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9 *and Jacqueline Starkweather Living Trust*

10 STATE OF CALIFORNIA

11 STATE WATER RESOURCES CONTROL BOARD

12 In the matter of:

13 Notice of Construction Stormwater and
14 Unauthorized Fill Violations and Requirements
15 for Corrective Actions and Order Requiring
16 Technical Reports on Filled Tributary, October 5,
17 2022 _____

No.

PETITION FOR REVIEW
and
REQUEST FOR STAY

Accompanying papers:
Exhibits 1 and 2
Declaration of Timothy W.
Starkweather

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1 **I. INTRODUCTION**

2 Petitioners, owners and operators of a ranch and home in San Ramon, California, seek relief
3 from an improvidently issued Notice of Violation and Order Requiring Technical Reports alleging
4 unauthorized discharge of waste into a stream and grading of more than one acre of land without a
5 required construction stormwater permit. Neither allegation is warranted by the facts or law. The
6 Regional Board’s NOV and Order lack any evidence of a stream on the ranch site, nor of any waste
7 discharged into any such stream. Indeed, uncontroverted evidence describes a swale, not a stream,
8 on the site, and shows the swale was filled by landslides (not Petitioners) with natural soil (not
9 waste). Moreover, the activities asserted to be grading requiring a construction stormwater permit
10 were plainly routine maintenance and agricultural operations expressly exempt from the need of
11 such a permit.

12 The Order should be stayed pending State Board review of the NOV and Order, and both the
13 NOV and Order should be invalidated.

14 **II. IDENTIFICATION OF PETITIONERS**

15 The Petitioners are Timothy W. Starkweather, Jacqueline Starkweather, and Jacqueline
16 Starkweather Living Trust. Petitioners can be reached through counsel at:

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18 BRISCOE IVESTER & BAZEL LLP
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21 **III. REGIONAL WATER QUALITY CONTROL BOARD ACTION TO BE REVIEWED**

22 California Regional Water Quality Control Board, San Francisco Bay Region (“Regional
23 Board”), Order of October 5, 2023, entitled “Order Requiring Technical Reports on Filled Tributary”
24 (“Order”) and the associated Notice of Violation of the same date entitled “Notice of Construction
25 Stormwater and Unauthorized Fill Violations and Requirements for Corrective Actions” (“NOV”),
26 both pertaining to property located at 100 Circle E Ranch Place, San Ramon, California (“Site”),
27 enclosed as Exhibits 1 and 2.

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1 **IV. DATE OF REGIONAL BOARD ACTION**

2 The Regional Board adopted the Order and NOV on October 5, 2023.

3 **V. STATEMENT OF REASONS WHY THE REGIONAL BOARD ACTION WAS**
4 **IMPROPER**

5 The Regional Board action was inappropriate and improper for the reasons presented in
6 section VIII below.

7 Petitioners incorporate section VIII, below, as their basis for this Petition for Review and
8 Request for Partial Stay (“Petition”). In addition, Petitioners further state that the basis for their
9 appeal and request for stay is that the October 5, 2023, Order and NOV, in each and all provisions,
10 set forth requirements that are (1) arbitrary and capricious and contrary to law, (2) unsupported by
11 technical and scientific evidence, (3) beyond the Regional Board’s statutory authority, and (4)
12 inconsistent with State Water Resources Control Board (“State Board”) rules and policies and the
13 California Administrative Procedure Act (“APA”)

14 **VI. MANNER IN WHICH PETITIONER IS AGGRIEVED**

15 Petitioners are aggrieved because the NOV erroneously asserts that they have violated the
16 law by filling a stream without authorization and grading more than an acre of soil without
17 authorization by a construction stormwater permit and the Order ostensibly requires Petitioners to
18 submit two technical reports, but actually requires Petitioners to undertake extensive and expensive
19 work.

20 **VII. STATE BOARD ACTION REQUESTED BY PETITIONER**

21 Petitioners request that the State Board stay the Order, including the requirements to submit
22 reports by November 6, 2023.

23 Petitioners also request that the State Board find that the Order and NOV are not legally or
24 factually warranted, and invalidate the Order and NOV.

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VIII. POINTS AND AUTHORITIES IN SUPPORT OF LEGAL ISSUES RAISED IN THE PETITION

A. Background

Timothy W. Starkweather, Jacqueline Starkweather, and Jacqueline Starkweather Living Trust (“Petitioners”) own and operate a ranch and home on about 200 acres of land at 100 Circle E Ranch Place in San Ramon, California (“Site”). They regularly run about 75 head of cattle and a few horses on the ranch.

In recent years, several landslides on the Site have flowed over a swale along the bottom of a hillside, disrupting previous drainage patterns of the landscape, and covered a well facility used in the cattle operation.

Mr. Starkweather has responded by grading soil flowing from the landslides to restore and maintain the original line and grade and drainage patterns along the hillside and restore and maintain the well facility. This work was undertaken to facilitate and maintain the ongoing cattle operation.

Mr. Starkweather has as well undertaken to maintain roads on the ranch by spreading gravel and earthen material on their surface. This work too was undertaken to facilitate and maintain the ongoing cattle operation.

Mr. Starkweather has also undertaken to prepare the soil of a small area comprising an acre or two for planting and maintaining grape vines for agricultural purposes.

When the Regional Board staff contacted Mr. Starkweather in September 2022 to inquire about the work on the Site, he invited the staff to visit the Site and comfort themselves that all was well.

The staff conducted a site visit on October 7, 2022. During the visit, Mr. Starkweather allowed the staff to wander wherever they liked. He showed the hillside area, well facility, and landslides and explained much of the foregoing activities. In describing the disruption of the drainage pattern caused by the landslides, Mr. Starkweather noted that the landslides had flowed over a swale at the bottom of the hillside and overwhelmed it and the well facility with sediment several feet deep. Mr. Starkweather never said there was a stream along the bottom of the hillside, and rather characterized it as a small swale. In the course of the visit, Mr. Starkweather also pointed

1 out various measures, e.g., spreading of straw, planting of vegetation, and installation of waddles,
2 that had been undertaken to address the potential for erosion and sedimentation.

3 After the site visit, Mr. Worthington wrote to Mr. Starkweather thanking him for the site visit
4 and asking for information regarding assessments by ENGEO, an engineering and environmental
5 consulting firm, which Mr. Starkweather had mentioned during the visit. (Exhibit A of attached
6 Declaration of Timothy W. Starkweather.)

7 On October 11, 2022, Mr. Starkweather wrote to Mr. Worthington providing the requested
8 information and describing steps he is prepared to take in order to repair landslides and
9 accommodate recommendations of the Regional Board staff. (Exhibit A of attached Declaration of
10 Timothy W. Starkweather.)

11 Mr. Starkweather later sent to the Regional Board staff a report of a geologic assessment of
12 landslides on the site dated November 11, 2022, and prepared by J. Brooks Ramsdell, CEG, and
13 Roberth H. Boeche, CEG, of ENGEO. (Exhibit B of attached Declaration of Timothy W.
14 Starkweather.)

15 On November 15, 2022, the Regional Board staff, Mr. Starkweather, and his counsel David
16 Ivester met by videoconference to follow up the site visit. During this conference, Demir
17 Worthington of the Regional Board staff responded to the ENGEO report, stating that the Regional
18 Board has no authority over landslide repair. He noted that the Regional Board staff hadn't so far
19 seen any work that would trigger the Regional Board's regulatory jurisdiction. He added that the
20 staff had concerns about the grading on the Site, said that they would send a letter after this
21 conference asking for more information, and noted that the staff was still in an investigation stage.

22 Mr. Starkweather never again heard from the Regional Board staff about the Site—until
23 October 5, 2023, when he received the Notice of Violation and Order described below accusing him
24 of several violations of law and ordering him to take various actions within short periods of time.

25 Gary Sellani, to whom the NOV and Order also are directed, did not undertake the activities
26 mentioned in the NOV and Order, and the piles of material on his property and on the Site have, in
27 the year since the photographs attached to the NOV were taken, been removed and the material from
28 the piles spread on the surface of roads on the Site in order to maintain them.

