California Regional Water Quality Control Board
Santa Ana Region

November 30, 2007

ITEM: 9

SUBJECT: Order No. R8-2007-0067, Old Stone Heights, LLC, Parcel Map No. 30626, Riverside County.

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2007-0067, 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 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 (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."

Due to recent decisions by the Supreme Court that increasingly have limited the authority of the Corps to regulate discharges of dredge and fill to waters of the U.S., some project proponents find that their proposed discharges of dredge or fill to surface waters of the State are no longer subject to the Corps' jurisdiction. As a result, these projects are not subject to a CWA Section 404 permit from the Corps 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 5, 2007, Regional Board staff received a report of waste discharge (Report) from Old Stone Heights LLC. In the Report, Old Stone Heights LLC proposes to discharge fill to 0.28-acres of waters of the State. The waters of the State are located north of the intersection Knabe Road and Bedford Motorway in Riverside County (33.80724 degrees N/-117.50668 degrees W).

The affected waters are an un-named, riparian, ephemeral drainage. The drainage is tributary to Temescal Wash via a reinforced box culvert under Knabe Road and Interstate 15 and then via a storm drain within Leroy Road[1]. A total of 730 linear feet of waters of the State will be filled. A second ephemeral drainage on the property along Bedford Motorway will not be affected and will be left within a 0.7-acre remainder parcel[2]. In a letter dated September 13, 2006, the U.S. Army Corps of Engineers (Corps) determined that the drainages on the property were not subject to their jurisdiction under CWA Section 404.

The discharges will occur as part of the development of Parcel Map No. 30626 (PM 30626). PM 30626 consists of the subdivision of 8.7 acres into two parcels and ultimately the construction of commercial buildings on each. The interim condition involves preparation of the finished pads and construction of a cul-de-sac off of the adjacent Knabe Road to access the parcels. A specific development proposal for seven industrial buildings on one parcel and a mini-storage facility with a manager's office/residence on the other has been approved by the County of Riverside, however, Old Stone Heights LLC representatives have indicated that the parcels are likely to be sold and developed by others under a separate development proposal.

As a result of Regional Board staff review of the report of waste discharge, Regional Board staff has identified non-water contact recreation (REC-2), wildlife habitat (WILD), and groundwater recharge (GWR) as existing or potential beneficial uses. Regional Board staff has determined that the discharges to the non-federal waters of the State at PM 30626 would affect beneficial uses of the receiving drainage. However, the Regional Board could not authorize the proposed discharges in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order. Consequently, the proposed discharge would need to be authorized by individual waste discharge requirements.

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[1] The Leroy Road storm drain was constructed – replacing a natural channel – as part of the development of the Wildrose Business Park. The Business Park received Certification on October 5, 2004, at which time the natural channel was considered subject to Corps' jurisdiction.

[2] "Remainder parcel" is a legal term under the Subdivision Map Act. A remainder parcel is one where there is no present intent to sell immediately or in the future. The designation of a remainder parcel does not imply that the drainage contained there is preserved from being filled in the future.

Old Stone Heights LLC proposes to mitigate impacts to beneficial uses by directing runoff from approximately 0.3 acres of the developed site into the avoided southerly drainage, removing non-native pepper trees and propagules within that drainage, and by making a contribution to the Santa Ana Watershed Association towards the eradication of 0.56-acres of invasive plant species in the Temescal Wash watershed. The proposed tributary area of the avoided drainage is approximately 7-acres. The additional flow will come from what will ultimately be a landscaped cut slope behind the anticipated commercial buildings. The drainage conveys flows under Knabe Road and the parallel Interstate 15 to Temescal Wash via an 8-ft. by 5-ft. reinforced concrete box culvert. This culvert is expected to convey flows from the majority of the project site's 8.7-acres upon completion of both on-site drainage improvements and storm drain improvements being made to Knabe Road as part of the development of The Retreat residential development.

Other discharges that will occur as part of the development of PM 30626 are construction and post-construction discharges of storm water runoff. Both discharges are addressed by State Board Water Quality Order No. 99-08-DWQ, "General Permit for Discharges Associated with Construction Activity" (Order No. 99-08-DWQ) and Regional Board Order No. R8-2002-0011, NPDES Permit No. CAS618033, commonly known as the Riverside County Urban Storm Water Runoff Permit, and subsequent renewals. A Storm Water Pollution Prevention Plan (SWPPP) and a final Water Quality Management Plan (WQMP) will be developed. Typical construction best management practices (BMPs), such as erosion and sediment control measures, will be employed to remove pollutants in storm water runoff. Site plans, provided as part of the Report, indicates that 2 extended detention basins will be used to remove pollutants in discharges from the developed parcels but which will function as desilting basins during construction. Additional BMPs will be identified in the SWPPP and final WQMP. The WQMP will be subject to review and approval by the County of Riverside.

