
Colorado River Basin Regional Water Quality Control Board

March 23, 2012

Mr. John E. Durso
Coral Mountain Apartments, L.P.
46-753 Adams Street
La Quinta, CA 92253

**RE: ORDER FOR RESCISSION OF TECHNICALLY- CONDITIONED CLEAN
WATER ACT SECTION 401 WATER QUALITY CERTIFICATION FOR
DISCHARGE OF DREDGED AND/OR FILL MATERIALS**

Dear Mr. Durso:

Colorado River Basin Regional Water Quality Control Board's staff received your written request on January 30, 2012 to rescind the 401 Water Quality Certification (WQC) issued on August 22, 2011.

The focus of the project activity is the construction of one outlet structure on the west bank of the La Quinta Evacuation Channel. The activity will avoid disturbance of the Channel bed. Construction equipment will reach the outlet location via an access road adjacent to the top of the channel.

In February 2012, staff received the following letters (attached):

- Dated July 29, 2011, from the U.S. Army Corps of Engineers (USACE) that the proposed project is not subject to the jurisdiction under Section 404 of the Clean Water Act and thus, a permit would not be required.
- Dated September 30, 2011, from the California Department of Fish and Game (DFG) that a Lake or Streambed Alteration Agreement is not required because the agency did not meet the date to process the application.
- (Date unknown) from the DFG for a very similar construction project located just upstream of the subject site. The letter indicated that a Lake or Streambed Alteration Agreement is not required because the project will not substantially adversely affect an existing fish or wildlife resource.

Based on the updated information provided and staff's file review, it appears that neither a 401 Water Quality Certification nor waste discharge requirements is necessary.

Therefore, staff concurs with the conclusions made by USACE and DFG and agrees that rescission of the 401 WQC is appropriate.

Please be advised that dischargers whose projects disturb one or more acres of soil or whose projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity. The information about the General Construction permit is at the link below:

http://www.swrcb.ca.gov/water_issues/programs/stormwater/gen_const_faq.shtml

I hereby rescind the 401 WQC issued to Coral Mountain Apartments, L.P., dated August 22, 2011.

If you have any questions, please contact Jay Mirpour, Water Resources Control Engineer, at (760) 776-8981 or jmirpour@waterboards.ca.gov.



Robert Perdue, Executive Officer
Colorado River Basin Regional Water Quality Control Board

JJM/

cc:

USACE - Michelle Mattson, Michelle.L.Mattson@usace.army.mil
DFG - Michael D. Flores, mflores@dfg.ca.gov
DFG - James Sheridan, jsheridan@dfg.ca.gov

Enc:

- USACE - letter from Michelle Mattson on July 29, 2011
- DFG - letter from Michael D. Flores on September 30, 2011
- DFG - letter from James Sheridan (date unknown)

File: Coral Mountain Apts. L.P. Project, WDID No. 7A333119001



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY

LOS ANGELES DISTRICT, CORPS OF ENGINEERS
REGULATORY DIVISION
SOUTH COAST BRANCH
6010 HIDDEN VALLEY ROAD, SUITE 105
CARLSBAD, CA 92011

July 29, 2011

Regulatory Division

John Durso
Coral Mountain Apts, L.P.
c/o: Michelle Witherspoon
MSA Consulting, Inc.
34200 Bob Hope Drive
Rancho Mirage, California 92270

SUBJECT: Approved Jurisdictional Determination regarding presence/absence of geographic jurisdiction and determination regarding requirement for Department of the Army Permit

Dear Mr. Durso:

I am responding to your request (File No. SPL-2011-00670-RJV), dated July 11, 2011, for clarification on whether a Department of the Army Permit is required for the Coral Mountain Apartments project, located within the city of La Quinta, Riverside County, California (-116.273015, 33.702613).

The United States (U.S.) Army Corps of Engineers' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. The first test determines whether or not the proposed project is located within or contains a water of the U.S. (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project includes an activity potentially regulated under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. If both tests are met then a permit would be required. As part of our evaluation process, we have made the determination below.

Geographic jurisdiction:

Based on the attached jurisdictional determination, dated July 28, 2011, we have determined the Coral Mountain Apartments project site does not contain water(s) of the U.S. pursuant to 33 C.F.R. §325.9, as the project is located outside of the Ordinary High Water Mark (OHWM) of the La Quinta Evacuation Channel.

Activity:

Based on the information you have provided, we have determined the proposed work, were it to occur in waters of the U.S. (see above, "*Geographic jurisdiction*"), would

involve a discharge of dredged or fill material and therefore would be regulated under Section 404 of the Clean Water Act.

Requirement for a Department of the Army Permit:

Based on the discussion above, we have determined your proposed project is not subject to our jurisdiction under Section 404 of the Clean Water Act and a permit would not be required from our office if the activity is performed at the location and in the manner described. This determination was made based on the fact that the proposed outfall structure is located above the OHWM of the La Quinta Evacuation Channel. If the location of the outfall structure is altered, a new jurisdictional determination may be needed. In addition, this jurisdictional determination has not analyzed whether or not the La Quinta Evacuation Channel is a waters of the U.S. and any activity located within the channel may be subject to Section 404 of the Clean Water Act. Notwithstanding our determination above, your proposed project may be regulated under other Federal, State, and local laws.

