UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 12, 2007

Colonel Alex Dornstauder
District Engineer
U.S. Army Corps of Engineers, LA District
Attn: Mark Durham
914 Wilshire Boulevard, 14th Floor
Los Angeles, CA 90017

Subject: Final Environmental Impact Statement (FEIS) for the San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan (SAMP) (CEQ # 60543)

Dear Colonel Dornstauder:

The Environmental Protection Agency (EPA) has reviewed the document referenced above. Our review is pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. This project serves to determine the permitting process for future projects in the SAMP area covering a 131,000-acre area in the San Juan Creek and western San Mateo Creek watersheds in southern Orange County, California.

On January 26, 2006, we commented on the Draft Environmental Impact Statement (DEIS) and associated Special Public Notices (SPNs) and rated the proposed alternative as Environmental Concerns - Insufficient Information (EC-2). Our primary concerns focused on the alternatives analysis required under the Clean Water Act (CWA) Section 404(b)(1) Guidelines (Guidelines) and cumulative impacts. We recommended addressing these concerns before the Corps authorizes the long-term Individual Permit (IP) referenced in the SPN for the Rancho Mission Viejo (RMV) Planning Area.

EPA and the Corps have had several discussions regarding this SAMP. EPA strongly supports a watershed-based approach to environmental permitting and planning that the Corps has undertaken in this SAMP. This comprehensive approach to resource protection and development can help reduce cumulative impacts to aquatic resources and provide protection for high value resource areas, while allowing for needed development. EPA endorses the strong conservation component included in this SAMP.

While the San Juan Creek and Western San Mateo Creek Watershed SAMP will be an important planning tool for Orange County, EPA has concerns regarding how the alternatives analysis was conducted and the long-term IP for RMV. Specifically, EPA is concerned that the EIS does not sufficiently substantiate the selection of Alternative B-12 as the least environmentally damaging practicable alternative (LEDPA) and that more stringent requirements should be placed on the IP for RMV to ensure protection of the Aquatic Resource Conservation Areas and to support low impact development.

We raise these issues to your attention because 1) we want to come to agreement with the Corps on methodologies to assess the economic viability of large-scale development and 2) ensure that the IP supports the broader preservation of landscape values and functions outlined in the SAMP. These issues are important for this SAMP, as well as others that are currently under development.

Attached in our detailed comments are specific recommendations for improvements to the SAMP and the IP that can be incorporated into the Record of Decision (ROD) for this project. In brief, the ROD should: 1) support the selection of B-12 as the LEDPA based on objective economic criteria, 2) include protocols to ensure that the Rancho Mission Viejo Land Conservancy is established as soon as possible, and 3) incorporate low-impact development mitigation measures within the IP to lessen impacts to Waters of the U.S.

We look forward to meeting with Dave Castanon and Jae Chung of your office on February 16, 2007, and we appreciate their willingness to travel to meet with us. We can further discuss these comments when we meet and identify opportunities for greater collaboration on future SAMPs. When the ROD for this project is released for public review, please send (2) copies to the address above (mailcode: CED-2). If you have any questions, please contact me at 415-972-3946 or Summer Allen, the lead reviewer for this project. Summer can be reached at 415-972-3847.

Sincerely,

/S/

Nova Blazej, Manager
Environmental Review Office

Enclosures: Summary of Rating Definitions
Detailed Comments

cc: Holly Herod, US Fish and Wildlife Service

Main ID # 3665

Alternatives Analysis

We continue to believe there is insufficient information to make a determination as to whether Alternative B-12 represents the least environmentally damaging practicable alternative (LEDPA) to meet the project purpose, as required under the Guidelines (40 CFR 230.10(a), 230.12). This is a crucial issue for this, and future, SAMPs in California. In particular, the economic criteria for selecting B-12 as the LEDPA and eliminating the less environmentally damaging alternative, B-8, is not clear. The EIS states that Rancho Mission Viejo's (RMV) primary economic goal is to produce an "economically viable" project, but we are unclear what parameters the Corps has used to determine whether or not an alternative meets this goal. On page 3-10 and 3-17, the Corps notes that Alternative B-8 is not able to provide the housing units in the range indicated as acceptable to the County of Orange and RMV but there is no baseline number for comparison. In environmental documents for housing developments, the economic rationale for selection of particular alternatives usually depends on a more defined need.

