



EDMUND G. BROWN JR.  
GOVERNOR

MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**California Regional Water Quality Control Board, San Diego Region**

August 27, 2015

**Certified Mail – Return Receipt Requested**  
Article Number: 7010 1060 0000 4953 0501

Mr. Todd Snyder, Manager  
Watershed Protection Program  
County of San Diego  
5510 Overland Avenue, Ste.410  
San Diego, CA 92123-3597

In reply refer to: cmeans: CW-813830

**Subject: Notice of Violation No. R9-2015-0130; Violation of Order Nos. R9-2007-0001 and R9-2013-0001 leading to the unauthorized discharge of fill to waters of the U.S./State at Brightwater Ranch, Lakeside CA**

Mr. Snyder,

Enclosed is Notice of Violation (NOV) No. R9-2015-0130 issued to the County of San Diego for violations San Diego Water Board Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS0108758, *Waste Discharge Requirements For Discharges Of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority*, and San Diego Water Board Order No. R9-2013-0001, NPDES General Permit No. CAS0109266.

As described in the NOV, the violations subject the County of San Diego to further enforcement pursuant to the California Water Code (CWC). The San Diego Water Board reserves the right to take any enforcement action authorized by law.

We look forward to meeting with you to discuss these violations, and associated corrective actions, at the scheduled September 2, 2015 meeting at 9:30 a.m. in our offices. In making the determination of whether and how to proceed with further enforcement action, the San Diego Water Board will consider the severity and effect of the violation, the level of cooperation, the time it takes to correct the identified violations, and the sufficiency of the corrections.

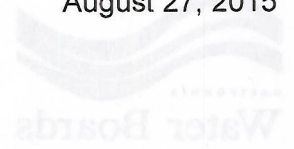
In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." For questions pertaining to the subject matter, please contact Christopher Means at (619) 521-3365 or [cmeans@waterboards.ca.gov](mailto:cmeans@waterboards.ca.gov).

Respectfully,

Chiara Clemente  
Senior Environmental Scientist

Mr. Todd Snyder  
County of San Diego  
NOV R9-2015-0130

August 27, 2015



CMC;cjm

Enclosures:

Notice of Violation R9-2015-0130

CC (by email with enclosures):

Mr. Jarrett Ramaiya, County of San Diego: [Jarrett.Ramaiya@sdcounty.ca.gov](mailto:Jarrett.Ramaiya@sdcounty.ca.gov)

Ms. Beth Ehsan, County of San Diego: [Beth.Ehsan@sdcounty.ca.gov](mailto:Beth.Ehsan@sdcounty.ca.gov)

Mr. Kurt Bausback, KB Home: [kbausback@kbhome.com](mailto:kbausback@kbhome.com)

Mr. John Lormon, Procopio, Cory, Hargreaves & Savitch LLP: [john.lormon@procopio.com](mailto:john.lormon@procopio.com)

Mr. Sohail Bokhari, Pulte Home Corporation: [Sohail.Bokhari@pultegroup.com](mailto:Sohail.Bokhari@pultegroup.com)

Ms. Chiara Clemente, San Diego Waterboard: [Chiara.Clemente@waterboards.ca.gov](mailto:Chiara.Clemente@waterboards.ca.gov)

Mr. Eric Becker, San Diego Water Board: [Eric.Becker@waterboards.ca.gov](mailto:Eric.Becker@waterboards.ca.gov)

Mr. David Boyers, Office of Enforcement: [David.Boyers@waterboards.ca.gov](mailto:David.Boyers@waterboards.ca.gov)

Ms. Naomi Kaplowitz, Office of Enforcement: [Naomi.Kaplowitz@waterboards.ca.gov](mailto:Naomi.Kaplowitz@waterboards.ca.gov)

Ms. Lisa Honma, San Diego Water Board: [Lisa.Honma@waterboards.ca.gov](mailto:Lisa.Honma@waterboards.ca.gov)

Ms. Melanie Tymes, US Army Corps of Engineers: [Melanie.B.Tymes@usace.army.mil](mailto:Melanie.B.Tymes@usace.army.mil)

U.S. EPA, OWOW, Region 9: [R9-WTR8-Mailbox@epa.gov](mailto:R9-WTR8-Mailbox@epa.gov)

