RANCHO MISSION VIEJO

April 2, 2007

Mr. John H. Robertus, Executive Officer
California Regional Water Quality Control Board
San Diego Region
9174 Sky Park Court – Suite 100
San Diego, CA 92123-4353

Reference: Tentative Order No. R9-2007-0002; NPDES No. CAS0108740

Subject: Rancho Mission Viejo Comments

Dear John,

Thank you for providing Rancho Mission Viejo (RMV) the opportunity to provide comments on the referenced Tentative Order. This letter transmits RMV's specific concerns regarding the Tentative Order. We are also recommending modifications to the Tentative Order, which we believe will provide for the necessary protection of water quality within Orange County, while also providing landowners like ourselves with the flexibility to implement approved subregional planning efforts directed toward the long term protection and management of aquatic resources, including comprehensive water quality measures.

RMV consists of approximately 22,815 acres located in Southern Orange County, California. The Ranch is bound by the existing communities of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano and the undeveloped Cleveland National Forest and MCB Camp Pendleton. Various habitat types including but not limited to coastal sage scrub, chaparral, grassland, oak woodland and riparian are present on the Ranch.

Since 1882, the O'Neill family has been a responsible steward of the Ranch. We have, and continue to actively manage the Ranch to protect the resources on it. We intend to continue this tradition of stewardship into the future. As you are aware, to protect our land's resources, and address the needs of Orange County's growing population, RMV, in conjunction with the County of Orange, has undertaken a coordinated approach to the Endangered Species Act, Clean Water Act and Orange County's General Plan.

File 10-6000.02

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In 2004 RMV and the County of Orange completed a General Plan Amendment/Zone Change (GPA/ZC) process to determine future land uses on RMV land. In January of this year, the County of Orange, RMV and U.S. Fish and Wildlife Service (USFWS) successfully concluded the decades long planning process for the Southern Subregion Habitat Conservation Plan (HCP). This month the U.S. Army Corps of Engineers (USACE) and RMV also concluded the planning effort for the San Juan Creek Watershed/western San Mateo Creek Watershed Special Area Management Plan (SAMP). Both the HCP and the SAMP will result in the implementation of a watershed-wide management plan for the preservation, enhancement and restoration of aquatic resources on RMV lands.

RMV is fully supportive of the Board's efforts to protect water quality within the County; however, we believe the Tentative Order does not provide sufficient flexibility to landowners like ourselves who have put significant time and effort into a coordinated planning process that has resulted in a development/open space plan designed to recognize the specific watershed and sub-watershed attributes of our land, including measures for the permanent protection and management of aquatic resources.

In this regard, we provide the following broad scale comments and suggest modifications to the language of the Tentative Order which we believe will provide the flexibility which we believe is necessary for RMV to implement the approved GPA/ZC, HCP and SAMP. In addition, we provide specific technical comments in Attachment A to this letter. We would also offer our support to the comments offered by the Building Industry Legal Defense Foundation and Building Industry Association of Orange County and hereby incorporate their comments by reference.

A. Watershed Planning in Orange County

The Tentative Order does not recognize the watershed level planning that has occurred in Orange County through approval of the Southern Subregion HCP and San Juan/San Mateo SAMP(see HCP Figure 7-M, attached). Through these efforts, the County and RMV have applied site design BMP's at the watershed and sub-watershed scale for RMV lands resulting in, for example:

- Conserving natural areas – 20,868 acres of RMV lands will be preserved as open space and dedicated to a Habitat Reserve over time. Only 5,873 acres will be developed.
- Minimizing disturbances to natural drainages – all mainstem creeks on RMV are preserved, 8,198 acres of riparian habitats will be protected in the SAMP Study Area including RMV lands.
- Minimizing soil compaction of permeable soils – development acres are focused in clay soils, sandy soils are preserved in open space

In order to maximize the benefits to water quality in Orange County that will accrue through implementation of the approved HCP and SAMP, the Tentative Order must recognize the resource protection and water quality measures contained in these significant watershed planning efforts.

