

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

September 16, 2010

ITEM: *7

SUBJECT: Order No. R8-2010-0054, Hemet Hospitality Investments LLC, Florida Promenade SP Amendment, Parcel Map No. 36230, City of Hemet.

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2010-0054, authorizing the discharge of fill to waters of the State that have been determined to be outside of the U.S. Army Corps of Engineers' jurisdiction and not subject to regulation under Clean Water Act Section 404 (non-federal waters).

BACKGROUND

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain 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 (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (State Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, Section 3830 *et seq.* Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification."

Due to recent decisions by the Supreme Court that increasingly have limited the authority of the Corps to regulate discharges of dredge and fill to waters of the

STAFF REPORT

U.S., some projects discharge dredge or fill to waters of the State that are considered 'non-federal' waters. As a result, these projects are not subject to a CWA Section 404 permit from the Corps and do not require a Certification. In the absence of the need to obtain a Certification, the State Board has asserted the State's authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act, codified as California Water Code Division 7.

On May 4, 2004, the State Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-DWQ)." However, numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On December 29, 2009, Regional Board staff received a report of waste discharge (ROWD) from Glenn Lukos Associates (GLA) on behalf of Hemet SP 55 and Hemet Hospitality Investments LLC (Discharger), who propose to discharge fill to 0.24-acres of waters of the State. The affected waters are ephemeral agricultural drainage ditches with no wetlands or woody riparian vegetation. These ditches run along roads through dry-farmed land that is now being developed or slated for development. A total of 2,670 linear feet of drainage will be filled.

The discharges will occur as part of the construction and operation of a 100 to 110-unit hotel on a 7.23-acre site, and related offsite improvements, near the intersection of Myers Street and Florida Avenue in the City of Hemet (City). This project is proposed as an amendment to Specific Plan (SP) #06-004 for the Florida Promenade Project, which includes an approximately 19-acre retail center and offsite improvements related to it. The offsite improvements for the 7.23 acre hotel project consist of completing up to three lanes on Myers Street from the southern boundary of the hotel development to the northern boundary of the development, two lanes from the northern boundary to Devonshire Avenue and up to two lanes on Devonshire Avenue from its current termination point, west to Myers Street. The construction will include the grading of the ultimate right-of-way of both Myers Street and Devonshire Avenue to accommodate new lanes, drainage and future improvement of curb, gutter and sidewalk. Completion of these sections of Myers Street and Devonshire Avenue has been required by the City as part of its approval of the Discharger's proposed project and related Specific Plan amendment.

The project site drains to the southwest via culverts under, and occasionally by flooding over, Florida Avenue and Warren Road. West of Warren Road is a large vernal pool complex that is inhabited by various threatened or endangered plants and invertebrates. The project extends the City storm drain infrastructure towards the vernal pool complex.

STAFF REPORT

Hydraulic conditions of concern (HCOC) are present at the vernal pool complex. The project has the potential to cause or contribute to erosion through alteration of the local hydrology, or conversion of the seasonal pools to perennial pools by the conveyance of nuisance flows. These potential impacts are partly addressed through Regional Board Order No. R8-2010-0033, NPDES Permit No. CAS 618033, commonly known as the Riverside County Municipal Separate Storm Sewer (MS4) urban storm water runoff permit, as discussed below. The City's participation in the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), and City ordinances implementing the MSHCP, provide additional assurance that the City will take appropriate steps to protect the vernal pool complex. In addition, the City of Hemet anticipates addressing these potential impacts through a drainage plan for the area¹. The project will include a storm water retention/infiltration basin that will capture all runoff from the hotel site. This basin is in part intended to address the vernal pool complex HCOC, by modulating runoff flows from the project in a manner that maintains the hydrology necessary to support the vernal pools.

In a letter dated September 29, 2009, the U.S. Army Corps of Engineers (Corps) verified that the project waters are not subject to regulation under Section 404 of the Clean Water Act.

Based on review of biological reports provided in the ROWD, Board staff has determined that the existing or potential beneficial uses of the waters affected by the proposed project include wildlife habitat (WILD) and groundwater recharge (GWR). Regional Board staff has determined that the discharges to the non-federal waters of the State at Florida Promenade would not affect beneficial uses of the receiving drainages. However, the Regional Board could not authorize the proposed discharges in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order. Consequently, the proposed discharges would need to be authorized under individual waste discharge requirements.

The Discharger proposes to mitigate impacts to beneficial uses supported by the ephemeral agricultural drainage ditches by paying an in-lieu fee to either the Santa Ana Watershed Association or Riverside County park's and Open Space District's Santa Ana River Mitigation Bank for the eradication of 0.48-acre of invasive plant species in riparian waters of the watershed in which the project is located. Regional Board staff believes that the proposed mitigation is appropriate and acceptable.