SWRCB 401 Water Quality Certification and Wetlands Unit: [Stateboard401@waterboards.ca.gov](mailto:Stateboard401@waterboards.ca.gov)

Tech Staff Info & Use	
Reg Measure ID	387335
Party ID	39617
Violation ID	995028
Place ID	255223

Christa Clemente  
Senior Environmental Scientist



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## California Regional Water Quality Control Board, San Diego Region

August 27, 2015

### NOTICE OF VIOLATION NO. R9-2015-0130

Mr. Todd Snyder, Manager  
Watershed Protection Program  
County of San Diego  
5510 Overland Avenue, Ste. 410  
San Diego, CA 92123-3597

Violations of Order R9-2007-0001 and  
R9-2013-0001

Unauthorized discharge of fill to waters  
of the U.S./State at Brightwater Ranch,  
Lakeside CA, APN # 397-180-13

In reply refer to: "cmeans:CW-813830"

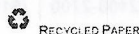
#### YOU ARE HEREBY NOTIFIED THAT:

The County of San Diego is in violation of California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) Order No. R9-2007-0001, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS0108758, *Waste Discharge Requirements For Discharges Of Urban Runoff From the Municipal Separate Storm Sewer Systems (MS4s) Draining the Watersheds of the County of San Diego, the Incorporated Cities of San Diego County, the San Diego Unified Port District, and the San Diego County Regional Airport Authority*, and San Diego Water Board Order No. R9-2013-0001 (NPDES No. CAS0109266), *Waste Discharge Requirements for Discharges from the MS4s Draining the Watersheds within the San Diego Region*.

Such violations subject you to possible enforcement action by the San Diego Water Board including administrative enforcement orders requiring you to cease and desist from violations, clean up waste and abate existing or threatened conditions of pollution or nuisance; pay administrative civil liability in amounts of up to \$10,000 per day per violation; referral to the State Attorney General for injunctive relief; and/or, referral to the District Attorney for criminal prosecution.

HENRY ABARBANEL, CHAIR | DAVID GIBSON, EXECUTIVE OFFICER

2375 Northside Drive, Suite 100, San Diego, CA 92108-2700 | (619) 516-1990 | [www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)



## A. Background

The proposed Brightwater Ranch project (APN # 397-180-13) is located within the unincorporated community of Lakeside in San Diego County. The 76.23 acre site is located northwest of Business Route 8/East Main street, and southwest of Los Cocheros Road (Latitude: 32.832479°N, Longitude: -116.914554°W, Center Reading).

Directly adjacent to and southeast of the Brightwater Ranch project site is the 40.6 acre KB Home Settler's Point residential housing project (Project). The Project was purchased by KB Home in September of 2014. Active grading on the Project began in December 2014 and construction activities are ongoing.

In February 2006, a Biological Technical Report was prepared for the Project by RC Biological Consulting. The report was prepared for the previous owner (Centex Homes). The project description did not include any offsite grading on the adjacent Brightwater property. The report did include general biological surveys, sensitive plant surveys, and a presence/absence survey for the Quino checkerspot butterfly. There was no indication of survey or delineation for jurisdictional waters of the U.S./State conducted. However, the survey included vegetation mapping 100 feet beyond the Project boundaries.

In August of 2008, the County of San Diego requested that the Odom Trust (subsequent owner to Centex) add additional offsite grading to the Project. These improvements consisted of a "temporary street knuckle" per County Design Standard DS-15. This street knuckle was requested to provide secondary access to Wellington Hill Drive and to comply with the County of San Diego's Fire Protection Plan requirements. From 2008 to the present, the street knuckle on the offsite Brightwater Ranch property has been a consistent part of the project design.

In January 2009, and again in March 2013, REC Consulting prepared updated Biological Assessments of the Project that included the offsite street knuckle. In both updates, REC Consulting determined that no additional biological field work was necessary to analyze the both onsite and off-site impacts of the Project. As a result, no jurisdictional waters of the U.S./State were observed in the offsite street knuckle.

On February 10, 2012, the County of San Diego, acting as Lead Agency under the California Environmental Quality Act (CEQA), issued a Final Mitigated Negative Declaration (MND), for the Project. The Initial Study that accompanied the MND failed to acknowledge the presence of jurisdictional water of the U.S./State associated with the offsite road improvements, and thus did not require any mitigation measures for those proposed impacts.

