California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2003-0025

Waste Discharge Requirements

For

The Colonies Partners, LP
The Colonies at San Antonio Project
Campus Avenue at 19th Street
Upland, San Bernardino County

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

1. The Colonies Partners, LP (hereinafter, discharger) proposes to complete construction of "The Colonies at San Antonio" in the City of Upland, San Bernardino County (N34° 07', W117°, 37'). The project is a mixed-use development that encompasses approximately 450 acres and includes a combination of single family residences, luxury attached dwellings, neighborhood and commercial facilities, roadways, drainage and flood control features, and open space.

2. On June 4, 1999, Board staff waived waste discharge requirements and Clean Water Act Section 401 certification, with conditions, for the first phase of the project in its easternmost portion. This proposed Order prescribes waste discharge requirements for fill activities that have been and will be conducted during the second and final phase of the project. These fill activities have affected and will affect beneficial uses of isolated surface waters, which are waters of the state but are currently considered outside the jurisdiction of the U.S Army Corps of Engineers (ACOE). Therefore, a Clean Water Act Section 404 permit is not being required by the ACOE, and no Section 401 water quality standards certification is necessary.

3. The project site is bounded by the Holiday Rock gravel mining operation located immediately to the north of the 210 Freeway; by Colonies Parkway and Tanglewood Avenue to the east; by Campus Avenue to the west; and by residences and a golf course to the south. An east-west arterial road, 19th Street, currently bisects the site into northern and southern portions. South of 19th Street, sand and gravel mining activities took place in two major pits separated by an earthen levee. The largest pit, located on the north side of the levee, is referred to as Basin 6 and the pit on the south side of the levee is referred to as Basin 7.

4. The site overlies the Cucamonga Groundwater Subbasin, which is used as a source of supply by water purveyors, including the Cucamonga County Water District and the San Antonio Water Company. Asserting the existence and viability of certain easements on the site, San Antonio Water Company has diverted, and continues to divert, flows from San Antonio Creek to serve its shareholders. Surplus water is discharged by the San Antonio Water Company into Basin 6 for groundwater recharge purposes. These easements and the rights of the San Antonio Water Company to continue such recharge operations are the subject of pending litigation between the San Antonio Water Company and the discharger. Cucamonga County Water District, which has no easement to spread water but which extracts from the Cucamonga Groundwater Subbasin, has intervened in the pending litigation. Also at issue in the litigation is the viability of easement granting the San Bernardino County Flood Control District the right to construct, operate, and maintain flood control facilities on The Colonies' property. A court hearing to resolve the litigation (San Bernardino County Superior Court Case No. RCV 061971 - The Colonies Partners, LP v. San Bernardino Flood Control District and San Antonio Water Company) is scheduled for June 2, 2003. The results of this litigation may materially affect the final design of the project.

5. Storm and low-flow runoff from a 2,400-acre urban watershed (part of the City of Upland and unincorporated County of San Bernardino) and from a segment of the 210 Freeway also enter Basin 6 from the west via the 19th and 20th Street channels. This surface flow has enabled development of wetland/riparian habitat (including marsh and willow/mule fat scrub associations) and intermittent ponds. The California Department of Fish and Game (CDFG) identified a total of 29 acres of wildlife habitat in Basins 6 and 7.

6. In order to develop the project, the discharger proposes to conduct construction activities throughout Basins 6 and 7. Some unauthorized grading has already occurred. Prior to October 2002, earth-moving activities took place within Basin 6 that impacted three to five acres of wetlands and associated habitat (and therefore beneficial uses of waters of the state), without prior notification of and authorization by the Regional Board. On November 5, 2002, to prevent further destruction of wetland resources on the site, Board staff issued an order to stop further work on the project.

7. Basins 6 and 7 are considered isolated waters of the State. While beneficial uses for these isolated waters are not specifically listed in the Basin Plan, the beneficial uses of the wetlands and other habitat types in Basins 6 and 7 that will be impacted by the proposed construction activities include wildlife habitat (WILD), warm freshwater habitat (WARM), groundwater recharge (GWR), and non-contact water recreation (REC2).

8. On December 10, 2002, the discharger submitted a report of waste discharge (ROWD) in order to obtain appropriate waste discharge requirements for all project activities at the site that could affect beneficial uses and to resume work on the site.

9. This Order proposes waste discharge requirements to address the impacts of the project on waters of the state, including all prior unauthorized activities, and it authorizes lifting of the stop work order and resumption of construction work on the project once requisite approvals are obtained. The final project[1] design now proposed by the discharger includes a dedicated open space area wherein mitigation for the impacts of the project on beneficial uses is to be implemented. The discharger proposes the construction of an approximately 60-acre basin (Basin A), superimposed over the existing Basin 6, that will include wetlands (Zone 1, approximately 12 acres), riparian habitat (Zone 2, approximately 13 acres), open ponds (2 acres), and native upland shrub vegetation (32 acres) (Attachment C1). Additionally, appropriate native vegetation, including riparian associations, is proposed to be established along the 8.5-acre, narrow corridor ("gooseneck") that will convey stormwater overflow from the developed open space area to an existing detention basin (Basin B) adjacent to Cucamonga Creek. Basin A will also be used for flood control purposes by the County of San Bernardino Flood Control District. The discharger has committed to the completion of mass grading of Basin A by September 4, 2004. The discharger has also committed to the timely implementation, once mass grading is complete, of interim mitigation, consisting of vegetating the entire Basin with a range of species suited to the habitats to be included in the final basin design. The final design of the Basin, and implementation of long-term mitigation, are contingent on the final design and construction of the Basin for flood control purposes. The final design of the project is also contingent on the results of pending litigation. If the water purveyors prevail in their argument that their use of the site for groundwater recharge purposes must be protected, then the final design may need to be modified accordingly.

