CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Department of Planning, Building and Code Enforcement
JOSEPH HORWEDEL, DIRECTOR

PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA

File No. PP08-203. Alum Rock Park Bank Repair and Stream Restoration Projects
Project Description: Stream and bank restoration activities on Upper Penitencia Creek within Alum Rock Park. Proposed activities include two bridge abutment repairs and ten bank repair, floodplain restoration, and fish passage improvement projects. Several of the specific project elements are intended to restore riparian and aquatic habitat, reduce erosion and sedimentation in the creek, and repair damage to historic structures.

PROJECT LOCATION: Within **Alum Rock Park,** including the banks of Upper Penitencia Creek. The site is located in the foothills of the Diablo Range in the City of San Jose (Council District 5).

The City has performed environmental review on the project. Environmental review examines the nature and extent of any adverse effects on the environment that could occur if a project is approved and implemented. Based on the review, the City has prepared a draft Mitigated Negative Declaration (MND) for this project. An MND is a statement by the City that the project will not have a significant effect on the environment if protective measures (mitigation measures) are included in the project.

The public is welcome to review and comment on the draft Mitigated Negative Declaration.

The public comment period for this draft Mitigated Negative Declaration begins on **October 21, 2011,** and ends on **November 21, 2011.**

The draft Mitigated Negative Declaration, initial study, and reference documents are available online at: http://www.sanjoseca.gov/planning/eir/MND.asp .

The documents are also available for review from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, located at City Hall, 200 East Santa Clara Street; and at the Dr. Martin Luther King, Jr. Main Library, located at 150 E. San Fernando Street.

For additional information, please contact John Davidson at (408) 535-7895, or by e-mail at john.davidson@sanjoseca.gov .

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulated on: 10/21/2011

John Davidson
Deputy

MITIGATED NEGATIVE DECLARATION

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.

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Project Location: Within **Alum Rock Park,** including the banks of Upper Penitencia Creek. The site is located in the foothills of the Diablo Range in the City of San Jose (Council District 5).

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 this 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 proposed project is generally consistent with the existing visual character of the area, but may have a minor short term impact on the existing visual character of the site and its surroundings. Impacts may include the short-term presence of construction equipment and staging areas, excavation of existing fill material, the repair of existing structures, and the placement of erosion control features.

MITIGATION MEASURES: See Cultural Resources and Biological Resources mitigation measures CR-1, CR-2, and BIO-5, BIO-6, and BIO-8.

II. **AGRICULTURE AND FOREST RESOURCES.** The project will not have a significant impact on agriculture or forest resources, therefore no mitigation is required.

III. AIR QUALITY. The project will not have a significant air quality impact, therefore no mitigation is required.

IV. BIOLOGICAL RESOURCES. Although the project would restore several degraded portions of the creek and lead to a healthier habitat in several creek sections, as with any construction project within and around sensitive habitat, there is potential for the project to result in at least short-term adverse habitat impacts.

Mitigation Measure BIO-1. Regulatory Permits

- The applicant shall acquire all necessary permits from the U.S. Army Corps of Engineers (including ESA consultation with National Marine Fisheries Service and the U.S. Fish and Wildlife Service), the California Department of Fish and Game, and the Regional Water Quality Control Board prior to the start of any construction activities.

Mitigation Measure BIO-2. Stream Dewatering & Protection of ESA-Listed Aquatic Species

To minimize risk to special-status aquatic species, the following measures shall be adopted:

- Prior to construction, a qualified biologist shall conduct a training program to familiarize all construction personnel with identification of steelhead, red-legged frogs, and selected state special concern species; their habitat, general provisions and protections afforded by the Endangered Species Act, measures implemented to protect steelhead and red-legged frogs, and a review of the project boundaries. A representative of the City of San José shall be present during any training sessions.
- Construction shall be limited to daylight hours in the period between June 15th and October 15th unless extended in writing by the permitting agencies. Hand planting and low impact revegetation activities may occur between October 15th and June 15th in order to establish plants in the planting season.
- Every effort shall be taken to ensure that pollutants including: soil, chemicals, fuel, concrete, slurry, or washings thereof are not permitted to enter the flowing stream. Prior to the start of construction, the stream shall be diverted around or through the work area and the work area shall be isolated from the flowing stream. If any concrete, cement, slurry, or washings thereof inadvertently enters the stream, all construction activities shall immediately cease until the material is cleaned up and removed from the channel.
- Watertight cofferdams shall be constructed around all instream work areas to isolate flowing water from the project area. No work shall occur within any active channel prior to dewatering. Project 13/CEMAR shall receive cofferdams upstream and downstream of instream work areas and water shall be diverted through a suitably sized pipe or trench, as approved by NMFS, from upstream of the upstream cofferdam and discharged downstream of the downstream cofferdam. The water diversion shall extend for the entire length of the area instream work is to occur. All other small instream work areas shall receive a cofferdam built around the instream work area. The diversions shall remain in place for the duration of active construction at each site and for sufficient time to allow any instream concrete or mortar to cure and harden.
- Cofferdams shall be constructed of a non-erodible material that does not contain soil or fine sediment. Cofferdams and the stream diversion system shall remain in place and function through the construction period. If, for any reason, the cofferdams or stream diversions fail, they shall be repaired immediately. Upon completion of construction, all stream channels shall be returned to their pre-construction condition or shall meet the specified design for the site.

- Block nets shall be installed prior to installation of the cofferdams and bypass pipes or channels. The block nets shall be removed after these stream diversion facilities are completed.
- Cofferdams shall be constructed in a manner that will allow and encourage voluntary movement out of the work area by fish or frogs. The downstream end will be closed off last, after hand removal of any remaining instream or bank cover within the work area.
- A biologist with all necessary state and federal permits shall be on site to rescue all steelhead or red-legged frogs within the work site prior to dewatering. Rescued fish or frogs shall be moved to the nearest appropriate site on the stream. Capture and relocation of all steelhead, including capture techniques and storage temperatures, shall be conducted pursuant to NMFS protocol and subject to NMFS approval. Capture and relocation of all red-legged frogs shall be conducted pursuant to USFWS protocol and subject to USFWS approval.
- A qualified biologist will be present on-site when work occurs within the stream and during dewatering activities to rescue stranded amphibians if necessary.

Mitigation Measure BIO-3. Special Status Species Conservation Measures

To minimize risk to special-status species, the following measures shall be adopted:

- Pre-construction surveys shall be conducted to determine the presence of California red-legged frogs, foothill yellow-legged frogs, western pond turtles, dusky-footed woodrats, or any other special-status animal species. Any individuals of these species found within a work area prior to construction shall be relocated to a suitable area outside of the construction area by a qualified biologist with all required federal and state permits.
- Prior to construction, a qualified biologist shall conduct training sessions to familiarize all construction personnel with identification, habitat requirements, and protection protocol for California red-legged frogs, foothill yellow-legged frogs, western pond turtles, dusky-footed woodrats, or any other special-status animal species. A representative of the San José Planning Department shall be present during any training sessions.
- Silt fences shall be installed around each work area to minimize erosion and to exclude amphibians and other small wildlife from re-entering the cleared area.
- All work activities within or adjacent to the stream will take place during daylight hours to maximize species detection and avoidance. Activities shall not commence until one half hour after sunrise and shall cease one half hour before sunset.
- Temporary impacts to upland and aquatic habitats will be restored to pre-project conditions upon completion of construction.

Mitigation Measure BIO-4. Special Status Bird and Bat Species Conservation Measures

To minimize risk to special-status bird and bat species, the following measures shall be adopted:

- **Raptors.** Pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner

indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.

- **Bats**. Surveys for roosting bats shall be conducted by a qualified biologist no more than thirty (30) days prior to any building demolition or removal, construction activities or Oak tree relocation and/or removal. If a female or maternity colony of bats is found on the project site, and the project can be constructed without direct disturbance to the roosting colony, a bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony. Buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31 and before March 1). If an active nursery roost is known to occur on the site and the project cannot be conducted outside of the maternity roosting season, bats may be excluded after July 31 and before March 1 to prevent the formation of maternity colonies. Such exclusion shall occur under the direction of a bat biologist, by sealing openings and providing bats with one-way exclusion doors. In order to avoid excluding all potential maternity roosting habitat simultaneously, alternative roosting habitat, as determined by the bat biologist, should be in place at least one summer season prior to the exclusion. Adjacent Oaks and Oak Woodland areas should be preserved to the maximum extent feasible as potential bat roosting habitat. Bat roosts should be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with the requirements of the CDFG. A biologist report outlining the results of pre-construction surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading, building, or tree removal permit.
- **Migratory Bird Protection**. Any mature trees removed as a result of the project shall be removed outside of the migratory bird nesting season that runs from February 1 to August 31, to the maximum extent practical. If any trees are required to be removed during the bird nesting season, a qualified biologist will conduct preconstruction surveys no more than 15 days prior to the commencement of tree removal activities. Any nests present during surveys prior to February 1st shall be removed before trees are cut or disturbed. Ongoing active nest surveys and nest removal shall be conducted weekly prior to the commencement of any mature tree removal scheduled during the nesting season to ensure that no bird eggs or young are harmed.

Mitigation Measure BIO-5. Wetlands/Waters Creation

Impacts to wetland/waters will be minimized, and, where unavoidable impacts occur, the following mitigation measures will be implemented:

- The project shall create and restore wetlands and waters, leading to a net gain of approximately 0.09 acres (see also Table 1, above), as described in the Habitat Mitigation and Monitoring Plan (HMMP) prepared for the project (Appendix E).
- Revegetation within created wetlands/waters shall be consistent with: the HMMP; Santa Clara Valley Transportation Authority C111 Alum Rock Fish Passage Project Plans and Specifications Plans and Specifications; City of San Jose, Department of Public Works, City Facilities Architectural Services Plans for the Construction of Alum Rock Park Nine Streambank Repair and Floodplain Expansion Projects; and City of San Jose, Department of Public Works, City Facilities Architectural Services Plans for the Construction of Alum Rock Park Bridge Protection and Bank Repair Creekside Bridge and specifications.
- All invasive exotic plant species shall be removed from the project site. Any Vinca, Cape, or German ivy, castor bean, arundo, or other exotic plant species shall be bagged and

appropriately disposed of at a landfill. Exotic species shall not be used in composting or left otherwise exposed in or around the project site. Heavy equipment and other machinery shall be inspected for the presence of undesirable species prior to on-site use and cleaned to reduce the risk of introducing exotic plant species into the project site.

Mitigation Measure BIO-6. Riparian Restoration

Impacts to riparian areas will be minimized. Where unavoidable riparian impacts occur the following measures will be implemented:

- Upon completion of construction, all barren soil within the project site shall be hydroseeded with a mixture of appropriate native seed mix and stabilizing emulsion to minimize the likelihood of erosion.
- The project proponent shall implement the Habitat Mitigation and Monitoring Plan (HMMP) (Appendix E).
- The project site shall be monitored and maintained for five years following completion of construction to ensure a survival rate of at least 75 percent for replanted vegetation. Treed and woody vegetation shall be monitored for 10 years. If a 75 percent success rate is not realized at the end of five years (10 years for trees), additional planting shall be required and monitoring and maintenance shall be continued until the 75 percent success rate is achieved. The applicant shall provide written reports annually to the Director of Planning describing the number and species of trees and other plants planted, the survival rate of the vegetation, and any remedial measures necessary.
- The goal of Shaded Riverine Aquatic (SRA) habitat replacement is the establishment of new vegetative cover, providing a minimum planting mitigation ratio of 4:1. Annual monitoring for riparian revegetation shall also evaluate these shading goals. If, after five years, monitoring shows that revegetation will not meet these goals, additional planting and monitoring shall occur until this determination has been made. This analysis shall be included within the annually submitted written reports as stated above.

Mitigation Measure BIO-7. Pollution Control

- No heavy equipment shall operate in the live stream.
- Staging/storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream high water channel and associated riparian area. Stationary equipment such as motors, pumps, generators, compressors, and welders, located within the dry portion of the stream channel or adjacent to the stream, shall be positioned over drip pans. Vehicles and equipment shall be moved out of the riparian area prior to refueling and lubricating.
- Spoil sites shall not be located within the stream channel, where spoil may be washed back into the stream, or where it will cover wetland or riparian vegetation. Building materials and construction equipment shall not be stored where materials could be washed into the water or where it will cover wetland or riparian habitat.
- If the excavation site must be de-watered during construction, any muddy or otherwise contaminated water shall be pumped to a settling pond located outside the stream channel or to a stable upland site where the water can clear prior to re-entering the stream.
- A DFG-approved pH reducer shall be applied to all exposed concrete surfaces per the manufacturer's recommendations.

Mitigation Measure BIO-8. Tree Protection, Removal, Replacement

All trees that are to be removed shall be replaced at the following ratios:

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 - 18 inches	3:1	2:1	none	24-inch box
less than 12 inches	1:1	1:1	none	15-gallon container
x:x = tree replacement to tree loss ratio **Note:** Trees greater that 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.				

The species and exact number of trees to be planted on the site shall be subject to approval of the City Arborist and the Department of Planning, Building, and Code Enforcement.

Although the project site has sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, if replacement planting becomes infeasible due to unforeseen circumstances:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
- An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact Jaime Ruiz, PRNS Landscape Maintenance Manager, at 975-7214 or Jaime.Ruiz@sanJoséca.gov for specific park locations in need of trees.
- A donation of $300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make a donation. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of a development permit.

The following tree protection measures will also be included in the project in order to protect trees to be retained during construction:

- Pre-construction treatments

1. The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
2. Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
3. Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

- During construction

1. No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
2. Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
3. Supplemental irrigation shall be applied as determined by the consulting arborist.
4. If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
5. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE.
6. Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
7. As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.

Mitigation Measure BIO-9. Habitat Plan Referral

The project shall be referred to the DFG and USFWS for review under the Santa Clara Valley Habitat Plan because the project meets the following criteria:

1. The project is located within the Habitat Plan Planning Area; **AND**
2. The project requires discretionary permits subject to CEQA review; **AND**
3. A mitigated negative declaration must be prepared based on information that the project may potentially have an adverse impact on natural communities including:
    - The project occurs in or is adjacent to a natural habitat;
    - The project is in or adjacent to a stream;
    - The project may fill a wetland.

If comments are received from DFG and/or USFWS, any recommended mitigation shall be incorporated into the project to ensure the project is consistent with the preliminary conservation objectives of the Habitat Plan.

If no response to referral is received from DFG and USFWS, then the project will be considered to be consistent with the preliminary conservation objectives of the Habitat Plan.

V. **CULTURAL RESOURCES.** Pedestrian bridges and masonry retaining walls that would be repaired or altered have been identified as historic structures that are eligible for the National Register of Historic Places. These historic structures would be repaired in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or Standards and Guidelines for Rehabilitating Historic Structures. Adherence to these standards will reduce the impact of the proposed repairs to these historic structures to a less than significant level.

Mitigation Measure CR-1. Conform Bridge and Wall Repair and Alteration to Secretary of Interior's Standards
Repair and alteration of the pedestrian bridges and masonry retaining walls shall be in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* or *Standards and Guidelines for Rehabilitating Historic Structures.*

Mitigation Measure CR-2. Conduct Data Recovery at Historic-era Archaeology Site
Prior to disturbance of the historic-era archaeological site by Projects 3 and 10, archaeological data recovery, including archaeological excavation, shall be conducted by qualified archaeologists in accordance the Secretary of the Interior's Standards for Archaeological Documentation. Documentation shall be sufficient to address identified research questions and shall be made available to the public.

Mitigation Measure CR-3. Interpretive Display
If data recovery at the historic-era archaeology site yields artifacts and materials with interpretive value, as determined by a qualified archaeologist, then an interpretive display shall be developed, incorporated into the project site, and made available to the public for viewing.

Mitigation Measure CR-4. Document Masonry Retaining Wall
Prior to removal of the masonry retaining wall by Project 3 and 10, the wall shall be recorded in accordance with the Secretary of the Interior's Standards for Archaeological Documentation and City of San Jose standard measures for demolition of structures of merit.

1) *Professional Qualifications*: The documentation is to be conducted by a qualified consultant meeting the professional qualification standards of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.*
2) *Format:* Department of Parks and Recreation, Primary Record (DPR A) and Building, Structure, and Object (DPR 523B) forms: *The bound and electronic copy of the Historic Report and/or DPR forms for the Structures/Site*
3) *Photography Protocol:* Non-HABS Archival Photo-Documentation:
   - *Cover sheet*-The documentation shall include a cover sheet identifying the following:
     - Photographer, location of artifact, date of photographs and description of photographs.
   - *Camera*- A 35mm camera.

- *Lenses*- May include normal focus length, wide angle and telephoto (no soft focus).
- *Filters*-Photographer's choice. Use of a pola screen is encouraged.
- *Film*-Must use black and white film; tri-X, Plus-X, or T-Max film is recommended.
- *View*-As required to capture artifact.
- *Lighting*-As required to capture artifact.
- *Technical*-All areas of the photograph must be in sharp focus

4) *Submission of Photo-Documentation*: Evidence that the documentation, including the original prints and negatives, has been submitted to History San José (Attention: Jim Reed, History San José, 1650 Senter Road, San José, CA 95112-2599, (408) 287-2290), shall be submitted to the Historic Preservation Officer. Digital photos may be provided as a supplement to, but not in place of, the above photo-documentation. The above shall be accompanied by a transmittal stating that the documentation is submitted in fulfillment of standard measures for the loss of the structure of merit which shall be named and the address stated.

