

EXHIBIT A

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, California 94105

IN THE MATTER OF:)	DOCKET NO. CWA-309(a)-2022-004
)	
Henry Simpson)	
d/b/a/ Buena Vista Subdivision)	ADMINISTRATIVE ORDER ON
)	CONSENT
Santa Rita, Guam)	
)	<i>Proceeding under Section 309(a) of the Clean</i>
Respondent.)	<i>Water Act, 33 U.S.C. § 1319(a)</i>
)	
)	

ADMINISTRATIVE ORDER ON CONSENT

I. STATUTORY AUTHORITY

1. Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency (EPA) finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent (AOC) is issued pursuant to the authority vested in the EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. This authority has been delegated to the Regional Administrator of the EPA, Region 9, and further delegated by the Regional Administrator to the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 9.

3. Respondent is Henry Simpson d/b/a Buena Vista Subdivision.

4. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in Section V of this Order, except to the extent that those allegations provide the EPA with a jurisdictional basis to enforce this AOC.

II. STATUTORY AND REGULATORY FRAMEWORK

5. CWA Section 301(a), 33 U.S.C. § 1311(a), makes it unlawful for a person to discharge pollutants from a point source into waters of the United States, including the territorial seas, except, among other things, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

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6. CWA Section 402, 33 U.S.C. § 1342, establishes the NPDES program and authorizes the EPA and authorized states to issue permits governing the discharge of pollutants from point sources into waters of the United States. CWA Section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for certain stormwater discharges including stormwater from industrial activity. 33 U.S.C. § 1342(p)(2)(B); 40 C.F.R. § 122.26(a)(1)(ii). Pursuant to authority in Section 402(p), EPA promulgated regulations that define industrial activity to include construction activity. 40 C.F.R. §§ 122.26(b)(14)(x) and 122.26(b)(15).

7. The stormwater implementing regulations define construction activities to include “clearing, grading, and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more.” 40 C.F.R. § 122.26(b)(14)(x).

8. Each person discharging stormwater must request and obtain authorization to discharge under either an individual NPDES permit or a promulgated NPDES general permit issued by the EPA or by a state with an EPA-approved NPDES program. 40 C.F.R. § 122.26(c)(1), 33 U.S.C. §§ 1311(a) and 1342(p).

9. The EPA is the NPDES permitting authority in the territory of Guam. Since 1992, the EPA has issued a series of Construction General Permits that are available in areas where the EPA is the NPDES permitting authority. Most recently, the EPA issued the *2022 NPDES General Permit for Discharges from Construction Activities* (hereinafter, “2022 Construction General Permit”) on February 17, 2022. The 2022 Construction General Permit replaced the 2017 Construction General Permit, which was in effect from February 16, 2017, through February 16, 2022.

10. Under 40 C.F.R. § 122.21(c), a discharger proposing a new discharge of stormwater associated with construction activity covered by 40 C.F.R. § 122.26(b)(14)(x) must submit an application ninety (90) days prior to the date construction is to commence, or by the deadlines provided by the terms of any applicable general permit. See 40 C.F.R. § 122.28(b)(2).

11. Under the 2022 Construction General Permit, an “operator” is any party associated with a construction project that either has (a) operational control over the construction plans and specifications, including the ability to make modifications to those plans and specifications, or (b) day-to-day operational control of those activities at a project that are necessary to ensure compliance with the permit conditions. See Parts 1.1.1.a and 1.1.1.b. of the 2022 Construction General Permit.

12. Under CWA Section 502(12), the term “discharge of a pollutant(s)” means any addition of any pollutant to navigable waters from any point source or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft. 33 U.S.C. § 1362(12).

13. Under CWA Section 502(6), the term “pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. 33 U.S.C. § 1362(6).

14. Under CWA Section 502(14), the term “point source” means any discernible, confined, and discrete conveyance from which pollutants are or may be discharged. 33 U.S.C. § 1362(14).

15. Under CWA Section 502(7), the term “navigable waters,” means the waters of the United States, including the territorial seas. 33 U.S.C. § 1362(7).

16. Under CWA Section 502(8), the term “territorial seas,” means the belt of seas measured from the line of the ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles. 33 U.S.C. § 1362(8).

17. Under CWA Section 502(5), the term “person” means an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body. 33 U.S.C. § 1362(5).

III. FINDINGS OF FACT AND DETERMINATIONS OF LAW

18. Respondent is an individual and is a “person” within the meaning of CWA § 502(5), 33 U.S.C. § 1362(5).

19. At all times relevant to this action, Respondent has been engaged in clearing, grading, excavating and disturbing land at the Buena Vista Subdivision located at 976-C Cross Island Route 17 in Santa Rita, Guam (“Project Site”) since at least October 19, 2016, a date best known to Respondent. The Project Site is divided into five phases and the total land disturbance at the Project Site is approximately 60.4 acres. The Project Site is located 2.2 miles from Apra Harbor. The Project Site includes all areas that are owned and/or operated by the Respondent and planned for development or are currently under development. The Project Site is depicted in Attachment 1 to this AOC.