1 **B. Standard Of Review**

2 The State Board exercises independent judgment in evaluating whether the Regional Board’s
3 decision was appropriate. (See Water Code § 13320(c) (“[t]he state board may find that the action of
4 the regional board, or the failure of the regional board to act, was appropriate and proper[;] ... [i]n
5 taking any action, the state board is vested with all the powers of the regional boards under this
6 division”).) The State Board is not constrained by the record before the Regional Board, but shall
7 also include “any other relevant evidence which, in the judgment of the state board, should be
8 considered to effectuate and implement the policies of this division.” (Water Code § 13320(b).)

9 The State Board should stay a Regional Board order if a petitioner makes a showing,
10 supported by a declaration, of (i) “substantial harm to petitioner or to the public interest if a stay is
11 not granted”, (ii) “a lack of substantial harm to other interested persons and to the public interest if a
12 stay is granted”, and (iii) “substantial questions of fact or law regarding the disputed action” exist.
13 (23 Cal. Code Reg. § 2053(a).)

14 The Regional Board’s Order and NOV are not supported by the law or the evidence. The
15 State Board should stay the Order while this matter is pending, and ultimately invalidate the Order
16 and NOV.

17 **C. The Regional Board Acted Contrary To The Law And Evidence In Finding A**
18 **“Stream” On The Site**

19 Under both federal and California law, a “stream” constituting “waters of the United States”
20 under the Clean Water Act or “waters of the state” under the Porter-Cologne Act refers to a flowing
21 body of water bounded and characterized by an “ordinary high water mark”. (See 33 C.F.R. §§
22 328.3(a), 328.4(c)(1); *Rutherford v. State of California* (1987) 188 Cal.App.3d 1276, 1279-1280;
23 *People v. Weaver* (1983) 147 Cal.App.3d Supp. 23, 30.) The ordinary high water mark is generally
24 recognized as “that line on the shore established by the fluctuations of water and indicated by
25 physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the
26 character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other
27 appropriate means that consider the characteristics of the surrounding areas.” (33 C.F.R. §
28 328.3(c)(3); see *Rutherford, supra.*) To be distinguished from streams exhibiting ordinary high-

1 water marks are “[s]wales and erosional features (e.g., gullies, small washes) characterized by low
2 volume, infrequent, or short duration flow”, which are not waters of the United States (33 C.F.R. §
3 328.3(b)(8)), and likewise should not be regarded streams or waters of the state.

4 In its NOV, the Regional Board speaks of a “tributary stream”, but never describes it or its
5 features, and never mentions an ordinary high-water mark. In an attached report describing a site
6 inspection on October 7, 2022, Demir Worthington speaks of a “creek” with a visible bed and bank
7 on other property adjoining the Site downhill from what he calls Pond 3. He does not speak of
8 seeing that creek or any stream on the Site. Rather, he notes merely observing “a meandering
9 erosional feature that appeared to be a gully or newly forming channel.”

10 He adds that Mr. Starkweather spoke of managing landslides that had filled a “channel”
11 approximately 12 to 18 inches deep, seemingly suggesting this “channel” was a stream. Mr.
12 Starkweather did not refer to any such channel as a stream, nor did he say anything about an
13 ordinary high-water mark. Rather he pointedly characterized the channel as a swale. In its NOV,
14 the Regional Board thus offers no evidence of a stream on the Site.

15 Moreover, the Regional Board inexplicably disregards evidence provided by two Certified
16 Engineering Geologists from ENGEO, an engineering and environmental consulting firm. In a
17 November 11, 2022, report of their assessment of landslides on the Site (which was provided to the
18 Regional Board), they said nothing about any stream on the Site and rather referred to their
19 observation of a swale. (Exhibit B of attached Declaration of Timothy W. Starkweather.) These
20 experts know there is a difference between streams and swales.

21 **D. The Regional Board Acted Contrary To The Law And Evidence In Finding That**
22 **Petitioners Discharged Any Waste Into A Stream**

23 In its NOV and attached inspection report, the Regional Board does not set forth evidence
24 that it observed discharges of fill into a stream. Rather, it notes that Mr. Starkweather described
25 natural landslides filling the channel (i.e., swale) and surrounding areas and his efforts to manage
26 those landslides to restore the general pattern of drainage on the Site. While not clear, the Regional
27 Board appears to characterize Mr. Starkweather’s management of soil that had already naturally

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1 filled the swale as Mr. Starkweather somehow filling the swale himself. The Regional Board offers
2 no evidence that Mr. Starkweather filled a swale that nature hadn't already filled.

3 **E. In Any Event, The Natural Landslide Soil Mr. Starkweather Managed Is Not**
4 **“Waste”, So The Regional Board Has No Authority To Regulate It As Such**

5 The Regional Board has authority to issue Waste Discharge Requirements for discharges of
6 “waste”. (Water Code § 13260(a).) “Waste” means waste. The Legislature defined “waste” to
7 include “sewage and any and all other waste substances”—and said nothing of anything other than
8 waste: “‘Waste’ includes sewage and any and all other waste substances, liquid, solid, gaseous, or
9 radioactive, associated with human habitation, or of human or animal origin, or from any producing,
10 manufacturing, or processing operation, including waste placed within containers of whatever nature
11 prior to, and for purposes of, disposal.” (Water Code § 13050(d).)

12 This provision is more a description of the Legislature’s intended focus than a definition
13 since it speaks of what the term “includes” rather than what it “means,” and it uses the term “waste”
14 to describe itself. Because the Legislature did not otherwise specially define “waste,” the term
15 should be read according to its commonly understood meaning. (See *Halbert’s Lumber, Inc. v. Lucky*
16 *Stores, Inc.* (1992) 6 Cal.App.4th 1233, 1238-1239.)

17 Of the many definitions of “waste” offered in dictionaries, the common thread is reference to
18 something useless, worthless, unused, unneeded, left over, discarded, or the like. (See, e.g.,
19 Webster’s New Twentieth Century Dictionary (2d ed. 1979), p. 2064; 2 Compact Edition of Oxford
20 English Dictionary (1971), p. 3687.) The Legislature’s elaboration on the meaning of “waste” in
21 section 13050(d) comports with this usual, ordinary understanding. (See *Waste Management of the*
22 *Desert v. Palm Springs Recycling Center, Inc.* (1994) 7 Cal.4th 478, 485.)

23 Here, soil covering a swale as a result of landslides can hardly be regarded “waste”
24 “associated with human habitation, or of human or animal origin, or from any producing,
25 manufacturing, or processing operation”. Even if Mr. Starkweather’s management of landslide soil
26 may be regarded as his filling of a swale, he certainly has not endeavored to discard or dispose of
27 any such soil or otherwise treat it as waste, but rather has affirmatively managed and used it in order

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1 to restore and maintain the general topography and drainage pattern of the Site and serve the
2 purposes of cattle grazing. That soil is not “waste” within the meaning of the Water Code.

3 **F. The Regional Board Acted Contrary To The Law And Evidence In Finding That**
4 **Petitioners Performed Grading Requiring Authorization Under A Construction**
5 **Stormwater Permit**

6 In its NOV, the Regional Board asserted that grading of one acre or more had occurred on the
7 Site and such grading requires a construction stormwater permit.

8 That is not quite right. Not all grading requires a stormwater permit. The State Water
9 Resources Control Board’s Order WQ 2022-0057-DWQ setting forth its general construction
10 stormwater permit expressly excepts two types of grading pertinent here. The Order provides in
11 pertinent part:

12 This General Permit does not apply to the following construction activity:

- 13 1. Routine maintenance. Routine maintenance is defined as activities
14 intended to maintain the original line and grade, hydraulic capacity
15 and/or purpose of the facility. This General Permit further defines
16 routine maintenance for road and highway projects as the
17 replacement of the structural section, but not when the activity
18 exposes the underlying soil or erodible subgrade. The road surface
and base are not part of the subgrade. As such, those portions of a
project that remove the paved road surface and base down to the
erodible subgrade and/or underlying soil would not be considered
routine maintenance.
2. Disturbances to land surfaces solely related to growing crops or
agricultural operations such as disking, harrowing, terracing, and
leveling, and soil preparation.

19 (Order WQ 2022-0057-DWQ, pp. 8-9.)

20 Both exceptions apply here. In its NOV, the Regional Board says nothing of the
21 purpose of the grading or Mr. Starkweather’s intent. As noted above, he specifically managed the
22 landslide soil and associated areas to restore the general drainage pattern of the Site (routine
23 maintenance) and serve the purpose of cattle grazing (agricultural operations) and applied material to
24 the surface of roads on the Site (routine maintenance).

25 **G. In Issuing Its Order, The Regional Board Exceeded Its Authority Under Section**
26 **13267**

27 The Order (a) is not in furtherance of an investigation, (b) calls for much more than technical
28 reports, and (c) costs much more than warranted.

1 **H. In Issuing Its Order Without A Hearing Or Even A Courtesy Phone Call, The**
2 **Regional Board Deprived Petitioners Of Property Without Due Process Of Law**
3 **In Violation Of The Constitution**

4 Due process cries out for a hearing in this case. There is no reason to force Petitioners at
5 great expense to conduct expensive studies, prepare expensive reports, and undertake expensive
6 work to remedy issues that might well have been resolved with a few telephone calls and letters.

7 “Due process principles require reasonable notice and opportunity to be heard before
8 governmental deprivation of a significant property interest.” (*Horn v. County of Ventura* (1979) 24
9 Cal.3d 605, 612.) ““The fundamental requirement of due process is the opportunity to be heard at a
10 meaningful time and in a meaningful manner.”” (*People v. Litmon* (2008) 162 Cal.App.4th 383,
11 395, quoting *Mathews v. Eldridge*, 424 U.S. at 333, citations and quotation marks omitted.) ““If the
12 right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a
13 time when the deprivation can still be prevented.”” (*Id.*, quoting *Fuentes v. Shevin* (1972) 407 U.S.
14 67, 81.)

15 **IX. THE PETITION HAS BEEN SENT TO THE REGIONAL BOARD**

16 This petition has been sent to the Regional Board.

17 **X. AS THE ORDER AND NOV WERE ISSUED WITHOUT A HEARING OR**
18 **OTHERWISE APPRISING PETITIONERS OF THE ALLEGATIONS,**
19 **PETITIONERS WERE UNABLE TO RAISE THESE SUBSTANTIVE ISSUES OR**
20 **OBJECTIONS BEFORE THE REGIONAL BOARD**

21 Even though the Regional Board apparently worked on this matter over the course of a year
22 after visiting the Site, it issued its NOV and Order without a hearing and without otherwise apprising
23 Petitioners of the allegations and claims in the NOV and Order beforehand, so Petitioners had no
24 opportunity to present the issues and objections directly to the Regional Board, nor did Petitioners
25 have an opportunity beforehand to raise issues and objections concerning certain aspects of the NOV
26 and Order, including the Regional Board’s legal authority or basis for issuing the NOV and Order.

27 **XI. THE ORDER SHOULD BE STAYED**

28 The State Board should stay the Order.

 The requested stay should issue because the accompanying declaration of Mr. Starkweather,
together with the other information presented with this Petition, show that substantial harm to

Petitioners would otherwise result, a stay will not cause harm, and substantial questions of fact and law exist related to the Order.

XII. CONCLUSION

The State Board should stay the Order pending the State Board's review of this Petition. The State Board should also find that the Order and NOV are not legally or factually warranted, and invalidate the Order and NOV.

DATED: November 6, 2023

BRISCOE IVESTER & BAZEL LLP

By: 

David Ivester

Attorney for Petitioners

*Timothy W. Starkweather, Jacqueline Starkweather,
and Jacqueline Starkweather Living Trust*

EXHIBIT 1

San Francisco Bay Regional Water Quality Control Board

October 5, 2023

Timothy Starkweather, Jacqueline Starkweather,
and Jacqueline Starkweather Living Trust
100 Circle E. Ranch Place
San Ramon, CA 94583
Sent electronically to twstark@aol.com

Gary Sellani
PO Box 2053
San Ramon, CA 94583

Subject: Order Requiring Technical Reports on Filled Tributary

Site: 100 Circle E Ranch Place & Adjacent Parcels, Contra Costa County

Dear Dr. Timothy Starkweather, Ms. Jacqueline Starkweather, and Mr. Gary Sellani:

The San Francisco Bay Regional Water Board (Water Board) requires you to submit technical reports pertaining to the fill of tributaries at parcels associated with the 100 Circle E Ranch Place property (Site) by November 6, 2023. Any requested extension of this deadline must be approved and confirmed in writing by Regional Water Board staff.

Background

Earth-moving operations at the Site, resulted in the discharge of fill to waters of the State as discussed in the Water Board's October 5, 2023, Notice of Violation and attached inspection report (Inspection Report). Dr. Timothy W. Starkweather, Ms. Jacqueline Starkweather, and the Jacqueline Starkweather Living Trust own Contra Costa County Assessor Parcel Numbers 211-030-012 and 211-030-030 (Starkweather Properties), and Mr. Gary Sellani owns Contra Costa County Assessor Parcel No. 211-030-024 (Sellani Property). There are three ponds on the properties: two are on the Starkweather Properties ("Pond 1" and "Pond 2," Inspection Report Figure 1), and one is on the Sellani Property, ("Pond 3," Inspection Report Figure 1), Earth moving activities filled a portion of an unnamed, ephemeral stream that connected these ponds and is a tributary that connects to South San Ramon Creek (Unnamed Tributary).

Requirements for Technical Reports

Pursuant to Water Code section 13267, Dr. Timothy W. Starkweather, Ms. Jacqueline Starkweather, and the Jacqueline Starkweather Living Trust are required to submit a technical report for the Starkweather Properties, and Mr. Gary Sellani and Dr. Timothy W. Starkweather must submit a technical report for the Sellani Property. While Mr. Sellani is the owner of this property, Dr. Starkweather was, at least in part, responsible for earth-moving activities at the Sellani Property. The technical reports must characterize impacts to the Unnamed Tributary and must include a corrective action plan as follows:

- Estimate the volume and area of fill (earthen material) discharged to the Unnamed Tributary, which encompasses the channel between Pond 2 and Pond 3 at the Sellani Property and the channel between Pond 2 and Pond 3 along with the headwater (upgradient) channel upgradient of Ponds 1 and 2 at the Starkweather Properties.
- Estimate the amount of fill material that was mobilized during rain events and discharged to ponds (Ponds 1, 2, and 3) since the fill was placed, including during the 2022-2023 rainy season.
- Estimate the timeframe (date range) when the Unnamed Tributary was filled.
- Characterize the materials used to fill the Unnamed Tributary and evaluate the potential impacts to State waters with respect to water impairment and toxicity for both materials imported to the Site and soil generated onsite.
- Explain the purpose and need for earth-moving activities at the Starkweather Properties and the Sellani Property.
- Describe erosion and sediment control measures implemented both during and after the earth-moving activities to prevent or mitigate discharges of sediment or other construction-related materials or wastes to State waters.
- Discuss whether federal, state, or local permits or other work authorizations were obtained by you, your representatives, other property owners, or any other parties (provide copies if applicable).
- Provide photographs that show current conditions at the Site (i.e., taken within two weeks of receiving this order).
- Include a work plan to restore waters of the State damaged by the earth-moving and fill activities, which shall consist of the following:
 - Corrective actions to restore the channel and associated functions and values of the Unnamed Tributary with a map that shows the planned restoration areas and redesigned channels and an implementation schedule;
 - monitoring and reporting to evaluate the success of corrective actions that includes monitoring methods, performance criteria, and a reporting schedule;

- management of soil stockpiles and debris that includes testing for contaminants of concern and storage so that sediment or other pollutants are not washed into State waters.

Basis for Requirement

The Water Board requires technical reports to assess impacts to the Unnamed Tributary and the corrective actions that should be taken to reverse or mitigate these impacts and restore waters of the State pursuant to Water Code section 13267, which allows the Water Board to require technical or monitoring program reports from any person who has discharged, discharges, proposes to discharge, or is suspected of discharging waste that could affect water quality, as discussed in the attached Fact Sheet.

This 13267 Order is intended to secure an appropriate evaluation of water quality impacts with proposed plans, as needed, to remedy the impacts. The required reports will allow the Water Board to consider requirements for corrective action, whether undertaken voluntarily or compelled through a cleanup and abatement order pursuant to Water Code section 13304.

The burden of preparing the report, including costs, bears a reasonable relationship to the benefits to be obtained from it since the report is necessary to determine the impacts to water quality and to protect the beneficial uses of South San Ramon Creek, consistent with the San Francisco Bay Basin Water Quality Control Plan. Many of the requirements for the technical reports involve insignificant costs, essentially just requiring disclosing information about the events that occurred at the Starkweather Properties and Sellani Property during the time period in question. The work plan must be prepared by a qualified professional, or professionals, and will result in costs that are reasonable for the benefits gained from necessary actions to restore watershed health.

Right to Petition

Any person aggrieved by this action may petition the State Water Resources Control Board to review the action in accordance with Water Code section 13320 and title 23, California Code of Regulations section 2050 *et seq.* The State Water Resources Control Board must receive the petition by 5:00 p.m. November 6, 2023. Copies of the law and regulations applicable to filing petitions can be provided upon request and may be found on the Internet at

https://www.waterboards.ca.gov/public_notices/petitions/water_quality/wqpetition_instr.shtml

Enforcement

The Water Board reserves the right to use its enforcement authority for violations of the Water Code that include a violation of this order for technical reports, issued pursuant to Water Code section 13267. The failure to comply with a Water Code section 13267 order is subject to administrative civil liability of up to \$1,000 per day of violation pursuant to Water Code section 13268. The Water Board reserves the right to take any

additional enforcement action as authorized by law, including referring the matter to the state Attorney General's Office.

If you have any questions, please contact Demir Worthington, Engineering Geologist, at Demir.Worthington@waterboards.ca.gov.

Sincerely,



Digitally signed by
Keith H. Lichten,
Division Manager
Date: 2023.10.05
16:06:10 -07'00'

for Eileen White
Executive Officer

Attachments: 13267 Fact Sheet

San Francisco Bay Regional Water Quality Control Board

Fact Sheet – Requirements for Submitting Technical Reports Under Section 13267 of the California Water Code

What does it mean when the Regional Water Board requires a technical report?

Section 13267¹ of the California Water Code provides that "...the regional board may require that any person who has discharged, discharges, or who is suspected of having discharged or discharging, or who proposes to discharge waste...that could affect the quality of waters...shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires."

This requirement for a technical report seems to mean that I am guilty of something, or at least responsible for cleaning something up. What if that is not so?

The requirement for a technical report is a tool the Regional Water Board uses to investigate water quality issues or problems. The information provided can be used by the Regional Water Board to clarify whether a given party has responsibility.

Are there limits to what the Regional Water Board can ask for?

Yes. The information required must relate to an actual or suspected or proposed discharge of waste (including discharges of waste where the initial discharge occurred many years ago), and the burden of compliance must bear a reasonable relationship to the need for the report and the benefits obtained. The Regional Water Board is required to explain the reasons for its requirement.

What if I can provide the information, but not by the date specified?

A time extension may be given for good cause. Your request should be promptly submitted in writing, giving reasons.

Are there penalties if I don't comply?

Depending on the situation, the Regional Water Board can impose a fine of up to \$5,000 per day, and a court can impose fines of up to \$25,000 per day as well as criminal penalties. A person who submits false information or fails to comply with a requirement to submit a technical report may be found guilty of a misdemeanor. For some reports, submission of false information may be a felony.

Do I have to use a consultant or attorney to comply?

There is no legal requirement for this, but as a practical matter, in most cases the specialized nature of the information required makes use of a consultant and/or attorney advisable.

What if I disagree with the 13267 requirements and the Regional Water Board staff will not change the requirement and/or date to comply?

You may ask that the Regional Water Board reconsider the requirement, and/or submit a petition to the State Water Resources Control Board. See California Water Code sections 13320 and 13321 for details. A request for reconsideration to the Regional Water Board does not affect the 30-day deadline within which to file a petition to the State Water Resources Control Board.

If I have more questions, whom do I ask?

Requirements for technical reports include the name, telephone number, and email address of the Regional Water Board staff contact.

¹ Code sections can be found by searching the California Legislative Code Section search at <http://leginfo.ca.gov/faces/codes.xhtml>

rev: March 2014

EXHIBIT 2

San Francisco Bay Regional Water Quality Control Board

October 5, 2023

Timothy Starkweather, Jacqueline Starkweather,
and Jacqueline Starkweather Living Trust
100 Circle E. Ranch Place
San Ramon, CA 94583

Gary Sellani
PO Box 2053
San Ramon, CA 94583

Sent electronically to twstark@aol.com

**Subject: Notice of Construction Stormwater and Unauthorized Fill Violations
and Requirements for Corrective Actions**

Site: 100 Circle E. Ranch Place, San Ramon, Contra Costa County

Dear Dr. Timothy W. Starkweather, Jacqueline Starkweather, and Gary Sellani:

We appreciate your cooperation and assistance in carrying out our inspection of your property at 100 Circle E. Ranch Place in San Ramon (Property) last October. During the inspection and subsequent investigation and review of aerial photography, San Francisco Bay Regional Water Quality Control Board (Water Board) staff has identified violations of the Water Code, the federal Clean Water Act, and the San Francisco Bay Basin Water Quality Control Plan (Basin Plan) for discharging waste and/or allowing waste to be discharged to an ephemeral tributary (Unnamed Tributary) to South San Ramon Creek (Creek) and a Clean Water Act violation for performing grading work on more than an acre of land without coverage under the Construction Stormwater General Permit¹ (Permit).

To address the grading without permit violation, please obtain Permit coverage as soon as possible, but no later than **November 6, 2023**. To address the discharge of waste violation, submit technical reports, described in the enclosed Requirement for Technical Reports on Filled Tributary letter as soon as possible, but no later than **December 4, 2023**.

¹ Construction Stormwater General Permit, Order WQ 2022-0057-DWQ

JAYNE BATTEY, CHAIR | EILEEN WHITE, EXECUTIVE OFFICER

Parcel Ownership

You are receiving this letter as an owner of a parcel where earthwork occurred, or is occurring, that threatens the beneficial uses of State waters. Based on our review of Contra Costa County Assessor's Office records (Attachment 1), Dr. Timothy W. Starkweather, Jacqueline Starkweather, and the Jacqueline Starkweather Living Trust own parcels 211-030-012 and 211-030-030, and Mr. Gary Sellani owns parcel 211-030-024.

Unauthorized Fill of a Tributary Stream Violations

There are three ponds on the Property, which have been named ponds 1, 2, and 3 (Attachment 2, Inspection Report, Figure 1) for the purposes of the inspection report and this notice, that are connected the Unnamed Tributary that was filled some time between August 28, 2016, and December 30, 2016. Attachment 3 includes Google Earth photos taken on August 28, 2016, and December 30, 2016, which show a stream above Pond 3 on August 28. That same area appears to be covered with fill on December 30 of that year. In addition, the December 30, 2016, photo shows machinery that may have been used to perform the fill. The Unnamed Tributary, a water of the State and potentially the United States, extends from its point of discharge from Pond 2 to Pond 3, and from its point of discharge into Pond 1 to the upper extent of the headwater channel that drains into Pond 1. During our October 7, 2022, inspection, we observed an erosional feature in the filled area between Ponds 2 and 3 where, according to Dr. Starkweather, a stream was previously located.

- *Unauthorized Discharge Violation*

Water Code section 13260 requires any person who discharges, or proposes to discharge, waste that could affect waters of the State to submit a report of waste discharge (ROWD). The discharge of waste is broadly defined in the Water Code to include fill, any material resulting from human activity, or any other discharge that may directly or indirectly impact waters of the State. Water Code section 13264 prohibits the discharge of waste prior to filing a ROWD or obtaining Waste Discharge Requirements (WDRs). We have no record of having received a ROWD for these activities, nor has the Water Board issued WDRs for them. Accordingly, you are in violation of Water Code section 13260 based on your failure to submit a ROWD or obtain WDRs. Clean Water Act section 301 requires a permit, issued pursuant to regulations under section 404, prior to the discharge of fill material into waters of the United States. The U.S. Army Corps of Engineers (Corps) is responsible for issuing section 404 permits, and the Water Board is responsible for certifying the Corps' permits pursuant to Clean Water Act section 401. We have not issued a certification of a Corps permit for your project and we have not received any notice that you have sought or obtained a section 404 permit from the Corps.

