

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF REPORT

To: Bruce Wolfe
Executive Officer

October 6, 2010

From: Elizabeth Morrison
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CIWQS No.: 722750

Subject: Application for CWA Section 401 Water Quality Certification and Waste Discharge Requirements for the Wal-Mart Stores, Inc., Walters Road Development, Suisun City, Solano County

Introduction

Wal-Mart Stores, Inc., (the Applicant) has submitted an application for water quality certification (certification) under Section 401 of the Federal Clean Water Act and waste discharge requirements (WDRs) for discharge of dredge and fill materials into wetlands and other waters of the State and the United States associated with the construction of a retail shopping center (Project) on a 20.8-acre site at the intersection of Highway 12 and Walters Road in Suisun City.

Site Description

The Project is located in the Suisun Marsh watershed, on a 20.8-acre site at the intersection of Highway 12 and Walters Road in eastern Suisun City. The Project site is a triangularly-shaped property, with Highway 12 forming the southern boundary, Petersen Road forming the northern boundary, and Walters Road forming the eastern boundary.

The Project site is situated approximately 20 feet above sea level, with elevations decreasing slightly in a west to east and north to south direction. The Project site is comprised of three habitat types: non-native annual grasslands, stream, and seasonal wetlands. The landowner disks the majority of the site annually.

There are approximately 2.996 acres of jurisdictional waters of the State and the United States, including wetlands and a stream channel, on the Project site. The jurisdictional waters are comprised of 2.596 acres of seasonal wetlands and vernal pools; and 0.4 acres (1,100 linear feet) of a stream channel with riparian/wetland vegetation. The unnamed stream bisects the Project site in a north to south direction, and is tributary to Hill Slough, which enters the northern portion of Suisun Slough and Suisun Marsh.

A portion of the Project site is within federally-designated critical habitat for the endangered vernal pool tadpole shrimp (*Lepidurus packardii*) and threatened vernal pool fairy shrimp (*Branchinecta lynchi*). In addition, waters on the Project site also provide for flood water attenuation, groundwater recharge, and water quality enhancement including the filtering of sediment and nutrients to downstream waters.

Project Description

The Applicant proposes to construct a retail shopping center on 20.14 acres of the 20.8-acre site. The shopping center will be comprised of:

- An 182,000 square foot supercenter with 879 parking stalls on 18.44 acres;
- An 8,000 square foot restaurant with 69 parking stalls on 1.41 acres; and
- Two stormwater detention basins totaling 12,850 square feet on 0.29 acres.

Project Application

The Applicant first submitted an application for certification for the Project on November 20, 2007. Due to the lack of a complete application detailing the Project proposal, including an incomplete alternatives analysis and stormwater management plan, and to preserve our ability to act on certification for the Project, on November 19, 2008, the application was denied without prejudice.

On January 22, 2009, the Water Board received a new certification application for the Project. Due to the lack of a complete application detailing the Project proposal, including an incomplete alternatives analysis and stormwater management plan, and to preserve the ability to act on for the Project, on April 23, 2010, the application was denied without prejudice. Correspondence received on the two applications that were denied without prejudice is posted on the Board's website.

After numerous meetings during May and June 2010 between Board staff, the Applicant, and representatives of Suisun City and the Governor's Office of Economic Development, the Applicant submitted a new certification application on June 21, 2010, proposing a revised Project, which was subsequently completed by additional information submitted on July 9, 2010.

The Project as now proposed no longer includes the gas station and the resultant fill of wetlands on the 0.95 acre "gas station parcel", which was proposed in the earlier applications, avoids fill of approximately 315 feet of the stream channel, includes a landscaped buffer for the avoided fill, proposes post-construction treatment of stormwater discharging from a 11.75 acre catchment drained by the stream channel to the north of the Project site, and proposes mitigation for the remaining stream channel fill at the Noonan Ranch site in northern Fairfield. This Project is described in the tentative order (TO) that would adopt certification and WDRs for the Project, which was circulated for public comment on August 23, 2010.

Project Impacts

As part of the complete application, the Applicant has submitted a Clean Water Act section 404(b)(1) Alternatives Analysis, as well as additional information requested by staff to supplement the Analysis. These documents address off-site alternatives to the Project, as well as onsite design alternatives, and demonstrate the Applicant's conclusion that the Project as proposed is the least environmentally damaging practicable alternative. Staff concur with this conclusion.

