

Santa Ana Regional Water Quality Control Board

October 15, 2015

Mr. Vincent Gin
Orange County Public Works
300 North Flower Street
Santa Ana, CA 92703

**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE PETERS CANYON CHANNEL MAINTENANCE
PROJECT, CITY OF IRVINE, COUNTY OF ORANGE, CALIFORNIA (USACOE
REFERENCE NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 302015-04)**

Dear Mr. Gin:

On February 13, 2015, we received from the Orange County Public Works (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project that consists of removing approximately 16,000 cubic yards of sediment and vegetation within the Peters Canyon Channel (F06), in order to restore the drainage system to its original design capacity (Project). The Applicant submitted a filing fee of \$19,548.00, which satisfies this Project's fee requirement for consideration of a 401 Certification. 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 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 involves the removal of approximately 16,000 cubic yards of sediment and vegetation from 4,536 linear feet of Peters Canyon Channel. The Project is needed to improve the channel's flood control capacity and reduce the risk of flooding the surrounding area during major rain events.

The Project impact area totals approximately 4,356 feet, extending from the confluence of the existing Orange County Flood Control District facility designated F06 and El Modena Irvine Channel (F07) to approximately 165 feet downstream of Interstate-5.

Heavy equipment will be required to conduct the maintenance activities, including the use of excavators, dump trucks, and front-end loaders. Work will occur in wetted portions of the channel. No water will need to be diverted around the Project site because a six-foot wide low-flow area will be created within the channel as part of the proposed Project activities.

With the exception of an existing 10-foot wide vegetated corridor adjacent to the low-flow channel, the vegetation in the channel will be removed, which will result in direct impacts to the channel. However, the vegetated corridor should help replenish the native freshwater marsh vegetation along the corridor.

The work will take place within Sections 26 and 27 of Township 5 South, Range 9 West of the U.S. Geological Survey *Tustin, California* 7.5 minute topographic quadrangle map (33° 42' 32.994" N, -117° 47' 59.868" W).

Receiving water:

Peters Canyon Channel and Upper Newport Bay. Peters Canyon Channel has beneficial uses (existing or potential) that include: contact recreation (REC1); non-contact recreation (REC2); wildlife habitat (WILD); groundwater recharge (GWR); and, warm freshwater habitat (WARM). Upper Newport Bay has beneficial uses (existing or potential) that include: contact recreation (REC1); non-contact recreation (REC2); commercial and sport fishing (COMM); Preservation of Biological Habitats of Special Significance (BIOL); wildlife habitat (WILD); rare, threatened, and endangered species (RARE); spawning reproduction (SPWN); marine habitat (MAR); shellfish harvesting (SHEL); and, estuarine ecosystems (EST).

Fill area:

Temporary Impact to Wetland Habitat	1.26 acres	linear feet n/a
Temporary Impact to Streambed Habitat	0.27 acres	linear feet n/a

Dredge/Fill volume: 16,000 cubic yards

Federal permit: U.S. Army Corps of Engineers (USACE) Nationwide Permit No. 3 (Maintenance).

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.
- A ten-foot wide vegetated corridor (totaling 1.00 acre) will remain adjacent to the low flow channel. This vegetated corridor will be designed to recruit additional native freshwater marsh vegetation.

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 best management practices (BMPs) will be implemented to reduce construction-related impacts to waters of the State in compliance with the requirements of 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 you substantially comply with the requirements of the State Water Resources Control Board NPDES General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order Number 2012-0006-DWQ.

On August 4, 2015, pursuant to the California Environmental Quality Act (CEQA), Orange County Public Works filed a CEQA Guidelines Section 15301(d) "Class 1" Categorical Exemption. "Class 1" consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. "Class 1" deals with restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and

safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood.

Orange County Public Works also filed a CEQA Section 15304(g) "Class 4" Categorical Exemption. "Class 4" includes maintenance dredging where the spoil is deposited in an area authorized by all applicable State and federal agencies. The Regional Board has independently considered the County's Categorical Exemptions 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) 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.
- 3) 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.
- 4) 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 site.
- 5) 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.
- 6) 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.

- 7) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 8) Construction de-watering discharges, including temporary stream diversions necessary to carry out Project construction may be regulated under Regional Board Order No. R8-2015-0004, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at www.waterboards.ca.gov/santaana/.
- 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 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

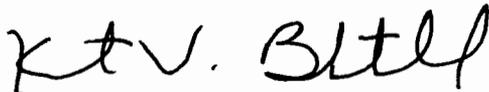
violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Certification. Violations of the conditions of this Certification may subject the Applicant to civil liability pursuant to Water Code Section 13350 and/or 13385.

This letter constitutes a Water Quality Standards Certification issued pursuant to Clean Water Act Section 401. I hereby 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 or marc.brown@waterboards.ca.gov, or Wanda Cross at (951) 782-4468 or wanda.cross@waterboards.ca.gov.

Sincerely,



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

cc (via electronic mail):

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 Barabe
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme
U.S. EPA - Supervisor of the Wetlands Section - Jason A. Brush