



EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

California Regional Water Quality Control Board, San Diego Region

May 23, 2016

**NOTICE OF VIOLATION
No. R9-2016-0124**

Mr. Jose Capati, Vice President of Development
Baldwin & Sons
Sunranch Capital Partners LLC
280 Newport Center Drive
Newport Beach, CA 92660

Sunranch Capital Partners LLC

Portola Center South - TTM 15353 and 401
Certification Site¹
PIN No. SM-831856

Violations of

**Order No. 2009-0009-DWQ,
Construction General Permit**

Sunranch Capital Partners LLC and Baldwin & Sons are hereby notified that the California Regional Water Quality Control Board, San Diego Region (San Diego Water Board) reserves the right to take any enforcement action authorized by law for the violations described herein.

Sunranch Capital Partners LLC and Baldwin & Sons (Discharger) are in violation of State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, NPDES No. CAS000002, *National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities* (Construction General Permit or Permit).

¹ WDID No. 930C371181 provides coverage under State Water Board Order No. 2009-0009-DWQ, as amended, for the construction and work of the mitigation area required under Clean Water Act section 401 Water Quality Certification No. R9-2013-0113.

Sunranch Capital Partners LLC is constructing approximately 626 dwelling units in the South Planning Area of the Portola Center Project (Project). The Project is located on an approximately 196 acre site in the Portola Hills Community of the City of Lake Forest, California.² This Notice of Violation addresses violations of the Construction General Permit in the Portola Center South Planning Area (TTM15353).

Summary of Violations

A. Construction General Permit Violations

1. Failure to Comply with Discharge Prohibitions for Construction Activities:

- a. **Pursuant to Provision III.B of State Water Board Order No. 2009-0009-DWQ:** All discharges are prohibited except for the storm water and non-storm water discharges specifically authorized by this Permit or another NPDES permit.
- b. **Observation:** On January 19, 2016, March 14, 2016, and March 21, 2016, the San Diego Water Board inspected the Portola Center South construction site (WDID 930C371181). Mr. Jose Capati, Vice President of Development for Baldwin & Sons (Discharger), is the Legally Responsible Person (LRP) enrolled under the Permit for the site and is the owner of Sunranch Capital Partners LLC. San Diego Water Board inspectors observed on January 19, 2016, evidence of sediment and sediment-laden storm water discharged from the site. San Diego Water Board inspectors observed on January 19, 2016, evidence that the sediment and sediment-laden storm water discharged from the site was due to failure by Sunranch Capital Partners LLC and Baldwin & Sons (Discharger) to implement adequate Best Management Practices (BMPs). See attached Facility Inspection Report Photo Location Maps A through D and Photos 1 through 49.

2. Failure to Comply with the Conditions of the Permit:

- a. **Pursuant to Provision IV.A.1 of State Water Board Order No. 2009-0009-DWQ:** The Discharger shall comply with all of the conditions of this Permit. Any Permit non-compliance constitutes a violation of the Clean Water Act and the Porter-Cologne Water Quality Control Act and is grounds for enforcement action and/or removal from Permit coverage.
- b. **Observation:** San Diego Water Board inspectors observed on January 19, 2016, March 14, 2016, and March 21, 2016, evidence that the Discharger failed to comply

² The Portola Center Project is separated into two Tentative Tract Maps (TTM15353 and TTM17300) and consists of a mix of single family and multi-family homes, public and neighborhood parks, public trails, and a small neighborhood serving retail component. The Project site is bifurcated by Glenn Ranch Road east to west and Saddleback Ranch Road north to south, breaking the Project site into three separate planning areas, the Portola South Planning Area, the Portola Northwest Planning Area, and the Portola Northeast Planning Area.

with the conditions of the Permit. See attached Facility Inspection Report³ Findings 1 through 16, Photo Location Maps B through D, Photos 1 through 49, and Attachments 1 through 9.

