

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

ORDER NO. 99-075

WASTE DISCHARGE REQUIREMENTS FOR:

PORT OF OAKLAND, METROPOLITAN OAKLAND INTERNATIONAL AIRPORT,
AIRPORT DEVELOPMENT PROJECT, OAKLAND, ALAMEDA COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter Board, finds that:

1. The Port of Oakland (hereinafter Port), which owns and operates Metropolitan Oakland International Airport (hereinafter OAK), proposes to construct a number of airport improvements on both the land- and air-sides of OAK, including the construction of a cross-airport roadway from Bay Farm Island in the City of Alameda to 98th Avenue in Oakland, terminal expansion, ground access and parking improvements, and expansion or improvement of: cargo facilities, aircraft parking, a taxiway, and aircraft maintenance support facilities. These projects are known collectively as the Airport Development Project (hereinafter ADP, or project), and will impact 7.76 acres of jurisdictional waters of the United States, including wetlands. The Port proposes to mitigate for impacts to waters by completing a wetland mitigation project at the Oro Loma Marsh site in unincorporated San Lorenzo, Alameda County. Additionally, the Port proposes to complete separate wetlands creation and enhancement projects on two sites near the airport in the City of Oakland, the Damon Slough and EZBH sites. The ADP project, its accompanying mitigation at the Oro Loma Marsh, and the two proposed creation and enhancement projects constitute the project to be addressed by these Waste Discharge Requirements (hereinafter WDRs).
2. OAK is located along the eastern shore of San Francisco Bay, on an approximately 2,445 acre site in the southwestern portion of the City of Oakland in Alameda County. The site was historically salt marsh, open water, and mudflat. At present, the airport consists largely of those waters, which have been filled and partially drained, and includes approximately 637 acres of wetlands and other waters of the United States. The Port has applied to the Board for Water Quality Certification for the project under Section 401 of the Clean Water Act. On December 11, 1998, the U.S. Army Corps of Engineers (hereinafter Corps) issued a Public Notice for a proposed Individual Section 404 permit for the project.

Regulatory Authority and Findings

3. The Board has determined to regulate the proposed discharge of fill materials into waters of the state by issuance of WDRs pursuant to Section 13263 of the State Water Code. The Board considers WDRs necessary to adequately address impacts and mitigation to

beneficial uses of waters of the State from this project, to meet the objectives of the State Wetlands Conservation Policy (Executive Order W-59-93), and to expediently fulfill its obligations to act on an application for water quality certification.

4. The Board, on June 21, 1995, adopted, in accordance with Section 13244 et. seq. of the California Water Code, a revised Water Quality Control Plan, San Francisco Bay Basin (Basin Plan). This updated and consolidated revised Basin Plan was approved by the State Water Resources Control Board and the Office of Administrative Law on July 20, 1995, and November 13, 1995, respectively. A summary of regulatory provisions is contained in 23 CCR 3912. The Basin Plan defines beneficial uses and water quality objectives for waters of the State, including surface waters and groundwaters. This order is in compliance with the Basin Plan.
5. The subject wetlands and other waters are located within the San Francisco Bay Lower Basin and have the following existing beneficial uses defined in the Basin Plan: ocean, commercial, and sport fishing; estuarine habitat; industrial service supply; fish migration; navigation; preservation of rare and endangered species; water contact recreation; non-contact water recreation; shellfish harvesting; and wildlife habitat. A portion of the wetlands and waters are located in San Leandro Creek, which has the following existing (e) and potential (p) beneficial uses, as defined in the Basin Plan: cold freshwater habitat (e); fresh water habitat (e); wildlife habitat (e); fish migration (p); water contact recreation (p); non-contact water recreation (p); fish spawning (p); and warm freshwater habitat (p).
6. The Basin Plan Wetland Fill Policy (policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together, and that mitigation for wetland fill projects is to be located in the same area of the Region, whenever possible, as the project. The policy further establishes that wetland disturbance should be avoided whenever possible, and if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered.
7. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...." Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State." Section 13142.5 of the State Water Code requires that the "[h]ighest priority shall be given to improving or eliminating discharges that adversely affect...wetlands, estuaries, and other biologically sensitive areas."

Proposed Project

8. These WDRs apply to the fill associated with the ADP and its accompanying mitigation at the Oro Loma Marsh, and to the proposed wetland creation and enhancement projects at the EZBH and Damon Slough sites near OAK. As proposed, the Port would place fill in 7.76 acres of waters of the United States, including wetlands, at OAK in the course of constructing the ADP. The permanent impact of this fill on waters was identified as a potentially significant impact in the Environmental Impact Report (hereinafter EIR) certified for the ADP.
9. The Port has submitted a Clean Water Act 404(b)(1) Alternatives Analysis, dated September 1998, and supplemental information to show that appropriate effort was made to avoid and then to minimize wetland disturbance, as required by the Basin Plan. The Board concurs with the conclusions of the Alternatives Analysis, as supplemented.
10. The Port has proposed the "Conceptual Mitigation Plan for the Restoration of the Northeastern Edge of the Oro Loma Marsh," dated July 1999. The wetland mitigation plan is a part of its proposal to offset impacts to beneficial uses of waters of the State. As directed in the Provisions, the Port shall submit a final mitigation plan for the Oro Loma Marsh site, acceptable to the Executive Officer, no later than 30 days prior to the start of construction. The Board agrees to the proposed mitigation plan.
11. The Port proposes to complete the ADP, including its associated fills, over a period of approximately 5 years.
12. The Port proposes to mitigate for the loss of 7.76 acres of waters of the United States, including wetlands, through the creation of a minimum of 14.41 acres of created wetlands, 1.18 acres of enhanced wetlands, and 2.58 acres of preserved transitional buffer at the Oro Loma Marsh site, with construction beginning no later than May 2000.
13. The Port proposes to complete separate wetland creation/restoration projects at two additional sites, the Damon Slough and EZBH sites. Design of these sites has not been completed at the time of this order, so exact areas and types of wetland creation and enhancement are not known at this time. Final designs for these two projects, acceptable to the Executive Officer, are required in the Provisions of this Order.
14. The Port has proposed that it be allowed to complete and use the wetland creation and restoration projects at the Damon Slough and EZBH sites as mitigation for future unspecified projects with impacts to waters of the State, including wetlands. These mitigation projects would be completed prior to impacts of those future projects occurring. The Board agrees that the proposed Damon Slough and EZBH projects will be considered as potential mitigation for future projects, subject to the review of the Board and/or the Executive Officer, as appropriate. Further, where appropriate, wetlands mitigation in general must address both temporal and permanent impacts to water bodies. The Board recognizes that, to the extent that the EZBH and Damon Slough project(s)

have been completed and wetland functions and values established on those sites prior to fill occurring on future projects, it is appropriate to consider whether mitigation for temporal impacts should be removed from mitigation required for those future projects that mitigate at the Damon Slough and/or EZBH sites. This would have the effect of reducing the overall required amount of mitigation for those future projects. Such a reduction would be subject to the review of the Board and/or Executive Officer, as appropriate. This Order does not in any way constitute review or approval of future projects or acceptance of mitigation at the Damon Slough or EZBH sites for a specific future project or projects.

15. Discharges of storm water associated with construction activity will occur. The EIR certified for the ADP identified such discharges, including the pollutants associated with them, as a potentially significant impact. This Order does not apply to such discharges, and the Port is responsible for obtaining appropriate permits for these discharges, including complying with the rules and regulations of National Pollutant Discharge Elimination System (NPDES) permit requirements, including NPDES General Permit CAS000002 for discharges of storm water associated with construction activity.
16. Discharges of storm water associated with industrial activity will occur following construction of the ADP. The EIR certified for the ADP identified such discharges, including the pollutants associated with them, as a potentially significant impact. This Order does not apply to such discharges, and the Port is responsible for obtaining appropriate permits for these discharges, including complying with the rules and regulations of National Pollutant Discharge Elimination System (NPDES) permit requirements, including NPDES General Permit CAS000001 for discharges of storm water associated with industrial activity.
17. The California Environmental Quality Act (CEQA) requires all projects approved by State agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (e.g., Environmental Impact Report or Negative Declaration) for such projects. The Port certified an Environmental Impact Report (EIR) and Final Supplement to the EIR for the ADP on June 29, 1999. To address the potential impacts at the Oro Loma marsh site, the Port considered amendments to the EIR on August 31, 1999. The EIR identified three primary potentially significant impacts to water quality. These have been discussed above in Findings 8, 15, and 16.
18. Pursuant to Title 23, California Code of Regulations 3857, the Board is issuing WDRs and will not act on this application for Water Quality Certification.
19. The Board has notified the Corps, the Port, and interested agencies and persons of its intent to prescribe WDRs for this discharge and will take no action on the Port's application for Water Quality Certification.

20. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

IT IS HEREBY ORDERED that the Port, in order to meet the provisions contained in Division 7 of the State Water Code and regulations adopted thereunder, shall comply with the following, pursuant to authority under Sections 13263 and 13267 of the State Water Code:

A. Discharge Prohibitions

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The wetland fill activities subject to these requirements shall not cause a nuisance as defined in Section 13050(m) of the State Water Code.
5. The discharge of decant water from active dredging or fill sites and dredged material stockpile or storage areas to surface waters or surface water drainage courses is prohibited.
6. The groundwater in the vicinity of the project shall not be degraded as a result of the placement of fill for the project.
7. The discharge of materials other than storm water, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.

B. Provisions

1. The Port shall comply with all Prohibitions and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Port shall submit copies of all necessary approvals and/or permits for the project and mitigation projects from applicable government agencies, including the State Department of Fish and Game, San Francisco Bay Conservation and Development Commission, U.S. Fish and Wildlife Service, Federal Aviation Administration, East Bay Regional Park District, and U.S. Army Corps of Engineers, prior to the start of construction.

Mitigation Project Implementation Deadlines

3. The Port shall submit a Final Mitigation Plan for the Restoration of the Northeastern Edge of the Oro Loma Marsh (Final Plan), acceptable to the Executive Officer, no later than 30 days prior to the start of construction at the Oro Loma site, and no later than December 1, 1999. The Port acknowledges that it is solely responsible for completion of all mitigation requirements pursuant to this Order. The Plan shall include ownership by a third party with expertise in wetlands maintenance and funding adequate to ensure such maintenance, or an alternative method to ensure wetlands maintenance in perpetuity. If an alternative is proposed, the Board will consider the proposal at a public meeting.
4. The Port must begin implementation of the Final Plan, including earthmoving activities, at the Oro Loma Marsh site no later than May 2000. The Board may reconsider the terms of this Order should threats or concerns with the success or the timeliness of implementation of this mitigation project become known.

Damon Slough and EZBH Sites

5. No later than March 1, 2000, the Port shall submit a report, acceptable to the Executive Officer, detailing a timeline for the submission of a Final Mitigation and Monitoring Plan and the commencement and completion of creation and restoration activities at the Damon Slough and EZBH sites. A copy shall be provided to the Federal Aviation Administration (FAA) for its review. This report may be included as a part of the conceptual mitigation plans required in Provision B.6.
6. No later than March 1, 2000, the Port shall submit conceptual restoration plans, acceptable to the Executive Officer, for the Damon Slough and EZBH sites that address the design of wetland creation and enhancement projects, and other associated work, on the two sites. The Port shall develop the conceptual restoration plans in conjunction with the FAA. A copy of each of the plans shall be provided to the FAA for its review and comment. The conceptual plans shall include an estimate of the wetland acreage proposed to be created and enhanced on the sites and a delineation of existing jurisdictional waters of the United States at the sites, verified by the Corps. No later than 30 days prior to the start of construction at each of the Damon Slough and EZBH sites, the Port shall submit a final mitigation plan or plans, acceptable to the Executive Officer, for the site(s) at which construction is to begin. The final mitigation plan or plans shall include written comments from the FAA, a description by the Port of the FAA's review of the plans, or other similar assurance from the FAA that projects will not present a hazard to aviation activities at OAK.

Annual Mitigation Monitoring Reports

7. The Port shall submit an as-built report within 60 days of installation of each mitigation site. The Port shall submit annual mitigation monitoring reports to the Board for a minimum of 5 years after the submission of the as-built report for the mitigation site(s)

and before a notice of mitigation completion has been submitted to the Executive Officer, pursuant to Provision B.8 of this Order. Annual Reports shall be submitted no later than February 1 of each calendar year following the year being reported on (e.g., the Annual Report for 2000 must be submitted no later than February 1, 2001).

