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Santa Ana Regional Water Quality Control Board

October 14, 2016

Mr. Robert Stein
City of Newport Beach
100 Civic Center Drive
Newport Beach, CA 92660

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CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE BIG CANYON HABITAT RESTORATION PROJECT, CITY OF NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA (USACE REFERENCE NO. SPL-2016-00305) (SARWQCB PROJECT NO. 302016-04)

Dear Mr. Stein,

On January 25, 2016, we received from the City of Newport Beach (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) that would remove non-native vegetation and replace it with native plantings in a 6-acre site owned by the Applicant, and located in the eastern portion of the 60-acre Big Canyon Nature Park. Big Canyon Park is situated along the eastern side of Upper Newport Bay approximately one (1) mile north of the Coast Highway in the City of Newport Beach between Jamboree Road to the east and Back Bay Drive to the west, and bounded by residential communities to the north and south along the creek bluff. Big Canyon Creek (creek) flows westerly through Big Canyon Nature Park and into Upper Newport Bay. The Project area is designated open space in the Applicant's certified Land Use Plan.

The six-acre Project site currently contains four acres of riparian habitat, as well as 1.53 acres of coastal sage scrub alliances and 0.10 acre of alkali marsh, freshwater wetlands and non-native grasses and invasive vegetation. An existing culvert located under Jamboree Road provides a conduit for dry-weather runoff and stormwater flows from a golf course located east of Jamboree Road to the west where the creek floodplain exists.

The proposed Project will result in 2 acres of temporary impacts and 0.24 acre permanent impact to waters of the State and the United States (U.S.). The Applicant has submitted a filing fee of \$200.00, which satisfies the fee requirement for

consideration of a 401 Certification for a Habitat Restoration project. 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 restore in some parts of Big Canyon Creek (Creek) and create in others, a complex of functioning wetland, riparian and upland habitat areas. Eroded banks will be stabilized, and the existing floodplain restored and expanded. Non-native invasive plants that have overrun portions of the existing active but degraded floodplain will be removed.

Approximately 15,000 cubic yards of soil will be graded in order to lower by approximately six (6) feet an approximately 0.4 acre area located 2 to 3 feet up gradient from an existing low-flow channel south of the Creek. A 20-foot wide floodplain will be created by cutting into upland terraces currently dominated by non-native grasses and degraded riparian habitat, and the Creek's overly-steep south bank. The restoration activity is targeted to remove invasive plant species, and create additional floodplain that can be inundated by stormwater during high-flow events.

On the north bank of Big Canyon Creek, 150 feet of channel and floodplain will be restored to stabilize bank erosion. In addition, a 0.47 acre underground "bioretention cell", a proposed modified subterranean wetland designed per the Project's February 2016 Mitigated Negative Declaration (MND) specifications, will be constructed to treat stormwater flows.

A dry-weather flow diversion structure will be constructed immediately west and adjacent to the mouth of the Jamboree Avenue culvert. The diversion structure will be designed to passively divert and collect the initial 0.5 cubic feet per second (cfs) of upgradient groundwater seepage flows containing high concentrations of selenium. These

flows will be collected in a stilling basin equipped with vertical open topped risers at the basin's low point. The design will enable sediment to settle to the stilling basin's floor, while allowing seepage flows to overtop the riser and discharge to a sanitary sewer connection at the riser's base. The diversion system will be valved such that the system can be shut off prior to a precipitation event. Flows greater than 0.5 cfs will flow through the diversion line and into the restored floodplain below.

The undercut Creek channel will be realigned from its current position towards the center of the floodplain connecting it to the adjacent existing floodplain to create new floodplain on both banks. Additional proposed Project activities along the edge of the north bank of the creek include planting vegetated soil lifts to stabilize the bank. Encapsulated vegetated soil lifts will be planted with willows and other native riparian vegetation to construct and protect stream banks and provide erosion control. Each vegetated soil lift will be 1-foot thick, and contain native alluvial soil from the site plus amendments, and encapsulated in coir (coconut husk) fiber that will biodegrade over the first 2-3 years as the vegetation becomes established. Willow brush mats will be placed over the cut bank adjacent to this location and secured with biodegradable coir fabric, then secured with biodegradable rope and wooden stakes. All cut and filled banks will be reinforced up to the 100-year water surface elevation with willow and natural materials.

The proposed Project is funded by various grants, and as such, has been designed to be implemented in two phases. Phase I will include construction of the water quality treatment elements, seepage diversion and restoration of the floodplain, as well as some invasive removal in the existing riparian habitat. Phase II will continue the efforts to remove invasive species in Big Canyon and on the east side of Jamboree, and construct the community access improvement elements. Phase II will be implemented as funding becomes available.

The work will take place in Section 24 of Township 6 South, Range 10 West of the U.S. Geological Survey *Newport Beach*, CA 7.5 minute topographic quadrangle map (33° 37' 31.51" N, -117° 11' 4.50" W).

