

Santa Ana Regional Water Quality Control Board

February 10, 2015

Susan Brodeur
County of Orange Parks & Recreation
13042 Old Myford Road
Irvine, CA 92602

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE NEWPORT HARBOR PATROL MARINE WAYS REPAIR
PROJECT, NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA (ACOE
REFERENCE NO. SPL-2014-00645-SME) (SARWQCB PROJECT NO. 302014-21)**

Dear Ms. Brodeur:

On November 26, 2014, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from the County of Orange Parks & Recreation for a project to replace the underwater portion of the original Newport Harbor Patrol Headquarters structure that was built in 1956. 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 and disposal of an approximately 25-foot long steel railroad rail and support frame, four 10-inch diameter by 10-foot long steel pipe piles, 100 square feet of concrete pavement immediately landward of the existing toe wall, and miscellaneous steel framing and hardware. The project will also furnish and install eight 12-inch diameter by 10 to 15 feet long steel pipe foundation piles, as well as a new 8-foot wide by 53-foot long steel frame to support the new marine ways rail track. A new sheet pile toe wall will be installed immediately bayward of the existing, deteriorated ways ramp toe, to prevent backfill loss underneath the existing concrete ramp pavement.

The work will take place within an Section 36 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach* 7.5 minute topographic quadrangle map (33.602872° N, -117.883929° W).

Receiving water: Lower Newport Bay, which has present or potential beneficial uses, including: contact recreation (REC1), non-contact recreation (REC2), rare/threatened/endangered species (RARE), wildlife habitat (WILD), municipal and domestic supply (MUN), commercial and sport fishing (COMM), marine habitat (MAR), navigation (NAV), and shellfish harvesting (SHEL).

Fill area:

Temporary Impact to Ocean Habitat	0.005 acres	linear feet N/A
Permanent Impact to Ocean Habitat	0.0007 acres	linear feet N/A

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Permit No. SPL-2014-00645-SME

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:

- The project impacts will be mitigated by increasing the size of the County's eelgrass mitigation bed from a required 0.011 ac to 0.077 ac.

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 according to the requirements of 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 you substantially comply with the requirements of State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity.

Pursuant to the California Environmental Quality Act (CEQA), the County of Orange filed a CEQA Guidelines Section 15301, Class 3 Categorical Exemption, which declares that the project consists of repairs to an existing marine way, the new construction and installation of a rail, which will be extended approximately 23 feet, steel framing, pile support, and passive cathodic protection. The Regional Board has independently considered the County's 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) The applicant must comply with the requirements of the applicable Clean Water Act section 404 permit.
- 2) Proposed mitigation shall be timely implemented; by increasing the size of the County's eelgrass mitigation bed from a required 0.011 ac to 0.077 ac. Documentation of this mitigation shall be provided to this office.
- 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.
- 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 on-site, except as necessary to complete the proposed project. No equipment shall be operated in areas of flowing water.

- 7) 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.
- 8) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 9) 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.

Susan Brodeur
Orange County Parks & Recreation
RWQCB #: 302014-21 CIWQS #: 811549

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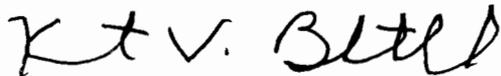
Violations of the conditions of this certification may subject the applicant to civil liability pursuant to Water Code section 13350 and/or 13385.

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/wqo_2003-0017.pdf

Should there be any questions, please contact Marc Brown at (951) 321-4584.

Sincerely,



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

cc (via electronic mail):

Noble Consultants, Inc. – Jon T. Moore – jmoore@nobleconsultants.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 M. Barabe
State Water Resources Control Board, DWQ-Water Quality Certification Unit - Bill Orme