California Regional Water Quality Control Board
Santa Ana Region

June 29, 2007

ITEM: * 11

SUBJECT: Waste Discharge Requirements for Parente/Chino Hills Co. L.P., Vila Borba Project, Butterfield Ranch Road south of Pine Avenue, City of Chino Hills, San Bernardino County – Order No. R8-2007-0011

DISCUSSION:

Parente/Chino Hills Co. L.P., a California Limited Partnership (hereinafter, discharger) proposes construction of the Vila Borba Project (Project). This proposed Order prescribes waste discharge requirements (WDRs) for the fill, diversion, and modification of portions of natural drainages on the Project site. These WDRs address on-site mitigation for the impacts of the Project on the water quality standards (water quality objectives and beneficial uses) of these drainages, which contain riparian and wetland habitat of varying quality. These drainages are waters of the state, parts of which are also considered waters of the U.S. The applicable water quality standards are defined in the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan).

Development of the Vila Borba Project, proposed initially in 1999, has a lengthy and complicated regulatory history involving the Regional Board, U.S. Army Corps of Engineers, California Department of Fish and Game, the State Water Resources Control Board, and other agencies and parties. The Project has been modified to address concerns identified by these parties. The Regional Board's administrative record for this Project documents this extensive regulatory history. For the purposes of the proposed Waste Discharge Requirements, it suffices to indicate that the State Board determined that the issuance of individual WDRs for the Project was appropriate and not a waiver of WDRs or other regulatory action. A Report of Waste Discharge (ROWD) for the modified Project was initially submitted on March 15, 2005. Subsequently, Regional Board staff requested additional information from the discharger, including proposed mitigation measures, and reviewed the project's Environmental Impact Report. The ROWD was determined to be complete on November 20, 2006.

Project Description

The Project consists of a residential and commercial development encompassing approximately 181 acres of an approximately 336-acre project site located on the piedmont draining the eastern Puente (Chino) Hills, in the southeastern City of Chino Hills (City) (Attachment A). The discharger will dedicate, through deed restriction, 155 acres (approximate) of the elevated southwestern part of the 336-acre site as a conservation easement, contiguous to Chino Hills State Park. Dedication of this area is part of a Habitat Mitigation and Monitoring Plan, which is discussed below.

The Project is situated on both sides of Butterfield Ranch Road, south of Pine Avenue. Existing developments are located north ("Pinehurst West") and south ("Hunters Hill") of the Project area. All but the northeastern corner of the property is located west of State Route 71 (SR 71).

The project site is comprised of four parcels approved by the City for construction of this Project (Tract Nos. 15989, 16338, 16413, and 16414), and a fifth parcel, Lot 6 of Tract No. 15710 (87.51 acres) that will be included within the conservation easement. All five parcels have been shown in the discharger's submittals as constituting the 336-acre Project considered by the Regional Board. The discharger proposes to develop the northern portion (Tract No.15989), central portion (Tract No. 16413), and southeastern portion (Tract No. 16338) of the Project area with up to 351 single-family residences, streets, and a park. Approximately 35 acres of the 118.52 acre Tract No. 15989, and approximately 24 acres of the 86.40 acre Tract 16338 will remain natural open space. Approximately 280 multi-family residences, with commercial sites, will be constructed on the northeastern portion of the site (Tract No. 16414). A total of 631 dwelling units is proposed, representing a decrease in total units from an earlier Project proposal (835 units).

The loss or impairment of much of the site's surface water beneficial uses will be caused by the fill of portions of approximately seven natural drainage channels (including associated tributaries, swales, and wetlands) in the northern, central and eastern portions of the site (Attachment B). The proposed Project will not require the import of fill, but will entail overexcavation and recompaction of an estimated 112,025 cubic yards of on-site earth material, and placement of an estimated 120,075 cubic yards of engineered fill into drainages on the Project site.

The impacted drainages occupy the distal portions of two sub-watersheds of the eastern Chino Hills (informally identified in the ROWD as "Northerly and Southerly Drainage Basins") that are separated by an east-west trending ridge (central ridge). Each sub-watershed contains two dominant drainages that flow easterly, converge, and enter culverts that convey flows beneath SR 71 for discharge into the Prado Basin:

- In the "Northerly Drainage Basin" (Tract No.15989), stream channels referred to as the "North" and "Middle Drainages" flow toward Pine Avenue. The Middle Drainage flows toward a wetland (approx. one acre). Currently, most "Northerly Drainage Basin" flow eventually enters the Butterfield Ranch Road storm drain, which extends north from Pine Avenue to a box culvert crossing under SR 71, and discharges into the Chino Creek wetlands upstream of the Prado Basin.

- In the "Southerly Drainage Basin," the "South Drainage," a stream channel that has historically flowed from local ravines to the Prado Basin, crosses the southern "panhandle" of Lot 6 of Tract No. 15710 and turns north, then east, through a culvert under Butterfield Ranch Road. This flow converges with flow from a small ravine to the north that is truncated by the Butterfield Ranch Road crossing and is called the "Cutoff Drainage" (Tract No. 16413). East of Butterfield Ranch Road, the consolidated flow is referred to as the "East Drainage" as it crosses the southeastern Project area (Tract No. 16338). The "East Drainage" leaves the property to cross a triangular City-owned holding (Tract 13880-7). The Tract 13880-7 channel enters a 6-foot box culvert extending beneath SR 71freeway ("Tract 13880-7 box culvert").

Implementation of the proposed Project will redirect the affected portions of the above-referenced drainages into underground storm drains and wetland diversion basins as

discussed below, and major storm flow will continue to discharge offsite. Tract No. 16414 has minimal channelization, with general sheet flow drainage toward an existing 42-inch storm drain that also extends beneath SR 71 and discharges to the Prado Basin. South of this storm drain, a viaduct beneath SR 71 provides access to the two Southern California Edison (SCE) transmission line easements that cross the Project site. This viaduct does not transport water but does provide access to a proposed mitigation site on the east side of SR 71.

Impacts to Beneficial Uses

All site drainages are tributary to Chino Creek, Reach 1B, which is within the Prado Basin Management Zone (PBMZ). The beneficial uses of Chino Creek, Reach 1B, include Water Contact Recreation (REC1); Non-Contact Water Recreation (REC2); Warm Freshwater Habitat (WARM); Wildlife Habitat (WILD); and Rare, Threatened, or Endangered Species Habitat (RARE). Pursuant to the tributary rule specified in the Basin Plan, the drainages on the Project site that will be affected by project implementation are assumed to have these same beneficial uses. Implementation of the proposed Project (Attachment C) will significantly impact these beneficial uses through the following actions. At least 1,800 feet of the existing eastern ends of the North and Middle Drainages will be filled, and storm water flows discharged from the tributary sub-watershed will be carried through the Project enclosed within large diameter underground pipes. While North Drainage flows will continue to reach the Butterfield Ranch Road storm drain and flow north to wetlands along Chino Creek (within the PBMZ), Middle Drainage flows will be diverted across Butterfield Ranch Road to the eastern Project area. The South Drainage will be preserved both on Lot 6 of Tract 15710 and on City property west of and adjacent to Butterfield Ranch Road, where the existing detention basin will undergo minor modification (a riser and new bulkhead, Attachment D1), in order to regulate flow that will continue north beneath Butterfield Ranch Road and eventually east to Prado Basin. The Cutoff Drainage, including a small ravine and seep, will be filled and replaced by an underground storm drain pipe. All of the East Drainage within the property boundary, including minor tributaries to the Cutoff Drainage and the Butterfield Ranch Road storm drain, will be filled and replaced by underground storm drain pipe.

The East Drainage has the most extensive riparian habitat value of the channels on the Project site, supporting RARE, WARM, WILD, and REC2 beneficial uses. This drainage contains Mulefat Scrub, Southern Cottonwood-Willow Riparian Forest, and Southern Willow Scrub vegetative communities that directly support these uses. The existence of RARE has been supported by the presence of least Bell's vireo (*Vireo belii pusillus*) in the Middle and East Drainages. Five adults and two fledglings were recorded during a Focused Survey conducted for the wetlands delineation. Habitat suitable for the southwestern willow flycatcher (*Empidonax traillii extimus*) was noted in the North Drainage, but presence of the species itself was not confirmed. All other drainages, including a swale in Tract No. 16338, were found to support elements of the riparian communities noted above, with numerous non-protected transitory vertebrate species, even though the area is generally degraded by cattle grazing. Filling of the existing channels in the Project area, as proposed, will eliminate the drainage's beneficial uses and habitat described above.

Permitting

California Department of Fish and Game (CDFG) has determined jurisdiction over 3.19 ac of impacted riparian habitat (impacted "waters of the state") within the Project footprint. A subset of this acreage (2.49 acres) is "waters of the United States" subject to the jurisdiction of the U.S. Army Corps of Engineers (USACOE). Of the 2.49 acres, 1.8 acres are wetlands. The largest discrete wetland, located at the northern boundary west of Butterfield Ranch Road, will be replaced by Basin No.1, one of three on-site wetland basins in the mitigation program developed for this Project. In October 1999, the discharger submitted an application to CDFG for a Streambed Alteration Agreement (SAA) pursuant to Fish and Game Code Section 1603. CDFG was unable to process the application within the 60-day period provided by law, and, as a result, issuance of the SAA was waived. CDFG later issued its concurrence with U.S. Fish and Wildlife Service (USFWS) conclusions and recommendations for the Project (see below).

