

State of California
California Regional Water Quality Control Board
Santa Ana Region

September 17, 2021

STAFF REPORT

ITEM: *

SUBJECT: BLC Fleming, LLC, Legado Specific Plan Project, City of Menifee, Riverside County, Order No. R8-2021-0041

DISCUSSION:

California Water Code (CWC) section 13376 states that any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States (WOTUS) within the jurisdiction of this State shall file a report of the discharge in compliance with CWC section 13260. Section 13260(a) of the CWC requires a report of waste discharge (ROWD) be filed by any person discharging waste or proposing to discharge waste that could affect the quality of the waters of the State (WOTS). Under federal Clean Water Act (CWA) section 401, applicants for a federal permit or license for any activity that may result in a discharge to WOTUS must obtain a state Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (USACE) CWA section 404 permits for dredged and fill material discharges. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations (CCR) Title 23, section 3830 et seq. Since November 2003, Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Board Order No. 2003-0017-DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that Have Received State Water Quality Certification."

Because of Supreme Court decisions and U.S. Environmental Protection Agency's (USEPA's) periodic clarifications of WOTUS rules that have limited the authority of the USACE to regulate discharges of dredged and fill material to WOTUS, certain discharges of dredged or fill material to surface WOTS are no longer subject to USACE jurisdiction (these waters are known as non-federal waters). As a result, these discharges are not subject to a CWA section 404 Permit from the USACE and do not require Certification because federal waters have been redefined. In the absence of a project's need to obtain a Certification for waters now deemed only State waters, the State Water Board has asserted the State's authority to regulate discharges of dredged and fill to WOTS under the Porter-Cologne Water Quality Control Act. Where discharges would occur to both WOTUS and non-federal WOTS, Waste Discharge Requirements (WDRs) can be issued to cover both impacts and act as a Certification for those impacts to WOTUS, in lieu of issuing a separate action.

On January 13, 2021, Glenn Lukos Associates, on behalf of BLC Fleming, LLC, (discharger), submitted a Report of Waste Discharge (ROWD; application) for Discharges of Dredged or Fill Material to Waters of the State for a proposed residential development, Legado Specific Plan (Tract Maps 37391, 37408, and 37409; hereinafter, Project). The Project was assigned the Santa Ana Regional Water Quality Control Board WDID No. 332021-01. A total payment of \$14,915 was received on August 2, 2021 to cover the application fee and the additional Project fee based on impacts.

On February 5, 2021, the discharger submitted to the USACE a Preliminary Jurisdiction Determination Form, stating that Project activities would discharge fill to 0.42 acre of WOTUS. Upon review of the ROWD and supplemental information submitted by the discharger, Santa Ana Water Board staff deemed the ROWD complete on August 11, 2021. This Order will also serve as a CWA Section 401 Water Quality Certification for Project impacts to WOTUS.

The discharger proposes to construct the Project, which would develop a residential community of up to 1,061 homes and associated amenities within an approximate 331.0-acre site. The Project would also address seasonal flooding that occurs along Encanto Drive adjacent to the western Project boundary and flooding that occurs along Chambers Avenue adjacent to the southeastern Project boundary.

The Project site is located in the City of Menifee, Riverside County, within Section 22 of Township 5 South, Range 3 West of the USGS Romoland 7.5" topographic quadrangle map. The Project site is located south of Rouse Road, west of Antelope Road, and east of Encanto Road. Maps showing the Project location are found in Attachment A of the tentative Order No. R8-2021-0041.

The Project would permanently impact a total of 0.81 acre of WOTS including wetlands, ephemeral drainages and a vernal pool that are present onsite. Mass grading to prepare the site for construction of the residential development and associated infrastructure would result in the permanent loss of all onsite WOTS. Additionally, an off-site drainage would be filled as part of storm drain improvements.

The discharger would provide compensatory mitigation for the permanent physical loss of 0.81 acre of WOTS through the purchase of 0.81 acres of re-establishment credits and an additional 1.62 acres of re-establishment or rehabilitation credits for a total of 2.43 acres of mitigation credits at the Riverpark Mitigation Bank. The mitigation purchase represents a 3:1 mitigation to impact ratio and would offset Project impacts to the WOTS.