¹ To the west of Florida Promenade is the proposed Garrett Ranch commercial development, which will also further extend the City's storm drain infrastructure towards the vernal pool complex. The cumulative impacts of storm drain systems will be addressed by the City through conditions it places on development of Garrett Ranch or through a separate storm drain improvement plan.

STAFF REPORT

Other discharges that will occur as part of the development of Florida Promenade are construction and post-construction (urban) discharges of storm water runoff. Both discharges are addressed by State Board Water Quality Order No. 2009-0009 -DWQ, "General Permit for Discharges Associated with Construction Activity" (Order No. 2009-0009-DWQ) and Regional Board Order No. R8-2010-0033, the Riverside County MS4 permit, and subsequent renewals. As required under these permits, a Storm Water Pollution Prevention Plan (SWPPP) and a final Water Quality Management Plan (WQMP) will be developed. Typical construction best management practices (BMPs) for erosion control and sediment control devices, such as silt fences and gravel bags, will be employed to control and remove pollutants in storm water runoff.

A preliminary WQMP, provided as part of the Report, indicates that master-planned, City-funded and maintained water quality BMPs will provide treatment of runoff from the street improvements. The hotel site will drain to the southwest corner of the site to an infiltration/detention basin. In addition to providing a storm water runoff treatment function, the basin is also intended to address the HCOC with the vernal pool complex, by controlling the rate and amount of runoff flow from the site that reaches the vernal pools. Additional BMPs will be identified in the SWPPP and final WQMP.

The property owner(s), is responsible for operation and management of all BMPs on the proposed hotel site.. The approved WQMP for the project includes a recorded Covenant that authorizes the City to "cause any necessary maintenance to be done" in the event that the owner "fails to accomplish the necessary maintenance contemplated by the Covenant." In addition, the City has acknowledged that they have accepted responsibility for ongoing operation and maintenance of the offsite street improvements and associated post construction BMPs.

Pursuant to CEQA, the City of Hemet prepared a Mitigated Negative Declaration (MND) for the Florida Promenade specific plan amendment and adopted it on December 8, 2009. A Notice of Determination was filed on July 15, 2010. As a Responsible Agency under CEQA, the Board is required to consider the Lead Agency's environmental documents and make findings on the significant impacts within its jurisdiction to approve. A Responsible Agency has responsibility for mitigating direct or indirect environmental effects of those parts of a project it decides to carry out or approve. (California Code of Regulations, Title 14, Section 15096). As noted above, Board staff has considered the City's MND for the project and the proposed mitigation discussed above, and independently finds that there are no un-mitigated significant impacts on water quality that would result from the proposed project.

STAFF REPORT

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2010-0054.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District

California Department of Fish and Game

U.S. Fish and Wildlife Service

City of Hemet

U.S. Environmental Protection Agency Region 9, Wetlands Regulatory Office

State Water Resources Control Board, Division of Water Quality, Water Quality Certification Unit

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

Waste Discharge Requirements

Order No. R8-2010-054

For

Hemet Hospitality Investments LLC
Florida Promenade Specific Plan Amendment, Parcel Map No. 36230,
City of Hemet, Riverside County

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

1. Hemet SP 55 and Hemet Hospitality Investments LLC (hereinafter, Discharger) proposes to discharge fill to 0.24 acre of ephemeral, roadside agricultural drainage ditches (2,670 linear feet), as part of the development of Florida Promenade Specific Plan (SP) Amendment, Parcel Map No. 36230 (Project) in the City of Hemet (City).
2. The Project is the construction and operation of a 100 to 110-unit hotel and related offsite improvements on a 7.23-acre site near the intersection of Myers Street and Florida Avenue in the City. The City has conditioned the Project to provide offsite improvements that include completing up to three lanes on Myers Street from the southern boundary of the hotel development to the northern boundary of the development and two lanes from the northern boundary to Devonshire Avenue, and to complete up to two lanes on Devonshire Avenue from its current termination point, west to Myers Street. The construction will include the grading of the ultimate right-of-way of both Myers Street and Devonshire Avenue to accommodate new lanes, drainage and future improvement of curb, gutter and sidewalk. Florida Promenade SP Amendment is located within Section 7, Township 5 South, Range 1 West, as shown on the U.S. Geological Service *Winchester, California* and *Lakeview, California* quadrangles (33 deg. 44 min. 53 sec. N/-117 deg. 01 min. 95 sec. W).
3. In a letter dated September 29, 2009, the U.S. Army Corps of Engineers (Corps) verified that the Project waters are not subject to regulation under Section 404 of the Clean Water Act.
4. The Board commonly regulates discharges of dredge or fill to waters of the State through the issuance of Clean Water Act (CWA) Section 401 Water Quality

Standards Certifications (Certifications) where the discharge is also subject to regulation by the Corps. This occurs when the definitions of “waters of the State” and “waters of the U.S.” (under CWA Section 404) overlap. In the absence of an applicable federal permit or license, the Board may regulate the proposed discharge through the issuance of Waste Discharge Requirements or a waiver thereof.

