

**MITIGATED NEGATIVE DECLARATION  
(Revised)**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

**NAME OF PROJECT:** Bay Trail Reach 9/9B Public Project

**PROJECT FILE NUMBER:** PP09-182

**PROJECT DESCRIPTION:** Development of Reaches 9 and 9B of the Bay Trail as shown in the Bay Trail Master Plan, dated June 25, 2002 and the Lower Guadalupe River Trail Master Plan, dated June 22, 2005. The proposed project includes approximately 2,320 LF of paved pedestrian/bicycle trail along the Alviso Slough/Guadalupe River, a pedestrian bridge crossing the Alviso Slough/Guadalupe River westerly of the existing Union Pacific Railroad (UPRR) Bridge, an approximately 200 L.F. access ramp system, and three under-crossings (beneath new bridge, UPRR alignment and Gold Street)

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** Along Alviso Slough/Guadalupe River west of the Gold Street bridge in Alviso

**COUNCIL DISTRICT:** 4

**APPLICANT CONTACT INFORMATION:** City of San Jose, Department of Public Works, City Facilities Architectural Services Division (Attn: Jan Palajac, Senior Landscape Architect)

**FINDING:** The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of the draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

**MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL**

- I. **AESTHETICS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- II. **AGRICULTURE AND FOREST RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- III. **AIR QUALITY** – The project will not have a significant impact on air quality, therefore no mitigation is required. During project construction, BAAQMD's Basic Control Measures for construction sites shall be implemented (BAAQMD, 2010) to avoid and minimize short-term construction air quality impacts, including cumulative air quality impacts. The mitigation shall consist of the following:
  - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
  - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.

- C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
- E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible.
- F. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- G. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- H. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- I. A publicly visible sign will be posted with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

**IV. BIOLOGICAL RESOURCES.** The permanent loss of coastal freshwater marsh, brackish marsh, and open water habitats totaling 0.08 ha (0.20ac) may contribute to cumulatively significant impacts to potential special-status species' habitat. Implementation of the following compensatory mitigation would reduce project-related temporary and permanent impacts to coastal freshwater marsh, brackish marsh, and open water to a less than significant level.

**Coastal Freshwater Marsh, Coastal Brackish Marsh, Open Water**

- A. **Mitigation Measure BIO-1a:** Permanent habitat loss, including shading impacts associated with the proposed pedestrian bridge, will be mitigated at a minimum 1:1 ratio in the form of payment into a local mitigation bank or participation in an ongoing restoration project within the local watershed or as determined through USACE (Section 404), RWQCB (Section 401), CDFG (Section 1602), and BCDC permits. All temporary impacts to marshlands and open water will be restored on site to their preconstruction conditions. A qualified biologist, retained by the project proponent, will prepare a mitigation plan. The plan will be approved prior to the commencement of construction and implemented throughout the duration of project construction. A mitigation site at a local mitigation bank or ongoing restoration project shall be identified and will be designed to ensure success of the created or restored freshwater marsh habitat.
- B. **Mitigation Measure BIO-1b:** To minimize potential direct and indirect impacts to coastal marshlands and open water habitat, construction activities shall be limited to the smallest area possible to complete the proposed work and shall be conducted during the dry season or low flow periods. A qualified biologist will clearly delineate the limited construction areas and environmentally sensitive areas (ESAs) for incorporation into the project plans and specifications. Before construction begins, the contractor, in coordination with the project biologist, will install ESA fencing to clearly delineate protected areas and confine workers and equipment to the designated construction areas. The marsh edge and waterline shall be marked prior to construction to prevent construction impacts. The construction crew shall be alerted to the fact that a sensitive habitat exists adjacent to the construction zone.

**Salt Flats**

Potential indirect impacts to adjacent salt flat habitats may occur during trail construction, but would be avoided by implementing the following mitigation measures:

- A. **Mitigation Measure BIO-2:** Potential indirect impacts to salt flats during trail construction would be minimized with implementation of the following mitigation measures:
  - 1. **Mitigation Measure BIO-2a:** Construction activities shall be limited to the smallest area possible to complete the proposed work.
  - 2. **Mitigation Measure BIO-2b:** ESA fencing locations determined by a qualified biologist will clearly delineate protected areas and will confine workers and equipment to the

designated construction areas. A qualified biologist will clearly delineate the limited construction areas for incorporation into the project plans and specifications.

3. **Mitigation Measure BIO-2c:** A qualified biological monitor will be retained to ensure minimal impacts occur during construction activities. The biological monitor will also implement an onsite construction personnel education program at the beginning of construction activities to provide additional information on working in this environment, especially during the breeding season.

### **Coyote Brush Scrub**

Temporary loss of coyote brush scrub totaling 0.03 ha (0.07 ac) are expected to occur during construction of the pedestrian bridge. This temporary loss would be less than significant with implementation of the following mitigation measures. Temporary impacts to 0.03 ha (0.07 ac) of coyote brush scrub may contribute to a cumulatively significant impact.

- A. **Mitigation Measure BIO-2a:** As previously described, Mitigation Measure BIO-2a will be implemented, including limiting construction activities to the smallest area possible to complete the proposed work.
- B. **Mitigation Measure BIO-2b:** As previously described, Mitigation Measure BIO-2b will be implemented, including requiring ESA fencing locations determined by a qualified biologist to clearly delineate protected areas and to confine workers and equipment to the designated construction areas.
- C. **Mitigation Measure BIO-3:** Upon completion of construction activities, all temporarily impacted areas will be regraded to a preconstruction condition and will be seeded with a native, annual seed mix or landscaped with coyote brush seedlings native to the area and other low-lying shrubs and grasses. As stipulated in the Bay Trails Master Plan Initial Study/Mitigated Negative Declaration (City of San José, 2001), any revegetation along or adjacent to the marshlands must be limited to low-growing species such as native grasses and ground covers to limit perch sites for potential predators that prey on many of the special-status species known to occur within the marshlands within and adjacent to the project region

### **Annual Grasslands**

Temporary loss of annual grassland habitat totaling 0.75 ha (1.85 ac) is expected to occur during project implementation, which may contribute to a cumulatively significant impact. To avoid potential project-related impacts to annual grasslands, the following avoidance and minimization measures would be implemented:

- A. **Mitigation Measure BIO-2a:** The previously described Mitigation Measure BIO-2a will be implemented. Construction activities shall be limited to the smallest area possible to complete the proposed work.
- B. **Mitigation Measure BIO-2b:** The previously described Mitigation Measure BIO-2b will be implemented. ESA fencing locations determined by a qualified biologist will clearly delineate protected areas and will confine workers and equipment to the designated construction areas. A qualified biologist will clearly delineate the limited construction areas for incorporation into the project plans and specifications.
- C. **Mitigation Measure BIO-2c:** The previously described Mitigation Measure BIO-2c will be implemented. A qualified biological monitor will be retained to ensure minimal impacts occur during construction activities. The biological monitor will also implement an onsite construction personnel education program at the beginning of construction activities to provide additional information on working in this environment, especially during the breeding season.
- D. **Mitigation Measure BIO-4:** All temporary impacts to grassland habitat would be mitigated onsite through habitat restoration after project construction.

