

State of California

California Regional Water Quality Control Board
Santa Ana Region

May 7, 2021

STAFF REPORT

ITEM: 8

SUBJECT: Rancho Diamante Investments, LLC, Rancho Diamante TTM 35393
Phase 4 Project, City of Hemet, Riverside County, Order No. R8-2021-
0027

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 (WOTUS) within the jurisdiction of this State shall file a report of the discharge in compliance with CWC section 13260. Section 13260(a) of the CWC requires a report of waste discharge (ROWD) be filed by any person discharging waste or proposing to discharge waste that could affect the quality of the waters of the State (WOTS). Under federal Clean Water Act (CWA) section 401, applicants for a federal permit or license for any activity that may result in a discharge to WOTUS must obtain a 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, 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 and United States Environmental Protection Agency's (USEPA's) periodic clarifications of WOTUS rules that have limited the authority of the USACE to regulate discharges of dredged and fill material to WOTUS, certain discharges of dredged or fill material to surface WOTS are no longer subject to USACE jurisdiction (these waters are known as non-federal waters). As a result, these discharges are not subject to a CWA section 404 Permit from the USACE and do not require Certification because federal waters have been redefined. In the absence of a project's need to obtain a Certification for waters now deemed only State waters, the

State of California
California Regional Water Quality Control Board
Santa Ana Region
Order No. R8-2021-0027

Waste Discharge Requirements
for
Rancho Diamante Investments, LLC
Rancho Diamante TTM 35393 – Phase 4
City of Hemet, 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 Rancho Diamante Investments, LLC (hereinafter, discharger) for the Rancho Diamante TTM 35393 – Phase 4 (Project).
2. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent amendments (Basin Plan) and other plans and policies. The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the State, water quality objectives to protect those uses, and the State and federal antidegradation policies.
3. WDRs are necessary to address impacts of dredged and fill material on the beneficial uses of waters of the State (WOTS).
4. Helix Environmental Planning, on behalf of the discharger, submitted an application for a 401 Water Quality Standards Certification and a Report of Waste Discharge (ROWD) for the proposed Project (Rancho Diamante TTM 35393 – Phase 4). The Project application was received by the Santa Ana Water Board on August 20, 2020 and was assigned the WDID No. 332020-38.
5. An application and project fee of \$1949 was received on August 20, 2020. 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 & Excavation Discharges (fee code 84) with the dredge and fill fee calculator.
6. On January 23, 2020, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers (USACE) issued the Navigable Waters Protection Rule (Rule) that includes a revised definition of Waters of the U.S. (WOTUS). This Rule reemphasized that isolated waters that are geographically separate and not tributary to a WOTUS are not considered WOTUS. In addition, ephemeral waters and water conveyances dug in uplands are not considered WOTUS. The USACE

made a determination on February 22, 2021 that the project site had no WOTUS, that the waters on site were isolated and dug in uplands. As a result, dredge or fill of the Project sites waters would not require a Clean Water Act section 404 permit and that States could not issue a CWA section 401 Water Quality Standards Certification. The Santa Ana Water Board staff, as well of the California Department of Fish and Wildlife, has determined however that WOTS exist on site.

7. The ROWD as well as the 401 Water Quality Standards Certification application were considered complete on February 10, 2021.
8. This Order regulates the discharge of fill material to WOTS. Onsite WOTS consist of one unnamed tributary that enters the property from the adjacent housing tract to the east and flows approximately 801 feet across the site where it connects to the flood control channel that carries flows to west and eventually into the isolated basin. This tributary consists of an area of approximately 0.06 acre. The entire tributary would be filled by Project mass grading.
9. The Project site consists of a total of 31.83 acres. The discharger proposes to construct 145 single family residential lots and associated infrastructure, including open space and park, roads, landscaped slopes, and drainage facilities, on the Project site.
10. The Project site is within the City of Hemet in Riverside County and is located north of Domenigoni Parkway, east of Warren Rd, south of Mustang Way and west of Fisher St. The Project's coordinates are 33.8165° N/ -117.1550° W. Maps showing the Project location are found in Attachment A of this Order.
11. The Project site's assumed beneficial uses (existing or potential) are:
 - i. Intermittent Water Contact Recreation (REC 1)
 - ii. Non-contact Water Recreation (REC 2)
 - iii. Intermittent Warm Freshwater Habitat (WARM)
 - iv. Wildlife Habitat (WILD)
12. The Project would permanently impact and fill a total of 0.06 acre of ephemeral WOTS through mass grading.
13. The discharger would provide compensatory mitigation for the permanent physical loss of 0.06 acre of WOTS through the purchase of 0.06 acre of re-establishment credits and 0.06 acre of rehabilitation credits from the Riverpark Mitigation Bank. The mitigation purchase represents a 2:1 mitigation to impact ratio and would offset Project impacts to the ephemeral WOTS. In addition, best management practices (BMPs) would be implemented to treat and manage stormwater onsite. An onsite storm water quality basin would be installed on site

