



California Regional Water Quality Control Board Santa Ana Region



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Arnold Schwarzenegger
Governor

October 26, 2006

James Hirsch
D. R. Horton
5790 Fleet Street
Suite 210
Carlsbad, CA 92008

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE PROPOSED TRACT 14094, CITY OF CHINO HILLS (ACOE REFERENCE NO. 200601236 – GS)

Dear Mr. Hirsch:

On March 27, 2006 we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by Glenn Lukos Associates for the proposed residential Tract 14094 in the City of Chino Hills. Following the preparation of various iterations of a Water Quality Management Plan (WQMP), a final WQMP was submitted on July 27, 2006¹. A requested addendum was received via electronic messages on October 17, 2006 and October 19, 2006. This letter responds to your request for certification that the proposed project, described in your application and summarized below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin (1995) and subsequent Basin Plan amendments:

Project Description:

Tract 14094 consists of the construction of 76 single family residential homes, extended detention and debris basins, and associated roadways and infrastructure on 141.2 acres. 86.74 acres of the site will remain as natural open space. The site is located west of the intersection of Carbon Canyon and Canyon Hills Roads in Section 36 of Township 2 South, Range 9 West the U.S. Geological Survey *Yorba Linda, California*, 7.5-minute topographic quadrangle map (33 deg. 57 min. 13 sec. N/-117 deg. 46 min. 46 sec. W).

¹ The WQMP was initially prepared in anticipation of discretionary project approval by the City of Chino Hills. Although a WQMP was later determined not to be required due to the project's age and the City's lack of discretionary authority, it was mutually agreed that a WQMP was an appropriate format for evaluating the removal of pollutants in storm water runoff from the project site as well as other water quality impacts.

Receiving water: Portions of two ephemeral riparian drainages, tributary to Carbon Canyon Creek.

Fill area: 0.21 acres of permanent impact to ephemeral riparian drainages; 0.01 acres of permanent impact to riparian wetlands (2,843 linear feet).

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 application submittals. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Nuisance flow and 'first-flush' discharges from the developed portions of the proposed project will be treated in an extended detention basin to be operated by a homeowner's association.
- 0.44 acres of riparian scrub habitat will be created on-site within the downstream portion of drainage "C", near the southern boundary of the project site and the drainage's confluence with Carbon Canyon Creek.
- Additional site-specific best management practices (BMPs) are specified in the site's Storm Water Pollution Prevention Plan (SWPPP) and Water Quality Management Plan (WQMP).

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 BMPs 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 99-08 DWQ, is required, as is development of a SWPPP to control discharges from the project site.

You have submitted an application for coverage under 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 CEQA, the County of San Bernardino certified a Supplemental Environmental Impact Report for the Chino Hills Specific Plan on or about May 11, 1989. Following its incorporation on December 1, 1991, the City of Chino Hills re-approved any projects that had been previously approved by the County, specifically approving Tract 14094 on May 20, 1997. According to staff of the City of Chino Hills, the City's approval appears to have been based on the environmental analysis in the SEIR for the Chino Hills Specific Plan. Staff of the City of Chino Hills has determined that the City has no further discretionary approval authority over Tract 14094. Consequently, no further environmental analysis is required in order for the City to satisfy CEQA.

The surface water quality impact analysis found in the Chino Hills Specific Plan SEIR largely consists of the following statement: "There are no known practical methods to mitigate impacts to surface water quality from urban runoff and these impacts would be unavoidable. The significance of these, however, is not known." In consideration of various studies, including those cited in Regional Board Order No. R8-2002-0012, NPDES Permit No. CAS618036 (Order No. R8-2002-0012), the various findings found in Order No. R8-2002-0012, and, in general, the current state of scientific knowledge regarding the impacts of urban storm water runoff on surface water quality and methods for their mitigation, the statement in the SEIR is no longer valid. Regional Board staff believes that the impacts of urban storm water runoff are potentially significant unless mitigated, and that practical mitigation measures are available. The requirements of this Certification adequately mitigate the water quality impacts of the proposed project.

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

1. The proposed extended detention basin shall be constructed and operational prior to the occupancy of any residence within its respective tributary area.
2. Easements, covenants, or other appropriate legal instruments, shall be placed upon the extended detention basin for the purpose of assuring its water quality functions throughout the life of the project.
3. D. R. Horton, its successors and assigns, shall operate and maintain the proposed extended detention basin in a manner that assures its optimal performance.
4. By January 2, 2007, D. R. Horton, its successors or assignees, shall develop an operations and maintenance plan (OMP), for the extended detention and debris basins for review and approval by Regional Board staff. The OMP shall include a description of the management and qualitative and quantitative monitoring activities for the long-term operations and maintenance of the basins. The plan shall use plain

language and shall be written for use by subsequent parties responsible for operation and maintenance of the basins.

5. D. R. Horton, its successors or assignees, shall fully implement the OMP, as described above in Condition 4, upon approval.
6. D. R. Horton, its successors and assigns shall maintain appropriate inspection and maintenance logs and copies of any water quality sampling results as a denoted element in the OMP(s) for the extended detention basin for a minimum of five years.
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;
 - b. Access to copy any records that are kept under the requirements of this Certification;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from Tract 14094; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification.
8. The discharger shall create 0.44 acres of riparian waters of the U.S. as proposed. The creation effort shall proceed according to a written mitigation plan prepared according to U.S. Army Corps of Engineers guidelines. The mitigation plan shall include measurable success criteria based upon an appropriate reference water body. The effort shall involve the excavation of uplands for the purpose of forming an ordinary high water mark that denotes the created waters. The mitigation effort shall be initiated no later than October 15th following initial site grading.
9. The discharger shall submit an annual report, documenting the implementation of the mitigation plan, by November 15th of each year for a period of five years. Submittal of the annual report may be discontinued with written authorization by Regional Board staff, based on demonstrated or imminent achievement of success criteria described in the mitigation plan. The annual report shall include a copy of this Certification and any subsequent amendments.
10. This Certification and any subsequent amendments shall be maintained on site as a denoted element of any SWPPP.
11. This Certification is transferable only upon written notice to the Executive Officer. The notice shall include written acknowledgement of this Certification by the transferees' authorized representatives and shall indicate the assignment of responsibility, and the mechanism for that assignment, for each numbered condition of this Certification.

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.

Although we anticipate no further regulatory involvement, 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, we may formulate Waste Discharge Requirements.

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 Santa Ana Regional Water Quality Control Board (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. 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.

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

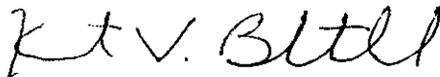
California Environmental Protection Agency



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.swrcb.ca.gov/resdec/wqorders/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,



for GERARD J. THIBEAULT
Executive Officer

cc: U. S. Army Corps of Engineers, Los Angeles Office – Gerry Salas
State Water Resources Control Board, OCC – Eric Spiess
State Water Resources Control Board, DWQ-Water Quality Certification Unit –
Valerie Connor
California Department of Fish and Game, Ontario Office – Jeff Brandt
U.S. EPA, Tim Vendlinski, Supervisor of the Wetlands Regulatory Office WTR- 8

APF:401/certifications/TM 14094 362006-08