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MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

January 4, 2016

Ms. Lindsay Parton
DJM Capital Partners, Inc.
922 Laguna Street
Santa Barbara, CA 93101

Email: lparton@djmcapital.com

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE LIDO MARINA VILLAGE VESSEL RELOCATION PROJECT, CITY OF NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA (USACE REFERENCE NO. Not Available) (SARWQCB PROJECT NO. 302015-20)

Dear Ms. Parton:

On September 28, 2015, we received from CAA Planning on behalf of DJM Capital Partners, Inc. (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to remove four existing 50-foot long docks and associated gangway, and replace these facilities with four new 85 foot long docks and a new 80-foot long American Disabilities Act (ADA) compliant gangway. The proposed Project is situated at Lido Marina, located at 3400 Via Oporto, Newport Beach. The proposed Project will result in 52 square feet of permanent impacts to jurisdictional waters. The Applicant submitted a filing fee of \$200.00, which satisfies the 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 proposed Project will demolish four 50-foot long docks and a gangway to construct four new 85-foot long docks (each dock totals 94 feet with backwalk), and the removal of 11 existing piles to install 18 new piles and a new 80-foot long ADA gangway.

WILLIAM RUIH, CHAIR | KURT V. BERNTOLD, EXECUTIVE DEPUTY

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The total number of slips will not change. The Project will relocate dinghy berths and four large vessels from the center of the dock system to the southeasterly end of Lido Marina.

The proposed Project will result in an increase of over-water coverage by 271 square feet. Eleven 12-inch diameter piles will be removed and replaced by 18 piles (five 18-inch diameter and thirteen 24-inch diameter). This represents an increase in fill to waters of the United States by 52 square feet.

The work will take place within Section 28 of Township 6 South, Range 10 West of the U.S. Geological Survey *Newport Beach* 7.5 minute topographic quadrangle map (33.618251° N, -117.927798° W).

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

Fill area:

Permanent Impact to Ocean Habitat	52 square feet	linear feet- not available
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Dredge/Fill volume: 52 square feet

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 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), DJM Capital, Inc. proposed and filed a CEQA Guidelines Section 15301 "Class 1" Categorical Exemption on October 6, 2014, which declares that the Project consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. 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. 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. 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. 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 Applicant must recover the material to the maximum extent practical.
3. Project-related activities must not cause 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.
4. An effective monitoring plan must be developed and implemented to document compliance with Conditions 2 and 3 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 Project and be available for inspection by Regional Board staff.
5. Pre- and Post-Construction Eelgrass Surveys: The Applicant shall conduct an eelgrass survey within two months prior to and following 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.
6. Post-Construction Shading Effects Survey: The Applicant shall conduct the post-construction shading effects survey specified in the Eelgrass Impact Assessment Report that was submitted with the Certification application. The Applicant shall 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.
7. The Applicant must comply with the requirements of the applicable Clean Water Act Section 404 permit.
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 Project scope of work, and incorporating all necessary pollution prevention BMPs as they relate to each potential pollution source identified.
9. 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.
10. 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.

11. 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.
12. Vehicles shall not be driven or equipment operated in waters of the State onsite, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.
13. 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 revocation of this Certification and imposition of administrative civil or criminal liability.
14. 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 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 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.

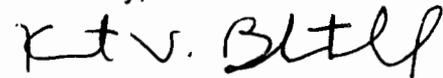
For purposes of Section 401(d) of the Clean Water Act, the applicability of any State law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. Violations of the conditions of this Certification may subject the Applicant to civil liability pursuant to Water Code Sections 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 or (951) 321-4584 or marc.brown@waterboards.ca.gov, or Wanda Cross at (951) 782-4468 or wanda.cross@waterboards.ca.gov.

Sincerely,



Kurt V. Berchtold
Executive Officer

cc (via electronic mail):

CAA Planning – Shawna L. Schaffner – sschaffner@caaplanning.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

State Water Resources Control Board, DWQ-Water Quality Certification Unit - Bill Orme

U.S. EPA - Supervisor of the Wetlands Section - Jason A. Brush