



California Regional Water Quality Control Board

Santa Ana Region



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Linda S. Adams
*Secretary for
Environmental Protection*

Arnold Schwarzenegger
Governor

July 22, 2009

Dennis Fitzpatrick
PacTen Partners Real Estate
Development
1689 Comstock Avenue
Los Angeles, CA 90024

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR COMMERCE POINTE INDUSTRIAL PARK, CITY OF MENIFEE, RIVERSIDE COUNTY (ACOE REFERENCE NO. SPL – 2009 – 00081 – MAS)

Dear Mr. Fitzpatrick:

On December 24, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification"), submitted on your behalf by RBF Consulting, for the development of the Commerce Pointe Industrial Park in the City of Menifee. A notice that the application was incomplete was provided to you by Regional Board staff on January 14, 2009. The application was deemed complete on April 9, 2009.

On May 13, 2009, your application was denied without prejudice pending resolution of various issues described in the denial, including the payment in full of outstanding fees and issues raised in Regional Board staff's original notice to you that the application was incomplete. On May 22, 2009, RBF Consulting submitted additional materials in response to the denial. The outstanding fee balance was received on June 18, 2009.

This letter responds to your request for certification that the proposed project, described in your applications and in subsequent submittals and summarized below, will comply with State water quality standards outlined in the 1995 Water Quality Control Plan for the Santa Ana River Basin ("Basin Plan") and subsequent Basin Plan amendments:

Project Description: Construction of two industrial parks consisting of a total of 51 concrete tilt-up buildings according to City of Menifee Plot Plans 21452 and 22280. Grading of the site will result in the discharge of fill to two ephemeral drainages and their tributaries. The project is located between Zeiders Road and State Route 215, generally north of Keller Road and

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south of Scott Road, within Section 22 of Township 6 South, Range 3 West, of the U.S. Geological Survey *Romoland, California*, 7.5-minute topographic quadrangle map (33.632394 degrees N/ -117.173454 degrees W).

Receiving water: Two un-named ephemeral drainages and their tributaries.

Fill area: 0.30 acre of permanent impact to ephemeral drainages (4,200 linear feet total).

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 39.

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Nuisance flow and 'first-flush' discharges from the project will be treated using a combination of porous landscape detention (bio-filters), Filterra Stormwater Bioretention Filtration Systems, Stormwater Antimicrobial Treatment Units®, and underground detention chambers. These structural treatment controls will be operated and maintained by the discharger until such time as the facilities are turned over to a property owners association.
- Additional site-specific best management practices ("BMPs") will be specified in the site's Storm Water Pollution Prevention Plan(s) ("SWPPPs") and Water Quality Management Plan(s) ("WQMPs").
- A drainage channel, vegetated with native grasses, will be constructed along the south and west perimeter of the project site. Native oak trees will be planted along the channel. Flow in the channel will be controlled by a splitter structure(s) and limited to approximately one cubic foot per second (cfs). In some areas, the relative elevations of the channel invert, top of bank, and adjacent areas, creates a leveed condition where there is a risk of a break-out of flow due to flow obstructions, root growth, and rodents. The risk will be mitigated by installing a permanent root and rodent barrier in the levees. Routine landscaping maintenance will include removal of obstructions in the channel.
- Language will be incorporated into the on-site storm drain easement agreement and/or other legal instrument requiring that development upstream of the flow splitter structure(s) must not eliminate or alter the design flow rate to the perimeter drainage channel to sustain vegetation as a condition of making any modifications (including storm drain connections) to the flow splitters or the storm drain inlet.

Offsite Water Quality Standards Mitigation Proposed:

- No off-site water quality standards mitigation is proposed.

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 will ensure those impacts are mitigated to an acceptable level. Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project is over one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order No. 99-08 DWQ ("Order No. 99-08 DWQ"), is required, as is development of a SWPPP to control the discharge of pollutants from the project site.

