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## Santa Ana Regional Water Quality Control Board

September 15, 2016

Mr. Michael Curci  
Lido Peninsula Company, LLC  
717 Lido Park Drive, 2<sup>nd</sup> Floor  
Newport Beach, CA 92663

[Michael@curcicompanies.com](mailto:Michael@curcicompanies.com)

### **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE CHANNEL ROAD MARINA RENOVATION PROJECT, CITY OF NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA (USACE REFERENCE NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 302016-05)**

Dear Mr. Curci,

On February 5, 2016, we received an application from Lido Peninsula Company, LLC (Applicant) for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to replace and upgrade an existing marina, including docks, piles, utilities, and a gangway. The proposed Project is situated on the southern corner of (Little) Lido Isle in Lower Newport Bay in the City of Newport Beach, California. The proposed Project will result in 0.29 acre of temporary impact and 0.04 acre of permanent impact to jurisdictional waters. The Applicant has submitted a filing fee of \$600.00, which satisfies a portion of the \$19,440.00 Project fee requirement for 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 purpose of the proposed Project is to replace the existing timber dock system with more durable floating wooden docks equipped with internal water and electrical utility routing. In addition, the existing piles will be removed and replaced with new piles. The existing gangway will also be removed and replaced with a new gangway, constructed to meet current design regulations.

After the dock is assembled and aligned, the remaining guide piles will be installed through pre-set openings in the docks, and then the gangways and utility hookups will be installed.

The concrete piles will be installed using a combination of jetting and driving methodologies. Jetting will be used to advance the piles to within a few feet of tip elevation, and then impact hammered into place. Turbidity will be contained using a localized curtain.

The work will take place in Section 33 of Township 6 South, Range 10 West of the U.S. Geological Survey *Newport Beach*, CA 7.5 minute topographic quadrangle map (33° 36' 37.13" N, -117° 55' 30.44" W).

Receiving water: Lower Newport Bay has designated beneficial uses (existing or potential) that include: navigation (NAV), contact recreation (REC1), non-contact recreation (REC2), commercial and sportfishing (COMM), marine habitat (MAR), rare, threatened, or endangered species (RARE), shellfish harvesting (SHEL), spawning, reproduction and development (SPWN), and wildlife habitat (WILD).

Fill area:

Temporary Impact to Marine Habitat	0.29 acre	720 linear feet
Permanent Impact to Marine Habitat	0.04 acre	720 linear feet

Dredge/Fill volume: not applicable

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 the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife should 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), Lido Peninsula Company filed a CEQA Guidelines Section 15302 "Class 2" Categorical Exemption with the City of Newport Beach on November 20, 2015. The "Class 2" Exemption declares the proposed Project consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. The Regional Board has independently considered the CEQA 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) The Applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.
- 2) The Applicant shall ensure that all fees, which include but may not necessarily be limited to the remaining \$18,840.00 in filing fees associated with this Project, shall be paid to each respective agency prior to conducting any onsite construction activities.
- 3) Using generally accepted protocols, the Applicant 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 its discovery. In addition, any sightings of *Caulerpa taxifolia* should be reported to the California Department of Fish and Wildlife (William Paznokas at (858) 467-4218 (wpaznokas@dfg.ca.gov) or the National Marine Fisheries Service (Bryant Chesney (Bryant.Chesney@noaa.gov)) 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) Effective perimeter control BMPs must be in place at all times to control the discharge of pollutants from the Project site during construction. Construction waste must be contained and protected against wind and exposure to storm water at all times unless being actively handled. Chemical, fuel, and lubricant containers must be kept closed and protected from damage or upset at all times unless being actively used. Dirt and landscaping material stockpiles must have effective erosion control BMPs in place to prevent their being transported in storm water or directly into the channel, and may not be located within waters of the United States. Discharges of wastewater from the site are prohibited.
- 5) 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.
- 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) An effective monitoring plan must be developed and implemented to document compliance with Conditions 4, 5 and 6 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 onsite for the duration of the proposed discharge and be available for inspection by Regional Board staff.
- 8) 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 from the Project site.
- 9) Motorized equipment shall not be maintained or parked within or near any water crossing, channel or margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions.
- 10) Vehicles shall not be driven or equipment operated in waters of the State at the Project site, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.

11) This 401 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 appropriate enforcement action, including the revocation of this Certification and imposition of administrative civil or criminal liability.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all 401 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 that the Applicant 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 401 Water Quality 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(s) 13350 and/or 13385.

This letter constitutes a 'Water Quality Standards Certification' issued pursuant to Clean Water Act Section 401. I hereby certify 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)

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

Sincerely,



Kurt V. Berchtold  
Executive Officer

cc (via electronic mail):

Anchor QEA, LCC – Adam Gale – [agale@anchoragea.com](mailto:agale@anchoragea.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 – Russell Barabe – [rbarabe@dfg.ca.gov](mailto:rbarabe@dfg.ca.gov)  
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme  
US EPA, Region 9 – Wetlands Section – [Melissa Scianni - scianni.melissa@epa.gov](mailto:Melissa.Scianni@epa.gov)  
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