Mitigation Measure CR-5 Reuse of Rock from Removed Wall
The rock wall at Project 3 and 10 shall be removed and the rock reused on other projects that require repair to historic rock structures within the park. Reuse of recovered rock may be used on Projects 2, 4, 5, 9, and other projects requiring rock. If any, excess rock suitable for future use within the park shall be stockpiled.

Mitigation Measure CR-6. Archaeological Monitoring of Ground-disturbing Activities
There shall be monitoring of ground disturbing activities to the extent determined by a qualified archaeologist as necessary to insure appropriate identification and treatment of any currently unknown archaeological resources.

1) If no resources are discovered, the archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.

2) If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results. These reports shall identify any program mitigation that the City shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources.)

3) 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:

   a) 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 Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that

the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants 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 re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

b) A final report shall be submitted to the City's Environmental Principal Planner This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, 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 City's Environmental Principal Planner.

Due to its location within a seismically active region, the project site would likely be subject to at least one moderate to major earthquake that could affect the project after construction. The site would be subject to strong ground shaking in the event of a major earthquake on one of the region's active faults.

VI. **GEOLOGY AND SOILS.** Due to its location within a seismically active region, the project site would likely be subject to at least one moderate to major earthquake that could affect the project after construction. The site would be subject to strong ground shaking in the event of a major earthquake on one of the region's active faults.

Mitigation Measure GEO-1. Incorporation of Geotechnical Report

The project shall incorporate all recommendations set forth in the geotechnical investigations prepared for the project by Fisher Geotechnical, dated February 5, 2008 and November 8, 2010.

VII. **GREENHOUSE GAS EMISSIONS.** The project will not have a significant impact due to greenhouse gas emissions, therefore no mitigation is required.

VIII. **HAZARDS AND HAZARDOUS MATERIALS.** The use of equipment fuels and fluids during construction may create a minor risk of exposing the public to hazardous materials. All hazardous or regulated materials that are used on site during construction activities would generally be properly stored and secured, to prevent access by the general public. In the unlikely event of a spill, fluids would be controlled and cleaned up in accordance with county and state regulations. Hazardous materials would not be routinely transported or stored on site. However, given the project's location on the banks of Upper Penitencia Creek, a hazardous materials management plan shall be included in contractor requirements.

The project site is also located in an area which is seasonally subject to fires, and construction activity would occur during the summer-early fall peak fire season.

Mitigation Measure HAZ-1. Hazardous Materials Management Plan

A hazardous materials management plan shall be included in the contractor's requirements. The plan shall address the transport, handling and storage of fuels and other equipment fluids and hazardous materials, with emphasis on preventing releases to Upper Penitencia Creek either directly or indirectly.

The plan shall address spill prevention, cleanup, and disposal. To the extent feasible, the control measures shall adhere to recognized Best Management Practices (BMPs).

Mitigation Measure HAZ-2. Potential Soil Contamination

If in the event that soil contamination is identified before or during soil grading or excavation, all construction procedures will be halted at the project site and the contaminated soil will be removed from the site and disposed of appropriately.

Mitigation Measure HAZ-3. Fire prevention

Fire prevention methods shall be enacted to control the potential for wildfire during the project construction phase. These measures shall include restricting parking of vehicles to paved areas whenever practical. Parking of vehicles in vegetated areas shall be limited to those essential for construction activities. Contractor shall keep on site adequate fire prevention hand tools to respond to any small fire caused by construction and shall additionally maintain cellular phones on site to notify emergency agencies of any fire or immediate fire hazard.

IX. HYDROLOGY AND WATER QUALITY. The project will not have a significant hydrology and water quality impact, therefore no mitigation is required.

X. LAND USE AND PLANNING. The project will not have a significant land use impact, therefore no mitigation is required.

XI. MINERAL RESOURCES. The project will not have a significant impact on mineral resources, therefore no mitigation is required.

XII. NOISE. The project will not have a significant noise impact, therefore no mitigation is required.

XIII. POPULATION AND HOUSING. The project will not have a significant population and housing impact, therefore no mitigation is required.

XIV. PUBLIC SERVICES. The project will not have a significant impact on public services, therefore no mitigation is required.

XV. RECREATION. The project will not have a significant impact on recreation, therefore no mitigation is required.

XVI. TRANSPORTATION / TRAFFIC. The project will not have a significant traffic impact, therefore no mitigation is required.

XVII. UTILITIES AND SERVICE SYSTEMS. The project will not have a significant impact on utilities and service systems, 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 21, 2011** 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.

Joseph Horwedel, Director
Planning, Building and Code Enforcement

Circulation period, from **October 21, 2011** to **November 21, 2011**.

John Davidson

Deputy

Revised 5-6-11 jam

Final Initial Study
Alum Rock Park Bank Repair and Stream Restoration Projects

City of San Jose
Department of Planning, Building, and Code Enforcement
200 E. Santa Clara Street
San Jose, CA 95113
Phone (408) 535-7895

December 2011

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Initial Study
Alum Rock Park Bank Repair and Stream Restoration Projects

PROJECT FILE NO.: SCH # 2011102049

PROJECT DESCRIPTION:

The City of San José, Department of Parks, Recreation, and Neighborhoods Services proposes to implement 12 distinct stream and bank restoration activities on Upper Penitencia Creek within Alum Rock Park (Appendix A - Figure 1, Vicinity Map; Figure 2, Site Map). Proposed activities include two bridge abutment repairs and ten bank repair, floodplain restoration, and fish passage improvement projects. Several of the specific project elements are intended to restore riparian and aquatic habitat, reduce erosion and sedimentation in the creek, and repair damage to historic structures.

Construction would begin upon acquisition of regulatory permits and program funding and would be implemented over a five-year period from 2012 to 2017. All work would occur in the dry season from June 15 through October 15. Work would generally occur in immediate proximity to Upper Penitencia Creek. Floodplain restoration would extend as much as 40 feet away from the existing bank; most other project activities would not extend beyond top of bank except for vehicle parking, temporary stockpiling of materials, and use of construction equipment. Most individual project activities are very limited in spatial extent.

Project Identification – Project locations and plans are included in Appendix A and D. Descriptions of each project follow.

The individual projects presented in this document are arranged in spatial (not numerical) sequence from upstream to downstream and are grouped into three distinct clusters. The upstream cluster extends over an area of about 1,200 linear feet, from the Creekside Bridge to just below Bridge K, and includes projects 1, 11, 3, 10, and 4.

The middle cluster begins about 1,000 feet downstream, just above Bridge I, extends about 1,200 feet to a point about 250 feet below the Visitor Center Bridge, and includes projects 2, 5, 6, and 9, and 13 (also known as Center for Ecosystem Management and Restoration.[CEMAR]).

The downstream cluster begins nearly a mile below the middle cluster, extends for about 600 feet, and includes projects 7 and 8.

Project 1. Creekside Bridge Abutment Repair.
Project 1 is located on the existing left (south) bank of Creekside Bridge, which lies at the outside bank at the end of a minor bend. Erosion at the left downstream face abutment and adjacent, over-steepened bank threaten the stability of the bridge abutment and the bank. Scouring of the bank has exposed the roots of a 12-inch maple which currently acts as a retaining wall for the bank.

Erosion along portions of the left bridge footing has created a gap between the footing and the

underlying bedrock, which acts as a foundation for the footing. Because of the underlying bedrock, erosion is not likely to continue vertically, however, there is potential for it to migrate longitudinally and dislodge the footing. The Project 1 bank repair consists of removing the Maple, laying the bank back, trenching in a toe of boulders (1 T), and placing riprap (1/4 T) up the bank supported by the toe boulders. Because the bank will be laid back, grout will be avoided, and the interstices of the toe boulders will be filled with native streambed material or ¾" drain rock and planting soil. A geosynthetic layer around the toe and between the bank and riprap will prevent wicking away of bank soil. Coir fabric, planting soil, and an erosion control blanket will cover the surface of the riprap, and the system will be staked with diagonal cut, notched, 2x4s tied together and cinched down with woven jute rope. Toe boulder interstices, lower, and middle bank will be planted with live stakes. The upper bank will be planted with shrubs, and a 2-inch minimum layer of a native hydroseed mix will be applied to the bank and any other exposed areas.
A 4-inch stone veneer would be added to the existing pilaster to cover exposed concrete superstructure at the location of the former retaining wall and to blend aesthetically with the bridge. Mortar and ¼ T riprap will fill any gaps in the bottom of the wall (currently buried).

In locations of erosion along the left pilaster base and abutment footing, high strength, non-shrink grout would be installed by hand or similar underpinning methods to fill the void and prevent further undercutting. Except for the underpinning of the left abutment footing and a potential for part of the toe boulder trench to fill a total of 164 ft^2 of COE jurisdictional waters, the proposed structures are located above ordinary high water.

This repair prevents the extensive excavation required for more invasive approaches, such as construction of retaining walls, protects the structural integrity of this historic bridge, and compromises between an enduring design (laying back and armoring the banks, stabilizing with toe rock) and a softer design (planting rock joints and bank; bolstering with geosynthetic, coir, and erosion control blankets; bolstering and cinching with stakes and jute rope).

Project 11. Expansion of Floodplain
Floodplain expansion and restoration is proposed along the east bank downstream of the Creekside Bridge. A stream segment from 200 to 300 feet downstream of the bridge is currently constrained by a stacked rock wall which functions as a retaining wall for an adjacent picnic area. The recommended restoration activity is removal of the wall, relocation of the existing picnic area, and creation of a floodplain by grading the left (east) bank to an elevation equal to ordinary high water. There would be no placement of fill or impacts to existing wetlands or within the OHWM of the creek. The project would require the removal of one large sycamore tree. It is estimated that the restoration action would create approximately 1986 sf^2 (0.045 acre) of new floodplain and COE jurisdictional waters.

The expansion area will be revegetated as specified in the Habitat Mitigation and Monitoring Plan (HMMP, Appendix E), including mitigation of the mature sycamore at a 5:1 ratio.

Project 3. Removal of Rock Wall Downstream of Bridge L

Project 3 consists of removal of an approximately 120-ft long section of existing undercut, mortared, stone masonry retaining wall located on the left (east) overbank immediately downstream of historic foot bridge, Bridge L. The stream channel is confined by grouted rock walls on both sides. The encroachment of the wall on the stream channel has increased the channel velocity and caused undercutting. The rock wall is undercut for approximately 25 feet. In some locations the wall has been separated from its poured concrete footing and hangs unsupported above the creek. The scour extends under the rock wall by a distance of up to 36 inches.

Portions of the removed rock wall would be used on other projects that require masonry façade and to repair sections of wall located elsewhere in the park. The end points of the existing retaining wall would be curved around the existing grotto and the existing left, downstream abutment of Bridge L as scour protection. This would also allow adjacent existing grades to be maintained.

Project 10. Expansion of Floodplain Downstream of Bridge L

Project 10 includes widening of the floodplain for high flow relief, sediment exchange, and creation of refugia for juvenile steelhead. Project 10 would occur in the same location as Project 3, following rock wall removal. Grading would commence during the summer season just below ordinary high water with the resulting floodplain extending approximately 120 feet along the creek with a maximum width of 30 feet. This would create an estimated 2,590 square feet (.06 acre) of new floodplain and COE jurisdictional waters.

Project 4. Repair Undercut Rock Wall Downstream of Historic Bridge K

Project 4 is located on the left (east) overbank immediately downstream of Bridge K and consists of a failing section of mortared stone masonry retaining wall which retains the left bank. The dimensions of failure are approximately 19 feet long by approximately 7 to 11 feet in height.

An in-kind repair of native rock and mortar would be placed to fill in the existing void space and to conform to the existing wall. The existing 12-inch buckeye tree would remain; placement of rock would occur around the rootwad and base of the tree. To alleviate groundwater seepage, weepholes would be installed in the repaired sections of wall.

Project 2. Youth Sciences Institute (YSI) Bridge abutment repair

Project 2 is located at the left (south) upstream bank of Youth Science Institute (YSI) Bridge and consists of repair of erosion and failure of the upper bank. The bank failure occurs under a low, curved, stone masonry approach wall immediately adjacent to the bridge. Remnants of either a failed rock wall or cobble fill comprise the bank. This project would also protect and preserve an undercut mature (+/- 36-inch diameter) Deodar cedar, located on the left bank. The lower segment of the bridge abutment is in good condition and does not require repair.

The repair begins above ordinary high water and consists of a curved retaining wall with a return into bank to prevent future scour. The wall would protect the root mass of the cedar and bank. The length of the proposed wall is approximately 17 feet.

A mini-pile foundation (drilled and grouted into the typically shallow bedrock) would be used to support a cast-in-place concrete strip footing. The continuous, curved footing would support the new retaining wall. The base of the wall may be protected with new, selectively placed boulder

revetment. The curved retaining wall would be constructed of cast-in-place concrete. For appearance, the curved retaining wall would be faced with stone masonry veneer to match the existing bridge construction.

Project 13. CEMAR fish passage improvement project

An undercut weir serving as a grade control structure 75 feet downstream of the YSI Bridge has caused a scour pool and a 4.5-foot vertical drop from the crest of the weir to the normal pool surface, creating a salmonid migration barrier. Weir removal could trigger upstream channel degradation and threaten the structural integrity of the bridge. This project proposes to leave the weir in place and to create a stable roughened channel suitable for fish passage.

The mitigation project will modify the existing concrete grade control structure and install a roughened channel. The roughened channel will extend approximately 48 linear feet upstream and 254 downstream of the modified concrete grade control structure. The roughened channel includes 12 rock band structures to control grade and six chutes and five pool structures. The overall slope of the channel would be approximately 4%. All work in the stream channel would occur while the channel is dewatered using coffer dams. Fill material would be placed within an area of approximately 0.2 acres to create the roughened channel. The new streambed would be compacted with tamping and water to reduce subsurface flow; water used for jetting would be captured and recycled to prevent downstream escape of sediments.

As a result of the channel design, the OHW line would be elevated through the restored channel reach. There would be no significant net change in channel cross section, area of jurisdictional waters, or wetted area other than a slightly increased elevation of both channel bed and OHW line. There would be a significant improvement in fish migration capability, and there would also be a net gain in aquatic habitat quality.

Associated bank improvements include slope regrading, rock wall removal, and revegetation in the downstream part of the project reach, with some rock protection placed at the toe of slope.

Project 5. Repair of Eroded Rill

Adjacent to a grade control structure (see Project 13/CEMAR, above) 70 feet downstream of the YSI Bridge, a gap between two existing concrete sack walls has resulted in streambank erosion on the north bank. The failure may be related to existing runoff from a nearby parking lot. The unprotected section of bank is approximately 7 feet in length. The proposed project would connect the existing walls using rock and grout and conform to the existing side slope. Installation of steel piles may be required. This would reduce the amount of exposed soil at risk of erosion. Permanent impacts (0.002 acres) would be limited to a small area of wall footing extending below the ordinary high water line. The Project 5 work area overlaps with that described in the CEMAR project, above.

Project 6. Repair of failed bank protection adjacent to Visitor's center

About 150 feet upstream of the Visitor Center Bridge, an approximately 150-foot stretch of previous bank protection project on the south bank has failed. A paved path/access road is located approximately 7 feet from the top of bank. An approximately 50-foot long by 5-foot high crib wall has failed and no longer retains the slope. About 30 feet upstream a 6 by 15-foot rock and mortar wall has failed and slid into the channel. Downstream of the crib wall, a 7 by 20-foot section of rock and mortar bank facing has been undercut by erosion and has slid down to the edge of the stream. This section also has an exposed a failed 15-inch culvert. In this area of multiple failures, a 30 to 40-foot long section of the bank protrudes into the channel and is

near vertical.

The project would lay the bank back to a slope between 2:1 and 3:1 horizontal to vertical. The hinge point of excavation would be sited above ordinary high water and near existing boulders located along the channel, which would be augmented with a trenched toe of ¼ T boulders seated in geosynthetic. A retaining wall with an average height of 4 to 5 feet is incorporated in the design to make up the vertical grade difference in order to allow the current asphalt path to remain without relocation. This configuration would maximize the preservation of trees located at top of bank and preclude the need to move the pathway. Banks will be covered with planting soil and an erosion control blanket. Toe bolder interstices, lower, and middle bank will be planted with live stakes, and the upper bank will be planted with shrubs. A 2-inch minimum layer of a native hydroseed mix will be applied to the bank and any other exposed areas. As part of this work, failed remains of existing bank retaining structures would be removed and the slope would be revegetated. Existing park fencing would be extended as necessary along the project perimeter.

Project 9. Abutment and bank protection and repair at the Visitor Center Bridge

The Visitor Center Bridge is a rock and mortar arch footbridge with a 40-foot span supported on approximately 9-foot by 4-foot rock and mortar abutments. The south (left) bank exhibits extensive erosion both upstream and downstream of the bridge. On the upstream bank, a rock and mortar wing wall in relatively good condition lies on the upstream side of the bridge abutment. Adjacent to the wing wall are failed remnants of wall sections and former stairs leading down slope. These features are surrounded by a slope surface that is exposed/unvegetated and raveling from foot traffic. Portions of the stair remnants and railing are embedded in and support the bank, and these should not be altered.

The downstream bank immediately adjacent to the bridge pilaster and wing wall is also exposed and eroded.

Because the bridge and abutments are intact and the banks themselves require no major repair, we recommend treatment of south banks that avoid interfering with structural components. For the upstream south bank, the section of retaining wall that is unsupported should be removed. The bank itself will be scarified, filled with a layer of planting soil, covered with erosion control blanket, staked, and planted with live stakes and shrubs. Bank plantings will obscure the pathway down the banks, and a row of native blackberry at the top of bank will further discourage foot traffic. Fencing will be replaced and augmented to discourage public access.

Immediately downstream of the bridge on the top of the north bank is an eroded section of stacked rock wall. The adjacent downstream wall is intact. Filling in the voids by rebuilding the failed section of wall with rock and mortar from top of bank to existing ground and conforming to existing grade is recommended. The new section of wall will rest on a concrete footing.

Project 7. Repair/protect failing south bank along trail downstream of Quail Hollow

Project 7 repairs a collapsed portion of the right (southwest) overbank downstream of the Quail Hollow Bridge. The collapsed section is approximately 10-foot wide by 6-foot high and appears to have been composed of loose bank material (cobble, gravel and sand fill) constructed at a steep slope. The failure encroaches approximately 1-foot into an existing trail located at the top of the bank. The adjacent, downstream bank is retained by a rock masonry wall supported by a partially undercut footing.

The objective of Project 7 is protect the trail and to avoid major construction in the creek and removal of riparian trees. Timber lagging similar to the repair on the trail's opposite bank would provide a vertical repair to the upper portion of the bank in this highly confined space to shield the eroded area. Backfill would be placed behind the new timber lagging to re-build the shoulder of the trail. A cluster of willows which currently act as a retaining wall for the lower portion of the bank would be preserved. Construction would not encroach upon the creek.

High strength, non-shrink grout would be installed by hand to fill the void underneath the undercut footing and prevent further undercutting. Dewatering for construction would not be required because the concrete footing is located above ordinary high water.

Project 8. Repair of failing north bank sack concrete wall and bank

Project 8 is approximately 1600 feet downstream of Quail Hollow Bridge and is comprised of two components. The first component addresses a section of undercut concrete sack wall footing on the right (northeast) overbank located on the outer bank of a 90-degree bend in the creek. The second is immediately adjacent and upstream and consists of a failed bank.

The downstream portion of the project occurs between a 15-inch culvert that extends through the concrete sack wall and a 36-inch poplar tree. Damage extends for approximately 33 lineal feet and consists of undercutting of the rough concrete footing supporting a 9-foot high concrete wall. A bedrock bank is exposed immediately downstream and adjacent to the sack concrete wall. The undercut concrete footing would be protected with high strength, non-shrink grout to fill the void and prevent further deterioration.

The upstream component of this project is an approximately 50-ft long section of bank failure ending near the 36-inch poplar tree. Sloughing of the upper bank has exposed a near vertical bank with a sloping lower bank. Cobbles, boulders, large concrete debris along with sandy and gravelly soil are exposed in the bank. This material has also accumulated at the base of the failure. Opposite the bank failure, the channel is constricted by a near-vertical bedrock inner bank. Upper bank failure has undermined a portion of the outer pavement edge of the roadway. The roadway has been relocated away from the failure and an asphalt concrete dike has been constructed in this area.

In order to repair the failed bank and preserve the existing road a pile and lagging wall would be installed with a roughened slope at the bottom. Steel H piles driven 5 to 6 feet on center and cast into underlying bedrock with concrete lagging provides a durable vertical solution. The bottom portion of the wall would be roughened with ¼ T riprap stacked at a 2:1 horizontal to vertical slope from above the OHW mark to the new pile and lagging wall. The riprap would be trenched in at the toe, underlain by a geosynthetic, and covered with coir fabric, plantings soil, and an erosion control blanket and then planted with live stakes.

Project Activities
Excavation and repair activities would utilize standard construction equipment including an excavator, a dump truck, a dozer, a backhoe, a gas powered generator, a tamper, a concrete truck, and asphalt paving equipment. A drum compactor may be used on Project 8, and a small pile driving hammer on Project 5, and 8. Work would occur June 15 through October 15, beginning in 2012 and completing in 2017. One to four projects would be initiated each year and completed in the same year. Equipment would normally stage on uplands away from the stream, on nearby paved parking areas when possible. Only essential construction activities would occur in or immediately adjacent to the streambed.

Other Permits and Approvals Required:
The following regulatory agencies may have jurisdiction over one or more of the proposed projects:

Federal Agencies:

U.S. Army Corps of Engineers (COE)
The Project Proponent would be required to acquire a Section 404 permit for fill and excavation within wetlands and waters of the U.S. within the project area.

U. S. Fish and Wildlife Service (USFWS)
Issuance of the COE Section 404 permit triggers Endangered Species Act (ESA) Section 7 Consultation with USFWS for potential impacts to listed terrestrial and aquatic species. A Biological Assessment has been prepared to assist with the consultation (Appendix K).

NOAA Fisheries
Issuance of the COE Section 404 permit triggers ESA Section 7 Consultation with NMFS for potential impacts to anadromous fish species. A Biological Assessment has been prepared to assist with the consultation (Appendix K).

State and Local Agencies:

Bay Area Regional Water Quality Control Board
The Bay Area Regional Water Quality Control Board must issue a Section 401 certification that the project meets State water quality standards, and in addition may require the issuance of either individual or general waste discharge requirements (WDRs).

Department of Fish and Game
The California Department of Fish and Game requires a completed Streambank Alteration Agreement for any project within the bed and banks of a stream.

State Historic Preservation Officer
Prior to issuance of a Section 404 Permit, the COE is required to consult with SHPO pursuant to 36 CFR Part 800. A cultural resources report and historic resources analysis completed for the project will aid the COE in completing the SPHO consultation requirements of Section 106 of the National Historic Preservation Act

PROJECT LOCATION AND ASSESSOR'S PARCEL NUMBER(s):
The project is located in the City of San José, and includes the banks of Upper Penitencia Creek within Alum Rock Park as shown in Appendix A - Figure 1, Vicinity Map. The site is located in the foothills of the Diablo Range. APN No. 595-07-015, 599-25-001, 612-46-001.

EXISTING GENERAL PLAN DESIGNATION:
The City of San José General Plan Designation for the project is Public Park and Open Space.

EXISTING ZONING:
The zoning for the park is R-1-8, which is a Single-Family Residence District. Public parks are permitted in the R-1-8 zoning district pursuant to the City's Zoning Ordinance.

EXISTING LAND USE:
Existing land use is Public Park and Open Space.

SURROUNDING LAND USES / GENERAL PLAN / ZONING:
The proposed project area is entirely within a municipal park. Surrounding areas include private grazing land and additional parkland on mostly steep slopes covered by Diablo sage scrub and oak woodland. Cherry Hills Reservoir is located upstream (east) of the project area, and residential neighborhoods of the City of San José border the lower (western) end of the park.

PROJECT APPLICANT'S NAME AND ADDRESS:
City of San José, Department of Parks, Recreation, and Neighborhood Services
200 E. Santa Clara Street
San José, CA 95113
Contact - Evelyn Velez-Rosario

DETERMINATION
On the basis of this initial study:

☐	I find the proposed project could not have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.
☒	I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the project proponent has agreed to revise the project to avoid any significant effect. A MITIGATED NEGATIVE DECLARATION will be prepared.
☐	I find the proposed project could have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT (EIR) is required.
☐	I find the proposed project could have a significant effect on the environment, but at least one effect has been (1) adequately analyzed in a previous document pursuant to applicable legal standards, and (2) addressed by mitigation measures based on the previous analysis as described in the attached initial study. An EIR is required that analyzes only the effects that were not adequately addressed in a previous document.
☐	I find that although the proposed project could have a significant effect on the environment, no further environmental analysis is required because all potentially significant effects have been (1) adequately analyzed in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (2) avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are included in the project, and further analysis is not required.

_____ _____

Date Signature

Preparer: John Davidson, Senior Planner

I. AESTHETICS - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Have a substantial adverse effect on a scenic vista?	☐	☒	☐	☐	1,2
b) Substantially damage scenic resources, including, but not limited to, trees, rock out-croppings, and historic buildings within a state scenic highway?	☐	☐	☐	☒	1,2
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	☐	☒	☐	☐	1,2
d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area?	☐	☐	☐	☒	1,2
e) Increase the amount of shading on public open space (e.g. parks, plazas, and/or school yards) ?	☐	☐	☐	☒	1,2

FINDINGS:

I a, c) **Less than Significant With Mitigation.** The proposed project is generally consistent with the existing visual character of the area, but may have a minor short term impact on the existing visual character of the site and its surroundings. Impacts may include the short-term presence of construction equipment and staging areas, excavation of existing fill material, the repair of existing structures, and the placement of erosion control features. The project includes repairs to footings of bridges which have been identified as contributors to the Alum Rock Park Historic District (LSA, 2008). Repairs to bridge footings and walls would occur close to the water line and would be compatible with existing appearance. Historical features and appropriate mitigation measures are discussed in greater detail in the Cultural Resources section (Mitigation Measures CR-1 and CR-2).

Floodplain expansion (Mitigation Measure BIO-5) would also result in a more natural appearance and would include native plantings appropriate to the region. Upon completion of the project and revegetation (Mitigation Measure BIO-6), the visual appearance of the area would be little changed from the present condition. In areas of stream bank repairs, visual appearance is likely to be improved through the repair of ongoing erosion. Trees that are removed will be replaced pursuant to City standards (Mitigation Measure BIO-8). Compliance with City of San José site design review by Planning Staff would further ensure compatibility with the surrounding area and ensure that the project would not significantly degrade the existing visual character of the site.

I b, d, e) No Impact. The project is not on or near a state scenic highway and, thus, no impact to state scenic highways would occur. There would be no new exterior building or parking lot lighting associated with the proposed project. There would be no increase in the amount of nighttime lighting beyond the existing land use on the site, and it would not adversely affect views in the area. Therefore, no lighting impacts would occur as a result of the project. The proposed project is within a park and may lead to a desirable increase in shading of the creek, but the project would not increase shading relevant to issue I e., above.

MITIGATION MEASURES: See Cultural Resources and Biological Resources mitigation measures CR-1, CR-2, and BIO-5, BIO-6, and BIO-8.

II. AGRICULTURE RESOURCES - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	☐	☐	☐	☒	1,3,4
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	☐	☐	☐	☒	1,3,4
c) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?	☐	☐	☐	☒	1,3,4

FINDINGS:

II a, b, c) **No Impact**. The project site is not located in an area identified as prime farmland, nor is the site being used for or zoned for agricultural use. Therefore, the proposed project would not result in a significant impact on the City's or region's agricultural resources.

III. AIR QUALITY - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Conflict with or obstruct implementation of the applicable air quality plan?	☐	☐	☒	☐	1,14
b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	☐	☐	☒	☐	1,14
c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is classified as non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions that exceed quantitative thresholds for ozone precursors)?	☐	☐	☒	☐	1,14
d) Expose sensitive receptors to substantial pollutant concentrations?	☐	☐	☒	☐	1,14
e) Create objectionable odors affecting a substantial number of people?	☐	☐	☒	☐	1,14

FINDINGS:

III a, b, c, d, e) **Less than Significant.** Alum Rock Park is located within the Bay Area Air Basin, which is under the jurisdiction of the Bay Area Air Quality Management District (BAAQMD). The basin has been designated as a nonattainment area for PM_{10} and $PM_{2.5}$ (respirable particulate matter) as well as ozone. The City of San José uses the threshold of significance established by the BAAQMD to assess air quality impacts. Based on the BAAQMD threshold of significance, projects that generate fewer than 2,000 vehicle trips per day are not considered major air pollutant contributors and do not require a technical air quality study. As this project would generate only a few vehicle trips per day and only during the construction periods, only a limited air quality study was prepared (URBEMIS, Appendix H).

Temporary Air Quality impacts may result from demolition of existing structure(s), excavation of soil, and other construction activities on the subject site. Construction activities would result in temporary emissions of diesel and gasoline engine combustion products and earthen dust from construction. The project involves a relatively low level of construction activity with respect to air quality, so the impacts are inherently limited to minor emission levels, and would not constitute a cumulatively considerable increase in any air pollutant. No atmospheric effects other than noted above are expected. Because of the small amount of construction equipment and vehicle trips associated with the proposed project, the amount of greenhouse gases produced would be less than significant.

These standard conditions will be incorporated into the project plans and specifications to reduce the project impact on air quality:

Equipment Exhaust Control

Equipment emissions shall be controlled when heavy construction equipment is operating. These measures shall include:

- Reduce unnecessary idling of construction equipment (i.e., limit idling time to 5 minutes or less);
- Where possible, use newer, cleaner-burning diesel-powered construction equipment.
- Properly maintain construction equipment per manufacturer specifications.
- Gasoline-powered equipment shall be equipped with catalytic converters, where feasible.
- If any pile driving is proposed such work shall comply with Regulation 6, Particulate Matter, Rule 1 of the BAAQMD.

Dust Control

The following construction practices shall be implemented during all phases of construction for the proposed project to prevent visible dust emissions from leaving the site.

- Water all active construction areas at least twice daily and more often during windy periods to prevent visible dust from leaving the site; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard;
- Pave, apply water at least three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- Sweep daily (or more often if necessary) to prevent visible dust from leaving the site (preferably with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality; and
- Sweep streets daily, or more often if necessary (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
- Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for ten days or more);
- Enclose, cover, water at least twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc,) to prevent visible dust from leaving the site;
- Limit traffic speed on unpaved roads to 15 mph;
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and

- Replant vegetation in disturbed areas as quickly as possible.

IV. BIOLOGICAL RESOURCES - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☒	☐	☐	1,10
b) Have a substantial adverse effect on any aquatic, wetland, or riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	☐	☒	☐	☐	1,6,10
c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act including, but not limited to, marsh, vernal pool, coastal, etc., through direct removal, filling, hydrological interruption, or other means?	☐	☒	☐	☐	1,6
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	☐	☒	☐	☐	1,10
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	☐	☒	☐	☐	1,11
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?	☐	☒	☐	☐	1,2

FINDINGS:

IV a, b, c, d, e, f) **Less than Significant with Mitigation**. Alum Rock Park is located in the foothills of the Diablo Range. Upper Penitencia Creek flows through the park, and is bordered on both sides by steep upland terrain. A narrow band of riparian habitat is present along the high-gradient, rocky stream; upland slopes support Diablo sage scrub, oak woodland, and grassland openings. Within the park, a variety of recreational activities are supported by an access road, parking lots, trails, bridges, maintained lawns, and buildings.

Though it has been drastically modified through the construction of a variety of structures that encroach on the historic floodplain and riparian habitat, the creek valley within the park continues to provide habitat for a number of fish and wildlife species. Although the project would restore several degraded portions of the creek and lead to a healthier habitat in several creek sections, as with any construction project within and around sensitive habitat, there is potential for the project to result in at least short-term adverse habitat impacts. These potential impacts and mitigation measures to reduce the significance of impacts are discussed below.

Sensitive Species and Habitats: A biological assessment (Winzler & Kelly, 2010a) completed for the project provides further detail regarding sensitive species (Appendix K). The Central Coastal California steelhead (*Oncorhynchus mykiss,*) and the California red-legged frog (*Rana draytonii*), both federally threatened species, are known to occur within the project area and may be affected by the project. The park is also within Critical Habitat for both species. Several additional sensitive species are known to occur (foothill yellow-legged frog, *Rana boylii*; San

Francisco dusky-footed woodrat, *Neotoma fuscipes annectans*) or may occur (southwestern pond turtle, *Actinemys marmorata pallida*; yellow warbler, *Dendroica petechia brewsteri*; pallid bat, *Antrozous pallidus pacificus*; and Cooper's hawk, *Accipiter cooperi*). Portions of the proposed project (fish passage improvements and floodplain restoration) are intended to restore or enhance habitat for special status species.

A botanical survey (Appendix F) was conducted to provide further detail regarding sensitive botanical resources (Winzler & Kelly, 2008). A CNDDB database search identified historical records of eight sensitive plant species within the Calaveras Reservoir 7.5 minute USGS quadrangle. No plant species of concern were found within or near the proposed construction area, and, therefore, no impacts to sensitive plant species are anticipated. The proposed project site includes riparian habitat and is adjacent to a variety of other natural communities including Diablo sage scrub. Although there would be short-term impacts to riparian habitat, the proposed project would enhance riparian habitat by creating additional floodplain area and stabilizing several failing banks in the creek.

The project site may provide habitat for several wildlife species associated with urban areas. Trees in urban areas provide food and cover for wildlife adapted to this environment, including birds such as house finch, mourning dove, house sparrow, and Brewer's blackbird. In addition, mature trees on the project site may provide nesting habitat for raptors (birds of prey). Raptors and their nests are protected under the Migratory Bird Treaty Act of 1918 and California Department of Fish and Game (CDFG) Code Sections 3503 and 3503.5. Although no raptors or nests were observed on the site, mature trees suitable for raptor nesting occur on the site. Despite the disturbed nature of the site, there remains the potential for raptors to nest in these trees.

Implementation of mitigation measures BIO-1 through BIO-4 is expected to reduce the temporary construction impacts to sensitive species to a less than significant level.

Jurisdictional Waters: The California Regional Water Quality Control Board (RWQCB) has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). Under Section 401 the CWA, the Water Board has regulatory authority over actions in waters of the United States. Section 401 certifications are issued in combination with permits issued by the Army Corps of Engineers (COE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Water Discharge Requirements for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the COE (e.g., isolated wetlands, vernal pools, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of COE jurisdiction may require the issuance of either individual or general waste discharge requirements (WDRs) from the Water Board.
The project is directly associated with Upper Penitencia Creek and bordering wetlands and will require a COE Section 404 permit and RWQCB Section 401 certification. The ordinary high water mark has been delineated within the action area of the project (Attachment I; Winzler & Kelly, 2010). The project would permanently impact approximately 0.21 acres of wetlands or waters of the United States. This impact would be offset by the creation of approximately 0.3 acres of waters in areas of floodplain creation. The project would cause a net gain of approximately 0.09 acres of waters or wetlands. There would also be approximately 0.6 acres of

temporary impact, consisting mostly of temporary dewatering areas during construction. Proposed impacts and mitigation areas and volumes are shown in Table 1, below.