(1) Tentative Order Issue – Need to Recognize Site Design Policies Applied at a Broader Sub-watershed and Watershed Scale Which Incorporated Broader Principles of Geomorphology/Hydrology

Section D.1.c (2) and d(4) - Site Design BMP requirements in project approval process

Comment:

The SAMP (March 2007) and HCP (January 2007) encompass and address approximately 90% of the undeveloped private lands in the San Juan Creek and San Mateo Creek watersheds. A companion Water Quality Management Plan (WQMP) was: (a) reviewed and approved by the County as part of its approval of the GPA/ZC; (b) further reviewed in the SAMP EIS and the HCP EIR/EIS; (c) based on the SAMP and HCP planning principles; and (d) is required to be coordinated with the SAMP and HCP.

The proposed Site Design BMP requirements do not provide for Projects that have addressed these type of site design BMP through the development and application of basic principles of geomorphology a sub-watershed and watershed scale. As a case in point, the HCP and SAMP applied geomorphologic terrains principles (particularly the differing infiltration and runoff characteristics of different soils types, e.g., sandy soils, clay soils) at both a sub-watershed and watershed scale to help determine areas where development should be avoided (e.g., sandy soils characterized by high infiltration rates) and areas where development could be concentrated (e.g., areas that presently are characterized by relatively rapid stormwater rates, soils generating fine sediments and limited infiltration). These principles are set forth in Attachment B under the headings "SAMP Tenets" and "Baseline Conditions Watershed Planning Principles. Also, see SAMP Figure 4.1.1-3 and SAMP Figure 6-1 (attached) illustrating some of these concepts.

From the perspective of geomorphologic watershed planning principles, in many instances, applying the proposed BMP site requirements at a project level may lead to poor project design compared to applying these requirements at a broader sub-watershed and watershed level of analysis. The SAMP/HCP geomorphologic planning principles place considerable emphasis on preserving sources of coarse sediments (e.g., sandy soils crystalline terrains) important to stream course processes and beach sand replenishment by concentrating development in terrains that would otherwise generate fine sediments. Similarly, from a broader sub-watershed and watershed scale, it may be far better to avoid soils with high infiltration capabilities (e.g., sandy soils) by concentrating development in areas with higher levels of natural runoff rates (e.g. clayey soils) than to minimize impervious surface on a project-by-project basis.

We believe that the watershed planning principles applied to land use and water quality determinations in the SAMP and HCP are consistent with the emphasis on fluvial geomorphology described in the Fact Sheet for the SWRCB's draft General Permit for Construction Activity (March 2, 2007) According to the SWRCB Fact Sheet:

> "In order to address hydromodification from urbanization, a basic understanding of fluvial geomorphic concepts is necessary." (Fact Sheet, p. 26)

In describing the geomorphic sequence that characterizes stream channel behavior over time, the SWRCB report notes that: "The magnitude of the geomorphic sequence discussed above varies along a stream network as well as with the age of development, slope, geology, sediment characteristics, type of urbanization, and land use history." (Fact Sheet, p. 29, emphasis added)

The SAMP and HCP were developed employing: (a) a detailed set of tenets of fluvial geomorphologic planning principles; (b) sub-basin watershed planning principles addressing specific soils and hydrologic characteristics of sub-watersheds within the planning area. (see Southern Orange County HCP, Chapter 5)

Recommendation:

(a) Apply Site Design BMPs Using a Sub-Watershed and Watershed Approach. The site design BMPs directed toward maximizing infiltration, slowing runoff and minimizing impervious footprint need to be modified to specifically provide for the application of hydrologic/geomorphologic planning principles at a broader sub-watershed and watershed perspective rather than just being applied on a project-by-project basis.

(b) The Consideration of the Feasibility of Site Design Minimization Measures Should be undertaken from the Sub-Watershed and Watershed Scale Rather than Limited to Project Level Application. The applicability of site design requirements to Priority Projects should consider the geographic scale at which the project was planned. The mandatory requirement to implement the listed site design BMPs or demonstrate infeasibility will necessitate lengthy analysis by RMV and others in a similar situation as to why no further minimization measures can be employed when avoidance/minimization measures have been comprehensively addressed at a broader sub-watershed and watershed scale. This is particularly true for sub-sections D.1.d(4)(c)(i), (ii), (iii) and (x).

Suggested Language Insert for the Tentative Order Section D. 1. d (SUSMPs, p. 23):

Suggest inserting the following after the first full paragraph for SUSMP requirements just above "(1) Definition of Priority Development Project":

> "Where a JURMP has been prepared and adopted on a watershed or sub- watershed basis employing any adopted WURMP requirements and/or adopted SAMP or HCP requirements and provides for site design and treatment control standards employing

fluvial geomorphologic planning principles (hydrology/geomorphology), such standards shall govern SUSMP review of Priority Projects with respect to the site design BMP and Treatment Control BMP requirements of this Order."

(2) Tentative Order Issue – Need to Recognize Site Design Policies Applied at a Broader Sub-watershed and Watershed Scale Which Incorporated Requirements for Buffer Zones

Section D.1.c (3) - Buffer Zones requirements in project approval process

Comment: Similar to the requirements for site design BMPs discussed above, the application of requirements for buffer zones for natural water bodies during the project approval process should take into account the geographic scale at which the project is proposed and the planning principles employed in project review and approval. If the project has been planned at the watershed scale (as the RMV's project has) applying SAMP tenets and NCCP/HCP Scientific Review Panel tenets of reserve design directed toward providing buffers through habitat reserve design, the requirement for site design BMPs and buffers should reflect the application of buffer principles at a larger scale and areas planned for development should not have further requirements placed upon them.

Regarding buffers, one of the fundamental SAMP Tenets addressed the provision of adequate buffers from riparian corridors (see Attachment B and page 5-1 of the SAMP FEIS). SAMP Tenet 7 states "Maintain adequate buffer for the protected riparian corridors." All alternatives were examined for their ability to meet this tenet. Specific to the selection of the B-12 Alternative as the "Least Environmentally Damaging Alternative" (LEDPA) under the Corps regulations, pages 6-22 through -23 of the FEIS state:

> "Under the B-12 Alternative, most major riparian corridors would be adequately buffered from development. Major riparian corridors within the RMV Planning Area can be defined as Chiquita Creek, Gobernadora Creek, San Juan Creek, Verdugo Creek, Cristianitos Creek, Gabino Creek, La Paz Creek, and Talega Creek and would be protected in the following manner:
>
> Development in Planning Area 2 below the SMWD wastewater treatment plant would be set back from a minimum of 225 feet to over 500 feet from centerline of Chiquita Creek.
>
> Development in Planning Area 3 would have a 656-foot-wide (200 meter) setback to buffer northerly San Juan Creek. When combined with the 656-foot-wide (200 meter) setback for Planning Area 4, a 1,312-foot-wide (400 meter) corridor as recommended by Beier would be provided for mountain lion movement along San Juan Creek.
>
> Verdugo Creek Canyon would not be directly impacted by the proposed Planning Area 4

development, thereby protecting the Verdugo Creek riparian corridor and its associated coarse sediments.

No development is proposed in the Gabino, or La Paz Sub-basins under the B-12 Alternative; therefore, Gabino Creek, and La Paz Creek would be protected. Very limited development (50 acres of citrus orchard and a 25-acre Rancho Mission Viejo headquarters) is proposed for the Cristianitos Sub-basin and neither use is anticipated to result in significant impacts to this sub-basin.

Based on the overstated impact analysis boundary for Planning Area 8, the setback for development from Talega Creek would range from 1,000 to 1,650 feet to the creek and has an elevation range of 80 to 280 feet above the creek. From the southern middle of Planning Area 8 to the southeastern edge of Planning Area 8, the setback range for development would be 1,875 to 3,350 feet from the creek with an elevation range of 280 to 500 feet above the creek. As noted previously, development in the Talega Sub-basin is limited to 500 acres; therefore, further protection of the Talega Creek riparian corridor is anticipated.

As a result of SAMP and HCP watershed-scale planning, all avoided wetlands on RMV have been appropriately buffered through the planning leading up to approval of the HCP and SAMP. Due to the protection of wetlands, riparian areas and creeks through reserve design and the limited amount of approved development areas through the Southern HCP and SAMP, no further minimization measures should be required within the footprint of the development area. See attached SAMP Figure 8-10 for an illustration of preserved buffers.

