

June 23, 2008

California Water Quality Control Board  
Central Valley Region  
Attention: Kim Schwab  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114

Re: Draft Order, Water Discharge Requirements, NDPDES No. CAS082597

Dear Ms. Schwab:

Thanks for the opportunity to comment upon the draft order. As you are aware the Upper Laguna Creek Collaborative has been engaged, by way of grant funding, in the third phase of what is intended to be four phases. The current phase included the production of a calibrated hydrogeomorphic model for Laguna Creek. Along with the development of the model, the phase three effort also included working with a landowner in assessing the feasibility of, among other things, of use of the model. Our site served as the pilot project for just such a purpose.

Our work effort does provide an opportunity for evaluation of the model as well as the general principles contemplated by the ULCC watershed planning effort. In the process of pursuing the effort we have learned valuable lessons. One significant lesson is that for the approach to work it must be applied universally within a shed. Our concern is that, should the process contemplated by the order stand, significant development in the watershed may not only be evaluated pursuant to CEQA but significant development could appear on the ground absent the information and opportunities now at hand. We would urge the Board to recognize the necessity for requiring consideration of hydromodification at the earliest possible stage. We believe that stage should be the point at which CEQA assessments begin.

Because the work effort undertaken in the Laguna Shed has been quite intense, we recognize that a requirement for watershed based hydromodification analysis and controls on all stream groups is quite problematic. But, given the efforts of the ULCC, their application to the upper watershed is timely and possible.

**Recommendation:** given the existence of a very detailed model and inputs for the upper Laguna Creek Watershed, require the submittal of modification of standards for control of stormwater flows such that 90% of stream modification is eliminated, no later than one year from the date of publication of the order.

One of the significant results of the ULCC modeling effort has been the fundamental need for assessment to recognize that very different soil circumstances require very different best management practices. For this reason, we would ask the Board to observe that sub-regional soil and geologic

We observe that the Order observes practical limitations on permittees (as quoted below at Finding 24) but does not similarly reflect a greater accountability for pollutants over which the permittees have significant control. It appears that the order remains an “intent” order even in the case of sediment and stream erosion control. This “practical limitations” concept cuts different ways in different circumstances. We would ask that, with respect to LID, the soil types which prevail on a given site and

**Finding 24** “urban runoff may be derived from extraneous sources that Permittees have no or limited jurisdiction over.” “. . . the implementation of the measures set forth in this order is intended to reduce the entry of these pollutants into storm water and their discharge to receiving waters. . .” (page 5)

the costs associated with overcoming those limitations are significant both with respect to monetary expenditures and, in our Global Warming context, will add significantly to the carbon foot print of projects. Many LID practices require significant grading and hauling in of soil amendments. At the scale of the pilot project, the requirement borders on over a 100,000 yards of amendments to be brought to the site. The cost and carbon cost of such hauls is quite significant.

This permit and prior permits have relied significantly upon Best Management Practices as the means to “reduce the discharge of pollutants in urban runoff to the maximum extent practicable (MEP)” (page 8). The factors considered in accomplishing the MEP include: “effectiveness, regulatory compliance, public acceptance, cost and technical feasibility.” (Page 9) In the soil types which occur on the pilot project site the flow duration control approach should prove to be the best management practice when measured against LID.

**Receiving Water Limitations** Recent study done for the Laguna Creek Watershed Council (LCWC) provided field collected data from portions of Laguna Creek, located in the Cities of Elk Grove and Rancho Cordova as well as the intervening unincorporated areas. The data provided insight to the “natural” context in which the concentrations of dissolved solids

as well as the normal pH range expressed in the permit may be “violated”. The language of the permit (first paragraph under this heading, page 30) concedes that non conformance may not be a violation but that the RWB can require further investigation. I would ask that language be inserted to specifically acknowledge the circumstances whereby the order would be “naturally violated”.

Subparagraph (l) shall not result in degradation of the species, including invertebrate species. The work done by the LCWC demonstrated that degradation can be measured in two directions. The sediments created by construction runoff and kept wet by urban runoff evidenced a broader range of invertebrate and plant life than areas not subject to stream erosion and sediment deposition.

It is observed that sub item (iii) **Program Elements, 8 Construction Program Element**, (a) the objectives of the Construction Program are to: “Require BMPs to control sediment and pollutants from construction sites.” (Page 37)

At page 47, subparagraph b. **Low Impact Development Strategies**, the following is asked:

1. What is meant by inserting the word “Priority” in the first sentence before the words “new development and redevelopment projects . . .”?
2. We would ask that the following words be inserted into the tenth (10<sup>th</sup>) line (in red) “that have been successfully and effectively implemented in other municipal areas with similar soil and geologic characteristics.”

**Recommendation:** On page 47, the tenth line, insert the words “with similar soil and geologic characteristics” following the words “effectively implemented in other municipal areas . . .”

It is also requested that the discussion contained herein acknowledge the opportunity for utilizing planned in hydro modification by way of flow control measures that occur in many ways on with the large scale project. For example, many projects today include hundreds if not thousands of acres and units. The nature of the process often avails itself of large scale mitigation efforts and likewise does not easily assure site by site mitigation. The Upper Laguna Creek Council’s pilot project is an example of the value of the large scale (similar to the approach embodied in the efforts by Counties in the San Francisco Bay Area other than Contra Costa County).

**Recommendation:** We would ask that the following be inserted into 15 (a) (ii) Because of the unique opportunity that large scale developments provide, LID approaches may utilize a strategy that, on a large scale, minimizes the transport of urban runoff and pollutants offsite and into MS4s. This strategy can integrate well with strategy ix (below) related to hydromodification concepts.”

At page 48, c. **Hydromodification Management Plan (HMP)**, given the experience accomplished by the work done by the Upper Laguna Creek Collaborative, it is suggested that the following be inserted into the order.

“With the exception of the areas of the Laguna Creek Water Shed north and east of Calvine Road in unincorporated Sacramento County, the Permittees shall submit a HMP Work Plan as part of their SQIPs for approval by the Regional Board. For the referenced portion of Laguna Creek, the Permittees shall submit amendments to their development standards to the Board no later than one year from Board approval of this order. It is acknowledged that a flow duration control model has been developed for this portion of the watershed and that the Permittees require time to review and adopt the model, or adopt alternative means for accomplishment of the model’s objectives. In any case, the Permittees will condition all projects in this portion of the water shed to meet the objectives of the ULCC model, to the extent that those projects are consistent with the model’s objectives.”

**Recommendation:** Page 50. 17 **Entitlement Process.** Insert the following on the fourth line:  
“developer and Permittees considered storm water quality treatment and site issues before the facilities/projects are approved and final designed. Included within this consideration of impacts shall be an analysis of the impact of a flow duration control approach upon water quality impacts.

Thank you for the opportunity to comment.

Sam Miller  
Vice President, Community Development  
Lewis Planned Communities