As required by Order No. R9-2007-0001, the County of San Diego must ensure that Priority Development Projects (PDPs), such as the Settler's Point Project, are designed with appropriate stormwater treatment Control Best Management Practices (BMPs) to treat pollutants generated by the site during precipitation events. The County of San Diego approved the June 2009 *Stormwater Management Plan for "Settlers Point"* (also prepared by REC Consultants). The plan included the off-site street knuckle as part of the Project, but failed to propose treatment control BMPs to treat pollutants generated from the street knuckle's impervious surface. Additionally, Order No. R9-2013-0001 prohibits the discharge of non-stormwater pollutants into the MS4, and drainages impacted by the off-site street knuckle are considered to be part of the County's MS4 system. The County's approval of the Project as proposed, led to the unauthorized discharge of fill to waters of the U.S./State by KB Home, and a discharge of pollutants to the MS4.

On February 26, 2014, the County of San Diego issued a grading permit for the Project. On September 2, 2014 KB Home purchased the Settler's Point property. Grading on the Project began on December 4, 2014 and was completed by January 13, 2015. On March 10, 2015, Pulte Home Corporation submitted a Clean Water Act Section 401 Water Quality Certification (Certification) application for the adjacent Brightwater Ranch project to the San Diego Water Board. The proposed project is a 66-unit single-family residential subdivision with four Homeowner Association- maintained lots, and 41.8 acres of open space. The Certification application included a preliminary jurisdictional delineation for the presence of waters of U.S./State.

The preliminary jurisdictional delineation was conducted on November 7, 2014 and concluded that the site held 0.05 acre (685 linear feet) of jurisdictional waters of the U.S./State (ephemeral dry wash) under the jurisdiction of the USACE, San Diego Water Board, and California Department of Fish & Wildlife (CDFW). The preliminary delineation identified an additional 0.17 acre (4,395 linear feet) of non-federal waters of the State onsite. The 76.23 acre site contains five unnamed ephemeral drainages that are tributary to Los Coches Creek (Hydrologic sub area 907.14).

In April 2015, during an initial San Diego Water Board review of the Pulte Home Corporation Certification application, Google Earth aerial imagery revealed that grading had been conducted offsite of the Settler's Point project boundary, and had impacted jurisdictional waters on the Brightwater Ranch Project. On July 1, 2015 staff from the United States Army Corps of Engineers (USACE), San Diego Water Board, KB Home, Helix Environmental Planning, and County of San Diego met onsite to inspect the impacts and to verify the preliminary jurisdictional delineation. On July 7, 2015, KB Home's environmental consultant reported that their unauthorized discharge of fill into jurisdictional waters of the U.S./State, associated with the offsite knuckle portion of the Project was approximately 0.018 acres (278 linear feet) (see attached Exhibit 1).

## B. Summary of Violations

### 1. Failure to Prevent the Discharge of Pollutants into the Municipal Separate Storm Sewer System (MS4)

- a. **Pursuant to Discharge Prohibition A.1 (b) of Order No. R9-2013-0001:** Non-storm water discharges into MS4s are to be effectively prohibited, through the implementation of Provision E.2, unless such discharges are authorized by a separate NPDES permit.

Additionally, Finding No. 11 of Order No. R9-2013-0001 states in part that "Historic and current development makes use of natural drainage patterns and features as conveyances for runoff. Rivers, streams and creeks in developed areas used in this manner are part of the Copermittees' MS4s regardless of whether they are natural, anthropogenic, or partially modified features. In these cases, the rivers, streams and creeks in the developed areas of the Copermittees' jurisdictions are both an MS4 and receiving water."

**Observation:** As shown in the attached Exhibit 2, Drainage 1 is part of the County of San Diego's MS4 system, receiving runoff from the Terrace View Mobile Home Estates located at 13162 Highway 8 Business in El Cajon, CA, and connecting downstream to the MS4 at the Wellington Hill Drive road knuckle.

The impacted drainages are tributaries to Los Coches Creek. Beneficial Uses assigned to Los Coches Creek and its tributaries include Industrial Service Supply (IND), Contact Water Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD). Construction of the project in and over the drainages has negatively impacted, if not eliminated, the Beneficial Uses in that location and resulted in a condition of pollution, contamination, and/or nuisance.