Receiving water: Big Canyon Creek has designated beneficial uses (existing or potential) that include: municipal and domestic supply (MUN), contact recreation (REC1), non-contact recreation (REC2), rare, threatened, or endangered species (RARE), warm water habitat (WARM), and wildlife habitat (WILD).

Upper Newport Bay has designated beneficial uses (existing or potential) that include: contact recreation (REC1), non-contact recreation (REC2), wildlife habitat (WILD), commercial and sport fishing (COMM), preservation of biological habitats of special significance (BIOL), spawning, reproduction, and development (SPWN), marine habitat (MAR), shellfish harvesting (SHEL), estuarine habitat (EST), and rare, threatened, or endangered species (RARE).

Fill area:

Temporary Impact to Riparian Habitat	2.0 acres	linear feet not available
Permanent Impact to Riparian Habitat	0.24 acre	linear feet not available
Permanent Impact to Wetland Habitat	0.57 acre	Linear feet not available

Dredge/Fill volume: 4,000 cubic yards

Federal permit: U.S. Army Corps of Engineers (USACE) Permit No. SPL-2016-00305

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.
- The creation of 0.25 acre of new wetland habitat is proposed to be located directly to the southwest of the proposed water quality treatment area, which will lie immediately downgradient (southerly) from the culvert opening on the west side of Jamboree Road to offset the permanent loss of 0.24 acre riparian habitat and 0.57 acre wetland habitat.
- 0.52 acre of non-native vegetation will be removed and replaced with native riparian habitat in the newly created proposed riparian and seed source areas (i.e., riparian habitat enhancement). These proposed activities will include the

removal of Brazilian Pepper trees on the canyon's northern slopes, west of Jamboree Road and adjacent to the active floodplain. These slopes were identified as the primary source areas of invasive seeds for Big Canyon. In addition, understory invasive vegetative species that have not been mapped within the Project Area by Dudek are prevalent throughout the Project Area. These species include, but may not necessarily be limited to: Pampas Grass, Periwinkle, and English Ivy. These species will be removed as part of the enhancement activities.

- Of the 1.07 acres of invasive removal, approximately 0.64 acre will be mitigation for unavoidable permanent impacts. Enhancement activities are distinguished from those considered restoration activities, in that restoration will require grading and extensive soil remediation to achieve full habitat functionality, as opposed to enhancement areas will not require any grading.
- Areas temporarily impacted as a result of construction of the water quality or infrastructure related components of the project will be restored to native habitat at a 1:1 ratio.

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 in compliance with the requirements of Santa Ana Regional Board 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 the Applicant substantially comply with the requirements of the State Water Resources Control Board General NPDES Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order Number 2012-0006-DWQ.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a Responsible Agency, the Regional Board is required to consider an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) prepared by the lead agency in determining whether to approve an application submitted for a project to receive 401 Water Quality Certification. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project that 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, in approving this Certification, the Regional Board has considered the MND prepared by the City of Newport Beach for the proposed Project and filed with the Orange County Clerk's Office on May 17, 2016, and subsequent information provided in the Applicant's application. More specifically, the Regional Board has considered those sections of the MND pertaining to impacts to water quality standards. Based on the mitigation proposed in the MND, and the conditions set forth in this Certification, potentially adverse impacts to water quality should be reduced to a less than significant level and beneficial uses protected if all stated mitigation and conditions are performed. Thus, the Regional Board independently finds that these changes or alterations have been incorporated into the Project that should 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 mitigation proposed shall be implemented in a timely manner. Materials documenting the purchase of necessary mitigation credits shall be provided to the Regional Board prior to the discharge of fill to, or the dredging or excavation of material from, waters of the State.
- 3) 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.
- 4) 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.
- 5) 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.

- 6) 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 onsite, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.
- 7) 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.
- 8) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 9) The Applicant shall follow the Project design and implementation criteria specified within the Supplemental Information document prepared by Environmental Science Associates (ESA) dated January 21, 2016.
- 10) The Applicant shall follow all procedures and policies specified in the Project Revegetation and Habitat Mitigation & Monitoring Plan prepared by ESA and dated April 2016.
- 11) The Applicant shall ensure that all fees associated with this Project shall be paid to each respective agency prior to conducting any onsite construction activities.
- 12) Prior to any grading in areas slated to be impacted that are related to the Project, functional assessments of these proposed wetland and riparian habitats and riparian mitigation sites shall be conducted using the California Rapid Assessment Method, February 2012. Site mitigation assessments shall be conducted from October through December until success criteria are met for five (5) consecutive years. This information shall be reported to <http://www.californiawetlands.net/tracker/>.
- 13) 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.

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 Section 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

Mr. Robert Stein
City of Newport Beach
SARWQCB # 302016-04

- 9 -

October 14, 2016

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,



KV Kurt V. Berchtold
Executive Officer

cc (via electronic mail):

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State Water Resources Control Board, OCC - David Rice
California Department of Fish and Wildlife – Russell Barabe – rbarabe@dfg.ca.gov
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