The Project activities would implement Best Management Practices (BMPs) to control and prevent discharges, such as sediment from erosion of soil surfaces and other pollutants that could impact surface waters. The discharger proposes that BMPs would be implemented as part of the storm water pollution prevention measures in accordance with appropriate stormwater permit requirements.

1. The City of Menifee, as the lead agency for compliance with the California Environmental Quality Act, certified an Environmental Impact Report (EIR) for the *Specific Plan No. 2017-187; Change of Zone No. 2017-188; Tract Map Nos. 37391, 37408, and 37409* on June 17, 2020. This EIR covers the tract maps for this Project. A

Notice of Determination was filed with the Clerk's Office of Riverside County on June 17, 2020, and the State Clearinghouse on June 18, 2020.

The Santa Ana Water Board staff has considered the EIR certified by the City of Menifee and subsequent information provided by the discharger. More specifically, the Santa Ana Water Board staff considered those sections of the EIR pertaining to impacts to water quality standards, the stormwater BMPs to be implemented, and the Conditions set forth in the tentative Order No. R8-2021-0041, and determined that potentially adverse impacts to water quality standards should be reduced to a less than significant level and beneficial uses protected, if all stated mitigation and conditions are performed. Compensatory mitigation would include purchase of 0.81 acres of re-establishment credits and an additional 1.62 acres of re-establishment or rehabilitation credits for a total of 2.43 acres of mitigation credits from the Riverpark Mitigation Bank for impacts to 0.81 acre of WOTS (represents a 3:1 ratio of mitigation to impact).

For further information on the proposed Project, please contact Santa Ana Water Board staff Maher Zaher at Maher.Zaher@waterboards.ca.gov.

RECOMMENDATION:

Adopt Order No. R8-2021-0041 as presented.

Comments were solicited from the following:

U.S. Environmental Protection Agency (R9cwa401@epa.gov)
James Mace, U.S. Army Corps of Engineers, Los Angeles Office
(James.E.Mace@usace.army.mil) (SPL-2020-00659)
Eric Chan, California Department of Fish and Wildlife (Eric.Chan@wildlife.ca.gov)
(RIV-15324-R6)
California Department of Fish and Wildlife (R6LSA@wildlife.ca.gov) (RIV-15324-R6)
State Water Resources Control Board, Division of Water Quality, Water Quality Certification Unit
(Stateboard401@waterboards.ca.gov)
David Lancaster, State Water Resources Control Board, Office of the Chief Counsel
(David.Lancaster@waterboards.ca.gov)
Lexi Kessans, Glenn Lukos Associates (lkessans@wetlandpermitting.com)
Noah Shih, BLC Fleming, LLC (nshih@npland.com)

State of California
California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2021-0041
Waste Discharge Requirements
for
BLC Fleming, LLC
Legado Specific Plan
City of Menifee, Riverside County

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter, Santa Ana Water Board), finds that:

1. This Order is for Waste Discharge Requirements (WDRs) for BLC Fleming, LLC (hereinafter, discharger) for the Legado Specific Plan Project (Tract Maps 37391, 37408, and 37409; hereinafter, Project).
2. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent amendments (Basin Plan) and other plans and policies. The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the State (WOTS), water quality objectives to protect those uses, and the State and federal antidegradation policies.
3. This Order regulates the discharge of fill material to WOTS, including waters of the U.S. (WOTUS). WDRs are necessary to address impacts of dredged and fill material on the beneficial uses of WOTS. As a result of the discharge of fill to WOTUS, this Order also serves as a Clean Water Act Section 401 Water Quality Certification for federal permitting by the U.S. Army Corps of Engineers (USACE) under Nationwide Permit Number 29, Residential Developments.
4. On January 13, 2021, Glenn Lukos Associates, on behalf of the discharger, submitted a Report of Waste Discharge (ROWD; application) for the Project, which was assigned Santa Ana Water Board WDID No. 332021-01.
5. On February 5, 2021, the discharger submitted to the USACE a Preliminary Jurisdiction Determination Form, stating that Project activities would discharge fill to 0.42 acre of WOTUS. The USACE approved the determination on February 17, 2021.
6. A total payment of \$14,915 was received on August 2, 2021 to cover the application fee and the additional Project fee based on impacts. The fee amount was determined as required by California Code of Regulations (CCR) title 23,

sections 3833(b)(3) and 2200(a)(3) and was calculated as Category A - Fill & Excavation Discharges (fee code 84) with the dredge and fill fee calculator.