### **Impacts to Special-Status Plants**

The project has the potential to temporarily impact individuals and/or 0.75 ha (1.85 ac) of potential habitat for Congdon's tarplant during construction. This may contribute to a cumulatively significant

impact. With implementation of the following mitigation measures, the project would result in less than significant construction-related impacts to Congdon's tarplant individuals and/or potential habitat.

- A. **Mitigation Measure BIO-5:** To minimize and avoid potential impacts to individual Congdon's tarplants, the following mitigation measures will be incorporated into the project:
1. **Mitigation Measure BIO-5a:** Pre-construction surveys during the blooming season will be conducted in suitable habitat by a qualified biologist to ensure no individuals will be directly or indirectly affected by the proposed project.
  2. **Mitigation Measure BIO-5b:** If the preconstruction survey results conclude that Congdon's tarplant is present within the BSA and that impacts will result from construction activities, CDFG will be notified and the mitigation plan for the project will be amended accordingly to include habitat restoration for the species.
- B. **Mitigation Measure BIO-2b:** The previously described Mitigation Measure BIO-2b will be implemented for potential Congdon's tarplant habitat both within and adjacent to the construction area. If individual Congdon's tarplants are found prior to or during construction activities, ESA fencing locations determined by a qualified biologist will clearly delineate protected areas and will confine workers and equipment to the designated construction areas.

### **Invertebrates: California Brackish Water Snail**

Approximately 0.04 ha (0.11 ac) of California brackish water snail suitable habitat would be permanently impacted during construction of the trail alignment. In addition, approximately 0.04 ha (0.11 ac) of California brackish water snail suitable habitat will be permanently shaded upon project completion. This may contribute to cumulatively significant impacts to California brackish water snail suitable habitat. Implementation of the following compensatory mitigation measures would reduce project-related permanent impacts to coastal brackish water snail habitat to a less than significant level.

- A. **Mitigation Measure BIO-1a:** As previously described, Mitigation Measure BIO-1a (Coastal Marshland and Open Water) will be implemented. Permanent habitat loss, including shading impacts associated with the proposed pedestrian bridge, will be mitigated at a minimum 1:1 ratio in the form of payment into a local mitigation bank or participation in an ongoing restoration project within the local watershed or as determined through USACE (Section 404), RWQCB (Section 401), CDFG (Section 1602), and BCDC permits.

Approximately 0.17 ha (0.43 ac) of California brackish water snail suitable habitat would be temporarily impacted during construction of the trail alignment. This may contribute to cumulatively significant impacts to California brackish water snail suitable habitat. To avoid potential temporary impacts to the California brackish water snail, the following mitigation measures will be incorporated into the proposed project to reduce project-related temporary impacts to coastal brackish marsh to a less than significant level.

- A. **Mitigation Measures BIO-6a:** Preconstruction surveys for California brackish water snail suitable habitat will be conducted by a qualified biologist approximately 1 week prior to any construction activity in suitable habitat within the BSA to ensure no individuals would be directly or indirectly affected by the proposed project.
- B. **Mitigation Measures BIO-6b:** If individual California brackish water snails are found prior to or during construction activities, a buffer zone shall be clearly delineated with ESA fencing by a qualified biologist.
- C. **Mitigation Measures BIO-6c:** All activities shall be limited to the designated construction zone that clearly avoids California brackish water snail suitable habitat.
- D. **Mitigation Measures BIO-6d:** Any potential California brackish water snail suitable habitat adjacent to the construction area shall be temporarily fenced by a qualified biologist and signed to keep construction activities away from these areas to avoid unnecessary disturbance of existing vegetation and sensitive habitats.

- E. Mitigation Measures BIO-2c:** As previously described, Mitigation Measure BIO-2c will be implemented. A qualified biological monitor will be retained to ensure no impacts occur during construction activities. The biological monitor will also implement an onsite construction personnel education program at the beginning of construction activities to provide additional information on working in suitable habitat for the California brackish water snail, especially during the wet season.

**Fish: Central California Coast Steelhead, Central Valley Chinook Salmon, Green Sturgeon, and Longfin Smelt**

Approximately 0.01 ha (0.03 ac) of suitable fish habitat (open water) would be permanently lost as a result of the proposed project. In addition, approximately 0.02 ha (0.04 ac) of suitable fish habitat will be permanently shaded upon project completion. This may contribute to cumulatively significant impacts to suitable fish habitat. Implementation of the following compensatory mitigation measure would reduce project-related permanent impacts to suitable fish habitat to a less than significant level.

- A. Mitigation Measure BIO-1a:** As previously described, Mitigation Measure BIO-1a will be implemented. Permanent habitat loss, including shading impacts, to open water habitat associated with the proposed pedestrian bridge will be mitigated at a minimum 1:1 ratio in the form of payment into a local mitigation bank or participation in an ongoing restoration project within the local watershed or as determined through USACE (Section 404), RWQCB (Section 401), CDFG (Section 1602), and BCDC permits.

**Essential Fish Habitat designated for Central Valley Chinook salmon fall-run Evolutionarily Significant Unit**

Approximately 0.01 ha (0.03 ac) of Essential Fish Habitat designated for the Central Valley Chinook salmon fall-run Evolutionarily Significant Unit (ESU) would be permanently impacted and 0.02 ha (0.04 ac) will be permanently shaded upon project completion. This may contribute to cumulatively significant impacts. Permanent habitat loss, including shading impacts, to this Essential Fish Habitat associated with the proposed pedestrian bridge, will be mitigated at a minimum 1:1 ratio in the form of payment into a local mitigation bank or participation in an ongoing restoration project within the local watershed or as determined through USACE (Section 404), RWQCB (Section 401), CDFG (Section 1602), and BCDC permits. Implementation of this compensatory mitigation would reduce project-related permanent impacts to this Essential Fish Habitat to a less than significant level. Direct and indirect temporary impacts to special-status fish species associated with construction-related activities would be avoided or minimized to the extent feasible by incorporating the following measures into the proposed project:

