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Santa Ana Regional Water Quality Control Board

August 29, 2016

Mr. Mansour Katany
Orange County Community Resources
Orange County Parks
13042 Old Myford Road
Irvine, CA 92602

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**CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS
CERTIFICATION FOR THE UPPER NEWPORT BAY-EAST BLUFF DRAINAGE
REPAIR PROJECT, CITY OF NEWPORT BEACH, COUNTY OF ORANGE,
CALIFORNIA (USACE REFERENCE NO. SPL-2015-0078-AP) (SARWQCB
PROJECT NO. 302015-21)**

Dear Mr. Katany:

On October 16, 2015, we received an application from Orange County Community Resources, Orange County Parks (Applicant) for Clean Water Act Section 401 Water Quality Standards Certification ("Certification") for a project (Project) to improve drainages and repair erosion on a bluff located on the eastern side of Upper Newport Bay. Specifically, the Project site is located just west of East Bluff Elementary School and Vista Del Oro and east of Back Bay Drive in the City of Newport Beach. The proposed Project would result in 0.17 acre permanent impact to jurisdictional waters (waters of the United States), and 0.18 acre temporary impact to jurisdictional waters. The Applicant submitted a filing fee of \$4,941.00, which partially satisfies the \$5,541.00 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.

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 drainage improvements and erosion repair within the East Bluff community of Newport Beach, along Back Bay Drive, on the eastern side of Upper Newport Bay. The existing drainage facilities failed, causing extensive erosional damage to the soil surrounding a 30-inch diameter corrugated steel pipe (CSP) buried into the face of the bluff and exposing and suspending a section of the pipe. The Project entails the removal of an existing safety hazard and reduction of future bluff erosion at the Project site by removing and reconstructing the current bluff drainage facilities, repairing the eroded areas, and providing additional permanent erosion protection.

The bluff drainage and augmentation activities are divided into Upper and Lower Portions of the northeasterly to southwesterly drainage:

Construction activities on the Upper Portion located on the downslope area east of Vista Madera, include: clear and grub along the bluff access areas; excavate a temporary detention basin that will be located near the existing 36-inch CSP storm drain outlet at the base of the bluff; trench approximately 300 linear feet between the existing storm drain outlet and the bluff drain outlet; trench and install a new 48-inch diameter high-density polyethylene (HDPE) pipe; trench and install a new 18-inch diameter CSP that will connect to the existing 18-inch CSP culvert and a new 48-inch HDPE pipe; install a catch drain protected with approximately 96 square feet of non-grouted rip rap near the edge of the bluff to collect and direct sheet flow into the new 48-inch HDPE pipe; and, install permanent erosion control measures (approximately 9,800 square feet of jute mat erosion protection) along the top of the bluff to overlay the new 48-inch HDPE pipe segment.

Lower Portion construction activities will include: clear and grub the bluff access areas east of Vista Madera to Back Bay Drive; install approximately 174 linear feet subdrain at the base of the northeastern to southwestern running erosional gully in East Bluff (located west of Vista Madera and northeast of Back Bay Drive); remove the existing 30-inch diameter CSP bluff drain line and replace with a new 48-inch HDPE pipe that will connect to the trenched 48-inch HDPE pipe segment on the Upper Portion; import approximately 1,800 cubic yards (CY) of clean, certified fill

material to restore existing eroded locations along the bluff; and, remove approximately 10 CY of existing concrete swale located at the bottom of the bluff, adjacent to Back Bay Drive, in order to accommodate the new fill slope.

Project impact areas will be seeded with native species to further stabilize the slope and to restore habitat impacts in accordance with the Project's *East Bluff Conceptual Restoration Plan* (October 1, 2015).

All Project mitigation will occur onsite. The area will be restored to continue functioning as wildlife habitat, will benefit from the removal of non-native vegetation, and will continue to provide water quality functions via the creation of a vegetated swale.

The work will take place within Section 24 of Township 6 South, Range 10 West of the U.S. Geological Survey *Newport Beach* 7.5 minute topographic quadrangle map (33° 38' 32.59" N, -117° 52' 58.33" W).

Receiving water: Upper Newport Bay has designated beneficial uses (existing or potential) that include: contact recreation (REC1), non-contact recreation (REC2), wildlife habitat (WILD), commercial and sport fishing (COMM), preservation of biological habitats of special significance (BIOL), spawning, reproduction, and development (SPWN), marine habitat (MAR), shellfish harvesting (SHEL), estuarine habitat (EST), and rare, threatened, or endangered species (RARE).

