

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

REVISED TENTATIVE ORDER

AMENDMENT OF WASTE DISCHARGE REQUIREMENTS FOR:

CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO INTERNATIONAL AIRPORT,
SAN MATEO COUNTY

The California Regional Water Quality Control Board, San Francisco Bay Region, hereinafter the Water Board, finds that:

1. San Francisco International Airport (hereinafter SFIA) is owned and operated by the City and County of San Francisco. The facility is located in San Mateo County along the western shore of San Francisco Bay, on a 2,700-acre site largely composed of baylands that have been filled and partially drained over the last century.
2. **Regulatory History**
 - a. **Existing Order:** On May 25, 1999, the Water Board adopted Waste Discharge Requirements (Order No. 99-037; hereafter, the 1999 Order) for SFIA to fill and appropriately mitigate for a total of 31.21 acres of jurisdictional wetlands and open waters associated with SFIA's Master Plan and airfield safety improvement construction activities (Project). The 1999 Order consolidated the wetland fills and mitigation requirements that occurred in 1997 and 1999 for the Project.
 - b. **Water Board Resolution:** On February 19, 1997, the Water Board adopted Resolution No. 97-032 recommending that the Executive Director of the State Water Resources Control Board grant a water quality certification for the wetland fills and mitigation requirement for a portion of the Project. The required wetland mitigation described in this Resolution was subsequently incorporated into the 1999 Order.
 - c. **Corps Regulatory Action:** Between 1996 and 1999, the U.S. Army Corps of Engineers (Corps) issued three Individual Permits for the fills associated with the Project, pursuant to Section 404 of the Clean Water Act.
3. **Purpose of Amendment:** This Order amends the 1999 Order to allow SFIA to meet its wetland mitigation requirements with alternative mitigation measures. As described below, SFIA has a shortfall of 17.3 acres of its wetland mitigation requirements and has proposed mitigation alternatives with which the Water Board agrees to fully address the shortfall.
4. **Background:** SFIA filled 17.10 and 14.11 acres of jurisdictional wetlands and open waters of the United States for the Project in 1997 and 1999, respectively. The total 31.21-acre fill was comprised of 22.42 acres (72%) of primarily seasonal wetlands and 8.79 acres (28%) of open water. SFIA was required to mitigate the impacted wetlands and open water in accordance with the requirements of the 1999 Order. The following table describes what was required and the extent to which a requirement has or has not been satisfied:

Compensatory Mitigation Requirements and Shortfall Summary (in acres)

Required Wetland Creation			
Project	Required Wetland Creation	Wetlands Actually Created	Net Difference
Palo Alto Harbor Point	7.2	5.8	-1.4 tidal salt marsh
Crissy Field	20.0	18.3 (18 tidal and intertidal and 0.3 wetlands) ¹	-1.7 tidal salt marsh
India Basin	3.4	2.5 (2.1 acres of tidal salt marsh and 0.4 acres of enhanced tidal salt marsh)	-0.9 tidal salt marsh
Hunters Point Phase I (Parcel B)	3.0	Not created	-3.0 seasonal marsh
Hunters Point Phase II (Parcel E)	15.0	Not created	-15.0 seasonal marsh
Outer Bair Island	37.5	42.2 (4.91 tidal salt marsh and 37.13 seasonal wetlands)	+4.7 tidal and seasonal marsh
Sub-total	86.1 acres	68.8 acres	-17.3 acres of seasonal & tidal marsh wetlands
Proposed Alternative Compensatory Mitigation at Hunters Point			
Project	Required Wetland Creation	Alternative Creation	Net Difference Acreage
Yosemite Slough (California State Parks Foundation)	--	12	+12.0 acres of tidal salt marsh
Deepwater Slough (Starwood Capital Group)	--	5.8	+5.8 acres of tidal salt marsh
Total	86.1	86.6	+0.5 acres of tidal salt marsh
Hunters Point Waterfront Park and Stormwater Treatment Wetland Project	SFIA proposes to provide funding to Arc Ecology in the amount of \$500,000 to complete planning and environmental studies at Hunters Point Waterfront Park and for the proposed Stormwater Treatment Wetland Project		
Required and Implemented Wetland Preservation and Enhancement			
Project	Planned	Implemented	
Outer Bair Island	140 acres	140 acres of tidal marsh enhanced	
West-of-Bayshore SFIA	8.5 acres	8.5 acres of seasonal freshwater marsh enhanced	
Oliver Brothers/Hayward Marsh	324 acres	296 acres of tidal marsh enhanced ²	
Candlestick Point Recreation Area and Yosemite Slough	SFIA paid the California State Parks Foundation (Foundation) \$500,000 for a water quality improvement feasibility study at Candlestick Point Recreation Area and Yosemite Slough		