20. Respondent is an “operator” of the Project Site as defined by 40 C.F.R. § 122.2 and Part 1.1.1.b. of the 2022 Construction General Permit.

21. Stormwater runoff from the Project Site is a “stormwater discharge associated with construction activity” as defined by 40 C.F.R. § 122.26(b)(14)(x).

22. Stormwater runoff discharges from construction sites, such as the Project Site, include sediment, represented as Total Suspended Solids, metals from exposed rebar, phosphorous, pH from concrete debris, and other chemicals found in construction products and therefore, these discharges contain “pollutants,” as defined by CWA Section 502(6), 33 U.S.C. § 1362(6).

23. Stormwater runoff discharges from the Project Site through a drain inlet located on the roadway of Phase 4. There is an additional drain inlet in Phase 4 that discharges down-grade via a hillside outfall. The discharges from the Project Site and the drain inlets and outfalls are “point sources” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

24. Stormwater runoff discharges pollutants from the Project Site to the Atantano River, which flows into Apra Harbor and then to the Philippine Sea and the Pacific Ocean, and discharges to the Ylig River which flows into Ylig Bay and then the Pacific Ocean. Apra Harbor

and Ylig Bay are territorial seas and navigable waters within the meaning of CWA Sections 502(7), 502(8), 33 U.S.C. §§ 1362(7) and 1362(8) and the CWA implementing regulations.

25. Respondent's discharge of pollutants in stormwater into waters of the United States constitutes a "discharge of pollutants" within the meaning of CWA Sections 301(a) and 502(12), 33 U.S.C. §§ 1311(a) and 1362(12).

26. The 2022 Construction General Permit requires, among other things:

- a. Under Part 2.2.5 of the 2022 Construction General Permit, operators must remove or contain all sediment, material, and waste stockpiles. Specifically, stockpiles must be located outside any natural buffers, as established in Part 2.2.1 of the 2022 Construction General Permit, and away from any constructed or natural site drainage features, storm drain inlets, and areas where stormwater flow is concentrated. See Part 2.2.5(a) of the 2022 Construction General Permit. Operators must also install a sediment barrier along all downgradient perimeter areas of stockpiled soil or land clearing debris piles. See Part 2.2.5(b) of the 2022 Construction General Permit. For piles that are unused for 14 or more days, operators must provide cover or appropriate temporary stabilization (consistent with Part 2.2.14 of the 2022 Construction General Permit). See Part 2.2.5(c) of the 2022 Construction General Permit.
- b. Part 2.2.10 of the 2022 Construction General Permit requires operator to install storm drain inlet protection measures that remove sediment from discharges prior to entry into a storm drain inlet that would carry stormwater from the construction site to a receiving water. Operators must also clean, or remove and replace, the inlet protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised.
- c. Part 2.2.14 of the 2022 Construction General Permit requires operators to stabilize exposed portions of the construction site. Specifically, operators must "implement and maintain stabilization measures (e.g., seeding protected by erosion controls until vegetation is established, sodding, erosion control blankets, hydromulch, gravel) that minimize erosion from any areas of exposed soil on the site...."
- d. In general, Part 4 of the 2022 Construction General Permit requires operators to conduct site inspections and maintain inspection records. Operators must conduct site inspections at least once every seven calendar days or once every 14 calendar days and within 24 hours of the occurrence of (a) a storm event that produces 0.25 inches or more of rain within a 24-hour period or (b) a discharge caused by snowmelt from a storm event that produces 3.25 inches or more of snow within a 24-hour period. See Part 4.2 of the 2022 Construction General Permit. Further, operators must complete an inspection report within 24 hours of completing any site inspection. See 2022 Part 4.7.1. of the Construction General Permit.

27. On August 26, 2021, representatives of the U.S. EPA performed an inspection of the Project Site to evaluate the Respondent's compliance with the requirements of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and the 2017 *NPDES General Permit for Discharges from Construction Activities* (2017 Construction General Permit)(replaced by the 2022 Construction General Permit on February 17, 2022). EPA provided the inspection report to Respondent on October 19, 2021, and it is attached to this AOC, See Attachment 2. Respondent did not provide a response to the inspection report.

28. During the inspection, EPA inspectors observed that active construction was occurring in Phases 3, 4, and 5. There were undeveloped parcels in Phases 1 and 2. EPA inspectors observed greater than one acre of cleared and graded land with no stabilization BMPs, unmaintained storm drains, and active excavation of land without erosion control BMPs.

29. On March 6 and 7, 2017, EPA issued two NPDES ID numbers under the 2017 Construction General Permit to Henry Simpson to authorize stormwater discharges from two subprojects in the Buena Vista Subdivision Phase 4 area. NPDES ID #: GUR1000001 indicates that 1.75 acres will be disturbed and NPDES ID# GU100002 indicates that 17.5 acres will be disturbed. The Stormwater Pollution Plan for Phase 4 lists the disturbed area as 17.5 acres.

30. Based on EPA's review of the national CGP database, additional records provided, and observations during its inspection, the EPA inspectors found the following:

- a. Respondent has not obtained authorization to discharge stormwater from Phases, 1, 2, 3, and 5 under the 2017 Construction General Permit;
- b. Respondent has not developed a Stormwater Pollution Prevention Plan (SWPPP) for Phases 1, 2, 3, and 5;
- c. Exposed portions of the Project Site do not have stabilization measures that minimize erosion;
- d. Installation and maintenance of storm drain inlet protection measures were missing;
- e. Sediment, material, and waste stockpiles were not provided with cover or stabilization; and
- f. Project Site inspection records have not been maintained.

31. Between April 30, 2017, and August 26, 2021, the National Oceanic and Atmospheric Administration reports that at least 0.5 inches of rain fell on at least 267 days at the Agat, Guam, NOAA Weather Station, which is located approximately 2.3 miles from the Project Site. Therefore, during that time period, Complainant alleges that on at least 267 days, stormwater associated with construction activity discharged from the Project Site through onsite drainages and onsite storm drain inlets that discharge to the Atantano River, the Apra Harbor, and ultimately the Philippine Sea and the Pacific Ocean. Stormwater also discharges from the Project Site to the Ylig River which flows into Ylig Bay and the Pacific Ocean.

32. By discharging stormwater associated with construction activity without NPDES Permit authorization for Phases 3 and 5 at the Project Site, Respondent has violated and continues to violate CWA Section 301(a), 33 U.S.C. § 1311(a). Respondent also failed to comply with a condition or limit in its NPDES Permit for the two subprojects in Phase 4. Section 309(a)(3) of the Clean Water Act, 33 U.S.C. § 1319(a)(3), thus authorizes EPA to issue an order requiring compliance.

IV. ORDER FOR COMPLIANCE ON CONSENT

33. Based on the foregoing Findings of Fact and Determinations of Law and pursuant to the authority of CWA Section 309(a), 33 U.S.C. § 1319(a), IT IS HEREBY ORDERED and AGREED TO:

- a. Within sixty (60) days of the Effective Date, Respondent shall develop a site-specific stormwater pollution prevention plan for the whole Project Site (as depicted in Attachment 1) that meets the requirements of the 2022 Construction General Permit, and submit the required Permit Registration Documents to NeT-CGP at <https://cdx.epa.gov/> to seek Permit coverage for future stormwater discharges for the entire Project Site.
- b. Within thirty (30) days of the Effective Date, Respondent shall stabilize all exposed portions of the Project Site including, but not limited to, all graded surfaces and active construction areas in accordance with Part 2.2.14 of the 2022 Construction General Permit.
- c. Within thirty (30) days of the Effective Date, Respondent shall install and maintain storm drain inlet protection measures at the Project Site in accordance with Part 2.2.10 of the 2022 Construction General Permit.
- d. Within thirty (30) days of the Effective Date, Respondent shall remove all sediment, material, and waste stockpiles at the Project Site in accordance with Part 2.2.5 of the 2022 Construction General Permit.
- e. Within thirty (30) days of the Effective Date, Respondent shall stabilize and/or install erosion control measures below all drainage outlets at the Project Site in accordance with Part 2.2.7 of the 2022 Construction General Permit.
- f. Upon the Effective Date of the AOC, Respondent shall conduct inspections at the Project Site in accordance with the schedule required by Part 4 of the 2022 Construction General Permit. Respondent shall also create and maintain inspection records related to the Project Site as required by Part 4.7 of the 2022 Construction General Permit.
- g. If there are any changes to the estimated area to be disturbed at the Project Site, then Respondent shall modify the NOI and SWPPP, as required by Parts 1.4.4 and 7.4 of the 2022 Construction General Permit. Respondent shall submit a “Change NOI” form using NeT-CGP at <https://cdx.epa.gov/>.

V. FINAL REPORT AND TERMINATION OF THE AOC

34. Within thirty (30) calendar days after Respondent has fully completed and implemented the actions required by Section IV (Agreement on Consent) of this AOC, Respondent shall submit for the EPA's review and approval a final report (Final Report), that includes a description, including photographs, and timeline of all of actions which have been taken toward achieving compliance with this AOC and the CWA.

