



California Regional Water Quality Control Board

San Francisco Bay Region



Dan Skopec
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Arnold Schwarzenegger
Governor

Date: **MAY 30 2006**
File No: 2198.09 (bkw)
Site No: 02-01-C0804
ACOE File No. 28514S

Mr. Vijay Agarwal
38833 Bell Street, #206
Fremont, CA 94536

Subject: Water Quality Certification for the Construction of Two Culverts to Support an Access Road at 2492 and 2512 D Street in Unincorporated Hayward in Alameda County

Dear Mr. Agarwal:

We have reviewed the application materials submitted by Vijay Agarwal (the Applicant), for the proposed placement of two culverts in un-named seasonal creek channels to support an access road at 2492 and 2512 D Street, in an unincorporated area of Alameda County, east of the City of Hayward, that is known as the Fairview Area (Project). In December of 2004, the Project received authorization from the United States Army Corps of Engineers (ACOE) under a Clean Water Act (CWA) Section 404 Nationwide Permit No. 14 (*Linear Transportation Projects*) (ACOE File No. 28514S). In accordance with Clean Water Act (CWA) Section 401, you have applied to this office for State water quality certification.

Project Description: The following Project description was derived from application materials received on November 17, 2004, and March 1, 2006. The Project site, located at a 2492 and 2512 D Street, in the unincorporated Fairview Area of Alameda County, is being subdivided for the construction of 16 single-family residences. A new private road will be constructed to provide access to the residences from D Street. This road will cross two un-named seasonal, headwater creek channels, identified in Project plans as Drainage 1 and Drainage 2. At Drainage 1, an existing culvert will be extended by about 40 feet, and, at Drainage 2, a new, 30-foot long culvert will be installed. Culverts will be constructed of 15-inch diameter, high density polyethylene pipe. Due to the steep topography of the site, the culvert outfalls will discharge to boulder cascades.

Impacts: The Project will permanently impact 0.044 acres of waters of the State at Drainage 1 and 0.016 acres of waters of the State at Drainage 2, for a total impact of 0.06 acres (2,614 square feet) of waters of the State. Impacts at Drainage 1 will extend over 40 linear feet (LF) of channel and impacts at Drainage 2 will extend over 30 LF of channel, for a total impact of 70 LF. About 739 cubic yards of engineered soil will be placed in Drainage 1 and about 521 cubic yards of engineered soil will be placed in Drainage 2, for a total fill volume of 1,260 cubic yards.

Mitigation: The two channels are currently dominated by non-native plant species. As mitigation for the Project's impacts, the Applicant will remove non-native pampas grass (*Cortaderia jubata*) from Drainage 2 and plant native trees within the eastern portion of Drainage 1 and along the entirety of Drainage 2. Native plantings will include the placement of 40 red willow (*Salix laevigata*) pole cuttings, and the seeding of narrow-leaved cattail (*Typha angustifolia*) at the former location of the pampas grass stand. Bare areas of soil along the drainages will be seeded with a mix of mugwort (*Asteris douglasiana*), California poppy (*Eschscholzia californica*), pigmy-leaf lupine (*Lupinus bicolor*), purple needlegrass (*Nassella pulchra*), figwort (*Scrophularia californica*), and three-weeks fescue (*Vulpia microstachys*), at a density of 15 pounds per acre.

CEQA Compliance: The Alameda County Planning Department filed a Notice of Determination for a Mitigated Negative Declaration for the Project on October 18, 2004.

Certification and General Waste Discharge Requirements: 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, "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 Certification. The following conditions are associated with this certification:

1. No debris, rubbish, creosote-treated wood, soil, silt, sand, cement, concrete, or washings thereof, or other construction related materials or wastes, oil or petroleum products or other organic or earthen material shall be allowed to enter into, or be placed where it may be washed by rainfall or runoff, into waters of the State. Any of these materials placed within or where they may enter waters of the State by the Applicant, or any party working under contract, or with the permission of the Applicant, shall be removed immediately. When construction is completed, any excess material shall be removed from the work area and any areas adjacent to the work area where such material may be washed into waters of the State. During construction, neither the Applicant, nor any party working under contract, shall dump any litter or construction debris within waters of the State. All such debris and waste shall be picked up daily and properly disposed of at an appropriate site;
2. The Applicant shall adhere to the conditions imposed by CWA Section 404, Nationwide Permit No. 14;
3. The Applicant shall adhere to the conditions imposed by the California Department of Fish and Game in the Streambed and Lake Alteration Agreement (Notification No. 1600-2004-0846-3) issued for the Project;
4. The Project shall be constructed in conformance with the Project Description and Mitigation Measures described in the application materials received by the Water Board on November 17, 2004, and the revised culvert designs received by the Water Board on March 1, 2006;
5. The culverts and outfalls shall be constructed in conformance with the *Improvement Plans for Tract Map 7337 in Unincorporated Territory of: Eden Township Alameda County*, prepared by GLA Civil Engineers, Inc. (414 Mason Street, Suite 404, San Francisco, CA 94102-1716), dated January 10, 2006 (Drainage 1 on Sheets 5 and 6 of 20; Drainage 2 on Sheets 7, 8, 9, and 15 of 20);
6. The Applicant shall implement all mitigation measures presented in the *Draft Stream Enhancement Plan for Agarwal Project at 2492 D Street Alameda County*, prepared by Heath Bartosh, Bear Republic Ecological Consulting, received by the Water Board on November 17, 2004. These measures shall include removing non-native pampas grass (*Cortaderia jubata*) from Drainage 2, placing 40 red willow (*Salix laevigata*) pole cuttings along Drainages 1 and 2, seeding narrow-leaved cattail (*Typha angustifolia*) at the former location of the pampas grass, and seeding bare areas of soil along the drainages with a mix of mugwort (*Asterias douglasiana*), California poppy (*Eschscholzia californica*), pigmy-leaf lupine (*Lupinus bicolor*), purple

