

State of California
California Regional Water Quality Control Board
Santa Ana Region

IN THE MATTER OF:)
)
Lennar Homes of California, Inc.)
)
) Settlement Agreement and Stipulations For
) Adoption of Order No. R8-2017-0047
)

This Settlement Agreement and Stipulation for Entry of Order No. R8-2017-0047 (“Settlement Agreement” or “Stipulated Order”) is entered into by and between the Executive Officer of the Santa Ana Regional Water Quality Control Board (“Regional Board”) on behalf of the Prosecution Team (“Prosecution Team”) and Lennar Homes of California, Inc. (“Discharger”)(the Regional Board and the Discharger are collectively referred to as the “Parties”) and is presented to the Regional Board or its delegee, for adoption as an Order by settlement, pursuant to Government Code 11415.60. This Settlement Agreement accepts the stipulations for settlement of administrative civil liability assessed to the Discharger for violations of California Water Code section 13385.

A. RECITALS

1. The Discharger is the Legally Responsible Person for construction activity related to the project located at Fairway Drive from McAllister Parkway to Van Buren Boulevard (8 33C373425) in the city of Riverside. The project includes the construction of Fairway Drive public roadway. Construction activities include landscaping, street and utility development, and construction of slopes. The total project area covers approximately 17.84 acres. A Notice of Intent to comply with the terms and conditions of State Water Resources Control Board (State Board) Order No. 2009-0009-DWQ, NPDES Permit No. CAS000002, General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit) was submitted by the Discharger to the Regional Board on July 13, 2015.
2. Both Sections V.A.2. of the General Permit and A.1.b. of Attachment C to the General Permit require the Discharger to minimize or prevent pollutants in storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. Section F of Attachment C requires the Discharger to effectively manage all run-on, all runoff within the site and all runoff that

discharges off the site. Section B.1.c of Attachment C requires the Discharger to store chemicals in water-tight containers with secondary containment or in a completely enclosed storage. Section B. 2. D of Attachment C requires the discharger to cover waste disposal containers at the end of every business day and during a rain event. Section B.2.f of Attachment C requires the Discharger to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used. Section E.1 of Attachment C requires the Discharger to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the site. Section G. 3 of Attachment C requires the Discharger to begin implementing repairs or design changes to BMPs within 72 hours of identification and complete the changes as soon as possible.

3. As shown in Attachment A, incorporated herein by reference, the Regional Board alleges that the Discharger violated the General Permit by (1) discharging and failing to minimize pollutants in storm water runoff using sediment or perimeter controls; (2) failing to establish erosion, sediment, or perimeter controls for storm water run-on; (3) failing to store waste oil in water tight containers with secondary containment and to cover same waste oil containers during a rain event; (4) failing to contain stockpiled waste material from wind and rain; and (5) failing to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site.
4. Regional Board staff conducted an inspection at the Discharger's construction site on November 21, 2016. Violations of the General Permit were observed and documented. Due to the violations observed, a follow up inspection was performed and additional photos were taken on November 28, 2016.
5. Water Code section 13385(a)(2) provides that any person who violates the General Permit may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs. Water Code section 13385(a)(5) provides that any person who violates Section 301 of the federal Clean Water Act may be subject to administrative civil liability of up to \$10,000 for each day the violation occurs.
6. The State Water Board adopted Resolution No. 2009-0083, thereby adopting the Water Quality Enforcement Policy (Enforcement Policy), which became effective May 20, 2010. The Enforcement Policy establishes a methodology for assessing administrative civil liability that address factors that are required to be considered when imposing a civil liability as outlined in Water Code section 13385, subdivision, and section 13327 that is less than the maximum civil liability allowed in section 13385 subdivision (c).

7. The Parties have engaged in settlement negotiations and agree to fully settle the matter without administrative or civil litigation and by presenting this Stipulated Order to the Regional Board or its delegee for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The liability imposed by this Order was reached using the Water Quality Enforcement Policy, as described in Attachment A. The Prosecution Staff believes 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 specific violations alleged in Attachment A, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.

