



California Regional Water Quality Control Board

San Diego Region



Linda S. Adams
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[http:// www.waterboards.ca.gov/sandiego](http://www.waterboards.ca.gov/sandiego)

April 22, 2011

In reply refer to:
271621: clofen

Dennis Chapman
Brookfield Land Company, Inc.
1522 Brookhollow Drive
Santa Ana, CA 92705

Dear Mr. Chapman:

**SUBJECT: AMENDMENTS TO CWA SECTION 401 WATER QUALITY
CERTIFICATION NO. 02C-056 FOR THE WALLACH PROPERTY
PROJECT**

On March 14, 2011, the San Diego Regional Water Quality Control Board (San Diego Water Board) received a request to amend Section 401 Water Quality Certification No. 02C-056 (Certification) for the Wallach Property Project (Project). The request consists of a modification of the mitigation site requirements to include specific areas of maintenance by Riverside County Flood Control and Water Conservation District (RCFCWCD).

The Project, which has already been constructed, included the development of a commercial site and recreational park in Riverside County. The project resulted in permanent impacts to approximately 0.39 acres of an unnamed tributary to Warm Springs Creek. The required mitigation included the creation of approximately 1,975 linear feet of streambed on-site, including 2.1 acres of riparian habitat. Mitigation was installed in November 2005 and has finished its 5th year of monitoring. On May 29, 2008, the San Diego Water Board issued Notice of Violation R9-2008-0068 to Brookfield Land Company for failure to submit a conservation easement over the mitigation site, and for failure to submit the final requirements that RCFCWCD had placed on the project. As a result, Brookfield Land Company has requested to amend the original mitigation and preservation conditions in the Certification to allow for RCFCWCD to conduct maintenance activities within the existing mitigation site approximately 50 feet upstream and downstream of Pourroy Road, as well as adjacent to storm drain outfalls within the mitigation site. The RCFCWCD will not allow the placement of a conservation mechanism over the mitigation area unless it explicitly allows for maintenance at these locations. The total area of existing mitigation proposed to be impacted by maintenance activities is 0.32 acres.

California Environmental Protection Agency

The Certification requires the creation of 2.1 acres of riparian waters of the state within the on-site mitigation area. However, the 5th year mitigation monitoring report and amendment request determined that the on-site mitigation efforts resulted in the creation of 2.96 acres of southern willow scrub/riparian woodland, all of which are considered waters of the United States. Excluding the 0.32 acres of proposed flood control maintenance areas within the mitigation site, this represents a total created area of 2.64 acres of waters of the U.S./State, which consists of 0.54 acres of creation beyond the 2.1 acres required by the Certification. Thus, the reduction in size of the mitigation site due to impacts by RCFCWCD of 0.32 acre would not violate the acreage mitigation requirements of the original Certification.

After a review of the Project's file and the proposed changes for the mitigation and preservation mechanism, I concur that the proposed changes to the mitigation and preservation requirements (Additional Condition 12) are reasonable modifications to the original Section 401 Water Quality Certification. As a result, the Section 401 Water Quality Certification for the Wallach Property has been amended to reflect these proposed changes. The amendments are included below with changes shown in bold/strikeout format.

Additional Condition 12 of the Certification (enclosed) is amended as follows:

The Brookfield Land Company, Inc. shall submit, within 90 days of issuance of this ~~certification amendment~~, a draft conservation easement, ~~or deed restriction~~, **or other legal mechanism that will protect all mitigation areas in perpetuity, excluding the 0.32 acres of required flood control maintenance area within the mitigation site as depicted in Attachment 3. Within one year of the issuance of this amendment, Brookfield Land Company, Inc. must submit proof of a completed preservation mechanism that will protect all mitigation areas in perpetuity. The conservation easement, deed restriction, or other legal limitation on the mitigation property must be adequate to demonstrate that the site will be maintained without future development or encroachment on the site which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the U.S. that it supports. The legal limitation must prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland and streambed functions and values of the site. The preservation mechanism must clearly prohibit activities that would result in soil disturbance or vegetation removal, other than the removal of non-native vegetation. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, maintenance roads, and areas of maintained landscaping for recreation. Delays in the submittal of the completed preservation mechanism shall result in an increase in the mitigation requirement of 10 percent beyond that**