¹ Water Board Order No. 99-037 previously identified and referenced the Crissy Field project as a 20-acre salt marsh. This Water Board Order amendment clarifies that the intent of the project design was to create tidal, intertidal and wetland habitat.

² This requirement has been implemented in full. The 28-acre discrepancy is due to a typographical error in the Assessor's map for this parcel. Preservation and enhancement of the parcel in question was completed. However, the total parcel acreage was 296 acres, rather than the 324 acres shown on the Assessor's map.

5. As shown in the table above, SFIA successfully created 68.8 acres out of the required total of 86.1 acres of wetlands. SFIA has a net shortfall of 17.3 acres of seasonal marsh wetlands to comply with the 1999 Order. Out of the total, the 18-acre wetland shortfall at Hunters Point occurred because ongoing, but unfinished, site cleanup efforts preclude the property transfer of two Hunters Point parcels (Parcels B and E) from the Navy to the City and County of San Francisco. These parcels were originally planned to be used for a proposed wetland mitigation project. The rest of the overall shortfall of 5.3 acres is the difference of the excess credits and shortages of the created wetland mitigation acreages at other project sites. SFIA has proposed alternatives to fully comply with its mitigation obligations consistent with the requirements of the 1999 Order.
6. On April 3, 2007, the Airport Commission adopted Resolution No.07-0072 authorizing SFIA to enter into an agreement with the California State Parks Foundation to make monetary compensation to create twelve (12) acres of new wetlands at the Yosemite Slough Wetlands Restoration Project. SFIA agreed to pay the Foundation an amount not to exceed four million dollars (\$4,000,000). Such amount is derived based on the \$333,000 per acre cost figure calculated by the Foundation for the cost of 12 acres of tidal wetlands creation at the Yosemite Slough. SFIA will make the payments all in the fiscal year 2008-09.
7. The Water Board separately issued Waste Discharge Requirements and Water Quality Certification, Board Order No. R2-2007-0046, to the California Department of Parks and Recreation (State Parks Department) for the Yosemite Slough Wetland Restoration project on July 11, 2007. Pursuant to this order, the State Parks Department is responsible to submit implementation of the mitigation and monitoring reports and other related reports for the creation of 12 acres of new wetlands at Yosemite Slough.
8. On May 27, 2008, the Airport Commission adopted Resolution No. 08-0100 authorizing SFIA to enter into a funding agreement with Starwood Capital Group to purchase 5.8 acres of wetland credits at the Corps-approved Deepwater Slough Island Mitigation Bank in Redwood City, San Mateo County. SFIA will pay VII Pac Shore Investors, LLC, dba Deepwater Slough Island Mitigation Bank (“Bank”) three million one hundred ninety thousand dollars (\$3,190,000). The Bank will sell the 5.8 acres of wetland credits to SFIA and will subsequently transfer the 5.8 acres of wetlands acquired by SFIA at Deepwater Slough Island in Redwood City, as part of transfer of the entire island, to the San Francisco Bay National Wildlife Refuge.
9. SFIA will allocate 5.8 acres of the available 7.1 acres wetland creation credits at Deepwater Slough Island to meet its remaining mitigation obligation pursuant to the 1999 Order requirements. SFIA will retain the remaining available wetland credit for future mitigation projects.
10. SFIA’s proposed mitigation alternatives, contribution of monetary funds for the creation of 12 acres of tidal wetlands at the Yosemite Slough, and purchase of 5.8 acres of established and functional tidal wetlands at Deepwater Slough, will satisfy SFIA’s remaining mitigation requirements. The Yosemite Slough project, as proposed, is expected to create a significant public and environmental benefit due to its cleanup of contaminated, historically industrial land and restoration of this land into tidal wetlands and area providing public access for non-contact water recreation. SFIA’s contribution will help ensure the Yosemite Slough project’s timely construction.

