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Santa Ana Regional Water Quality Control Board

July 14, 2014

Nardy Khan
Engineering Supervisor
OC Public Works
300 North Flower Street
Santa Ana, CA 92702

REVISED CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE SUNSET CHANNEL MAINTENANCE PROJECT, CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, CALIFORNIA (SARWQCB PROJECT NO. 302011-32)

Dear Ms. Khan:

On June 17, 2014, we received a request from the Orange County Public Works (OCPW), for the revision of an existing Clean Water Act Section 401 Water Quality Standards Certification (401 Certification). The original 401 Certification was issued by the Santa Ana Regional Water Quality Control Board on December 12, 2012, for a project to restore and protect eroding slopes on the Sunset Channel, located in Huntington Beach. Included within the project's original 2012 application were the following:

- A copy of the application to the United States Army Corps of Engineers (USACOE) for an individual Clean Water Act Section 404 permit for the project;
- A copy of the application for a California Department of Fish and Game (CDFG) Streambed Alteration Agreement (Agreement);
- A copy of a Notice of Determination indicating that the Mitigated Negative Declaration prepared for the project was certified in compliance with the California Environmental Quality Act; and,
- \$40,000 as the filing fee for a 401 Certification for this project, as specified by the California Code of Regulations (CCR), Title 23, Division 3, Chapter 9, Article 1, Section 2200 (a)(3) (23 CCR 2200(a)(3)). On August 13, 2012, we received an additional fee of \$19,000 for this project; to conform to the revised fee requirements specified in 23 CCR 2200(a) (3), as amended, effective October 19, 2011. This additional amount completed the 401 Certification filing fee for this project.

This letter responds to your request for a revision to the December 12, 2012, 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 OCPW proposes to perform continuing maintenance on the 1.2 mile section of the Sunset Channel between Heil Avenue and Edinger Avenue in the City of Huntington Beach, Orange County. Sunset Channel is an Orange County Flood Control District facility (referred to as C07) and is adjacent to residential areas. In the project area, C07 is an open channel with earthen bed and banks; this section of the channel has experienced severe erosion to its banks. The USACOE recently conducted a PL 84-99 inspection of this section of C07 and deemed the channel as failing the guidelines of the inspection. In the Certification application, the County stated that continued erosion will make the channel access road inaccessible to maintenance crews. Downstream of Heil Avenue, C07 is a fully enclosed culvert system for a distance of about 1,100 feet before passing beneath Heil Avenue and through a residential development before discharging into Huntington Harbour. Regional Board staff have observed that the channel contains tidal flows for at least three miles upstream of Heil Avenue to east of Bolsa Chica Street. Most of this section of the channel was observed to contain open water. Salt marsh plants, mostly pickleweed (*Salicornia spp*), were observed growing on the edges of the tidal waters in the channel. The biological technical report submitted with the application described this section of the channel as containing disturbed southern coastal salt marsh. The channel was observed to be dry in areas upstream of the tidal flows.

The specific maintenance tasks to be completed on the channel include:

- Grade approximately 6,040 cubic yards of earthen material to repair eroded slopes within approximately 6,885 linear feet of Sunset Channel, in order to restore baseline conditions.
- Remove approximately 282 feet of pipe and wire from within the Sunset Channel.
- Conduct in-kind repairs to approximately 340 linear feet of rip-rap-lined side slopes.
- Temporary impact: approximately 0.332 acre of wetland waters of the United States and 1.932 acres of non-wetland waters of the United States through implementation of the above activities.

Receiving water: Sunset Channel which is tributary to Huntington Harbour and the Pacific Ocean

Latitude | Longitude: 33.729652 N/-118.032898 W to 33.722678N/-118.052061 T5S, R5W, Sections 20, 21, USGS *Seal Beach, CA* quadrangle

Fill Area: Temporary impact approximately 0.332 acre of wetland
Temporary impact approximately 1.932 acres of non-wetland

Dredge/Fill Volume: Approximately 6,040 cubic yard of earthen material will be used to restore the eroded slopes

Federal Permit: USACE Nationwide Permit (NWP) No. 3 (Maintenance)

Mitigation: No mitigation will be required. In-kind soil material will be used for repairing the eroded slopes.

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.

Regional Board Order No. R8-2009-0030, commonly known as the Orange County Municipal Storm Water Permit, requires that you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 2009-0009-DWQ (or subsequent iterations thereof) including the preparation of a Storm Water Pollution Prevention Plan (SWPPP).

Huntington Harbour was placed on the 2006 Clean Water Act Section 303 (d) list (303(d) list) as an impaired water body. The pollutants/stressors chlordane, copper, lead, nickel, pathogens, PCBs and sediment toxicity (collectively refer to hereinafter as "303(d) pollutants") are reported as potential sources of impairment to the beneficial uses of Huntington Harbour. To verify that further impairment will not occur as a result of this project, this certification includes conditions for monitoring for the 303(d) pollutants shown above before and during project operations. See Condition 6 below.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board must consider an EIR or Negative Declaration prepared for a project by the Lead Agency, and reach its own conclusions on whether and how to approve the project involved. Regional Board staff has considered the project's Mitigated Negative Declaration (MND) in issuing this 401 Certification, particularly those sections of the MND that relate to water quality. Based on the mitigation proposed and the conditions set forth in this 401 Certification, the Regional Board independently concludes that the project will very likely not create further impairment, and that the project's impacts to water quality will be reduced 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) Project-related activities must not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in the receiving waters (i.e., Huntington Harbour within 300 feet down current ¹of the discharge point) to be increased by values greater than the following Basin Plan objectives:
 - 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.
- 3) Project-related activities must not cause a violation of the following Basin Plan objectives for Enclosed Bays and Estuaries for turbidity, dissolved oxygen (DO) and/or pH in the area of 100 ft. down current of the Sunset Channel outlet in Huntington Harbour, or at the down current edge of any visible discharge plume:
 - a) *"The dissolved oxygen content of enclosed bays and estuaries shall not be depressed to levels that adversely affect beneficial uses as a result of controllable water quality factors."*
 - b) *"The pH of bay or estuary waters shall not be raised above 8.6 or depressed below 7.0 as a result of controllable water quality factors; ambient pH levels shall not be changed more than 0.2 units."*
 - c) *"All enclosed bays and estuaries of the region shall be free of changes in turbidity which adversely affect beneficial uses."*
- 4) On each day where discharges from Sunset Channel into Huntington Harbour include flows that have come into contact with materials or equipment used to construct this project, turbidity, dissolved oxygen (D.O.), temperature and pH monitoring must be conducted, according to the following:
 - a) Monitoring must be conducted in Huntington Harbour approximately 100 ft. down current from the outlet of the Sunset Channel at a depth midway between the water surface and the harbor bottom.

¹ Down current during outgoing tides would be towards the outlet of Huntington Harbour, which is generally to the southwest. Down current during incoming tides would be generally to the northwest. At ebb tide the monitoring location would be 100 ft west of the discharge point.

- b) Whenever monitoring is conducted as specified in this Condition, background monitoring must also be completed. Background monitoring must be completed at the same depths in an area not affected by project activities and within four hours of when project discharge monitoring is conducted. Turbidity, D.O., temperature and pH monitoring shall be conducted at a background monitoring station.
 - c) Coordinates of all locations where monitoring is conducted shall be recorded, and reported with the respective monitoring data.
 - d) Regional Board staff must be provided with monitoring results via email within 48 hours. Results must be accompanied by the longitude and latitude of each location monitored.
- 5) Monitoring must be conducted for the 303(d) pollutants at a location in Huntington Harbour 100 ft. down current of the outlet of Sunset Channel. In addition, monitoring for the 303(d) pollutants must be conducted at a background monitoring station (as described in Condition 4b).

One week prior to startup of project construction, one representative sample of the Huntington Harbour water column shall be collected , 100 ft. from the Sunset Channel outlet during ebb (slack) tide. The sample will be analyzed for 303(d) pollutants, except sediment toxicity.

One down current, water column sample shall be collected monthly, and analyzed for 303(d) pollutants. The sample will be collected during project construction, on a day where discharges from Sunset Channel into Huntington Harbour include flows that have come into contact with materials or equipment used to construct this project, when the tide is falling/out-going and at least three hours after the forecast daily high tide.

At the conclusion of the project, one sediment sample shall be collected 300ft. west of the Sunset Channel outlet and tested for sediment toxicity.

If the project is conducted to such extent where there are no discharges from Sunset Channel into Huntington Harbour that include flows that have come into contact with materials or equipment used to construct this project, pre-project, background monitoring and end-of-project monitoring for 303 (d) pollutants shall be completed in the manner described above.

- 6) Monitoring completed in compliance with Condition 5 must be conducted in accordance with an appropriate quality assurance project plan, must be compatible with the State Water Resources Control Board Surface Water Ambient Monitoring Program (SWAMP) and results must be entered into the SWAMP database. At the project's conclusion, monitoring results for 303(d) pollutants shall be provided to Board staff in a report that discusses and

interprets the results and draws conclusions about the effects, if any, that the project has had on the quality of the receiving water.

- 7) If monitoring results show that Basin Plan water quality objectives are not being met (see Conditions 2 and 3, above), OCPW must cease the discharge and develop and implement a plan to meet objectives. Project activities may not resume until water quality objectives can be met at the sampling locations in Huntington Harbour.
- 8) All materials generated from construction activities associated with this project must be managed appropriately. This must 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.
- 9) The project proponent must utilize appropriate BMPs during project construction to minimize the controllable discharges of sediment and other wastes into the channel downstream of the project and particularly into Huntington Harbour. The applicant shall use silt screens and divert flows around construction areas as necessary.
- 10) All reasonable efforts must be made to avoid and minimize the project's impacts on the salt marsh vegetation present in the channel.
- 11) 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, must not be discharged to soils or waters of the state. All waste concrete must be removed.
- 12) Motorized equipment must not be maintained or parked within or near any stream crossing, channel or other water body in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles must not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project. No equipment may be operated in areas of flowing water.
- 13) 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.
- 14) Best management practices to stabilize disturbed soils must include the use of native plant species wherever feasible.

- 15) Construction de-watering discharges, including temporary stream diversions necessary for project construction, shall be in compliance with the terms and conditions of Regional Board Order No. R8-2009-0003, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality (De Minimis Permit). Separate authorization under the De Minimis Permit is not required. For more information, please review Order No. R8-2009-0003 at www.waterboards.ca.gov/santaana/

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.

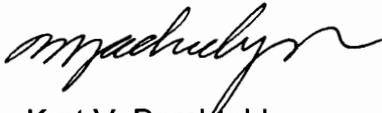
If the above stated conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, the Regional Board may require the applicant to submit a report of waste discharge and obtain Waste Discharge 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 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/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

cc: Orange County Public Works - Maher Almasri
U. S. Army Corps of Engineers, Los Angeles Office- Jason Lambert
State Water Resources Control Board, OCC- David Rice
State Water Resources Control Board, DWQ -Water Quality Certification Unit
California Department of Fish and Wildlife - Kevin Hupf
U.S. EPA- Supervisor of the Wetlands Regulatory Office WTR- 8