

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

**REVISED 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 29, 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.

*Revised March 14, 2012  
Date: December 9, 2011*

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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. This mitigation will restore, enhance, and protect in perpetuity aquatic habitat and watershed lands that will increase habitat value for wildlife, especially for listed endangered and threaten species. This Order approves the Final MMP and requires its implementation.
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 outstanding requirements, specifically mitigation for stream impacts through implementation of the Final MMP, the securing of credits at the Elsie Gridley Mitigation Bank, and the submittal of the final Stormwater Control Plan. It also includes the procedural requirement that the Discharger use the California Wetlands Form to provide Project information related to impacts and mitigation/restoration measures and updates annual fee requirements. 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. As a responsible agency, the Water Board considered the environmental impact report prepared by the lead agency, City of Suisun, for the Project as a whole when it adopted Order No. R2-2010-0109. Approval of this Order amending Order No. R2-2010-0109 is exempt from the California Environmental Quality Act (CEQA). Specifically, approval of the Final MMP is exempt from CEQA under Cal. Code Regs., tit. 14, section 15333, which exempts small habitat restoration projects not exceeding five acres to assure the maintenance, restoration, enhancement, or protection of habitat, provided, among other things, there would be no significant impact on threatened, rare or endangered species. The Final MMP involves less than five acres of habitat restoration and will not have any significant impacts to threatened, rare or endangered species because of specific requirements set forth therein and

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reiterated in this Order. The Final MMP is also exempt from CEQA under Cal. Code of Regs., tit. 14, section 15302 with respect to the mitigation project's replacement spring box.

Approval of this Order amending Order No. R2-2010-0109 related to reporting on the Elsie Gridley Mitigation Bank, approval of the required Stormwater Control Plan, wetland information reporting, and fee requirement corrections is exempt from CEQA under Cal. Code Regs., tit. 14, section 15061(b)(3) because these activities will not have any significant effects on the environment.

13. 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.
14. 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; 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; and Provisions for use of native plant seeds/plantings and the avoidance of non-native vegetation;
- f. To ensure minimization of impacts to any endangered species that might be present at the mitigation site, the following measures shall be implemented:
  - 1. Restoration activities will not begin on the mitigation site until June 15, and only then if site conditions are dry enough to begin work;
  - 2. Staff of the Water Board, the California Department of Fish and Game (DFG), and USFWS will be notified when construction is to begin;
  - 3. DFG and USFWS staff will approve a qualified biologist/monitor (Approved Biologist);
  - 4. The contractor, Approved Biologist, and Solano Land Trust staff will hold a pre-construction meeting. Items to be discussed at the meeting include avoidance and conservation measures that are to be implemented at the mitigation site;
  - 5. Construction workers will receive a field training course from the Approved Biologist prior to start of construction in which they will learn about the special-status species, including California red-legged frogs (CRLF), that could potentially be present, including how to identify them and what to do if one is sighted. A small pamphlet with photographs of the species will be provided to the workers;
  - 6. Within 24 hours prior to start of construction the Approved Biologist will search the work area for CRLF and western pond turtles (northern pacific pond turtle sub-species). Trained workers and/or the Approved Biologist will check any open trenches prior to start of work at the mitigation site each day for CRLF and turtles. Should any be found, the Approved Biologist qualified to handle the animals will be called in to address the issue. Open trenches will also have a sloped ramp of soil or lumber (or similar) left in them at the end of each work day that will allow any animal falling into the trench to escape. Trenching will be completed in as short a time as possible to minimize the amount of time that trenches are open;
  - 7. CRLF sighting plan: If CRLF is sighted at any time, USFWS and DFG staff will be notified within 24 hours of the sighting. If CRLF is sighted during a pre-construction survey, no work will be initiated until the Approved Biologist can confirm that CRLF has safely left the area. Once work is started and CRLF is sighted and is in immediate danger, the Approved Biologist will capture the CRLF and safely move it to the nearest appropriate aquatic habitat. If CRLF is sighted during work but is not in immediate danger, work will stop in that area and will not start again until the Approved Biologist can confirm that CRLF has moved from the area;
  - 8. Before and during plant debris removal, the Approved Biologist will be present for inspection for CRLF and other wildlife, such as pond turtles. Debris will be removed from work areas without harming CRLF and other wildlife;
  - 9. The Approved Biologist will remain onsite until such time all removal of CRLF or pond turtles (if any), training of workers, and initial habitat disturbance has been completed. After this time, the Discharger will designate a person, trained by the Approved Biologist, to monitor onsite compliance of all minimization measures;

10. Any wildlife encountered during the course of mitigation construction shall be allowed to leave the construction area unharmed;
11. No pesticides will be used for weed management prior to construction, during construction, or post construction in accordance with injunction orders for CRLF as determined by the California Department of Pesticide Regulation and in accordance with the Final MMP;
12. California native trees and shrubs are not to be removed with the exception of invasive Himalayan blackberry in accordance with the Final MMP; and
13. The Discharger shall comply with additional terms and conditions in the amended USFWS Biological Opinion.
  1. ~~A monitoring program that consists of:~~
  2. ~~Establishment of performance criteria;~~
  3. ~~Selection of performance indicators;~~
  4. ~~Field sampling of performance indicators;~~
  5. ~~Analysis of the field data;~~
  6. ~~A remedial action plan;~~
  7. ~~Annual reports submittals; and~~
  8. ~~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.~~

The Executive Officer is delegated the authority and discretion to approve minor modifications to the Final MMP. The Discharger shall submit requests for approval of a minor modification not later than 45 days prior to the proposed date of implementation of the modification.

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

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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 onsite and offsite treatment measures in perpetuity. The Executive Officer is delegated the authority and discretion to approve minor modifications to the Stormwater Control Plan. The Discharger shall submit requests for approval of a minor modification not later than 45 days prior to the proposed date of implementation of the modification.

14. This Order combines Waste Discharge Requirements and Clean Water Act Section 401 Water Quality Certification provisions. The annual fee shall reflect this, and consist of the following:

The fee amount for the Waste Discharge Requirements portion shall be in accordance with the current fee schedule, per California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200(a)(1), based on the discharge's Threat to Water Quality and Complexity rating of the Discharge to Land or Surface Waters, plus applicable surcharge(s). The Threat and Complexity rating shall be rated as 1A2B, and may be modified upon Executive Officer approval. After the initial year, this portion of the fee shall be billed annually to the Discharger. The fee payment shall indicate the Order number, WDID number, and the applicable season.

**California Wetlands Portal**

33. In order to track mitigation/restoration projects' success, the Discharger shall complete and submit the Wetland Tracker Standard Form to provide Project information related to impacts and mitigation/restoration measures. The Discharger shall email the completed form to [Habitatdata@waterboards.ca.gov](mailto:Habitatdata@waterboards.ca.gov) within 14 days of the date of adoption of this Order. 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.

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Bruce H. Wolfe  
Executive Officer