10. This Order addresses both possible outcomes of the pending litigation between the discharger and the water purveyors.

    a. In the event that the discharger prevails, the Order requires the discharger to submit for approval by the Executive Officer a proposed plan and schedule for mass grading, fine grading and completion of the project, and the implementation of both short- and long- term mitigation.

    b. In the event that the water purveyors prevail in the litigation, this Order requires that the discharger submit a proposed plan and schedule, for approval by the Regional Board, for mass grading, fine grading and project completion, and short- and long-term mitigation, that insures that any court-ordered directives regarding protection of the San Antonio Water Company's groundwater recharge rights are fully implemented.

    c. In either situation (10.a. or 10.b., above), the discharger is required to submit a proposed plan for the monitoring and maintenance of mitigation, and to identify the funding mechanism for these activities.

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1 The entire project site has been divided into 21 different planning areas that provide specific limits on the number and type of residential dwelling units, architectural and landscaping guidelines, development standards and controls, environmental performance standards, clearly defined land uses, and essential development and infrastructure phasing.

d. In either situation (10.a. or 10.b., above), the discharger is required to implement the approved plans, including the monitoring and maintenance of mitigation.

11. An estimated 520,000 cubic yards of waste, including concrete, asphalt, tires, paint, oil, plastic, and construction material, was previously disposed of illegally at the site by others during the previous 20 years, prior to ownership of the site by the project proponent. The discharger has submitted a proposed Debris Removal Plan whereby this waste will be removed for proper disposal. Clean concrete and boulders will be recovered from the debris, crushed, combined with clean, on-site materials, and reused for fill. This Order requires the implementation of this Plan.

12. All dry-weather flow and first-flush[2] stormwater runoff from the project's commercial, residential, and institutional land-use areas and roadways will pass through stormwater treatment devices prior to discharge to waters of the State. Additionally, natural vegetation to be planted in the main and tributary channels will constitute a passive stormwater treatment system. Dry weather and stormwater runoff from those parts of the City of Upland tributary to Basin A is covered separately under the San Bernardino County municipal stormwater system (MS4) permit, in which the City of Upland is a co-permittee. For the period of construction only, the discharger has obtained coverage under the State Board's General Permit for Storm Water Discharges Associated with Construction Activities, Order No. 99-08-DWQ.

13. A Water Quality Control Plan (Basin Plan) became effective on January 24, 1995. The Basin Plan identifies water quality objectives and beneficial uses of waters in the Santa Ana Region. The requirements contained in this Order are necessary to implement the Basin Plan.

14. The beneficial uses of the wetlands in Basins 6 and 7 that will be impacted by the proposed construction of the Colonies project are:

a. Wildlife habitat (WILD),

b. Warm freshwater habitat (WARM),

c. Groundwater recharge (GWR), and

d. Non-contact water recreation (REC2).

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2 The volume of runoff produced from the 85th percentile 24-hour runoff event, based on historical records.

15. The discharge of fill to basins 6 and 7 overlies the Cucamonga Groundwater Subbasin, the beneficial uses of which include:

    a. Municipal and domestic supply (MUN),

    b. Agricultural supply (AGR),

    c. Industrial process supply (PROC), and

    d. Industrial service supply (IND).

16. This Order is necessary to address impacts of the fill to waters of the State and to meet the objectives of the State Wetlands Conservation Policy (Executive Order W-59-93). The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...." Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State."

17. Between 1997 and 2002, various surveys were conducted to inventory biological resources and to perform focused searches for threatened and endangered species. No threatened or endangered species were found, and a Biological Opinion is not required.

18. The City of Upland certified an environmental impact report for the project on September 24, 2002. The Regional Board finds that the significant environmental effects of the proposed project within the Regional Board's jurisdiction, as mitigated by provisions approved in this order, are reduced to less-than-significant levels.

19. On November 12, 2002, CDFG issued a streambed alteration agreement for the project, including requirements for mitigation of the loss of the 29 acres of habitat in Basins 6 and 7[3].

20. The Regional Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.

21. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.

22. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

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[3] As a matter of information, the California Department of Water Resources (DWR) advised the discharger that due to embankment changes at Basin 6, the Basin is now under State jurisdiction for dam safety. Further, DWR advised the discharger that the dam was being operated and maintained without approval by DWR, a violation of Section 6077 of the California Water Code. The discharger proposes to rectify the violation by the construction of a new breach in the embankment, eliminating water storage.

IT IS HEREBY ORDERED that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code 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 Section 13050 of the California Water Code.

2. The discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27.

3. For soil samples from the pit bottoms and any fill to be emplaced, a saturated extract must indicate that:

   a. Total petroleum hydrocarbons (TPH) remaining in the soil do not exceed the following:

      (1) TPH (Gasoline) - 100 mg/kg and
      (2) TPH (Diesel) – 1000 mg/kg

   b. Total threshold limit concentrations (TTLC) of priority metals do not exceed the concentrations (in mg/kg) specified in Title 22, California Code of Regulations Section 66699.

4. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.

5. 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.

B. DISCHARGE PROHIBITIONS:

1. The discharger shall not conduct activities that would impact waters of the state until the plans required under Provision C. 2. or 3., are approved.

2. The discharge of wastes or pollutants that is not otherwise regulated by a separate National Pollutant Discharge Elimination System (NPDES) permit to surface waters, or to any place where they would contact surface waters or be eventually transported to surface waters and flood plains, is prohibited. Any such modifications may be reduced back to the levels specified in the original monitoring and reporting program at the discretion of the Executive Officer.

C. PROVISIONS:

1. The discharger shall comply with M&RP No. R8-2003-0025. This monitoring and reporting program may be modified by the Executive Officer at any time during the term of this Order to include a reduction or an increase in the number of parameters to be monitored, the frequency of the monitoring or the number and size of samples to be collected.

2. If the discharger prevails as a result of final adjudication of the litigation discussed in Finding 4., above, the discharger shall submit for approval by the Executive Officer the following:

   a. a proposed plan and schedule for mass grading, fine grading and completion of the project, and both short- and long- term mitigation. The proposed plan and schedule shall reflect the concurrent implementation of mitigation as the development proceeds, to the greatest extent feasible. The proposed plan shall also include a specific proposal whereby the discharger proposes to guarantee completion of all agreed-upon mitigation. This proposal shall account for the possibility of change of ownership of the site. The proposed plan shall be submitted by September 1, 2003 or three months after final adjudication or other resolution of the aforementioned litigation.

   b. a proposed plan for monitoring and maintenance of both short-and long-term mitigation included in the plan required by Provision 2. The proposed plan shall ensure monitoring and maintenance of vegetation and other devices/practices established for mitigation purposes for a minimum of five years after completion of the project. Proposed monitoring and maintenance practices, frequency, mitigation success criteria, and reporting shall be specified. The proposed plan shall identify the mechanism proposed by the discharger to assure funding for the proposed monitoring and maintenance activities. The proposed plan shall be submitted by September 1, 2003 or three months after final adjudication or other resolution of the aforementioned litigation. This proposed plan may be submitted separately or as part of the plan required under Provision 2a.

3. If the discharger does not prevail wholly or in part as a result of final adjudication of the litigation discussed in Finding 4., above, the discharger shall submit for approval by the Regional Board the following:

   a. a proposed plan and schedule for mass grading, fine grading and completion of the project, and both short- and long-term mitigation that insures that any court-ordered directives regarding protection of the San Antonio Water Company's groundwater recharge rights are fully implemented. The proposed plan and schedule shall reflect the concurrent implementation of mitigation as the development proceeds, to the greatest extent feasible. The proposed plan shall also include a specific proposal whereby the discharger proposes to guarantee completion of all requisite and agreed-upon mitigation. This proposal shall account for the possibility of change of ownership of the site. The proposed plan shall be submitted by December 1, 2003 or three months after final adjudication or other resolution of the aforementioned litigation.

   b. a proposed plan for monitoring and maintenance of both short-and long-term mitigation included in the plan required by Provision 5. The proposed plan shall ensure monitoring and maintenance of vegetation and other devices/practices established for mitigation purposes for a minimum of five years after completion of the project. Proposed monitoring and maintenance practices, frequency, mitigation success criteria, and reporting shall be specified. The proposed plan shall identify the mechanism proposed by the discharger to assure funding for the proposed monitoring and maintenance activities. The proposed plan shall be submitted by December 1, 2003 or three months after final adjudication or other resolution of the aforementioned litigation. This proposed plan may be submitted separately or as part of the plan required under Provision 3.a., above.

4. Upon approval by the Executive Officer, the discharger shall implement the plans required in Provisions 2. Any changes to the proposed plans shall be implemented only with prior approval from the Executive Officer.

5. Upon approval by the Regional Board, the discharger shall implement the plans required under Provisions 3. Any changes to the proposed plans shall be implemented only with prior approval from the Regional Board.

6. The discharger shall assure that all dry-weather flow and first-flush[4] stormwater runoff from the Colonies at San Antonio development project site is appropriately treated prior to discharge to waters of the State. The discharger shall submit a Post Construction Water Quality Best Management Practices (BMP) Plan by September 1, 2003 for approval by the Executive Officer. This plan shall identify the measures to be employed to assure adequate treatment of dry-weather and first-flush flows, and that runoff flows from the development are not increased in amplitude, volume, or velocity from the pre-development condition. The discharger shall implement this plan upon approval by the Executive Officer.

7. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.

8. The discharger shall remove from the site any waste or fill material found to contain substances listed as hazardous wastes or hazardous material pursuant to Section 25140 of the Health and Safety Code and shall dispose of these material at an approved disposal site. The discharger has submitted a proposed Debris Removal Plan. The discharger shall implement this Plan upon approval by the Executive Officer.

9. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code and may constitute a violation of the 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. This Order does not convey any property rights of any sort, or any exclusive privilege.

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[4] The volume of runoff produced from the 85th percentile 24-hour runoff event, based on historical records.

15. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Regional Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.

16. 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 Regional Board.

17. The Regional 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.

I, Gerard J. Thibeault, 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 16, 2003.

Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

Monitoring and Reporting Program No. R8-2003-0025

for

The Colonies Partners, LP
The Colonies at San Antonio Project
Campus Avenue at 19th Street
Upland, San Bernardino County

A. General Monitoring Requirements:

1. All sampling and sample preservation shall be in accordance with the current edition of *"Standard Methods for the Examination of Water and Wastewater"* (American Public Health Association).

2. Chemical, bacteriological, and bioassay analyses shall be conducted at a laboratory certified for such analyses by the State Department of Health Services or at laboratories approved by the Regional Board's Executive Officer.

3. The total volumes of debris material separated from usable fill, for the purposes of disposal at separate municipal solid waste and hazardous waste landfills, shall be estimated and recorded in the permanent log. Hauling manifests and chain-of-custody receipts shall be filed with the permanent records and copies made available for reporting.

4. Aside from the determination of debris to be removed for landfilling, the following soil testing program shall be conducted:

    a. Materials excavated from areas of the site known to have contained contaminated wastes and reclaimed for use in engineered fills or construction of approved mitigation facilities, shall be sampled at a minimum of one sample per 10,000 cubic yards, and analyzed for:

        1) Total petroleum hydrocarbons (TPH-Gasoline and TPH-Diesel using method 8015), and;

        2) CCR, Title 22 priority metals by total threshold limit concentrations (TTLC), by means of a saturated extract.

    b. The final graded surface of engineered fills and approved mitigation facilities, shall be sampled at a minimum of three representative samples per acre and analyzed for:

1) Total petroleum hydrocarbons (TPH-Gasoline and TPH-Diesel using method 8015), and

2) CCR, Title 22 priority metals by total threshold limit concentrations (TTLC), by means of a saturated extract.

B. Reporting

1. A monitoring report shall be submitted on the 30th day of each month and shall include all information, including records from the permanent log referenced in A., above, collected in accordance with this Monitoring and Reporting Program for the previous month, including:

   a. The estimated volume of fill material, in cubic yards, separated and hauled to landfills, stockpiled on site, and emplaced in the pits during the previous month. If no fill material is used during the reporting period, then a report to that effect shall be submitted in lieu of a monitoring report.

   b. Hauling manifests and chain-of-custody receipts for hauled debris, including contaminated fill.

   c. For every item where the requirements of the Order and this Monitoring and Reporting Program are not met, the discharger shall submit a statement of the actions undertaken or proposed which will bring the discharge into full compliance with requirements at the earliest time and submit a timetable for correction.

2. By September 30 of each year, an annual report discussing the following shall be submitted:

   a. Description of project components completed within the year;

   b. Discussion of mitigation measures that were completed during the previous year, including as-built plans;

   c. Schedule for initiation/completion of remaining mitigation measures;

   d. Description of any maintenance activities occurring within any mitigation areas; and

e. A summary of changes made during the year to the Specific Plan, Streambed Alteration Agreement, Open Space Revegetation Specifications or other planning or regulatory documents prepared for the Colonies at San Antonio development project that effect, or have the potential to effect, the implementation of the approved Mitigation Plan, M&M Plan, or Post Construction BMP Plan for the project.

3. Any annual reports required by the approved Mitigation Plan, M&M Plan, or Post Construction BMP Plan for the project shall be submitted by September 30 of each year.

4. All reports shall be signed by a responsible officer or duly authorized representative of the discharger and shall be submitted under penalty of perjury.

Ordered by _____

Gerard J. Thibeault
Executive Officer

May 16, 2003

California Regional Water Quality Control Board
Santa Ana Region

May 16, 2003

ITEM: 8

SUBJECT: Waste Discharge Requirements for The Colonies Partners, LP, "The Colonies at San Antonio" Project, Campus Avenue at 19th Street, Upland, San Bernardino County – Order No. R8-2003-0025

DISCUSSION:

The Colonies Partners, LP (hereinafter, discharger) proposes to complete construction of "The Colonies at San Antonio" in the City of Upland, San Bernardino County (N34° 07', W117°, 37') (Attachment A). The project is a mixed-use development that encompasses approximately 450 acres and includes a combination of single family residences, luxury attached dwellings, neighborhood and commercial facilities, roadways, drainage and flood control features, and open space.

On June 4, 1999, Board staff waived waste discharge requirements and Clean Water Act Section 401 certification, with conditions, for the first phase of the project in its easternmost portion. This proposed Order prescribes waste discharge requirements for fill activities that have been and will be conducted during the second and final phase of the project. These fill activities have affected and will affect beneficial uses of isolated surface waters, which are waters of the state but are currently considered outside the jurisdiction of the U.S Army Corps of Engineers (ACOE). Therefore, a Clean Water Act Section 404 permit is not being required by the ACOE, and no Section 401 water quality standards certification is necessary.

The project site is bounded by the Holiday Rock gravel mining operation located immediately to the north of the 210 Freeway; by Colonies Parkway and Tanglewood Avenue to the east; by Campus Avenue to the west; and by residences and a golf course to the south (Attachment B). An east-west arterial road, 19th Street, currently bisects the site into northern and southern portions. South of 19th Street, sand and gravel mining activities took place on the site in two major pits separated by an earthen levee. The largest pit, located on the north side of the levee, is referred to as Basin 6 and the pit on the south side of the levee is referred to as Basin 7.

The site overlies the Cucamonga Groundwater Subbasin, which is used as a source of supply by water purveyors, including the Cucamonga County Water District and the San Antonio Water Company. Asserting the existence and viability of certain easements on the site, San Antonio Water Company has diverted, and continues to divert, flows from San Antonio Creek to serve its shareholders. Surplus water is discharged by the San Antonio Water Company into Basin 6 for groundwater recharge purposes. These easements and the rights of the San Antonio Water Company to continue such recharge operations are the subject of pending litigation between the San Antonio Water Company and the discharger. Cucamonga County Water District, which has no easement to spread water but which extracts from the Cucamonga Groundwater Subbasin, has intervened in the pending litigation. A court hearing to resolve the litigation is scheduled for June 2, 2003. The results of this litigation may materially affect the final design of the project.

Storm and low-flow runoff from a 2,400-acre urban watershed (part of the City of Upland and unincorporated County of San Bernardino) and from a segment of the 210 Freeway also enter Basin 6 from the west via the 19th and 20th Street storm drains.

The basins support diverse wildlife habitat. The California Department of Fish and Game (CDFG) identified a total of 29 acres of wildlife habitat in the basins, comprised of willow/mulefat scrub, marsh, riparian, and intermittent pond ecotypes.

In order to develop the project, the discharger proposes to conduct construction activities throughout Basins 6 and 7. Some unauthorized grading has already occurred (see discussion below). The specific plan for the project anticipates that as much as 5 million cubic yards of material from Basin 6 will be excavated and 4.7 million cubic yards of fill will be emplaced. While beneficial uses for these isolated waters are not specifically listed in the Basin Plan, the beneficial uses of the wetlands and other habitat types in Basins 6 and 7 that will be impacted by the proposed construction activities include wildlife habitat (WILD), warm freshwater habitat (WARM), groundwater recharge (GWR), and non-contact water recreation (REC2). Between 1997 and 2002, various surveys were conducted to inventory biological resources and to perform focused searches for threatened and endangered species. No threatened or endangered species were found, and a Biological Opinion is not required. The City of Upland certified an environmental impact report for the project on September 24, 2002. On November 12, 2002, CDFG issued a streambed alteration agreement for the project, including requirements for mitigation of the loss of the 29 acres of habitat in Basins 6 and 7[1].

Prior to October 2002, earth-moving activities took place within Basin 6 that impacted three to five acres of wetlands and associated habitat (and therefore beneficial uses of waters of the state), without prior notification of and authorization by the Regional Board[2]. On November 5, 2002, to prevent further destruction of wetland resources on the site, Board staff issued an order to stop further work on the project. On December 10, 2002, the discharger submitted a report of waste discharge (ROWD) in order to obtain appropriate waste discharge requirements for all project activities at the site that could affect beneficial uses and to resume work on the site. This Order proposes waste discharge requirements to address the impacts of the project on waters of the state, including all prior unauthorized activites, and it authorizes lifting of the stop work order and resumption of construction work on the project.

The final project design now proposed by the discharger includes a dedicated open space area wherein mitigation for the impacts of the project on beneficial uses is to be implemented. The discharger proposes the construction of an approximately 60-acre basin (Basin A) (see Attachment C, Planning Area 16[3]), superimposed over the existing Basin 6, that will include

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1 As a matter of information, the California Department of Water Resources (DWR) advised the discharger that due to embankment changes at Basin 6, the Basin is now under State jurisdiction for dam safety. Further, DWR advised the discharger that the dam was being operated and maintained without approval by DWR, a violation of Section 6077 of the California Water Code. The discharger proposes to rectify the violation by the construction of a new breach in the embankment, eliminating water storage.

