

**San Francisco Bay Regional Water Quality Control
Board**

**Berryessa Properties, Berryessa Mixed-Use
Development Project in the City of San Jose
in Santa Clara County – Issuance of Waste
Discharge Requirements**

Response to Written Comments

RESPONSE TO WRITTEN COMMENTS ON THE BERRYESSA MIXED-USE DEVELOPMENT PROJECT TENTATIVE ORDER

The Water Board received four comment letters during the public comment period, which began on July 7 and closed on August 6, 2025. The comments from these letters and our responses are presented here. For full content and context of the comments, please refer to the comment letters. To request a copy of the letters, please contact Brian Wines at (510) 622-5680 or by email to Brian.Wines@waterboards.ca.gov.

Comment letters received:

1. City of San José (J. Guevara)
2. Amah Mutsun Tribal Band (Lorelei Alli)
3. Northern Valley Yokut Tribe (Katherine Perez)
4. Carpenters Local Union 405 (Anthony Carroll)

1. Comment Letter 1: City of San José

1.1. The City requests the Tentative Order provide additional options for the protection of wetlands to be negotiated after the Tentative Order has been adopted.

Thank you for your comment requesting additional options for the protection of wetlands. We have modified the Tentative Order (TO) to allow for additional options as requested. A response to each suggested change is provided below.

1.2. In addition to Provision C.19 for the deposit of funds for the HOA to manage the wetlands on the private property as the primary compliance path for the developer, the City requests the Water Board consider two additional options as alternatives:

1.2.1. A possible regional stormwater system to be used for wetland mitigation (which sites could include, but may not be limited to, the upcoming Venetian Terrace or Kelley Regional Park Green Stormwater Infrastructure projects' ability to reserve ~1.4 acres of treated water for designated wetlands).

Changes related to this comment have not been included in the revised TO. In response to this comment, Water Board and City staff coordinated to recognize the goals the offsite mitigation project would need to achieve to appropriately mitigate for the Project's impacts. Water Board staff drafted revised language that would have allowed the City to submit a proposal for offsite pond and wetland mitigation on City property. However, after further discussion about the requirements for a viable offsite mitigation project, the City rescinded their request to include an offsite mitigation option in the Order.

1.2.2. The TO identifies that an HOA will be responsible for managing on-site wetlands. The City asks that the order allow a Community Facility District (CFD) to fund and manage the on-site wetlands rather than an HOA.

The City may choose to form a CFD to fund and manage onsite improvements, including wetland mitigation, should the mitigation be implemented onsite. This would be an acceptable alternative, and staff revised TO Finding 9 and Provision C.19 to allow it. The revised text requires that the Water Board's Executive Officer be provided with the enabling documents for the CFD for review and acceptance, to ensure that they appropriately identify responsibility for mitigation operation and maintenance.

1.3. Providing these options would allow for the developer to proceed with entitlements and meet affordable housing funding deadlines. The developer still can negotiate directly with the Water Board regardless of consideration of these options. Meanwhile, the City will have time to review the feasibility of the alternatives to support maximizing housing production. All parties can negotiate in the coming months while still ensuring compliance.

Comment noted. We revised the TO to include the City's remaining requested edit to allow a CFD to manage onsite improvements.

2. Comment Letter 2: Amah Mutsun Tribal Band

2.1. "It is highly recommended, if not previously done, to search through Sacred Lands Files (SLF) and California Historical Resource Information Systems (CHRIS) as well as reaching out to the Native American Heritage Commission (NAHC) In order to determine whether you are working in a Cultural and/or Historic sensitivity."

We thank the Amah Mutsun Tribal Band for engaging with us during the public comment process. We have shared this recommendation with the Discharger, but the Water Board does not have the legal authority to require it in the TO. The City of San Jose, as the lead agency under the California Environmental Quality Act (CEQA), prepared and certified a Final Environmental Impact Report (Final EIR) for the Project (State Clearinghouse No. 2021070467). The City completed a records search through the California Historical Resource Information System to identify archaeological and cultural resources within the Project site and within one quarter mile of the site. The City did not conduct a Sacred Lands Files search, but the City did complete tribal consultation under Assembly Bill 52 to identify tribal cultural resources and mitigation measures to reduce potential impacts to tribal cultural resources. (See Final EIR, pp. 58–59.)

**2.2. "If you have received any positive cultural or historic sensitivity within 1 mile of the project area here are A.M.T.B Inc's and Amah Mutsun Tribal Band of San Juan Bautista's recommendations:
- All Crews, Individuals and Personnel who will be moving any earth be**

Cultural Sensitivity Trained.

- A Qualified California Trained Archaeological Monitor is present during any earth movement.

- A Qualified Native American Monitor is present during any earth movement.”

As stated above, the City of San Jose prepared and certified a Final EIR for the Project and the recommendations are not related to our authority under the Porter-Cologne Water Quality Control Act to protect waters of the State. The Discharger will need to follow mitigation measures MM CUL-1.1 through MM CUL-1.3 in the Final Environmental Impact Report (EIR) for tribal cultural resources for construction-related ground disturbance, which require crews and individuals moving earth to be cultural sensitivity trained, the completion of a mechanical presence/absence exploration to explore for buried historical and Native American resources prior to the issuance of any grading permit and prior to any construction-related ground disturbance, and the preparation of a treatment plan, if necessary, based on the presence/absence exploration. The Water Board does not have the authority to require cultural sensitivity training or monitors outside of the CEQA mitigation requirements.

3. Comment Letter 3: Northern Valley Yokut Tribe

3.1. “The proposed project should have as a condition of approval Native American monitor on board during all ground disturbance, there should be cultural resource awareness training for all construction Crew.”

We thank President Perez for engaging with us on this project. As stated above, we do not have the authority to require a monitor outside of the CEQA mitigation requirements. The Discharger will need to follow the mitigation measures in the Final EIR for tribal cultural resources for construction-related ground disturbance that was adopted during the CEQA process. In response to this comment, we revised the TO to add the following finding:

24. Tribal cultural resources are defined in California Public Resources Code (PRC) section 21074. This Order does not authorize any activity adversely impacting a tribal cultural resource. The Discharger is responsible for ensuring that actions taken to implement the compensatory mitigation measures specified in this Order and to comply with the Provisions of this Order are made in compliance with all applicable local, state, and federal laws and regulations related to the discovery and protection of tribal cultural resources and human remains, including PRC sections 5097.98 and 5097.99, and California Health and Safety Code section 7050.5.

In response to this comment, we offered the opportunity to meet with President Perez to provide an overview of our regulatory authority and discuss the comment letter submitted by the Northern Valley Yokut Tribe. In that meeting, we also noted

the Tribe's preference for an offsite mitigation option. In response to that preference and comments by the City of San José, we worked with the City to identify an acceptable off-site mitigation option. The City determined it will not pursue an offsite mitigation option, so we did not revise the TO to allow it.

4. Comment Letter 4: Carpenters Local Union 405

- 4.1. "Local 405 urges the [Water Board] to postpone [consideration of] the Tentative Order. Local 405 urges this action based on the project applicant's current failure to engage with Local 405, which counts many local residents among its membership ranks, including those who live and/or work in the vicinity of the project."**

We thank Local 405 for their comment. The request is not related to our authority under the Porter-Cologne Water Quality Control Act to protect waters of the State. We are, therefore, not able to delay adoption of the Order in response to the comment. We shared this comment letter with Berryessa Properties.