ITEM NO. 11

August 25, 2006

ERRATA SHEET

CHANGES TO ORDER NO. R8-2006-0062

(Language added is underlined.)
(Language deleted is ~~struck out~~)

1. Order No. R8-2006-0062, FINDINGS, Page 1 of 5, amend Finding 3. as follows:

   3. The waste discharge requirements proposed herein address the discharge of fill to the isolated drainage that will result from the development of Tract 31957. Discharges of fill to waters of the U.S. were authorized by the Executive Officer on ~~August 3, 2006~~ August 14, 2006 with the issuance of a Clean Water Act Section 401 Water Quality Standards Certification (Certification).

2. Order No. R8-2006-0062, PROVISIONS, Page 3 of 5, amend Provision 1. as follows:

   1. The discharger shall create 0.08 acres waters of the U.S. adjacent to Rice Canyon Creek through the excavation of uplands. The creation effort shall proceed in conjunction with, and in addition to, creation of 0.25 acres of waters of the U.S. provided in compensation for the proposed discharge of fill to waters of the U.S. authorized by the Executive Officer in a Certification issued on ~~August 3, 2006~~ August 14, 2006. Consistent with that Certification, the mitigation effort shall proceed according to a written mitigation and monitoring plan applicable for a 6-year duration beginning on the date of initial vegetation planting. The mitigation and monitoring plan shall be prepared according to Corps' guidelines and include measurable quantitative intermediate and final success criteria. Initial planting and seeding shall occur no later than October 31 following completion of rough grading. The mitigation and monitoring plan shall be provided to Regional Board staff a minimum of 60-days prior to initial grading.

California Regional Water Quality Control Board
Santa Ana Region

August 25, 2006

ITEM: 11

SUBJECT: Order No. R8-2006-0062, Fortland Development, Inc., Tract Map 31957, City of Lake Elsinore

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2006-0062, which authorizes the discharge of dredge or fill to waters of the State that have been determined by the U.S. Army Corps of Engineers to be outside of its jurisdiction and not subject to regulation under the 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 October 27, 2005, Regional Board staff received an application for Clean Water Act Section 401 Certification (Certification) from the agent for Fortland Development, Inc., Glenn Lukos Associates (GLA), for the discharges from the proposed residential Tract 31957 (a.k.a. Lake Elsinore Highlands). Tract 31957 is a proposed 101-lot residential development on 34.2 acres of an 80-acre site at the western termini of Running Deer Road and Mountain Street in the City of Lake Elsinore. The project site lies along a reach of Rice Canyon Creek, an ephemeral drainage tributary to Temescal Creek and a water of the U.S. The proposed residential development will occur on the east side of Rice Canyon Creek, with the Creek and the remainder of the property on its west side preserved as part of the Riverside County Multi-Species Habitat Conservation Plan (MSHCP).

In their application for Certification, GLA provided a delineation of waters of the U.S. that concluded that the site contained a total of 0.94 acres of waters of the U.S. and 0.04 acres (644 linear feet) of isolated waters of the State that are considered outside of federal jurisdiction (non-federal). Of the total waters of the U.S. on the project site, the applicant proposes to permanently fill 0.06 acres (644 linear feet). The applicant also proposes to permanently fill all of the 0.04 acres of isolated, non-federal, water of the State in order to develop Tract 31957. The isolated water of the State proposed for fill is an ephemeral channel dominated by non-native grasses and some native chaparral vegetation. GLA formally submitted a report of waste discharge (ROWD) for the proposed discharge of fill to the isolated channel on July 3, 2006.

Upon review of the application for Certification, the ROWD, biological reports provided by the applicant, and after a site evaluation on July 30, 2006, Regional Board staff identified non-water contact recreation (REC-2), wildlife habitat (WILD), and groundwater recharge (GWR), as potential or existing beneficial uses of the isolated channel that would be impacted through the proposed discharge of fill.

Regional Board staff has determined that the Regional Board cannot authorize the proposed discharges of dredge or fill in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order.

Discharges of fill to waters of the U.S. on Tract 31957 are subject to Corps' Clean Water Act Section 404 permitting and, therefore, were authorized by the Executive Officer under Order No. 2003-0017-DWQ with the issuance of a Clean

Water Act Section 401 Certification on August 3, 2006. The August 3, 2006 Certification required, in part, that Fortland Development Inc. create 0.25 acres of waters of the U.S. within Rice Canyon Creek through the excavation of the adjacent uplands and planting with native riparian vegetation. The proposed Order No. R8-2006-0062 authorizes the proposed discharges of fill to non-federal waters of the State and requires that Fortland Development Inc. create an additional 0.08 acres of waters of the U.S. as part of the compensatory mitigation effort proposed for discharges of fill to waters of the U.S. The proposed Order No. R8-2006-0062 does not authorize discharges of storm water or process wastewater.

Pursuant to CEQA, the City of Lake Elsinore prepared a Mitigated Negative Declaration for the project and adopted it on September 13, 2005. A Notice of Determination was filed on September 16, 2005.

RECOMMENDATION

Adopt Order No. R8-2006-0062.

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. R8-2006-0062

Waste Discharge Requirements

for

Fortland Development, Inc.
Tract 31957 (a.k.a. Lake Elsinore Highlands)
City of Lake Elsinore

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

1. Fortland Development, Inc. proposes the development of residential Tract 31957 at the western termini of Running Deer Road and Mountain Street in the City of Lake Elsinore. Tract 31957 includes the development of 101 single-family residential homes on 34.2 acres of an 80-acre site. Fortland Development, Inc. is proposing to fill waters of the State as part of the development of Tract 31957.

2. The affected waters of the State are tributaries to Rice Canyon Creek and an un-named isolated ephemeral drainage with a combined area of approximately 0.10 acres. Rice Canyon Creek is waters of the U.S., being tributary to Temescal Creek and ultimately tributary to the Pacific Ocean. All of the drainages possess an ordinary high water mark and meet the U.S. Army Corps of Engineers' (Corps) physical criteria as waters of the U.S. However, being isolated, the un-named ephemeral drainage does not meet the Corps' regulatory criteria and is not subject to their jurisdiction.

3. The waste discharge requirements proposed herein address the discharge of fill to the isolated drainage that will result from the development of Tract 31957. Discharges of fill to waters of the U.S. were authorized by the Executive Officer on August 3, 2006 with the issuance of a Clean Water Act Section 401 Water Quality Standards Certification (Certification).

4. In compliance with the California Environmental Quality Act, a Mitigated Negative Declaration has been prepared and certified by the City of Lake Elsinore on September 13, 2005. A Notice of Determination was filed on September 16, 2005.

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

6. The un-named ephemeral drainage is isolated and exhibits no surface or subsurface connection with other waters of the state (i.e., receiving waters). No beneficial uses are designated for the ephemeral drainage within the Santa Ana River Basin Water Quality Control Plan (1995), however, upon review of the Biological Assessment and an on-site evaluation conducted on July 30, 2006, Regional Board staff has determined that the following beneficial uses are existing or potential:
   a. Wildlife Habitat (WILD)
   b. Groundwater Recharge (GWR)
   c. Non-water Contact Recreation (REC-2),

7. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill of waters of the State that are outside the jurisdiction of the U.S. Army Corps of Engineers.

8. The Regional Board has considered anti-degradation 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 under these WDRs.

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, are prohibited.

C. PROVISIONS:

1. The discharger shall create 0.08 acres waters of the U.S. adjacent to Rice Canyon Creek through the excavation of uplands. The creation effort shall proceed in conjunction with, and in addition to, creation of 0.25 acres of waters of the U.S. provided in compensation for the proposed discharge of fill to waters of the U.S. authorized by the Executive Officer in a Certification issued on August 3, 2006. Consistent with that Certification, the mitigation effort shall proceed according to a written mitigation and monitoring plan applicable for a 6-year duration beginning on the date of initial vegetation planting. The mitigation and monitoring plan shall be prepared according to Corps' guidelines and include measurable quantitative intermediate and final success criteria. Initial planting and seeding shall occur no later than October 31 following completion of rough grading. The mitigation and monitoring plan shall be provided to Regional Board staff a minimum of 60-days prior to initial grading.

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 August 25, 2006.

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Gerard J. Thibeault
Executive Officer