2 The discharger had been advised by the U.S. Army Corps of Engineers (letter dated November 7, 2001) that appropriate notification of the Regional Board should be made to determine what approval might be required.

3 The entire project site has been divided into 21 different planning areas that provide specific limits on the number and type of residential dwelling units, architectural and landscaping guidelines, development

Attachment C, Planning Area 16[3]), superimposed over the existing Basin 6, that will include wetlands (Zone 1, approximately 12 acres), riparian habitat (Zone 2, approximately 13 acres), open ponds (2 acres), and native upland shrub vegetation (32 acres) (Attachment C1). Additionally, appropriate native vegetation, including riparian associations, is proposed to be established along the 8.5-acre, narrow corridor ("gooseneck") that will convey stormwater overflow from the developed open space area to an existing detention basin (Basin B) adjacent to Cucamonga Creek. Basin A will also be used for flood control purposes by the County of San Bernardino Flood Control District. The discharger has committed to the completion of mass grading of Basin A by September 4, 2004. The discharger has also committed to the timely implementation, once mass grading is complete, of interim mitigation, consisting of vegetating the entire Basin with a range of species suited to the habitats to be included in the final basin design. As stated above, the final design of the project is contingent on the results of pending litigation. If the water purveyors prevail in their argument that their use of the site for groundwater recharge purposes must be protected, then the final design may need to be modified accordingly.

This Order addresses both possible outcomes of the pending litigation. In the event that the discharger prevails, the Order requires the discharger to submit for approval by the Executive Officer a proposed plan and schedule for mass grading, fine grading and completion of the project, and the implementation of both short- and long- term mitigation. The schedule is to reflect the concurrent implementation of mitigation as the development proceeds, to the greatest extent feasible. This plan must also include a specific proposal whereby the discharger proposes to guarantee completion of agreed-upon mitigation. Finally, the discharger is required to submit a proposed plan for the monitoring and maintenance of both short- and long-term mitigation, and to identify the mechanism proposed to assure funding for these activities.

In the event that the San Antonio Water Company prevails in the litigation, this Order requires that the discharger submit a proposed plan and schedule for project implementation, for approval by the Regional Board, that insures that any court-ordered directives regarding protection of groundwater recharge rights are fully implemented. Again, this plan and schedule must reflect concurrent implementation of mitigation as the development proceeds, to the greatest extent feasible. This plan must also include a specific proposal whereby the discharger will guarantee completion of the agreed-upon mitigation. The discharger is also required to submit a proposed plan for the monitoring and maintenance of mitigation, and to identify the funding mechanism for these activities.

All dry-weather flow and first-flush[4] stormwater runoff from the project's commercial, residential, and institutional land-use areas and roadways will pass through stormwater treatment devices prior to discharge to waters of the State. Additionally, natural vegetation to be planted in the main and tributary channels will constitute a passive stormwater treatment system. Dry weather and stormwater runoff from those parts of the City of Upland tributary to Basin A is

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3 The entire project site has been divided into 21 different planning areas that provide specific limits on the number and type of residential dwelling units, architectural and landscaping guidelines, development standards and controls, environmental performance standards, clearly defined land uses, and essential development and infrastructure phasing.

4 The volume of runoff produced from the 85th percentile 24-hour runoff event, based on historical records.

covered separately under the San Bernardino County municipal stormwater system (MS4) permit, in which the City of Upland is a co-permittee. For the period of construction only, the discharger has obtained coverage under the State Board's General Permit for Storm Water Discharges Associated with Construction Activities, Order No. 99-08-DWQ.

An estimated 520,000 cubic yards of waste, including concrete, asphalt, tires, paint, oil, plastic, and construction material, was previously disposed of illegally at the site by others during the previous 20 years, prior to ownership of the site by the project proponent. The discharger has submitted a proposed Debris Removal Plan whereby this waste will be removed for proper disposal. Clean concrete and boulders will be recovered from the debris, crushed, combined with clean, on-site materials, and reused for fill. This Order requires the implementation of this Plan. Confirmation sampling of this remediated area is required by Monitoring and Reporting Program No. R8-2003-0025.

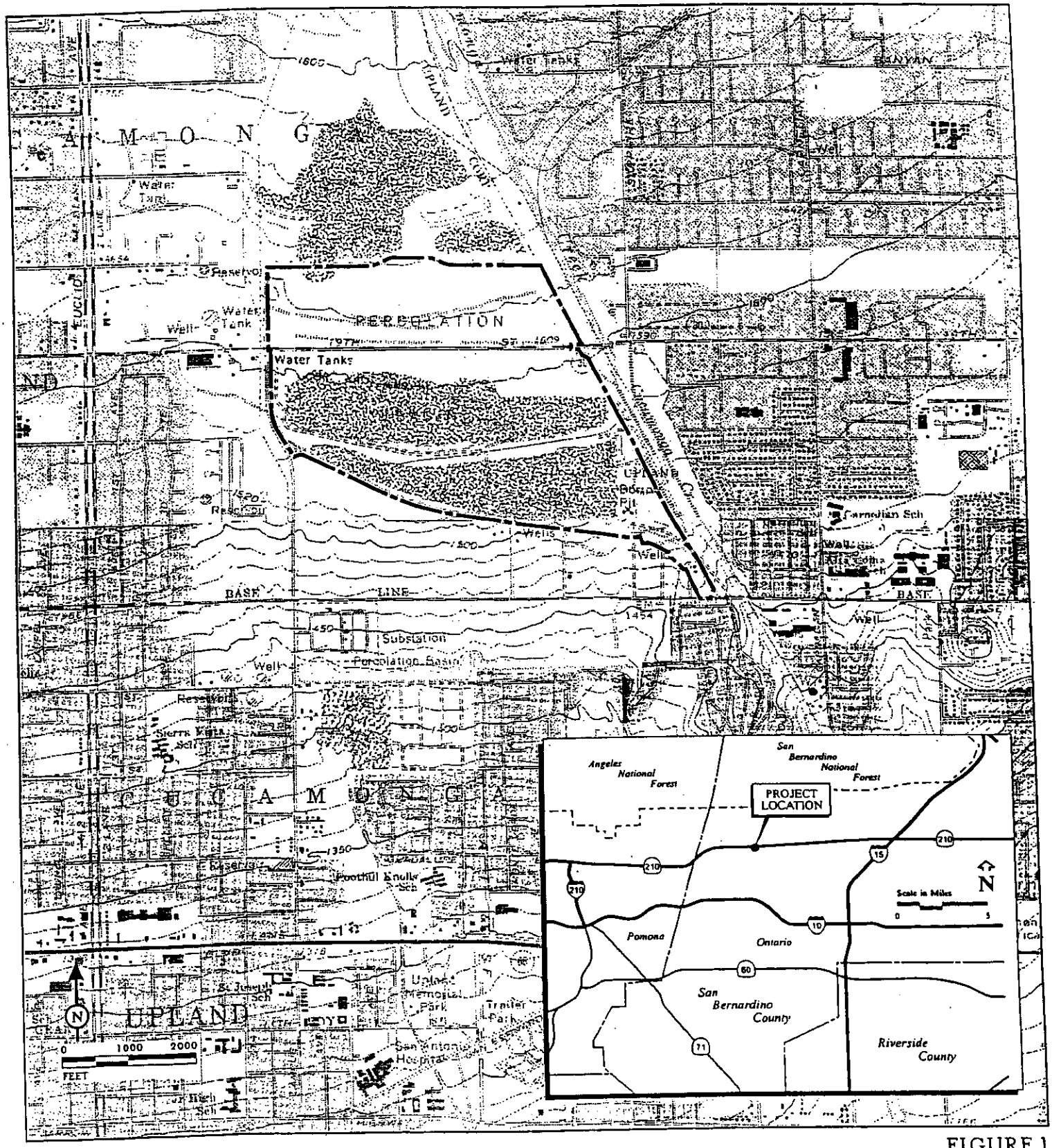
Order No. R8-2003-0025 should be adequate to protect beneficial uses and to assure appropriate mitigation of impacts to waters of the state.

RECOMMENDATION:

Adopt Order No. R8-2003-0025 as presented.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch – Robert Smith
U.S. Fish and Wildlife Service, Carlsbad – Loren Hays
State Water Resources Control Board, Office of the Chief Counsel – Jorge Leon
State Water Resources Control Board, Division of Water Quality – Jim Maughan
State Water Resources Control Board, DWQ, Water Quality Certification Unit – Oscar Balaguer
State Department of Health Services - San Bernardino
State Department of Water Resources, Glendale/ – Anna Kolakowski (Sacramento)
State Department of Fish and Game, Los Alamitos – Robin Malone-Ramos
San Bernardino County Dept. of Public Works, Flood Control/Permits – Naresh Varma
San Bernardino County Dept. of Environmental Health Services, LEA Chief – Jacquie Adams
City of Upland – Rob Turner/Michael Thornton
San Antonio Water Company, Upland – Ray Wellington, General Manager
Cucamonga County Water District, Rancho Cucamonga– Robert DeLoach, General Manager
Chino Basin Watermaster - John V. Rossi, Chief Executive Officer
McPeters, McAlearney, Shimoff, & Hat, Redlands – Lisa DeBenedet
Law Offices of Susan M. Trager, Irvine – Susan M. Trager/Francis D. Logan, Jr.
Pitassi Architects, Inc., Rancho Cucamonga – Peter J. Pitassi, President
LSA Associates, Inc., Riverside – Jack Easton
Orange County Coastkeeper – Garry Brown
Lawyers for Clean Water c/o San Francisco Baykeeper
Natural Resource Defense Council- David Beckman
Center for Biological Diversity



LSA

FIGURE 1

Attachment A – Index Map
Staff Report, Order No. R8-2003-0025
Waste Discharge Requirements, The Colonies at San Antonio
Upland, San Bernardino County

The Colonies at San Antonio

SOURCE: USGS 7.5' QUADS - CUCAMONGA PEAK, 1988; GUASTI, 1981; ONTARIO, 1981; & MT. BALDY, 1988.

