
North Coast Regional Water Quality Control Board

June 23, 2016

In the Matter of

Water Quality Certification

for the

Fox Hollow Project

APPLICANT: CV Santa Rosa Investments, LLC
RECEIVING WATER: Peterson Creek
HYDROLOGIC UNIT: Santa Rosa Hydrologic Subarea, No. 114.22
COUNTY: Sonoma
FILES: Fox Hollow, ECM PIN CW-821894, WDID No. 1B16026WNSO

FINDINGS BY THE EXECUTIVE OFFICER:

1. On February 5, 2016, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from CV Santa Rosa Investments, LLC (Applicant), requesting Federal Clean Water Act, section 401, Water Quality Certification (certification) for activities related to the proposed Fox Hollow Project (Project).
2. **Public Notice:** Information describing the Project was noticed for public comment on the Regional Water Board's website on March 29, 2016. No comments were received.
3. **Receiving Waters:** The proposed Project will cause disturbances to jurisdictional seasonal wetlands in the Santa Rosa Hydrologic Sub Area of the Middle Russian River Hydrologic Area (Basin Plan Hydrologic Planning Area no. 114.22).

4. **Project Description:** The Applicant will construct a residential development on a 22.32-acre parcel that is currently undeveloped at 1615 Fulton Road, in the city of Santa Rosa. The proposed development includes 135 single-family homes and eight duplexes with associated infrastructure, access roads, and landscaping. Additional offsite improvements would include the construction of footpath extensions through an existing park just north of the Project site and construction of two storm water outfalls that would convey storm water from bioretention basins into Peterson Creek. Project implementation would also include construction of a sanitary sewer line to provide sanitary sewer delivery to the city of Santa Rosa sanitary network.
5. **Construction Timing:** Project construction is expected to last 31 months between June 1, 2016, and December 31, 2018.
6. **Project Impacts:** The proposed Project would result in permanent fill impacts of approximately 0.41 acres of seasonal wetlands due to placing roads and building foundations. The construction of two storm water outfall structures into Peterson Creek would result in the permanent fill of approximately 290 square feet (0.007-acres) of jurisdictional waters. Also, a sewer line maintenance gravel road and a receiving pit for the jack and bore with associated temporary stockpile and equipment access areas associated with the installation of the sanitary sewer alignment off the project site would result in the fill of 0.003-acre (130.7 square feet) of seasonal wetland area. To facilitate dewatering of the construction area, the construction of the two outfalls would require installation of temporary sand bag coffer dams at both of the outfall locations in Peterson Creek, resulting in approximately 0.009 acres (385 square feet) of temporary impacts. Project implementation would also result in encroachment impacts to approximately 0.37 acres of seasonal wetlands on the Project site.
7. **Avoidance and Minimization:** The sewer line would be constructed via a jack and bore method to minimize surface impacts to wetlands. The Project has been designed to avoid an existing 0.37-acre seasonal wetland area, which will be preserved in perpetuity via a deed restriction.
8. **Mitigation for Project Impacts:** To compensate for permanent and encroachment impacts to jurisdictional wetlands and waters, the Applicant has purchased 0.78 acres of wetland mitigation credits from Carinalli Nature Preserve in the Santa Rosa Plain. The Applicant is also proposing to enhance no less than 48 linear feet (0.3 acres) of the existing riparian area above the Peterson Creek top of bank by planting native vegetation between the creek and Project area.

To compensate for impacts to the California tiger salamander and Sonoma sunshine, the Applicant shall conserve 15.61 acres at "Fox Hollow West Preserve," situated adjacent the Project area on the west side of Peterson Creek. The Applicant has also

purchased 2.34 acres of California tiger salamander mitigation bank credits at the Carinalli Nature Preserve, and will purchase an additional 5.1 acres at an existing United States Fish and Wildlife Service-approved mitigation bank.

9. **Post-Construction Storm Water:** Project implementation would result in approximately 5.9 acres of added impervious area. The Applicant prepared a *Standard Urban Storm Water Mitigation Plan (SUSMP)*, dated March 8, 2016, that was found acceptable by the Regional Water Board. The SUSMP describes mitigation measures to protect receiving water quality from the pollutants and increased water velocities and quantities that are generated from impervious areas.
10. **Disturbed Soil Area:** Project implementation would result in greater than one acre of disturbed soil area. The Applicant shall apply for coverage under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Order No. 2009-0009-DWQ) and prepare a Stormwater Pollution Prevention Plan detailing best management practices (BMPs) to control pollution from the Project area during construction. All temporarily disturbed areas within the Project area shall be appropriately stabilized and/or replanted with appropriate native vegetation.
11. **Other Agency Actions:** The Applicant has applied to the United States Army Corps of Engineers for Nationwide Permits 7, *Outfall Structures and Associated Intake Structures*, 29, *Residential Developments*, and 33, *Temporary Construction, Access, and Dewatering*, pursuant to the Clean Water Act, section 404. The Applicant is seeking a 1600 Streambed Alteration Agreement from the California Department of Fish and Wildlife. The United States Fish and Wildlife Service issued a Biological Opinion on June 17, 2016, that the Project is likely to adversely affect California tiger salamander critical habitat and Sonoma sunshine, but not likely to jeopardize their continued existence.
12. **CEQA Compliance:** The City of Santa Rosa, as lead California Environmental Quality Act (CEQA) agency, has prepared a Mitigated Negative Declaration for the Project, and signed a Notice of Determination approving the Mitigated Negative Declaration on August 28, 2015.
13. **Antidegradation Policy:** 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 certification 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, and does not otherwise authorize degradation of the waters affected by this Project.

