



Feb 14 2022

STATE CLEARINGHOUSE

San Francisco Bay Regional Water Quality Control Board

Attention: Brian Wines, Water Resource Control Engineer

February 11, 2022

Subject: Response to Comments on the Sabercat Trail Extension Project Initial Study Mitigated Negative Declaration, SCH No 2022010048

Dear Mr. Wines,

The City of Fremont (City) appreciates your interest and engagement on the Sabercat Trail Extension Project. The City is interested in addressing your comments and reaching resolution that meets the San Francisco Water Quality Control Board's (Board) satisfaction. We hope that this letter can represent our commitment to our mutual agreed upon resolution during the virtual meeting held on February 10, 2022.

The City views Sabercat Creek and riparian area as a valuable resource and therefore we have taken great pains to minimize impacts to the greatest extent possible, including reviewing many alternative alignments to the project along with methods of construction. Caltrans has been a partner in planning and overseeing the sensitive development of the I-680 overcrossing portion of the project, which could ultimately connect BART commuters with the Ohlone Community College among other noteworthy destinations. This connection would be limited to pedestrians and bicyclists.

During the planning of this project, the Project team identified the I-680 Mitigation Site early on. Project planning included site visits with the Caltrans biologist who oversaw the 6-year monitoring plan. The Project team and the biologists held many discussions on how best to avoid and minimize impacts to this area. Geotechnical investigations may bring light to further reducing impacts, but at this point, the team is reporting a temporary impact of less than 0.02 acre. Please see Figure 1 inserted following Table 1 as well as a Project Drawing attached to the back of this letter.

The City has recorded and responded to your comments in table format. The following tables outline the referenced text from our IS/MND, the Board's specific comment (and sub-comments) and our response to each. The response to the last comment follows these tables.

Table 1 - Comment 1. The Project should avoid impacts to the existing Caltrans Sabercat Creek Mitigation Site.

Table with 3 columns: IS/MND Summary Text, RWQCB Commentary, and Response. Row 1: Construction access for the Project may result in impacts to the Caltrans Sabercat Mitigation; The extent of the Caltrans Mitigation is illustrated in Figure 2 of the attached Sabercat Creek Mitigation Project, Annual; Thank you for confirming the boundary of the I-680 Sabercat Creek Mitigation Project. This boundary has not been available via design drawings, but we tried to estimate the boundary using aerial photographs and

