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

*Sent via electronic mail: No hard copy to follow*

March 14, 2016  
CIWQS Place ID 818597 (SG)  
Regulatory Measure ID: 403119

U.S. Army Corps of Engineers  
1455 Market Street  
San Francisco, CA 94103  
Attention: Ms. Amanda Cruz  
*Email: Amanda.b.cruz@usace.army.mil*

**Subject: Water Quality Certification for the Upper Berryessa Creek Flood Risk Management Project in Cities of Milpitas and San Jose, Santa Clara County**

Dear Ms. Cruz:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff has reviewed the application for certification for the Upper Berryessa Creek Flood Risk Management Project (Project) the U.S. Army Corps of Engineers (Corps) submitted on September 25, 2015. As the federal administrating agency for regulating the discharge of dredge and fill materials to waters of the United States pursuant to section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344), the Corps signed the Record of Decision dated May 29, 2015, stating that the Project meets all environmental statutes.

The Corps (the Applicant) has applied to the Water Board under Section 401 of the CWA for water quality certification (Certification) that the Project does not violate State water quality standards. The Water Board received the application on September 25, 2015 (Application). On October 23, 2015, the Water Board notified the Applicant via email that the Application was incomplete and listed the supplemental information needed before the Certification could be issued. The Applicant submitted supplemental information to the Water Board via email on January 6, 2016, (letter dated December 28, 2015) and other emails from January 8 through February 22, 2016. The Application package includes the Project's 95 percent Planting Plan received January 26, 2016; Groundwater Management Plan received January 26, 2016; and 90 percent design plans dated January 14, 2016, received on February 22, 2016. Water Board staff has determined that the original Application materials and supplemental Application materials received through February 22, 2016, constitute a complete Application. The Water Board provided public notice of the Application on October 14, 2015, and received one comment letter from the Citizens Committee to Complete the Refuge. The Water Board Executive Officer (Executive Officer) has carefully considered all

comments received on the Application before issuing Certification. The Water Board hereby issues Certification for the Project.

The Applicant is partnering with the Santa Clara Valley Water District (District) on the Project. This Certification authorizes construction of the Project as proposed by the Applicant in its Application.

This Certification is being issued to facilitate the Applicant's contracting and construction schedule for the Project, which is intended to result in the completion of Project construction prior to the planned opening of the Milpitas Bay Area Rapid Transit (BART) station in late 2017. Subsequent to issuance of this Certification, the Water Board will consider adoption of Waste Discharge Requirements (WDRs) with the District named as the permittee for the Project. The following is a partial list of items the WDR will address:

- Future operation and maintenance;
- Requirements for monitoring of vegetation reestablishment and channel cross and longitudinal sections to inform future maintenance guidelines under the District's Stream Maintenance Program;
- A plan to compensate for the capital project's impacts;
- Requirements for post-construction stormwater treatment from newly-constructed or replaced impervious surface; and
- Plans for future site uses.

As of the date of this Certification, the Applicant has not yet submitted information necessary for the Water Board to accept final plans (the creek dewatering plan, 100 percent Planting Plan, and 100 percent design plans), although it has submitted initial or draft information. This Certification requires preparation and submittal of final plans prior to commencement of construction for the relevant Project component.

## I. FINDINGS

- A. **Project Purpose.** The Project is intended to provide protection from the one percent exceedance probability flood flow event for 650 parcels along Berryessa Creek between Calaveras Boulevard in the City of Milpitas and Interstate 680 (I-680) in the City of San Jose (Attachment A, Figure 1). The area being protected encompasses the new Milpitas BART station and rail line infrastructure, which is part of a \$2.3 billion (including \$900 million of federal funding) BART expansion project that will extend BART service from Fremont through Milpitas to San Jose.
- B. **Project Description.** The Applicant proposes to modify Upper Berryessa Creek from the upstream face of Calaveras Boulevard in Milpitas to the downstream face of I-680 in San Jose, for a length of about 2.2 miles (11,400 linear feet) (Attachment A, Figure 1). The Project will also modify 210 linear feet of Los Coches Creek and 60 linear feet of Piedmont Creek, which are tributary to Upper

Berryessa Creek. The Project is located just upstream of the “Lower Berryessa Creek and Lower Calera Creek Flood Protection Improvements Project” (Lower Berryessa-Calera Project) currently under construction by the District. Both the Lower Berryessa-Calera Project and the Project are scheduled for completion before the opening of the new Milpitas BART station in late 2017.

The major Project features include: (1) enlarging the Upper Berryessa Creek channel; (2) armoring channel beds and banks with rock riprap; (3) constructing concrete box culverts and associated concrete structures; and (4) building other concrete structures including floodwalls and access ramps. These elements have the following details below and are shown in Attachment A, Figures 2-1 and 2-2. In addition, fill and excavation information is presented in Table 1.

1. Enlarge the creek channel from approximately 9.6 to 17.2 acres for a trapezoidal channel cross section with bed width varying from 12 to 40 feet, height varying from 8 to 14 feet, and banks with a 2-to-1 horizontal-to-vertical (2:1) slope.
2. Build new pre-cast concrete box culverts (where currently none exist) and associated cast-in-place concrete wingwalls and concrete or grouted rock riprap transition structures at the Los Coches Creek and Piedmont Creek confluences, and to replace the existing Union Pacific Railroad (UPRR) wooden trestle bridge;
3. Build rock riprap of 9 to 15 inches (or 24-inch grouted rock riprap) in channel beds and banks for erosion protection, with the following details:
  - a. Total area of 10.1 acres of rock riprap, including 9.96 acres in Upper Berryessa Creek, 0.14 acres in Los Coches Creek, and less than 0.01 acres in Piedmont Creek;
  - b. Grouted rock riprap at the Piedmont Creek confluence and beneath the existing Yosemite Drive bridge crossing (total of 0.58 acres);
  - c. Rock riprap in channel beds and banks (7,378 linear feet), with riprap extending up to the 2.5 to 10-year water surface elevation;
  - d. Bank riprap extending 5 feet below the channel invert elevation in an additional 2,435 linear feet of Upper Berryessa Creek upstream of Calaveras Boulevard, where creek beds are not lined with riprap;
  - e. Native sediment covering channel bed and bank riprap, followed by biodegradable erosion control blankets from the bank toe to the top of banks, with hydroseed in beds and banks to promote native vegetation growth and erosion protection; and
  - f. Rock riprap linear and areal extent includes replacing existing concrete to be removed at the 90 degree bend upstream of Montague Expressway (400 linear feet);

