

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL
BOARD SAN FRANCISCO BAY REGION

CLEANUP AND ABATEMENT ORDER

NO. R2-2021-1011

ASSESSOR'S PARCEL NO. 0052-160-090
VALLEJO, SOLANO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region (Regional Water Board), finds that:

Background

1. Param Dhillon and Amandeep Dhillon (collectively, Dischargers) are named as dischargers under this Cleanup and Abatement Order (Order) because they own the property described as Solano County Assessor's Parcel No. 0052-160-090 (Property), generally located east of Sonoma Boulevard and north of Sereno Drive in the City of Vallejo, and caused or allowed waste to be discharged to waters of the State, or to a location where it could discharge to waters of the State, as described herein.
2. The Dischargers purchased the Property at an auction held on June 11 and 12, 2019. The Property consists of 7.6 acres of open space in the City of Vallejo, Solano County. The Property contains the East Lagoon, an approximately 5-acre seasonal wetland that is a water of the State, a tributary to the Napa River, and part of the White Slough.
3. In or around October 2019, the Dischargers authorized construction activities at the Property that included disking, grading, and placing fill into wetlands or in areas that threatened waters of the State. During a hearing before the Regional Water Board on November 18, 2020, Param Dhillon testified that he met someone at a hardware store near the Property and authorized that person to import fill of an unspecified origin and to place the fill on the Property. The Regional Water Board is unaware of any testing performed on that fill.
4. Regional Water Board staff estimate that the Dischargers had at least 1,000 cubic yards of dirt and debris imported to the Property for fill and grading activities that occurred over approximately 4.4 acres of the Property (Figure 1). These activities directly affected about 2.6 acres of waters of the State (Figure 2) and were adjacent to and threatened waters of the State over the remainder of the Property.
5. The Dischargers did not obtain permits to fill waters of the State or to conduct the construction activities and conducted activities that are prohibited.
 - a. California Water Code (Water Code) section 13260 requires that any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the State, shall file with the appropriate Water Board a report of waste discharge. Water Code section 13264 further provides that no person shall initiate any new discharge of waste, or make any material changes in any discharge, prior to the filing of the report of waste discharge required by

Water Code section 13260. The Dischargers have not filed a report of waste discharge with the Water Board for the unauthorized construction activities at the Property, which could adversely impact the quality of waters of the State. Accordingly, the Dischargers are in violation of Water Code sections 13260 and 13264.

- b. Sites disturbing one acre or more of soil are required by federal law¹ to have a construction stormwater permit pursuant to State Water Resources Control Board (State Water Board) Order No. 2009-0009-DWQ, as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ, NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction Stormwater General Permit). Approximately 4.4 acres of the Property were disturbed by fill and grading activities (Figure 1) without coverage under the Construction Stormwater General Permit.
 - c. Chapter 4, Table 4-1 of the Basin Plan, Discharge Prohibition No. 9, prohibits 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 or to unreasonably affect or threaten to affect beneficial uses. The Dischargers' unauthorized importing and grading of fill dirt has resulted in the discharge and/or threatened discharge of soil and other earthen materials into the East Lagoon of the White Slough, thereby unreasonably affecting or threatening to affect beneficial uses.
6. The Dischargers capped the end of a storm drain with concrete on the southwest corner of the Property without authorization. This action likely altered the hydrology of the East Lagoon by preventing the flow of stormwater and potentially tidal waters from entering and/or exiting the Property. This unauthorized activity at the Property is also in violation of the Basin Plan.
 7. In 1990, the State of California adopted the White Slough Protection and Development Act (White Slough Act), codified at California Government Code (Government Code) sections 66670–66682, which protects tidal wetlands and tidally influenced areas, adjacent wetlands, and upland habitats of the White Slough. In 1996, Solano County and the City of Vallejo produced (and amended in 2010) a White Slough Specific Area Plan, as required by the White Slough Act, which protects the East Lagoon at the Property. In 1999, the City of Vallejo rezoned the Property from “retail use” to “resource conservation” to provide maximum protection of wetland habitat. This zoning only allows for permanent open space preserves and facilities for low-impact public recreational uses (e.g., trails).
 8. Wetlands at the Property are part of the White Slough. The “tributary rule” provides that a tributary to a listed water body has the beneficial uses of that water body. White Slough, and the Property's wetlands (whether directly or by virtue of the tributary rule), have the following beneficial uses: estuarine habitat; fish migration; preservation of rare and endangered species; fish spawning; wildlife habitat; water contact recreation; and non-contact water recreation.