- *Basin Plan Violations*

Basin Plan Prohibition No. 7 prohibits the discharge of "rubbish, refuse, bark, sawdust, or other solid wastes" into surface waters, and Basin Plan Prohibition No. 9 prohibits the discharge of "silt, sand, clay, or other earthen materials from any activity" where they unreasonably affect or threaten to affect beneficial uses of

surface waters. Water from tributaries on the subject property discharge to a Creek tributary, which has the beneficial uses listed below. By the tributary rule, a tributary to a listed water body has the beneficial uses of that water body. The Creek, and thus the onsite tributaries, have the following beneficial uses: Warm Freshwater Habitat, Wildlife Habitat, Water Contact Recreation, and Non-Contact Water Recreation. The discharge of waste material and/or earthen material into these waters unreasonably affects these beneficial uses. Accordingly, you have violated Basin Plan Prohibitions 7 and 9. You may access a copy of the Basin Plan online at: www.waterboards.ca.gov/sanfranciscobay/basin_planning.html#basinplan.

Construction without Permit Coverage Violation

More than an acre of grading has occurred at the Property on parcels 211-030-012 and 211-030-030. Parties who intend to disturb an acre or more of soil are required by Clean Water Act sections 301 and 402 to obtain a construction stormwater permit. There is no record indicating you have filed for coverage under the Permit via the State Water Resources Control Board (State Water Board) electronic filing system. Accordingly, you are in violation of Clean Water Act sections 301 and 402.

Attachment 4 includes Google Earth photos taken August 31, 2017, April 2, 2018, and June 20, 2019, showing soil disturbance upgradient of Ponds 1 and 2. Attachment 5 includes a Google Earth photo taken in May 2022 that shows disturbed soil upgradient of Ponds 1 and 2 and includes an estimate of the areal extent of disturbed soil, 2.68 acres, calculated by using Google Earth measurement tools. During our October 7, 2022 inspection, Water Board staff observed disturbed soil in areas upgradient of Ponds 1 and 2 (Attachment 2, Figure 1), which Dr. Starkweather informed them was due to grading operations he was performing on the Property.

Obtain Permit Coverage

As set forth above, you are required to obtain Permit coverage as soon as possible, but no later than **November 6, 2023**. Dr. Starkweather, Jacqueline Starkweather, and Jacqueline Starkweather Living Trust must take immediate steps to obtain Permit coverage and comply with all its requirements, including the implementation of appropriate erosion and sediment controls for all disturbed areas. Please submit a notice of intent (NOI) to apply for coverage under the Permit for any current or planned construction work on the Property, or provide documentation of a prior submittal. Permit coverage must be obtained for the entire period of construction activities related to the site.

Attachment 1 includes an aerial photograph with parcel maps and ownership information overlayed. As such, Dr. Starkweather, Jacqueline Starkweather, and Jacqueline Starkweather Living Trust are responsible for obtaining Permit coverage for grading on parcels 211-030-012 and 211-030-030, and all parties will be named in an upcoming order addressing the Unnamed Tributary fill on parcels 211-030-030 and 211-030-024.

To obtain Permit coverage you will need to perform the following:

Create an account and password for the [Stormwater Multiple Application and Report Tracking System \(SMARTS\)](#).

1. After you log in to your account, click the “Get Started” button.
2. Fill out the Notice of Intent (NOI) form. When you are in SMARTS, look at the tabs across the top and the menu at the left to find the correct forms to fill out.
3. Complete the Legally Responsible Person (LRP) form and **MAIL** the hard copy, signed in blue ink, to the Sacramento address on the form. After you receive the LRP authorization, you will then be able to log in and certify your documents. **The permit application is not complete until the documents have been certified online and the fee paid.**
4. Prepare the documents required under the Permit. You must hire a Qualified Stormwater Pollution Prevention Plan (SWPPP) Practitioner or Developer (QSP or QSD) to prepare the SWPPP.
5. Read the Permit and the Attachment that applies to your project’s Risk Level. You will determine the Risk Level as part of the application process in SMARTS.

Resources to assist you in obtaining permit coverage include the following:

- General information about the Permit:
https://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.html
- A copy of the current Permit, attachments, appendices, and guidance:
[Construction Stormwater Program | California State Water Resources Control Board](#)
- A copy of the Permit that will become effective on September 1, 2023:
[NPDES Construction Stormwater General Permit Reissuance | California State Water Resources Control Board](#)
- A list of Frequently Asked Questions about the Permit:
https://www.waterboards.ca.gov/water_issues/programs/stormwater/const_permits_faqs.shtml

Consequences

You may be subject to monetary penalties for violations pursuant to Water Code section 13385(c), 13265, and 13350. In considering our enforcement options, we will evaluate your timeliness and diligence in responding to this notice and obtaining coverage under the construction stormwater general permit.

If you have any questions concerning this letter, please email Demir Worthington at Demir.Worthington@waterboards.ca.gov. We are available to meet to discuss the corrective actions.

Sincerely,



Digitally signed by Keith
H. Lichten, Division
Manager

Date: 2023.10.05
16:11:57 -07'00'

Keith H. Lichten, P.E.
Division Manager
Watershed Management Division

Attachments:

- Attachment 1 – 100 Circle E Ranch Place Parcels
- Attachment 2 – Inspection Report
- Attachment 3 – Google Earth Images of Tributary Fill
- Attachment 4 – Google Earth Images of Grading
- Attachment 5 – Google Earth Estimate of Grading Area

Enclosure:

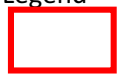
- Order requiring Technical Reports on Filled Tributary

100 Circle E Ranch Place, San Ramon, Contra Costa County

Contra Costa County Parcel Number	Parcel Owner(s)
211-030-012	Timothy W Starkweather Jacqueline F Starkweather Starkweather J F Living Trust
211-030-030	Timothy W Starkweather Jacqueline F Starkweather Starkweather J F Living Trust
211-030-024	Gary Sellani



Legend



Contra Costa County Parcel



National Hydrography Dataset Flowlines

TO: 100 Circle E Ranch Road Case File

FROM: Demir Worthington
Engineering Geologist

DATE: October 5, 2023

Subject: Report of October 7, 2022, Inspection of 100 Circle East Ranch Place,
Contra Costa County

On October 7, 2022, I inspected 100 Circle East Ranch Place (Property) in San Ramon to investigate grading activity. Brian Thompson, Senior Engineering Geologist for the San Francisco Bay Regional Water Quality Control Board (Water Board), Vaneeta Chintamaneni, Attorney with the State Water Resources Control Board's (State Water Board) Office of Enforcement, Kathryn Hart, Water Board Water Resource Control Engineer, and I had contacted Dr. Timothy W. Starkweather, one of the Property owners, on September 27, 2022, about potential grading at his property. Dr. Starkweather confirmed he was responsible for the grading and invited us to visit the property.

At approximately 11:10 a.m. on October 7, 2022, Kathryn Hart, Vaneeta Chintamaneni, and I arrived at the Property and met with Dr. Starkweather and his attorney, David Ivester. I asked Dr. Starkweather if we had his permission to inspect his property and take photographs, and he verbally consented to both the inspection and photography. We also obtained permission from Dr. Starkweather's neighbor, Gary Sellani, who owns an adjacent property, but was not present there on the date of this inspection. Dr. Starkweather called Mr. Sellani and handed me his telephone so I could speak with him. During this telephone conversation, Mr. Sellani gave us permission to inspect his parcel and take photographs thereof.

At the entrance to the Property and on Mr. Sellani's parcel, I observed approximately 10 uncovered piles of a light gray earthen material at two locations (Photos 1 and 2). Dr. Starkweather said the material was parking lot asphalt taken from a parking lot in Santa Clara and that he plans to use the material to maintain roads on the ranch.