B. STIPULATIONS

1. **Jurisdiction:** The Parties agree that the Regional Board has subject matter jurisdiction over the violation described herein and personal jurisdiction over the Parties to this Settlement Agreement.
2. **Administrative Civil Liability:** Within 30 days of adoption of this Stipulated Order, the Discharger shall remit **fifty eight thousand seven hundred and sixteen dollars (\$58,716)** in the form of a check made payable to the *State Water Resources Control Board Cleanup and Abatement Account*. The check shall indicate Order No. R8-2017-0047 and shall be sent to the following address:

State Water Resources Control Board
Division of Administrative Services, ATTN: ACL Payment
P.O. Box 1888
Sacramento, California 95812-1888

A copy of the check shall also be transmitted electronically to the following e-mail address:

Adam Fischer
Adam.Fischer@waterboards.ca.gov

3. **Scope of Order:** Upon adoption by the Regional Board, or its delegee, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in this Order or which could have been asserted based on the specific facts alleged in this Stipulated Order against Discharger as of the effective date of this Stipulated Order. The provisions of this Paragraph are expressly conditioned on Discharger's full payment of the administrative civil liability by the deadline specified in Stipulation 2.
4. **Waiver of Hearing:** The Discharger has been informed of the rights provided by Water Code section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Board prior to the adoption of the Order.

5. **Denial of Liability:** Neither this Settlement Agreement (including all Attachments), nor any payment made pursuant to the Stipulated Order, shall constitute evidence of, or be construed as, a finding, adjudication, or acknowledgement of any fact, law, or liability, nor shall it be construed as an admission of violation of any law, rule, or regulation, by the Discharger. However, this Stipulated Order and/or any actions of payment pursuant to the Order may constitute evidence in actions seeking compliance with this Order. This Order may be used as evidence of a prior enforcement action in future unrelated enforcement actions by the Regional Board against the Discharger.
6. **Release and Covenant not to Sue the Discharger:** Upon the full payment of the fifty eight thousand seven hundred and sixteen dollars (\$58,716) as required in Stipulation 2, the Regional Board shall and does release, discharge, and covenant not to sue the Discharger and Lennar Corporation, including Discharger and Lennar Corporation's officers, elected board members, agents, directors, employees, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or cause of action, including for civil penalties or administrative oversight costs, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
7. **Release and Covenant not to Sue Regional Board:** Upon the effective date of this Order, the Discharger shall and does release, discharge, and covenant not to sue or pursue any civil or administrative claims against the Regional Board, including its officers, board members, agents, directors, employees, contractors, subcontractors, attorneys, representatives, predecessors-in-interest, and successors and assigns for any and all claims or causes of action, of every kind and nature whatsoever, in law and equity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, which arise out of or are related to this action.
8. **Public Notice:** The Parties agree that the Settlement Agreement, as signed by the Parties, will be noticed for a 30-day public comment period prior to being presented to the Regional Board, or its delegee, for adoption in the Order. In the event objections are raised during the public review and comment period, the Regional Board, or its delegee, may, under certain circumstances, require a public hearing regarding the Settlement Agreement. In that event, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the proposed Settlement Agreement. Except in such an event, the Discharger agrees that it will not rescind or otherwise withdraw its approval of this Settlement Agreement prior to its adoption in the Order.
9. **Procedure:** The Parties agree that the procedure that has been adopted for the approval of the settlement by the Parties and review by the public, as reflected in this Settlement Agreement, will be adequate. In the event procedural objections are raised prior to the effective date of the Order, the Parties agree to meet and confer concerning any such objections, and may mutually agree to revise or adjust the procedure as necessary or advisable under the circumstances. However, agreement to such revisions or adjustments shall not require Discharger to pay any amount in excess of that set forth in this Settlement Agreement.

10. **Order not Adopted/Vacated:** In the event that this Order does not take effect because it is not adopted by the Regional Board or its delegee, or is vacated in whole or in part by the State Board or a court, the Discharger acknowledges that the Prosecution Team may proceed to a contested evidentiary hearing before the Regional Board to determine whether to assess administrative civil liability for the underlying alleged violations, or may continue to pursue settlement. In the event of the Order being vacated by the State Board or a court, unless waived by the Discharger in writing, the Regional Board shall refund to the Discharger, within thirty (30) days of the effective date of such vacation, the fifty eight thousand seven hundred and sixteen dollars (\$58,716), provided that the Discharger had paid the amount as per this Settlement Agreement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions, including this Settlement Agreement and all Attachments, will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing. The Parties also agree to waive the following objections related to their efforts to settle this matter:
- a. Objections related to prejudice or bias of any of the Regional Board members or their advisors and any other objections to the extent that they are premised in whole or in part on the fact that the Regional Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions, and therefore may have formed impressions or conclusions, prior to conducting any contested evidentiary hearing in this matter, except that Discharger may object to members of the Prosecution Team serving as advisors to the Regional Board in any such subsequent administrative or judicial proceeding or hearing; or
 - b. Laches or delay or other equitable defenses based on the time period that the order or decision by settlement may be subject to administrative or judicial review.
11. **Appeals:** Upon adoption of this Order, the Discharger waives their right to appeal this Order to the State Board, a California Superior Court and/or any California appellate level court. Nothing in this Settlement Agreement, however, shall be construed to prevent the Discharger from participating as parties or interveners in any appeal of this Order brought by a third party before any California court of law or the State Board.
12. **Effect of Stipulated Order:** Except as expressly provided in this Settlement Agreement, nothing in the Order is intended nor shall it be construed to preclude the Prosecution Team or any state agency, department, board or entity or any local agency from exercising its authority under any law, statute, or regulation.
13. **Water Boards not Liable:** Neither the Regional Board members nor the Regional Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from the negligent or intentional acts or omissions by the Discharger or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement, nor shall the Regional Board, its members, or staff be

held as parties to or guarantors of any contract entered into by Discharger, or their respective directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Settlement Agreement.

14. **No Waiver of Right to Enforce:** The failure of the Prosecution Team or Regional Board to enforce any provision of this Settlement Agreement shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Agreement. The failure of the Prosecution Team or Regional Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Agreement. No oral advice, guidance, suggestions or comments by employees or officials of any Party regarding matters covered under this Agreement shall be construed to relieve any Party regarding matters covered in this Agreement. This Agreement relates only to the subjective matter hereof, including administrative civil liability for the violations listed in Attachment A. The Regional Board reserves all rights to take additional enforcement actions, including without limitation the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Settlement Agreement.
15. **Regulatory Changes:** Nothing in this Settlement Agreement shall excuse Discharger from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.
16. **Third Party Claims.** Nothing in this Settlement Agreement shall be deemed to create any rights in favor of, or to inure to the benefit of, any third party or parties, or to waive or release any defense or limitation against third party claims.
17. **Authority to Enter Stipulated Order:** Each person executing this Settlement Agreement in a representative capacity represents and warrants that he or she is authorized to execute this Settlement Agreement on behalf of and to bind the entity on whose behalf he or she executes the Settlement Agreement.
18. **Integration:** This Settlement Agreement constitutes the entire agreement between the Parties and may not be amended or supplemented except as provided for in this Settlement Agreement.
19. **Modification:** Neither this Settlement Agreement nor the proposed Order shall be modified by any of the Parties by oral representation whether made before or after the execution of this Order. All modifications must be made in writing and approved by Discharger and the Regional Board or its delegee.
20. **Interpretation:** This Settlement Agreement shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared it and any uncertainty and ambiguity shall not be interpreted against any one party.
21. **Effective Date:** The effective date of the Order shall be the date on which it is adopted by the Regional Board or its delegee.
22. **Disputes:** In the event of a dispute, the Discharger, as appropriate, shall file a "Notice of Dispute" with the Executive Officer or the Executive Officer's Designee within ten (10) days of discovery of the problem. The Regional Board and

Discharger shall then attempt to negotiate a resolution of such claim and, if appropriate, process an amendment to implement the terms of any such resolution. If the Regional Board and the Discharger are unable to resolve the dispute, the decision of the Executive Officer or the Executive Officer Designee shall be final, unless appealed to a court of competent jurisdiction.

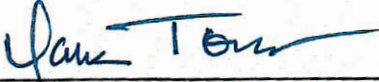
23. **Counterpart Signatures:** This Settlement Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.
24. **Incorporated Attachments:** Attachment A is incorporated by reference and is made fully a part of this Settlement Agreement as though set forth herein.

IT IS SO STIPULATED¹:



Hope Smythe, Executive Officer
Santa Ana Regional Water Quality Control Board
Prosecution Team

10/2/17
Date



Mark Torres
Division President
Lennar Homes of California, Inc.

9/29/17
Date

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¹ The final version of this document may include more than one page with the same page number to accommodate the various executing signatures.