3. Failure to Comply with Duty to Mitigate Discharge to the Environment for Construction Activities:

a. Pursuant to Provision IV.D of State Water Board Order No. 2009-0009-DWQ:

The Discharger shall take all responsible steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment.

b. Observation: San Diego Water Board inspectors observed on January 19, 2016, evidence that the Discharger failed to take all responsible steps to minimize, or prevent, the sediment and sediment-laden storm water discharges that occurred during the January 4, 2016, rain event which resulted in adverse impacts to Aliso Creek, tributaries to Aliso Creek, and offsite mitigation areas regulated under Clean Water Act section 401 Water Quality Certification No. R9-2013-0113 (401 Certification). See attached Facility Inspection Report Findings 1 through 10, 12, 13, and 16, Photo Location Maps B through D, Photos 1 through 49, and Attachments 1 through 9.

4. Failure to Comply with Proper Operation and Maintenance of BMPs to Achieve Permit Compliance for Construction Activities:

a. Pursuant to Provision IV.E of State Water Board Order No. 2009-0009-DWQ:

The Discharger shall at all times properly operate and maintain any facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger, including when necessary, proper laboratory controls, quality assurance procedures, and back up or auxiliary systems, to achieve compliance with the conditions of the Permit.

b. Observation: San Diego Water Board inspectors observed on January 19, 2016, March 14, 2016, and March 21, 2016, evidence that the Discharger failed to properly operate and maintain BMPs to achieve compliance with the Permit. See attached Facility Inspection Report Findings 1 through 16, Photo Location Maps B through D, Photos 1 through 49, and Attachments 1 through 9.

5. Failure to Comply with Effluent Limitations for Construction Activities:

a. Pursuant to Provisions V.A.2 of State Water Board Order No. 2009-0009-DWQ:

Dischargers shall minimize or prevent pollutants in storm water discharges and

³ The Facility Inspection Report includes photos, findings, and conclusions from the January 19, 2016, March 14, 2016, and March 21, 2016 San Diego Water Board inspections.

authorized non-storm water discharges through the use of controls, structures, and management practices that achieve Best Available Technology Economically Achievable (BAT) for toxic and non-conventional pollutants and Best Conventional Pollutant Control Technology (BCT) for conventional pollutants.

- b. Pursuant to Provision X and Section A.1.b and A.2 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Dischargers shall minimize or prevent pollutants in storm water and authorized non-storm water discharges through the use of controls, structures, and management practices that achieve BAT for toxic and non-conventional pollutants and BCT for conventional pollutants.
- c. Observation:** During the January 19, 2016, inspection San Diego Water Board inspectors observed that the Discharger failed to minimize or prevent pollutants in storm water and authorized non-storm water discharges through the use of controls, structures, or BMPs to achieve BAT and/or BCT. The Discharger failed to adequately implement BMPs required by the Permit on Risk Level 2 sites. San Diego Water Board inspectors observed on January 19, 2016, March 14, 2016, and March 21, 2016 that the Discharger failed to adequately implement management, erosion, runoff, and run-on control BMPs which led directly to erosion and sedimentation on-site. The failure to adequately implement BMPs in accordance with the BAT and/or BCT Permit requirements directly resulted in the discharge of sediment and sediment-laden storm water runoff from the site to Aliso Creek, tributaries to Aliso Creek, and offsite mitigation areas regulated under the 401 Certification permit. The failure to achieve BAT and/or BCT was a result of the Discharger's failure to implement slope stabilization BMPs, erosion and sediment control BMPs, scheduling of construction activities, and adequately size or construct sediment basins and/or traps to contain highly erosive soils mobilized during storm events. See attached Facility Inspection Report Compliance History, Inspection Summary Findings 1 through 16, and Attachments 1 through 9.

6. Failure to Implement Good Site Management "Housekeeping" BMPs for Construction Materials and Waste Management:

- a. Pursuant to Provision X and Section B.1.b of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers are required to cover and berm loose stockpiled construction materials that are not actively being used (i.e. soil, spoils, aggregate, fly-ash, stucco, hydrated lime, etc.).
- b. Pursuant to Provision X and Sections B.1.b and B.2.f of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers are required to contain and securely protect stockpiled waste material from wind and rain at all times unless actively being used.
- c. Observation:** During the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed stockpiles of construction

materials and waste material without adequate berm or containment. See attached Facility Inspection Report Photos 42, 43, and Attachment 6.

