

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

**ORDER No. R2-2017-00XX**

**WASTE DISCHARGE REQUIREMENTS for:**

**EDEN SHORES ASSOCIATES I'S EDEN SHORES COMMERCIAL RETAIL PROJECT  
IN THE CITY OF HAYWARD,  
ALAMEDA COUNTY**

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

1. This Order serves as Waste Discharge Requirements (WDRs) for construction of the Eden Shores Commercial Retail Project (Project) on 5.43 acres of semi-developed vacant land located in the southwestern portion of the City of Hayward, in Alameda County, immediately west of Hesperian Boulevard (Latitude: 37.612827; Longitude: -122.087405; APNs 456-0101-009-04, 456-0101-009-05, and 456-0101-009-06) (Site). The Site consists of three connected parcels (APNs 456-0101-009-04, 456-0101-009-05, and 456-0101-009-06), and is zoned for Neighborhood Commercial.
2. The Project proponent, Eden Shores Associates I, LLC, a Delaware Limited Liability Company, has submitted a Report of Waste Discharge to the Regional Water Board for authorization to construct the Project and is hereafter referred to as the Discharger.
3. The Project encompasses the construction of an approximately 5.43-acre commercial retail complex, including internal roads, utilities, and parking lots. The Project, once completed, will provide commercial retail services within the larger Eden Shores project, which includes residential, commercial, light industrial, and open space development.
4. The majority of the Site consists of uplands, with vegetation dominated by soft chess (*Bromus hordeaceus*), ripgut brome (*B. diandrus*), Italian rye grass (*Festuca perennis*), Mediterranean barley (*Hordeum marinum* ssp. *gussoneanum*), mouse barley (*H. murinum*), slender oat (*Avena barbata*), and prickly lettuce (*Lactuca serriola*).
5. The Site contains 0.48 acres of seasonal wetlands, which are dominated by non-native hydrophytic herbs, such as Mediterranean barley (*Hordeum marinum*), common rabbit's-foot grass (*Polypogon monspeliensis*), cut-leaf plantain (*Plantago coronopifolia*), bird's-foot trefoil (*Lotus corniculatus*), and perennial pepperweed (*Lepidium latifolium*).

***Project Impacts, and Mitigation***

6. The 0.48 acres of seasonal wetlands within the central and northwestern portions of the Site will be permanently impacted through direct filling with clean fill as part of the construction of the commercial retail area. Ground elevations across the Site will be raised on average by about 1 foot.
7. Avoidance and minimization of the wetland impacts is not practicable because of their location. It would not be possible to avoid filling wetlands and their contributing drainage watersheds without eliminating essential Project elements, such as building structures, parking lots,

- primary and internal access roads, and important utility infrastructure. The elimination of these development elements would make the Project impracticable.
8. To compensate for permanent impacts to 0.48 acres of seasonal wetlands, the Discharger will provide offsite mitigation through the purchase of 0.48 acres of seasonal wetland creation mitigation credits at the San Francisco Bay Wetland Mitigation Bank (Bank) (Corps File No. 2008 00046S).
  9. The purchase of mitigation credits from the Bank (Corps File No. 2008 00046S) will accomplish the goal of the California Wetlands Conservation Policy (“No Net Loss Policy;” Executive Order W-59-93) to “ensure no overall net loss and achieve a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values in California in a manner that fosters creativity, stewardship, and respect for private property.”
  10. This Order requires submittal of documentation of the purchase of 0.48 acres of wetland mitigation credit to Regional Water Board’s Executive Officer, prior to impacting waters of the State.
  11. Regional, State, and national studies have determined that tracking of mitigation/restoration projects must be improved to assess the performance of these projects. In addition, to effectively carry out the “No Net Loss Policy,” the State needs to track both wetland losses and mitigation/restoration project success closely. Therefore, this Order requires the Discharger to submit the California Wetlands Form to provide project information related to impacts and mitigation 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.ecoatlas.org/regions/ecoregion/bay-delta/projects>.

### ***Post-Construction Stormwater Management***

12. Stormwater discharges from urban and developing areas in the San Francisco Bay Region are significant sources of certain pollutants that cause or may be causing or threatening to cause or contribute to water quality impairment in waters of the Region. Furthermore, as delineated in the CWA section 303(d) list, the Regional Water Board has found that there is a reasonable potential that municipal stormwater discharges cause or may cause or contribute to an excursion above water quality standards for the following pollutants: mercury, PCBs, furans, dieldrin, chlordane, DDT, trash, and selenium in San Francisco Bay segments. Runoff from impervious surfaces at the developed Project site may contribute to water quality impairment in the Region.
13. This Order requires the Discharger to implement stormwater treatment best management practices (BMPs) for post-construction stormwater runoff from the Project’s impervious surfaces, consistent with its plan *Stormwater Quality Management Plan for Eden Shores Retail Site, City of Hayward, Alameda County* (RSC Engineers, August 15, 2016) (Attachment 2 to this Order). Stormwater treatment controls must be constructed concurrently with each phase of the Project, so that treatment is provided for each completed phase. The Order requires any changes to the plan in Attachment 2 to this Order to be submitted to the Executive Officer of the Regional Water Board for review and approval at least 90 days before construction starts on the phase of the Project that will be treated by the changed proposal.

### ***Regional Water Board Jurisdiction***

14. The Regional Water Board has authority to regulate the proposed discharge of fill materials into waters of the State by issuance of Waste Discharge Requirements (WDRs) pursuant to section 13263 of the California Water Code (Water Code) and section 3857 of title 23 of the California Code of Regulations (23 CCR). The Regional Water Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from the Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require changes to the Project as described and allowed herein.
15. The Discharger is required to pay annual fees pursuant to Water Code section 13260, title 23 of the California Code of Regulations (Cal. Code Regs., tit. 23, § 2200 et seq.) and in accordance with Provision D.8.

### ***Regulatory Framework***

16. The *Water Quality Control Plan for the San Francisco Bay Basin* (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law, and U.S. EPA, where required.
17. The Basin Plan lists the following existing and potential beneficial uses for groundwater within the East Bay Plain sub-basin of the Santa Clara Valley Basin (Basin Number 2-9.04), which underlies the Project site:
  - a. Municipal and Domestic Water Supply (MUN)
  - b. Industrial Process Supply (PROC)
  - c. Industrial Water Supply (IND)
  - d. Agricultural Water Supply (AGR)
18. The Basin Plan lists the following existing and potential beneficial uses for seasonal palustrine wetlands:
  - a. Agricultural Water Supply (AGR)
  - b. Cold Freshwater Habitat (COLD)
  - c. Freshwater replenishment (FRESH)
  - d. Groundwater Recharge (GWR)
  - e. Water Contact Recreation (REC1)
  - f. Non-contract Water Recreation (REC2)
  - g. Warm Freshwater Habitat (WARM)
  - h. Wildlife Habitat (WILD)
  - i. Preservation of Rare and Endangered Species (RARE)

19. Project implementation would permanently impact the beneficial uses of the seasonal palustrine wetlands at the Project site.
20. The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be reviewed in compliance with requirements of CEQA. The Site is part of the larger Eden Shores Business Park Site, which was assessed as part of the South of Route 92 Specific Plan, which was adopted by the City of Hayward in 1988. The Specific Plan provided for a mixed-use development consisting of a business park, single-family housing, light manufacturing, open space, and active recreation on about 333.5 acres, which at the time was used mostly for agriculture. In 1998, the City of Hayward, acting as the CEQA lead agency, certified the *Environmental Impact Report for the South of Route 92 General Plan Amendment and Specific Plan for the Oliver Estate/Weber Properties* (EIR) (State Clearinghouse Number 95103079). Some of the development anticipated in the Specific Plan and analyzed in the 1998 EIR, has been completed, including a sports park, a large retail development, and residential subdivisions.

In 2007, an Initial Study / Mitigated Negative Declaration (IS/MND) was prepared for an amendment to the 1998 Specific Plan. This Initial Study/MND specifically addressed development of the 5.43-acre Project Site. Impacts to waters of the State associated with the current Project are consistent with the impacts identified in the 2007 ISMND.

