California Regional Water Quality Control Board
North Coast Region

Revised Water Code Section 13267 Investigative Order R1-2022-0025

Directing Kernen Construction (Operator/Discharger)

To Submit Technical Reports

Pertaining to Wetland Alteration and Potential

Stormwater Discharges from its Glendale Yard to Waters of the State

WDID No. 1 12I017319

Humboldt County

Findings

The California Regional Water Quality Control Board, North Coast Region (Regional Water Board) finds that:

1. Mr. Scott Farley operates the Kernen Construction Glendale Yard (Facility) located at 2350 Glendale Drive, in McKinleyville, Humboldt County, California. The property is owned by Bedrock Investment LLC. and Kurt Kernen. The Facility includes five parcels: APN 516-141-017 which is referred to as Southern or "Upper" Yard, APN 516-141-005 which is a small portion of the Southern Yard that is not currently used for industrial purposes, APN 516-151-016 which is referred to the Northern or "Lower" Yard, and APNs 516-151-017 and 516-151-008 which are a portion of the Northern Yard that is not currently used for industrial purposes. Please see the attached site maps.

2. The Southern Yard drains to Noisy Creek and the Northern Yard drains to Hall Creek. Hall Creek and Noisy both discharge directly to the Mad River which is approximately 15,000 feet downstream of the Facility.

3. The Facility is located on an approximately 37-acre property, with approximately 36 acres of industrial activities exposed to storm water. Construction equipment, materials, stockpiles, and construction wastes such as aggregate, asphalt grinding, and scrap roofing shingles materials are stored outside within the upper and lower yards exposed to rain. The receiving water bodies are Hall Creek and Noisy Creek, tributaries to the Mad River, both located along the northeast side of the facility. Stormwater runoff from the Facility's upper (southern) yard discharges into Noisy Creek. Stormwater runoff from the Facility's lower (northern) yard enters an approximately 15-foot-wide swale (Swale) originating onsite which is hydrologically connected to Hall Creek.

4. The Swale contains riparian vegetation, including willows, sedges, and cattails that provide both year-round and seasonal terrestrial and aquatic habitat. The observed conditions and characteristics within the Swale, including the presence of a bed, bank, and channel, as well as vegetation, indicate that the Swale may be a watercourse.

5. The Facility is currently enrolled for coverage under the Industrial Storm Water General Permit Order No. 2014-0057-DWQ (Industrial Permit, Permit, or IGP), with WDID No. 1 12I017319 and SMARTS Application ID 178335.

6. On June 24, 2021, in response to a complaint received from California Department of Fish and Wildlife (CDFW) in May 2021 regarding tadpole stranding along an existing Swale entering Hall Creek, Regional Water Board staff participated in an inspection of the facility in the company of CDFW staff and Kernen Construction Company operator, Scott Farley; Qualified Industrial Stormwater Practitioner (QISP), Yolynn St. John; and Facility staff, Nick Randle.

7. Per CDFW's staff (Ryan Bourque, Senior Environmental Scientist) recommendations, the Discharger was required to take action to resolve tadpole stranding issue within the Swale by smoothing out the check dams created by the Discharger from auger spoils and removing the rock piles placed in the holes (infiltration drains). Per the Regional Water Board staff request, a few photos were provided by the Discharger indicating that the corrective actions have been taken for the auger piles in response to CDFW recommendation. The photos were forwarded to CDFW staff. However, per CDFW request, the Regional Water Board staff directed the Discharger to provide more photos of the Swale that indicate CDFW comments have been fully addressed. Per Regional Water Board staff direction, a report was provided and uploaded to SMARTS by the Discharger to include additional photos of the Swale.

8. During the inspection, Regional Water Board staff observed check dams and vertical infiltration drains in the Swale, and a settling basin adjacent to the Swale. Stormwater drains from the basin into the Swale through a vegetated outlet.

9. The amended Facility's Storm Water Pollution Prevention Plan (SWPPP), section 2.1.4, identifies all areas of existing and constructed drainage including infiltration trenches, sediment/settling traps, stormwater retention area, swales, settling basin and check dams.

