

**California Regional Water Quality Control Board
San Francisco Bay Region**

RESPONSE TO WRITTEN COMMENTS

On the Adoption of Waste Discharge Requirements and Water Quality Certification
Santa Clara Valley Water District
Stream Maintenance Program

The Regional Water Board received written comments on the draft Waste Discharge Requirements and Water Quality Certification (Tentative Order) from the following parties:

- Mr. Kenneth A. Harris, Executive Officer, Central Coast Regional Water Quality Control Board, dated March 11, 2014
- Ms. Norma J. Camacho, Chief Operating Officer – Watersheds, Santa Clara Valley Water District, dated March 11, 2014

This response to the comments includes the original comment in *italics* followed by a staff response. Revisions to the Tentative Order are shown with strikethrough for deletions and underline for additions.

Central Coast Regional Water Quality Control Board

Comment 1: *Provision 58 (p. 22) [now Provision 60]. This provision requires the District to monitor all mitigation sites in accordance with Chapter 11 of the SMP Manual. Section 11.9.1 of the SMP Manual includes a statement that the District will monitor large woody debris (LWD) placement (Tier 4 only) for one year post-construction. Flow conditions vary in streams from year to year due to variations in rainfall and other factors. Therefore it is unlikely that a one-year monitoring period is sufficient to determine that placement of LWD will not cause erosion or other water quality problems. Therefore we recommend adding a provision requiring the District to monitor LWD placement annually for at least two years post-construction, and up to five years, depending on site conditions. We also recommend that the Tentative Order include a provision requiring the District identify the site-specific monitoring period in the appropriate mitigation plan proposal each year.*

Response to Comment 1:

We agree that a one-year monitoring period for LWD may not provide sufficient information to determine the benefit of LWD placement and that monitoring should be conducted after higher flows to determine the stability and functions of the LWD. We note that the District will be proposing LWD performance criteria in the annual Notice of Proposed Work, and, as part of our review and approval process, we will evaluate the need for a longer monitoring period on a case by case basis. In order to simplify this process and increase the chances of obtaining meaningful monitoring data, we have increased the monitoring period to be at least two years. The following language has been added as Provision 60 to the Tentative Order:

The District shall monitor LWD placement annually for at least two years post-construction. If Regional Water Board staff determine that the performance criteria, as specified in the approved NPW, have not been met and/or the LWD feature(s) has created any adverse effects, then the District shall propose, in the ASR, and implement corrective action and additional monitoring until the approved performance criteria have been met.

Comment 2: Provision 61 (p. 22) [now Provision 64]. This provision requires the District to submit a Notice of Proposed Work (NPW) each year that includes the information specified in Chapter 12 of the SMP Manual. According to Chapter 12 of the SMP Manual, the District will evaluate alternative maintenance approaches that achieve the same result under the following circumstances: (1) when conducting vegetation management activities (Section 12.2.2.1.m), and (2) when conducting sediment removal activities (Notification Form, item 63). The District should be required to evaluate alternative approaches for maintenance activities in steelhead streams when conducting bank stabilization activities as well. Therefore we recommend revising Provision 61 to include a statement requiring the District to evaluate alternative maintenance approaches when conducting vegetation management activities, sediment removal activities, and bank stabilization activities in steelhead streams, at a minimum.

Response to Comment 2: A change to the Tentative Order and the SMP Manual is not necessary. The District will assess bank erosion sites as specified in Chapters 3 and 6 of the SMP Manual to determine the most appropriate bank repair methods that minimize impacts to the environment.

Comment 3: Provision 71 (pp. 24-5) [now Provision 74]. This provision requires the District to develop a workplan and implementation schedule for developing new and updated maintenance guidelines (MGs) each year that addresses all channels listed in Chapter 3 (List of Facilities for MG Development (2014-2023)) of the SMP Manual. However, it is not clear in the February 7, 2014 SMP Manual whether Table 3-4 (List of Facilities for MG Development (2014-2023)) contains reaches that are planned for capital improvement projects. While Central Coast Water Board staff agrees that the District should develop MGs for all capital improvement projects, development of MGs for capital improvement projects should not be included under the SMP. Therefore we recommend revising Provision 71 to include a statement that, if Table 3-4 of the SMP Manual includes reaches that are planned for capital improvement projects, those reaches should be removed from Table 3-4 and replaced with reaches that are not planned for capital improvement projects.