35. If the EPA determines, after review of the Final Report, that all the requirements of this AOC have been completed and implemented in accordance with this AOC, the EPA will provide notice to Respondent and this AOC shall be deemed terminated.

36. If the EPA determines that any requirement has not been completed and implemented in accordance with this AOC, the EPA will notify Respondent, provide a list of deficiencies, and require Respondent to modify its actions as appropriate to correct such deficiencies. If so required, Respondent shall implement the modified requirement(s) and submit a modified Final Report.

VI. SUBMISSIONS AND RECORD RETENTION

37. Respondent shall submit all written communications, including progress reports, electronically. Respondent shall submit all required reports and plans to the EPA in an electronic format that allows them to be searchable by key word. Respondent shall send all submittals to the following e-mail addresses. Submissions will be deemed made on the date they are sent electronically.

Benjamin Rocha, Physical Scientist
Enforcement and Compliance Assurance Division
Rocha.Benjamin@epa.gov

Desean Garnett, Attorney-Advisor
Office of Regional Counsel
Garnett.Desean@epa.gov

38. All reports, notifications, documentation, and submittals required by this AOC shall be signed by a duly authorized representative of Respondent as specified by 40 C.F.R. § 122.22 and shall include the following statement:

“I certify under the penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

39. Respondent shall preserve and retain all records and documents now in its possession or control, or which come into its possession or control, that relate in any manner to the performance of the tasks in this AOC, until five (5) years after termination of this AOC. Respondent shall also instruct its agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the tasks in this AOC.

VII. MODIFICATION

40. Any request for modification by Respondent shall include the reason(s) for the request and a timeline for completion. Modification of this AOC shall be in writing and shall take effect only upon approval by the EPA. Failure by Respondent to implement any modified requirement(s) shall be a violation of this AOC.

VIII. GENERAL PROVISIONS

41. This AOC is binding on Respondent and its officials, officers, directors, partners, agents, employees, attorneys, successors and assigns, and on all persons, independent contractors, consultants and contractors acting in concert with Respondent.

42. Respondent shall provide a copy of this AOC to any successor in interest to its control, operation, or any other interest in any portion of its Project Site at least thirty (30) calendar days prior to the transfer, and shall simultaneously notify the EPA in writing, via e-mail, that such notice has been given. Within fourteen (14) calendar days after the effective date of this AOC or the date of contracting, whichever is later, Respondent shall provide a copy of this AOC to all contractors and/or consultants to perform any of the work described in Section IV. Respondent shall condition the transfer of control, operation or any other interest in any portion of its Project Site and any contract related to the performance of the work described in Section IV upon successful execution of this AOC.

43. This AOC is not and shall not be construed to be a permit under the CWA, nor shall it in any way relieve or affect Respondent's obligations under the CWA, or any other applicable federal, state, or territorial laws, regulations, and/or permits. Compliance with this AOC shall be no defense to any actions commenced pursuant to such applicable laws, regulations, or permits, nor does it constitute a release.

44. This AOC shall in no way affect the rights of the EPA or the United States against any person not a party hereto.

45. This AOC shall in no way limit or affect the EPA's authority to obtain information, and to enter, inspect, sample or monitor compliance under any law, permit, court order or agreement.

46. The provisions of this AOC shall be severable. If any provision is declared by a court of competent jurisdiction to be unenforceable, then the remaining provisions shall remain in full force and effect.

47. Respondent consents to and agrees not to contest the EPA's authority or jurisdiction to issue and enforce this Section 309(a) AOC. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

48. Failure to comply with the terms of this AOC may result in liability for statutory civil penalties under CWA Section 309(d), 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, a United States District Court may impose such penalties if the court determines that Respondent has violated the CWA as described above and failed to comply with the terms of this AOC. In determining the amount of any penalty the court will consider the seriousness of the violations, the economic benefit (if any) resulting from the violations, any history that Respondent may have of such violations, any good faith efforts that Respondent has made to comply with legal requirements, the economic impact a penalty may have upon Respondent, and such other matters as justice may require.

49. Issuance of this AOC is not an election by the EPA to forego any remedies available to it under the law, including without limit any administrative, civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA. The EPA reserves all available legal and equitable rights and remedies to enforce any violations cited in this AOC, and the right to seek recovery of any costs and attorney fees incurred by the EPA in any actions against Respondent for non-compliance with this AOC.

50. In accordance with CWA Section 309(a)(4), 33 U.S.C. § 1319(a)(4), the EPA will provide notice and a copy of this AOC to the territory of Guam upon execution.

51. The undersigned signatory for Respondent certifies that he or she is authorized to execute this AOC and legally bind the Respondent.