The total delineated jurisdictional waters of the State and U.S. on the Project site are approximately 2.996 acres. The site's jurisdictional waters are comprised of:

- a. 2.596 acres of seasonal wetlands, some of which are considered vernal pools; and

- b. 0.4 acres (1,100 linear feet) of stream channel with associated riparian/wetland vegetation.

The Project will result in the permanent fill of approximately 2.63 acres of the site's 2.996 acres of jurisdictional waters. This impact is comprised of the following:

- a. 2.35 acres of wetlands; and
- b. 0.28 acres (786 linear feet) of stream channel.

Mitigation

To mitigate for the permanent fill of 2.35 acres of seasonal wetlands and vernal pools, the Applicant proposes to purchase 2.35 acres of credit of seasonal wetlands at the Elise Gridley Mitigation Bank near Dixon in northeastern Solano County. While this mitigation bank is outside this Board's jurisdiction (it is in the Central Valley Regional Water Board's jurisdiction), we have allowed other Solano County project proponents to mitigate for their projects' impacts to seasonal wetlands and vernal pools at this bank.

To mitigate for the permanent fill of 0.28 acres (786 linear feet) of stream channel, the Applicant proposed in its June 21, 2010, application to create and/or restore a minimum of 1,572 linear feet of stream channel at an off-site parcel, the Noonan Ranch site in northern Fairfield, Solano County. This location was identified in the TO circulated for public comment. However, since the Applicant had not acquired any mitigation credits at the Noonan Ranch site or otherwise identified the specifics as to how mitigation at that site would be planned, implemented, and monitored to success, the TO requires the Applicant to submit a Final Mitigation and Monitoring Plan for Water Board approval no less than 90 days in advance of the start of Project construction. The TO further describes the mitigation and monitoring specifications that the Plan must include.

Since circulation of the TO on August 23, the Applicant has notified staff that the Noonan Ranch site is no longer a viable option for off-site mitigation for stream impacts. Staff is continuing to work with the Applicant to identify an acceptable off-site parcel that will mitigate the impacts to the onsite stream channel. The TO, at Finding 13, will be need to be revised to delete reference to the Noonan Ranch site as the off-site mitigation parcel.

Stormwater BMPs

The Applicant submitted a report titled, Stormwater Control Plan, dated October 6, 2008, on treatment of onsite stormwater associated with the new impervious surface. The TO requires the Applicant to update/revise the Stormwater Control Plan to accurately reflect the onsite stormwater control measures proposed in the current Project application, which include bio-swales and bio-planters surrounding parking areas, and two detention basins on the gas station parcel.

The Applicant also submitted a report titled, Post-Construction Stormwater Treatment for Off-site Run-on, dated May 26, 2010, and revised June 16, 2010, that proposes treatment of a 11.75 acre catchment drained by the stream channel to the north of the Project site. Additional information on stormwater and hydromodification was provided in Avoided Wetlands Mitigation dated May 26, 2010. These reports include measures to address the Project's post-construction urban runoff impacts, as well as regulate flows to pre-development levels as required by the Board's Municipal Regional Stormwater Permit. The TO requires the Applicant to monitor, inspect, and maintain these stormwater treatment measures in perpetuity.

The Applicant is also required to prepare and implement a site-specific Stormwater Pollution Prevention Plan (SWPPP) for the Project in accordance with the requirements of the State Water Board's General Construction Permit for discharges of stormwater associated with construction activity.

Other Agencies' Involvement

The U.S. Army Corps of Engineers (Corps) issued a Public Notice for an earlier version of the Project on January 31, 2008, but has not issued a permit for the Project at this time. The Corps has initiated consultation with the U.S. Fish & Wildlife Service (USFWS) under the authority of Section 7 of Endangered Species Act regarding project-related impacts to critical habitat. The USFWS has not yet issued a Biological Opinion for the Project. The Corps cannot issue a permit for the Project until the USFWS issues the Biological Opinion and the Board adopts certification.

