
North Coast Regional Water Quality Control Board

October 26, 2016

In the Matter of
Water Quality Certification
for the
Bay Village Homes Project

APPLICANT: Dan Morgan
RECEIVING WATER: Unnamed seasonal wetlands
HYDROLOGIC UNIT: Middle Russian River (114.22)
COUNTY: Sonoma
FILE NAME: Bay Village Homes; ECM PIN CW-240171; WDID 1B04112WNSO

FINDINGS BY THE EXECUTIVE OFFICER:

1. On September 3, 2014, Dan Morgan (applicant) filed an application for water quality certification (certification) under section 401 of the Clean Water Act (33 U.S.C. § 1341) with the North Coast Regional Water Quality Control Board (Regional Water Board) for activities associated with the Bay Village Homes Project (project). The application was deemed complete on October 4, 2016. The project is located on Bay Village Avenue in Santa Rosa, at latitude 38.465965°N, 122.753502°W.
2. **Public Notice:** The Regional Water Board provided public notice of the application pursuant to Title 23, California Code of Regulations, Section 3858 on October 4, 2016, and posted information describing the project on the Regional Water Board's website. No comments were received.
3. **Receiving Waters:** The proposed project will cause disturbances to unnamed seasonal wetlands on the Santa Rosa Plain in the Middle Russian River hydrologic area (114.22). There are approximately 0.042 acre of seasonal wetlands on site, occurring in shallow depressions that are centered off-site to the north. They are characterized by hydric soils and are dominated by ryegrass and Mediterranean barley.

4. **Project Description:** The purpose of the project is residential housing. The 0.042 acre of seasonal wetland on site will be permanently filled. Twelve attached townhouses and associated improvements will be built on the 0.78 acre site as part of a medium-density housing development. The project will incorporate low impact development (LID) stormwater treatment practices.
5. **Construction Timing:** The project is expected to take approximately 9 months.
6. **Project Impacts:** Approximately 0.042 acre of seasonal wetlands will be permanently filled.
7. **Mitigation for Project Impacts:** The applicant purchased 0.6 acres of wetland mitigation credits for the adjacent Meadowlark and Centennial Homes project, including 0.15 acre for this project.
8. **Storm Water Control and Treatment:** Project implementation would result in a 0.78-acre increase in impervious area. To address storm water pollutants from the added impervious area, the applicant proposes to utilize low-impact development (LID) landscape features.
9. **Total Maximum Daily Load (TMDL):** The Russian River is identified as impaired for sediment and temperature under Clean Water Act Section 303(d). At present, 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 certification, the Regional Water Board may revise the provisions of the certification to address actions identified in such action plans.
10. **Sediment TMDL Implementation Policy:** Pursuant to Regional Water Board Resolution R1-2004-0087, *Total Maximum Daily Load Implementation Policy Statement for Sediment-Impaired Receiving Waters within the North Coast Region* (Sediment TMDL Implementation Policy), the Executive Officer is directed to “rely on the use of all available authorities, including existing regulatory standards, and permitting and enforcement tools to more effectively and efficaciously pursue compliance with sediment-related standards by all dischargers of sediment waste.”
11. **Other Agency Actions:** The applicant has applied to the United States Army Corps of Engineers for Nationwide Permit 29, *Residential Developments*, pursuant to section 404 of the Clean Water Act.
12. **CEQA Compliance:** As lead agency, the City of Santa Rosa certified a Mitigated Negative Declaration (SCH No. 2015052025), pursuant to the requirements of the California Environmental Quality Act (CEQA).

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 68-16, which incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution 68-16 requires that existing high quality waters be maintained unless degradation is justified under specific provisions. 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 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:	Unnamed seasonal wetlands on the Santa Rosa Plain in the Middle Russian River hydrologic area (114.22)	
Filled and/or Excavated Areas:	Permanent impacts to jurisdictional wetlands:	0.042 acre
Latitude/Longitude:	38.465965°N, 122.753502°W	
Certification Expiration:	October 26, 2021	

Accordingly, based on its independent review of the record, the Regional Water Board certifies that the Bay Village Homes (WDID 1B04112WNSO), 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 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.

Project-Specific Conditions

1. The Applicant shall implement the storm water treatment and volume control BMPs identified in the Project application, including the June 2015 Final Stormwater Mitigation Plan prepared by Morgan Properties Inc. and approved by our stormwater

staff on September 22, 2016. BMPs identified in the application include bioretention beds along Bay Village Avenue and interceptor trees around the development.

2. The mitigation measures detailed in the Mitigated Negative Declaration (SCH 2015052025) are hereby incorporated by reference and are conditions of approval of this certification. Notwithstanding any more specific conditions in this certification, the applicant shall comply with all mitigation measures identified in the Mitigated Negative Declaration that are within the Regional Water Board's jurisdiction.

Project Specific Conditions Requiring Reports

3. Annual summary reports shall be submitted beginning the year of issuance of the certification and continuing until completion of the project. Reports shall be submitted to the Regional Water Board by January 31 and shall include:
 - The status, progress, and anticipated schedule for completion of project construction activities;
 - Best management practices used;
 - Maintenance activities performed; and
 - Photographs taken from the same vantage point throughout the monitoring period.
4. Regional Water Board staff shall be notified in writing at least five working days 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.

Standard Conditions

5. 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.
6. 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.
7. 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. A fee of \$1,467 was received for this project on September 3, 2014. The complete fee for the project is \$200. A refund for the difference will be issued.
8. The applicant must notify the Regional Water Board of the end of the construction phase of the project in order to request the Regional Water Board to terminate annual

construction period billing and to receive a "Notice of Completion of Discharges Letter". If the project is subject to annual monitoring fees, the applicant must also notify the Regional Water Board at the end of the monitoring period in order to request to terminate annual monitoring period billing and receive a "Notice of Project Complete Letter". Completion reports may be necessary to be submitted by applicant at the end of each of these phases. Regional Water Board staff may request site visits at the end of each phase of the project to confirm status of project and compliance with this Certification.

9. Herbicides and other pesticides shall not be used within the project limits. If the applicant has a compelling case as to why pesticides should be used, then a request for pesticide use and a BMP plan may be submitted to the Regional Water Board staff for review and acceptance.
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. Best management practices (BMPs) shall be implemented according to the submitted application and the conditions in this certification. 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. BMPs shall be immediately available for deployment at all times to prevent discharges to waters of the state.
12. The applicant is prohibited from discharging waste to waters of the state, unless explicitly authorized by this certification. For example, no debris, soil, silt, sand, bar, slash, sawdust, 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 is liable and responsible for the proper disposal, reuse, and/or recycling of all Project-generated waste in compliance with applicable state and federal laws and regulations.
14. The applicant shall provide Regional Water Board staff access to the project site to document compliance with this certification.

15. Work in flowing or standing surface waters, unless otherwise proposed in the project description and approved by the Regional Water Board, is prohibited.
16. 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.
17. All project activities shall be implemented as described in the submitted certification application package and the findings and conditions of this certification. Subsequent project changes that could significantly impact water quality shall first be submitted to Regional Water Board staff for prior review, consideration, and written concurrence. 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.
18. 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).
19. The applicant shall provide a copy of this Certification and State Water Board Order 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.
20. Disturbance or removal of existing vegetation as detailed within the application shall not exceed the minimum necessary to complete the project.
21. 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 wetlands. At no time shall the applicant or its contractors allow use of any vehicle or equipment that leaks any substance that may impact water quality.
22. The Applicant shall not use leaking vehicles or equipment within state waters or riparian areas. Vehicles and equipment used within state waters shall be checked for leaks at the beginning of each work day.

23. 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 Regional 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 Regional 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 pursuant to Section 13267 of the Porter-Cologne Water Quality Control Act.
24. 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 and approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
25. 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 Regional Water Board at 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.
26. 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

- ii) compliance with all applicable requirements of the Water Quality Control Plan for the North Coast Region (Basin Plan).

27. 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).

28. The authorization of this certification for any dredge and fill activities expires on October 26, 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 3-4 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 contact Kaete King of my staff, at (707) 576-2848, or via e-mail at Kaete.King@waterboards.ca.gov.

Matthias St. John
Executive Officer

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