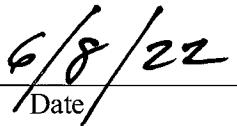
IX. EFFECTIVE DATE

52. This AOC shall become effective on the date it is signed by the EPA.

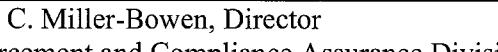
IT IS SO AGREED AND ORDERED:

FOR RESPONDENT HENRY SIMPSON


Henry Simpson, Owner
Buena Vista Subdivision


Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION 9


Amy C. Miller-Bowen, Director
Enforcement and Compliance Assurance Division

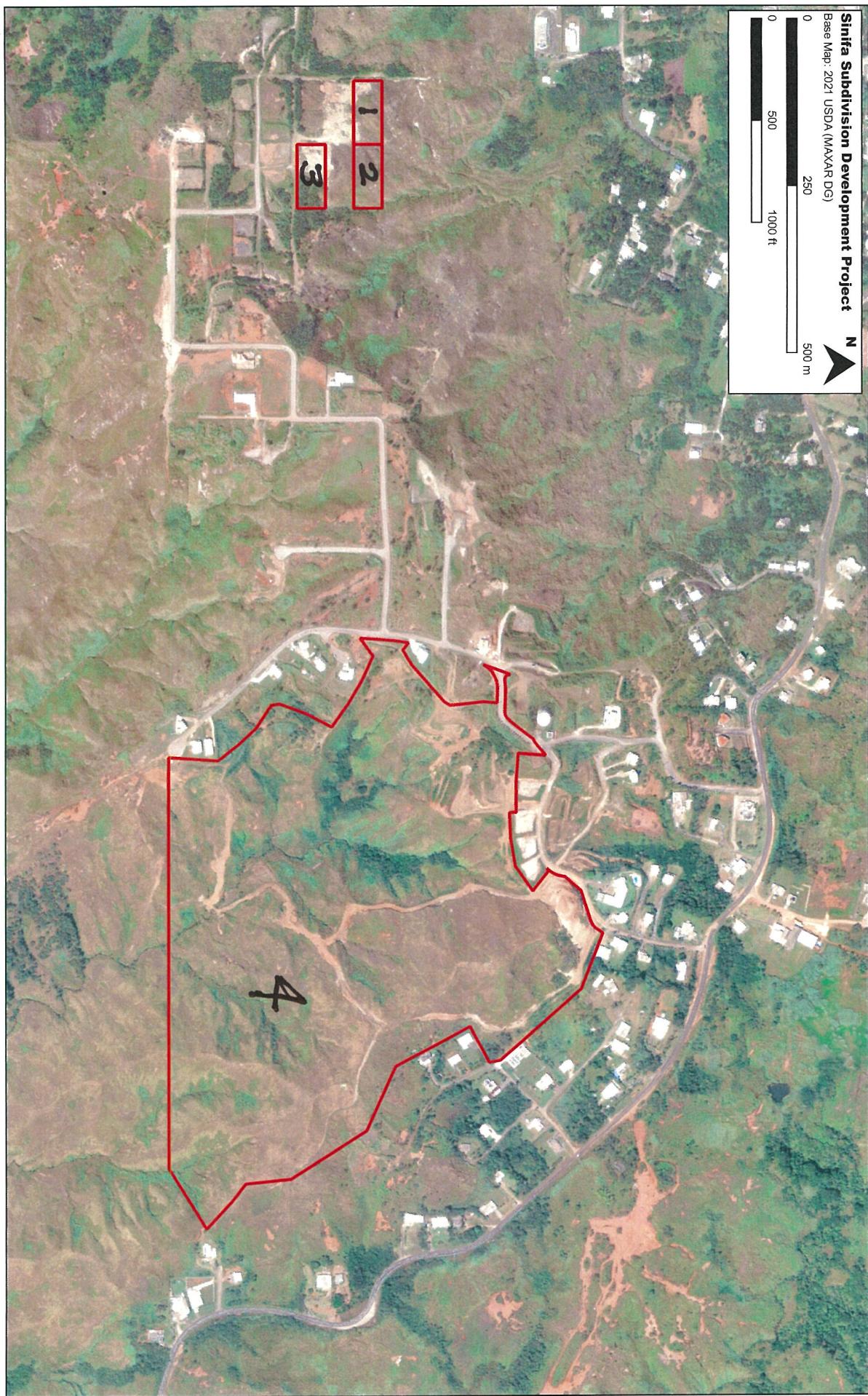

Date

In re: Henry Simpson, Buena Vista Subdivision
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ATTACHMENT 1

