California Regional Water Quality Control Board
Santa Ana Region

May 27, 2005

ITEM: 13

SUBJECT: Order No. R8-2005-0088, Entrepreneurial-Sheffield Partners, LLC, Chiou Property (Tentative Tract Number 32646) Residential Development Project, City of Riverside

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2005-0088 authorizing the discharge of fill to waters of the State that have been determined to be outside of the U.S. Army Corps of Engineers jurisdiction and not subject to regulation under 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 any discharge from 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 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." In the absence of the need to obtain a Certification, 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 May 4, 2004, the State Water Resources Control 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 January 25, 2005, Regional Board staff received an application for Clean Water Act Section 401 Certification (Certification) from the agent for Entrepreneurial-Sheffield Partners, LLC, Glenn Lukos Associates (GLA), for the development of Tentative Tract 32646, a residential development project. The proposed project consists of 97 single-family residential lots developed on 80 acres. In their Report, GLA provided a delineation of waters that concluded that the site contained approximately 41,079 square feet (0.94 acre) of waters subject to Clean Water Act Section 404 Permits (waters of the U.S.), of which 24,361 square feet (0.56 acre) consist of wetlands. GLA identified three jurisdictional drainages and one feature supporting 493 linear feet (0.02 acre) of isolated waters of the State that are not subject to Clean Water Act Section 404 Permits (non-federal). Permanent impacts to waters of the U.S. total 18,922 square feet (0.43 acre), of which 13,548 square feet (0.31 acre) consist of jurisdictional wetlands. Discharges of fill to the waters of the U.S. were authorized in a Certification issued by the Executive Officer on April 22, 2005. Authorization for the remaining discharges of fill to waters of the State cannot be granted under Order No. 2004-0004-DWQ because the discharge exceeds the thresholds therein.

After conducting a site visit on April 5, 2005 and upon review of the application for Certification and the included biological reports, Regional Board staff identified Wildlife Habitat (WILD) and Groundwater Recharge (GWR) beneficial uses for the non-federal ephemeral drainage. During the April 5, 2005 site visit, Regional Board staff observed that the affected drainage is the terminus of a larger drainage feature that extends offsite to the east. Regional Board staff observed that the operation of the previous citrus orchard had affected the onsite portion of the drainage through a sub-drain, a tile line placed beneath the drainage. A hole had been excavated at the terminus of the drainage and flows from the drainage were entering the hole and being conveyed underground in the tile line. The beginning and ultimate outlet of the tile line is unknown. When Tract 32646 is constructed, flows from the drainage will be carried by the Tract's storm drain system, creating a connection to waters of the U.S.

The discharger has proposed to mitigate the discharge of fill to 0.02 acres of non-federal waters of the State through the purchase of 0.05 acres of mitigation credit from the Riverside-Corona Resource Conservation District for enhancement of riparian drainages. The proposed Order No. R8-2005-0088 authorizes the proposed discharges of fill to non-federal waters of the State and requires the

discharger to proceed with the proposed mitigation. The proposed Order No. R8-2005-0088 does not authorize discharges of storm water or process wastewater.

Pursuant to CEQA, a mitigated negative declaration was prepared and certified by the City of Riverside and a Notice of Determination was filed on March 17, 2005.

RECOMMENDATION

Adopt Order No. R8-2005-0088, as presented.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District
Department of Fish and Game
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office
State Water Resources Control Board, Department of Water Quality, Water Quality Certification Unit

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2005-0088

Waste Discharge Requirements

for

Entrepreneurial-Sheffield Partners, LLC
Tentative Tract 32646
City of Riverside

TENTATIVE

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

1. The Entrepreneurial-Sheffield Partners, LLC (hereinafter, discharger) proposes to develop Tract 32646 in the City of Riverside. The project site is 80 acres located at the southwest corner of Chicago and Krameria Avenues in the City of Riverside. The proposed project entails development of 97 single family dwellings and related infrastructure. The project is located in Section 25, Township 3 South, Range 5 West, shown on the USGS *Riverside, California* quadrangle (33 deg. 52 min. 30 sec. N/117 deg. 22 min. 30 sec. W).

2. Within Tract 32646 are approximately 41,079 square feet (0.94 acre) of waters of the State subject to Clean Water Act Section 404 Permits administered by the U.S. Army Corps of Engineers (Corps), of which 24,361 square feet (0.56 acre) consist of wetlands. An additional 493 linear feet (0.02 acre) of isolated waters of the State that are not subject to Clean Water Act Section 404 Permits (non-federal).

3. The waste discharge requirements proposed herein addresses the fill of one non-federal, ephemeral water of the State on Tract 32646. Discharges of fill to waters of the U.S. have been addressed under 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", which requires compliance with the Clean Water Act Section 401 Water Quality Standards Certification for the project issued on April 22, 2005.

4. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the City of Riverside, acting as the Lead Agency, certified a Mitigated Negative Declaration on March 17, 2005.

5. The Water Quality Control Plan for Santa Ana River Basin (1995) does not specifically designate beneficial uses for isolated surface water on the project site. The applicant's biological assessment indicates that beneficial uses that are existing or attainable for these waters include:

   a. Wildlife habitat (WILD)
   b. Groundwater recharge (GWR)

6. This Order regulates the discharge of fill material to non-federal waters of the State. The discharger submitted a Report of Discharge on January 5, 2005.

7. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill of non-federal waters of the State.

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

9. 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.

10. 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 except as authorized by these Waste Discharge Requirements.

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 permit, is prohibited.

C. PROVISIONS:

1. The discharger shall purchase 0.05 acres of mitigation credit from the Riverside-Corona Resource Conservation District for the enhancement of riparian drainages. Documentation of the purchase shall be provided to the Regional Board not later than 30-days from the commencement of grading activities on the project site.

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 May 27, 2005.

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Gerard J. Thibeault
Executive Officer