



California Regional Water Quality Control Board Santa Ana Region



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Arnold Schwarzenegger
Governor

December 22, 2010

David A. Webb
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA 92663-3884

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE MARINA PARK PROJECT, NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA (SARWQCB PROJECT NO. 302010-40)

Dear Mr. Webb:

On October 11, 2010, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the City of Newport Beach for the construction of the Marina Park marina, on the Balboa Peninsula. 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) (Basin Plan) and subsequent Basin Plan amendments:

Project Description: Demolition of an existing groin wall, construction of new perimeter bulkhead walls and groin, and construction of a marina. The new marina would consist of pre-cast concrete floating docks for 23 slips, gangways, and a dinghy storage area. Up to 50 pre-stressed concrete guide piles, ranging from 14" to 24" in diameter, would be used. The work will take place within Section 33 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach, California, topographic quadrangle map (33° 36.5' / 117° 55.3')*.

Receiving water: Lower Newport Bay/Pacific Ocean

Fill area: 0.66 acre of permanent impact to marine habitat,
1.15 acres of temporary impact to marine habitat

Dredge/Fill volume: 53,000 cubic yards

Federal permit: Rivers and Harbors Act, Section 10

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You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

Onsite Water Quality Standards Mitigation Proposed:

- Site-specific construction and post-construction Best Management Practices (BMPs) will be specified in the project's Storm Water Pollution Prevention Plan (SWPPP).
- Site-specific BMPs described and illustrated within the project's City of Newport Beach approved Water Quality Management Plan (WQMP) will be implemented and maintained.
- Other mitigation for impacts to water quality standards is specified in the project's environmental impact report.

Offsite Water Quality Standards Mitigation Proposed:

- None

Based on the composition and characteristics of the dredged materials, suitable dredged sand materials will be transported off-site to beach nourishment (receiver) sites. Dredged materials that do not meet the criteria for receiver sites or that are contaminated will be either transported off-site for disposal at an upland landfill or at the Port of Long Beach (POLB) Middle Harbor combined disposal facility. This dredging is being coordinated with the City's Rhine Channel dredging project, in which contaminated sediments from the Rhine Channel area of Newport Bay are being dredged and transported to POLB for disposal. The Rhine Channel project previously received Section 401 water quality standards certification.

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 according to the requirements of Order No. R8-2009-0030 (NPDES Permit No. CAS618030), commonly known as the Orange County Municipal Storm Water Permit, and subsequent iterations thereof. Order No. R8-2009-0030 requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, including the preparation of a SWPPP.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an Environmental Impact Report (EIR) or Negative Declaration 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.

As required by Section 15096, the Regional Board has considered the EIR prepared for the proposed project in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR relating to water quality. Based on the mitigation proposed in the Marina Park Recirculated EIR, State Clearinghouse Number 2008051096, information submitted by the City in the June 21, 2010 Moffatt & Nichol memorandum, "Marina Park-Regulatory Guidance for Marina Flushing," 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

De-watering discharges from the proposed project may be regulated under Regional Board Order No. R8-2003-0061, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality. For more information, please review Order No. R8-2003-0061 at www.waterboards.ca.gov/santaana/pdf/03-61.pdf.

This 401 Certification is contingent upon the execution of the following conditions:

1. Using generally accepted protocols, the discharger must survey for *Caulerpa taxifolia*, an invasive marine seaweed, to help locate and prevent its spread. If *Caulerpa taxifolia* is found prior to or during implementation of the project, the applicant must not begin or continue at that location until authorized by Regional Board staff. If the invasive seaweed is discovered, it is not to be disturbed, and the Regional Board must be notified within 48-hours of the location and date of the discovery. In addition, any sightings of *Caulerpa taxifolia* should be reported to the California Department of Fish and Game (William Paznokas at (858) 467-4218 (wpaznokas@dfg.ca.gov)) or the National Marine Fisheries Service (Robert Hoffman at (562) 980-4043 (bob.hoffman@noaa.gov)) within 24-hours of discovery. Further information regarding *Caulerpa taxifolia* sightings can be obtained at www.sccat.net.

Should no *Caulerpa* be observed during the project, the applicant must notify the Regional Board of this fact when all construction has been completed. Please contact Wanda Cross at (951) 782-4468 concerning issues related to *Caulerpa taxifolia*.

2. The Project shall be sited, designed and operated for maximum flushing and circulation of surface waters, to reduce the potential for water stagnation, to maintain biological productivity, and to reduce the potential for accumulations of toxic substances or the creation of toxic conditions in bottom sediments.
3. 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 and applicable waste discharge requirements;
 - b. Access to copy any records that are kept under the requirements of this Certification and 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 applicable waste discharge requirements.
4. Materials must not be placed in a manner where they could be discharged to surface waters except as authorized by this certification. In the event that trash or debris is discharged to surface waters, the discharger must recover the material to the maximum extent practical.
5. Construction and operation of the Project must not depress the dissolved oxygen content in any part of Lower Newport Bay, including the marina proposed, below 5 mg/L as a result of controllable water quality factors. When natural dissolved oxygen content is less than 5 mg/L, the discharger must not cause further depression.
6. Project activities must not raise the pH in any part of Lower Newport Bay above 8.6 or lower pH below 7.0 as the result of controllable water quality factors; ambient pH levels must not be changed by more than 0.2 units.

7. Project-related activities must not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in the receiving waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
 - a. If natural turbidity is between 0 and 50 NTU, the maximum increase must not exceed 20% of the measured natural turbidity.
 - b. If natural turbidity is 50 to 100 NTU, the increase must not exceed 10 NTU.
 - c. If natural turbidity is greater than 100 NTU, the maximum increase must not exceed 10% of the measured natural turbidity.
8. Project-related activities must not cause the numeric targets for constituents specified in the U.S. Environmental Protection Agency Toxics TMDLs¹ for the Rhine Channel and Lower Newport Bay to be exceeded.
9. An effective monitoring plan must be developed and implemented to document compliance with conditions 3, 4, 5, 6 and 7, above. Any suspected violation of these conditions must be reported to Regional Board staff in writing within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
10. Impacts to eelgrass must be compensated for according to the National Marine Fisheries Service's Southern California Eelgrass Mitigation Policy, including the creation of eelgrass beds. Any deficiencies in the mitigation effort must be addressed according to the Policy.
11. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.
12. The applicant must comply with the requirements of the applicable Clean Water Act section 404 permits.
13. All materials generated from construction activities associated with this project shall be managed appropriately. This shall include identifying all potential pollution sources within the scope of work of this project, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified.

¹ This document is located under San Diego Creek, Newport Bay Toxics TMDL at: <http://www.epa.gov/region9/water/tmdl/final.html>

14. The project proponent and all subsequent operators of the project shall utilize Best Management Practices at all times to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
15. Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, shall not be discharged to soils or waters of the state. All waste concrete shall be removed.
16. This Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and civil or criminal liability.
17. This Certification is transferable only upon written notice to the Executive Officer. Notice of transfer must include written acknowledgement of this Certification by the transferee's authorized representative.

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.

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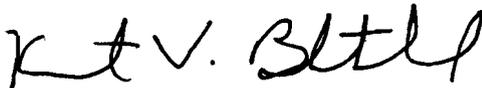
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean 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/wqo_2003-0017.pdf

Should there be any questions, please contact Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert
Department of Fish and Game – Anna Milloy
State Water Resources Control Board, Office of Chief Counsel – David Rice
State Water Resources Control Board DWQ – Water Quality Certification Unit
U.S. EPA – Supervisor of the Wetlands Regulatory Office WTR- 8

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