Regional Board staff has reviewed a preliminary WQMP for the proposed project. While Regional Board staff has no objections to the overall concept, there is insufficient information to assure that all storm water runoff on the project site will be conveyed to one or more of the proposed structural treatment facilities. Regional Board staff expects that this matter, as well as other technical issues, will be resolved by the City of Menifee through compliance with Regional Board Order No. R8-2002-0011, NPDES Permit No. CAS618033, commonly known as the Riverside County Urban Storm Water Runoff Permit.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. You have applied for a Streambed Alteration Agreement with the California Department of Fish and Game. Pursuant to the California Environmental Quality Act (CEQA), the City of Menifee certified an Environmental Impact Report (EIR) for the proposed project on April 7, 2009.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR prepared by the lead agency in determining whether to approve a Section 401 Certification. A responsible agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the EIR prepared for the proposed project in approving this Certification, specifically, those sections of the EIR relating to water quality. Based on the mitigation proposed in the EIR, and the conditions set forth in this Certification, impacts to water quality will be reduced to a less

than significant level and beneficial uses will be protected. In approving this Certification, the Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level.

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

1. This Certification is conditioned upon the construction of all storm water treatment facilities, as proposed, according to published and generally accepted engineering design criteria. Structural storm water treatment facilities must be constructed and operational prior to the occupancy of any structure in the facilities' respective tributary area(s).
2. A conservation easement, or other appropriate legal instrument(s), must be placed over the proposed mitigation channel, to include the flow splitter structure(s), which assures the permanence and quality of the channel over the life of the project. The legal instrument(s) must include language that requires that the design hydrology for the mitigation channel is maintained as a condition of any modification of the storm drain system. The instrument(s) and accompanying language must be readily discoverable during the normal course of due diligence exercised as part of the development of the properties that are tributary to the storm drain system. The instrument(s) must be fully executed prior to the sale or transfer of any portion of the proposed project or within 24 months of the date of this Certification, whichever occurs first. The instrument(s) must be submitted to the Executive Officer within 14 days of their execution.
3. The mitigation channel must be constructed concurrent with grading on any portion of the project and must be ready to accept flow upon completion of the storm drain system.
4. Effective structural best management practices must be implemented to mitigate the risk of flow breakout from the mitigation channel caused by roots, rodents, or other controllable factors.
5. The mitigation channel must be stabilized using best management practices that include vegetation with appropriate native plant species, prior to the issuance of a Notice of Termination according to Order No. 99-08 DWQ, or subsequent renewals.
6. The discharger must execute measures that adequately assign the responsibility for maintaining the hydrology of the mitigation channel, and the operation and maintenance of the mitigation channel and the related flow splitter structure(s), prior to the sale or transfer of any portion of the proposed project.
7. Regional Board staff and other authorized representatives shall be allowed:
 - a. Entry upon premises where storm water treatment facilities are located, or where records are kept under the requirements of this Certification and applicable waste discharge requirements;

- b. Access to copy any records that are kept under the requirements of this Certification and applicable waste discharge requirements;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from the project site; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification and applicable waste discharge requirements.
8. This Certification and any subsequent amendments must be maintained on site as a denoted element of any project SWPPP or WQMP.
 9. This Certification and any relevant subsequent amendments must be recorded with the final map and any drainage easements through the properties.
 10. This Certification is transferable only upon written notice to the Executive Officer. The notice must include written acknowledgement of this Certification by the transferee's authorized representative.
 11. The applicant must comply with the conditions and provisions of the Corps' Clean Water Act Section 404 permit(s).

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

If the above stated 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, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification 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. Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby issue an order certifying that any discharge from the referenced project will comply with the applicable provisions of Sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) of the Clean Water Act, and with other applicable requirements of State law. 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 Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 200-0017-DWQ is available at:

www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Shannon Pankratz
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ – Water Quality Certification Unit
California Department of Fish and Game – Arna Milloy
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8
City of Menifee – Nancy Hutar

APF:401/certifications/commerce pointe 332008-33