- A. Mitigation Measure BIO-7a: Seasonal Avoidance.** Construction within the open water and freshwater/brackish marsh habitat will occur only between June 15 and October 15 to coincide with the typical dry season in central California. During this time, stream flows are expected to be at annual lows to mid flows, and movement of migratory fish through the action area would be minimal.
- B. Mitigation Measure BIO-7b: Avoidance of Entrapment during Construction.** Although it is anticipated that all construction would be done outside of the open-water channel, special-status fish species may be present within the ponded waters within the marshlands during migration. If individuals are found, they will be removed from the action area prior to the start of bridge construction. However, individuals could be trapped within the construction site; therefore, one or more qualified biologists will be onsite to monitor construction and relocate fish from the action area as needed.
- C. Mitigation Measure BIO-7c: Onsite Construction Personnel Education Program.** A construction personnel education program should occur before start of construction so that the NMFS-approved biologist can explain to construction personnel how best to avoid the accidental take of special-status fish species. The approved biologist shall conduct a training session that would be scheduled as a mandatory informational field meeting by the resident engineer for contractors and all construction personnel. The field meeting should include topics on species identification, life history, descriptions, habitat requirements during various life stages, and the species' protected

status. Emphasis will be placed on the importance of the habitat and life stage requirements within the context of project avoidance and minimization measures. Handouts, illustrations, photographs, and project mapping showing areas where minimization and avoidance measures are being implemented shall be included as part of this education program. The program shall increase the awareness of the contractors and construction workers about existing federal and state laws regarding endangered species, as well as increase compliance with conditions and requirements of the resource agencies.

- D. **Mitigation Measure BIO-7d: Avoidance of Accidental Spills and a Spill Response Plan.** All fueling and maintenance of vehicles and other equipment and staging areas shall occur at least 20 meters (65 feet) from any wetland habitat or water body. To minimize the potential for contamination of these habitats, a plan detailing the prompt and effective response to any accidental spills shall be prepared prior to the start of construction. All workers shall be informed, during the worker education program, of the importance of preventing spills and of the appropriate measures to take should a spill occur.
- E. **Mitigation Measure BIO-7e: Implementation of BMPs.** To control erosion during and after project implementation, the applicant shall implement BMPs, as identified by the forthcoming SWPPP. Water pumped out of the action area will be pumped to temporary holding tanks to allow sediment to settle out before the water is allowed to re-enter the open water.
- F. **Mitigation Measure BIO-7f: Construction Area Delineation.** Prior to any onsite ground disturbance, the upstream and downstream boundaries of the BSA will be clearly delineated with ESA fencing or solid barriers by the approved biologist to prevent workers or equipment from inadvertently straying from the BSA. If a diversion channel is needed, after it has been constructed and is operational, ESA fencing will be installed by the biologist between the action area of the old stream channel and the diversion channel to protect the diversion channel and floodplain from construction-related impacts.
- G. **Mitigation Measure BIO-7g:** Upon completion of construction activities, all temporarily impacted areas suitable for special-status fish species would be regraded to a preconstruction condition, in accordance with the mitigation plan for open-water habitat and marshlands.

#### **Impacts to Special-Status Fish Species from Pile Installation**

The proposed use of pile driving for the bridge construction may potentially have an adverse effect on federally listed and other special-status fish species in Alviso Slough, which may contribute to cumulatively significant impacts to special-status fish species. Implementation of the following mitigation measures would reduce pile driving-related impacts to federally listed and other special-status fish species in Alviso Slough to a less than significant level.

- A. **Mitigation Measure BIO-8:** Avoidance and minimization measures, such as restricting pile-driving to a June 15 to October 15 work window, noise monitoring, and use of vibratory pile-driving, will be implemented, in addition to other measures that may be necessary as a result of the Section 7 Consultation to reduce the potential impact to a less than significant level.

#### **Reptiles: Western Pond Turtle and Southwestern Pond Turtle**

Approximately 0.08 ha (0.21 ac) of pond turtle habitat would be permanently impacted and approximately 0.06 ha (0.15 ac) of suitable pond turtle habitat will be permanently shaded upon completion of the trail alignment, as previously described in the discussion of impacts to freshwater marsh, brackish marsh, and open water. This may contribute to cumulatively significant impacts to such habitat. Implementation of the following mitigation measures, along with incorporation of the avoidance measures identified previously, would reduce all potential impacts to these special-status reptile species to a less than significant level.

- A. **Mitigation Measures BIO-1:** Permanent impacts to western and southwestern pond turtle habitat would be reduced to a less than significant level by implementing both Mitigation Measures BIO-1 and BIO-2 together, as described above. These mitigation measures include mitigation at a minimum 1:1 ratio in the form of payment into a local mitigation bank or participation in an ongoing restoration project within the local watershed or as determined through USACE (Section

- 404), RWQCB (Section 401), CDFG (Section 1602), and BCDC permits. Implementation of this compensatory mitigation would reduce project-related permanent impacts to pond turtle habitats.
- B. To minimize and avoid potential indirect impacts to these special-status turtles, the following mitigation measures would also be implemented:
  - C. **Mitigation Measure BIO-2c:** As previously described, Mitigation Measure BIO-2c will be implemented. A qualified biological monitor will be retained to ensure that no impacts occur during construction activities. The biological monitor would also implement an onsite construction personnel education program at the beginning of construction activities to provide additional information on working in suitable habitat for the western and southwestern pond turtle, especially during the wet season.
  - D. **Mitigation Measure BIO-6a:** As previously described, Mitigation Measure BIO-6a will be implemented. Preconstruction surveys would be conducted by a qualified biologist approximately 1 week prior to any construction activity in suitable habitat within the BSA to ensure that no individuals would be directly or indirectly affected by the proposed project.

Direct temporary impacts to special-status reptile individuals are not expected to occur as no construction will occur within occupied habitat for these species. This may contribute to cumulatively significant impacts to suitable pond turtle habitat. Pre-construction surveys will identify occupied habitat and these areas will be avoided. However, if pond turtles are found onsite, the mitigation proposed below would minimize the potential for direct and indirect temporary impacts to these species. Implementation of these mitigation measures would reduce project-related temporary impacts to suitable pond turtle habitat to a less than significant level.

- A. **Mitigation Measure BIO-6b:** As previously described, Mitigation Measure BIO-6b will be implemented. If a western or southwestern pond turtle is found prior to or during construction activities, a buffer zone shall be clearly delineated with ESA fencing, or individuals will be removed by a qualified biologist and translocated to suitable habitat upstream or downstream of the BSA in accordance with CDFG protocols.
- B. **Mitigation Measure BIO-6c:** As previously described, Mitigation Measure BIO-6c will be implemented. All activities shall be limited to the designated construction zone.
- C. **Mitigation Measure BIO-6d:** As previously described, Mitigation Measure BIO-6d will be implemented. In addition, any potential habitat adjacent to the construction area shall be temporarily fenced and signed by a qualified biologist to keep construction activities away from these areas and avoid unnecessary disturbance of existing vegetation and sensitive habitats. All temporary impacts to potential pond turtle habitat would be mitigated onsite through habitat restoration to avoid permanent impacts continuing after project construction.