Fill area:

Permanent Impact to Wetland Habitat	0.02 acre	289 linear feet
Permanent Impact to Riparian Habitat	0.12 acre	366 linear feet
Temporary Impact to Riparian Habitat	0.18 acre	Linear feet not available
Permanent Impact to Streambed Habitat	0.03 acre	366 linear feet

Dredge/Fill volume: 142 cubic yards

Federal permit: U.S. Army Corps of Engineers (USACE) Nationwide Permit No. 12 - Utility Line Activities

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.
- Prior to grubbing, selective removal of non-native vegetation will be performed in the Project areas that have been impacted from erosion.
- Revegetation and/or enhancement of 0.30 acre of onsite riparian habitat will occur post-construction to offset the 0.12 acre of permanent impact and 0.18 acre of temporary impact to the riparian habitat. Revegetation will include a mix of native vegetation planted and/or seeded in aforementioned riparian areas of the Project. The proposed activities will provide soil and slope stabilization and erosion control.
- Permanent impacts to 0.02 acre wetland habitat and 0.03 acre streambed habitat will be mitigated by restoring out-of-kind habitat at a 6:1 ratio (impacted area to mitigation area). The mitigation will require planting xeric riparian habitat as a result of the redirection of storm water into a new storm drain.
- All habitat restoration and enhancement efforts will be performed under an established Revegetation/Landscape Plan/Mitigation Plan dated September 5, 2014, specifically designed for the Project.

Offsite Water Quality Standards Mitigation Proposed:

- Off-site mitigation includes the creation of wetland/riparian habitat adjacent to a freshwater marsh at a Newport Valley site (owned by the City of Newport Beach). The created habitat will be located in two (2) 0.18-acre areas along the northern and southern edges of the marsh. The Applicant will mitigate the 0.12 acre permanent impact to riparian and wetland (Waters of the United States) habitats at a 3:1 ratio (impacted area to mitigation area) for a total of 0.36 acre of created habitat. The proposed mitigation will consist of installing willow and mulefat cuttings, container plants, and a native herbaceous/native grass seed mix. The cuttings will include at least 225 cuttings per side of the mitigation area. Cuttings will be collected from the site and other areas within Upper Newport Bay.

The key advantages of the site include a shallow groundwater table (less than three feet for three of five groundwater wells), a nearby nursery (at the Back Bay Science Center) that can be contracted to grow the cuttings before planting, and a volunteer labor force to assist with implementing the plan. The mitigation will be implemented in conjunction with the Coastal Commission's Community-Based Restoration and Education Program (CBREP), which empowers the public to restore and protect the native biological diversity of Upper Newport Bay. CBREP is a non-profit project of the California Coastal Commission and the Tides

Center. The proposed mitigation area is a transition zone between the adjacent wetland and the upland coastal sage scrub. This transition zone is sparsely vegetated, with many bare areas (Southern area) and other areas with dead coastal sage scrub plants.

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 in compliance with 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 California Code of Regulations, Title 14, Chapter 3, Section 15096, as a Responsible Agency, the Regional Board is required to consider an Environmental Impact Report (EIR) or Mitigated Negative Declaration (MND) prepared by the lead agency in determining whether to approve an application submitted for a project to receive 401 Water Quality Certification. A responsible agency has responsibility to mitigate and avoid only the direct and indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, in approving this Certification, the Regional Board has considered the MND prepared for the proposed Project and filed by the County of Orange, Orange County Parks Design Division on July 1, 2016 and supplemental information in the Applicant's application. More specifically, the Regional Board has considered those sections of the MND pertaining to impacts to water quality standards. Based on the mitigation proposed in the MND, and the conditions set forth in this Certification, potentially adverse impacts to water quality should be reduced to a less than significant level and beneficial uses protected if all stated mitigation and conditions are performed. Thus, the Regional Board independently finds that changes or alterations have been required or incorporated into the Project that should 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) This Order for Water Quality Certification will remain valid until the USACE 2012 Individual Permits expires, or through an extended period beyond the expiration date that is authorized in writing by the USACE.
- 3) Construction materials, stockpiles, and wastes must not be stored in waters of the U.S. during the wet season. During the dry season, construction materials, stockpiles, and wastes must not be stored in waters of the U.S. during, or 48 hours prior to, a forecast storm event with a 10% or greater chance of occurrence.
- 4) 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.
- 5) 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 site.
- 6) 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.
- 7) 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.
- 8) A copy of this Certification and any subsequent amendments must be maintained on site for the duration of work as a denoted element of any Project Storm Water Pollution Prevention Plan (SWPPP), Water Quality Management Plan (WQMP) and/or HMMP.

- 9) Best management practices to stabilize disturbed soils must include the use of native plant species whenever feasible.
- 10) The Applicant shall follow all procedures and policies specified in the Project HMMP.
- 11) Construction dewatering discharges, including temporary stream diversions necessary for Project construction may be regulated under Regional Board Order No. R8-2015-0004, General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimis) Threat to Water Quality. For more information, please review Order No. R8-2015-0004 at www.waterboards.ca.gov/santaana/
- 12) The Applicant shall ensure that all fees associated with this Project (including application fees of \$5,541.00 associated with the issuance of this Certification) are paid to each respective agency prior to conducting construction activities at the Project site.

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(s) 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

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):

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State Water Resources Control Board, OCC - David Rice

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