

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION

ORDER NO. 99-087

WASTE DISCHARGE REQUIREMENTS FOR:

**LB/L Duc FAIRFIELD, LLC  
OCEANIS, A PARTNERSHIP  
FAIRFIELD, SOLANO COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Board, finds that:

1. LB/L Duc Fairfield, LLC, (hereinafter LB/L Duc) is a limited liability corporation. Oceanis, a Partnership, (hereinafter Oceanis) is a limited partnership with the general partners of Dancon Corporation, Marcon Corporation, Matz Corporation and Arbet Trust. All of these entities are referred to as Dischargers.
2. The Dischargers are constructing a phased housing development known as the Serpas Ranch Housing Project (hereinafter Project), located on or near Hilborn Road in the City of Fairfield, Solano County. Most of the Project site is owned by Oceanis, with the rest owned by LB/L Duc. Oceanis and LB/L Duc will separately construct their respective phases of the Project. A total of 340 houses will be constructed.
3. There are currently 2.09 acres of seasonal wetlands and 2.72 acres of tributary on the Project site. Development of the entire Project will impact 2.67 acres of jurisdictional waters of the United States. A total of 2.04 acres of seasonal wetlands, 0.58 acres (4,550 feet) of ephemeral tributary channels, and 0.05 acres (400 feet) of intermittent tributary channels will be filled. The portion of the site developed by Oceanis will impact 1.64 acres of seasonal wetlands and 0.2 acres (1,750 feet) of ephemeral tributary channels, and 0.05 acres (400 feet) of intermittent tributary channels. The portion developed by LB/L Duc will impact 0.4 acres of seasonal wetlands and 0.38 acres (2,800 feet) of ephemeral tributary channels.
4. This Order regulates the discharge of dredged and fill material to surface waters and does not apply to storm water discharges associated with construction activities. The Dischargers are responsible for obtaining and complying with the rules and regulations of National Pollutant Discharge Elimination System (NPDES) permit requirements.
5. The Dischargers have applied to the Board for Water Quality Certification under Section 401 of the Clean Water Act. On July 6, 1999, the U. S. Army Corps of Engineers (hereinafter Corps) issued an authorization under Nationwide Permit No. 26 for the Project.

6. State authority to regulate the discharge, and threatened discharge of waste to Waters of the State, including surface water, groundwater, and wetlands was granted to the State Water Resources Control Board in the Porter-Cologne Water Quality Act (Act). Water Quality Control Plans implement the Act by designating the beneficial uses to be protected, and the water quality objectives reasonably required for that purpose.
7. The Board, on June 21, 1995, adopted, in accordance with Section 13240 et seq. of the California Water Code, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). This updated and consolidated revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters. This order is in compliance with the Basin Plan.
8. The Project site is located within the Suisun Basin as identified in the Basin Plan. The impacted jurisdictional waters are located adjacent to and tributary to the Laurel Creek Basin. The following existing beneficial uses are identified in the Basin Plan: Cold Freshwater Habitat, Freshwater Replenishment, Fish Migration, Water Contact Recreation, Noncontact Water Recreation, Fish Spawning, Warm Freshwater Habitat, and Wildlife Habitat.
9. The Basin Plan Wetland Fill Policy establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, wherever possible, as the project. The Policy further establishes that wetland disturbances should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered. The Dischargers have submitted documentation to show that appropriate effort was made to avoid and then to minimize wetland disturbance, as required by the Basin Plan. The Board concurs with this finding.
10. To protect the water quality at and in the vicinity of the site for the duration of project construction, to adequately address proposed project impacts and mitigation to waters of the State, to meet the objectives of the California Wetland Conservation Policy, to require appropriate changes over the life of the project and its construction, and to address public safety concerns in an environmentally responsible way, the Board has determined to regulate discharge of dredged and fill material to surface waters by issuance of Waste Discharge Requirements (WDRs).
11. The Project consists of the construction of 340 single-family houses on 160 acres of land. The total acreage for the Project site is about 400 acres. Approximately half the site (231 acres) will remain as permanent open-space managed by the Solano Open Space Foundation.