Implementation of mitigation measures BIO-5 and BIO-6 are expected to reduce construction-related impacts to waters and wetlands to a less than significant level.

Table 1: Impacts to Waters and Area of Restoration[1]							
Number	**Location**	**Description**	**Temporary Impacts[2]**	**Permanent Impacts[3]**	**Volume of Fill** (cubic yards)	**Mitigation/ Creation**	**Net Change Waters of US**
1	Creekside Bridge	Abutment repair	0.0617 ac 2,690 sf	0.0038 ac 164 sf	8.6 cy	0	(-) 0.0038 ac 164 sf
11	Downstream of Creekside Bridge	Floodplain expansion	0.09 ac 3,958 sf	0	0	0.0456 ac 1,986 sf	(+) 0.0456 ac 1,986 sf
3 and 10	Downstream of Bridge L	Floodplain expansion, wall removal	0.1486 ac 6,473 sf	0	0	0.061 ac 2,657 sf	(+) 0.061 ac 2,657 sf
4	Downstream of Bridge K	Rock wall repair	0	0	0	0	0
2	YSI Bridge	Abutment repair	0.091 ac 3,957 sf	0	0	0	0
13/ CEMAR	Downstream of YSI Bridge	Fish passage improvement	0.0046 ac [1] 200 sf	0.197 ac 8,572 sf	1,430 cy	0.197 ac 8,527 sf	0 self mitigating
5	Downstream of YSI Bridge	Repair eroded rill/wall	See 13/CEMAR	0.0015 ac 65 sf	19.25 cy	0	(-)0.0015 ac 65 sf
6	Adjacent to Visitor Center	Repair failed bank protection	0.028 ac 1,213 sf	0.006 ac 261 sf	41.5 cy	0	(-) 0.006 ac 261 sf
9	Visitor Center Bridge	Abutment repair	0.061 ac 2,650 sf	0.0018 ac 78 sf	2.98 cy	0	0
7	Downstream of Quail Hollow	Bank repair	0	0	0	0	0
8	Downstream of Quail Hollow	Repair failing sack concrete wall	0.074 ac 3,211 sf	0.0016 ac 69 sf	2.6 cy	0	(-)0.0016 ac 69 sf
TOTAL			**0.6 ac ~24,352 sf**	**(-)0.21 ac ~9,209 sf**	**1,505 cy**	**(+) 0.30 ac ~13,170 sf**	**~0.09 ac ~4,000 sf net gain**

1 All numbers approximate based upon surveyed topography and best available design accuracy and information.

2 Temporary impacts include entire in-channel area below OHW to be dewatered during construction, except 13/CEMAR where dewatered section is included as self-mitigating permanent impact because the channel will be reconstructed for improved fish habitat..

3 Permanent impacts include permanent fill or alteration of streambed below OHW

Trees: Construction of the proposed project would result in the removal of ordinance-protected trees. The 2008 Winzler & Kelly botanical survey for the project recommends removal of the tree only outside of the migratory bird nesting season that runs from February 1st to August 31st. It is estimated that approximately 8 mature trees and 20 trees under 12" diameter at breast height would be removed as a result of the project. Removal of a small number of trees when conducted in accordance with the City's tree preservation ordinance would not constitute a significant impact. Mitigation Measure BIO-8 is expected to ensure uniform compliance with the City's tree replacement policy.

Habitat Plan: To promote the recovery of endangered species while accommodating planned development, infrastructure and maintenance activities, the Local Partners, consisting of the City of San José, Santa Clara Valley Transportation Authority, Santa Clara Valley Water District, Santa Clara County and the cities of Gilroy and Morgan Hill, are preparing a joint Habitat Conservation Plan/Natural Community Conservation Plan. The Santa Clara Valley Habitat Plan (Habitat Plan) is being developed in association with the U.S. Fish & Wildlife Service (USFWS), California Department of Fish & Game (CDFG), and the National Marine Fisheries Service (NMFS) and in consultation with stakeholder groups and the general public to protect and enhance ecological diversity and function within more than 500,000 acres of southern Santa Clara County.

The Santa Clara Habitat Plan Planning Agreement outlines the Interim Project Process to ensure coordination of projects approved or initiated in the Planning Area before completion of the Habitat Plan to help achieve the preliminary conservation objectives of the plan, and not preclude important conservation planning options or connectivity between areas of high habitat values. The Interim Project Process requires the local participating agencies to notify the wildlife agencies (DFG and USFWS) of projects that have the potential to adversely impact Covered Species, natural communities, or conflict with the preliminary conservation objectives of the Habitat Plan. The Wildlife Agencies comments on Interim Projects should recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives of the Habitat Plan. This process has been incorporated as Mitigation Measure BIO-9.

The project should be referred to the DFG and USFWS for review under the Habitat Plan because the project meets the following criteria:

1. The project is located within the Habitat Plan Planning Area; **AND**
2. The project requires discretionary permits subject to CEQA review; **AND**
3. A mitigated negative declaration must be prepared based on information that the project may potentially have an adverse impact on natural communities including:
    - The project occurs in or is adjacent to a natural habitat;
    - The project is in or adjacent to a stream;
    - The project may fill a wetland.

This referral process and incorporation of subsequent agency comments are included as Mitigation Measure BIO-9.

MITIGATION MEASURES: Implementation of the mitigation measures listed below will reduce the temporary construction impacts to biological resources to a less than significant level. The following practices shall be implemented during all phases of construction for the proposed project:

Mitigation Measure BIO-1. Regulatory Permits

- The applicant shall acquire all necessary permits from the U.S. Army Corps of Engineers (including ESA consultation with National Marine Fisheries Service and the U.S. Fish and Wildlife Service), the California Department of Fish and Game, and the Regional Water Quality Control Board prior to the start of any construction activities.

Mitigation Measure BIO-2. Stream Dewatering & Protection of ESA-Listed Aquatic Species

To minimize risk to special-status aquatic species, the following measures shall be adopted:

- Prior to construction, a qualified biologist shall conduct a training program to familiarize all construction personnel with identification of steelhead, red-legged frogs, and selected state special concern species; their habitat, general provisions and protections afforded by the Endangered Species Act, measures implemented to protect steelhead and red-legged frogs, and a review of the project boundaries. A representative of the City of San José shall be present during any training sessions.
- Construction shall be limited to daylight hours in the period between June 15th and October 15th unless extended in writing by the permitting agencies. Hand planting and low impact revegetation activities may occur between October 15th and June 15th in order to establish plants in the planting season.
- Every effort shall be taken to ensure that pollutants including: soil, chemicals, fuel, concrete, slurry, or washings thereof are not permitted to enter the flowing stream. Prior to the start of construction, the stream shall be diverted around or through the work area and the work area shall be isolated from the flowing stream. If any concrete, cement, slurry, or washings thereof inadvertently enters the stream, all construction activities shall immediately cease until the material is cleaned up and removed from the channel.
- Watertight cofferdams shall be constructed around all instream work areas to isolate flowing water from the project area. No work shall occur within any active channel prior to dewatering. Project 13/CEMAR shall receive cofferdams upstream and downstream of instream work areas and water shall be diverted through a suitably sized pipe or trench, as approved by NMFS, from upstream of the upstream cofferdam and discharged downstream of the downstream cofferdam. The water diversion shall extend for the entire length of the area instream work is to occur. All other small instream work areas shall receive a cofferdam built around the instream work area. The diversions shall remain in place for the duration of active construction at each site and for sufficient time to allow any instream concrete or mortar to cure and harden.
- Cofferdams shall be constructed of a non-erodible material that does not contain soil or fine sediment. Cofferdams and the stream diversion system shall remain in place and function through the construction period. If, for any reason, the cofferdams or stream diversions fail, they shall be repaired immediately. Upon completion of construction, all stream channels shall be returned to their pre-construction condition or shall meet the specified design for the site.
- Block nets shall be installed prior to installation of the cofferdams and bypass pipes or channels. The block nets shall be removed after these stream diversion facilities are completed.
- Cofferdams shall be constructed in a manner that will allow and encourage voluntary movement out of the work area by fish or frogs. The downstream end will be closed off last, after hand removal of any remaining instream or bank cover within the work area.
- A biologist with all necessary state and federal permits shall be on site to rescue all steelhead or red-legged frogs within the work site prior to dewatering. Rescued fish or frogs shall be moved to the nearest appropriate site on the stream. Capture and relocation

of all steelhead, including capture techniques and storage temperatures, shall be conducted pursuant to NMFS protocol and subject to NMFS approval. Capture and relocation of all red-legged frogs shall be conducted pursuant to USFWS protocol and subject to USFWS approval.

- A qualified biologist will be present on-site when work occurs within the stream and during dewatering activities to rescue stranded amphibians if necessary.

Mitigation Measure BIO-3. Special Status Species Conservation Measures

To minimize risk to special-status species, the following measures shall be adopted:

- Pre-construction surveys shall be conducted to determine the presence of California red-legged frogs, foothill yellow-legged frogs, western pond turtles, dusky-footed woodrats, or any other special-status animal species. Any individuals of these species found within a work area prior to construction shall be relocated to a suitable area outside of the construction area by a qualified biologist with all required federal and state permits.
- Prior to construction, a qualified biologist shall conduct training sessions to familiarize all construction personnel with identification, habitat requirements, and protection protocol for California red-legged frogs, foothill yellow-legged frogs, western pond turtles, dusky-footed woodrats, or any other special-status animal species. A representative of the San José Planning Department shall be present during any training sessions.
- Silt fences shall be installed around each work area to minimize erosion and to exclude amphibians and other small wildlife from re-entering the cleared area.
- All work activities within or adjacent to the stream will take place during daylight hours to maximize species detection and avoidance. Activities shall not commence until one half hour after sunrise and shall cease one half hour before sunset.
- Temporary impacts to upland and aquatic habitats will be restored to pre-project conditions upon completion of construction.

Mitigation Measure BIO-4. Special Status Bird and Bat Species Conservation Measures

To minimize risk to special-status bird and bat species, the following measures shall be adopted:

- **Raptors.** Pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California, Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit.
- **Bats**. Surveys for roosting bats shall be conducted by a qualified biologist no more than thirty (30) days prior to any building demolition or removal, construction activities or Oak tree relocation and/or removal. If a female or maternity colony of bats is found on the project site, and the project can be constructed without direct disturbance to the roosting colony, a bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony. Buffer zones may include a

200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31 and before March 1). If an active nursery roost is known to occur on the site and the project cannot be conducted outside of the maternity roosting season, bats may be excluded after July 31 and before March 1 to prevent the formation of maternity colonies. Such exclusion shall occur under the direction of a bat biologist, by sealing openings and providing bats with one-way exclusion doors. In order to avoid excluding all potential maternity roosting habitat simultaneously, alternative roosting habitat, as determined by the bat biologist, should be in place at least one summer season prior to the exclusion. Adjacent Oaks and Oak Woodland areas should be preserved to the maximum extent feasible as potential bat roosting habitat. Bat roosts should be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with the requirements of the CDFG. A biologist report outlining the results of pre-construction surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading, building, or tree removal permit.

- **Migratory Bird Protection**. Any mature trees removed as a result of the project shall be removed outside of the migratory bird nesting season that runs from February 1 to August 31, to the maximum extent practical. If any trees are required to be removed during the bird nesting season, a qualified biologist will conduct preconstruction surveys no more than 15 days prior to the commencement of tree removal activities. Any nests present during surveys prior to February 1st shall be removed before trees are cut or disturbed. Ongoing active nest surveys and nest removal shall be conducted weekly prior to the commencement of any mature tree removal scheduled during the nesting season to ensure that no bird eggs or young are harmed.

Mitigation Measure BIO-5. Wetlands/Waters Creation

Impacts to wetland/waters will be minimized, and, where unavoidable impacts occur, the following mitigation measures will be implemented:

- The project shall create and restore wetlands and waters, leading to a net gain of approximately 0.09 acres (see also Table 1, above), as described in the Habitat Mitigation and Monitoring Plan (HMMP) prepared for the project (Appendix E).
- Revegetation within created wetlands/waters shall be consistent with: the HMMP; Santa Clara Valley Transportation Authority C111 Alum Rock Fish Passage Project Plans and Specifications Plans and Specifications; City of San Jose, Department of Public Works, City Facilities Architectural Services Plans for the Construction of Alum Rock Park Nine Streambank Repair and Floodplain Expansion Projects; and City of San Jose, Department of Public Works, City Facilities Architectural Services Plans for the Construction of Alum Rock Park Bridge Protection and Bank Repair Creekside Bridge and specifications.
- All invasive exotic plant species shall be removed from the project site. Any Vinca, Cape, or German ivy, castor bean, arundo, or other exotic plant species shall be bagged and appropriately disposed of at a landfill. Exotic species shall not be used in composting or left otherwise exposed in or around the project site. Heavy equipment and other machinery shall be inspected for the presence of undesirable species prior to on-site use and cleaned to reduce the risk of introducing exotic plant species into the project site.

Mitigation Measure BIO-6. Riparian Restoration

Impacts to riparian areas will be minimized. Where unavoidable riparian impacts occur the following measures will be implemented:

- Upon completion of construction, all barren soil within the project site shall be hydroseeded with a mixture of appropriate native seed mix and stabilizing emulsion to minimize the likelihood of erosion.
- The project proponent shall implement the Habitat Mitigation and Monitoring Plan (HMMP) (Appendix E).
- The project site shall be monitored and maintained for five years following completion of construction to ensure a survival rate of at least 75 percent for replanted vegetation. Treed and woody vegetation shall be monitored for 10 years. If a 75 percent success rate is not realized at the end of five years (10 years for trees), additional planting shall be required and monitoring and maintenance shall be continued until the 75 percent success rate is achieved. The applicant shall provide written reports annually to the Director of Planning describing the number and species of trees and other plants planted, the survival rate of the vegetation, and any remedial measures necessary.
- The goal of Shaded Riverine Aquatic (SRA) habitat replacement is the establishment of new vegetative cover, providing a minimum planting mitigation ratio of 4:1. Annual monitoring for riparian revegetation shall also evaluate these shading goals. If, after five years, monitoring shows that revegetation will not meet these goals, additional planting and monitoring shall occur until this determination has been made. This analysis shall be included within the annually submitted written reports as stated above.

Mitigation Measure BIO-7. Pollution Control

- No heavy equipment shall operate in the live stream.
- Staging/storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream high water channel and associated riparian area. Stationary equipment such as motors, pumps, generators, compressors, and welders, located within the dry portion of the stream channel or adjacent to the stream, shall be positioned over drip pans. Vehicles and equipment shall be moved out of the riparian area prior to refueling and lubricating.
- Spoil sites shall not be located within the stream channel, where spoil may be washed back into the stream, or where it will cover wetland or riparian vegetation. Building materials and construction equipment shall not be stored where materials could be washed into the water or where it will cover wetland or riparian habitat.
- If the excavation site must be de-watered during construction, any muddy or otherwise contaminated water shall be pumped to a settling pond located outside the stream channel or to a stable upland site where the water can clear prior to re-entering the stream.
- A DFG-approved pH reducer shall be applied to all exposed concrete surfaces per the manufacturer's recommendations.

Mitigation Measure BIO-8. Tree Protection, Removal, Replacement

All trees that are to be removed shall be replaced at the following ratios:

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 - 18 inches	3:1	2:1	none	24-inch box
less than 12 inches	1:1	1:1	none	15-gallon container
x:x = tree replacement to tree loss ratio **Note:** Trees greater that 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.				

The species and exact number of trees to be planted on the site shall be subject to approval of the City Arborist and the Department of Planning, Building, and Code Enforcement.

Although the project site has sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, if replacement planting becomes infeasible due to unforeseen circumstances:

- The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees.
- An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact Jaime Ruiz, PRNS Landscape Maintenance Manager, at 975-7214 or Jaime.Ruiz@sanJoséca.gov for specific park locations in need of trees.
- A donation of $300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make a donation. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of a development permit.

The following tree protection measures will also be included in the project in order to protect trees to be retained during construction:

- Pre-construction treatments
    1. The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.

2. Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
3. Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture.

- During construction
  1. No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist.
  2. Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.
  3. Supplemental irrigation shall be applied as determined by the consulting arborist.
  4. If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
  5. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE.
  6. Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel.
  7. As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.

Mitigation Measure BIO-9. Habitat Plan Referral

The project shall be referred to the DFG and USFWS for review under the Santa Clara Valley Habitat Plan because the project meets the following criteria:

1. The project is located within the Habitat Plan Planning Area; **AND**
2. The project requires discretionary permits subject to CEQA review; **AND**
3. A mitigated negative declaration must be prepared based on information that the project may potentially have an adverse impact on natural communities including:
   - The project occurs in or is adjacent to a natural habitat;
   - The project is in or adjacent to a stream;
   - The project may fill a wetland.

If comments are received from DFG and/or USFWS, any recommended mitigation shall be incorporated into the project to ensure the project is consistent with the preliminary conservation objectives of the Habitat Plan.

If no response to referral is received from DFG and USFWS, then the project will be considered to be consistent with the preliminary conservation objectives of the Habitat Plan.

