California Regional Water Quality Control Board
Santa Ana Region

June 29, 2007

ITEM: 9

SUBJECT: Order No. R8-2007-0043, Trumark Companies, Canyon Hills Estates Specific Plan (Tract 34249), Unincorporated Riverside County

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2007-0043, authorizing the discharge of fill to waters of the State that have been determined to be outside of the U.S. Army Corps of Engineers jurisdiction and not subject to regulation under Clean Water Act Section 404 (non-federal waters).

BACKGROUND

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this state shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that the proposed activity will comply with state water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 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." 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.

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 November 13, 2006, Regional Board staff received a report of waste discharge (ROWD), in the form of an application for CWA Section 401 Certification, from PCR Services, the agent for Trumark Companies, for discharges of fill associated with the construction of the Canyon Hills Estates Specific Plan (Tract 34249). The proposed discharges of fill impact both waters of the U.S. (triggering the need for a Certification application) and non-federal waters of the State.

Tract 34249 is a residential development project, consisting of 302 single-family residential homes, a 5-acre public park along a portion of Cottonwood Creek, two water reservoirs, and 126.2 acres of natural open space on a 246.6-acre site. Two pedestrian bridges are proposed as part of the public park. The project includes 6.1 acres of off-site road improvements, necessary for access, which will involve discharges of fill to waters of the U.S. The project site is expected to be annexed into the City of Lake Elsinore. TM 34249 is generally bound by Pine Avenue, Crab Hollow Circle, Crooked Arrow, and the Hemlock Street right-of-way (to be vacated) within Section 13 of Township 6 South, Range 4 West, shown on the U.S. Geological Service *Romoland* and *Lake Elsinore, California* quadrangles (33.6521 degrees North/-117.2454 degrees West). The non-federal waters of the State consist of 0.03 acres (1,133 linear feet) of three isolated ephemeral headwater streams 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 Report, Regional Board staff determined that the discharges to the non-federal waters of the State in Tract 34249 would affect beneficial uses and that the Regional Board could not authorize the proposed discharges in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order. Discharges of fill to waters of the U.S. on Tract 34249 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 Certification on May 10, 2007.

Tract 34249 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, commonly known as the Riverside County Urban Storm Water Runoff Permit, and subsequent renewals thereof. Urban storm water runoff from the developed portions of the site will be treated in six extended detention basins. Two of the basins may be combined into a single basin contingent upon approval by the City of Lake Elsinore as part of their approval of the WQMP. An in-stream detention basin will also be constructed to protect storm drainage facilities on the adjacent Canyon Hills Specific Plan recently constructed to the north[1]. The detention facilities will also protect a buried sewer line that will cross an on-site reach of an intermittent creek that will not be permanently filled.

[1] Canyon Hills Specific Plan Phase 1 was waived from Certification in 1992. Phases 2 through 8 received Certification on March 25, 2003. The Phase 1 waiver expired, pursuant to the Porter-Cologne Water Quality Control Act, in 2001.

Impacts to the beneficial uses of both waters of the U.S. and non-federal waters of the State will be compensated for concurrently with on-site enhancement of Drainage A, which bisects the site in a circuitous manner, and Cottonwood Creek, which crosses the site at its northeast corner. In Drainage A, the discharger proposes to eradicate non-native shrubs and forbs on approximately 0.49 acres at the north-central portion of the site in order to compensate for impacts to the beneficial uses of the non-federal waters of the State. This is also the location of the sewer line crossing. In order to provide hydrology to promote greater vegetative cover and diversity, the outfalls from the adjacent extended detention basins will be constructed at the uppermost portion of this reach of Drainage A. The discharger has prepared a draft Habitat Mitigation Monitoring Plan (HMMP), however, this plan will require some revision to conform to the conditions contained in the May 10, 2007 Certification.

Regional Board staff had proposed to authorize discharges of fill to both waters of the U.S. and non-federal waters of the State and issue Certification as a single action by the Board. However, at the request of the discharger, the Certification and authorization of fill of waters of the U.S. were issued by the Executive officer separately.

Pursuant to the California Environmental Quality Act (CEQA), the City of Lake Elsinore certified an environmental impact report for the Canyon Hills Estates Specific Plan on January 23, 2007. The City's environmental impact report was considered by Regional Board staff as part of the preparation of Order No. R8-2007-0043.

RECOMMENDATION

Adopt Order No. R8-2007-0043 as presented.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District
California Department of Fish and Game
U.S. Fish and Wildlife Service

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2007-0043

Waste Discharge Requirements

for

Trumark Companies
Canyon Hills Estates Specific Plan (Tract 34249) in Unincorporated Riverside County

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

1. Trumark Companies (hereinafter, discharger) proposes construction of Canyon Hills Estates Specific Plan (Tract 34249), a residential development project in unincorporated Riverside County on approximately 246.6 acres. The project includes 302 single-family homes, a 5-acre public park along Cottonwood Creek, two water reservoirs, and 126.2 acres of natural open space. Tract 34249 is generally bound by Pine Avenue, Crab Hollow Circle, Crooked Arrow, and the Hemlock Street right-of-way (to be vacated) within Section 13 of Township 6 South, Range 4 West, shown on the U.S. Geological Service *Romoland* and *Lake Elsinore, California* quadrangles (33.6521 degrees North/-117.2454 degrees West).

2. The construction of Tract 34249 will result in the discharge of fill to both waters of the U.S. and waters of the State that are not subject to Clean Water Act Section 404 permits administered by the U.S. Army Corps of Engineers (non-federal waters). The non-federal waters of the State that are affected total 0.03 acres (1,133 linear feet) of three 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 Tract 34249 are waters of the State but are considered outside the jurisdiction of the U.S. Army Corps of Engineers.

4. Impacts to waters of the U.S., found within Tract 34249, are subject to the U.S. Army Corps of Engineers Clean Water Act Section 404 permits and have been authorized by Clean Water Act Section 401 Water Quality Standards

Certifications (Certifications) issued by the Executive Officer on May 10, 2007. This Certification authorizes 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 three 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 a ROWD in the form of an application for Certification on November 13, 2006 that described discharges of fill to the non-federal waters of the State.

8. The discharger has committed to compensate for impacts to the beneficial uses of the non-federal waters of the State by eradicating non-native shrubs and forbs on approximately 0.49 acres of a drainage (Drainage "A" as identified in the report of waste discharge (ROWD)) that bisects the site in a circuitous manner at its north-central reach.

9. Pursuant to CEQA, the City of Lake Elsinore certified an Environmental Impact Report (EIR) for the proposed Canyon Hills Estates Specific Plan on January 23, 2007. Regional Board staff has considered the City's EIR in the preparation of this Order.

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 City'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 eradication of non-native shrubs and forbs on approximately 0.49 acres of Drainage "A" and the placement of storm drain outfalls in a manner that promotes improvements to beneficial uses. The Board finds that the potentially significant effects of the discharge of fill to non-federal waters, as a result of the grading of portions of Tract 34249, 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 eradicate non-native shrubs and forbs on approximately 0.49 acres of Drainage "A" at the north-central portion of the site as proposed. The eradication effort shall proceed according to a written Habitat Mitigation Monitoring Plan (HMMP) and in a manner that promotes the growth of a diverse native riparian habitat. The storm drain outfalls from the adjacent extended detention basins shall be placed as far upstream in the mitigation site as practical in order to provide adequate hydrology to support the goals of the HMMP.

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