

ORIGINAL



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BEFORE THE ARIZONA CORPORATIC  
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COMMISSIONERS

BOB STUMP—Chairman  
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BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

2013 SEP 20 P 2:12

AZ CORP COMMISSION  
DOCKET CONTROL

Arizona Corporation Commission  
DOCKETED

SEP 20 2013

DOCKETED BY

IN THE MATTER OF THE APPLICATION  
OF JOHNSON UTILITIES, L.L.C. FOR AN  
EXTENSION OF ITS CERTIFICATE OF  
CONVENIENCE AND NECESSITY FOR  
WATER AND SEWER SERVICES.

DOCKET NO. WS-02987A-12-0136  
MOTION FOR LEAVE TO LATE-FILE  
COMMENTS ON STAFF'S MODIFIED  
RECOMMENDATIONS AS SET  
FORTH IN STAFF'S REPLY  
AND  
NOTICE OF FILING LETTERS FROM  
ADEQ RESOLVING NOTICES OF  
VIOLATION

Utilities Division Staff ("Staff") filed its Closing Brief ("Closing Brief") in this docket on May 22, 2013, and a Supplement to Closing Brief ("Supplement") on June 17, 2013. On July 8, 2013, Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company") filed its Response ("Response") to Staff's Closing Brief and Supplement. On August 6, 2013, Staff filed its Reply ("Reply") to the Company's Response and modified its recommendations in this case, stating that "discussions have been ongoing and Staff's recommendations have evolved in light of those discussions."<sup>1</sup> Johnson Utilities has not had an opportunity to respond to the modified recommendations of Staff as set forth in its Reply, and hereby seeks leave from the Arizona Corporation Commission ("Commission") to late file these comments regarding the modified Staff recommendations. In addition, Johnson Utilities is submitting two letters from the Arizona Department of Environmental Quality ("ADEQ"), each dated August 12, 2013, evidencing the resolution of the two notices of violation ("NOVs") issued to the Company for its Santan wastewater treatment plant ("Santan WRP") as noted in Staff's Supplement.

<sup>1</sup> Staff's Reply at 1, lines 15-16.

Brownstein Hyatt Farber Schreck, LLP  
One East Washington, Suite 2400  
Phoenix, AZ 85004

1                    **RESOLUTION OF NOTICES OF VIOLATION FOR THE SANTAN WRP**

2                    In its Closing Brief, Staff attempted to rebut testimony at the hearing by a Johnson  
3 Utilities witness and late-filed exhibits evidencing that ADEQ had closed the two NOV's issued  
4 in October and November 2012 for effluent discharged from the Company's Santan WRP.<sup>2</sup>  
5 Then, Staff acknowledged in its Supplement that "in fact, ADEQ has closed these NOV's and  
6 that the correspondence of April 12, 2013, docketed by Johnson Utilities as a late filed exhibit  
7 on April 19, 2013, was intended to so reflect."<sup>3</sup> However, Staff also stated in its Supplement  
8 that because it has learned that two additional NOV's were issued to Johnson Utilities on May  
9 30, 2013, Staff is not changing its recommendation that the Company receive an order  
10 preliminary.<sup>4</sup> The two additional NOV's referenced by Staff are NOV 140548 issued May 30,  
11 2013, for the Santan WRP (Facility ID 18584) and NOV 140757 issued May 30, 2013.

12                    Johnson Utilities received a letter from ADEQ dated August 12, 2013, acknowledging  
13 that the Company met the "documenting compliance" provisions of NOV 140548. A copy of  
14 this letter is attached hereto as Attachment 1. Likewise, Johnson Utilities received a letter from  
15 ADEQ dated August 12, 2013, acknowledging that the Company met the "documenting  
16 compliance" provisions of NOV 140757. A copy of this letter is attached hereto as  
17 Attachment 2. These two letters show that both NOV's were resolved with no action taken by  
18 ADEQ.

19                    In its Reply, Staff states that "[b]ecause of the issuance of additional Notices of Violation  
20 ... from the Arizona Department of Environmental Quality ..., noted in Staff's Notice of Filing  
21 Supplement to Closing Brief docketed June 17, 2013, Staff recommends that all areas requested  
22 in the application be granted subject to an Order Preliminary...."<sup>5</sup> Staff continues, "[w]hen the  
23 Company resolves the NOV's, Staff recommends that the Company receive conditional CC&Ns  
24 for all requested extension areas except Merrill Ranch Expansion One Units 59A, 59C, 59D, and

25 \_\_\_\_\_  
26 <sup>2</sup> The two NOV's were NOV 133837 issued October 9, 2012 and NOV 134234 issued November 29,  
2012, both for the Johnson Ranch potable water system (Facility ID 18613).

