 (above neutral) is appropriate because the Discharger failed to properly implement its inspection procedures to identify the misconnected laterals. A reasonable and prudent discharger would have properly overseen the installation of the connections to ensure that raw sewage pipes were not connected to the storm drain system and sewage was not discharged to surface waters.
History of Violations	1.1	A score of 1.1 is appropriate because the Discharger has a history of violations. Within the last five years, the Regional Water Board has imposed administrative civil liabilities of \$3,000 (Order R2-2018-1013), \$12,000 (Order R2-2020-1020), and \$6,000 (Order R2-2021-10019) for effluent limitation violations of NPDES Permit CAG912002.

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<b>Factor</b>	<b>Selection</b>	<b>Rationale</b>
Cleanup and Cooperation	1.0	A score of 1.0 (neutral) is appropriate because, although the discharge was not quickly discovered due to the nature of the error, the Discharger responded in a reasonable and timely manner upon discovery and cooperated with the City of Dublin, Dublin San Ramon Services District, and Regional Water Board staff to properly implement corrective actions.
<b>Total Base Liability</b>	<b>\$212,256</b>	The total base liability is the initial liability times the culpability, history of violations, and cleanup and cooperation factors (\$160,800 x 1.2 x 1.1 x 1.0).
Ability to Pay and Continue in Business	No adjustment	The Discharger is able to pay the proposed administrative civil liability based on publicly available information. In its 2020 annual financial report to stockholders, the Discharger reported annual revenues of \$22.5 billion, with net earnings of \$2.5 billion and homebuilding operating earnings of \$3.0 billion. The proposed liability will not affect the Discharger's ability to continue in business.
Economic Benefit	<i>de minimus</i>	The Discharger did not enjoy any significant economic benefit associated with the violation.
Staff Costs	No adjustment	Staff costs are not included in the final proposed liability.
Minimum and Maximum Liabilities	<i>de minimus</i> to \$7.49 million	According to the Enforcement Policy, the minimum liability is the economic benefit plus ten percent. The maximum liability Water Code section 13385 allows is \$10,000 per day of violation and \$10 per gallon discharged and not cleaned up in excess of 1,000 gallons. Here, the maximum liability is about \$7.49 million based on 602 days of violation and 148,000 gallons discharged. The minimum liability is nominal.
<b>Final Liability</b>	<b>\$212,300 (rounded)</b>	The final liability is the total base liability after adjusting for ability to pay, economic benefit, other factors, and the minimum and maximum liabilities.

## **ATTACHMENT B**

### **Lennar Homes of California, Inc. (Settling Respondent) Project Description for Supplemental Environmental Project (SEP) Fund for the San Francisco Bay Regional Monitoring Program**

#### **1. Project Name**

Characterizing Per- and Polyfluoroalkyl Substances (PFAS) and Chlorinated Paraffins in San Francisco Bay Sediment.

#### **2. Project Amount**

\$106,150

#### **3. Project Lead**

San Francisco Estuary Institute (SFEI)

#### **4. SFEI Contacts**

- Technical: Rebecca Sutton, [rebeccas@sfei.org](mailto:rebeccas@sfei.org), (510) 746-7388
- Financial: Jennifer Hunt, [jhunt@sfei.org](mailto:jhunt@sfei.org), (510) 746-7347

#### **5. Project Description**

The Regional Monitoring Program for Water Quality in San Francisco Bay (RMP) will assess PFAS concentrations in San Francisco Bay sediment samples to improve our understanding of the occurrence and risks associated with PFAS in the Bay. Sediment samples collected throughout the Bay in 2018 and archived for the RMP Status and Trends Program will be analyzed, as well as a subset of samples expected to be collected in 2023 to provide current information. PFAS will be analyzed with targeted methods using tandem liquid chromatography/mass spectrometry and may also include analysis with the total oxidizable precursors assay, which allows characterization of the overall presence of precursors rather than individual PFAS. The results will inform a PFAS management strategy.

A limited number of samples will also be analyzed for short-, medium-, and long-chain chlorinated paraffins (individually and as sums) using a newly available ultra-performance liquid chromatography and tandem mass spectrometry method developed by SGS AXYS, a commercial laboratory and frequent analytical partner. Concentrations in Bay sediment will be compared to available toxicity thresholds to inform placement within the RMP tiered risk-based framework for Contaminants of Emerging Concern, to inform a management strategy and determine whether follow up study is needed to inform a management strategy.

#### **6. SEP Directly Benefits Surface Water Quality**

A SEP must directly benefit groundwater, surface water, or drinking water quality or quantity and the beneficial uses of waters of the State, and it must



fit within one or more designated categories. This SEP directly benefits surface water quality and the beneficial uses of waters of the State, and it fits into the assessment and audit SEP category.

**7. Above and Beyond Settling Respondent's Obligations**

This SEP provides no direct benefit to the Settling Respondent, which has no obligation to provide financial or other support for this project, will receive no direct or indirect benefit from this effort, and will not directly or indirectly exercise any control over the SEP. This SEP is above and beyond what is required in permits or orders issued by the San Francisco Bay Regional Water Quality Control Board (Regional Water Board) or what can be accomplished with required monetary contributions to the RMP.

**8. No Benefit to the Water Board Functions, Members, or Staff**

This SEP provides no direct fiscal benefit to the Regional Water Board's functions, its members, its staff, or family of its members or staff.

**9. Nexus to Nature or Location of Violation**

This SEP has a nexus to the violation because it is located within the immediate geographic area (i.e., in the same watershed and within a 50-mile radius) of where the violation occurred.

**10. Study Milestones and Performance Measures**

Within three years of the effective date of the Stipulated Order approving this study as a SEP, a technical report highlighting the findings of this study will be produced. Data will also be uploaded to the California Environmental Data Exchange Network.

**11. Study Budget and Reports to Water Board**

Pursuant to the October 2015 Supplement to the Memorandum of Understanding (MOU) between SFEI and the Regional Water Board, SFEI is responsible for identifying in each annual work plan and annual budget for the RMP those studies or elements, or portions of a study or element, that are to be funded by SEP funds. SFEI will keep a copy of accounting records of SEP fund contributions and expenditures separately from regular RMP funds. In its annual and quarterly financial reports to the Regional Water Board, SFEI will separately itemize SEP fund contributions and expenditures by each SEP funder. SFEI will provide notice to the Regional Water Board within one month after receiving funds from the Settling Respondent for the SEP, and the notice will state SFEI's agreement to use the funds received as described herein.

**12. Publicity**

Pursuant to the 2015 MOU, SFEI will indicate on its Regional Monitoring Program website, and annual and other reports, that funding for the study is the result of settlement of a "San Francisco Bay Water Board" enforcement action.