7. Failure to Implement Good Site Management “Housekeeping” BMPs for Construction Materials and Waste Management:

- a. Pursuant to Provision X and Section B.1.c, B.2.g, and B.2.h of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers are required to store chemicals in watertight containers with secondary containment or in a storage shed, implement procedures to effectively address hazardous and non-hazardous waste spills, and develop and implement a spill response plan in accordance with the SWPPP.
- b. Pursuant to Provision X and Section B.3 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers are required to implement good housekeeping for vehicle storage and maintenance of construction equipment.
- c. Observation:** During the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed unmaintained construction equipment and hazardous waste stored without secondary containment on the site. See attached Facility Inspection Report Photo Location Maps A and C, and Photos 34 and 41.

8. Failure to Implement Adequate Erosion Controls for Inactive Areas:

- a. Pursuant to Provision X and Section D.2 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall provide effective soil cover for inactive areas and all finished slopes, open space, utility backfill, and completed lots.
- b. Observation:** During the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed many areas throughout the site that appeared inactive, or could have been scheduled to be inactive, without effective soil cover or other BMPs to prevent erosion. Evidence of erosion and sediment transport due to inadequate or ineffective erosion control measures for inactive areas was observed throughout the site during the inspections. See attached Facility Inspection Report Photo Location Maps B, C, D, and Photos 9 through 13, 23, 28, 32, 36, 38, and 39.

9. Failure to Implement Adequate Erosion Controls for Active Areas:

- a. Pursuant to Provision X and Section E.3 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall implement appropriate erosion control BMPs (runoff control and soil stabilization) in conjunction with sediment control BMPs for areas under active construction.

- b. Observation:** During the January 19, 2016, March 14, 2016, and March 21, 2016, inspections San Diego Water Board inspectors observed many areas on the site that may have been considered active without evidence of runoff control or soil stabilization BMPs implemented to prevent erosion prior to, or during a storm event that began January 4, 2016 and was expected to continue to January 8, 2016. Evidence of erosion and sediment transport due to inadequate or ineffective erosion control measures for active areas was observed throughout the site during the inspections. Documentation for the site indicates that no erosion control BMPs were planned or prepared for implementation on active areas in accordance with the Storm Water Pollution Prevention Plan (SWPPP) uploaded to SMARTS by the Discharger. See attached Facility Inspection Report Compliance History, Findings 1 through 12 and 16, Photo Location Maps A through D, and Photos 1, 7, 9, 13, 21, 22, 30, 33, 35, 37, 41, 42, 43, and Attachments 1 through 9.

10. Failure to Implement Adequate Linear Sediment Controls for Exposed Slopes:

- a. Pursuant to Provision X and Section E.4 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall apply linear sediment controls along the toe of the slope, face of the slope, and at the grade breaks of exposed slopes to comply with sheet flow lengths in accordance with Table 1 (i.e. every 20 feet for 0-25% slopes, every 15 feet for 25-50% slopes, and every 10 feet for slopes over 50%).
- b. Observation:** During the January 19, 2016, March 14, 2016, and March 21, 2016 inspections, San Diego Water Board inspectors observed slopes throughout the site without linear sediment controls along the face of the slope and/or grade breaks of exposed slopes. See attached Facility Inspection Report Photo Location Maps A through D, and Photos 7, 9, 13, 17, 21, 22, 23, 25, 28, 31, 32, 33, 37, 39, and 48.

11. Failure to Implement Adequate Run-on and Runoff Controls:

- a. Pursuant to Provision X and Section F of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall manage all run-on, all runoff within the site and all runoff that discharges from the site. Run-on from off-site shall be directed away from all disturbed areas or shall collectively be in compliance with the effluent limitations of the Permit.
- b. Observation:** During the January 19, 2016, March 14, 2016, and March 21, 2016 inspections, San Diego Water Board inspectors observed a lack of effective controls for run-on to the site, a lack of effective controls for runoff within the site, and a lack of effective controls for runoff from the site. See attached Facility Inspection Report Photo Location Maps A through D, and Photos 1 through 8, 9, 13, 14 through 23, 24, 25, 26, 29, 31, 33, 35 through 39, 44 through 49, and Attachment 6.

