

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

July 30, 2021

STAFF REPORT

ITEM: 8

SUBJECT: Riverside Inland Development, LLC, Veterans Industrial Park 215 Project, City of Moreno Valley, Riverside County, Order No. R8-2021-0038

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 and 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 U.S. 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 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 July 27, 2016 the Riverside Inland Development, LLC (discharger) submitted an application fee of \$84,545.00 and a Certification application for a proposed industrial development, Veterans Industrial Park 215 (hereinafter, Project). The Project was assigned the Santa Ana Regional Water Quality Control Board WDID No. 332016-24. On April 9, 2021, the USACE made a determination that the Project site had no WOTUS because the waters on site have no indicators of an ordinary high-water mark or other signs of inundation, flow or flooding. Additionally, the vegetation present is sparse and of upland species. Subsequently, the discharger, through ELMT Consulting, requested on June 18, 2021 that the Certification application be considered as a Report of Waste Discharge for consideration of Waste Discharge Requirements. Additional Project changes were also included.

The discharger proposes to construct the Project, which encompasses development of an industrial warehouse building totaling approximately 2,022,364 square feet within an approximate 142.5-acre site. The Project site is located in the City of Moreno Valley within unincorporated Riverside County, east of the Interstate 215 Freeway, south of the existing March Field Air Museum, west of the existing runways and facilities of the March Air Reserve Base, and north of the boundary of the City of Perris within the land use jurisdiction of the March Joint Powers Authority. Maps showing the Project location are found in Attachment A of the tentative Order No. R8-2021-0038.

The Project would permanently impact a total of 1.66 acres of WOTS that include ephemeral drainages and seasonal depressions that are present onsite. There are five drainages, each having been previously created in upland habitat to convey stormwaters off the adjacent Interstate 215 freeway. All drainages are ephemeral. The main drainage collects waters from the four drainages and conveys the storm flows diagonally across the site to the southeast corner where they are discharged into the base storm drain system. Approximately 0.15 acre of the receiving channel would be lined to protect that channel from erosion. Mass grading to prepare the site for construction of the industrial development and associated infrastructure would result in the permanent loss of the rest of the WOTS.

The discharger is providing compensatory mitigation for the permanent physical loss of 1.66 acres of WOTS through the purchase of 6.56 acres of rehabilitation credits from the Riverpark Mitigation Bank. The mitigation purchase represents approximately a 4:1 mitigation to impact ratio and would offset Project impacts to the WOTS. Payment into the bank was completed on June 22, 2021.

The Project activities would implement Best Management Practices (BMPs) to control and prevent discharges, such as sediment from erosion of soil surfaces and other pollutants that could impact surface waters. The discharger proposes that BMPs would be implemented as part of the storm water pollution prevention measures in accordance with appropriate stormwater permit requirements.

The March Joint Powers Authority, as the lead agency for compliance with the California Environmental Quality Act, certified an Environmental Impact Report (EIR) for the *Specific Plan No. 8 and 16-06* and filed a Notice of Determination with the Riverside County Clerk on December 18, 2020. Ordinance changes were made to the EIR, and the EIR was certified again by the lead agency and another Notice of Determination was filed on January 13, 2021.

The Santa Ana Water Board staff has considered the EIR and subsequent changes certified by the March Joint Powers Authority 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, the stormwater BMPs to be implemented, and the Conditions set forth in the tentative Order No. R8-2021-0038 and determined that 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 6.56 acres of rehabilitation credits from the Riverpark Mitigation Bank for impacts to 1.66 acres of WOTS (4:1 mitigation to impact ratio).

For further information on the proposed Project, please contact Santa Ana Water Board staff Maher Zaher at Maher.Zaher@waterboards.ca.gov or Kyle Fructuoso at Kyle.Fructuoso@waterboards.ca.gov.

RECOMMENDATION:

Adopt Order No. R8-2021-0038 as presented.

Comments were solicited from the following:

U.S. Environmental Protection Agency (R9cwa401@epa.gov)
James Mace, U.S. Army Corps of Engineers, Los Angeles Office
(File No. SPL-2016-00533) (James.E.Mace@usace.army.mil)
Eric Chan, California Department of Fish and Wildlife (Eric.Chan@wildlife.ca.gov)
Carly Beck, California Department of Fish and Wildlife (LSA No. 1600-2016-0135-R6)
(Carly.Beck@wildlife.ca.gov)
Teresita Sablan, State Water Board, Office of the Chief Counsel
(Teresita.Sablan@waterboards.ca.gov)
State Water Board, Division of Water Quality – Water Quality Certification Unit
(Stateboard401@waterboards.ca.gov)
John Magness, Riverside Inland Development, LLC (John.Magness@hillwood.com)
Thomas McGill, ELMT Consulting (tmcgill@elmtconsulting.com)
Travis McGill, ELMT Consulting (travismcgill@elmtconsulting.com)