V. CULTURAL RESOURCES - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Cause a substantial adverse change in the significance of an historical resource as defined in CEQA Guidelines §15064.5?	☐	☒	☐	☐	1,7
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines §15064.5?	☐	☒	☐	☐	1,8
c) Directly or indirectly destroy a unique paleontological resource or site, or unique geologic feature?	☐	☒	☐	☐	1,8
d) Disturb any human remains, including those interred outside of formal cemeteries?	☐	☒	☐	☐	1,8

FINDINGS:

V a, b, c, d) **Less than Significant with Mitigation.** The following discussion is based upon cultural resources evaluations completed by LSA Associates on March 31, 2008 (Hibma, 2008) and an archaeological inventory (Massey, 2008) and draft National Register of Historic Places evaluation (Massey et. al., 2008) by Sonoma State University. As the reports may discuss the location of specific archaeological sites, they are considered administratively confidential and are not included in this Initial Study. Qualified personnel may request copies from the City's Planning Division located at 200 East Santa Clara Street, Floor 3, during normal business hours.

The historic resource records search and field investigation conducted in January 2008 by LSA Associates found that:

> *"Alum Rock Park Historic District buildings, structures, and objects within the current study area are significant contributors the District's National Register eligibility for listing…California Register eligibility… and in the City of San José's Historic Resources Inventory as a City Landmark for their association with the history of municipal parks in the State of California and the City of San José… most of the study area buildings, structures and objects have the required age and the integrity to convey their historical significance."*

No historic buildings would be affected by the project. However, the pedestrian bridges and masonry retaining walls that would be repaired or altered have been identified as historic structures that are eligible for the National Register of Historic Places. Several of the projects would specifically address past structural failures and ongoing deterioration of these historic structures. Repairs are intended to prevent future undermining and erosion damage to these structures, and are not expected to alter their character. These historic structures would be repaired in accordance with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or Standards and Guidelines for Rehabilitating Historic Structures (Weeks and Grimmer, 1995). Adherence to these standards will reduce the impact of the proposed repairs to these historic structures to a less than significant level (see Mitigation Measure CR-1).

The Sonoma State National Register of Historic Places evaluation and LSA historic resources report for the project area revealed one historic era archaeological site and one public works era historic rock wall that would be significantly impacted by Projects 3 and 10 to create an expanded floodplain. The archaeological site is comprised of buried historical artifacts and

structural remains that may be associated with a cottage dating from the 1880s to 1910s. The site lies within an area of proposed excavation. The rock wall would be removed and the rock reused on other projects that require repair to historic rock structures. The archaeological site and rock wall are both eligible for the National Register of Historic Places. Although avoidance and preservation are the preferable forms of mitigation for impacts to historical and archeological resources, the two historic resources cannot be avoided or preserved while creating an expanded floodplain at this location. As such, the project impacts would require mitigation including data recovery and documentation by qualified archaeologists in order to document the resources and disturbance resulting from the project (CR-2 and CR-3). Although the project will disturb the archaeological site and wall, the data recovery and documentation process will yield information about the history of the park. The Sonoma State NHRP evaluation notes:

"As the artifact deposit is associated with a visitors' cottage or residence, it could provide information about a poorly reported era of the Park's history. In the absence of archival or historical information, the archaeological record is the only surviving source information about this resource and the activities it represents. The information it contains has the potential to address the important research questions …."

Implementation of the project and the Mitigation Measures CR-2 and CR-4 will allow this potential source of historical information to be revealed, evaluated, and documented. Implementation of Mitigation Measure CR-3 will make the information readily available to the public.

Additionally, the rock from the removed wall would be reused in order to preserve the original appearance of several other degraded historic structures within the park (CR-5).

MITIGATION MEASURES: Implementation of the mitigation measures listed below will reduce Cultural Resource impacts to a less than significant level. The following practices shall be implemented prior to and/or during construction of the proposed project:

Mitigation Measure CR-1. Conform Bridge and Wall Repair and Alteration to Secretary of Interior's Standards

Repair and alteration of the pedestrian bridges and masonry retaining walls shall be in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings* or *Standards and Guidelines for Rehabilitating Historic Structures.*

Mitigation Measure CR-2. Conduct Data Recovery at Historic-era Archaeology Site

Prior to disturbance of the historic-era archaeological site by Projects 3 and 10, archaeological data recovery, including archaeological excavation, shall be conducted by qualified archaeologists in accordance the Secretary of the Interior's Standards for Archaeological Documentation. Documentation shall be sufficient to address identified research questions and shall be made available to the public.

Mitigation Measure CR-3. Interpretive Display

If data recovery at the historic-era archaeology site yields artifacts and materials with interpretive value, as determined by a qualified archaeologist, then an interpretive display shall be developed, incorporated into the project site, and made available to the public for viewing.

Mitigation Measure CR-4. Document Masonry Retaining Wall

Prior to removal of the masonry retaining wall by Project 3 and 10, the wall shall be recorded in accordance with the Secretary of the Interior's Standards for Archaeological Documentation and City of San Jose standard measures for demolition of structures of merit.

1) *Professional Qualifications*: The documentation is to be conducted by a qualified consultant meeting the professional qualification standards of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.*
2) *Format:* Department of Parks and Recreation, Primary Record (DPR A) and Building, Structure, and Object (DPR 523B) forms: *The bound and electronic copy of the Historic Report and/or DPR forms for the Structures/Site*
3) *Photography Protocol:* Non-HABS Archival Photo-Documentation:
   - *Cover sheet*-The documentation shall include a cover sheet identifying the following:
     - Photographer, location of artifact, date of photographs and description of photographs.
   - *Camera*- A 35mm camera.
   - *Lenses*- May include normal focus length, wide angle and telephoto (no soft focus).
   - *Filters*-Photographer's choice. Use of a pola screen is encouraged.
   - *Film*-Must use black and white film; tri-X, Plus-X, or T-Max film is recommended.
   - *View*-As required to capture artifact.
   - *Lighting*-As required to capture artifact.
   - *Technical*-All areas of the photograph must be in sharp focus

4) *Submission of Photo-Documentation*: Evidence that the documentation, including the original prints and negatives, has been submitted to History San José (Attention: Jim Reed, History San José, 1650 Senter Road, San José, CA 95112-2599, (408) 287-2290), shall be submitted to the Historic Preservation Officer. Digital photos may be provided as a supplement to, but not in place of, the above photo-documentation. The above shall be accompanied by a transmittal stating that the documentation is submitted in fulfillment of standard measures for the loss of the structure of merit which shall be named and the address stated.

Mitigation Measure CR-5 Reuse of Rock from Removed Wall

The rock wall at Project 3 and 10 shall be removed and the rock reused on other projects that require repair to historic rock structures within the park. Reuse of recovered rock may be used on Projects 2, 4, 5, 9, and other projects requiring rock. If any, excess rock suitable for future use within the park shall be stockpiled.

Mitigation Measure CR-6. Archaeological Monitoring of Ground-disturbing Activities

There shall be monitoring of ground disturbing activities to the extent determined by a qualified archaeologist as necessary to insure appropriate identification and treatment of any currently unknown archaeological resources.

1) If no resources are discovered, the archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary.

2) If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results. These reports shall identify any program mitigation that the City shall complete in order to mitigate archaeological

impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources.)

3) 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:

    a) 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 Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants 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 re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.

    b) A final report shall be submitted to the City's Environmental Principal Planner This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, 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 City's Environmental Principal Planner.

VI. GEOLOGY AND SOILS - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:					
1) Rupture of a known earthquake fault, as described on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? (Refer to Division of Mines and Geology Special Publication 42.)	☐	☐	☐	☒	1,5,24
2) Strong seismic ground shaking?	☐	☒	☐	☐	1,5,24
3) Seismic-related ground failure, including liquefaction?	☐	☐	☒	☐	1,5,24
4) Landslides?	☐	☒	☐	☐	1,5,24
b) Result in substantial soil erosion or the loss of topsoil?	☐	☒	☐	☐	1,5,24
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	☐	☐	☒	☐	1,5,24
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	☐	☐	☐	☒	1,5,24
e) Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	☐	☐	☐	☒	1,5,24

FINDINGS:

VI a) **Less than Significant with Mitigation.** The region is subject to strong earthquakes, as is much of California. The proposed project site is located in an area of convergence between the Hayward and Calaveras strike-slip fault zones, with several secondary faults present within the park. The Berryessa and Warm Springs faults, as well as an un-named fault, are thought to cross the immediate project area (Nolan Associates, 2001). Evidence of past landslides is common, especially between the Berryessa and Warm Springs faults on the steep slopes of the Berryessa formation.

Due to its location within a seismically active region, the project site would likely be subject to at least one moderate to major earthquake that could affect the project after construction. The site would be subject to strong ground shaking in the event of a major earthquake on one of the region's active faults.

A geotechnical report and supplement were prepared for the proposed project (Fisher Geotechnical, 2008 and 2010) (Appendix G). Recommendations from the geotechnical report have been incorporated into individual project designs to minimize the risk of failure. With the incorporation of mitigation measure GEO-1, the proposed project would not cause an increased potential for exposure to geologic hazards for people or property.

VI b) **Less than Significant.** The project site is intended in part to stabilize and repair damaged structures and eroding banks; thus it would result in a net decrease in erosion. Soil disturbance would occur as part of construction. The project would include excavation of oversteep slopes and repair of undercut banks and walls. BMPs would be used to prevent any increase in turbidity in Upper Penitencia Creek beyond the actual construction site. Implementation standard measures as discussed in the Hydrology and Water Quality section would reduce impacts to less-than-significant level.

VI c) **Less than Significant.** Steep terrain is present in proximity to the proposed project site, and there is risk of future landsliding. However, the project would not contribute to the risk of landsliding, and is intended in part to reduce such risks and to stabilize streambanks. The project would have no effect on steep slopes beyond the flat canyon floor and the immediate stream channel, and thus would have no long-term impact.

VI d) **No Impact.** Soils in the project area are not expansive and, therefore, no related impacts are anticipated.

VI e) **No Impact.** The project does not include a septic system and, therefore, there is no impact anticipated.

MITIGATION MEASURES:

Mitigation Measure GEO-1. Incorporation of Geotechnical Report

The project shall incorporate all recommendations set forth in the geotechnical investigations prepared for the project by Fisher Geotechnical, dated February 5, 2008 and November 8, 2010 (Appendix G).

See also Hydrology and Water Quality discussion for standard measures and BMPs.

VII. GREENHOUSE GAS EMISSIONS - Would the project:

a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	☐	☐	☒	☐	1,14
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	☐	☐	☒	☐	1,14
(Note: Greenhouse gas(es) include, but are not limited to, carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulphur hexafluoride)					

FINDINGS:

VII a,b) **Less than Significant.** A minor amount of greenhouse gas (GHG) emissions related to the project would result from the running of construction equipment and vehicles. GHG impacts resulting from the proposed project would not contribute to any cumulatively significant impacts. Pre- and post-project conditions would be nearly identical, resulting in no net increase or decrease of GHG in the long-term.

VIII. HAZARDS AND HAZARDOUS MATERIALS - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?	☐	☒	☐	☐	1
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?	☐	☒	☐	☐	1
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?	☐	☐	☐	☒	1
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?	☐	☐	☒	☐	1,12
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒	1,2
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?	☐	☐	☐	☒	1
g) Impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan?	☐	☐	☒	☐	1,2
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?	☐	☐	☒	☐	1

FINDINGS:

VIII a, b) **Less than Significant with Mitigation.** The use of equipment fuels and fluids during construction may create a minor risk of exposing the public to hazardous materials. All hazardous or regulated materials that are used on site during construction activities would generally be properly stored and secured, to prevent access by the general public. In the unlikely event of a spill, fluids would be controlled and cleaned up in accordance with county and state regulations. Hazardous materials would not be routinely transported or stored on site. However, given the project's location on the banks of Upper Penitencia Creek, a hazardous materials management plan shall be included in contractor requirements. The plan shall be developed in accordance with mitigation measures HAZ-1 and HAZ-2, below.

VIII c) **No Impact.** There are no existing or proposed schools within ¼ mile of the project site; therefore no impacts are anticipated to occur. The nearest school to the project site is Independence High School which is approximately three miles southwest of the project, located at 1776 Educational Park Drive.

VIII d) **Less than Significant with Mitigation.** A search of State and Federal environmental hazardous materials databases and records search was compiled by Environmental Data Resources, Inc, (EDR) to determine the presence or absence of known hazardous material sites within the project area (Appendix J). The database search included a search of the Cortese

database compiled by the California Department of Toxic Substance Control. California Government Code § 65962.5 requires various state agencies to compile lists of hazardous waste disposal facilities, unauthorized releases from underground storage tanks, contaminated drinking water wells and solid waste facilities from which there is known migration of hazardous waste and submit such information to the Secretary for Environmental Protection on at least an annual basis. The search radius was requested to be one mile for all databases, with the center point being near the Visitors Center so as to include the entire project area within the extent of database and records search. The search radius was not requested to specifically comply with ASTM Standard E1527-05 which is required for conducting a Phase I Environmental Site Assessment (ESA) to qualify potential property owner(s) for one of the three land-owner liability protections (LLPs). The database search radius is not required to comply with ASTM Standard E1527-05 because no property transaction is occurring and no Phase I ESA is proposed.

The database search identified a total of five site listing clusters within the one mile search radius. One of the site clusters (Item D) is located at a higher elevation than the project site but is nearly 1 mile to the northwest and is not likely to pose a threat to the project site. Two other site listing clusters (Items B and C) are located at lower elevations and greater than ½ mile from the project sites, and are therefore not likely to have impacted the project site. Two of the site listing clusters appear to be located immediately adjacent to the project area/alignment along Penitencia Creek. A brief description and analysis of the two identified site listing clusters are presented below.

Alum Rock Park, 16240 Alum Rock Avenue, Suite A (EDR ID A1, site 1 of 3 in cluster A on Detail Map): This site appears to be located at or near the Visitors Center at Alum Rock Park. This is a "San José HAZMAT" listing and does not provide any information regarding the nature of the listing. The listing in itself does not indicate a spill or release and may relate to permitted storage and/or use of hazardous materials and/or generation and disposal of wastes. Based on the information available at this time, this listing is unlikely to have resulted in contamination to or beneath the project sites.

Alum Rock Park Corporation Yard, 16240 Alum Rock Avenue (EDR ID A2 and A2, sites 2 and 3 of total 3 in cluster A on Detail Map): This site appears to be located at or near the Visitors Center at Alum Rock Park. This site is listed by SWEEPS and Historical UST databases in reference to a 1,000 gallon underground storage tank (motor vehicle fuel/regular unleaded). It is not known if the tank remains on the site. The listing indicates a possible visual leak detection, although no confirmation or additional information is provided. The tank is listed to have been installed in 1955. No spill or release is indicated and no additional information is presented. The proposed project would not disturb soil at the Visitors Center and within the vicinity of the indicated UST.

15350 Penitencia Creek Road (EDR ID 4 on Detail Map): This site listing is shown on the Overview Map immediately northeast of the site of Project 8. The site is a CDL listing for abandoned drug lab waste that was reported in May of 2005. It is assumed that the listing included removal and cleanup procedures and therefore it is unlikely to have continued impacts at the project site.

VIII e, f) **No Impact**. The project site is not within any airport land use plan area or in the vicinity of a private airstrip. The nearest airport is Mineta San José International Airport located approximately six miles to the west-southwest.

VIII g) **Less than Significant.** Staging areas may be along park access roads but would not completely block the roads. Because of the limited amount of project-related vehicle traffic, construction at the site and vehicles accessing the site would be unlikely to block fire response access. Thus, impacts to emergency response plans would be less than significant. There would be no impact to any emergency evacuation plan.

VIII h) **Less than Significant.** The project site is located in an area which is seasonally subject to fires, and construction activity would occur during the summer-early fall peak fire season. Diablo sage scrub communities on nearby hillsides are fire-prone, although riparian communities are generally less at risk. Because construction equipment would operate on paved access roads or parking areas or in streamside riparian communities, the risk of wildfire exists, but is limited. Mitigation measure HAZ-3 has been included to reduce the risks of a significant impact to less than significant.

MITIGATION MEASURES:

Mitigation Measure HAZ-1. Hazardous Materials Management Plan

A hazardous materials management plan shall be included in the contractor's requirements. The plan shall address the transport, handling and storage of fuels and other equipment fluids and hazardous materials, with emphasis on preventing releases to Upper Penitencia Creek either directly or indirectly. The plan shall address spill prevention, cleanup, and disposal. To the extent feasible, the control measures shall adhere to recognized Best Management Practices (BMPs).

Mitigation Measure HAZ-2. Potential Soil Contamination

If in the event that soil contamination is identified before or during soil grading or excavation, all construction procedures will be halted at the project site and the contaminated soil will be removed from the site and disposed of appropriately.

Mitigation Measure HAZ-3. Fire prevention

Fire prevention methods shall be enacted to control the potential for wildfire during the project construction phase. These measures shall include restricting parking of vehicles to paved areas whenever practical. Parking of vehicles in vegetated areas shall be limited to those essential for construction activities. Contractor shall keep on site adequate fire prevention hand tools to respond to any small fire caused by construction and shall additionally maintain cellular phones on site to notify emergency agencies of any fire or immediate fire hazard.

IX. HYDROLOGY AND WATER QUALITY - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Violate any water quality standards or waste discharge requirements?	☐	☐	☒	☐	1,15
b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	☐	☐	☐	☒	1
c) Substantially alter the existing drainage pattern of the site or area, including the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on-or off-site?	☐	☐	☒	☐	1
d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on-or off-site?	☐	☐	☒	☐	1
e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	☐	☐	☒	☐	1,17
f) Otherwise substantially degrade water quality?	☐	☐	☒	☐	1
g) Place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	☐	☐	☐	☒	1,9
h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows?	☐	☐	☒	☐	1,9
i) Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam?	☐	☐	☐	☒	1
j) Be subject to inundation by seiche, tsunami, or mudflow?	☐	☐	☐	☒	1

FINDINGS:

IX a, e, h) **Less than Significant.** The project is limited to repair of existing bridge footings and walls, bank repair, and floodplain restoration. No additional impervious coverage would be created and the project would, therefore, not be subject to the City of San José's National Pollutant Discharge Elimination System (NPDES) Permit. There would be no post-project change in stormwater runoff rates, and all construction work would take place during the dry season. The project includes a floodplain restoration component that would allow for a net increase in flood storage capacity.

