



California Regional Water Quality Control Board

Santa Ana Region



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September 12, 2008

Ben Macaluso
Chino Development Corporation
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CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR STORM DRAIN LINE A, TRACT MAP NO. 16419, CITY OF CHINO, SAN BERNARDINO COUNTY (ACOE REFERENCE NO. 2006 – 01916 – SPL)

Dear Mr. Macaluso:

On October 31, 2007, 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 construction of Storm Drain Line A ("Line A"), in association with Tract Map No. 16419 ("TM 16419", a.k.a. "The Preserve") in San Bernardino County. 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:

Construction of a sub-regional Storm Drain Line A with a discharge outfall into Cucamonga Creek at Hellman Avenue. Line A and its laterals have a tributary area totaling 451 acres generally bounded by Cucamonga Creek, Hellman (and its northern extension, the future Baker Avenue), and Merrill Avenues. The westerly boundary of the tributary area is formed by extending Walker Avenue southerly from its current terminus; by Flight Avenue; by Meadow Valley Avenue and Alpine Meadows Avenue; and by an imaginary southern extension of Alpine Meadows Avenue. TM 16419 totals 298.89 acres, of which 32 acres lie within the tributary area of Line A, with the remaining tributary area currently in dairy and other agricultural use. The Line A storm drain outfall would be located within Section 3 of Township 3 South, Range 7 West, of the U.S. Geological Survey *Fontana, California*, 7.5-minute topographic quadrangle map (33.94837 degrees N/ -117.61470 degrees W).

California Environmental Protection Agency



Receiving water: Cucamonga Creek.

Fill area: 0.01 acres of permanent impact to the perennial Cucamonga Creek flood control channel (up to 30 linear feet).

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 7

Nuisance flow and 'first-flush' discharges from portions of the drainage area of The Preserve, tributary to the Line A outfall, are proposed to be treated by various treatment controls described in the Preliminary Water Quality Management Plan ("WQMP") prepared for Tract Map 17058, which represents a portion of TM 16419. The WQMP includes the construction of a temporary "water quality basin" (a.k.a. "Hellman Basin" or "Mickel Basin") located north of the intersection of Pine and Hellman Avenues, west of Hellman Avenue on property owned or controlled by the applicant for Certification. This "water quality basin" is sized based on volumetric calculations but has not been described in a manner consistent with terminology found in published design criteria (i.e. extended detention basin, infiltration basin, etc.). The temporary "water quality basin", as well as similar, land-intensive structural treatment controls, would be decommissioned and their treatment function replaced with the construction of the Mill Creek Wetlands ("Wetlands"), currently proposed as a regional water quality treatment best management practice ("BMP"), or, alternately the "Wind Basin".

The Mill Creek Wetlands, in concept, would be located within the Prado Basin on property owned by the U.S. Army Corps of Engineers in an area south of Chino-Corona Road, west of Hellman Avenue and west of Cucamonga Creek. The property would be leased to San Bernardino County Regional Parks Department and the Wetlands would be operated by the City of Ontario. The Wetlands would be sized to treat nuisance flow and 'first-flush' discharges from tributary areas of The Preserve in the City of Chino and the New Model Colony in the City of Ontario.

Discharges from TM 16419 would be diverted to either the "Wind Basin" or the Wetlands with a diversion structure located within Line A, prior to entering Cucamonga Creek. During the dry season, additional treatment capacity in the Wetlands will be used, at a minimum, to treat dry weather discharges in Cucamonga Creek from existing development¹. A separate diversion structure will need to be constructed in Cucamonga Creek to divert flow into the Wetlands and another outfall structure will also be needed to discharge from the Wetland to an unspecified location in Mill Creek².

¹ Diversions and discharges of treated non-storm water runoff, including dry weather urban runoff, may require the issuance of separate waste discharge requirements.

² Mill Creek is the name given to the downstream reach of Cucamonga Creek (below Hellman Avenue) and is not a separate water body.

The Wetlands may be funded by a combination of funds from New Model Colony Builders, the Chino Preserve Development Corporation, the Chino Development Corporation, and State Proposition 40 grant monies. Technical details regarding the treatment volume of the Mill Creek Wetlands and the distribution of that volume between existing and new development have not been provided but will be subject to further review in order to assure that those who benefit from the Wetlands proportionately fund the treatment of nuisance flow and 'first-flush' discharges from their projects.

A considerable amount of work remains at this time before the Wetlands are constructed and operational. Their construction will require authorizations from the U.S. Army Corps of Engineers, the Department of Fish and Game, and the Regional Board. These approvals have not yet been obtained. Consultation with the Fish and Wildlife Service will be necessary pursuant to the requirements of the Federal Endangered Species Act. In addition, an environmental analysis will need to be completed pursuant to the California Environmental Quality Act ("CEQA") and the National Environmental Policy Act ("NEPA").

