California Regional Water Quality Control Board
Santa Ana Region

May 27, 2005

ITEM: 11

SUBJECT: Order No. R8-2005-0083, City of Calimesa, Coussoulis Development and Joseph Nicholas Homes Inc., Tract 26811, City of Calimesa

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2005-0083, 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 (SWRCB) 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." In the absence of the need to obtain a Certification, the SWRCB has asserted its authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act. On May 4, 2004, the State Water Resources Control 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). Numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On November 15, 2004, Regional Board staff received a report of waste discharge (Report) from the agent for the dischargers, P & D Environmental (P&D), for Tract 26811, a proposed development of a 119.7-acre property generally located north of Singleton Road, south of Garden Air Wash, and east of Interstate 10 in the City of Calimesa. In their Report, P&D provided a delineation of waters of the U.S. that concluded that the site contained 0.698 acres (11,644 linear feet) of ephemeral drainages that are waters of the State. The project will discharge fill to 0.523 acre (9,266 linear feet) of the drainages while avoiding a bisecting drainage. None of the drainage channels meet criteria in the U.S. Army Corps of Engineers (Corps) 1987 Wetland Delineation Manual to qualify as wetlands. Discharges of fill to 0.493 acres (8,853 linear feet) of these drainages is subject to Clean Water Act Section 404 Permits (404 Permits) issued by the Corps and, consequently, to State Water Quality Certification. The remaining 0.147 acres (3,510 linear feet) of waters of the State are isolated and not subject to 404 Permits.

Upon review of the Report, Regional Board staff determined that the discharges to the non-federal waters of the State at Tract 26811 would affect beneficial uses and that 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. Discharges of fill to waters of the U.S. on Tract 26811 are subject to Corps permitting and, therefore, are expected to be authorized by the Executive Officer under Order No. 2003-0017-DWQ with the issuance of a Clean Water Act Section 401 Certification.

The proposed discharge will occur in association with the construction of approximately 270 single-family homes and related infrastructure on 119.7-acrs. The project proposes to maintain 23.3 acres as open space that will incorporate a wildlife movement corridor and preserve a larger bisecting drainage. The site exhibits a vegetative cover comprised largely of Riversidean Sage-Chaparral Scrub, Chamise Chaparral, and non-native grassland.

The discharger has proposed to mitigate impacts to non-federal waters of the State on Tract 26811 through the purchase of 0.44 acres of mitigation credit from the Riverside-Corona Resource Conservation District, to be applied in San Timoteo Creek. The proposed Order No. R8-2005-0083 requires the purchase of the mitigation credit. The proposed Order No. R8-2005-0083 does not authorize discharges of storm water or process wastewater.

Pursuant to the requirements of the California Environmental Quality Act (CEQA), the City of Calimesa, acting as the Lead Agency, certified a Mitigated Negative Declaration on December 16, 1991 and an Addendum on November 20, 1995.

RECOMMENDATION

Adopt Order No. R8-2005-0083, as presented.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District
Department of Fish and Game
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office
State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2005-0083

Waste Discharge Requirements

for

City of Calimesa, Coussoulis Development, and Joseph Nicholas Homes Inc.
Tentative Tract 26811
City of Calimesa, County of Riverside

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

1. The City of Calimesa, Coussoulis Development, and Joseph Nicholas Homes (hereinafter, dischargers) propose to develop Tract 26811 in the City of Calimesa. The project site is 142.9 acres located within the City of Calimesa, east of Interstate 10, near the San Bernardino/Riverside County line. The proposed project entails development of 119.7 acres of the site into 270 single family dwellings and related infrastructure. The remaining 23.2 acres is designated as open space and includes a bisecting drainage. The project site is located within Section 24, Township 2 south, Range 2 west, as mapped on the United States Geological Survey (USGS) 7.5 minute topographical Series El Casco quadrangle.

2. Within the Tract are 0.698 acres (11,644 linear feet) of ephemeral drainages that are waters of the State as shown on Figure 1. The project will result in the discharge fill to 0.523 acre (9,266 linear feet) of the drainages while avoiding a bisecting drainage. None of the drainage channels meet criteria in the U.S. Army Corps of Engineers (Corps) 1987 Wetland Delineation Manual to qualify as wetlands. Discharges of fill to 0.493 acres (8,853 linear feet) of these drainages are subject to Clean Water Act Section 404 Permits (404 Permits) issued by the Corps and, consequently, to State Water Quality Certification. The remaining 0.147 acres (3,510 linear feet) of waters of the State are isolated and not subject to 404 Permits.

3. The waste discharge requirements proposed herein address the fill of six isolated ephemeral drainages, constituting 0.147 acres (3,510 linear feet) of waters of the State. Discharges of fill to waters of the U.S. will be addressed under 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."

4. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the City of Calimesa, acting as the Lead Agency, certified a Mitigated Negative Declaration on December 16, 1991 and an Addendum on November 20, 1995.

5. The Water Quality Control Plan for Santa Ana River Basin (1995) does not specifically designate beneficial uses for any of the isolated surface waters on the project site. The

applicant's biological assessment indicates that beneficial uses that are existing or attainable for these waters include:

a. Wildlife habitat (WILD)
b. Groundwater recharge (GWR)

6. This Order regulates the discharge of fill material to waters of the State. The dischargers submitted a Report of Discharge on November 15, 2004.

7. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill of non-federal waters of the State.

8. The Regional Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.

9. The Board has notified the dischargers 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.

10. 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 except as authorized by these Waste Discharge Requirements.

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 permit, is prohibited.

C. PROVISIONS:

1. The dischargers shall purchase 0.50 acres of mitigation credit from the East Valley Resource Conservation District for the enhancement of riparian drainages to be applied in San Timoteo Creek. Documentation of the purchase shall be provided to the Regional Board not later than 30-days from the commencement of grading activities on the project site.

2. The dischargers 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 dischargers 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 dischargers 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 dischargers 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 dischargers 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 dischargers from liabilities under federal, state, or local laws, nor guarantee the dischargers 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 dischargers 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. 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.

I, Gerard J. Thibeault, 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 May 27, 2005.

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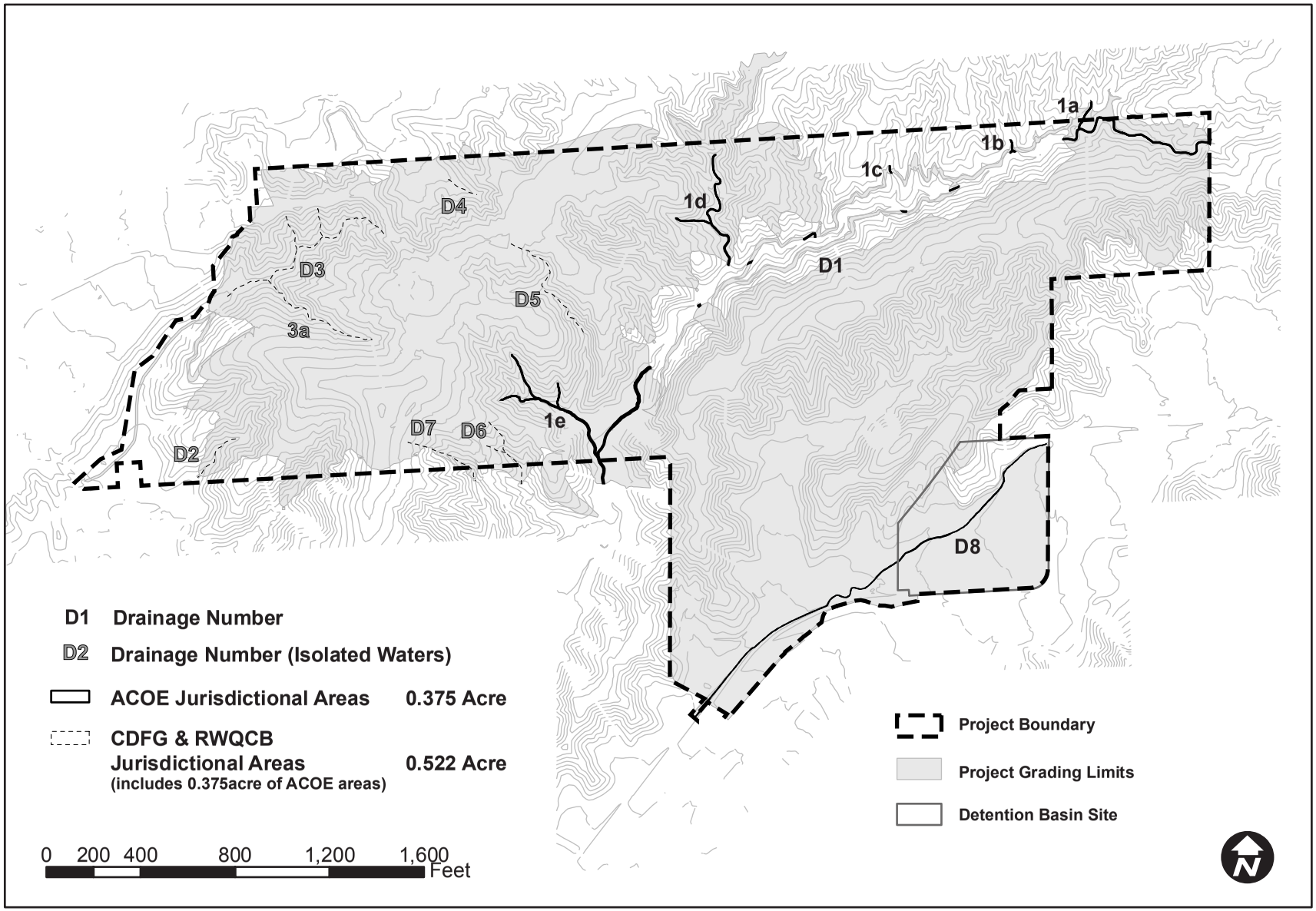
Gerard J. Thibeault
Executive Officer



Environmental & Regulatory Specialists, Inc.	**Impacts to Jurisdictional Areas**	**Figure 1**