The project includes repair of structures within the 100-year floodplain, including bridge footings and walls, but would not increase the area of these structures such that flow would be altered or impaired. The project would not expose people or new structures to flooding because it is intended only to repair eroded existing structures and banks, restore floodplain, and improve fish passage. There would not be a significant impact related to placing structures in the floodplain.

IX c, d, f) **Less than Significant.** Project 13/CEMAR fish passage improvement project would raise portions of the channel bed but would not change the amount of wetted area or the width of the channel and would not lead to additional erosion or siltation. Several of the projects would repair existing bank and structural failures that, if left to degrade, would continue to introduce sediment to the creek. The project would result in a net increase in flood storage capacity. Floodplain restoration and removal of rock walls would widen the stream course in places but would not substantially alter the stream course. Any minor alterations in the stream course would restore the creek to a more natural state by removing historic fill or restoration to original creek gradient. All earthwork and stockpiling of spoils material and other construction-related earth-disturbing activities would occur in the dry season and BMPs would be implemented throughout construction. However, as with all projects in and around flowing water, construction activities have a limited potential to temporarily increase delivery of sediment to surface water near the project.

The following standard conditions will be incorporated into the project plans and specifications to reduce project impacts to a less than significant level:

Contain Sediments

The project shall comply with the City of San José's Grading Ordinance, including erosion and dust controls during site preparation, and with the City of San José's Zoning Ordinance requirement of keeping adjacent streets free of dirt and mud during construction.

Work within the streambed will take place within areas which have been dewatered. Sediments shall be allowed adequate time to settle before flow is restored. These measures will minimize the potential for sediments to migrate and settle outside the containment area. On streambanks or uplands near the stream, silt fences and other BMPs, as appropriate, shall be installed to contain sediments within the work area.

Standard Stormwater Control Measures

Implementation of the following measures, consistent with NPDES Permit and City Policy requirements, will reduce potential construction impacts to surface water quality to less than significant levels:

Construction Measures

- Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit, to the satisfaction of the Director of Public Works, as follows:
  1. The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of stormwater pollutants including sediments associated with construction activities;
  2. The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

- The project shall incorporate applicable Best Management Practices (BMPs) into the project to control the discharge of stormwater pollutants including sediments associated with

construction activities. The following BMPs are adapted from Bay Area Stormwater Management Agencies Association, *Blueprint for a Clean Bay* (BASMAA, 2004):

- Identify all storm drains, drainage swales and creeks located near the construction site and make sure all subcontractors are aware of their locations to prevent pollutants from entering them.
- Clean up leaks, drips, and other spills immediately so they do not contact stormwater.
- Refuel vehicles and heavy equipment in one designated location on the site and take care to clean up spills immediately.
- Wash vehicles at an appropriate off-site facility. If equipment must be washed on-site, do not use soaps, solvents, degreasers, or steam cleaning equipment, and prevent wash water from entering the storm drain. If possible, direct wash water to a low point where it can evaporate and/or infiltrate.
- Never wash down pavement or surfaces where materials have spilled. Use dry cleanup methods whenever possible.
- Avoid contaminating clean runoff from areas adjacent to your site by using berms and/or temporary or permanent drainage ditches to divert water flow around the site. Reduce stormwater runoff velocities by constructing temporary check dams and/or berms where appropriate.
- Protect all storm drain inlets using filter fabric cloth or other best management practices to prevent sediments from entering the storm drainage system during construction activities.
- Keep materials out of the rain — prevent runoff pollution at the source. Schedule clearing or heavy earth moving activities for periods of dry weather. Cover exposed piles of soil, construction materials and wastes with plastic sheeting or temporary roofs. Before it rains, sweep and remove materials from surfaces that drain to storm drains, creeks, or channels.
- Keep pollutants off exposed surfaces. Place trash cans around the site to reduce litter. Dispose of non-hazardous construction wastes in covered dumpsters or recycling receptacles.
- Practice source reduction — reduce waste by ordering only the amount you need to finish the job.
- Do not over-apply pesticides or fertilizers and follow manufacturer's instructions for mixing and applying materials.
- Recycle leftover materials whenever possible. Materials such as concrete, asphalt, scrap metal, solvents, degreasers, cleared vegetation, paper, rock, and vehicle maintenance materials such as used oil, antifreeze, batteries, and tires are recyclable (check with the local planning or building department for more information).
- Dispose of all wastes properly. Materials that cannot be reused or recycled must be taken to an appropriate landfill or may require disposal as hazardous waste. Never throw debris into channels, creeks or into wetland areas. Never store or leave debris in the street or near a creek where it may contact runoff.
- Illegal dumping is a violation subject to a fine and/or time in jail. Be sure that trailers carrying your materials are covered during transit. If not, the hauler may be cited and fined.
- Train your employees and inform subcontractors about the stormwater requirements and their own responsibilities.
- Additional Specific Practices of BMPs are contained in the publication *Blueprint for a Clean Bay.*

- Prior to the issuance of a grading permit, the applicant may be required to submit an Erosion Control Plan to the City Project Engineer, Department of Public Works, 200 E. Santa Clara Street, San José, California 95113. The Erosion Control Plan may include BMPs as specified in ABAG's *Manual of Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities. For additional information about the Erosion Control Plan, the NPDES Permit requirements or the documents mentioned above, please call the Department of Public Works at (408) 535-8300.

- The project applicant shall comply with the City of San José Grading Ordinance, including erosion and dust control during site preparation and with the City of San José Zoning Ordinance requirements for keeping adjacent streets free of dirt and mud during construction. The following specific BMPs will be implemented to prevent stormwater pollution and minimize potential sedimentation during construction:
  1. Restriction of grading to the dry season (April 15 through October 15) or meet City requirements for grading during the rainy season.
  2. Utilize on-site sediment control BMPs to retain sediment on the project site;
  3. Utilize stabilized construction entrances and/or wash racks;
  4. Implement damp street sweeping, if necessary;
  5. Provide temporary cover of disturbed surfaces to help control erosion during construction;
  6. Provide permanent cover to stabilize the disturbed surfaces after construction has been completed.

Post-Construction Measures

- 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) TCMs.

IX b, g, i, j) **No Impact.** Groundwater depletion would not occur, therefore there is no impact. The project site is situated within a mapped flood hazard area. However, the project does not include the construction of any new housing. There would be little change in ground elevation or contour, except for restoration of historical floodplain and fish passage improvements, and thus the project would not increase flood risk. Flooding may sometimes occur within wetland portions of the corridor under pre-project conditions and may continue to occur post-project; however there are no inhabited structures in this area. There would be no new exposure of people to injury or death. The project is not located within a tsunami risk zone. Thus there would be no impact.

X. LAND USE AND PLANNING - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Physically divide an established community?	☐	☐	☐	☒	1,2

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	☐	☐	☒	☐	1,2
c) Conflict with any applicable habitat conservation plan or natural community conservation plan?	☐	☐	☒	☐	1,2

FINDINGS:

X a) **No Impact.** Projects that have the potential to physically divide an established community may include new freeways and highways, major arterials streets, and railroad lines. Because the project area is within parklands and is surrounded by steep rangelands on three sides, the project would not physically divide a community. Residential areas are located nearby in San José but are not bisected by the project.

X b, c) **Less than Significant.** The City of San José General Plan Land Use designation for the project area is Public Parks and Open Space. The project is not within the Coastal Zone. The proposed project is within the area of the Santa Clara Habitat Conservation Plan / Natural Communities Conservation Plan (HCP/NCCP), which is in preparation but has not yet been adopted. The proposed HCP/NCCP involves multiple stakeholders including the City of San José. The Planning Agreement for the HCP/NCCP requires that the California Department of Fish and Game (DFG) and other agencies comment on Reportable Interim Projects and recommend mitigation measures or project alternatives that will help achieve the preliminary conservation objectives and not preclude important conservation planning options or connectivity between areas of high habitat value. The project site is within the interim referral area; however, it will not adversely affect natural communities (see Mitigation Measure BIO – 9 and Biological Resources Section IV. f.).

The project is compatible with the requirements of adopted plans, and is intended to implement the recommendations of the Alum Rock Park Riparian Management Plan; thus potential effects are less-than-significant.

XI. MINERAL RESOURCES - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	☐	☐	☒	☐	1,2,23
b) Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	☐	☐	☒	☐	1,2,23

FINDINGS:

XI a, b) **Less than Significant.** Extractive resources known to exist in and near the Santa Clara Valley include cement, sand, gravel, crushed rock, clay, and limestone. Santa Clara County has also supplied a significant portion of the nation's mercury over the past century. Pursuant to the mandate of the Surface Mining and Reclamation Act of 1975 (SMARA), the State Mining and Geology Board has designated: the Communications Hill Area (Sector EE), bounded generally by the Southern Pacific Railroad, Curtner Avenue, State Route 87, and Hillsdale Avenue, as containing mineral deposits which are of regional significance as a source of construction aggregate materials.

Neither the State Geologist nor the State Mining and Geology Board has classified any other areas in San José as containing mineral deposits which are either of statewide significance or the significance of which requires further evaluation. Therefore, other than the Communications Hill area cited above, San José does not have mineral deposits subject to SMARA.

The project site is outside of the Communications Hill area, and will therefore not result in a significant impact from the loss of availability of a known mineral resource.

XII. NOISE - Would the project result in:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Exposure of persons to, or generation of, noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	☐	☒	☐	☐	1,2,13,18
b) Exposure of persons to, or generation of, excessive groundborne vibration or groundborne noise levels?	☐	☐	☐	☒	1
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☐	☒	1
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	☐	☐	☒	☐	1
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒	1
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	☐	☐	☐	☒	1

FINDINGS:

The San José 2020 General Plan states that the City's acceptable exterior noise level is 55 DNL long term, and 60 DNL short term. The acceptable interior noise level is 45 DNL. The plan recognizes that the noise levels may not be achieved in the Downtown, and in the vicinity of major roadways and the Mineta San José International Airport.

XII a, d) **Less than Significant.**

Noise Impacts from the Project:

a. Project-Generated Traffic / Noise Impacts

The proposed project would generate no new average daily trips, as defined in the General Plan Transportation section. As traffic would normally have to double to create a significant impact, traffic generated by this project is not expected to substantially increase traffic-related noise levels in the project area.

b. Short-Term Construction Impacts

Noise impacts resulting from construction depend on: 1) the noise generated by various pieces of construction equipment; 2) the timing and duration of noise generating activities; 3) the distance between construction noise sources and noise sensitive receptors; and 4) existing ambient noise levels.

Construction activities may result in noise-related disturbance to park users near to the individual construction sites. Typical hourly average construction noise levels are 75 to 80 dBA measured at a distance of 100 feet from the site during busy construction periods. Such noise levels may be intermittently audible within 1,000 feet of the construction site. Although construction would be temporary and park users could avoid areas of construction, the project has the potential to result in minor short-term construction-related noise impacts to park users. Noise from the construction of the proposed project could also potentially pose a significant impact to the

surrounding residential properties. To limit the construction noise impacts on nearby properties and park users, the standard conditions will below would be incorporated into the project plans and specifications:.

Limit Construction Periods

- Construction will be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit. Construction outside of these hours may be approved through a development permit based on a site-specific construction noise mitigation plan and a finding by the Director of Planning, Building and Code Enforcement that the construction noise mitigation plan is adequate to prevent noise disturbance of affected residential uses.
- Weekend construction hours, including staging of vehicles, equipment and construction materials, shall be limited to Saturdays between the hours of 9 a.m. to 5 p.m. The applicant shall be responsible for educating all contractors and subcontractors of said construction restrictions. Rules and regulations pertaining to all construction activities and limitations identified in this permit, along with the name and telephone number of an appointed disturbance coordinator, shall be posted in a prominent location at the entrance to the job site. The Director of Planning, at his discretion, may rescind provisions to allow extended hours of construction activities on weekends upon written notice to the applicant.

Reduce Construction Related Noise

- The contractor shall use "new technology" power construction equipment with state-of-the-art noise shielding and muffling devices. All internal combustion engines used on the project site shall be equipped with adequate mufflers and shall be in good mechanical condition to minimize noise created by faulty or poorly maintained engines or other components.

- Locate stationary noise generating equipment as far as possible from sensitive receptors. Staging areas shall be located a minimum of 200 feet from noise sensitive receptors, such as residential uses

- The applicant will implement a Construction Management Plan approved by the Director of Planning, Building and Code Enforcement to minimize impacts on the surrounding sensitive land uses to the fullest extent possible. The Construction Management Plan would include the following measures to minimize impacts of construction upon adjacent sensitive land uses:

    - Early and frequent notification and communication with the neighborhood/park users of the construction activities.
    - Prohibit unnecessary idling of internal combustion engines.
    - Designate a "noise disturbance coordinator" who shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator shall determine the cause of the noise complaints (e.g., beginning work too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site.

XII b, c, e, f) **No Impact.** The project will not cause any excessive groundborne vibration or groundborne noise. The project is not located in the vicinity of a public airport or private airstrip.

XIII. POPULATION AND HOUSING - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	☐	☐	☐	☒	1,2
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒	1
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	☐	☐	☐	☒	1

FINDINGS:

XIII a, b, c) **No Impact.** The project has no relationship to population or housing. The project will not induce population growth or encourage construction of any new housing, roads, or infrastructure. No existing housing or populations would be displaced by construction or operation of the project.

XIV. PUBLIC SERVICES

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:					
Fire Protection?	☐	☐	☐	☒	1,2
Police Protection?	☐	☐	☐	☒	1,2
Schools?	☐	☐	☐	☒	1,2
Parks?	☐	☐	☒	☐	1,2
Other Public Facilities?	☐	☐	☐	☒	1,2

FINDINGS:

XIV a, b, c, d, f) **No Impact**. The project site is located within an urbanized area of San José, and is well served by existing Fire, Police, School, Park and other Public Facilities. The project creates no nexus between fire and police services, schools, or parks, and will not cause an increase in need for other utilities or services. The project is intended only to repair damaged or eroding structures and banks, and to restore floodplain and improve fish passage.
XIV e) **Less than Significant.** During project construction, the number of construction-related vehicles on park access roads will increase minor amount. Truck traffic associated with construction of this project will be limited and temporary and will place ordinary wear and tear on the roads traversed. There will be no long term operational aspect to the project and long term traffic will be the same as under existing conditions.

XV. RECREATION

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	☐	☐	☒	☐	1,2
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment?	☐	☐	☒	☐	1,2

FINDINGS:

XV a, b)**. Less than Significant** The project is within an existing park, and will not cause an increased need for recreational facilities or programs in or near Alum Rock Park. The proposed project will be minimally intrusive for park users and is not expected to significantly increase the use of Alum Park or displace use to another park. The project is, therefore, not expected to significantly impact the use of existing parks or recreation centers such that deterioration would occur or be accelerated.

The proposed project is within an area where recreational activities occur, but it is not directly associated with recreational activity except for possible temporary inconvenience during construction. The project will, therefore, have a less than significant effect on recreational facilities or opportunities.

XVI. TRANSPORTATION / TRAFFIC - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio of roads, or congestion at intersections)?	☐	☐	☒	☐	1,2,19
b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways?	☐	☐	☒	☐	1,2,19
c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	☐	☐	☐	☒	1,19
d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible land uses (e.g., farm equipment)?	☐	☐	☐	☒	1,19
e) Result in inadequate emergency access?	☐	☐	☐	☒	1,20
f) Result in inadequate parking capacity?	☐	☐	☒	☐	1,18
g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)?	☐	☐	☐	☒	1,2,18

FINDINGS:

XVI a, b, f) **Less than Significant Impact**. The proposed project would be in conformance with the City's Transportation Level of Service Policy (Council Policy 5-3) and would not create a significant traffic impact.

During the two to four month construction period each year of construction, four to nine passenger vehicle round trips per day are expected, with truck trips ranging from intermittent (about one every other week) up to seven trips per day. These trips would be spread throughout the construction period and would have peaks and lows depending on the work schedule. There will be no operational phase, and thus no operational traffic.

A temporary lane closure may be required during work on Project 8, resulting in one-way controlled traffic during peak construction times. The duration of the closures will be limited and will occur only during the hours of construction. A few parking spaces may be lost at some project sites when staging areas are within existing parking lots. The percentage of available parking area blocked at any one time would be very small, normally affecting only a few spaces.

Because of the short construction period and the small number of trips, and because existing traffic on park access roads is light during weekday construction times, this impact would be less than significant.

XVI c, d, e, g) **No Impact**. The project would have no connection to air traffic patterns. The project does not propose alterations to the local and regional public roadway facilities (i.e., new construction, improvement of existing roadways). There would be no operational phase, thus traffic would be the same as under current conditions. There would be adequate parking in staging areas for construction vehicles. The project would not conflict with any policies supporting alternative transportation. The project would have no connection to rail, water, or airborne transportation.

XVII. UTILITIES AND SERVICE SYSTEMS - Would the project:

Issues	*Potentially Significant Impact*	*Less Than Significant With Mitigation Incorporated*	*Less Than Significant Impact*	*No Impact*	*Information Sources*
a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	☐	☐	☒	☐	1,15
b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☒	☐	1,2,21
c) Require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	☐	☐	☒	☐	1,17
d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	☐	☐	☒	☐	1,22
e) Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	☐	☐	☒	☐	1,21
f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	☐	☐	☒	☐	1,21
g) Comply with federal, state, and local statutes and regulations related to solid waste?	☐	☐	☒	☐	1,21

FINDINGS:

XVII a – f) **Less than Significant Impact.** The project will not contribute to any significant changes in the water, wastewater, stormwater, or solid waste generated by the park. The proposed project would not require construction of new facilities for wastewater treatment, storm drainage, water, or waste disposal because the subject site is located within the City of San José Urban Service Area where such facilities exist, and have the capacity to serve the proposed project.

XVIII. MANDATORY FINDINGS OF SIGNIFICANCE

a) Does the project have the potential to (1) degrade the quality of the environment, (2) substantially reduce the habitat of a fish or wildlife species, (3) cause a fish or wildlife population to drop below self-sustaining levels, (4) threaten to eliminate a plant or animal community, (5) reduce the number or restrict the range of a rare or endangered plant or animal, or (6) eliminate important examples of the major periods of California history or prehistory?	☐	☒	☐	☐	1,10
b) Does the project have impacts that are individually limited, but cumulatively considerable? "Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.	☐	☒	☐	☐	1,16
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	☐	☒	☐	☐	1

FINDINGS:

XVIII a - c) **Less than Significant with Mitigation.** As discussed in the previous sections, without mitigation, the proposed project could potentially have significant environmental effects with respect to air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, and noise. With the incorporation of the specified mitigation measures, however, the impacts of the proposed project would be reduced to a less than significant level.

With incorporation of mitigation measures, the project is not anticipated to have the potential to: (1) degrade the quality of the environment, (2) substantially reduce the habitat of a fish or wildlife species, (3) cause a fish or wildlife population to drop below self-sustaining levels, (4) threaten to eliminate a plant or animal community, (5) reduce the number or restrict the range of a rare or endangered plant or animal, or (6) eliminate important examples of the major periods of California history or prehistory.

Cumulatively Considerable Effects: When viewed together with the effects of past, present, and probable future projects, the proposed project, as mitigated, is not expected to contribute to considerable incremental effects on the environment. On the contrary, the project is specifically designed to reduce adverse impacts associated with the past historic construction of a variety of structures which degraded Upper Penitencia Creek. There are no known concurrent projects that would have impacts on the project area environment. Future projects likely to occur within the project area are likely to be similar restoration and conservation projects within the park. Because these past, present, and future projects are also subject to a high degree of environmental review and regulation associated with work in and around water and sensitive species, it is likely that they were/are subject to similar conditions as the proposed project. As such, the project does not have the potential to contribute to cumulatively considerable environmental effects.

Substantial Adverse Effect on Human Beings: The project, as mitigated, is not expected to have any substantial direct or indirect adverse effect on human beings.

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CHECKLIST REFERENCES

1. Environmental Clearance Application – File No.
2. San José 2020 General Plan
3. USDA, Soil Conservation Service, Soil Survey of SC County, August 1968
4. USDA, Soil Conservation Service, Important Farmlands of SC County map, June 1979
5. State of California's Geo-Hazard maps / Alquist Priolo Fault maps
6. Riparian Corridor Policy Study 1994
7. San José Historic Resources Inventory
8. City of San José Archeological Sensitivity Maps
9. FEMA Flood Insurance Rate Map, Santa Clara County, 1986
10. California Department of Fish & Game, California Natural Diversity Database, 2001
11. City of San José Heritage Tree Survey Report
12. California Environmental Protection Agency Hazardous Waste and Substances Sites List, 1998
13. City of San José Noise Exposure Map for the 2020 General Plan
14. BAAQMD CEQA Guidelines, Bay Area Air Quality Management District. April 1996, revised 1999.
15. San Francisco Bay Regional Water Quality Control Board 1995 Basin Plan
16. Final Environmental Impact Report, City of San José, SJ 2020 General Plan
17. Santa Clara Valley Water District
18. City of San José Title 20 Zoning Ordinance
19. San José Department of Public Works
20. San José Fire Department
21. San José Environmental Services Department
22. San José Water Company, Great Oaks Water Company
23. California Division of Mines and Geology
24. Cooper Clark, San José Geotechnical Information Maps, July 1974

Additional References

Biotic Resources Group. April 2001. *Alum Rock Park Riparian Management Plan*. Soquel, CA.

Bay Area Stormwater Management Agencies Association. BASMAA, 2004. *Blueprint for a Clean Bay*

California Department of Fish and Game. May 2000. *Guidelines for Assessing the Effects of Proposed Development on Rare, Threatened, and Endangered Plants and Plant Communities.* Sacramento, CA.

Hibma, Michael R. and Christian Gerike 2008. *Alum Rock Park Historic Resources Report, San José, Santa Clara County, California*. Produced by LSA Associates, Inc., Point Richmond, California, for the City of San José Community Facilities Department, Santa Clara County, California.

Hickman, J. C. 1993. *The Jepson Manual: Higher Plants of California.* University of California Press. Berkeley CA.

Massey, Sandra 2008. *An Archaeological Inventory for the Alum Rock Park Bank and Stream Restoration Project, City of San José, Santa Clara County, California*. Prepared for Winzler & Kelly Consulting Engineers, Eureka, California. Anthropological Studies Center Sonoma State University, Rohnert Park, California.

Massey et. Al. 2008. *Draft National Register of Historic Places Evaluation of the Bridge L Historic-Period Archaeological Site, Alum Rock Park, San José, California*. Prepared for Winzler & Kelly Consulting Engineers, Eureka, California. Anthropological Studies Center Sonoma State University, Rohnert Park, California.

Tibor, David, P, ed. 2001. *California Native Plant Society's Inventory of Rare and Endangered Vascular Plants of California*, Sacramento, CA.

Weeks, Kay D., and Anne E. Grimmer. 1995. *The Secretary of the Interior's Standards for the Treatment of Historic Properties: With Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*. Washington, DC: U.S. Department of the Interior, National Park Service, Cultural Resource Stewardship and Partnerships, Heritage Preservation Services. http://www.nps.gov/history/hps/tps/standguide/index.htm.

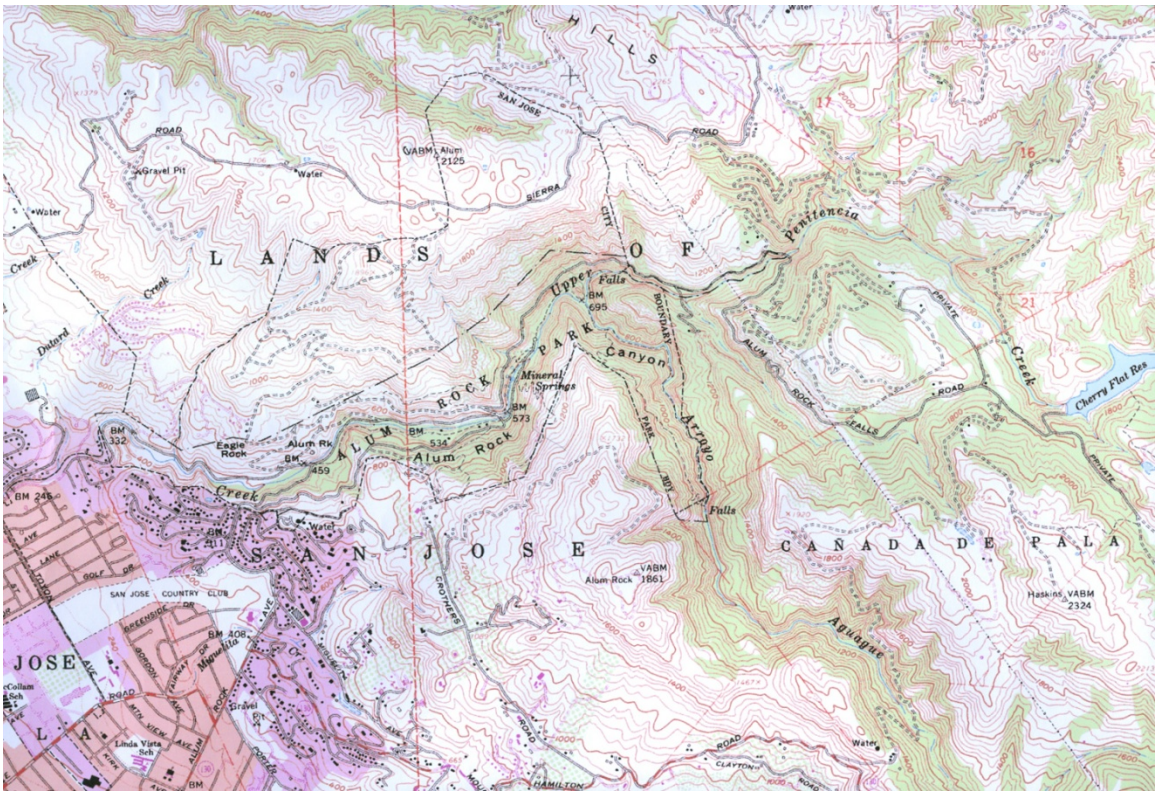
Winzler & Kelly 2008. Botanical Survey for the Proposed Improvements at Alum Rock Park, San José, California.

Winzler & Kelly 2010a. *Alum Rock Park Biological Assessment.* Prepared for the City of San José Parks, Recreation and Neighborhood Services.

Winzler & Kelly 2010b. *Delineation of Ordinary High Water Mark and Riparian Habitat for the Alum Rock Park Proposed Project Areas 1-11, San José, California.*

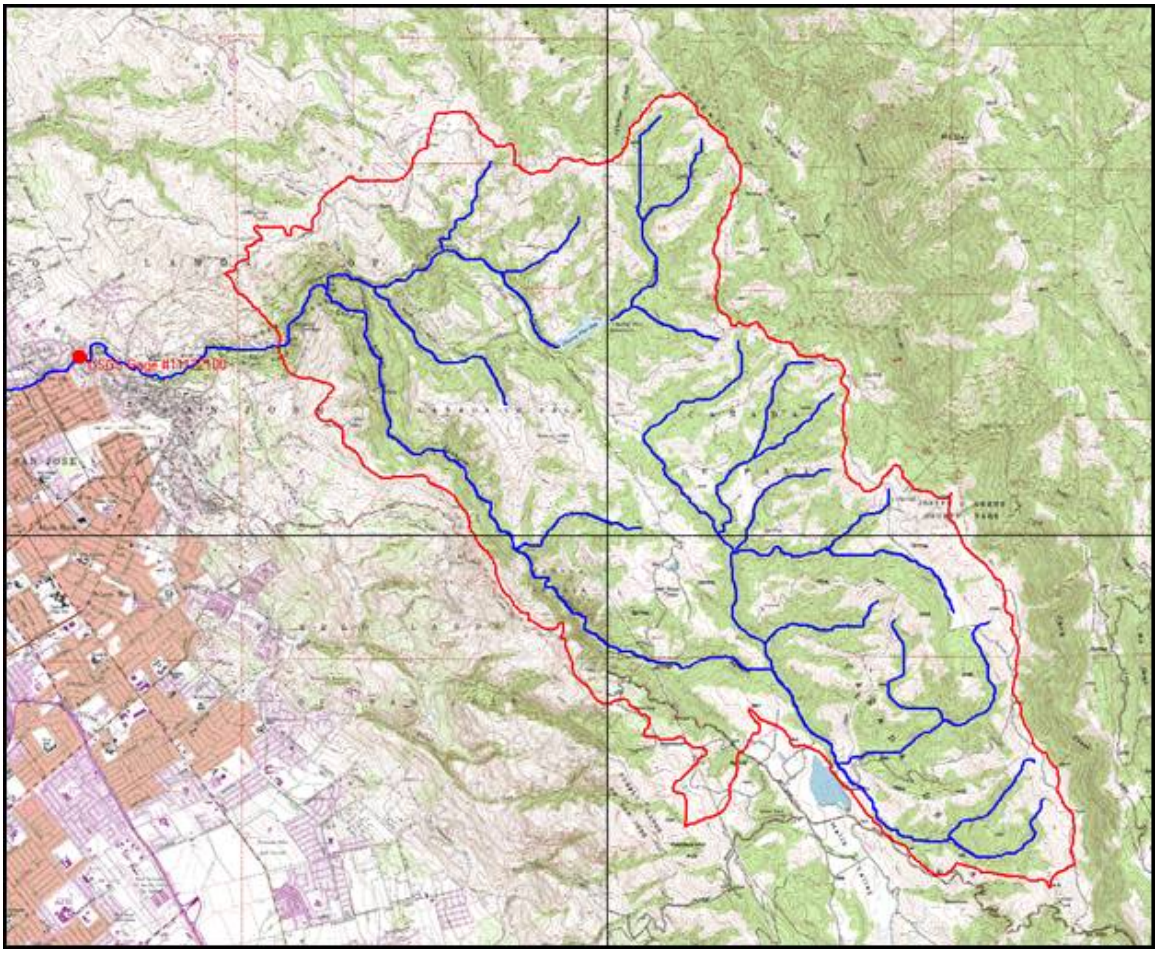
Appendix A
Figures

Source: California State Geological Survey



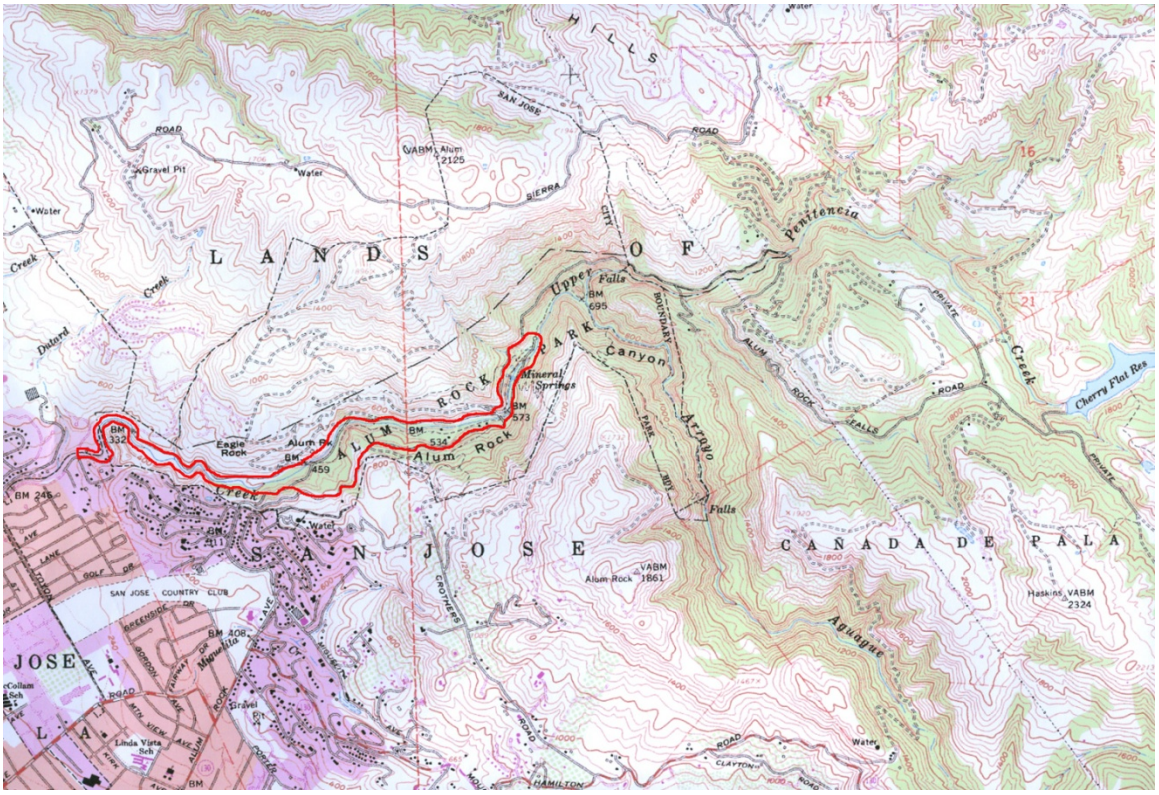
Source: USGS Calaveras Reservoir topographic quadrangle.

Figure 1. Location and Vicinity Maps



Source: USGS Calaveras Reservoir 7.5' topographic quadrangle

Figure 2. Watershed Map, showing the Upper Penitencia Creek drainage above the project site.



Source: USGS Calaveras Reservoir 7.5’ topographic quadrangle

Figure 3. Action Area.

