California Regional Water Quality Control Board
Santa Ana Region

June 29, 2007

ITEM: 10

SUBJECT: Order No. R8-2007-0042, Laing-Sequoia, LLC, McCanna Hills Specific Plan, Villages I and II, Community of Nuevo in Unincorporated Riverside County

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2007-0042, 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. Therefore, the discharge of fill to waters of the State that are subject to Corps' CWA Section 404 permits are authorized through the issuance of a Certification.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permit 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. Discharges of dredge or fill material that exceed these thresholds are authorized under individual waste discharge requirements.

On January 30, 2007, Regional Board staff received a report of waste discharge, in the form of an application for CWA Section 401 Certification, from RBF Consulting, the agent for Laing-Sequoia, LLC, for Villages I and II of the McCanna Hills Specific Plan (a.k.a. Specific Plan No. 246 or SP 246). Regional Board staff deemed the application inadequate for purposes of serving as a Report of Waste Discharge (ROWD) for the discharge of fill to non-federal waters because it was not signed by the discharger and did not adequately quantify the proposed discharge. A complete ROWD was subsequently received on April 26, 2007.

SP 246 is a residential and commercial development project, consisting of five Villages, on approximately 906.26 acres in the community of Nuevo in unincorporated Riverside County. Villages I and II include residential Tract 33976, Tract 33977, and Tract 33978 and involves the construction of storm drain line A-K (Line A-K) within the Orange Avenue right-of-way to the Perris Valley Storm Drain to the west. Line A-K is an element of the Perris Valley Area Drainage Plan initially adopted by the Riverside County Flood Control and Water Conservation District (District) in July of 1987. SP 246 is generally located south of the Ramona Expressway, east of Dunlap Drive, north of Nuevo Road and west of the San Jacinto River. Villages I and II are north of the proposed Orange Avenue extension, which bisects SP 246, within the majority of Section 15 of Township 4 South, Range 3 West, shown on the U.S. Geological Service *Perris, California* quadrangle (33 deg. 49 min. 20 sec. North/-117 deg. 11 min. 00 sec. West). The non-federal waters of the State consist of two isolated ephemeral headwater channels and, therefore, are not deemed to be waters of the U.S. subject to Clean Water Act Section 404 permitting by the U.S. Army Corps of Engineers (Corps).

Upon review of the April 26, 2007 ROWD, Regional Board staff determined that the discharges to the non-federal waters of the State in SP 246 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 SP 246 are subject to Corps permitting and have been authorized by the Executive Officer under Order No. 2003-0017-DWQ with the issuance of a Clean Water Act Section 401 Certifications (Certifications) on April 10, 2006 and May 14, 2007 for Village IV and Villages I and II respectively.

With the exception of a planned school site in Planning Area 13 of Village I, all Villages will have structural and non-structural storm water treatment BMPs developed as part of Water Quality Management Plans (WQMP) in accordance with Regional Board Order No. R8-2002-0011, NPDES Permit No. CAS618033, (Order No. R8-2002-0011) commonly known as the Riverside County Urban Storm Water Runoff Permit, and subsequent renewals thereof. The school site is for an elementary school to be constructed by the Val Verde Unified School District. In Regional Board Order No. R8-2002-0011, Val Verde Unified School District (District) is recognized as one of many entities that may discharge urban storm water runoff containing pollutants into municipal storm drain systems. The Regional Board "expected that these entities [would] work cooperatively with the Permittees to manage Urban Runoff". In addition, the Regional Board, pursuant to 40 CFR 122.26(a), asserted its discretion

and authority to require non-cooperating entities to participate in Order No. R8-2002-0011, or to issue individual storm water permits. Although pollutants from the planned School may be treated in the future homeowner's association basin, Regional Board staff does not believe that the District can rely on this facility to fully remove pollutants from its storm water discharges without overwhelming its treatment capacity or creating a condition of nuisance (particularly with trash and nutrients) and thereby affecting the community's acceptance of the basin. The District is expected to develop additional source control and treatment control best management practices to remove pollutants in its storm water runoff as part of its development process and has been notified of this by way of copy of the May 14, 2007 Certification.

Impacts to the filled non-federal waters of the State will be compensated for through the payment of an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.24 acres of invasive plant species within the San Jacinto Watershed. The in-lieu fee payment will be sufficient to cover initial removal of invasive plant species and 5-years of follow-on maintenance. The in-lieu fee payment is expected to occur concurrent with the purchase of 0.18 acres as compensation for the fill of 0.06 acres of waters of the U.S. Therefore the total payment will be for 0.42 acres of eradication.

Pursuant to the California Environmental Quality Act (CEQA), the County of Riverside certified an environmental impact report for the Preissman Specific Plan in 1994 and adopted an addendum to the EIR on August 23, 2005. In addition, the County of Riverside prepared an initial study for Tracts 33977 and 33978. No subsequent CEQA document was prepared for Tracts 33977 and 33978 in accordance with CEQA Guidelines Section 15182. All of these documents were considered by Regional Board staff as part of the preparation of Order No. R8-2007-0042.

RECOMMENDATION

Adopt Order No. R8-2007-0042 as presented.