Recommendation:

Suggest adding the following language to Section D. 1. c. (new second paragraph):

"Buffer zone requirements and site design BMPs should, where feasible, be applied at a sub-watershed and watershed scale. Where a JURMP incorporates the results of a comprehensive sub-watershed or watershed plan prepared under the direction of a Co-Permittee and/or in cooperation with a USACE or USFWS comprehensive planning program such as a SAMP or HCP, buffer requirements for development projects within the area subject to the SAMP/HCP shall be satisfied through compliance with the SAMP/HCP buffer and site design requirements."

(3) Tentative Order Issue – Need to Provide for the Use of Waters of the U.S. and Waters of the State for Water Quality Treatment and Infiltration of Runoff if permitted through a 401 Certification/WDR.

Section D.1.d(6)(c) and D.1d(6)(d)(ii)(g) No BMPs in Waters of the U.S. or State

Comment: The Tentative Order places great emphasis on mimicking natural hydrologic conditions to the maximum extent feasible (e.g., the use of "water balance" principles), slowing urban runoff and infiltrating urban runoff. In fact, Tentative Order provision D.1.d (4)(b) requires that natural drainages be maintained or restored in drainage networks as a site design BMP. Where authorized pursuant to a 401 Certification of a CWA 404 permit and/or a WDR issued for discharge into non-federal waters, placement of hydromodification control and/or treatment control BMPs in drainages within the boundaries of a development project should be allowed. In this way all runoff can be treated and/or infiltrated, to the maximum extent practicable, prior to being discharged into mainstem creeks. See for example WQMP Figures 3-6 and 3-7.

Recommendation:

Suggest adding the following language to sections D.1.d(6)(c):

> "All treatment control BMPs must be located so as to infiltrate, filter, or treat runoff prior to its discharge to any waters of the U.S., except where authorized pursuant to a 401 Certification of a CWA 404 permit.

Suggest adding the following language to section D.1.d(6)(d)(ii)(g):

> "Except where authorized pursuant to a 401 Certification of a CWA 404 Permit and/or a WDR issued for discharge into non-federal waters, treatment control BMPs shall not be constructed within a waters of the U.S. or waters of the State."

(4) Tentative Order Issue – Need to Address Concerns Regarding the Protection of ESA's through Large-Scale SAMP and HCP Programs

Section D.1.d (2)(g) ESAs as Priority Project Categories & Attachment C, Page C-3 Definition of ESAs

Comment: According to the definition of ESAs, the SDRWQCB is contemplating designating areas identified as preserved under the NCCP program or their equivalent as Environmentally Sensitive Areas. The potential designation of the Southern Subregion Habitat Reserve as an ESA is unnecessary and duplicative of SAMP and HCP actions. All RMV development projects will meet the definition of a Priority Project through subpart (a) of the definition. This is particularly true given the fact that Waters of the U.S. and of the state within the Habitat Reserve are already addressed through their respective Basin Plan beneficial use designations in the Water Quality Management Plan (WQMP) that is an integral component of the approved SAMP and HCP.

During the course of permitting the HCP and SAMP, RMV developed a comprehensive WQMP to address both pollutants and conditions of concern through consideration of the hydrologic/geomorphic conditions of the RMV watersheds and sub-watersheds, pre- and post

project flow duration modeling to address hydromodification, and pollutant loading modeling. Further, the approved SAMP and HCP require coordination of the implementation of the WQMP with the Habitat Reserve Management Program. Any designation of the Southern Subregion Habitat Reserve or any portion thereof as an ESA will not achieve greater protection for the Waters within the Habitat Reserve than will be achieved through implementation of the SAMP and HCP. Rather in the context of the comprehensive Habitat Reserve Adaptive Management Program incorporated into the Southern SAMP and HCP (including the provision for an advisory Science Panel), the potential ESA designation for the Southern Habitat Reserve would add unnecessary, duplicate and potentially conflicting requirements.

Recommendation:

Suggest adding the following language at the end of Section D.1.d(2)(g) (page 25) and creating a new subsection D.2.d(1)(c)(ii) (page 41):

> "Habitat Reserves designated pursuant to the federal ESA, USACE SAMP and/or state NCCP, as applicable, should be governed by the management provisions of the adopted plans, and runoff management from proximate development areas shall be governed by the provisions of those plans and as further reviewed through the 401 certification process.