Project Site Map

UNDEVELOPED PROPERTY IN THE "BENIA VISTA" AREA
OWNED BY HENRY AND CAROLYN SIMPSON



1 LOT 402-R10-2-30
2 LOT 402-R10-2-43
3 LOT 402-R10-2-45 50% interest

4 TRACT 24405

ATTACHMENT 2

Inspection Report

Inspection Date(s):	08/26/2021	Announced: No
Time:	Entry: 10:45 AM (ChT)	Exit: 11:39 AM (ChT)

Media:	Water
Statute(s)/Program(s):	Clean Water Act, NPDES, Stormwater – Construction
Type of inspection:	CSI - Construction Stormwater Inspection
Access:	Granted

Permittee Name:	Henry Simpson
Facility or Site Name:	Buena Vista Estates Sub-Division Phases 1-5
Facility/Site Physical Address:	976-C Cross Island Road Route 17
(City, state, zip code)	Santa Rita, GU 96915
Facility GPS Coordinates:	13.3955, 144.6943

Permit Number:	GUR100001 and GUR100002

Persons Participating in Inspection:					
Title	Name	Phone	Email	Present at Opening Conf.	Present at Closing Conf.
Lead Inspector	Connor Adams	(808)541-2752	Adams.Connor@epa.gov	Yes	Yes
Owner	Henry Simpson	(671)727-5382	mtview671@gmail.com	Yes	Yes
Guam EPA	Maricar Quezon	(671)300-4781	Maricar.Quezon@epa.guam.gov	Yes	Yes

Lead Inspector:					
Connor Adams		/s/ Oct. 18, 2021			
		Region 9- Inspector		Adams.Connor@epa.gov	(808) 541-2752

Records Review:					
Benjamin Rocha		/s/ Oct. 19, 2021			
		Region 9- Inspector		Rocha.benjamin@epa.gov	(415) 972-3829

Supervisor Review:					
Jamie Marincola		/s/ Oct. 18, 2021			
		Region 9		Marincola.JamesPaul@epa.gov	(415) 972-3520

SECTION I – INTRODUCTION

Site Entry and Inspection Objectives

Region 9 Lead Inspector, Connor Adams, arrived at the Buena Vista Estates (the “Site” or “Facility”), located at 976-C Cross Island Road Route 17, at 10:45 AM (ChT) on 08/26/2021 for an unannounced inspection. Upon arrival, the Region 9 Lead Inspector presented his credentials to Henry Simpson (Buena Vista Estates) and informed him that this was a Region 9 inspection to determine the Facility’s compliance with the Clean Water Act (CWA) and the National Pollutant Discharge Elimination System (NPDES) permit program. The inspection was conducted under the authority of Region 9 NPDES permit program, authorized under Section 308 of the CWA. The table above identifies the attendees that participated in the inspection. This report is based on information supplied by Buena Vista Estates representatives, observations made by the Region 9 inspector, and records and reports maintained by the permittee and Region 9 including: direct observations made by the Region 9 Inspector(s), photographs taken by the Region 9 inspector(s), physical evidence collected by the Region 9 inspector(s), measurements taken by Region 9 inspector(s), verbal or written statements made by information supplied by Buena Vista Estates representatives (the permittee) during or subsequent to the on-site Inspection, and materials, processes, data, photographs, or documents shown, demonstrated, or submitted to the Region 9 inspector(s) by Buena Vista Estates representatives during or subsequent to the on - site Inspection. In addition, information gathered prior to or subsequent to the Inspection from a review of USEPA, State, and public records may be included in this report.

Facility/Site Description

The Site is comprised of five phases which encompass approximately 210 acres in Santa Rita, Guam (Figure A, Appendix 1 & 2). At the time of inspection, most active construction was observed in Phases 3, 4 and 5, although undeveloped parcels remain in the other phases. NPDES Permit for Discharges from Construction Activities¹ (“Permit”) was issued by EPA to Henery Simpson (“Operator”) for discharges from the *Buena Vista Estate Phase IV As-Built Grading & Erosion Control Plan*. EPA had no record of Permit coverage for Phases 1,2, 3 & 5 at the time of inspection. The Notice of Intent (NOI) associated with NPDES ID: GUR100001 states that 1.75 acres will be disturbed, and the Notice of Intent (NOI) associated with NPDES ID: GUR100002 states that 17.5 acres of land will be disturbed (Appendix 3). Both NPDES IDs are associated with Phase 4 of the Buena Vista Estates project and list the same latitude/longitude coordinates (13.3955°N, 144.6943°E). The Stormwater Pollution Prevention Plan for Phase 4 lists the disturbed area 17.50 acres. Phase 3 and Phase 4 of the project appear to coincide, and it is difficult to distinguish between each based on the information supplied to EPA.