27 <sup>3</sup> Staff's Supplement at 1, lines 16-18 (emphasis added).

28 <sup>4</sup> In its Supplement, Staff reported that the date of the two NOV's was May 31, 2013. In fact, the date of  
the NOV's was May 30, 2013.

<sup>5</sup> Staff's Reply at 1-2.

1 59E.”<sup>6</sup> As evidenced by the letters from ADEQ attached hereto as Attachments 1 and 2, both of  
2 the NOV’s referenced in Staff’s Supplement—NOV 140548 and NOV 140757—have now been  
3 resolved. Thus, Staff’s recommendation “that all areas requested in the application be granted  
4 subject to an Order Preliminary” should be rejected.

5 Johnson Utilities requests that the Commission reject Staff’s recommendation regarding  
6 an order preliminary and issue a certificate of convenience and necessity (“CC&N”) with  
7 appropriate conditions for (i) all areas of the requested Bella Vista Farms extension; and (ii) all  
8 areas of the requested Merrill Ranch Expansion One including Units 59A, 59C, 59D, and 59E.

9 **COMMENTS REGARDING STAFF’S MODIFIED RECOMMENDATIONS**

10 Johnson Utilities has the following comments regarding the modified recommendations  
11 included in Staff’s Reply:

12 1. Based upon the resolution of the NOV’s as discussed above, neither the Bella  
13 Vista Farms extension area nor the Merrill Ranch Expansion One extension area (including  
14 Units 59A, 59C, 59D and 59E) should be subject to an order preliminary as recommended by  
15 Staff in Recommendation 1 at page 2 of the Reply. Rather, these extension areas should be  
16 subject to a CC&N with appropriate conditions. Thus, Johnson Utilities urges the rejection of  
17 Staff Recommendation 1.

18 2. While Johnson Utilities does not believe that Staff’s Recommendation 2 at page 2  
19 of the Reply is necessary in light of the resolution of the NOV’s as discussed above, the  
20 Company would not oppose the inclusion of Recommendation 2 as a condition of a CC&N for  
21 Bella Vista Farms and Merrill Ranch Expansion One.

22 3. On May 21, 2013, Johnson Utilities late-filed in the docket an updated  
23 preliminary engineering analysis prepared by Baxter Design Group (“Baxter”) for the Merrill  
24 Ranch Expansion One. Included with that filing was a phasing map for the extension area, a  
25 copy of which is attached hereto as Attachment 3.<sup>7</sup> As described on page 1 of the Baxter  
26

27 <sup>6</sup> *Id.* at 2, lines 2-4.

28 <sup>7</sup> A copy of this same phasing map was attached as Figure 2 to the March 18, 2013 Memorandum from  
Jian Liu to Bob Gray, a copy of which was attached as Exhibit 1 to the April 2, 2013 Staff Report in this  
docket (Staff Hearing Exhibit S-1).

1 analysis, the Merrill Ranch Expansion One area “consists of approximately 227 acres of single-  
2 family residential lots (900 lots) and 121 acres of commercial development.” As stated in the  
3 Company’s Response to Staff’s Closing Brief and Supplement, the Merrill Ranch Expansion  
4 One encompasses approximately one-half square mile and includes 13 planned phases. The  
5 development is an extension of the existing Anthem at Merrill Ranch master-planned  
6 development, where Johnson Utilities is already serving more than 2,000 customers. Moreover,  
7 Johnson Utilities has existing certificated territory adjacent to the Merrill Ranch Expansion One  
8 on the north and west, with additional certificated territory just south of the development.

9 4. Units 59A, 59C, 59D and 59E of Merrill Ranch Expansion One are located at the  
10 south end of the planned development, and as shown on the diagram attached hereto as  
11 Attachment 4, comprise 87 acres—or only 25%—of the total 348 acres included in Merrill  
12 Ranch Expansion One. Johnson Utilities has submitted an updated preliminary engineering  
13 analysis which includes these parcels, a copy of which is attached as Attachment 3. Staff has  
14 not provided any compelling reason why these four parcels should be carved out and subjected  
15 to an order preliminary. Thus, Staff Recommendations 4 and 5 at page 2 of the Reply should be  
16 rejected.<sup>8</sup>

17 5. While Johnson Utilities does not believe that Staff’s Recommendation 3 at page 2  
18 of the Reply is necessary, the Company would not oppose the inclusion of Recommendation 3  
19 as a condition of a CC&N for Merrill Ranch Expansion One.

