



EDMUND G. BROWN JR.
GOVERNOR



MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

November 29, 2012

Max Gondon
1913 East Bay Avenue
Newport Beach, CA 92661

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE GONDON SEAWALL REPLACEMENT PROJECT,
COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. SPL-20111-01009-
SME) (SARWQCB PROJECT NO. 302012-26)**

Dear Mr. Gondon:

On July 26, 2012, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Shellmaker Inc., on your behalf, for a project to construct a seawall replacement at 1913 East Bay Avenue. 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: The project will install a 37.5-foot-long by 5-foot-wide concrete cantilever deck on top of a newly constructed seawall at 1913 East Bay Avenue abutting Newport Bay. The cantilever deck would be located at least five feet from either property line and would be approximately +9.0 feet MLLW in elevation. The work will take place within Section 35 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach* quadrangle map (33° 35' 59.4" N/ -117° 53' 10.3" W).

Receiving water: Newport Harbor

Fill area: 0.0043 acre of permanent impact to ocean waters of the United States

Dredge/Fill volume: N/A

Federal permit: Rivers and Harbors Act, Section 10

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:

- Standard water quality related best management practices (BMPs) will be employed during construction activities.

Offsite Water Quality Standards Mitigation Proposed:

- None

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.

Pursuant to the California Environmental Quality Act (CEQA), Shellmaker Inc. filed a CEQA Categorical Exemption approved by the City of Newport Beach Harbor Resources Division on August 30, 2011. The City of Newport Beach Harbor Resources Division has determined that the project is ministerial or categorically exempt from provisions of CEQA. The Regional Board has considered the Categorical Exemption in the issuance of this Certification and finds that no changes or alterations to the proposed project are necessary to 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. 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. Regional Board staff and other authorized representatives must be allowed:
 - a. Entry upon premises where dewatering or storm water storage or 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 dewatering wastes and 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.
3. Construction materials and all wastes 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.
4. Project activities must not depress the dissolved oxygen content in any part of Lower Newport Bay 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.
5. 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.
6. 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.
7. Project-related activities must not cause exceedance of the constituents for which numeric targets are specified in the U.S. Environmental Protection Agency Toxics TMDLs¹ for the Rhine Channel and Lower Newport Bay.
8. An effective monitoring plan shall be developed prior to the initiation of construction and implemented to document compliance with conditions 3, 4, 5, 6, and 7 above. The monitoring plan is subject to approval by Board staff, and shall be revised as requested by Board staff. 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.
9. 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.
10. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.
11. The applicant must comply with the requirements of the applicable Clean Water Act section 404 permits.
12. All materials used in or 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.
13. At all times, the project shall utilize BMPs to minimize the controllable discharges of sediment and other non-point source pollutants to drainage systems or other waters of the state and of the United States.
14. 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.

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

15. This Water Quality 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.
16. 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.

Applicant shall ensure that all fees associated with this project shall be paid to each respective agency prior to conducting any on-site construction activities. 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.

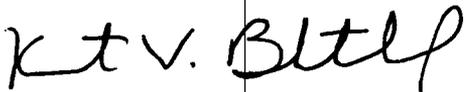
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean 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. 2003-0017-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 Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold
Executive Officer
Santa Ana Regional Water Quality Control Board

cc (via electronic mail):

Shellmaker Inc. – President – Lisa Miller
U.S. Army Corps of Engineers, Los Angeles Office - Stephen Estes
State Water Resources Control Board, OCC - David Rice
California Department of Fish and Game - Kevin Hupf, KHupf@dfg.ca.gov
State Water Resources Control Board, DWQ-Water Quality Certification Unit - Bill Orme

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