While we agree that consideration of local needs are an important part of determining the overall project purpose (as exhibited by Orange County's long-term housing goals and General Plan), we remain concerned that the Corps has not developed an independent methodology for analyzing economic practicability. The Corps findings from the 1989 Hartz Mountain 404(q) Elevation state that the Corps should not give "undue deference" to a local zoning body. It also notes that the alternatives analysis should not be constrained by a narrowly-defined project purpose and often, Federal concerns (including environmental concerns), "will result in decisions that are inconsistent with local land use approvals." When we review and comment on large scale development proposals, EPA normally expects a reasonably rigorous quantitative analysis of residential development alternatives considered and the appropriateness of the level of housing development identified in the preferred alternative.

Recommendations:

In the Record of Decision (ROD), the Corps should explain what is needed to be considered "reasonable economic activities and development," one of the primary goals of the SAMP. It should include clearly defined economic goals, such as a minimum number of housing units needed (as this seems to be the biggest deciding factor among the alternatives) and these should be used to explain the rationale for eliminating Alternative B-8. For example, for the Sunrise-Douglas project, a large scale, multi-phase development project in Sacramento County, California, the proponent prepared a detailed financial analysis of alternative development scenarios to support the selection of the preferred alternative/LEDPA.

Conservation Element

A central goal of the SAMP is to provide permanent protection and management for wetland and riparian communities within the designated Aquatic Resource Conservation Areas (ARCA). The DEIS proposed that these areas be managed comprehensively as part of one coordinated management program (the NCCP/MSAA/HCP habitat reserve). Since the details of the proposed habitat reserve have not been approved, the DEIS proposed to establish the Ranch Mission Viejo Land Conservancy (RMVLC) to manage the conservation areas during the interim. While we support the concept of using a land trust or conservancy to hold the conservation easement, provide local stewardship and to manage the land into perpetuity, we are concerned that this entity has not been established. Development of a non-profit organization – including setting up a Board of Directors, hiring land managers and staff takes a large amount of time and effort.

Recommendations:
The permit should be adapted to contain specific requirements to ensure that the development of the RMVLC occurs in a timely manner. The permit should also require the RMVLC to meet third-party accreditation from the Land Trust Alliance within the first five years, providing independent verification of the RMVLC's ability to operate in an ethical, legal and technically sound manner and ensure the long-term protection of land in the public interest.

Low-impact Development

We recommended including low-impact development measures within the Individual Permit for areas targeted for development to help mitigate the long-term cumulative impacts to Waters of the U.S. In the response to comments, the Corps requests suggestions for low-impact development. We refer you to the website: www.epa.gov/smartgrowth and have included some water resource-specific recommendations here:

- Establish minimum upland buffer zones of 100 feet extending from each bank of all avoided waters.
- Minimize the amount of impervious cover.
- Establish new legal status for avoidance areas (*i.e.*, new individual parcels with restrictive covenants on all avoided waters and associated buffer zones). Record these legal restrictions within 30 days of 404 permit issuance.
- Establish responsibility and oversight of the preserve areas by an independent third-party with appropriate expertise (*e.g.*, conservation organization, regional parks district).
- Analyze the practicability of front-loaded streets to minimize impacts to aquatic habitat.
- Ensure that all detention basins provide required water-quality functions and site them off-stream where practicable.
- Ensure that recreational trails are placed outside the buffer zones associated

with washes (*i.e.*, trails no closer than 100' from the edge of bank).

Air Impacts

In the Response to Comments, the Corps states that impacts on resources other than Waters of the U.S., including reductions to the project's impacts to air quality, are outside of the Corps' jurisdiction (p. 3-25 and 3-28). While we understand that the Corps has the limited role of the 404 permit, this permit will allow development on over 130,000 acres in Orange County, an area with existing environmental issues, such as nonattainment status for 8-hour ozone, particulate matter less than 2.5 microns in diameter (PM2.5), particulate matter less than 10 microns in diameter (PM10), and carbon monoxide. We recognize that steps the Corps has taken in drafting a SAMP to meet the needs of RMV and the County of Orange. However, once the long-term Individual Permit is issued, development boundaries within the RMV Planning Area will be established, and no further avoidance or minimization will be required. Consequently, it is critical that prior to issuance of this permit, potential impacts to air quality within the proposed development areas be avoided and minimized to the maximum extent practicable.

Recommendations:
Given the substantial amount of growth in Orange County and the desire to look at growth comprehensively to minimize or mitigate impacts, the ROD should include information on planning coordination with the South Coast Air Quality Management District.