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## San Francisco Bay Regional Water Quality Control Board

March 29, 2013  
CIWQS Place No. 757384 (MB)

*Sent via electronic mail: No hardcopy to follow*

San Francisquito Creek Joint Powers Authority  
1231 Hoover Street  
Menlo Park, CA 94025

Attn: Mr. Kevin Murray, Project Manager  
Email: kmurray@sfcjpa.org

**SUBJECT:** Incomplete Application for Water Quality Certification for the San Francisquito Creek Flood Reduction, Ecosystem Restoration, and Recreation Project, City of Palo Alto, Santa Clara and San Mateo Counties

Dear Mr. Murray:

The San Francisco Bay Regional Water Quality Control Board (Water Board) has reviewed the Clean Water Act (CWA) water quality certification application materials submitted on March 12, 2013 by the San Francisquito Creek Joint Powers Authority (SFCJPA) proposing to improve flood water conveyance and flood protection, and enhance wildlife habitat and recreational use by widening the creek channel, setting back the levees, constructing floodwalls, and creating tidal marsh along San Francisquito Creek between Highway 101 and the San Francisco Bay on the county boundary of San Mateo and Santa Clara Counties (Project).

At this time, the Water Board cannot certify that the Project will not violate State water quality standards pursuant to Section 401 of the CWA because the application as submitted is incomplete and invalid. Additionally, the Project proposal as described in the application materials would not comply with State and Water Board policies.

### Summary of Information Required for the 401 Certification Application

In its present form, the 401 water quality certification application lacks a sufficient discussion of Project details, associated impacts, alternatives analysis, proposed mitigation measures, and supporting technical documentation. Below is a summary of application deficiencies.

- Project Description:
  - The application needs to include a thorough and complete description of the Project elements and associated impacts to waters of the State related to (1) levee alterations; (2) boardwalk; (3) "Additional Construction" activities; (3) rock slope protection or alternative natural bio-technical methods; (4) vehicle access; (5) sediment reuse; (6) water quality protection; (7) PG&E Tower T3; (8) figures and mapping; and (9) impacts to mitigation areas established for unrelated projects.

- A dewatering plan and water quality monitoring plan are required.
- Project Alternatives: The application does not provide supporting documentation that the proposed Project constitutes the least environmentally damaging practicable alternative design as required by the San Francisco Bay Basin Water Quality Control Plan (Basin Plan).
- Mitigation and Monitoring Plan: A mitigation and monitoring plan for unavoidable temporary and permanent impacts to waters of the State is required as specified in the Basin Plan.
- Technical Studies: The hydraulic study prepared by PWA needs to be included.

### **Project Description**

1. The application materials only describe impacts to waters of the U.S. under the jurisdiction of the U.S. Army Corps of Engineers (Corps). The application needs to be revised to also include jurisdictional waters of the State. The Water Board has regulatory authority over wetlands and waterways under both the CWA and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). Under the CWA, the Water Board has regulatory authority over actions in waters of the U.S., through the issuance of conditional water quality certifications under Section 401 of the CWA, which are issued in combination with permits issued by the Corps, under Section 404 of the CWA and Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 320.2). Activities in areas that are outside of the jurisdiction of the Corps (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark including riparian habitat) may be regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. The application needs to be revised to clearly identify impacts to waters within both Corps' jurisdiction and the Water Board's jurisdiction.
2. The Project is considered a linear design project. As such, the impacts (permanent and temporary) need to be listed in linear feet, as well as acres, for all linear features (e.g. floodwalls, levees, boardwalk, channel rock slope protection, etc.) throughout the total Project footprint.
3. The Additional Pages for Box 12 of the application refers to the Biological Assessment (BA) for more detailed information on each project element. The Project description as presented in the BA does not include sufficient details to clearly understand all the Project elements. Therefore, it is difficult to determine if the Project as proposed will be protective of water quality and beneficial uses. The application needs to provide more in-depth details related the following Project elements.
  - a. Page 9
    - i. The right bank levee at the Faber Tract marsh will be lowered from a 5-year rain event overflow to a 2.5-year rain event overflow to allow flood flows to enter the marsh. Please provide the total height the overflow area will be lowered and the volume of sediment to be removed.
    - ii. The application materials state that the proposed boardwalk will be constructed to extend from the existing Friendship Bridge into the area where marsh restoration is proposed, and will be constructed of timber with concrete pilings. The description does not indicate the dimensions of the boardwalk and pilings, including the number of concrete pilings to be located in the proposed marsh restoration area. The application needs to

fully describe the boardwalk design and associated impacts to waters of the State, as well as any avoidance and minimization measures.

- b. Page 13
    - i. The Project activities listed under “Additional Construction” do not include sufficient design details or identify resulting impacts to waters of the State. Provide a detailed description of all activities listed under “Additional Construction” that will impact waters of the State, including, but not limited to, specifications related to each activity, associated impacts to waters of the State (in linear feet and acres), impact avoidance and minimization measures, and mitigation measures.
    - ii. The Project proposes to place a significant amount of rock slope protection (RSP) as shown in the Figure 2.x series. The Water Board considers the RSP to be a permanent impact. Since the Project proposes to widen the channel with the intent to accommodate flood flows and reduce velocity, the application needs to include sufficient engineering calculations demonstrating the rock slope protection is necessary to avoid and minimize channel erosion and that other more natural bio-technical methods would not be feasible to achieve erosion control.
  - c. Page 14
    - i. The application states that large vehicles are not allowed on roadways that will be used to access two of the three staging areas. How will these vehicles access all the staging areas and haul routes?
    - ii. The Project description states that excavated sediment will be reused within the Project site. The application needs to also explain that the reuse of sediment will be subject to sediment characterization to identify any pollutants that may impact water quality and beneficial uses.
  - d. Page 15: The application states that PG&E Tower T13 will be located in the creek after the channel is widened. The application needs to include sufficient details of the design specifications and associated impacts to waters of the State, and avoidance measures related to the PG&E tower.
  - e. Page 19-22 (Water Quality Protection)
    - i. Provide a definition for “significant rainfall” related to implementing BMPs to stabilize the Project site in the event of rain.
    - ii. The application needs to also clarify that the Project will be subject to the requirements of the construction general NPDES permit.
4. The application needs to include figures that identify waters of the State as well as Corps jurisdictional waters. In addition, the following figures contain minor errors with the legend/labeling.
    - a. Figure 2.2 appears to be part of the Figure 4.x series and not the Figure 2.x series.
    - b. Figure 4.2 show two TSM 1 and TSM 9 areas.
    - c. Figure 1.3 shows existing and simulated view, but doesn't show the restored marsh.
  5. The proposed Project will impact an existing mitigation area established as part of separate projects previously constructed adjacent to the City of Palo Alto Pump Station.

