



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

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Governor's Office of Planning & Research

*Sent via electronic mail: No hardcopy to follow*

APR 02 2019  
STATE CLEARINGHOUSE

City of Dublin, Community Development Department  
ATTN: Obaid Khan, Transportation and Operations Manager (obaid.khan@dublin.ca.gov)  
100 Civic Plaza  
Dublin, CA 94568

**Subject:** San Francisco Bay Regional Water Quality Control Board Comments on the  
*Draft Environmental Impact Report for the Dublin Boulevard – North Canyons  
Parkway Extension Project, City of Dublin, Alameda County, California*  
**SCH No. 2017052047**

Dear Mr. Khan:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Draft Environmental Impact Report for the Dublin Boulevard – North Canyons Parkway Extension Project, City of Dublin, Alameda County, California* (DEIR). The DEIR evaluates the potential environmental impacts associated with implementing the Dublin Boulevard – North Canyons Parkway Extension Project (Project).

The Project includes the extension of Dublin Boulevard approximately 1.5 miles eastward. The roadway extension will start from the current terminus of Dublin Boulevard at the Dublin Boulevard/Fallon Road intersection in Dublin and end at the Doolan Road/North Canyons Parkway intersection along the boundary of Alameda County (County) and Livermore. The Project site includes areas of eastern Dublin and the County. The roadway extension includes four to six travel lanes and bicycle and pedestrian facilities (i.e., shared pathways, sidewalks, and bike lanes). The operational footprint for the Project, including the roadway, sidewalks, intersections, and land acquired for right-of-way, is estimated at 29 acres.

**Summary**

As is discussed below, the DEIR does not provide acceptable mitigation for impacts to wetlands and creek channels that will be impacted by Project construction. In addition, the DEIR does not provide an adequate assessment of impacts to all areas of aquatic habitat subject to State jurisdiction.

DR. TERRY F. YOUNG, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

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**Comment 1.****Section 5.3 of the DEIR Uses on Out of Date Significance Criteria for Biological Resources**

In the CEQA Guidelines, the pre-2019 significance criteria for Biological Resources included the following criterion.

Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to marshes, vernal pools, etc.) through direct removal, filling, hydrological interruption, or other means?

This significance criterion was updated in the *2019 California Environmental Quality Act (CEQA) Statute and Guidelines* to read as follows:

Have a substantial adverse effect on state or federally protected wetlands ~~as defined by Section 404 of the Clean Water Act~~ (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?

The current text of the DEIR places too much emphasis on federally jurisdictional waters, while not fully addressing impacts to waters and riparian areas subject to State jurisdiction by the Water Board and the California Department of Fish and Wildlife (CDFW) (e.g., creek channels above the Ordinary High Water Mark and top of bank riparian vegetation). Please revise Section 5.3 of the DEIR to incorporate the most recent language in the CEQA Guidelines and revise discussions of impacts to wetlands and other waters to cover all impacts to waters and riparian habitat subject to State jurisdiction.

**Comment 2.****Section 5.3 of the DEIR does not Provide Acceptable Mitigation for Impacts to Waters of the State.**

The discussion of impacts to Biological Resources in Section 5.3 of the DEIR includes Impact BIO-2.

**Impact BIO-2:** The Project may adversely affect riparian habitat and other sensitive natural communities within the construction footprint, through temporary disturbance during construction and permanent loss of natural areas through conversion to a multi-modal roadway. **(Less than Significant with Mitigation)**

And Impact BIO-3:

**Impact BIO-3:** The Project may adversely affect protected wetlands through temporary placement of construction equipment, construction access, grading, placement of Project fill material, and permanent roadway improvements. **(Less than Significant with Mitigation)**

Wetland delineation surveys conducted during April and May of 2018 identified four habitats within the BSA that may be protected under Section 404 of the CWA: seasonal wetlands, perennial marsh, perennial streams, and ephemeral streams.

- The Project would result in direct permanent effects to 0.10 acres and 749 linear feet of stream habitats through culverting of five streams that intersect the proposed road alignment, and placement of fill through grading and road construction.
- The Project would result in direct temporary impacts to 0.03 acres of stream habitats due to construction access, movement of equipment and personnel, and a temporary crossing of Cottonwood Creek.
- The Project would result in 0.12 acres of direct permanent impacts to seasonal wetlands (including 249 linear feet of in-channel seasonal wetlands) as a result of pavement or road construction.
- The Project would result in 0.33 acres of direct temporary impacts to perennial marsh (<0.01 acres) and seasonal wetlands (0.33 acres) due to grading and construction access.

The review of impacts in Impact BIO-3 should be expanded to cover all waters and riparian areas subject to the jurisdiction of the Water Board and CDFW. Please revise Impact BIO-3 to include impacts to all areas subject to regulation under the California Water Code and the California Fish and Game Code.

