

State of California
California Regional Water Quality Control Board
Santa Ana Region

May 3, 2019

STAFF REPORT

ITEM: *8

SUBJECT: LS College Park, LLC, Edison and Oaks Avenues Road Widening Project, City of Chino, San Bernardino County, Order No. R8-2019-0040

DISCUSSION:

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 (WOTUS) 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 (USACE) CWA section 404 permits for dredge and fill discharges. The State Water Resources Control Board (State Water 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 Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges that Have Received State Water Quality Certification."

Because of Supreme Court decisions that have limited the authority of the USACE to regulate discharges of dredged and fill materials to WOTUS, certain proposed dredged or fill discharges to surface waters of the State are no longer subject to USACE jurisdiction (these waters are known as non-federal waters). As a result, these projects are not subject to a CWA section 404 permit from the USACE and do not require a Certification. In the absence of the need to obtain a Certification, the State Water Board has asserted the State's authority to regulate dredged and fill discharges to waters of the State (WOTS) under the Porter-Cologne Water Quality Control Act.

On September 29, 2017 the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board) received from LS College Park, LLC (discharger) an Application for CWA Section 401 Certification (Application) for Edison and Oaks Avenue Road Widening Project (Project). The application was assigned the Santa Ana Water Board WDID 362017-35. On February 27, 2018 the discharger was notified by the USACE that they would not take jurisdiction over the waters present within the Project area. The Santa Ana Water Board informed the discharger on March 22, 2018 that the information included in the Application could be considered an ROWD. The discharger submitted additional information through December 11, 2018. Santa Ana Water Board staff deemed the ROWD complete on January 10, 2019.

The Project is for the widening of Edison Avenue and Oaks Avenue and construction of sidewalks and curbs and gutters. The purpose of this Project is to improve local traffic circulation and provide pedestrian improvements in the City of Chino.

The Project is located in the City of Chino, in San Bernardino County. The Project is located north and west of the intersection of Oaks Avenue and Edison Avenue. The proposed Project area can be found within Sections 13 and 14 of Township 2 South, Range 8 West of the U.S. Geological Survey Prado Dam 7.5-minute quadrangle map. The latitude and longitude for the Project is 33.997351°N, -117.676002°W. A map showing the Project location is found in Attachment A of this Order.

Impacts to WOTS are a result of grading and permanently filling of 0.35 acre (3,508 linear feet) of three unnamed ephemeral tributaries of Chino Creek, Reach 1B. Chino Creek, Reach 1B and its unnamed ephemeral tributaries have the following beneficial uses: Water Contact Recreation (REC1), Non-contact Water Recreation (REC2), Warm Freshwater Habitat (WARM) Wildlife Habitat (WILD), and Rare, Threatened, or Endangered Species (RARE).

On March 22, 2018, Santa Ana Water Board staff determined that the ephemeral tributaries proposed to be filled through Project activities are WOTS. Tributaries are located on both the east and west shoulders of Oaks Avenue and on the south shoulder of Edison Avenue.

Pursuant to California Environmental Quality Act, City of Chino, as the Lead Agency, approved an Environmental Impact Report (EIR) for the Project, on August 18, 2004. City of Chino's EIR identified potentially significant impacts to water quality and biological resources. The EIR's proposed mitigation measures must ensure that compensation for permanent impacts on jurisdictional resources is equivalent or superior to the biological and water quality functions and values impacted by the Project.

To address the potential impacts identified in the EIR, the discharger must perform the following mitigation measures: (1) purchase 0.70 acre of rehabilitation credits from a Santa Ana Water Board-approved mitigation bank or in-lieu fee program within the Santa Ana River Watershed and (2) prior to issuance of a grading permit, the discharger must obtain a National Pollutant Discharge Elimination System General Permit for Storm Water Dischargers Associated with Construction and Land Disturbances Activities (Stormwater Permit). The Stormwater Permit requires the development of a site-specific Storm Water Pollution Prevention Plan to address short-term construction-related water quality issues and associated Best Management Practices.

The Santa Ana Water Board finds that the required compensatory mitigation will reduce the potentially significant effects of the discharge of fill to WOTS to less-than significant levels, and

compensation for permanent impacts on jurisdictional resources is of an equivalent or superior biological function and value.

RECOMMENDATION:

Adopt Order No. R8-2019-0040, as presented.

