



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

**Santa Ana Regional Water Quality Control Board**

August 13, 2013

David Salisbury  
Waterfront Enterprises, Inc.  
400 Main Street  
Balboa, CA 92661

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR THE HARBORSIDE RESTAURANT DINING DECK BALBOA  
PAVILION PROJECT, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE  
NO. SPL-2013-00149-CJF) (SARWQCB PROJECT NO. 302013-16)**

Dear Mr. Salisbury:

On June 27, 2013, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Waterfront Enterprises, Inc. for a project in the city of Newport Beach, to modify the existing floating docks and construct a new fixed dining deck on the north/bay side of the historic Balboa Pavilion. 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 proposed project consists of the following activities as they relate to water quality:

The existing floating dock/skiff area will be relocated approximately 24 feet bayward. A new fixed dining deck for the Harborside Restaurant will be constructed directly adjacent to the existing, first floor restaurant and lounge on the bay side of the building. The new fixed dining deck will be constructed above open water and supported by existing piers and pilings. No new pilings will be constructed and no bay floor disturbance will be required. Also, the existing floating dock will be relocated by cutting it into manageable sections, maneuvering them around the existing piers, and securing them in place at their new location. No fill/excavation, dredging, or bay floor disturbance of any kind is proposed for this project.

CAROLE H. BESWICK, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

3737 Main St., Suite 500, Riverside, CA 92501 | [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana)

However, additional shading of unoccupied eelgrass habitat will occur as a result of project activities. 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° 36' 39" N/ -117° 53' 55" W).

Receiving water: Lower Newport Bay  
Fill area: N/A  
Dredge/Fill volume: N/A  
Federal permit: Individual Permit: SPL-2013-00149-CJF

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 Wildlife 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.

The applicant reports that the project qualifies for a Public Resources Code Division 13 Section 21080.80 (b)(1); 15268 ministerial exemption from the provisions of the California Environmental Quality Act (CEQA). The applicant filed a CEQA Notice of Exemption for the project with the City of Newport Beach Harbor Resources Division on July 8, 2013. The City of Newport Beach Harbor Resources Division has determined that the project is ministerial or categorically exempt from provisions of CEQA. The Board has independently determined and finds that the project will not have a significant effect on the environment and that it qualifies for a CEQA Guidelines Section 15268, "Ministerial Projects" exemption from the provisions of CEQA.

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

- 1) The applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 2) Impacts to eelgrass habitat must be compensated for according to the National Marine Fisheries Service's Southern California Eelgrass Mitigation Policy, which may include the creation of eelgrass beds. Any deficiencies in the mitigation effort must be addressed according to the Policy.
- 3) 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 (Bryant Chesney at (562) 980-4037 (Bryant.chesney@noaa.com)) within 24-hours of discovery. Further information regarding *Caulerpa taxifolia* sightings can be obtained at [www.sccat.net](http://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*.
- 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) 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.
- 6) The project proponent shall utilize BMPs during project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the state and of the United States.
- 7) 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.

- 8) Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.
- 9) 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.
- 10) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 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) 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.
- 13) 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/wqo\\_2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf)

David Salisbury  
Waterfront Enterprises, Inc.  
401 Certification No. 302013-16

- 6 -

August 13, 2013

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):

Thirtieth Street Architects, Inc. – John C. Loomis  
U.S. Army Corps of Engineers, Los Angeles Office - Stephen Estes  
State Water Resources Control Board, OCC - David Rice  
California Department of Fish and Wildlife – Russell Barabe  
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme