

**Santa Ana Regional Water Quality Control Board**

**October 22, 2014**

Mr. Kevin Moriarty  
2782 Bayshore Drive  
Newport Beach, CA 92660

**REVISED CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR THE MORIARTY DOCK SYSTEM PROJECT, COUNTY OF  
ORANGE, CALIFORNIA (ACOE REFERENCE NO. NOT AVAILABLE) (SARWQCB  
PROJECT NO. 302014-09)**

Dear Mr. Moriarty:

On March 2014, we received an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") from CAA Planning, Inc., for a project to improve the existing Moriarty Residential Dock, in the City of Newport Beach, Orange County. Revisions to the original application were submitted on October 17, 2014, by CAA Planning, Inc., in response to comments submitted by the applicant, from the California Coastal Commission. 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 replacing 764 square feet of an existing residential dock located in Newport Harbor. The dock was originally constructed in 1953 and replaced in 1984 and has now reached the end of its useful life. The proposed approximately 841 square foot replacement dock will retain the existing U-shaped layout and will use natural wood material for the decking of the new structure. The design of the proposed dock retains components of the existing dock, including access pier and gangway. The existing 12" square piles will be replaced with 14" square piles. The overall area of the dock will be 1086 square feet. Replacing the existing piles will increase the area of excavation and fill to Waters of the U.S. by 1.8 square feet. No dredging or discharge of dredged material is proposed.

The work will take place inside designated eelgrass habitat; even though eelgrass is not currently growing within the proposed project area. Proposed work will be conducted within Section 35 of Township 6 South, Range 10 West, of the U.S. Geological Survey *Newport Beach* quadrangle map (33.61611° N/ -117.907344° W).

Receiving water: Newport Harbor (bay)

Fill area: 0.02 acre of permanent impact to marine habitat, <0.01 acre of temporary impact to marine habitat

Dredge/Fill volume: N/A

Federal permit: Rivers and Harbors Act Section 10

The project will result in the replacement of the existing 12"x12" piles into the bay floor with 14"x14" piles, comprising a cumulative additional footprint of 1.8 square feet, and will add approximately 77 square feet of structure that will cast shade on an area of Newport Bay where eelgrass could occur. Eelgrass requires full sunlight for proper growth.

Onsite Water Quality Standards Mitigation Proposed:

- Standard water quality related best management practices (BMPs) will be employed during construction activities, including use of a silt curtain.
- The applicant has prepared the project to avoid eelgrass impacts, in accordance with the Southern California Eelgrass Mitigation Policy (SCEMP), an updated pre-construction eelgrass and invasive algae survey will be completed within 30 days prior to commencement of the proposed dock/gangway construction.
- A post-construction project eelgrass survey will be completed within 30 days of the completion of the project, in accordance with the SCEMP,

Offsite Water Quality Standards Mitigation Proposed:

- No out-of-kind or off-site eelgrass mitigation is proposed.
- The need for on-site eelgrass mitigation will be assessed following completion of two annual monitoring surveys conducted during the eelgrass growing season. Should eelgrass impacts be identified from these surveys, impacted eelgrass will be mitigated at a ratio of 1.2:1 (mitigation to impact).

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 BMPs will be implemented to reduce construction-related impacts to Waters of the State.

The City of Newport Beach has determined that the project is categorically exempt from the reporting provisions of the California Environmental Quality Act (CEQA). The project qualifies for a Class 2 exception pursuant to CEQA Guidelines section 15302 which states:

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced.

The Regional Board independently finds that the project is exempt from CEQA reporting requirements and that features and practices have been incorporated into the project such that impacts to water quality are avoided or mitigate to a less than significant level.

**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 Wildlife (William Paznokas at (858) 467-4218 ([wpaznokas@dfg.ca.gov](mailto:wpaznokas@dfg.ca.gov)) or the National Marine Fisheries Service (Bryant Chesney ([Bryant.Chesney@noaa.gov](mailto:Bryant.Chesney@noaa.gov))) within 24-hours of discovery. Further information regarding *Caulerpa taxifolia* sightings can be obtained at [www.sccat.net](http://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. Pre-Construction Eelgrass Surveys: The Applicants must conduct an eelgrass survey within 30 days prior to of the commencement of excavation. Mitigation for identified eelgrass losses must be performed in accordance with the SCEMP ([http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11\\_final.pdf](http://swr.nmfs.noaa.gov/hcd/policies/EELPOLrev11_final.pdf)).
6. Post-Construction Shading Effects Survey: The Applicants must conduct the post-construction shading effects survey specified in the Eelgrass Impact Assessment Report that was submitted with the Certification application. The Applicants must prepare and submit for approval an eelgrass mitigation plan consistent with the requirements of the SCEMP to address eelgrass habitat losses due to shading caused by this project. Impacts to eelgrass habitat identified from these surveys, shall be mitigated at a ratio of 1.2:1 (mitigation to impact).
7. Unavoidable impacts to eelgrass habitat are subject to management measures specified in the SCEMP. The applicant may apply for an exemption to the mitigation requirements of the SCEMP for projects that impact less than 10 square meters of eelgrass.
8. A copy of this Certification must remain at the project site for the duration of the work and be available for inspection upon request.
9. 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.
10. 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.

11. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel, shoreline 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.
12. 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.
13. 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.

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.

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 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](http://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 Mark Adelson at (951) 782-3234.

Sincerely,



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

cc (via electronic mail):

CAA Planning, Inc. – Shawna L. Schaffner, [sschaffner@caaplanning.com](mailto:sschaffner@caaplanning.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 - Kevin Hupf, [KHupf@dfg.ca.gov](mailto:KHupf@dfg.ca.gov)  
State Water Resources Control Board, DWQ-Water Quality Certification Unit - Bill Orme  
Orange County Coast Keeper – Amanda Bird, [Amanda@coastkeeper.org](mailto:Amanda@coastkeeper.org)  
USEPA Region IX – Wetlands Program Office - David Wampler, [wampler.david@epa.gov](mailto:wampler.david@epa.gov)