Location Map

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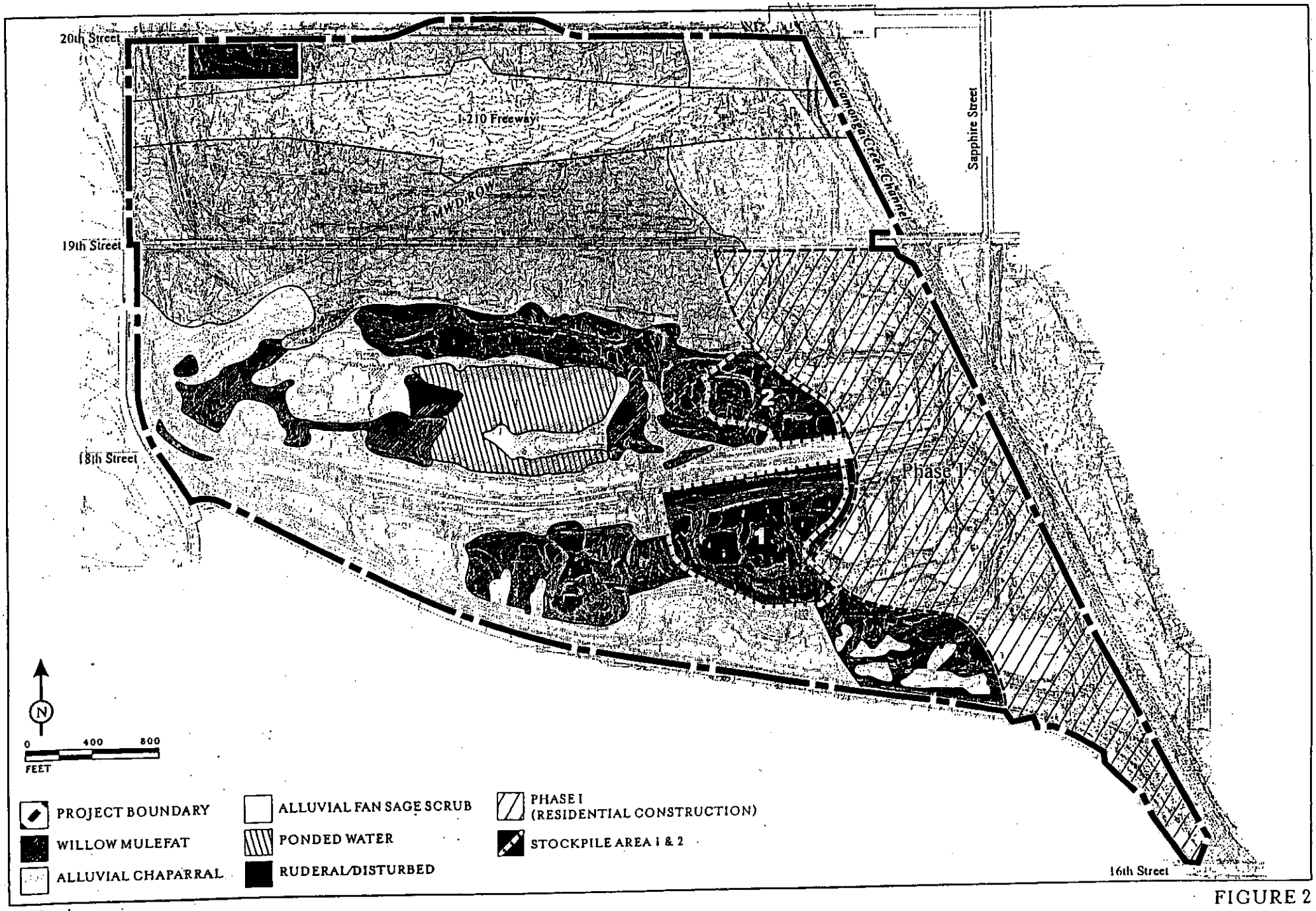


LSA

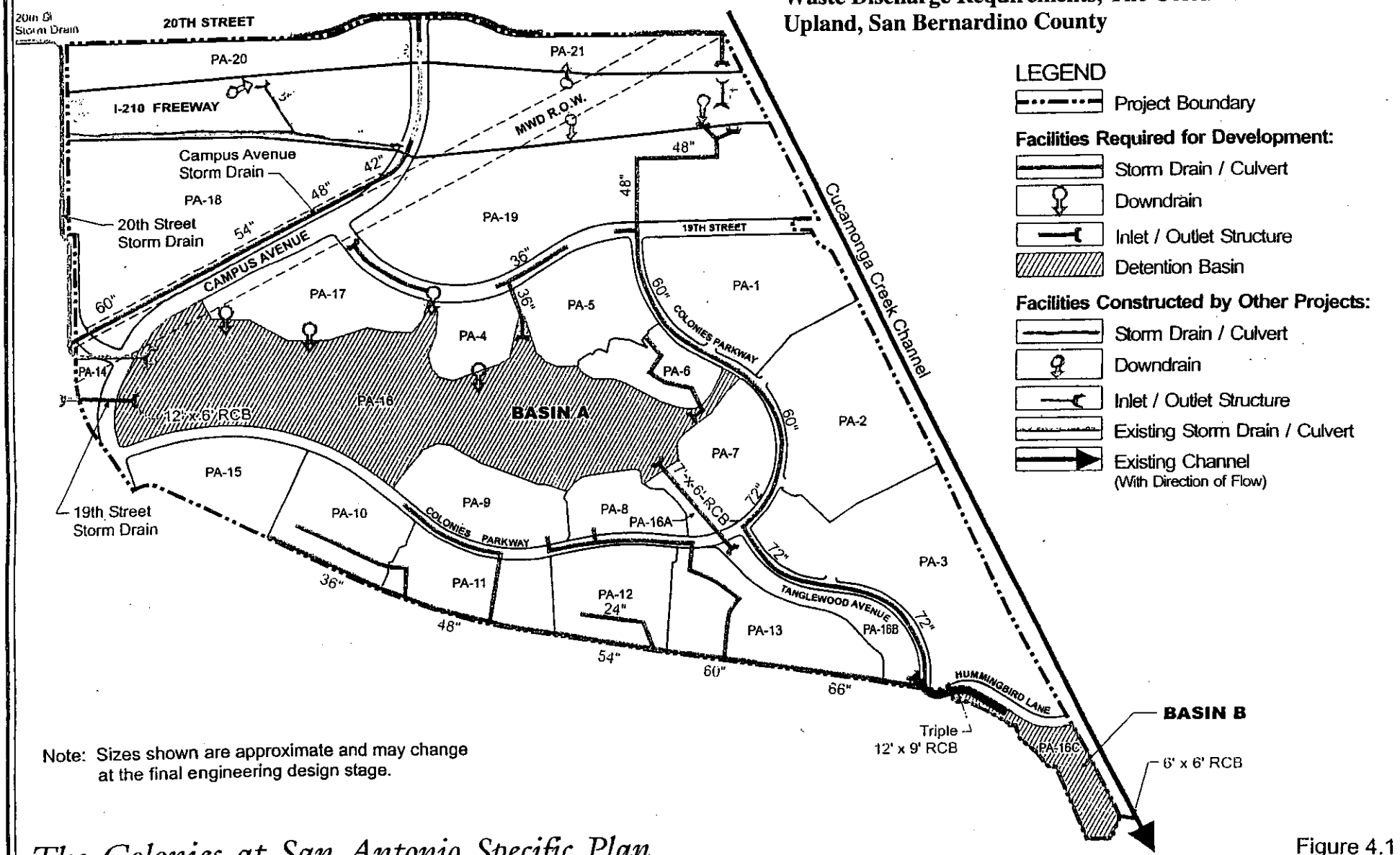
FIGURE 2
The Colonies at San Antonio
Vegetation Map

Attachment B – Pre-Construction Configuration
Staff Report, Order No. R8-2003-0025
Waste Discharge Requirements, The Colonies at San Antonio
Upland, San Bernardino County

R:\BGL030\Graphics\Bio\Bio Res\vegmap.cdr (6/4/02)

6/12/02(BGL030/Specific Plan/backbone stormdrain.cdr)

Attachment C – Proposed Final Development
Staff Report, Order No. R8-2003-0025
Waste Discharge Requirements, The Colonies at San Antonio
Upland, San Bernardino County



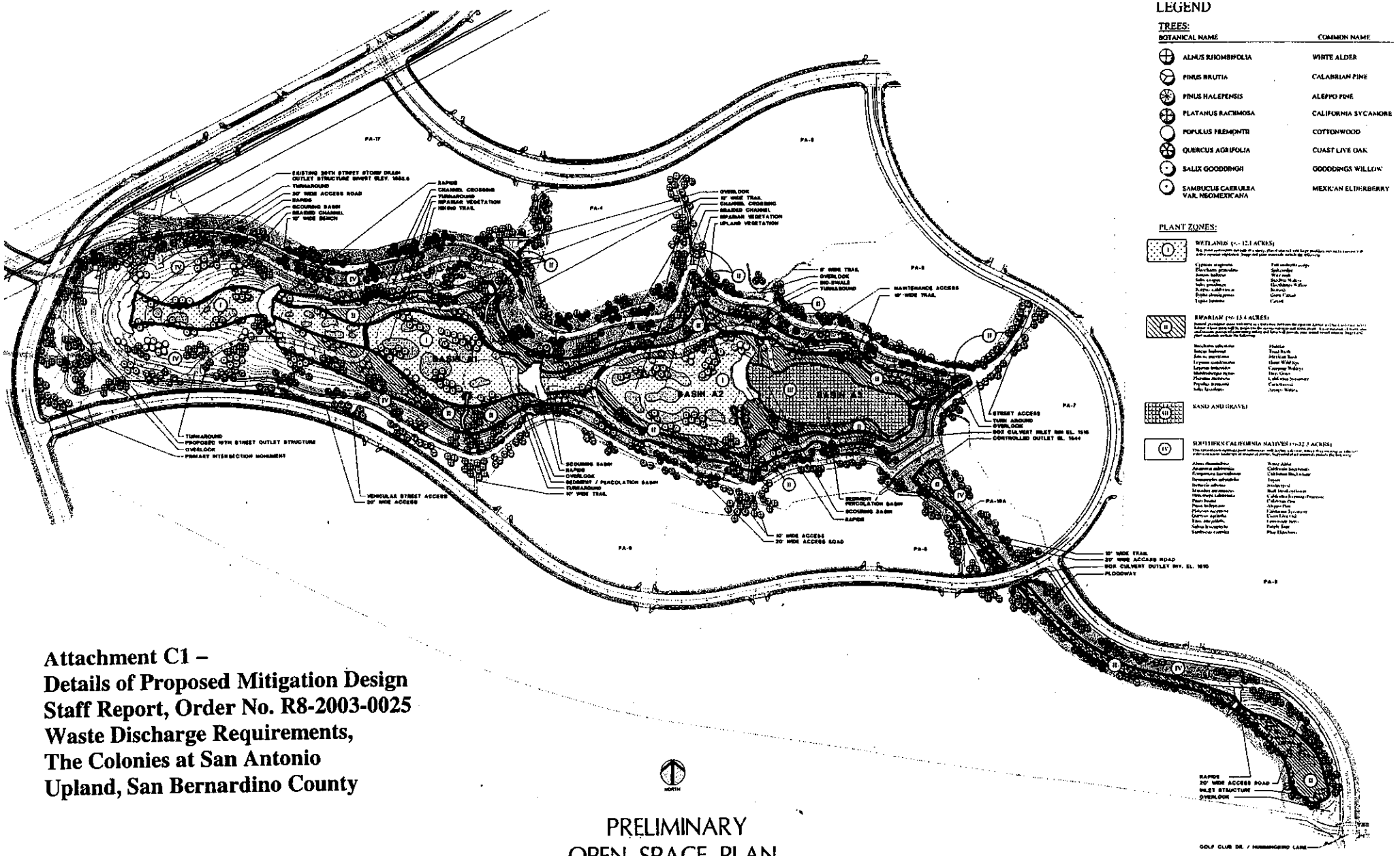
Note: Sizes shown are approximate and may change at the final engineering design stage.

The Colonies at San Antonio Specific Plan

N Not to Scale

Source: Associated Engineers, Inc.

Figure 4.1



Attachment C1 –
Details of Proposed Mitigation Design
Staff Report, Order No. R8-2003-0025
Waste Discharge Requirements,
The Colonies at San Antonio
Upland, San Bernardino County

PRELIMINARY
OPEN SPACE PLAN

The Colonies *at* San Antonio
Upland, California
THE COLONIES CROSSROADS INC.

0 120' 240' 360'

April 8, 2003

RJM DESIGN GROUP, INC.

Associated Engineers, Inc.

SUPA ARCHITECTURE • PLANNING

WILLIAM HEZMALHALCH ARCHITECTS INC.

EAV. 8-7-03

Book

California Regional Water Quality Control Board
Santa Ana Region

Winston H. Hickox
Secretary for Environmental Protection

Internet Address: http://www.swrcb.ca.gov/rwqcb8
3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (909) 782-4130 - FAX (909) 781-6288

Gray Davis
Governor

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website at www.swrcb.ca.gov/rwqcb8.

May 20, 2003

Mr. Phil Burum
The Colonies Partners, LP
Colonies Crossroads, Inc.
10621 Civic Center Drive, Second Floor
Rancho Cucamonga, CA 91730

TRANSMITTAL OF ADOPTED ORDER NO. R8-2003-0025

Dear Mr. Burum:

At the regular Board Meeting held on May 16, 2003, the Regional Board adopted Order No. R8-2003-0025. A certified copy is enclosed for your records.

Sincerely,

BARBARA LAFFOON
Executive Assistant

Enclosure: Adopted Order No. R8-2003-0025

c. State Water Resources Control Board, Division of Water Quality, James Maughan
United States Environmental Protection Agency, WTR 5, Permits Section, Terry Oda

/bjl