
North Coast Regional Water Quality Control Board

May 23, 2013

In the Matter of

Water Quality Certification

for

City of Rohnert Park
Wilfred Avenue Improvement Project
WDID No. 1B12201WNSO

APPLICANT: City of Rohnert Park
RECEIVING WATER: Seasonal Wetlands
HYDROLOGIC UNIT: Laguna Hydrologic Subarea No. 114.21,
Russian River Hydrologic Area 114.00
COUNTY: Sonoma
FILE NAME: City of Rohnert Park,
Wilfred Avenue Improvement Project

BY THE EXECUTIVE OFFICER:

1. On December 24, 2012, the City of Rohnert Park (Applicant) filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the California Regional Water Quality Control Board, North Coast Region (Regional Water Board) for activities associated with widening and constructing improvements along Wilfred Avenue from the intersection of Redwood Drive to just west of Stony Point Road to accommodate anticipated development within the City of Rohnert Park's urban growth boundary (Project). Information describing the project was noticed for public comment on the Regional Water Board's website on May 16, 2013. Under Title 23, California Code of Regulations, Section 3858(a): "The executive director or the executive officer with whom an application for certification is filed shall provide public notice of an application at least twenty-one (21) days before taking certification action on the application, unless the public

notice requirement has been adequately satisfied by the applicant or federal agency. If the applicant or federal agency provides public notice, it shall be in a manner and to an extent fully equivalent to that normally provided by the certifying agency. If an emergency requires that certification be issued in less than 21 days, public notice shall be provided as much in advance of issuance as possible, but no later than simultaneously with issuance of certification." The Army Corps of Engineers provided public notice of the section 401 requirement on their website for 30 days (January 25, 2013 to February 25, 2013) in an equivalent manner to that normally provided by this agency. No comments were received by the Regional Water Board during that public comment period. Additionally, the Regional Water Board has been informed by the City of Rohnert Park that the 401 certification must be issued as soon as possible in order to avoid creating a clear and imminent threat to public safety that would occur should the road widening project not be completed by the time the Graton Rancheria Casino and Hotel (Graton Casino) opens. Accordingly, the Regional Water Board is issuing this certification less than 21 days from the provided public notice. The Project is located on the west side of Highway 101, on Wilfred Avenue, between Stony Point Road and Redwood Drive, Rohnert Park, in Sonoma County. The Project is located at: west end - latitude 38.363262°N, and longitude 122.741189°W; east end - latitude 38.363279°N, and longitude 122.715354°W. The Project will cause permanent impacts to 0.75 acres of seasonal wetlands. Project is within the Laguna Hydrologic Subarea No. 114.21, Russian River Hydrologic Area 114.00.

2. The Project purpose is to improve safety, traffic circulation, pedestrian circulation, and manage stormwater runoff along Wilfred Avenue between Stony Point Road and Redwood Drive, a length of approximately 1.4 miles. The proposed roadway improvements would be necessary to mitigate the additional traffic impacts resulting from the cumulative effects of several City and private projects being developed or planned for the foreseeable future, including the new Graton Rancheria Casino and Hotel, and to accommodate other approved or anticipated development within the City's urban growth boundary. Applicant proposes to expand the number and width of lanes between Stony point Road and Redwood Drive along Wilfred Avenue, improve the intersections where Primrose Avenue, Whistler Avenue, Langner Avenue, Labath Avenue, and Dowdell Avenue meet Wilfred Avenue, construct vehicle pullout shoulders, pedestrian and bicycle paths, and stormwater treatment swales, relocate utilities where necessary, construct outfall structures, and install attendant features including signal lights, signs, medians, striping, and landscaping. A portion of Wilfred Avenue located on land owned by Graton Rancheria Casino and Hotel will receive the same road improvements as this project ; however, it is not within the jurisdiction of the Regional Water Board, and the 401 Certification for that portion of the project is the responsibility of the United States Environmental Protection Agency.
3. Project is scheduled to commence in spring/summer 2013 and have a duration of approximately seven months. Work that would not adversely impact water quality may be done past October 15.

4. Compensatory mitigation for impacts to 0.75 acres of wetlands includes purchase of 0.80 acres of wetland creation credits at the Hazel Mitigation Bank.
5. Low Impact Development (LID) stormwater treatment and infiltration will be employed along the project, and includes Bioretention Swales and Bioretention Tree Well units, and will be constructed and maintained as described in the application, and detailed in the *Final Standard Urban Storm Water Mitigation Plan*, prepared by Kimley-Horn and Associates, Inc., dated November 2012.
6. The Applicant has applied to the California Department of Fish and Wildlife for a Streambed Alteration Agreement and Incidental Take Permit on December 5, 2012. The Applicant applied to the US Army Corps of Engineers, for Clean Water Act Section 404 Individual Permit.
7. Section 21083.5 of the California Environmental Quality Act (CEQA) directs that when an Environmental Impact Statement (EIS) has been prepared for a project pursuant to the requirements of the National Environmental Policy Act (NEPA) and implementing regulations, all or part of that EIS may be submitted in lieu of all or any part of an Environmental Impact Report (EIR) required by CEQA, provided that the EIS complies with the requirements of CEQA and the CEQA Guidelines.
8. As part of the Graton Casino approval process, the National Indian Gaming Commission (NIGC) prepared and completed an EIS (NIGC EIS) under the National Environmental Policy Act (NEPA). The NIGC EIS evaluated the environmental consequences of the NIGC's approval of a gaming management contract between the Tribe and SC Sonoma Management, LLC, and the subsequent development of a gaming facility and associated infrastructure. The NIGC EIS evaluated a number of project alternatives and analyzed the environmental impacts associated with each alternative, including off-reservation environmental impacts. The NIGC EIS ultimately adopted a Record of Decision (ROD) approving a reduced intensity version of the Graton Casino. Among other environmental topics, the NIGC EIS included an analysis of off-reservation traffic impacts for each of the project alternatives, and identified the widening of Wilfred Avenue as a necessary measure to mitigate adverse effects to traffic and transportation associated with the Graton Rancheria Casino Project for the Wilfred Site (Alternatives A and H, and Variant H-sub 1) and the Stony Point Site (Alternatives B, C, D, and E) identified in the NIGC EIS.
9. CEQA Guidelines section 15225 provides that where an EIS was circulated for public review as broadly as state and local law may require and notice was given that met the standards in section 15087(a) of the CEQA Guidelines, the lead agency may use the EIS in place of an EIR without recirculating the EIS for public review. Prior to using the EIS in place of an EIR, the lead agency must provide notice that it will use

the EIS in place of the EIR and that it believes the EIS meets the requirements of CEQA.

10. The NIGC EIS complies with the requirements of CEQA and the CEQA Guidelines, including a robust alternatives analysis, detailed mitigation measures, greenhouse gas emissions analysis, and assessments of growth inducing and cumulative impacts. Accordingly, the Regional Water Board finds that the NIGC EIS meets all requirements of CEQA and the CEQA Guidelines. In compliance with CEQA, the Regional Water Board will use the NIGC EIS to support its issuance of this certification.
11. The NEPA environmental review process for the Graton Casino included four public hearings and over 160 days for public comment on the scoping report and Draft EIS (DEIS). As with a CEQA document, the NIGC EIS was circulated to the public for review and comments. The Notice of Intent (NOI) was published in the Federal Register on February 12, 2004, with a 50-day comment period. The Draft EIS was released through a Notice of Availability (NOA), published on March 9, 2007, in the Federal Register and the public comment period was open for a total of 89 days. The NOA was published in the *Marin Independent Journal* and the *Santa Rosa Press Democrat* on six different days over a two-month period. Public hearings were held on April 4, 2007 in Rohnert Park and on April 5, 2007 in Santa Rosa. The DEIS was also made available online beginning February 28, 2007, for public comment. Over 350 comment letters and public hearing comments were received. These were all responded to in the EIS, which was published by the USEPA in the Federal Register on Feb 27, 2009, with an announced 30-day comment period. All new comments received during this period were responded to in the ROD dated October 1, 2010. Notices of the DEIS, EIS, and ROD were sent to the State Clearinghouse (SCH # 2007034002).
12. Because the NIGC EIS was circulated as broadly as state law and local law required and notice met the standard set forth in section 15087(a), the Regional Water Board will rely on the NIGC EIS without recirculating it for public review. Pursuant to CEQA Guidelines section 15225, the Regional Water Board provided notice of its intent to rely on the NIGC by posting notice on its website on May 16, 2013 and publishing notice in the Press Democrat on May 18, 2013. This notice was also posted on the City of Rohnert Park's website and on a website dedicated to the NIGC EIS (www.gratoneis.com) on or about May 16, 2013.
13. CEQA requires that, when relying on an EIS as an EIR, certain findings must be made pursuant to Public Resources Code section 21081, subdivision (a) (see also, CEQA Guidelines section 15091). These findings are attached hereto as Attachment A and incorporated herein. Public Resources Code section 21081.6 also requires the adoption of a mitigation, monitoring and reporting program (MMRP) when the lead agency adopts findings pursuant to section 21081. The MMRP is attached hereto as Attachment B and incorporated herein.

14. Government Code section 12012.56(b)(1)(C) provides the following:

The execution of an intergovernmental agreement between a tribe and a county or city government negotiated pursuant to the express authority of, or as expressly referenced in, the tribal-state gaming compact ratified by this section.

The Joint Exercise of Powers Agreement (JEPA) entered into between the City of Rohnert Park, County of Sonoma, and Federated Indians of Graton Rancheria authorizes the Project and establishes the terms and conditions for carrying out the Wilfred Avenue improvements. The purpose of that intergovernmental agreement is to mitigate the Casino Project's offsite traffic impacts by committing the parties to plan, finance, construct and otherwise implement the mitigation measures identified in the NIGC EIS as necessary for Wilfred Avenue. The JEPA is an intergovernmental agreement mandated by tribal-state gaming compact ratified by section 12012.56 of the Government Code. As a result, Government Code section 12012.56(b)(1)(C) provides that CEQA review shall not apply to such an intergovernmental agreement. Accordingly, the Project is exempt from CEQA.

15. This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ, "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification," which requires compliance with all conditions of this water quality certification.

[http://www.waterboards.ca.gov/board_decisions/adopted_orders/water quality/2003/wqo/wqo2003-0017.pdf](http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf)

Receiving Water: Laguna Hydrologic Subarea No. 114.21,
Russian River Hydrologic Area 114.00

Filled or Excavated Area: Permanent impact to 0.75 acres of seasonal wetlands

Latitude/Longitude: Western end - 38.363262°N, 122.741189°W;
Eastern end - 38.363279°N, 122.715354°W.

Expiration: May 23, 2018

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the City of Rohnert Park Wilfred Avenue Improvement Project (WDID No. 1B12201WNSO), as described in the application, will comply with sections 301, 302, 303, 306 and 307 of the Clean Water Act, and with applicable provisions of state law, provided that the Applicant complies with the following terms and conditions:

All conditions of this order apply to the Applicant (and all their employees) and all contractors (and their employees), sub-contractors (and their employees), and any other entity or agency that performs activities or work on the project as related to this Water Quality Certification.

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and title 23, California Code of Regulations, section 3867.
2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to title 23, California Code of Regulations, section 3855, subdivision (b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
3. The validity this certification is conditioned upon total payment of any fee required under title 23, California Code of Regulations, section 3833, and owed by the Applicant.
4. The Regional Water Board shall be notified annually and in writing at least five working days (working days are Monday – Friday) prior to the commencement of ground disturbing activities, with details regarding the construction schedule, in order to allow staff to be present onsite during construction, and to answer any public inquiries that may arise regarding the Project.
5. The federal antidegradation policy requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. This Order is consistent with applicable federal and State antidegradation policies, as it does not authorize the discharge of increased concentrations of pollutants or increased volumes of treated wastewater.
6. Applicant shall use wildlife-friendly 100% biodegradable erosion control products/BMPs. For purposes of this Order, photodegradable synthetic products are not considered biodegradable. Applicant shall not use or allow the use of erosion control products, that contain synthetic (e.g., plastic or nylon) netting or materials for

permanent erosion control (i.e., erosion control materials to be left in place for two years or after the completion date of the Project). If the Applicant finds that erosion control netting or products have entrapped or harmed wildlife, the Applicant shall remove the netting or product and replace it with wildlife-friendly biodegradable products. Applicant shall remove any remaining synthetic netting or materials remaining at the end of two years, or sooner.

7. No debris, soil, silt, sand, bark, slash, sawdust, rubbish, cement or concrete washings, oil or petroleum products, or other organic or earthen material from any construction or associated activity of whatever nature, other than that authorized by this Order, shall be allowed to enter into or be placed where it may be washed by rainfall into waters of the State. When operations are completed, any excess material or debris shall be removed from the work area.
8. A copy of this Order and the application documents submitted by the Applicant for this certification shall be provided to all contractors and subcontractors conducting the work, and shall be in their possession at the work site.
9. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
10. If, at any time, an unauthorized discharge to surface water (including wetlands, lakes, rivers or streams) occurs, or any water quality problem arises, the associated project activities shall cease immediately until adequate BMPs are implemented including stopping work. The Regional Water Board shall be notified promptly and in no case more than 24 hours after the unauthorized discharge or water quality problem arises.
11. Prior to implementing any change to the Project that may have a significant or material effect on the findings, conclusions, or conditions of this Order, the Applicant shall obtain the written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement action(s).
12. All Project work shall be conducted as described in this Order and in the application submitted by the Applicant. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this Order, and the Applicant may be subject to Regional Water Board enforcement actions.
13. The Applicant shall provide a copy of this Order and State Water Resources Control Board (SWRCB) Order No. 2003-0017-DWQ to any contractor(s), subcontractor(s), and utility company(ies) conducting work on the Project, and shall require that copies remain in their possession at the work site. The Applicant shall be responsible for ensuring that all work conducted by its contractor(s), subcontractor(s), and utility

companies is performed in accordance with the information provided by the Applicant to the Regional Water Board.

14. The Applicant shall implement the Project in accordance with the Project described in the application and the findings above, and shall comply with all applicable water quality standards as detailed in the Basin Plan.
15. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
16. Fueling, lubrication, maintenance, storage, and staging of vehicles and equipment shall not result in a discharge or threatened discharge to any waters of the State including dry portions of the shoreline. At no time shall the Applicant or its contractors allow use of any vehicle or equipment, which leaks any substance that may impact water quality.
17. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
18. In the event of any violation or threatened violation of the conditions of this Order, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under applicable state or federal law. For the purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this Order. In response to a suspected violation of any condition of this certification, the State Water Board may require the holder of any federal permit or license subject to this Order to furnish, under penalty of perjury, any technical or monitoring reports the State Water Board deems appropriate, provided that the burden, including costs, of the reports shall bear a reasonable relationship to the need for the reports and the benefits to be obtained from the reports. In response to any violation of the conditions of this Order, the Regional Water Board may add to or modify the conditions of this Order as appropriate to ensure compliance.
19. In the event of any change in control of ownership of land presently owned or controlled by the Applicant, the Applicant shall notify the successor-in-interest of the existence of this Order by letter and shall forward a copy of the letter to the Regional Water Board at the above address.

To discharge dredged or fill material under this Order, the successor-in-interest must send to the Regional Water Board Executive Officer a written request for transfer of

the Order. The request must contain the requesting entity's full legal name, the state of incorporation if a corporation, and the address and telephone number of the person(s) responsible for contact with the Regional Water Board.

The request must also describe any changes to the Project proposed by the successor-in-interest or confirm that the successor-in-interest intends to implement the Project as described in this Order. Except as may be modified by any preceding conditions, all certification actions are contingent on: a) the discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description, and b) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

20. The authorization of this certification for any dredge and fill activities expires on May 23, 2018. Conditions and monitoring requirements outlined in this Order are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

If you have any questions or comments, please call Stephen Bargsten at (707) 576-2653.

Matthias St. John
Executive Officer

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Weblink: State Water Resources Control Board Order No. 2003-0017 -DWQ, General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification can be found at:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Original to: Mr. Darrin Jenkins, City of Rohnert Park, 130 Avram Ave., Rohnert Park, CA 94928