

## Santa Ana Regional Water Quality Control Board

December 23, 2015

Mr. Riley Thomas Pratt  
Project Manager  
New Irvine Ranch Conservancy  
4727 Portola Parkway  
Irvine, Ca 92620

### **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE SHADY CANYON TURTLE POND OPERATION AND MAINTENANCE ACTIVITIES, CITY OF IRVINE, ORANGE COUNTY (USACE FILE NO. SPL-2015-00399-ERS) (SARWQCB PROJECT NO. 302015-12)**

Dear Mr. Pratt:

On June 16, 2015, Regional Board staff received from the New Irvine Ranch Conservancy (Applicant) an application for Clean Water Act (CWA) Section 401 Water Quality Standards Certification (401 Certification) for the Shady Canyon Turtle Pond Operation and Maintenance Activities project (Project). With the application, we received:

- A description of the proposed Project and the Long-Term Management Plan for the Shady Canyon Turtle Pond Mitigation Site;
- A check for \$200, which satisfies the fee requirement for consideration of a 401 Certification for an Ecological Restoration and Enhancement Project, such as the Turtle Pond 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 iteration of California Code of Regulations, Division 3, Chapter 9, Article 1, Section 2200 (a) (3) in effect at the time the application was submitted.

Subsequently, we received the following additional 401 Certification application materials:

- A Letter of Permission (LOP) dated November 10, 2015 issued by the United States Army Corps of Engineers (USACE) authorizing the Project to proceed

within the San Diego Creek Watershed Special Area Management Plan (SDC SAMP)<sup>1</sup>.

- A final Streambed Alteration Agreement for the Project from the California Department of Fish and Wildlife (CDFW);
- Notification that CDFW determined the Project is exempt from the California Environmental Quality Act (CEQA). A Notice of Exemption (NOE) for the Project was filed on October 12, 2015; and
- Recommendations from the United States Fish and Wildlife Service (USFWS) for measures the Applicant should take to reduce Project impacts on native plants and wildlife.

This letter responds to your request for 401 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.

#### 1. Project description:

The Shady Canyon Turtle Pond Mitigation site was created in 2001 to provide habitat for the western pond turtle (*Emys marmorata* spp. *Pallida*), a CDFW Species of Special Concern. The mitigation site was part of mitigation obligations for adverse impacts resulting from the construction of the Shady Canyon Golf and Residential Project. The turtle pond area was previously a stock pond constructed on an intermittent stream. The turtle pond was excavated and constructed with 0.12 acre of deep water (3 to 12 ft. deep) habitat in the upstream portion and 0.32 acre of shallow water (0 to 3 ft. deep) habitat. A reliable water supply was installed that provides a consistent pond surface elevation.

Over time, sediment has filled in much of the pond, decreasing the size and depth of the pond. The original dimensions of the pond in 2001 were approximately 50 ft. wide by 100 ft. long, with a 12 ft. maximum depth. Currently, the pond size has been reduced to appropriately half of its original dimensions.

Project impacts to waters of the United States/State will result from excavation of the pond and the placement of two gabions on the upstream tributary intermittent stream. A

---

<sup>1</sup> A Letter of Permission is issued under the provisions of section 404 of the Clean Water Act as a type of expedited USACE 404 permit.

total of approximately 18,600 cubic feet (cf) of sediment will be excavated in two stages to restore the pond to original design conditions.

The pond supports a stable population of about 70 turtles. In the first stage of the Project, the pond turtles will be captured and removed to an offsite capture facility. The pond will be allowed to dewater naturally to an approximate three foot depth. Large debris and non-native species such as the destructive African clawed frog (*Xenopus laevis*) will be removed. Existing sediment in the upstream portion of the pond will then be excavated using a small excavator. Approximately 4,800 cf of sediment will be removed to a nearby upland sediment deposition area.

Wet sediment will be removed using a gas-powered trash pump. Approximately 13,800 cf of wet sediment from the deepest sections of the pond will be pumped to the upland sediment deposition area. Non-native species will continue to be removed during the second stage of the Project.

Two 24-foot long gabions will be installed upstream of the pond to reduce future sediment deposition into the pond. The gabions will be placed perpendicular to stream flow, one 20 feet upstream from the pond and the other about 10 feet from the stream inlet. The pond will then be refilled and the pond turtles returned. The Long-Term Management Plan requires regular maintenance of the pond after it is restored, including removal of sediment that accumulates behind the gabions, maintenance of the water system, maintenance of the plants, non-natives species removal, and monitoring of the western pond turtle population.

