
San Francisco Bay Regional Water Quality Control Board

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March 14, 2022



Department of Planning, Building, and Code Enforcement
200 East Santa Clara Street, 3rd Floor Tower
San José CA 95113-1905

Attn: Reema Mahamood, Planner III (Reema.Mahamood@sanjoseca.gov)

Subject: Blossom Hill Station Mixed Use Project, Draft Environmental Impact Report
SCH No. 2020100005

Dear Ms. Mahamood:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff has reviewed the *Blossom Hill Station Mixed Use Project, Draft Environmental Impact Report* (DEIR). The DEIR assesses potential impacts associated with implementing the Blossom Hill Station Mixed Use Project (Project). The 7.42-acre Project site is located at 605 Blossom Hill Road (Assessor's Parcel Number: 464-22- 032), between Canoas Creek and the State Route 85 offramp, in south San José. The project site is currently developed with a 542-space surface parking lot for the adjacent VTA light rail station, VTA bus stop, landscaping and ornamental trees. The proposed Project would demolish approximately half of the existing surface parking and associated landscaping to construct a new six-story, market-rate, mixed-use building and a new five-story affordable residential building containing a total of 328 residential units and 13,590 square feet commercial space.

Comment 1. Section 2.4.2, Trail Improvements, does not correctly identify the extent of Water Board and California Department of Fish and Wildlife (CDFW) jurisdiction in Canoas Creek.

This section of the DEIR contains the following text:

Although not anticipated, any work that would occur around Canoas Creek below the ordinary high-water mark would require permitting and approval from regulatory agencies including but not limited to United States Army Corps of Engineers (USACE), Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife (CDFW).

The ordinary high water mark of a creek establishes the upper bound of federal jurisdiction under the federal Clean Water Act (CWA). However, the Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act

JIM McGRATH, CHAIR | THOMAS MUMLEY, INTERIM EXECUTIVE OFFICER

(California Water Code, Division 7). Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (Certifications) under Section 401 of the CWA, which are issued in conjunction with permits issued by the U.S. Army Corps of Engineers (USACE), under Section 404 of the CWA. When the Water Board issues Section 401 Certifications, it simultaneously issues general Waste Discharge Requirements (WDRs) for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the USACE (e.g., isolated wetlands, vernal pools, seasonal streams, intermittent streams, channels that lack a nexus to navigable waters, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of USACE jurisdiction may require the issuance of either individual or general WDRs. Any work on Canoas Creek below the top of bank will require a permit from the Water Board.

CDFW jurisdiction along a creek channel extends to the outer dripline of riparian vegetation at the top of bank. Therefore, any activity that impacts trees at the top of bank of Canoas Creek may require a Lake and Streambed Alteration Agreement from CDFW.

Please revise Section 2.2.4 to correctly identify the extent of Water Board and CDFW jurisdiction along Canoas Creek.

Please contact me at brian.wines@waterboards.ca.gov if you have any questions.

Sincerely,



Brian Wines
Water Resource Control Engineer
Watershed Division

cc: State Clearinghouse (state.clearinghouse@opr.ca.gov)
CDFW, Kristin Garrison (Kristin.garrison@wildlife.ca.gov)