



RANCHO MISSION VIEJO

VIA EMAIL AND U.S. MAIL

August 18, 2016

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-2000

Reference: Statewide Dredged or Fill Procedures: Proposed Procedures for
Discharges of Dredged or Fill Materials to Waters of the State (June 17,
2016 Draft)

Subject: Rancho Mission Viejo Comments

Dear Ms. Townsend:

Thank you for the opportunity to review and provide comments on the Proposed Procedures for Discharges of Dredged or Fill Materials to Waters of the State ("Proposed Procedures"). Rancho Mission Viejo ("RMV") previously provided comments on the EIR NOP for the Proposed Procedures when they were termed the Wetlands Policy (see RMV May 10, 2011). We have reviewed this latest version of the procedures and offer the following comments for your consideration.

Background

Recently and over a period of sixteen (16) years of extensive planning and processing with federal, State and local agencies, RMV in cooperation with the County of Orange ("County"), U.S. Army Corps of Engineers ("USACE"), U.S. Fish and Wildlife Service ("USFWS") and the California Department of Fish and Wildlife ("CDFW") undertook and completed three coordinated watershed-level planning efforts to determine the future land uses for south Orange County, including all RMV lands (approximately 23,000 acres). These planning processes have resulted in approval of:

1. A General Plan Amendment/Zone Change for RMV lands by the County (this approval is commonly referred to as "The Ranch Plan");

2. The San Juan Creek/Western San Mateo Creek Watershed Special Area Management Plan (SAMP) and associated Long Term 404 Permit by the USACE;
3. The Orange County Southern Subregion Habitat Conservation Plan (SSHCP) by USFWS; and
4. A Master Streambed Alteration Agreement (MSAA) for the Ranch Plan by CDFW.

In order to complete these lengthy and complex planning and regulatory review processes, the participating parties prepared several supporting technical studies including:

- The USACE conducted a comprehensive landscape scale delineation and functional assessment of the streams and riparian zones within the study area. The USACE identified and mapped the extent of potential USACE jurisdiction and ranked the streams in terms of their overall hydrologic, biologic and biogeochemical integrity.
- RMV conducted a project level delineation to identify and quantify the extent of areas subject to the jurisdiction of (1) the USACE pursuant to Section 404 of the Clean Water Act and (2) the CDFW pursuant to Section 1600 of the Fish and Game Code.

These delineations were approved by the USACE and CDFW, respectively, during the planning processes for the SAMP and MSAA and were significant determining factors in the decisions regarding which RMV lands should be protected as conservation/natural open space including Waters of the State and which lands could be developed. *The result of the SAMP and MSAA planning processes is that 94% of all CDFW Jurisdictional Areas and 95% of all Waters of the U.S. on RMV lands are designated for permanent protection and identified as Aquatic Resource Conservation Areas (ARCAs).*

Since the approval of the SAMP in 2007 and the MSAA in 2009, RMV in cooperation with the USACE and CDFW have been implementing the SAMP and the MSAA. To date 6,515 acres of RMV property has been permanently protected through the recordation of conservation easements (or irrevocable covenants, a prelude to conservation easements). Within the 6,515 acres conserved to date, ARCAs such as San Juan Creek, Chiquita Creek and isolated features such as vernal pools and slope wetlands have been protected. These ARCA's are being actively managed to maintain or restore habitat values. For example, RMV has removed over 50 acres of *Arundo donax* from San Juan Creek to date to improve the riparian habitat which supports such endangered species as Arroyo Toad, Least Bell's Vireo and Southwestern Willow Flycatcher.

Comment:

The Proposed Procedures do not include any “grandfathering” language for projects with existing long term permits.

The Proposed Procedures consist of three components (1) a wetland definition, (2) wetland delineation procedures and (3) procedures for application submittal, and the review and approval of Water Quality Certifications, Waste Discharge Requirements, and waivers of Waste Discharge Requirements for dredged or fill activities. None of these components address projects that have existing long-term permits issued under existing regulations intended to protect and govern impacts to wetlands and Waters of the State. As noted above, RMV spent almost two decades to develop and implement a land use/open space plan for its property (i.e., the Ranch Plan). This effort involved the USACE, CDFW, USFWS and, at times, the San Diego RWQCB in addition to members of environmental organizations such as Natural Resources Defense Council, Endangered Habitats League, Sierra Club and many, many members of the general public.

Through the SAMP process, which included publication of an Environmental Impact Statement, the USACE completed a complex alternatives analysis in accordance with Section 404 (b)(1) of the Clean Water Act to determine the Least Environmentally Damaging Practical Alternative, for which the USACE issued RMV a long-term permit (SAMP LTP). The SAMP LTP provides for abbreviated permitting procedures for RMV to implement the Ranch Plan development and supporting infrastructure. These procedures rely on the USACE approved delineation described above. In proposing a project covered under the SAMP LTP, RMV must specify the impacts according to the approved delineation and describe the minimization measures and mitigation that will be used consistent with the requirements set forth in the SAMP. The MSAA contains similar sub-notification requirements. RMV anticipates using the SAMP and MSAA procedures to build out the Ranch Plan which may take up to 20 years.

