

**STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**CLEANUP AND ABATEMENT ORDER NO. R9-2022-0066
FOR
ALDI, INC., BOGART CONSTRUCTION, INC. AND THE JAMAL HABIB TRUST
ASSESSOR PARCEL NOS. 282-130-4500 AND 282-130-4600
SAN DIEGO COUNTY**

This Order is issued to ALDI, Inc., Bogart Construction, Inc. and The Jamal Habib Trust (together Dischargers) based upon Water Code section 13304, authorizing the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) to issue an order requiring the cleanup and abatement of wastes, and Water Code section 13267 authorizing the San Diego Water Board to require the preparation and submittal of technical and monitoring reports (Order).

The Executive Officer finds the following regarding the Dischargers' acts or failures to act:

Purpose of the Order

1. This Order requires the Dischargers to cleanup and abate waste discharged to vernal pools on San Diego County Assessor Parcel Numbers (APNs) 282-130-4500¹ and 282-130-4600² (Habib Properties or Habib Site), Ramona, County of San Diego. Waste was discharged to vernal pools, which are waters of the State, during construction activity at the property adjacent to the Habib Site, APN 281-171-0400^{3,4} (ALDI Site), on or about 2021. The discharge was not authorized by any federal, state, or local agencies, including the San Diego Water Board. This Order requires investigation and cleanup in compliance with the Water Code, the Water Quality Control Plan for the San Diego Basin (Basin Plan),⁵ State Water Resources Control Board (State Water Board) Resolution No. 92-49,⁶ and other applicable State and Regional Water Board plans, policies, and regulations.

¹ See Exhibit 1, APN 282-130-4500 Property Report.

² See Exhibit 2, APN 282-130-4600 Property Report.

³ See Exhibit 3, APN 281-171-0400 Property Report.

⁴ See Exhibit 4, Ramona APNs Aerial.

⁵ The Basin Plan can be found at

https://www.waterboards.ca.gov/sandiego/water_issues/programs/basin_plan/

⁶ The resolution can be found at

https://www.waterboards.ca.gov/water_issues/programs/site_cleanup_program/resolution_92_49.html

Site Location and Description

2. The Habib Site is in the San Dieguito Hydrologic Unit, Santa Maria Hydrologic Area, Ramona Hydrologic Sub-Area (905.41). There are two utility easements on the Habib Site.⁷ One easement is labeled “Ramona Street” or “N. Ramona Street.” The second easement is labeled “Paseo Court” or “Vermont Street.”
3. Vernal pools, which are waters of the State,^{8,9} and cysts of the federally listed endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*) exist on the Habib Site and the Habib Site supports San Diego fairy shrimp.^{10,11,12} Exhibits 6, 22 and 23 are vernal pool surveys conducted by Ecological Restoration Service. Exhibits 22 and 23 show portions of the Habib Properties and provide additional relevant information. The entire Habib Site is located within designated critical habitat for the San Diego fairy shrimp (Unit 3, Subunit E.3).^{13,14} The San Diego fairy shrimp is a small aquatic crustacean generally restricted to vernal pools in coastal southern California and northwestern Baja California, Mexico.¹⁵
4. The adjacent ALDI Site is owned by Main 16, LP and was developed by ALDI, Inc.^{16,17}

Dischargers

5. The Dischargers must comply with this Order based on the following.

⁷ See Exhibit 5, Parcel Map No. 1306.

⁸ See Exhibit 28, State Water Board State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State at Lines 39 through 42.

⁹ See Exhibit 29, State Water Board Staff Report, including the Substitute Environmental Documentation to State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, adopted April 2, 2019, and revised April 6, 2021, at PDF page 76 of 253.

¹⁰ See Exhibit 6, October 16, 2006, Vernal Pool Survey Habib Properties.

¹¹ See Exhibit 22, June 7, 2006, Vernal Pool Survey ALDI Property.

¹² See Exhibit 23, April 20, 2011, Vernal Pool Survey ALDI Property.

¹³ See Exhibit 7, Main 16, LP USFWS Take Permit with HCP, See Figure 6, San Diego Fairy Shrimp Critical Habitat Map at PDF page 41 of 42.

¹⁴ See Exhibit 27, 50 CFR Part 17, Federal Register Vol. 72, No. 238, Wednesday, December 12, 2007, Rules and Regulations, see Map 5 at page 70700. See also page 70671, top of 2nd column for a description of the subunit.

¹⁵ See Exhibit 8, USFWS Species Profile.

¹⁶ See Exhibit 12, WestLaw Real Property Transaction Record APN 281-171-0400.

¹⁷ See Exhibit 13, ALDI SWPPP.

- a. ALDI, Inc. and Bogart Construction, Inc. conducted both authorized and unauthorized discharges to vernal pools. ALDI, Inc. and Bogart Construction, Inc. conducted construction activity and directed construction activity that resulted in the permitted taking of vernal pools on the ALDI Site.^{18,19,20} Although ALDI, Inc. and Bogart Construction, Inc.'s construction activity and direction of construction activity on the ALDI Site was permitted, ALDI, Inc. and Bogart Construction, Inc. conducted construction activity and directed construction activity that occurred outside of the permitted activities on the ALDI Site. These activities took place on the Habib Site and resulted in the discharge of waste into vernal pools and disturbed vernal pools on the Habib Site on or about 2021 without authorization. ALDI, Inc. and Bogart Construction, Inc. did not file a Report of Waste Discharge with the San Diego Water Board, or otherwise obtain permits from the San Diego Water Board, or U.S. Fish and Wildlife Service.²¹ A person that unlawfully discharges wastes to waters of the State may be required to cleanup and abate those wastes pursuant to Water Code section 13304.
 - b. The Jamal Habib Trust owns the Habib Site that contains vernal pools that were discharged into and disturbed on or about 2021.²² As the owner at the time of the discharge, including the time period when San Diego Water Board staff inspected the Habib Site, the Jamal Habib Trust had or should have had knowledge of the activities that resulted in the discharge and had the legal ability to prevent those activities. Additionally, as the current owner of the Habib Site, the Jamal Habib Trust had, or should have had, knowledge of the alleged discharges at the Habib Site and have control of the Habib Site and the legal ability to remediate those conditions and prevent additional discharges.
6. The San Diego Water Board reserves the right to amend this Order to add additional persons as dischargers when and if the San Diego Water Board identifies those parties.

¹⁸ See Exhibit 9, ALDI, Inc. 401 Water Quality Certification and Waste Discharge Requirements Application for Dredged or Fill Impacts to Waters of the State.

¹⁹ See Exhibit 10, Notice of Applicability No. R9-2020-0199.

²⁰ See Exhibit 11, Notice of Intent to comply with Construction General Storm Water Permit, WDID No. 9 37C390463.

²¹ See Paragraphs 8 and 9 of this Order.

²² See Exhibits 1 and 2.

Factual Basis of the Order

7. San Diego Water Board and United States Fish and Wildlife Service staff were invited to the Habib Site on January 18, 2022, to investigate “alleged grading of vernal pools by grader retained by ALDI, [Inc.].”²³ Also, in attendance at the Habib Site visit were representatives of the County of San Diego and California Department of Fish and Wildlife.²⁴ After the Habib Site visit, San Diego Water Board staff concluded that the area “has recently been disturbed with grading/pushing of surficial sediment/soil.”²⁵
8. Permitted construction activities began at the ALDI Site on or about December 2020.²⁶ Construction activities continued through November 2021.²⁷
9. During construction activities ALDI, Inc. and/or Bogart Construction, Inc. disturbed and filled vernal pools on the Habib Site, some of which contained San Diego fairy shrimp cysts during the vernal pool surveys.²⁸
 - a. July 29, 2021: County of San Diego inspection photographs demonstrate that a discharge of wastes to vernal pools at the Habib Site occurred.²⁹

²³ See Exhibit 14, January 18, 2022, Porter Notes.

²⁴ See Exhibit 15, January 18, 2022, Sign-in Sheet.

²⁵ See Exhibit 14 at page 1 of 2.

²⁶ See Exhibit 25, December 2020 Google Earth Image.

²⁷ See Exhibit 26, November 12, 2021, County Storm Water Inspection Report.

²⁸ See Exhibits 6, 22 and 23.

²⁹ See Exhibit 17, County Photographs July 29, 2021.

- i. Photograph file 20210729_105139.JPG is taken from the west side of the ALDI Site looking south at the ALDI store on the left and vacant building on the Habib Site on the right. At least six vehicles are parked on the north side of the vacant building on the Habib Site. Based upon oral comments from staff of Woodcrest Real Estate Ventures³⁰ and the County of San Diego and statements by ALDI, Inc. and Bogart Construction, Inc.,³¹ and that construction activity was occurring on the ALDI Site, these vehicles were identified to be those of construction laborers for ALDI, Inc. or its contractors. The portion of the Habib Site seen in the photograph has been graded as evidenced by the level dirt with no grass, heavy equipment tire treads in the dirt, and there is no longer a meandering dirt road as seen in pre-construction aerial imagery.³² Grading in this area resulted in the filling of vernal pools with fairy shrimp cysts.³³

³⁰ See Exhibits 14 and 15. Woodcrest Real Estate Ventures, a division of Woodcrest Homes, Inc., is representing a potential purchaser of the Site.