<p>Wetland (Caltrans Mitigation), which is located within Caltrans right-of-way east of I-680 and adjacent to Sabercat Historical Park.</p>	<p>Wetland Monitoring Report, Year 6 Wetlands and Waters Restoration (Year 6 Monitoring Report) Caltrans, District 4, December 2017. The areas identified as wetland basin, oak woodland, and riparian in Figure 2 are required for compliance with the Certification. These areas are to be preserved in perpetuity and should not be disturbed by Project activities.</p>	<p>included this boundary into our design drawings to assist in determining avoidance and minimization limits. See figure 1 inserted below and project drawing attached as EX-1.</p> <p>As described in the project description, the Construction Management Plan (CMP) developed for the proposed Project includes a measure to limit the construction footprint to the smallest area possible which would minimize and avoid impacts to the riparian habitat. Additional refinements may be possible that may include avoiding impacts in this area once the geotechnical information becomes available.</p> <p>As noted in the IS/MND, consideration was given to other alternatives. All of which result in substantially greater adverse impacts on the Caltrans Mitigation site and/or riparian and wetland areas within the Sabercat Creek corridor.</p> <p>Resolution: The revised IS/MND will include an exhibit (like Figure 1 inserted below) that delineates the mitigation site as well as the temporary construction limits for both staging and construction access routes.</p>
<p>...because shading of the mitigation wetland would be transitory relative to the sun's arc both seasonally and hourly, there is likely to be no substantive change in the existing conditions. The shading impact is considered less than significant, and no mitigation is required.</p> <p>A portion of the upland zone within the mitigation area is proposed for construction access to build the east landing and would be <u>temporarily impacted</u> during Project construction...despite pursuing other alternatives that would disturb high habitat value ...Therefore, impacts to an upland component of the Caltrans Sabercat Creek Mitigation Site would be considered the <u>least damaging practicable alternative</u>.</p>	<p>1)It is <u>not clear</u> from the discussion of Potential Impact BIO-8 if the impacted uplands would include the oak woodland and riparian areas identified in Figure 2 in the Year 6 Monitoring Report. Please compare the outlines of the oak woodland and riparian areas in Figure 2 to the areas that are proposed for temporary disturbance for construction access for the Project. <u>If there is an overlap</u> between these two areas of upland vegetation at the Caltrans Mitigation site, please attempt to relocate the construction access area out of these Certification-required mitigation areas.</p> <p>2)The MND should be revised to quantify the surface area of unavoidable impacts to the Caltrans Mitigation site and provide sufficient compensatory mitigation for that area of impacts. Since mitigation sites are to be preserved in perpetuity, the required amount of mitigation for impacts to mitigation sites is usually greater than the mitigation quantities required for other impacts.</p>	<p>The area temporarily impacted is estimated to be less than 0.02 acre (estimated to be approximately 830 square feet) and located in the area identified as riparian and oak woodland in Figure 2 in the Year 6 Monitoring Report. The area temporarily impacted is on the edge of the Caltrans Mitigation site (<i>Please refer to the figure 1 below for location of temporary impact</i>).</p> <p>The tree georeferencing survey in the Mitigation Area did not find any surviving trees within the temporary impact area. However, because the overgrowth may have shielded sightings, the Project team is erring that up to 6 oak saplings, as well as Coyote brush, California sage, and black sage vegetation may be impacted. The Caltrans Mitigation site requirements per condition 12 of the original 1602 permit (<i>and thus not called out as mitigation</i>) include:</p> <ul style="list-style-type: none"> • Full restoration of any disturbed areas, • A 6:1 replacement ratio of tree plantings that are not oak trees, and • An 8:1 replacement ratio of any oak tree removed <p>Please note that because the mitigation site is supported with these replacement obligations, the mitigation listed in the IS/MND only addresses the coordination with Caltrans on the restoration and location of the tree replacement. Neither activity would become a new impact because restoration will occur in situ and tree plantings will only require workers with hand shovels/tools planting within the I-680 Mitigation site boundaries. These efforts would not result in the need for large equipment, nor will there be clearing, grubbing or access impacts since the Caltrans Mitigation site has designated access routes.</p>