7. The ROWD was considered complete on August 11, 2021.
8. This Order regulates the discharge of fill material to WOTS, including WOTUS. The Project's onsite WOTS consist of a vernal pool, wetlands and unnamed ephemeral drainages tributary to Salt Creek. Salt Creek is a major waterbody within the San Jacinto Watershed.
9. The Project site consists of a total 331.0 acres. The discharger proposes to construct the Project, which would be part of a residential community within the City of Menifee, Riverside County. The discharger proposes developing up to 1,061 residential homes on approximately 216.9 acres, 20.1 acres of commercial land, a 12.9-acre community park/community center, a 1.9-acre private recreation center, 7.9 acres of neighborhood parks, 6.3 acres of conserved open space, detention or water quality basins on 26.4 acres, and roadways on 38.6 acres.
10. The Project site is located south of Rouse Road, west of Antelope Road, and east of Encanto Road in the City of Menifee in Riverside County, within Section 22 of Township 5 South, Range 3 West of the USGS Romoland 7.5" topographic quadrangle map. The Project's coordinates are 33.725314° N/-117.180586° W. Maps showing the Project location are found in Attachment A of this Order.
11. Salt Creek has the following designated intermittent beneficial uses (existing or potential):
 - i. Water Contact Recreation (REC 1)
 - ii. Non-contact Water Recreation (REC 2)
 - iii. Warm Freshwater Habitat (WARM)
 - iv. Wildlife Habitat (WILD)
12. Project impacts associated with grading to construct the residential development, parks, water quality basins, and storm drain infrastructure would result in direct loss of 0.42 acre of WOTUS and 0.39 acre of non-federal WOTS, totaling a 0.81-acre direct loss of WOTS.
13. The discharger would provide compensatory mitigation for the permanent physical loss of 0.81 acre of WOTS through the purchase of a total of 2.43 acres of mitigation credits of Riverpark Mitigation Bank. The mitigation purchase would include 0.81 acres of re-establishment credits and an additional 1.62 acres of re-establishment or rehabilitation credits for a total of 2.43 acres of mitigation

credits. The mitigation purchase represents a 3:1 mitigation to impact ratio and would offset Project impacts to the WOTS.

14. The Santa Ana Water Board has the authority to regulate the discharge of dredged and fill materials through the issuance of WDRs pursuant to California Water Code (CWC) section 13263. The Santa Ana Water Board has determined that WDRs are necessary to adequately address the Project's potential impacts on the beneficial uses of WOTS.
15. CWC section 13263 authorizes the Santa Ana Water Board, after any necessary hearing, to prescribe requirements as to the nature of any proposed discharge with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements must implement any relevant water quality control plans that have been adopted and take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of CWC section 13241. In accordance with subdivision (g) of CWC section 13263, all discharges of waste into WOTS are privileges, not rights, and the WDRs in this Order shall not create a vested right to continue to discharge and are subject to rescission or modification.
16. Pursuant to CWC section 13267, the Santa Ana Water Board, in establishing or reviewing any water quality control plan or WDRs, or in connection with any action relating to any plan or requirement authorized by CWC Division 7, may investigate the quality of any WOTS within its region. In conducting such an investigation, the Santa Ana Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. The WDRs contained in this Order incorporate requirements for water quality monitoring and Project reporting, which are necessary to ensure that the discharge of dredged and fill material complies with WDRs and is protective of the environment.
17. The WDRs in this Order are adopted pursuant to CWC sections 13263 and 13267. The WDRs set forth the requirements, prohibitions, and other conditions to implement the Basin Plan, and the discharger's responsibilities for monitoring and reporting. The discharger is responsible for ensuring compliance with the WDRs. In addition, this Order also regulates the discharge of fill material to WOTS.
18. Pursuant to CCR Title 14, Chapter 3, section 15096, as a responsible agency, the Santa Ana Water Board is required to consider California Environmental

Quality Act (CEQA) documents prepared by the lead agency to determine whether a Project should receive WDRs. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the Project that it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by CCR section 15091 and, if necessary, section 15093 for each and every significant impact of the project.