10. As described by the Discharger's representative, Mr. Farley, and shown in the Facility's SWPPP, the Discharger has constructed approximately 30

check dams and vertical infiltration drains within an approximately 1,200 long Swale. The vertical infiltration drains are augered holes, approximately 6 to 8 feet deep, backfilled with clean cobble. The check dams are approximately 10 feet long by 15 feet wide, and 3 to 4 feet tall in average, and each spans the width of the Swale channel.

11. The Facility sampling results show exceedances for Total Suspended Solids (TSS), iron, aluminum, and Chemical Oxygen Demand (COD) during the 2015-2016 and 2016-2017 reporting years. The facility moved into Level 2 status for TSS, iron, aluminum, and COD on July 1, 2017. Per the level 2 ERA technical report uploaded to SMARTS, the following BMPs were installed during the 2018-2019 reporting year: construction of the swales and an asphalt dike around the entire southern facility boundary; removal of the recycled concrete stockpile; sediment traps and check dams modifications. According to SMARTS, the facility is currently in level 2 status for Iron and Aluminum only.

12. Aggregate, asphalt grindings, roofing waste materials, and rusty equipment are stored within the upper yard and exposed to rain. Per the Facility's SWPPP dated February 2022, the Upper yard runoff captures by multiple sediment traps and then drains to infiltration trenches and allows the untreated industrial stormwater to be infiltrated to groundwater.

13. During the June 24, 2021 inspection, the Qualified Industrial Stormwater Practitioner (QISP) informed Regional Water Board staff that the check dams were installed approximately 10 years ago, and additional rock was added in 2020 as a maintenance action. Additionally, the QISP advised staff that silt and sediment are periodically removed from the Swale channel as deemed necessary, typically at two-year intervals. Each removal occurs along approximately 20 linear feet of Swale.

14. During the June 24, 2021 inspection, the QISP informed staff that the check dams installed in the Swale modify the channel to slow the flow of stormwater to Hall Creek, reducing sediment transport, while the vertical infiltration drains are in place to reduce runoff.

15. On December 23, 2021, Regional Water Board staff was made aware that the Discharger had constructed a new stormwater retention area in the lower yard. Through communication with QISP, additional information about the design, use, and discharge points from this new basin were requested. As of the issuance date of this Order, the information has not yet been provided. However, per the amended SWPPP uploaded to SMARTS on February 11, 2022, the stormwater retention area receives a portion of the runoff from the northern (lower) yard and retained water will be used to water the yard for dust suppression. Additional specific design

criteria, sizing, and detail on use and function of this feature were not provided.

16. The Facility is located within the Mad River Valley Groundwater Basin and groundwater within the North Coast Region is generally of high-quality. Beneficial Uses of Groundwater within the North Coast Region include Municipal/Domestic, Industrial Process/Use, Agricultural, Aquaculture, Native American Culture, and Freshwater Replenishment. The infiltration of untreated industrial stormwater via infiltration trenches, vertical infiltration drains, an existing settling basin and a new stormwater retention area at the Facility poses a potential threat to groundwater.

17. The Discharger did not select the "On-Site Compliance Option," included as Attachment I of the IGP. As such, the Discharger did not conduct monitoring and characterization of the Facility's industrial stormwater prior to infiltration to groundwater, nor completed associated required technical reports, to ensure the protection of groundwater.

18. The Discharger routinely "maintains" the Swale by removing accumulated silt and sediment and regrading. During these periodic clearing activities riparian vegetation is also removed, resulting in reduced ecological function and temporal loss of riparian habitat.

19. The Swale contains several indicators suggesting that the feature might be waters of the state, including, but not limited to the presence of aquatic vegetation.

Legal and Regulatory Authority

20. This California Water Code (Water Code) section 13267 Investigative Order (Order) conforms to and implements policies and requirements of the Porter-Cologne Water Quality Control Act (Division 7, commencing with Water Code section 13000), including section 13267, and the Water Quality Control Plan for the North Coast Region (Basin Plan) adopted by the Regional Water Board, including beneficial uses, water quality objectives, and implementation plans.

