California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2004-0106

Waste Discharge Requirements

for

Mission Ranch West Partners, LP
Tract 29596 and Tract 29222, City of Riverside

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

1. Mission Ranch West Partners, LP (hereinafter, discharger) proposes to develop Tract 29596 and Tract 29222 in the City of Riverside by building approximately 232 dwelling units on two 40-acre tracts located in the southern portion of Sections 28 and 29, Township 5 South, Range 2 West, shown on the U.S. Geological Service *Riverside East, California* quadrangle.

2. Within Tract 29596 are riparian drainages consisting of 0.07 acres (1,020 linear feet) of waters of the U.S. and 0.07 acres (2,300 linear feet) of isolated waters of the State that are considered outside of federal jurisdiction. Tract 29222 contains 0.04 acres (560 linear feet) of isolated, non-federal waters of the State.

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 riparian drainages on Tracts 29596 and 29222 are waters of the State but are not subject to the U.S. Army Corps of Engineers jurisdiction.

4. Impacts to waters of the U.S., found on Tract 29596, 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 a Clean Water Act Section 401 Water Quality Standards Certification (Certification) issued by the Executive Officer on November 1, 2004. This Certification requires compliance with waste discharge requirements specified in 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."

5. The discharger has committed to mitigate direct impacts to waters of the State and waters of the U.S by purchasing four (4) acres of mitigation credit to be applied towards the creation of two acres each of mulefat scrub and southern willow scrub habitats in the Santa Ana River Mitigation Bank operated by the Riverside-Corona Resource Conservation District. The purchase of one acre of each habitat type has already been required as a condition in the November 1, 2004 Certification of Tract 29596. The proposed Order requires the discharger to complete the mitigation proposed by purchasing the remaining mitigation credits.

6. In compliance with the California Environmental Quality Act, a Negative Declaration was prepared for Tract 29596 and Tract 29222 and certified by the City of Riverside on September 5, 2002. The waste discharge requirements proposed herein address the fill of 2,300 linear feet of isolated riparian drainage on Tract 29596 and 560 linear feet of isolated riparian drainage on Tract 29222. The proposed Order requires the discharger to proceed with the proposed mitigation.

7. The Water Quality Control Plan for Santa Ana River Basin (1995) does not specifically designate beneficial uses for any of the isolated surface waters on the project site. Based on Regional Board staff assessment of the site, the requirements of State Board Resolution No. 88-63, and the applicant's biological assessment, beneficial uses that are existing or attainable for these isolated waters include:

   a. Municipal and Domestic Supply (MUN)
   b. Wildlife habitat (WILD)
   c. Agricultural supply (AGR)
   d. Groundwater recharge (GWR)

8. This Order regulates the discharge of fill material to waters of the State. The discharger submitted two separate Reports of Discharge on February 19, 2004 and August 3, 2004.

9. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill of waters of the State.

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

11. 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.

12. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

A. DISCHARGE SPECIFICATIONS:

1. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.

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

3. The groundwater in the vicinity of the project shall not be degraded as a result of the project activities or placement of fill for the project.

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

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.

2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.

3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.

4. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, is prohibited.

C. PROVISIONS:

1. The discharger shall purchase two acres of mitigation credit, to be applied towards the creation of one acre each of mulefat scrub and southern willow scrub habitats in the Santa Ana River Mitigation Bank operated by the Riverside-Corona Resource Conservation District. The discharger shall provide proof of the purchase by February 17, 2005.

2. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.

3. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.

4. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order; or a combination thereof.

5. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

6. The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.

7. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.

8. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, state, or local laws, nor guarantee the discharger a capacity right in the receiving waters.

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

10. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Regional Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.

11. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Regional Board.

12. 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 December 20, 2004.

Gerard J. Thibeault
Executive Officer