Response to Comment 3: We agree. However, the District may develop MGs for reaches slated for CIPs that are still in the planning stage if maintenance will be necessary before a CIP is implemented. However, any MGs developed for future CIPs should not be included on the list.

To clarify, Provision 71 (now Provision 74) has been revised by adding the following sentence:

The List shall not include future CIPs.

Comment 4: *Provision 87 (p. 27) [now Provision 90]. This provision requires the District to conduct SMP maintenance work within specified work windows. In particular, the provision allows the District to conduct the following maintenance activities year-round in non-instream areas: vegetation management, herbicide application, large woody debris removal, mowing, flaming, grazing, animal conflict management, and minor maintenance. It is not clear how the term “non-instream,” used in the Tentative Order, compares with the term “non-in-channel,” which is used in the February 10, 2014 SMP Manual. According to the February 7, 2014 SMP Manual, “in-channel” is defined as “inboard levee toe to the opposite inboard levee toe; where there is not a levee, inboard toe of the stream, ordinarily associated with ‘channel bottom’; or below bankfull. See Glossary cross-section diagram.” According to this definition and the Glossary cross-section diagram, “in-channel” includes areas within waters of the State. Therefore we recommend revising the Tentative Order to use terminology that is consistent with the SMP Manual, and to apply the “in-channel” work window and other requirements to all areas within the inboard tops of levee or bank.*

Response to Comment 4:

Table 3-2 of the SMP Manual includes year round vegetation maintenance specific to in-channel hand pruning and in-channel hand removal. Table 3-3 of the SMP Manual includes year round vegetation maintenance specific to herbicides (per Material Safety Data Sheet and Product label limitations), large woody debris (see Management of LWD guidelines), mowing, flaming, grazing, management of animal conflicts (per special status species and pesticide requirements), and minor maintenance (in-channel work follows activity specific work windows). The tables are also included in Provision 87 (now Provision 90) of the Tentative Order. Per Table 3-3 of the SMP Manual, the District may conduct certain maintenance activities within the channel above the inboard levee toe, which are still within waters of the State. Upon agreement between the District and the Regional Water Boards (Central Coast and San Francisco), the District will implement additional BMPs to further avoid potential impacts resulting from the activities. The District has added the following footnotes to Tables 3-2 and 3-3 of the SMP Manual. Accordingly, the following footnotes have also been added to Provision 87 (now Provision 90) of the Tentative Order.

Table 3-2

All maintenance vehicles shall stay on maintenance roads during the rainy season and when the soil is damp so as to avoid and minimize disturbed soil conditions within the bed and bank of the channel.

Table 3-3

All maintenance vehicles shall stay on maintenance roads during the rainy season and when the soil is damp so as to avoid and minimize disturbed soil conditions within the bed and bank of the channel.

Grazing animals shall be restricted from entering the channel, all waters flowing and standing, and wetlands habitats.

Santa Clara Valley Water District

Comment 1: *Finding 8 states: "The SMP Manual and associated attachments are considered a "living document" which allows for minor updates and revisions as maintenance techniques and methods are changed to be more protective of the environment to improve the District's stream maintenance program."*

The District agrees that the SMP Manual is a "living document", however; the Manual states the following, "The SMP is envisioned to be flexible, subject to periodic revisions that reflect improved understanding of resource conditions, maintenance technologies, and management practices over time." The District incorporates stream stewardship practices into design and construction of maintenance activities by avoiding and minimizing impacts whenever possible. There may be instances that require a change to maintenance methods or best management practices due to the infeasibility of current practices. We respectfully request the following revision to Finding 8 (note: underline denotes new text): "The SMP Manual and associated attachments are considered a "living document" which allows for minor updates and revisions as maintenance techniques and methods are changed to be more protective of the environment or to improve the District's stream maintenance program."