20 6. Johnson Utilities does not oppose the conditions set forth in Recommendations 6,  
21 7 and 8 at page 3 of Staff’s Reply. These conditions would be included in the grant of a CC&N  
22 for Bella Vista Farms and Merrill Ranch Expansion One.

23 . . . .  
24 . . . .  
25 . . . .  
26 . . . .  
27

28 <sup>8</sup> On August 9, 2013, Staff filed a Notice of Errata modifying its Recommendation 5 at page 2 of the Reply.

**Brownstein Hyatt Farber Schreck, LLP**  
One East Washington, Suite 2400  
Phoenix, AZ 85004

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RESPECTFULLY submitted this 20<sup>th</sup> day of September, 2013.

BROWNSTEIN HYATT FARBER SCHRECK LLP



Jeffrey W. Crockett, Esq.  
One East Washington Street, Suite 2400  
Phoenix, Arizona 85004  
Attorneys for Johnson Utilities, L.L.C.

ORIGINAL and thirteen (13) copies of the  
foregoing filed this 20<sup>th</sup> day of July, 2013, with:

Docket Control  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered  
this 20<sup>th</sup> day of July, 2013, to:

Yvette B. Kinsey, Administrative Law Judge  
Hearing Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Janice Alward, Chief Counsel  
Legal Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007

Steve Olea, Director  
Utilities Division  
ARIZONA CORPORATION COMMISSION  
1200 West Washington Street  
Phoenix, Arizona 85007



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# **ATTACHMENT 1**



Jarice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • www.azdeq.gov



Henry R. Darwin  
Director

CERTIFIED MAIL  
Return Receipt Requested

Case ID #: 140548

August 12, 2013

Johnson Utilities, LLC  
Attention: Greg H. Brown  
5230 E Shea Blvd  
Scottsdale, AZ 85254

Subject: Notice of Violation issued on May 30, 2013  
Santan Water Reclamation Plant, Facility ID 18584  
200 E Hunt Hwy, Queen Creek, AZ 85143

Dear Greg H. Brown:

This letter constitutes a monthly update on the status of Arizona Department of Environmental Quality (ADEQ) action resulting from ADEQ's inspection of the above-referenced site on May 15, 2013, as required by A.R.S. § 41-1009(I).

ADEQ has determined that the *Documenting Compliance* provisions of the Notice of Violation (NOV) issued to Johnson Utilities, LLC on May 30, 2013 have been met.

Even though the *Documenting Compliance* provisions of the NOV have been met, ADEQ reserves the right to take additional action, including seeking civil penalties for the violations alleged in the NOV. ADEQ will continue to keep you informed about whether it will pursue further action through monthly action update letters.

Should you have any comments or questions regarding this matter, please do not hesitate to contact me at (602) 771-4612.

Sincerely,

Daniel L. Czecholinski, Manager  
Water Quality Utility Field Service Unit

cc: File Inv # 105325; Reading File

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

Printed on recycled paper

# **ATTACHMENT 2**



Janice K. Brewer  
Governor

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1110 West Washington Street • Phoenix, Arizona 85007  
(602) 771-2300 • www.azdeq.gov



Henry R. Darwin  
Director

CERTIFIED MAIL  
Return Receipt Requested

Case ID #: 140757

August 12, 2013

Johnson Utilities, LLC  
Attention: Greg H. Brown  
5230 E Shea Blvd  
Scottsdale, AZ 85254

Subject: Notice of Violation issued on May 30, 2013  
Johnson Utilities Company, Facility ID 114360  
Address Not Found, Queen Creek,

Dear Greg H. Brown:

This letter constitutes a monthly update on the status of Arizona Department of Environmental Quality (ADEQ) action resulting from ADEQ's inspection of the above-referenced site on May 15, 2013, as required by A.R.S. § 41-1009(I).

ADEQ has determined that the *Documenting Compliance* provisions of the Notice of Violation (NOV) issued to Johnson Utilities, LLC on May 30, 2013 have been met.

Even though the *Documenting Compliance* provisions of the NOV have been met, ADEQ reserves the right to take additional action, including seeking civil penalties for the violations alleged in the NOV. ADEQ will continue to keep you informed about whether it will pursue further action through monthly action update letters.

