

State of California
California Regional Water Quality Control Board
Santa Ana Region

June 10, 2016

STAFF REPORT

ITEM: *#

SUBJECT: ARI Chaney LLC, Fairway Business Park, City of Lake Elsinore, Riverside
County, Order No.R8-2016-0047

DISCUSSION:

California Water Code (CWC) Section 13376 states that, "any person discharging dredge or fill material or proposing to discharge dredged or fill material into the navigable waters of the United States within the jurisdiction of this State shall file a report of the discharge in compliance with Section 13260." Section 13260(a) of the CWC requires that any person discharging waste or proposing to discharge waste within any region, other than to a community sewer system, that could affect the quality of the waters of the State, file a report of waste discharge (ROWD). Under federal Clean Water Act (CWA) Section 401, every applicant for a federal permit or license for any activity that may result in a discharge to waters of the United States must obtain State Water Quality Certification (Certification) that the proposed activity will comply with State water quality standards.

Most Certifications are issued in connection with U.S. Army Corps of Engineers (Corps) CWA Section 404 permits for dredge and fill discharges. The State Water Resources Control Board (State Board) and Regional Water Quality Control Boards administer the Certification program in accordance with the requirements of California Code of Regulations Title 23, section 3830 *et seq.* Since November 2003, all Certifications have been issued by the Executive Officer accompanied by authorization to discharge in accordance with 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 State Water Quality Certification."

Because of Supreme Court decisions that have limited the authority of the Corps to regulate discharges of dredge and fill to waters of the U.S., certain proposed discharges of dredge or fill to surface waters of the State are no longer subject to the Corps' jurisdiction (non-federal). As a result, these projects are not subject to a CWA Section 404 permit from the Corps and do not require a Certification. In the absence of the need to obtain a Certification, the State Board has asserted the State's authority to regulate discharges of dredge and fill to waters of the State under the Porter-Cologne Water Quality Control Act.

On May 4, 2004, the State Board issued Water Quality Order No. 2004-0004-DWQ, "Statewide General Waste Discharge Requirements for Dredge and Fill Discharges to Waters Deemed by the U.S. Army Corps of Engineers to be Outside of Federal Jurisdiction (Order No. 2004-D004-

0WQ). Numeric impact thresholds limit the application of Order No. 2004-0004-DWQ to relatively small discharges of fill.

On October 5, 2015, Regional Board staff received an application for Certification from ARI Chaney, LLC. In the application, ARI Chaney, LLC proposes to discharge fill to a total of 0.49 acre waters of the State, which consists of 0.04 acre waters of the U.S. and 0.40 acre non-federal waters of the State as part of the construction of a storm drain outfall to the Lake Elsinore Outlet Channel, and temporary impacts to 0.05 acre waters of the U.S. The waters of the State are located on an 18-acre property bounded by Chaney Street, the Lake Elsinore Outlet Channel, the 3rd Street Channel, and an existing business park bisected by Birch Street (33 deg. 40.96 min. N/-117 deg. 20.27 min. W). Due to the proposed discharge of fill to non-federal waters of the State, Regional Board staff has accepted the application for Certification as a Report of Waste Discharge pursuant to CWC Section 13260. This Order will also serve as a 401 Water Quality Certification for the discharge of fill to the waters of the United States as part of the project.

The discharges will occur as part of the development of Fairway Business Park. The project consists of the construction of 20 buildings totaling 279,445 square feet of light industrial use, to be constructed in three phases. The project includes the construction of two storm drain inlets in Birch Street connecting to a proposed outfall in Temescal Creek, Reach 6, which will result in 0.04 acre of permanent fill and 0.05 acre of temporary fill to waters of the U.S. This Order will serve as the Clean Water Act Section 401 Certification for the discharges of fill to waters of the U.S. proposed as part of the outfall construction. Temescal Creek, Reach 6 has designated beneficial uses (existing or potential) that include: groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), and wildlife habitat (WILD).

The non-federal waters proposed for fill on the property consist of a seasonally ponded depression that does not have a surface water connection to Temescal Creek Reach 6. The seasonally ponded depression is 0.40 acre in size and will be completely filled in by project activities. Board staff has identified groundwater recharge (GWR), contact recreation (REC1), non-contact recreation (REC2), warm freshwater habitat (WARM), and wildlife habitat (WILD) as existing or potential beneficial uses for the ponded area.

Board staff has determined that the discharge of fill to the ponded area and Temescal Creek, Reach 6 has the potential to impact the waters' beneficial uses. Board staff determined that the Board cannot authorize the discharge in accordance with Order No. 2004-0004-DWQ because the discharge of fill would result in a total of 0.44 acre of permanent impacts, which exceeds the Order's 0.2 acre impact threshold. Consequently, the discharge must be considered for separate authorization under individual waste discharge requirements. The proposed Order is intended to satisfy this requirement.

ARI Chaney, LLC proposes to mitigate impacts to beneficial uses as the result of the proposed discharges of fill to the ponded area and Temescal Creek, Reach 6 through the purchase of 0.66 acre of enhancement mitigation credit at a Regional Board approved mitigation bank or in-lieu-fee program.

Pursuant to CEQA, the City of Lake Elsinore prepared a Mitigated Negative Declaration (MND) and adopted it on November 27, 2007. The City's ND has been considered in the preparation of Order No. R8-2016-0047.

RECOMMENDATION:

Adopt Order No. R8-2016-0047, as presented.

Comments were solicited from the following:

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Shelah Riggs, Dudek (sriggs@dudek.com)

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