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MATTHEW RODRIGUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

Santa Ana Regional Water Quality Control Board

August 22, 2016

Mr. Chris Miller
City of Newport Beach
Harbor Resources Division
100 Civic Center Drive
Newport Beach, CA 92660

**AMENDED CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE CENTRAL AVENUE PUBLIC DOCK INSTALLATION
PROJECT, CITY OF NEWPORT BEACH, COUNTY OF ORANGE, CALIFORNIA
(USACE REFERENCE NO. NOT AVAILABLE) (SARWQCB PROJECT NO. 302016-
12)**

Dear Mr. Miller,

On August 18, 2016 we received a request from Tonia McMahon of Moffat & Nichol, acting on your behalf, to amend the August 12, 2016, Clean Water Act Section 401 Water Quality Standards Certification (Certification) for the subject project. We have considered your request, and have revised the Certification accordingly. Revisions are shown by striking out removed text, and underlining added text. Text that is neither stricken nor underlined remains unchanged. This amended Certification replaces the Certification for this project dated August 29, 2011.

On April 26, 2016, we received from the City of Newport Beach (Applicant) an application for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to ~~replace an existing antiquated private dock and replace it with~~ install a new public dock. The proposed Project is located in Lower Newport Harbor adjacent to Lido Village and an existing public parking lot at the terminus of Central Avenue in the City of Newport Beach, CA. The purpose of the proposed Project is to provide a publicly-accessible tie-up facility for visitors' boats of various sizes.

The proposed Project will result in 0.087 acre impact to jurisdictional waters, of which 0.0285 acre is permanent and 0.052 acre is temporary. The Applicant submitted a filing fee of \$200.00, which satisfies the Project 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.

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

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♻️ RECYCLED PAPER

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 Applicant proposes to ~~replace an existing private marina constructed in 1955 with a modernized~~ construct a new public marina. The public marina's conceptual design includes: an 84 foot long by 10 foot wide floating dock up to 96 feet (ft.) long by 10 ft. wide; a 50-foot long American Disabilities Act (ADA)-compliant gangway; a gangway platform adjacent to the existing bulkhead wall; a gangway landing float; and installation of up to five 14-inch diameter piles into the substrate of Newport Bay. The proposed Project would create a total surface water shading area of 1,112,250 square feet.

The work will take place within Section 28 of Township 6 South, Range 10 West of the U.S. Geological Survey *Newport Beach, CA* 7.5 minute topographic quadrangle map (33° 37' 11.43" N, -117° 55' 44.94" W)

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

Fill area:

Temporary Impact to Ocean Habitat	0.052 acre	linear feet not available
Permanent Impact to Ocean Habitat	0. <u>0258</u> acre	linear feet not available

Dredge/Fill volume: Not available

Federal permit: Rivers and Harbors Act Section 10, which is authorization from the U.S. Army Corps of Engineers for the construction of any structure in or over any navigable waters of the United States

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 the U.S. Fish and Wildlife Service and California Department of Fish and Wildlife should ensure those impacts are mitigated to an acceptable level. Appropriate BMPs will be implemented to reduce construction-related impacts to waters of the State per the requirements of Santa Ana Regional Board 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 the Applicant substantially comply 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.

Pursuant to the California Environmental Quality Act (CEQA), the City of Newport Beach filed a CEQA Guidelines Section 15303 "Class 3" Categorical Exemption with the Orange County Clerk on April 14, 2016. The "Class 3" Exemption declares the proposed Project consists of the construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The Regional Board has independently considered the CEQA 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, as well as Section 10 of the Rivers and Harbors Act.
- 2) Using generally accepted protocols, the Applicant 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 its 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) or the National Marine Fisheries Service (Bryant Chesney (Bryant.Chesney@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*.

- 3) The Project proponent shall utilize BMPs during Project construction to minimize the controllable discharges of sediment and other wastes to drainage systems or other waters of the State and of the United States.
- 4) 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 from the Project.
- 5) 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 onsite, except as necessary to complete the proposed Project. No equipment shall be operated in areas of flowing water.
- 6) 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 appropriate enforcement action, including the revocation of this Certification and imposition of administrative civil or criminal liability.
- 7) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 8) The Applicant shall ensure that all fees associated with this Project shall be paid to each respective agency prior to conducting any onsite construction activities.

- 9) Effective perimeter control BMPs must be in place at all times to control the discharge of pollutants from the Project site during construction. Construction waste must be contained and protected against wind and exposure to storm water at all times unless being actively handled. Chemical, fuel, and lubricant containers must be kept closed and protected from damage or upset at all times unless being actively used. Dirt and landscaping material stockpiles must have effective erosion control BMPs in place to prevent their being transported in storm water or directly into the channel, and may not be located within waters of the United States. Discharges of wastewater from the site are prohibited.

Under California Water Code, Section 1058, and Pursuant to 23 CCR §3860, the following shall be included as conditions of all 401 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 that the Applicant submit a Report of Waste Discharge and obtain Waste Discharge Requirements.

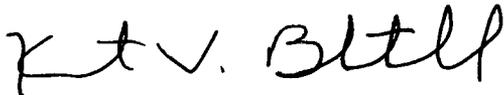
In the event of any violation or threatened violation of the conditions of this Certification, the holder of any permit or license subject to this Certification shall be subject to any remedies, penalties, process or sanctions as provided for under State law. For purposes of Section 401(d) of the Clean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

cc (via electronic mail):

Moffatt & Nichol – Tonia McMahon – tmcmahon@moffattnichol.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 – Russell Barabe – rbarabe@dfg.ca.gov
State Water Resources Control Board, DWQ-Water Quality Certification Unit - Bill Orme
U.S. EPA -Supervisor of the Wetlands Regulatory Office WTR-8 – Jason Brush