On January 11, 2002, a Clean Water Act (CWA) Section 404 permit (404 Permit No. 199915475-GS) was issued to the discharger by USACOE, for discharges of fill to waters of the U.S. The discharger has been granted 404 Permit extensions, most recently on July 27, 2006. As a prerequisite to the 404 Permit, on March 5, 2001 the USFWS issued a Biological Opinion that specified mitigation for the impacts of the project on threatened or endangered species, following an Endangered Species Act consultation. The CDFG issued a Consistency Determination agreeing to the Biological Opinion on September 27, 2001, pursuant to Fish and Game Code Section 2080.1. The Biological Opinion was most recently amended on March 3, 2004, after surveys identified the on-site presence of least Bell's vireo, and USFWS ruled that the Project would not jeopardize the continued existence of the species provided that specific mitigation was implemented. The discharger submitted a Habitat Mitigation and Monitoring Plan (HMMP) to USACOE on November 3, 2003. The HMMP was incorporated into the 404 Permit. The HMMP was considered finalized by USACOE and the USFWS on March 3, 2004 with the second amendment of the Biological Opinion. Regional Board staff believes that the 404 Permit, as extended, reflects the most recently updated Biological Opinion, HMMP, and Project tract numbers.

After finalization of the HMMP in March 2004, a California Environmental Quality Act (CEQA) Initial Study of the Project was conducted by the City and subsequently discussed with Board staff. The ROWD was submitted on March 15, 2005. In a March 25, 2005 letter to the discharger's representatives, Board staff notified the discharger that the ROWD was incomplete, and requested additional information, including documentation of CEQA compliance. A Draft Environmental Impact Report (DEIR) for the Project was distributed by the City of Chino Hills on June 3, 2005, and on July 15, 2005, Regional Board staff issued a letter commenting on the DEIR. The City Council adopted the DEIR, with a Response to Comments, as a Final EIR, on April 25, 2006 and filed a Notice of Determination with San Bernardino County on April 26, 2006, in compliance with CEQA.

During and after the review of the ROWD and DEIR, Board staff identified a shortfall in beneficial use mitigation proposed by the discharger and worked with the discharger to locate additional mitigation acreage within and adjacent to the Project area. Candidate mitigation sites were identified and considered through meetings, field visits, and

communications between Board staff and discharger representatives. The accepted sites, as well as issues inherent to these negotiations, are described below. Site maps showing mitigation locations, storm water quality management features, and other information necessary to address Board staff concerns with the Project were submitted by November 2006. The ROWD was determined to be complete by staff letter issued on November 20, 2006.

HMMP Mitigation Measures

Throughout the Board's involvement with this Project, staff has required that the discharger examine Project alternatives that avoid impacts to beneficial uses before selecting alternatives that result in impacts that require compensatory mitigation. Owing to the Project's many design constraints, discharger representatives have not been willing to further change the Project design to avoid the on-site drainages. They cited the measures previously established in the HMMP agreed to by the USACOE, USFWS and CDFG, as shown on Attachment C, to mitigate for the loss of waters of the state and the U.S., as well as loss of upland habitat. Upland mitigation measures are not under Regional Board purview but are mentioned here in the context of summarizing the HMMP program.

Two vegetated water quality wetland basins without forebay divisions have been planned as structural Best Management Practices (BMPs) for the Project. They will serve the dual functions of replacement wetlands and storm water runoff water quality treatment BMPs. A Continuous Deflective Separation (CDS) unit will be installed in the storm drain system ahead of each Basin to remove floatable debris and a large percentage of suspended solids, sediment, oil, and grease from storm water runoff. The CDS units will contain adsorbent filters, sorbents, and oil retention baffles (EIR p. 5-196). Risers in each basin will control water level and basin overflow.

- **Wetland Basin No. 1** (1.00 acre wetted area; total 1.34-acre footprint). Low-flow diversion drains will convey dry-weather and "first-flush" rainfall runoff flows from the proposed North and Middle Drainage storm drains into the proposed Basin No. 1 (Attachments C and D1).

- **Wetland Basin No. 2** (3.68-acre wetted area; total 4.59-acre footprint). On the southeastern side of Tract No. 16414, the Middle Drainage storm drain joins the East Drainage storm drain at a second basin, Basin No. 2. The volume of this larger basin has been calculated to receive flow from both sub-watersheds, and it is meant to function as a water resource for wildlife using the central ridge corridor. A diversion will be constructed to direct dry weather and first flush low flows from storm drains serving Tracts 16338 and 16413 to this basin. The main subsurface storm drain will send major flows directly to the Tract No. 13880-7 channel and box culvert, and off site (Attachments C and D2).

- **Upland Restoration.** Native species planting (9.40 acres) on the central ridge adjacent to the SCE transmission line easements, as well as the dedication of Lot 6 of Tract No. 15710 and other upland areas (Attachment C), are expected to benefit wildlife transit between the Chino Hills and the Prado Basin via the SCE viaduct and to a lesser extent, the Tract 13880-7 box culvert. The HMMP agreement would

mitigate for loss of the 3.19 riparian acres identified by the CDFG, by the restoration of 9.57 acres of wetland and upland plant community, using a 3:1 mitigation ratio. These 9.57 acres will be apportioned among Basin No. 1 (1.00 acre), Basin No. 2 (3.68 acre), sycamore and willow planting, and a 4.89-acre strip of Riversidean sage scrub and oak woodland to be relocated above the Middle Drainage.

Additional Mitigation Required by Regional Board

Board staff determined that the apparent emphasis of the HMMP on mitigation through conservation of upland habitat did not provide sufficient compensation for the projected loss and impairment of beneficial uses within the existing watercourses in the Project area. The combined 4.68-acre riparian/wetland component of the 9.57-acre HMMP mitigation represents an insufficient 1.5:1 ratio for in-kind mitigation of the 3.19 acre riparian area. Further, while water quality treatment wetlands are generally acceptable as mitigation, staff recognizes that they may never achieve the ecological function of a natural wetland, and that they may expose wildlife to non-point source urban pollutants. It would not be fully compensatory to replace a natural wetland receiving few non-point source inputs with a water quality wetland treatment BMP. Although CDS units may reduce pollutant loadings of some constituents, they are not effective at reducing concentrations of dissolved pollutants and pathogens. Consequently, Board staff determined that additional area capable of supporting REC2, WILD, WARM and RARE, and providing the pollutant attenuation functions of wetlands, was necessary to augment mitigation measures already established by the HMMP agreement.

The following additional measures (Attachment D2) have been incorporated into the project to mitigate for the loss of the project area's WILD, WARM, RARE, and REC2 beneficial uses that will occur as the project is developed:

- **Wetland Basin No. 3 (**1.04 acres, total area 2.58 acres). Similar to the other two wetland basins (with CDS unit, riser, outlet pipe, riparian plantings), Basin No. 3 will be constructed at the eastern end of Tract 16414 to treat storm water runoff and dry-weather flows from the entire tract. Overflow from the basin will flow to a newly constructed seasonal depression on the eastern side of SR 71, via an existing 42-inch reinforced concrete drainage pipe beneath SR 71.

- **Created Seasonal Depression** (0.25 acres, total area 1.55 acres). The unused northeast corner of Tract 16414, a remnant, 1.55-acre triangular lot east of SR 71, will be graded into a concavity to create a type of water body known as a "seasonal depression." The intent is to collect rainfall, along with intermittent runoff from the immediate area and overflow from Basin 3, in a 0.25-acre pond. Seasonally, this wetted area will support the above beneficial uses while providing a resource to wildlife. The existing SCE easement road, which crosses the southern part of the lot, will be protected. The adjacent SCE viaduct provides access.

- **Existing Seasonal Depression** (wetted area varies; total area 1.23 acres). A former borrow pit that collects localized runoff is located upon the lower portion of the central ridge, within the SCE easement. This site will remain ungraded and protected as a seasonal depression. It will provide a seasonal, passive ponding

feature within the ridge's wildlife corridor immediately east of Avenida De Portugal (main road).

- **Channel To Box Culvert** (No acreage included). Flows leaving the area of Basin No. 2 will enter the channel crossing City-owned Tract No. 13880-7 and flow into the box culvert under SR 71. This channel is deeply incised and supports a narrow strip of mature riparian habitat. Board staff requested that the City and the discharger dedicate a conservation easement or other formal restriction to preserve the channel and the integrity of its beneficial uses. The City chose not to enact an easement or similar dedication but to include this channel with other sites in its current study regarding their potential protection. The study team includes the CDFG, which confirmed that this channel is under review. Because there is no guarantee of protection to date, nor has any deed restriction or land transaction encumbered any portion of Tract No. 13880-7 into the Project, any future encroachment upon the channel will necessitate a separate 404 permitting process.