21. Water Code section 13267, subdivision (a), provides that the Regional Water Board may investigate the quality of any waters of the state within its region in connection with any action relating to the Basin Plan. Water Code section 13267, subdivision (b) provides that the Regional Water Board, in investigating, may require a Discharger to furnish, under penalty of perjury, technical or monitoring program reports. The reports required by this Order, pursuant to Water Code section 13267, are necessary to

understand the impacts of these discharges to Hall Creek, and to ensure that any threat to water quality created by activities at the facility are properly assessed and controlled. Hall Creek is tributary to the Mad River, which is Clean Water Act section 303(d)-listed as impaired by sediment. The Facility poses a threat to discharge untreated stormwater containing sediment and hydrocarbon. The costs associated with developing the requested reports and workplans bear a reasonable relationship to the benefits that will be obtained from having the necessary information for the Regional Water Board to properly evaluate and monitor the Facility.

22. Regional Water Board staff estimate that the costs for producing the technical reports, including a wetland delineation study and stormwater monitoring plan required by this Order could range from $36,000 to $44,000 if developed by consultants. See attached estimated cost.

The technical or monitoring reports required by this Order are necessary for Regional Water Board staff to determine/assess the nature and volume of stormwater discharges to waters of the state from the Facility, the potential impacts to the quality and beneficial uses, and determining if wetlands were impacted or destroyed during the construction of drainage features. The Discharger owns and/or operates the Property and is responsible for causing the unauthorized and/or threatened discharges of waste to waters of the state that are the subject of this Order. For the above reasons, the burden, including costs, of the reports bear a reasonable relationship for the need for the reports and the benefits to be obtained from the reports.

Information Required

The Directives, below, include a requirement that the Discharger submit a formal wetland delineation that characterizes the full scope of the potential wetland and waters of the state prior to any disturbance, and that assesses the threat of any future discharges. Based upon the Executive Officer's acceptance of the delineation Report, and the results contained therein, the Discharger may be directed to submit a Restoration and Monitoring Plan (RMP) to address site conditions identified in the Report.

Pursuant to the requirements of the revised section 13267 of the Water Code, Kernen Construction Co. is directed to submit the information for Directive 1 to the Regional Water Board **no later than September 9, 2022, unless otherwise stated. Also, the required reports regarding the Directives 2 and 3 must be submitted by March 1, 2023.**

Directives:

1. Provide the following information for the newly installed stormwater retention area:

    a. The location and types of water (stormwater/non-stormwater) to be captured.

    b. How it is designed and operated to protect the groundwater quality.

2. Submit a wetland delineation that is developed by a professional wetland specialist with experience in wetland delineation; pursuant to the methodology described in the 1987 US Army Corps of Engineers Wetlands Delineation Manual, Section F. A typical Situations (pages 73-83). The delineation should cover portions of the lower (northern) yard (APNs 516-151-016 and 516-151-017) along the Swale and Hall Creek, and should include the following elements:

    a. At a minimum, characterization of vegetation, including an analysis of the types of vegetation that may have previously been in, and in the vicinity of, the disturbed area in question, including the Swale entering Hall Creek and the area along Hall Creek.

    b. Characterization of soils that may have previously been in the vicinity of the disturbed area in question, taking into account the nature and extent of site alterations, including steps to identify and characterize the soils that were on site prior to site disturbance. This may include investigating soils that have been buried and/or soils that have been moved onsite or removed offsite.

    c. Characterization of hydrology that may have previously been in the vicinity of the disturbed area in question taking into account the nature and extent of alterations to site hydrology resulting from site development and the effects of those alterations, including characterization of the hydrology that previously existed, analysis of adjacent areas for hydrologic indicators, and review of aerial imagery.