to detain, hold, and treat Project stormwater and urban flows. Other BMPs would be implemented to avoid construction-related impacts to downstream waters.

14. 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.
15. 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 CWC 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.
16. 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.
17. 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 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.
18. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption,

cooking, and sanitary purposes. This Order promotes that policy by requiring that discharges not exceed maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.

19. 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.
20. The City of Hemet, as the lead agency, adopted an Environmental Impact Report (EIR) for this Project. On March 12, 2009 the City of Hemet filed a Notice of Determination (NOD) with the County Clerk of Riverside County for Tentative Tract Map No. 35393. On August 1, 2017, the City of Hemet approved a modification to the proposed project EIR and filed a NOD for this action.
21. As required by CCR section 15096, in approving this Order, the Santa Ana Water Board has considered the EIR adopted by the City of Hemet and subsequent information provided by the discharger. More specifically, the Santa Ana Water Board considered those sections of the EIR pertaining to impacts to water quality standards. Based on the mitigation proposed in the EIR 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.
22. 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.
23. Consistent with the antidegradation policy, any degradation resulting from the discharges authorized by this Order must provide 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 BMPs, and requiring the discharger to submit an annual report.

24. 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:

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 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 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.
5. 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. CAS61806 and WDR Order No. R8-2010-0033, and subsequent iterations thereof.
6. If construction dewatering discharges, including temporary stream diversions, are necessary to carry out the Project, the discharger shall comply with Santa Ana Water Board Order No. R8-2020-0006, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality.

7. The discharge of fill materials shall be limited to the placement of native fill and inert materials, as defined in CCR Title 27, Division 2, section 20230. The discharge of fill material other than native soil is prohibited, unless authorized by the Santa Ana Water Board.

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 onsite 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.

PROVISIONS:

1. Prior to the start of Project grading activities, the discharger shall submit to the Santa Ana Water Board the receipt of the purchase of 0.06 acre of rehabilitation credits and 0.06 acre of re-establishment credits from the Riverpark Mitigation Bank.
2. To treat onsite stormwater, the discharger shall construct a basin as described in the WQMP to treat project and offsite storm water and urban flows. In addition, stormwater and construction and post-construction BMPs as described in the WQMP and application shall also be implemented.
3. 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.
4. The discharger shall comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the CWC, may constitute a

violation of the federal Clean Water Act 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 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.
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 Santa Ana Water Board.

12. 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 status and schedule (including ground disturbance, site clearing and grubbing, site construction), and implementation status of BMPs during the Active Discharge Period. If the Project has not started, the discharger shall provide an estimated start date and reasons for delay.
13. The discharger shall submit a *Commencement of Construction Report* at least seven days prior to start of initial ground disturbance activities.
14. 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.
15. 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.
16. 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.
17. The Santa Ana Water Board and other authorized representatives shall be allowed to:

- a. Enter premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;
 - b. Access and copy any records that are kept under the requirements of this Order;
 - c. Inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and
 - d. Photograph, sample, and monitor for the purpose of assuring compliance with this Order.
18. This Order becomes effective on the date of adoption by the Santa Ana Water Board.
19. 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 May 7, 2021.

HOPE A. SMYTHE
Executive Officer



HELIX
Environmental Planning

Aerial Vicinity
Figure 2



State Water Board has asserted the State's authority to regulate discharges of dredged and fill to WOTS under the Porter-Cologne Water Quality Control Act. Where discharges would occur to both WOTUS and non-federal WOTS, Waste Discharge Requirements (WDRs) can be issued to cover both impacts and act as a Certification for those impacts to WOTUS, in lieu of issuing a separate action.