State of California
California Regional Water Quality Control Board
Santa Ana Region
Order No. R8-2021-0038
Waste Discharge Requirements
for
Riverside Inland Development, LLC
Veterans Industrial Park 215 Project
City of Moreno Valley, 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 Riverside Inland Development, LLC (hereinafter, discharger) for the Veterans Industrial Park 215 Project (hereinafter, 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. An application for Clean Water Act (CWA) section 401 certification (Certification) and an application fee of \$84,545.00 was received on July 27, 2016. 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. The Project was assigned Santa Ana Water Board WDID No. 332016-24.
5. The Certification application was deemed incomplete on August 4, 2016.
6. The Project was denied Certification without prejudice on March 26, 2020 because information to evaluate impacts and compliance with water quality standards had not been received. In addition, the Project was still undergoing compliance with the California Environmental Quality Act (CEQA).
7. The discharger submitted a water quality management plan and compensatory mitigation plan on April 24, 2020. In reviewing the submittal, Santa Ana Water Board staff issued a supplemental deficiency notice on May 14, 2020. On

January 8, 2021, the discharger submitted the first Notice of Determination on completion Environmental Impact Report (EIR).

8. On April 9, 2021, the U.S. Army Corps of Engineers (USACE) determined that the Project site no longer had waters of the United State (WOTUS) due to a January 23, 2020 change in the definition of WOTUS through the Navigable Waters Protection Rule issued by U.S. Environmental Protection Agency and USACE (File No. SPL-2016-00533). The on-site waters have no indicators of an ordinary high-water mark or other signs of inundation, flow, or flooding. Additionally, the vegetation present is sparse and of upland species. As a result, dredge or fill of the Project site waters would not require a CWA section 404 permit nor a section 401 Water Quality Certification because no federal waters exist at the location. The Santa Ana Water Board staff has determined, however, that WOTS continue to exist on the Project site.
9. On May 10, 2021, the California Department of Fish and Wildlife issued a Notification of Lake and Streambed Alteration (LSA No. 1600-2016-0135-R6) for the discharger to comply with the requirements in the notification, including completing the Project within the proposed term and seasonal work period and implementing all avoidance and mitigation measures to protect fish and wildlife resources.
10. On June 18, 2021, ELMT Consulting, on behalf of the discharger, requested that the Certification application be considered a Report of Waste Discharge (ROWD) for the Project. The ROWD was considered complete on June 18, 2021.
11. This Order regulates the discharge of fill material to WOTS. The Project's onsite WOTS consist of unnamed drainage features tributary to the San Jacinto River and seasonal depressions and are considered by the discharger as non-federal waters and USACE. The San Jacinto River is a major waterbody within the San Jacinto Watershed.
12. The Project site consists of a total 142.5 acres. The discharger proposes to construct the Project, which is part of the March Inland Port Airport in the City of Moreno Valley, Riverside County. The discharger proposes to construct an industrial warehouse building that would allow for a mix of logistics center uses and support airport-related business.
13. The Project site is located north of Nandina Avenue, east of Interstate 215, south of the eastern terminus of Van Buren Boulevard, and west of the March Air Reserve Base's runway. The Project's coordinates are 33.874796° N/ -117.262124° W. Maps showing the Project location are found in Attachment A of this Order.

14. San Jacinto River (Reach 3) has the following designated intermittent beneficial uses (existing or potential):

- i. Agricultural Supply (AGR)
- ii. Groundwater Recharge (GWR)
- iii. Water Contact Recreation (REC 1)
- iv. Non-contact Water Recreation (REC 2)
- v. Warm Freshwater Habitat (WARM)
- vi. Wildlife Habitat (WILD)

15. The Project would permanently impact a total of 1.66 acres of ephemeral and seasonal depression WOTS due to mass grading required for the industrial development and the lining of the receiving stormwater channel to prevent erosion.

16. The discharger has provided compensatory mitigation for the permanent physical loss of 1.66 acres of WOTS through the purchase of 6.56 acres of rehabilitation credits at the Riverpark Mitigation Bank. The mitigation purchase, executed on June 22, 2021, represents approximately a 4:1 mitigation to impact ratio and would offset Project impacts to the WOTS.

17. 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.

18. 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.

19. 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.

20. 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.
21. Pursuant to CCR Title 14, Chapter 3, section 15096, as a responsible agency, the Santa Ana Water Board is required to consider CEQA documents prepared by the lead agency to determine 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.
22. The March Joint Powers Authority, as the lead CEQA agency, certified an Environmental Impact Report (EIR) for *Specific Plan No. 8 and 16-06*, on December 16, 2020. The lead agency filed a Notice of Determination with the Riverside County Clerk (SCH No. 2016081061) on December 16, 2020. Changes were made to the EIR, which was certified again on January 13, 2021. The lead agency filed a second Notice of Determination on January 13, 2021.
23. As required by CCR section 15096, in approving this Order, the Santa Ana Water Board has considered the EIR and subsequent changes certified by the March Joint Powers Authority 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 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.
24. 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.