19. The City of Menifee, as the lead CEQA agency, certified an Environmental Impact Report (EIR) for *Specific Plan No. 2017-187; Change of Zone No. 2017-188; Tract Map Nos. 37391, 37408, and 37409* on June 17, 2020. The lead agency filed a Notice of Determination with the Clerk's Office of Riverside County on June 17, 2020, and with the State Clearinghouse (SCH No. 2016081061) on June 18, 2020.
20. As required by CCR section 15096, in approving this Order, the Santa Ana Water Board has considered the EIR certified by the City of Menifee and subsequent information provided by the discharger. More specifically, the Santa Ana Water Board considered those sections of the EIR pertaining to impacts to water quality standards. Based on the Conditions set forth in this Order, potentially adverse impacts to water quality standards should be reduced to a less than significant level and beneficial uses protected, if all stated mitigation and conditions are performed.
21. The Santa Ana Water Board has considered antidegradation pursuant to State Water Resources Control Board (State Water Board) Resolution No. 68-16 and Title 40, Code of Federal Regulations section 131.12 and finds that the discharge permitted under this Order is consistent with those provisions. State Water Board Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. Minimal water quality degradation may be allowed only if any change in water quality is consistent with the maximum benefit to the people of the State; the degradation will not unreasonably affect present and anticipated beneficial uses; and the degradation will not result in violation of any applicable water quality control plan. Discharges must meet requirements that will result in the best practicable treatment or control to avoid pollution or a condition of nuisance.
22. Consistent with the antidegradation policy, any degradation resulting from the discharges authorized by this Order provides the maximum benefit to the people of the State. Flood protection is critical to the safety of the public. Moreover, this Order contains WDRs to ensure present and future beneficial uses are maintained or enhanced through compensatory mitigation requirements for authorized impacts to WOTS. The WDRs ensure that the highest level of water quality is maintained consistent with the maximum benefit to the people of the State by prohibiting certain discharges, requiring the implementation of best management practices, and requiring the discharger to submit an annual report.

23. The Santa Ana Water Board has notified the discharger and other interested agencies and persons of its intent to prescribe WDRs for the discharge and has provided them with an opportunity for public hearing and an opportunity to submit their written views and recommendations.

IT IS HEREBY ORDERED that the discharger, in order to meet the provisions contained in CWC Division 7 and regulations adopted thereunder, shall comply with the following:

DISCHARGE SPECIFICATIONS:

1. No activities associated with the Project shall cause or threaten to cause a nuisance or pollution as defined in CWC section 13050.
2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.
3. The groundwater in the vicinity of the Project shall not be degraded as a result of the Project activities or placement of fill for the Project.
4. The discharger shall comply with conditions described in and required by the State Water Board's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ, as amended by Order No. 2012-0006-DWQ; NPDES No. CAS000002) and any subsequent iterations thereof.
5. The discharger shall comply with the local regulations associated with the Santa Ana Water Board's Municipal Stormwater Permit issued to Riverside County and co-permittees under NPDES No. CAS61806 and WDR Order No. R8-2010-0033, and subsequent iterations thereof.
6. If construction dewatering discharges, including temporary stream diversions, are necessary to carry out the Project, the discharger shall comply with Santa Ana Water Board Order No. R8-2020-0006, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality.
7. The discharge of fill materials shall be limited to the placement of native fill and inert materials, as defined in CCR Title 27, Division 2, section 20230. The discharge of fill material other than native soil is prohibited, unless authorized by the Santa Ana Water Board.

DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes, into channels, surface waters, or any place where they would contact or be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate NPDES permit are prohibited.
5. During the grading and filling operation, there shall be no onsite fueling, lubrication, changing of oil or other equipment fluids and their filters, or any other maintenance or storage of construction equipment within or next to drainage areas or other surface runoff conveyances.

PROVISIONS:

1. Prior to the start of Project grading activities, the discharger shall submit to the Santa Ana Water Board the receipt of the purchase of 0.81 acres of re-establishment credits and an additional 1.62 acres of re-establishment or rehabilitation credits for a total of 2.43 acres of mitigation credits at the Riverpark Mitigation Bank
2. Low impact development features and construction and post-construction best management practices shall be implemented as described in the Preliminary Water Quality Management Plan (WQMP) submitted with the ROWD.
3. The discharger shall maintain a copy of this Order at the Project site so that it is always available to site operating personnel. Key operating personnel shall be familiar with the Order's content.
4. The discharger shall comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the CWC, may constitute a violation of the federal Clean Water Act and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order, or a combination thereof.

5. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
6. The provisions of this Order are severable and, if any provision of this Order or the application of any provisions of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
7. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.
8. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, State, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
9. This Order does not convey any property rights of any sort, or any exclusive privilege.
10. This Order is not transferable in its entirety or in part to any person or organization except after notice to the Santa Ana Water Board in accordance with the following terms:
 - a. The discharger shall notify the Santa Ana Water Board by submitting a Transfer of Property Ownership Report of any change in ownership or interest in ownership of the Project area. The discharger and purchaser shall sign and date the notification and provide such notification to the Santa Ana Water Board at least ten days prior to the transfer of ownership. The purchaser shall also submit a written request to the Santa Ana Water Board to be named as the discharger in a revised order.
 - b. Until such time as this Order has been modified to name the purchaser as the discharger, the discharger identified in this Order shall continue to be responsible for all requirements set forth in this Order.
11. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Santa Ana Water Board.
12. The discharger shall submit to the Santa Ana Water Board an annual report each year on the anniversary of this Order. Annual reporting shall continue until a *Notice of Project Complete Letter* is issued to the discharger. The contents of the

annual report shall include a construction summary, Project status and schedule (including ground disturbance, site clearing and grubbing, and site construction), and implementation status of Best Management Practices during the active discharge period. If the Project has not started, the discharger shall provide an estimated start date and reasons for delay.