³¹ See Exhibit 19, January 31, 2022, email from ALDI, Inc. to the San Diego Water Board.

³² See Exhibit 18, Google Earth Image October 2020.

³³ See Exhibit 6.

- ii. Photograph file 20210729_105144.JPG is taken from the northeast corner of the Habib Site looking west. A yellow construction loader with a backhoe is in the upper center of the photograph on the Habib Site. Based upon oral comments from Woodcrest Real Estate Ventures³⁴ and that construction activity was occurring on the ALDI Site, the piece of heavy construction equipment shown in this photograph has been identified as from the ALDI Site and is being operated by ALDI, Inc. or its contractors. A gravel construction materials stockpile, in the upper right corner of the photograph, on the Habib Site filled a vernal pool with fairy shrimp cysts.³⁵ There are two orange traffic delineator posts to the left of the gravel stockpile. A dirt material stockpile which filled a vernal pool occupied with San Diego fairy shrimp cysts can be seen in the upper left of the photograph on the Habib Site. The Habib Site in the photograph has been graded as evidenced by the level dirt terrain, lack of grass, and heavy equipment tire treads as compared to the pre-construction condition.³⁶ Grading in this area resulted in the filling of multiple vernal pools with fairy shrimp cysts.³⁷ Note that the Roders (APN 282-130-1900) and Yuzapavik (APN 282-130-2000) properties, as seen in the upper right of the photograph, were not graded, as evidenced by the continued existence of grass.³⁸
- iii. Photograph file 20210729_105150.JPG is taken from the west side of the ALDI Site looking north. The Habib Site is on the left side of the photograph. The lack of grass, flatness of the terrain and heavy tire tread marks on the ground indicate that the area has been disturbed and graded. The construction activity filled vernal pools with San Diego fairy shrimp cysts.³⁹

³⁴ See Exhibits 14 and 15.

³⁵ See Exhibit 6.

³⁶ See Exhibit 16, County Photographs May 4, 2020. Specifically, photograph files IMG_5375.JPG, IMG_5377.JPG and IMG_5381.JPG.

³⁷ See Exhibit 6.

³⁸ See Exhibit 4.

³⁹ See Exhibit 6.

- iv. Photograph file 20210729_105253.JPG is taken from the east side of the Habib Site looking south onto Main Street. Two pickup trucks are parked on the Habib Site; one facing the photographer and another, a white pickup truck, is parked next to the vacant building. Grey gravel has been placed on the Habib Site and filled vernal pools some of which contained San Diego fairy shrimp cysts.⁴⁰ On January 31, 2022, ALDI's contractor, Bogart Construction, explained in a letter that County of San Diego inspector Sammie Twilligear directed them to add additional gravel to the construction entrance on N. Ramona Street, which is on the Habib Site and this resulted in the filling of vernal pools.⁴¹
 - v. Photograph file 20210729_105303.JPG is taken from west side of the ALDI Site looking south at the back of the ALDI grocery store. Gravel rock is spread out on the Habib Site as seen in the far left of the photograph that filled one vernal pool.⁴² Heavy equipment tire treads can be seen on the ALDI Site in the lower right of the photograph. Two wooden pallets with bagged construction materials can be seen on the Habib Site in the far center left of the photograph.
 - vi. Photograph file 20210729_105341.JPG is taken from the ALDI Site looking west at the Habib Site. The vacant building on the Habib Site can be seen in the far left of the photograph. A white pickup truck is parked on the Habib Site in the center right of the photograph. A silver pickup truck is parked on the Habib Site in the far left of the photograph, while a blue pickup truck is parked partially on the Habib Site and partially on the ALDI Site.
- b. August 25, 2021: County of San Diego inspection photographs further demonstrate that a discharge of wastes to vernal pools at the Habib Site occurred.⁴³

⁴⁰ See Exhibit 6.

⁴¹ See Exhibit 19.

⁴² See Exhibit 6.

⁴³ See Exhibit 20, County Photographs August 25, 2021.

