

State of California
California Regional Water Quality Control Board
Santa Ana Region

June 19, 2020

STAFF REPORT

ITEM: 6

SUBJECT: Menifee North Specific Plan (TTMs 29326, 29327, 29328, and 31820)
Residential Development Project, Diversified Pacific Communities,
Unincorporated Area of Riverside County (Homeland), Order No. R8-
2020-0031

DISCUSSION:

California Water Code (CWC) section 13376 states that any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States (U.S.) within the jurisdiction of this State shall file a report of discharge in compliance with CWC 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 U.S. 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 (USACE) CWA section 404 permits for dredged and fill material discharges. The State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations (CCR) 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 Board Order No. 2003-0017-DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that Have Received State Water Quality Certification."

Because of Supreme Court decisions that have limited the authority of the USACE to regulate discharges of dredged and fill material to waters of the U.S., certain proposed discharges of dredged or fill material to surface waters of the State are no longer

subject to USACE jurisdiction (these are known as non-federal waters). As a result, these projects are not subject to a CWA section 404 permit from the USACE and do not require a Certification. In the absence of the need to obtain a Certification, the State Water Board has asserted the State's authority to regulate discharges of dredged and fill materials to waters of the State under the Porter-Cologne Water Quality Control Act.

On May 4, 2004, the State Water Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to Be Outside of Federal Jurisdiction." Numeric impact thresholds, however, limit the application of Order No. 2004-0004-DWQ to relatively small discharges of dredged or fill material. Therefore, individual WDRs are issued by the applicable Regional Water Quality Control Board.

On September 4, 2019, the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) received a Report of Waste Discharge (ROWD) for the Menifee North Specific Plan (TTMs 29326, 29327, 29328, and 31820) Residential Development Project from Diversified Pacific Communities (discharger). The Project was assigned the Santa Ana Water Board WDID No. 302019-24. The discharger paid a \$1,638.00 application fee and a \$2,915.00 (0.28-acre fill) project fee. The project fee amount was determined as required by CCR, Title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as Category A – Fill and Excavation Discharges (fee code 84) with the dredge and fill fee calculator.

The Project is for the subdivision of 63.60 acres into an approximately 227-lot residential development. Development activities would result in temporary and permanent impacts to waters of the State. Project activities would also include the construction of roads, open space, water quality features, and associated infrastructure.

The Project is located in Homeland, an unincorporated area of western Riverside County within Section 7, Township 5 South, Range 2 West on the Winchester 7.5-minute U.S. Geological Survey topographic quadrangle (latitude 33°44'51" N, longitude -117°7'21" W). More specifically, the site is situated immediately north of Highway 74 and bound on the west by Briggs Road, to the north by Watson Road, and to the east by Leon Road. General land uses near the Project include residential to the east and agriculture to the west. The Project comprises Assessor parcel Numbers 457-120-065, 457-320-001 through -012, -017, -018, -020 through -024, 457-340-018 through -021, 028, and 457-350-006.

Unavoidable permanent impacts to waters of the State would occur within the Project activities. A total of 0.28 acre (5,056 linear feet) of permanent impacts would occur to isolated, non-wetland waters. These impacts will be mitigated through the purchase of 0.56 acre of rehabilitation credits through the Riverpark Mitigation Bank. In addition, avoidance and minimization measures and best management practices will be conducted to reduce Project impacts to water quality beneficial uses.

The discharges of fill would occur in receiving waters, including two isolated, unnamed ephemeral drainages within the eastern portion of Project site. Reach 3 of the San Jacinto River, which is a tributary of Canyon Lake, is the closest downstream waterway, although no surface water connection exists between this waterway and the man-made basin. Designated beneficial uses (existing or potential) of the receiving waters of the San Jacinto River Reach 3 include: Intermittent Agricultural Recharge (AGR), Intermittent Groundwater Recharge (GWR), Intermittent Water Contact Recreation (REC 1), Intermittent Non-contact Water Recreation (REC 2), Intermittent Warm Freshwater Habitat (WARM), Intermittent Wildlife Habitat (WILD) and Rare, Threatened, or Endangered Species (RARE).

The County of Riverside adopted Mitigative Negative Declarations (MNDs) for the Project on February 6, 2007 for TTM No. 31820 (4.92 ac, 17 Lots), on March 13, 2007 for TTM No. 29326 (19.1 ac, 58 Lots), on June 6, 2007 for TTM No. 29327 (21.1 ac, 78 Lots) and on September 11, 2007 for TTM No. 29328 (19.32 ac, 74 Lots) as lead agency for the California Environmental Quality Act. The County of Riverside also filed Notices of Determination at the Clerk of the Board of Supervisors, County of Riverside, on March 12 and March 26, 2007, June 9, 2007 and August 28, 2007 respectively.

The Santa Ana Water Board has considered the MNDs filed by the County of Riverside and subsequent information provided by the discharger. More specifically, the Santa Ana Water Board considered those sections of the MNDs pertaining to impacts to water quality standards. Based on the mitigation proposed in the MNDs and the Conditions set forth in the proposed Order, potentially adverse impacts to water quality standards should be reduced to a less than significant level and beneficial uses protected, if all stated mitigation and conditions are performed. Thus, the Santa Ana Water Board independently finds that to avoid or mitigate impacts to water quality to a less than significant level, changes or alterations have been required in the Project.

RECOMMENDATION:

Adopt Order No. R8-2020-31, as presented.

Comments were solicited from the following:

Jim Mace, U. S. Army Corps of Engineers, Los Angeles Office
[\(James.E.Mace @usace.army.mil\)](mailto:James.E.Mace@usace.army.mil)

Melissa Scianni, U.S. Environmental Protection Agency (Scianni.Melissa@epa.gov)

Carly Beck, CA Department of Fish and Wildlife (Carly.Beck@wildlife.ca.gov)

State Water Board, Division of Water Quality – Water Quality Certification Unit
[\(Stateboard401@waterboards.ca.gov\)](mailto:Stateboard401@waterboards.ca.gov)

Teresita Sablan, State Water Board, Office of the Chief Counsel
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Nolan C. Leggio, Diversified Pacific Communities (NLeggio@diversifiedpacific.com)

Amir Morales, Helix Environmental Planning (AmirM@helixepi.com)

State of California

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2020-0031

Waste Discharge Requirements
for

Menifee North Specific Plan (TTMs 29326, 29327, 29328, and 31820) Residential
Development Project
Diversified Pacific Communities
Homeland, Riverside County

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

1. This Order is for Waste Discharge Requirements (WDRs) for the Menifee North Specific Plan (TTMs 29326, 29327, 29328, and 31820) Residential Development Project (Project).

WDRs are necessary to address impacts of dredged and fill material on the beneficial uses of waters of the State (WOTS). HELIX Environmental Planning, Inc., on behalf of Diversified Pacific Communities (discharger), submitted a Report of Waste Discharge (ROWD) on September 4, 2019. The Project was assigned the Santa Ana Water Board WDID No. 302019-24. No Clean Water Act (CWA) section 404 permit or other federal approvals would be required because the United States (U.S.) Army Corps of Engineers determined that there would be no Project impacts to waters of the U.S. Since only WOTS would be impacted, an ROWD was required.

The ROWD confirmed that the Project would only impact WOTS. Therefore, only WDRs, instead of a CWA Section 401 Water Quality Certification, would be issued for this Project for impacts of dredged and fill materials to WOTS.

2. This Order regulates the discharge of fill material to WOTS. An application fee of \$1,638.00 was received on September 4, 2019. Prior to the issuance of this Order, the discharger paid an additional fee of \$2,915.00 for Project impacts to WOTS. The fee amount was determined as required by California Code of Regulations (CCR), title 23, sections 3833(b)(3) and 2200(a)(3) and was

calculated as Category A - Fill and Excavation Discharges (fee code 84) with the dredge and fill fee calculator.

3. The Project proposed in the application is for constructing a residential development on 63.60 acres into approximately 227 residential lots. Development activities would result in permanent impacts to WOTS. Project activities would also include the construction of roads, open space, water quality features, and associated infrastructure.
4. The Project footprint would result in permanent impacts to ephemeral drainages and isolated WOTS. Construction activities would impact two existing isolated ephemeral drainages.
5. The Project's grading and other construction activities would cause permanent impacts to 0.28 acre and 5,056 linear feet of WOTS.
6. The Project is located in the unincorporated Homeland area of western Riverside County within Section 7, Township 5 South, Range 2 West on the Winchester 7.5-minute U.S. Geological Survey topographic quadrangle (latitude 33°44'51" N, longitude -117°7'21" W). The site is situated north of Highway 74 and south of Watson Road and is bordered on the east by Leon Road and on the west by Briggs Road. General land uses near the Project include residential to the north and south and agriculture to the east. The Project comprises Assessor Parcel Numbers: 457-120-065, 457-320-001, 457-002-012, 457-002-017, 457-002-018, 457-020-024, 457-340-018, 457-019-021, 457-019-028, and 457-350-006. A map showing the Project location is found in Attachment A of this Order.
7. Reach 3 of the San Jacinto River is the closest downstream waterway, although no surface water connection exists between this waterway and the existing on-site drainages. Reach 3 of the San Jacinto River has designated beneficial uses (existing or potential) that include:
 - i. Intermittent Agricultural Supply (AGR)
 - ii. Intermittent Groundwater Recharge (GWR)
 - iii. Intermittent Water Contact Recreation (REC1)
 - iv. Intermittent Non-Contact Water Recreation (REC2)
 - v. Intermittent Warm Freshwater Habitat (WARM)
 - vi. Intermittent Wildlife Habitat (WILD)
 - vii. Rare, Threatened, or Endangered Species (Rare)
8. The discharger will provide compensatory mitigation for permanent impacts to 0.28 acres to WOTS through the purchase of 0.56 acres of rehabilitation credits from the Riverpark Mitigation Bank.