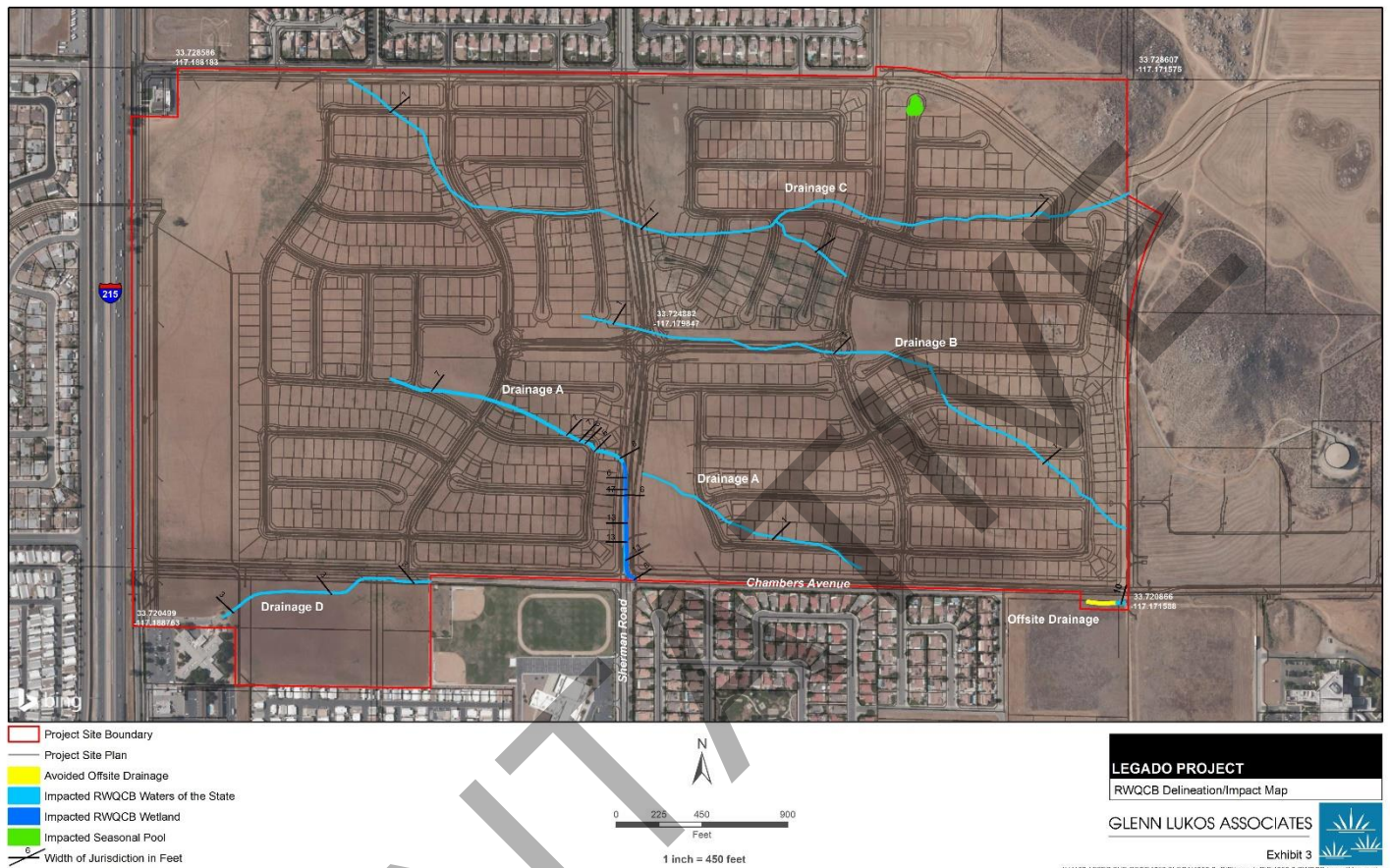
13. The discharger shall submit to the Santa Ana Water Board staff a *Commencement of Construction Report* at least seven days prior to start of initial ground disturbance activities.
14. The discharger shall submit a *Request for Notice of Completion of Discharges Letter* following completion of active Project construction activities, including any required restoration and discharger-responsible mitigation. This request shall be submitted to the Santa Ana Water Board staff within thirty days following completion of all Project construction activities. Upon acceptance of the request, Santa Ana Water Board staff will issue to the discharger a *Notice of Completion of Discharges Letter*, which will end the active discharge period and, if appropriate, associated annual fees.
15. The discharger shall submit a *Request for Notice of Project Complete Letter* when construction and any required post-construction monitoring is complete and no further Project activities will occur. This request shall be submitted to Santa Ana Water Board staff within thirty days following completion of all Project activities. Upon approval of the request, the Santa Ana Water Board staff will issue to the discharger a *Notice of Project Complete Letter*, which will end the post discharge monitoring period and associated annual fees.
16. The discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. Records may be maintained electronically. This period may be extended during the course of any unresolved enforcement action or litigation regarding this discharge or when requested by the Santa Ana Water Board.
17. The Santa Ana Water Board and other authorized representatives shall be allowed to:
 - a. Enter premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
 - b. Access and copy any records that are kept under the requirements of this Order;

- c. Inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - d. Photograph, sample, and monitor for the purpose of assuring compliance with this Order.
18. This Order becomes effective on the date of adoption by the Santa Ana Water Board.
19. This Order will remain valid for five years from the date of this Order.

I, Jayne Joy, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on September 17, 2021.

JAYNE JOY, P.E.
Executive Officer

Order No. R8-2021-0041
 BLC Fleming, LLC
 Legado Specific Plan Project
 Attachment A



Order No. R8-2021-0041
 BLC Fleming, LLC
 Legado Specific Plan Project
 Attachment A

