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Attorneys for Petitioner
CITY OF PALO ALTO

STATE WATER RESOURCES CONTROL BOARD

FOR THE STATE OF CALIFORNIA

In the Matter of the Petition of

CITY OF PALO ALTO

For Review and Reconsideration of Failure to Act on the Application for Section 401 Water Quality Certification of the City of Palo Alto Municipal Golf Course Reconfiguration Project in the City of Palo Alto, Santa Clara County ,

Petitioner,

vs.

Regional Water Quality Control Board, San Francisco Bay Region,

Respondent.

PETITION FOR REVIEW AND RECONSIDERATION

(California Water Code Section 13320 and California Code of Regulations, Title 23, Sections 2050 and 3867)

INTRODUCTION AND SUMMARY

The City of Palo Alto ("the City" or "Petitioner") respectfully petitions the California State Water Resources Control Board (the "State Board") for review and reconsideration of the failure of the San Francisco Bay Regional Water Quality Control Board ("Regional Board") to issue,

issue with conditions, or deny the federal Clean Water Act Section 401 water quality certification sought by application ("the Application") of the City. The City's Application, submitted to the Regional Board on December 23, 2013, pertains to the reconfiguration of the Palo Alto Municipal Golf Course ("the Project" or "the golf course project"). The golf course project complies with all state water quality standards. More importantly, it is a wetlands enhancement project that proposes new and restored wetland habitat to be set aside and protected in perpetuity through appropriate legal means, consistent with the requirements of the U.S. Army Corps of Engineers Guidelines and as may be specified in all permits, resulting in a total of nearly 9 acres of wetlands.

Despite the completeness of the Application, as submitted and as supplemented by the City on January 31 and March 5, 2014 in response to the requests of the staff of the Regional Board, the staff of the Regional Board has continued to deem the Application incomplete and fails and refuses to act on the merits of the completed Application as required by law. The staff communicated its first refusal to act in a letter to the City dated January 16, 2014, and its second refusal in a letter dated February 28, 2014.

The City has complied with all Application obligations. Yet, the City has neither been issued its requested certification nor provided with a hearing before the Regional Board. The serial refusals of staff to deem the Application complete, to issue the requested certification, or to forward the Application to the Regional Board for decision now constructively operate: (1) as a failure to act by the Regional Board; and (2) to deny the Application, to the detriment of the City. Accordingly, the City files this Petition for Review and Reconsideration pursuant to California Water Code Section 13320 and California Code of Regulations, Title 23, Section 2050 and 3867.

The City requests that this Petition be held in abeyance pursuant to California Code of Regulations, Title 23, Section 2050.5(d) and 3869(c). At such time, if any, as the Petition is removed from abeyance, the City further requests a hearing before the State Board pursuant to California Code of Regulations, Title 23, Section 2050.6 (b) and 3869(b) and the opportunity to present additional written material, evidence, points and authorities and argument.

1. CONTACT INFORMATION FOR PETITIONER

City of Palo Alto
250 Hamilton Avenue, 6th Floor
Palo Alto, CA 94301
Attention: Mr. Joe Teresi, Senior Engineer
Telephone: (650) 329-2129
Email: joe.teresi@cityofpaloalto.org

City Attorney of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301
Attention: Molly S. Stump, City Attorney
Telephone: (650) 329-2171
Email: molly.stump@cityofpaloalto.org

Musick, Peeler and Garrett, LLP
One Wilshire Boulevard, Suite 2000
Los Angeles, CA 90017
Attention: William W. Carter and Jane Ellison Usher
Telephone: (213) 629-7600
Email: w.carter@mpglaw.com and j.usher@mpglaw.com

2. INACTION FOR WHICH PETITIONER SEEKS REVIEW

Petitioner seeks review of the failure of the Regional Board to grant, conditionally grant, or deny the Application for water quality certification of the City of Palo Alto Municipal Golf Course Reconfiguration Project in the City of Palo Alto, Santa Clara County. An order or resolution of the Regional Board has not been included in this Petition because no such order or resolution has yet issued. Instead, the staff of the Regional Board has issued two letters that contend that the complete Application of the City is incomplete. True and correct copies of these letters, dated January 16, 2014 and February 28, 2014, are attached to this Petition as Exhibits A and B, and are incorporated into the Petition by this reference. On January 31, 2014, the City responded in writing to the staff letter of January 16, 2014; a true and correct copy of the City's response is attached as Exhibit C and incorporated into this Petition. The City is currently preparing a written response to the staff letter of February 28, 2014. No hearing before the Regional Board on the merits of the Application has been scheduled. Because the Application is complete, contrary to

the assertions made in the staff letters, the successive staff letters now constructively operate: (1) as a failure to act by the Regional Board; and (2) to deny the Application, to the detriment of the City.

3. DATE ON WHICH THE REGIONAL BOARD FAILED TO ACT

The City did not object to the initial letter from the staff of the Regional Board of January 16, 2014 that contended that the City's water quality certification application was incomplete. Rather, the City attempted to work in good faith to answer in writing and put to rest all issues raised in the Regional Board's staff correspondence with the City. Notwithstanding its thorough efforts, the City has now received a second letter of incompletion from the staff dated February 28, 2014. This second Regional Board letter is in all material respects identical to its January 16, 2014 letter. Because the Regional Board has readily available, substantial and complete evidence on which to review and act on the water quality certification Application of the City, and because the good faith efforts of the City to work with the Regional Board staff to advance the Application to an action on the merits have not succeeded, the City can draw only one conclusion: the Regional Board has failed to act. The date of that failure to act is February 28, 2014, the date of the second staff letter to the City.

4. REASONS THE FAILURE TO ACT WAS INAPPROPRIATE OR IMPROPER

The failure of the Regional Board to act to issue, issue with conditions, or deny the Application of the City on its merits was inappropriate or improper for the following reasons: (1) the Regional Board abused its discretion by failing to consider readily available and substantial evidence that the water quality certification Application of the City is complete and satisfies all legal standards for 401 certification; (2) the Regional Board abused its discretion by refusing to schedule and conduct a hearing on the merits of the complete Application pursuant to California Code of Regulations, Title 23, Section 3858(b); (3) the Regional Board abused its discretion by improperly and without legal authority placing the City's completed water quality certification Application for the golf course on hold for an unspecified and indefinite length of time until after

such time as the Regional Board acts in the future on the significantly more complex, yet separate and independent, water quality certification application of another entity, the San Francisquito Creek Joint Powers Authority, of which the City is a member but over which the City does not have control; and (4) the Regional Board's delegation of authority to its staff to act, whether constructively or expressly, to deny the City's 401 water quality certification Application was unlawful – pursuant to California Code of Regulations, Title 23, Section 3859, only the Regional Board and its Executive Officer were empowered to act on 401 certification applications. While the City supports and acknowledges the important work accomplished by the staff to the Regional Board, when that work constructively denies a water quality certification application, then that work is in excess of authority and contrary to law.

5. THE MANNER IN WHICH THE CITY IS AGGRIEVED

The City is dependent on the revenues generated from its municipal golf course to sustain that facility and to provide the associated recreational services to the public and its residents. At the same time, the City's residents and those of the surrounding communities anticipate and expect the municipal golf course operations to be impaired, in whole or in part, once the City commences construction on the reconfiguration of the golf course, which is the subject of the instant water quality certification Application. The failure of the Regional Board to act on the merits of the City's 401 Application has caused considerable confusion and uncertainty for the City, the golf course, and its users. Each month of confusion and uncertainty has produced a loss of revenue to the City in the amount of $100,000. The City cannot continue to sustain such lost revenue, provide municipal golf and related recreational services to its residents and neighbors, and undertake the beneficial project to reconfigure its golf course as contemplated by the Application. This current state of limbo and loss cannot be controlled or remedied by the City. The inaction of the Regional Board on the City's complete Application aggrieves the City, its residents, and its taxpayers, who are entitled under the law to a decision on the merits of their water quality certification Application for the golf course project.