21. The Regional Water Board, as a responsible agency under CEQA, has independently considered the EIR and IS/MND and finds that significant environmental impacts of the proposed Project to waters of the State have been identified and mitigated to less than significant levels by the mitigation requirements adopted in this Order (See Cal. Code Regs., tit. 14, § 15096, subd. (g)).
22. The State of California recognizes that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes (Wat. Code § 106.3; State Water Board Reso. 2016-10.). This Order promotes that policy by requiring discharges to meet discharge levels designed to protect human health and ensure that water is safe for domestic use.
23. The Regional Water Board provided public notice of the application pursuant to title 23, California Code of Regulations section 3858 on May 17, 2017, and posted information describing the project on the Regional Water Board's website. The Regional Water Board has notified the Discharger and interested parties of its intent to issue WDRs for the Project.
24. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to this Order.
25. In a letter from the San Francisco District of the U.S. Army Corps of Engineers (Corps), dated January 6, 2016 (Corps File Number SPN-1999-241560S), the Corps notified the Discharger that the wetlands at the Project site were not regulated as waters of the U.S. Therefore, fill of the seasonal wetland at the Project does not require authorization pursuant to a Clean Water Act Section 404 permit. This discharge of fill to waters of the State at the Project site is regulated under Water Code section 13263 and title 23 of the California Code of Regulations.
26. Pursuant to 23 CCR section 3857, the Regional Water Board is issuing WDRs for the proposed Project.

IT IS HEREBY ORDERED that the Discharger, in order to meet the provisions contained in Division 7 of the Water Code and regulations adopted thereunder, shall comply with the following, pursuant to authority under Water Code sections 13263 and 13267:

**A. *Discharge Prohibitions***

1. The direct or indirect discharge of wastes, as defined in Water Code section 13050(d), within or outside of an active project site, to surface waters or surface water drainage courses is prohibited, except as authorized in this Order.
2. The Discharger shall not cause degradation of any municipal water supply.
3. The wetland fill activities subject to these requirements shall not cause a nuisance as defined in Water Code §13050(m).
4. The discharge of materials other than stormwater, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.
5. The groundwater in the vicinity of the Project shall not be degraded as a result of the placement of fill for the Project.
6. No debris, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or petroleum products or other organic or earthen material shall be allowed to enter into or be placed where they may be washed by rainfall or runoff into waters of the State. When operations are completed, any excess material shall be removed from the work area and any adjacent areas where such materials could be washed into waters of the State.

**B. *Discharge Specifications***

1. In accordance with Water Code section 13260, the Discharger shall file with the Regional Water Board a report of any material change in the character, location, or quantity of this waste discharge that is beyond the scope of this Order. Any proposed material change in the discharge requires approval by the Regional Water Board.
2. The Discharger shall notify the Regional Water Board promptly by telephone or email, and in no case more than 24 hours after, if an adverse condition occurs as a result of a discharge. An adverse condition includes, but is not limited to, a violation of the conditions of this Order, spill of petroleum products or toxic chemicals, or damage to control facilities that could affect compliance. A written notification of the adverse condition shall be submitted to the Regional Water Board within five days of occurrence. The written notification shall identify the adverse condition, describe the actions taken or planned to remedy the condition, and specify a timetable, subject to approval by the Regional Water Board's Executive Officer, for the remedial actions that follow any initial response to the adverse condition.

**C. *Receiving Water Limitations***

1. With the exception of the fill of waters of the State authorized by this Order, the discharge shall not cause the following conditions to exist in waters of the State at any place:

