

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

September 16, 2016

STAFF REPORT

ITEM: *#

SUBJECT: South Shore II, LLC, South Shore II TTM 36567, City of Lake Elsinore, Riverside County, Order No.R8-2016-0058

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 (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 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."

Because of Supreme Court decisions that have limited the authority of the USACE to regulate discharges of dredge and fill to waters of the U.S., certain proposed discharges of dredge or fill to surface waters of the State are no longer subject to USACE jurisdiction (non-federal). 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 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 16, 2015, Santa Ana Regional Water Quality Control Board (Regional Board) staff received from South Shore II, LLC a ROWD, whereby South Shore, LLC proposes to discharge fill to a total of 0.16 acre and 3,908 linear feet of waters of the State as a result of constructing a detached single family home residential development. The waters of the State are located on a 71.7-acre property located 0.70 mile north of the Interstate-15 Freeway Franklin Street Overpass (33.680949° N/-117.307413° W). Regional Board staff accepted a ROWD pursuant to CWC Section 13260 for the proposed discharge of fill to non-federal waters of the State. This Order will also serve as a Clean Water Act Section 401 Water Quality Standards Certification in the event that one is required by any federal agency.

The South Shore II, TTM 36567, residential development consists of the construction of 147 single-family residences, a 3.5-acre public park, a storm drain system, a bioretention water quality basin and a roadway network on 71.7 acres. The discharges are to unnamed drainages located in the San Jacinto River, Reach 1 watershed. San Jacinto River, Reach 1 has designated beneficial uses (existing or potential) that include: municipal supply (MUN), agricultural supply (AGR), groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), and wildlife habitat (WILD).

Board staff has determined that the discharge of fill to the unnamed drainages has the potential to impact the waters' beneficial uses. Board staff determined that the Board cannot authorize the discharge in accordance with Order No. 2004-0004-DWQ because the discharge of fill would result in a total of 3,908 linear feet of permanent impacts, which exceeds the Order's 400 linear feet impact threshold. Consequently, the discharge must be considered for separate authorization under individual waste discharge requirements. The proposed Order is intended to satisfy this requirement.

South Shore II, LLC proposes to mitigate impacts to beneficial uses as the result of the proposed discharges of fill to the unnamed drainages in the San Jacinto River, Reach 1 Watershed through the purchase of either 0.24 acre of re-establishment credit at a Regional Board approved mitigation bank or in-lieu-fee program in the San Jacinto River watershed, or 0.32 acre of re-establishment credit at a Regional Board approved mitigation bank or in-lieu-fee program in the Santa Ana River watershed.

Pursuant to CEQA, the City of Lake Elsinore prepared a Mitigated Negative Declaration (MND) for the proposed development and adopted it on April 14, 2015. The City's MND has been considered in the preparation of Order No. R8-2016-0058.

RECOMMENDATION:

Adopt Order No.R8-2016-0058, as presented.

Comments were solicited from the following:

Erik Lunde, South Shore II, LLC (erikwlunde@gmail.com)
Barry Jones, Helix Environmental Planning (BarryJ@helixepi.com)
James Mace, U. S. Army Corps of Engineers, Los Angeles Office
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