California Regional Water Quality Control Board
Santa Ana Region

Order No. R8-2004-0093

Waste Discharge Requirements

for

Bluestone Communities
Tract 31892, Riverside County
Winchester Ridge Project

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

1. Bluestone Communities (hereinafter, discharger) proposes to develop Tract 31892 in Riverside County by building approximately 390 dwelling units on approximately 238 acres located in the southern portion of Section 31, Township 5 South, Range 2 West, shown on the U.S. Geological Service *Romoland, California* quadrangle.

2. Within the Tract are 900 linear feet of drainage channel, four seasonal pools, and one large stock pond. Two of the seasonal pools are associated with naturally occurring groundwater seeps, one pool was formed incidental to agricultural road construction and one pool developed as the result of seepage from the stock pond. The project entails the discharge of fill to the entire 0.86 acres of the stock pond, 0.03 acres (250 linear feet) of the drainage channel, and 0.04 acres of the pools formed incidental to road construction and resulting from seepage from the stock pond. The two seasonal groundwater seeps and their associated pools, and 650 linear feet of drainage channel will be avoided. The pools formed from the groundwater seeps are wetlands that meet criteria in the US Army Corps of Engineers (Corps) 1987 Wetland Delineation Manual. The Corps declined to take jurisdiction over these drainage features as waters of the U.S. in a letter dated April 13, 2004, and no Clean Water Act (CWA) Section 404 Permit will be issued. The discharger has committed to mitigate direct impacts to waters of the State by purchasing 1.0 acre of mitigation credit to be applied in the Barry Jones Mitigation Bank in the City of Temecula.

3. In compliance with the California Environmental Quality Act, an addendum to an Environmental Impact Report was prepared for Tract 31892 and certified by the County of Riverside on September 22, 2004. The waste discharge requirements proposed herein address the fill of 250 linear feet of drainage, the stock pond and its adjacent pool, and the pool formed incidental to agricultural road construction. The discharger has proposed an in-lieu mitigation purchase to mitigate impacts to

waters of the State. The proposed Order requires the discharger to proceed with the proposed mitigation and provide for the preservation of the avoided groundwater seeps and their accompanying pools.

4. The discharger has conducted a Biological Assessment of the site and found that all of the pools are suitable habitat for the vernal pool fairy shrimp, a common species. Suitable habitat for Riverside fairy shrimp, an endangered species, was found in three of the pools onsite. The Biological Assessment identifies one of the pools associated with a groundwater seep and the stock pond as suitable but does not identify the third pool. Indications of the presence of the Riverside fairy shrimp were found in the pool associated with the groundwater seep. The project would not involve the fill of this pool.

5. The Water Quality Control Plan for Santa Ana River Basin (1995) does not specifically designate beneficial uses for any of the surface waters on the project site. The applicant's biological assessment indicates that beneficial uses that are existing or attainable for these waters include:

   a. Rare and endangered species (RARE)
   b. Spawning, reproduction, and development (SPWN)
   c. Wildlife habitat (WILD)
   d. Agricultural supply (AGR)
   e. Groundwater recharge (GWR)

6. This Order regulates the discharge of fill material to waters of the State. The discharger submitted a Report of Discharge on June 30, 2004.

7. Waste Discharge Requirements (WDRs) are necessary to address impacts of the fill of waters of the State and to meet the objectives of the State Wetlands Conservation Policy (Executive Order W-59-93).

8. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring "no overall loss" and achieving a "...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...." Senate Concurrent Resolution No. 28 states that "[i]t is the intent of the legislature to preserve, protect, restore, and enhance California's wetlands and the multiple resources which depend on them for benefit of the people of the State."

9. The Regional Board has considered antidegradation pursuant to State Board Resolution No. 68-16 and finds that the discharge is consistent with those provisions.

10. The Board has notified the discharger and other interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity for public hearing and opportunity to submit their written views and recommendations.

11. The Board, in a public meeting, heard and considered all comments pertaining to the discharge.

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 discharge of fill materials shall be limited to inert materials, as defined in Section 20230, Division 2, Title 27. The discharge of fill material other than native soil shall be only with the prior approval of the Executive Officer.

B. DISCHARGE PROHIBITIONS:

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.

2. The discharge of floating 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 National Pollutant Elimination System (NPDES) permit, is prohibited.

C. PROVISIONS:

1. The discharger shall purchase one acre of mitigation credit in the Barry Jones Wetland Mitigation Bank. The discharger shall provide proof of the purchase by January 5, 2005.

2. The discharger shall avoid impacts to the two groundwater seep-supported seasonal pools and to the 650 linear feet of drainage channel identified in Finding 2, above, and shall place conservation easements, or other appropriate legal instruments, upon the avoided waters of the State, for the purpose of preserving them in perpetuity.

3. The discharger shall maintain a copy of this Order at the site so that it is available to site operating personnel at all times. Key operating personnel shall be familiar with its content.

4. The discharger shall remove from the site any waste or fill material found to contain substances that may have a deleterious effect on water quality, and dispose of unacceptable wastes in a manner acceptable to the Executive Officer.

5. The discharger must 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 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. This Order does not convey any property rights of any sort, or any exclusive privilege.

11. This Order is not transferable to any person except after notice to, and approval by, the Executive Officer. The Regional Board may require modification or revocation and re-issuance of this Order to change the name of the discharger.

12. 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 Regional Board.

13. The Regional 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.

I, Gerard J. Thibeault, 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 November 5, 2004.

Gerard J. Thibeault
Executive Officer

California Regional Water Quality Control Board
Santa Ana Region

November 5, 2004

ITEM: 6

SUBJECT: Order No. R8-2004-0093, Bluestone Communities, Tract 31892, Community of Winchester, Riverside County

SUMMARY

The matter before the Board is to consider adoption of Order No. R8-2004-0093, authorizing the discharge of fill to waters of the State that have been determined by the U.S. Army Corps of Engineers to be outside of its jurisdiction and not subject to regulation according to Clean Water Act Section 404 (non-federal waters).

BACKGROUND

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 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 (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (SWRCB) 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." In the absence of the need to obtain a Certification, the SWRCB has asserted its 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 Water Resources Control 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). The application of this order is limited by specific impact thresholds specified therein.

Order No. R8-2004-0093
STAFF REPORT

On June 30, 2004, Regional Board staff received a report of waste discharge (Report) from the agent for Bluestone Communities, Glenn Lukos Associates (GLA), for proposed development of the 238-acre property located southwest of the intersections of Leon and Patton Avenues in the unincorporated community of Winchester, Riverside County. In their Report, GLA provided a delineation of waters of the U.S. that concluded that one drainage, a stock pond, and four seasonal pools on this site were isolated and, therefore, not waters of the U.S. subject to Clean Water Act Section 404 permitting by the U.S. Army Corps of Engineers. The Report also includes a letter from the Corps, dated April 13, 2004, indicating that the drainage, stock pond, and four seasonal pools are non-jurisdictional and stating that the project would not result in the discharge of dredge or fill material to waters of the U.S.

Upon review, Regional Board staff determined that the discharge would affect beneficial uses of waters of the State. Regional Board staff also determined that the Regional Board could not authorize the proposed discharge in accordance with Order No. 2004-0004-DWQ because the discharges exceeded the impact thresholds of that Order.

In determining the appropriate scope of mitigation for the impacts of the project, Regional Board staff considered whether a waiver could be applied to the proposed discharges to agricultural stock ponds. Staff concluded that, even if a waiver were generally acceptable for wastes discharged to agricultural stock ponds, the use of a waiver would not be an appropriate application in this case because impacts to rare and endangered species, or their habitat, may occur.

The proposed discharge will occur in association with the construction of 388 single-family homes and related infrastructure on 132 acres of a 238-acre parcel. The remaining 106 acres, that are to be preserved as open space, contain two seasonal pools associated with groundwater seeps and 650 linear feet of avoided on-site channel. The project will fill one 0.86-acre stock pond, a pool adjacent to the stock pond (believed to be partly supported by seepage from the stock pond), another pool formed incidental to construction of an agricultural road, and 250 linear feet of ephemeral channel. All but one of the pools and the stock pond are considered potential habitat for the endangered Riverside fairy shrimp, however, the non-habitat pool is not specifically identified in the application. All of the pools and the stock pond are habitat for common vernal pool fairy shrimp.

The discharger has proposed to mitigate for impacts to waters of the State through the purchase of one acre of mitigation credit at the Barry Jones Wetland Mitigation Bank. The Barry Jones Wetland Mitigation Bank involves restoration of vernal pools in the City of Temecula, in the San Diego Region. Although Regional Board staff has reservations about implementing mitigation outside of the Santa Ana Region for impacts occurring within the Region, the proposed mitigation is the only option that provides reasonably comparative compensation for impacts to beneficial uses at this time. The proposed Order No. R8-2004-0093 does not address discharges of storm water or process wastewater.

An addendum to an Environmental Impact Report has been prepared for Tract 31892 and certified by the Riverside County on September 22, 2004.

RECOMMENDATION

Board staff recommends that the Regional Board adopt Order No. R8-2004-0093.