### **Western Burrowing Owl (BUOW)**

Approximately 0.14 ha (0.34 ac) of suitable BUOW nesting and foraging habitat will be permanently impacted upon completion of the trail alignment. This may contribute to cumulatively significant impacts to suitable BUOW nesting and foraging habitat. To avoid potential impacts to BUOW, the following mitigation measures will be incorporated into the proposed project.

- A. **Mitigation Measure BIO-2b:** The previously described Mitigation Measure BIO-2b will be implemented. ESA fencing locations determined by a qualified biologist will clearly delineate protected areas and will confine workers and equipment to the designated construction areas. A qualified biologist will clearly delineate the limited construction areas for incorporation into the project plans and specifications
- B. **Mitigation Measures BIO-6c:** All activities shall be limited to the designated construction zone that clearly avoids California brackish water snail suitable habitat.
- C. **Mitigation Measure BIO-9a:** Pre-construction surveys shall be conducted no more than 1 week prior to construction within suitable habitat along the trail alignment and within 150 meters (500 feet) of the trail alignment to ensure that no individuals that may have established territories will be directly or indirectly affected by the proposed project. All surveys shall be done by a qualified biologist in compliance with CDFG survey protocol for BUOW. During construction activities, a qualified biological monitor may be retained to ensure that no impacts occur to BUOW. All activities shall be limited to the designated construction zone. In addition, any potential habitat

adjacent to the construction area shall be temporarily fenced and signed by a qualified biologist to keep construction activities away from these areas and to avoid unnecessary disturbance of existing vegetation and sensitive habitat. The biological monitor will also implement an onsite construction personnel education program at the beginning of construction activities to provide additional information on working with this special-status species. If ground-disturbing activities are delayed for more than 30 days after the preconstruction survey, the site must be resurveyed, including a 150-meter (500-foot) buffer around the areas to be disturbed.

- D. **Mitigation Measure BIO-9b:** During the breeding season, if any active nesting BUOWs are detected within 150 meters (500 feet) of construction activities, a 75-meter (250-foot) construction-free buffer zone between project activities and the active burrow will be established by a qualified biologist until monitoring has determined that the burrow is no longer active. Depending on the distance between the nesting burrow and the action area, the onsite biological monitor will monitor the burrow and owl activity during construction to determine whether the nesting BUOWs are being disturbed by project activities. A qualified biologist will consult with CDFG if disturbance is occurring to determine what measures should be implemented to avoid disturbance. In addition, a qualified biologist will consult with CDFG before removing the 75-meter (250-foot) construction-free buffer zone to ensure the trail alignment and its associated construction activities avoid all occupied burrows.
- E. **Mitigation Measure BIO-9c:** During the non-breeding season, if occupied burrows are found within the construction area, owls must be removed to avoid take or indirect impacts. CDFG must be notified and, upon approval, a CDFG-approved biologist may use passive relocation techniques such as one-way doors to exclude owls from re-entering their burrows. Trapping techniques are not advised. One-way doors shall be placed in the burrows that need to be removed for 48 hours to ensure that the owls have left the burrows before excavation. Once the doors are removed, the burrow shall be excavated by hand carefully. In addition, sections of flexible plastic piping shall be inserted into the burrow during careful excavation to maintain an escape route if owls are still presently in the burrow during excavation. The fully excavated burrow shall be filled to prevent reoccupation. No owls shall be evicted from their burrows during the nesting season (February 1 to August 31). Lastly, no owls shall be evicted without prior notice to and approval from the CDFG.
- F. **Mitigation Measure BIO-9d:** Prior to the issuance of any grading or building permits, the developer shall submit a biologist's report to the City's Environmental Principal Planner to the satisfaction of the Director of Planning indicating that no owls were found on the site or that owls were present and that mitigation has been implemented in conformance with the requirements of the above regulatory agencies.
- G. **Mitigation Measure BIO-9e:** To offset the loss of foraging and burrow habitat on the project site, a minimum of 6.5 ac of foraging habitat (calculated on a 250 feet foraging radius around the burrow) per pair or unpaired resident bird, will be acquired and permanently protected. The protected lands should be adjacent to occupied burrowing owl habitat and at a location acceptable to CDFG. Protection of additional habitat acreage per pair or unpaired resident bird may be applicable in some instances.
- H. **Mitigation Measure BIO-9f:** When destruction of occupied burrows is unavoidable, existing unsuitable burrows should be enhanced (enlarged or cleared of debris) or new burrows created (by installing artificial burrows) at a ratio of 2:1 on the protected lands site.
- I. **Mitigation Measure BIO-9g:** If owls must be moved away from the disturbance area, passive relocation methods (such as one-way doors as described above) should be used rather than trapping. At least one or more weeks will be necessary to accomplish this and allow the owls to acclimate to alternate burrows.
- J. **Mitigation Measure BIO-9h:** The project sponsor should provide funding for long-term management and monitoring of the protected lands. The monitoring plan should include success criteria, remedial measures, and an annual report to CDFG.
- K. **Mitigation Measure BIO-2b:** As previously described, Mitigation Measure BIO-2b will be implemented. ESA fencing locations determined by a qualified biologist will clearly delineate protected areas and will confine workers and equipment to the designated construction areas.

- L. **Mitigation Measure BIO-6c:** As previously described, Mitigation Measure BIO-6c will be implemented. All activities will be limited to the designated construction zone that clearly avoids sensitive species and habitat.

Temporary impacts to suitable BUOW nesting and foraging habitat totaling 0.75 ha (1.85 ac) are expected to occur during project implementation. This may contribute to cumulatively significant impacts to suitable BUOW nesting and foraging habitat. Temporary impacts to BUOW nesting and foraging habitat would be mitigated to a less than significant level with implementation of **Mitigation Measures BIO-2a, BIO-2b, BIO-2c, and BIO-4**, identified above for impacts to annual grassland and BUOW. All temporary impacts to annual grassland habitat potentially suitable for future BUOW nesting and foraging would be mitigated onsite through habitat restoration after project construction. All landscaping in these areas will be limited to low-growing species such as native grasses (City of San José, 2001). With the avoidance and minimization measures previously proposed, no direct impacts are expected to occur to individuals of this special-status species within the project vicinity; thus, no other compensatory mitigation is necessary.