(5) Tentative Order Issue – Need to Allow the Permittees to Apply Alternative Treatment Control and Flow Control (Hydromodification) Approaches Rather than Mandating "One Size Fits All" Project Level Prescriptions

Comment: A number of the treatment control and flow control prescriptions in the Tentative Order are contrary to the understanding gained through Orange County watershed planning programs. Examples are set forth below:

a. Combined Control System Concepts – Water quality treatment and hydromodification control can best be achieved at a sub-watershed scale through properly sited and operated "combined control systems." Several of the MS4 prescriptions would inhibit the use of such systems (e.g., see prior comment regarding prohibitions on siting treatment facilities within Waters of the U.S. and the State and the application of site design and treatment control provisions at the project-scale versus a sub-watershed or watershed scale).

b. Dry Weather Flow Diversions – The Tentative Order requires the diversion of dry weather flows containing significant pollutant loads from infiltration devices (Section D.1.c(6)). Quite to the contrary, dry weather flows should be treated with natural treatment systems such as vegetated swales, bioretention areas, water quality basins, or wetlands, to the extent feasible, and then infiltrated or used for habitat management purposes (e.g., under drought conditions). Natural treatment systems are effective,

do not consume energy and avoid other issues with diverting urban dry weather flows to treatment plants. Infiltration of treated dry weather flows will prevent habitat impacts to receiving waters and is not likely to impact groundwater. The Water Augmentation Study conducted by the Los Angeles and San Gabriel Rivers Watershed Council, in partnership with several agencies including water districts, municipalities, and the U.S. Bureau of Reclamation, indicates that the infiltration of stormwater, with appropriate pretreatment, does not adversely impact groundwater quality (Los Angeles Basin Water Augmentation Study, August 2005).

c. Recognize Infiltration Characteristics of Different Soils Types - Some soils types provide much greater water quality treatment through infiltration while others, such as sandy soils, provide limited treatment but extensive hydromodification control infiltration. Coarse grained soils are suitable for infiltration of urban runoff for hydromodification control purposes, provided that such runoff has been fully treated in a separate treatment control BMP that addresses the pollutants of concern in groundwater. Restrictions on infiltration must be broad enough to allow for such differences. Please refer to Attachment C for further technical comments on this issue.

d. Interim Requirements for Large Projects – The hydromodification provisions are very prescriptive and are event-based. These detailed prescriptions are contrary to the continuous flow and water balance methodologies used in the Southern Orange County SAMP and HCP Water Quality Management Plan. Provision D.1.h (5) should allow for an equivalent, or better, hydromodification control interim standard to be used for large projects. See also comments below regarding interim requirements for large projects.

e. SMC and SCCWRP Hydromodification Criteria - It seems highly inappropriate and contrary to regulatory agency practice to mandate criteria based on findings of studies prepared by non-regulatory agencies without full public hearing and the normal regulations adoption process. Additionally, in the case of the Southern Orange County SAMP and HCP, such findings could create inconsistencies with USACE and USFWS approval requirements.

Thus, the "one-size fits all" approach must be re-examined and should be modified to allow for the use of alternative measures and programs for achieving water quality goals based on larger scale planning programs

Recommendation

Suggest inserting the following language at the end of Section D.1.c.:

Treatment control systems may be integrated with hydromodification control systems through measures such as "combined control systems."

Suggest revising the language of Section D.1. c. (6) (b) addressing "dry weather flows" to read as follows:

> All dry weather flows containing significant pollutant loads must either be diverted from infiltration devices or may be treated through the use of natural treatment systems or equivalent measures and then infiltrated where soils are appropriate.

Suggest revising the language of Section D.1.h.(3) (Implement Hydromodification Management Strategy) as follows

> In the absence of a sub-watershed or watershed plan that has been incorporated into a JURMP, each Copermittee must implement, or require implementation of, a suite of management measures within each Priority Development Project to protect downstream beneficial uses and prevent adverse physical changes to downstream channels. Where a sub-watershed or watershed plan has been incorporated into a JURMP and provides for comprehensive hydromodification measures addressing the geomorphic/hydrologic characteristics of the sub-watershed or watershed, such measures shall govern the hydromodification requirements for projects undertaken within the planning area.

