



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

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Arnold Schwarzenegger
Governor

April 29, 2009

Jaime Murillo
City of Newport Beach Planning Department
3300 Newport Boulevard
Newport Beach, CA 92685-8915

NOTICE OF PREPARATION AND INITIAL STUDY FOR A DRAFT ENVIRONMENTAL IMPACT REPORT, NEWPORT BEACH CITY HALL AND PARK DEVELOPMENT PLAN, CITY OF NEWPORT BEACH, SCH# 2009041010

Dear Mr. Murillo:

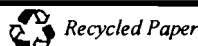
Staff of the Regional Water Quality Control Board, Santa Ana Region (Regional Board) have reviewed the Initial Study (IS) for a Draft Environmental Impact Report (DEIR) for the proposed Newport Beach City Hall and public park areas, to be constructed north of the City's existing Library (Project). The Project is located south of San Joaquin Hills Road, between Avocado Avenue and MacArthur Boulevard (north-south trending streets) and between San Nicholas Drive and Harbor View Drive (Figure 1). From south to north, improvements will include Library expansion, the new City Hall building (meeting hall, Council Chambers, and parking structure) and public park areas straddling San Miguel Drive. A dog park is proposed for the open-space slope north of San Miguel Drive.

We believe that the DEIR should incorporate the following comments in order for the Project to best protect water quality standards (water quality objectives and beneficial uses) contained in the Water Quality Control Plan for the Santa Ana River Basin (Region 8 Basin Plan, 1995, as amended):

1. South of San Miguel Drive and north of the new City Hall, the greater portion of the park would surround the existing linear wetland that occupies a short channel at the bottom of steep embankments. The DEIR's Geology Section should determine whether this open space is underlain by Miocene Monterey Formation (bedrock or reworked sediments), which could release potentially harmful selenium to the wetland, or is underlain by Pleistocene/Holocene marine terrace or another formation that contains little or no selenium. Further, the Hydrology Section should determine the direction(s) of site drainage following building and park construction, both internal drainage to the wetland and offsite drainage to either Upper Newport Bay or to Lower Newport Bay.

The impacts of dry weather flows and stormwater runoff on the water quality standards of all receiving waters must be examined in the DEIR. For example,

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Best Management Practices (BMPs) will be necessary to intercept and treat nitrates and sediment from the proposed dog park that may likely be transported to storm drains, while those constituents as well as pesticides, potentially selenium, etc. must likewise be minimized if internal drainage on the south side of San Miguel Drive would transport them to the wetland. These and other BMPs must be established in conformance with the Orange County Drainage Area Management Plan (DAMP) and Water Quality Management Plan (WQMP), both required by the Regional Board's "Orange County MS4" permit¹, as well as in conformance with the State Water Resources Control Board's Water Quality Order No. 99-08-DWQ, "General Permit for Storm Water Discharges Associated with Construction Activity." Please see web site at http://www.waterboards.ca.gov/water_issues/programs/stormwater/

2. The DEIR should reflect that where groundwater dewatering is necessary for projects that discharge into Upper or Lower Newport Bay, these discharges require coverage under Order No. R8-2004-0021 (amended by R8-2006-0065), NPDES No. CAG998002, "General Waste Discharge Requirements for Short-Term Groundwater-Related Discharges and *De Minimus* Wastewater Discharges to Surface Waters Within the San Diego Creek/Newport Bay Watershed." This general permit establishes a waste discharge management program applicable to the project area, for the purpose of reducing selenium, sediment, nutrients, pesticides, and other pollutants. This permit is available at: http://www.waterboards.ca.gov/santaana/board_decisions/adopted_orders . You may also contact the Region 8 Permitting Section staff at (951) 782-4130.
3. The IS (p.25) generally recognizes impacts to jurisdictional wetland/riparian habitat, subject to permitting by the United States Army Corps of Engineers (USACE) and the California Department of Fish and Game, but does not relate this jurisdiction to the Regional Board. Because the Project appears to result in excavation of ("dredging") and/or placement of fill into "waters of the United States," which include wetlands, the Project is expected to fall within the jurisdiction of the USACE and requires their issuance of a Clean Water Act (CWA) Section 404 permit. If so, the City is advised to apply for the prerequisite CWA Section 401 Water Quality Standards Certification (Certification) from the Regional Board that construction and operation of the Project will not adversely affect water quality standards.

The anticipated jurisdictional delineation (IS p.25) and subsequent USACE staff determination may find that wetlands or other surface waters are isolated from waters of the U.S. and are therefore outside of federal jurisdiction. Please be advised that these so-called "isolated waters" are nevertheless waters of the State and may be subject to individual waste discharge requirements pursuant to the California Water Code. If a Section 404 permit is not required, then the BMPs will

¹ Waste Discharge Requirements for Orange County (NPDES Permit No. CAS618030, Order No. R8-2002-0010, Areawide Urban Storm Water Runoff Permit for the County of Orange, Orange County Flood Control District, and Incorporated Cities of Orange County within the Santa Ana Region), also known as the Orange County municipal separate storm sewer system, or "Orange County MS4 permit." (please see web site at http://www.waterboards.ca.gov/santaana/html/oc_permit.html).

follow those criteria required by the statewide Water Quality Order No. 99-08-DWQ and the WQMP requirement of the MS4 permit.

The issuance of a Certification represents a determination by the Executive Officer that discharges of waste to waters of the U.S. that are associated with the Project will comply with the applicable provisions of CWA Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards), and with other applicable requirements of State law. In order for such a determination to be meaningful, projects subject to Certification are evaluated for their direct, indirect, and cumulative impacts to waters of the U.S., specifically, impacts to state water quality standards. Such impacts must be mitigated to receive a Certification and the DEIR should identify likely mitigation concepts. Information concerning Certification can be found at http://www.waterboards.ca.gov/santaana/water_issues/programs/401_certification/index.shtml.

If you have any questions, please contact Glenn Robertson at (951) 782-3259, grobertson@waterboards.ca.gov, or me at (951) 782-3234, or madelson@waterboards.ca.gov

Sincerely,



Mark G. Adelson, Chief
Regional Planning Programs Section

cc: State Clearinghouse
U.S. Army Corps of Engineers, Los Angeles -Stephanie Hall
California Department of Fish and Game, Los Alamitos – Erinn Wilson
U.S. Fish and Wildlife Service, Carlsbad – Jonathan Snyder
Orange County RDMD, Flood Control, Santa Ana - Andy Ngo

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