Response to Comment 1: We made the following clarifying changes below to Finding 8 and Provision 89. We also note that the basis for any changes to the SMP should be documented as part of the annual review process.

The SMP Manual and associated attachments are considered a "living document" that allows for minor updates and revisions in order to incorporate as maintenance techniques and methods are changed to be that are more protective of the environment or to improve the District's stream maintenance program SMP. Any proposed minor changes shall be submitted via the NPW or the ASRs for review and approval. Any substantive changes to the SMP Manual or the associated attachments must comply with all terms and conditions of this Order and be approved in writing by the Executive Officer.

Comment 2: *Finding 9 reads: "The SMP Manual covers five primary maintenance activities: vegetation management, sediment removal, bank stabilization, management of animal conflicts, and minor maintenance. The SMP also includes a habitat protection and enhancement component that consists of invasive plant management, riparian planting program, instream habitat complexity program, and land preservation."*

The SMP's habitat protection and enhancement components also include gravel augmentation and large woody debris. While these components provide instream habitat complexity, the term "instream habitat complexity" is used in the SMP to be a specific mitigation type. Please add "gravel augmentation, large woody debris" to the list of habitat protection and enhancement components.

Response to Comment 2: We agree and revised Finding 9 accordingly.

Comment 3: *Finding 10 reads: "The District maintains channels where it has fee title or easements or where the District has received specific direction from the District's Board or a regulatory agency."*

Other regulatory agencies do not have jurisdiction or legal authority to require the District to conduct work where the District has no land rights (i.e., on private property). Please strike "or a regulatory agency."

Response to Comment 3: We agree and revised Finding 10 accordingly.

Comment 4: *Finding 19 reads: "Minor maintenance activities include: cleaning and removing sediment (limited to 25 cubic yards per project site) at outfalls, culverts, flap gates, tide gates, inlets, grade control structures, fish ladders, fish screens; removing trash and debris; repairing and installing fences and gates; grading and repairing existing maintenance roads to restore the original contour; grading small areas without vegetation above channel banks to improve drainage and reduce erosion, repairing structures with substantially similar materials within approximately the same footprint; installing and maintaining mitigation and landscape sites; removing obstructions at structures to maintain functions; and maintaining stream gauges."*

Grading small areas above channel banks should include areas either with or without vegetation. Requirements for vegetation removal are included in the minor maintenance limits. Please strike "without vegetation."

Response to Comment 4: We agree and revised Finding 19 accordingly.

Comment 5: *Finding 21 states: "The District implements stream maintenance activities in an integrated stream management approach that involves protecting and enhancing existing instream resources while providing for the flood conveyance capacity in the stream channels."*

The District appreciates the Water Board's recognition of our approach to incorporate protection and enhancement of existing stream resources into our maintenance activities. The primary goal of the SMP is to preserve flow conveyance capacity for flood protection and to maintain structural integrity of District facilities such as stream banks and maintenance roads. The District incorporates stream stewardship measures to reduce potential impacts and enhance conditions where possible. We request this finding be revised to read, "The District implements stream maintenance activities in an integrated stream management approach that involves preserving the flood conveyance capacity in the stream channels while protecting and enhancing existing instream resources."

Response to Comment 5: We agree as it is consistent with the language in findings 2 and 22. We revised Finding 21 as follows:

The District implements stream maintenance activities using an integrated stream management approach that involves preserving flood conveyance capacity in stream channels while protecting and enhancing existing instream resources ~~while providing for the flood conveyance capacity in the stream channels...~~