ORDER No. R8-2017-0047


HAVING CONSIDERED THE PARTIES' STIPULATIONS, AS SET FORTH IN THE ATTACHED SETTLEMENT AGREEMENT, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD, FINDS THAT:

1. In adopting this Order, the Santa Ana Regional Water Quality Control Board or its Delegee has assessed a penalty in accordance with Water Code section 13385(c) and the Enforcement Policy.

2. The Settlement Agreement resolves an action brought to enforce the laws and regulations administered by the Santa Ana Regional Water Quality Control Board. The Santa Ana Regional Water Quality Control Board, acting through its Executive Officer, finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code section 21000 et seq.), in accordance with sections 15061(b)(3) and 15321(a)(2), of Title 14 of the California Code of Regulations.

PURSUANT TO SECTION 13385 OF THE CALIFORNIA WATER CODE AND SECTION 11415.60 OF THE CALIFORNIA GOVERNMENT CODE, THE SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD **HEREBY ADOPTS THIS ORDER.**

I, Hope Smythe, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order adopted by the California Regional Water Quality Control Board, Santa Ana Region on November 3, 2017.



Hope Smythe, Executive Officer
Santa Ana Regional Water Quality Control Board

11/3/17
Date

ATTACHMENT A
to
Administrative Civil Liability Complaint No. R8-2017-0009
Specific Factors Considered for Civil Liability
Lennar Homes of California, Inc.

This document provides details to support the proposed Administrative Civil Liability Complaint No. R8-2017-0009 (Complaint) against Lennar Homes of California, Inc. (Discharger) in response to alleged violations of State Water Resources Control Board (State Board) Order No. 2009-0009-DWQ, NPDES Permit No. CAS000002, General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (General Permit).

The alleged violations stem from inspections of the Discharger's construction site located on Fairway Drive from McAllister Parkway to Van Buren Boulevard (8 33C373425). On November 21, 2016, Regional Board staff inspected and took photos of the Discharger's construction site. Weather conditions at the time were partly cloudy and a rain event occurred the night before the inspection (November 20, 2016) and the morning of the inspection day. Due to the violations observed, a follow up inspection was performed and additional photos were taken on November 28, 2016. Weather conditions were partly cloudy and a rain event occurred two nights before the inspection (November 26, 2016).

Each factor of the State Water Board's *Water Quality Enforcement Policy*¹ (Enforcement Policy), its corresponding score for the discharge violation, and the score for the four non-discharge violations alleged in the Complaint are presented below:

Violations 1 through 5:

- (1) Discharger's unauthorized discharge and failure to minimize pollutants in storm water runoff using sediment or perimeter controls;**
- (2) Discharger's failure to establish erosion, sediment, or perimeter controls for storm water run-on;**
- (3) Discharger's failure to store waste oil in water tight containers with secondary containment and to cover same waste oil containers during a rain event;**
- (4) Discharger's failure to contain stockpiled waste material from wind and rain; and**
- (5) Discharger's failure to establish and maintain effective perimeter controls and stabilize all construction entrances and exits to sufficiently control erosion and sediment discharges from the site**

Step 1 - Potential for Harm for Discharge Violation 1

¹ http://waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

The potential for harm for discharge violations is determined by calculating three factors: the potential for harm to beneficial uses, the degree of toxicity of the discharge, and the discharge's susceptibility to cleanup or abatement. The sum of these factors determines the final score for the potential for harm for discharge violations. Steps 1 and 2 are not applicable to Violations 2 through 5 because they are not discharge violations.

Potential for harm:

The Discharger is alleged to have failed to minimize or prevent pollutants in storm water discharges and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve Best Available Technology (BAT) for toxic and non-conventional pollutants and Best Conventional Technology (BCT) for conventional pollutants. Erosion, sediment, or perimeter control BMPs must be implemented to minimize or prevent sediment or pollutant runoff and achieve these standards.

Regional board staff alleges that this violation occurred both on November 21, 2016 and November 28, 2016, as discussed above. Photos taken during the inspections, provide evidence that storm water runoff flowed directly to a natural drainage channel without required erosion, sediment or perimeter controls. Both discharges occurred near the southern terminus of the project site. At this location, rilling in the slope indicates that the discharge was towards a natural drainage channel located within the Citrus Heights development. The runoff was produced by two separate storm events that preceded each of the inspections by Regional Board staff. The natural drainage channel has been delineated and found to be waters of the U.S. according to the Discharger's application for Clean Water Act Section 401 Water Quality Standards Certification submitted for the Citrus Heights development.

