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Sent Via Electronic Transmission – November 3, 2015 @ 8:22 pm PST
(rb9agenda@waterboards.ca.gov)

November 3, 2015

Mr. David Gibson,
Executive Officer
Regional Water Quality Control Board
San Diego Region
Board Meeting Room
2375 Northside Drive, Suite 108
San Diego, California

Notice of Potential 'Taking' of Private Property – Safari Highlands Ranch, Pending Subdivision Map and Related Entitlements - Escondido California
Directed to San Diego Regional Water Quality Control Board (RWQCB)

Scheduled Meeting of November 18, 2015 – 2375 Northside Drive, Suite 108, San Diego, California

Dear Mr. Gibson:

This firm represents Safari Highlands Ranch, LLC, the owner of approximately 1100 acres of land in the General Plan and Specific Plan Area #4, of the City of Escondido, California, more specifically described in the attached exhibits.

This correspondence is not intended to fully state all arguments or law relevant to the RWQCB's potential decision at its forthcoming meeting on November 18, 2015, but is offered as 'Notice' of exposure to liability.

An analysis of the Potential Critical Coarse Sediment Yield Areas, as indicated on the attached exhibits and illustrated by our engineers of work, Hunsacker & Associates, proves to show that if the Hydromodification Management BMP Requirements considered by the RWQCB are adopted and applied to the Safari Highlands Ranch, such action will constitute in a total taking of the land value.

This action by the RWQCB will render the land and pending Subdivision Tract Map without value, as defined in Federal and State law, including but not limited to the well supported decision in *Lucas v. South Carolina Coastal Council, 424 S.E.2d 484, 486 (S.C. 1992).*

We urge you review the attached exhibit of the Safari Highland Ranch pending Subdivision Tract Map and related entitlements, noted as "REGIONAL WMAA – Safari Highland Ranch." This exhibit illustrates via the red triangles, areas identified as potential critical coarse sediment areas by the City of San Diego as lead agency to develop the new BMP Design Manual to implement the 2013 water quality permit.

This evidences the total taking of the land value, in that the manual requires complete avoidance of actual CCSYAs, offering no mitigation for developing any of the red triangles.

The Safari Highland Ranch development project is valued at completion of entitlements in excess of $500,000,000.00, and, since all value would be 'taken' by implementation of the proposed regulations, the exposure of the RWQCB and relevant agencies might easily exceed that figure.

We urge you to consider these statements of fact and law and decline to proceed with these unreasonable critical coarse sediment regulations.

Please accept this letter as part of the administrative record regarding the adoption of the proposed regulations.

Sincerely,

/s/ C. Samuel Blick

C. Samuel Blick
Attorney at Law

CSB: sh

Cc: Don Underwood, President, Concordia Communities,
San Diego Association of Governments
California Coastal Commission
United States Fish & Wildlife Service

California Department of Fish & Wildlife

C. Samuel Blick
Attorney at Law

United States Army Corps of Engineers

Enclosures:

REGIONAL WMAA – Map of Safari Highland Ranch
PROVISION E: JURISDICTIONAL RUNOFF MANAGEMENT PROGRAMS

0 800 1600 2400

SCALE 1" =800'

LEGEND

POTENTIAL CRITICAL COARSE SEDIMENT YIELD AREAS

DATE OF PREPARATION 7/21/15

PREPARED BY:

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REGIONAL WMAA
SAFARI HIGHLANDS RANCH

CITY OF ESCONDIDO, CALIFORNIA

W.O. 2374-0017

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(b) A Priority Development Project may be allowed to utilize alternative compliance under Provision E.3.c.(3) in lieu of complying with the storm water pollutant control BMP performance requirements of Provision E.3.c.(1)(a). The Priority Development Project must mitigate for the portion of the pollutant load in the design capture volume not retained onsite if Provision E.3.c.(3) is utilized. If a Priority Development Project is allowed to utilize alternative compliance, flow-thru treatment control BMPs must be implemented to treat the portion of the design capture volume that is not reliably retained onsite. Flow-thru treatment control BMPs must be sized and designed in accordance with Provisions E.3.c.(1)(a)(ii)[a]-[c].