- i. Photograph file 20210825_140736.JPG is taken from the ALDI Site looking west. An uncovered and unbermed waste stockpile is in the upper center of the photograph on the Habib Site. An uncovered and unbermed material stockpile of soil on the Habib Site is next to the two yellow utility pole anchor wires and a waterline excavation pit. The two stockpiles filled vernal pools with San Diego fairy shrimp cysts.⁴⁴ Additionally, heavy equipment tire treads cross through the vernal pools.
 - ii. Photograph file 20210825_140744.JPG is taken from the northwest side of the ALDI site looking south. There are two unbermed and uncovered material stockpiles (gravel and soil) in the upper right of the photograph on the Habib Site that filled vernal pools with fairy shrimp.⁴⁵ A car and two pieces of construction equipment, associated with the Aldi Site construction, are parked near the vacant building on the Habib Site in the upper center of the photograph.
10. ALDI, Inc. stated on January 31, 2022, that it did not grade offsite, but its general contractor, subcontractors, and utility contractors, including Ramona Municipal Water District and San Diego Gas & Electric Company, accessed the ALDI Site from the Habib Site (N. Ramona Street), as directed by the County of San Diego Building Inspector.⁴⁶ However, ALDI, Inc. admitted that this activity potentially disturbed Vernal Pool No. 1 estimated at 640 square feet, or 0.0147 acres based upon a survey conducted by Helix Environmental Planning, Inc. and disturbed 0.38 acres of land on the Habib Site. Additionally, Bogart Construction, Inc. stated that its “work area consisted of the property the Aldi store is located on, and the unmaintained dirt road known as North Ramona Street.”⁴⁷

Beneficial Uses and Waste Discharge Prohibitions

11. The Basin Plan designates beneficial uses, establishes water quality objectives and waste discharge prohibitions, contains implementation programs for achieving objectives, and incorporates by references, plans and policies adopted by the State Water Board.

⁴⁴ See Exhibit 6.

⁴⁵ See Exhibit 6.

⁴⁶ See Exhibit 19 at PDF page 2 of 6.

⁴⁷ See Exhibit 19 at PDF page 6 of 6.

12. The Basin Plan's designated beneficial uses of inland surface waters for the Ramona Hydrologic Sub-Area (905.41) include Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Service Supply (IND), Industrial Process Supply (PROC), Contact Water Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD). Existing beneficial uses which have not been formally designated in the Basin Plan are protected as well as designated uses.⁴⁸ Therefore, where the presence of habitat that supports a beneficial use occurs even if not so designated in the Basin Plan, the beneficial use is protected at the site.
13. Vernal Pools are inland surface waters that support the following beneficial uses: REC-2, WARM, WILD, and Rare, Threatened, or Endangered Species (RARE).
 - a. "In the western United States, vernal pools are a unique, specialized form of seasonal wetlands that occur in a geographical area extending from southern Oregon through California into northern Baja California, Mexico."⁴⁹ "[N]umerous sensitive species currently without Federal status are associated with vernal pool habitats, including at least 12 endemic plants."⁵⁰ The herbs *Eryngium aristulatum* var. *parishii*, and *Navarretia fossalis*, and the San Diego fairy shrimp are all federally listed endangered species that occur in the Ramona area.⁵¹ "Vernal pools are an example of a regional subclass of depressional wetlands. Depressional wetlands, including vernal pools, occur in topographical depressions with closed elevation contours that allow for the accumulation of surface water."⁵² "After sufficient rainfall, pools form in depressions above an impervious soil layer or layers. Typically, the depressions are part of an undulating landscape, where soil mounds are interspersed with basins, swales, and drainages. This landscape is frequently called "mima-mound" topography, after the Mirna Prairie in Washington where these soil mounds were first described (Cox 1984 a, b)."⁵³
 - b. "Both aquatic and terrestrial insects are associated with vernal pool habitats, serving as herbivores and predators."⁵⁴

⁴⁸ Basin Plan at page 2-13.

⁴⁹ See Exhibit 21, Vernal Pools of Southern California Recovery Plan, U.S Fish and Wildlife Service, September 3, 1998, at PDF page 15 of 153, 1st sentence of 1st ¶.

⁵⁰ See Exhibit 21 at PDF page 15 of 153, 2nd sentence of 2nd ¶.

⁵¹ See Exhibit 21 at PDF page 8 of 153, 3rd full ¶; Page 18 of 153, last ¶, and Page 20 of 153.

⁵² See Exhibit, 24, The Hydrogeomorphic Approach and Its Use in Vernal Pool Functional Assessment by Mary Butterwick at PDF page 2 of 6, 1st full ¶.