The application needs to include specific details related to the impacts to the mitigation area, including, but not limited to, (1) Project name(s) and mitigation requirements for the existing mitigation site to be impacted; (2) proposed areal extent and type of impact(s); and (3) detailed description of proposed mitigation design to compensate for the impacts to the pre-existing mitigation areas.

6. The application materials need to include a dewatering plan that details how the channel will be dewatered including, but not limited to, the following information:
  - a. Design specifications including the size of storm event for which it will be designed, special considerations for tidal and freshwater environments, groundwater, and wildlife habitats
  - b. Method of dewatering
  - c. Discharge features to avoid and minimize water quality impacts
  - d. BMPs
  - e. Contingency plan
  - f. Water quality monitoring plan that clearly explains the process of monitoring and treatment methods to ensure water quality objectives identified in the Basin Plan will be met.

### **Project Alternatives**

The Water Board requires that the least damaging practicable alternative (LEDPA) be defined for the Project in accordance with the EPA's 404(b)(1) Guidelines. The Final Environmental Impact Report (FEIR) states that Alternative 3 (golf course bypass) would provide a similar reduction of peak water levels as the proposed Project, but was ultimately rejected as the preferred Project due to cost. Alternative 3 does not include channel widening, levee setbacks, and the use of Faber Tract to attenuate flood flows, and would avoid the associated impacts to waters of the State. The FEIR also states that the Palo Alto Municipal Golf Course, directly adjacent to the Project, will be reconfigured as a separate project to accommodate the proposed Project. Also, during a meeting and site visit on February 28, 2013, the Project applicant and its consultant stated the reason the golf course could not be used to capture flood flows was that the existing drainage pattern would cause the adjacent airport to flood unless the golf course was altered to contain flood flows.

It appears that since a project to reconfigure the golf course is already being planned, then the golf course drainage pattern can be altered to accommodate flood flows by implementing Alternative 3, as the proposed Project, thereby further avoiding impacts to waters of the State. The application does not provide supporting documentation demonstrating that the proposed Project, and not Alternative 3, is the LEDPA, and would achieve Project goals and objectives while avoiding and minimizing environmental impacts to the maximum extent practicable.

As previously stated, the Water Board requires avoidance and minimization of wetland and creek habitat impacts to the maximum extent feasible. Projects which do not adequately demonstrate avoidance and minimization measures for wetlands and other waters of the State may result in our inability to issue required water quality certification and/or waste discharge requirements for the project as proposed.

### **Mitigation and Monitoring Plan (MMP)**

The application materials state that the SFCJPA will develop an MMP consistent with federal and State permitting requirements. The application materials briefly describe mitigation

measures to compensate for permanently and temporarily impacted habitat, which includes in-kind replacement for riparian habitat impacts. The Project also proposes to restore 14.63 acres of marsh plain habitat. The proposed compensatory mitigation is still at a conceptual phase. The application materials need to include adequate compensatory mitigation for the temporary and permanent impacts to waters of the State after measures to avoid and minimize any direct and indirect impacts have been implemented. The Proposed mitigation measures need to be presented in sufficient detail to demonstrate that impacts to waters of the State have been fully compensated.

The SFCJPA needs to be aware that water quality certification for impacts to waters of the State will not be issued until the Water Board has approved a mitigation and monitoring plan (MMP). Since, at this time, Water Board staff has only been provided with a conceptual mitigation description, we are not able to assess whether or not the proposed mitigation will be sufficient to reduce Project impacts to a less than significant level. Mitigation measures and a higher ratio of mitigation acreage to impacted acreage need to be provided to account for temporal losses of habitat, the uncertainty of success associated with any mitigation project, and potential distances between the areas of impact and the mitigation sites.

### **Technical Studies**

The application materials include the Hydraulic Review Technical Memorandum, which is a summary of the review of the findings (prepared by HDR Engineering, Inc.) of the hydraulic HEC-RAS model for the Project reach (prepared by Philip Williams & Associates). The document does not provide sufficient information demonstrating that the proposed Project is the least environmentally damaging project that is designed to avoid and minimize impacts to water quality and beneficial uses to the maximum extent practicable while meeting the goals and objectives of the Project. The application needs to include a scientifically-based hydraulic study supporting the proposed Project as the least environmentally damaging project alternative.

### **Conclusion**

In its present form the application is significantly incomplete and lacks key components needed to determine whether or not the Project complies with State and Water Board standards.

The 401 water quality certification application needs to be revised to include the missing information discussed in this letter.

If you have any questions related to this incomplete application notification letter, please contact Maggie Beth at 510-622-2338 or [mabeth@waterboards.ca.gov](mailto:mabeth@waterboards.ca.gov).

Sincerely,



William B. Hurley  
Senior Engineer

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