
San Francisco Bay Regional Water Quality Control Board

April 26, 2026

Town of Los Gatos
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Surrey Farms Estates Subdivision Project, Recirculated Initial Study / Mitigated Negative Declaration, SCH No. 2025090920

This is the fourth comment letter provided by San Francisco Bay Regional Water Quality Control Board (Water Board) staff on proposals to develop a residential subdivision at 178 Twin Oaks Drive in the Town of Los Gatos (Project). We provided comments on the Draft Environmental Impact Report (DEIR) on October 8, 2015, comments on a recirculated DEIR on June 12, 2017, and comments on the Initial Study / Mitigated Negative Declaration (ISMND) on October 6, 2025. The *Surrey Farms Estates Subdivision Project, Recirculated Initial Study / Mitigated Negative Declaration*, (Recirculated ISMND) acknowledges that waters of the State subject to the jurisdiction of the Water Board and the California Department of Fish and Wildlife (CDFW) will be impacted by the Project. However, the Recirculated ISMND does not acknowledge the presence of riparian vegetation along the ephemeral channel. In addition, the Recirculated ISMND does not quantify the Project's impacts on waters of the State or demonstrate that it is feasible to mitigate the Project's impacts to waters of the State to a less than significant level.

Comment 1. The ISMND acknowledges that the Project will impact a creek that is subject to the jurisdiction of the Water Board and CDFW.

The Recirculated ISMND acknowledges the Project's proposed impacts on jurisdictional waters of the State on page 7.

In response to public comments and input at the Planning Commission hearing, on February 12, 2026, Live Oak Associates conducted additional on-site field investigation of the ephemeral feature located on the project site after a storm event when water was flowing in the on-site ephemeral feature. This follow-on assessment resulted in the determination that the northerly limits of the ephemeral feature extend into the proposed internal driveway and Lot 5 development footprint. As a result, consistent with CEQA Guidelines Section 15073.5, the IS/MND has been revised and recirculated

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to identify a new potentially significant impact related to having a substantial adverse effect on aquatic features, and include new mitigation measures under question IV-b,c to reduce the newly identified impact to a less-than-significant level (Mitigation Measures IV-10 and -11). Additional Town-initiated changes have been made consistent with the errata sheet included as Exhibit 14 of the Town's December 17, 2025, Planning Commission Staff Report.

We appreciate the additional field work that was conducted to establish that the Project will impact jurisdictional waters of the State. The Recirculated ISMND notes that the northern end of the ephemeral creek channel has areas with an incised channel and areas without an incised channel. We consider areas without an incised channel that lie between areas with an incised channel to be portions of the jurisdictional creek, since water clearly flows between the incised reaches. Therefore, the complete flow path of the ephemeral creek to its northernmost incised channel is a water of the State. All impacts to this water of the State require mitigation. However, as discussed below in Comment 3, the mitigation measures in the Recirculated ISMND fail to establish that the Project's impacts to waters of the State can be mitigated to a less than significant level.

Comment 2. The definition of riparian areas in Section IV b,c, Biological Resources, is not consistent with the way in which the Water Board regulates riparian vegetation along ephemeral creek channels.

The definition of riparian vegetation in the Recirculated ISMND is not relevant to ephemeral creeks, which do not convey sufficient water to affect the type of vegetation growing along the creek channel. We consider vegetation that provides shade or allochthonous input to a creek channel to be riparian vegetation. We will require mitigation for any impacted vegetation along the ephemeral creek channel. The discussion of riparian vegetation does not quantify the extent of the Project's impacts to riparian vegetation and does not provide mitigation for the Project's impacts to riparian vegetation. Therefore, the Recirculated ISMND does not demonstrate that the Project's impacts to riparian vegetation can be mitigated to a less than significant level.

Comment 3. The Recirculated ISMND does not provide sufficient mitigation for the Project's impacts to waters of the State or riparian vegetation.

Proposed mitigation measures for the Project's impacts to the ephemeral creek and its associated riparian vegetation are presented on Page 53 of the Recirculated ISMND.

Mitigation Measure(s)

Implementation of the following mitigation measures would reduce the above potential impact to a *less-than-significant* level.

IV-10. Prior to initiation of any ground disturbance activities, the project applicant shall submit to the San Francisco Bay Regional Water Quality Control Board (SFRWQCB) an application for Clean Water Act Section 401 Water Quality Certification and/or Waste Discharge Requirements for Projects Involving Discharge of Dredged and/or Fill Material to Waters of the State. The

project proponent shall be responsible for conducting all project activities in accordance with the permit provisions outlined in the applicable SFRWQCB permit, which may include but not necessarily be limited to the following minimization and compensation measures.

Minimization. *Because full avoidance is not possible, actions shall be taken to minimize impacts to the ephemeral stream (e.g., potentially waters of the State and under the jurisdiction of both RWQCB and CDFW). Measures taken during construction activities should include placing construction fencing around the ephemeral stream to be preserved to ensure that construction activities do not inadvertently impact these areas.*

Compensation. *The proposed project would impact some small areas of the ephemeral stream. Therefore, the project shall replace the lost habitat value resulting from this impact through the creation, restoration, and/or enhancement of habitat at one or more appropriate locations near the impacted areas at a minimum of a 1:1 replacement-to-loss ratio as well as reseedling or replanting of vegetation in temporarily disturbed areas. The final mitigation amounts will be based on actual impacts to be determined during the design phase. If impacts are lessened, then the amount of mitigation should be appropriately reduced.*

It is anticipated that all compensation measures can be accommodated onsite within the existing ephemeral stream. An important consideration is to remove the existing culvert in the upper area of the stream. An on-site habitat mitigation and monitoring plan (HMMP) would need to be developed with the goal of creating, restoring, and/or enhancing the ephemeral stream with habitat functions and values greater than or equal to those existing in the impact zone. At a minimum, the HMMP should include:

- The location of all enhancement and/or restoration activities;*
- Planting specifications;*
- Site maintenance and management requirements;*
- Monitoring requirements;*
- Final success criteria; and*
- Adaptive management procedures.*

Written verification of the 401 Water Quality Certification or Waste Discharge Requirements shall be provided to the Town of Los Gatos Community Development Department, prior to initiation of any ground disturbance activities.

The proposed 1:1 mitigation ratio would only be sufficient if the mitigation for impacts to the ephemeral creek and its associate riparian vegetation were both in-kind and on-site. For the fill of a portion of an ephemeral creek, in-kind mitigation consists of creating or restoring an ephemeral creek channel. The Recirculated ISMND states that all compensation can be accommodated on-site within the existing ephemeral channel. This does not appear to be likely, since enhancement of an existing ephemeral creek

channel does not provide in-kind mitigation for filling a portion of that channel. The text of the Recirculated ISMND refers to an existing culvert over an upper portion of the ephemeral creek that could be removed as mitigation for fill of a portion of the ephemeral creek channel. Removal of a culvert from the creek may provide mitigation for the fill of a portion of the creek if the removed culvert is at least as long as the filled reach of the creek. However, the discussion of mitigation for impacts to the ephemeral creek is insufficient because the Recirculated ISMND does not provide the length of the ephemeral creek channel that will be impacted by the Project or the length of the culvert that would be removed from the creek channel.

The mitigation provided in the Recirculated ISMND consists of obtaining permits from the Water Board and CDFW. Applying for permits from the resource agencies prior to impacting jurisdictional waters is a legal requirement, but it is not a mitigation measure. The Recirculated ISMND lacks concrete proposals for mitigation. Therefore, the Recirculated ISMND fails to demonstrate that the project's impacts to waters of the State can be mitigated to less than significant levels. Without a revision that includes concrete mitigation proposals, it is likely that the Recirculated ISMND will not be adequate to support the issuance of State permits for impacts to the ephemeral creek channel.

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. While it is true that any impacts to waters of the State would require permit(s) from the Water Board, compliance with regulatory requirements is not in itself a mitigation measure. CEQA documents should identify impacts associated with a project and propose specific mitigation measures in sufficient detail for persons reviewing the CEQA document to assess the feasibility and adequacy of the proposed mitigation measures. This kind of assessment is not possible on the basis of the information provided in the Recirculated ISMND.

Sincerely,



Brian Wines
Water Resource Control Engineer

cc: State Clearinghouse
CDFW

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