This letter contains an approved jurisdictional determination for the Coral Mountain Apartments project. If you object to this decision, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet (Appendix A) and Request for Appeal (RFA) form. If you request to appeal this decision you must submit a completed RFA form to the Corps South Pacific Division Office at the following address:

Tom Cavanaugh
Administrative Appeal Review Officer,
U.S. Army Corps of Engineers
South Pacific Division, CESPD-PDS-O, 2042B
1455 Market Street, San Francisco, California 94103-1399

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 C.F.R. Part 331.5, and that it has been received by the Division Office within 60 days of the date on the NAP. Should you decide to submit an RFA form, it must be received at the above address by September 26, 2011. It is not necessary to submit an RFA form to the Division office if you do not object to the decision in this letter.

This verification is valid for five years from the date of this letter, unless new information warrants revision of the determination before the expiration date. If you wish to submit new information regarding the approved jurisdictional determination for

this site, please submit this information to R.J. Van Sant at the letterhead address by September 26, 2011. The Corps will consider any new information submitted and respond within 60 days by either revising the prior determination, if appropriate, or reissuing the prior determination. A revised or reissued jurisdictional determination can be appealed as described above.

This determination has been conducted to identify the extent of the Corps' Clean Water Act jurisdiction on the particular project site identified in your request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

If you have any questions, please contact R.J. Van Sant at 760-602-4837 or via e-mail at Richard.J.Vansant@usace.army.mil. Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



Michelle Mattson
Senior Project Manager
South Coast Branch

Enclosure(s):

Figure 1 – Regional and local map

Figure 2 – Storm drain exhibit

Approved Jurisdictional Determination



DEPARTMENT OF FISH AND GAME

Inland Deserts Region

78078 Country Club Dr., Ste. 109

Bermuda Dunes, CA 92203

(760) 200-9419



Pedro S.G. Rodriguez, CFO
La Quinta Housing Associates, L.P.
45-701 Monroe Street, Plaza 1, Ste. G
Indio, CA 92201

Re: SSA# 1600-2008-0113-R6

Dear Mr. Rodriguez:

The California Department of Fish and Game (Department) has reviewed the proposed construction of the storm drain outfall structure for the La Quinta Housing Associates, L.P. Dune Palms Neighborhood project. The project consists of the construction of a storm drain outfall structure on the west bank of the La Quinta Evacuation Channel, north of the Avenue 48 crossing. No activity is proposed in the channel bed. A backhoe will be utilized on an existing access road adjacent to the top of the channel bank. No activity is proposed in the channel bed. A backhoe will be utilized on an existing access road adjacent to the top of the channel bank. Permanent impacts to the channel bank include 0.004 acres and 15 linear feet of disturbed area, including 20 cubic yards of fill needed to construct the outfall structure. For access purposes, no fill is proposed, but 0.10 acres and 210 linear feet will be temporarily disturbed. The Department has determined that the activities will not substantially adversely affect an existing fish or wildlife resource, and you may commence these activities without an agreement, if you conduct the activities as described in the notification, including any measures in the notification that are intended to protect fish and wildlife resources.

Thank you for your cooperation in this matter. If you have any questions, you may contact me at the above address and phone number.

Sincerely,

James Sheridan
Environmental Scientist
Inland Deserts Region



California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Inland Desert Region
78078 Country Club Dr., Suite #109
Bermuda Dunes, CA 92203
(760) 200-9419
www.dfg.ca.gov

EDMOND G. BROWN, Governor
Charlton H. Bonham Director



September 30, 2011

John E. Durso
Coral Mountain Apts, L.P.
46-7853 Adams Street
La Quinta, CA 92253

Subject: 1600-2011-0193-R6

Dear Mr. Durso:

The Department had until September 25th, 2011 to submit a draft Lake or Streambed Alteration Agreement ("1600-2011-0193-R6") to you or inform you that an Agreement is not required. The Department did not meet that date. As a result, by law, you may now complete the project described in your notification without an Agreement.

Please note that pursuant to Fish and Game Code section 1602(a)(4)(D), if you proceed with this project, it must be the same as described and conducted in the same manner as specified in the notification and any modifications to that notification received by the Department in writing prior to September 25, 2011. This includes completing the project within the proposed term and seasonal work period and implementing all avoidance and mitigation measures to protect fish and wildlife resources specified in the notification. If the term proposed in your notification has expired, you will need to re-notify the Department before you may begin your project. Beginning or completing a project that differs in any way from the one described in the notification may constitute a violation of Fish and Game Code section 1602.

Your notification includes, but is not limited to, the following information: The project work includes the construction of one outlet structure on the west bank of the La Quinta Evacuation Channel. This channel is needed for a new 10.66 acre housing development (Coral Mountain Apartments). The proposed activities for this new outlet structure will avoid disturbance to the channel bed. Construction equipment will reach the outlet location via an access road adjacent to the top of the channel. To further minimize impacts, erosion control and Best Management Practices will be implemented as part of a Storm Water Pollution Prevention Plan plus a dust mitigation plan.

Also note that while you are entitled to complete the project without an Agreement, you are still responsible for complying with other applicable local, state, and federal laws. These include, but are not limited to, the state and federal Endangered

Conserving California's Wildlife Since 1870

1600-2011-0193-R6
September 30, 2011
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Species Acts and Fish and Game Code sections 5650 (water pollution) and 5901 (fish passage).

Finally, if you decide to proceed with your project without an Agreement, you must have a copy of this letter and your notification with all attachments available at all times at the work site. If you have any questions regarding this matter, please Jim Sheridan, Environmental Scientist, at the above phone number

Sincerely,



Michael D. Flores
Senior Environmental Scientist
Inland Deserts Region