14. 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. The Order may be accessed at this web address:
http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0017.pdf

Receiving Water:	Peterson Creek	
Filled and/or Excavated Areas:	Permanent impacts to seasonal wetlands:	0.41 acres
	Permanent impacts to waters of the U.S.:	16 linear feet (0.007 acres)
	Temporary impacts to waters of the U.S.:	385 square feet (0.009 acres)
Latitude/Longitude:	Various locations, ~38.459, -122.772 ¹	
Certification Expiration:	June 23, 2021	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Fox Hollow Project (WDID No. 1B16026WNSO) 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 certification apply to the Applicant (and 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 WGS84 datum

Project-Specific Conditions

1. The Applicant shall implement the SUSMP dated March 8, 2016.

Project-Specific Conditions Requiring Reports

2. The Applicant shall submit a Habitat Mitigation Plan (HMP), subject to the acceptance of Regional Water Board staff, at least 30 days prior to initiation of Project construction. The HMP shall include a planting palette, planting plan, success criteria, monitoring and reporting plan, and a proposal to enhance not less than 48 linear feet (0.3 acres) of riparian area. The HMP shall include a plan to submit monitoring reports for years 1, 3, and 5, no later than January 31 following the respective monitoring year.
3. The Applicant shall record a Conservation Easement, approved by the United States Fish and Wildlife Service, by June 17, 2017, but not later than December 17, 2017. The Applicant shall provide a copy of the Conservation Easement to the Regional Water Board no later than two weeks after it is recorded.

Standard Conditions

4. 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.
5. 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.
6. The validity of 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. The total application fee is \$2,381. The Regional Water Board received \$2,381 from the Applicant on February 5, 2016.
7. This certification will be subject to annual billing during the construction phase ("Annual Active Discharge Fee"), per the current fee schedule, which can be found on our website:
http://www.swrcb.ca.gov/northcoast/water_issues/programs/water_quality_certification.shtml. These fees will be automatically invoiced to the Applicant.

8. The Applicant shall notify the Regional Water Board upon Project construction completion to request termination of the Annual Active Discharge Fee and to receive a "Notice of Completion of Discharges Letter."
9. The Regional Water Board shall be notified at least five working days (working days are Monday – Friday) prior to the commencement of construction.
10. Only wildlife-friendly, 100 percent biodegradable erosion and sediment control products that will not entrap or harm wildlife shall be used. Erosion and sediment control products shall not contain synthetic (e.g., plastic or nylon) netting. Photodegradable synthetic products are not considered biodegradable. The Applicant shall request approval from the Regional Water Board if an exception from this requirement is needed for a specific location.
11. BMPs shall be implemented as proposed in the application materials. BMPs for erosion, sediment and turbidity control shall be implemented and in place at commencement of, during and after any ground clearing activities or any other Project activities that could result in erosion or sediment discharges to surface water. Severe and unseasonal rain events are becoming more frequent due to the effects of climate change. Therefore, BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.
12. 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 certification, 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.
13. The Applicant shall provide Regional Water Board staff access to the Project site to document compliance with this certification.
14. 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.
15. Prior to implementing any change to the Project that may be a material change as defined in California Water Code section 13260(c) as a proposed change in character, location, or volume of the discharge, the Applicant shall obtain prior written approval of the Regional Water Board Executive Officer. If the Regional Water Board is not notified of the material change to the discharge, it will be considered a violation of this

certification, and the Applicant may be subject to Regional Water Board enforcement action(s).

16. All Project work shall be conducted as described in this certification and in the application submitted by the Applicant, and shall comply with all applicable water quality standards as detailed in the Basin Plan. If the Regional Water Board is not notified of a significant alteration to the Project, it will be considered a violation of this certification, and the Applicant may be subject to Regional Water Board enforcement actions.
17. The Applicant shall provide a copy of this certification 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.
18. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
19. 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 creek bank. 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.
20. In the event of any violation or threatened violation of the conditions of this certification, 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 certification. 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 certification 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 certification, the Regional Water Board may add to or modify the conditions of this certification as appropriate to ensure compliance.

21. The Regional Water Board may add to or modify the conditions of this certification, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
22. 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 certification by letter and shall email a copy of the letter to the following email address: NorthCoast@waterboards.ca.gov.

The successor-in-interest shall email the Regional Water Board Executive Officer at: NorthCoast@waterboards.ca.gov to request authorization to discharge dredged or fill material under this certification. The request must contain the following:

- i) Effective date of ownership change;
 - ii) Requesting entity's full legal name;
 - iii) The state of incorporation, if a corporation;
 - iv) The address and phone number of contact person; and
 - v) A description of any changes to the Project or confirmation that the successor-in-interest intends to implement the project as described in this certification.
23. Except as may be modified by any preceding conditions, all certification actions are contingent on:
 - i) The discharge being limited to and all proposed mitigation being completed in strict compliance with the Applicant's Project description and CEQA documentation, as approved herein; and
 - ii) Compliance with all applicable water quality requirements and water quality control plans including the requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan), and amendments thereto.
 24. The authorization of this certification for any dredge and fill activities expires on June 23, 2021. Conditions and monitoring requirements outlined in this certification are not subject to the expiration date outlined above, and remain in full effect and are enforceable.

Conditions 1, 2 and 3 are requirements for information and reports. Any requirement for a report made as a condition to this certification is a formal requirement pursuant to California Water Code section 13267, and failure or refusal to provide, or falsification of such required report is subject to civil liability as described in California Water Code, section 13268.

If you have any questions or comments, please call Brendan Thompson of my staff, at (707) 576-2699, or via e-mail at Brendan.Thompson@waterboards.ca.gov.

Matthias St. John
Executive Officer

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