The receiving water is an ephemeral riparian drainage at the bottom of a canyon with the natural potential to produce sediment-laden runoff. Drainages in this environment are generally not sensitive to sediment-laden runoff. The antecedent moisture conditions were low meaning that much of the precipitation was infiltrated into the relatively dry soil. The volume of runoff at the discharge location was also likely low. The erosion caused by the flow from the project site resulted in shallow rills down a slope to the natural drainage and the volume of sediment in the discharge was likely substantially less than one yard.

The potential harm to beneficial uses from this violation is minor and assigned a score of 2 on the scale of 0 to 5.

Physical, Chemical, Biological, or Thermal Characteristics:

The runoff from the construction site may have contained sediment, cementitious wastes, trash and debris, and other potential pollutants. The quantities of these pollutants were likely low but could have been significantly less if the discharger had employed the

requisite BMPs. The characteristics of the discharged material are relatively benign or are not likely to harm potential receptors on the Fairway Drive site. Therefore, the risk of toxicity of the discharge is minor and is assigned a score of 1 on a scale of 0 to 4.

Susceptibility to Cleanup or Abatement:

The Discharger did not undertake any known cleanup activities to address the discharge of storm water runoff. Pollutants discharged into the riparian drainage at the south terminus would have been difficult to cleanup. Therefore, a score of 1 is assigned because less than 50% of the discharge was susceptible to cleanup.

Final Score:

The final potential for harm score was determined by adding up all three factors. The final score is 4.

Step 2 – Per Day Assessments for Discharge Violations

Because the per gallon assessment of the discharges is unknown, liability is proposed to be assessed on a daily basis, as shown below:

Deviation from Requirement:

Both Sections V.A.2. of the General Permit and A.1.b. of Attachment C to the General Permit require the Discharger to minimize or prevent pollutants in storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants. At the southern terminus of the road project, staff observed evidence of storm water runoff directly leading to a natural drainage channel without the benefit of any BMP controls. During the follow up inspection a week later, there was no improvement in the implementation of the BMPs. The implementation and maintenance of standard BMPs at this location was non-existent through two inspections. Therefore, the deviation from this requirement is moderate.

Per Day Factor:

Table 2 on page 15 of the Enforcement Policy describes the “per day factor” for discharge violations. Based on the final score of 4 from the Potential for Harm factor and a moderate deviation, the per day factor is 0.016.

Days of Violation:

For Violation 1, the number of days violation is 2. Evidence of runoff was discovered on both November 21st and November 28th inspection days. Evidence of runoff found on the

first inspection was subject to the rain events from the previous night (November 20, 2016) and the morning the day of the inspection (November 21, 2016). Runoff found during the second inspection on November 28th was subject to a rain event that occurred the two days prior to the inspection day on November 26, 2016.

Step 3 – Per Day Factor for Non-Discharge Violations 2 through 5

Step 3 of the Enforcement Policy's penalty calculation methodology directs the Regional Board to calculate a per day factor for non-discharge Violations 2 through 5 by considering the Potential for Harm and the Extent of Deviation from the applicable requirements. This step does not apply to Violation 1 because it is a discharge violation.

Potential for Harm:

The Enforcement Policy requires a determination of whether the characteristics of the violation resulted in a minor, moderate, or major potential for harm or threat to beneficial uses. Runoff from the construction site flowed offsite through several storm drains that all eventually lead to the Arlington Channel. Runoff from the south end of site near McAllister Parkway leads to a natural drainage that has been delineated as waters of the U.S. The natural drainage also flows to the Arlington Channel through a series of storm drains. The Arlington Channel joins the Temescal Wash, Reach 1a which flows to the Santa Ana River by way of the Prado Basin Management Zone. Pollutants in storm water runoff from the site have the potential to harm the beneficial uses applicable to the Santa Ana River, Reach 3; Temescal Wash, Reach 1a; and the on-site delineated drainage channel. Beneficial uses of the Santa Ana River, Reach 3 include Agriculture Supply, Groundwater Recharge, Water Contact and Non-Contact Water Recreation, Warm Freshwater Habitat, Wildlife Habitat, Rare, Threatened, or Endangered Species and Spawning, Reproduction and Development. Beneficial uses of Temescal Wash, Reach 1a include Non-Contact Water Recreation, Warm Freshwater Habitat and Wildlife Habitat. Although there are no specifically listed Beneficial Uses for the Arlington Drain or the onsite delineated drainage channel in the Basin Plan upstream from Temescal Wash, the beneficial uses are treated as having the same beneficial uses as Temescal Wash and the Santa Ana River via the "tributary rule."

Violation 2: The Discharger is alleged to have failed to manage all run-on within the site.

During the November 21, 2016 site inspection, Board staff observed that run-on to the northern terminus of the project site from Van Buren Boulevard had ran across a road base layer adjacent to a ribbon gutter. The road base was not protected by diversions, erosion controls, sediment controls or perimeter controls. This resulted in the run-on causing erosion in the base layer. Along Fairway Drive, there are several points where run-on was also not well managed. Run-on came onto the site running across bare, unprotected soil. Run-on then entered the project's new drainage facilities, comprised of interceptor v-ditches and culverts. After leaving the project's drainage facilities, there were multiple locations where no downstream sediment or perimeter controls were in

place to capture sediment before the flow left the site. The storm events preceding Regional Board's inspections did not produce evidence of significant erosion at these locations leading to surface waters. The surrounding topography is gently sloping and the land is undeveloped with good vegetative cover. These conditions would attenuate sediment loads in runoff prior to entering waters of the U.S. The potential for harm from this violation is minor.

Violation 3: The Discharger is alleged to have failed to store containers with secondary containment or in a storage shed and failed to cover waste containers during a rain event.

On the November 21, 2016 inspection, regional board staff found storm water collected in open waste containers containing oil or an oily residue. Blue drums and polymer containers which appeared to be empty at the time of the inspection had no secondary containment. A pan containing oily water from the November 20, 2016 storm event was cracked on one side, increasing the potential to discharge. With the exception of the pan, the containers seemed to appear undamaged and had freeboard.

The wastewater in the containers was likely less than 10 gallons in total and the containers were stored on gently sloping terrain well away from waters of the U.S. No waters of the U.S. are documented in the vicinity of the containers. The potential harm to beneficial uses is minor.

Violation 4: The Discharger is alleged to have failed to contain stockpiled waste material of wood, plastic, and paper from wind and rain.

During the November 21, 2016 inspection, a trash stockpile was found at the site that included wood, paper, and plastic debris. No waste container was used. The stockpile was not contained by a cover or any perimeter controls. Paper and plastic can be scattered by wind and rain and can easily disperse from the site from storm water runoff. Over time, plastic is known to degrade into smaller pieces and adsorb other pollutants, such as pesticides, to its surface. These smaller pieces may be ingested by wildlife lower on the food chain, creating a pathway for the adsorbed pollutants to bio-accumulate in wildlife and humans. However, the relative potential contribution of the project site to the overall pollutant load is small and the pollutants do not pose an unusual hazard. The potential impact to beneficial uses is minor.

Violation 5: The Discharger is alleged to have failed to establish and maintain effective perimeter controls.

In numerous locations, Regional Board staff observed on November 21, 2016 and November 28, 2016 that perimeter controls were absent or contained gaps. Perimeter controls are generally the last line of defense in preventing the mobilization of pollutants during the rain event. The surrounding topography is gently sloping and the land is undeveloped with good vegetative cover. These conditions would attenuate sediment

loads in runoff prior to entering waters of the U.S. The potential for harm for this violation is minor.

Deviation from Requirement:

To assess the factor used to calculate the per day assessments for non-discharge violations, in addition to the potential for harm, the deviation from the requirements for each violation must be categorized as either minor, moderate or major. The Enforcement Policy defines each category.

Violation 2: Section F of Attachment C requires the Discharger to effectively manage all run-on, all runoff within the site and all runoff that discharges off the site. Regional Board staff found evidence of erosion in base material along Van Buren Boulevard's gutter that was mobilized by run-on to the project site. Few controls were attempted to divert storm water run-on through or around the project site to prevent erosion. Upon entering the site, the run-on was not subjected to erosion, sediment, or perimeter controls. There were multiple other locations along the road project site where run-on was not either diverted away from disturbed area or subjected to erosion, sediment, or perimeter controls. The effectiveness of the requirement was partially compromised and, therefore, the deviation from the requirement is moderate.