Should you have any comments or questions regarding this matter, please do not hesitate to contact me at (602) 771-4612.

Sincerely,

Daniel L. Czecholinski, Manager  
Water Quality Utility Field Service Unit

cc: Inv. #105325; Reading File

Southern Regional Office  
400 West Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

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# **ATTACHMENT 3**

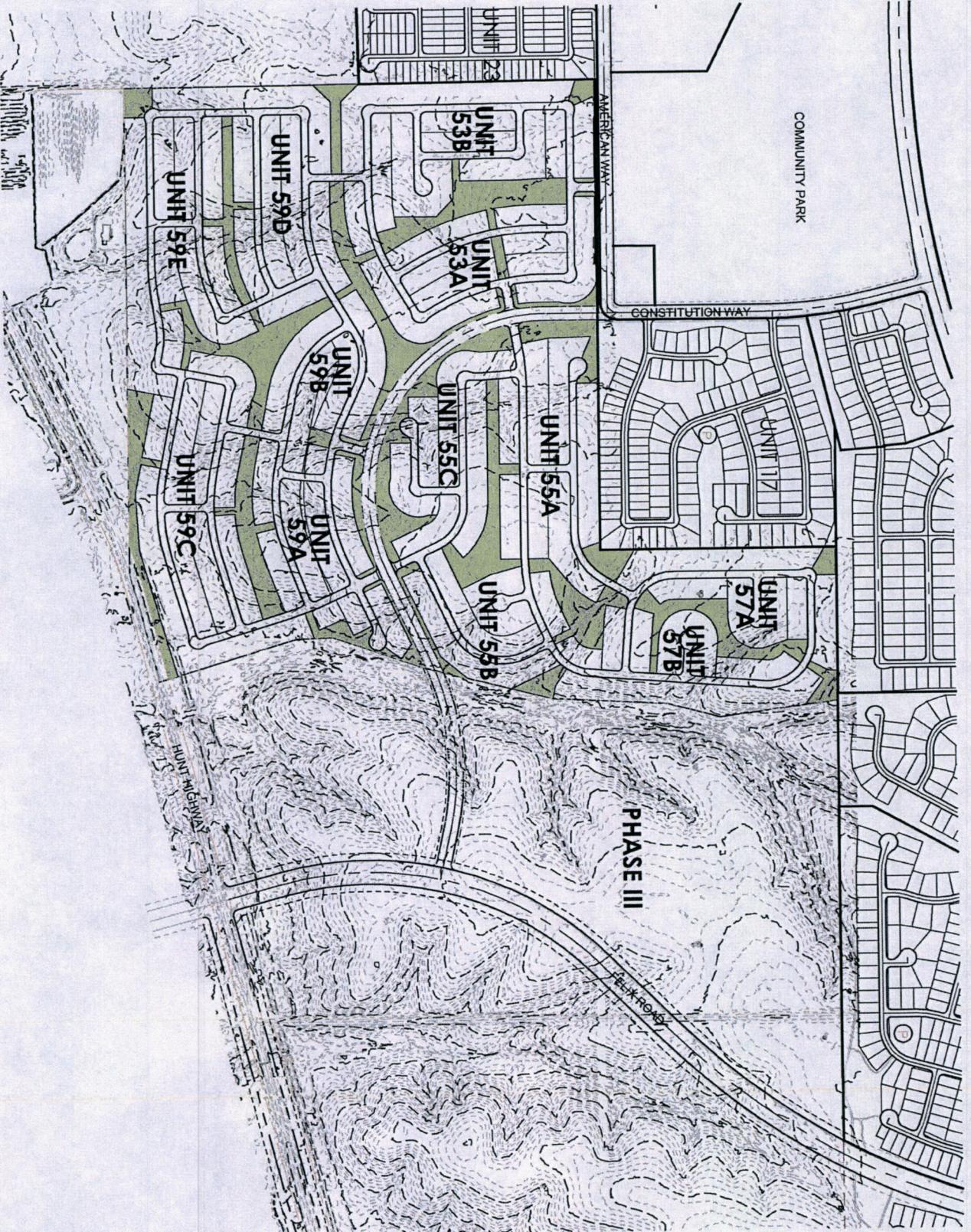


anthem  
BY DEL WEBB

