

December 14, 2010

Colleen Haggerty, P.E.  
Santa Clara Valley Water District  
5750 Almaden Expwy  
San Jose, CA 95118-3686

**SUBJECT: RESPONSE TO COMMENTS RECEIVED ON MITIGATED NEGATIVE  
DECLARATION FOR SAN JOSE BAY TRAIL REACH 9/9B PUBLIC  
PROJECT, FILE NO. PP09-182**

Dear Ms. Haggerty:

The City of San Jose appreciates your review and input on the Mitigated Negative Declaration for the San Jose Bay Trail Reach 9/9B Public Project. The document has been revised to address your comments. Responses are provided corresponding to the comments received in the SCVWD letter dated November 22, 2010.

1. The description of the bridge construction on page 13 should include the compaction grouting noted in the geotechnical report to strengthen the soils at the bridge pier and abutment locations and a discussion of any impacts that may be associated with this work.

**Response:** Discussion and analysis added per comment.

2. Figure 3b and page 13 note placement of temporary bridge supports within the low flow channel and notes that the supports would be removed upon completion of the bridge. The MND does not provide any discussion of the type of supports proposed, installation method, or removal method. The preliminary plans dated October 2008 note that temporary pile supports would be installed using vibratory methods. It is unclear how removal of the temporary supports, in particular piles, would be completely removed from the channel and how that would be accomplished without equipment entering the low flow channel. Further discussion, including any associated impacts, regarding the proposed temporary support installation and removal after completion of the bridge needs to be included in the MND.

**Response:** Clarifying language added to text.

3. Page 14 notes that the City will obtain a temporary construction access agreement for use of District property. The District will allow temporary access as part of the encroachment permit issued for the project, and no separate agreements will be required.

**Response:** Text clarified per comment.

4. On page 14 under Trail Operations the MND notes that security lighting will be installed under the UPRR bridge and will operate 24 hours a day, though the trail operating hours are sunrise to one hour after sunset. The document should further discuss why the lighting is planned for after hours and how this may impact the riparian habitat. In addition the impact discussion on page 27 does not discuss habitat impacts from the lighting within the channel.

**Response:** Additional language added to the Trail Operations section and the Biological Resources impact analysis. Because the lighting will be of low intensity and will be directed towards the trail and bank section located under the bridge, the effect of light on a sensitive natural community identified in local or regional plans, policies, regulation or by CDFG or USFWS will be less than significant.

5. Page 14 under Trail Operation incorrectly states the UPRR Bridge safety canopy is existing.

**Response:** Clarified "the proposed UPRR Bridge safety canopy".

6. Page 16 incorrectly states that a District permit is required for any "project within 50 feet of the top of bank of SCVWD facilities." The permit requirement noted in the MND is from the District's Ordinance 83-2 which was repealed and replaced in 2006 with the Water Resources Protection Ordinance (WRPO). The WRPO requires a permit for any work done on District right of way or on District facilities. In addition to a permit, the project will require a Joint Trails Agreement (JTA) be developed between the City and the District for use of the District's property for the operation of a trail prior to issuance of a District permit. Please revise discussion regarding the District's permitting authority and the requirement for a JTA.

**Response:** Revised language per comment.

7. Under "Environmental Consequences" on pages 92 and 93 it is stated that the "project would be constructed on an existing in-channel maintenance road." The existing depressed maintenance road is located upstream of Gold Street. The portion of the trail from the upstream side of the Gold Street bridge to the Bay Trail Reach 7a connection is not located on an existing depressed maintenance road.

**Response:** Text clarified and analysis developed to distinguish between those areas that would not substantially alter runoff conditions and those that would generate new runoff concerns.

8. Page 93 states that "project design features would minimize runoff into adjacent waterways. For instance, the trail would be generally sloped at a 2 percent grade towards the waterways ... and vegetated strips would run adjacent to the outboard side of the trail to collect stormwater runoff to allow percolation into the natural substrate." It is not clear how sloping the trail toward the waterway minimizes runoff to the waterway. In addition the preliminary plans do not include any vegetated buffers on the outboard side of the trail, which for the most part in this reach is located at the toe of the levee. For areas of the trail at the top of the levee there is limited, if any, opportunity for

vegetated buffers along the outboard trail edge. Also, in general overbank drainage to waterway is to be avoided.

**Response:** Text clarified. Although it is understood that overbank drainage is generally to be avoided and it is agreed that this is a good goal, there are no existing drainage features on the outside portion of the levee and not enough space to create such infrastructure. Furthermore, installation of new stormwater channels would create a need for a new outfall to the Alviso Slough. A 2 percent grade slope would be consistent to current design in the area. Text is further clarified to state that areas between the levee/trail and the water would be gravel and all disturbed soil areas would be vegetated or hydroseeded to provide vegetated buffers between the trail and water to collect and percolate runoff. The trail would be graded to avoid any concentrated runoff over the bank.

9. Page 94 states that the existing levee is surfaced with aggregate base and that "similar paving would be added at the bridge approach ramp on the northern and southern sides of the Alviso Slough and along the maintenance ramp continuing along the toe of the northern levee." According to the preliminary plans provided the trail will be paved with concrete in areas except the top of levee where asphalt will be used. Please revise the description of the trail paving for consistency with the plans.

**Response:** Text updated to be consistent with the preliminary plans. The proposed trail at bridge approaches on the northern and southern sides of the Alviso Slough would be paved with asphalt-concrete. The maintenance road continuing along the toe of the northern levee would be paved with concrete.

10. Mitigation Measure HYDRO-2b on page 94 notes the project will comply with Provision C.3 of NPDES CAS0299718. The Regional Water Quality Control Board issued a new Municipal Regional Stormwater NPDES permit on October 14, 2009 with an implementation date of December 1, 2011. Depending on the project schedule, it appears that the project may be required to follow the provisions in the new permit. The MND should discuss the new NPDES and its applicability to this project, which may be dependent on the project start date.

**Response:** The new NPDES Permit CAS612008 is applicable to this project. Language updated to identify both the existing and new permit. Provisions identified in the text are consistent with both the existing and future permit.

11. The UPRR Bridge safety canopy should be included in the list of project elements that encroaches into the floodplain on page 95 as the supports for the canopy will be located within the channel conveyance area. The discussion should state if the canopy supports were included in the hydraulic analysis and whether debris loading on the supports was considered.

**Response:** Text added to this effect. The canopy supports are located in an ineffective flow area (i.e., very tight inside horizontal bend in the Slough). While these elements were not specifically included in the project hydraulic modeling (Appendix C), these features would have a negligible effect on any flood flows in the Slough. Likewise,

debris loading on the safety canopy supports, is considered to be insignificant in terms of flooding impacts, because the supports are very small, they are located on an inside bend of the Slough (debris tends to flow and accumulate in the middle and outside bend of flowing streams) and this portion of the channel is an ineffective flow area, as described above.

12. Page 96 incorrectly state that the most current FIS for the project area as having an effective of October 26,2006 and Figures 10a and 10b show the FIRM also dated October 26, 2006. The most current FIS and FIRM for the area have an effective date of May 18, 2009.

**Response:** FIS/FIRM date changed in the text. Because the LHS is approved using the former mapping, the analysis will simply refer to that study and figures omitted.

13. The impact discussion regarding exposure of people to flooding on page 96 states that Alviso is subject to flooding and "vulnerable to high tides in San Francisco Bay which could result in trail flooding." Mitigation Measure HYDRO-3 does not address trail flooding and protecting people from entering the trail when flooded. The discussion on flooding also does not address the issue of sea level rise.

**Response:** Revised analysis to move Mitigation Measure HYDRO-3 into previous discussion re: floodplain loss (Section IX.h.). Section IX.i. discussion re: flood-related risks to humans and structures revised to identify design features that would alleviate flood risk to pedestrians.

Furthermore, a sea level rise discussion is added to Section IX.i. While sea level rise may result in existing levees to overtop during extreme floods, the project would not have any effect on these conditions. The pedestrian bridge would have adequate clearance and would not flood.

14. The word "watercourses" should be replaced with "water resources" in the following statement found on page 100 "The SCVWD manages watercourses within Santa Clara County by providing a reliable supply of healthy and clean water" found on page 100.

**Response:** Revised per comment.

15. The MND includes as mitigation for habitat impacts, payment into a local mitigation bank or participation in an ongoing restoration project in the local watershed. Based on the discussion in the MND it appears that no specific mitigation banks or projects have been identified for potential mitigation opportunities. The mitigation options noted may not exist locally, so it is unclear if this mitigation measure is feasible and implementable, particularly at the mitigation ratio of 1: 1 noted. If local watershed mitigation opportunities are unavailable the costs to mitigate for habitat impacts could be considerable and an obstacle to construction of the project.

**Response:** The former Director of the South Bay Salt Ponds Program (SBSP) at the Coastal Conservancy indicated that mitigating through a contribution to the SBSP project is feasible. Furthermore, there are precedents to that approach. Caltrans, for example, has successfully used a contribution to the SBSP as mitigation for

permanent impacts to tidal habitat. This approach is particularly valuable when impacted acreage is relatively small, as is the case of those associated with the BT Bridge impacts (as seen on Table 3 of the IS). Therefore the cost of mitigating for less than one acre of habitat is not considered to be prohibitive. No change was made to the IS/MND.