Comment 6: *Finding 24 [now Finding 23] states: "The District has a mitigation deficit associated with SMP, activities conducted during the 2002-2013 period (SMP-1) under Order R2-2002-0028. The District shall complete mitigation as required in Provision 49 of this Order. Order No. R2-2002-0028 required the District to complete a total of 10.0 mitigation acres for the Freshwater Wetland Creation/Restoration mitigation component and 81.0 mitigation credits for the Stream and Watershed Protection mitigation component. The District has fulfilled the mitigation requirements for the Tidal Wetland Restoration mitigation component, the Giant Reed Control mitigation component, and the Invasive Smooth Cordgrass mitigation component. The District has completed 7.0 mitigation acres for the Freshwater Wetland Creation/Restoration mitigation component and 10.0 mitigation credits for the Stream and Watershed Protection mitigation component. The District is in the midst of several land acquisitions, including finalizing associated conservation easements and long-term management plans that will fulfill another 59.0 mitigation acre credits. The District shall complete the remaining mitigation requirements of 3.0 mitigation acres for the Freshwater Wetland Creation/Restoration mitigation component and 12.0 mitigation credits for the Stream and Watershed Protection mitigation component by December 31, 2014, including finalizing land acquisition(s) and associated conservation easements and long-term management plans."*

The District is proposing to fulfill both the remaining 3.0 mitigation acres for the Freshwater Wetland Creation/Restoration mitigation component and the remaining 12.0 mitigation credits for the Stream and Watershed Protection (S&WP) mitigation component via acquisition and preservation of a property in the Guadalupe Watershed, which was introduced and described to the permitting agencies through a February 10, 2014 email and a February 25, 2014 site visit. This property will provide more than 15.0 S&WP mitigation credits. Because the District just recently became aware of this property, we are requesting that paragraph above be revised to read (note: underline denotes new text and strikethrough denotes deleted text), "The District is in the midst of several land acquisitions, which are scheduled to be completed by December 31, 2014 including finalizing associated conservation easements and long-term management plans that will fulfill another 59.0 mitigation acre credits. The District shall complete the remaining 15 mitigation credits ~~mitigation requirements of 3.0 mitigation acres for the Freshwater Wetland Creation/Restoration mitigation component and 12.0 mitigation credits for the Stream and Watershed Protection mitigation component~~ by December 31, 2015 including finalizing land acquisition(s) and associated conservation easements and long-term management plans." The schedule for finalizing these property transactions are (sic) subject to receipt of approval from regulatory agencies that those properties would adequately fulfill the outstanding mitigation requirements.

Response to Comment 6: We agree. The District is in various stages of land acquisition and development of conservation easements and long-term management plans for four properties. The District anticipates completing three of the four property acquisitions including finalizing the conservation easements and long-term management plans. The acquisition process of the fourth property is very recent and will fulfill the remaining requirements upon completion. However, the District is just getting started on this fourth property and anticipates completing the conservation easement and long-term management plan in 2015. We revised Finding 24 (now Finding 23) and corresponding Provision 49 as follows:

Finding 23

The District ... has completed 7.0 mitigation acres for the Freshwater Wetland Creation/Restoration mitigation component and 10.0 mitigation credits for the Stream and Watershed Protection mitigation component. The District is in the midst of several land acquisitions, which are scheduled to be completed by December 31, 2014, including finalizing associated conservation easements and long-term management plans that will fulfill another 59.0 mitigation acre credits. The District shall complete the remaining 15 mitigation credits ~~mitigation requirements of 3.0 mitigation acres for the Freshwater Wetland Creation/Restoration mitigation component and 12.0 mitigation credits for the Stream and Watershed Protection mitigation component~~ by December 31, 2015, 2014 including finalizing land acquisition(s) and associated conservation easements and long-term management plans.

Provision 49

The District ... shall complete the remaining 15 mitigation credits ~~mitigation requirements of 3.0 mitigation acres for the Freshwater Wetland Creation/Restoration mitigation component and 12.0 mitigation credits for the Stream and Watershed Protection mitigation component~~ by December 31, 2015, 2014 including finalizing land acquisition(s) and associated conservation easements and long-term management plans. If the District is not able to complete the remaining mitigation requirements by December 31, 2015, 2014, the District shall submit by November 1, 2015, to the ~~Regional Water Board's~~ Executive Officer for written approval ~~by November 1, 2014~~, an alternative mitigation proposal(s) that explains the District's plan and timeline to complete the remaining mitigation requirements.

