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Subject: Comment submission re CWA-02-2025-3451
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November 6 2025

Greetings,

On behalf of the Rincón chapter of Surfrider Foundation, and our members and local supporters, we submit this response to The EPA request for comments regarding Clean Water Act (CWA) violations incurred by this project, and proposed federal fines to be imposed on the development groups Desarrolladora Yahir Inc. and A&M Group Inc. for those willful violations. Please note that Surfrider Foundation Rincón was the primary community group leading the effort to create the Reserva Marina Tres Palmas (RMTP, the receiving waters of the illegal sediment-laden rainfall runoff caused by this project) and has a seat on the RMTP Co-Management Board, as recognized by the PR DNER).

In brief, it is our opinion that the imposition of the maximum amount of fines under the CWA by the EPA is fully justified for this project, and encourage the EPA to investigate the possibility of imposing further non-administrative penalties concerning this project, as detailed below. Our recommendation is based primarily on the following points:

- That the Storm Water Pollution Prevention Plan (SWPPP) permit for this project was applied for, and granted, based on the General Construction Permit plan which showed only the earth movement involved in constructing of the roads within the project area. Any preventative actions (sediment fencing, catchment ponds etc.) were installed on the basis of that specific permit. NPDES ID PRR10000JG (<https://echo.epa.gov/detailed-facility-report?fid=110071728026>)
- That subsequent to this, the developers did wilfully and knowingly exceed the scope of that permit to include the entire 5 acre project site. Those subsequent actions involved extensive cutting, filling, and grading of terrain and soil compaction, and removal of vegetative cover for the huge majority of the project area, as well as the roads permitted under the limited SWPPP. As noted in the EPA Public Notice 2026-01 A&M Group Inc. failed to apply for and acquire the necessary NPDES permit for the extended scope of the project's earth movement work, and that Desarrolladora Yahir Inc. failed to comply with the requirements and conditions of the NPDES permit they had acquired.
- As a consequence the installed SWPPP prevention was totally inadequate, and enormous volumes of turbid

rainfall runoff (at times in the range of 100 gal/sec by our estimate based on supplied video footage) was discharged directly from the project site into the drainage declivity leading to the creek whose outflow mouth marks the northern terrestrial extent of the RMTP (and thus is also within the 100 meter buffer zone).

- Despite numerous complaints from the public and local community members, the developers only made a *pro forma* effort to reduce this discharge volume or otherwise stabilize the exposed soil. Thus the excessive discharge continued in varying amounts from April 2025 to the present day, depending on rainfall amounts.
- This turbid discharge water not only transports coarse and fine sediment but also other contaminants and soil bacteria into coastal waters that see a high degree of recreational and sports use by the public – posing a significant long term and continuing health risk to those users. Thus we feel the project merits the maximum penalties provided under these CWA violations.
- In view of the above facts, we advocate that the EPA additionally require the developers to conduct immediate corrective action to significantly amplify SWPPP & NPDES preventative measures, to immediately begin environmental restoration work to reduce erosion / sediment transport on and from the project site and other soil stabilization measures, and that continued monitoring and compliance assessment of these all these measures be mandated.

Further, we feel the developers merit additional penalties beyond the CWA violations under consideration for the following reasons:

- The RMTP contains, or provides critical habitat for, several species listed as threatened or endangered under the Endangered Species Act (ESA). Of particular significance is the presence of iconic colonies of *acropora palmata* (elkhorn coral) in the nearshore coral reef systems. This species is extremely susceptible to negative impacts from both fine and coarse sediment deposition / reduction of sunlight penetration both for survival and reproduction of this species. Those same factors reduce the effectiveness of protecting other critical habitat features within the RMTP and surrounding buffer zones.
- The RMTP is a federally registered Marine Reserve requiring the highest degree of protection possible under federal statutes.

For those reasons we are advocating for additional penalties to be levied on the developers for long term and continuing violations of the pertinent sections of the ESA as well as pertinent federal regulations concerning the requirements necessary for the protection of federal Marine Reserves in general.

The chapter is completely willing and available to supply whatever documentation or evidentiary data the EPA may require in further consideration of the issues highlighted in this comment submission. Please do not hesitate to contact me directly for any additional assistance that is needed.

Respectfully

Steve Tamar

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Lab Director and Program Coordinator, Blue Water Task Force Rincón water quality program

<https://bwtf.surfrider.org/explore/4>

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