5. The waters of the State on the Project site consist of ephemeral agricultural drainage ditches. The Water Quality Control Plan for Santa Ana River Basin (1995, revisions compiled 2008) does not designate beneficial uses for any of the surface waters on the site. Based on the applicant’s biological assessment and staff’s observations of these waters, beneficial uses that are existing or attainable for the ephemeral drainages include:
 - a. wildlife habitat (WILD); and
 - b. groundwater recharge (GWR).
6. Waste Discharge Requirements (WDRs) are necessary to address potential impacts of the fill on the beneficial uses of waters of the State.
7. This Order regulates the discharge of fill material to waters of the State that are not subject to Corps CWA Section 404 jurisdiction (nonfederal). The discharger submitted a Report of Waste Discharge (ROWD) on December 29, 2009.
8. The discharger has committed to mitigate direct impacts to waters of the State by paying an in-lieu fee to either the Santa Ana Watershed Association or the Santa Ana River Mitigation Bank, managed by the Riverside County Parks and Open Space District, for the eradication of 0.48-acre of invasive plant species.
9. Pursuant to CEQA, the City of Hemet adopted a Mitigated Negative Declaration (MND) for Florida Promenade Specific Plan Amendment on December 8, 2009. A Notice of Determination was filed on July 15, 2010.
10. In the watershed below the project there is a complex of vernal pools, at which hydraulic conditions of concern (HCOC) are present. The project will include a storm water retention/infiltration basin that is in part intended to address the vernal pool complex HCOC, by modulating runoff flows from the project site in a manner that maintains the hydrology necessary to support the vernal pools.
11. As a Responsible Agency under CEQA, the Board is required to consider the Lead Agency’s environmental documents and make findings on the significant impacts within its jurisdiction to approve. A Responsible Agency has responsibility for mitigating direct or indirect environmental effects of those parts of a project it decides to carry out or approve (California Code of Regulations, Title 14, Section 15096). The Regional Board has considered the MND prepared

by the City of Hemet in the adoption of these waste discharge requirements and finds that measures are specified herein to mitigate impacts to water quality standards to insignificant levels. There will be no un-mitigated significant impacts on water quality that would result from the proposed project.

11. The Regional Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions. The project is not expected to result in lowering of water quality. Project construction should not affect water quality if conducted in compliance with applicable State Water Resources Control Board permits. The project's potential long-term effects on water quality standards will be minimized or avoided by implementing appropriate best management practices specified in approved water quality management plans, and by complying with the mitigation measure required herein.
12. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.
13. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that the discharger, 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 SPECIFICATIONS:

1. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.
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 discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating 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 National Pollutant Elimination System (NPDES) permit, is prohibited.

C. PROVISIONS:

1. To mitigate for the discharge of fill to 0.24 acres of waters of the state, the discharger shall pay an in-lieu fee to either the Santa Ana Watershed Association or the Santa Ana River Mitigation Bank managed by Riverside County Parks and Open Space District for the eradication of 0.48-acre of invasive plant species in the San Jacinto River watershed above Canyon Lake, or within the Santa Ana River watershed. The fee shall include monies for a minimum of 6-years of follow-on maintenance. Evidence of the payment shall be provided to the Executive Officer by November 30, 2010.
2. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.
3. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.
4. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA 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 to any person except after notice to, and approval by, the Executive Officer. The Regional Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.
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 Regional Board.
12. This Order will serve as a Clean Water Act Section 401 Water Quality Standards Certification in the event that one is required by any federal agency, except as noted below. Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:
 - a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
 - b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- c. Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.
13. The Regional Board and other authorized representatives shall be allowed:
- a. Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
 - b. Access to copy any records that are kept under the requirements of this Order;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Order.

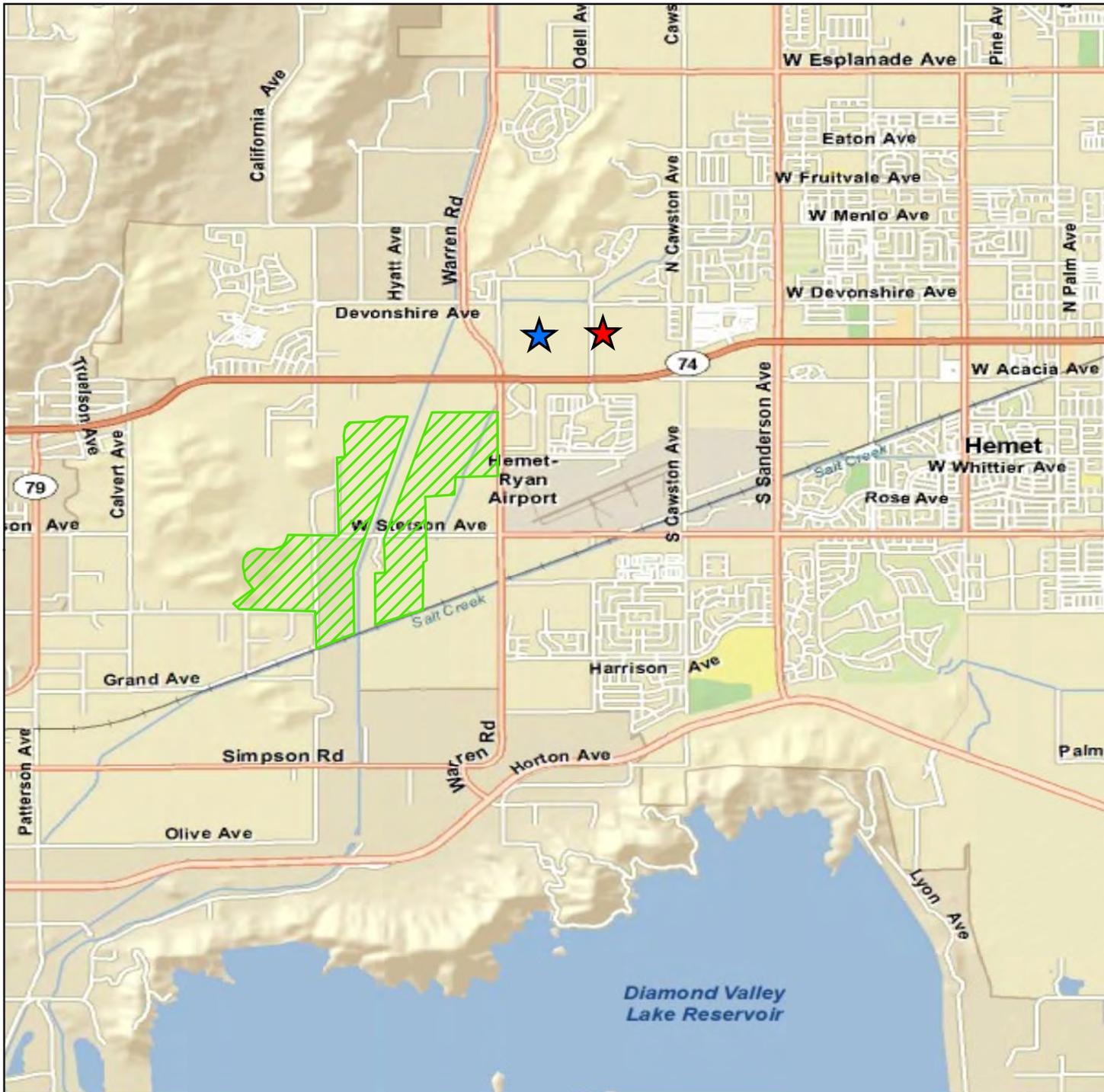
D. REPORTING:

Upon completion of the discharge of fill to waters of the state authorized by this Order, the Discharger shall submit a compliance report to the Board. The report shall:

1. Notify the Board that the discharge has been completed;
2. Include information concerning compliance with the specifications, prohibitions and provisions of this Order; and,
3. If not previously submitted, provide evidence of the payment of in-lieu of mitigation fees to either the Santa Ana Watershed Association or the Santa Ana River Mitigation Bank (see provision C.1.).
4. Request the rescission of this Order.

I, Kurt V. Berchtold, 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 16, 2010.

Kurt V. Berchtold
Executive Officer



Legend

-  Florida Promenade
-  Garrett Ranch Project
-  Approximate Proposed Preserve Area (Wetlands/Vernal Pool Areas)*



* City of Hemet
 Existing General Plan Land Use
 ArcGIS Online Resource Center:
<http://resources.esri.com/arcgisonlineservices>

FLORIDA PROMENADE

GLENN LUKOS ASSOCIATES