In addition to the discharger, comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District
California Department of Fish and Game
Riverside County Flood Control and Water Conservation District
Val Verde Unified School District

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2007-0042

Waste Discharge Requirements

for

Laing-Sequoia, LLC
McCanna Hills Specific Plan, Villages I and II, Community of Nuevo in Unincorporated Riverside County

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

1. Laing-Sequoia, LLC (hereinafter, discharger) proposes to begin construction of Villages I and II of the McCanna Hills Specific Plan (a.k.a. Specific Plan No. 246 or SP 246), a residential and commercial development project in unincorporated Riverside County on approximately 906.26 acres. Villages I and II include residential Tract 33976, Tract 33977, and Tract 33978 and includes the construction of storm drain line A-K (Line A-K) within Orange Avenue to the Perris Valley Storm Drain. Line A-K is an element of the Perris Valley Master Drainage Plan adopted by the Riverside County Flood Control and Water Conservation District (District) in 1987. SP 246 is generally located south of the Ramona Expressway, east of Dunlap Drive, north of Nuevo Road and west of the San Jacinto River. Villages I and II are north of the proposed Orange Avenue extension, which bisects SP 246, within the majority of Section 15 of Township 4 South, Range 3 West, shown on the U.S. Geological Service *Perris, California* quadrangle (33 deg. 49 min. 20 sec. North/-117 deg. 11 min. 00 sec. West).

2. The construction of Villages I and II of SP 246 will result in the discharge of fill to both waters of the U.S. subject to Clean Water Act Section 404, administered by the U.S. Army Corps of Engineers, and to waters of the State that are not subject to Section 404. The non-federal waters of the State that are affected total 0.08 acres (2,555 linear feet) of two ephemeral headwater streams.

3. On January 9, 2001 the United States Supreme Court issued a decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers* (2001) 121 S. Ct. 675 (*SWANCC*) that held that the language of the Clean Water Act (CWA) cannot be interpreted as conferring authority for the federal government to regulate "isolated, intrastate, and non-navigable waters" merely because migratory birds may frequent them. The Court emphasized the states' responsibility for regulating such waters. Consequently, those isolated ephemeral

drainages within SP 246 are waters of the State but are considered outside the Section 404 jurisdiction of the U.S. Army Corps of Engineers.

4. Impacts to waters of the U.S. found within SP 246 are subject to the U.S. Army Corps of Engineers Clean Water Act Section 404 permits and have been authorized by the Regional Board in Clean Water Act Section 401 Water Quality Standards Certifications (Certifications) issued by the Executive Officer on April 10, 2006 and May 10, 2007 for Village IV and Villages I and II respectively. These Certifications authorize discharges of fill to waters of the U.S. 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." The Certifications do not authorize discharges of fill to the isolated waters of the State.

5. The isolated waters of the state consist of two ephemeral headwater drainages. The Water Quality Control Plan for Santa Ana River Basin (1995) does not designate beneficial uses for any of the isolated surface waters on the project site. Based on the applicant's biological assessment, beneficial uses that are existing or attainable for the ephemeral drainages include:

   a. non-water contact recreation (REC-2);
   b. groundwater recharge (GWR); and
   c. wildlife habitat (WILD).

6. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on beneficial uses of waters of the State.

7. This Order regulates the discharge of fill material to waters of the State that are not considered under Corps CWA Section 404 jurisdiction (non-federal). The discharger submitted an application for Certification on January 30, 2007 that described discharges of fill to non-federal waters of the State. The application was deemed inadequate to serve as a Report of Waste Discharge (ROWD) and a separate ROWD was submitted on April 26, 2007.

8. The discharger has committed to mitigate direct impacts to waters of the State by providing an in-lieu fee payment to the Santa Ana Watershed Association towards the eradication of 0.24 acres of invasive plant species within the San Jacinto Watershed. The in-lieu fee payment will be sufficient to cover initial removal of invasive plant species and 5-years of follow-on maintenance.

9. Pursuant to CEQA, the County of Riverside certified an Environmental Impact Report (EIR) for the proposed Specific Plan No. 246, previously known as the Preissman Specific Plan, 1994 and adopted an addendum to the EIR on August 23, 2005. In addition, the County of Riverside prepared an initial study for Tracts 33977 and 33978. No subsequent CEQA document was prepared for Tracts 33977 and 33978 in accordance with CEQA Guidelines Section 15182.

10. 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. (Public Resources Code, Section 21002.1(d); California Code of Regulations, Title 14, Section 15096(g), (h).) The County's environmental documents identified potentially significant impacts to biological resources as the result of discharges of fill to waters and to water quality as the result of pollutants in storm water runoff from the project. Impacts to biological resources from discharges of fill to waters of the U.S. and impacts to water quality are addressed in the May 10, 2007 Certification; this Order applies only to the discharge of fill to non-federal waters of the State. General Provision C.1. requires the discharger to compensate for impacts to the beneficial uses of the non-federal waters of the State through an in-lieu fee payment to the Santa Ana Watershed Association towards the eradication of 0.24 acres of invasive plant species within the San Jacinto Watershed. The Board finds that the significant effects of the discharge of fill to non-federal waters, as a result of the grading of Phases I and II of SP 246, authorized by this Order, are reduced to a less-than-significant level.

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.

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. Except as authorized here, 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. The discharger shall make an in-lieu fee payment to the Santa Ana Watershed Association towards the eradication of 0.24 acres of invasive plant species within the San Jacinto Watershed. The in-lieu fee payment shall be sufficient to cover initial removal of invasive plant species and 5-years of follow-on maintenance. Evidence of the payment shall be provided to the Executive Officer within 90-days of adoption of this Order.

2. 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, including trash and debris, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.

3. 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.

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. 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.

Gerard J. Thibeault
Executive Officer