Pursuant to CEQA, the County of Riverside prepared a Negative Declaration (ND) and adopted it on June 28, 2005. A Notice of Determination was filed on July 8, 2005.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2007-0067.

Comments were solicited from the following agencies and parties:

U.S. Army Corps of Engineers, Los Angeles District
California 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. R8-2007-0067

Waste Discharge Requirements

for

Old Stone Heights, LLC
Parcel Map No. 30626, Riverside County

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

1. Old Stone Heights, LLC (hereinafter, discharger) proposes to discharge fill to 0.28-acres of an ephemeral riparian drainage as part of the development of commercial Parcel Map No. 30626 (PM 30626), in the Temescal/El Cerrito area of Riverside County.

2. PM 30626 consists of the grading and preparation of two commercial parcels and a cul-de-sac on 8.7-acres located north of the intersection of Knabe Road and Bedford Motorway. PM 30626 is located within Section 21 of Township 4 South, Range 6 West, as shown on the U.S. Geological Service *Corona South, California* quadrangle (33.80724 degrees N/-117.50668 degrees W).

3. In a letter dated September 13, 2006, the U.S. Army Corps of Engineers (Corps) determined that the drainages on the property were not subject to their jurisdiction under CWA Section 404.

4. The Board commonly regulates discharges of dredge or fill to waters of the State through the issuance of Clean Water Act (CWA) Section 401 Water Quality Standards Certifications (Certifications) where the discharge is also subject to regulation by the Corps. These Certifications are 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. This regulatory approach is used when the jurisdiction of the Corps for waters of the U.S., under CWA Section 404, and that of the State under the California Water Code overlap. In the absence of an applicable federal permit or license, the Board regulates the proposed discharge to waters of the State through the issuance of Waste Discharge Requirements, or a waiver thereof.

5. The affected water of the State consists of an unnamed riparian ephemeral drainage. The drainage is tributary to Temescal Wash via a reinforced concrete box culvert under Knabe Road and Interstate 15 and then via a storm drain pipe in Leroy Road. The Water Quality Control Plan for Santa Ana River Basin (1995) does not specifically designate beneficial uses for the drainage on the project

site. Based on the applicant's biological assessment, beneficial uses that are existing or attainable for the ephemeral drainages include:

a. non-water contact recreation (REC-2);
b. wildlife habitat (WILD); and
c. groundwater recharge (GWR).

6. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill on the beneficial uses of waters of the State.

7. This Order regulates the discharge of fill material to waters of the State that are not within the Corps' CWA Section 404 jurisdiction (non-federal). The discharger submitted a ROWD on April 5, 2007.

8. The discharger has committed to mitigate direct impacts to waters of the State by minimizing changes to the drainage area of the avoided southerly drainage and by compensating for impacts to the beneficial uses of the central drainage into which the discharge of fill is proposed. The compensatory mitigation will consist of the payment of an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.56-acres of invasive plant species in the Temescal Wash watershed.

9. Pursuant to CEQA, the County of Riverside adopted a Negative Declaration (ND) for the proposed PM 30626 on June 28, 2005.

10. As a Responsible Agency under CEQA, the 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 County's environmental document 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 in storm water runoff from the project. General Provision C.1. of this Order requires the discharger to compensate for impacts to the beneficial uses of the non-federal waters of the State through the payment of an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.56-acres of invasive plant species in the Temescal Wash watershed. The Board finds that the significant effects of the discharge of fill to non-federal waters associated with the grading of PM 30626, as authorized by this Order, are reduced to a less-than-significant level.

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 of wastes or pollutants to surface waters, unless otherwise regulated by a separate National Pollutant Discharge Elimination System (NPDES) permit, is prohibited.

C. PROVISIONS:

1. The discharger shall compensate for permanent impacts to beneficial uses by paying an in-lieu fee to the Santa Ana Watershed Association towards the eradication of 0.56-acres of invasive plant species in the Temescal Wash watershed and removing non-native pepper trees and their propagules from the avoided drainage along Bedford Motorway. The fee payment shall include a

minimum of 6-years of follow-on maintenance. Evidence of the payment shall be provided to the Executive Officer by January 30, 2008.

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 30, 2007.

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Gerard J. Thibeault
Executive Officer