¹ The California Water Code (Water Code) prohibits certain discharges of stormwater containing pollutants except in compliance with a National Pollutant Discharge Elimination System (NPDES) permit (Title 33 U.S.C. §§ 1311 and 1342(p); also referred to as Water Code §§ 301 and 402(p)).

Regional Water Board Actions

9. Regional Water Board staff notified the Dischargers of violations related to the fill and grading activities at the Property and provided the Dischargers with an opportunity to comply through the submission of technical reports.
 - a. On November 18, 2019, Regional Water Board staff issued a notice of violation to the Dischargers, alleging violations of the Water Code and the Basin Plan for their unauthorized activities.
 - b. On February 7, 2020, the Regional Water Board issued the Dischargers a "Notice of Violation and 13267 Directive to Submit Technical Reports" (13267 Order). By requiring the Dischargers to submit technical reports, the 13267 Order provided a regulatory path to address harm, or threat of harm, to waters of the State and to comply with applicable water quality laws, regulations, and policies. The Dischargers did not submit the technical reports.
10. On August 28, 2020, the Regional Water Board issued Administrative Civil Liability Complaint No. R2-2020-1028 (Complaint) to the Dischargers for failing to submit two technical reports required by the 13267 Order.
11. On November 18, 2020, the Regional Water Board held a hearing on the Complaint and issued Order No. R2-2020-0030, imposing an administrative civil liability of \$61,374 on the Dischargers pursuant to Water Code sections 13323 and 13268 for their failure to submit the two technical reports required by the 13267 Order.
12. Param Dhillon informed the Regional Water Board at the November 18, 2020, hearing that he "took the liberty to close" a storm drain in the southwest portion of the Property. He stated "if [water from] the storm drain doesn't make it to [his] property, there won't be any wetlands" and the "Water Board may not have jurisdiction." On November 3, 2020, the City of Vallejo Flood and Wastewater District notified Regional Water Board staff that Param Dhillon had plugged the storm drain with concrete (Figure 1, Photo 3). The storm drain is located within waters of the State (Figure 2).

Cleanup and Abatement Order Authority

13. The Dischargers' unauthorized construction activities and placement of fill and concrete unreasonably affected or threaten to affect water quality and beneficial uses of waters of the State and protected wetlands.
 - a. Grading and fill activities destroyed wetlands and harmed or threatened water quality and beneficial uses.
 - b. Construction activities filled or otherwise damaged or threatened wetlands protected by law and were not allowed by local zoning.
 - c. Blocking a storm drain in the southwest portion of the Property impedes water flow within East Lagoon and wetland habitat. The White Slough Act directed the establishment and maintenance of adequate waterflow and water quality and the improvement of water management practices, including drainage and upland flood protection, to protect White Slough (Government Code section 66677(a)).

14. Water Code section 13304 requires that any person who has discharged or discharges waste into waters of the State in violation of any waste discharge requirement or other order or prohibition issued by the Regional Water Board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into waters of the State and creates, or threatens to create, a condition of pollution or nuisance, shall, upon order of the Regional Water Board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts.
15. Based on the above findings, the Dischargers have caused or permitted waste to be discharged, or deposited where it has been discharged, into waters of the State, and created or threatens to create a condition of pollution. As such, pursuant to Water Code sections 13267 and 13304, this Order requires the Dischargers to submit technical reports and undertake corrective actions to clean up the waste discharged and abate its effects. The burden of preparing technical reports required pursuant to Water Code section 13267, including costs, must bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports, namely the restoration of beneficial uses at the Property.

The technical report and corrective action plan are essential components of restoration; these documents will not only help the Regional Water Board to ensure that planned corrective actions will be adequate to restore the beneficial uses at the Property, but will assist the Dischargers in scheduling and performing work at the Property. The mitigation and monitoring reports will enable the Regional Water Board to assess the effectiveness of the restoration and gauge when restoration is complete. The burden of preparing these reports, including the costs of hiring a consultant and reimbursement for the Regional Water Board's oversight, is estimated to be less than \$50,000. The Regional Water Board considers this burden reasonable in light of these important benefits.

Additional Findings

16. Issuance of this Order is an action to enforce the laws and regulations administered by the Regional Water Board and for the protection of the environment. As such, this action is categorically exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 *et seq.*) pursuant to section 15321, subdivision (a)(2), of title 14 of the California Code of Regulations. This Order generally requires the Dischargers to submit plans for approval prior to implementation of cleanup activities. Submittal of plans is exempt from CEQA because submittal will not cause a direct or indirect physical change in the environment or is an activity that cannot possibly have a significant effect on the environment. CEQA review at this time would be premature and speculative because there is not enough information concerning the Dischargers' proposed remedial activities and possible associated environmental impacts. If the Regional Water Board determines that implementation of any plan required by this Order will have a significant effect on the environment, the Regional Water Board will conduct the necessary and appropriate environmental review prior to the Executive Officer's approval of the applicable plan. The Dischargers will bear the costs, including the Regional Water Board's costs, of determining whether implementing any plan required by this Order will have a significant effect on the

environment and, if so, in preparing and handling any documents necessary for environmental review.

17. Pursuant to Water Code section 13304, the Dischargers are hereby notified that the Regional Water Board is entitled to, and may seek reimbursement for, all reasonable costs actually incurred by the Regional Water Board to investigate unauthorized discharges of waste and to oversee cleanup of such waste, abatement of the effects thereof, or other remedial action, required by this Order.
18. The Regional Water Board notified the Dischargers and interested persons of its intent to consider adoption of this Cleanup and Abatement Order and provided an opportunity to submit written comments.

IT IS HEREBY ORDERED, pursuant to Water Code sections 13267 and 13304, that the Dischargers shall submit the required technical reports and clean up the waste discharged, abate its effects, and take other remedial actions as follows:

Prohibitions

1. No unauthorized construction-related materials or wastes shall be allowed to enter into or be placed where they may be discharged into waters of the State.
2. The discharge of sediment, waste products, hazardous materials, or other materials that may degrade, or threaten to degrade, water quality, or adversely affect, or threaten to adversely affect existing or potential beneficial uses of waters of the State is prohibited.
3. The discharge of sediment into waters of the State resulting from failure to provide effective erosion and sediment control measures is prohibited.
4. Removal or destruction of wetland vegetation in a manner that adversely impacts or threatens to adversely impact water quality or beneficial uses of waters of the State is prohibited.
5. The take, or incidental take, of any special status species is prohibited. The Dischargers shall use the appropriate protocols, as approved by California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, to ensure that activities do not adversely affect the preservation of rare and endangered species or violate the California or federal Endangered Species Acts.

Required Actions

1. No later than July 1, 2021, the Dischargers shall submit a technical report that will serve as the basis for the corrective action work plan described below by documenting the unauthorized construction activities (including the plugging of a storm drain) that occurred on the Property since the Dischargers acquired it and assessing the impacts to the wetlands and waters of the State at the Property. This technical report shall include a detailed description of the nature and extent of the unauthorized fill and vegetation clearing activities, a map illustrating the extent of unauthorized construction activities on the Property, calculations quantifying the acreage of land disturbance and wetland area impacts, calculations of the volume and types of fill placed; detailed

qualitative description of the overall project purpose and design, jurisdictional delineation of the extent of waters of the State on the Property prior to the construction activity, and description of the impacts to wetlands and waters of the State. The technical report shall include an evaluation of the sources of the imported fill and, if warranted, include a sampling plan if the fill is suspected to contain contaminants of concern with respect to wetland habitat.

A jurisdictional delineation and evaluation of the impacts to wetlands and State waters shall be prepared and approved by appropriately qualified professionals, with expertise performing jurisdictional delineations of wetlands and waters of the State, and include, at a minimum, a description of the pre-disturbance channel morphology, soil conditions, hydrology, and characterization of the impacted wetlands, as well as supporting documentation (e.g., aerial photographs, photographs, reports, topographic maps, and drawings).

Submission of this report shall also satisfy the requirement to submit Technical Reports No. 1 and 2 as stated in the 13267 Order.

2. No later than August 16, 2021, the Dischargers shall submit a corrective action work plan that includes the following:
 - a. A proposal for corrective actions designed to (1) remove sediment, rock, and other earthen materials placed without authorization from waters of the State; (2) remove concrete from the plugged storm drain at the southern end of the Property; (3) eliminate the threat of discharge of sediment posed by the unauthorized construction activities at the Property; and (4) restore affected waters of the State. The corrective action work plan shall include a monitoring plan designed to monitor and evaluate the success of restoration actions and interim and final success criteria to assess whether waters of the State have been adequately restored. Performance criteria shall include targets for wetland hydrology, wetland vegetation cover, and invasive species cover. The Dischargers shall monitor the success of the restored wetlands for at least five years following completion of restoration actions and until performance criteria are successfully achieved.
 - b. An implementation time schedule for design, permitting, and construction. Within sixty days of acceptance of the corrective action work plan by the Executive Officer, the Dischargers shall initiate implementation of the corrective action work plan in accordance with the accepted implementation time schedule.

Submission of this report will also satisfy the requirement to submit Technical Report No. 3 as stated in the 13267 Order.