¹ https://www.epa.gov/sites/default/files/2019-06/documents/final_2017_cgp_current_as_of_6-6-2019.pdf

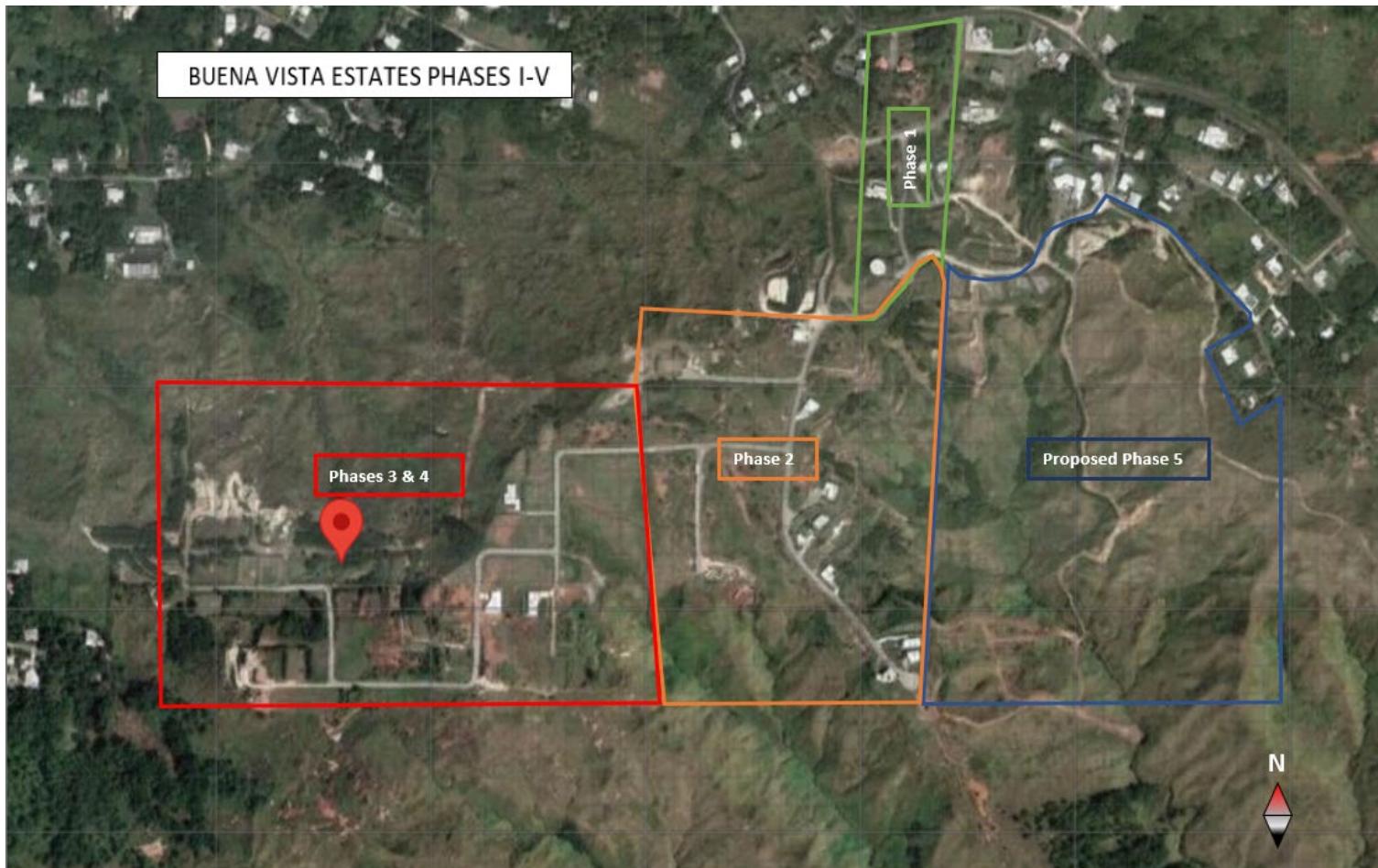


Figure A- Google Maps satellite imagery of the Buena Vista Estates Sub-Division. This map was generated by referencing Appendix 1.

SECTION II – OBSERVATIONS

Observations may not be in sequential order. Location information can be found on Figure A.

“AOC” means Area of Concern

Location: Phase 5

Contains AOC: Yes

Observation #: CA1-OB-012

This is the north side of the Phase 5 development seen in the Phase 5 observations below. The slope has partial vegetation and presents evidence of erosion where not stabilized (red arrows). Sediment was observed to be tracking into the storm drain inlet on the roadway.

Photo 1**Photo 2****Photo 3****Location:** Phase 1/5**AOC:** Yes**Observation #:** CA1-OB-011

Simpson explained that this clearing is to allow for the installation of power and water utilities to the sub-division. This construction was occurring near the water tower in Phase 1 and was traveling down-grade into Phase 5.