I observed three ponds on the Property, which Figure 1 identifies and names for clarity. Ponds 1 and 2 were adjacent, and Pond 3 was approximately 400 feet downstream of Pond 2 (estimated via Google Earth imagery). I observed loose fine-grained sediment on the ground of the area upgradient of Ponds 1 and 2, and some of it had crossed into the ponds, which were dry at the time (Photos 3 and 4). Pond 3 was approximately 20 feet in diameter, had a berm on the southern side, and was partially filled with water that appeared opaque and stagnant. I observed a pipe in the berm which allows the pond to overflow into a creek downstream of the pond (Photo 5). The creek had a clearly visible

bed and bank and is on a different property, which is indicated by a fence 15 feet downstream of the pond (Photos 6). Kathryn Hart noted that the creek supported riparian habitat with under and overstory vegetation. Dr. Starkweather told me he that he is raising cattle on the property and the ponds are for the cows. Dr. Starkweather said that he is grading the hill above Ponds 1 and 2 to plant a vineyard on the Property and that he plans to hydroseed it to prevent erosion. Grading one or more acre of soil without obtaining coverage under the Construction Stormwater General Permit is a violation of Clean Water Act sections 301 and 402.

In the drainage area above Pond 3 I observed a meandering erosional feature that appeared to be a gully or newly forming channel (Photos 7 and 7a). Dr. Starkweather told us he has been managing three landslides on his property and that in 2017 or 2018, during the wet season, the landslides moved several thousand cubic yards of dirt onto the area above Pond 3, which is located on Mr. Sellani's property. He added that he spread the landslide material over that area, filling in the channel that previously drained to Pond 3. According to Dr. Starkweather, the former channel was approximately 12 to 18 inches deep, conveyed water to Pond 3, and that the ongoing erosion in that area is reformation of that channel. The topsoil in the filled area had grain size finer than sand, was a light-gray color, and contained chunks of asphalt (Photo 8). The topsoil in the landslide area uphill of the fill area had grain size finer than sand, was a light-brown color, and was partially covered with vegetation (Photo 9). Discharging fill to waters of the state without submitting a report of waste discharge (ROWD) or the United States without obtaining a Clean Water Act section 404 permit is a violation of Water Code section 13260, Clean Water Act section 301, and the San Francisco Bay Basin Water Quality Control Plan (Basin Plan).

During this inspection, Dr. Starkweather described grading and channel fill that had occurred at the Property, and I observed uncovered piles of earthen material, sediment in dry ponds, and an erosional feature that appeared to be reformation of a filled channel.

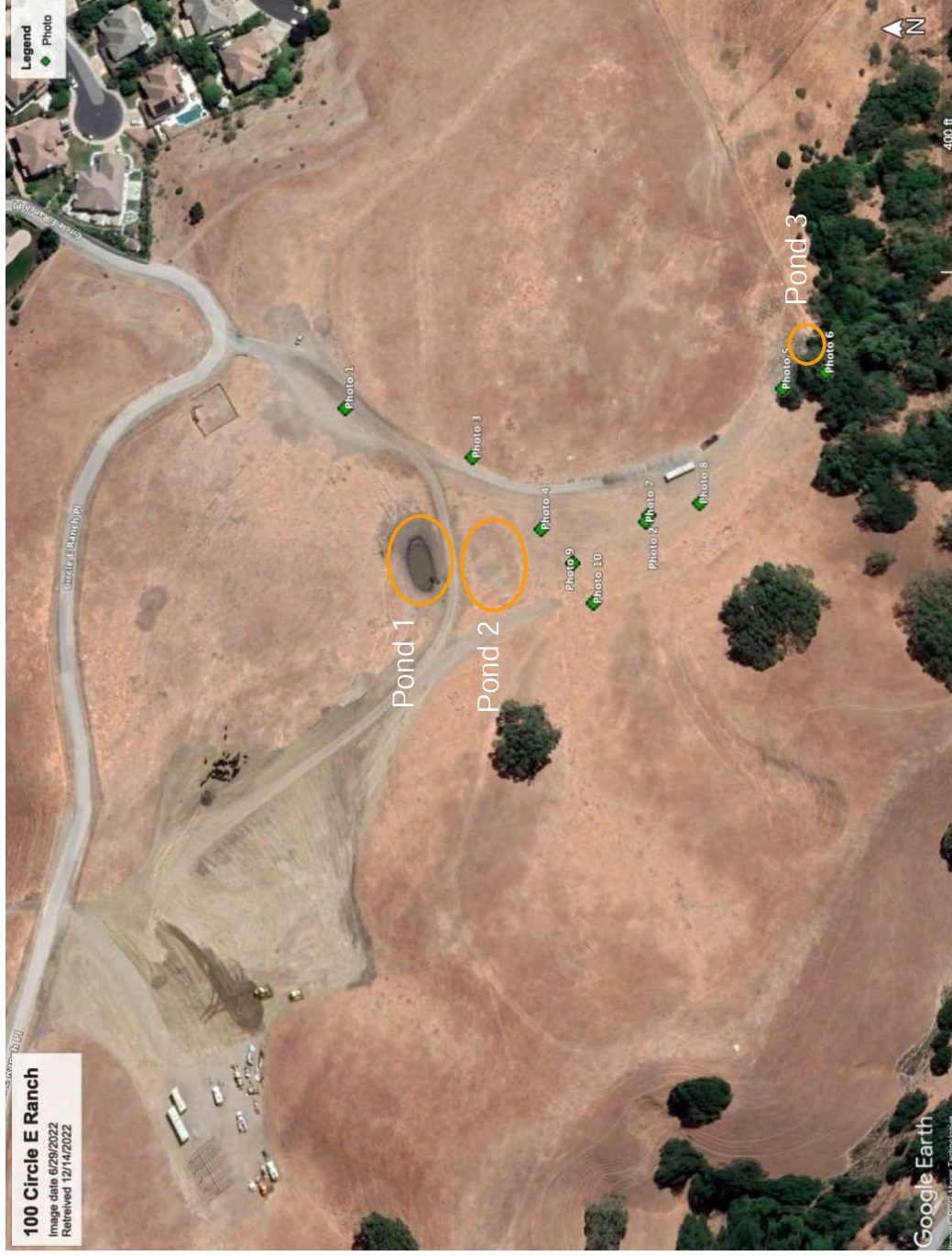


Figure 1: Property Map
Map of 100 Circle E Ranch Road, dated June 29, 2022
Image modified by Demir Worthington to add photograph locations and pond locations

Photo 1



Approximately four uncovered stockpiles of a light-gray, earthen material were piled near the gate of the property. A tractor with a front-load bucket was parked next to the piles. Dr. Starkweather said that the material came from a parking lot in Santa Clara, and that he plans to use it for road maintenance on the Property.

Photo 2



Approximately six uncovered stockpiles were piled on Mr. Sellani's property. The stockpiled material was similar to the light-gray, earthen material piled on Dr. Starkweather's property (Photo 1).

Photo 3



Pond 2 was fenced off and sediment from the slope beyond it had passed under straw waddles into the dry pond. Hay covered a portion of the dirt road behind the pond (circled; Photo 4)

Photo 4



Hay spread over a dirt road just upslope of pond 2 (Photo 3).

Photo 5



Pond 3, approximately 20 feet in diameter, had a culvert (circled) that would drain pond water to a creek below (Photo 6). The water in the pond was opaque and appeared stagnant.

Photo 6



The berm for pond 3 was approximately two feet high. A culvert at the bottom of the berm (circled) was aligned with the culvert at the top of the berm (shown in Photo 5). The berm was constructed across a creek near the property line (assumed to be the fence) that had a visible bed and bank.

Photo 7a



The area above pond 3 had a meandering, erosional feature forming in it.

Photo 7b



The erosional feature was approximately a foot wide with shallow banks on each side that were two to three inches deep.

Photo 8



Sediment in the area above pond 3 was gray in color, sandy, and contained chunks of asphalt (circled).

Photo 9

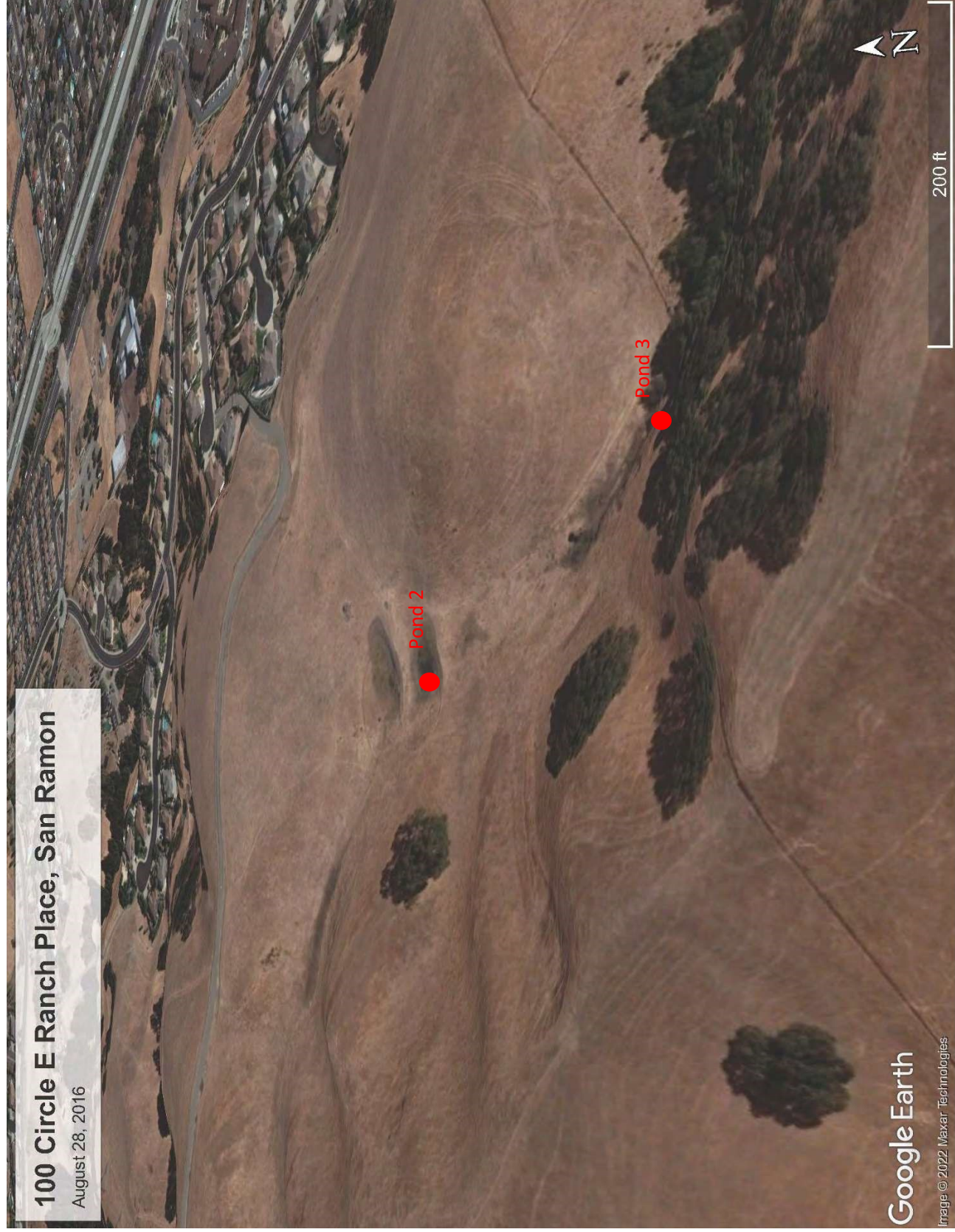


Soil in the landslide area was light brown in color and fine-grained.

Photo 10



Sediment in the landslide area was partially covered with vegetation.



100 Circle E Ranch Place, San Ramon

August 28, 2016

Google Earth

Image © 2022 Maxar Technologies

200 ft

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Image retrieved July 12, 2022. Pond 2 and Pond 3 indicators added by Demir Worthington

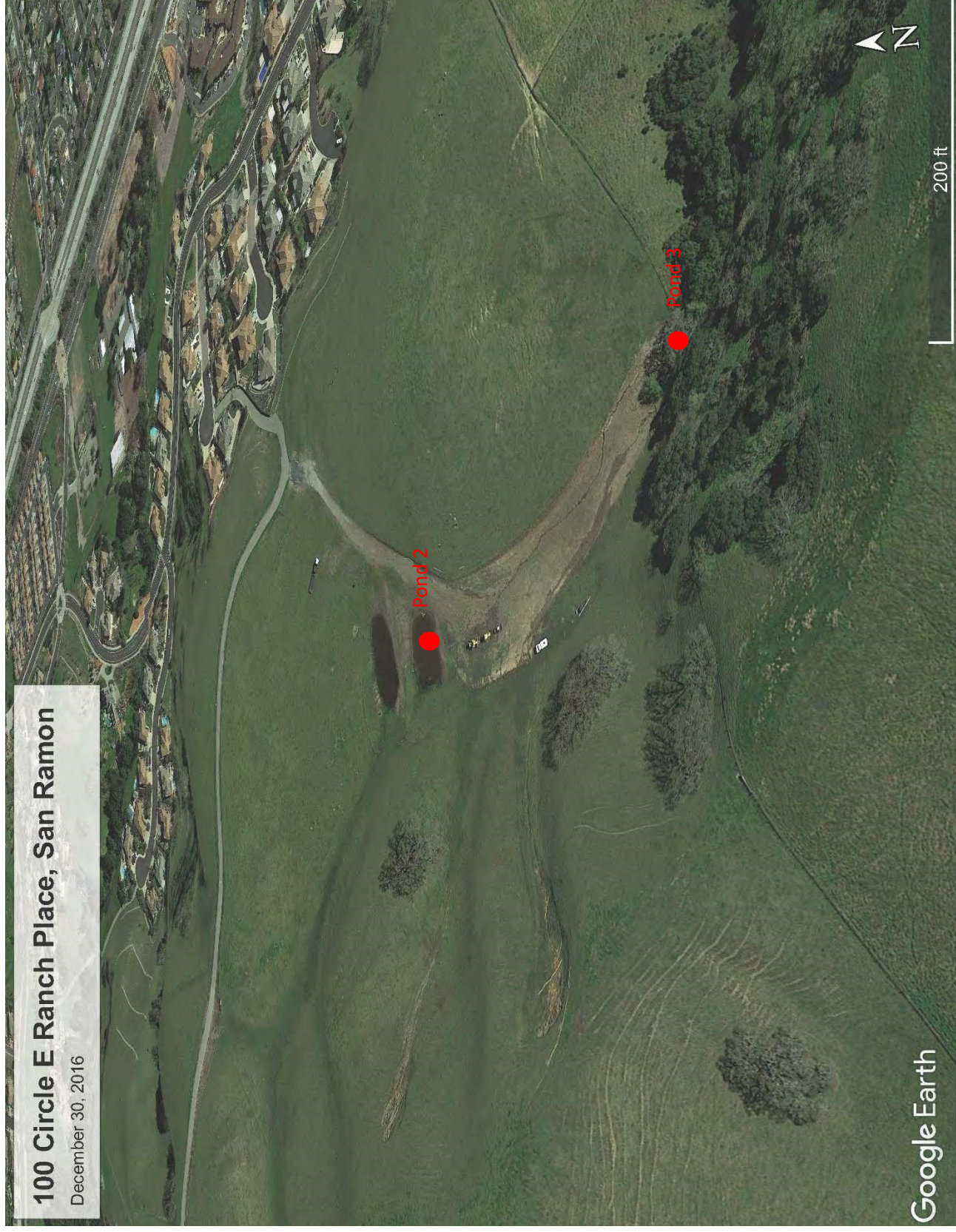


Image retrieved July 12, 2022. Pond 2 and Pond 3 indicators added by Demir Worthington

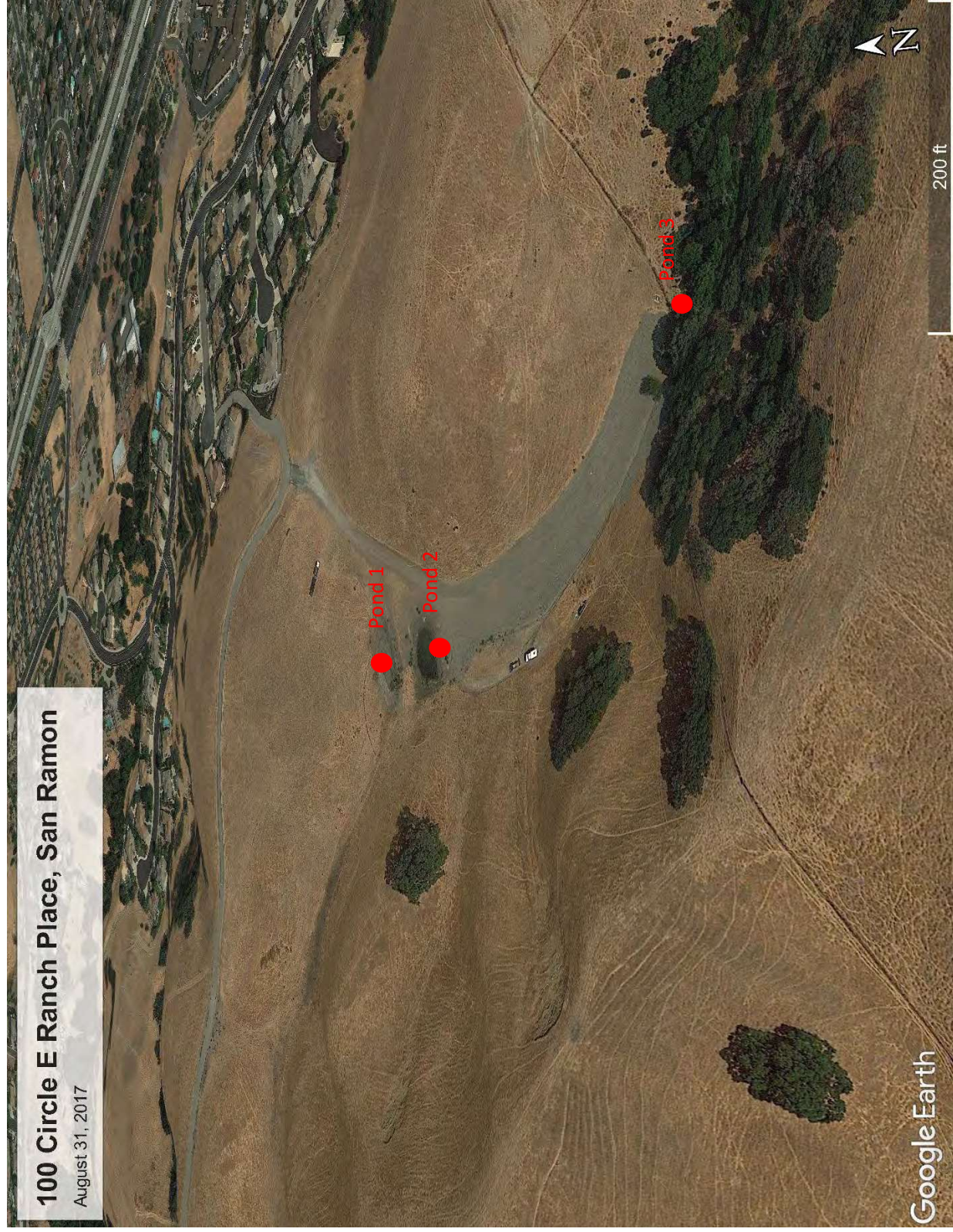


Image retrieved July 12, 2022. Pond 1, 2, and 3 indicators added by Demir Worthington



Image retrieved July 12, 2022. Soil Disturbance area circled in red, and Pond 1, 2, and 3 indicators added by Demir Worthington

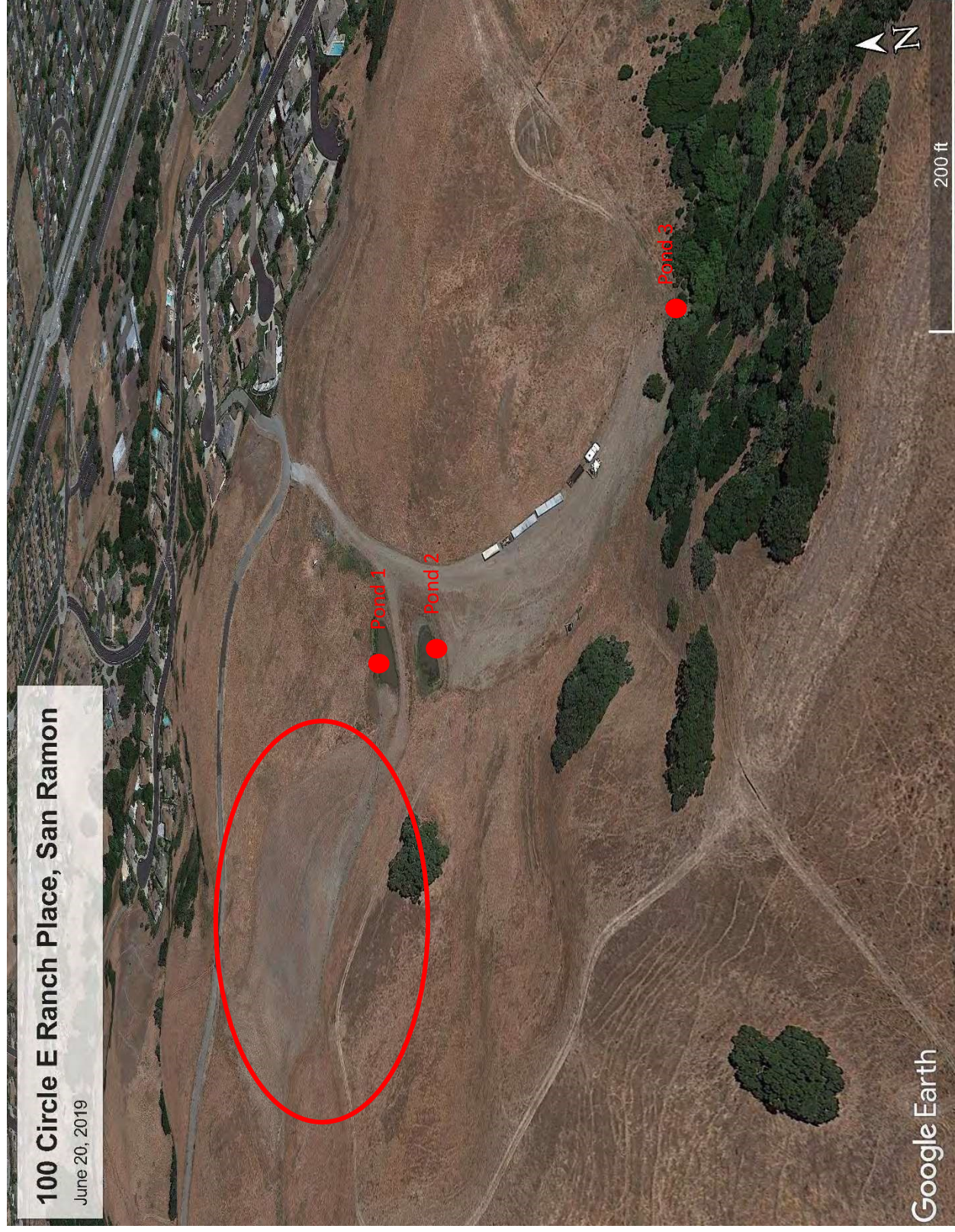



Image retrieved July 12, 2022. Soil Disturbance area circled in red, and Pond 1, 2, and 3 indicators added by Demir Worthington

100 Circle E Ranch Place, San Ramon

Image Date: May 2022
Retrieved: April 20, 2023

Legend

 Disturbed Area = 2.68 Acres

