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## Santa Ana Regional Water Quality Control Board

June 8, 2015

Chris Miller  
City of Newport Beach  
829 Harbor Island Drive  
Newport Beach, CA 92660

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR THE BALBOA MARINA WEST DREDGING AND  
PUBLIC/TRANSIENT DOCK DEVELOPMENT PROJECT, CITY OF NEWPORT  
BEACH, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. N/A)  
(SARWQCB PROJECT NO. 302014-22)**

Dear Mr. Miller:

On December 18, 2014, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the City of Newport Beach for a project that consists of the development of a new boat dock; improving and expanding the existing Balbo Marina, and installing a new rock riprap. The applicant has also submitted a filing fee of \$1,097.00, which satisfied part of this project's fee requirement for the consideration of a 401 Certification. This fee amount was determined using the Dredge and Fill Fee Calculator on the State Water Resources Control Board (SWRCB) web site, which is based on the most current iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, section 2200 (a) (3) in effect when the application was submitted. 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 relocate four existing public boat slips from within the private Balboa Marina to an area of Lower Newport Bay, allowing easier access to transient public boaters. The proposed project will also provide additional private boat slips and a new gangway in the Balboa Marina that would enable boaters to dock and access the land-side development areas.

The project consists of constructing new public transient docks, dredging accumulated sediments within the Balboa Marina and installing a riprap embankment. Specific activities include the following:

**New Public Transient Docks:** Long docks and side ties will be constructed to accommodate approximately 12 public boats. A Private Dock Expansion will include: adding 24 private boat slips that will be accessible from the existing private Balboa Marina and a new private gangway.

**Dredging:** Development of the new public transient dock and private dock expansion will require dredging of approximately 9,900 cubic yards (CY) of sediment, as well as the removal of 1,300 CY of upland soils.

**Riprap Embankment:** In order to accommodate the proposed expanded number of boat slips, a riprap embankment will be constructed approximately 15 feet landward of the existing rip rap embankment, along the western edge of the project site. A short concrete gravity wall will be constructed to sit on top of the aforementioned revetment, to provide a clean edge interface with the landside property. The proposed riprap will be constructed of a total of 650 cubic yards (550 CY of new rock riprap, 100 CY of reused rock riprap).

The work will take place within Section 25 of Township 4 South, Range 8 West of the U.S. Geological Survey *Black Star Canyon* 7.5 minute topographic quadrangle map (33° 36' 56" N, -117° 54' 16.53" W).

Receiving water: Lower Newport Bay, which has present or potential beneficial uses, including: contact recreation (REC1), non-contact recreation (REC2), rare/threatened/endangered species (RARE), wildlife habitat (WILD), municipal and domestic supply (MUN), commercial and sport fishing (COMM), marine habitat (MAR), navigation (NAV), shellfish harvesting (SHEL), and spawning, reproduction and development (SPWN).

Fill area:

Temporary Impact to Ocean Habitat	0.85 acres	linear feet N/A
Permanent Impact to Ocean Habitat	0.001 acres	linear feet N/A

Dredge/Fill volume: 9,900 cubic yards

Federal permit: U.S. Army Corps of Engineers Nationwide Permit No. 25  
(*Structural Discharges*) and Section 10 Letter of Permission  
(LOP)

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 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.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR or Negative Declaration prepared by the lead agency in determining whether to approve a project. 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 Mitigated Negative Declaration (MND) prepared for the proposed project and filed by the City of Newport Beach on November 25, 2014 and information provided subsequently in the applicant's application, in approving this Certification. More specifically, the Regional Board has considered those sections of the MND relating to water quality. Based on the mitigation proposed in the MND, 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 independently 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.

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

1. 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.
2. 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.
3. An effective monitoring plan must be developed and implemented to document compliance with conditions 1 and 2 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.
4. Pre- and Post-Construction Eelgrass Surveys: The Applicants must conduct an eelgrass survey within two months of the commencement of dredging. Mitigation for identified eelgrass losses must be performed in accordance with the Southern California Eelgrass Mitigation Plan (SCEMP) [http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11\\_final.pdf](http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11_final.pdf).
5. Post-Construction Shading Effects Survey: The Applicants must conduct the post-construction shading effects survey specified in the Eelgrass Impact Assessment Report that was submitted with the Certification application. The Applicants must prepare and submit for approval an eelgrass mitigation plan consistent with the requirements of the SCEMP to address eelgrass losses due to shading caused by this project.

6. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.
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. 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.
9. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel, shore line 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.
10. 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.
11. 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.
12. A copy of this Certification and any subsequent amendments must be maintained at the project site for the duration of work.
13. The applicant must comply with the requirements of the Clean Water Act section 404 permits.

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)

Chris Miller  
City of Newport Beach  
RWQCB #: 302014-22 CIWQS #: 812485

- 7 -

June 8, 2015

Should there be any questions, please contact Marc Brown at (951) 321-4584 or at [marc.brown@waterboards.ca.gov](mailto:marc.brown@waterboards.ca.gov) , or Wanda Cross at (951) 782-4468

Sincerely,



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

cc (via electronic mail):

Anchor QEA, LLC – Adam Gale – [agale@anchorqea.com](mailto:agale@anchorqea.com)  
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 – Kevin Hupf  
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme