



California Regional Water Quality Control Board

Santa Ana Region



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Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

June 4, 2008

Tim Carr
Dover Shores Community Association
c/o Keystone Pacific Properties
Management
16845 Von Karmen, Suite 200
Irvine, CA 92606

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE DOVER SHORES DREDGE PROJECT, CITY OF NEWPORT BEACH (ACOE REFERENCE NO. 2007 – 01403 – DPL)

Dear Mr. Carr:

On April 17, 2008, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by Anchor Environmental, LLC for dredging of Upper Newport Bay in the vicinity of the Dover Shores Community. 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) and subsequent Basin Plan amendments:

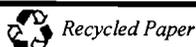
Project Description:

Dredging of approximately 31,000 cubic yards of material from the bottom of Upper Newport Bay in an 11.7-acre area in the vicinity of the Dover Shores Community shore and docks. The dredging activity will restore the design elevation of the area to -7 feet Mean Lower Low Water (MLLW) with an additional 1-foot over-dredge allowance. Dredged material will be mechanically excavated and transported by dump-scow for disposal at the LA-3 permanent ocean dredged material disposal site located approximately 4.5 nautical miles offshore from Newport Beach at depths ranging from -1,500 to -1,675 feet MLLW. The material is not suitable for beach replenishment. The project is located within Section 26 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach, California*, 7.5-minute topographic quadrangle map (33 deg. 37 min. 17 sec. N/ -117 deg. 53 min. 06 sec. W).

Receiving water: Upper Newport Bay.

Fill area: Not Applicable

California Environmental Protection Agency



Dredge/Fill volume: 31,000 cubic yards

Federal permit: U.S. Army Corps of Engineers Individual Permit No. 2007 – 01403 – DPL.

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.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), the City of Newport Beach and the Executive Officer have determined that the proposed project is Categorical Exempt from provisions of CEQA according to Guidelines Section 15304(g).

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

1. Regional Board staff and other authorized representatives must be allowed:
 - a. Entry upon premises where storm water 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 or applicable waste discharge requirements;
 - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of discharges from the project site; and
 - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification or applicable waste discharge requirements
2. Project activities must be conducted in a manner that prevents discharges of dredged materials or other wastes 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.
3. Project activities must not depress the dissolved oxygen content of receiving waters 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.
4. Project activities must not raise the pH of receiving waters 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.
5. Project-related activities must not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in 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.
6. Best management practices must be implemented to limit the dispersal of sediments to the immediate work area to the maximum extent practical.
 7. An effective monitoring plan must be developed and implemented to document compliance with conditions 3, 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 on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
 8. 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*.
 9. This Certification, and any subsequent amendments, must be maintained on-site for the duration of the proposed work.
 10. A sediment contaminant report must be submitted to the Executive Offer within 90-days of the completion of work. The report must characterize sediment grain size and the concentration of the following constituents within the newly-exposed sediments in the project area:
 - a. Total Organic Carbon
 - b. Arsenic
 - c. Cadmium
 - d. Chromium
 - e. Copper
 - f. Lead
 - g. Mercury
 - h. Nickel
 - i. Selenium
 - j. Zinc
 - k. Total PCBs (all congeners)
 - l. Total DDT (all isomers)
 - m. Chlordane
 - n. Dieldrin

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.

Although we anticipate no further regulatory involvement, 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, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation 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.

In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

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. 200-0017-DWQ is available at www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Dan Swenson
State Water Resources Control Board, OCC – David Rice
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

APF:401/certifications/dover shores 302008-10