- a. Waters shall not contain floating material, including solids, liquids, foams, and scum in concentrations that cause nuisance or adversely affect beneficial uses.
  - b. Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on objects in the water, that cause nuisance, or otherwise adversely affect beneficial uses.
  - c. Waters shall not contain biostimulatory substances in concentrations that promote aquatic growth to the extent that such growth cause nuisance or adversely affect beneficial uses.
  - d. Waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in human, plant, animal, or aquatic life.
  - e. The natural receiving water temperature of inland surface waters shall not be altered unless it can be demonstrated to the satisfaction of the Regional Water Board that such alteration in temperature does not adversely affect beneficial uses. The temperature of any cold or warm freshwater habitat shall not be increased by more than 5°F (2.8°C) above natural receiving water temperature.
2. The discharge shall not cause nuisance, or adversely affect the beneficial uses of the receiving water.
3. With the exception of the fill of waters of the State authorized by this Order, the discharge shall not cause the following limits to be exceeded in waters of the State at any point:
- a. Dissolved Oxygen: 5.0 (WARM) or 7.0 (COLD) mg/l minimum. When natural factors cause lesser concentrations, then this discharge shall not cause further reduction in the concentration of dissolved oxygen.
  - b. pH: A variation of natural ambient pH by more than 0.5 pH units.
  - c. Turbidity: Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where ambient turbidity is greater than 50 NTU. Where ambient turbidity is less than 50 NTU, activities authorized by this Order shall not increase turbidity by more than 5 NTU.
  - d. Toxicity: All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
  - e. Salinity: The project shall not increase total dissolved solids or salinity to a degree that the increase adversely affects beneficial uses or water quality.
  - f. Chlorine: The project shall not discharge water to waters of the State with residual chlorine levels (free chlorine plus chloramines) that exceed the instantaneous limit of 0 mg/L in Table 4-2 of the Basin Plan. Chlorine residual levels that are non-detect at a reporting limit of 0.08 mg/L will be considered to be non-compliance with the instantaneous limit in Table 4-2 in the Basin Plan.

**D. Provisions**

1. The Project shall be constructed as described in the application materials submitted by the Discharger on March 14, 2017. Any changes to the Project design shall be submitted, acceptable to the Water Board Executive Officer, and accepted in writing prior to being implemented.

***Compensatory Mitigation***

2. To provide mitigation for the Project's impacts to waters of the State, the Discharger shall purchase 0.48 acres of seasonal wetland creation mitigation credits from the Bank as described in Finding 8.

***Monitoring and Reporting***

3. California Wetlands Portal: The Discharger shall complete the standard California Wetlands Form for the Project sites. The Discharger shall electronically submit the completed standard form and map showing the location of the Project site to [habitatdata@waterboards.ca.gov](mailto:habitatdata@waterboards.ca.gov).

***Notice of Mitigation Completion***

4. Mitigation for impacts to wetlands will be satisfied through purchase of 0.48 acres of wetland mitigation credits from the Bank; proof of such purchase shall be submitted to the Regional Water Board's Executive Officer prior to impacting wetlands at the Project site, and no later than September 1, 2017.

***Project Site Stormwater Management***

5. The Discharger shall comply with the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit Order No. 2009-0009-DWQ; NPDES Permit No. CAS000002). The Discharger shall prepare and implement a site-specific Stormwater Pollution Prevention Plan (SWPPP) for the construction of each phase of the Project, in accordance with the requirements, provisions, limitations, and prohibitions of the General Construction Permit for discharges of stormwater associated with construction activity.
6. The Discharger, or its successors, shall ensure that the post-construction stormwater treatment best management practices (BMPs), including bioretention areas, in the *Stormwater Quality Management Plan for Eden Shores Retail Site, City of Hayward, Alameda County* (RSC Engineers, August 15, 2016) (Attachment 2) are constructed and appropriately maintained for the life of the Project. Stormwater treatment controls shall be constructed concurrently with each phase of the Project, so that treatment is provided for each completed new area of impervious surfaces in the same year that new impervious surfaces are created. Any changes to the BMPs in Attachment 2 to this Order must be submitted to the Executive Officer of the Regional Water Board for review and approval at least 90 days before construction starts on the phase of the Project that will be treated by the altered BMP proposal. Construction of that phase of the Project shall not commence until the Regional Water Board's Executive Officer has approved the altered BMP proposal (Construction consists of any disturbance of the site surface that results in the creation of new impervious surfaces). Any transfer of responsibility for this Provision's

requirements from the Discharger to another party must be approved by the Regional Water Board's Executive Officer before the responsibility may be transferred. To propose such a transfer, the Discharger shall submit the terms of such a transfer of responsibility to the Regional Water Board's Executive Officer for review and approval. Upon approval of any such transfer of responsibility, the Discharger may request this Order be amended to reflect the transfer.