Table 1 of the proposed Order summarizes the key water-quality mitigation measures and designed wetted acreages. Table 1 indicates that 4.68 acres of new wetland (out of 9.57 total compensatory acres in the HMMP) will combine with 1.04, 0.25, and 1.23 acres of wetland basin/seasonal depression area agreed to with Board staff (Oct. 25, 2006, letter from discharger representatives), to provide a total of 7.2 potentially wetted acres that will mitigate for the proposed loss or impairment of 3.19 acres of CDFG-jurisdictional state waters and their associated beneficial uses. Total dedicated acreage for these basins and depressions, including embankments and peripheral features (11.26 acres) surpasses a 3:1 mitigation ratio. In addition, within the approximately 155 acres of open space that will be preserved as a conservation easement (including Lot 6 of Tract 15710), there are 2.08 acres of CDFG-jurisdictional riparian habitat that will be avoided, including 1.66 acres of state/federal wetlands.

Monitoring and Reporting Program

This proposed Order requires the discharger to implement the overall mitigation program as proposed, and to comply with Monitoring and Reporting Program (M&RP) R8-2007-0011. This includes a requirement for quarterly reporting of mitigation compliance for a minimum six-year period from the commencement of construction to the post-Project phase. Once success criteria specified in the HMMP and other agreements have been achieved, the Executive Officer may consider revising the M&RP and the Regional Board may consider rescission of the Order. This M&RP reporting requirement is intended to integrate with the discharger's HMMP five-year implementation requirement, not to duplicate it.

The 2005 ROWD states that the discharger will conduct maintenance and monitoring until a Homeowners Association (HOA) is functioning. The HOA will then, "...engage the proper qualified consultants to perform water monitoring, silt removal, maintenance, and protection of wetlands, habitat creation, and open space...," as well as be responsible for annual fees. In the ROWD, the discharger also states that if the HOA defaults in these responsibilities, the HOA will pay the City to carry out this work. A conservation easement is to be placed over open space and newly created habitat,

including the wetland basins, under the management of "...a private conservation group...to be selected prior to grading." The City's April 2006 Conditions of Approval for the Project largely shift these commitments to a future Landscape and Lighting Assessment District (LLAD), although more than one HOA is anticipated that will assist with landscape maintenance. The City has required (Conditions 12, 15, and 152) that the discharger assure that the mitigation areas and water quality management features described above are properly protected through conservation easements and appropriate perpetual maintenance. To that end, the City requires the discharger to create an LLAD responsible for "...maintenance of all programs of all natural or re-created waterways (streambeds)," "components of the HMMP not dedicated to a conservation entity," "wetlands" and "natural, native, and/or re-established open space."

The proposed Order requires that within 120 days of commencement of the initial phase of construction, the discharger shall "...develop an Operations and Maintenance Plan (OMP) in conjunction with the Regional Board," as instructed by Special Condition No. 19 of the 404 permit, and submit the OMP for approval by the Executive Officer. The OMP is to document specific maintenance and monitoring practices that will be implemented to assure the continued effectiveness of the water-quality basins, seasonal depressions, stormwater runoff BMPs, and riparian habitat. Specific habitat success criteria for each individual mitigation site, derived from the conditions established in the 404 Permit, the Biological Opinion, the HMMP and associated biological monitoring, the ROWD, the Final EIR, the City's project conditions, and this Order, must be incorporated into the procedures specified in the OMP. A combined document for all site mitigation conducted for all relevant agencies is satisfactory.

Further, the OMP must designate the parties and persons responsible for implementing the OMP, and a procedure for documenting and accepting delegation of authority for implementation of the OMP from one party to another. The City's Project conditions and the OMP provide an adequate level of assurance that there will be a dependable entity that is responsible for monitoring and maintaining the mitigation and water quality management facilities required by the WDRs.

Stormwater Runoff and Recycled Water Use Permits

The discharger must file a Notice of Intent for coverage of the Project under the SWRCB's "General Permit for Storm Water Discharges Associated with Construction Activity," Water Quality Order (WQO) No. 99-08-DWQ, NPDES Permit No. CAS000002 (and subsequent iterations of this general permit), in compliance with Clean Water Act Section 402, WQO No. 99-08-DWQ requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared and available on site during construction.

The City of Chino Hills will require the discharger to comply with applicable provisions of the Regional Board's Waste Discharge Requirements (Order No. R8-2002-0012, NPDES Permit No. CAS618036) for "San Bernardino County Flood Control District, the County of San Bernardino, and the Incorporated Cities of San Bernardino County within the Santa Ana Region, Area-Wide Urban Storm Water Runoff," also known as the San Bernardino County municipal separate storm sewer system, or "MS4," permit. All development must conform to the Water Quality Management Plan (WQMP)

requirements of the MS4 permit by implementing a variety of structural and non-structural BMPs controlling discharge of pollutants to the MS4 from both point and non-point sources. The EIR states that a project WQMP has already been approved by the City of Chino Hills.

A 6-million-gallon recycled water reservoir will be constructed as part of the project, above the Middle Drainage on the highest, westernmost point of the Project area. The Inland Empire Utilities Agency (IEUA), in accordance with recycled water provisions in their WDRs, purveys recycled water to the City of Chino Hills, which distributes recycled water primarily for landscape irrigation in common areas only. Use of recycled water by all parties must be conducted in conformance with waste discharge requirements for the IEUA Carbon Canyon Water Reclamation Facility (Order No. R8-2004-0020), for the IEUA Regional Plant No. 5 (Order No. R8-2003-0003, amended by Order R8-2004-0006), and/or WDRs for any other IEUA plant that may produce recycled water for distribution throughout the IEUA service area.

Order No. R8-2007-0011 should be adequate to protect beneficial uses and to assure appropriate mitigation of impacts to waters of the state.

RECOMMENDATION:

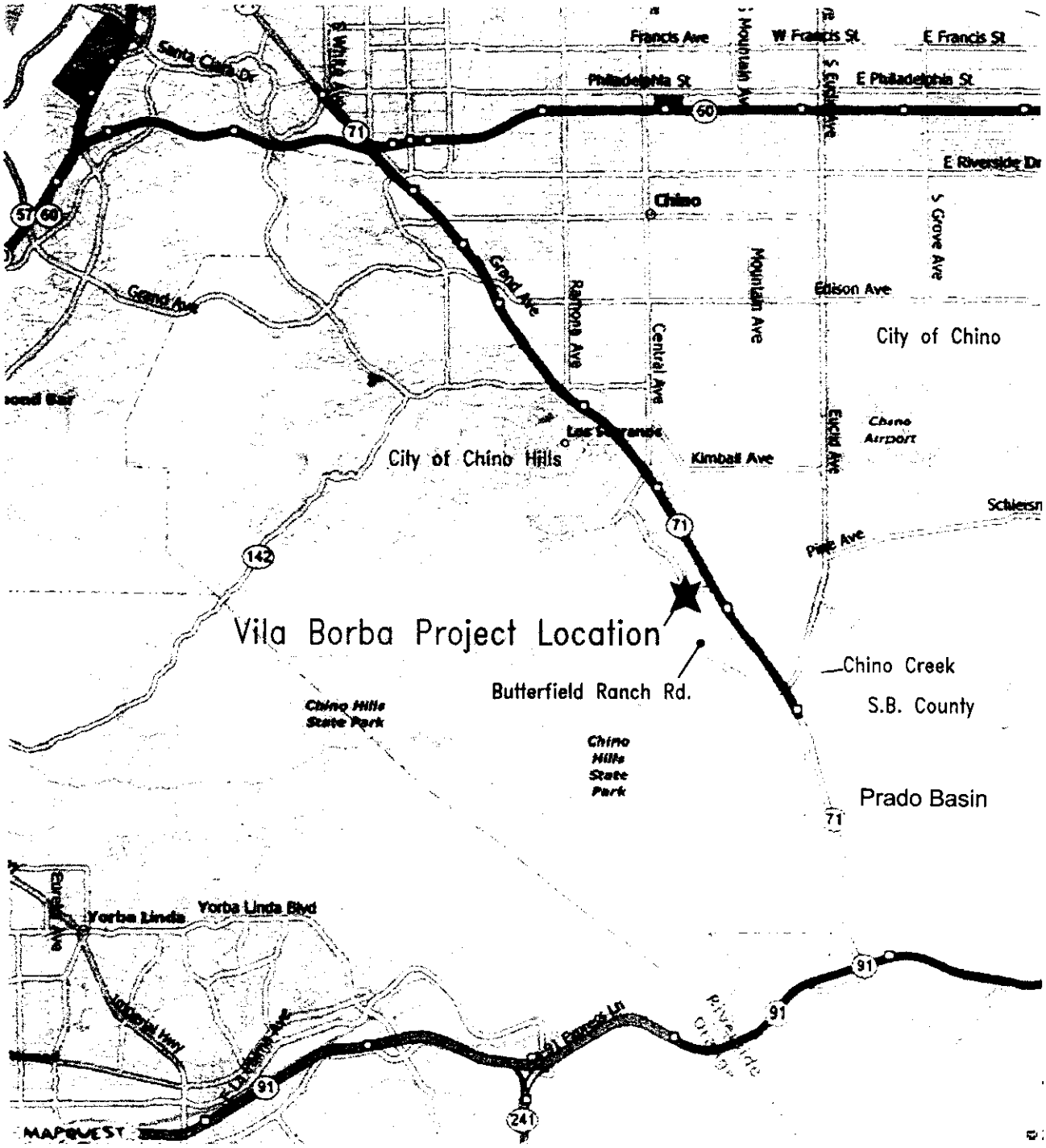
Adopt Order No. R8-2007-0011 as presented.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch – Ruth Villalobos
U.S. Fish and Wildlife Service, Carlsbad – Eric Porter, San Bernardino Co. Division
State Water Resources Control Board, Office of the Chief Counsel – Erik Spiess
State Water Resources Control Board, DWQ, Water Quality Certification Unit – Valerie Connor
State Department of Water Resources - Glendale
State Department of Fish and Game, Ontario – Jeff Brandt
State Department of Parks and Recreation, Perris - Gary Watts
San Bernardino County Dept. of Public Works, Flood Control/Permits – Naresh Varma
San Bernardino County Environmental Health Services, LEA Chief – Jacquie Adams
City of Chino Hills Planning Department – Jeff Adams
City of Chino Hills Asst. City Manager – Kathy Gotch
Inland Empire Utilities Agency, Watershed Planning – Gary Hackney
Chino Basin Watermaster
Santa Ana Watershed Project Authority – Celeste Cantu
Southern California Edison Co., Title and Real Estate Services, Westminster – Lisa Salinas
Wildlife Corridor Conservation Authority – Judi Tamasi/ Bob Henderson
Orange County Coastkeeper – Garry Brown
Lawyers for Clean Water C/c San Francisco Baykeeper
Natural Resource Defense Council - David Beckman
Inland Empire Waterkeeper
Center for Biological Diversity, Los Angeles
W.H. Coursen and Associates – Walt Coursen
Greenburg Glusker Fields Claman Machtinger & Kinsella, LLP - Roger Holt
Paulette Hawkins