(2) Hydromodification Management BMP Requirements

Each Copermittee must require each Priority Development Project to implement onsite BMPs to manage hydromodification that may be caused by storm water runoff discharged from a project as follows:

(a) Post-project runoff conditions (flow rates and durations) must not exceed pre-development runoff conditions by more than 10 percent (for the range of flows that result in increased potential for erosion, or degraded instream habitat downstream of Priority Development Projects).

(i) In evaluating the range of flows that results in increased potential for erosion of natural (non-hardened) channels, the lower boundary must correspond with the critical channel flow that produces the critical shear stress that initiates channel bed movement or that erodes the toe of channel banks.

(ii) The Copermittees may use monitoring results collected pursuant to Provision D.1.a.(2) to re-define the range of flows resulting in increased potential for erosion, or degraded instream habitat conditions, as warranted by the data.

(b) Each Priority Development Project must avoid critical sediment yield areas known to the Copermittee or identified by the optional Watershed Management Area Analysis pursuant to Provision B.3.b.(4), or implement measures that allow critical coarse sediment to be discharged to receiving waters, such that there is no net impact to the receiving water.

(c) A Priority Development Project may be allowed to utilize alternative compliance under Provision E.3.c.(3) in lieu of complying with the performance requirements of Provision E.3.c.(2)(a). The Priority Development Project must mitigate for the post-project runoff conditions not fully managed onsite if Provision E.3.c.(3) is utilized.

The San Diego Water Board understands, indeed asserts, that the pre-development hydrology of an area in question can only be roughly estimated and cannot be precisely known. However, using the hydrology of a natural condition, even if not precisely known, will provide significant benefit to receiving waters over using the hydrology associated with pervious (developed) surfaces. Therefore in order to achieve the goals of the Clean Water Act, which are to "*restore and maintain the chemical, physical, and biological integrity of the nation's waters* [emphasis added]," the most appropriate standard to use for hydromodification management is the standard associated with the pre-development condition.

Provision E.3.c.(2)(b) requires Priority Development Projects to avoid known critical sediment yield areas or implement measures that would allow coarse sediment to be discharged to receiving waters, such that the natural sediment supply is unaffected by the project. This is necessary because coarse sediment supply is as much an issue for causing erosive conditions to receiving streams as are accelerated flows.

The San Diego Water Board recognizes that in some situations implementing the hydromodification management BMP requirements fully onsite may not be technically feasible, may be cost prohibitive, or may not provide any overall water quality benefits to the Watershed Management Area. Thus, Provision E.3.c.(2)(c) allows for the use of a combination of onsite hydromodification management BMPs and alternative compliance options described in Provision E.3.c.(3).

Provision E.3.c.(3) allows for alternative compliance in instances where the Copermittee determines that offsite measures will have a greater overall water quality benefit for the Watershed Management Area than if the Priority Development Project were to implement structural BMPs onsite. Consequently, watershed-specific structural BMP requirements are present in this Order in the form of allowable compliance offsite. The Alternative Compliance Program to Onsite Structural BMP Implementation Provision is intended to integrate with the Copermittees' planning efforts in the Water Quality Improvement Plans.

The Alternative Compliance Program is an option for Priority Development Projects where the governing Copermittee has participated in the development of a Watershed Management Area Analysis as part of the Water Quality Improvement Plan (described in Provision B.3.b.(4)). Such an approach is consistent with the latest findings in hydromodification management by the scientific community. In a Technical Report entitled *Hydromodification Assessment and Management in California,*[38] the report states:

> *"An effective [hydromodification] management program will likely include combinations of on-site measures (e.g., low-impact development techniques, flow-control basins), in-stream measures (e.g., stream habitat restoration), floodplain*

[38] 2012. ED Stein, F Federico, DB Booth, BP Bledsoe, C Bowles, Z Rubin, GM Kondolf, A Sengupta. Technical Report 667. Southern California Coastal Water Research Project. Costa Mesa, CA.