

Santa Ana Regional Water Quality Control Board

August 9, 2012

John Schatz
Supervising/Principal Planner
Department of Public Works
825 E. Third Street, Room 201
San Bernardino, CA 92415-0835

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR CHERRY AVENUE STREET DRAINAGE, CITY OF FONTANA,
COUNTY OF SAN BERNARDINO, CALIFORNIA (OUR FILE NO. 362012-06)**

Dear Mr. Schatz:

On February 21, 2012, Santa Ana Regional Water Quality Control Board (Regional Board) staff received an application for a Clean Water Act Section 401 Water Quality Standards Certification (401 Certification) for the above referenced project. Included with the application were the following:

- \$4,627 as the filing fee intended¹ to complete the process to consider a 401 Certification for this project, as specified by California Code of Regulations (CCR), Division 3, Chapter 9, Article 1, Section 2200 (a) (3);
- A copy of a California Environmental Quality Act (CEQA) Notice of Determination indicating that the final negative declaration (dated November 4, 2008) for the project was certified by the County of San Bernardino;
- A copy of an addendum to the negative declaration, dated August 10, 2011;
- A copy of a Nationwide Permit Pre-Construction Notification Form submitted to the United States Army Corps of Engineers (USACE) indicating that the applicant had applied for a Clean Water Act Section 404 permit for the project, and;
- A copy of an application for a Notification of Lake or Streambed Alteration Agreement submitted to the California Department of Fish and Game.

¹ Fees for issuing a 401 Certification were increased by the State Water Resources Control Board on September 21, 2011. The fees submitted do not reflect the current required fees. See Condition 2 below.

On August 6, 2012, staff received a copy of the final CDFG Streambed Alteration Agreement (Agreement) and verification of payment of funds to satisfy the offsite mitigation requirement specified in the Agreement.

1. Project description:

The project entails the widening of Cherry Avenue between Whittram Avenue and Foothill Boulevard, in the City of Fontana. The project will include the construction of two additional traffic lanes, sidewalk, curb, gutter, driveway, and median improvements. In addition, the project includes transforming the existing earthen channel adjacent to Cherry Avenue from Whittram Avenue to the West Fontana Channel into an approximately 313 linear foot, open, vertical wall, concrete channel. At the outlet end of the proposed concrete channel a 40 ft by 30 ft grouted rip-rap dissipater will be constructed. Approximately 0.07 acre (480 linear ft.) of the existing earthen channel, a water of the U.S., will be permanently impacted.

2. Location: Lat. 34.095057, Long. -117.488681
T 1 S / R 6 W / S-10 & 11
Fontana, California, USGS Quadrangle Map
3. Receiving water: Cherry Avenue drainage to the West Fontana Channel then to Banana Basin, Hickory Basin, and thence the San Sevaine Channel
4. Fill Area: 0.07 acre, 480 linear ft
5. Dredge volume: NA
6. Federal permit: Nationwide Permit 43
7. Mitigation: As part of the CDFG Streambed Alteration Agreement for the project, the applicant is required to mitigate the impacts to 0.08 acres of CDFG jurisdictional areas by providing sufficient funds to the Santa Ana Watershed Association (SAWA) for the ongoing restoration of 0.10 acre of CDFG jurisdictional area within the Santa Ana Watershed.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board must consider the EIR or Negative Declaration prepared for a project by the Lead Agency, and reach its own conclusions on whether and how to approve the project involved. Regional Board staff has considered the project's November 4, 2008, Mitigated Negative Declaration (MND) and August 10, 2011, addendum to the MND, in issuing this 401 Certification, particularly those sections

of the MND that relate to water quality. Based on the mitigation proposed and the conditions set forth in this 401 Certification, the Regional Board independently concludes that the project's impacts to water quality will be reduced to a less than significant level.

This 401 Certification is contingent upon the execution of the following conditions:

1. The project proponent shall timely implement the mitigation described above.
2. This 401 Certification is contingent upon the submittal of fees required to process and complete the 401 Certification as specified in California Code of Regulations (CCR), Division 3, Chapter 9, Article 1, Section 2200 (a) (3) and as shown in the State Water Resources Control Board Dredge and Fill Fee Calculator adopted September 21, 2011. Regional Board staff has determined that an additional \$848.20 is required to complete the fees necessary to process this 401 Certification.
3. Should the proposed project impact state- or federally-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service and the California Department of Fish and Game shall be completed to ensure that these impacts are mitigated to an acceptable level.
4. The project proponent shall utilize Best Management Practices (BMPs) during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or waters of the United States.
5. Materials shall not be placed in a manner where they could be discharged to surface waters except as authorized by this certification. In the event that trash or debris is discharged to surface waters, the dischargers shall recover the material to the maximum extent practical.
6. Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the United States. All waste concrete shall be removed.
7. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.

8. This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any of the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in appropriate enforcement action, including imposition of administrative civil liability, the revocation of this Certification, and civil or criminal liability.
9. A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work as a denoted element of any project SWPPP or WQMP.
10. The applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.

Under California Water Code, Section 1058, and Pursuant to 23 CCR 3860, the following shall be included as conditions of all water quality standards certification actions:

- (a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.
- (b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855 (b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
- (c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at www.waterboards.ca.gov/board/decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf.

This letter constitutes a conditional water quality standards certification. Although we anticipate no further regulatory involvement, if the above conditions are changed, any of the criteria or conditions as previously described are not met, or new information

becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements for the project.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401 (d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the Regional Board may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

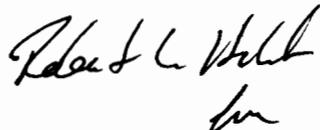
In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

It is the intention of the Regional Board that this 401 Certification "run with the land." If the ownership of the property associated with this 401 Certification is changed, and the conditions of the 401 Certification have not been met, it is the intention of the Regional Board that the terms and conditions of this 401 Certification shall be binding on any subsequent owners unless agreements have been made that other parties will be responsible to meet the conditions of the 401 Certification. The Regional Board must be notified of changes of ownership and of any parties that will be responsible to meet the conditions of the 401 Certification within 30 days.

Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality certification. Please notify our office five (5) days before construction begins on this project.

If you have any questions, please call David G. Woelfel at (951) 782-7960 or dwoelfel@waterboards.ca.gov, or Mark Adelson at (951) 782-3234 or madelson@waterboards.ca.gov.

Sincerely,



Kurt V. Berchtold
Executive Officer

cc: U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory Office – Tim Vendlinski (WTR-8)
State Water Resources Control Board, DWQ - Water Quality Certification Unit
State Water Resources Control Board, OCC – David Rice
California Department of Fish and Game – Kim Freeburn (kfreeburn@dfg.ca.gov)
USACE – Jason Lambert
LSA Associates, Inc. – Maria A. Lum (maria.lum@lsa-assoc.com)