The County of San Diego requested and approved the construction of the street knuckle through its actions as lead agency in the CEQA process, approval of development requirements, and its issuance of grading permits to KB Home. The County's review and approval process of the Project allowed the discharge of sediment and construction materials into Drainage 1, part of the County of San Diego's MS4, which is in violation of Discharge Prohibition A.1(b) of Order No. R9-2013-0001.

### 2. Failure to Prevent the Discharge of Pollutants not Reduced to the Maximum Extent Practicable

- a. **Pursuant to Discharge Prohibition A.2 of Order No. R9-2007-0001:** Discharges from MS4s containing pollutants which have not been reduced to the Maximum Extent Practicable (MEP) are prohibited.

**Observations:** While a majority of the Project contains storm water treatment control BMPs, the County of San Diego failed to ensure that the pollutants generated from storm water runoff at the street knuckle are also treated. No treatment control BMPs were installed to capture and treat flows from the street knuckle.

Precipitation data from the El Cajon rain gauge<sup>1</sup> for 2015 shows that after installation of the road knuckle, there were at least 5 rain events (03/01/2015, 03/02/2015, 05/15/2015, 07/18/2015 and 07/09/2015) that generated over 0.1 inch of precipitation and likely created runoff from the impervious street knuckle that received no treatment by treatment control BMPs.

### 3. Failure to Implement Standard Urban Storm Water Mitigation Plan (SUSMP) Requirements

- a. **Pursuant to Provision D.1.d of Order No. R9-2007-0001:** Each Copermittee shall implement an updated local SUSMP which meets the requirements of section D.1.d of this Order and (1) reduces Priority Development Project discharges of pollutants from the MS4 to the MEP, (2) prevents Priority Development Project runoff discharges from the MS4 from causing or contributing to a violation of water quality standards, and (3) manages increases in runoff discharge rates and durations from Priority Development Projects that are likely to cause increased erosion of stream bed and banks, silt pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force.

**Observations:** The County of San Diego failed to conduct adequate oversight of the Project's original June 2009 Stormwater Management Plan, and approved a project that did not propose treatment control BMPs to treat the off-site street knuckle in violation of Section D.1.d.6 of Order R9-2007-0001.

Additionally, On August 11, 2015, KB Home submitted *Amendment 1 to the Major Stormwater Management Plan (Major SWMP) for Jackson Ridge* (prepared by Hunsaker and Associates) which provides an after the fact solution to the lack of treatment control BMPs associated with the street knuckle. The plan proposes the implementation of drainage inlet filters to treat the new pavement of the road knuckle. Drainage Inlet filters are considered to have a low pollutant removal efficiency. Order R9-2007-0001, Section D.1.d.6(d)(i) requires that :

<sup>1</sup> [http://www.wrh.noaa.gov/sgx/obs/rtp/rtp\\_ELC\\_15](http://www.wrh.noaa.gov/sgx/obs/rtp/rtp_ELC_15)

“Treatment control BMPs with a low removal efficiency ranking shall only be approved by a Copermittee when a feasibility analysis has been conducted which exhibits that implementation of treatment control BMPs with high or medium removal efficiency rankings are infeasible for a Priority Development Project or portion of a Priority Development Project.”

In reviewing the August 11, 2015 submittal, there seems to be no feasibility analysis included with the amendment, and the County has provided no communications to indicate that any such analysis has been required of KB Home.

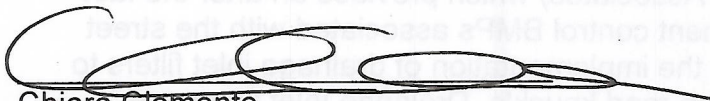
By failing to require appropriate treatment control BMPs as part of the off-site road knuckle portion of the KB Project, and allowing discharges of pollutants not treated to the MEP, the County has failed to implement its SUSMP program as required by Provision D.1.d of Order R9-2007-001.

