



RANCHO MISSION VIEJO

VIA EMAIL

September 18, 2017

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

Reference: State Wetland Definition and Procedures for Discharges of Dredged or Fill
Materials to Waters of the State (June 21, 2017 Final Draft)

Subject: Rancho Mission Viejo Comments

Dear Ms. Townsend:

Thank you for the opportunity to review and provide comments on the Final Draft of the State Wetland Definition and 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 also provided comments on the prior draft of the Proposed Procedures (see RMV August 18, 2016). We have reviewed the Water Board's responses to our August 18, 2016 letter of comment and this latest version of the Proposed Procedures.

RMV appreciates the revisions that the Water Board has made to the Proposed Procedures to recognize that HCPs and SAMPs may meet the definition of a watershed plan, however, in our opinion the Proposed Procedures do not provide sufficient differentiation between requirements that apply to future watershed plans versus those that may apply to existing approved SAMPs. We are most concerned with the latter and in this regard provide additional comments.

Background

In our August 18, 2016 letter of comment, we noted that SAMPs are not a commonly used regulatory tool due to the length of time they take to get approved and the associated expense involved. This is borne out by the very limited number of approved SAMPs. According to the U.S. Army Corps of Engineers ("USACE"), there are at most five

approved SAMPs in California: 1) San Juan Creek/Western San Mateo Creek Watershed SAMP in Orange County, 2) San Diego Creek Watershed SAMP in Orange County, 3) Santa Margarita & San Jacinto Watersheds SAMP in Riverside County, 4) Otay Watershed SAMP in San Diego County and 5) the SAMP for Beale Airforce Base in Yuba County.

RMV is the principal permittee under the San Juan Creek/Western San Mateo Creek Watershed SAMP (“SJC/SMC SAMP”) which was approved by the USACE in 2007 following circulation of an EIS, public hearings, response to comments and adoption of a Record of Decision. In addition to the alternatives analysis for the SJC/SMC SAMP required under NEPA, the EIS also included an alternatives analysis per Section 404(b)(1) of the federal Clean Water Act, and the impact analysis was based on a project level delineation conducted using the 1987 Manual and Arid West Supplements. Monitoring provisions and specific requirements for compensatory mitigation were also set forth. In the Public Notice for the SJC/SMC SAMP, the USACE summed up the benefits of a SAMP as follows:

“In exchange for assurances of being able to implement permitted activities over the long-term, proposed permittees are able to make long-term commitment to aquatic resource protection and management over a large geographic area with focus on protecting higher value aquatic resources.” (Public Notice, p. 8.)

RMV has been implementing the terms of the SJC/SMC SAMP since 2007, and in this regard we have conducted advance, pre-impact work in the Aquatic Resource Conservation Areas identified by the SJC/SMC SAMP. Advance pre-impact work has focused on the removal of arundo donax present in San Juan Creek, one of the key conservation areas. To date, RMV has removed 61 acres of arundo in advance of impacts at a cost of over \$600,000. Furthermore, RMV has created 15 acres of wetlands/riparian habitat in advance of project impacts at a cost of approximately \$500,000. RMV has also recorded irrevocable covenants and conservation easements over portions of San Juan Creek, Chiquita Creek, and other waters of the U.S., that were identified as Aquatic Resource Conservation Areas (ARCAs) in the SJC/SMC SAMP. These areas are subject to active management and monitoring, including vegetation monitoring and wildlife surveys. The annual cost for management and monitoring of these areas is approaching \$325,000 per year, and is anticipated to continue to increase as additional ARCAs are protected. The investment to complete and implement the SJC/SMC SAMP was explicitly done in order to secure predictability and certainty for RMV along with greater resource protection.

Comments

In our letter of August 18, 2016 we suggested revisions to the Proposed Procedures that would differentiate between future watershed plans and existing approved SAMPs. We continue to advocate that the Water Board should recognize that approved SAMPs are a special case, and SAMP Permittees should not be required to repeat regulatory processes

that they have already completed, i.e., preparation and circulation of environmental documents, alternatives analysis, establishment of monitoring provisions and compensatory mitigation.

Projects undertaken pursuant to approved SAMPs prior to the effective date of the Proposed Procedures should not be subject to these new procedures for 401 Certification and WDR's, and in this regard, we respectfully request that the Water Board adopt our changes as shown in italics:

a. Section IV.A.1.g.ii

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.*

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

c. 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 approved by the Corps 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.*

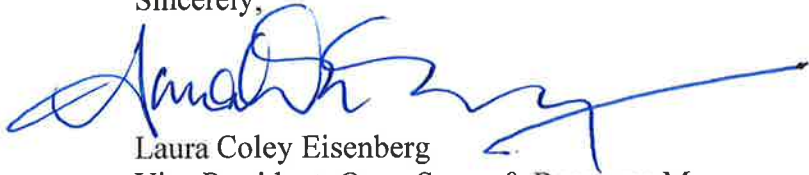
d. Section IV.B.5.c.

We are requesting a new Strategy 1 be added as follows. Current Strategy 1 and 2 would be re-numbered as Strategy 2 and 3 respectively.

Strategy 1. Applicant is a participant in a SAMP approved by the Corps prior to the Effective Date of these Proposed Procedures that has specified compensatory mitigation requirements, and Applicant has proposed compensatory mitigation consistent with the terms of the SAMP.

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,



Laura Coley Eisenberg
Vice President, Open Space & Resource Management