⁵³ See Exhibit 21 at PDF page 36 of 153, 2nd ¶.

⁵⁴ See Exhibit 21 at PDF page 46 of 153, 2nd full ¶.

- c. “Five species of amphibians are expected to utilize vernal pools in southern California: the Pacific treefrog (*Hyla regilla*), western toad (*Bufo boreas*), (western) spadefoot toad (*Scaphiopus hammondi*), and the non-natives, bullfrog (*Rana catesbeiana*), and African clawed frog (*Xenopus laevis*).”⁵⁵
 - d. “Avian use of vernal pool habitat is typically understated. Vernal pools provide important habitat for resident and migratory birds, particularly waterfowl and shorebirds. Primary use of vernal pools coincides with pool inundation periods and migration. Birds are attracted to the pools, in part because the pools are shallow and provide an optimal feeding depth.”⁵⁶
 - e. “While no mammals are restricted to vernal pool habitats, they are attracted to them as a source of food and water...”⁵⁷
14. The Basin Plan has the following Waste Discharge Prohibitions that were violated by the filling and disturbing of vernal pools on the Site by the Dischargers:
- a. No. 1. The discharge of waste to waters of the state in a manner causing, or threatening to cause a condition of pollution, contamination or nuisance as defined in Water Code section 13050, is prohibited.
 - b. No. 2. The discharge of waste to land, except as authorized by Waste Discharge Requirements (WDRs) or the terms described in Water Code section 13264 is prohibited.
 - c. No. 7. The dumping, deposition, or discharge of waste directly into waters of the State, or adjacent to such waters in any manner which may permit its being transported into the waters, is prohibited unless authorized by the Regional Board.
 - d. No. 14. The discharge of sand, silt, clay, or other earthen materials from any activity, including land grading and construction, 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.

⁵⁵ See Exhibit 21 at PDF page 47 of 153, 2nd full ¶.

⁵⁶ See Exhibit 21 at PDF page 48 of 153 3rd ¶.

⁵⁷ See Exhibit 21 at PDF page 49 of 153, 1st full ¶.

Legal Basis of the Order

15. Water Code section 13304, subdivision (a) states, in relevant part, “any person who has discharged or discharges waste into waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit, any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the regional board, cleanup the waste or abate the effects of the waste. Upon failure of any person to comply with the cleanup and abatement order, the Attorney General, at the request of the board, shall petition the superior court for that county for the issuance of an injunction requiring the person to comply with the order. In the suit, the court shall have jurisdiction to grant a prohibitory or mandatory injunction, either preliminary or permanent, as the facts may warrant.”
16. “Waste” is defined by Water Code section 13050, subdivision (d) as, “sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for the purpose of, disposal.”
 - a. Sediment is “waste” as defined under Water Code section 13050.
17. “Pollution” is defined by Water Code section 13050, subdivision (l)(1) as, “an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following: (A) the waters for beneficial uses, or (B) facilities which serve these beneficial uses.”
 - a. Sediment has the potential to unreasonably affect the beneficial uses of waters of the State.
 - b. Discharges of sediment and other inert material alter, the ability for vernal pools to hold water, smother and/or eliminate critical wildlife habitat, and threaten aquatic dependent species, thereby impacting the following beneficial uses: Rare, Threatened, or Endangered Species, Warm Freshwater Habitat, and Wildlife Habitat. Even if not completely filled, discharges of sediment, or sediment laden water to vernal pools can lead to adverse conditions such as physical alterations (hydrologically and geologically), increases in suspended sediment and turbidity, aquatic toxicity and, inability to support wildlife including the San Diego fairy shrimp.

18. Cleanup and abatement is necessary to ensure that the existing condition of pollution is cleaned up and abated, and that any impacts to beneficial uses are mitigated. The issuance of a cleanup and abatement order pursuant to Water Code section 13304 is appropriate and consistent with San Diego Water Board and State Water Board policies.
19. State Water Board Resolution No. 92-49, *Policies and Procedures for Investigation and Cleanup and Abatement of Discharges Under Water Code Section 13304* sets forth the policies and procedures to be used during an investigation and cleanup of a polluted site and requires that cleanup levels be consistent with State Water Board Resolution No. 68-16, *Statement of Policy with Respect to Maintaining High Quality Waters in California* (Antidegradation Policy). Resolution No. 92-49 requires the Dischargers to clean up the waste in a manner that promotes attainment of either background water quality, or the best water quality which is reasonable if background levels of water quality cannot be restored. Any alternative cleanup level to background must: (1) be consistent with the maximum benefit to the people of the State; (2) not unreasonably affect present and anticipated beneficial use of such water; and (3) not result in water quality less than that prescribed in the Basin Plan and applicable Water Quality Control Plans and Policies of the State Water Board. Resolution No. 92-49 directs that investigations proceed in a progressive sequence. To the extent practical, it directs the San Diego Water Board to require and review for adequacy written work plans for each element and phase, and the written reports that describe the results of each phase of the investigation and cleanup.