12. The Dischargers have proposed a mitigation plan, "Serpas Ranch Section 404 Mitigation Plan" (hereinafter Mitigation Plan), dated November 30, 1998, as a part of its proposal, to offset the loss of beneficial uses of waters of the State. The Board concurs with the Mitigation Plan.
13. The Mitigation Plan proposes, at a minimum, to create 4.1 acres of seasonal marsh habitat and 1.2 acres of seasonal tributary. All of the created marsh habitat and seasonal tributary will be on the portion of the site currently owned by Oceanis. In addition, 7.5 acres of riparian oak woodland and native grassland would be created. The proposed wetland mitigation measures will offset the temporal and permanent loss of beneficial uses of Waters of the State resulting from the wetland fill.
14. To assure that unavoidable impacts to the waterbodies of the United States are successfully mitigated, the Dischargers will post a surety bond. The performance bond, in the amount of \$150,000, will name the City of Fairfield as a beneficiary. The City has agreed to act as the beneficiary. The bond will cover all the costs associated with constructing, monitoring, and, if necessary, repairing the wetland mitigation during the five-year, or longer if the mitigation is not successful, monitoring period. The Dischargers will be obligated to maintain all mitigation measures until such time as the mitigation performance criteria are met.
15. Storm water discharges to surface waters associated with construction activities and post project construction will occur.
16. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (EIR or Negative Declaration) for such projects. The City of Fairfield adopted a Mitigated Negative Declaration for the Project on January 21, 1992. Potential significant impacts to water quality and the proposed mitigation measures to reduce these impacts to less than significant were identified in the Mitigated Negative Declaration. These impacts and the recommended mitigations are: unstable slopes and soils – implementation of standard engineering measures in the geotechnical report; creek channel improvements – determine which channel stabilization materials are best for drainage and biotic purposes; and loss of wetlands and other waters of the United States – creation of wetlands and other waters to compensate for the loss.
17. Pursuant to Title 23, California Code of Regulations Section 3857, the Board is issuing WDRs and will not act on the Dischargers' application for Water Quality Certification.
18. By letter dated September 28, 1999, the Board notified the Dischargers of its intent to prescribe WDRs for this discharge.
19. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that the Dischargers, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

**A. Discharge Prohibitions**

1. The direct discharge of wastes to surface waters or surface water drainage courses is prohibited.
2. The discharge of oil, gasoline, diesel fuel, any petroleum derivative, any toxic chemical, or hazardous waste is prohibited.
3. The discharge of waste shall not cause a pollution or nuisance as defined in Section 13050 of the California Water Code.
4. At no time shall surplus or waste earthen materials be placed in surface drainage courses, or in such a manner as to allow the discharge of such materials to adjacent undisturbed land or to any surface water drainage course except as authorized by the Order and described in Findings 3 and 13, above, and as described in the Dischargers' application/Report of Waste Discharge and supporting materials.
5. Discharges of materials other than storm water, which are not otherwise regulated by a NPDES permit or allowed by this Order to waters of the State are prohibited.
6. The groundwater shall not be degraded as a result of project construction and related activities.

**B. Provisions**

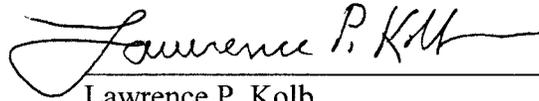
1. The Dischargers shall comply with all the Prohibitions and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Dischargers shall immediately notify the Board by telephone whenever an adverse condition occurs as a result of this discharge. An adverse condition includes, but is not limited to, a violation or of the conditions of this Order, significant spill of petroleum products or toxic chemicals, or damage to control facilities that could cause noncompliance. Pursuant to Section 13267(b) of the California Water Code, a written notification of the adverse condition shall be submitted to the Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Board, for the remedial actions.
3. The Dischargers shall notify the Board in writing 30 days prior to actual start dates for each phase of construction.

4. The Dischargers shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with the Dischargers' application for water quality certification and the completed report of waste discharge.
5. To reduce the potential impacts to water quality, the Dischargers shall divert any flow around construction and/or restoration work within waterbodies using a low flow channel, pipe, or other practices such that the flow does not flow across the work area and no equipment operates in areas of flowing or standing water.
6. All reports pursuant to these Provisions shall be prepared under the supervision of a suitable professional in the State of California.
7. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 27, Division 2, Subdivision 1, Chapter 2 of the California Code of Regulations shall be conducted in accordance with applicable state and federal regulations.
8. The Dischargers shall remove and relocate any wastes which are discharged at any sites in violation of this Order.
9. In accordance with Section 13260 of the California Water Code, the Dischargers shall file with the Board a report of any material change or proposed change in the character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of implementation of any proposal. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Project site. For the purpose of these requirements, this includes any proposed change in the boundaries of the Project site.
10. The Dischargers shall maintain a copy of this Order at the project site so as to be available at all times to site operating personnel.
11. The Dischargers are considered to have full responsibility for correcting any and all problems which arise in the event of a failure which results in an unauthorized release of waste or wastewater.
12. The Dischargers shall permit the Board or its authorized representative, upon presentation of credentials:
  - a. Entry on to the project site or the premises in which records are kept.
  - b. Access to copy any records required to be kept under the terms and conditions of this Order.
  - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.