Attachment A

Index Map
Staff Report, Order No. R8-2007-0011
Vila Borba Project, City of Chino Hills
San Bernardino County



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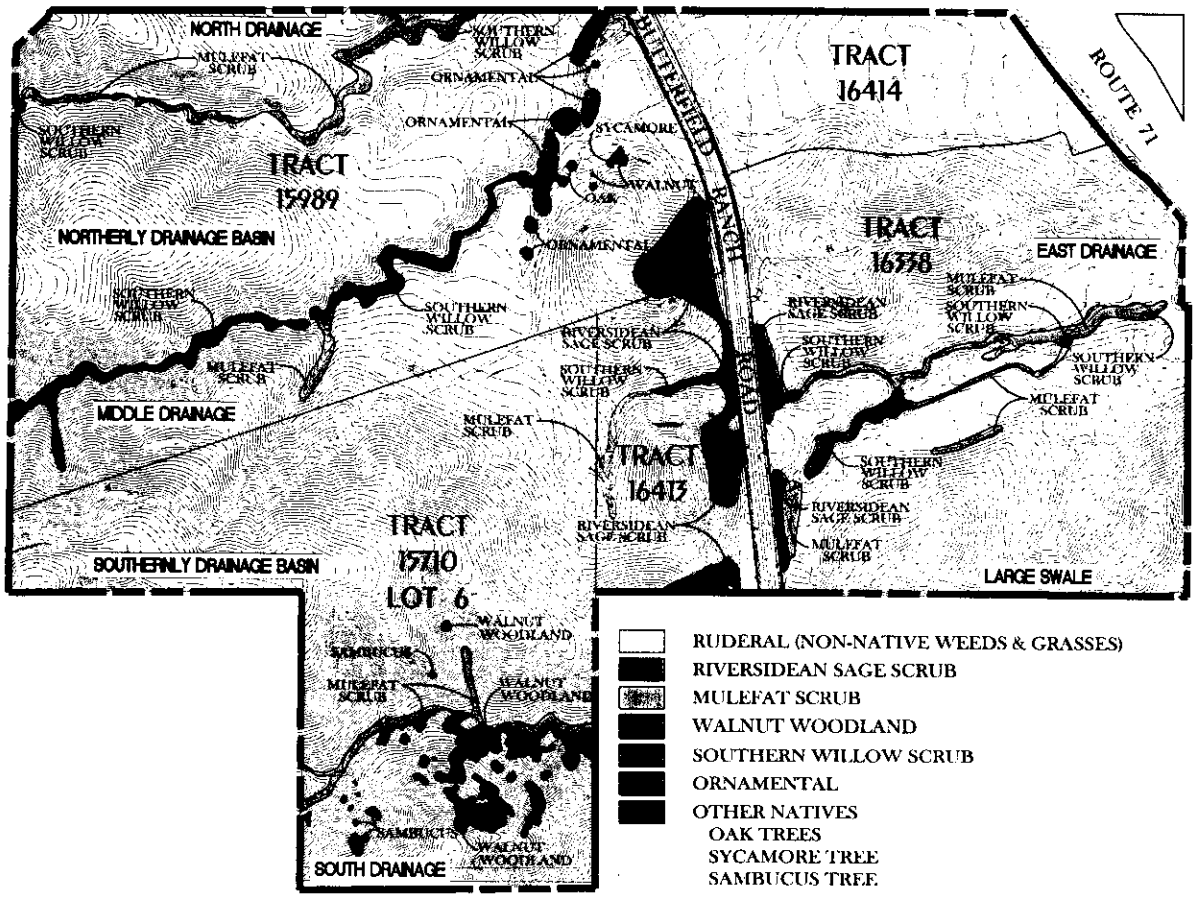
Attachment B

Current Aerial Photo and Corresponding Map: Pre-Project Channels and Riparian Habitat
Staff Report, Order No. R8-2007-0011, Vila Borba Project, City of Chino Hills



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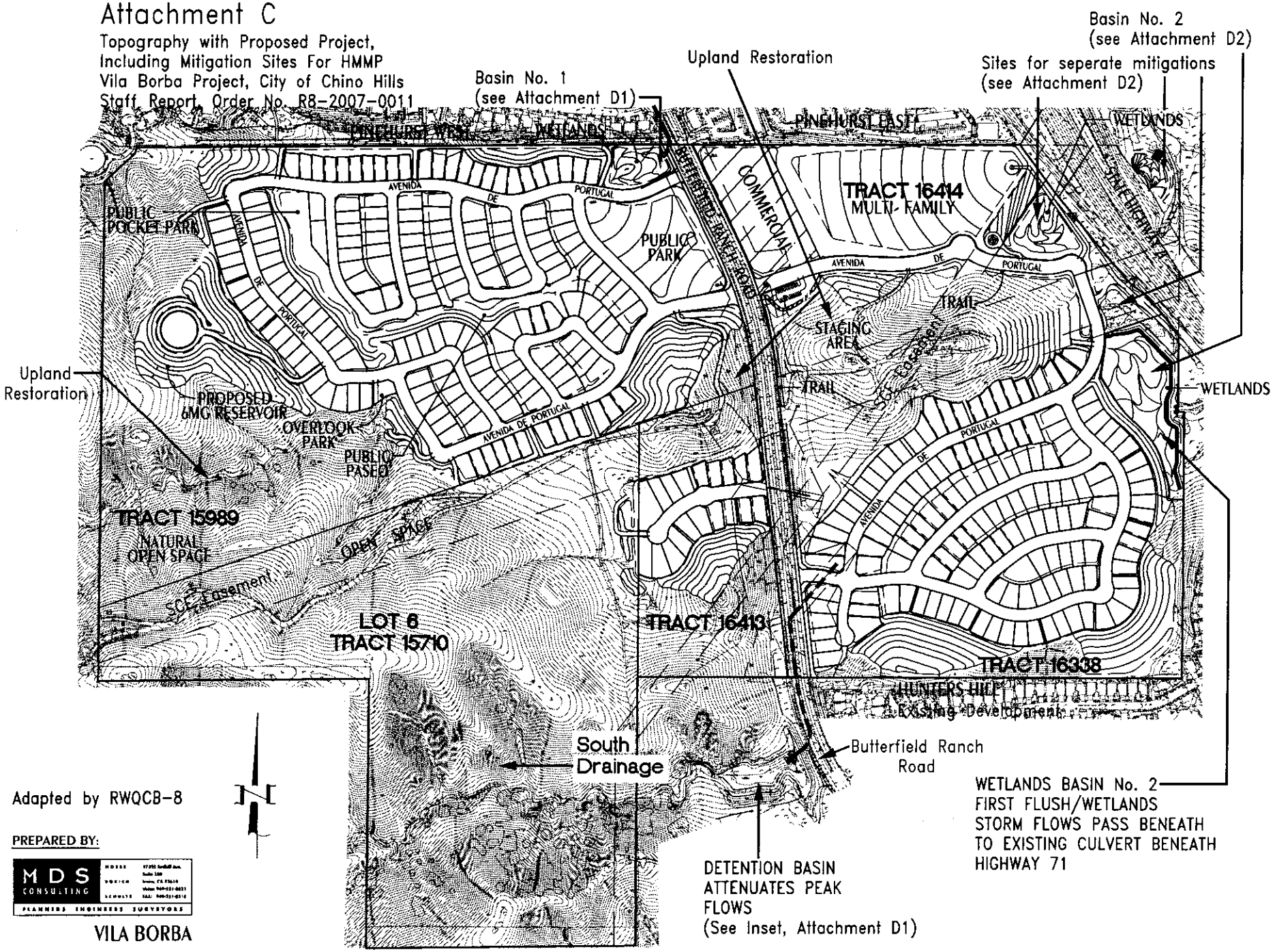
Attachment C

Topography with Proposed Project,
Including Mitigation Sites For HMMP
Vila Borba Project, City of Chino Hills
Staff Report, Order No. R8-2007-0011



Adapted by RWQCB-8

PREPARED BY:

MDS CONSULTING
PLANNERS ENGINEERS SURVEYORS

VILA BORBA

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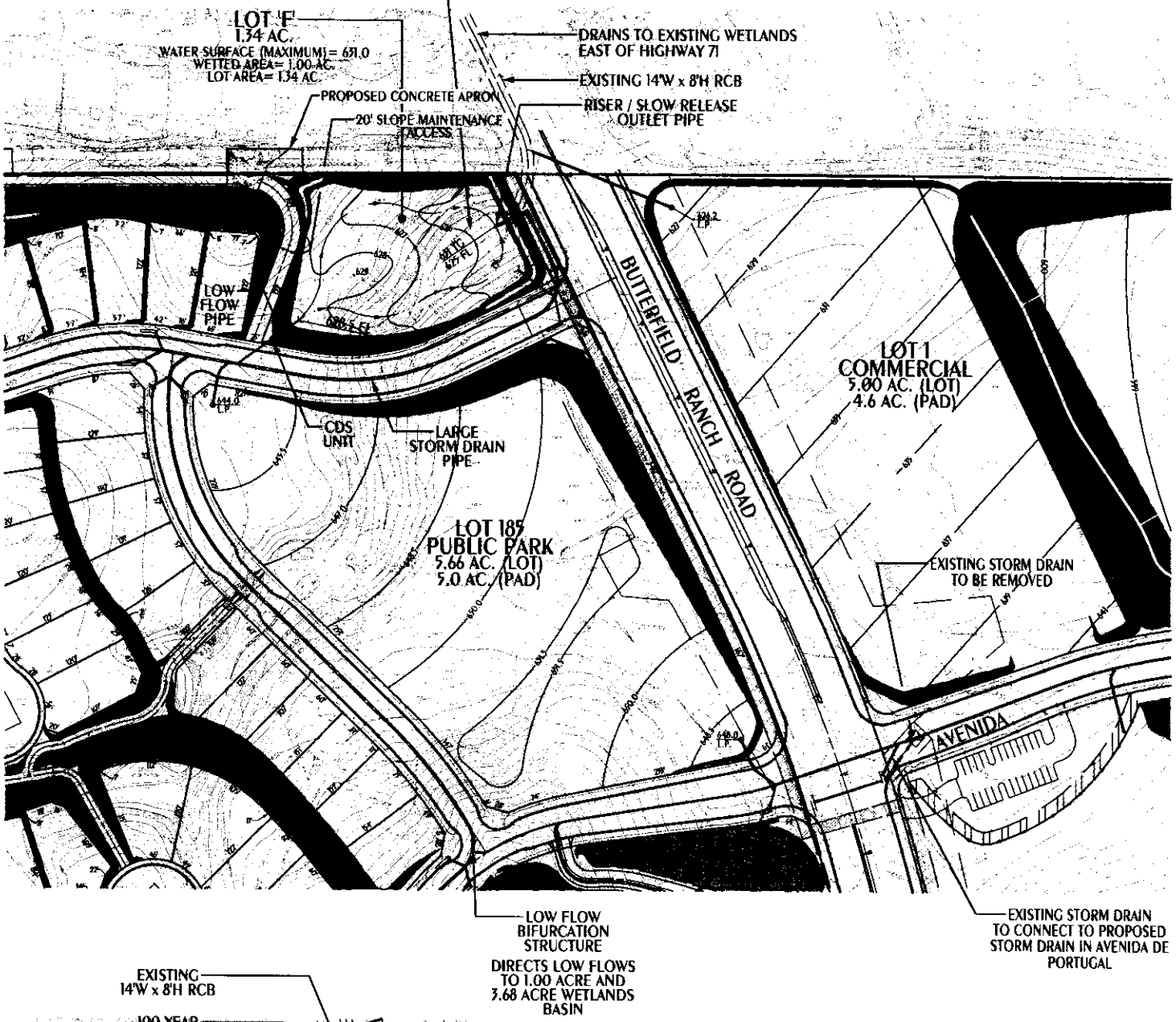
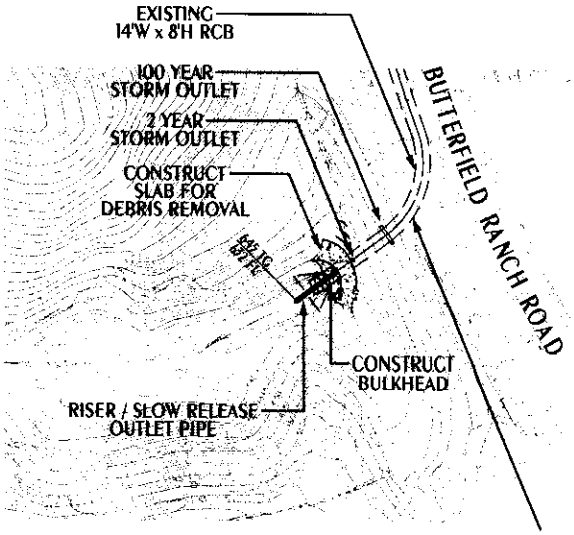
Wetland Basin No. 1 for HMMP

Attachment D1





Insert for South Drainage, Attachment C

Mitigation Sites for Water Quality Beneficial Use Impacts, Including Those for RWQCB in Addition to HMMP Vila Borba Project, City of Chino Hills Staff Report, Order No. R8-2007-0011

Adapted from MDS by RWQCB-8

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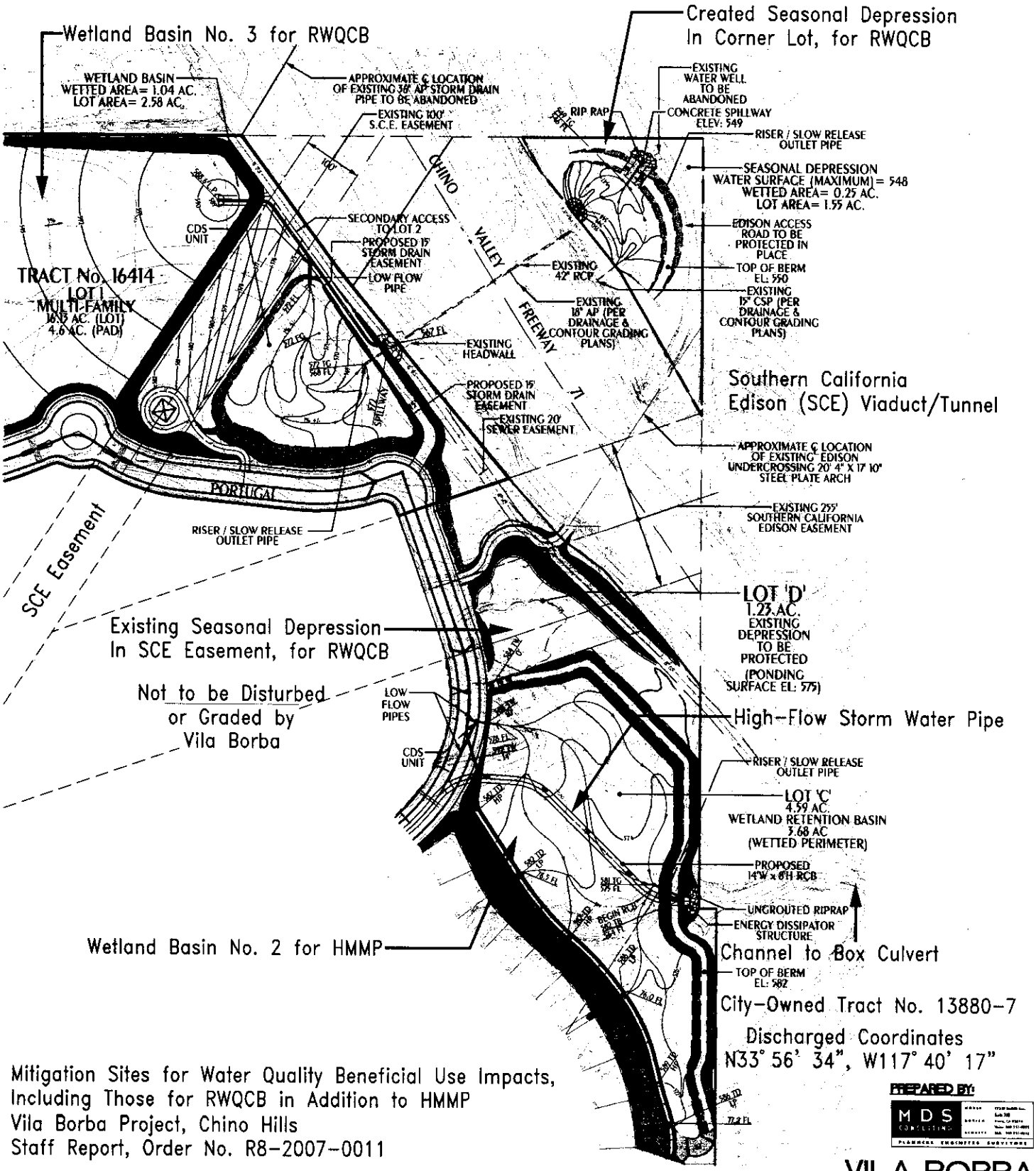
Attachment D2