4. Construct concrete floodwalls of 1,273-feet long by up to 2-feet high on the west bank of Upper Berryessa Creek between Los Coches Street and Piedmont Creek, and 450-feet long by 3-feet deep to be buried on the west bank upstream of Montague Expressway to reinforce an existing retaining wall;
5. Build concrete access ramps, one each on the east and west banks upstream of Montague Expressway, and a single concrete ramp on the east bank downstream of I-680;
6. Construct a 10-foot wide concrete approach ramp leading to a new UPRR culvert on the east bank;
7. Construct concrete and rock riprap transition structures at the upstream face of the existing Calaveras Boulevard Bridge;
8. Build new and replace existing maintenance roads (10,360 linear feet), with a width of 18 feet on the east bank and 15 to 18-feet wide on the west banks, with the exception of the section downstream of I-680, which lacks space on the west bank for a road;
9. Remove an unspecified volume of sediment and vegetation from about 200 linear feet of concrete-lined creek section just downstream of I-680; and
10. Replace and realign existing utilities within the Project right-of-way (see item I.C for additional information).

**Table 1. Fill and Excavation Quantities <sup>[1]</sup>**

<b>Project Element</b>	<b>Material</b>	<b>Excavation (cubic yards)</b>	<b>Fill (cubic yards)</b>	<b>Length (linear feet)</b>	<b>Area (acres)</b>
Trapezoidal channel construction	Sediment	148,400	41,800	10,453	17.2
Riprap in beds and banks (9 to 24-inch diameter)	Imported rock	---	91,000	9,813	10.1
Pre-cast concrete culverts	Concrete	---	1,300	340	0.15
Cast-in-place concrete wingwalls and transition structures	Concrete	---	1,508	346	0.37
Access ramps	Concrete	---	144	300	0.08
Access road (10-ft wide) to new UPRR culvert	Concrete	---	15	15	0.01
Floodwalls	Concrete	---	424	1,723	0.06
Remove concrete channel lining	Concrete	597 <sup>[2]</sup>	---	400	0.37

Build new and replace existing roads	Aggregate base	---	5,654	10,360	7.1
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**Notes:**

Notation as "---" means this category is not applicable.

UPRR – Union Pacific Railroad

<sup>[1]</sup> Impacts of fill and excavation activities to waters of the U.S. and of the State are reported in Table 3.

<sup>[2]</sup> This quantity is estimated based on an area of 0.37 acres, a length of 400 feet, and an assumed thickness of 1 foot.

- C. **Replace and Realign Existing Utilities.** Several utility lines are within the Project right-of-way including electric, stormwater, potable water, and fiber optics lines. Some utility lines will be protected in place while others will be replaced and realigned. The Application states that the locations of some utility lines are estimated and the Applicant’s contractor will verify and document their locations. In addition, the Application states that all utility work will be implemented by cut and fill procedures with no directional drilling.
- D. **Staging, Stockpiling, and Hauling.** Two areas outside of the Project right-of-way will be used for staging and sediment stockpiling (Attachment A, Figures 2-1 and 2-2). Access to and from the Project site and the staging areas will occur along existing paved roads via Calaveras Boulevard, Los Coches Street, Yosemite Drive, Ames Avenue, and Montague Expressway.
- E. **Reuse or Dispose of Exported Material.** The Applicant will haul about 106,600 cubic yards of sediment from the site in addition to demolition debris such as concrete and utility components. Sediment and demolition debris will be reused or recycled to the extent feasible. The Application states that disposal of any demolished material and debris shall be in accordance with all applicable local, State, and federal regulations. This Certification requires the Applicant to characterize any sediment removed from the Project area to determine an appropriately-permitted upland location for disposal or for beneficial reuse, as appropriate.
- F. **Dewatering.** The Applicant plans to conduct construction during dry weather. However, dewatering of surface water or groundwater that accumulates at excavated areas will likely be necessary. The creek areas where dewatering is most likely to be necessary are downstream of the Piedmont Creek confluence, where water flow is more persistent, and in the area downstream of Montague Expressway, where deep excavations for the replacement of the UPRR trestle bridge are more likely to encounter groundwater. This Certification contains a condition that prohibits creek dewatering to occur before submitting a Dewatering Plan to the Water Board. The Dewatering Plan shall be consistent with the Applicant’s 90 percent specifications, which state that dewatering will be controlled at all times to maintain compliance with existing State water quality standards (Specification no. 01 57 20.00 10). In addition, the Environmental Impact Report (EIR) for the Project includes Mitigation Measure WAQ-B-Prepare and Implement a Dewatering Plan to mitigate for potentially significant water quality impacts due to construction activities.

- G. Groundwater Management.** The Project is within the footprint of a past solvent release from the Jones Chemical, Inc., former chemical plant. The Water Board requires the Applicant to capture and treat all groundwater encountered from within the potential extent of the toxic waste plume as demarcated in the 90 percent design plans. Any such groundwater must meet the standards of the NPDES General Permit for the *Discharge or Reuse of Extracted and Treated Groundwater Resulting from the Cleanup of Groundwater Polluted by Volatile Organic Compounds (VOC), Fuel Leaks and Other Related Wastes* (Water Board Order No. R2-2012-0012; NPDES Permit No. CAG912002) (VOC and Fuel General Permit), as stipulated in a letter to the Applicant dated August 14, 2015 (see Attachment B). The Applicant's Groundwater Management Plan submitted by email to the Water Board on January 26, 2016, is currently under review by Water Board staff.
- H. Operations and Maintenance.** The Application states that the District, as the Project's local sponsor, will be responsible for post-project operations and maintenance (O&M) of the channel. As such, the Applicant is not proposing to complete O&M activities under this Certification, and O&M activities are not covered by it. Rather, such activities will be considered for permitting as a part of the WDRs for the Project to be brought before the Water Board later this year. The Applicant will complete an O&M Manual for the Project to inform the District's subsequent activities.

The Project's EIR states that sediment removal maintenance activities have been pre-mitigated under the District's existing Stream Maintenance Program. However, capital projects such as the Project are not covered by the Stream Maintenance Program, in accordance with the Stream Maintenance Program Manual, which the Water Board adopted with *Water Quality Certification and Waste Discharge Requirements for Santa Clara Valley Water District Stream Maintenance Program* (Water Board Order No. R2-2014-0015). Mitigation necessary for future O&M activities is intended to be considered as a part of the WDRs for the Project to be brought before the Water Board later this year.

In addition, the WDRs are intended to address the process to transition the Project into the Stream Maintenance Program. This will be facilitated by the District's collection of information on Project performance during the first 5 years after Project completion.

- I. Impacts.** A jurisdictional wetland delineation consistent with the 1987 Corps Wetlands Delineation Manual was conducted in 2014 (Tetra Tech, 2014). The Project's delineation results are presented in Table 2. The Project will impact the entire area of 4.18 acres of waters of the U.S. within the Project limits. These waters are also waters of the State.

No jurisdictional wetlands are in the Project. However, the wetland delineation identified patches of wetland vegetation fringing the margins of the Upper Berryessa Creek active channel, with a combined area of less than 0.5 acres.

For the purposes of this Certification, the Water Board finds that about 0.45 acres of wetland vegetation is in the Project.

**Table 2. Wetland Delineation Results in the Project Site**

<b>Location</b>	<b>Waters of the U.S. and of the State</b>	<b>Area (acres)</b>
Upper Berryessa Creek	Intermittent and Perennial Stream	4.05
Los Coches Creek at confluence with Upper Berryessa Creek	Intermittent Stream	0.10
Piedmont Creek at confluence with Upper Berryessa Creek	Perennial Stream	0.03
<b>TOTAL</b>		4.18

The San Francisco Bay Basin Water Quality Control Plan (Basin Plan) assigns the following beneficial uses to Berryessa Creek, which also apply to Los Coches Creek and Piedmont Creek by the Tributary Rule: wildlife habitat (WILD); warm water habitat (WARM); water contact recreational uses (REC-1); and non-contact water recreational uses (REC-2). Upper Berryessa Creek is a tributary of Lower Penitencia Creek, which, in turn, flows into Coyote Creek, a tributary to San Francisco Bay. The beneficial uses of Lower Penitencia Creek are the same as for Upper Berryessa Creek. Some of the beneficial uses of Coyote Creek, which also apply to Upper Berryessa Creek by the Tributary Rule, include migration habitat (MIGR), spawning habitat (SPWN), preservation of rare and endangered species (RARE), and cold water habitat (COLD).

The Project could indirectly impact waters of the State and the United States during excavation and construction of the creek channel. The water quality of Upper Berryessa Creek could be impacted by accidental releases of soil and debris during excavation of the creek channel, installation of riprap, and creek dewatering activities, as well as by the accidental release of hazardous materials and contaminants used or encountered during construction. These releases could cause violations of the water quality objectives proscribed in Chapter 3 of the Basin Plan including, but not limited to, water quality objectives for the following parameters: bacteria, dissolved oxygen, floating material, oil and grease, pH, sediment, settleable material, suspended material, temperature, toxicity, turbidity, and specific chemical constituents.

Furthermore, impervious surfaces created and/or replaced by the Project may also collect and concentrate stormwater runoff and pollutants that are subsequently discharged to Upper Berryessa Creek. The Project will result in the construction of 7.1 acres of redeveloped maintenance roads with impervious aggregate base (AB) material and an additional 0.08 acres of impervious maintenance ramps. This issue is intended to be considered as a part of the WDRs for the Project to be brought before the Water Board. The issue includes

the District's responsibility to comply with the post-construction best management practices (BMP) requirements in the NPDES *Municipal Regional Stormwater Permit* (MRP) (Water Board Order No. R2-2015-0049; NPDES Permit No. CAS612008) by using pervious material or by constructing post-construction stormwater BMPs to capture, detain, retain, and treat stormwater runoff from the Project's impervious surfaces or from an equivalent or greater amount of impervious surfaces offsite. The O&M Manual this Certification requires will need to include O&M of the maintenance roads and any associated BMPs to ensure compliance with the MRP for the life of the Project.

In addition, the Project will directly impact waters of the U.S. (classified as "other waters") in Upper Berryessa Creek, Los Coches Creek, and Piedmont Creek. These direct impacts are described in the Application (90 percent design plan dated June 19, 2015; email of January 13, 2016, from Corps staff to Water Board staff; and 95 percent Planting Plan dated January 15, 2016) and listed in Table 3.

**Table 3. Impacts on Waters of the U.S. (Other Waters) by the Project**

Project Activity	Permanent <sup>[1]</sup>		Temporary <sup>[1]</sup>	
	Acres	Linear Feet	Acres	Linear Feet
Dewater creeks <sup>[2]</sup>	--	--	4.18	10,763
Enlarge creek channel <sup>[3]</sup>	--	--	4.18	10,763
Rock riprap in channel beds and banks <sup>[4]</sup>	10.1 <sup>[3]</sup>	9,813 <sup>[4], [5]</sup>	--	--
UPRR concrete culvert and associated structures for trestle bridge replacement <sup>[4]</sup>	0.33 <sup>[6]</sup>	138	--	--
Other concrete culverts, wingwalls, and transition structures	1.42	636	--	--
Concrete ramps	0.08	300	--	--
Concrete access road	0.01	40	--	--
Concrete floodwalls	--	--	0.06	1,723
Remove patches of wetland vegetation	--	--	0.45	--
Remove native trees and shrubs	--	--	53 native trees and shrubs	
Conduct future maintenance	--	--	To be addressed in WDRs to be considered by the Water Board	

**Notes:**

The "--" notation means the category is not applicable to the project activity.

