State of California
California Regional Water Quality Control Board
Santa Ana Region

September 16, 2016

STAFF REPORT

ITEM: *8

SUBJECT: South Shore II, LLC, South Shore II TTM 36567, City of Lake Elsinore, Riverside County, Order No.R8-2016-0058

DISCUSSION:

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this State shall file a report of the discharge in compliance with Section 13260." Section 13260{a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States (U.S.) must obtain State Water Quality Certification (Certification) that the proposed activity will comply with State water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (USACE) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (State Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, section 3830 *et seq.* Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification."

Because of Supreme Court decisions that have limited the authority of the USACE to regulate discharges of dredge and fill to waters of the U.S., certain proposed discharges of dredge or fill to surface waters of the State are no longer subject to USACE jurisdiction (non-federal). As a result, these projects are not subject to a CWA Section 404 permit from the USACE and do not require a Certification. In the absence of the need to obtain a Certification, the State Board has asserted the State's authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act.

On May 4, 2004, the State Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-0004-

DWQ). Numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On April 16, 2015, Santa Ana Regional Water Quality Control Board (Regional Board) staff received from South Shore II, LLC a ROWD, whereby South Shore, LLC proposes to discharge fill to a total of 0.16 acre and 3,908 linear feet of waters of the State as a result of constructing a detached single family home residential development. The waters of the State are located on a 71.7-acre property located 0.70 mile north of the Interstate-15 Freeway Franklin Street Overpass (33.680949° N/-117.307413° W). Regional Board staff accepted a ROWD pursuant to CWC Section 13260 for the proposed discharge of fill to non-federal waters of the State. This Order will also serve as a Clean Water Act Section 401 Water Quality Standards Certification in the event that one is required by any federal agency.

The South Shore II, TTM 36567, residential development consists of the construction of 147 single-family residences, a 3.5-acre public park, a storm drain system, a bioretention water quality basin and a roadway network on 71.7 acres. The discharges are to unnamed drainages located in the San Jacinto River, Reach 1 watershed. San Jacinto River, Reach 1 has designated beneficial uses (existing or potential) that include: municipal supply (MUN), agricultural supply (AGR), groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), and wildlife habitat (WILD).

Board staff has determined that the discharge of fill to the unnamed drainages has the potential to impact the waters' beneficial uses. Board staff determined that the Board cannot authorize the discharge in accordance with Order No. 2004-0004-DWQ because the discharge of fill would result in a total of 3,908 linear feet of permanent impacts, which exceeds the Order's 400 linear feet impact threshold. Consequently, the discharge must be considered for separate authorization under individual waste discharge requirements. The proposed Order is intended to satisfy this requirement.

South Shore II, LLC proposes to mitigate impacts to beneficial uses as the result of the proposed discharges of fill to the unnamed drainages in the San Jacinto River, Reach 1 Watershed through the purchase of either 0.24 acre of re-establishment credit at a Regional Board approved mitigation bank or in-lieu-fee program in the San Jacinto River watershed, or 0.32 acre of re-establishment credit at a Regional Board approved mitigation bank or in-lieu-fee program in the Santa Ana River watershed.

Pursuant to CEQA, the City of Lake Elsinore prepared a Mitigated Negative Declaration (MND) for the proposed development and adopted it on April 14, 2015. The City's MND has been considered in the preparation of Order No. R8-2016-0058.

RECOMMENDATION:

Adopt Order No.R8-2016-0058, as presented.

Comments were solicited from the following:

Erik Lunde, South Shore II, LLC (erikwlunde@gmail.com)
Barry Jones, Helix Environmental Planning (BarryJ@helixepi.com)
James Mace, U. S. Army Corps of Engineers, Los Angeles Office (James.E.Mace@usace.army.mil)
Jeff Brandt, CA Department of Fish and Wildlife (jeff.brandt@wildlife.ca.gov)
Melissa Scianni, U.S. EPA (scianni.melissa@epa.gov)
Elizabeth Goldmann, U.S. EPA (goldmann.elizabeth@epa.gov)

