

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

May 8, 2020

STAFF REPORT

ITEM: 10*

SUBJECT: Toll Brothers Inc., Nakase-Toll Brothers Development Project, City of Lake Forest, Orange County, Order No. R8-2020-0027

DISCUSSION:

California Water Code (CWC) section 13376 states that any person discharging dredged or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States (U.S.) within the jurisdiction of this State shall file a report of the discharge in compliance with CWC 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 (WOTS), 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 U.S. 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 dredged and fill material 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, "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 material to waters of the U.S., certain proposed discharges of dredged or fill material to surface WOTS are no longer subject to USACE jurisdiction (these waters are known as non-federal waters). As a result, these

discharges 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 discharges of dredged and fill materials to WOTS under the Porter-Cologne Water Quality Control Act.

On May 4, 2004, the State Water Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredged or Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to Be Outside of Federal Jurisdiction." Numeric impact thresholds, however, limit the application of Order No. 2004-0004-DWQ to relatively small discharges of dredged or fill material. Therefore, individual WDRs are issued by the applicable Regional Water Quality Control Board.

On September 5, 2019 the Santa Ana Regional Water Quality Control Board (Santa Ana Water Board; SARWQCB) received from Glenn Lukos Associates, Inc. on behalf of Toll Brothers Inc. (discharger), an ROWD (SARWQCB WDID No. 302019-16) and an Application for CWA Section 401 Certification for the Nakase-Toll Brothers Development Project (Project). Upon review of the ROWD and supplemental information submitted by the discharger, Santa Ana Water Board staff deemed the ROWD complete on October 4, 2019. An application fee of \$1,638.00 was submitted with the application materials. An additional check for \$12,706.00 based on total Project impacts was received on February 5, 2020.

On February 14, 2020, the USACE issued an Approved Jurisdictional Delineation that determined that no WOTUS were present within the Project boundaries.

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.

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. A map showing the Project location is found in Attachment A of the tentative Order No. R8-2020-0027.

Serrano Creek borders the southeastern boundary of the Project, and a portion of the streambed lies within the boundaries of the Nakase nursery. The Project would avoid the entire area of Serrano Creek that lies within the Nakase nursery boundaries. This area will be conserved in perpetuity through a conservation easement or a similar form of legal mechanism.

The Project would permanently impact 0.99 acre and 4,043 linear feet of WOTS that are 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. The Project would have no temporary impacts.

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 of the tentative Order No. R8-2020-0027.

Pursuant to the California Environmental Quality Act, on January 21, 2020, the City of Lake Forest, as lead agency, certified the final Environmental Impact Report (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.

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 the tentative Order No. R8-2020-0027, 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. Mitigation includes the creation of 2.97 acres of streambed on-site (a 3:1 mitigation ratio of mitigation: impact).

RECOMMENDATION:

Adopt Order No. R8-2020-0027 as presented.

Comments were solicited from the following:

Melissa Scianni, U.S. Environmental Protection Agency (USEPA)
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State of California
California Regional Water Quality Control Board, Santa Ana Region

Order No. R8-2020-0027
Attachment A

Waste Discharge Requirements for Toll Brothers Inc.
Nakase-Toll Brothers Development Project
City of Lake Forest, Orange County

TENTATIVE

Toll Brothers Inc.

Nakase-Toll Brothers Project

Figure 1: Map A-1: Project Location and Waters of the State



Figure 2: Map A-2: Conceptual Mitigation Layout (Southeast Portion of Project)