9. The Santa Ana Water Board has the authority to regulate the discharge of dredged and fill materials through the issuance of WDRs pursuant to California Water Code (CWC) section 13263. The Santa Ana Water Board has determined that WDRs are necessary to adequately address the Project's potential impacts on the beneficial uses of WOTS.
10. CWC section 13263 authorizes the Santa Ana Water Board, after any necessary hearing, to prescribe requirements as to the nature of any proposed discharge with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements must implement any relevant water quality control plans that have been adopted and take into consideration the beneficial uses to be protected, the water quality objectives reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of CWC section 13241. In accordance with subdivision (g) of section 13263, all discharges of waste into WOTS are privileges, not rights, and the WDRs in this Order shall not create a vested right to continue to discharge and are subject to rescission or modification.
11. Pursuant to CWC section 13267, the Santa Ana Water Board, in establishing or reviewing any water quality control plan or WDRs or in connection with any action relating to any plan or requirement authorized by CWC Division 7, may investigate the quality of any WOTS within its region. In conducting such an investigation, the Santa Ana Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, furnish, under penalty of perjury, technical or monitoring program reports. The burden, including costs, of these reports must bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. The WDRs contained in this Order incorporate requirements for water quality monitoring and Project reporting, which are necessary to ensure that the discharge of dredged and fill material complies with WDRs and is protective of the environment.
12. The WDRs in this Order are adopted pursuant to CWC sections 13263 and 13267. The WDRs set forth the requirements, prohibitions, and other conditions to implement the Water Quality Control Plan for the Santa Ana River Basin (Basin Plan), and the discharger's responsibilities for monitoring and reporting. The discharger is responsible for ensuring compliance with the WDRs. In addition, this Order also regulates the discharge of fill material to WOTS.

13. Pursuant to CCR, Title 14, Chapter 3, section 15096, as a responsible agency, the Santa Ana Water Board is required to consider California Environmental Quality Act (CEQA) documents prepared by the lead agency to determine whether a Project should receive WDRs. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project that it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by CCR section 15091 and, if necessary, section 15093 for each and every significant impact of the Project.
14. On February 6, March 13, June 6, and September 11, 2007, the County of Riverside, as lead agency for CEQA, adopted several Mitigative Negative Declarations (MNDs) for the Project and filed Notices of Determination for the corresponding MNDs at the Clerk of the Board of Supervisors, County of Riverside on February 12, March 26, July 9, and September 11, 2007, respectively.
15. As required by CCR section 15096, in approving this Order, the Santa Ana Water Board has considered the MNDs adopted by the County of Riverside and subsequent information provided by the discharger. More specifically, the Santa Ana Water Board considered those sections of the MNDs pertaining to impacts to water quality standards. Based on the mitigation proposed by the discharger and the Conditions set forth in this Order, potentially adverse impacts to water quality standards should be reduced to a less than significant level and beneficial uses protected, if all stated mitigation and conditions are performed.
16. The Santa Ana Water Board has considered antidegradation pursuant to State Water Resources Control Board (State Water Board) Resolution No. 68-16 and Title 40, Code of Federal Regulations section 131.12 and finds that the discharge permitted under this Order is consistent with those provisions. State Water Board Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. Minimal water quality degradation may be allowed only if any change in water quality is consistent with the maximum benefit to the people of the State; the degradation will not unreasonably affect present and anticipated beneficial uses; and the degradation will not result in violation of any applicable water quality control plan. Discharges must meet requirements that will result in the best practicable treatment or control to avoid pollution or a condition of nuisance.

Consistent with the antidegradation policy, any degradation resulting from the discharges authorized by this Order provides the maximum benefit to the people

of the State. Flood protection is critical to the safety of the public. Moreover, this Order contains WDRs to ensure present and future beneficial uses are maintained or enhanced through compensatory mitigation and monitoring requirements for authorized impacts to WOTS. The WDRs ensure that the highest level of water quality is maintained consistent with the maximum benefit to the people of the State by prohibiting certain discharges, requiring the implementation of best management practices, and requiring the discharger to submit an annual report.