- A. **Mitigation Measure BIO-4:** All temporary impacts to grassland habitat would be mitigated onsite through habitat restoration after project construction.
- B. **Mitigation Measure BIO-10:** Temporary and permanent impacts to individual BUOWs are not expected to occur during project implementation with incorporation of the mitigation measures identified above. However, if impacts to or take of individuals results from construction activities, work will be stopped immediately and the resource agencies will be notified immediately. Upon approval of the CDFG, construction activities will resume, and the mitigation plan for the project will be amended accordingly to include compensatory mitigation for the impact on or take of the species.

**Other Federal- and State-listed Bird Species: Western snowy plover, American peregrine falcon, bald eagle, California black rail, California brown pelican, California clapper rail, bank swallow, California least tern**

Indirect impacts to federal- or state-listed bird species due to construction noise may contribute to cumulatively significant impacts to federal- or state-listed bird species. To ensure that all potential direct and indirect impacts are avoided, the following mitigation measures would be incorporated into the proposed project.

- A. **Mitigation Measure BIO-11a: Construction Area Delineation.** The proposed construction zone necessary for the completion of the project will be designated and areas not required for construction will be designated as ESAs and will be marked with orange temporary fencing by a USFWS-approved biologist. Construction personnel, equipment, or debris will not be allowed within the ESAs.
- B. **Mitigation Measure BIO-11b: Biological Monitoring and Translocation.** During construction activities, a USFWS and/or CDFG-approved onsite biological monitor will be retained to conduct presence/absence surveys during the non-breeding season (October through February) and nesting surveys during the breeding season (March 1 through September 30) before construction begins and during the initial ground-disturbing activities to ensure that no impacts occur within the construction zone. To minimize and avoid potential impacts, pre-construction surveys shall be conducted no more than 7 days prior to construction within suitable habitat along the trail alignment and within 150 meters (500 feet) of the trail alignment to ensure that no individuals that may have established territories will be directly or indirectly affected by the proposed project.
- C. All surveys shall be performed by a qualified biologist in compliance with USFWS and/or CDFG requirements. During construction activities, a qualified biological monitor will be retained to ensure that no impacts occur. All activities shall be limited to the designated construction zone. In addition, any potential habitat adjacent to the construction area shall be temporarily fenced and signed to keep construction activities away from these areas and to avoid unnecessary disturbance of existing vegetation and sensitive habitat. If ground-disturbing activities are delayed for more than 7 days after the pre construction survey, the site must be resurveyed, including a 150-meter (500-foot) buffer around the areas to be disturbed.

- D. During the breeding season, if any active nesting individuals are detected within 150 meters (500 feet) of construction activities, a construction-free buffer zone between project activities and the active nest will be established in consultation with USFWS until the monitoring biologist has determined that the nest is no longer active. Depending on the distance between the nest and the action area, the onsite biological monitor will observe the nest and bird activity during construction to determine whether it is being disturbed by project activities. A qualified biologist will consult with USFWS/CDFG if disturbance is occurring to determine what measures should be implemented to avoid disturbance. In addition, a qualified biologist will consult with USFWS/CDFG before removing the construction-free buffer zone to ensure the trail alignment and its associated construction activities avoid any potential impacts.
- E. **Mitigation Measure BIO-11c: Onsite Construction Personnel Education Program.** A qualified biologist will conduct onsite informational meetings with all construction personnel. The purpose of these meetings will be to familiarize construction personnel with the sensitive species that could potentially enter the action area and the procedures they are to follow if this listed species is encountered.
- F. **Mitigation Measure BIO-8:** As previously described, avoidance and minimization measures, such as restricting pile-driving to a June 15 to October 15 work window, noise monitoring, and use of vibratory pile-driving, will be implemented, in addition to other measures that may be necessary as a result of the Section 7 Consultation to reduce the potential impacts to listed birds to a less than significant level.
- G. **Mitigation Measures BIO-12: Potential Seasonal Trail Closures.** In addition, this mitigation measure would be employed if federal- or state-listed species, such as the western snowy plover, move to nest within 100 feet of the trail. The trail would be closed during the breeding season or, if approved by the USFWS, the trail would be fenced with simple rail or cable fencing to discourage nesting. In addition, dogs would be required to be on leash (signs placed), and educational signs shall be installed.

Approximately 0.23 ha (0.58 ac) of suitable nesting and foraging habitat for federal- and state-listed birds would be permanently impacted and 0.06 ha (0.15 ac) will be permanently shaded upon completion of the trail alignment. This may contribute to cumulatively significant impacts to federal- or state-listed bird species. Implementation of the following mitigation measures would reduce all potential impacts to special-status avian species to a less than significant level.

- A. **Mitigation Measures BIO-1, BIO-3, and BIO-4:** Permanent impacts to nesting and foraging habitat would be reduced to a less than significant level by implementing Mitigation Measures BIO-1, BIO-3, and BIO-4 together, as described above. These mitigation measures include wetlands and upland mitigation at a minimum 1:1 ratio in the form of payment into a local mitigation bank or participation in an ongoing restoration project within the local watershed or as determined through USACE (Section 404), RWQCB (Section 401), CDFG (Section 1602), and BCDC permits. Implementation of this compensatory mitigation would reduce project-related permanent impacts to nesting and foraging habitat.

Temporary impacts to suitable nesting and foraging habitat (including freshwater marsh, brackish marsh, coyote brush scrub, and annual grassland) for federal- and state-listed birds totaling 0.95 ha (2.35 ac) are expected to occur during project implementation. This may contribute to cumulatively significant impacts to suitable nesting and foraging habitat for federal- and state-listed birds. Implementation of the following mitigation measures will reduce the potential impact to a less than significant level.

- A. **Mitigation Measure BIO-1, BIO-3, and BIO-4:** By employing Mitigation Measures BIO-1, BIO-3, and BIO-4 collectively, all permanent and temporary impacts to potential federal- and state-listed bird nesting and foraging habitat would be mitigated onsite through habitat restoration after project construction. With development and implementation of the approved mitigation plans previously referenced, potential impacts to the federal- and state-listed birds contained within the sensitive habitats discussed herein would be mitigated to a less than significant level. No further mitigation would be required.

- B. **Mitigation Measure BIO-13:** If impacts to or take of individual listed birds results from construction activities, work will be stopped immediately and USFWS/CDFG will be notified immediately. Upon approval from USFWS/CDFG, construction activities will commence, and the mitigation plan for the project will be amended accordingly to include compensatory mitigation for impacts on or take of the species.

### **Migratory Birds**

Take of nesting migratory birds is not expected to occur during project implementation as pre-construction surveys will be conducted and all nesting birds will be avoided. The potential for take of nesting migratory birds, including tri-colored blackbird, short-eared owl, northern harrier, salt marsh common yellowthroat, white-faced ibis, black skimmer, loggerhead shrike, and California gull, may contribute to cumulatively significant impacts to migratory birds. With the implementation of the above mitigation measures, take of nesting migratory birds is not expected to occur during project implementation.

- A. **Mitigation Measure BIO-14:** To ensure that all potential direct and indirect impacts to birds and nests are avoided or minimized, the following mitigation measures would be incorporated into the proposed project:
- B. **Mitigation Measure BIO-14a:** Surveys by a qualified biologist shall be conducted 1 week prior to any construction activity within 500 feet of suitable habitat within the BSA to ensure that no individuals or nests will be directly or indirectly affected by the proposed project.
- C. **Mitigation Measure BIO-14b:** A qualified biological monitor will be retained to ensure that no impacts to birds or nests occur during construction activities including noise monitoring during pile-driving activities.
- D. **Mitigation Measure BIO-14c:** All activities shall be limited to the designated construction zone. In addition, any habitat located within approximately 250 feet of the construction area shall be temporarily fenced and signed by a qualified biologist to keep construction activities away from these areas and avoid unnecessary disturbance of existing vegetation and sensitive habitats.
- E. **Mitigation Measure BIO-14d:** If impacts to nesting individuals results from construction activities, work will be immediately stopped and the biological monitor and CDFG will be notified immediately. Upon approval from CDFG, construction activities will commence, and the mitigation plan for the project will be amended accordingly to include compensatory mitigation for impacts on or take of the species.
- F. **Mitigation Measure BIO-11b:** As previously described, the biological monitor will also implement an onsite construction personnel education program at the beginning of construction activities to provide additional information on working with special-status species.

### **Mammals: Salt Marsh Harvest Mouse**

While temporary indirect impact to the salt marsh harvest mouse due to temporary construction noise is expected to be less than significant, the following measures would further minimize noise impacts from construction activities.

- A. **Mitigation Measures BIO-8 and BIO-11:** As previously described, these mitigation measures, including the restriction of pile-driving to a June 15 to October 15 work window, noise monitoring, and use of vibratory pile-driving, biological monitoring, pre-construction surveys, and crew educational programs, will be implemented, in addition to other measures that may be necessary as a result of the Section 7 Consultation to reduce the potential impacts to salt marsh harvest mouse to a less than significant level.

### **Impacts to Wetlands and Waters**

Approximately 0.08 ha (0.20 ac) of jurisdictional wetlands and waters (including freshwater marsh, brackish marsh, and open water) would be permanently impacted upon completion of the trail alignment. Additionally, approximately 0.06 ha (0.15 ac) of permanent impacts due to shading from the proposed pedestrian bridge are expected to occur after project completion. This may contribute to cumulatively significant impacts to jurisdictional wetlands and waters. Implementation of the following

mitigation measure would reduce project-related permanent impacts to jurisdictional wetlands and waters to a less than significant level.

- A. **Mitigation Measure BIO-1:** As previously described, permanent impacts to wetlands and waters shall be mitigated at a 1:1 ratio in form of payment into a local mitigation bank or participation in an ongoing restoration project within the local watershed, or as dictated by resource agency permits. Shade impacts associated with the pedestrian bridge shall also be mitigated at a 1:1 ratio. Implementation of an appropriate mitigation plan for wetlands and waters shall begin prior to or during project construction. A mitigation site at a local mitigation bank or ongoing restoration project shall be chosen and planned to ensure success of the created or restored wetlands and waters habitat. Coordination with USACE, CDFG, RWQCB, and BCDC will be required.

Temporary impacts to jurisdictional wetlands and waters (including freshwater marsh, brackish marsh, and open water) totaling 0.173 ha (0.427 ac) are expected to occur during project implementation. This may contribute to cumulatively significant impacts to jurisdictional wetlands and waters. Implementation of the following mitigation measures would reduce project-related temporary impacts to jurisdictional wetlands and waters to a less than significant level.

- A. **Mitigation Measure BIO-1a:** Permanent habitat loss, including shading impacts associated with the proposed pedestrian bridge, will be mitigated at a minimum 1:1 ratio in the form of payment into a local mitigation bank or participation in an ongoing restoration project within the local watershed or as determined through USACE (Section 404), RWQCB (Section 401), CDFG (Section 1602), and BCDC permits. All temporary impacts to marshlands and open water will be restored on site to their preconstruction conditions. A qualified biologist, retained by the project proponent, will prepare a mitigation plan. The plan will be approved prior to the commencement of construction and implemented throughout the duration of project construction. A mitigation site at a local mitigation bank or ongoing restoration project shall be identified and will be designed to ensure success of the created or restored freshwater marsh habitat.
- B. **Mitigation Measure BIO-1b:** To minimize potential direct and indirect impacts to coastal marshlands and open water habitat, construction activities shall be limited to the smallest area possible to complete the proposed work and shall be conducted during the dry season or low flow periods. A qualified biologist will clearly delineate the limited construction areas and environmentally sensitive areas (ESAs) for incorporation into the project plans and specifications. Before construction begins, the contractor, in coordination with the project biologist, will install ESA fencing to clearly delineate protected areas and confine workers and equipment to the designated construction areas. The marsh edge and waterline shall be marked prior to construction to prevent construction impacts. The construction crew shall be alerted to the fact that a sensitive habitat exists adjacent to the construction zone.
- C. **Mitigation Measure BIO-15:** In accordance with the “no net loss of wetlands” rule set forth by Section 404 of the Clean Water Act, areas subject to temporary impacts to wetlands and waters shall be restored to the pre-construction condition.

The potential indirect impacts to jurisdictional wetlands and waters, including limited obstruction of water flow, shading, and introduction of raptor perches, would have a less than significant impact; however, to further minimize potential project-related impacts to wetlands and waters of the U.S., the following mitigation measures will be implemented as part of the project:

- A. **Mitigation Measure BIO-1b:** As previously described, construction activities would be limited to the smallest area possible to complete the proposed work and will be conducted during the dry season or low-flow periods where the trail crosses or is located within the banks of the Guadalupe River/Alviso Slough. A qualified biologist will clearly delineate the limited construction areas and ESAs for incorporation into the project plans and specifications. The wetland edge would be marked by the biologist prior to construction to prevent construction impacts to the wetland. The construction crew would be alerted to the fact that a sensitive habitat exists adjacent to the construction zone.

- B. **Mitigation Measure BIO-7e:** As previously described, temporary dewatering activities near jurisdictional wetlands and waters may be necessary during bridge construction and would follow standard BMPs, including those that will be described in the SWPPP including erosion control, sediment control, and spill prevention, to minimize any potential of impacting jurisdictional wetlands and waters onsite or downstream of the BSA.

### **Impacts to Migration Corridors**

Approximately 0.08 ha (0.20 ac) of migration corridors (including freshwater marsh, brackish marsh, and open water) will be permanently impacted upon completion of the trail alignment. This may contribute to cumulatively significant impacts to wildlife migration. Implementation of the following mitigation measures would reduce project-related permanent impacts to migration corridors to a less than significant level.

- A. **Mitigation Measures BIO-1, BIO-2, BIO-3, BIO-4, and BIO-7:** Collectively Mitigation Measures BIO-1 through BIO-4 and BIO-7, described above, would mitigate for all permanent impacts to the wildlife corridors contained within the sensitive habitats discussed herein. Application of these mitigation measures would reduce this impact to a less than significant level. No further mitigation would be required.

Temporary impacts to migration corridors (including brackish marsh and open water habitats) totaling 0.17 ha (0.42 ac) are expected to occur during project implementation. This may contribute to cumulatively significant impacts to wildlife migration. Implementation of the following mitigation measures would reduce project-related temporary impacts to migration corridors to a less than significant level.

- A. **Mitigation Measures BIO-1, BIO-2, BIO-3, BIO-4, BIO-7, and BIO-8:** Collectively Mitigation Measures BIO-1 through BIO-4, BIO-7, and BIO-8 described above, would mitigate for all temporary impacts to the wildlife corridors contained within the sensitive habitats discussed herein. Application of these mitigation measures would reduce this impact to a less than significant level. No further mitigation would be required.

- V. **CULTURAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required. However, there is a possibility that subsurface cultural resources could be accidentally discovered during construction activities. Proposed construction could alter the archaeological integrity and data potentials of as yet-unknown subsurface prehistoric or historic archaeological deposits. This impact is less than significant, however to further avoid impact in the event that any archaeological, cultural, or historical are found, the following mitigation measures would be implemented. The following mitigation measures would reduce the potential for impact to archaeological resources, paleontological resources, and human remains to a less than significant level
- A. **Mitigation Measure CS-1:** Retain the services of a qualified archaeologist who will be available to the City of San José for on-call consultation in the event of an inadvertent discovery of archaeological, cultural and historical resources.
- B. **Mitigation Measure CS-2:** If evidence of any archaeological, cultural, or historical deposits are found, the qualified archaeologist will perform hand excavation or mechanical excavation to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. A copy of the report shall be given to the City of San José Environmental Principal Planner and, if appropriate, the State Lands Commission. These reports shall identify any program mitigation that the City of San José, Division of Parks and Recreation Facilities (project sponsor) shall complete to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources).
- All prehistoric and historic archaeological resources deemed significant under CEQA and/or by the State Lands Commission shall be cleaned, identified, catalogued and interpreted by the archaeologist. Additional archival research to assist in the identification of past residents

may be required as part of the interpretive process. Results of these analyses and a discussion of the monitoring, evaluation, and data recovery program shall be presented in a professional report of findings to be submitted to the Principal Planner.

- In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
  - In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Medical Examiner shall be notified and shall make a determination as to whether the remains are Native American. If the Medical Examiner determines that the remains are not subject to his authority, he/she shall notify the Native American Heritage Commission who shall attempt to identify a “Most Likely Descendant” of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
  - A final report shall be submitted to the Principal Planner and, if appropriate, the State Lands Commission, that contains a description of the mitigation program and its results including a description of the monitoring and testing programs, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning and, if appropriate, the State Lands Commission.
- All significant artifacts and other samples (non-burial related) shall be curated in an appropriate curation facility.
- Throughout any period of subsurface construction, the archaeologist shall have authorization to require a security system such as a nighttime/weekend guard, fence, or both should any archaeological resources be threatened by unauthorized looting by unauthorized persons. Under no circumstances should construction workers or others be authorized to loot or collect artifacts from the property.

C. **Mitigation Measure CS-3:** Restrict all construction operations to the designated alignments, improvement zones, and proposed staging areas. Any culturally sensitive areas would be fenced off as specified by the archaeologist.

**VI. GEOLOGY AND SOILS.** Because the project area is prone to liquefaction and strong ground-shaking and the integrity of the existing levees and bridge foundations in the area may not withstand earthquake effects, the potential impact to local soil conditions if the levee system or bridge were to fail in such an earthquake event would be significant. By implementing the following mitigation measures, the potential impact to the trail, bridge, and ramp structures in the event of an earthquake would be less than significant.

A. **Mitigation Measure GS-1:** The Bay Trail Master Plan (Amphion Environmental, 2002) states that proposed structural features such as the pedestrian bridge and the ADA ramps should be designed according to the recommendations of a detailed geotechnical investigation. In general, seismic impacts would be avoided or minimized with incorporation of the recommendations contained in the geotechnical investigation prepared for this project into the project design (CH2M HILL, 2008). These recommendations include earthquake ground motions for the design of the proposed walls, in accordance with the USACE guidelines (ER 1110-2-1906, 1995). The guidelines call for a two-level design earthquake: Operating Basis Earthquake (OBE) and Maximum Design Earthquake (MDE). The bridge and ramp structures would be designed to withstand appropriate seismic forces, ground movements, and soil/foundation considerations. Design and construction of the proposed trail and appurtenant structures in accordance with current seismic bridge design standards for the State of California would prevent structural collapse during seismic events. This would limit potential

seismic-related impacts to a less than significant level. No mitigation would be necessary to reduce this impact to a lower level.

Furthermore, damage to trail features from seismic ground shaking would be repaired by the City of San José. Damage to any levees that the trail may travel upon will be repaired by the levee owner. Any hazardous or unsafe conditions will require closure of that segment of trail until the conditions are repaired.

- B. **Mitigation Measure GS-2:** To avoid impacts of liquefiable soils at the bridge's foundation locations, ground improvements would be employed to replace susceptible soils with a stronger base foundation. Compaction grouting was determined in the geotechnical investigation completed for this project (Appendix F; CH2M HILL, 2008) to be the most suitable method based on the site conditions and characteristics of the soils encountered at the proposed bridge site. Compaction grouting involves injecting mortar-like grout columns into the soils to be treated that will displace the surrounding soils. Depending on the spacing of the grout columns, various degrees of densification can be achieved.

**VII. GREENHOUSE GAS EMISSIONS**– The project will not have a significant impact on this resource, therefore no mitigation is required.

**VIII. HAZARDS AND HAZARDOUS MATERIALS.** Due to the proximity of the project site to upstream industrial activities and historic mercury mining activities, there is a short-term potential to expose trail users to hazardous materials during earth moving activities associated with construction. By implementing the following mitigation measure, this impact would be reduced to a less than significant level.