**B. Summary of Potential Enforcement Options**

Failure to address these violations may subject you to additional enforcement by the San Diego Water Board or State Water Resources Control Board, including a potential civil liability assessment of \$10,000 per day of violation (Water Code section 13385) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

Questions pertaining to this Notice of Violation should be directed to Christopher Means at (619) 521-3365 or [cmeans@waterboards.ca.gov](mailto:cmeans@waterboards.ca.gov). Written correspondence pertaining to this NOV should be sent to [sandiego@waterboards.ca.gov](mailto:sandiego@waterboards.ca.gov). In the subject line of any response, please include “ **cmeans:CW-813830.**”



Chiara Clemente  
Senior Environmental Scientist  
San Diego Water Board

CMC:EB:cjm



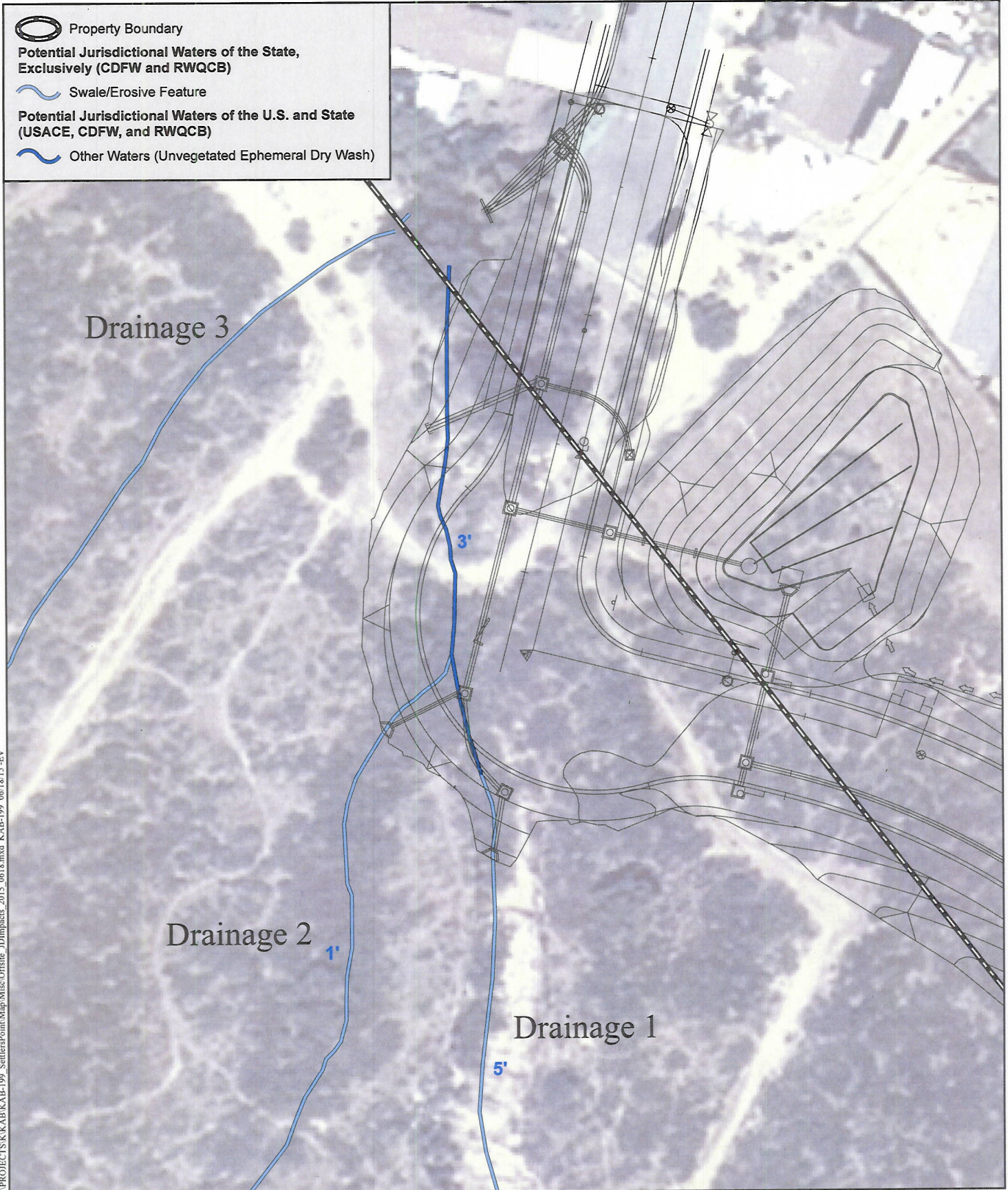
Attachments:

Exhibit 1: Impacts to Waters of the US/Water of the State

Exhibit 2: Overview of Waters of the US/Waters of the State

Tech Staff Info & Use	
Reg Measure ID	387335
Party ID	39617
Violation ID	995028
Place ID	255223

# Exhibit 1

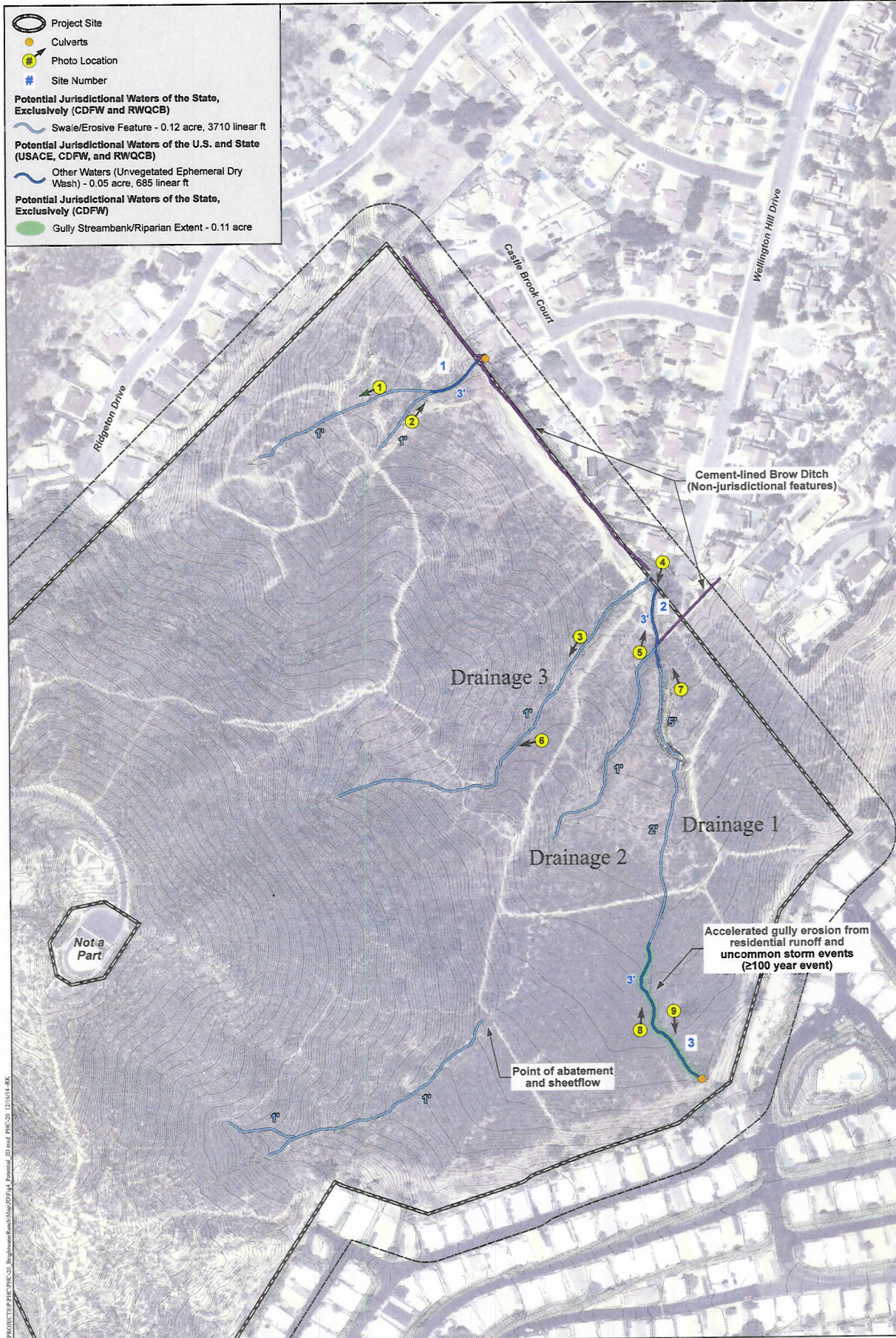


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## Waters of the US/Waters of the State

SETTLER'S POINT

# Exhibit 2



Waters of the US/Waters of the State

BRIGHTWATER RANCH