

RANCHO MISSION VIEJO

February 20, 2013

Darren Bradford
Environmental Scientist
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

Reference: SDRWQCB Tentative WDR R9-2013-0007

Subject: Rancho Mission Viejo Comments

Dear Darren:

Rancho Mission Viejo (RMV) has reviewed the referenced WDR recently posted on the SRWQCB website for public review and comment. Prior to offering comments on this WDR, we would like the SDRWQCB to be aware of certain background information that is relevant to our comments.

RMV/TCA Settlement Agreement

RMV and the Transportation Corridor Agencies (TCA) are parties to a Settlement Agreement (SA) resulting from prior litigation. This settlement agreement pertains partly to TCA's use of RMV property for mitigation purposes for impacts associated with the construction of SR-241. The settlement agreement contains certain terms and conditions related to mitigation for impacts to wetlands including the form of, parties to, and timing of recordation of conservation easements. Specifically, per Section 2.f (ii)

"RMV shall cause to be granted to The Reserve, and shall cause to be recorded in the Official Records of the County of Orange a Spreader Amendment to the RMV Conservation Easement over the Wetlands Acreage not later than ten (10) days after the date upon which the Agency notifies RMV that it has obtained, and provides RMV with, written evidence that it has achieved the Wetlands Performance Standards established by the Wetlands Resource Agencies."

Thus the SA establishes the following 1) the form of the Conservation Easement – the RMV Conservation Easement, 2) who the grantor is – RMV, 3) who the grantee is – The Reserve at Rancho Mission and; 4) the timing of when the conservation easement is to be recorded.

SSHCP/SAMP Phased Dedication Requirements

The SDRWQCB is aware that RMV is a party to certain ranch wide approvals, including a Long Term 404 Permit issued by the U.S. Army Corps of Engineers (USACE) under the San Juan Creek Watershed/San Mateo Creek Watershed Special Area Management Plan (SAMP), a Master Streambed Alteration Agreement (MSAA) issued by the California Department of Fish and Wildlife (CDFW) and the Southern Subregion Habitat Conservation Plan (SSHCP) approved by U.S. Fish and Wildlife Service (USFWS). These programmatic approvals provide for the development of certain areas of Rancho Mission Viejo and the perpetual conservation of certain other areas of Rancho Mission Viejo in a habitat reserve. The mechanism by which the habitat reserve areas are conserved is described in the SSHCP Phased Dedication Program as follows:

“the enrollment of lands in the San Juan Creek watershed will occur through a two-step process of open space dedication consisting of (1) the phased recordation of irrevocable covenants (the “Irrevocable Covenants”) by affected RMV landowners on or before grading or grubbing, whichever occurs first, for the Ranch Plan Project is commended within each Planning Area (or portion thereof) to be developed, at which times the areas subject to the Irrevocable Covenants (the “Covenant Areas”) will become subject to the AMP component of the HRMP, followed by (2) the phased recordation of conservation easements (the “Conservation Easements”) as soon as practicable but no later than three years following recordation of the corresponding Irrevocable Covenants.”

In accordance with the terms of the SSHCP, the holder of the habitat reserve conservation easements and manager of the habitat reserve lands are separate entities. The holder of all RMV habitat reserve Irrevocable Covenants and subsequent Conservation Easements is The Reserve at Rancho Mission Viejo (The Reserve). Management of the habitat reserve lands is carried out by the Rancho Mission Viejo Land Trust (RMVLT).

RMV Development Schedule

RMV anticipates initiating development of portions of Planning Area 2 this year. Thus, in accordance with the requirements noted above, RMV will be recording Irrevocable Covenants on certain open space associated with Planning Area 2, including in all likelihood TCA’s proposed Mitigation Site A. When these Irrevocable Covenants are recorded, the proposed Mitigation Site A will be enrolled in the Habitat Reserve and subject to all the restrictions of the SSHCP prohibited uses. The site will also be managed and monitored in accordance with the SSHCP Adaptive Management Plan.

With this background information in mind, we offer the following comments and changes to the proposed WDR language. These comments and changes are suggested to ensure that the proposed WDR conditions are consistent with the requirements of the RMV/TCA

SA and provide for implementation of our prior approvals as contemplated by the USACE, CDFW and USFWS.

- A. Page 14. Section VII.C – requires the TCA to provide a description of the legal arrangements & financial assurance, protection & management of compensatory mitigation sites including reporting on same. Since RMVLT will be the long term manager of both compensation sites and The Reserve the conservation easement holder, RMV requests that we be afforded the opportunity to review all information developed to respond to this condition to ensure that the information provided accurately reflects the obligations that RMV already has regarding long-term management, reporting, etc.
- B. Page 16/17. Section VII.F. – in order to address the SA requirements noted above, we suggest the following changes to this condition:

Conservation Easement. The Discharger must comply with the following requirements:

1. The Discharger must provide a copy of the form of the Southern Subregion Habitat Conservation Plan Conservation Easement for the compensatory mitigation sites to the San Diego Water Board no later than 6 months following issuance of this Order. The Conservation Easement Deed shall indicate the "Grantor" (property owner) and "Grantee" (holder) of the Conservation Easement.
2. For the purposes of independent review, and consistent with the terms of the San Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan and Southern Subregion Habitat Conservation Plan, the holder of the Conservation Easement shall be The Reserve at Rancho Mission Viejo. the holder of the Conservation Easement shall not be the Discharger. The Discharger shall provide sufficient funds to the holder of the Conservation Easement land manager, Rancho Mission Viejo Land Trust, to allow the holder to monitor the compensatory mitigation sites in perpetuity and to ensure compliance with the conservation easement and report to the agencies. Funds shall be provided by the Discharger to the holder no later than 18 months of issuance of this Order.
3. The Conservation Easement must ensure that the property for compensatory mitigation will be retained in perpetuity and maintained without future development or encroachment on the site or activities which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the State that it supports. The Conservation Easement or other appropriate legal limitation must prohibit,

~~without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation and managed consistent with the terms of the Conservation Easement.~~

4. The Conservation Easement must provide the Assessor's Parcel Numbers for all the properties in the compensatory mitigation sites.

5. Recordation of the Conservation Easement shall occur no later than ten (10) days after the Discharger receives concurrence from the San Diego Water Board and any other agency with jurisdiction that the Compensatory Mitigation Sites have achieved the performance criteria set forth in the Final Habitat Mitigation and Monitoring Plan.

6. Endowment funding for the interim and long-term management of the compensatory mitigation sites must meet the following requirements:

i The endowment holder shall ~~not be the Discharger~~ be The Rancho Mission Viejo Land Trust.

ii The Discharger must provide the San Diego Water Board with proof of full funding for the endowment fund for the interim and long-term management of the compensatory mitigation sites in accordance with the HMMP no later than 6 months of issuance of this Order.

C. Page 18. Section VIII.A.8 – this section requires preparation of an annual report by the easement holder. RMV prepares an annual compliance and effectiveness report for USFWS, CDFW and the USACE to fulfill the requirements of the SSHCP, MSAA and SAMP. We request the condition be revised as follows:

An annual monitoring report, prepared by the easement holder, documenting compliance with the conservation easement. At the discretion of the Conservation Easement holder, the report may be prepared and submitted as a separate report, or the information may be included in the Annual Compliance & Effectiveness Report prepared for the Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan and Southern Subregion Habitat Conservation Plan;

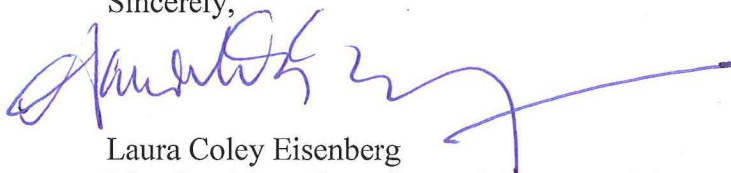
D. Page 23. Section IX. F.4 – in order to clarify where sampling and monitoring may occur, we request the following changes to this section:

Inspection and Entry. The Discharger must allow the San Diego Water Board or the State Water Resources Control Board, and/or their authorized representative(s) (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to:

1. After having provided 24-hour notice, enter upon the Applicant's premises, where a regulated facility or activity is located or conducted or where records are kept, under the conditions of this Order;
2. Access and copy, at reasonable times, any records that must be kept under the conditions of this Order;
3. After having provided 24-hour notice, inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this Order; and
4. Sample or monitor, at reasonable times, for the purposes of assuring compliance with this Order or as otherwise authorized by the Water Code, any substances or parameters at any location where a regulated facility or activity is located or conducted under the conditions of this Order.

We appreciate the opportunity to coordinate with you regarding the WDR.

Sincerely,



Laura Coley Eisenberg
Vice President, Open Space & Resource Management

Cc: Valerie McFall, TCA
Jeff Brinton, PBMB
Richard Broming, RMV
Jeff Thompson, RMV