

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

Order No. R8-2020-0027

Waste Discharge Requirements
for
Toll Brothers Inc.
Nakase-Toll Brothers Development Project
City of Lake Forest
Orange 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 Toll Brothers Inc. (herein after Discharger) for the Nakase-Toll Brothers Development Project (Project).
2. Receiving waters and groundwater potentially impacted by this Project are protected in accordance with the Water Quality Control Plan for the Santa Ana Basin (1995) and subsequent amendments (Basin Plan) and other plans and policies. The Basin Plan includes water quality standards, which consist of existing and potential beneficial uses of waters of the State, water quality objectives to protect those uses, and the State and federal antidegradation policies.
3. WDRs are necessary to address impacts of dredged and fill material on the beneficial uses of waters of the State (WOTS).
4. On September 5, 2019 Glenn Lukos Associates, Inc., on behalf of the discharger, submitted a Report of Waste Discharge (ROWD) and application for a Clean Water Act (CWA) Section 401 Water Quality Certification (Certification). The Project was assigned the Santa Ana Water Board WDID Number 302019-16.
5. An application fee of \$1,638.00 was received on September 5, 2019. An additional check for \$12,706.00 based on total Project impacts was received on February 5, 2020. The fee amount was determined as required by California Code of Regulations (CCR) title 23, sections 3833(b)(3) and 2200(a)(3) and was calculated as Category A - Fill & Excavation Discharges (fee code 84) with the dredge and fill fee calculator.
6. The ROWD was considered complete on October 4, 2019.

7. Santa Ana Water Board Staff issued a Denial Without Prejudice for the Project on November 5, 2019 because the final Project Environmental Impact Report (EIR) and remaining project fee were outstanding. The Discharger submitted the final Project EIR and the remaining project fee on February 5, 2020.
8. On February 14, 2020, the U.S. Army Corps of Engineers issued an Approved Jurisdictional Delineation that determined that no waters of the United States (WOTUS) were present within the Project boundaries.
9. This Order regulates the discharge of fill material to waters of the State (WOTS). Onsite WOTS consist of two unnamed drainages that are tributary to Serrano Creek.
10. The Discharger proposes to implement the “Nakase Property Area Plan,” which would permit the development of the 124.5-acre Project site as a master-planned community. The Project site is currently operated as a wholesale nursery. The Project would change the zoning of the site from “Agriculture” to “Planned Community.” The Area Plan would establish guidelines for the future development of the planned community, which would consist of up to 675 single-family residential units (contained in five distinct neighborhoods), 101 affordable housing units for senior citizens, an elementary school, parks and open space, and an internal traffic circulation system.
11. The Project is located on the site of the Nakase Brothers Wholesale Nursery (Nakase nursery) at 20261 Lake Forest Drive in the City of Lake Forest. The Project is bounded on three sides by Bake Parkway, Rancho Parkway, and Serrano Creek. The fourth (southwest) side is bounded by a tract of commercial property adjacent to Dimension Drive. The CIWQS place ID for the Nakase nursery is 861048.
12. The Project’s coordinates are 33.668582 latitude and -117.667828 longitude. The Assessor’s Parcel Number is 612-221-01. The site is within an un-sectioned portion of Township 6 South, Range 8 West, of the U.S. Geological Survey 7.5” quadrangle map El Toro, California (dated 1968 and photo-revised in 1982). A map showing the Project location is found in Attachment A of this Order.
13. The Project site is currently operating as a wholesale nursery (Nakase nursery). In 2006 the Santa Ana Water Board issued WDRs to Nakase nursery (Order No. R8-2005-0006) to regulate discharges from the facility.
14. Serrano Creek and its tributaries have the following designated beneficial uses (existing or potential):
 - i. Groundwater Recharge (GWR)
 - ii. Water Contact Recreation (REC1)

- iii. Non-Contact Water Recreation (REC2)
 - iv. Warm Freshwater Habitat (WARM)
 - v. Wildlife Habitat (WILD)
15. Serrano Creek borders the southeastern boundary of the Project, and a portion of the streambed lies within the Nakase nursery boundaries. The Project would avoid the entire area of Serrano Creek that lies within the Nakase nursery boundaries.
16. The Project would permanently impact 0.99 acre and 4,043 linear feet of WOTS that is present on-site. A drainage channel that bisects the site and a drainage ditch along southwest perimeter would be replaced by concrete underground pipes and/or filled.
17. The discharger will provide compensatory mitigation for permanent impacts to 0.99 acre to WOTS by creating 2.97 acres of on-site stream channel habitat. A map providing the conceptual layout of the proposed mitigation is included in Attachment A.
18. 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 (CWC) 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.
19. CWC 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 must implement any relevant water quality control plans that have been adopted and 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 CWC section 13241. In accordance with subdivision (g) of section 13263, all discharges of waste into 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.
20. Pursuant to CWC 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 CWC Division 7, 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, furnish, under penalty of

perjury, technical or monitoring program reports. The burden, including costs, of these reports must 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.

21. The WDRs in this Order are adopted pursuant to CWC sections 13263 and 13267. The WDRs set forth the requirements, prohibitions, and other conditions to implement the Water Quality Control Plan for the Santa Ana River Basin (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.
22. It is the policy of the State of California that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes. This Order promotes that policy by requiring that discharges not exceed maximum contaminant levels designed to protect human health and ensure that water is safe for domestic use.
23. Pursuant to CCR Title 14, Chapter 3, section 15096, as a responsible agency, the Santa Ana Water Board is required to consider California Environmental Protection Agency (CEQA) documents prepared by the lead agency to determine a Project should receive WDRs. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project that it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by CCR section 15091 and, if necessary, section 15093 for each and every significant impact of the project.
24. A draft Project EIR was provided with the Discharger's application. Santa Ana Water Board staff submitted comments on the draft EIR on October 1, 2019. On January 21, 2020, the City of Lake Forest, as lead CEQA agency, certified the final EIR for the Project and filed a Notice of Determination at the Clerk of the Board of Supervisors, County of Orange on January 22, 2020.
25. As required by CCR section 15096, in approving this Order, the Santa Ana Water Board has considered the EIR certified by the City of Lake Forest and subsequent information provided by the Discharger. More specifically, the Santa Ana Water Board considered those sections of the EIR pertaining to impacts to water quality standards. Based on the mitigation proposed in the EIR and the Conditions set forth in this Order, potentially adverse impacts to water quality standards should be reduced to a less than significant level and beneficial uses protected, if all stated mitigation and conditions are performed.

26. 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.
27. 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 best management practices, and requiring the discharger to submit an annual report.
28. 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 CWC Division 7 and regulations adopted thereunder, shall comply with the following:

DISCHARGE SPECIFICATIONS:

1. No activities associated with the Project shall cause or threaten to cause a nuisance or pollution as defined in CWC section 13050.
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 comply with conditions described in and required by the State Water Board's NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ, as amended by Order No. 2012-0006-DWQ; NPDES No. CAS000002) and any subsequent approvals.
5. The discharger shall comply with the local regulations associated with the Santa Ana Water Board's Municipal Stormwater Permit issued to Orange County and co-permittees under NPDES No. CAS618030 and Waste Discharge Requirements Order No. R8-2010-0030, and subsequent iterations thereof.
6. If construction dewatering discharges, including temporary stream diversions are necessary to carry out the Project, the discharger shall comply with Santa Ana Water Board Order No. R8-2019-0061, General Waste Discharge Requirements for Discharges to Surface Waters Resulting from *De Minimis* Discharges, Groundwater Dewatering Operations, and/or Groundwater Cleanup Activities at Sites Within the Newport Bay Watershed.
7. The discharge of fill materials shall be limited to the placement of native fill and inert materials, as defined in CCR Title 27, Division 2, section 20230. The discharge of fill material other than native soil is prohibited, unless authorized by the Santa Ana Water Board.
8. The Project is located in the Newport Bay Watershed. The Santa Ana Water Board has established the following Total Maximum Daily Loads (TMDLs) for this watershed: nutrients, sediment, fecal coliform, selenium, organochlorine compounds, and selenium. In 2006 the Santa Ana Water Board issued WDRs to Nakase Brothers Nursery, which currently occupies the Project area. These WDRs included wasteload allocations for nitrogen, phosphorus, and sediment based on allocations in the respective TMDLs for nurseries. These allocations will no longer be applicable once the nursery use ceases. The applicable wasteload allocations for this Project (if any) will be included in the applicable construction and stormwater permits.

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 are 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.

PROVISIONS:

1. Prior to the start of Project grading activities, the discharger shall submit for the proposed 2.97 acres on-site stream channel habitat mitigation a conceptual Habitat Mitigation and Monitoring Plan detailing five-year success criteria, site preparation, installation, and long-term management of the mitigation site for review and approval by the Santa Ana Water Board staff.
2. The discharger shall maintain a copy of this Order at the Project site so that it 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 CWC, may constitute a violation of the federal 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.
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 in its entirety or in part to any person or organization except after notice to the Santa Ana Water Board in accordance with the following terms:
 - a. The discharger shall notify the Santa Ana Water Board by submitting a Transfer of Property Ownership Report, of any change in ownership or interest in ownership of the Project area. The discharger and purchaser shall sign and date the notification and provide such notification to the Santa Ana Water Board at least ten days prior to the transfer of ownership. The purchaser shall also submit a written request to the Santa Ana Water Board to be named as the discharger in a revised order.
 - b. Until such time as this Order has been modified to name the purchaser as the discharger, the discharger identified in this Order shall continue to be responsible for all requirements set forth in this Order.
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 Best Management Practices during the Active Discharge Period. If the Project has not started, the discharger shall provide an estimated start date and reasons for delay.
12. The discharger shall submit a *Commencement of Construction Report* at least seven 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 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 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.
17. This Order becomes effective on the date of adoption by the Santa Ana Water Board.
18. 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 8, 2020.

Original signed by
HOPE A. SMYTHE
Executive Officer

TENTATIVE