Violation 3: Section B.1.c of Attachment C requires the Discharger to store chemicals in water-tight containers with secondary containment or in a completely enclosed storage. Section B. 2. D of Attachment C requires the discharger to cover waste disposal containers at the end of every business day and during a rain event. Open waste containers containing collected storm water were improperly stored without shelter or secondary containment. In another area, a pan containing oily storm water was cracked on one side making it more susceptible for spillage. These waste containers should have never been allowed to remain open, particularly to collect storm water and consequently increase the waste volume, or stored in a manner where they were vulnerable to upset. The total volume of the wastewater was likely less than 10 gallons. The way the waste was stored only partly met the intention of the requirement, and, therefore, the deviation from the requirement is moderate.

Violation 4: Section B.2.f of Attachment C requires the Discharger to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used. Regional Board staff found a stockpile of loose wood, paper, and plastic improperly contained. Plastic and paper may be subject to dispersion. No effort was made to protect this stockpile. However, the majority of the material in the stockpile was heavy and not subject to dispersion. There is no indication that the lighter material had dispersed. Therefore, the deviation from the requirement is moderate.

Violation 5: Section E.1 of Attachment C requires the Discharger to establish and maintain effective perimeter controls to sufficiently control erosion and sediment discharges from the site. In multiple locations, perimeter controls were absent. The failure to implement

complete perimeter controls partially compromised the intended effectiveness of the legal requirement and, therefore, the deviation from the requirement is moderate.

Per Day Factor:

Applying a Potential for Harm of minor and an Extent of Deviation of moderate results in a factor of 0.25 for Violations 2, 3, 4, and 5 (Table 3, pg. 16 of the Enforcement Policy.)

Days of Violation:

Though it is possible that uncontained wastewater and trash exceeded the number of days past the first inspection on November 21, 2016, the following observations were addressed by the follow up inspection on November 28, 2016. For Violations 3 and 4, the number of days of violation is 1.

For Violations 2 and 5, the number of violation days is 7. Rain events occurred two days preceding the follow up inspection on November 28th and evidence of runoff was observed. Additionally, perimeter controls were not established or repaired during this period.

Violations 1 through 5 - Initial Liability Amount

The initial liability amounts for the discharge and non-discharge violations calculated on a per-day basis are as follows:

Violation 1: $2 \text{ days} \times \$10,000 \times 0.016 = \320.00

Violation 2: $7 \text{ days} \times \$10,000 \times 0.25 = \$17,500.00$

Violation 3: $1 \text{ day} \times \$10,000 \times 0.25 = \$2,500.00$

Violation 4: $1 \text{ day} \times \$10,000 \times 0.25 = \$2,500.00$

Violation 5: $7 \text{ days} \times \$10,000 \times 0.25 = \$17,500.00$

Total Initial Liability = \$40,320

Step 4 – Adjustment Factors

There are three additional factors to be considered for modification of the amount of initial liability: the violator's culpability, efforts to clean up or cooperate with the regulatory authority, and the violator's compliance history.

Culpability:

For culpability, the Enforcement Policy suggests an adjustment resulting in a multiplier between 0.5 to 1.5, with the lower multiplier for accidental incidents, and the higher multiplier for intentional or negligent behavior. The General Permit BMP requirements were only partly adhered to as observed by Regional Board staff during the inspections. The implementation of the BMPs was rendered ineffective due to lack of maintenance and incomplete implementation. The absence of required BMPs for pollutant discharges, chemical storage, exposed wastes, and perimeter controls falls below the due standard of care. Most of these instances were repeatedly observed on November 21, 2016 and on the follow up inspection on November 28, 2016. Most conditions had not been improved or changed on the follow up inspection reflecting behavior that falls far below the due standard of care.

Furthermore, the site has two Qualified SWPPP Developers, three Qualified SWPPP Practitioners, an authorized BMP inspector, a Site Superintendent, and two Erosion and Sediment Control Providers. The BMP Inspector and Erosion and Sediment Control Provider perform their responsibilities under the supervision of the QSP. The duties of specified staff are to monitor and prevent Violations 1 through 5 from occurring. The lack of utilizing such qualified and available staff reflects on Lennar Home's culpability.

As of now, Lennar Homes of California Inc. has 33 active construction projects in the Santa Ana Region. Given Lennar Home's extensive construction experience, they should be familiar with the Permit requirements.