2. Location: Longitude: 117°.779615 West, Latitude 33°46'6.575" North, Section 36, Township 6 South, Range 9 West, USGS Laguna Beach Quadrangle
3. Receiving water: Un-named tributary to Shady Canyon Creek, a tributary to Sand Canyon Wash that has designated beneficial uses (existing or potential) that include: Groundwater Recharge (GWR), Water Contact Recreation (REC 1), Non-Contact Water Recreation (REC2), Rare, Threatened or Endangered Species (RARE), Warm Freshwater Habitat (WARM), and Wildlife Habitat (WILD).
4. Fill Area: Impacts to jurisdictional waters of the United States: 0.09 acre of temporary wetland impact, 0.01 acre of temporary streambed impact, 0.006 acre permanent streambed impact, and 89 linear feet of temporary streambed impact
5. Dredge volume: 18,600 cu ft.

- 6. Federal permit: Letter of Permission
- 7. Mitigation: No mitigation required.

Should the proposed Project impact State- or federal-listed endangered species or their habitat, implementation of measures identified in consultation with U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) will ensure that 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 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, and Santa Ana Regional Board Order No. R8-2009-0030 as amended by R8-2010-0062 (NPDES Permit No. CAS618030), commonly known as the Orange County Municipal Storm Water Permit, and subsequent iterations thereof.

On October 12, 2015, pursuant to the California Environmental Quality Act (CEQA), CDFW filed a CEQA Guidelines Section 15304 (g) "Class 4" Categorical Exemption, which declares the proposed Project consists of "minor alterations in land, water, and vegetation on officially designated wildlife management areas or fish production facilities which result in improvement of habitat for fish and wildlife resources". As a result of staff's review of the Project description and a field visit, the Regional Board independently considered the Categorical Exemption in the issuance of this Certification and finds that with the application of mitigation and avoidance measures specified in the 401 Certification application, the Letter of Permission issued by the USACE, the 401 Certification, and the CDFW Streambed Alteration Agreement, 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 USACE Letter of Permission.
- 2. The Applicant must comply with USFWS guidance to seed the upland fill site with an appropriate complement of native plant seeds, and complete post

implementation maintenance and monitoring in order to maintain the sediment deposition areas free of weeds until native plants are established.

3. The Project CDFW Streambed Alteration Agreement conditions shall be implemented, including the re-vegetation of temporarily impacted areas with native seed, and restoration maintenance and monitoring for 5 years. The Applicant shall submit the Project monitoring reports to Regional Board staff for the duration of Project implementation.
4. Impact avoidance and minimization measures and site design, source control, and structural source control Best Management Practices (BMPs) must be implemented to reduce Project impacts.
5. The Project proponent shall utilize appropriate BMPs during Project activities to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the State and of the United States.
6. A copy of this Certification and any subsequent amendments must be maintained on-site for the duration of work as a denoted element of any Project Storm Water Pollution Prevention Plan (SWPPP) or Water Pollution Control Program (WPCP).
7. 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 washings and cuttings thereof, and metal cutting or forming wastes including grinding debris and slag, shall not be discharged to soils or waters of the State. All waste concrete must be removed from the Project site.
8. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such manner that petroleum products or other pollutants from the equipment might 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.
9. Construction de-watering discharges necessary to carry out the Project are subject to regulation by 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 the Regional Board's website: [www.waterboards.ca.gov/santaana](http://www.waterboards.ca.gov/santaana).

10. 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 conditions contained in any other permit or approval for this Project issued by the State of California, or any subdivision thereof, may result in appropriate enforcement action, including revocation of this Certification and imposition of administrative civil or criminal liability.

Under California Water Code, Section 1058, and Pursuant to 23 CCR 3860, the following shall be included as conditions of all water quality standards 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.

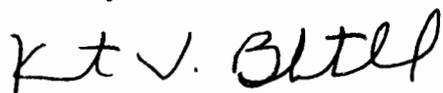
Violations of the conditions of this Certification may subject the Applicant to civil liability pursuant to Water Code Section 13350 and/or 13385.

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 Received State Water Quality Certification" that 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](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo_2003-0017.pdf)

Please notify our office five (5) days before construction begins on this Project. If you have any questions, please contact Dave Woelfel at (951) 782-7960 or [david.woelfel@waterboards.ca.gov](mailto:david.woelfel@waterboards.ca.gov) or Wanda Cross at (951) 782-4468 or [wanda.cross@waterboards.ca.gov](mailto:wanda.cross@waterboards.ca.gov).

Sincerely,



Kurt V. Berchtold  
Executive Officer

cc: U.S. Army Corps of Engineers – Eric Sweeney  
U.S. Environmental Protection Agency, Supervisor of the Wetlands Section –  
Jason A. Brush (WTR-8)  
State Water Resources Control Board, DWQ - Water Quality Certification Unit  
State Water Resources Control Board, OCC – David Rice  
California Department of Fish and Wildlife – Kevin Hupf