

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

**STAFF SUMMARY REPORT (Brian Wines)
MEETING DATE: September 10, 2025**

ITEM: 5

SUBJECT:

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

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DISCUSSION

The Revised Tentative Order (Order) (Appendix A) would issue Waste Discharge Requirements (WDRs) to Berryessa Properties to implement the Berryessa Mixed-Use Development Project (Project) in the City of San José, Santa Clara County. The Project will include construction of up to 850 residential units, 480,000 square feet of commercial space, and 0.9 acre of open space. Streets, stormwater facilities, and other associated infrastructure will also be constructed.

Waters of the state at the Project site include a pond with a fringing wetland. The Water Board is considering WDRs pursuant to California Water Code (Water Code) section 13263 to authorize the discharge of fill material to waters of the State because the U.S. Army Corps of Engineers determined that the site's waters are isolated from waters of the U.S. and therefore are not subject to regulation under Clean Water Act section 404. Thus, there is no federal authorization requiring an associated CWA section 401 Water Quality Certification for the discharge of fill.

The Project will permanently fill 0.34 acres of freshwater pond and 0.26 acres of seasonal freshwater wetland. To mitigate those impacts, the Order would require the Discharger to create 0.7 acres of open water and fringing wetland at the Project site.

The Project will create or redevelop nine acres of impervious surfaces at the Project site. To address the post-construction discharge of pollutants in urban runoff, the Project will construct storm drain infrastructure that will convey Project runoff to the North Flea Market Development Area regional stormwater treatment facility. This regional facility treats runoff from a larger developed area that includes the Project site.

We circulated the tentative order for a 30-day public comment period ending August 6, 2025. Four comments were received. Responses to comments are provided in Appendix B. In response to comments by the City of San Jose (City), staff revised the tentative order to allow the establishment of a Community Facilities District (CFD) as an alternative to the Homeowners Association (HOA) as the entity responsible for the Project's onsite mitigation and stormwater conveyance infrastructure. This is acceptable because, if established, the CFD would name the City as the management entity, and

the City has sufficient experience and resources to manage those on-site improvements. The City's comments also initially requested the tentative order be revised to include an alternative, offsite mitigation option to be provided on City land. After further discussion with staff, the City rescinded that request. In addition, staff engaged with interested tribes during the public comment period, and the Northern Valley Yokut Tribe expressed a preference for offsite mitigation. Staff worked with Berryessa Properties and the City to try to identify acceptable off-site mitigation. Because we were unable to identify potentially acceptable off-site mitigation, we did not modify the tentative order in response to the Tribe's preference. The Order shows the proposed revisions resulting from these comments in underline and ~~strikeout~~ format for proposed additions and deletions, respectively. In addition, staff made minor, non-substantive edits to the tentative order.

CIWQS Regulatory Measure Number: 454228

APPENDICES

A: Revised Tentative Order

B: Response to Comments

Appendix A

Revised Tentative Order

**Berryessa Properties, Berryessa Mixed-Use Project in the City of San Jose in
Santa Clara County**

Issuance of Waste Discharge Requirements

Appendix B

Response to Comments

**Berryessa Properties, Berryessa Mixed-Use Project in the City of San Jose in
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Issuance of Waste Discharge Requirements