16. Some of the descriptions of the surface treatment of the existing maintenance road and proposed trail are unclear. The word "paved" is used to describe the existing unpaved aggregate base maintenance road and then the word "paved" is used to describe the proposed trail that will be primarily paved with concrete with limited areas of asphalt. For examples of this please see pages 5, 6 and 94.

**Response:** Text clarified to use 'surfacing' when discussing current conditions and 'smoothed and paved' with the appropriate material for proposed actions.

17. It is not clear from the MND whether the proposed work areas are located within the areas inundated during the daily high tides. The MND does not discuss any impacts that may occur when preparing staging areas that may be inundated during high tide or discuss any measures to prevent working in tidally inundated areas. Noting the daily mean high tide elevation in the document text and on Figure 3B would be helpful in visualizing the tidal areas in relation to the proposed work.

**Response:** Figure 3B updated to show the mean daily high tide mark. Language clarified to note that work would be conducted during the dry season and outside of the tidal flood limits.

18. The MND lacks a discussion of potential impacts from the potential uncovering and release of legacy mercury in Alviso Slough sediments encountered during construction of the bridge piers and trail.

**Response:** Clarifying language added to text. It is anticipated that mercury could be encountered during work within the channel. Mitigation Measure HAZ-1 is supplemented to include installation of a cofferdam, work outside of the wet season, and removal of all soils excavated from the channel.

19. The MND does not list related projects including the District's Alviso Slough Restoration Project and the Pond A8 notch constructed as part of the South Bay Salt Ponds Restoration Project. Additional information on the Alviso Slough Restoration Project can be found at the District's website <http://www.valleywater.org/services/AlvisoSlough.aspx>. There may be cumulatively considerable construction-related impacts if the construction period overlaps with the Slough Restoration project. Please note that the District as part of the Alviso Slough Restoration Project is also looking at obtaining rights to APN: 015-03-029 for maintenance access. Also, it is not clear if the revised hydrology resulting from the operation of the Pond A8 notch is considered in the long-term stability of the proposed trail north of the bridge.

**Response:** Text added to discuss these projects and the potential cumulative effects.

Colleen Haggerty, SCVWD

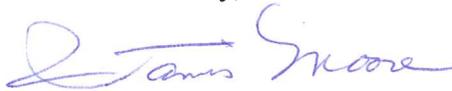
December 14, 2010

**RE: RESPONSE TO COMMENTS ON MND-SJ BAY TRAIL REACH 9/9B, FILE NO. PP09-182**

Page 6

The final, certified Mitigated Negative Declaration is attached with these changes. You may view the revised Initial Study at <http://www.sanjoseca.gov/planning/eir/MND.asp> If you have questions or additional comments, please feel free to contact me at [Janis.Moore@sanjoseca.gov](mailto:Janis.Moore@sanjoseca.gov) or by phone at (408) 535-7815.

Sincerely,



Janis Moore  
Planner II

Attachment: MND

December 14, 2010

Cy R. Oggins, Chief  
Division of Environmental Planning and Management  
California State Lands Commission  
100 Howe Avenue, Suite 100-South  
Sacramento, CA 95825-8202

**SUBJECT: RESPONSE TO COMMENTS RECEIVED ON MITIGATED NEGATIVE  
DECLARATION FOR SAN JOSE BAY TRAIL REACH 9/9B PUBLIC  
PROJECT, FILE NO. PP09-182**

Dear Mr. Oggins:

The City of San Jose appreciates your review and input on the Mitigated Negative Declaration for the San Jose Bay Trail Reach 9/9B Public Project. The document has been revised to address your comments. Specifically, clarifying language was added to Item 9 of the Required Approvals section to state that historic beds of the Guadalupe River and Alviso Slough at the proposed bridge crossing site are State-owned sovereign lands under the jurisdiction of the CSLC. Any Project-related activities within these historic beds will require a lease from the CSLC.

Likewise, the cultural analysis was supplemented to state that archaeological sites and historic or cultural resources on or in the tidal and submerged lands of California are under the jurisdiction of the CSLC. Submerged archaeological site or submerged historic resources remaining in state waters for more than 50 years are presumed to be significant. Mitigation Measure CS-1 was revised to state that if archaeological, cultural, or historic resources are identified on or in the tidal and submerged lands, that in addition to the City of San José Principal Planner the CSLC will be notified. Any associated reporting would also be sent to the CSLC.

The final, certified Mitigated Negative Declaration is attached with these changes. You may view the revised Initial Study at <http://www.sanjoseca.gov/planning/eir/MND.asp> If you have questions or additional comments, please feel free to contact me at [Janis.Moore@sanjoseca.gov](mailto:Janis.Moore@sanjoseca.gov) or by phone at (408) 535-7815.

Sincerely,



Janis Moore  
Planner II

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