~~already achieved. prohibits development within, mowing, and/or other activities that would result in permanent or temporary disturbance of the 60-foot wide mitigation zone as depicted in. No maintenance, except for the removal of exotic and diseased vegetation shall be permitted within this area. The remainder of the channel may be maintained for flood control purposes, but shall be protected from development and further channelization. Brookfield Land Company, Inc. shall submit proof of a completed conservation easement or deed restriction prior to grading, filling, or otherwise impacting the drainage.~~

On April 05, 2010 receipt of the request to amend the original Certification was posted on the San Diego Water Board web site to serve as appropriate notification to the public. No public comments were received on the request to amend the original Certification.

The heading portion of this letter includes a San Diego Water Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the San Diego Water Board pertaining to this matter. If you have any questions regarding this notification, please contact Chad Loflen at (858) 467-2727 or cloflen@waterboards.ca.gov.

Respectfully,



DAVID W. GIBSON
Executive Officer

Enclosures

1. Attachment 3: Mitigation Site Map
2. Clean Water Act Section 401 Water Quality Certification No. 09C-003

cc electronic copy:

Crystal Doyle, US Army Corps of Engineers Regulatory Division Office,
crystal.l.doyle@usace.army.mil

Kim Freeburn, California Department of Fish and Game
KFreeburn@dfg.ca.gov

Bill Orme, State Water Resources Control Board,
Stateboard401@waterboards.ca.gov

David W. Smith, U.S. Environmental Protection Agency, Region 9
R9-WTR8-Mailbox@epa.gov

Stephanie Gasca, PCR Services Corporation
s.gasca@pcrnet.co

Tech Staff Info & Use	
File No.	02C-056
Reg. Measure ID	378678
Place ID	271621
Party ID	5323

Attachment 3: Mitigation Site Map





California Regional Water Quality Control Board

San Diego Region



Winston H. Hickox
Secretary for
Environmental
Protection

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Gray Davis
Governor

Action on Request for
Clean Water Act Section 401 Water Quality Certification and
Application/Report of Waste Discharge for
Discharge of Dredged and/or Fill Materials

PROJECT: Wallach Property (File No. 02C-056)
Waste Discharge Identification No. 9 000000985

Civitas:

APPLICANT: Brookfield Land Company, Inc.
Mr. Dennis Chapman
1522 Brookhollow Drive, Suite 1
Santa Ana, Ca 92705

*Reg. Mess 214062
Place 271621*

ACTION:

1. Order for Standard Certification
2. Order for Technically-conditioned Certification
3. Order for Denial of Certification

STANDARD CONDITIONS:

The following three standard conditions apply to all certification actions, except as noted under Condition 3 for denials (Action 3).

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).
2. This certification action is not intended and shall not be construed to 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 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

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18-2002056-02

ADDITIONAL CONDITIONS:

The following additional conditions shall apply to this project:

1. Brookfield Land Company, Inc. shall, at all times, fully comply with the engineering plans, specifications and technical reports submitted with this application for Section 401 Water Quality Certification and all subsequent submittals required as part of this certification.
2. Brookfield Land Company, Inc. shall comply with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity.
3. This certification is not transferable to any person except after notice to the Executive Officer of the San Diego Regional Water Quality Control Board (Regional Board). Brookfield Land Company, Inc. shall submit this notice in writing at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new owner containing a specific date for the transfer of this certification's responsibility and coverage between the current owner and the new owner. This agreement shall include an acknowledgement that Brookfield Land Company, Inc. is liable for violations up to the transfer date and that the new owner is liable from the transfer date on.
4. 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.
5. In response to a suspected violation of any condition of this certification, the 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, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.
6. 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.
7. Brookfield Land Company, Inc. shall notify the Regional Board, in writing, of the start of project grading, the start of mitigation installation, and the completion of mitigation installation. All notifications shall be submitted within 3 days of the start of the action, and shall reference File No. 02C-056.

8. As mitigation for impacts to approximately 2,196 linear feet (0.39 acre) of a tributary to Warm Springs Creek, Brookfield Land Company, Inc. will realign the channel and create a 60-foot wide (average) riparian corridor and stream designed to meander across the channel bottom, which will range from approximately 62 to 106 feet wide. The soft-bottomed channel will have ungrouted riprapped sides sized to hold a 100 year flood event. A flood plain terrace will be planted with riparian species and serve as a buffer to the riparian stream corridor. The mitigation area will be approximately 1,975 linear feet of streambed with associated riparian habitat, totaling approximately 2 acres in size. The mitigation channel will be constructed and planted in accordance with the Habitat Mitigation and Monitoring Plan for the Wallach Property, dated May 2003.
9. To avoid temporal impacts to the drainage and its associated corridor, Brookfield Land Company, Inc will create the new channel during the first phase of grading. The existing drainage will be fenced off and remain intact for at least six months following construction and planting of the new channel.
10. Brookfield Land Company, Inc. shall submit a report (including topography maps and planting locations) to the Regional Board within 90 days of completion of mitigation site preparation and planting, describing as-built status of the mitigation project. If the site grading and planting are not completed within six weeks of each other, separate reports will be submitted describing those specific as-built conditions.
11. The mitigation area shall be monitored in accordance with the Habitat Mitigation and Monitoring Plan for the Wallach Property, dated May 2003. Mitigation monitoring reports shall be submitted annually until the site has been deemed successful. Monitoring reports shall include, but not be limited to, the following:
 - a. Names, qualifications, and affiliations of the persons contributing to the report;
 - b. Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
 - c. Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results; and
 - d. Photodocumentation from established reference points.
12. The Brookfield Land Company, Inc. shall submit, within 90 days of the issuance of this certification, a draft conservation easement or deed restriction that prohibits development within, mowing, and/or other activities that would result in permanent or temporary disturbance of the 60-foot-wide mitigation zone. No maintenance, except for the removal of exotic and diseased vegetation shall be permitted within this area. The remainder of the channel may be maintained for flood control purposes, but shall be protected from development and further channelization. Brookfield Land Company, Inc. shall submit proof of a completed conservation easement or deed restriction 30 days prior to grading, filling, or otherwise impacting the existing drainage. *(cert issued 20 May 2003)*
13. Two basins, vegetated with native grasses, will be constructed on site to treat urban runoff and first flush storm water runoff from the developed site before it enters the mitigation

channel. No low-flow channel, or other structure that would compromise the water purification functions of the basin, shall be constructed in the proposed basins. Any changes to the number of basins or the conceptual design, including size, location, and proposed planting material, shall be included in the Water Quality Mitigation and Monitoring Plan per Condition 15, below.

14. The park site, commercial landscaped areas, and street-scape areas will have a smart irrigation system installed that will include, but not be limited to, soil moisture meters that will automatically turn off irrigation when soil is saturated.

15. Brookfield Land Company, Inc. shall also submit a detailed Water Quality Mitigation and Monitoring Plan to this office for review 30 days prior to any grading on site. The plan shall include additional structural and non-structural best management practices (BMPs) designed to reduce, treat, or control urban runoff from the proposed development. Maintenance of proposed BMPs shall also be included in the plan.

16. ^{7/10/1} Prior to the initiation of construction in waters of the U.S., Brookfield Land Company, Inc. shall submit to the Regional Board any final requirements the RCFCWCD has placed on the project. This certification does not allow additional impacts to waters of the U.S. based upon any RCFCWCD requirement other than those specifically authorized. Should the RCFCWCD require additional impacts to waters of the U.S., Brookfield Land Company, Inc. must reapply for a Section 401 Water Quality Certification.

17. This certification does not address dewatering; separate authorization will be required from the Regional Board for any dewatering impacts.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

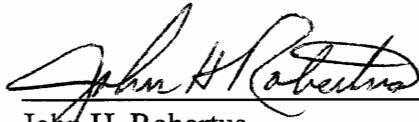
Megan Fisher
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
858-268-5363

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the Wallach Property Development Project (File No. 02C-056, WDID No. 9 000000985) 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. The proposed project as conditioned is consistent with conditions specified in the Water Quality Control Plan for the San Diego Basin (9) (Basin Plan) for a waiver of waste discharge requirements. Although the adoption of waste discharge requirements is being waived at this time, we may issue waste

discharge requirements should new information come to our attention that indicates a water quality problem.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).