Mitigation Sites for Water Quality Beneficial Use Impacts, Including Those for RWQCB in Addition to HMMP
Vila Borba Project, Chino Hills
Staff Report, Order No. R8-2007-0011

PREPARED BY:
MDS CONSULTING

VILA BORBA
R.O.W.D. BASIN EXHIBIT

CITY OF CHINO HILLS, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA

Adapted from MDS by RWQCB-8

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California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2007-0011

Waste Discharge Requirements

for

Parente/Chino Hills Co. L.P.
Vila Borba Project
Butterfield Ranch Road South of Pine Avenue
City of Chino Hills, San Bernardino County

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

1. Parente/Chino Hills Co. L.P., a California Limited Partnership (hereinafter, discharger) proposes construction of the Vila Borba land development (Project). The Project is situated on both sides of Butterfield Ranch Road, south of Pine Avenue, in the southeastern portion of the City of Chino Hills (City). All but the northeastern corner of the property is located west of State Route 71 (SR 71). The Project proposes 631 dwelling units (351 single-family residences and 280 multi-family residences) and commercial development on four parcels (Tract Nos. 15989, 16338, 16413, 16414) and proposes dedication of a fifth parcel (Lot 6 of Tract No. 15710, 87.51 acres) as open space upon which no building will occur, in perpetuity. Approximately 181 acres of the 336-acre project site will be developed and the discharger will dedicate through deed restriction the remaining 155 acres (approximate) of the elevated southwestern project area as a conservation easement contiguous to Chino Hills State Park.

2. This Order prescribes waste discharge requirements (WDRs) for the discharge of fill to portions of approximately seven natural watercourses in the Project area, including wetlands and swales. These watercourses are waters of the state, parts of which are also waters of the U.S. In addition, implementation of the project will divert and modify portions of these watercourses. These WDRs address on-site mitigation for the impacts of the Project on the water quality standards of these waters. Water quality standards are specified in the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan).

3. The Regional Board's administrative record for this Project documents its complex and extensive regulatory history. In part, the record reflects that Board staff reviewed a February 21, 2001, 401 Certification application for this Project from the discharger and determined that the environmental impacts of the Project had not been properly evaluated or disclosed, as required by the California Environmental Quality Act (CEQA). On August 8, 2001, the U.S. Army Corps of Engineers (USACOE) determined that the Clean Water Act Section 401 Certification review period for this Project had concluded and that a provisional

Section 404 Permit would be issued without the prerequisite 401 Certification. 404 Permit No. 199915475-GS (404 Permit) was issued on January 11, 2002.

4. The State Water Resources Control Board (SWRCB) heard an appeal of this matter on May 16, 2002 and adopted Water Quality Order No. 2002-0008, finding issuance of individual waste discharge requirements appropriate and directing the Regional Board to issue WDRs for the Project.

5. The discharger submitted an ROWD for WDRs for this Project on March 15, 2005. In compliance with CEQA, an environmental impact report (EIR) for the Vila Borba Project, with accompanying mitigation measures and response to comments, was certified by the Chino Hills City Council on April 25, 2006. A revised set of documents, including the adopted EIR and detailed descriptions of all project mitigation measures, constituted an ROWD that Board staff determined to be complete on November 20, 2006.

6. The impacted watercourses occupy the distal portions of two Chino Hills sub-watersheds (informally identified as "Northerly and Southerly Drainage Basins") that are separated by an east-west trending ridge (central ridge). Each sub-watershed contains two dominant drainages (respectively, "North and Middle," "Cutoff and South") that flow easterly, converge, and enter culverts that convey flows beneath SR 71 for discharge into the Prado Basin. In particular, the "Cutoff" and "South" channels converge into the "East Drainage," which crosses the southeastern portion of the property. The "East Drainage" leaves the project area to cross a triangular City-owned holding (Tract 13880-7) as an incised channel. This channel enters a 6-foot box culvert extending beneath SR 71.

7. Implementation of the proposed Project will entail overexcavation and recompaction of an estimated 112,025 cubic yards of on-site earth material, and discharge of an estimated 120,075 cubic yards of fill into the eastern portions of the watercourses on the Project site. All of the Cutoff and East Drainages, and at least 1,800 feet of the existing eastern ends of the North and Middle Drainages, will be filled. Storm water flows discharged from the tributary sub-watersheds will be carried through the Project site enclosed within large diameter subsurface storm drain pipes. The Project will divert "first flush" and dry-weather flows into water quality treatment basins containing created wetlands. Major storm flow will bypass the water quality basins and discharge offsite. While North Drainage flows will continue to reach the Butterfield Ranch Road storm drain and flow north to the Chino Creek wetlands, Middle Drainage flows will be diverted across Butterfield Ranch Road to the eastern Project area. The South Drainage will be preserved both on Lot 6 of Tract 15710 and on City property adjacent to Butterfield Ranch Road.

8. The Water Quality Control Plan for the Santa Ana River Basin, 1995, and subsequent amendments, (Basin Plan) identifies water quality objectives and beneficial uses of waters in the Santa Ana Region. The requirements contained in this Order are necessary to implement the Basin Plan.

9. The Basin Plan assigns the same beneficial uses of the water bodies listed in the Basin Plan to unlisted tributaries (tributary rule). All Project area watercourses are

tributary to Chino Creek, Reach 1B, within the Prado Basin Management Zone (PBMZ), the beneficial uses of which include:

a. Water Contact Recreation (REC1);
b. Non-Contact Water Recreation (REC2);
c. Warm Freshwater Habitat (WARM);
d. Wildlife Habitat (WILD); and
e. Rare, Threatened, or Endangered Species Habitat (RARE).

10. Chino Creek, Reach 1B, is listed as impaired (2006 list) for nutrients pursuant to Clean Water Act Section 303(d). No Total Maximum Daily Load (TMDL) has been established for nutrients for Chino Creek.

11. The filling of the eastern portions of the Project area's natural watercourses will cause the loss of these waters' beneficial uses, including riparian habitat that supports the RARE, WARM, WILD, and REC2 beneficial uses. RARE is indicated by the presence of Least Bell's vireo (*Vireo belii pusillus*) in the Middle and East Drainages. Project area drainages support varying densities of the Mulefat Scrub, Southern Cottonwood-Willow Riparian Forest, and Southern Willow Scrub riparian vegetation communities, most extensively in the East Drainage. Final Project design has been largely dictated by prior mitigation agreements with other agencies.

12. California Department of Fish and Game (CDFG) has determined jurisdiction over 3.19 acres of impacted riparian habitat (impacted "waters of the state") within the Project footprint. A subset of this acreage is considered waters of the United States subject to the jurisdiction of the U.S. Army Corps of Engineers (USACOE). This area constitutes 2.49 acres, of which 1.80 acres are wetlands.

13. As a prerequisite to the USACOE's issuance of 404 Permit No. 199915475-GS on January 11, 2002, the U.S. Fish and Wildlife Service (USFWS) issued a Biological Opinion on March 5, 2001, determining and specifying mitigation to address impacts of the Project on threatened and endangered species. The CDFG issued a Consistency Determination agreeing to the Biological Opinion on September 27, 2001. The discharger developed a Habitat Mitigation and Monitoring Plan (HMMP) designed to satisfy the requirements of the USACOE, USFWS, and CDFG. The HMMP was incorporated into the 404 Permit and considered finalized by USACOE and the USFWS on March 3, 2004.

14. During the review of Project documents and site conditions, Board staff determined that mitigation measures finalized in the HMMP did not sufficiently compensate for the projected loss and impairment of beneficial uses within the existing watercourses of the Project area. Separately from the HMMP agreement and conditions, additional riparian in-kind mitigation measures addressing impacts of the discharge of fill to waters of the State were determined in consultation with the discharger. This Order requires the discharger to implement a comprehensive mitigation program, which is summarized in Table 1 of the Order.

15. The requirements of this Order are necessary to meet the goals of the California Wetlands Conservation Policy (Executive Order W-59-93) ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values..." This Order is consistent with State Senate Concurrent Resolution No. 28, which states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State." The Project, as proposed, will provide a net increase in wetland acreage.

16. The discharger or its successors will assume responsibility for maintenance of mitigation measures shown in Table 1 and other facilities proposed to treat nuisance and storm water discharges from the site. The 404 Permit requires that before construction of the project is initiated, an Operations and Maintenance Plan (OMP) must be developed in conjunction with the Regional Board, and that agreements must be in place that commit those parties who will implement the HMMP mitigation and monitoring program through a minimum six-year period. Conditions of Approval adopted by the City for the Project require the discharger to take specific steps intended to assure perpetual maintenance for all mitigation measures.

17. This Order requires the discharger to comply with Monitoring and Reporting Program (M&RP) R8-2007-0011, and to monitor mitigation compliance for a minimum six-year period from the commencement of construction. Once success criteria specified in the HMMP, 404 Permit, and OMP is observed to be achieved following this period, the Regional Board may consider rescission of the Order.