12. Failure to Identify and Record BMPs That Need Maintenance to Operate Effectively, or That Have Failed, or Could Fail to Operate as Intended:

- a. Pursuant to Provision X and Section G.2 of Attachment D of State Water Board Order No. 2009-0009-DWQ:** Risk Level 2 dischargers shall perform weekly inspections and observations, and at least once each 24-hour period during extended storm events, to identify and record BMPs that need maintenance to operate effectively, that have failed, or that could fail to operate as intended.
- b. Observation:** During the January 19, 2016, inspection, San Diego Water Board inspectors observed several BMPs throughout the site that were not implemented, required maintenance to operate effectively, that failed, or could fail to operate as intended. Documentation for the site indicates that the Qualified SWPPP Practitioner (QSP) conducting weekly inspections of BMPs failed to identify BMPs that were not implemented, required maintenance, failed, or failed to operate as intended. See attached Facility Inspection Report Findings 7 through 10, 12, 13, and 16 and Attachments 1 through 9.

13. Failure to Include Information in the SWPPP to Demonstrate Compliance with the Requirements of the Permit:

- a. Pursuant to Provision XIV.B of State Water Board Order No. 2009-0009-DWQ:** To demonstrate compliance with requirements of the Permit, the QSD shall include information in the SWPPP that supports the conclusions, selections, use, and maintenance of BMPs.
- b. Observation:** Following the January 19, 2016, inspection, San Diego Water Board inspectors reviewed the SWPPP uploaded by the discharger to SMARTS. The SWPPP does not include the 401 Certification permit requirements for low flow from the site during construction or adequate capacity of sediment basins for phasing of run-on and runoff controls due to changes in topographical conditions or runoff conditions during mass grading to prevent the discharge of sediment and sediment-laden storm water to Aliso Creek, Serrano Canyon Creek, tributaries to Aliso Creek and Serrano Creek, and the 401 Certification mitigation site. See attached Facility Inspection Report Compliance History, Findings 1 through 10, 12, 13, 16, and Comments 1, 3, 4, 6, 8, 9, 10, 12, 16, 17, and 18.

B. Summary of Potential Enforcement Options

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 per violation (Water Code section 13385) and/or any of the following enforcement actions:

Other Potential Enforcement Options	Applicable Water Code Section
Technical or Investigative Order	Sections 13267 or 13383
Cleanup and Abatement Order	Section 13304
Cease and Desist Order	Sections 13301-13303
Time Schedule Order	Sections 13300, 13308

In addition, the San Diego Water Board may consider revising or rescinding applicable waste discharge requirements, if any, referring the matter to other resource agencies, referring the matter to the State Attorney General for injunctive relief, and/or referral to the municipal or District Attorney for criminal prosecution.

In the subject line of any response, please include the information located in the heading of this letter: "in reply refer to." Questions pertaining to this Notice of Violation should be directed to Erica Ryan at (619) 521-8051 or Erica.Ryan@waterboards.ca.gov.



Laurie Walsh, P.E.
Senior Water Resource Control Engineer
Storm Water Management

LAW:DTB:DB:ER

Attachments: Facility Inspection Report dated January 19, 2016 for inspections conducted on January 19, 2016, March 14, 2016, and March 21, 2016

Tech Staff Info & Use	
WDID	9 30C371181
SMARTS Place ID	SM-831856
Inspection IDs	202913, 202914, 202915
Violation IDs	01/19/2016: 860184 (Discharge), 860175 (BMP), 860176 (SWPPP) 03/14/2016: 860177 (BMP), 860178 (SWPPP) 03/21/2016: 860179 (BMP), 860180 (SWPPP)
Enforcement ID	423104