3. No later than August 16, 2021, the Dischargers shall submit a mitigation and monitoring plan that includes a proposal to provide compensatory mitigation to compensate for any permanent or temporal impacts to waters of the State that resulted from unauthorized activities at the Property. The mitigation and monitoring plan shall (1) describe existing conditions at the proposed mitigation site, (2) describe implementation methods used to provide compensatory mitigation, (3) include a full description and schedule of the monitoring that will be implemented, (4) provide interim and final success criteria sufficient to fully evaluate the success of the compensatory mitigation, and (5) include an

implementation schedule. The Dischargers shall initiate implementation in accordance with the accepted implementation time schedule within 60 days of written acceptance of the mitigation and monitoring plan by the Executive Officer. Compensatory mitigation shall comply with the State's No Net Loss Policy², which is to ensure no overall net loss and to achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values. Compensatory mitigation shall be in-kind and preferably onsite. To the extent that the mitigation is delayed beyond the schedule set forth in this Order, or its success is uncertain, the plan shall propose a greater amount of mitigation relative to the amount of impacts.

Submission of this report will also satisfy the requirement to submit Technical Report No. 4 as stated in the 13267 Order.

4. No later than November 1, 2021, or November 1 of the first viable construction season if there is delay due to agencies processing of regulatory permits, the Dischargers shall complete restoration and mitigation measures. A construction season is considered viable if, after obtaining all necessary permits, there is sufficient time to implement all restoration and mitigation actions by October 30. The Dischargers shall submit timely and complete permit applications and be responsive to regulatory agencies during the application review and processing period. Delays caused by the Dischargers, such as not submitting technically sound or complete permit application documents or not initiating work in a timely manner, will constitute a violation of this requirement.
5. No later than January 31 of each year following completion of restoration, the Dischargers shall submit annual monitoring reports evaluating the success of the restoration in accordance with the approved implementation time schedule and approved monitoring plan in the corrective action work plan.
6. No later than January 31 of each year following implementation of the compensatory mitigation, the Dischargers shall submit annual monitoring reports for mitigation implemented under the approved mitigation and monitoring plan evaluating the progress of implementation and success of mitigation in accordance with the approved implementation time schedule and approved mitigation and monitoring plan.
7. The Dischargers shall obtain all necessary permits, authorizations, and other approvals necessary to complete the actions this Order requires.
8. The Dischargers shall submit with the final monitoring report a Notice of Completion demonstrating that the corrective action work plan and mitigation and monitoring plan, as approved, have been successfully completed.

² Governor's Executive Order W-59-93 (signed August 23, 1993; also known as the California Wetlands Conservation Policy, or the "No Net Loss" policy).

9. If the Dischargers are delayed, interrupted, or prevented from meeting the work completion or report submittal deadlines specified in this Order, the Dischargers shall promptly notify the Executive Officer in writing with recommended revised completion or report submittal deadlines. Any extensions of the time deadlines specified in this Order shall be approved in writing by the Executive Officer. The Executive Officer may consider revisions to this Order.
10. The Dischargers shall provide Regional Water Board staff reasonable access to the Property as necessary to oversee compliance with this Order.
11. Pursuant to Water Code section 13267, subdivision (b)(1), the Dischargers shall include a perjury statement in all reports submitted under this Order. The perjury statement shall be signed by a senior authorized representative of the Dischargers, not by a consultant. The perjury statement shall be in the following format:

I, [NAME], certify under penalty of law that this document and all attachments were prepared by me, or under my direction or supervision, in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
12. The technical reports and other submittals required above shall be complete, accurate, and adequate as determined acceptable by the Executive Officer. The Dischargers shall revise any submittal to reflect any comments the Executive Officer may make to ensure that the submittal acceptably complies with these requirements. The Executive Officer's issuance of comments regarding a submittal does not relieve the Dischargers of their obligation to meet any deadline specified in this Order.
13. The Dischargers shall provide documentation that plans and reports required under this Order are prepared under the direction of appropriately qualified professionals. California Business and Professions Code sections 6735, 7835, and 7835.1 require that engineering and geologic evaluations and judgements be performed by or under the direction of registered professionals. A statement of qualifications and registration numbers of the responsible lead professionals shall be included with all plans and reports submitted by the Dischargers. The lead professional must sign and affix their registration stamp to the report, plan, or document.