Therefore, a factor of 1.3 is appropriate for Violations 1 through 5.

Cleanup and Cooperation:

This factor reflects the extent to which a discharger voluntarily cooperated in returning to compliance and correcting environmental damage. A multiplier between 0.75 and 1.5 is to be used, with a higher multiplier when there is a lack of cooperation. The Discharger was given a multiplier value of 1 for Violations 1 through 5 because the discharger initiated corrections by the time of the second inspection day (November 28, 2016). For violations 3 and 4, the uncontained wastewater and trash appeared to have been removed shortly after the initial inspection.

History of Violations:

The Discharger does not have a history of violations that have been formally adjudicated. Therefore a factor of 1.0 is applied.

Step 5 - Determination of Total Base Liability Amount

The Total Base Liability for Violations 1 through 5 is determined by applying the adjustment factors from Step 4 to the Total Initial Liability Amount determined in Step 3.

Violations 1 through 5 - Total Base Liability Amount

Total Initial Liability x Culpability Multiplier x Cleanup and Cooperation Multiplier x
History of Violations Multiplier = Total Base Liability

Violation 1: $\$320 \times 1.3 \times 1 \times 1 = \416.00

Violation 2: $\$17,500 \times 1.3 \times 1 \times 1 = \$22,750.00$

Violation 3: $\$2,500 \times 1.3 \times 1 \times 1 = \$3,250.00$

Violation 4: $\$2,500 \times 1.3 \times 1 \times 1 = \$3,250.00$

Violation 5: $\$17,500 \times 1.3 \times 1 \times 1 = \$22,750.00$

Total Base Liability = **\$52,416**

Step 6 – Ability to Pay and Ability to Continue in Business

According to Lennar's 2015 Annual Report, the gross profit on land sales were \$30.1 million at the end of 2015 and \$41.7 million by the end of 2014. Selling, general and administrative expenses were \$831.1 million by the end of 2015 and \$714.8 million by the end of 2014. The net income totaled \$81.6 million in 2015 and \$7.5 million by 2014 (2015 Annual Report, pg 33). The Discharger has the ability to pay the penalty and stay in business.

Step 7 – Other Factors as Justice May Require

It is appropriate to increase the Total Base Liability amount by \$6,300 in consideration of investigation and enforcement costs incurred in prosecuting this matter. Increasing the Total Base Liability amount in this manner serves to create a more appropriate deterrent against future violations.

Step 8 – Economic Benefit

Estimated Economic Benefit: \$79

Pursuant to Water Code section 13385(e), civil liability, at a minimum, must be assessed at a level that recovers the economic benefit, if any, derived from the acts that constitute a violation. The violations of the General Permit were due to the failure to adequately oversee and implement appropriate erosion, sediment, and waste management control best management practices (BMPs). The discharger incurred an economic benefit by not conducting adequate inspections and addressing deficiencies in BMPs leading up to, and following the storm event on November 21, 2016.

The first inspection was conducted on November 21, 2016, during which BMP deficiencies were identified. On the November 28, 2016 follow up inspection, only a few improvements were made. However, the BMP deficiencies from the first inspection were observed in the second in similar or worse conditions.

Cost estimate and assumptions were determined based on BMP type and the amount of BMPs needed for BMP deficient areas. The estimated economic benefit was calculated based on delayed compliance. Compliance is assumed to be fully achieved as of December 14, 2016.

Step 9 – Maximum and Minimum Liability Amounts

Minimum Liability Amount: \$86.90

Maximum Liability Amount: \$180,000

The Enforcement Policy states (p. 21) that the total liability shall be at least 10% higher than the economic benefit, “so that liabilities are not construed as the cost of doing business and the assessed liability provides meaningful deterrent to future violations.” Therefore, the minimum total liability associated with the economic benefit is approximately \$86.90.

Maximum liability is determined by \$10,000 per day per violation.

Violations 1 through 5 - Maximum Liability Amount

Violation 1: 2 days

Violation 2: 7 days

Violation 3: 1 day

Violation 4: 1 day

Violation 5: 7 days

Maximum Liability Amount: $\$10,000 \times (2 + 7 + 1 + 1 + 7) = \$180,000$

Maximum Liability Amount = **\$180,000**

Step 10 – Final Proposed Liability Amount

Final Proposed Liability Amount: **\$58,716.00**