6. SPECIFIC ACTION THE CITY REQUESTS OF THE STATE BOARD

The City respectfully requests that the State Board: (1) accept this Petition for Review and Reconsideration; and (2) remand this matter to the Regional Board with instructions that the Regional Board issue the City's requested water quality certification, together with such legally appropriate and necessary conditions and findings, within thirty (30) days of the date of the remand. However, the City further respectfully requests that the Petition be held in abeyance pursuant to California Code of Regulations, Title 23, Sections 2050.5(d) and 3869(c), and reserves its rights to a public hearing and to supplement this Petition.

7. STATEMENT OF SUPPORTING POINTS AND AUTHORITIES

The City's preliminary statement of points and authorities is set forth in both section 4 above and section 10 below. The City reserves the right to supplement this statement upon further development, receipt and review of the relevant administrative record.

8. INTERESTED PERSONS OTHER THAN THE CITY

Other than the public generally, the City is not aware of any persons other than the City with an interest in the subject matter of the Petition.

9. STATEMENT THAT THE PETITION WAS SENT TO THE REGIONAL BOARD

A true and correct copy of this Petition for Review and Reconsideration was sent to the Regional Board via electronic mail on April 1, 2014, to the attention of Bruce H. Wolfe, Executive Officer. A true and correct copy of the correspondence reflecting the transmission is included and incorporated as Exhibit D to this Petition.

10. STATEMENT WHY THE CITY WAS UNABLE TO RAISE ITS SUBSTANTIVE ISSUES BEFORE THE REGIONAL BOARD

The gravamen of this Petition is that, contrary to law, the City has been unable to advance its completed Application to consideration and hearing by the Regional Board. Given this posture, the City has been unable to discuss the substantive matters raised in the Application with the

Regional Board. The City has endeavored to engage the Regional Board staff regarding the golf course reconfiguration project. In October 2013, the City asked for pre-application input and a pre-application site meeting with the staff of the Regional Board and the City's environmental consultant, ICF International, but the Regional Water Board staff declined. The City then responded to substantive issues raised by the staff in a letter dated January 16, 2014, following the City's Application. The City's reply, dated January 31, 2014, did not achieve its desired purpose of resolving the matters raised. Instead, it was followed by a second nearly identical staff inquiry of February 28, 2014, to which the City is now preparing a response. More productively, mitigation issues pertinent to the City's golf course project were amplified in the Mitigation and Monitoring Plan ("MMP"), which was submitted by the City to the Regional Board staff on March 5, 2014. The MMP is specifically designed for restoration of impacted water bodies within the golf course project and clearly satisfies the anticipated conditions of the Clean Water Act 404(b) permit to be issued by the U.S. Army Corps of Engineers and the Clean Water Act 401 water quality certification standards and requirements.

As a result of the City's lack of success in advancing this matter, this Petition is now filed to preserve the City's rights and to obtain issuance of the requested water quality certification.

11. COPY OF REQUEST FOR RECORD TO THE REGIONAL BOARD

A request for preparation of the Regional Board's staff record was sent via electronic mail on April 1, 2014, to the attention of Bruce H. Wolfe, Executive Officer. A true and correct copy of the correspondence reflecting the transmission is included and incorporated as Exhibit D to this Petition. Because the City asks that the Petition be held in abeyance pursuant to California Code of Regulations, Title 23, Sections 2050.5(d) and 3869(c), the City also asks that its request for preparation of the record be held in abeyance at this time.

12. SUMMARY OF CITY'S PARTICIPATION IN REGIONAL BOARD PROCESS

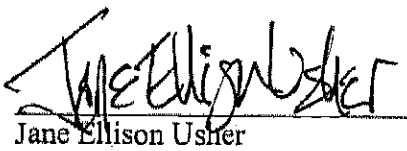
The City availed itself of every opportunity to engage and participate before the Regional Board. These efforts are more particularly described in section 10 of this Petition. But this

Petition has been filed because, despite the City's good faith efforts, the City has not been able to obtain issuance of the requested water quality certification or even a hearing before the Regional Board. While this Petition is held in abeyance, it is the City's hope that it can return to work with the Regional Board to achieve the water quality certification requested in its Application.

Respectfully submitted via electronic mail by prior arrangement.

DATED: April 1, 2014

MUSICK, PEELER & GARRETT LLP

By: 

Jane Ellison Usher
Attorneys for **CITY OF PALO ALTO**

EXHIBIT A

CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

San Francisco Bay Regional Water Quality Control Board

Reg Meas ID: 394458

January 16, 2014
Site No: 02-01-C0698 (bkw)
CIWQS Place No. 802332

Sent via electronic mail: No hardcopy to follow

City of Palo Alto
250 Hamilton Avenue, 6th Floor
Palo Alto, CA 94301

Attn: Joe Teresi (joe.teresi@cityofpaloalto.org)

Subject: Incomplete Application for Water Quality Certification for the City of Palo Alto Municipal Golf Course Reconfiguration Project in the City of Palo Alto, in Santa Clara County

Dear Mr. Teresi:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff have reviewed materials submitted by ICF International (the Applicant's authorized agent) on behalf of the City of Palo Alto (the Applicant), and received by the Water Board on December 24, 2013, for the project to reconfigure the Palo Alto Municipal Golf Course in Santa Clara County (Project). The Project will impact about 2.24 acres of wetlands. This letter is being sent to inform you that the application is incomplete, and to outline for you what materials are still needed to comprise a complete application package.

Comment 1
Box 14, Project Purpose, of Application for 401 Water Certification and/or Report of Waste Discharge (Application).
The application materials state that the "purpose of the project is to reconfigure the golf course in concurrence with the San Francisquito Creek Joint Power Authority (SFCJPA) Flood Reduction Project, which permanently incorporates 7.4 acres of the acres of the golf course into the SFCJPA's project." The Water Board is concerned that the submission of an application for certification of the Golf Course project independent of the SFCJPA flood control project may constitute piece mealing of the two projects' impacts to San Francisquito Creek and adjacent habitat for listed species in the Faber Tract in East Palo Alto, which provides habitat for the federally listed California clapper rail and the salt marsh harvest mouse.

Based on our review of the Golf Course application materials and the SFCJPA's application materials, there is a significant overlap between the Golf Course Project and the Lower San Francisquito Creek Flood Control project. This agency has significant concerns with the SFCJPA's current design for the flood control project, and it is possible that the design in the SFCJPA's current application will not be approved by this agency. Approving the current design proposal for the Golf Course Project would have the unfortunate effect of foreclosing potential options for improving the SFCJPA's flood control design.

The City of Palo Alto's cover letter for the Application materials states that the City cannot offer any more than 7.4 acres of the existing golf course to the flood control project, and still have sufficient surface area to construct the reconfigured golf course. However, based on the application materials, it appears to be feasible to modify the proposed Athletic Center designs, which have not yet been finalized. The City should consider possible modifications to the Athletic Center designs, if it is necessary to dedicate more land area to an acceptable flood control project. The reconfigured golf course and the flood control project are likely to remain in place for many decades. Therefore, it is prudent to design these projects carefully to ensure that potential impacts to special status species habitat are reduced as much as possible.

The relative timing of the SFCJPA project and the golf course project is unclear in the application materials. Under the heading, *Project Overlap with the SFCJPA Flood Control Project*, on page 11 of the supplemental application materials, it appears to be stated that the golf course project will be built after the SFCJPA project. However, the SFCJPA project does not appear to be near the end of its permitting process. The City of Palo Alto's cover letter for the Application materials states that the SFCJPA has reached conceptual agreement with the resource agencies on a final flood control design. However, the agencies are still working with the SFCJPA to explore all options for improvements to the flood control project and the agencies are still reviewing the ability of the SFCJPA's hydraulic modeling to accurately predict the interaction of the main channel of San Francisquito Creek with adjacent flood plain and marshes.

The amount of overlap in the impacts of the golf course project and the SFCJPA flood control project is summarized on page 12 of the supplemental application materials, under the heading, *Project Overlap with the SFCJPA Flood Control Project*. However, it is not clear how the impact quantities in Table 5, *SFCJPA Flood Control Project Impacts to Waters of the State by Activity Type within the Overlap Area*, relate to the quantities in Table 4, *Project Impacts to Waters of the State by Activity Type*. Please clarify whether or not the quantities in Table 5 are a subset of the quantities in Table 4, or whether the quantities are completely separate.

Comment 2
Box 15, Description of Activity and Environmental Impacts, of Application.
Projects requiring permits from the Water Board are required to provide documentation that they will provide stormwater runoff treatment that is consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit (MRP) for the management of stormwater runoff (Order R2-2009-0074; NPDES Permit No. CAS612008). The application materials lack designs for the Project's post construction stormwater treatment measures, including supporting calculations, and related infrastructure.

The application materials state that, "runoff would continue to flow through turf and native grassland areas (biofilters) and would be collected in many drain inlets which feed into the pump station." The application materials do not show the locations or dimensions of the biofilters, or include calculations to support the proposed sizing of the biofilters Please provide designs for the Project's post-construction stormwater treatment measures; the application will not be deemed complete without these designs.

Comment 3
Box 19, Mitigation, of Application.
The discussion of mitigation provided in Box 19 is fairly conceptual (e.g., Figure 5, which provides a conceptual cross-section of an enhanced wetland, is the only design cross-section provided), and there are some areas of ambiguity in the mitigation discussion that has been

provided. For example, areas of post-Project wetlands are indicated in Figure 4, but it is not clear if these wetlands include both existing wetlands that will be preserved and new mitigation wetlands, or if all of the wetlands in Figure 4 are proposed mitigation wetlands. The existing wetlands at the Project site are brackish wetlands. Please clarify if the mitigation wetlands will also be designed to be brackish wetlands. If the mitigation wetlands are intended to function as brackish wetlands, please describe how brackish wetland conditions will be established at the Project site. More detailed mitigation plans are needed before the application can be considered complete.

The supplemental materials acknowledge that the Project site's jurisdictional delineation for wetlands has not yet been verified by the U.S. Army Corps of Engineers (Corps) and that the mitigation proposal will be refined after the delineation is verified. The Water Board will not issue a Clean Water Act Section 401 water quality certification on the basis of a conceptual mitigation plan. Only a final mitigation plan, with detailed design information and performance criteria, is sufficient to support certification

The supplemental application materials state that the City of Palo Alto will develop a Mitigation Monitoring and Reporting Plan (MMRP) for the Project. Prior to issuing a Clean Water Act Section 401 water quality certification to the Project, the Water Board must be provided with a complete MMRP for review and approval. Certification will not be issued until the Water Board has determined that the MMRP is appropriate to ensure the success of the mitigation wetlands.

An adequate MMRP should, at least, contain the following minimum components: a summary of maintenance activities, including irrigation, weeding, and replanting of dead or missing vegetation; a schedule for implementing maintenance activities; the plant palette selected for replanting, including pounds per acre of seeds, numbers and sizes of container plants, and sources of all plant material; metrics to be used in assessing establishment of wetland hydrology and vegetation; annual performance criteria, including percent cover, percent survival of plants, and target plant heights or percent coverage; final success criteria; and contingency measures to be implemented in the event that annual performance criteria or final success criteria are not attained, or mitigation wetlands do not attain jurisdictional status at the end of the initial monitoring period. At this site, maintenance and monitoring should probably be conducted for a minimum period of five years, until final success criteria are attained.

Also, mitigation wetlands must be protected with a legal instrument (e.g., a conservation easement or a deed restriction) consistent with the requirements of the 33 CFR 332.7 and 40 CFR 230.97, Management, (a) Site Protection in the joint Corps and U.S. EPA 2008 Compensatory Mitigation Rule.

Please contact Brian Wines of my staff at (510) 622-5680 or bwines@waterboards.ca.gov if you have any questions. All future correspondence regarding this Project should reference the Site Number indicated at the top of this letter.

Sincerely,

Digitally signed by Dale Bowyer
DN: cn=Dale Bowyer, o=RWQCB, ou=120, email=dbowyer@waterboards.ca.gov, c=US
Date: 2014.01.16 09:30:01 -08'00'

Dale Bowyer
Section Leader
South East Bay Counties
Watershed Division

Cc:

U.S. Army of Corps Engineers, Ian Liffman, (ian.liffmann@usace.army.mil)
CDFW, David Johnston (david.johnston@wildlife.ca.gov)
USFWS, Joseph Terry (joseph_terry@fws.gov)
USFWS, Ryan Olah (ryan_ollah@fws.gov)
USFWS, Cay Goude (cay_goude@fws.gov)
ICF International, Matthew Jones (mjones@icfi.com)
Water Board, Dyan Whyte (dyan.whyte.@waterboards.ca.gov)
Water Board, Bill Hurley (bill.hurley@waterboards.ca.gov)
Water Board, Margarete Beth (margarete.beth@waterboards.ca.gov)
Water Board, Ann Riley (al.riley@waterboards.ca.gov)

EXHIBIT B

California Water Boards

Edmund G. Brown Jr., Governor

Matthew Rodriguez, Secretary for Environmental Protection

San Francisco Bay Regional Water Quality Control Board

February 28, 2014
Site No: 02-01-C0698 (bkw)
CIWQS Place No. 802332
CIWQS Reg. Meas. No: 394458

Sent via electronic mail: No hardcopy to follow

City of Palo Alto
250 Hamilton Avenue, 6th Floor
Palo Alto, CA 94301

Attn: Joe Teresi (joe.teresi@cityofpaloalto.org)

Subject: Second Incomplete Application for Water Quality Certification for the City of Palo Alto Municipal Golf Course Reconfiguration Project in the City of Palo Alto, in Santa Clara County

Dear Mr. Teresi:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff have reviewed additional materials submitted by ICF International (the Applicant's authorized agent) on behalf of the City of Palo Alto (the Applicant) for the project to reconfigure the Palo Alto Municipal Golf Course in Santa Clara County (Project). The Project will impact about 2.24 acres of wetlands. This letter is being sent to inform you that the application remains incomplete, and to outline for you what materials are still needed to comprise a complete application package.

Comment 1
Box 14, Project Purpose, of Application for 401 Water Certification and/or Report of Waste Discharge (Application).
Comment 1 in the January 15, 2014, incomplete application letter stated.

The application materials state that the "purpose of the project is to reconfigure the golf course in concurrence with the San Francisquito Creek Joint Power Authority (SFCJPA) Flood Reduction Project, which permanently incorporates 7.4 acres of the acres of the golf course into the SFCJPA's project." The Water Board is concerned that the submission of an application for certification of the Golf Course project independent of the SFCJPA flood control project may constitute piece mealing of the two projects' impacts to San Francisquito Creek and adjacent habitat for listed species in the Faber Tract marsh in East Palo Alto, which provides habitat for the federally listed California clapper rail and the salt marsh harvest mouse.

Based on our review of the Golf Course application materials and the SFCJPA's application materials, there is a significant overlap between the Golf Course Project and the Lower San Francisquito Creek Flood Control project. The Water Board has significant concerns with the SFCJPA's current design for the flood control project, and won't be able to permit the SFCJPA's flood control project as currently proposed.

Approving the current design proposal for the Golf Course Project would have the unfortunate effect of foreclosing potential options for improving the SFCJPA's flood control design.

The City of Palo Alto's cover letter for the Application materials states that the City cannot offer any more than 7.4 acres of the existing golf course to the flood control project, and still have sufficient surface area to construct the reconfigured golf course. However, based on the application materials, it appears to be feasible to modify the proposed Athletic Center designs, which have not yet been finalized. The City should consider possible modifications to the Athletic Center designs, if it is necessary to dedicate more land area to an acceptable flood control project. The reconfigured golf course and the flood control project are likely to remain in place for many decades. Therefore, it is prudent to design these projects carefully to ensure that potential impacts to special status species habitat are reduced as much as possible.

The relative timing of the SFCJPA project and the golf course project is unclear in the application materials. Under the heading, *Project Overlap with the SFCJPA Flood Control Project*, on page 11 of the supplemental application materials, it appears to be stated that the golf course project will be built after the SFCJPA project. However, the SFCJPA project does not appear to be near the end of its permitting process. The City of Palo Alto's cover letter for the Application materials states that the SFCJPA has reached conceptual agreement with the resource agencies on a final flood control design. However, the agencies are still working with the SFCJPA to explore alternatives for improvements to the flood control project and the agencies are still reviewing the ability of the SFCJPA's hydraulic modeling to accurately predict the interaction of the main channel of San Francisquito Creek with adjacent floodplains and marshes.

The amount of overlap in the impacts of the golf course project and the SFCJPA flood control project is summarized on page 12 of the supplemental application materials, under the heading, *Project Overlap with the SFCJPA Flood Control Project*. However, it is not clear how the impact quantities in Table 5, *SFCJPA Flood Control Project Impacts to Waters of the State by Activity Type within the Overlap Area*, relate to the quantities in Table 4, *Project Impacts to Waters of the State by Activity Type*. Please clarify whether or not the quantities in Table 5 are a subset of the quantities in Table 4, or whether the quantities are completely separate.

The Applicant's response divided Comment 1 into three components: 1A, 1B, and 1C (Note: The response does not actually include a "1C", but it is implied in the response letter).

Response 1A deals with the sequence of Golf Course Project development. According to the response, while the Golf Course Project was initiated in response to the SFCJPA flood control project, once changes to the Golf Course footprint were required by the SFCJPA project, the Applicant decided to completely renovate the Golf Course. The Applicant concludes that this makes the Golf Course Project a separate project. However, Water Board staff remains concerned that the Golf Course project, as currently proposed, will impede necessary changes to the SFCJPA project. On February 27, 2014, the Water Board sent a letter to the SFCJPA in which the SFCJPA Flood Control Project's application for certification was denied without prejudice. The denial without prejudice letter directed the SFCJPA to explore other alternative designs for the flood control project, including a

potential option that would construct a bypass channel that would divert some of the flow from the San Francisquito Creek channel to the ball fields near the upstream end of proposed flood wall, continue on down along the southern boundary of the golf course, and discharge to the tidal marsh at the southern end of the airport. Therefore, the Applicant should not assume that the SFCJPA project footprint will not be changed in ways that may impact the configuration of the golf course. The Water Board continues to believe that the SFCJPA project and the Golf Course Project are not fully independent projects, since components of the two projects physically overlap and the extent of the necessary overlap has not been resolved. Therefore, we cannot issue permits for the Golf Course Project until an acceptable footprint of the SFCJPA Flood Control Project has been developed.

In Response 1B, the Applicant expresses confidence that the SFCJPA project's permitting issues will be resolved quickly, without complicating the implementation of the Golf Course Project. The February 27, 2014, denial without prejudice letter from the Water Board to the SFCJPA makes it clear that the flood control project's permitting issues will not be resolved in the near future.

In Response 1C, the Applicant clarified the information provided in Tables 4 and 5 of the Application materials.

In summary, Water Board staff does not consider the Golf Course Project to be separate from the SFCJPA flood control project. As was noted in the February 27, 2014, denial without prejudice letter, the future flood control project application should present alternatives that (1) convey flows in a manner that is protective of both the communities and the environment, such as through the use of multiple conveyance features to split flows and reduce velocities; (2) protect water quality; (3) protect endangered species; and (4) protect habitat along San Francisquito Creek and in the Faber Tract marsh. Since there is a real possibility that an acceptable flood control design may impact land at the Golf Course, permitting the Golf Course Project as currently proposed would constrain the development of an acceptable flood control project.

Comment 2

Box 15, Description of Activity and Environmental Impacts, of Application.

Comment 2 in the January 15, 2014, incomplete application letter stated.

Projects requiring permits from the Water Board are required to provide documentation that they will provide stormwater runoff treatment that is consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit (MRP) for the management of stormwater runoff (Order R2-2009-0074; NPDES Permit No. CAS612008). The application materials lack designs for the Project's post construction stormwater treatment measures, including supporting calculations, and related infrastructure.

The application materials state that, "runoff would continue to flow through turf and native grassland areas (biofilters) and would be collected in many drain inlets which feed into the pump station." The application materials do not show the locations or dimensions of the biofilters, or include calculations to support the proposed sizing of the biofilters. Please provide designs for the Project's post-construction stormwater treatment measures; the application will not be deemed complete without these designs.

The Applicant's response focusses on elements of the Golf Course Project that would trigger the numeric treatment requirements of the MRP, due to the amount of impervious surfaces created by the Project. The Applicant appears to have misunderstood the Water Board's comment. For projects that require an individual permit from the Water Board, the size thresholds are not relevant. The Water Board has always had the authority to require treatment of runoff from all impervious surfaces at sites that require an individual permit from the Water Board. The MRP requires that projects that do not require individual permits from the Water Board provide appropriate stormwater treatment and management. During the development of the MRP, permittees requested size thresholds that would trigger MRP compliance. The reason for requesting thresholds was to help the permittees manage their staff resources, by not requiring permittee staff to address stormwater management compliance at smaller projects. However, these thresholds are not relevant to the Golf Course Project, which requires an individual permit form the Water Board. The Applicant must provide the information that was requested in the original Comment 2. Failure to provide the requested information will prevent the Water Board from issuing a permit for the Project.

Comment 3

Box 19, Mitigation, of Application.

Comment 3 in the January 15, 2014, incomplete application letter stated.

The discussion of mitigation provided in Box 19 is fairly conceptual (e.g., Figure 5, which provides a conceptual cross-section of an enhanced wetland, is the only design cross-section provided), and there are some areas of ambiguity in the mitigation discussion that has been provided. For example, areas of post-Project wetlands are indicated in Figure 4, but it is not clear if these wetlands include both existing wetlands that will be preserved and new mitigation wetlands, or if all of the wetlands in Figure 4 are proposed mitigation wetlands. The existing wetlands at the Project site are brackish wetlands. Please clarify if the mitigation wetlands will also be designed to be brackish wetlands. If the mitigation wetlands are intended to function as brackish wetlands, please describe how brackish wetland conditions will be established at the Project site. More detailed mitigation plans are needed before the application can be considered complete.

The supplemental materials acknowledge that the Project site's jurisdictional delineation for wetlands has not yet been verified by the U.S. Army Corps of Engineers (Corps) and that the mitigation proposal will be refined after the delineation is verified. The Water Board will not issue a Clean Water Act Section 401 water quality certification on the basis of a conceptual mitigation plan. Only a final mitigation plan, with detailed design information and performance criteria, is sufficient to support certification

The supplemental application materials state that the City of Palo Alto will develop a Mitigation Monitoring and Reporting Plan (MMRP) for the Project. Prior to issuing a Clean Water Act Section 401 water quality certification to the Project, the Water Board must be provided with a complete MMRP for review and approval. Certification will not be issued until the Water Board has determined that the MMRP is appropriate to ensure the success of the mitigation wetlands.

An adequate MMRP should, at least, contain the following minimum components: a summary of maintenance activities, including irrigation, weeding, and replanting of dead or missing vegetation; a schedule for implementing maintenance activities; the plant

palette selected for replanting, including pounds per acre of seeds, numbers and sizes of container plants, and sources of all plant material; metrics to be used in assessing establishment of wetland hydrology and vegetation; annual performance criteria, including percent cover, percent survival of plants, and target plant heights or percent coverage; final success criteria; and contingency measures to be implemented in the event that annual performance criteria or final success criteria are not attained, or mitigation wetlands do not attain jurisdictional status at the end of the initial monitoring period. At this site, maintenance and monitoring should probably be conducted for a minimum period of five years, until final success criteria are attained.

Also, mitigation wetlands must be protected with a legal instrument (e.g., a conservation easement or a deed restriction) consistent with the requirements of the 33 CFR 332.7 and 40 CFR 230.97, Management, (a) Site Protection in the joint Corps and U.S. EPA 2008 Compensatory Mitigation Rule.

The Applicant's response divided Comment 1 into four components: 3A, 3B, 3C and 3D (Note: The response does not actually include "3C" and "3D", but they are implied in the response letter).

Response 3A clarifies the relationship between the existing wetlands and the Project site and the proposed footprint of the mitigation wetlands. The response also states that the brackish condition of the existing wetlands is sustained by interaction with shallow, tidally influenced groundwater. To ensure that the groundwater interface results in brackish wetland conditions in the mitigation wetlands, the MMRP for the Project should include appropriate monitoring of wetland salinity and assessments of the extent of salt-tolerant plants in the wetlands.

Response 3B addresses the current status of Corps verification of the wetland delineation on the Project site. The Applicant states that the Corps has verified the extent of wetlands in the portion of the Golf Course that is currently proposed to be part of the SFCJPA Flood Control Project footprint, and that the Corps verification was consistent with the Applicant's preliminary jurisdictional delineation. Based on the Corps verification of the proposed extent of wetlands at the SFCJPA portion of the site, the Applicant predicts that the Corps jurisdictional delineation on the Golf Course Project area will also not differ from the Applicant's preliminary delineation. While this may be true, the Water Board cannot be certain of the full extent of impacts to wetlands, and the extent of required mitigation, until the Corps has verified the wetland delineation.

Response 3C addresses the need for the Applicant to submit a complete MMRP to the Water Board, and states that an MMRP will be provided to the Water Board no later than February 14, 2014. Water Board staff have not received the MMRP.

Response 3D addresses the Applicant's intention to provide appropriate legal protection to ensure the perpetual protection of the mitigation wetlands. However, the Applicant has not yet proposed a specific legal mechanism. The form of the legal protection of the mitigation wetlands must be confirmed prior to the issuance of a permit for the Project.

Please contact Brian Wines of my staff at (510) 622-5680 or bwines@waterboards.ca.gov if you have any questions. All future correspondence regarding this Project should reference the Site Number indicated at the top of this letter.

Sincerely,

Digitally signed by Shin-Roei Lee
Date: 2014.02.28 17:01:40 -08'00'

Shin-Roei Lee, Chief
Watershed Division

Cc:

U.S. Army of Corps Engineers, Ian Liffman, (ian.liffmann@usace.army.mil)
CDFW, David Johnston (david.johnston@wildlife.ca.gov)
USFWS, Joseph Terry (joseph_terry@fws.gov)
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EXHIBIT C

ICF INTERNATIONAL

January 31, 2014

Mr. Brian Wines
Water Quality Certification
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Subject: Response to Incomplete Application for Water Quality Certification for the City of Palo Alto Municipal Golf Course Reconfiguration Project in the City of Palo Alto, in Santa Clara County

Dear Mr. Wines:

Enclosed is City of Palo Alto's response to the Incomplete Application for Water Quality Certification CIWQS Place No. 802332 of the Palo Alto Municipal Golf Course Reconfiguration Project. The application was submitted to the Regional Water Quality Control Board (Waterboard) on December 24, 2013. The Application was determined by the Waterboard to be incomplete on January 16, 2014. The response package includes all information requested in the incomplete application letter including a response letter, and associated attachments.

The following documents/enclosures comprise the notification package in this binder:

- Response Letter addressing each question
- Supporting Attachments

If you require additional information, or have any questions regarding this request, please contact Joe Teresi (Project Applicant) at (650) 329-2129 or me at (408) 216-2815. Thank you for your assistance with this project.

Sincerely,

Matthew Jones
Project Manager

cc: Joe Teresi, Senior Engineer, City of Palo Alto

75 E. Santa Clara Street, Suite 300 — San Jose, CA 95113 — 408.216.2800 — 408.216.2805 fax — icfi.com

Responses to "Incomplete Application for Water Quality Certification for the City of Palo Alto Municipal Golf Course Reconfiguration Project in the City of Palo Alto, in Santa Clara County"

Introduction

The format of the comment and response section reprints in full the RWQCB's comments, both enumerated and otherwise, found in the January 16, 2014 Incomplete Notification. Each complete comment, presented in *italics* is followed immediately by a complete response indented without italics. If the response is partially or wholly addressed in a previous response to comment, the applicable discussion will be succinctly summarized again and the applicable previous response to comment will be referenced.

Comments and Responses

Comment 1
Box 14, Project Purpose, of Application for 401 Water Certification and/or Report of Waste Discharge (Application).

The application materials state that the "purpose of the project is to reconfigure the golf course in concurrence with the San Francisquito Creek Joint Power Authority (SFCJPA) Flood Reduction Project, which permanently incorporates 7.4 acres of the acres of the golf course into the SFCJPA's project." The Water Board is concerned that the submission of an application for certification of the Golf Course project independent of the SFCJPA flood control project may constitute piece mealing of the two projects' impacts to San Francisquito Creek and adjacent habitat for listed species in the Faber Tract in East Palo Alto, which provides habitat for the federally listed California clapper rail and the salt marsh harvest mouse.

Based on our review of the Golf Course application materials and the SFCJPA's application materials, there is a significant overlap between the Golf Course Project and the Lower San Francisquito Creek Flood Control project. This agency has significant concerns with the SFCJPA's current design for the flood control project, and it is possible that the design in the SFCJPA's current application will not be approved by this agency. Approving the current design proposal for the Golf Course Project would have the unfortunate effect of foreclosing potential options for improving the SFCJPA's flood control design.

The City of Palo Alto's cover letter for the Application materials states that the City cannot offer any more than 7.4 acres of the existing golf course to the flood control project, and still have sufficient surface area to construct the reconfigured golf course. However, based on the application materials, it appears to be feasible to modify the proposed Athletic Center designs, which have not yet been finalized. The City should consider possible modifications to the Athletic Center designs, if it is necessary to dedicate more land area to an acceptable flood control project. The reconfigured golf course and the flood control project are likely

to remain in place for many decades. Therefore, it is prudent to design these projects carefully to ensure that potential impacts to special status species habitat are reduced as much as possible.