3. Submit an assessment of other existing and historic non-wetland waters of the state located in the lower (northern) yard. This assessment should include, but not be limited to, the drainage swale

(Swale) adjacent to the access road that is hydrologically connected to Hall Creek and also Hall Creek itself.

4. Develop a Stormwater Monitoring Plan that meets the following:

Stormwater samples of influent entering infiltration BMPs shall be collected. In the upper yard, samples must be collected from surface runoff at a point immediately prior to entering the infiltration trenches in Drainage Areas 1b, 2, and 3 (one sample for each Drainage Area), In the lower yard, samples must be collected from the settling basin and the new stormwater retention area.

a. The samples must be representative of stormwater associated with industrial activities and any commingled authorized non-stormwater discharges.

b. Samples collection from each drainage area shall occur within four hours of the start of the discharge from the drainage area, or the start of facility operations if the QSE occurs within the previous 12-hour period (e.g., for storms with discharges that begin during the night for facilities with day-time operating hours).

c. Sample collection should occur during scheduled facility operating hours and when sampling conditions are safe in accordance with Section XI.C.6.a of the Industrial General Permit.

d. All samples shall be analyzed for the following parameters:

i. Oil and grease (O&G)
ii. Total Dissolved Solids (TDS)
iii. pH
iv. Total and dissolved iron and aluminum
v. Total and dissolved zinc, copper, and lead
vi. Nitrite plus Nitrate as Nitrogen
vii. Volatile Organic Compounds by EPA Method 8260 (report all peaks)
viii. Semi-Volatile Organic Compounds by EPA Method 8720 (report all peaks)

e. Samples collected under Directive 4.a shall be analyzed for constituents in Directive 3.d for each precipitation event that generates runoff until five samples have been collected and

analyzed at each sampling location. Analysis may be discontinued for a constituent if two consecutive results have been reported at less than one-half the primary (or secondary if no primary) maximum contaminant level.

f. For each constituent reported above the primary or secondary drinking water maximum contaminant level for samples collected under this Order, within 90 days of receipt of the laboratory report with the exceedance, provide an updated pollutant source assessment in accordance with Section X.G.2 of the IGP.

g. Sampling Analysis Reporting shall be compliant with Sections XI. B.8, 10, and 11 of the IGP.

h. Visual Observation must be conducted in accordance with Section XI. A of the IGP.

i. All sampling results, laboratory reports, chains of custody, and all other supporting documentation shall be submitted within 30 days after laboratory results are received. All reports must be uploaded to SMARTS.

PROVISIONS

1. Use of Registered Professionals: If the Discharger opts to have this information prepared by a registered professional, the report shall include a statement of qualifications and registration numbers of the responsible lead professional. The lead professional shall sign and affix his or her registration stamp to the report.

2. Signatory Requirements: The technical report shall be signed and certified by a principal executive officer, ranking elected official, or the person with overall responsibility for environmental matters by the Discharger. Additional reports submitted in support of the technical report must be signed by the principal author.

3. Certification Statement: Any person signing a document under this provision shall make the following certification:

   "I certify under 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."

4. Delayed Compliance: If for any reason, Kernen Construction is unable to perform any activity or submit any document in compliance with the schedule set forth herein, Kernen Construction may request, in writing, an extension of the time specified. The extension request shall include justification for the delay. Any extension request shall be submitted as soon as a delay is recognized and prior to the compliance date. An extension may only be granted by modification of this Order or by a letter from the Executive Officer or his/her delegee.

5. Report and Data Submittals: The technical reports and sample results, lab reports, and supporting documentation required under this Order shall be uploaded into the Stormwater Multiple Application and Report Tracking System (SMARTS), the Electronic Content Management system (ECM). Additionally, these documents shall be submitted electronically to: Ryan Bey at Ryan.Bey@Waterboards.ca.gov. All sample results, lab reports, and supporting documentation shall be submitted electronically to: Farzad Kasmaei at Farzad.Kasmaei@waterboards.ca.gov.

Should you have any questions regarding this matter, please contact Farzad Kasmaei of my staff at Farzad.Kasmaei@waterboards.ca.gov.