Required Technical Reports

20. Water Code section 13267, subdivision (a) provides that a regional board may investigate the quality of any water of the State within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that a regional board, through an investigation, may require dischargers to furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these technical reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. San Diego Water Board staff estimate the total cost of technical or monitoring reports required by this Order to be approximately \$20,000 - \$49,000. The costs of the technical or monitoring reports required by this Order bear a reasonable relationship to the need for these reports and the benefit to be gained by these reports, as discussed below:

- a. The Restoration/Mitigation and Monitoring Plan (RMP) is a technical report that is necessary to assess impacts to waters of the State resulting from the discharges of waste associated with ALDI, Inc.'s construction activities and any other activities on the Habib Site to determine the appropriate restoration and mitigation work to address those impacts. By requiring the Dischargers to submit an RMP, the San Diego Water Board or its delegated officer has the opportunity to review and approve the scope of the proposed restoration and corrective actions to confirm the proposed work will adequately remediate site conditions and prevent unauthorized discharges from further impacting beneficial uses. The plan requirements and associated costs to prepare an RMP (i.e., field inspection and report preparation) is estimated to cost between \$15,000 and \$40,000. After consideration of these factors, the burden, including costs, of submitting the RMP bears a reasonable relationship to the need for the report and the benefits to be obtained from the report.
- b. The RMP Completion Report demonstrates to the San Diego Water Board or its delegated officer that the restoration and corrective actions contained in the approved RMP have been fully implemented. By requiring the Dischargers to submit documentation of the corrective actions, including pre- and post-remediation photographs and relevant maps and schematic diagrams, staff can confirm that the RMP has been fully implemented and that Best Management Practices (BMPs) are adequate to prevent future discharges of wastes into waters of the State. The cost to prepare an RMP Completion Report is comparable to the report preparation component of a combined is estimated to cost between \$5,000 and \$9,000. After consideration of these factors, staff determined that the burden, including costs, of submitting the RMP Completion Report bears a reasonable relationship to the need for the report and the benefits obtained from the report.
- c. The Dischargers named in this Order currently own the Habib Site and have owned and/or operated the Habib Site during all the alleged discharge, or conducted and/or directed construction activities on the Habib Site and ALDI Site that resulted in waste discharges on the Habib Site, and thus are appropriately named as dischargers and must provide the requested technical reports.

California Environmental Quality Act

21. Issuance of this Order is an enforcement action taken by a regulatory agency to enforce the regulatory provision of the Basin Plan, and is exempt from provisions of the California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 et seq.) in accordance with California Code of Regulations (Cal. Code Regs.), title 14, section 15321. This action may also be considered exempt because it is an action by a regulatory agency for the protection of natural resources (Cal. Code Regs., title 14, section 15307) and an action by a regulatory agency for the protection of the environment (Cal. Code Regs., title 14, section 15308). To the extent that the Order requires earth disturbing and revegetation activities not to exceed five acres in size and to ensure restoration of habitat and prevent erosion, such actions may be considered exempt from the provisions of CEQA pursuant to Cal. Code Regs., title 14, section 15333. Should additional environmental review be required in connection with future discretionary regulatory actions at this site, the San Diego Water Board may recover the costs associated with preparing and processing environmental documents from the Dischargers (Public Resources Code, section 21089).

Required Actions

IT IS HEREBY ORDERED that, pursuant to Water Code sections 13267 and 13304, the Dischargers shall cleanup and abate, or take other necessary remedial action, with respect to the ongoing threatened discharge of waste to waters of the State, and submit technical and/or monitoring reports as follows:

22. **Within 90-days of the effective date of this Order**, the Dischargers shall prepare and submit to the San Diego Water Board a Restoration/Mitigation and Monitoring Plan (RMP) that assesses impacts to waters of the State resulting from the discharges of waste associated with ALDI, Inc.'s construction activities and any other activities on the Habib Site, determines the appropriate cleanup and abatement activities to restore and mitigate for impacts of waste discharged to the Habib Site, and proposes a monitoring plan to demonstrate successful completion of the cleanup and abatement activities. The RMP must detail, at a minimum, the following information, activities and their timing:
- a. Habib site assessment of vernal pools and San Diego fairy shrimp and cysts: Using historical evidence (e.g. vernal pool surveys), and a current investigation of vernal pool filling and disturbance after ALDI Site construction, provide a description of the area and extent of impacts to vernal pools and San Diego fairy shrimp and cysts present at the Habib Site. The assessment should describe any vernal pools present at the Habib Site, include their location and condition, and include the location and numbers of Fairy shrimp and cysts using text, photographs and maps.