On August 20, 2020 the Santa Ana Water Board received from HELIX Environmental Planning, Inc., on behalf of the discharger, a Report of Waste Discharge (ROWD) and a Certification application for the Rancho Diamante TTM 35393 Phase 4 Residential Development Project (Project). An application fee of \$1,949.00 was submitted with the application. This Project was given the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) Waste Discharge Identification Number 332020-38. Upon review of the ROWD and Certification application and supplemental information submitted by the discharger, Santa Ana Water Board staff deemed them complete on February 10, 2021.

On January 23, 2020, USEPA and USACE issued the Navigable Waters Protection Rule that includes a revised definition of WOTUS. This rule determined that ephemeral waters, reaffirmed that isolated waters (not tributary to a navigable water), and water conveyances dug in uplands would not be considered as WOTUS. As a result of the Project waters being considered a water conveyance dug in uplands and isolated, the USACE issued a jurisdictional delineation on February 22, 2021 that determined that there were no WOTUS on the Project site.

The discharger proposes to construct the Rancho Diamante TTM 35393 Phase 4 residential project, which would subdivide 31.83 acres into 145 single-family residential lots and an associated private Homeowners Association and open space areas. Paseos walkways are proposed for open space, pedestrian pathways would be constructed, and the conveyance of onsite and offsite drainage would be installed. A central linear water quality basin would be constructed.

The Project site is within the City of Hemet in Riverside County and is located north of Domenigoni Parkway, east of Warren Rd, south of Mustang Way and west of Fisher St. The Project's coordinates are 33.8165° N/ -117.1550° W. Maps showing the Project location are found in Attachment A of this Order.

The Project would permanently impact a total of 0.06 acre of ephemeral WOTS that are present onsite. Mass grading to prepare the site for construction of the residential lots and associated infrastructure would result in the permanent loss of all onsite WOTS.

The discharger would provide compensatory mitigation for the permanent physical loss of 0.06 acre of WOTS through the purchase of 0.06 acre of rehabilitation credits and 0.06 acre of re-establishment credits from the Riverpark Mitigation Bank. The mitigation purchase represents a 2:1 mitigation to impact ratio and would offset Project impacts to the ephemeral WOTS.

The Project would provide Best Management Practices to reduce impacts from Project stormwater and urban flows. The construction of an onsite and offsite conveyance drainage system would be completed. A central linear water quality basin would be constructed to receive and treat both onsite and offsite oncoming urban flows.

The City of Hemet, as the lead agency, certified an Environmental Impact Report (EIR) for this Project. On March 12, 2009, the City of Hemet filed a Notice of Determination (NOD) with the County Clerk of Riverside County for Tentative Tract Map No. 35393. On August 1, 2107, the City of Hemet Planning Commission approved a substantial conformance of the Project. An NOD was filed for this action, as well.

The Santa Ana Water Board staff has considered the EIR certified by the City of Hemet and subsequent information provided by the discharger. More specifically, the Santa Ana Water Board staff considered those sections of the EIR pertaining to impacts to water quality standards. Based on the mitigation proposed in the EIR, the stormwater BMPs implemented, and the Conditions set forth in the tentative Order No. R8-2021-0027, 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. Compensatory mitigation includes the purchase of 0.06 acre of rehabilitation credits and 0.06 acre of re-establishment credits from the Riverpark Mitigation Bank for impacts to 0.06 acre of WOTS (a 2:1 mitigation ratio of mitigation to impact).

For further information on the proposed Project, please contact Santa Ana Water Board staff Claudia Tenorio at Claudia.Tenorio@waterboards.ca.gov or David Woelfel at David.Woelfel@waterboards.ca.gov.

RECOMMENDATION:

Adopt Order No. R8-2021-0027 as presented.

Comments were solicited from the following:

Melissa Scianni, U.S. Environmental Protection Agency (USEPA)

(Scianni.Melissa@epa.gov)

James E. Mace, USACE, Los Angeles District (James.E.Mace@usace.army.mil)

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