Suggest inserting the following language in Section D.1.h.(5) addressing "Interim Requirements of Large Projects:" at the end of subsection 5

> (b) For large interim projects subject to a sub-watershed or watershed plan that comprehensively address geomorphic/hydrologic conditions consistent with the requirements of subsections (1), (2), and (3) above, such measures shall be considered the required hydromodification measures pursuant to this subsection. References to "onsite" control shall include areas authorized pursuant to a 401 certification of a CWA 404 permit and/or a WDR for discharges to non-federal waters.

Suggest modifying the following language in Section D.1.h.(4) {"Develop and Implement Hydromodification Criteria) as follows:

> "Within two years of adoption of this Order, each Copermittee must revise its SUSMP/WQMP . . . to implement updated hydromodification criteria for all Priority Development Projects. Criteria must specifically consider findings from hydromodification publications produced by the Stormwater Monitoring Coalition SMC and Southern California Coastal Water Research Project (SCCWRP), as appropriate to conditions in the San Juan Hydrologic Unit, as well as approved SAMP, HCP and other comprehensive planning programs. If SMC and SCCWRP publications include descriptive or numeric criteria applicable to the San Juan Hydrologic Unit, then those criteria must also be considered."

B. Programmatic Approvals

During the processing of the HCP and SAMP, RMV raised with staff the issue of integration of the Board's requirements for water quality protection with the SAMP and HCP. In particular, RMV discussed review and approval by the Regional Board of the WQMP framework and strategies. At the time the Board declined to participate in an effort that would have resulted in some form of programmatic approval. RMV continues to believe that cross-coordination of the HCP, SAMP and the Board requirements would maximize the benefits to water quality protection in Orange County.

(1) Need to Provide for the Approval of Programmatic Water Quality Management Programs Comparable to the SAMP, HCP and Other Large-Scale Aquatic and Uplands Resource Programs that Have Been Carried Out in Orange County

Comment: Many of the prescriptive measures in the Tentative Order do not take into account and may even contradict conditions of approval of programs such as the SAMP and HCP specifically directed toward the protection of aquatic systems. Similarly, the provisions of the Tentative Order do not provide the requisite flexibility to allow coordination between adaptive management undertaken within the framework of SAMP and HCP provisions and adaptive management undertaken as part of the WQMP identified as a "coordinated management program" by the Southern Orange County SAMP and HCP.

a. Section I. D. of the Corps Special Permit Conditions for the Southern SAMP contains geographic specific conditions for the protection of aquatic resources and water quality that must be factored into the implementation of the WQMP. Likewise, the HCP Appendix U contains similar provisions that were coordinated with the SAMP. (The relevant portions of the SAMP Long Term Individual Permit and HCP Appendix U are included as Attachments D and E).

b. Section II of the Corps Special Permit Conditions set forth detailed "Project Construction" conditions for controlling sediment runoff and protecting aquatic resources that must be coordinated with implementation of the WQMP.

c. The SAMP and HCP provide for an integrated Habitat Reserve Management Program with which the WQMP is required to be coordinated. The provisions of the Tentative Order must allow for flexibility in assuring such coordination.

Recommendation

Suggest adding the following language after the second introductory paragraph in Section D (JURMP) (page 23):

> A WURMP, or any sub-watershed plan, that encompasses large-scale aquatic systems, such as a SAMP or HCP, may be included in a co-permittee JURMP. Programmatic measures provided for through such alternative conservation planning programs such as a SAMP and/or HCP may be employed as alternative measures to the specific measures identified in this Order for addressing water quality and hydromodification issues through the adoption, approval and implementation of a JURMP

In addition to the comments above, Rancho Mission Viejo is also providing additional technical comments in Attachment A.

We appreciate the opportunity to provide these comments and look forward to the Board's responses. If you have any questions regarding these comments please contact Laura Coley Eisenberg of my staff at (949) 240-3363.

Sincerely,

Richard Broming
Senior Vice President
Planning & Entitlement

Enc:
Attachment A
Attachment B
Attachment C
Attachment D
Attachment E

Figures:
HCP Figure 7-M
SAMP Figure 4.1.1-3
SAMP Figure 6-1
WQMP Figure 3-7
SAMP Figure 8-1

pc: Jeremy Haas, SDRWQCB