Comments were solicited from the following:

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State of California
California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2019-0040

Waste Discharge Requirements
For
LS College Park, LLC
Edison and Oaks Avenues Road Widening Project
City of Chino
San Bernardino County

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

1. This Order is for Waste Discharge Requirements (WDRs) for the LS College Park, LLC (discharger), Edison and Oaks Avenues Road Widening Project (Project).

WDRs are necessary to address impacts of dredge/fill on the beneficial uses of waters of the State (WOTS). On September 29, 2017, LS College Park, LLC submitted an application for a 401 Water Quality Certification. The application was assigned the Santa Ana Water Board WDID 362017-35. On February 27, 2018, the discharger submitted information that the United States Army Corps of Engineers did not take jurisdiction over the waters to be impacted by the Project. On March 22, 2018, the Santa Ana Water Board determined that the proposed discharges of fill would be to the WOTS. On March 22, 2018, Santa Ana Water Board staff confirmed that the information provided in the application for a Clean Water Act section 401 Water Quality Certification would constitute a Report of Waste Discharge. This Order regulates the discharge of fill material to WOTS.

2. The Project is a part of a larger project called the Redevelopment Plan for the Merged Chino Redevelopment Project Area. The discharger proposes the widening of Oaks and Edison Avenues and the construction of concrete sidewalk and curb and gutter. The additional infrastructure will replace the earthen bottom ephemeral drainages with a 36-inch reinforced concrete pipe (RCP) culvert. The purpose of the Project is to promote commerce and generate employment in the City of Jurupa Valley. The filling of the earthen drainage will result in permanent impacts to 0.35 acre and 3,508 linear feet of ephemeral WOTS.
3. The Project is located in the City of Chino, in San Bernardino County. The Project is located north and west of the intersection of Oaks Avenue and Edison Avenue. The proposed Project area can be found within Sections 13 and 14 of Township 2 South, Range 8 West of the U.S. Geological Survey Prado Dam 7.5-minute quadrangle map.

The latitude and longitude for the Project is 33.997351°N, -117.676002°W. A map showing the Project location is found in Attachment A of this Order.

4. The Project site is a highly disturbed roadway shoulder. Onsite WOTS include three ephemeral roadside drainages, one drainage on the south shoulder of Edison Avenue (Drainage 1) and two drainages on the west (Drainage 2) and east (Drainage 3) shoulders of Oaks Avenue. All three drainages are tributary to Chino Creek, Reach 1B. Drainage 1 ranges from 3 to 6 feet in width and is 2,473 linear feet in length. Drainage 2 is 585 linear feet and ranges from 2 to 6 feet in width. Drainage 3 is 2 to 8 feet in width and 450 linear feet in length. All three drainages are mostly unvegetated. Chino Creek, Reach 1B has designated beneficial uses (existing or potential) that include:
 - i. Water Contact Recreation (REC1);
 - ii. Non-Contact Water Recreation (REC2);
 - iii. Warm Freshwater Habitat (WARM);
 - iv. Wildlife Habitat (WILD); and,
 - v. Rare, Threatened, or Endangered Species (RARE).
5. The three drainages will be replaced by three underground RCPs measuring 72, 30 and 24 inches and will be installed for storm water conveyance. For this replacement, the discharger will remove existing riprap and debris, grade the three drainages, install the RCPs, backfill the drainages, and construct the widened roadways, sidewalks, and curb and gutter.
6. Proposed grading and construction activities will expose underlying soils and disturb surficial soils on the Project site. The areas disturbed during construction will be landscaped or covered with impervious surfaces.

Permanent impacts to WOTS from proposed construction activities are a result of grading and filling 0.35 acre (3,508 linear feet) of the ephemeral drainages.
7. The discharger will provide compensatory mitigation for permanent impacts to 0.35 acre to WOTS through the purchase 0.70 acre of rehabilitation credits from the Land Veritas Soquel Canyon Mitigation Bank.
8. The Santa Ana Water Board has the authority to regulate the discharge of dredged and fill materials through the issuance of WDRs pursuant to California Water Code section 13263. The Santa Ana Water Board has determined that WDRs are necessary to adequately address the Project's potential impacts on the beneficial uses of WOTS.
9. California Water Code section 13263 authorizes the Santa Ana Water Board, after any necessary hearing, to prescribe requirements as to the nature of any proposed discharge with relation to the conditions existing in the disposal area or receiving waters upon, or into which, the discharge is made or proposed. The requirements shall implement any relevant water quality control plans that have been adopted and shall take into consideration the beneficial uses to be protected, the water quality objectives

reasonably required for that purpose, other waste discharges, the need to prevent nuisance, and the provisions of California Water Code section 13241. In accordance with subdivision (g) of section 13263, all discharges of waste into the WOTS are privileges, not rights, and the WDRs in this Order shall not create a vested right to continue to discharge and are subject to rescission or modification.

10. Pursuant to California Water Code section 13267, the Santa Ana Water Board, in establishing or reviewing any water quality control plan or WDRs, or in connection with any action relating to any plan or requirement authorized by Division 7 of the California Water Code, may investigate the quality of any WOTS within its region. In conducting such an investigation, the Santa Ana Water Board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region, shall furnish, under penalty of perjury, technical or monitoring program reports which the regional water board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. The WDRs contained in this Order incorporate requirements for water quality monitoring, and Project reporting, which are necessary to ensure that the discharge of dredged and fill material complies with WDRs and is protective of the environment.
11. The WDRs in this Order are adopted pursuant to California Water Code sections 13263 and 13267. The WDRs set forth the requirements, prohibitions, and other conditions to implement the Basin Plan, and the Discharger's responsibilities for monitoring and reporting. The Discharger is responsible for ensuring compliance with the WDRs. In addition, this Order also regulates the discharge of fill material to WOTS and waters of the United States.
12. Pursuant to the California Environmental Quality Act (CEQA), the City of Chino, as the Lead Agency, approved on August 18, 2004 an Environmental Impact Report (EIR) for the Development of State Surplus Property and Amendment to the Redevelopment Plan for the Merged Chino Redevelopment Project Area. Additionally, the City of Chino filed a Notice of Determination with the County of San Bernardino Assessor-County Clerk-Recorder on August 18, 2004. City of Chino's EIR identified potentially significant impacts to water quality and biological resources. The EIR's proposed mitigation measures must ensure that compensation for permanent impacts on jurisdictional resources is equivalent or superior to the biological and water quality functions and values impacted by the Project.
13. As a Responsible Agency under CEQA, the Santa Ana Water Board is required to consider the Lead Agency's environmental documents, adopt mitigation measures, and make findings on the significant impacts within its jurisdiction to approve. (Public Resources Code, section 21002.1, subdivision. (d); California Code of Regulations, title 14, section 15096, subdivisions (f), (g), (h).)

To address the potential impacts identified in the EIR, the discharger must complete the following mitigation measures: (1) purchase 0.70-acre of WOTS rehabilitation

credits from a Santa Ana Water Board approved mitigation bank or in-lieu fee program within the Santa Ana River Watershed. This Order also requires the discharger to report on the implementation of mitigation to ensure that the mitigation occurs as required by this Order. (California Code of Regulations, title 14, section 15097). (2) Before the issuance of a grading permit, the discharger must obtain coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities. (3) Develop a site-specific Storm Water Pollution Prevention Plan to address short-term construction-related water quality issues, and (4) must comply with the site-specific Water Quality Management Plans and their associated Best Management Practices (BMPs).

The Santa Ana Water Board finds that the required mitigation will reduce the potentially significant effects of the discharge of fill to WOTS to less than significant levels and the compensatory mitigation for permanent impacts to jurisdictional resources is of equivalent or superior biological function and value.

14. The Santa Ana Water Board has considered antidegradation pursuant to State Water Resources Control Board (State Water Board) Resolution No. 68-16 and Title 40 Code of Federal Regulations section 131.12 and finds that the discharge permitted under this Order is consistent with those provisions. State Water Board Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. Minimal water quality degradation may be allowed only if any change in water quality is consistent with the maximum benefit to the people of the State; the degradation will not unreasonably affect present and anticipated beneficial uses; and the degradation will not result in violation of any applicable water quality control plan. Discharges must meet requirements that will result in the best practicable treatment or control to avoid pollution or a condition of nuisance. Consistent with the antidegradation policy, any degradation resulting from the discharges authorized by this Order provides the maximum benefit to the people of the State. Flood protection is critical to the safety of the public. Moreover, this Order contains WDRs to ensure present and future beneficial uses are maintained or enhanced through compensatory mitigation and monitoring requirements for authorized impacts to WOTS. The WDRs ensure that the highest level of water quality is maintained consistent with the maximum benefit to the people of the State by prohibiting certain discharges, requiring the implementation of BMPs, and requiring the discharger to submit an annual report.
15. The Santa Ana Water Board has notified the discharger and other interested agencies and persons of its intent to prescribe WDRs for the discharge and has provided them with an opportunity for public hearing and an opportunity to submit their written views and recommendations.