- b. Restoration Plan: Describe all activities proposed to cleanup and abate the discharged waste by purchasing vernal pool credits, establishment/re-establishment of vernal pools, or restoring the impacted vernal pools and demonstrating that vernal pool functions and values (geological, hydrological, and biological) are no less than the conditions prior to impacts. Appropriate cleanup and or abatement may include fencing, cleanup and removal of the waste, appropriate disposal of the waste and ultimate waste disposal location, confirming integrity of clay lens, revegetation with appropriate native species to the habitat, and re-population of San Diego fairy shrimp.
 - c. Habitat Monitoring and Mitigation Plan: The RMP shall also propose success criteria for demonstrating that establishment/re-establishment of vernal pool functions and values are no less than the conditions prior to impacts and provide a monitoring and reporting plan to document that the interim and final success criteria have been met.
 - i. The RMP must propose interim and final success criteria. Restoration work will not be considered complete until the final success criteria are met.
 - ii. Permanent discharges of fill to Habib Site vernal pools that cannot be cleaned up and abated through restoration, may be abated by the Dischargers purchasing compensatory mitigation at a ratio of 10:1 at an established vernal pool mitigation bank or by construction of vernal pool mitigation.
 - 1. Any compensatory mitigation purchased or constructed to satisfy this Order shall be protected and maintained in perpetuity from land-use and maintenance activities that would threaten water quality or beneficial uses within these areas.
 - d. Schedule detailing the sequence of restoration and mitigation and monitoring activities, and the time frame for completing each activity.
23. **Following approval of the RMP by the San Diego Water Board or its delegate** the Dischargers shall implement the RMP in accordance with the schedule provided in 22.d above.
24. **Restoration/mitigation shall be completed no later than 2 years from execution of this Order.** The Dischargers shall subsequently initiate monitoring for interim and final success criteria including photograph documentation of the installation work.

25. When final success criteria have been met, the Dischargers shall submit the RMP Completion report demonstrating completion and shall request that the San Diego Water Board issue a letter indicating that no further action is warranted to satisfy this Order.

General Requirements and Notices

26. **Use of Qualified Professionals:** All technical reports required by this Order that involve planning, investigation, evaluation, or design, or other work requiring interpretation and proper application of engineering or geological sciences, shall be prepared by, or under the direction of, persons registered to practice in California pursuant to California Business and Professions Code sections 6735, 7835, and 7835.1. As required by these laws, completed technical reports must bear the signature(s) and seal(s) of the registered professional(s) in a manner such that all work can be clearly attributed to the professional responsible for the work.
27. **Signatory Requirements:** All technical reports submitted by the Dischargers shall include a cover letter signed by the Dischargers, or a duly authorized representative, certifying under penalty of law that the signer has examined and is familiar with the report and that to their knowledge, the report is true, complete, and accurate. The Dischargers shall also state if they agree with any recommendations/proposals and whether they approve implementation of said proposals. Any person signing a document submitted under this Order shall make the following certification:

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 knowledge and 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.

28. **Notice of Change in Ownership or Occupancy:** The Dischargers shall file a written report of any changes in the Site's ownership or occupancy. The Dischargers shall file this report with the San Diego Water Board no later than 30 days prior to a planned change and shall reference the number of this Order.
29. **Compliance with Other Regulatory Requirements:** The Dischargers shall obtain all applicable local, state, and federal permits necessary to fulfill the requirements of this Order prior to beginning work.