Photo 4**Location:** Phase 3 & 4**AOC:** Yes**Observation #:** CA1-OB-010

Overview of cleared plots Phase 4. Native vegetation has grown back since the initial clearing and grading. These parcels are for sale for residential development.

Photo 5**Photo 6**

Photo 7**Location:** Phase 2**AOC:** No**Observation #:** CA1-OB-009

Overview of the active construction in Phase 5 (See Observation # CA1-OB-008 and Observation # CA1-OB-006). Photograph captured from a cul-de-sac in Phase 2.

Photo 8**Photo 9****Location:** Phase 5**AOC:** Yes**Observation #:** CA1-OB-008

Overview of hill-top clearing and grading in Phase 5 (Figure A). The stockpile of corrugated plastic piping is used for the construction of culverts to manage the flow of stormwater offsite. A drain inlet can be seen in Photos 12 and 13. This drain inlet discharges down-grade via hillside outfall (Photo 14).

Photo 10**Photo 11****Photo 12****Photo 13**

Photo 14**Location:** Phase 5**AOC:** Yes**Observation #:** CA1-OB-006

Overview of hill-side erosion from hill-top clearing activities in Phase 5. No stabilization controls were present in this Phase. Hillside cuts, ruts and rills can be seen in the photos below.

Photo 15**Photo 16****Photo 17****Photo 18**

**Photo 19****Photo 20****Location:** Phase 5**AOC:** Yes**Observation #:** CA1-OB-004

Southeast terminus of the Phase 5 clearing and grading at the time of inspection (Figure A).

Photo 21**Photo 22**



Location: Phase 3 & 4

AOC: Yes

Observation #: CA1-OB-001

Overview of home construction in Phase 3&4. Stockpiles of construction debris and trash can be seen on the bare ground without controls to prevent pollutants from being mobilized by stormwater. The parcel did not appear to have stabilization controls other than native vegetation in some areas.

Photo 23



Photo 24



Photo 25**Photo 26****Photo 27****Photo 28**

SECTION III – RECORDS REVIEW

Records may not be in sequential order. All records provided to EPA by Henry Simpson on 9/4/2021 and reviewed by Benjamin Rocha on 9/28/2021. Document names are the titles of the files provided by Simpson.

“AOC” means Area of Concern.

Record: Notice of Intent Ref #: BR2-RR-006	AOC: Yes
Buena Vista Estates provided the Lead Inspector, Connor Adams, with two NOIs for Phase IV of the Site. EPA Staff, Benjamin Rocha, reviewed the documentation provided to the Lead Inspector and did not locate NOIs for Phase I, II, III, or V of the Site.	
Document(s)	
“Buena.Vista.NOI2.docx”	
“Bueva.Vista.NOI.docx”	

“Buena.Vista.NOI2.docx”
“Bueva.Vista.NOI.docx”

Record: Erosion Control Plan	AOC: Yes
Ref #: BR2-RR-005	Reviewed By: Benjamin Rocha
Reviewed Date: 09/28/2021	
Buena Vista Estates provided an erosion control plan for Phase IV of the Site. EPA staff, Benjamin Rocha, reviewed the documentation provided to the Lead Inspector and did not locate an erosion control plan for Phase I, II, III, or V.	
Document(s)	
"6- Phase IV Final EPP-EPC.pdf"	
Record: Inspection Reports	Ref #: BR2-RR-004
AOC: Yes	
The Site did not provide a record of inspection reports as required by Section 4.7 of the Construction General Permit.	
Record: SWPPP	Ref #: BR2-RR-002
AOC: Yes	
Buena Vista Estates provided a Stormwater Pollution Prevention Plan (SWPPP) for Phase IV of the Site. EPA staff, Benjamin Rocha, reviewed the documentation provided to the Lead Inspector and did not locate an SWPPP for Phase I, II, III, or V.	
The Phase IV SWPPP is missing the following elements:	
1. Stormwater Team 2. Training Log	
Document(s)	
"4-Phase IV SWPPP.pdf"	

SECTION VI – CLOSING CONFERENCE AND FOLLOW UP

Closing Conference

The Region 9 Lead Inspector held a closing conference with Facility personnel at 11:39 AM (ChT) on 08/26/2021 for the inspection. During the closing conference, Region 9 Lead Inspector discussed the observations and Areas of Concern identified during the inspection. Observations and Areas of Concern have not yet been evaluated for a formal compliance determination.

SECTION VII – LIST OF APPENDICES

1. General Vicinity Map Provided by Henry Simpson
2. Google Digital Imagery
3. Notice of Intent associated with NPDES ID: GUR100001 and NPDES ID: GUR100002