25. 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 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.
26. 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:

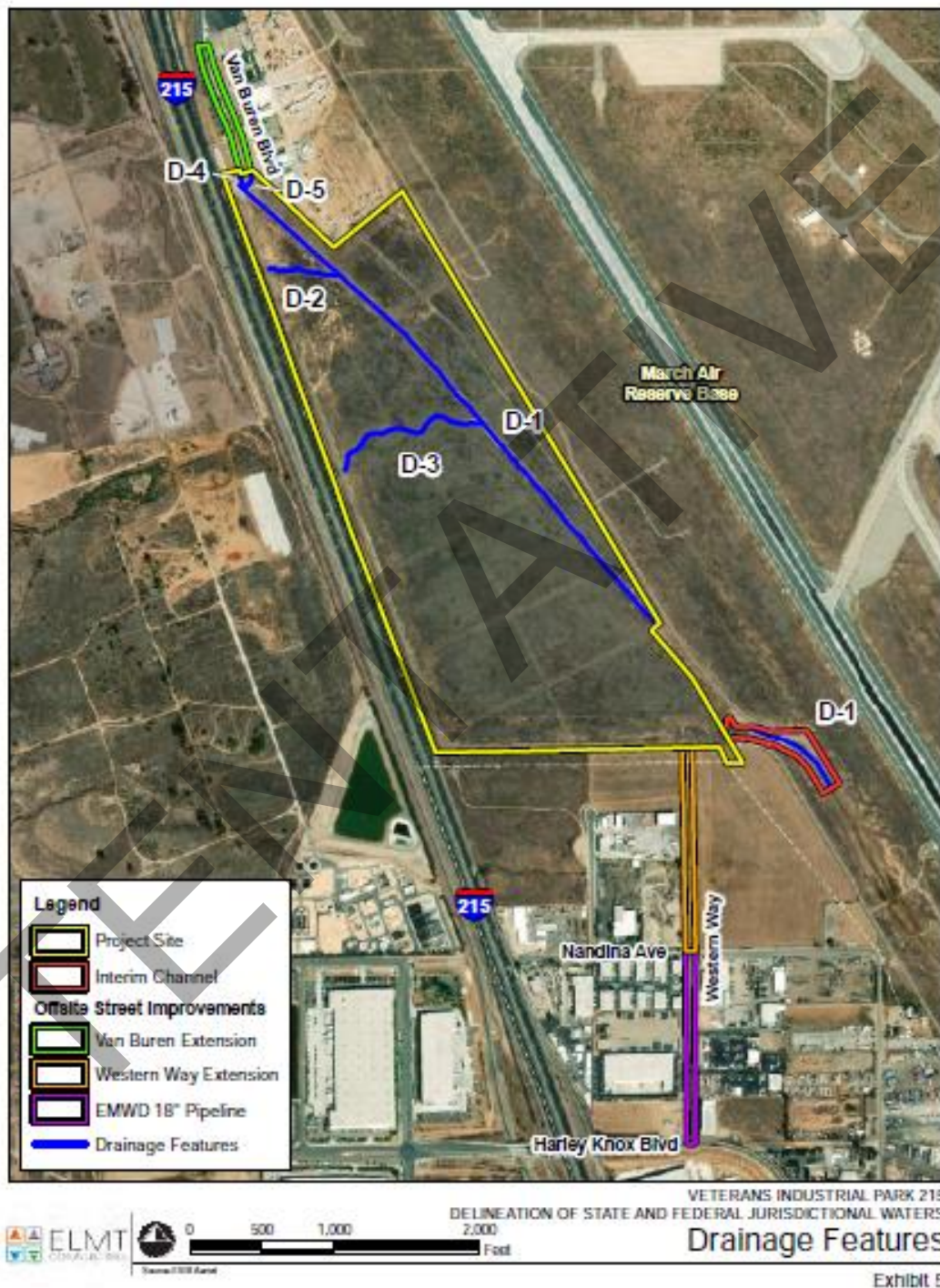
1. The purchase of 6.56 acres of rehabilitation credits at the Riverpark Mitigation Bank shall be used to compensate for the permanent physical loss of 1.66 acres of WOTS as a result of this Project.
2. Low impact development features and construction and post-construction best management practices shall 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 CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order, or a combination thereof.
5. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.
6. The provisions of this Order are severable and, if any provision of this Order or the application of any provisions of this Order to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Order shall not be affected thereby.
7. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.
8. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal, State, or local laws, nor guarantee the discharger a capacity right in the receiving waters.
9. This Order does not convey any property rights of any sort, or any exclusive privilege.
10. This Order is not transferable 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 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.
 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 July 30, 2021.

HOPE A. SMYTHE
Executive Officer



Order No. R8-2021-0038
 Riverside Inland Development, LLC
 Veterans Industrial Park 215 Project
 Attachment A