7. As-built plans for the post-construction stormwater treatment measures for each phase of the Project shall be prepared and submitted to the Regional Water Board within six weeks of the completion of construction and planting of each post-construction stormwater treatment feature. As-built plans shall be accompanied by an as-built report that describes any changes to the approved plans that were necessary during construction of the stormwater treatment feature, as well as a technical justification for any design changes that were necessary in the field. The technical justification must demonstrate that the constructed treatment measures are consistent with the requirements of Regional Water Board Order No. R2-2015-0049 (NPDES Permit No. CAS612008).

#### ***Fees***

8. The fee amount for these WDRs shall be in accordance with the current fee schedule, per California Code of Regulations, title 23, section 2200, subdivision (a), based on the quantity of waters of the State impacted by discharges authorized by this Order. The Project will permanently impact 0.48 of waters of the State. The application fee for these impacts is \$4,899, which was paid in full on May, [TBD], 2017. An annual discharge fee shall also be paid to the Regional Water Board in each year in which impacts to waters of the State that are authorized by this Order are implemented (note: the Annual Active Discharge Fee may be changed by the State Water Board; at the time that this Order was adopted, it was \$720 per year). After the initial year, the Annual Active Discharge portion of the fee shall be billed annually to the Discharger. Fee payments shall indicate the Order number, CIWQS Place ID Number in the header for this Order, and the applicable year.

#### ***Records Provisions***

9. The Discharger shall retain records of all reports required by this Order for a period of at least five years from the date of the report. This period may be extended by request of the Regional Water Board's Executive Officer at any time. The Discharger shall submit electronic versions of any submitted reports or documents.

#### ***General Provisions***

10. The Discharger shall comply with all the Prohibitions, Effluent and Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided in this Order.
11. All reports pursuant to these Provisions shall be prepared by professionals registered in the State of California.
12. The Discharger shall immediately notify the Regional Water Board by telephone and e-mail whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to Water Code §13267(b), a written notification of the adverse



condition shall be submitted to the Regional Water Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Regional Water Board, for the remedial actions.

13. The Discharger shall notify the Regional Water Board in writing at least 30 days prior to the actual start date of impacts to waters of the State associated with the Project.
14. All work performed within waters of the State shall be completed in a manner that minimizes impacts to beneficial uses and habitat. Measures shall be employed to minimize disturbances that will adversely impact the water quality of waters of the State. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete Project implementation.
15. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
16. The discharge of any hazardous, designated, or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.
17. These WDRs are subject to modification or revocation upon administrative or judicial review, including review and/or reconsideration pursuant to Water Code sections 13320 and 13330 and California Code of Regulations, title 23, section 3867.
18. These WDRs are not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to California Code of Regulations, title 23, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
19. The Discharger shall maintain a copy of this Order and all relevant plans and BMPs at the Project site, so as to be available at all times to site operating personnel.
20. The Discharger shall permit the Regional Water Board staff or its authorized representative, upon presentation of credentials:
  - a. Entry on to the premises on which maintenance activities are planned or underway, wastes are located, or in which records are kept;
  - b. Access to copy any records required to be kept under the terms and conditions of this Order;
  - c. Access to inspect any treatment equipment, monitoring equipment, or monitoring method required by this Order; and
  - d. Access to sample any discharge or surface water covered by this Order.
21. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process, or sanctions as provided for under applicable State policies, codes, and regulations. In response to a suspected violation of any condition of this Order, the Regional Water Board

may require the Discharger to furnish, under penalty of perjury, any technical or monitoring reports the Regional Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.

22. In accordance with Water Code §13260, the Discharger shall file with the Regional Water Board a report of any proposed change in ownership or any material change in the character, location, or quantity of this waste discharge. Any proposed material change in the discharge requires approval by the Regional Water Board after a hearing under Water Code §13263. Material change includes, but is not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be filled and mitigated.
23. This Order is not transferable.
24. 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.
25. The Regional Water Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.

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 July 12, 2017.

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Bruce H. Wolfe  
Executive Officer

Attachment A: Site Maps and Figures  
Attachment B: *Stormwater Quality Management Plan for Eden Shores Retail Site, City of Hayward, Alameda County (RSC Engineers, August 15, 2016)*