
North Coast Regional Water Quality Control Board

July 13, 2016

In the Matter of
Water Quality Certification

for

**Sonoma Marin Area Rail Transit Non-Motorized Pathway
Manor to East Cotati Project
WDID No. 1B16602WNSO**

APPLICANT: Bill Gamlen, Sonoma-Marin Area Rail Transit (SMART)
RECEIVING WATER: Wetlands and riparian habitat
HYDROLOGIC UNITS: Russian River Hydrologic Unit No. 114.21
COUNTY: Sonoma County
FILE: SMART Non-Motorized Pathway - Manor to East Cotati, CW-825143

FINDINGS BY THE EXECUTIVE OFFICER:

1. On June 1, 2016, the North Coast Regional Water Quality Control Board (Regional Water Board) received an application from Bill Gamlen, Sonoma-Marin Area Rail Transit (SMART) (applicant) requesting Federal Clean Water Act (CWA), section 401 Water Quality Certification (certification) for the SMART Non-Motorized Pathway - Manor to East Cotati Project (Project).
2. **Public Notice:** Information describing the Project was noticed for public comment on the Regional Water Board's website on June 8, 2016. We received no comments.
3. **Receiving Waters:** The proposed Project will cause disturbances to waters of the United States and state associated with wetlands and waters of the state associated with riparian habitat within the Russian River Hydrologic Unit No. 114.21.

4. **Project Description:** The Project involves construction of approximately 0.65 mile of paved non-motorized pathway (NMP) and other ancillary features such as retaining walls, fences, curbs, and signage. The entire NMP segment and associated features are located on the east side of the rail, mostly within the existing SMART right-of-way except for a discrete location near mile post 45.4. The pathway will be 8-foot wide with a 2-foot wide shoulder. The Project's southern terminus is located at latitude 38.322222° N, longitude 122.685267° W and the northern terminus is located at latitude 38.330645° N, longitude 122.690676° W.
5. **Construction Timing:** The Project is planned to begin in the summer of 2016, with construction work planned to last approximately four to six months.
6. **Project Impacts:** The Project will result in permanent impacts to approximately 0.004 acres of wetlands.

Mitigation for Project Impacts: The applicant has purchased 0.004 acres of wetland mitigation credit at the Laguna Valley Mitigation Bank to mitigate for the impacts associated with the Project.

7. **Other Agency Actions:** The applicant has applied for authorization from the U.S. Army Corps of Engineers for a Clean Water Act, section 404 permit, Nationwide Permit No. 14. The applicant has applied to the California Department of Fish and Wildlife to obtain a Lake and Streambed Alteration Agreement.
8. **CEQA Compliance:** On July 19, 2006, the Board of Directors of the Sonoma-Marín Area Rail Transit District, acting as lead agency under the California Environmental Quality Act (CEQA), determined that an environmental impact report was prepared and certified for the Project (SCH. 2002112033). Subsequent amendments, additions, and notices of determination are available and listed on the state clearinghouse website. The Regional Water Board has considered the environmental document, BMPs and any proposed changes incorporated into the Project or required as a condition of approval to avoid significant effects to the environment.
9. **Total Maximum Daily Load:** The Russian River is identified as impaired for sediment and temperature under Clean Water Act Section 303(d). At present, total maximum daily loads (TMDLs) have not been established for this water body. If TMDLs are established and implementation plans are adopted for this watershed prior to the expiration date of the requested certification, the Regional Water Board may revise the provisions of that certification to address actions identified in such action plans. Bank erosion is identified as a source contributing to the sediment impairment. Removal of riparian vegetation is identified as a source contributing to temperature impairment. Activities that will be authorized by this certification are designed to reduce removal of riparian vegetation and reduce sediment discharges

from bank erosion. Accordingly, this certification is consistent with, and implements, BMPs that would attenuate sediment and adverse temperature impacts.

10. **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.

11. 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

Receiving Water:	Wetlands and riparian habitat	
Filled and/or Excavated Areas:	Fill placement (areal)	0.004 acres
Latitude/Longitude:	Southern terminus: 38.322222° N, 122.685267° W Northern terminus: 38.330645° N, 122.690676° W	
Certification Expiration:	July 13, 2021	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Sonoma Marin Area Rail Transit Non-Motorized Pathway – Manor to East Cotati Project (WDID No. 1B16602WNSO) 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.

Standard Conditions

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 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.
4. A fee of \$200 was received for the Project on June 1, 2016. This certification will not be subject to annual billing during the construction phase ("Annual Active Discharge Fee") and does not have a monitoring phase of the Project ("Annual Post Discharge Monitoring 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
5. The Regional Water Board shall be notified at least five working days (working days are Monday – Friday) prior to the commencement of construction.
6. 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.
7. 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.
8. 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.
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 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).
 12. 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.
 13. 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.
 14. Disturbance or removal of existing vegetation shall not exceed the minimum necessary to complete the Project.
 15. 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.

16. 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.
17. 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.
18. 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 must 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.
19. 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.
20. The authorization of this certification for any dredge and fill activities expires on July 13, 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.

If you have any questions or comments, please call Jake Shannon at (707) 576-2673 or via e-mail at Jacob.Shannon@waterboards.ca.gov.

Matthias St. John
Executive Officer

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