		<p>Text located in other parts of the IS/MND, including 1.1 Aesthetics, recognize the following planting obligation: In addition to the permanent changes, up to 25 trees of a mixture of sizes (most under 1 inch diameter trunk) would be removed along the east side of I-680. Trees that are part of a previous I-680 mitigation site are <u>required</u> to be replaced at a 6:1 ratio <u>and 8:1 ratio of oak trees removed</u> within the same vicinity. For trees outside this mitigation area, tree replacement would be in conformance with the Fremont Municipal Code (FMC) 18.215, City of Fremont Tree Preservation Ordinance, and existing mature trees to remain would be protected, in conformance with the City’s Standard Details for Landscape Planting and Tree Protection.</p> <p>Resolution: We concur that this detail will be added in the final IS/MND under biology for clarity. The IS/MND will include the following text in the final version presented to the City Council on Feb 15, 2022: <i>“The area of temporary impact within the I-680 Mitigation Site is estimated to be less than 0.02 acre in size. Final design will continue to investigate methods for further avoiding this impact. Impacts within the I-680 Mitigation site requirements per condition 12 of the original 1602 permit require replacement and/ or restoration as describe herein:</i></p> <ul style="list-style-type: none"> • <u>Full restoration of any disturbed areas,</u> • <u>A 6:1 replacement ratio of tree plantings that are not oak trees, and</u> • <u>An 8:1 replacement ratio of any oak tree removed</u> <p><u>The replacement trees are proposed to be planted within Caltrans property inside or nearby the Mitigation Area with hand tools that do not include machinery. Tree placement will not require clearing or altering the landscape”</u></p>
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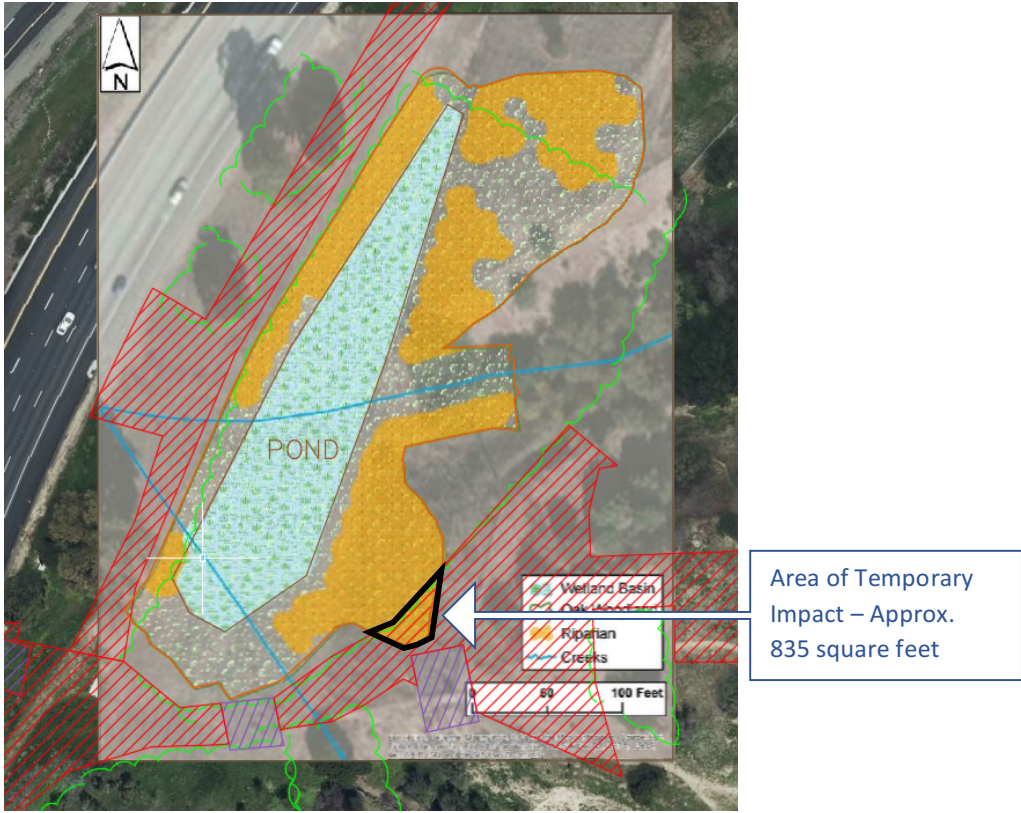


Figure 1: Overlap of Temporary Access Road (red diagonal lines) over Riparian Portion of I-680 Mitigation Area (please also see project drawing attached to this letter)

Table 2, Comment 2. Mitigation Measure BIO-7 in Section 1.4.2b, in the discussion of Biological Resources, should be revised to provide a proposed mitigation project.

IS/MND summary text referenced in letter	RWQCB Comments	Response to Comment
<p>MM-BIO-7:</p> <p>Develop compensatory mitigation as prescribed by Caltrans and the resource agencies for impacts to the existing mitigation site uplands. The City of Fremont will develop compensatory mitigation in coordination with Caltrans, CDFW, and RWQCB. Compensatory mitigation would likely involve post-project restoration of the upland zone per the originally proposed HMMP planting plan and a pledge to provide site irrigation (and herbivory protection) sufficient to ensure</p>	<p>After the discussion of Potential Impact BIO-8, Impacts to the Caltrans Sabercat Creek Mitigation Site, in Section 1.4.2.b of the MND, <u>Mitigation Measure MM-BIO-7</u> is proposed to reduce potential Project impacts to the Caltrans Mitigation site to less than significant levels.</p> <p>Under CEQA, proposed mitigation measures should be presented in <u>sufficient detail</u> for readers of the CEQA document to evaluate the likelihood that the proposed remedy will reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant</p>	<p>The mitigation measure MM-BIO-7 was developed to beyond the MOA requirements of the I-680 Sabercat Creek Mitigation Site.</p> <p>Under CEQA, requirements are not deemed to be mitigation measures. The City of Fremont adopts all 'requirements' as part of the Project Description. As stated above, in response to comment #1, the within the I-680 Mitigation site requirements per condition 12 of the original 1602 permit require replacement and/ or restoration as describe herein:</p> <ul style="list-style-type: none"> • Full restoration of any disturbed areas, • A 6:1 replacement ratio of tree plantings that are not oak trees, and • An 8:1 replacement ratio of any oak tree removed <p>The area needed to replant approximately 36 trees based on a 6:1 and 8:1 ratio for oak tree planting</p>

<p>oak sapling survival. Additional compensatory mitigation proposed to offset these impacts would include non-native tree removal (e.g., olive, wattle, tree-of-heaven) at other Project sections.</p> <p>With the implementation of the measures identified in the project description related to the construction footprint and MM-BIO-7, impacts on the Caltrans Sabercat Mitigation Wetland site would be less than significant with mitigation.</p>	<p>environmental effect be <u>adequate, timely, and resolved by the lead agency</u>. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4).</p>	<p>ratio is approximately 0.03 acre. This area is available within the existing I-680 mitigation area. In addition, while not required for City led improvement projects, the City will be applying the City Tree ordinance in replacing all other impacted trees as part of the Project Description. The MM-BIO-7 recognizes that required replacement and restoration would involve Caltrans, RWQCB and CDFW in confirming that restoration details are complete and satisfactory (see first column text).</p> <p>As discussed with Caltrans in multiple coordination and field visit meetings, the tree replanting locations would be identified in consultation with Caltrans and would be completed with hand-tools in areas where more reliable water could sustain the saplings more successfully than the hillside this proposed project impacts occur.</p> <p>Resolution: We concur that this detail should be added in the final IS/MND under biology and augment the mitigation MM Bio-7 with enough detail to add clarity. The IS/MND will include the following in the final version presented to the City Council on Feb 15, 2022 (new text is red and underlined):</p> <p><u>“MM- BIO 7. In addition to the I-680 Mitigation site replacement and restoration requirements, the City of Fremont will develop the detailed tree planting plan for riparian tree replacement with a minimum of 5 feet on center between plantings. The City of Fremont will develop compensatory mitigation in coordination with Caltrans, CDFW, and RWQCB. Compensatory mitigation would likely involve post-project restoration.... The replacement trees are proposed to be planted within Caltrans property inside or nearby the Mitigation Area with hand tools that do not include machinery. Tree placement will not require clearing or altering the landscape.”</u></p>
	<p>Additional discussion item raised during a City-RWQCB meeting on February 10, 2022, 3pm:</p> <p>A request to clarify the plant establishment period to include 5 years for replacement plantings and 10-years for tree replacement.</p>	<p>The following text has been added to the IS/MND:</p> <p><u>For restoration plantings within Caltrans right-of-way, there shall be a 5-year plant establishment monitoring program and 10-years for tree plantings.</u></p>

SFBWQCB SUMMARY COMMENT #3:

The MND should be revised and re-circulated. Re-circulation is necessary to allow for full review and comment by the public and government agencies on the Project’s impacts to waters of the State and proposed mitigation measures for those impacts.

Response:

According to CEQA Portal Topic Paper on mitigation measures (page 6):

Revisions to mitigation measures can be prior to certification by the lead agency, with an explanation for the revision, including why recirculation is not needed. Any substantive revisions to mitigation measures made after approval and adoption by a lead agency generally requires public notice and adoption at a public hearing with an explanation as to why the revision(s) was required.

Based on the above, we believe that including the noted changes to the IS/MND would make the temporary impact and approach to addressing the temporary impact clearer, but no new or undisclosed significant impact results from this refinement and therefore the City does not feel that recirculation is warranted. The Public hearing will be held on February 15, 2022 at the City Council regularly scheduled meeting. Public and Agency comments and the proposed changes to the IS/MND will be presented at this meeting for consideration.

The City sincerely hopes that these refinements *as proposed above* to the Sabercat Trail Extension Project IS/MND address your concerns. Thank you for working with us to resolve these concerns satisfactorily. If you have any other Project concerns or questions, Jodi Ketelsen, our subconsultant with T.Y.Lin International will make herself available. For your convenience, her email is: jodi.ketelsen@tylin.com and her phone number is 916-349-4259.

Sincerely,

DocuSigned by:

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Wayland Li

Principal Planner