You may also contact Heaven Moore at Heaven.Moore@waterboards.ca.gov or Ryan Bey at Ryan.Bey@Waterboards.ca.gov.

Notifications

1. **Enforcement Discretion:** The Regional Water Board reserves its rights to take any enforcement action authorized by law for violations of the terms and conditions of this Order. Furthermore, compliance with this Order is wholly distinct from any possible enforcement that may follow from the discharges themselves, pursuant to violations of the Water Code or other orders issued by the Regional Water Board.

2. **Enforcement Notification:** Pursuant to Water Code section 13268, failure to submit the required technical reports as required by Water Code section 13267(b), or falsifying any information provided therein, may result in the imposition of administrative civil liability of up to $1,000 per violation per day.

Any actual unauthorized discharge to waters of the United States may subject the Discharger to up to $10,000 for each day of discharge, and $10 for each gallon over 1,000 gallons not cleaned up pursuant to Water Code section 13385. The Regional Water Board may refer this matter to the Attorney General for enforcement in civil court. The Regional Water Board reserves its rights to take any further enforcement action authorized by law.

3. **California Environmental Quality Act Compliance:** The issuance of this Order is categorically exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant California Code of Regulations, title 14, section 15306. The submission of technical information does not constitute a project with environmental impacts.

4. **Appeal Notification:** Any person aggrieved by this action of the Regional Water Board may petition the State Water Resources Control Board to review the action in accordance with Water Code section 13320 and California Code of Regulations, title 23, sections 2050 and following. The State Water Board must receive the petition by 5:00pm, 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 (including mandatory furlough days), the petition must be received by the State Water Board by 5:00pm on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: https://www.waterboards.ca.gov/public_notices/petitions/water_quality/ or will be provided upon request.

It is hereby ordered.

C.E. Reed for Water Boards
Digitally signed by Charles Reed_Sep2020
Date: 2022.08.31 15:24:56 -07'00'