30. **Cost Recovery:** Pursuant to Water Code section 13304, San Diego Water Board staff is entitled to, and may seek reimbursement for, all reasonable costs it actually incurs investigating and abating the effects of the unauthorized discharges of waste and to oversee/supervise the cleanup of such waste, or other remedial action, required by this Order. If requested by the San Diego Water Board, the Dischargers shall enroll in the State Water Board's Cost Recovery Program and shall reimburse the State of California for all reasonable costs actually incurred by the San Diego Water Board.
31. **Submissions:** All reports, plans, and documents required by this Order shall be submitted electronically as a Portable Document File (PDF) file to: sandiego@waterboards.ca.gov, with the following in the subject heading "CAO No. R9-2022-0066:CW-880490:FMelbourn" unless otherwise stated. If the Dischargers cannot send the reports, plans, and documents required by this Order by email, they shall be submitted electronically on a Universal Serial Bus (USB) flash drive or Compact Disc (CD) to the following address:
- Frank Melbourn
Attn: CAO No. R9-2022-0066:CW-880490:FMelbourn
California Regional Water Quality Control Board, San Diego Region
2375 Northside Drive, Suite 100
San Diego, CA 92108
32. **Delayed Compliance:** If for any reason, the Dischargers are unable to perform any activity or submit any document in compliance with the required actions, or in compliance with any work schedule submitted pursuant to this Order and approved by the San Diego Water Board or its delegated officer, the Dischargers shall notify the San Diego Water Board as soon as a delay is recognized by the Dischargers and prior to the compliance date. The Dischargers may request that the San Diego Water Board, or its delegee, modify this Order to allow for a delay. Any such request shall include justification for the delay. The San Diego Water Board may grant an extension by revising this Order. The San Diego Water Board acknowledges that local, state, and federal permits may cause a delay beyond the control of the Dischargers and will take all the available relevant facts into consideration when considering whether to grant an extension request.
33. **Modification of Order:** Any modification to this Order shall be in writing and approved by the San Diego Water Board or its delegated officer, including any potential extension requests.

34. **Enforcement Authority:** If the Dischargers fail to comply with the requirements of this Order, the San Diego Water Board may refer this matter to the Attorney General for judicial enforcement, may issue a complaint for administrative civil liability, or may take other enforcement actions. Failure to comply with this Order may result in the assessment of Administrative Civil Liability of up to \$5,000 per violation, per day, depending on the violation, pursuant to the Water Code, including sections 13268 and 13350. The San Diego Water Board reserves its right to take any enforcement actions authorized by law.
35. Any person aggrieved by this action of the San Diego Water Board may petition the State Water Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 et seq. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or State holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.
36. This Order is issued under authority delegated to the Executive Officer by the San Diego Water Board pursuant to Resolution No. R9-2005-0271 and is effective upon signature.

Signed version of this document is available upon request.
DAVID W. GIBSON
Executive Officer

Exhibits:

1. APN 282-130-4500 Property Report, Habib Trust South.
2. APN 282-130-4600 Property Report, Habib Trust North.
3. APN 281-171-0400 Property Report, ALDI
4. Ramona APNs Aerial
5. Parcel Map No. 1306
6. October 16, 2006, Vernal Pool Survey Habib Properties
7. Main 16, LP USFWS Take Permit with HCP
8. USFWS Species Profile
9. ALDI, Inc. 401 Water Quality Certification and Waste Discharge Requirements Application for Dredged or Fill Impacts to Waters of the State
10. Notice of Applicability No. R9-2020-0199
11. Notice of Intent to comply with Construction General Storm Water Permit, WDID No. 9 37C390463
12. WestLaw Real Property Transaction Record APN 281-171-0400
13. ALDI SWPPP
14. January 18, 2022, Porter Notes
15. January 18, 2022, Sign-in Sheet
16. County Photographs May 4, 2020
17. County Photographs July 29, 2021
18. Google Earth Image October 2020
19. January 31, 2022, email from ALDI, Inc. to the San Diego Water Board
20. County Photographs August 25, 2021
21. Vernal Pools of Southern California Recovery Plan, U.S Fish and Wildlife Service, September 3, 1998
22. June 7, 2006, Vernal Pool Survey ALDI Property
23. April 20, 2011, Vernal Pool Survey ALDI Property
24. The Hydrogeomorphic Approach and Its Use in Vernal Pool Functional Assessment by Mary Butterwick, Proceedings from a 1996 Conference. California Native Plant Society, Sacramento, CA. 1998.
25. December 2020 Google Earth Image
26. November 12, 2021, County Storm Water Inspection Report
27. 50 CFR Part 17, Federal Register / Vol. 72, No. 238 / Wednesday, December 12, 2007 / Rules and Regulations
28. State Water Board State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, adopted April 2, 2019, and revised April 6, 2021
29. State Water Board Staff Report, including the Substitute Environmental Documentation to State Policy for Water Quality Control: State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State, adopted April 2, 2019, and revised April 6, 2021