The Dischargers are and shall be liable, pursuant to Water Code section 13304, to the Regional Water Board for all reasonable costs actually incurred by the Regional Water Board for investigation into and oversight of unauthorized discharges of waste, cleanup of such waste, abatement of the effects of such waste, or other remedial action, required by this Order, as well as supervising cleanup or abatement activities. Such costs include, but are not limited to, staff time for investigation of the discharge, preparation of this Order, work to complete the directives specified in this Order, and communications between Regional Water Board staff and parties associated with the cleanup and abatement of the

discharged wastes, including the Dischargers, interested members of the public, and other regulatory agencies. If the Dischargers are enrolled in a State Water Board-managed reimbursement program, reimbursement shall be made pursuant to this Order and according to the procedures established in that program. Any disputes raised by the Dischargers over reimbursement amounts or methods used in that program shall be resolved consistent with the dispute resolution procedures for that program.

Failure to comply with the provisions of this Order may result in the imposition of civil liabilities, imposed either administratively by the Regional Water Board or judicially by the Superior Court in accordance with Water Code sections 13268, 13304, 13308, and/or 13350, and/or referral to the Attorney General of the State of California for injunctive relief or civil or criminal liability. Failure to submit, late or inadequate submittal of technical reports and workplan proposals, or falsifying information therein, is a misdemeanor and may subject the Dischargers to additional civil liabilities. This Order does not preclude or otherwise limit in any way the Regional Water Board's ability to take appropriate enforcement action for the Dischargers' violations of applicable laws, including, but not limited to, discharging without a permit and failing to comply with applicable requirements, including those of the 13267 Order. The Regional Water Board reserves its rights to take any enforcement action authorized by law.

Any person aggrieved by this action may petition the State Water Board to review the action in accordance with Water Code section 13320 and Title 23, California Code of Regulations, section 2050 et al. The State Water Board, Office of Chief Counsel, must receive the petition by 5:00 p.m., 30 days after the date this Order becomes final (if the thirtieth day falls on a weekend or State holiday, the petition must be received by the next business day).

I, Michael Montgomery, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on May 27, 2021.

Michael Montgomery
Executive Officer

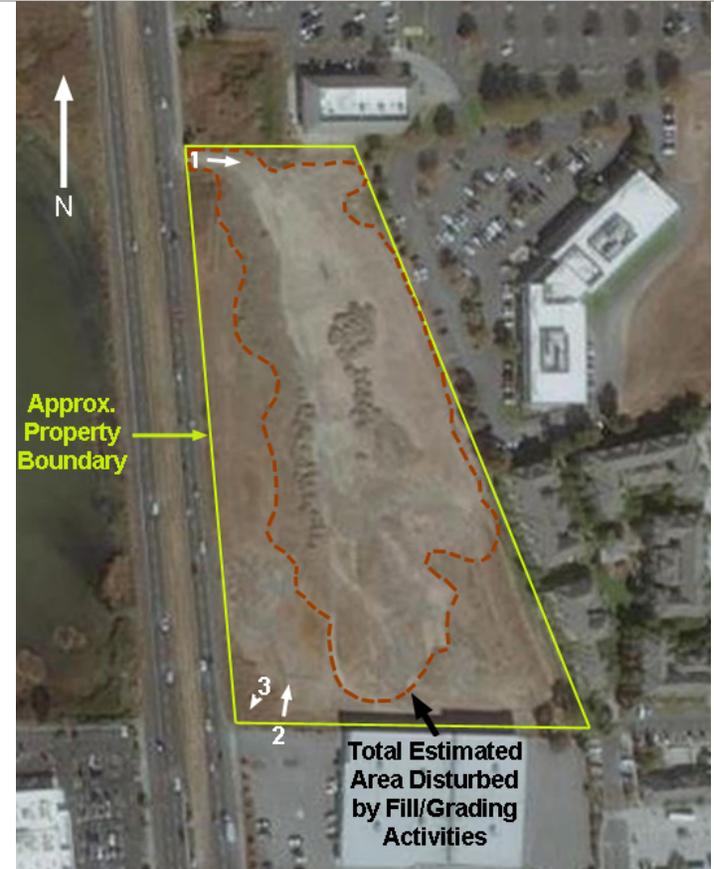


Figure 1: Photographs of Unauthorized Filling and Grading

Dhillon Property on October 31, 2019, aerial image [source: CA Basin Plan Beneficial Use Viewer – Environmental Systems Research Institute (ESRI) basemap, last accessed March 8, 2021] showing total estimated area (4.4 acres) disturbed by fill and grading activities (Photos 1 and 2). Numbers and arrows show location and direction of photographs by number. Photograph 1 and 2 are from local residents, provided to the Regional Water Board by the San Francisco Bay Conservation and Development Commission (BCDC). Photograph 3 is from the Vallejo Flood and Wastewater District showing blocked storm drain. Regional Water Board staff cropped photographs and added dates and numbers.