Comment 7: *Finding 28: "Fish Spawning (SPWN)" should be letter "n." in the list of beneficial uses.*

Response to Comment 7: We agree and revised Finding 28 accordingly.

Comment 8: *Finding 31 states: The TMDLs is an average fish issue concentration of 10 mg total PCBs per kg of typically consumed fish, on a wet weight basis (10 IJg/kg wet weight).*

Please revise "fish issue" to the appropriate "fish tissue".

Response to Comment 8: We agree and revised Finding 31 accordingly.

Comment 9: *Condition B. 4. states, "The District shall notify the Regional Water Board promptly by telephone or email, and in no case more than 24 hours after, if an adverse condition occurs as a result of a discharge. An adverse condition includes, but is not limited to, a violation or threatened violation of the conditions of this Order, spill of petroleum products or toxic chemicals, or damage to control facilities that could affect compliance."*

The 2002 SMP permit allowed the District to resolve an adverse condition as a result of a discharge within 24 hours. If the adverse condition persists after 24 hours the District would then report it. We request the same requirement in the 2014 Tentative Order.

Response to Comment 9: We disagree. The 2002 Order does not include this condition. Condition B.4 requires the District to timely notify Regional Water Board staff when there is an adverse condition caused by violation of the Order. Condition B.4 is consistent with the recent stream maintenance orders adopted by the Regional Water Board for the Sonoma County Water Agency and the Napa County Flood Control District. However, we removed "or threatened violation" from this notification condition because a threatened violation by nature should not have caused an adverse condition.

Comment 10: *Condition C.2. includes water quality limits that shall not be exceeded. The Water Quality Monitoring Plan sent to us by Regional Board staff to include as Attachment H in the SMP Manual does not require the District to test for dissolved sulfide, toxicity, un-ionized ammonia, and salinity, nor does the District anticipate that SMP activities would result in an exceedance of the limits for these parameters. We request that these constituents be removed from the list of required water quality tests.*

Response to Comment 10: We agree. We revised the Provision C.2 as follows:

SMP activities shall not cause the following limits to be exceeded in waters of the State at any point:

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|----------------------------------|--|
| a. Dissolved Oxygen: | 5.0 (WARM) or 7.0 (COLD) mg/l minimum. When natural factors cause lesser concentrations, then this discharge shall not cause further reduction in the concentration of dissolved oxygen. |
| b. Dissolved Sulfide: | All water shall be free from dissolved sulfide concentrations above natural background levels. |
| c. pH: | A variation of natural ambient pH by more than 0.5 pH units. |
| d. Toxicity: | All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms. |

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|------------------------|--|
| e. Un-ionized Ammonia: | 0.025 mg/L as N, annual median; and 0.16 mg/L as N, maximum. |
| f. Salinity: | The project shall not increase total dissolved solids or salinity to adversely affect beneficial uses. |
| g. Turbidity | Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity related to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU. |

Comment 11: *Provision 27 states, "All staging shall occur on adjacent access roads or previously disturbed areas. Soil and riprap shall be staged in areas that have been previously disturbed (e.g., service roads, turn-outs)."*

District field staff make every effort to utilize existing roads, turnouts, or other previously disturbed areas for staging areas. There may be instances where staging needs to occur closer to the active site than these areas allow. When previously undisturbed areas are used for staging, the District intends to avoid/minimize impacts to the extent possible. When impacts cannot be completely avoided or minimized, mitigation will be provided for any remaining impacts. The Regional Board has agreed with other agency staff in the development of SMP project notification requirements that include the reporting of "Staging Length (feet)", "Staging Width (feet)" and "Acres". In order to be consistent with the agreed upon project notification requirements, we request that this provision be revised to incorporate the use of previously undisturbed areas as staging.

