California Regional Water Quality Control Board
Santa Ana Region

April 30, 2004

ITEM: 5

SUBJECT: Order No. R8-2004-0049, Boeing Realty Corporation, Boeing Integrated Defense Systems Pacific Gateway Business Center

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2004-0049, which authorizes the discharge of fill to waters of the State. The U.S. Army Corps of Engineers has determined these waters are outside of its jurisdiction and not subject to regulation according to Clean Water Act Section 404 (non-federal waters).

BACKGROUND

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 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 (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (SWRCB) 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, and accompanied by an 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." In the absence of the need to obtain a Certification in compliance with the CWA, the SWRCB has asserted its authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act.

On November 20, 2003, Regional Board staff received a request for verification of jurisdictional delineation from the agent for Boeing Realty Corporation, Glenn Lukos Associates (GLA), for the property generally bound by Westminster Avenue, Seal Beach Boulevard, Adolfo Lopez Drive, and Los Alamitos Flood Control Channel & Retarding

Basin, City of Seal Beach, Orange County. In GLA's request, they provided a delineation of waters of the U.S., finding that three drainages at the site were non-jurisdictional, because they were excavated from uplands. Drainages excavated from uplands are generally not considered to be waters of the U.S., according to the Preamble to the Code of Federal Regulations Title 33 Section 328.3. The GLA request also includes a letter from the Corps, dated August 1, 2001, indicating that the three drainages are non-jurisdictional and stating that the project would not result in the discharge of dredge or fill material to waters of the U.S.

On December 5, 2003, Regional Board staff sent a letter to GLA stating that because of the Corps' determination, the Regional Board could not authorize the proposed discharge in accordance with Order No. 2003-0017-DWQ and requested that Boeing Realty Corporation submit a Report of Waste Discharge. Regional Board staff received a Report of Waste Discharge on December 12, 2003.

The discharge will occur in association with the construction of up to 13 light industrial buildings, a hotel, and up to three commercial buildings and the possible demolition of former Department of Defense (DoD)-related structures. The discharger proposes to fill the north-most drainage at the site, impacting 0.11 acres of waters of the State. Boeing Realty Corporation expects to mitigate direct impacts to waters of the State by creating an additional 1.28 acres of waters of the State through the expansion and enhancement of the south drainage to 1.21 acres and the expansion and enhancement of the central drainage to 0.13 acres. The proposed Order No. R8-2004-0049 does not address discharges of storm water or process wastewater.

An environmental impact report has been prepared for the Boeing Specific Plan Project (State Clearinghouse No. 2002031015) and certified by the City of Seal Beach on August 1, 2003. A Notice of Determination was recorded on September 12, 2003.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2004-0049.

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2004-0049

Waste Discharge Requirements

for

Boeing Realty Corporation
Boeing Integrated Defense Systems
Pacific Gateway Business Center

TENTATIVE

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

1. The Boeing Realty Corporation (hereinafter, discharger) proposed to develop the Pacific Gateway Business Center. The proposed Pacific Gateway Business Center is a mixed-use development encompassing approximately 107 acres generally bound by Westminster Avenue, Seal Beach Boulevard, Adolfo Lopez Drive, and Los Alamitos Flood Control Channel & Retarding Basin, City of Seal Beach, Orange County. Up to 13 light industrial buildings, a hotel, and up to three commercial buildings will be constructed on the site.

2. Traversing the site from east to west are three drainage features that are identified as waters of the State. The drainage features were originally excavated from uplands for the purpose of draining storm water runoff from the existing Boeing industrial facility located adjacent to and east of the proposed Pacific Gateway Business Center. The north and central drainage covers an area of 0.11 and 0.05 acres, respectively, of non-wetland waters of the State. The south drainage covers an area of 0.10 acre and a 0.01 acre side tributary. Of this, 0.06 acres is wetland that meets criteria in the US Army Corps of Engineers (Corps) 1987 Wetland Delineation Manual. The discharger proposes to fill the north drainage, impacting 0.11 acres of waters of the State. The discharger expects to mitigate direct impacts to waters of the State by creating an additional 1.28 acres of waters of the State through the expansion and enhancement of the south drainage to 1.21 acres and the expansion and enhancement of the central drainage to 0.13 acres. Because of the –upland origin of the drainages, the Corps declined to take jurisdiction over these drainage features as waters of the U.S., and the Corps will not issue a Clean Water Act (CWA) Section 404 Permit.

3. In compliance with the California Environmental Quality Act, an environmental impact report (EIR) for the Pacific Gateway Business Center, with accompanying mitigation measures, was certified by the City of Seal Beach on August 1, 2003 and a Notice of Determination was filed on September 12, 2003. The waste discharge requirements proposed herein address the fill of the north drainage and the enhancement of the central and south drainages. The discharger has proposed an extensive program of mitigation measures to address the potential water quality and beneficial use impacts of the project, including the fill or enhancement of the drainages. The proposed Order requires the discharger to implement this program.

4. The discharger has conducted a Biological Assessment of the site and found no rare, threatened, or endangered species designated under State or Federal law.

5. Although the location of the discharge to waters of the State (receiving water) occurs in the Santa Ana Region, beneficial uses are designated for the receiving waters within both the Santa Ana Region Water Quality Control Plan (Santa Ana Basin Plan) and the Los Angeles Region Water Quality Control Plan (Los Angeles Basin Plan). The receiving water is tributary to both the San Gabriel River and the San Gabriel River Tidal Prism. The San Gabriel River lies within the Los Angeles Region and the San Gabriel River Tidal Prism lies within the Santa Ana Region. The Los Angeles Basin Plan became effective on June 13, 1994 and the Santa Ana Basin Plan became effective on January 24, 1995. The Basin Plans identify water quality objectives and beneficial uses of waters in their respective Regions. The requirements contained in this Order are necessary to implement the Santa Ana Region Basin Plan

6. The north, central, and southern drainages are tributary to the Los Alamitos Retarding Basin and the Los Alamitos Flood Control Channel, tributary to the San Gabriel River and the San Gabriel River Tidal Prism, the beneficial uses of which include:

   a. Industrial service supply,
   b. Municipal and domestic supply,
   c. Water contact recreation,
   d. Non-contact water recreation,
   e. Commercial and sport fishing,
   f. Warm freshwater habitat,
   g. Wildlife habitat,
   h. Rare, threatened, or endangered species,
   i. Marine habitat,
   j. Shellfish harvesting,
   k. Estuarine habitat.

7. This Order regulates the discharge of fill material to waters of the State. The discharger submitted a Report of Discharge on December 12, 2003.

8. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill of waters of the State and to meet the objectives of the State Wetlands Conservation Policy (Executive Order W-59-93).

9. 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."

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

11. The 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.

12. The 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. The discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. 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 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. Discharges to surface waters of wastes or pollutants that– are not otherwise regulated by a separate National Pollutant Elimination System (NPDES) permit, is prohibited.

C. PROVISIONS:

1. The discharger shall fully implement the mitigation plan (see Attachment "A", Conceptual Habitat Creation Plan, November 2003), including the 5-year monitoring plan contained therein. Any changes to the mitigation plan shall be implemented with prior approval from the Executive Officer of the Regional Board.

2. 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.

3. The discharger shall remove from the 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.

4. 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 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.

5. 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.

6. 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.

7. 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.

8. 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.

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

10. 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.

11. 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.

12. 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, Gerard J. Thibeault, 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 April 30, 2004.

_____

Gerard J. Thibeault
Executive Officer