

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

TENTATIVE ORDER NO. R2-2012-XXXX

**AMENDMENT OF ORDER NO. R2-2010-0109 WASTE DISCHARGE REQUIREMENTS
AND WATER QUALITY CERTIFICATION FOR:**

**WAL-MART STORES, INC.
WALTERS ROAD DEVELOPMENT PROJECT
SUISUN CITY, SOLANO COUNTY**

**The California Regional Water Quality Control Board, San Francisco Bay Region,
(hereinafter referred to as the Water Board) finds that:**

1. On October 10, 2010, the Water Board adopted Order No. R2-2010-0109, prescribing Waste Discharge Requirements and Water Quality Certification for Wal-Mart Stores, Inc., Walters Road Development Project, Suisun City, Solano County. Order No. R2-2010-0109 conditionally authorized Wal-Mart Stores, Inc., (Discharger) to impact waters of the United States to construct a retail shopping center on a 20.8-acre site at the intersection of Highway 12 and Walters Road in Suisun City (Project).
2. There are approximately 2.996 acres of jurisdictional waters of the United States, including wetlands and a stream channel, on the Project site. The site's waters of the United States are comprised of:
 - a) 2.596 acres of seasonal wetlands, and
 - b) 0.4 acres (1,100 linear feet) of stream channel with riparian/wetland vegetation.
3. The Project will result in the permanent fill of approximately 2.630 acres of the site's 2.996 acres of jurisdictional waters of the United States. This impact is comprised of the following:
 - a) 2.35 acres of wetlands, and
 - b) 0.28 acres (786 linear feet) of stream channel.
4. The Discharger has applied to the U.S. Army Corps of Engineers (Corps) for an individual permit under Section 404 of the Clean Water Act (33 U.S.C. § 1344). The Corps issued a Public Notice for the Project on January 31, 2008, but has not issued a permit for the Project at this time.
5. The United States Fish & Wildlife Service (USFWS) issued a Final Biological Opinion for the Project on August 10, 2011. However, on September 30, 2011, the Corps re-initiated consultation with the USFWS under the authority of Section 7 of Endangered Species Act regarding endangered species issues on a newly proposed offsite mitigation parcel. The USFWS has not yet issued an amended Biological Opinion for the Project at this time.
6. Provision C.5. of Order No. R2-2010-0109 requires the Discharger to submit, not later than 90 days prior to the start of construction (defined as site grading), a Final Mitigation and Monitoring Plan (Final MMP) that addresses the proposed offsite mitigation elements for stream impacts. Provision C.5.a. of the Order requires the Final MMP to include a proposal to create and/or restore a minimum of 1,572 linear feet of stream channel and replace the impacted stream's ecosystem functions and values.

Date: December 9, 2011

Tentative Order No. R2-2012-XXXX

7. On November 11, 2011, the Discharger submitted the Final MMP, *Mitigation and Monitoring Plan, Wal-Mart Mitigation Project, Old Homestead Wetland and Riparian Enhancement, Lynch Canyon, Solano County, November 2011, Nomad Ecology, Prepared in cooperation with Solano Land Trust*, to meet the Project's mitigation requirements for stream channel impacts. The Final MMP proposes restoration and enhancement of 1,637 linear feet of stream channel and 1.43 acres of jurisdictional wetland and waters on a 9.25-acre site within the 1,039-acre Lynch Canyon Open Space property in Solano County, owned and managed by the Solano Land Trust.
8. Provision C.7. of Order No. R2-2010-0109 requires the Discharger to submit, not later than 30 days prior to the start of any Project construction, proof of purchasing 2.35 acres of wetland creation and/or restoration credits that met prescribed performance standards from the Elsie Gridley Mitigation Bank or an approved mitigation bank in Solano County. On November 9, 2011, the Discharger submitted a letter stating that it had secured 2.35 acres of seasonal wetland creation credits at the Elsie Gridley Mitigation Bank. The Discharger will provide these credits in accordance with the provisions of this amendment.
9. Provision C.13. requires the Discharger to submit a revised Stormwater Control Plan that accurately reflects the Project as permitted by Order No. R2-2010-0109. On August 30, 2011, the Discharger submitted a final Stormwater Control Plan for the Project. This Order approves the final Stormwater Control Plan and requires its implementation.
10. 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.
11. This Order amends Order No. R2-2010-0109 to address the implementation of the Final MMP, the securing of credits at the Elsie Gridley Mitigation Bank, and the submittal of the final Stormwater Control Plan; and to add the requirement that the Discharger use the California Wetlands Form to provide Project information related to impacts and mitigation/restoration measures. Amendments that add text to Order No. R2-2010-0109 are displayed in underlined type and those that delete text are displayed in ~~strikeout~~ format.
12. The Water Board notified the Discharger and interested agencies and persons of its intent to consider adoption of this Order, and provided an opportunity to submit written comments.
13. In a public meeting, the Water Board heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that Wal-Mart Stores, Inc., in order to meet the provisions contained in Division 7 of the California Water Code and regulations adopted thereunder, shall comply with the following amendments of Order No. R2-2010-0109, pursuant to authority under CWC Sections 13263 and 13267:

C. Provisions

Compensatory Mitigation

5. The Discharger shall comply with and implement the Final MMP, *Mitigation and Monitoring Plan, Wal-Mart Mitigation Project, Old Homestead Wetland and Riparian Enhancement, Lynch Canyon, Solano County, November 2011, Nomad Ecology, Prepared in cooperation with Solano Land Trust*. Not later than 90 days prior to the start of construction (defined as

~~site grading), the Discharger shall submit, acceptable to the Regional Water Board, a Final Mitigation and Monitoring Plan (Final MMP) that The Final MMP addresses the proposed offsite mitigation elements for the stream impacts and includes the following: The Discharger shall comply with and implement the Final MMP. The Final MMP shall include the following:~~

- ~~a. Restoration and enhancement of a minimum of 1,637 linear feet of stream channel and 1.43 acres of jurisdictional wetlands and waters; A proposal that will create and/or restore a minimum of 1,572 linear feet of stream channel and replace the impacted stream's ecosystem functions and values. The proposed channel shall have similar characteristics of the impacted stream with a defined channel and enough water flow for scour and sediment transport to occur. If preservation and restoration of an existing stream is proposed, a higher amount of linear feet will be required;~~
- ~~b. Mitigation construction to commence prior to the start of any Project construction (defined as site grading) and to be completed within the same year as the impacts occur at the Project site; The proposed mitigation site must occur within the Regional Water Board's jurisdictional boundaries, as well as within Solano County;~~
- ~~c. Not later than 30 days prior to the start of any Project construction, the Discharger shall submit proof of financial assurance to ensure completion of the mitigation, monitoring, and maintenance work; A schedule providing for mitigation construction to commence prior to the start of Project construction. The schedule shall provide for all mitigation to be completed before construction is complete;~~
- ~~d. Not later than 30 days prior to the start of any Project construction, a deed restriction, to provide in perpetuity for the protection of the mitigation area for the purposes of retaining the land in its natural and open-space condition, shall be recorded; and An irrigation and planting plans;~~
- ~~e. Ongoing maintenance and monitoring shall be performed for a minimum of 10 years or until performance standards and final success criteria are met, whichever is later. Provisions for use of native plant seeds/plantings and the avoidance of non-native vegetation;~~
- ~~f. A monitoring program that consists of:
 - ~~i. Establishment of performance criteria;~~
 - ~~ii. Selection of performance indicators;~~
 - ~~iii. Field sampling of performance indicators;~~
 - ~~iv. Analysis of the field data;~~
 - ~~v. A remedial action plan;~~
 - ~~vi. Annual reports submittals, and~~
 - ~~vii. A minimum monitoring duration of 10 years—adequate to evaluate site performance;~~~~
- ~~g. If the proposed mitigation parcel will be grazed by livestock, a detailed grazing plan, including stocking rates, fencing plans for waterbodies and upland water sources shall be submitted;~~
- ~~h. Financial assurances adequate to ensure the construction, maintenance, monitoring, and preservation of the proposed mitigation and other measures. Detailed cost estimates to cover these activities shall be submitted, as well; and~~
- ~~i. A conservation easement or similar mechanism to provide in perpetuity for the protection of the mitigation area for the purposes of retaining the land in its natural and open-space condition.~~

Tentative Order No. R2-2012-XXXX

7. Not later than 30 days prior to the start of any Project construction, the Discharger shall submit proof of purchasing 2.35 acres of wetland creation and/or restoration credits that met prescribed performance standards from the Elissie Gridley Mitigation Bank ~~or an approved mitigation bank~~ in Solano County.

13. ~~By November 12, 2010, the Discharger shall submit a revised Stormwater Control Plan, acceptable to the Executive Officer that accurately reflects the Project as permitted by this Order. The Discharger shall implement the Stormwater Control Plan, Wal-Mart Store #3708-01 Supercenter, Suisun City, California, Prepared by: Robert A. Karn & Associates, Inc., Submittal Date: November 10, 2010, Revision Date: August 26, 2011.~~ The Discharger shall install the proposed post-construction stormwater and hydromodification treatment measures during Project construction pursuant to ~~the revised this~~ Stormwater Control Plan ~~as approved~~ and other reports identified in Finding 14. The Discharger shall submit an as-built report within 60 days of the complete installation of the stormwater and hydromodification treatment measures. As part of the as-built report, the Discharger is required to submit a signed Stormwater Treatment Measures Maintenance Agreement between the Discharger and the City of Suisun to ensure monitoring, inspecting, and maintaining both the on-site and off-site treatment measures in perpetuity.

California Wetlands Portal

33. In order to track mitigation/restoration projects' success, the Discharger shall use the Wetland Tracker 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.californiawetlands.net>.

I, Bruce H. Wolfe, 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, San Francisco Bay Region on _____, 2012.

Bruce H. Wolfe
Executive Officer