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 discharger shall implement appropriate BMPs to reduce construction-related impacts to WOTS per the requirements of Santa Ana Water Board Order No. R8-2010-0036 (NPDES Permit No. CAS618033), commonly known as the San Bernardino County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8- 2010-0036 requires that the discharger substantially comply with the requirements of State Water Board General NPDES Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order No. 2012-0006-DWQ.
5. The discharge of fill materials shall be limited to the placement of native fill and inert materials, as defined in Section 20230, Division 2, Title 27 of the California Code of Regulations. The discharge of fill material other than native soil is prohibited, unless authorized by the Santa Ana Water Board.

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid or liquid wastes into channels, surface waters, or any place where they would contact or be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of 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 NPDES permit is prohibited.
5. During the grading and filling operation, there shall be no onsite fueling, lubrication, changing of oil or other equipment fluids and their filters, or any other maintenance or storage of construction equipment within, or next to, drainage areas or other surface runoff conveyances.

C. PROVISIONS:

1. Prior to the start of Project activities, the discharger shall purchase 0.70 acre of WOTS rehabilitation credits from a Santa Ana Water Board-approved mitigation bank or in-lieu fee program in the Santa Ana River watershed and submit verification of the purchase of the credits to Santa Ana Water Board staff.
2. The discharger shall maintain a copy of this Order at the Project site so that the Order is always available to site operating personnel. Key operating personnel shall be familiar with the Order's content.
3. The discharger shall 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 federal Clean Water Act 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. This Order does not convey any property rights of any sort or any exclusive privilege.
9. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Santa Ana Water Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.
10. 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 Santa Ana Water Board.
11. The discharger shall submit an Annual Report each year on the anniversary of this Order. Annual reporting shall continue until a *Notice of Project Complete Letter* is issued to the discharger. The contents of the Annual Report shall include:

- a. Construction Summary: Project process and schedule, including ground disturbance, site clearing and grubbing, site construction, and implementation status of BMPs during the Active Discharge Period. If the Project has not started, the discharger shall provide estimated start date and reasons for delay.
12. The discharger shall submit a Commencement of Construction Report at least seven (7) days prior to start of initial ground disturbance activities.
 13. The discharger shall submit a *Request for Notice of Completion of Discharges Letter* following completion of active Project construction activities, including any required restoration and discharger-responsible mitigation. This request shall be submitted to the Santa Ana Water Board staff within thirty (30) days following completion of all Project construction activities. Upon acceptance of the request, Santa Ana Water Board staff will issue to the discharger a *Notice of Completion of Discharges Letter*, which will end the active discharge period and, if appropriate, associated annual fees.
 14. The discharger shall submit a *Request for Notice of Project Complete Letter* when construction and any required post-construction monitoring is complete and no further Project activities will occur. This request shall be submitted to Santa Ana Water Board staff within thirty (30) days following completion of all Project activities. Upon approval of the request, the Santa Ana Water Board staff will issue to the discharger a *Notice of Project Complete Letter*, which will end the post discharge monitoring period and associated annual fees.
 15. The discharger shall retain records of all monitoring information, including all calibration and maintenance records, copies of all reports required by this Order, and records of all data used to complete the application for this Order. Records shall be maintained for a minimum of five years from the date of the sample, measurement, report, or application. Records may be maintained electronically. This period may be extended during the course of any unresolved enforcement action or litigation regarding this discharge or when requested by the Santa Ana Water Board.
 16. The Santa Ana Water 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.
 15. This Order becomes effective on the date of adoption by the Santa Ana Water Board.

16. This Order will remain valid for five years from the date of this Order.

I, Hope A. Smythe, 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 3, 2019.

Hope A. Smythe
Executive Officer

TENTATIVE