needlegrass (*Nassella pulchra*), figwort (*Scrophularia californica*), and three-weeks fescue (*Vulpia microstachys*), at a density of 15 pounds per acre;

7. No equipment shall be operated in areas of flowing or standing water; no fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where an accidental discharge to Arroyo del Valle may occur; construction materials and heavy equipment must be stored outside of the creek channel;
8. Prior to the start of the rainy season, the Applicant shall ensure that disturbed areas of the creek banks and disturbed areas that drain to the creeks are protected with correctly installed erosion control measures (jute, straw, coconut fiber erosion control fabric, coir logs, straw, etc.), and revegetated with propagules (seeds, cuttings, divisions) of locally collected native plants;
9. Where areas of bare soil are exposed during the rainy season, silt control measures shall be used where silt and/or earthen fill threaten to enter waters of the State. Silt control structures shall be monitored for effectiveness and shall be repaired or replaced as needed. Build up of soil behind silt fences shall be removed promptly and any breaches or undermined areas repaired at once;
10. To document the progress of native riparian vegetation planted as mitigation at the Project site, the Applicant shall establish at least four (4) permanent photo locations along the enhanced areas of Drainages 1 and 2 at the Project site. Photos taken from the photo-documentation points shall be included in the annual status reports for the Project (see Condition 11) to provide a visual evaluation of the site. Following planting, the Applicant shall photographically document the immediate post-planting condition of the site and submit a report to the Water Board, including the post-construction photographs, and a site map with the locations of the photo-documentation points;
11. The Applicant shall monitor and maintain native vegetation plantings for a minimum of five years after planting. Native vegetation plantings shall have a minimum survival rate of 80 percent at the end of the first five years following planting. If the survival rate drops below 80 percent during the first five years after planting, the Applicant is responsible for replacement plantings, watering, weeding, invasive exotic eradication, or any other practice necessary to attain the performance goals. Replacement plants shall be monitored and maintained to attain the survival and cover goals for five years after replanting. An annual status report shall be provided to the Water Board by December 31 of each year of monitoring and maintenance activities. This report shall include the survival rate of the plantings and photographs from the designated photo-documentation points (See Condition 10). Each report should assess the progress toward attaining survival and cover goals and any corrective measures necessary to achieve those goals;
12. This certification action does not apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license, unless the pertinent certification application was filed pursuant to California Code of Regulations (CCR) Title 23, Subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought; and,
13. Certification is conditioned upon full payment of the required fee as set forth in 23 CCR Section 3833. Water Board staff received full payment on November 17, 2006.


Please be aware that any violation of water quality certification conditions is a violation of State law and subject to administrative civil liability pursuant to California Water Code (CWC) Section 13350. Failure to meet any condition of a certification may subject the Applicant to civil liability imposed by the

Regional Board to a maximum of \$5,000 per day of violation or \$10 for each gallon of waste discharged in violation of this action. Any request for a report made as a condition to this action (e.g., Conditions 10 and 11) is a formal request pursuant to CWC Section 13267, and failure or refusal to provide, or falsification of such requested report, is subject to civil liability as described in CWC Section 13268.

We anticipate no further action on this request. However, should new information come to our attention that indicates a water quality problem with this Project, the Water Board may issue Waste Discharge Requirements pursuant to 23 CCR Section 3857. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to CWC Section 13330 and 23 CCR Section 3867.

Please contact Brian Wines of my staff at (510) 622-5680 or bkw@rb2.swrcb.ca.gov if you have any questions. All future correspondence regarding this Project should reference the Site Number indicated at the top of this letter.

Sincerely,

for 
Bruce H. Wolfe
Executive Officer

cc: SWRCB-DWQ, Oscar Balaguer
USACE, San Francisco District, Attn: Regulatory Branch, 333 Market Street, San Francisco, CA 94105 -2197 (File No. 28514S)
U.S. EPA, Tim Vendlinski, WTR-8.
CDFG, Central Coast Region, Attn: Robert Floerke, Regional Manager, P.O. Box 47, Yountville CA 94599 (Notification No. 1600-2004-0846-3).