18. On August 19, 1999, in compliance with Clean Water Act Section 402, the SWRCB adopted Water Quality Order No. 99-08-DWQ, NPDES Permit No. CAS000002, the "General Permit for Storm Water Discharges Associated with Construction Activity." This General Permit implements the Final Regulations (40 CFR 122, 123, and 124) for storm water runoff published on November 16, 1990 by EPA in compliance with Section 402(p) of the Clean Water Act (CWA). It requires that a Storm Water Pollution Prevention Plan (SWPPP) be prepared and available on site during construction, and that Best Management Practices (BMPs) be implemented. The discharger is required to obtain authorization under this General Permit and to comply with its terms and conditions.

19. On April 12, 2002 the Regional Board adopted Waste Discharge Requirements (Order No. R8-2002-0012, NPDES Permit No. CAS618036) for, "The San Bernardino County Flood Control District, the County of San Bernardino, and the Incorporated Cities of San Bernardino County within the Santa Ana Region, Area-Wide Urban Storm Water Runoff," also known as the San Bernardino County municipal separate storm sewer system (MS4) permit. The City of Chino Hills must require the discharger to comply with applicable provisions of the MS4 permit by implementing a variety of structural and non-structural BMPs controlling pollutants from both point and non-point sources. All development must conform to the Water Quality Management Plan (WQMP) requirements of the MS4 permit.

20. A reservoir will be constructed within the project area to store and distribute recycled water from the Inland Empire Utilities Agency (IEUA) and the City of Chino Hills, thereby implementing local recycled water plans. The recycled water will be available for landscape irrigation use in common areas only. Use of recycled water by all parties must be conducted in conformance with Waste Discharge Requirements for the IEUA Carbon Canyon Water Reclamation Facility (Order No. R8-2004-0020), for the IEUA Regional Plant No. 5 (Order No. R8-2003-0003, amended by R8-2004-0006), and/or WDRs for any other IEUA plant that may distribute recycled water to the Project.

21. On April 25, 2006, the City of Chino Hills City Council adopted a Final Environmental Impact Report (the June 3, 2005 Vila Borba Project Draft Environmental Impact Report (DEIR) with Response to Comments) and subsequently filed a Notice of Determination with San Bernardino County in compliance with the California Environmental Quality Act (CEQA, Public Resources Code, Section 21100 *et seq.*).

22. The EIR evaluated the environmental impacts of the proposed Vila Borba residential project. As a responsible agency under CEQA, the Regional Board is required to consider the EIR and make findings on the potentially significant impact of the activities within its jurisdiction to approve (Public Resources Code, Section 21002.1(d); California Code of Regulations, Title 14, Section 15096(g),(h)). The Regional Board makes the following findings for those potentially significant environmental impacts:

    a. Five ephemeral to intermittent streams that support existing riparian and wetland habitat lie within the Project site. East-west trending riparian and ridge wildlife corridors cross the site. Despite onsite non-native species and habitat degradation due to grazing, three riparian habitat communities are found in the drainages: Southern Cottonwood-Willow Riparian Forest, Southern Willow Scrub, and Mulefat Scrub. Nearly 100 species of vertebrate animals are found on/adjacent to the project site, including 77 bird species and eight species of amphibians/ reptiles. Least Bell's vireo sightings are noted, along with four other Special-Status species using riparian areas: Cooper's and Sharp-Shinned Hawk, Western Yellow Warbler, and Yellow-Breasted Chat. Implementation of the proposed Project will result in direct impacts (killing) and indirect impacts (habitat loss) to wildlife on the project site.

        The following mitigation measures were identified by the EIR to substantially lessen or avoid these potentially significant impacts:

        The EIR cites implementation of the Project's Habitat Mitigation and Monitoring Plan (HMMP) agreement, which was completed in compliance with the U.S. Army Corps of Engineers' (USACOE) Clean Water Act Section 404 Permit, to mitigate for habitat loss in the affected channels. The HMMP was finalized in 2002 between the project proponent and the USACOE, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game (CDFG). The establishment of two wetland

basins is a primary element of the HMMP. The EIR cites that the HMMP includes sycamore and willow planting, upland site restoration, wildlife corridor protection, and the preservation of 155 acres of the 336-acre Project area (more than 46% of the total acreage of the site).

The following additional mitigation measures are imposed by the Regional Board to substantially lessen or avoid these potentially significant impacts:

Agreements will establish a third wetland basin, a new seasonal depression east of SR 71, the passive use of an existing seasonal depression on the eastern spur of the central ridge, and consideration of protection for a channel exiting the site and crossing City Tract No. 13880-7. Provisions 1 through 6 of the Order, below, require implementation of mitigation measures (riparian/wetland only) for both the HMMP and the Regional Board. Provision 1, Table 1 identifies these mitigation measures.

b. The EIR discusses the 1999 wetland and riparian area delineation that established the waters within the site (including those with well-incised banks) that are within the jurisdictional of the USACOE, pursuant to Clean Water Act (CWA) Section 404, and of the CDFG pursuant to Fish and Game Code (FGC) Section 1603. Including a proposed 155-acre conservation easement area, the delineation found 4.39 acres of waters of the U.S. for the entire site, of which 2.49 acres are subject to USACOE jurisdiction, with 1.84 acres of that existing within the Project footprint. The delineation found 5.27 acres of state streambeds subject to CDFG jurisdiction, of which 3.19 acres are found within the Project footprint. These wetland/riparian areas within the Project footprint will be removed by the Project and, therefore, compensatory mitigation is required by CWA Section 404 and FGC Section 1603, respectively.

The following mitigation measures were identified by the EIR to substantially lessen or avoid these potentially significant impacts:

The EIR states that the HMMP agreement referenced above would restore, at a 3:1 ratio, the 3.19 acres of wetland/riparian water bodies and associated habitat proposed to be removed. The total of 9.57 acres of mitigation acreage would be divided between 4.68 acres of wetland basins (two) and 4.89 acres of oak woodland and Riversidean sage scrub restoration.

The following additional mitigation measures are imposed by the Regional Board to substantially lessen or avoid these potentially significant impacts:

The 4.89 acres of oak woodland and Riversidean sage scrub restoration is not considered to constitute wetland/riparian restoration and commensurate mitigation, functionality, and acreage is required. The discharger shall, and has agreed to, construct, a third wetland basin (2.58 total acres) and a new seasonal depression east of SR 71 (1.55 total acres). The discharger shall, and has agreed to, preserve the passive use

of an existing seasonal depression on the eastern spur of the central ridge (1.23 total acres). The total area of the third basin and the two seasonal depression 5.36 acres, exceeds the 4.89 acres in question. Additionally, the discharger has asked the City for consideration of protection for a channel exiting the site and crossing City Tract No. 13880-7. Provisions 1 through 6 of the Order, below, require implementation of mitigation measures (riparian/wetland only) for both the HMMP and the Regional Board. Provision 1, Table 1 identifies these mitigation measures.

c. Project construction will involve the movement of varying volumes of earthen and other construction materials, such as paint, fuels, lubricants, etc., around the site. These materials have the potential to contaminate surface waters. (Groundwater, present at least 30 feet below ground surface, should not be affected by construction or the subsequent use of the Project.) Best Management Practices (BMPs) must be deployed to reduce erosion, siltation, sedimentation and contamination of runoff during construction. Once construction is completed, discharge of sediment and construction–related pollutants will be greatly reduced and post-construction BMPs will be used to control, manage, and treat pollutants in urban runoff from the built out project.

The following mitigation measure was identified by the EIR to substantially lessen or avoid these potentially significant impacts:

Pursuant to the Regional Board's current San Bernardino County MS4 permit, a Water Quality Management Plan (WQMP) has been prepared that specifies the BMPs the discharger will use to protect the quality of storm water runoff discharging from the completed Project. Pursuant to the SWRCB's General Construction Storm Water Permit, a Storm Water Pollution Prevention Plan (SWPPP) will be prepared that specifies the BMPs the discharger will use to protect the quality of storm water runoff during Project construction. The EIR listed the use of gravel bags around material piles; gravel bag check dams/chevrons; fiber roll filters; and oversight of vehicle-tracking of sediment onto local streets. The San Bernardino County Storm WQMP guidance describes the range of source control and structural BMP guidelines for new development.

The following additional mitigation measure is imposed by the Regional Board to substantially lessen or avoid these potentially significant impacts:

As necessary to conform with the SWRCB's General Construction Storm Water Permit, the Regional Board's San Bernardino County MS4 permit, and/or the projects' WQMP, additional construction-level BMPs and other pollutant management measures that are not listed above shall be specified and included in the SWPPP, and WQMP as appropriate, for construction project(s) conducted on the project site. Provision 7, below, requires compliance with applicable storm water permits and WQMP programs.

d. The Project will convert 71 acres of pervious surface into various impervious surfaces. This will decrease infiltration, increase the volume and rate at which runoff discharges from the site, and alter existing site hydrology.

The following mitigation measures were identified by the EIR to substantially lessen or avoid these potentially significant impacts:

The Project proposes to fill the site's surface drainage features, replacing them with enclosed storm drains. Improvements that are to be incorporated into the storm drain system include inlet structures to detain peak runoff flow volumes, capture debris and desilt storm water. The Project will provide BMPs for the runoff entering the storm drain system. The proposed wetland basins, mitigating for loss of surface water beneficial uses and biological impacts, will serve to further equalize and desilt storm water runoff flows prior to overflow into the main storm drains exiting the site, and are therefore part of the system to mitigate alterations to site hydrology.