17. The Santa Ana Water Board has notified the discharger and other interested agencies and persons of its intent to prescribe WDRs for the discharge and has provided them with an opportunity for public hearing and an opportunity to submit their written views and recommendations.

IT IS HEREBY ORDERED that the discharger, in order to meet the provisions contained in CWC Division 7 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 CWC section 13050.
2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.
3. The discharger shall comply with conditions described in and required by the State Water Board's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ, as amended by Order No. 2012-0006-DWQ; NPDES No. CAS000002) and any subsequent approvals.
4. The discharger shall comply with the local regulations associated with the Santa Ana Water Board's Municipal Stormwater Permit issued to Riverside County and co-permittees under NPDES No. CAS618033 and WDR Order No. R8-2010-0033, and subsequent iterations thereof.
5. The discharge of fill materials shall be limited to the placement of native fill and inert materials, as defined in CCR Division 2, Title 27, section 20230. The discharge of fill material other than native soil is prohibited, unless authorized by the Santa Ana Water Board.

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes, into channels, surface waters, or any place where they would contact or be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of 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 NPDES permit are prohibited.
5. During the grading and filling operation, there shall be no on-site fueling, lubrication, changing of oil or other equipment fluids and their filters, or any other maintenance or storage of construction equipment within or next to drainage areas or other surface runoff conveyances.

C. PROVISIONS:

1. Prior to the start of Project activities, the discharger shall purchase 0.56 acre of rehabilitation credits from the Riverpark Mitigation Bank and submit verification of the purchases to Santa Ana Water Board staff.
2. The discharger shall maintain a copy of this Order at the Project site so that it is always available to site operating personnel. Key operating personnel shall be familiar with the Order's content.
3. The discharger shall comply with all the requirements of this Order. Any violation of this Order constitutes a violation of the CWC, may constitute a violation of the federal 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.
4. 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.

5. 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.
6. 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.
7. 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.
8. This Order does not convey any property rights of any sort, or any exclusive privilege.
9. This Order is not transferable in its entirety or in part to any person or organization except after notice to the Santa Ana Water Board in accordance with the following terms:
 - a. The discharger shall notify the Santa Ana Water Board by submitting a Transfer of Property Ownership Report of any change in ownership or interest in ownership of the Project area. The discharger and purchaser shall sign and date the notification and provide such notification to the Santa Ana Water Board at least ten days prior to the transfer of ownership. The purchaser shall also submit a written request to the Santa Ana Water Board to be named as the discharger in a revised order.
 - b. Until such time as this Order has been modified to name the purchaser as the discharger, the discharger identified in this Order shall continue to be responsible for all requirements set forth in this Order.
10. 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 Santa Ana Water Board.
11. The discharger shall submit an Annual Report each year on the anniversary of this Order. Annual reporting shall continue until a Notice of Project Complete Letter is issued to the discharger. The contents of the Annual Report shall include a construction summary, Project process and schedule (including ground disturbance, site clearing and grubbing, and site construction), and

implementation status of best management practices during the Active Discharge Period. If the Project has not started, the discharger shall provide an estimated start date and reasons for delay.

12. The discharger shall submit a *Commencement of Construction Report* at least seven days prior to start of initial ground disturbance activities.
13. The discharger shall submit a *Request for Notice of Completion of Discharges Letter* following completion of active Project construction activities, including any required restoration and discharger-responsible mitigation. This request shall be submitted to the Santa Ana Water Board staff within thirty days following completion of all Project construction activities. Upon acceptance of the request, Santa Ana Water Board staff will issue to the discharger a *Notice of Completion of Discharges Letter*, which will end the active discharge period and, if appropriate, associated annual fees.
14. The discharger shall submit a *Request for Notice of Project Complete Letter* when construction and any required post-construction monitoring is complete and no further Project activities will occur. This request shall be submitted to Santa Ana Water Board staff within thirty days following completion of all Project activities. Upon approval of the request, the Santa Ana Water Board staff will issue to the discharger a *Notice of Project Complete Letter*, which will end the post discharge monitoring period and associated annual fees.
15. The discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. Records may be maintained electronically. This period may be extended during the course of any unresolved enforcement action or litigation regarding this discharge or when requested by the Santa Ana Water Board.
16. The Santa Ana Water 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.
17. This Order becomes effective on the date of adoption by the Santa Ana Water Board.
18. This Order will remain valid for five years from the date of this Order.

I, Hope A. Smythe, 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 19, 2020.

HOPE A. SMYTHE
Executive Officer