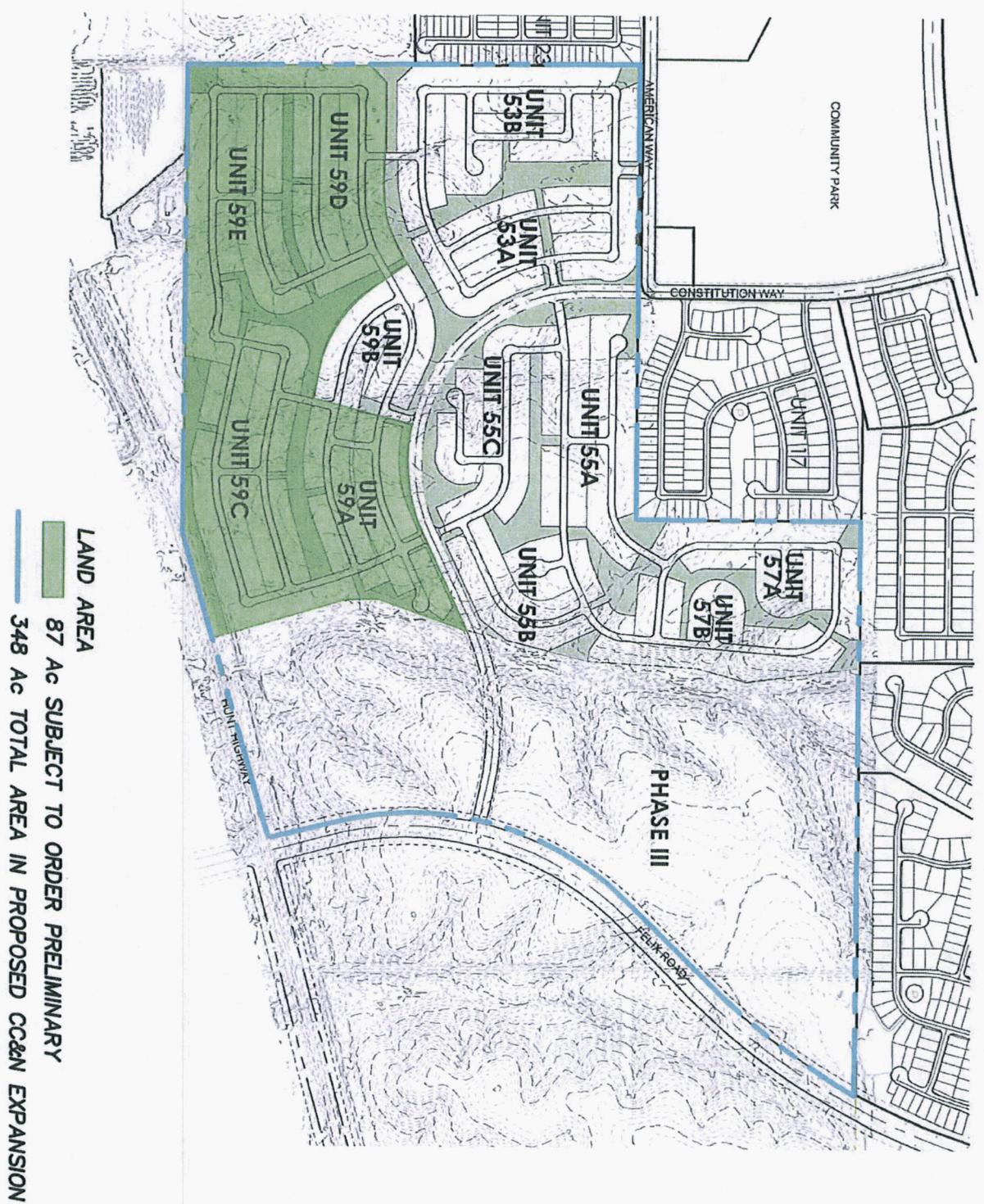
# Units 53 - 59 Phasing Plan



Scale: 1" = 500'  
March 18, 2013



# **ATTACHMENT 4**



S:\Specific Engineering\JOHNSON INTERNATIONAL\MAPS FOR KATHERINE\ANTHEM CC&N EXPANSION.dwg Plotted: Aug 14, 2013

**ANTHEM AT MERRILL RANCH**  
**CC&N**  
**EXPANSION**

**DRAWN FRB**  
**DATE 8-2013**  
**SCALE N/A**

**SPECIFIC ENGINEERING, LLC.**

6310 E. SHEA BOULEVARD SUITE 2  
 SCOTTSDALE, ARIZONA 85254  
 Phone: (480) 698-8339  
 FAX: (480) 698-8437