- d. Sampling of any discharge or surface water covered by this Order.
13. The Dischargers shall comply with the nine Special Conditions in the July 6, 1999, Corps' authorization letter. The Special Conditions include implementation of the Mitigation Plan and reporting requirements. The Dischargers shall notify the Board in writing of the actual start date of the mitigation. Any substantive future changes to the Mitigation Plan that do not change acreage or values of the created wetlands must be approved in writing in advance by the Executive Officer. Changes that will affect the acreage or values of the created wetlands must be approved by the Board.
14. All reports and other information, including mitigation monitoring reports, required to be submitted to the Corps shall also be submitted to the Executive Officer at the same time they are submitted to the Corps.
15. When the Dischargers have determined that mitigation has achieved success criteria, they shall submit a notice of mitigation completion, acceptable to the Executive Officer. The notice of mitigation completion shall include a plan for long-term maintenance and management, acceptable to the Executive Officer. The Dischargers shall implement these plans.
16. By December 1, 1999, the Dischargers will provide a surety bond in the amount of \$150,000 to cover all the costs associated with constructing, monitoring, and, if necessary, repairing the wetland mitigation during the five-year, or longer if the mitigation is not successful, monitoring period. A copy of the bond shall be submitted to the Board and the Corps by December 1, 1999. The City of Fairfield shall be named as a beneficiary of the bond. The bond shall terminate upon approval by the Executive Officer that the mitigation plan has been implemented and performance criteria have been met.
17. The Dischargers shall be considered to have a continuing responsibility for ensuring compliance with the prohibitions, limitations, and Provisions of this Order in the operations or use of the owned property. The Dischargers shall immediately notify the Board when a change in ownership of the Project site occurs.
18. These Requirements do not authorize commission of any act causing injury to the property of another or of the public; do not convey any property rights; do not remove liability under federal, state or local laws, regulations or rules of other programs and agencies nor do these Requirements authorize the discharge of wastes without appropriate permits from other agencies or organizations.
19. Before any soil is disturbed onsite, the Dischargers must file a Notice of Intent for coverage under the State's General Construction Activity Storm Water Permit. This must cover both the residential development and the wetland mitigation areas.

20. Native seed mixture shall be used for hydroseeding or broadcast seeded disturbed surfaces outside of the constructed wetlands.
21. The Dischargers shall submit copies of all necessary approvals and/or permits for the project and mitigation projects from applicable government agencies, including the State Department of Fish and Game, prior to the start of construction.

