
Santa Ana Regional Water Quality Control Board

April 2, 2013

Larry Van Tuyl
103 Linda Isle
Newport Beach, CA 92660

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE 103 LINDA ISLE DOCK REPLACEMENT PROJECT,
COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. NOT AVAILABLE)
(SARWQCB PROJECT NO. 302013-03)**

Dear Mr. Van Tuyl:

On February 15, 2013, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from Anchor QEA, on your behalf, for a project to replace the existing dock at 103 Linda Isle, Newport Beach. This dock, within Lower Newport Bay, is currently and will be used for berthing recreational vessels. 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 consists of the removal of the existing north-south facing dock, a 722-square foot structure, disassembling it, and transporting it to an approved upland disposal site. Disassembly will also include the removal of three existing concrete guide and support piles. The removed dock will be replaced with a 1,100 square foot, east-west facing floating dock, requiring the installation of at least four but not more than six¹ new concrete guide piles, which will maintain proper alignment of the new structure. The concrete piles will be installed using a pile-driving barge. No dredging is proposed. The work will take place within Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach, California* quadrangle map (33.61503147° N/ -117.90190871° W).

¹ At least four piles will be necessary; the City of Newport Beach may require up to six piles to conform to building code requirements.

Receiving water: Lower Newport Bay

Fill area: <0.01 acre of permanent impact to marine habitat

Dredge/Fill volume: N/A

Federal permit: Rivers and Harbors Act, Section 10

Eelgrass surveys of the project site have been done and no eelgrass has been reported. Accordingly, no mitigation for impacts to eelgrass has been proposed. The Applicant asserts that the project will have beneficial impacts on navigation, water quality, and habitat quality. The project will result in the placement of at least one but no more than three additional piles into the bay floor, and will result in an additional 378 square feet of structure that will cast shade on an area of Newport Bay where eelgrass could occur. The proposed piles and dock are considered permanent impacts. Since eelgrass requires full sunlight for proper growth, the project represents the permanent loss of 378 square feet of area that could potentially become colonized by eelgrass.

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, including use of a silt curtain.
- The applicant has prepared the project to avoid eelgrass impacts.
- Should unavoidable impacts to eelgrass habitat occur where eelgrass is present, project activities will be subject to management measures specified in the Southern California Eelgrass Mitigation Policy (SCEMP). In addition:
 - In accordance with the SCEMP, an updated pre-construction eelgrass and invasive algae survey will be completed within 60 days of the proposed construction.
 - In accordance with the SCEMP, a post-construction project eelgrass survey will be completed within 30 days of the completion of the project.

Should eelgrass impacts be identified from these surveys, impacted eelgrass will be mitigated at a ratio of 1.2:1 (mitigation to impact). The applicant may apply for an exemption to the mitigation requirements of the SCEMP for projects that impact less than 10 square meters of eelgrass.

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.

Pursuant to the California Environmental Quality Act (CEQA), Anchor QEA, L.P. filed a CEQA Categorical Exemption approved by the City of Newport Beach Harbor Resources Division on March 5, 2013. The City of Newport Beach Harbor Resources Division has determined that the project is ministerial or categorically exempt from provisions of CEQA. The Regional Board has considered the 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 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 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 discharger must recover the material to the maximum extent practical.
3. The Applicant must conduct an eelgrass survey within the two month period prior to 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.

4. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.
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.
6. 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.
7. Motorized equipment shall not be maintained or parked within or near any shore line in such a manner in which 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.
8. 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.
9. 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.

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 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.

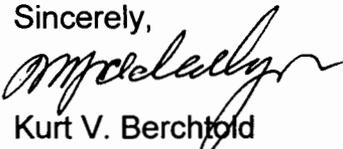
In the event of any violation or threatened violation of the conditions of this certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean 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/wqo2003-0017.pdf

Should there be any questions, please contact Marc Brown at (951) 321-4584, or Mark Adelson at (951) 782-3234.

Sincerely,

for 

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

cc (via electronic mail):

Anchor QEA, L.P.-Jack Malone, jmalone@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, KHupf@dfg.ca.gov
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme