California Regional Water Quality Control Board
Santa Ana Region

Linda S. Adams
Secretary for Environmental Protection

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Arnold Schwarzenegger
Governor

December 3, 2007

Chris Miller
City of Newport Beach
Harbor Resources
829 Harbor Island Drive
Newport Beach, CA 92660

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE RHINE WHARF PUBLIC DOCK, CITY OF NEWPORT BEACH (ACOE REFERENCE NO. NOT AVAILABLE)

Dear Mr. Miller:

On October 2, 2007, we received an application for Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the proposed construction of the Rhine Wharf Public Dock at the terminus of the Rhine Channel in the City of Newport Beach. 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:	Construction of a new, public-access floating dock. The dock will consist of an 8-foot by 100-foot float, a 4-foot by 80-foot gangway with an 8-foot by 20-foot gangway landing, and a 6-foot by 10-foot wharf landing. The project will include five 14-inch +/- piles and one or two T-piles for the wharf landing. The project is located at the terminus of the Rhine Channel next to Lido Park Drive within Section 51 of Township 6 South, Range 9 West, of the U.S. Geological Survey *Tustin, California*, 7.5-minute topographic quadrangle map (33 deg. 36 min. 53 sec. N/-117 deg. 55 min. 35 sec. W).
Receiving water:	Rhine Channel.

Fill area:	0.02208 acres of temporary impact to a marine channel (100-linear feet).
Dredge/Fill volume:	Not Available
Federal permit:	Rivers and Harbors Act Section 10

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 according to the requirements of Order No. R8-2002-0010, commonly known as the Orange County Municipal Storm Water Permit. Order No. R8-2002-0010 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 99-08 DWQ, including the preparation of a SWPPP.

You have applied for a federal permit from the U.S. Army Corps of Engineers in compliance with Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. You have applied for a Coastal Development Permit from the California Coastal Commission. Pursuant to the California Environmental Quality Act (CEQA), the City of Newport Beach and the Executive Officer have determined that the project is Categorically Exempt from provisions of CEQA under Guidelines Section 15303 for the construction of small structures, in Title 14 of the California Code of Regulations.

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

1. Using generally accepted protocols, the discharger must survey for *Caulerpa taxifolia*, an invasive marine seaweed, to help locate and prevent its spread. If *Caulerpa taxifolia* is found prior to or during implementation of the project, the applicant must not begin or continue at that location until authorized by Regional Board staff. If the invasive seaweed is discovered, it is not to be disturbed, and the Regional Board must be notified within 48-hours of the location and date of the discovery. In addition, any sightings of *Caulerpa taxifolia* should be reported to the California Department of Fish and Game (William Paznokas at (858) 467-4218 (wpaznokas@dfg.ca.gov)) or the National Marine Fisheries Service (Robert Hoffman at (562) 980-4043 (bob.hoffman@noaa.gov)) within 24-hours of discovery. Further information regarding *Caulerpa taxifolia* sightings can be

obtained at www.sccat.net. Should no *Caulerpa* be observed during the project, the applicant must notify the Regional Board of this fact when all construction has been completed. Please contact Wanda Cross at (951) 782-4468 concerning issues related to *Caulerpa taxifolia*.

2. Materials must 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 must recover the material to the maximum extent practical.
3. Project-related activities must not cause the background natural turbidity, as measured in Nephelometric Turbidity Units (NTUs), in the 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 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.
4. An effective monitoring plan must be developed and implemented to document compliance with conditions 2 and 3 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.
5. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.

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.

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

Sincerely,

GERARD J. THIBEAULT
Executive Officer

cc (via electronic mail):

U. S. Army Corps of Engineers, Los Angeles Office – Jason Lambert
State Water Resources Control Board, OCC – Erik Spiess
State Water Resources Control Board, DWQ-Water Quality Certification Unit – Bill Orme
California Department of Fish and Game – Naeem Siddiqui
U.S. EPA, Supervisor of the Wetlands Regulatory Office WTR- 8 – Eric Raffini and Dave Smith

APF:401/certifications/rhine wharf public dock 302007-24