The following additional mitigation measures are imposed by the Regional Board to substantially lessen or avoid these potentially significant impacts:

As necessary to further mitigate alterations to the site hydrology, additional post-construction BMPs and other management measures specified in the San Bernardino County WQMP shall be included in the SWPPP and/or a revised WQMP for the project. Provision 7, below, requires compliance with applicable WQMP programs.

Based on the foregoing, the Regional Board finds that the significant environmental effects of the activities for the proposed Project, as approved in this Order, are reduced to less-than-significant levels.

23. The Regional Board has considered antidegradation pursuant to 40 CFR 131.12 and State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.

24. 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.

25. 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 fill materials shall be limited to the placement of native soil fill and inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of other fill material than this shall be only with the prior approval of the Executive Officer.

3. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.

4. 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.

5. All first flush[1] and dry-weather runoff flows shall be treated by passing through a continuous deflection separation device and directed to one of three water quality wetland basins, where it will be retained for a period of not less than 24 hours.

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes into channels, surface waters, or 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 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 which are not otherwise regulated by a separate National Pollutant Discharge Elimination System (NPDES) permit, is prohibited.

5. There shall be no fueling, lubrication, maintenance, or storage of construction equipment within stream beds or other surface runoff conveyances during the grading and filling operation.

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[1] The volume of runoff produced from the 85th percentile 24-hour runoff event, based on historical records.

C. PROVISIONS:

1. The discharger shall implement the beneficial use mitigation measures summarized in Table 1, below, and described in detail in the discharger's completed Report of Waste Discharge and in the HMMP incorporated into 404 Permit No. 199915475-GS. Any changes to the mitigation plan shall be implemented only with prior approval from the Executive Officer of the Regional Board.

Table 1. Riparian/Wetland Mitigation Measures, Vila Borba Project

Mitigation Measures		Water Surface Acreage	Total Acreage (water surface + wetted perimeter)
For HMMP	**For RWQCB**		
Wetland Basin No. 1 (north boundary, W of Butterfield Ranch Road); Includes planting of willows, sycamores, wetland species		1.00	1.34
Wetland Basin No. 2 (southeast boundary adj. to City Tract No. 13880-7); Includes planting of willows, sycamores, wetland species		3.68	4.59
	Wetland Basin No. 3	1.04	2.58
	Seasonal Depression, east of SR 71 freeway	0.25	1.55
	Seasonal Depression, eastern spur of central ridge	Variable, up to 1.23 ac	1.23
	City Tract No. 13880-7 channel segment; Protection measure pending	Channel portion considered as a whole; No acreage measurement made	
Sum of riparian/wetland mitigation Considered by Regional Board to be direct compensation for loss of beneficial uses:		**7.2 ac**	**11.29 ac**

2. Within 120 days of commencement of the initial phase of construction, the discharger must develop and submit to the Executive Officer an Operations and Maintenance Plan (OMP) developed in conjunction with Regional Board staff, consistent with U.S. Army Corps of Engineers Specific Condition 19, 404 Permit No. 199915475-GS. The OMP shall document specific maintenance and monitoring practices that will be implemented to assure the continued effectiveness of the water-quality basins, seasonal depressions, storm water runoff Best Management Practices (BMPs), and riparian habitat through the minimum six-year period (five years for the HMMP), or until success criteria and ecological target function values are met. The OMP must designate the parties and persons responsible for implementing the OMP, and include a procedure for documenting and accepting delegation of authority for implementation of the OMP from one party to a dependable successor. OMP appendices shall include signed agreements that commit those parties to implementation of this OMP upon its approval by the Executive Officer.

3. The OMP shall specify implementation measures and habitat success criteria for each individual mitigation site. Success criteria are to be derived from the conditions established in the 404 Permit, the Biological Opinion, the HMMP and associated biological monitoring, the ROWD, the Final EIR, the City's project conditions, and this Order. Success criteria should include, but are not limited to:

   a. Distribution, percent coverage, diversity, and abundance of riparian/ wetland plant and animal species, with particular focus on the selected riparian and wetland plant palette, within and peripheral to all basins and seasonal depressions;

   b. Development of hydric soils, hydrophytic vegetation, and organic detritus;

   c. Approximate percent wetted and/or saturated period and area of each basin and seasonal depression, and comparison of these attributes to applicable design criteria;

   d. Performance of constructed wetlands to support beneficial uses cited in Finding 11., above, in comparison with the intent of the design;

   e. Natural recruitment of additional native species;

   f. Substantial absence of exotic and/or invasive plant and animal species; and,

   g. Other target functions and values stated in the OMP, and other indicators of robust riparian/wetland habitat, as appropriate.

4. Success criteria must be established in the OMP for stormwater runoff BMPs, including the continuous deflective separation (CDS) units that are to be installed upstream of inlets to the water quality basins. The OMP must indicate the criteria for judging the effect of these BMPs on the water quality of their associated basins

and seasonal depressions, such as presence of oil sheen, floatable waste, foam, etc., as well as the water quality of respective discharges leaving the project site.

5. The OMP shall include appropriate monitoring and reporting procedures, including standard reporting formats that are to be used to document mitigation site status and compliance with all success criteria.

6. The discharger shall implement the OMP upon approval by the Executive Officer.

7. The discharger shall ensure that the Project complies with SWRCB Water Quality Order No. 99-08-DWQ, NPDES Permit No. CAS000002, and with the San Bernardino County MS4 permit, Order No. R8-2002-0012, NPDES Permit No. CAS618036. All development must conform to the Water Quality Management Plan (WQMP) requirements of the MS4 permit by implementing structural and non-structural BMPs that control pollutants from both point and non-point sources to the level specified in the permit. A Storm Water Pollution Prevention Plan (SWPPP) must be prepared and available on site during construction.

8. 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.

9. The discharger shall comply with M&RP No. R8-2007-0011. This monitoring and reporting program may be modified by the Executive Officer at any time during the term of this Order to include an increase or reduction in the number of parameters to be monitored, the frequency of the monitoring, or the number and size of any samples to be collected.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. This Order does not convey any property rights of any sort, or any exclusive privilege.

17. In the event of any change in control or ownership of land presently owned or controlled by the discharger and subject to this Order, 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.

18. This Order is not transferable to any person except after written notice to and approval by the Executive Officer. The Regional Board may require any party to whom this Order is to be transferred to provide such additional information as is needed to verify that the transferee has the capacity and ability to comply with this Order.

19. 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 June 29, 2007.

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Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

Monitoring and Reporting Program No. R8-2007-0011

for
Vila Borba Project

Parente/Chino Hills Co. L.P.
City of Chino Hills
San Bernardino County

A. GENERAL MONITORING REQUIREMENTS:

1. The discharger shall describe and record on a weekly basis in a permanent log the types and approximate volumes of soil material used to fill waters of the state.

2. During earth moving and infrastructure construction activities, digital images or photographs showing the types of fill materials used, placement of engineered fill, and construction of low-flow runoff diversions and mitigation sites shall be taken on a weekly basis to document compliance with Order No. R8-2007-0011. The photographs shall be documented with date and specific location and keyed to and oriented on a site map of appropriate scale.

3. The discharger shall conduct all monitoring specified in the approved OMP, required by the Order, Provisions C.2, C.3, C.4, C.5, and C.6.

B. REPORTING:

1. Monitoring reports shall be submitted quarterly, by January 31, April 30, July 31, and October 31, and shall include all information collected for the previous three months in accordance with General Monitoring Requirements, A. above, including:

   a. Monitoring established in the OMP for all mitigation sites, as approved by the Executive Officer;

   b. The status and stages of completion of construction phases, and scheduled future steps necessary toward completion of phases;

   c. The status and stages of completion of the mitigation measures listed in Order No. R8-2007-0011, including comparison of their status with the target success criteria stated in the OMP;

   d. Description of maintenance activities occurring within the mitigation sites; and

e. Images/photographs and descriptions of fill, of project activities related to placement of fill in waters of the state, and of temporary and permanent BMP/mitigation measure construction.

2. By September 30 of each year, an annual report discussing the following shall be submitted:

   a. Description of project components completed during the prior 12 months;

   b. Status of completion of mitigation measures listed in Table 1 of Order No. R8-2007-0011, including as-built plans (if different from proposed plans) and an updated schedule for initiation/completion of remaining mitigation measures;

   c. Documentation of the success of, at minimum, the wetland, riparian, and seasonal depression mitigation sites. Comparisons to target success criteria must be discussed;

   d. Description of mitigation site maintenance occurring during the prior year; and

   e. Operations and Maintenance Plan or project changes that were made during the year.

3. For every item where the requirements of the Order and this monitoring and reporting program are not met, the discharger shall submit a statement of the actions undertaken or proposed which will bring the discharge into full compliance with requirements at the earliest time and submit a timetable for correction.

4. All reports shall be signed by a responsible officer or duly authorized representative of the discharger and shall be submitted under penalty of perjury.

Ordered by _____

Gerard J. Thibeault
Executive Officer

June 29, 2007