Response 1A: Once the impact on the Palo Alto Golf Course (PAGC) resulting from the SFCJPA Project was defined, including a delineation of the location and quantity of PAGC acreage needed by the SFCJPA for creek widening that would accommodate the projected 100-year stream flow and achieve the desired marsh habitat enhancements, the City of Palo Alto went through an Alternatives Analysis to look at multiple options for handling that impact, from the SFCJPA reconstructing just the impacted holes to a full reconstruction of the PAGC. Once the City selected a Project involving a complete reconfiguration of the PAGC, it was deemed prudent for the City to progress with the Project as an independent Project. The projects have very unique and individual functions and require different construction expertise and different lead agency involvement. As such, while the footprints of the projects are immediately adjacent to one another, the final utility and responsibility for the two projects are wholly independent. Both agencies have coordinated throughout the planning and design development processes for both Projects and have worked to ensure that all footprint and temporal impacts are covered fully and appropriately within the applicable purview of each Project. It is the City of Palo Alto's understanding that the SFCJPA has revised its project in a manner to address the U.S. Fish and Wildlife and RWQCB concerns related to the Faber Tract, and it has assured the City that project revisions would only have implications for the East Palo Alto / Faber Tract side of the Project and would not impact the final PAGC design for which the application has been submitted.

As stated in the City's Cover letter, the SFCJPA's proposed project already plans to utilize a large portion (7.4 acres) of the PAGC as currently designed. The City has been assured by the SFCJPA that no more than this amount of acreage was needed to optimize the flows through the project reach. Furthermore, as a result of the expanded creek footprint afforded by the 7.4 acres of PAGC land together with the removal of a substantial volume of accumulated in-stream sediment, the SFCJPA Project far exceeds its mitigation requirements for creation of marsh wetlands to the level that it should be considered a marsh habitat enhancement project with related water quality benefits above and beyond its impacts. Using additional acreage of the PAGC has diminishing returns in terms of flow conveyance due to the already low elevation of the golf course and downstream constriction at the Palo Alto Airport runway. The SFCJPA analyzed using the PAGC as a detention basin in 2008 and determined that such use of the PAGC was not a viable alternative in and of itself and required additional stream capacity improvements. The SFCJPA determined in their 2008 analysis that a Golf Course Alternative would require construction of passive weirs to allow for active flooding of the PAGC as well as the Faber Tract to relieve fluvial constraints of the main channel during 100-year storm events. The following paragraphs quickly summarize the SFCJPA's evaluation of the Golf Course Alternative.

For the SFCJPA to utilize the golf course as a detention basin, the existing levee would be lowered starting just downstream of the Palo Alto's Baylands Athletic Center to create a passive weir (spillway) into the Golf Course. The PAGC is approximately 150 acres, which translates, considering the topography of the golf course lands, into about 600 acre-feet of storage if the spillway were placed at elevation 9.0. A ring levee would be needed around the golf course to protect the surrounding businesses and airport, and the stored water would need to be pumped out as there is no feasible outlet in the area to allow for gravity flow out of the PAGC in to San Francisco Bay.

The maximum feasible amount of flow that could be diverted from the creek during a 7,500 cfs event would be approximately 3,500 cfs, leaving 4,000 cfs in the creek downstream of the diversion.

Storage capacity under this scenario can be calculated as follows:

600 acre-feet X 43,000 cubic-feet/acre-foot = 25,800,000 cubic feet of storage

Diversion duration under this scenario can be calculated as follows:

25,800,000 cubic feet / 3,500 cfs = 7,370 sec = 122 min = 2.03 hours

There would be about a 2 foot decrease in water surface elevation downstream of the weir when considering an instantaneous flow of 7,500 cfs. Under real storm conditions, creek flow would begin to spill in to the Golf Course at 4,000 cfs, and would occupy about half of the holding capacity of the basin prior to creek flow reaching 7,500 cfs if the rise in creek flow was sustained at the maximum rate observed in the historic hydrograph. Therefore, during a 7,500 cfs event under these conditions, a potential Golf Course basin would fill in about 1 hour. During a similar event in which the flow in the creek rose less rapidly there would be less storage capacity when flows reached 7,500 cfs. Once the basin fills, there would not be capacity to receive additional flow until the basin is emptied. This could provide some flood protection for a short period of time during a 7,500 cfs event under the right conditions, but would result in significant overtopping within the reach even if flows recede from 7,500 cfs to 4,000 cfs quickly after the peak. For a one percent event, the basin would offer no protection as it fills prior to the peak discharge and is no longer available for additional storage.

As for options at the Baylands Athletic Center, the areas considered for Athletic Center expansion are interior to existing areas of the Athletic Center which are adjacent to the Creek and which would not be reconfigured in any scenario and thus do not provide opportunities for additional capacity. The concept of eliminating the Baylands Athletic Center expansion from the scope of the PAGC Project in order to shift some of the reconfigured golf holes into the footprint of the proposed athletic center facilities in order to thereby free up additional area for a widened San Francisquito Creek is unacceptable because: 1) As stated above, using additional acreage of the PAGC has diminishing returns in terms of creek flow conveyance due to the already low elevation of the golf course and downstream constriction at the Palo Alto Airport runway, and 2) elimination of the athletic facilities results in a Project scope that fails to meet the Project objective of creating additional athletic field space for the community.

The City very much understands and respects the need to ensure that the reconfigured PAGC is suitable and appropriate for the City for the next several decades. The proposed project will transform the existing Palo Alto Municipal Golf Course from an unnatural park setting dominated by managed turf grass and non-native trees to a Baylands setting featuring a links-style course planted with native trees, shrubs, and grasses more appropriate for its location adjacent to San Francisco Bay. One of the project's hallmarks is a 40% reduction in irrigated turf grass on the renovated golf course. Additionally, it should be noted that the reduced turf area will be irrigated with a blend of potable water and recycled water from the regional wastewater treatment plant, providing for additional reduction in potable water usage. The new golf course will also feature native trees, shrubs, and grasses selected for their salt tolerance and habitat value for Baylands wildlife species as well as increased wetland areas that will provide valuable habitat as well as storm water filtration and absorption. Similar to the SFCJPA Project, the PAGC Project should be viewed as a wetland enhancement project in that it creates new and restored wetland areas far in excess of those required for mitigation of project impacts.

The relative timing of the SFCJPA project and the golf course project is unclear in the application materials. Under the heading, Project Overlap with the SFCJPA Flood Control Project, on page 11 of the supplemental application materials, it appears to be stated that the golf course project will be built after the SFCJPA project. However, the SFCJPA project does not appear to be near the end of its permitting process. The City of Palo Alto's cover letter for the Application materials states that the SFCJPA has reached conceptual agreement with the resource agencies on o final flood control design. However, the agencies are still working with the SFCJPA to explore all options for improvements to the flood control project and the agencies are still reviewing the ability of the SFCJPA's hydraulic modeling to accurately predict the interaction of the main channel of San Francisquito Creek with adjacent flood plain and marshes.

Response 1B: Given the SFCJPA's Project revisions, the City is working with the SFCJPA towards a project timeline consistent with the proposed application and remains confident that the SFCJPA permitting will reach a favorable conclusion within the anticipated timeframe. The City feels assured that any minor revisions to the SFCJPA Project moving forward would not impact the Golf Course design for the reasons stated in Response 1A. If the timing of actions should change, the City fully understand that permits may be need to revised to reflect those changed circumstances and could impact timing of permits.

The amount of overlap in the impacts of the golf course project and the SFCJPA flood control project is summarized on page 12 of the supplemental application materials, under the heading, Project Overlap with the SFCJPA Flood Control Project. However, it is not clear how the impact quantities in Table 5, SFCJPA Flood Control Project Impacts to Waters of the State by Activity Type within the Overlap Area, relate to the quontities in Table 4, Project Impacts to Waters of the State by Activity Type. Please clarify whether or not the quantities in Table 5 are a subset of the quantities in Table 4, or whether the quantities are completely separate.