To mitigate these Project impacts to less than significant levels, the DEIR proposes to implement Mitigation Measures BIO-5 and BIO-14 through BIO-18. Mitigation Measure BIO-5 includes appropriate mitigation for impacts to California red-legged frog and California tiger salamander habitat, Mitigation Measure BIO-14 includes appropriate measures to reduce impacts to riparian habitat that lie outside of the Project footprint, Mitigation Measure BIO-15 includes appropriate measures for protecting an avoided valley oak tree, and Mitigation Measure BIO-17 includes appropriate measures for minimizing Project impacts to aquatic habitat during Project design and Project construction activities. However, Mitigation Measures BIO-16 and BIO-18 do not provide acceptable mitigation for impacts to waters of the State.

Mitigation Measure BIO-16 describes the proposed mitigation for permanent loss of riparian habitat.

**Mitigation Measure BIO-16:** The permanent loss of riparian habitat types shall be mitigated as described in the EACCS. Mitigation will be provided via preservation, enhancement, and management as per EACCS guidelines. Because all riparian habitats in the construction footprint provide habitat for focal species, the mitigation ratio for the impacts will be at least 2.5:1 (acreage of new habitat: acreage of impacted habitat). Because the wetland and stream habitats all provide dispersal and foraging habitat for California red-legged frog and California tiger salamander, the final mitigation ratio must be as high as the determined EACCS requirements for focal species. Mitigation ratios will vary based on the location and quality of the mitigation lands, which have not been selected yet. Mitigation must be in-kind for mixed riparian woodland impacts but riparian grassland impacts may be mitigated with either grassy or wooded riparian habitat.

Temporary impacts to riparian habitat shall be restored in place at a 1:1 ratio through re-establishment of original contours along banks, decompaction of compacted soils where necessary, and seeding with a native seed mix developed by a qualified

restoration ecologist and containing species such as alkali barley (*Hordeum depressum*), meadow barley (*Hordeum brachyantherum*), purple needlegrass (*Stipa purpurea*), and/or other native grass and forb species that occur in the Project vicinity. Temporary impact areas will be monitored for 2 years and the criteria for success will be 75 percent vegetation cover or more compared to pre-Project conditions and no more than 5 percent cover of Cal-IPC-rated moderate and high impact weed species (excluding Cal-IPC-rated annual grasses).

Mitigation Measure BIO-16 claims that "in-kind mitigation for loss of riparian areas will be required consistent with the EACCS." However, the EACCS does not provide mitigation for impacts to waters of the State and riparian areas. As is described in Section 5.5.6 of the *East Alameda County Conservation Strategy (EACCS) Document*, the mitigation provided for impacts to listed species does not provide mitigation for impacts to waters of the State. The Water Board will require mitigation for impacts to wetlands and creek channels. This mitigation must be in the form of creation, restoration, or enhancement of waters of the State. The preferred form of mitigation for impacts to waters of the State is to provide in-kind mitigation. For impacts to wetlands, mitigation should consist of creating, restoring, or enhancing wetlands. For impacts to creek channels, mitigation should consist of creating, restoring, or enhancing creek channels. In order to meet the State's goal of achieving no net loss of waters, creation is the preferred form of mitigation, since it is the form of mitigation that prevents the net loss of acres and linear feet of waters of the State.

Please note that the required amount of wetland and creek mitigation will depend on the similarity of the impacted wetlands and creeks to the proposed mitigation project, the uncertainty associated with successful implementation of the mitigation project, and the distance between the site of the impact and the site of the mitigation wetlands and creek projects. In-kind mitigation for the fill of wetlands and creeks consists of the creation of new wetlands and creeks. If the mitigation consists of restoration or enhancement of wetlands and creeks, the amount of mitigation will be greater than if the mitigation consists of wetland or creek creation. If there are uncertainties with respect to the availability of sufficient water to support seasonal wetlands or sufficiently impermeable soils to sustain saturation, then the amount of mitigation would also have to be greater. Finally, the amount of required mitigation increases as the distance between the impact site and the mitigation site increases.

Each proposed mitigation project should also include a monitoring and maintenance plan (MMP) to be implemented to ensure the success of each mitigation project. An adequate MMP should, at least, contain the following minimum components: a summary of maintenance activities, including irrigation, weeding, and replanting of dead or missing vegetation; a schedule for implementing maintenance activities; the plant palette selected for replanting, including pounds per acre of seeds, numbers and sizes of container plants, and sources of all plant material; metrics to be used in assessing successful establishment of vegetation; annual performance criteria, including percent cover, percent survival of plants, species richness, and target plant heights or percent coverage; final success criteria (including formal delineation of mitigation wetlands); and contingency measures to be implemented in the event that annual performance criteria or final success criteria are not attained, or creek channels are not geomorphically stable at the end of the initial monitoring period. MMPs should describe the features (e.g., bank slumping, bank undercutting, rilling, channel avulsion, knickpoints, headcuts, excessive sediment deposition, etc.) that will be used to assess the geomorphic stability of mitigation creek channels. Monitoring

should be conducted for a minimum of five years for wetland mitigation projects and a minimum of 10 years for creek/riparian mitigation projects. In addition, each mitigation project site must be placed under some form of restrictive covenant to ensure that it will be preserved in perpetuity and funding must be provided to ensure the attainment of final performance goals and long-term maintenance of the mitigation project sites.

Mitigation Measure BIO-18 has the same flaws as Mitigation Measure BIO-16, since it relies on the EACCS to provide mitigation that the EACCS was not developed to provide.

Please revise Mitigation Measures BIO-16 and BIO-18 of the DEIR to include acceptable mitigation for impacts to waters of the State, including acceptable MMPs, restrictive covenants, and funding sources.

To account for temporal loss of habitat value at temporally impacted waters of the State, the Water Board usually requires 1.1:1 mitigation for temporary impacts. Monitoring and maintenance of temporary impacts must continue until the temporary impacts have been restored to pre-Project conditions. Please revise Mitigation Measures BIO-16 and BIO-18 of the DEIR to include mitigation for temporal loss of habitat value at temporarily impacted waters of the State.

### **Comment 3.**

#### **Section 5.8, Hydrology and Water Quality, does not address all potential impacts to waters of the State.**

The discussion of potential impacts to hydrology associated with the proposed new bridge at Cottonwood Creek only notes that the supports of the new bridge will be outside of the Ordinary High Water Mark. The Ordinary High Water Mark represents the upper bound of federal jurisdiction at Cottonwood Creek, but it does not represent the full extent of State jurisdiction. The Water Board will consider all impacts below the top of bank of Cottonwood Creek when reviewing the application for the Project. In addition, the CDFW has jurisdiction that extends to the outer dripline of riparian vegetation at the top of bank. Please revise Section 5.8 of the DEIR to consider all impacts to areas of the creek and riparian corridor that are subject to the jurisdiction of the Water Board and CDFW.

### **Comment 4. The DEIR does not describe acceptable mitigation measures for the fill of wetlands, culverting of creek channels, and construction of bridge piers at the Project site.**

In a CEQA document, a project's potential impacts and proposed mitigation measures should be presented in sufficient detail for readers of the CEQA document to evaluate the likelihood that the proposed remedy will actually reduce impacts to a less than significant level. CEQA requires that mitigation measures for each significant environmental effect be adequate, timely, and resolved by the lead agency. In an adequate CEQA document, mitigation measures must be feasible and fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines Section 15126.4). Mitigation measures to be identified at some future time are not acceptable. It has been determined by court ruling that such mitigation measures would be improperly exempted from the process of public and governmental scrutiny which is required under the California Environmental Quality Act.

The current text of the DEIR does not assess the full extent of impacts to waters of the State or propose acceptable mitigation projects for the Project's impacts to wetlands and creek channels. Impacts to the jurisdictional waters at the project site, as well as proposed, appropriate mitigation measures for those impacts, will require review under CEQA before the Water Board can issue permits for those proposed impacts. The City of Dublin is encouraged to revise the DEIR to include a full assessment of Project impacts to waters of the State and a thorough discussion of appropriate mitigation measures for impacts to wetlands and creek channels, and to circulate those mitigation proposals for public review by the resource agencies and other stakeholders.

### **Conclusion**

The DEIR does not provide acceptable mitigation for Project impacts to waters of the State, consisting of wetlands and creek channels. The DEIR should be revised to provide specific mitigation measures for all impacts to waters of the State. These mitigation measures should consist of in-kind and on-site mitigation measures to the maximum extent practicable. The amount of proposed mitigation should include mitigation for temporal losses of any impacted waters of the State. If mitigation is out-of-kind and/or off-site, then the amount of the proposed mitigation should be increased. Proposed mitigation measures should include designs with sufficient detail to show that any created wetlands will have sufficient hydrology to sustain wetland hydrology and vegetation without human intervention, and that mitigation creek channels will be stable and self-sustaining. A proposed program for monitoring the success of the mitigation features should also be included with the mitigation proposal(s).

If the DEIR is adopted without providing acceptable mitigation proposals for impacts to wetlands and creek channels, it may not be adequate to support the issuance of CWA Section 401 certification and Waste Discharge Requirements for the Project.

If you have any questions, please contact me at (510) 622-5680, or via e-mail at [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov).

Sincerely,

Digitally signed by Brian

**Brian Wines**

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Brian Wines

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Water Resources Control Engineer

South and East Bay Watershed Section

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