Notice of Mitigation Completion

8. When the Port has determined that the mitigation has achieved the final success criteria at any of the three sites proposed for wetland mitigation, creation, and/or enhancement, it shall submit a notice of mitigation completion (notice), acceptable to the Executive Officer. The notice shall include a plan for long-term maintenance and management, acceptable to the Executive Officer, of the applicable mitigation site. After acceptance of the notice in writing by the Executive Officer, submittal of annual mitigation monitoring reports for the applicable mitigation site is no longer required.
9. Any substantive changes to the final mitigation and monitoring plans for the proposed mitigation, creation, and enhancement projects must be approved in writing by the Executive Officer.

Change of Ownership

10. The Port shall be considered to have a continuing responsibility for ensuring compliance with the Prohibitions and Provisions of this Order in the operations or use of the airport and mitigation sites. The Port shall notify the Board when a change in ownership in the mitigation sites occurs.

Other Provisions

11. For a minimum of 5 years and as long as this Order is not rescinded, the Port shall submit a report, acceptable to the Executive Officer, no later than July 1 of each year, describing the status of potential future major airport projects. Such projects shall include any single project with the potential to fill more than one acre of wetlands, and, at a minimum, the three listed below:
 - a. Extension of runway 11/29, OAK's main commercial traffic runway.
 - b. Construction of a high-speed taxiway connecting runway 11/29 and Taxiway V.
 - c. Construction of a new commercial runway.
12. All reports pursuant to these Provisions shall be prepared under the supervision of a suitable professional registered in the State of California.
13. The Port shall immediately notify the Board by telephone whenever an adverse condition occurs as a result of this discharge. An adverse condition includes, but is not limited to, a

violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to Section 13267(b) of the California Water Code, a written notification of the adverse condition shall be submitted to the Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Board, for the remedial actions.

14. No later than 30 days prior to the initiation of construction-related ground disturbance activities for the Airport Roadway Project (hereinafter ARP) component of the ADP, the Port shall submit, acceptable to the Executive Officer, a long-term storm water best management practice (BMP) plan that addresses the design and structural measures the Port proposes to minimize impacts to beneficial uses resulting from runoff from the ARP and its attendant parking and replacement parking projects.
15. The Port shall notify the Board in writing at least 30 days prior to actual start dates for each phase of construction.
16. The Port shall at all times fully comply with the engineering plans, specifications, and technical reports submitted with its application for water quality certification and the completed report of waste discharge.
17. The discharge of any hazardous, designated or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.
18. The Port shall remove and relocate any wastes that are discharged at any sites in violation of this Order.
19. In accordance with Section 13260 of the California Water Code, the Port shall file with the Board a report of any material change or proposed change in the character, location, or quantity of this waste discharge. Any proposed material change in operation shall be reported to the Executive Officer at least 30 days in advance of implementation of any proposal. This shall include, but not be limited to, all significant new soil disturbances, all proposed expansion of development, or any new change in drainage characteristics at the project site. For the purpose of these WDRs, this includes any proposed change in the boundaries of the wetland fill sites.
20. The Port shall maintain a copy of this Order at the project site so as to be available at all times to site operating personnel.
21. The Port is considered to have full responsibility for correcting any and all problems that arise in the event of a failure which results in an unauthorized release of waste or wastewater.

22. The Port shall permit the Board or its authorized representative, upon presentation of credentials:
 - a. Entry onto the premises on which wetland fill or wetland mitigation is located or in which records are kept.
 - b. Access to copy any records required to be kept under the terms and conditions of this Order.
 - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
 - d. Sampling of any discharge or surface water covered by this Order.
23. These WDRs do not authorize commission of any act causing injury to the property of another or of the public; do not convey any property rights; do not remove liability under federal, state, or local laws, regulations or rules of other programs and agencies, nor do these WDRs authorize the discharge of wastes without appropriate permits from other agencies or organizations.
24. The Board will consider rescission of these WDRs upon the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

I, Loretta K. Barsamian, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on September 15, 1999.


Loretta K. Barsamian
Executive Officer