Although SAMP's are not a commonly used regulatory tool due to the length of time they take to get approved and the associated expense involved, they are a very effective tool to accomplish exactly what the Water Boards are seeking via Executive Order W-59-93. The same is true of MSAA's. It is imperative that entities such as RMV who have taken a holistic watershed based approach to entitling their properties should have their efforts recognized in the language of the Proposed Procedures. And it is critical that any new procedures adopted by the State Board along the lines of what is being proposed here not have the potential to disrupt, unravel, be inconsistent with, or otherwise operate in conflict with the approved SAMP and MSAA. To do otherwise is contrary to the Water Boards' stated desire to move towards watershed planning. Recognition should include modifications to the Proposed Procedures in all respects to make them clear that projects undertaken pursuant to a SAMP approved by the USACE prior to the effective date of the Proposed Procedures are not subject to these new procedures for 401 Certification and WDR's. In particular, such projects with approved SAMP's should not have to undergo an Alternatives Analysis by the Regional Board, as the USACE has already undertaken

such an alternatives analysis and the landowner has relied on that exacting process to make significant decisions and commitments of resources in reliance on that alternatives analysis. To have such an analysis revisited by the Regional Board would be patently unfair to the landowner/applicant, a misuse of limited Regional Board resources and draw projects unnecessarily into conflict with decisions made by the federal agency, and in the case of RMV, supported by USFWS via the SSHCP and CDFW via the MSAA.

It is equally true that the compensatory mitigation requirements that are already provided for under RMV's SAMP and MSAA – having already followed a watershed planning and protection approach in their formulation – should be recognized and accepted by the Regional Board for fulfilling any compensatory mitigation requirements associated with Section 401 Certifications or WDRs.

In consideration of the above, we respectfully request the following changes to the Proposed Procedures – our requested changes are shown in italics:

a. Section IV.A.1.b.

If wetlands that are waters of the state are present, a delineation of those wetlands as described in Section III, *or, if the project is subject to the terms of a Special Area Management Plan or Master Streambed Alteration Agreement approved prior to the Effective Date of these Proposed Procedures, a project delineation consistent with the overall approved SAMP or MSAA delineation.* In addition, if waters of the U.S. are present, any preliminary or final wetlands delineation that was submitted to the Corps, *or, if the project is subject to the terms of a Special Area Management Plan, a project delineation consistent with the overall approved SAMP delineation.*

b. Section IV.A.2. New Sub-Section h

We are requesting a new Sub-Section h as follows:

If the applicant is a participant in a SAMP and/or an MSAA approved prior to the Effective Date of these Proposed Procedures that has specified compensatory mitigation requirements, sub-section (d) shall not apply and the applicant shall submit a compensatory mitigation plan that is consistent with the terms of the approved SAMP and/or MSAA.

c. Section IV.B.2

The permitting authority shall rely on any Corps-approved wetland area delineation, within the boundaries of waters of the U.S. For all other wetland area delineations, the permitting authority shall review and approve delineations that are performed using the methods described in Section III. *If there is a wetland*

area delineation conducted in support of a SAMP or MSAA approved prior to the Effective Date of these Proposed Procedures, the permitting authority shall rely on this delineation.

d. Section IV.B.3.d.iv.

The project would be conducted *either: (i) in accordance with a watershed plan that has been approved by the permitting authority and analyzed in an environmental document that includes sufficient alternatives analysis, monitoring provisions, and guidance on compensatory mitigation opportunities, or (ii) in accordance with a SAMP that has been approved by the Corps prior to the Effective Date of these Proposed Procedures and analyzed in an environmental document that includes an alternatives analysis, monitoring provisions, minimization measures and compensatory mitigation.*

e. Section IV.B.5.b.

Where feasible, the permitting authority will consult and coordinate with any other public agencies that have concurrent mitigation requirements in order to achieve multiple environmental benefits with a single project, thereby reducing the cost of compliance to the applicant. *If the applicant is a participant in SAMP and/or an MSAA approved by the Corps and/or CDFW prior to the Effective Date of these Proposed Procedures that has specified compensatory mitigation requirements, the permitting authority shall accept a compensatory mitigation plan that is consistent with the terms of the SAMP and/or MSAA.*

f. Section V. (Definitions)

Section V provides a definition of a “Watershed Plan” we request that this definition be revised as follows:

Watershed Plan means a document that provides assessment and management information for a geographically defined watershed, including the analyses, actions, participants, and resources related to development and implementation of the plan. *For purposes of these Procedures, the term “Watershed Plan” shall include, but not be limited to, any SAMP approved by the Corps prior to the Effective Date of the Procedures.*

Should you have any questions regarding these comments, please feel free to contact me at (949) 240-3362 Ext 297 or via email at lcoleyeisenberg@ranchomv.com

Sincerely,

A handwritten signature in blue ink, appearing to read 'Laura Coley Eisenberg', with a long horizontal flourish extending to the right.

Laura Coley Eisenberg
Vice President, Open Space & Resource Management