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SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

August 17, 2015

Mr. Rocky Dixon and Ms. Julie Dixon
107 Harbor Island Road
Newport Beach, CA 92660

CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS CERTIFICATION FOR THE DIXON SEAWALL REPLACEMENT PROJECT, CITY OF NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA (ACOE REFERENCE NO. N/A (SARWQCB PROJECT NO. 302014-23)

Dear Mr. & Ms. Dixon:

On December 24, 2014, we received from Shellmaker Inc. on your behalf (Applicant), an application requesting a Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) in the City of Newport Beach that will replace a failing seawall, and remove and replace an existing deck with a smaller cantilevered deck. The Applicant has also submitted a filing fee of \$200.00, which satisfies the 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 proposed Project, as 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 and replacement of an existing seawall and deck area. The new seawall will have the same alignment as the existing structure. The new deck area will be substantially smaller than the existing deck, and will be cantilevered with the proper setbacks, rather than supported with pilings. The new seawall shall consist of new jetted-in pre-cast concrete panels topped with cast-in-place concrete coping. The new seawall shall be tied with Dywidag Tiebacks to two concrete deadmen buried behind the seawall into the substrate at a minimum depth of 18" – 6". A new cantilevered concrete deck shall be constructed on top of the concrete coping at an elevation of +10.20' NA VD88.

WILLIAM RUH, CHAIR | KURT V. BERCHTOLD, EXECUTIVE OFFICER

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The work will take place within Section 35 of Township 6 South, Range 7 West of the U.S. Geological Survey *Newport Beach, California* 7.5 minute topographic quadrangle map(33.611016° N, -117.901211° W).

Receiving water: Beneficial use designations (existing or potential) for Lower Newport Bay include: contact recreation (REC1), non-contact recreation (REC2), wildlife habitat (WILD), commercial and sport fishing (COMM), marine habitat (MAR), navigation (NAV), shellfish harvesting (SHEL), spawning reproduction (SPWN), and rare, threatened, and endangered species (RARE).

Fill area: N/A due to the smaller footprint of the proposed seawall to that of the existing structure.

Dredge/Fill volume: N/A

Federal permit: Rivers and Harbors Act Section 10

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.

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 BMPs will be implemented to reduce construction-related impacts to Waters of the State according to the requirements of 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 State Water Resources Control Board's General Permit for Storm Water Discharges Associated with Construction Activity.

Pursuant to the California Environmental Quality Act (CEQA), and State and local guidelines adopted there under, the Project has been determined to have ministerial exemption from provisions of CEQA. The Regional Board has considered the Applicant's Categorical Exemption 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) 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 Applicant must recover the material to the maximum extent practical.
- 3) Project-related activities must not cause 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 activities and be available for inspection by Regional Board staff.
- 5) 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.

- 6) The Project proponent shall utilize BMPs during project construction to minimize controllable discharges of sediment and other wastes to drainage systems or other waters of the State and of the United States.
- 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, and washings and cuttings thereof, shall not be discharged to soils or waters of the State. All waste concrete shall be removed.
- 8) 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.
- 9) This 401 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.
- 10) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 11) 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 the applicant to submit a Report of Waste Discharge and obtain Waste Discharge Requirements.

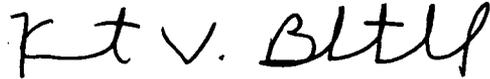
In the event of any violation or threatened violation of the conditions of this Certification, the holder of any permit or license subject to this certification shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of Section 401(d) of the Clean 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 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):

Shellmaker Inc. – Lisa E. Miller – shellmaker@sbcglobal.net
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, rbarabe@dfg.ca.gov
SWRCB, DWQ-Water Quality Certification Unit - Bill Orme