
San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy to follow

February 3, 2017
CIWQS Reg. Meas. 396251
CIWQS Place ID 754206

Doug Sherer
Reneson Hotel Group
121 7th Street
San Francisco, CA 94103
Email: dsherer@reneson.com

Subject: Incomplete Application for Water Quality Certification for the Corte Madera Inn Rebuild Project, Marin County

Dear Mr. Sherer:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff has reviewed the Clean Water Act Section 401 water quality certification application (Application) submitted for the Corte Madera Inn Rebuild Project (Project). This letter is being sent to inform you that the Application is incomplete and does not currently provide sufficient information to determine whether the Project complies with State water quality standards. This letter also outlines the information needed to complete the Application and for us to determine whether the Project complies with State water quality standards.

Information Item 1: Avoidance of Impacts

Before issuing water quality certification for the Project, we need to determine whether the Project is the least environmentally damaging practicable alternative (LEDPA) in accordance with EPA's Section 404(b)(1), "Guidelines for Specification of Disposal Sites for Dredge or Fill Material," dated December 24, 1980 (henceforth referred to as 404(b)(1) Guidelines). The Water Board adopted the 404(b)(1) Guidelines into the Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) for determining the circumstance under which filling of wetlands, streams or other waters of the State may be permitted. These guidelines prohibit all discharges of fill material into regulated waters of the United States, unless a discharge, as proposed, constitutes the LEDPA.

The Application includes an alternatives analysis to demonstrate that the Project is the LEDPA. Based on our review, the alternatives analysis is inadequate and will need to be revised and resubmitted before we can make the determination that impacts to

aquatic resources have been avoided and minimized to the maximum extent practicable. In general the basic/overall project purpose is too narrow and inappropriately constrains the alternatives. In addition, the cost estimate is outdated and appears to have been prepared with the intent of maximizing profits rather than to determine whether an alternative was practicable from a cost perspective. Lastly, the alternatives analysis also indicates that height restrictions are a logistical constraint, but does not provide an adequate basis for making this determination. To provide further clarification on the information needed to complete an adequate alternatives analysis, we have enclosed a memorandum with specific comments on the alternatives analysis.

Information Item 2: Avoidance of Impacts, Post-Construction Stormwater

The Application indicates that the Project will create and replace a substantial area of impervious surface. Impervious surfaces are known to impact waters of the State by collecting and concentrating pollutants that are discharged to waters of the State via stormwater. The Application, however, does not include a stormwater control plan with the information needed for us to evaluate whether measures will be implemented to adequately protect water quality from potential impacts associated with pollutants in post-construction stormwater. As a result, potential impacts and avoidance measures are not fully disclosed; thereby, making the Application incomplete.

To complete the Application, we need to be provided with a stormwater control plan prepared in accordance with the Stormwater Design Guidance for Marin County. We also highly recommend that the stormwater control plan for the Project follow the template provided in Appendix D of the Stormwater Design Guidance. If you need a copy of the Stormwater Design Guidance, it is available on-line and can be downloaded from http://www.marincounty.org/~media/files/departments/pw/mcstoppp/development/basm_aa-postconstruction-manual.pdf?la=en.

Information Item 3: Avoidance of Impact, Construction Stormwater

The Application indicates that the entire 5.5 acre site will be disturbed during construction. Given the size of the Project, the Project will need to be enrolled for coverage under the National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit) (Order No. 2009-0009-DWQ as amended by Order Nos. 2010-0014-DWQ and 2012-0006-DWQ). Please confirm that you intend to enroll for coverage under the Construction General Permit, so we can verify that construction related stormwater discharges will not violate a State water quality standard.

Information Item 4: Compensatory Mitigation

The Application indicates that 1.2 acres of freshwater seasonal wetland creation credit at the Burdell Mitigation Bank have been purchased to compensate for impacts to 0.65 acre of pond habitat. Please note that we will only accept compensatory mitigation if it can be demonstrated that Project impacts are unavoidable (see Supplemental

Information Item 1 [above](#)). Nonetheless, if it can be demonstrated that impacts are unavoidable, the mitigation proposal will be unacceptable because it is out-of-kind and the Water Board staff do not agree that the proposed mitigation is preferable to in-kind mitigation. We do not agree that the proposed mitigation is preferable because seasonal wetlands will not replace the lost functions and habitat provided by the pond. The pond currently supports submerged aquatic vegetation and provides habitat for black crowned night herons whereas seasonal wetlands do not. To complete the application, we need to be provided with a mitigation proposal that adequately compensates for pond acres and functions.

Information Item 5: California Environmental Quality Act (CEQA)

The Application indicates that the Town of Corte Madera is preparing an Environmental Impact Report (EIR) for the Project pursuant to CEQA. Although CEQA documentation is not required for a complete application, the Water Board must be provided with and have ample time to properly review a final copy of valid CEQA documentation before taking a certification action (23 CCR § 3856). Therefore, the certified EIR and associated Notice of Determination need to be submitted to us before we can issue the water quality certification for the Project.

Information Item 6: Application Fee

For the Application to be complete, the Water Board must receive the full application fee for the Project. The Water Board received an application fee deposit of \$720 on January 6, 2017. The full Application fee is \$6,634 and is based on the Fill and Excavation Fee Category. Therefore, to complete the Application, we need to be provided with \$5,914.

Closing

If you have any questions, please contact me at (510) 622-5685 or by e-mail at xavier.fernandez@waterboards.ca.gov.

Sincerely,

Xavier Fernandez
Senior Environmental Scientist

Enc.: Memorandum Comments on Alternatives Analysis, Corte Madera Inn, Marin County

Mr. Doug Sherer

- 4 -

Corte Madera Inn Project
CIWQS Reg. Meas. 396251
CIWQS Place ID 754206

Cc: U.S. EPA, Jennifer Siu, Siu.Jennifer@epa.gov
Corps, Roberta Morganstern, Roberta.A.Morganstern@usace.army.mil
Town of Corte Madera, Adam Wolff, awolff@tcmmail.org
Zentner Planning and Ecology, John Zentner, johnz@zentner.com

San Francisco Bay Regional Water Quality Control Board

Memorandum

To: Xavier Fernandez
Senior Environmental Scientist

February 3, 2017

From: Agnes Farres
Environmental Scientist

Subject: Comments on Alternatives Analysis, Corte Madera Inn, Marin County

We reviewed the Alternatives Analysis submitted to the San Francisco Bay Regional Water Quality Control Board (Water Board) for the proposed Corte Madera Inn (Project).

Based on our review, the Alternatives Analysis is inadequate because it does not evaluate all practicable alternatives in accordance with the EPA's 404(b)(1) Guidelines (Guidelines). As a result, the Alternatives Analysis will need to be revised and resubmitted before we can make the determination that impacts to aquatic resources have been avoided and minimized to the maximum extent practicable.

Alternatives Analysis

The basic/overall project purpose¹ is too narrow and inappropriately constrains the alternatives that were evaluated in both the off-site and on-site Alternatives Analysis (AA). The stated basic project purpose is "to develop a viable hotel facility capable of capitalizing on the demand for central Marin hotel space". The AA further states that a "viable hotel facility will incorporate elements, such as dual branding, and physical features that will result in an economically viable project." According to the Guidelines, the term "basic project purpose" does not include project amenities, a particular return on investment, "highest and best use of land", or certain desired size requirements. Further, the *Attleboro Mall* case² established that existence of available alternatives must be considered from the perspective of meeting the basic project purpose, not the perspective of the applicant, or of profitability. As such, the basic project purpose should be revised and is more appropriately defined as "to provide hotel facilities in central and southern Marin County".

¹ In accordance with the Two Forks Final Determination (1990), the terms basic project purpose and overall project purpose are interchangeable.

² *Bersani v. USEPA*, 674 F. Supp 405 (N.D.N.Y. 1987); *Bersani v. Robichaud*, 850 F.2d 36, 44 (2d. Cir. 1988), cert. denied, 489 U.S. 1089 (1989).

Both the off-site and on-site AA does not adequately demonstrate that there are no other alternatives capable of being done to achieve the basic project purpose. As discussed further below, the Alternatives Analysis should be revised to be consistent with the Guidelines to (1) define an appropriately generic basic project purpose (2) provide adequate justification for development and screening of off-site alternatives; and (3) provide adequate justification for development and screening of on-site alternatives, specifically regarding cost and logistic constraints. Based on our review, there are available alternatives that would avoid impacts to the pond, including the “no action” or “no project” alternative.

Off-site Alternatives

The off-site alternatives included only sites with the capacity for 200 hotel rooms, and “reasonably close to existing infrastructure and services”. As we previously stated, this analysis is inappropriately constrained by desired size requirements and amenities. The Guidelines state that any project that achieves the basic project purpose practicably should be considered, regardless of project scale, configuration, or proximity to amenities. In order to demonstrate that off-site alternatives are not practicable due to infrastructure costs or logistical constraints posed by distance from services, the AA should be revised to provide information supporting the assumption that infrastructure costs would be prohibitive or that annexation into a service area would pose a constraint.

Further, while the AA states that it will evaluate sites that “could reasonably be obtained and used to fulfill the project purpose”, all eight off-site alternatives were determined infeasible because they were not available at the time the analysis was performed. The off-site AA should be revised, consistent with the Guidelines, to include “all upland sites upon which the proposed project purpose could be achieved [that were] bought, sold, optioned, or leased within the planning period of the proposed project”. Similarly, the *Attleboro Mall* case established that an alternative is considered practicable if it was available at the time when the applicant was considering project locations, even if the alternative later becomes unavailable (i.e., the “market entry” rule)³.

On-site Alternatives

Three potentially practicable on-site alternatives (Alternatives 2, 3, and 4) were evaluated and compared with the proposed Project (Alternative 1). Alternatives 2 and 3 fully avoid impacts to the pond, while Alternative 4 will impact half of the pond. The AA determined that Alternatives 2 and 4 are not feasible because (1) it does not achieve the basic project purpose because it does not allow for a dual-branded facility; and (2) development costs exceed its value. It also determined that Alternatives 2 and 3 are not feasible because both exceed height limits and will not be approved by the Town.

³ *Bersani v. USEPA*, 674 F. Supp 405 (N.D.N.Y. 1987); *Bersani v. Robichaud*, 850 F.2d 36, 44 (2d. Cir. 1988), cert. denied, 489 U.S. 1089 (1989).

As discussed above, the stated basic project purpose is too narrow and is more appropriately defined as “to provide hotel facilities in central and southern Marin County”. All proposed alternatives meet this basic project purpose. In addition, other alternatives including, but not limited to, the “no project” or “no action” alternative, an alternative that retrofits the existing structure, alternatives with fewer rooms, and alternatives without dual branding would all meet the basic project purpose when defined as “to provide hotel facilities in central and southern Marin County”. Under the Guidelines, it is considered practicable to achieve the basic project purpose without the hotel expansion/redevelopment (i.e., the “no project” or “no action” alternative) since the existing hotel is already operating profitably.

The AA evaluated the cost feasibility of each alternative by comparing the present value of each alternative based on net operating income to development costs. Based on this comparison, the AA determined that Alternatives 2 and 4 are not feasible due to cost. However, the AA underestimates the present value of Alternatives 2 and 4 for the following reasons (1) the financial analysis is based on data from 2009-2012 during the recession; (2) average room rental rates, occupancy rates, and overall revenues have markedly increased from 2013 to the present; and (3) the AA’s projected revenue and net operating income for 2017-2026 is based on average daily rates that are more than 30 percent lower than rates at existing comparable facilities. Therefore, the AA has failed to demonstrate that the costs of Alternatives 2 and 4 are unreasonable. To make the determination that an alternative is infeasible due to cost, the AA needs to demonstrate that the costs of on-site alternatives are substantially greater than the costs normally associated with this type of project. The AA should be revised to examine costs from the perspective of what are reasonable costs for the proposed project, not whether the Applicant can afford the cost of the alternative.

Finally, the assertion that Alternatives 2 and 3 are not practicable because they will not be approved by the Town due to height restrictions is unsupported. In the Town of Corte Madera’s January 13, 2017, comment letter, the Town stated that the AA “mischaracterize the Town’s land use policies and assume decisions that have not yet been made”. The letter also states that two zoning mechanisms could potentially increase height above the maximum allowed “provided that relevant findings are made and approval is granted by the Town”. As such, the AA fails to demonstrate that height limits are a logistical constraint.