Karin Cleary-Rose, U.S. Fish and Wildlife Service (karin_cleary-rose@fws.gov)
Bill Orme, State Water Resources Control Board, 401 Water Quality Certification and Wetlands Program (Bill.Orme@waterboards.ca.gov)
David Rice, State Water Resources Control Board, Office of the Chief Counsel (David.Rice@waterboards.ca.gov)

State of California
California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2016-0058

Waste Discharge Requirements
for
South Shore II, LLC
South Shore II, TTM 36567
City of Lake Elsinore, Riverside County

The California Regional Water Quality Control Board, Santa Ana Region (hereinafter Regional Board), finds that:

1. South Shore II, LLC (hereinafter, discharger) proposes to construct the South Shore II, TTM 36567, a single family detached residential development project in the City of Lake Elsinore. The construction will discharge fill to 0.16 acre of waters of the State, resulting in 0.16 acre of permanent impact to waters of the State.

2. The South Shore II, TTM 36567, project (project) entails the construction of 147 detached single family homes, a storm drain system and bioretention basin to serve the subdivision, a roadway network, and a 3.5-acre park site on a 71.7-acre site. South Shore II, TTM 36567, will be located 0.6 mile north of Gunder Street in the City of Lake Elsinore, Riverside County, California. The project site is situated in Section 4, Township 6 South, Range 4 West on the Lake Elsinore U.S. Geological Survey 7.5 minute quadrangle map (33.680949° N/-117.307413° W).

3. The waters of the U. S. onsite consist of unnamed ephemeral drainages that eventually flow to San Jacinto River, Reach 1. San Jacinto River, Reach 1 has designated beneficial uses (existing or potential) that include:

    a) Municipal Supply (MUN)
    b) Agricultural Supply (AGR)
    c) Groundwater Recharge (GWR);
    d) Water Contact Recreation (REC1);
    e) Non-Contact Water Recreation (REC2);
    f) Warm Freshwater Habitat (WARM); and,
    g) Wildlife Habitat (WILD).

6. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on the beneficial uses of waters of the State. On April 16, 2015, the discharger submitted a Report of Waste Discharge. The application described discharges of fill to the waters of the State. This Order regulates the discharge of fill material to waters of the State.

7. The discharger asserts that the drainages proposed for fill are not subject to Clean Water Act (CWA) Section 404 permits administered by the U.S. Army Corps of Engineers (Corps). The discharger's assertion has not been verified by Corps staff. This Order will regulate the discharges of fill even if a CWA Section 404 permit and CWA Section 401 certification are later determined to be necessary.

8. The discharger will mitigate 0.16 acre permanent impact at either a 1.5:1 ratio (impacted area to mitigation area) through the purchase of 0.24 acre re-establishment mitigation credit in a Regional Board approved mitigation bank or in-lieu-fee program in the San Jacinto Watershed, or at a 2:1 ratio (impacted area to mitigation area) through the purchase of 0.32 acre re-establishment mitigation credit in a Regional Board approved mitigation bank or in-lieu-fee program in the Santa Ana Watershed.

9. Pursuant to CEQA, the City of Lake Elsinore (City) approved a Mitigated Negative Declaration (MND) for South Shore II, TTM 36567 on April 14, 2015. The City's MND was considered in the preparation of this Order.

10. As a Responsible Agency under CEQA, the Regional Board is required to consider the Lead Agency's environmental documents and make findings on the significant impacts within its jurisdiction to approve. (Public Resources Code, Section 21002.1(d); California Code of Regulations, Title 14, Section 15096(g), (h).) The City's MND identified potentially significant impacts, unless mitigated, to biological resources as the result of discharges of fill to waters, and to water quality as the result of pollutants contained in the storm water runoff from the project. To address these impacts, General Provision C.1. of this Order requires the discharger to offset the potential adverse beneficial use impacts of the project through the purchase of re-establishment mitigation credits from a Regional Board Approved Mitigation Bank or In-Lieu-Fee Program at a 1.5:1 ratio for re-establishment of waters of the State in the Santa Jacinto River Watershed or at a 2:1 ratio for re-establishment of waters of the State in the Santa Ana River Watershed. Pollutants in storm water runoff from the project site will be removed through implementation of site design best management practices. The Regional Board finds that the potentially significant effects of the discharge of fill to waters of the State are reduced to a less-than-significant level as the result of implementation of the project in accordance with these provisions.