John H. Robertus
Executive Officer
Regional Water Quality Control Board

5/20/2003
Date

Attachments 1 and 2

**ATTACHMENT 1
PROJECT INFORMATION**

Applicant: Brookfield Land Company, Inc.
Dennis Chapman
1522 Brookhollow Drive, Suite 1
Santa Ana, CA 92705
714-979-2456
714-241-5937 (f)

Applicant
Representatives: PCR Services Corporation
Michelle Lee Mattson
Miriam Herrmann
One Venture, Suite 150
Irvine, CA 92618
949-753-7001
949-753-7002 (f)

Project Name: The Wallach Property (File No. 02C-056, WDID No. 9 000000985)

Project Location: ✓ The Wallach Property is located east of the City of Murrieta in Riverside County. The 31-acre property is bound by Pourroy Road to the east and Winchester Road to the west. The southern boundary of the property is approximately 0.5 miles north of Thompson Road and the northern boundary is at the intersection of Pourroy and Winchester Roads. The property is contained in the Bachelor Mountain Quadrangle, Section 33, T 6 S, R 2 W.

Type of Project: ✓ Road widening, commercial development, and recreational park

Project Description: ✓ Brookfield Land Company, Inc. proposes to develop a commercial site and a recreational park. As part of the project, Winchester Road will be widened, requiring the realignment of a tributary to Warm Springs Creek. The development also includes the realignment of Pourroy Road through the center of the property, which was previously certified in Section 401 Water Quality Certification file no. 99C-109.

Federal Agency/Permit: U.S. Army Corps of Engineers/Section 404 Individual Permit

Other Required Regulatory Approvals: California Department of Fish and Game Streambed Alteration Agreement

California Environmental Quality Act (CEQA) Compliance: Riverside County approved a Mitigated Negative Declaration for the Winchester 1800 Specific Plan on July 3, 2000.

Receiving Water: ✓ Tributary to Warm Springs Creek

Impacted Waters of the United States:	Approximately <u>2,196</u> linear feet (0.39 acre) of the tributary to Warm Springs Creek will be realigned for the widening of Winchester Road and the construction of a flood control channel.
Dredge Volume:	Not applicable
Related Projects Implemented/to be Implemented by the Applicant(s):	Brookfield Land Company, Inc. received a 404 permit and 401 certification (file no. 99C-109) to develop an adjacent property. The applicant was authorized to remove a 300-foot long area of riparian habitat for the realignment of Pourroy Road.
Avoidance/Minimization Measures:	The project is impacting 0.39 acre out of a total of 0.64 acre of waters of the U.S. on site. Due to the widening of Winchester Road, and Riverside County Flood Control requirements, impacts are unavoidable.
Compensatory Mitigation:	✓ Mitigation will consist of creating a new channel with a 60-foot (average) wide restored streambed and riparian canopy within the flood control channel. The channel includes a meandering low-flow streambed with a minimum 60-foot-wide maintenance free zone, and associated floodplain terraces. The mitigation area will be approximately 1,975 linear feet of streambed, totaling 1.7 acres. Including the associated riparian habitat, the mitigation area is expected to be approximately <u>2.1</u> acres in size.
Best Management Practices:	✓ Two vegetated basins will be used to treat urban runoff and the first flush of storm water runoff from the site. In addition, the following BMPs are proposed: Park area efficient irrigation (soil moisture meters); Runoff-minimizing landscape design; Energy dissipaters; Catch basin stenciling; Inlet trash racks; Education of property owners, commercial residents, and park users; Activity restrictions; Landscape management; Litter control; Park catch basin inspection; and Street sweeping and parking lot maintenance.

**ATTACHMENT 2
DISTRIBUTION LIST**

Ms. Deanna Cummings
U.S. Army Corps of Engineers
Los Angeles District/Regulatory Branch
911 Wilshire Blvd.
Los Angeles, CA 90017-3401

Ms. Michelle Lee Mattson
PCR Services Corporation
One Venture, Suite 150
Irvine, CA 92618

State Water Resources Control Board
Division of Water Quality