<sup>[1]</sup> The sums for linear feet and acreage of different impacts are not quantified since impacts are overlapping within the same maximum length of 10,763 linear feet and area of 9.49 acres.

<sup>[2]</sup> Although the area and length dimensions are for all three creeks combined, some areas may be dry and would not require dewatering. The areas where surface water and/or groundwater will likely be present during construction activities are: (1) Upper Berryessa Creek from Calaveras Boulevard to the trestle bridge

replacement area downstream of Montague Expressway (about 7,700 linear feet); and (2) Piedmont Creek (60 linear feet).

<sup>[3]</sup> The area reported is based on post-project conditions.

<sup>[4]</sup> This length includes the length of concrete channel bed and bank lining to be removed (400 linear feet) and replaced with rock riprap.

<sup>[5]</sup> This length is the sum for lengths of Upper Berryessa, Los Coches, and Piedmont creeks.

<sup>[6]</sup> This area was calculated by multiplying the length of 138 feet by the width of 104 feet based on the combined width of the concrete structures spanning across the channel from the top of bank to top of bank.

**J. Avoidance and Minimization.** The Applicant proposes to implement the following avoidance and minimization measures:

1. The Project design avoids removing some native trees and shrubs, thereby reducing impacts to the connectivity between the channel and riparian habitat at the top of bank to the extent feasible. In addition, the Applicant's construction specifications state that existing trees and shrubs will be protected in place.
2. The Applicant will implement a stormwater pollution prevention plan and use erosion control BMPs to prevent construction-related pollution, sedimentation, and erosion, including hyroseeding the banks with native grass species.
3. Groundwater encountered from within the toxic waste plume boundary demarcated in the 90 percent design plans will be pumped and treated to meet the VOC and Fuel General Permit standards and protect receiving water quality.
4. The Applicant will only work during designated work windows when the creek has little or no flow to avoid impacts on fish and other aquatic life.
5. The Applicant will conduct pre-construction aquatic life and wildlife surveys; protect nesting birds; and relocate wildlife and aquatic life as necessary during construction activities. In addition, the Applicant will conduct pre-construction awareness training for detection and avoidance of wildlife and aquatic species.

**K. Mitigation.** The Application states the Applicant will replace any native trees and shrubs that will be removed and maintain them for five years. The Applicant submitted a 95 percent Planting Plan on January 26, 2016, which shows the locations for native tree and shrub species to be planted in the Project and states that the Applicant will plant replacement trees and shrubs at a rate of three plants for each plant the Project will remove. The Applicant will seed the creek channel beds with wetland species to serve as a seed bank to restore the 0.45 acres of wetland vegetation to be removed by the Project, as shown in the 90 percent design plans, sheet C-200. The Applicant will also seed the banks with native grass species. The wetland and grass species palettes are listed in the 90 percent design specifications (specification no. 32 92 19). Because the existing vegetation on the banks contains non-native species, the establishment of native

grasses to replace the existing vegetation is expected to increase the functions and values of the bank vegetation. As noted elsewhere herein, the Water Board will also consider WDRs to address other needs for the Project, including the need to compensate for temporal and permanent losses of functions and values by the Project design and future O&M activities and to monitor vegetation establishment and success.

- I. **California Environmental Quality Act Compliance.** The District, as lead agency, certified an Environmental Impact Report (EIR) on February 9, 2016, in accordance with the California Environmental Quality Act (CEQA) (Project State Clearinghouse Number 2001104013). The Water Board, as a responsible agency under CEQA, finds that impacts during the construction of the Project that are within the Water Board's purview and jurisdiction have been identified and will be mitigated to less-than-significant levels. Specifically, the Applicant will implement BMPs as required under the NPDES *General Permit for Discharges of Storm Water Associated with Construction Activities* (Order No. DWQ-2009-0009, as amended by Order Nos. 2010-0014-DWQ and 2012-006-DWQ) (Construction Stormwater Permit). The EIR does not include necessary detail for long-term impacts and mitigation and impacts from O&M activities (see Finding I.E). The need for compensation of impacts from the Project design and future O&M will be addressed as a part of the WDRs for the Project to be brought before the Water Board later this year.

## II. CERTIFICATION AND WASTE DISCHARGE REQUIREMENTS

**Certification and General Waste Discharge Requirements:** I hereby issue an order certifying that any discharge from the referenced Project will comply with the applicable provisions of CWA sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations), 303 (Water Quality Standards and Implementation Plans), 306 (National Standards of Performance), and 307 (Toxic and Pretreatment Effluent Standards) and with other applicable requirements of State law. This discharge is also regulated under State Water Resources Control Board Order No. 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 Certification. The following conditions are associated with this Certification:

### Conditions

1. The Applicant shall be responsible for work conducted by its consultants, contractors, and any subcontractors.
2. Project construction activities shall not commence until all required documents, reports, plans, and studies required by this Certification have been submitted.
3. The Project shall be constructed in conformance with the Project description provided in the approved Application materials. The Applicant shall notify the Executive Officer in writing should the Applicant need to significantly alter the Project. If the Water Board is not notified of a significant alteration to the Project, the Applicant will be considered in violation of this Order and may be subject to Water Board enforcement actions.
4. The Applicant shall obtain coverage under and comply with, or ensure its contractor obtains coverage and complies with, the Construction Stormwater Permit before beginning construction of the Project. All work performed within waters of the State shall be completed in a manner that minimizes impacts to water quality and the beneficial uses of Upper Berryessa Creek, Los Coches Creek, and Piedmont Creek and waters downstream of these creeks.
5. No equipment shall be operated in stream channels or other waters where there is flowing or standing water. No fueling, cleaning, or maintenance of vehicles or equipment shall take place within any areas where an accidental discharge to waters of the State may occur.
6. Concrete used in the Project shall be allowed to completely cure (a minimum of 28 days) or be treated with a California Department of Fish and Wildlife-approved sealant before it comes into contact with flowing water.
7. This Certification does not allow for the take, or incidental take, of any special status species. As applicable, the Applicant shall utilize the appropriate protocols, as approved by the California Department of Fish and Wildlife, National Marine Fisheries Service, and/or U.S. Fish and Wildlife Service, to ensure that Project

activities do not adversely impact water quality or the beneficial uses of Upper Berryessa Creek, Los Coches Creek, and Piedmont Creek, or other beneficial uses of waters downstream of the Project as referenced in Finding I.F.