11. The Regional Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.

12. The Regional Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.

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

IT IS HEREBY ORDERED that the discharger, in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following:

A. DISCHARGE SPECIFICATIONS:

1. No activities associated with the project shall cause or threaten to cause a nuisance or pollution as defined in Section 13050 of the California Water Code.

2. The discharge of any substance in concentrations toxic to animal or plant life is prohibited.

3. The groundwater in the vicinity of the project shall not be degraded as a result of the project activities or placement of fill for the project.

4. Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State per the requirements of Regional Board Order No. R8-2010-0033 (NPDES Permit No. CAS618033), commonly known as the Riverside County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2010-0033 requires that the discharger substantially comply with the requirements of State Water Resources Control Board General NPDES Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order Number 2012-0006-DWQ.

5. The discharge of fill materials shall be limited to the placement of native fill and inert materials, as defined in Section 20230, Division 2, Title 27 of the California Code of Regulations. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes into channels, surface waters, or any place where they would contact or be eventually transported to surface waters, including flood plains, is prohibited.

2. The discharge of 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. Discharges to surface waters of wastes or pollutants that are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, is prohibited.

5. During the grading and filling operation, there shall be no onsite fueling, lubrication, changing of oil or other equipment fluids and their filters, or any other maintenance or

storage of construction equipment within, or next to, drainage areas or other surface runoff conveyances.

C. PROVISIONS:

1. The discharger will purchase either 0.24 acre re-establishment mitigation credit in a Regional Board approved mitigation bank or in-lieu-fee program in the San Jacinto Watershed, or 0.32 acre re-establishment mitigation credit in a Regional Board approved mitigation bank or in-lieu-fee program in the San Jacinto Watershed. The credit shall be used for re-establishment of waters of the State.

2. Discharges of fill to waters of the State of California are prohibited until a copy of the receipt of the transfer of funds to a Regional Board approved mitigation bank or in-lieu-fee program for the purchase of the mitigation credits has been provided to the Regional Board.

3. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.

4. All post-construction structural storm water treatment facilities shall be constructed and operational prior to any occupation in the residential development.

5. The discharger shall remove from the construction site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.

6. The discharger must comply with all of the requirements of this Order. Any violation of this Order constitutes a violation of the California Water Code (CWC) and may constitute a violation of the CWA and its regulations, and is grounds for enforcement action, termination of this Order, revocation and re-issuance of this Order, denial of an application for re-issuance of this Order, or a combination thereof.

7. The discharger shall take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment.

8. The provisions of this Order are severable, and if any provision of this Order, or the application of any provisions of this Order to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this Order shall not be affected thereby.

9. The filing of a request by the discharger for modification, revocation and re-issuance, or termination of this Order or a notification of planned changes or anticipated noncompliance does not stay any requirements of this Order.

10. The requirements prescribed herein do not authorize the commission of any act causing injury to the property of another, nor protect the discharger from liabilities under federal,

State, or local laws, nor guarantee the discharger a capacity right in the receiving waters.

11. This Order does not convey any property rights of any sort, or any exclusive privilege.

12. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Regional Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.

13. In the event of any change in control or ownership of land or waste discharge facility presently owned or controlled by the discharger, the discharger shall notify the succeeding owner or operator of the existence of this Order by letter, a copy of which shall be forwarded to the Regional Board.

14. This Order will serve as a Clean Water Act Section 401 Water Quality Standards Certification in the event that one is required by any federal agency, except as noted below. Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all water quality certification actions:

    a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section §13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

    b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection §3855(b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

    c. Certification is conditioned upon total payment of any fee required under this Chapter and owed by the discharger.

15. The Regional Board and other authorized representatives shall be allowed:

    a. Entry upon premises where a regulated facility or activity is located or conducted, or where records are kept under the requirements of this Order;

    b. Access to copy any records that are kept under the requirements of this Order;

    c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order; and

    d. To photograph, sample and monitor for the purpose of assuring compliance with this Order.

I, Kurt V. Berchtold, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of an order adopted by the California Regional Water Quality Control Board, Santa Ana Region, on September 16, 2016.

Kurt V. Berchtold
Executive Officer