

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**STAFF REPORT**

To: Bruce Wolfe  
Executive Officer  
Date: May 25, 2004

From: Elizabeth Morrison  
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File Nos.: 2118.03  
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Site No.: 02-07-C0108

**Subject: Revised Application for CWA Section 401 Water Quality  
Certification for the Montanera Project in Gateway Valley, Orinda**

**Introduction**

Orinda Gateway, LLC (d.b.a. Montanera LLC), (Montanera, the Discharger) has submitted a revised application for water quality certification under Section 401 of the Federal Clean Water Act for discharge of dredge and fill materials into wetlands and other waters of the United States associated with construction of the Montanera Project (revised Project.) The revised Project, see Figure 1, is comprised of two parcels of land:

- A) a 978-acre parcel commonly known as “Gateway Valley” within the City of Orinda, Contra Costa County. The Discharger proposes to construct a 245 residential community on 216 acres of this parcel; and,
- B) approximately 205 acres of land immediately contiguous with the southern and eastern borders of Gateway Valley (the “Indian Valley” site) that will be subject to a permanent conservation easement for preservation and mitigation purposes. The Indian Valley site is located in unincorporated Contra Costa County.

The Board held a workshop on the proposed project on December 3, 2003. The staff report from that workshop, with Project details, is attached to this report. This report will discuss issues raised during the workshop, new information/details received since the Board workshop and the Tentative Order (TO) for the Project.

**Outstanding Issues**

The following issues were discussed during the workshop:

- A) Elimination of grazing from open-space areas; and
- B) The funding mechanism and dollar amount for long-term management.

Additional information/details since the workshop include:

- C) New ownerships for portions of the open-space/mitigation areas;
- D) Artificial turf on playfields; and,
- E) City of Orinda’s requirement for a Supplemental EIR.

- A) Elimination of grazing from open-space areas**

The Discharger had proposed to eliminate cattle/livestock grazing from open-space areas and to use limited goat grazing and hand clearing/mowing in areas needing vegetation management for Endangered Species habitat and fuel load. East Bay Regional Park District (EBRPD) staff voiced concerns that when grazing is removed entirely in grassland areas that a number of changes occur, including increased growth of non-native grasses and forbs, invasion by woody perennial species, overall loss of biodiversity and greatly increased loading of flammable vegetation. They also commented that the proposed alternatives, especially goat grazing, was a more expensive and less reliable as large-scale land management tools. Members of the public commented that the removal of grazing and associated impacts would be beneficial to the open-space areas.

Since the workshop the Discharger and his consultants, agencies staff, EBRPD, East Bay Municipal Utilities District (EBMUD), City of Orinda, and the Fire Marshall for the Moraga/Orinda Fire District attended several meeting regarding the long-term management of the open space areas. It was determined that managed cattle/livestock grazing, during the dry season, will be utilized in the open-space areas for fuel load management, with fencing provided for riparian and wetland areas. A Long Term Management Plan, which includes grazing parameters, fencing requirements, and water trough installation, has been prepared and the TO requires submission of a final draft for Executive Officer approval.

**B) The funding mechanism and dollar amount for long-term management**

Initially, the Discharger proposed to work with the City of Orinda to establish a Geologic Hazard Abatement District (GHAD) that would perform and pay for long-term management costs through homeowner assessments. In order to ensure that the GHAD would cover all of the mitigation areas, and would have sufficient funding to pay long term costs, a condition was drafted that would require the GHAD area to include all of the open space areas, and to set aside a portion of its annual budget for resource management. However, in response to U.S. Fish & Wildlife Service (USFWS) concerns regarding the use of assessments rather than an endowment to pay for resource management costs, the Discharger has agreed to establish separate long-term management endowments for each of the Conservation Entities. In light of the change to the use of developer-funding endowments, the GHAD no longer needs to cover the entire project area and will cover only the development area and those lands to be owned by the GHAD.

The Discharger has submitted a Property Analysis Record (PAR)-based estimate of the endowment amounts necessary to fund the long-term management activities for the open-space areas. The Discharger shall create a separate endowment fund for each of the Conservation Entities. The final Long Term Resource Management Endowments amounts will be calculated by the Discharger based on the cost of the last three years of the Initial Monitoring Period, and a final PAR analysis to calculate endowment amounts that will be adequate to fund such actual monitoring and maintenance requirements in perpetuity. The final Long Term Resource Management Endowments amounts shall be reviewed and approved by the Executive Officer and Conservation Entities. The

Discharger has presently estimated that an amount of \$800,000 is appropriate if an endowment mechanism is used to secure long-term funding.

