



California Regional Water Quality Control Board

Santa Ana Region



Linda S. Adams
Secretary for
Environmental Protection

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 • FAX (951) 781-6288 • TDD (951) 782-3221
www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

August 8, 2008

California Brea Partners, LP
c/o Bosc Equities
Attention: Waad Nadhir
719 Griswold Street, Suite 530
Detroit, MI 48226

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE LOFTUS CHANNEL MODIFICATION PROJECT, CITY OF BREA, ORANGE COUNTY (ACOE REFERENCE NO. 200800232 – JPL)

Dear Mr. Nadhir:

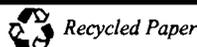
On January 22, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for modifications to a reach of the Loftus Channel in the City of Brea. This letter responds to your request for certification that the proposed project, described in 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: Modification of a 740-foot long reach of the Loftus Channel. In its current configuration, this channel reach is earth-bottomed with rip-rap banks. The proposed project will place this reach underground within a four-cell, reinforced concrete box. The project will enable the expansion of the Brea Plaza, which will involve the demolition and construction of several retail buildings, the expansion of the parking lot within Orange County Flood Control right-of-way along Loftus Channel, and the construction of a new sidewalk and landscaping along Associated Road. The project is located north of the intersection of Associated Road and Imperial Highway within Section 13 of Township 3 South, Range 10 West, of the U.S. Geological Survey *La Habra, California*, 7.5-minute topographic quadrangle map (33.91158 degrees N/ -117.88053 degrees W).

Receiving water: Loftus Channel.

Fill area: 0.28 acre of permanent impact to an intermittent stream (800 linear feet).

California Environmental Protection Agency



Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 14

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:

- Pollutants in storm water runoff from the existing and new portions of Brea Plaza will be treated in a bio-swale in the landscaped area along Associated Road. The bio-swale will be maintained by California Brea Partners, LP.
- The lost pollutant attenuation function of Loftus Channel will be replaced by Katchall Baffle Filters® constructed upstream of the new boxed channel. The filters will be maintained by California Brea Partners, LP.
- Additional best management practices ("BMPs") for removing pollutants in storm water runoff from the Brea Plaza will be specified in the project Water Quality Management Plan ("WQMP") and Storm Water Pollution Prevention Plan ("SWPPP").

Offsite Water Quality Standards Mitigation Proposed:

- An in-lieu fee will be paid to the San Gabriel Mountains Regional Conservancy towards the restoration of 2.0 acres of riparian habitat in Lemon Creek, downstream of Bicentennial Park in the City of Walnut¹. The work will include eradication of invasive plant species and re-vegetation with appropriate native species.

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. Since the project is more than one acre, 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, (General Stormwater Permit) is required, which requires as a condition development and implementation 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 Department of Fish and Game. The County of Orange approved a Land Use Entitlement Agreement allowing the lease of County land for the

¹ Oral communication with Ann Croissant of the San Gabriel Mountains Regional Conservancy on July 7, 2008.



expansion of Brea Plaza and facilitating the alteration of Loftus Channel. Pursuant to the California Environmental Quality Act ("CEQA"), the County found that the Land Use Entitlement Agreement was exempt from CEQA pursuant to California Code of Regulations, Title 14, Chapter 3 ("CEQA Guidelines"), sections 15301 and 15332. Subsequently, the City of Brea prepared and adopted a Mitigated Negative Declaration for the demolition of structures at the Brea Plaza, the construction of two new buildings, and the expansion of the parking lot over the Loftus Channel on June 10, 2008.

Pursuant to CEQA Guidelines section 15096, as a responsible agency, the Regional Board is required to consider the Mitigated Negative Declaration prepared by the City of Brea in independently determining whether and how to approve the proposed project. Accordingly, the Regional Board has considered the City's Mitigated Negative Declaration in the issuance of this Certification and finds that changes or alterations have been required, or incorporated into the project, that 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) An in-lieu fee payment must be made to the San Gabriel Mountains Regional Conservancy towards the eradication of invasive woody plant species on 2.0 acres of Lemon Creek, City of Walnut, and re-vegetation of the area with appropriate native plants with 5-years of follow-on maintenance. The in-lieu fee payment must include funding for the completion of functional assessment(s) of the mitigation site for the purposes of quantitatively measuring the marginal increase in riparian stream functions. The functional assessment(s) must be completed using published and generally accepted methods (e.g., Collins, J., Stein, E., et al., 2006 California Rapid Assessment Method (CRAM) for Wetlands and Riparian Areas, www.cramwetlands.org). Evidence of the in-lieu fee payment must be provided to the Executive Officer by November 7, 2008. The results of the functional assessments must be provided to the Executive Officer not later than 90-days following their completion.
- 2) This certification is conditioned upon the construction and operation of all proposed structural treatment controls described above. The structural treatment controls for removing pollutants in storm water runoff from Brea Plaza must be completed and operational prior to the occupancy of any new building. The proposed Baffle Filters® must be in place and operational upon completion of the concrete box channel.
- 3) California Brea Partners, LP must implement a water quality monitoring program for the purpose of evaluating the performance of the Baffle Filters® as analyzed in the Anti-degradation Analysis performed for the proposed project. The water quality monitoring program must complement the monitoring being performed by permittees under Order No. R8-2002-0010, NPDES Permit No. CAS618030, commonly known as the Orange County Municipal Storm Water Permit. A draft

monitoring plan must be provided to the Executive Officer for approval by October 7, 2008. The monitoring plan must be fully implemented upon approval.

- 4) In the event that the proposed Baffle Filters® do not achieve reductions for pollutants of concern identified in the Anti-degradation Analysis that are equivalent to the natural pollutant attenuation function of the filled channel, California Brea Partners, LP must implement additional best management practices to replace the natural pollutant attenuation function of the filled Loftus Channel. California Brea Partners, LP may at any time update the natural pollutant attenuation rates in the Anti-degradation Analysis using the best available scientific information.
- 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. 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 – Jason Lambert
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith
San Gabriel Mountain Regional Conservancy – Ann Croissant

APF:401/certifications/loftus channel (brea plaza) 302008-02