Alternately, you have proposed to construct the "Wind Basin" on property owned by you. The "Wind Basin" was originally contemplated as part of mitigation for water quality impacts in the Environmental Impact Report prepared for The Preserve by the City of Chino. Those impacts include the loss of wildlife habitat as the result of decommissioning dairy wastewater containment ponds. The "Wind Basin" is also being proposed to the Corps to offset flood capacity lost within the Prado Basin as part of improvements to Pine Avenue.

The "Wind Basin" would be located at 33.94925 degrees North, -117.61687 degrees West, on a former dairy operation known as Liberty Ranch (8486 Chino-Corona Road). The "Wind Basin" would be located below the 566-foot inundation elevation for Prado Dam on property that is subject to an easement held by the Corps. In the event that the Wetlands are not constructed or you are unable to discharge to them, nuisance flow and 'first-flush' discharges from portions of The Preserve that are tributary to the Line A outfall may be treated permanently in the "Wind Basin", as originally proposed in The Preserve Environmental Impact Report. This use is subject to Corps approval.

Although Regional Board staff is supportive of the regional wetlands concept, Chino Development Corp. does not possess sufficient ownership or control over either the proposed Wetlands site or the "Wind Basin". We are unaware of your participation in the development of the Mill Creek Wetland.

Additional project-specific storm water treatment facilities will be sited and designed with the development of project Water Quality Management Plans ("WQMPs") for subsequent development projects within The Preserve. Additional site-specific BMPs will be specified in project WQMPs and in the sites' Storm Water Pollution Prevention Plans ("SWPPP"). Because Mill Creek is unimproved and contains sensitive habitat³, Regional Board staff

³ The U.S. Army Corps of Engineers has designated the Mill Creek area as an "Extreme Resource Area" according to the City of Chino's Environmental Impact Report for The Preserve.

expects that the City of Chino will assure that those additional BMPs will include measures that will address hydraulic conditions of concern ("HCOC") or that the design of the Mill Creek Wetlands or the "Wind Basin" and project-specific best management practices, or some combination thereof, would ultimately resolve HCOC issues.

Also, until such time that the use of either proposed wetland site is approved by the Corps, Regional Board staff expects that the BMPs proposed and approved by the Cities of Ontario and Chino for each subsequent project will address all pollutants of concern in accordance with the San Bernardino County WQMP and subsequent amendments. In the event that neither proposed wetland is approved, all of the proposed structural treatment controls at the projects' sites must remain in place and cannot be decommissioned.

Discharges from Line A, and operation of the Mill Creek Wetlands and the "Wind Basin", as proposed, have the potential to adversely affect the beneficial uses of Cucamonga Creek and Mill Creek. In order to assess the potential water quality impacts of the operation of the facilities, bio-assessments will need to be conducted in a timely manner to monitor for indicators of adverse water quality impacts in Cucamonga Creek and its downstream reach, Mill Creek. The completion of bio-assessments is made a condition of this Certification (Condition 1, below) and will be made part of the Conditions for the Certification of discharges from the New Model Colony development in the City of Ontario. Regional Board staff expects that the bio-assessments will be coordinated to the extent possible between the proponents for The Preserve and New Model Colony developments, although Condition 1, below, does not presume this.

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

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 CEQA, the City of Chino certified an Environmental Impact Report ("EIR") for The Preserve on June 2, 2003. A subsequent Mitigated Negative Declaration ("MND") was prepared by the City of Chino for Phases 1 and 2 of The Preserve, including TM 16419, and adopted on September 15, 2003.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider the EIR and MND 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 for which it decides to carry out, finance, or approve.

As required by Section 15096, the Regional Board has considered the EIR and MND prepared for the proposed project in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR and MND relating to water quality. Based on the mitigation proposed in the EIR and MND, 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. Thus, 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. Bio-assessments must be completed for the purpose of evaluating beneficial use impacts as the result of: (a) discharges from Line A to Cucamonga Creek; (b) the diversion of flow from Cucamonga Creek and/or Mill Creek to the proposed Mill Creek Wetlands, and (c) discharges from the proposed Mill Creek Wetlands. The bio-assessments must be conducted by qualified persons using published and generally accepted methods in conformance with the Surface Water Ambient Monitoring Program Memorandum, dated May 21, 2007 and analyzed using the Southern California Index of Biological Integrity developed by the Department of Fish and Game. The bio-assessments must be conducted according to a written implementation plan subject to approval by the Executive Officer. A draft implementation plan must be provided to the Executive Officer by November 12, 2008. Upon approval, the plan must be fully implemented. Please contact Pavlova Vitale, at (951) 782-4920, for details regarding the preparation of a bio-assessment implementation plan.
2. Regional Board staff and other authorized representatives must be allowed:
 - a. Entry upon premises where storm water treatment facilities are located, or where records are kept under the requirements of this Certification or other applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification or other 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 other applicable waste discharge requirements.

3. This Certification and any subsequent amendments must be maintained on site as a denoted element of any SWPPP or WQMP for projects discharging to the Line A outfall.
4. 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.
5. The applicant must comply with the requirements of the 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 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. 2003-0017-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,



for GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme
California Department of Fish and Game, Ontario Office – Jeff Brandt
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith
City of Chino – Steve Wilson