8. All work performed within waters of the State shall be completed in a manner that minimizes impacts to beneficial uses and habitat. Measures shall be employed to minimize disturbances that will adversely impact the water quality of waters of the State. Disturbance or removal of vegetation shall not exceed the minimum necessary to complete Project implementation.
9. There shall be no violation of any water quality standard for receiving waters adopted by the Water Board or the State Water Resources Control Board. Creek dewatering discharges, accumulated groundwater or stormwater removed during dewatering of excavations, and diverted creek and stormwater flows shall not be discharged to waters of the State without meeting the receiving water objectives in the Basin Plan.
10. Disturbance or removal of vegetation shall be minimized. The site shall be stabilized through incorporation of appropriate BMPs, including the successful establishment of native grass vegetation, to compensate for impacts to wildlife habitat values, and to prevent and control erosion and sedimentation.
11. The Applicant shall revegetate the Project based on the 95 percent Planting Plan and Specifications for trees and shrubs; the 90 percent design specifications for native wetland and grass species palettes (specification no. 32 92 19); the 90 percent design plans, sheet C-200, for native wetland and grass seeding details; or the most current revised plans and specifications. The Applicant shall maintain trees and shrubs for five years as stated in the Application.
12. The Applicant shall prepare and implement, or ensure its contractor prepares and implements, a dewatering plan consistent with EIR Mitigation Measure WAQ-B, the 90 percent design specifications, and Finding I.C of this Certification. Creek dewatering shall not commence before the Applicant submits a Dewatering Plan to the Water Board. The Dewatering Plan shall provide details about the types and locations of any coffer dams; flow diversion pumps and containment; discharge dissipation devices; discharge locations; and measures to meet the receiving water quality objectives required in the Basin Plan.
13. The Applicant shall carry out a Groundwater Management Plan to meet the Water Board's requirements stipulated in a letter to the Applicant dated August 14, 2015, (Attachment B) for capturing and treating all groundwater encountered from within the boundary of the toxic waste plume as demarcated in the 90 percent design plans. The Water Board requires the Applicant's groundwater discharges to meet the standards of the VOC and Fuel General Permit.
14. All sediment being hauled offsite and waste materials shall be beneficially reused or recycled to the extent feasible. If reuse or recycling is infeasible, all waste

materials shall be disposed at an appropriately-permitted upland location. This applies to materials such as, but not limited to, sediment, concrete and asphalt demolition debris, and utility components (e.g., pipelines and manhole covers) being removed from the Project area.

15. This Certification prohibits conducting directional drilling in the Project.
16. This use of bank stabilization methods and materials other than the methods and materials in the 90 percent design plans and specifications are not authorized under this Certification.
17. This Certification prohibits the use of imported sediment or soil in the Project.
18. This Certification prohibits the alignment of any utilities, or maintaining existing utility lines in the Project, in such a manner that will create an obstacle to flow or destabilize the creek channel.

### **Plans and Reporting Requirements**

19. No later than 15 days before starting construction for the Project, the Applicant shall submit final 100 percent design plans to the Water Board. In addition, the 100 percent plans shall include, or otherwise be accompanied by, information, including an appropriately-detailed narrative description, describing all changes from the 90 percent plans.
20. No later than 15 days before starting construction for the Project, the Applicant shall submit a final 100 percent Planting Plan to the Water Board.
21. To document channel and bank conditions immediately upstream and downstream of the Project site, as well as the Project site itself, the Applicant shall establish a minimum of 12 photo-documentation sites at the Project site, in addition to sites sufficient to document each bridge crossing in the Project. These photo-documentation sites shall be selected to document channel and bank conditions immediately upstream and downstream of each site, as well as the Project reach. The Applicant shall prepare site maps with the photo-documentation points clearly marked. Prior to implementing the Project, the Applicant shall photographically document the condition of each site. Following implementation of the Project, the Applicant shall photographically document the immediate post-construction condition of the sites and submit a report to the Water Board including the pre-construction photographs, the post-construction photographs, and the map with the locations of the photo-documentation points. This report shall be submitted to the Water Board along with the as-built plans required in Condition 24 of this Certification.
22. The Applicant shall submit the final Project Operations and Maintenance Manual, as referenced in Finding I.E, to the Water Board upon transfer of the Project to the local sponsor.

23. The Applicant shall notify the Water Board by electronic mail or by hard copy of Project completion upon transfer of the Project to the local sponsor. This notification, known as a Project Completion Report, shall consist of the following information: (a) the CIWQS Place ID for this Project (i.e., CWIQS Place ID 818597); (b) the date Project construction activities were completed; and (c) the completion date of mitigation plantings. Project construction activities for the purpose of this condition are defined as activities associated with construction of the Project, establishing native grass vegetation on the banks, and planting trees and shrubs as per the Planting Plan. The Project Completion Report shall be submitted to Susan Glendening at [Susan.Glendening@waterboards.ca.gov](mailto:Susan.Glendening@waterboards.ca.gov), or the current Water Board staff member assigned to the Project.
24. The Applicant shall submit an as-built report of the Project in both digital format and hard copy of at least 11-inches by 17-inches to the Water Board before or at the same time as the Applicant transfers the Project to the local sponsor. The as-built report shall be submitted either by email to staff or by uploading it to the Water Board's FTP internet site. Instructions for uploading documents to the FTP internet site are available at [http://www.waterboards.ca.gov/sanfranciscobay/publications\\_forms/documents/FTP\\_Discharger\\_Guide-12-2010.pdf](http://www.waterboards.ca.gov/sanfranciscobay/publications_forms/documents/FTP_Discharger_Guide-12-2010.pdf). If the as-built report is submitted by uploading it to the FTP internet site, the Applicant shall notify the Water Board case manager via email.

### **Standard Conditions**

25. This Certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 and section 3867 of the California Water Code (CWC), Title 23 of the California Code of Regulations (23 CCR).
26. Certification action is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.
27. The 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 CWC or CWA section 303 or in response to new information concerning the conditions of the Project. Additionally, the Water Board reserves the right to suspend, cancel, or modify and reissue this Certification, after providing notice to the Corps, if the Water Board determines that the Project fails to comply with any of the conditions of this Certification, or when necessary to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the CWC or CWA section 303 (33 U.S.C. § 1313).

29. The Applicant, shall grant Water Board staff, or an authorized representative (including an authorized contractor acting as a Water Board representative), upon presentation of credentials and other documents as may be required by law, permission to:
- a. Enter upon the Project or compensatory mitigation site(s) premises where a regulated facility or activity is located or conducted or where records are kept;
  - b. Have access to and copy any records that are kept and are relevant to the Project or the requirements of this Certification;
  - c. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Certification; and
  - d. Sample or monitor for the purposes of assuring Certification compliance. The Corps, as the permittee for this Certification, shall be responsible for work conducted by its consultants, contractors, and any subcontractors.
29. A copy of this Certification shall be present at the Project site at all times during construction of the Project and made available to Water Board staff upon request. All foremen and other employees responsible for overseeing that construction of the Project complies with permitting requirements shall have access to and be familiar with the Certification requirements.

This Certification applies to the Project as proposed in the Application materials. Please be advised that failure to implement the Project as proposed is a violation of this Certification. Failure to comply with any condition of this Certification shall constitute a violation of the CWA. Any such Certification previously granted shall immediately be revoked and any or all discharges shall cease. The Applicant and/or discharger may then be subject to injunctive release, including stop work and/or restoration orders.

Should new information come to our attention that indicates a water quality problem with this project, the Water Board may issue WDRs pursuant to 23 CCR Section 3857.

If you have any questions, please contact Susan Glendening of my staff at (510) 622-2462 or by email to [Susan.Glendening@waterboards.ca.gov](mailto:Susan.Glendening@waterboards.ca.gov).

Sincerely,

Bruce H. Wolfe  
Executive Officer

Attachment A – Figures

- 1 – Project Location Map
- 2.1 – Project Elements, Calaveras Boulevard to Ames Avenue
- 2.2 – Project Elements, Ames Avenue to Interstate 680

Attachment B – Letter from Water Board to Corps dated August 14, 2015, Regarding  
Groundwater Management Plan Requirement

Cc: Corps:

Jay Kinberger, Jay.Kinberger@usace.army.mil  
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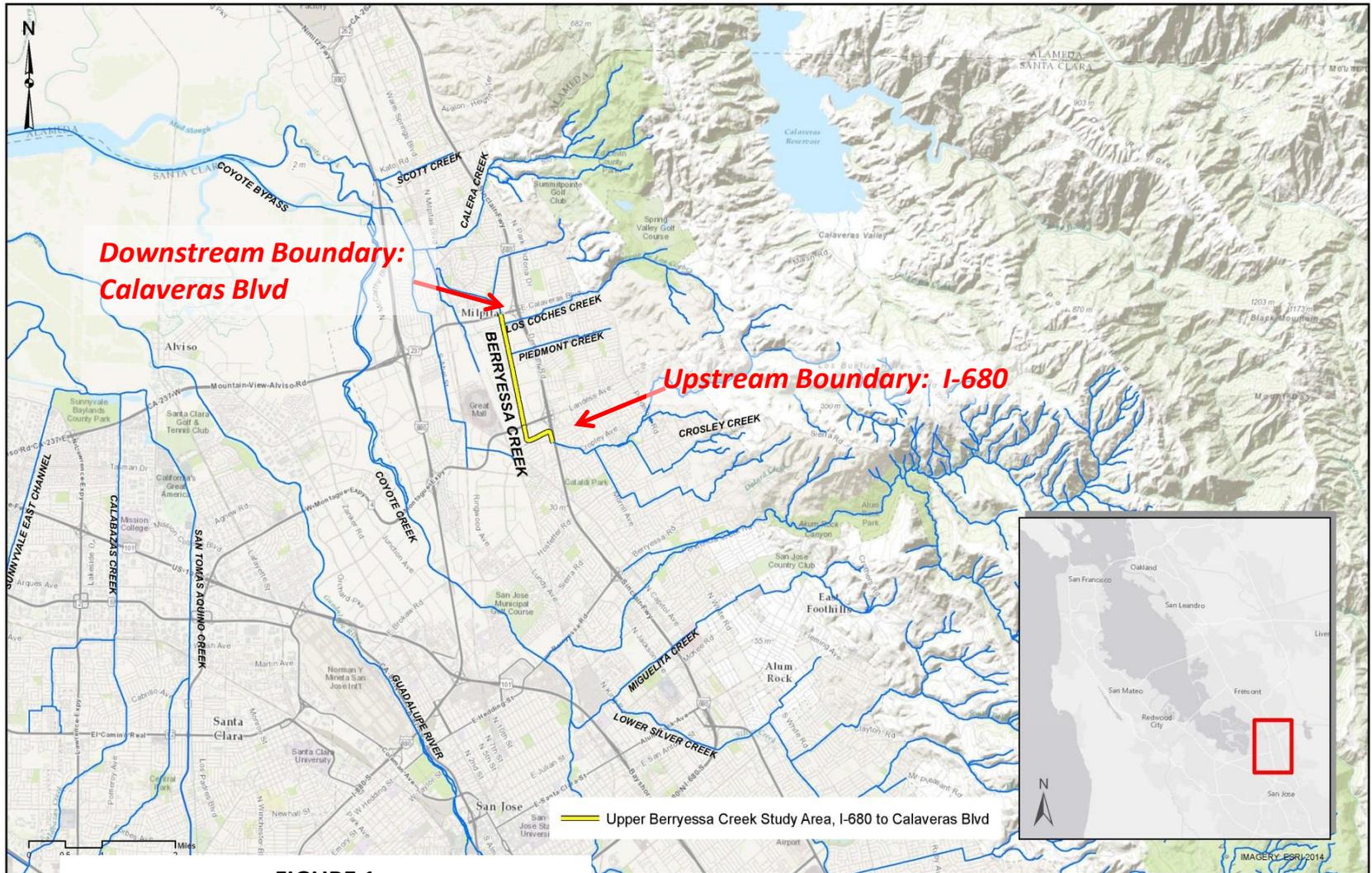
SWRCB-DWQ, Stateboard401@waterboards.ca.gov

Water Board:

Victor Aelion, Victor.Aelion@waterboards.ca.gov

## Attachment A

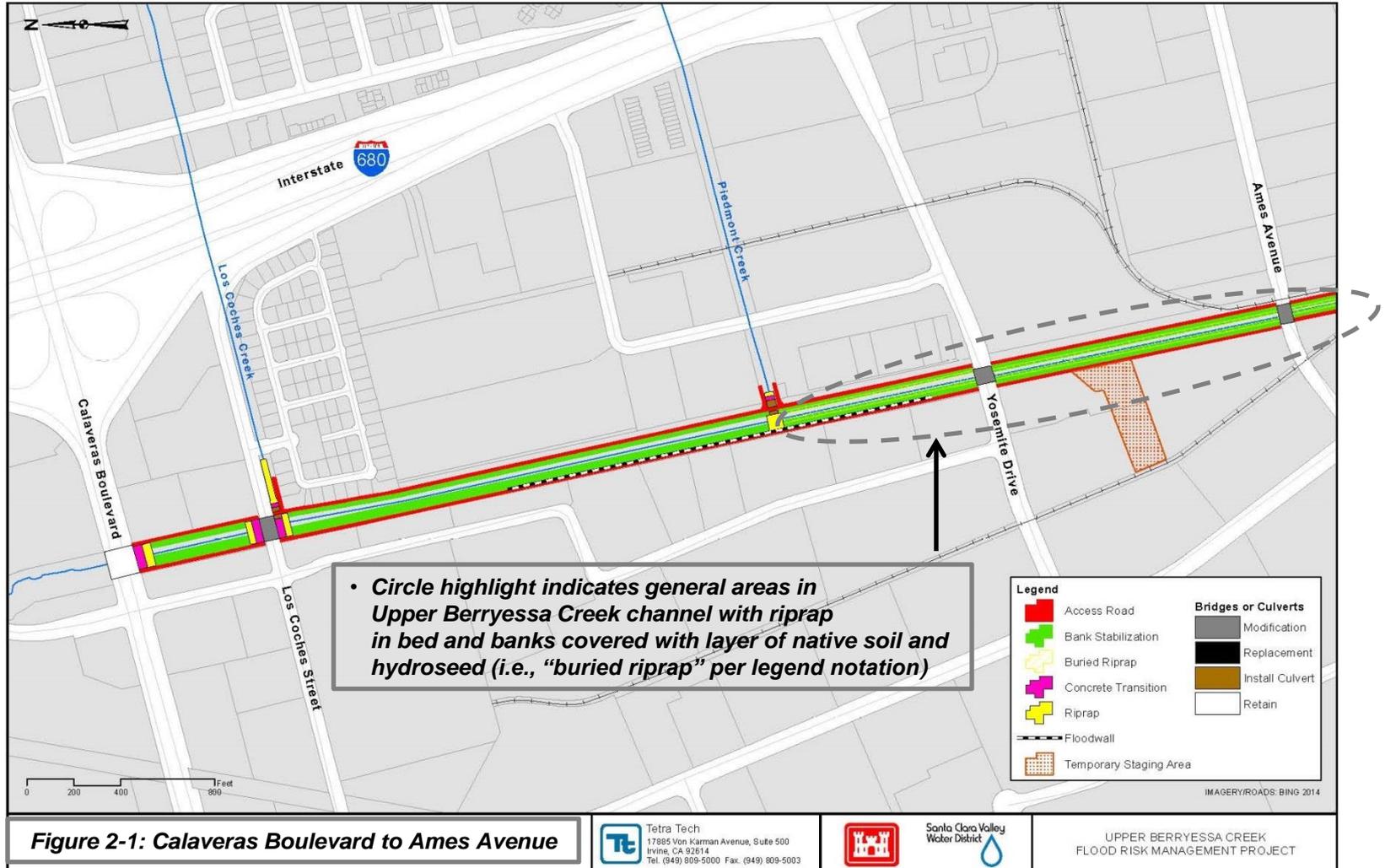
### Figure 1 – Project Location and Vicinity



**FIGURE 1**  
**Project Location & Vicinity**

Attachment A

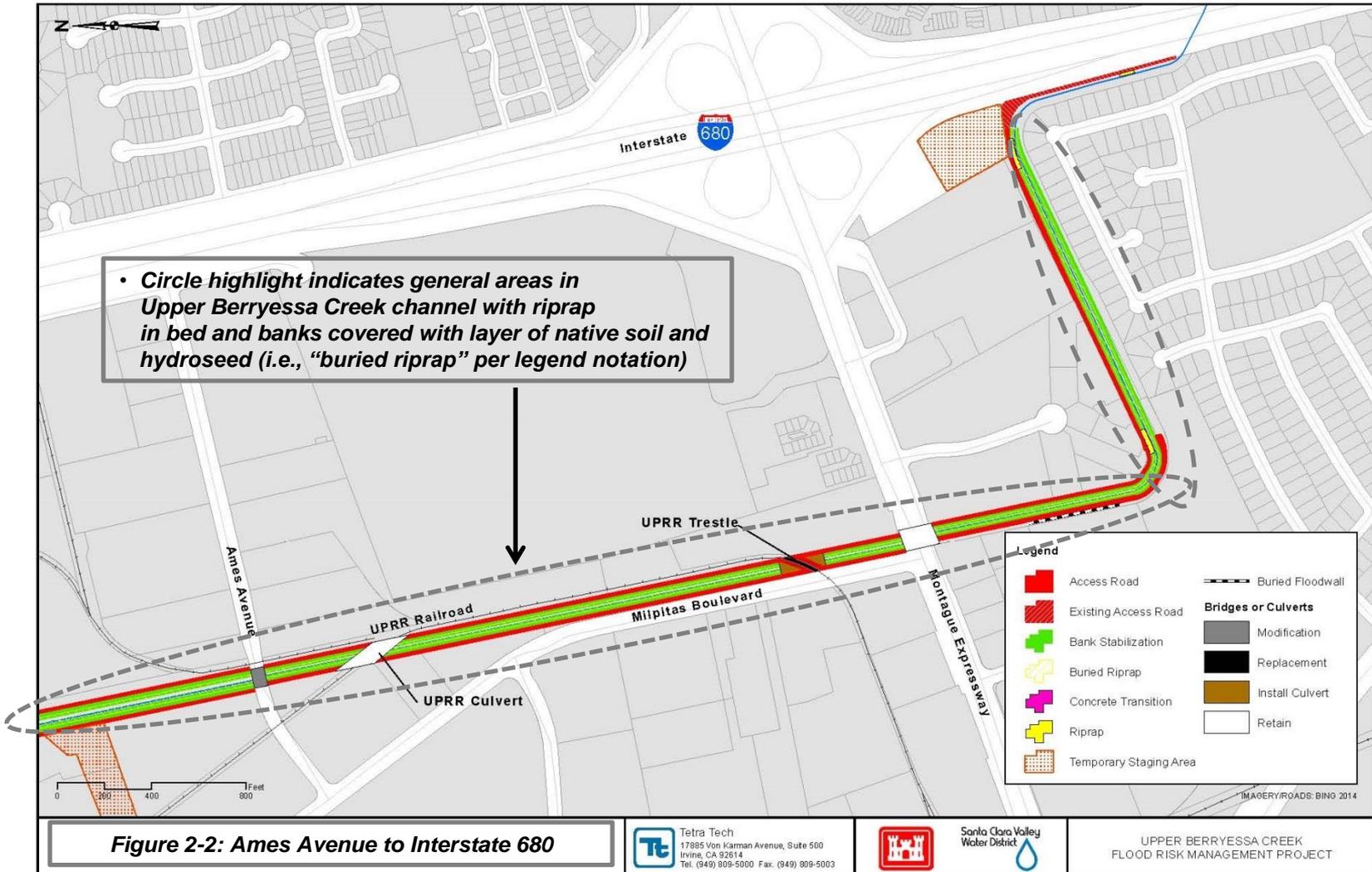
Figure 2-1 – Project Elements, Calaveras Boulevard to Ames Avenue



• Circle highlight indicates general areas in Upper Berryessa Creek channel with riprap in bed and banks covered with layer of native soil and hydroseed (i.e., “buried riprap” per legend notation)

Attachment A

Figure 2-2 – Project Elements, Ames Avenue to Interstate 680



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## San Francisco Bay Regional Water Quality Control Board

August 14, 2015  
File No. 43S0065 (mej)

Amanda Cruz  
San Francisco Planning Branch  
US Army Corps of Engineers  
1455 Market Street  
San Francisco, CA  
[Amanda.B.Cruz@usace.army.mil](mailto:Amanda.B.Cruz@usace.army.mil)

**SUBJECT:** Berryessa Creek Channel Modification Project, adjacent to the former JCI Jones Chemicals Facility, 985 Montague Expressway, Milpitas, Santa Clara County

Dear Ms. Cruz:

Thank you for meeting with Regional Water Board staff to discuss the upcoming creek channel modification project being conducted by the U.S. Army Corps. of Engineers and the Santa Clara Valley Water District. As we have discussed, the groundwater contaminant plume of volatile organic compounds (VOCs) originating from the former JCI Jones facility passes beneath passes beneath Berryessa Creek, immediately to the west of the former facility.

We understand that you will be working in the creek bed immediately adjacent to the former Jones site. As part of the construction, groundwater may be encountered. To manage groundwater that may be encountered during construction, a groundwater management plan will be developed that will include control and diversion of water, if necessary, using the most efficient means such as coffer dams, sump pumps, dewatering wells or other techniques. Any water that may be generated will be treated and discharged downstream or to a storm drain. The treatment standards for this discharge water will comply with those set forth in our NPDES General Permit (R2-2012-0012) for fuel and VOC impacted sites. However, you will not be obtaining an NPDES permit for this work. A copy of the groundwater management plan will be submitted to this agency for our review and comment.

Based on our understanding of the work outlined above and with the condition that the groundwater is treated to the standards described, we will not recommend enforcement for discharging without a permit.

The work in the creek bed will also include movement of soil/sediment as part of the construction activities. As discussed, there is no reason to believe shallow soil/sediment in the area adjacent to the former Jones facility is impacted. This being the case, no soil/sediment management plan is necessary for movement of the materials. In the case that impacted soil is encountered, it will be segregated and stockpiled for offsite disposal. We find this acceptable.

If you have any questions, please contact Mark Johnson of my staff at (510) 622-2493 [e-mail [mjohnson@waterboards.ca.gov](mailto:mjohnson@waterboards.ca.gov)].

Sincerely,

Bruce H. Wolfe  
Executive Officer

cc: Ira Artz, [Ira.Artz@tetrattech.com](mailto:Ira.Artz@tetrattech.com)  
Susan Glendening, [susan.glendening@waterboards.ca.gov](mailto:susan.glendening@waterboards.ca.gov)  
Tim Gaffney, JCI Jones Chemicals, Inc. [tgaffney@jcichem.com](mailto:tgaffney@jcichem.com)  
Chuck Pardini, Arcadis [Chuck.Pardini@arcadis-us.com](mailto:Chuck.Pardini@arcadis-us.com)