California Regional Water Quality Control Board
Santa Ana Region

November 5, 2004

ITEM: 5

SUBJECT: Order No. R8-2004-0091, The Tiger Woods Foundation

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2004-0091, 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 Clean Water Act Section 404 (non-federal waters). The Order requires the discharger to implement measures to prevent and mitigate the effects of the project.

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 considered 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 issued by the Executive Officer have been 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. The State Water Resources Control Board has issued Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside Federal Jurisdiction, Water Quality Order No. 2004-0004-DWQ (Order No. 2004-0004-DWQ) subject to specific impact thresholds.

On August 30, 2004, Regional Board staff received a report of waste discharge from The Tiger Woods Foundation for excavation within Gilbert Basin in association with the

construction of the Tiger Woods Learning Center in the City of Anaheim. The report also includes a verification letter from the Corps, dated August 29, 2003, declining to take jurisdiction over the excavation activities in Gilbert Basin. After a site visit with representatives of The Tiger Woods Foundation and reviewing grading plans, Regional Board staff concluded that discharges of fill would occur that would affect water quality standards and that those effects would not be addressed through existing waste discharge requirements. The proposed discharge exceeds qualifying thresholds found in Order No. 2004-0004-DWQ and, therefore, individual waste discharge requirements need to be issued.

The discharge will occur in association with the construction of the Tiger Woods Learning Center, involving the net discharge of 12,480 cubic yards of fill into Gilbert Basin for the construction of a Learning Center, auditorium, and related landscaping, re-contouring the Basin bottom, and the conversion of a highly-disturbed, earthen portion of the Basin into a chipping and putting green. Although most of Gilbert Basin is currently used as a golf driving range, the net discharge of fill will result in the loss of groundwater recharge (GWR) and capacity for municipal and domestic supply (MUN) beneficial uses. The conversion of the earthen portion of the Basin bottom will impact wildlife habitat (WILD) beneficial uses for terrestrial, urban-tolerant, species.

The discharger has proposed to mitigate impacts to beneficial uses through the excavation of the nearby Crescent Basin to increase its capacity and to plant vegetation on the upland slopes of Gilbert Basin. The Corps has declined to take jurisdiction over the excavation of Crescent Basin although it is a water of the U.S. because the excavation will occur on the upland slopes. Subsequently, no discharges of dredge or fill will occur to waters of the State in Crescent Basin. Impacts to water quality, as the result of earth disturbing activities in the upland portions of Crescent Basin, are adequately addressed through the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ.

A Mitigated Negative Declaration has been prepared for The Tiger Woods Learning Center and certified by the City of Anaheim on December 19, 2003.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2004-0091, as presented.

California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2004-0091

Waste Discharge Requirements

for

The Tiger Woods Foundation
Tiger Woods Learning Center, Gilbert Basin
City of Anaheim

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

1. The Tiger Woods Foundation proposes to modify Gilbert Basin, a water of the State, in order to develop the Tiger Woods Learning Center in the City of Anaheim. The modifications involve re-contouring the Basin bottom, a net discharge of 12,480 cubic yards of fill, and the subsequent conversion of highly disturbed wildlife habitat within the Basin into a chipping and putting green. The net discharge of fill will occur for the construction of a Learning Center with an auditorium and related landscaping.

2. The affected water of the State is a constructed settling and detention basin situated on approximately 16 acres adjacent to Carbon Creek Channel, a concrete-lined flood control structure as it passes Gilbert Basin. Gilbert Basin is designed to accept overflow from Carbon Creek Channel and is periodically inundated. Flows from Gilbert Basin are later discharged back into Carbon Creek. Most of Gilbert Basin is currently used as a golf driving range and the remainder is earthen and highly disturbed habitat for terrestrial, urban-tolerant, species.

3. The U.S. Army Corps of Engineers (Corps) has declined to take jurisdiction over Gilbert Basin in a letter dated August 29, 2003. In the same letter, the Corps asserted jurisdiction over the nearby Crescent Basin. The Tiger Woods Foundation is proposing to excavate within Crescent Basin, however the excavation will occur outside of waters of the U.S. and waters of the State and the Corps has declined to take jurisdiction over excavation in such uplands.

4. The waste discharge requirements proposed herein authorize discharges of fill to waters of the State from the re-contouring of the bottom of Gilbert Basin and the net discharge of 12,480 cubic yards of fill.

5. In compliance with the California Environmental Quality Act, a Mitigated Negative Declaration has been prepared and certified by the City of Anaheim. A Notice of Determination was filed on December 19, 2003.

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

7. No beneficial uses are designated for Gilbert Basin within the Santa Ana River Basin Water Quality Control Plan (1995). However, Gilbert Basin overlies the Santa Ana Forebay groundwater sub-basin, the beneficial uses of which include:
    a. Municipal and Domestic Supply (MUN)
    b. Agricultural Supply (AGR)
    c. Industrial Service Supply (IND)
    d. Industrial Process Supply (PROC)

8. The applicant's biological assessment and a site visit by Regional Board staff indicate that the following additional beneficial uses within Gilbert Basin are existing or attainable:
    a. Municipal and Domestic Supply (MUN)
    b. Groundwater Recharge (GWR)
    c. Wildlife Habitat (WILD)

9. This Order regulates excavation within waters of the State for the purpose of mitigating impacts to WILD, GWR, and MUN. The discharger submitted a Report of Discharge on August 30, 2004.

10. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill of waters of the State. The discharger has proposed to mitigate impacts through the expansion of Crescent Basin and to vegetate adjacent upland slopes within Gilbert Basin.

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 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 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 excavate Crescent Basin to mitigate impacts to GRW and MUN beneficial uses within Gilbert Basin as the result of the proposed discharge of fill. The excavation in Crescent Basin shall occur in a manner that compensates for lost groundwater recharge and municipal and domestic supply capacity in Gilbert Basin. The discharger shall mitigate impacts to WILD beneficial uses through the enhancement of the upland slopes of Gilbert Basin for those urban-tolerant species currently found within Gilbert Basin.

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 November 5, 2004.

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Gerard J. Thibeault
Executive Officer