Claudia E. Villacorta, P.E.
Assistant Executive Officer

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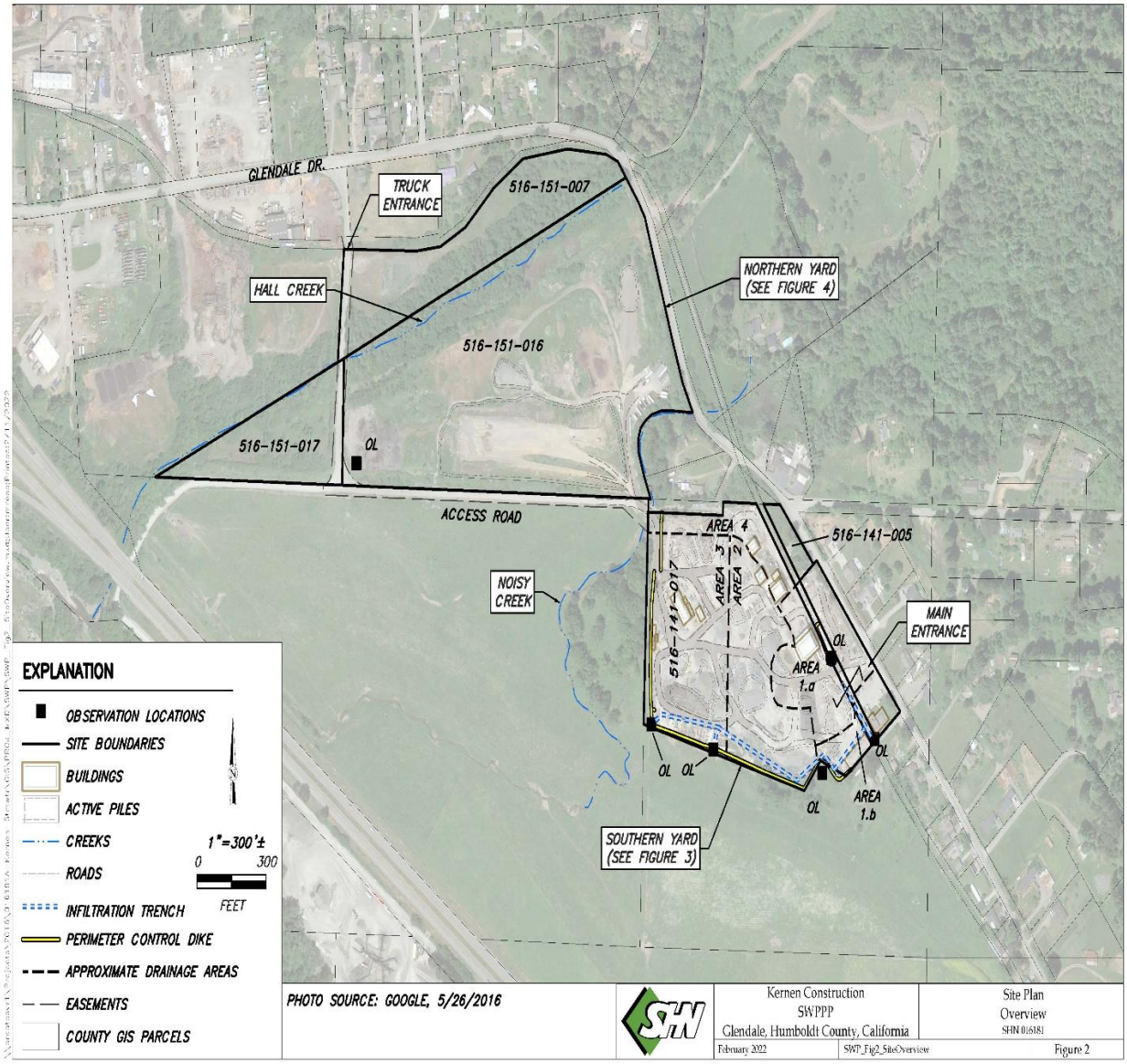
