



# California Regional Water Quality Control Board

## Santa Ana Region



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Arnold Schwarzenegger  
Governor

April 14, 2008

Maureen Querio  
Bay Island Club, Inc.  
c/o Villageway Management  
PO Box 4708  
Irvine, CA 92616

### **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE BAY ISLAND BULKHEAD AND BRIDGE PROJECT, CITY OF NEWPORT BEACH (ACOE REFERENCE NO. 2006 – 00441)**

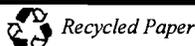
Dear Ms. Querio:

On June 8, 2006, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification), submitted on your behalf by Moffatt & Nichol for modifications to the bulkhead and bridge at Bay Island in the City of Newport Beach. Requested sampling results were received on February 28, 2008. 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) and subsequent Basin Plan amendments:

#### Project Description:

Replacement/repair of the existing bulkheads; replacement of the pedestrian bridge; and construction of a submerged beach sand retention wall on Bay Island. The southern and southwestern bulkhead will be replaced with steel sheet piles with a concrete cap, installed using a vibratory hammer, within the footprint of the existing bulkhead or landward. Temporary shoring will be required. The northern bulkhead is separated from the southern bulkhead by the beaches on either side of the island. The new northern bulkhead will be installed in front of the existing one using a vibratory hammer, and a concrete cap will be placed over the new steel sheet piles and the old piles. The pedestrian bridge will be replaced with a new, wider bridge with travel lanes for golf carts and pedestrians. The new bridge will be constructed adjacent to the old one to maintain continuous access and utility services. Upon completion of the new bridge, the old bridge will be demolished. The "L"-shaped sand retention wall will be fiberglass and constructed at approximately -1 foot Mean Lower Low Waterline (MLLW) off of the west pocket beach. The project is located within Section 34 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach, California*, 7.5-minute topographic quadrangle map (33 deg. 36.43 min. N/ -117 deg. 54.30 min. W).

*California Environmental Protection Agency*



Receiving water: Lower Newport Bay.

Fill area: 0.018 acre of permanent impact to marine floor (700 linear feet).

Dredge/Fill volume: N/A

Federal permit: U.S. Army Corps of Engineers Nationwide Permit Nos. 03 and 14.

You have proposed to mitigate water quality impacts as described in your Certification application and subsequent submittals. The proposed mitigation is summarized below:

**Onsite Water Quality Standards Mitigation Proposed:**

- The new bulkhead will feature Tideflex valves to release storm water runoff from the Island. Storm drain inlets will be fitted with catch basin filters.
- The new bridge will drain into the storm drain systems on either side but not directly into Lower Newport Bay.
- The demolition of the old bridge and construction of the new bridge will result in a net increase in marine benthic area by using fewer piles.
- The east beach will be excavated in order to create 0.071 acre of marine benthic area.

**Offsite Water Quality Standards Mitigation Proposed:**

- No offsite water quality standards mitigation is proposed.

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. Appropriate Best Management Practices will be implemented to reduce construction-related impacts to Waters of the State. This project affects an area that is less than one acre. Therefore, coverage under the State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity, Water Quality Order 99-08 DWQ, is not required.

You have applied for a Nationwide Permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act. Pursuant to the California Environmental Quality Act (CEQA), the City of Newport Beach adopted a Mitigated Negative Declaration for the Bay Island improvements on August 18, 2007. The Executive Officer has considered the City's Mitigated Negative Declaration in the issuance of this Certification.

**This 401 Certification is contingent upon the execution of the following conditions:**

1. Regional Board staff and other authorized representatives shall be allowed:
  - a. Entry upon premises where storm water treatment facilities are located, or where records are kept under the requirements of this Certification and applicable waste discharge requirements;
  - b. Access to copy any records that are kept under the requirements of this Certification or applicable waste discharge requirements;
  - c. To inspect any facility, equipment (including monitoring and control equipment), practices, or operations related to the treatment of storm water runoff from the project site; and
  - d. To photograph, sample and monitor for the purpose of assuring compliance with this Certification or applicable waste discharge requirements
2. Materials shall 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 shall recover the material to the maximum extent practical.
3. Project activities must not depress the dissolved oxygen content of receiving waters below 5 mg/L as a result of controllable water quality factors. When natural dissolved oxygen content is less than 5 mg/L, the discharger must not cause further depression.
4. Project activities must not raise the pH of receiving waters above 8.6 or lower pH below 7.0 as the result of controllable water quality factors; ambient pH levels must not be changed by more than 0.2 units.
5. Project-related activities shall not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in receiving waters to be increased by values greater than the following Basin Plan objectives at a distance of 100 feet from the activity:
  - a. If natural turbidity is between 0 and 50 NTU, the maximum increase shall not exceed 20% of the measured natural turbidity.
  - b. If natural turbidity is 50 to 100 NTU, the increase shall not exceed 10 NTU.
  - c. If natural turbidity is greater than 100 NTU, the maximum increase shall not exceed 10% of the measured natural turbidity.
6. An effective monitoring plan must be developed and implemented to document compliance with conditions 2, 3, 4, and 5 above. Any suspected violation of these conditions must be reported to Regional Board staff in writing within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.
7. This Certification, and any subsequent amendments, must be maintained on-site for the duration of the proposed work.

**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.

Although we anticipate no further regulatory involvement, 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, we may formulate Waste Discharge Requirements.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation 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.

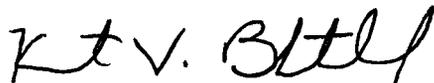
In response to a suspected violation of any condition of this certification, the Santa Ana Regional Water Quality Control Board (Regional Board) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the Regional Board deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

In response to any violation of the conditions of this certification, the Regional Board may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. Please notify our office five (5) days before construction begins on this project.

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. 200-0017-DWQ is available at [www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf](http://www.swrcb.ca.gov/resdec/wqorders/2003/wqo/wqo2003-0017.pdf)

Should there be any questions, please contact Adam Fischer at (951) 320-6363, or Mark Adelson at (951) 782-3234.

Sincerely,



for GERARD J. THIBEAULT  
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Dan Swenson  
State Water Resources Control Board, OCC – Dave Smith  
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme  
California Coastal Commission – Fernie Sy  
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and David Smith

APF:401/certifications/bay isl bulkhd & bridge 302006-13