- A. **Mitigation Measure HAZ-1:** Construction planning will include a contingency for dealing with contaminated soils or groundwater should they be encountered, worker health and safety precautions, procedures for handling and disposal of wastes, reporting requirements, and emergency procedures. In addition, BMPs will be employed to limit worker exposure to soils as well as potential offsite soil movement from fugitive dust or water erosion. BMPs could include, but not be limited to, the use of silt fences or fiber rolls to prevent migration of sediment offsite, application of water to disturbed areas during working or windy conditions to prevent dust and erosion, and use of drip pans for mobile fueling. Nonstructural BMPs may include good housekeeping practices, routine inspection, and preventative maintenance. Structural BMPs may include onsite surface containment, control berms, and other structural control techniques to minimize polluted stormwater runoff. Compliance with NPDES permitting requirements and associated SWPPP environmental protection measures would further enforce stormwater quality and runoff requirements. To avoid release of contaminants to the channel area, including mercury in the soils, construction within the channel would occur in the dry season (June 15<sup>th</sup> to October 15<sup>th</sup>) and coffer dams would be installed at bridge pier locations to dewater and excavate the immediate work area.

A small volume of soil would be excavated for bridge installation, primarily in the area where bridge piles and abutments would be installed. As mentioned, these excavation areas would be outside of the active channel. Because it is assumed that these soils contain mercury or other contaminants due to the historic uses of the upland areas, no excavated soils would be reused on-site. All excavated on-site soils would be removed from the site and disposed of at an appropriate landfill. In accordance with ASTM standards, the construction contractor would profile the soils and if stockpiling is necessary prior to disposal, appropriate containment would be employed. The volume of soils removed would not be substantial and would not affect the channel hydrology

Measures that will be implemented to reduce or eliminate fugitive dust emissions include use of track-out control devices, wheel wash systems, dust suppressants on open soils, sprinkling, irrigation, or mulching to prevent generation of airborne dust, and revegetation and mulching as soon as work is complete to minimize the exposure of bare soil. Proper storage of construction materials, including covering materials during the rainy season, will be included in this BMP mitigation.

**IX. HYDROLOGY AND WATER QUALITY.** The project could generate surface water quality impacts during construction through erosion, siltation and other pollution of surface water runoff into adjacent Alviso Slough and Guadalupe River.

**A. Mitigation Measure HYDRO-1:** The RWQCB administers protection of the water quality by regulating the construction-related discharge of stormwater runoff and the discharge of materials into “waters of the State.” Alviso Slough is considered “waters of the State” and because the proposed trail alignment and pedestrian bridge would disturb more than one acre of land, the City of San José would prepare a SWPPP prior to construction for the overall San José Bay Trail as part of a Notice of Intent to comply with the RWQCB General Permit for Stormwater Discharges Associated with Construction Activity. The SWPPP would include such BMPs as erosion and sediment controls, waste disposal requirements, implementation of approved local plans and post-construction controls, and non-stormwater management. Additionally, project design features would minimize runoff into adjacent waterways, as discussed in detail in the Reach 9/9B Trail Design section of the project description. Specifically to address stormwater runoff impacts, the trail would be generally sloped at a 2 percent grade towards the waterway to conform to existing grades and cross slopes. Aggregate base shoulders and vegetated strips would be constructed at the base of the sloped surface to collect stormwater runoff, and filter it to allow percolation into the natural substrate. The trail would be graded to minimize any concentrated runoff over the top of bank.

The City would further be required to secure a Section 401 Water Quality Certification from the RWQCB before any fill activity can begin within the Alviso Slough (discussed under **Mitigation Measure BIO-1a**).

By preparing the SWPPP and complying with the SWPPP BMPs, the effects on water quality as a result of construction or use of the trail would be reduced to a less than significant level. No additional mitigation would be necessary.

Proposed paving and bridge construction would permanently increase impermeable surfaces and resulting stormwater runoff. Implementation of the following mitigation measures will reduce potentially significant impacts to water quality to a less than significant level.

- A. Mitigation Measure HYDRO-2a:** The City must design details of specific BMPs, including, but not limited to, bioswales, landscaping to reduce impervious surface area, and hydroseeding of all disturbed or bare earth surfaces within the Project work limits to the satisfaction of the Director of Planning, Building and Code Enforcement.
- B. Mitigation Measure HYDRO-2b:** The project shall comply with Regional Water Quality Control Board Municipal Regional Stormwater NPDES permit conditions (Permit CAS0299718, replaced on December 1, 2011 by Permit CAS612008). Specifically, Provision C.3 would be followed, which provides enhanced performance standards for the management of stormwater of new development.
- C. Mitigation Measure HYDRO-2c:** The project shall comply with applicable provisions of the following City Policies – 1) Post-Construction Urban Runoff Management Policy (6-29) which establishes guidelines and minimum BMPs for all projects and 2) Post-Construction Hydromodification Management Policy (8-14) which provides for numerically sized (or hydraulically sized)

Certain components to the project could impede or redirect flood flows within the channel bank thereby increasing the potential for flooding within and beyond the channel bank. Project design and construction scheduling would reduce these impacts. The following mitigation would further compensate for the loss of floodplain natural wetlands.

- D. Mitigation Measure HYDRO-3:** The City of San José will mitigate for all project-related impacts to the floodplain natural wetlands by complying with the “no net loss to wetland functions and values” policy. The actual replacement ratio will be determined in collaboration with resource agencies and based on comments received during the environmental review process. Direct impacts to the flood carrying function of the floodplain will be avoided by conducting all construction within the river bank between June 15th and October 15th..

- X. **LAND USE AND PLANNING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XI. **MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XII. **NOISE** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIII. **POPULATION AND HOUSING** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XIV. **PUBLIC SERVICES** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XV. **RECREATION** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVI. **TRANSPORTATION / TRAFFIC** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVII. **UTILITIES AND SERVICE SYSTEMS** – The project will not have a significant impact on this resource, therefore no mitigation is required.
- XVIII. **MANDATORY FINDINGS OF SIGNIFICANCE** – The project will not substantially reduce the habitat of a fish or wildlife species, be cumulatively considerable, or have a substantial adverse effect on human beings, therefore no mitigation is required.

#### **PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on **November 29, 2010**, any person may:

1. Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
2. Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

Approved for circulation, from October 26, 2010 to November 29, 2010

Mitigated Negative Declaration (revised) adopted by Director of Public Works on \_\_\_\_\_.

NOTE: Two comment letters were received from the Santa Clara Valley Water District on 11/24/10 and the California State Lands Commission on 11/22/10, which raised technical issues that required revisions to the Initial Study, MND and MMRP; however the comments did not identify any significant new impacts that were not already adequately addressed in the CEQA documents.

Attachment: MMRP