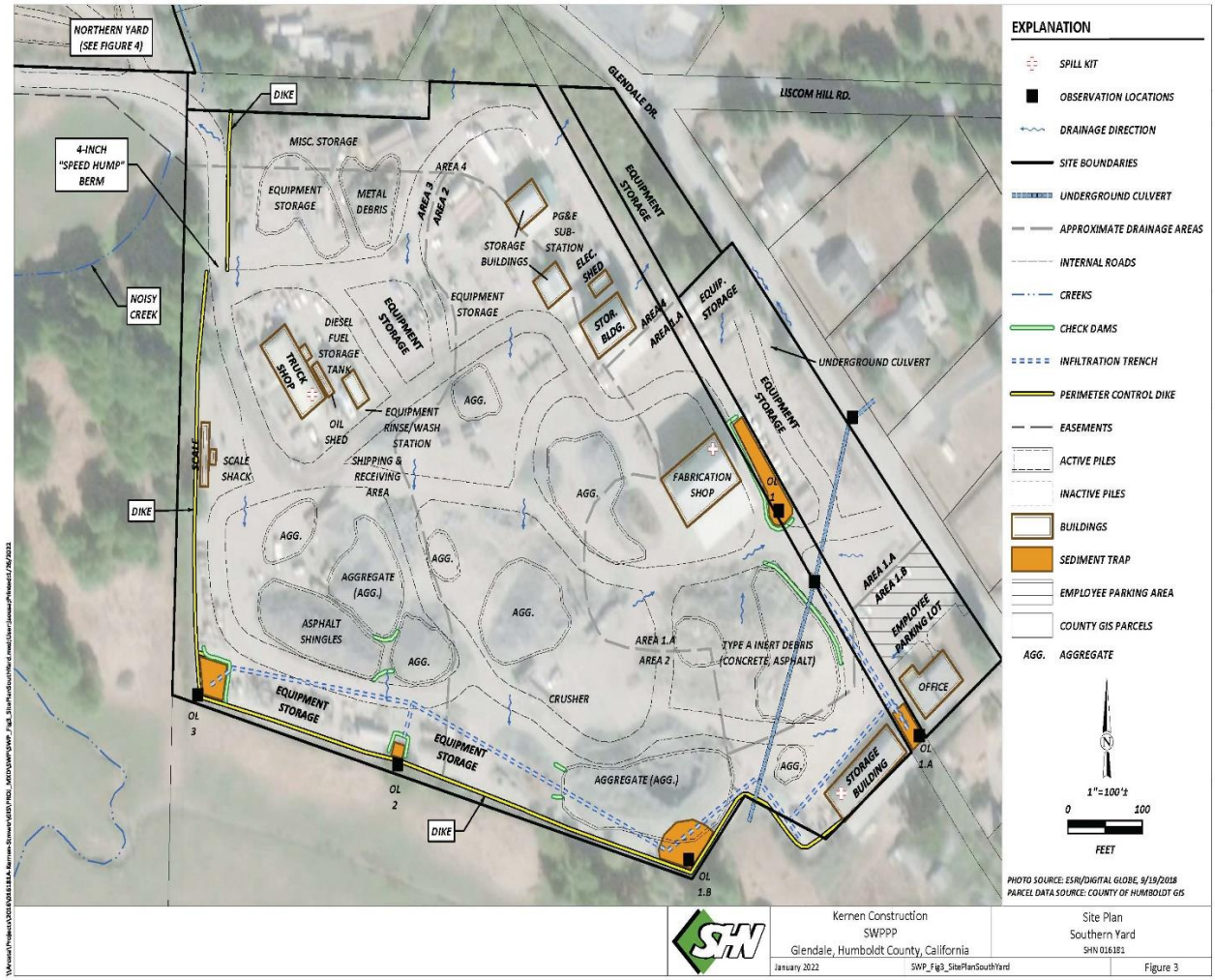
Attachments:
- **Attachment 1: Site maps**
- **Attachment 2: Estimated Cost**