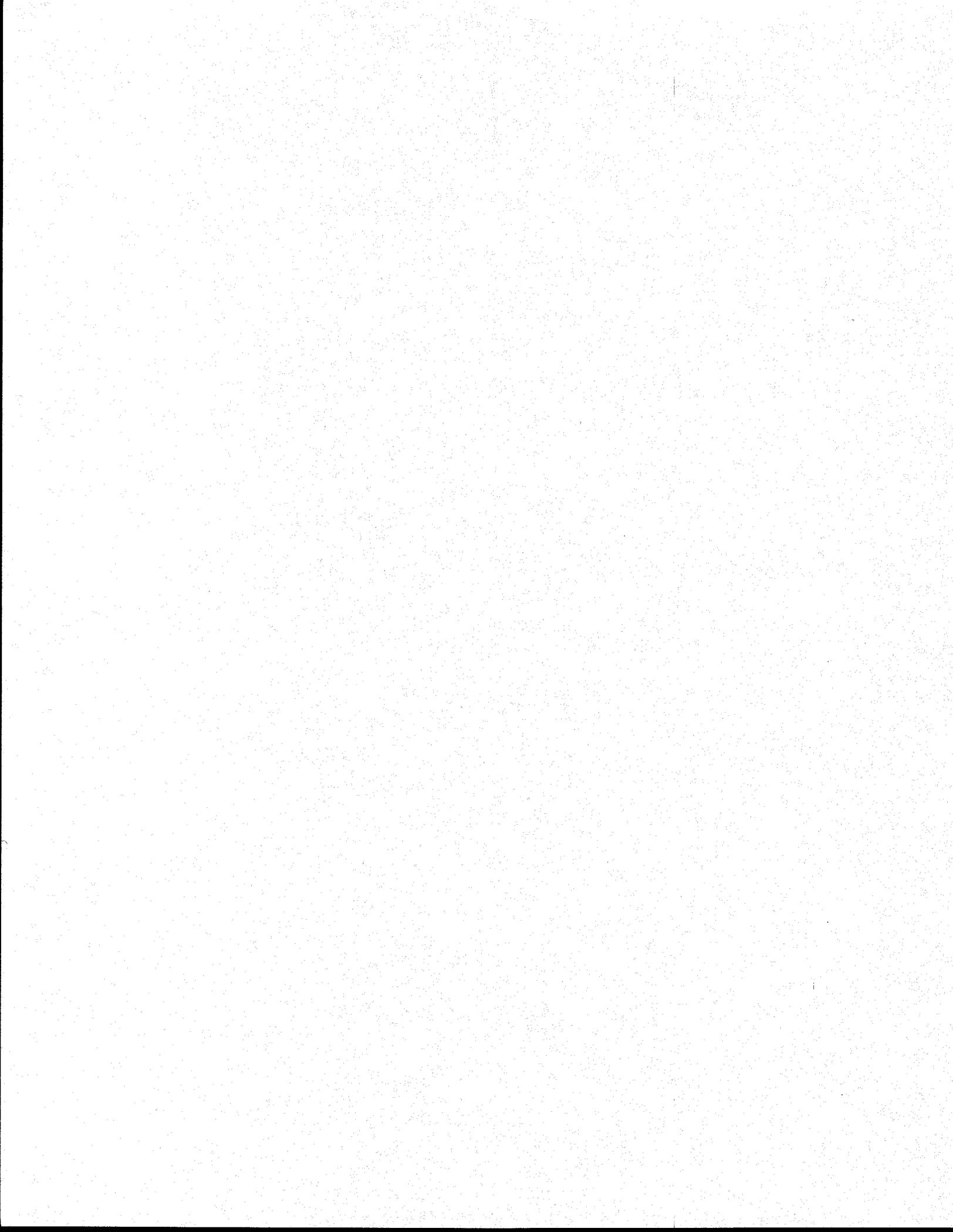
I, Lawrence P. Kolb, Acting Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on October 20, 1999.



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Lawrence P. Kolb  
Acting Executive Officer

Attachment 1: July 6, 1999 U.S. Army Corps of Engineers' Authorization Letter





REPLY TO  
ATTENTION OF:

Regulatory Branch

SUBJECT: File No. 23920N

Mr. John Zentner  
Zentner and Zentner  
4240 Hollis Street, Suite 360  
Emeryville, California 94608

Dear Mr. Zentner:

This is in reference to your Pre-Construction Notification (PCN) of December 14, 1998, on behalf of Condiotti Enterprises, concerning Department of the Army authorization to to construct the Serpas Ranch Housing Project, Phase II, on a 160-acre development parcel (APN 151-70-01), located northwest of Highway 80 and north of Waterman Boulevard, in the City of Fairfield, Solano County, California. The construction of 340 single-family houses on the development parcel would necessitate the discharge of approximately 290 cubic yards (cys) of fill material into 2.04 acres of seasonal wetlands and 0.63 acre of ephemeral tributary channels (other waters of the United States), as depicted on Figures 3 and 4 of the PCN and entitled, "Development Project and 404 Jurisdictional Impacts, Serpas Ranch." In addition, a series of weirs would be constructed in Channel Segments "C" and "E" for mitigation purposes, requiring the discharge of approximately 20 cys of rock below the plane of ordinary high water.

Based on a review of the information in your submittal and the current conditions of the site, as verified during a field investigation of August 18, 1998, the project qualifies for authorization under Department of the Army Nationwide Permit 26 for *Headwaters and Isolated Waters Discharges* (61 FR 65,874; Dec. 13, 1996), pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344).

The project must be in compliance with the General Conditions cited in Enclosure 1 and any Special Conditions specified in this letter for the nationwide permit authorization to remain valid. Non-compliance with any condition could result in the revocation of the nationwide permit for your project, thereby requiring you to obtain an individual permit from the Corps. Upon completion of the project and all associated mitigation and monitoring requirements, you shall sign and return the statement cited in Enclosure 2, certifying all work complies with the terms and conditions of the permit. This nationwide permit authorization for your project does not obviate the need to obtain other State or local approvals required by law.