**C) New ownerships for portions of the open-space/mitigation areas**

After the workshop EBMUD staff contacted Board staff regarding grazing impacts to the watershed runoff and expressing interest in being considered for management of portions of the open-space areas on the Project site. EBMUD was especially concerned about the tributaries of Upper San Leandro Reservoir (USL), including Moraga and Indian Creeks, because USL water has the highest levels of total organic carbon (TOC) of any EBMUD water supply reservoir. Any increases in TOC, nutrients or other organic constituents in runoff will significantly increase EBMUD water treatment costs and impact treated water quality.

Additionally, EBRPD also notified the Board that they were reconsidering accepting portions of the open-space areas based on urban interface issues, funding concerns, and fire and landslide liability.

EBMUD staff participated in the grazing meeting discussed above. During these negotiations it was agreed that portions of the open-space areas would be divided up between the two agencies, with the City's GHAD acquiring the land that neither agency was interested in owning. This plan allows for long-term resource protection and public access consistent with the missions of EBMUD and EBRPD. These management areas are shown in Figure 2. A portion of the "Eastern Hills" management area, shown on the map with blue and purple crosshatches, may be dedicated to either EBRPD or EBMUD. Each District has yet to decide if they are interested in acquiring this area. If neither district takes the area, it will be dedicated to the GHAD.

**D) Artificial turf on playfields**

The City of Orinda has requested that the Discharger install "artificial" turf on a portion of the playfields that will be constructed. There is a potential that materials in the artificial turf could be a pollutant in stormwater runoff. The Discharger is currently meeting with the artificial turf company to determine potential contaminants. The Discharger might need to propose appropriate downstream treatment control as part of their Final Stormwater Management Plan. If runoff pollutants cannot be treated, the Discharger will not install the artificial turf and return to the original plan of installing grass.

**E) City of Orinda requirement for a SEIR**

The City of Orinda notified the Board in their response to the TO that they have determined that it is required to prepare a Supplemental Environmental Impact Report ("SEIR") to evaluate the potentially significant visual/aesthetic impacts of the proposed above-ground rerouting of the electrical transmission line and the illumination of the community playfields, both of which are new components of the Montanera Project and therefore were not considered in the previous CEQA documentation. These two issues are not water quality related and will not impact

waters of the State. This additional CEQA review will not provide new water quality analysis.

The Discharger had originally proposed to install the power lines underground in the previous CEQA documentation. The elimination of the regulation golf course and reduced development area made installing power lines underground infeasible and required the Discharger to re-route the 115kV power lines that presently traverse east/west on the northerly portion of the property to the south along the western hills. The Discharger and PG&E will locate the towers and access roads to avoid impacts to aquatic resources.

### **Tentative Order**

The TO for the project allows for the development of approximately 245 homes and associated community amenities on a 216-acre development envelope and dedication of 973 acres as open space. There are approximately 15.34 acres of jurisdictional waters of the U.S. on the Project site, of these 4.03 acres will be impacted. The Discharger has submitted a Mitigation Plan and a Stream Plan, which will create and restore a total of 5.32 acres of wetlands, enhance and preserve over 58,000 linear feet of stream, and plant a minimum of 12.42 acres of riparian habitat. The mitigation areas will be monitored for a minimum of 10 years.

The TO was circulated for a 30-day review and staff received four comment letters in response to the TO. These letters and staff response will be included in the Staff Summary Report. Minor edits were made to the TO in response to the comments.

### **Conclusion**

Issues raised during the workshop, grazing and long-term funding, and a recent issue of ownership of the open-space areas have been resolved during numerous meetings of all interested parties. Staff will continue to discuss the use of artificial turf and potential stormwater issues with the Discharger. The TO requires submission for Executive Officer approval of a final Stormwater Management Plan, which will include artificial turf BMPs if needed. The City's requirement for a SEIR under CEQA to analyze above-ground power lines and lighting of the playfield will not affect the TO. Neither component will impact water quality or waters of the State.

After many years of working with various agencies, local districts, City of Orinda, and the public, the Project has gone through numerous revisions. The Discharger has significantly reduced the Project's potential impacts to the watershed and existing waterbodies and increased the mitigation and open-space areas, while still allowing the same number of residential units originally proposed.