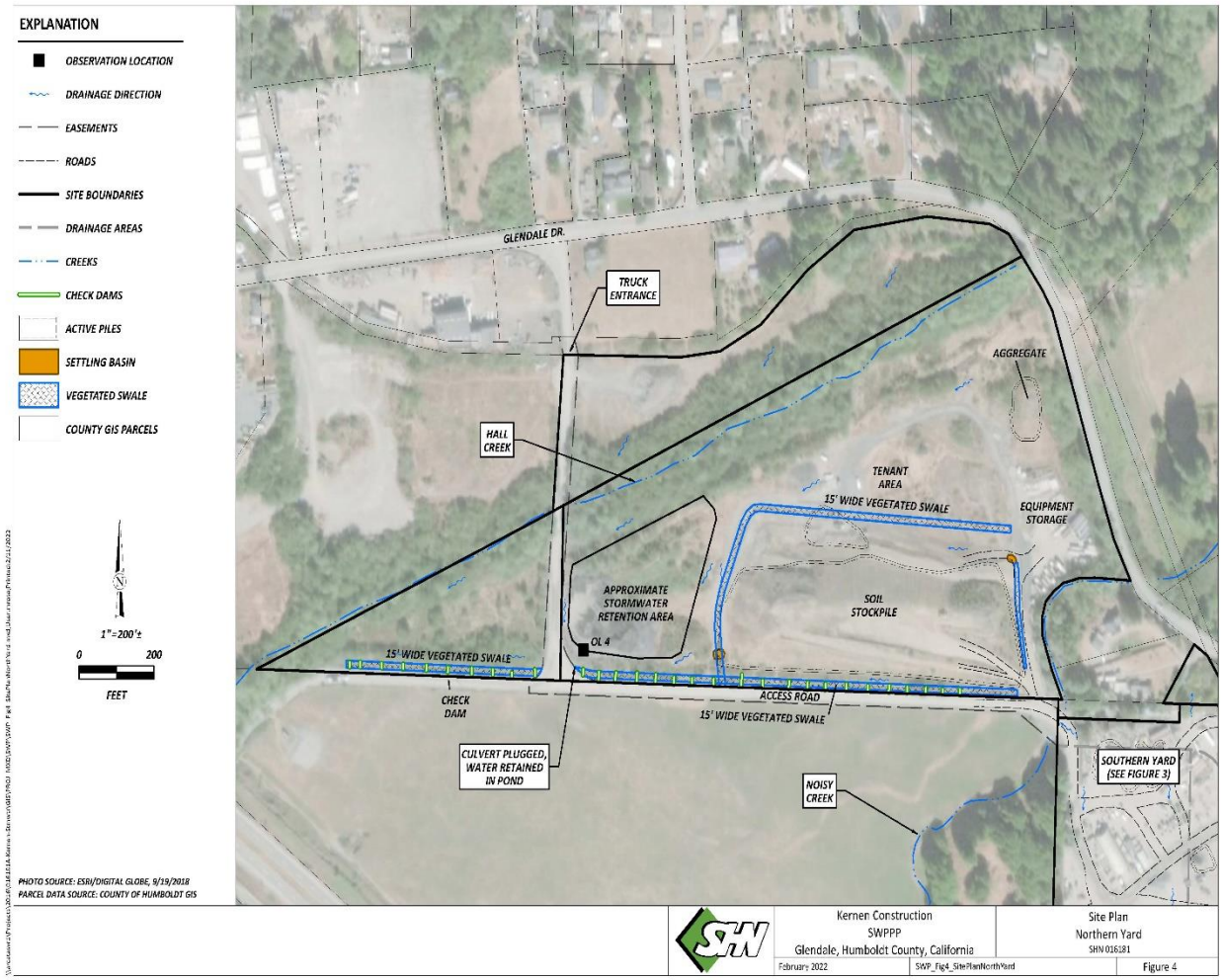
Attachment 1: Site Maps



Site map 1. Uploaded site map in SMARTS prepared by the Kernen Construction consultant that indicates drainage areas within the upper yard and the receiving water locations that receive runoff from both yards. Note that the parcel labeled 516-151-007, is incorrectly labeled and is actually APN 516-151-008 per County Assessor records available through LandVision.



Site map 2. Uploaded site map in SMARTS prepared by the Kernen Construction consultant that indicates the sediment traps and infiltration trench locations within the upper yard.



Site map 3. Uploaded site map in SMARTS prepared by the Kernen Construction consultant that indicates the existing Swale along the south side of the lower yard and the new stormwater retention area within the lower yard.

Attachment 2: Estimated Cost

Kernen Construction							
Task	**Designation**	**Events**	**Hours/Units**	**Rate (hourly)**		**Subtotal**	
				Low	**High**	**Low**	**High**
Stormwater Monitoring and inspection (5 rain inspections)	Facility stormwater staff / Consultant	5	3	$50	$90	$750	$1,350
Field sampling collection and analysis for pH for 5 observation locations (5 rain events w/ runoff)	Facility stormwater staff / Consultant	5	3	$50	$90	$750	$1,350
Incidental Costs		5	1	$200	$300	$1,000	$1,500
Lab Costs / 5 sampling locations / 5 rain events	TDS	5	5	$50	$50	$1,250	$1,250
	Oil & Grease	5	5	$95	$95	$2,375	$2,375
	Dissolved Fe	5	5	$35	$35	$875	$875
	Dissolved Al	5	5	$47	$47	$1,175	$1,175
	Dissolved Pb	5	5	$59	$59	$1,475	$1,475
	Dissolved Cu	5	5	$71	$71	$1,775	$1,775
	Dissolved Zn	5	5	$83	$83	$2,075	$2,075
	N+N (as N)	5	5	$55	$55	$1,375	$1,375
	VOCs	5	5	$150	$150	$3,750	$3,750
	SVOCs	5	5	$300	$300	$7,500	$7,500
Total Cost						$26,125	$27,825