11. SFIA also proposes to make an additional financial contribution in the amount of \$500,000 to Arc Ecology of San Francisco for planning and environmental studies at Hunters Point Waterfront Park and the proposed Stormwater Treatment Wetland Project. This payment was part of the delayed mitigation requirements at Hunters Point.
12. The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be in full compliance with CEQA, and requires a lead agency to prepare an appropriate environmental document (e.g., Environmental Impact Report or Negative Declaration) where necessary for such projects. The City and County of San Francisco adopted a Negative Declaration for the Project on January 26, 1999. The State Parks Department adopted a Mitigated Negative Declaration for its Yosemite Slough project on June 5, 2006, and mitigated all environmental impacts. The purchase of mitigation bank credits from the Bank and transfer of wetlands to a federal refuge will not have a physical change in the environment.
13. **Wetland Tracker System:** It has been determined through regional, State, and national studies that tracking of mitigation/restoration projects must be improved to better assess the performance of these projects, following monitoring periods that last several years. In addition, to effectively carry out the State's No Net Loss Policy for wetlands, the State needs to closely track both wetland losses and mitigation/restoration project success. Therefore, this Order requires that SFIA use a standard form to provide Project information related to impacts and mitigation/restoration measures. An electronic copy of the form and instructions can be downloaded at: <http://www.waterboards.ca.gov/sanfranciscobay/certs.shtml>. Project information concerning impacts and mitigation/restoration will be made available at the web link: <http://www.wetlandtracker.org>.
14. The Water Board has notified SFIA and interested agencies and persons of its intent to amend the 1999 Order.
15. The Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that the 1999 Order is amended to allow SFIA to satisfy its wetland mitigation shortfall of 17.3 acres as described and required under this Order, and SFIA shall comply with the following provisions, pursuant to authority under Sections 13263 and 13267 of the California Water Code:

1. SFIA shall pay the Foundation in the amount of four million dollars (\$4,000,000) for the creation of 12 acres of tidal marsh wetlands at the Yosemite Slough Wetland Restoration Project. SFIA shall make those payments in two installments (\$2,250,000 and \$1,500,000) and shall make both payments in the fiscal year 2008-09, and no later than June 30, 2009. No later than July 31, 2009, SFIA shall submit, acceptable to the Executive Officer, a report demonstrating that it has completed the required payments.
2. SFIA shall execute a funding agreement with Starwood Capital Group to purchase 5.8 acres of wetland credits for a total amount of three million, one hundred and ninety thousand dollars (\$3,190,000) at the Deepwater Slough Island Mitigation Bank in Redwood City, San Mateo

County. This Agreement shall be completed no later than December 31, 2009. No later than December 31, 2009, SFIA shall submit, acceptable to the Executive Officer, a report demonstrating that the Mitigation Bank Enabling Instrument (MBEI) has been executed and that the subsequent payment by SFIA to the Starwood Capital Group for the 5.8 acres of wetland credits has been completed.

3. SFIA shall fund Arc Ecology of San Francisco in the amount of \$500,000 for planning and environmental studies at the Hunters Point Waterfront Park and Stormwater Treatment Wetland Project not later than June 30, 2009. No later than July 31, 2009, SFIA shall submit, acceptable to the Executive Officer, a report demonstrating that it has completed the required payment to Arc Ecology.
4. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, state or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
5. SFIA is required to use the standard Wetland Tracker forms to provide Project information describing impacts and mitigation/restoration within 14 days from the adoption date of this Order. The completed Wetland Tracker form shall be submitted electronically to wetlandtracker@waterboards.ca.gov, or, shall be submitted as a hard copy to both: 1) San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612, to the attention of Wetland Tracker, and 2) San Francisco Estuary Institute, 7770 Pardee Lane, Oakland, CA 94621-1424, to the attention of Mike May.
6. The Water Board will consider rescission of this Order upon the Executive Officer's acceptance of notices of completion of mitigation for all mitigation projects and completion of related funding and other reporting required now or subsequently under this Order, the 1999 Order, and Resolution No. 97-032.
7. SFIA shall submit copies of all necessary approvals and/or agreements for the mitigation projects from applicable government agencies, including the State Department of Fish and Game, State Lands Commission, San Francisco Bay Conservation and Development Commission, U.S. Fish and Wildlife Service, and the Corps.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on March 11, 2009.

Bruce H. Wolfe
Executive Officer