Response to Comment 11: We agree. We revised the Provision 27 as follows:

All staging shall occur on adjacent access roads or previously disturbed areas unless demonstrated to be infeasible. Soil and riprap shall be staged in areas that have been previously disturbed (e.g., service roads, turn-outs). If the District is unable to use adjacent access roads or previously disturbed areas for staging, then the District shall choose an area for staging that will result in the least environmental impact. The District shall implement BMPs to ensure impacts to waters of the State and adjacent riparian areas are avoided and minimized, and the site is returned to pre-project conditions. If repair activities affect the active channel, the work area shall be isolated from flowing channel segments and restored to pre-project conditions after maintenance activities are complete.

Comment 12: *Provision 41 states: 'The District shall visually inspect each maintenance site at least once daily during extended storm events to confirm that BMPs are effective and maintained as necessary.'*

Provision 42 states: "The District shall visually inspect each maintenance site within two business days (48 hours) after each qualifying rain event to determine whether the BMPs were effective and identify the need to modify or include additional BMPs to be protective."

Previous reviews of this language included the word "active" to ensure that the District is only monitoring sites we are currently working in. We request both provisions be revised to state: "The District shall visually inspect each active maintenance site ... "

Response to Comment 12: We disagree. The existing language requires the District to monitor active and recently completed sites to ensure that the BMPs are adequate. Monitoring should continue until a site no longer poses threats to water quality and beneficial uses.

Comment 13: *Provision 57 [now Provision 59] states: "Annual minor maintenance activities that impact greater than 0.01 acre of wetland or riparian habitat shall be mitigated per the mitigation program described in Chapter 10 of the SMP manual."*

Minor maintenance activities are regulated by time of activity and are limited per project, annually, and per the 10-year program. The limits provide the constraints for the activities. There are no other mitigation requirements for minor activities. If mitigation is required it would not be considered minor. Please strike this provision from the Order to be consistent with the Manual.

Response to Comment 13: We disagree. The SMP Manual exempts minor maintenance from some notification and reporting requirements but does not exempt minor maintenance from mitigation requirements (see Chapter 8 and Chapter 10.4). Furthermore, Chapter 12.2.2, #9.b.vii of the SMP Manual includes "Proposed mitigation activities" for impacts up to 0.4 acres per year or 2.0 acres for five years. Failure to provide mitigation would not satisfy the State's "no net loss" policy. Accordingly, Provision No. 57 (now Provision No. 59) is consistent with the Manual, and the Provision needs to remain in the Order.

Comment 14: *Provision 72 (now Provision 75) states, "Each successive Notice of Proposed Work during the permit term shall contain a higher percentage of work (e.g. proposed sediment removal, bank stabilization, and vegetation management) that is located within reaches where new or updated MGs have been developed."*

Maintenance Guidelines do not apply to bank stabilization projects. Please strike "bank stabilization" from this provision.

Response to Comment 14: We agree and revised Provision 72 (now Provision 75) accordingly.

Staff-Initiated Revisions

In addition to minor editorial and formatting revisions, we made the following staff-initiated revisions to the Tentative Order:

1. The work window in Provision 88 (now Provision 90) labeled “In-channel Work Window for creeks that do not support sensitive species (creeks NOT supporting anadromous salmonids and, in San Francisco Bay tidal areas, green sturgeon and longfin smelt)” will include the following footnote to be consistent with Table 3-2 in the SMP Manual.

If heavy equipment would be required for in-channel work, the work shall be described in the NPW for the in-channel work window.

2. The District has acquired land as mitigation, including development of a conservation easement and a long term management plan for each property, associated with maintenance activities that were performed during SMP-1 (maintenance conducted during the 2002-2013 period under Order No. R2-2002-0028) and where the same type of maintenance activity and location of maintenance will occur again under SMP-2 (maintenance conducted under this Order). To ensure that the conservation easements are recorded and long term management plans are implemented, the following new Finding 24 and Provision 51 have been added to the Tentative Order:

Finding No. 24:

The District shall implement all approved conservation easements and long-term management plans for the properties listed below which have been acquired or are in the process of being acquired as mitigation for impacts associated with maintenance conducted under Order No. R2-2002-0028 and where the same type of maintenance activity and location of maintenance will occur again under SMP-2 (maintenance conducted under this Order).

- Barrett Canyon Creek: Located above Almaden Reservoir in the Guadalupe River Watershed, the property consists of 327 acres and will provide 16.8 mitigation credits for the Stream and Watershed Protection Program under Order No. R2-2002-0028. The District is in the process of purchasing the property and the conservation easement and long-term management plan will be finalized in 2015.
- Coyote Ridge Preserve: Located adjacent to the Anderson Reservoir in the Coyote Creek Watershed, the property consists of 454 acres and will provide 34.7 mitigation credits for the Stream and Watershed Protection Program under Order No. R2-2002-0028. The property has been purchased and the conservation easement and long-term management plan will be finalized in 2014.
- Hendrys Creek Property: Located east of Lexington Reservoir in the larger West Valley Watershed, the property consists of 117 acres and will provide 8.4 mitigation credits

for the Stream and Watershed Protection Program under Order No. R2-2002-0028. The District has purchased the property and the conservation easement and long-term management plan will be finalized in 2014.

- Upper Penitencia Creek Property: Located east of Cherry Flat Reservoir in the Coyote Creek Watershed, the property consists of 192 acres and will provide 15.8 mitigation credits for the Stream and Watershed Protection Program under Order No. R2-2002-0028. The District has purchased the property and the conservation easement and long-term management plan will be finalized in 2014.

Provision 51:

If the District is not able to manage a mitigation property, either in part or in full, consistent with the approved long term management plan for the property, then the District shall notify the Regional Water Board within 30 days. The District shall provide compensatory mitigation for impacts that occurred under Order No. R2-2002-0028 for which mitigation will no longer be applied as a result of the default in management of the mitigation property. The amount of mitigation the District shall provide for these areas must be commensurate with the total amount of mitigation credits applied to the mitigation property. For example, if a mitigation property fulfilled 8.4 mitigation credits under SMP-1 and the District is not able to continue management of the property, then the District shall provide 8.4 acres of mitigation associated with 8.4 acres of SMP-1 impacts. For impacts that will occur at the PMAs (where maintenance activities that were performed during SMP-1 and where the same type of maintenance activity and location of maintenance will occur again under SMP-2, for which mitigation via land acquisition has been provided), the District shall provide mitigation as specified in Chapter 10 of the SMP Manual.

3. Provision 52 (now Provision 53) will require the District to submit individual proposals for land acquisitions to the Regional Water Board for review and approval. The SMP Manual already describes that the District will submit mitigation proposals for gravel augmentation and large wood debris with the annual Notice of Proposed Work. Therefore, it is not necessary to include gravel augmentation and large woody debris in Provision 53 and, accordingly, the language has been deleted from the Provision as shown below:

The SMP Manual includes mitigation ratios (Chapter 10 and Attachment D) associated with each maintenance activity (e.g., sediment removal, vegetation management, tree removal, etc.) and each mitigation type (e.g., Invasive Plant Management Program, Land Acquisition Based Mitigation, ~~Instream Complexity, etc.~~). Due to the variation in maintenance activity impacts and mitigation types associated with Land Acquisition Based Mitigation and ~~Instream Complexity (gravel augmentation and large woody debris)~~, the District shall propose mitigation for review and approval by the ~~Regional Water Board~~ Regional Water Board Executive Officer. If the ~~Regional Water Board~~ Regional Water Board Executive Officer determines that the District has not proposed adequate mitigation for the potential impact to waters of the State, additional or alternative mitigation shall ~~may~~ be required.

4. The following language has been added to Provision 51.d.ii (now Provision 52.d.ii) for more clarification and to be consistent with the SMP Manual:

Large Woody Debris (LWD) Mitigation: The District will ... in the stream channel. The mitigation requirement associated with removal of LWD will be based on the volume of wood removed. The District shall estimate the volume of wood to be removed during pre-project assessments and use the estimated volume to determine a preliminary mitigation proposal to be included in the NPWs for review. The District shall implement LWD mitigation based on actual LWD removed from the maintenance site.