Response: The quantities are separate. Table 5 shows impacts associated with the SFCJPA project anticipated to occur prior to initiation of the PAGC Project within the final footprint of the reconfigured golf course. This overlap of the two project footprints has been carefully coordinated between the SFCJPA and the City of Palo Alto to ensure that impacts associated with both projects are fully accounted for. The acreage in Table 5 is important though, as it would represent additional area the City of Palo Alto would need to permit in the event that the Golf Course Project proceeded ahead of the SFCJPA Project. Table 4 represents the impacts of the PAGC reconfiguration project for which the City is now requesting permits.

Comment 2
Box 15, Description of Activity and Environmental Impacts, of Application.

Projects requiring permits from the Water Board are required to provide documentation that they will provide stormwater runoff treatment that is consistent with the requirements of the National Pollutant Discharge Elimination System (NPDES) Municipal Regional Permit (MRP) for the management of stormwater runoff (Order R2-2009-0074; NPDES Permit No. CAS612008). The application materials lack designs for the Project's post construction stormwater treatment measures, including supporting colculations, and related infrastructure.

The application materials state that, "runoff would continue to flow through turf and native grassland areas (biofilters) and would be collected in many drain inlets which feed into the pump station." The application materials do not show the locations or dimensions of the biofilters, or include calculations to support the proposed sizing of the biofilters. Please provide designs for the Project's post-construction stormwater treatment measures; the application will not be deemed complete without these designs.

Response: The City has determined that the only element of the PAGC Project that could potentially trigger the numeric stormwater treatment requirements contained in Section C.3 of the Municipal Regional Permit (MRP) is the concrete cart paths and compacted gravel maintenance roads being constructed throughout the Golf Course. The only other impervious area being constructed as part of the PACG Project is the new 300 square foot restroom facility, which falls below the 10,000 square foot impervious area threshold and is not considered a Regulated Project under the MRP. The Project includes the construction of approximately 200,000 square feet of concrete cart paths and 15,000 square feet of compacted gravel maintenance roads. Storm runoff from the paths and maintenance roads is not concentrated and drained directly into a storm drain system, however, but rather is discharged as diffuse sheet flow across turf or vegetated areas before it reaches a storm drain inlet. The paths and maintenance roads are regulated by Section C.3.b.ii(4) (Road Projects) of the MRP. Section C.3.b.ii(4)(d) specifically provides that sidewalks and impervious trails that are built to direct stormwater runoff to adjacent vegetated areas are excluded from consideration as a Regulated Project. The location and relative elevations of the cart paths, maintenance roads, and storm drain inlets are shown on the attached grading and drainage plans prepared for the PAGC Project. These plans demonstrate that storm runoff from the PAGC Project's paths and maintenance roads are directed to adjacent vegetated areas. The turf and vegetated areas serve as an effective means of slowing, filtering, and/or infiltrating the runoff before it reaches the storm drain system. Since the PAGC Project is not considered a Regulated Project, detailed stormwater treatment calculations are not required.

Comment 3
Box 19, Mitigation, of Application.

The discussion of mitigation provided in Box 19 is fairly conceptual (e.g., Figure 5, which provides a conceptual cross-section of an enhanced wetland, is the only design cross-section provided), and there are some areas of ambiguity in the mitigation discussion that has been provided. For example, areas of post-Project wetlands are indicated in Figure 4, but it is not clear if these wetlands include both existing wetlands that will be preserved and new mitigation wetlands, or if all of the wetlands in Figure 4 are proposed mitigation wetlands. The existing wetlands at the Project site are brackish wetlands. Please clarify if the mitigation wetlands will also be designed to be brackish wetlands. If the mitigation wetlands are intended to function as brackish wetlands, please describe how brackish wetland conditions will be established at the Project site. More detailed mitigation plans are needed before the application can be considered complete.

Response 3A: Detailed Plans have been developed for the entire Golf Course site, including the expanded wetland areas (called out as "low lying native areas" in the plan set). These detailed plans are included in the response Package as Attachment A. The seed mix and specifications for planting the expanded and newly created wetland areas is part of the "baylands" seed mix, the specifications for which are included in Attachment B.

The wetlands in Figure 4 do represent the final condition, including the new and preserved wetlands. Preserved wetlands are indicated and visible in Figure 4 as the "undisturbed zones" shown in red hatching. This shows the areas being protected but also provides a visual sense of the expansion of these wetted areas proposed for the reconfigured PAGC.

Under current conditions, the low lying wetted areas are as such because these wetlands interact with the existing water table and have hydrologic connection to the adjacent tidal reach of San Francisquito Creek and San Francisco Bay. The functions of these wetlands include contributions of

natural fresh water inputs overland and saline input through the natural tidal groundwater influence at the water table. The expansion of wetlands will increase the area at the elevation this natural brackish condition occurs under current conditions and will allow for a high degree of certainty that the new and expanded areas will function in the same manner as existing wetlands.

The supplemental materials acknowledge that the Project site's jurisdictional delineation for wetlands has not yet been verified by the U.S. Army Corps of Engineers (Corps) and that the mitigation proposal will be refined after the delineation is verified. The Water Board will not issue a Clean Water Act Section 401 water quality certification on the basis of a conceptual mitigation plan. Only a final mitigation plan, with detailed design information and performance criteria, is sufficient to support certification

Response 3B: As the wetlands on the Golf course are well defined, the City has a high level of confidence that wetlands are fully delineated and that the proposed plan for the Golf Course, including wetlands will not need to be altered. While the full delineation of the Golf Course is not verified, Ian Liffmann of the USACE San Francisco District did verify the wetlands for the SFCJPA project, which includes a portion of the Golf Course, on February 5, 2013, and the verification did not result in any changes or revisions to wetlands on the Golf Course.

The supplemental application materials state that the City of Palo Alto will develop a Mitigation Monitoring and Reporting Plan (MMRP) for the Project. Prior to issuing a Clean Water Act Section 401 water quality certification to the Project, the Water Board must be provided with a complete MMRP for review and approval. Certification will not be issued until the Water Board has determined that the MMRP is appropriate to ensure the success of the mitigation wetlands.

An adequate MMRP should, at least, contain the following minimum components: a summary of maintenance activities, including irrigation, weeding, and replanting of dead or missing vegetation; a schedule for implementing maintenance activities; the plant palette selected for replanting, including pounds per acre of seeds, numbers and sizes of container plants, and sources of all plant material; metrics to be used in assessing establishment of wetland hydrology and vegetation; annual performance criteria, including percent cover, percent survival of plants, and target plant heights or percent coverage; final success criteria; and contingency measures to be implemented in the event that annual performance criteria or final success criteria are not attained, or mitigation wetlands do not attain jurisdictional status at the end of the initial monitoring period. At this site, maintenance and monitoring should probably be conducted for a minimum period of five years, until final success criteria are attained.

Response: An MMRP specific to the wetland impacts is being prepared as requested and will be provided to the RWQCB no later than February 14, 2014.

Also, mitigation wetlands must be protected with a legal instrument (e.g., a conservation easement or a deed restriction) consistent with the requirements of the 33 CFR 332.7 and 40 CFR 230.97, Management, (a) Site Protection in the joint Corps and U.S. EPA 2008 Compensatory Mitigation Rule.

Response: The City of Palo Alto recognizes its legal responsibilities and will work with the RWCQB to identify and implement the appropriate mechanism for protection prior to permit issuance.

C3
C2
C1

101

Here are the pertinent sections of the technical specs that address the wetland seeding. In our specs, these areas are described as Bayland or Type B. I have deleted unrelated items such as the turf grass planting requirements from within these requirements in order to not confuse the reader.

1 Soil Amendment requirements for the Bayland areas

Application Rates

Amendment 13 MykosPro30 rate Or AM-120 rate Biosol 6-1-1 rate			350 #/AC or 60 #/AC 1200 #/AC	350 #/AC or 60 #/AC 1200 #/AC

Materials

Amendment	13	MykosPro 30 (Includes Mycorrhizal Inoculate) by Green Diamond Biological; Or both AM-120 Mycorrhizal Inoculate and Biosol 6-1-1 as supplied by Pacific Coast Seed

2 Turf and Native Grassing Installed by Seeding

The Greens, Baylands and Native Areas shown on the drawings shall be established by application of seed by the Contractor.

Native and Bayland areas designated on the drawings shall be seeded by hydroseed application in locations where the final shaping and grading has been approved by the Golf Course Architect. Seeding of such areas shall also include an application of inoculants as required under Section 31.0.

Hydroseeding or Hydrosprigging will be performed by persons or firms experienced in providing hydroseed services including handling, mixing and applying hydroseed slurry for native plant habitat restorations or golf course turf areas as may be applicable and as follows:

All areas to receive Hydroseed or Hydrosprigging shall first be approved by the City or Golf Course Architect prior to application by the Hydroseeder.

The Hydroseeder shall properly mix all seeds or stolons, mulch and other required additives to create a uniform slurry mixture. Such slurry shall be uniformly applied it throughout the defined application areas unless otherwise noted herein or as may be directed by the City or its agent(s).

Amendments and fertilizers may be added to the slurry mix or applied separately.

The Hydroseeder shall provide evidence if requested by the City to ascertain the slurry mixture is correctly proportioned and applied to provide the application rates of all components as herein required.

Spray all areas with a uniform, visible coat using the color of the mulch as a guide. The slurry shall be applied in a sweeping motion, in an arched stream so as to fall like rain allowing the mulch fibers to build on each other until a good coat is achieved and the material is spread at the required application rate.

The Hydroseeder shall manage the hydroseed application process so as not to drag spray hoses over existing planted areas or otherwise disturb other areas ready for planting. All hardscapes areas and adjacent areas designated to be planted differently or not planted shall be protected from slurry application by use of sheeting or other means to block accidental application of such areas. The Hydroseeder shall attempt to spray from the edges of the planting areas whenever possible.

Slurry mixture which has not been applied to the planting areas within four (4) hours after mixing will be rejected and shall be removed from the Site at the Contractor's expense.

The Hydroseeder shall avoid creating ruts or equipment tracks resulting from Contractor's vehicles in the performance of the work. Contractor shall be responsible for repairing all such ruts or damage to the satisfaction of the Golf Course Architect or City.

Once completed, each area of hydroseed or hydro sprigged area shall be maintained with moisture application as needed until acceptance of the area by the City.

Materials

All seed shall be certified as to genetic purity and accompanied by proof of Certified Status from the respective state's certifying agency. The Contractor shall be responsible for maintaining all records provided by the seed supplier. Each seed bag shall be delivered to the site sealed and clearly marked as to species, purity, percent germination, dealer's guarantee, and dates of test. In addition, the container shall be labeled to clearly reflect the amount of Pure Live Seed (PLS) contained.

For Native and Bayland areas which are to be hydroseeded, the Contractor shall apply seed as follows:

Native Mix "B", common seed mix for Baylands

Abbreviated Name	Name	Common Name	Rate in pounds PLS per acre (lb/ac)
JUNPHA	Juncus phaeocephalus	Brown-Headed Rush	5
CAROBIN	Carex obnupta	Slough Sedge	3
HORDEP	Hordeum depressum	Alkali Barley	5
TOTAL MIX			13

Hydromulching or Hydrosprigging mix requirements

Mulch shall be organic materials known as EnviroFiber, Hydropost, EcoFibre or equal.

Contractor shall provide an alternate cost as an Alternate Bid Item to upgrade the basic hydroseed mulch to Profile Products ProMatrix or equal and delete the Binder requirement for Native areas "A" and "B" only.

Binder or Stablizer/Tackifier shall be an organic substance supplied in powder form and shall be psilium-based and packed in clearly marked bags stating the contents of each package, M-Binder or equal.

Location	Mulch Rate	Binder
Paspalum	2000 lb/ac	100 lb/ac
Native Areas	2000 lb/ac	100 lb/ac *
Baylands	2000 lb/ac	100 lb/ac *
		* Not required if Alternate mulch upgrade is accepted.

EXHIBIT D

MUSICK, PEELER & GARRETT LLP
ATTORNEYS AT LAW

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April 1, 2014

VIA E-MAIL. NO HARD COPY TO FOLLOW.

Bruce H. Wolfe
Executive Officer
San Francisco Bay Regional Water Quality
Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612

Re: City of Palo Alto **Request for Preparation of the Record** and **Confirmation of Delivery of Petition for Review and Reconsideration**; Palo Alto Municipal Golf Course Reconfiguration Project; Site No: 02-01-C0698 (bkw)

Dear Mr. Wolfe:

As required by the California Code of Regulations, Title 23, sections 2050 and 3867, we provide this letter to: (1) request the preparation of the Regional Board's staff record in this matter; and (2) confirm that we have provided you with a true and correct copy of the Petition for Review and Reconsideration of the City of Palo Alto (the City).

The City has asked that its Petition for Review and Reconsideration, and accordingly also its request for preparation of the record, be held in abeyance pursuant to California Code of Regulations, Title 23, Sections 2050.5(d) and 3869(c) at this time, while the parties work expeditiously to successfully complete the City's water quality certification process.

We wish to assure you that the City has taken these steps for the purpose of preserving its rights. The City remains optimistic that its water quality certification concerns can be

resolved through timely work with the Regional Board, and that action on the Petition to the State Board will prove unnecessary.

Sincerely,

Jane Ellison Usher
for MUSICK, PEELER & GARRETT LLP

Enclosures:
Petition to the State Water Resources Control Board for Review and Reconsideration
Exhibits to Petition for Review and Reconsideration

Sent via electronic mail to:

Ms. Molly S. Stump, City Attorney of Palo Alto
(molly.stump@cityofpaloalto.org)
Mr. Joe Teresi, Senior Engineer of the City of Palo Alto
(joe.teresi@cityofpaloalto.org)
Mr. James R. Keene, City Manager of the City of Palo Alto
(james.keene@cityofpaloalto.org)
Shin-Roei Lee, Chief, Watershed Division, Regional Board
(shin-roei.lee@waterboards.ca.gov)
Brian Wines, Water Resources Control Engineer, Regional Board
(brian.wines@waterboards.ca.gov)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action.** I am employed in the County of Los Angeles, State of California. My business address is One Wilshire Boulevard, Suite 2000, Los Angeles, California 90017-3383.

On April 1, 2014, I served true copies of the following document(s) described as **REQUEST FOR PREPARATION OF THE RECORD AND CONFIRMATION OF DELIVERY OF PETITION FOR REVIEW AND RECONSIDERATION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

☐ **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Musick, Peeler & Garrett LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

☐ **BY FAX TRANSMISSION:** I faxed a copy of the document(s) to the persons at the fax numbers listed in the Service List. The telephone number of the sending facsimile machine was 213-624-1376. No error was reported by the fax machine that I used.

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from e-mail address c.durfee@mpglaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 1, 2014, at Los Angeles, California.

Carrie A. Durfee

SERVICE LIST

Re CITY OF PALO ALTO

Bruce Wolfe
Executive Officer
San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Phone: (510) 622-2300
Fax: (510) 622-2460
Email: bruce.wolfe@waterboards.ca.gov

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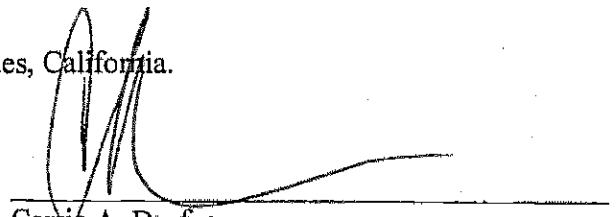

Carrie A. Durfee

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