**DEPARTMENT OF THE ARMY**  
SAN FRANCISCO DISTRICT, CORPS OF ENGINEERS  
333 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94105-2197

CALIFORNIA REGIONAL WATER  
JUL 08 1999  
QUALITY CONTROL BOARD

**ATTACHMENT 1**

Project authorization will remain valid until September 15, 1999, at which time Nationwide Permit 26 is scheduled to expire. If the project has commenced or is under contract to commence work prior to any modification, suspension, or revocation of the nationwide permit and the project could not comply with any newly issued nationwide permit, you shall have twelve (12) months from that date to complete the project under the present terms and conditions of this nationwide permit authorization

Project authorization will not be effective until you have obtained Section 401 water quality certification or a waiver from the Regional Water Quality Control Board (RWQCB), San Francisco Bay Region. You shall submit a copy of the certification or waiver to the Corps prior to the commencement of work. You shall comply with any condition of certification required by the RWQCB and consider it to be an integral part of the nationwide permit authorization for your project. If the RWQCB fails to act on a valid request for certification within two (2) months after receipt, the Corps may presume a waiver of water quality certification has been obtained.

To ensure compliance with this nationwide permit authorization, the project is subject to the following Special Conditions:

1. To compensate for the loss of 2.04 acres of seasonal wetlands and 0.63 acre of tributary channels associated with project construction, an array of mitigation measures shall be performed in the manner described in the "Serpas Ranch Section 404 Mitigation Plan" (Zentner, 30 November 1998). This plan calls for the creation of approximately 4.1 acres of seasonal wetlands, 1.2 acres of tributary channels, and 7.5 acres of (non-jurisdictional) riparian-oak woodland principally along Channel Segments "C" and "E" of the development parcel. The plan further specifies site preparation and planting procedures to be employed during construction; identifies specific performance criteria to be used in evaluating created habitat functions and values; and establishes a five-year maintenance and monitoring program to ensure compliance with the prescribed performance criteria. Phase I (Permit No. 18581N) mitigation construction at the Detention Basin has resulted in an overage of 0.27 acre of seasonal wetlands which may be applied to the 4.1-acre wetland mitigation requirement for Phase II.
2. Wetland and riparian mitigation construction shall commence concurrently with or in advance of any authorized wetland or channel fill discharge associated with project construction and shall be completed within one (1) year, thereafter. Within ten (10) calendar days after each date, the Corps shall be notified in writing of the wetland construction start and completion dates.
3. Wetlands to be preserved on the development and mitigation parcels shall be flagged or protected by other means to prevent disturbance during construction

work.

4. Within three (3) months after completion of the wetland and riparian mitigation construction work, a Summary Report shall be submitted to the Corps which describes the as-built condition of all required mitigation elements. The Summary Report shall include a detailed plan and profile of the created wetlands and tributary channels, and identify wetland and riparian plant species and planting locations established in the field.
5. By October 15 for each year of the five-year monitoring period, an Annual Monitoring Report shall be submitted to the Corps which describes the results of completed maintenance and monitoring activities; progress towards the attainment of the performance criteria; proposed corrective actions, if required; completed field data sheets; and photo documentation of the created habitats taken from permanent reference points. The first Annual Monitoring Report shall be submitted by October 15 of the year following the first growing season after planting.
6. As shown on the "Conceptual Landscape Plan, Serpas Ranch," a perimeter fence shall be installed around Channel Segments "C" and "E" (to the Detention Basin) to deter public access and preclude incidental cattle grazing and mowing within the mitigation parcel.
7. Within three (3) months after completion of the mitigation construction work, a conservation easement, restrictive covenant, or similar land encumbrance shall be completed and registered with the County Recorder's Office, specifying the preservation in perpetuity of the mitigation parcel as a wetland/open space preserve. A certified copy of the land encumbrance instrument shall be provided to the Corps.
8. A delineation of the created wetlands shall be performed at the conclusion of the five-year monitoring period, utilizing the evaluation procedures and parameters for vegetation, hydrology, and soils described in the "Corps of Engineers Delineation Manual" (January 1987). If the required mitigation acreage has not been established at that time, the Corps may require additional corrective measures or other compensatory mitigation to be performed.
9. If previously unknown historic, cultural, or archaeological resources are encountered while performing the authorized work, the Corps shall be promptly notified of the find. The Corps will initiate Section 106 consultation with the State Historic Preservation Office to determine if such resources warrant a recovery effort or are eligible for listing on the National Register.

You may refer any questions on this matter to Mr. Peter Straub of my staff at telephone 415-977-8443. All correspondence should be addressed to the Regulatory Branch, North Section, referencing the file number at the head of this letter.

Sincerely,  
**ORIGINAL SIGNED**  
By  
Calvin C. Fong

Calvin C. Fong  
Chief, Regulatory Branch

Enclosures

Copies Furnished:

Condiotti Enterprises, Santa Rosa, CA  
CA RWQCB, Oakland, CA