The California Department of Fish and Game (CDFG) has issued a Section 1603 Agreement (Agreement) for Alteration of Streambeds for the Project as previously proposed. However, the Agreement required the Applicant to mitigate for stream impacts at the Elise Gridley Mitigation Bank in northeastern Solano County. Elise Gridley Mitigation Bank no longer has 'linear' or 'stream' credits for sale, therefore the Agreement will need to be revised/amended to reflect the stream mitigation when a the Applicant proposes acceptable mitigation to CDFG.

Tentative Order

The TO for the Project was circulated on August 23, 2010, for public comment, with the public comment period scheduled to close on September 22, 2010. However, due to a problem with our database of interested parties' email addresses, not all interested parties received the August 23 electronic copy of the TO. This problem was identified and resolved by providing those interested parties excluded earlier with an electronic copy of the TO on September 2, 2010. As such, staff extended the public comment period to October 1, 2010, to ensure all interested parties had the full 30 days to review the TO as required by the Water Code.

As noted above, the Applicant has notified staff that the Noonan Ranch site is no longer a viable option for off-site mitigation for stream impacts. Thus, Finding 13 in the TO needs to be revised to delete the reference to the "Noonan Ranch site in northern Fairfield."

General Comments

As of the close of the comment period on October 1, 2010, we had received approximately 100 comment letters. These letters are posted on the Board's website and can be located at http://www.waterboards.ca.gov/sanfranciscobay/board_info/agendas/2010/October/walmart/6_Comments.pdf. Staff will prepare a response document to all comments and recommend revising the TO as appropriate. However, there are a few water quality issues that are significant and appear in many of the comment letters. I have listed them here and provide an initial response:

1) *The site contains a "man-made drainage ditch of little value."* – The site contains a stream channel, which historically was straightened, most likely by ranchers in the early to mid-1900s. The stream channel has been determined to be waters of the State and U. S., necessitating State and federal permitting for any activities that are proposed to dredge and fill it. The stream provides several functions including floodwater attenuation, groundwater recharge, and water quality enhancement including the filtering of sediment and nutrients to downstream waters.

2) *Relative to the mitigation for the stream channel impacts, comments ranged from concerns regarding “a lack of detailed plan to provide comments on”, “approval of mitigation after adoption of the TO” and “request for EO approval of the mitigation plan.”* – When the TO was initially circulated, it stated that the Applicant was proposing to mitigate stream channel impacts at the Noonan Ranch site. However, since a detailed plan for that mitigation was not submitted, the TO included provisions for submittal and subsequent Water Board approval of a Final Mitigation and Monitoring Plan. Requiring Water Board approval of the Plan ensures that the public will have an opportunity to review and comment on it before the Project starts construction. Since circulation of the TO, the Applicant has notified staff that Noonan Ranch is no longer a viable option for mitigation. The TO still requires that the Applicant submit its Plan for an off-site parcel that will provide appropriate mitigation for stream channel impacts. To ensure full public review and comment of the Plan, it is appropriate that the Plan be submitted for Water Board approval, rather than EO approval.

3) *“To mitigate the loss of wetland habitat, the applicant proposes to mitigate at a 1:1 ratio at the Elsie Gridley Mitigation Bank. This mitigation ratio is inadequate.”* – The Applicant has proposed to purchase 2.35 acres of wetland credits at Elsie Gridley Mitigation Bank. The Mitigation Bank has sufficient wetland credits for sale at this time. We view this ratio as appropriate since the onsite wetlands will be mitigated off-site before the onsite wetland impacts occur.

4) *“Let the applicant mitigate for their impacts”* – We fully agree that the Applicant needs to mitigate for the Project’s impacts. The Applicant has identified mitigation appropriate for the Project’s seasonal wetland impacts but not the Project’s stream impacts. The TO includes a requirement for submittal of a Final Mitigation and Monitoring Plan that would be approved by the Water Board once the Applicant identifies appropriate mitigation for the Project’s stream impacts.

Summary

In its June 21, 2010, application for certification and WDRs, the Applicant has proposed a revised project design that reduces seasonal wetland and stream impacts from its earlier proposals and expands the post-construction treatment of the local catchment’s stormwater runoff. The TO as circulated would adopt certification and WDRs for the revised project.

However, the Applicant has yet to identify a mitigation proposal that appropriately mitigates for the Project’s stream impacts. The TO requires that the Applicant do so, subject to Water Board approval, before Project construction begins. As such, the TO ensures that the public will have the opportunity to review the Applicant’s ultimate mitigation proposal.