Appendix B
Mitigation Monitoring and Reporting Plan

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Mitigation Measure BIO-1. Regulatory Permits • The applicant shall acquire all necessary permits from the U.S. Army Corps of Engineers (including ESA consultation with National Marine Fisheries Service and the U.S. Fish and Wildlife Service), the California Department of Fish and Game, and the Regional Water Quality Control Board prior to the start of any construction activities.	City of San José	Prior to Construction	Ongoing during construction	Check for Compliance
Mitigation Measure BIO-2. Stream Dewatering & Protection of ESA-Listed Aquatic Species To minimize risk to special-status aquatic species, the following measures shall be adopted: • Prior to construction, a qualified biologist shall conduct a training program to familiarize all construction personnel with identification of steelhead, red-legged frogs, and selected state special concern species; their habitat, general provisions and protections afforded by the Endangered Species Act, measures implemented to	City of San José	Prior to Construction	Ongoing during construction	Training Session, Check for Compliance

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
protect steelhead and red-legged frogs, and a review of the project boundaries. A representative of the City of San José shall be present during any training sessions. • Construction shall be limited to daylight hours in the period between June 15th and October 15th unless extended in writing by the permitting agencies. Hand planting and low impact revegetation activities may occur between October 15th and June 15th in order to establish plants in the planting season. • Every effort shall be taken to ensure that pollutants including: soil, chemicals, fuel, concrete, slurry, or washings thereof are not permitted to enter the flowing stream. Prior to the start of construction, the stream shall be diverted around or through the work area and the work area shall be isolated from the flowing stream. If any concrete, cement, slurry, or washings thereof inadvertently enters the stream, all construction activities shall immediately cease until the material is cleaned up and removed from the channel.				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
• Watertight cofferdams shall be constructed around all instream work areas to isolate flowing water form project area. Project 13/CEMAR shall receive cofferdams upstream and downstream of instream work areas and water shall be diverted through a suitably sized pipe or trench, as approved by NMFS, from upstream of the upstream cofferdam and discharged downstream of the downstream cofferdam. The water diversion shall extend for the entire length of the area instream work is to occur. All other small instream work areas shall receive a cofferdam built around the instream work area. The diversions shall remain in place for the duration of active construction at each site and for sufficient time to allow any instream concrete or mortar to cure and harden. • Cofferdams shall be constructed of a non-erodible material that does not contain soil or fine sediment. Cofferdams and the stream diversion system shall remain in place and function through the construction period. If, for any reason, the cofferdams or stream diversions fail, they shall be repaired immediately. Upon completion of construction, all stream channels shall be returned				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
to their pre-construction condition or shall meet the specified design for the site. • Block nets shall be installed prior to installation of the cofferdams and bypass pipes or channels. The block nets shall be removed after these stream diversion facilities are completed. • Cofferdams shall be constructed in a manner that will allow and encourage voluntary movement out of the work area by fish or frogs. The downstream end will be closed off last, after hand removal of any remaining instream or bank cover within the work area. • A biologist with all necessary state and federal permits shall be on site to rescue all steelhead or red-legged frogs within the work site prior to dewatering. Rescued fish or frogs shall be moved to the nearest appropriate site on the stream. Capture and relocation of all steelhead, including capture techniques and storage temperatures, shall be conducted pursuant to NMFS protocol and subject to NMFS approval. Capture and relocation of all red-legged frogs shall be conducted pursuant				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
toUSFWS protocol and subject to USFWS approval. • A qualified biologist will be present on-site when work occurs within the stream and during dewatering activities to rescue stranded amphibians if necessary.				
Mitigation Measure BIO-3. Special Status Species Conservation Measures To minimize risk to special-status species, the following measures shall be adopted: • Pre-construction surveys shall be conducted to determine the presence of California red-legged frogs, foothill yellow-legged frogs, western pond turtles, dusky-footed woodrats, or any other special-status animal species. Any individuals of these species found within a work area prior to construction shall be relocated to a suitable area outside of the construction area by a qualified biologist with all required federal and state permits. • Prior to construction, a qualified biologist shall	City of San José	Prior to construction	Ongoing during construction	Check for compliance

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
conduct training sessions to familiarize all construction personnel with identification, habitat requirements, and protection protocol for California red-legged frogs, foothill yellow-legged frogs, western pond turtles, dusky-footed woodrats, or any other special-status animal species. A representative of the San José Planning Department shall be present during any training sessions. • Silt fences shall be installed around each work area to minimize erosion and to exclude amphibians and other small wildlife from re-entering the cleared area. • All work activities within or adjacent to the stream will take place during daylight hours to maximize species detection and avoidance. Activities shall not commence until one half hour after sunrise and shall cease one half hour before sunset. • Temporary impacts to upland and aquatic habitats will be restored to pre-project conditions upon completion of construction.				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Mitigation Measure BIO-4. Special Status Bird and Bat Species Conservation Measures To minimize risk to special-status bird and bat species, the following measures shall be adopted: • **Raptors.** Pre-construction surveys for nesting raptors shall be conducted by a qualified ornithologist to identify active raptor nests that may be disturbed during project implementation. Between January and April (inclusive) pre-construction surveys shall be conducted no more than 14 days prior to the initiation of construction activities or tree relocation or removal. Between May and August (inclusive), pre-construction surveys no more than thirty (30) days prior to the initiation of these activities. The surveying ornithologist shall inspect all trees in and immediately adjacent to the construction area for raptor nests. If an active raptor nest is found in or close enough to the construction area to be disturbed by these activities, the ornithologist, shall, in consultation with the State of California,	Implement plan	Prior to construction	Ongoing during construction	Implement plan

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Department of Fish & Game (CDFG), designate a construction-free buffer zone (typically 250 feet) around the nest. The applicant shall submit a report to the City's Environmental Principal Planner indicating the results of the survey and any designated buffer zones to the satisfaction of the Director of Planning prior to the issuance of any grading or building permit. • **Bats.** Surveys for roosting bats shall be conducted by a qualified biologist no more than thirty (30) days prior to any building demolition or removal, construction activities or Oak tree relocation and/or removal. If a female or maternity colony of bats is found on the project site, and the project can be constructed without direct disturbance to the roosting colony, a bat biologist shall designate buffer zones (both physical and temporal) as necessary to ensure the continued success of the colony. Buffer zones may include a 200-foot buffer zone from the roost and/or timing of the construction activities outside the maternity roosting season (after July 31 and before March 1). If an active nursery roost is known to occur on the site and the project cannot be conducted outside				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
of the maternity roosting season, bats may be excluded after July 31 and before March 1 to prevent the formation of maternity colonies. Such exclusion shall occur under the direction of a bat biologist, by sealing openings and providing bats with one-way exclusion doors. In order to avoid excluding all potential maternity roosting habitat simultaneously, alternative roosting habitat, as determined by the bat biologist, should be in place at least one summer season prior to the exclusion. Adjacent Oaks and Oak Woodland areas should be preserved to the maximum extent feasible as potential bat roosting habitat. Bat roosts should be monitored as determined necessary by a qualified bat biologist, and the removal or displacement of bats shall be performed in conformance with the requirements of the CDFG. A biologist report outlining the results of pre-construction surveys and any recommended buffer zones or other mitigation shall be submitted to the satisfaction of the City's Environmental Principal Planner prior to the issuance of any grading, building, or tree removal permit. • **Migratory Bird Protection.** Any mature trees				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
removed as a result of the project shall be removed outside of the migratory bird nesting season that runs from February 1 to August 31, to the maximum extent practical. If any trees are required to be removed during the bird nesting season, a qualified biologist will conduct preconstruction surveys no more than 15 days prior to the commencement of tree removal activities. Any nests present during surveys prior to February 1st shall be removed before trees are cut or disturbed. Ongoing active nest surveys and nest removal shall be conducted weekly prior to the commencement of any mature tree removal scheduled during the nesting season to ensure that no bird eggs or young are harmed.				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Mitigation Measure BIO-5. Wetlands/Waters Creation Impacts to wetland/waters will be minimized, and, where unavoidable impacts occur, the following mitigation measures will be implemented: • The project shall create and restore wetlands and waters, leading to a net gain of approximately 0.09 acres (see also Table 1, above), as described in the Habitat Mitigation and Monitoring Plan (HMMP) prepared for the project (Appendix E). • Revegetation within created wetlands/waters shall be consistent with: the HMMP; Santa Clara Valley Transportation Authority C111 Alum Rock Fish Passage Project Plans and Specifications Plans and Specifications; City of San Jose, Department of Public Works, City Facilities Architectural Services Plans for the Construction of Alum Rock Park Nine Streambank Repair and Floodplain Expansion Projects; and City of San Jose, Department of Public Works, City Facilities Architectural Services Plans for the Construction of Alum Rock Park Bridge Protection and Bank Repair Creekside Bridge and specifications. • All invasive exotic plant species shall be removed	City of San José	Prior to construction	Ongoing during construction	Implement plan

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
from the project site. Any Vinca, Cape, or German ivy, castor bean, arundo, or other exotic plant species shall be bagged and appropriately disposed of at a landfill. Exotic species shall not be used in composting or left otherwise exposed in or around the project site. Heavy equipment and other machinery shall be inspected for the presence of undesirable species prior to on-site use and cleaned to reduce the risk of introducing exotic plant species into the project site.				
Mitigation Measure BIO-6. Riparian Restoration Impacts to riparian areas will be minimized. Where unavoidable riparian impacts occur the following measures will be implemented: • Upon completion of construction, all barren soil within the project site shall be hydroseeded with a mixture of appropriate native seed mix and stabilizing emulsion to minimize the likelihood of erosion.	City of San José	Prior to construction	Ongoing during construction	Implement plan

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
• The project proponent shall implement the Habitat Mitigation and Monitoring Plan (HMMP) (Appendix E). • The project site shall be monitored and maintained for five years following completion of construction to ensure a survival rate of at least 75 percent for replanted vegetation. Treed and woody vegetation shall be monitored for 10 years. If a 75 percent success rate is not realized at the end of five years (10 years for trees), additional planting shall be required and monitoring and maintenance shall be continued until the 75 percent success rate is achieved. The applicant shall provide written reports annually to the Director of Planning describing the number and species of trees and other plants planted, the survival rate of the vegetation, and any remedial measures necessary. • The goal of Shaded Riverine Aquatic (SRA) habitat replacement is the establishment of new vegetative cover, providing a minimum planting mitigation ratio of 4:1. Annual monitoring for riparian revegetation shall also evaluate these shading goals. If, after five years, monitoring				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
shows that revegetation will not meet these goals, additional planting and monitoring shall occur until this determination has been made. This analysis shall be included within the annually submitted written reports as stated above.				
Mitigation Measure BIO-7. Pollution Control • No heavy equipment shall operate in the live stream. • Staging/storage areas for equipment, materials, fuels, lubricants, and solvents shall be located outside of the stream high water channel and associated riparian area. Stationary equipment such as motors, pumps, generators, compressors, and welders, located within the dry portion of the stream channel or adjacent to the stream, shall be positioned over drip pans. Vehicles and equipment shall be moved out of the riparian area prior to	City of San José	Prior to Construction	Ongoing through Construction	Implement Plan

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
refueling and lubricating. • Spoil sites shall not be located within the stream channel, where spoil may be washed back into the stream, or where it will cover wetland or riparian vegetation. Building materials and construction equipment shall not be stored where materials could be washed into the water or where it will cover wetland or riparian habitat. • If the excavation site must be de-watered during construction, any muddy or otherwise contaminated water shall be pumped to a settling pond located outside the stream channel or to a stable upland site where the water can clear prior to re-entering the stream. • A DFG-approved concrete pH reducer shall be applied to all exposed concrete surfaces per the manufacturer's recommendations.				
Mitigation Measure BIO-8. Tree Protection and Removal All trees that are to be removed shall be replaced at the following ratios:	City of San José	Prior to Construction	Ongoing through Construction	Check for compliance

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects

Mitigation Measure	Verify Compliance	Timing of Initial Action	Monitoring Frequency and Duration	Action Items

Diameter of Tree to be Removed	Type of Tree to be Removed			Minimum Size of Each Replacement Tree
	Native	Non-Native	Orchard	
18 inches or greater	5:1	4:1	3:1	24-inch box
12 - 18 inches	3:1	2:1	none	24-inch box
less than 12 inches	1:1	1:1	none	15-gallon container

x:x = tree replacement to tree loss ratio

Note: Trees greater that 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.

The species and exact number of trees to be planted on the site shall be subject to approval of the City Arborist and the Department of Planning, Building, and Code Enforcement.

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Although the project site has sufficient area to accommodate the required tree mitigation, one or more of the following measures will be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, if replacement planting becomes infeasible due to unforeseen circumstances: • The size of a 15-gallon replacement tree may be increased to 24-inch box and count as two replacement trees. • An alternative site(s) will be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building, and Code Enforcement. Contact Jaime Ruiz, PRNS Landscape Maintenance Manager, at 975-7214 or Jaime.Ruiz@sanJoséca.gov for specific park locations in need of trees. • A donation of $300 per mitigation tree to Our City Forest for in-lieu off-site tree planting in the community. These funds will be used for tree planting and maintenance of planted trees for approximately three years. Contact Rhonda Berry, Our City Forest, at (408) 998-7337 x106 to make a donation. A donation receipt for off-site tree planting shall be provided to the Planning Project Manager prior to issuance of a development permit. The following tree protection measures will also be included in the project				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
in order to protect trees to be retained during construction: • Pre-construction treatments 1. The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection. 2. Fence all trees to be retained to completely enclose the TREE PROTECTION ZONE prior to demolition, grubbing or grading. Fences shall be 6 ft. chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed. 3. Prune trees to be preserved to clean the crown and to provide clearance. All pruning shall be completed or supervised by a Certified Arborist and adhere to the Best Management Practices for Pruning of the International Society of Arboriculture. • During construction 1. No grading, construction, demolition or other work shall occur within the TREE PROTECTION ZONE. Any modifications must be approved and monitored by the consulting arborist. 2. Any root pruning required for construction purposes shall receive the prior approval of, and be supervised by, the consulting arborist.				

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
3. Supplemental irrigation shall be applied as determined by the consulting arborist. 4. If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied. 5. No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the TREE PROTECTION ZONE. 6. Any additional tree pruning needed for clearance during construction must be performed or supervised by an Arborist and not by construction personnel. 7. As trees withdraw water from the soil, expansive soils may shrink within the root area. Therefore, foundations, footings and pavements on expansive soils near trees shall be designed to withstand differential displacement.				
Mitigation Measure BIO-9. Habitat Plan Referral The project shall be referred to the DFG and USFWS for review under the Santa Clara Valley Habitat Plan because the project meets the following criteria: 1. The project is located within the Habitat Plan Planning Area; **AND**	City of San José	Prior to Construction	None	Incorporate DFG/USFWS recommended mitigation into project

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
2. The project requires discretionary permits subject to CEQA review; **AND** 3. A mitigated negative declaration must be prepared based on information that the project may potentially have an adverse impact on natural communities including: • The project occurs in or is adjacent to a natural habitat; • The project is in or adjacent to a stream; • The project may fill a wetland. If comments are received from DFG and/or USFWS, any recommended mitigation shall be incorporated into the project to ensure the project is consistent with the preliminary conservation objectives of the Habitat Plan. If no response to referral is received from DFG and USFWS, then the project will be considered to be consistent with the preliminary conservation objectives of the Habitat Plan.				
Mitigation Measure CR-1. Conform Bridge and Wall Repair and Alteration to Secretary of Interior's Standards Repair and alteration of the pedestrian bridges and masonry retaining walls shall be in accordance with the Secretary of the Interior's *Standards for the Treatment of Historic Properties with Guidelines for Preserving,*	City of San José	During Construction	Ongoing through Construction	Check for compliance

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Rehabilitating, Restoring, and Reconstructing Historic Buildings or *Standards and Guidelines for Rehabilitating Historic Structures.*				
Mitigation Measure CR-2. Conduct Data Recovery at Historic-era Archaeology Site Prior to disturbance of the historic-era archaeological site by Projects 3 and 10, archaeological data recovery, including archaeological excavation, shall be conducted by qualified archaeologists in accordance the Secretary of the Interior's Standards for Archaeological Documentation. Documentation shall be sufficient to address identified research questions and shall be made available to the public.	City of San José	During Construction	Ongoing through Construction	Report findings, as needed
Mitigation Measure CR-3. Interpretive Display If data recovery at the historic-era archaeology site yields artifacts and materials with interpretive value, as determined by a qualified archaeologist, then an interpretive display shall be developed, incorporated into the project site, and made available to the public for viewing.	City of San José	During Construction	Ongoing through Construction	Report findings, as needed

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Mitigation Measure CR-4. Document Masonry Retaining Wall Prior to removal of the masonry retaining wall by Project 3 and 10, the wall shall be recorded in accordance with the Secretary of the Interior's Standards for Archaeological Documentation and City of San Jose standard measures for demolition of structures of merit. 5) *Professional Qualifications*: The documentation is to be conducted by a qualified consultant meeting the professional qualification standards of the *Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation.* 6) *Format:* Department of Parks and Recreation, Primary Record (DPR A) and Building, Structure, and Object (DPR 523B) forms: *The bound and electronic copy of the Historic Report and/or DPR forms for the Structures/Site* 7) *Photography Protocol:* Non-HABS Archival Photo-Documentation: ➢ *Cover sheet*-The documentation shall include a cover sheet identifying the following: o Photographer, location of artifact, date of photographs and description of photographs. ➢ *Camera*- A 35mm camera. ➢ *Lenses*- May include normal focus length, wide angle and telephoto (no soft focus). ➢ *Filters*-Photographer's choice. Use of a pola screen is encouraged.	City of San José	Start of Construction	Until Removal is Documented	Documentation of Wall

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Mitigation Measure CR-5 Reuse of Rock from Removed Wall The rock wall at Project 3 and 10 shall be removed and the rock reused on other projects that require repair to historic rock structures within the park. Reuse of recovered rock may be used on Projects 2, 4, 5, 9, and other projects requiring rock. If any, excess rock suitable for future use within the park shall be stockpiled.	City of San José	Start of Construction	Ongoing through Construction, continuing use of rock indefinitely	Reuse Rock

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Mitigation Measure CR-6. Archaeological Monitoring of Ground-disturbing Activities There shall be monitoring of ground disturbing activities to the extent determined by a qualified archaeologist as necessary to insure appropriate identification and treatment of any currently unknown archaeological resources. 4) If no resources are discovered, the archaeologist shall submit a report to the City's Environmental Principal Planner verifying that the required monitoring occurred and that no further mitigation is necessary. 5) If evidence of any archaeological, cultural, and/or historical deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the City's Environmental Principal Planner, describing the testing program and subsequent results. These reports shall identify any program mitigation that the City shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources.) 6) In the event that human remains and/or cultural materials are found, all project-related construction shall cease within a 50-foot	City of San José	Start of Construction	Ongoing through Construction	Report, additional Mitigation if Required

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Mitigation Measure GEO-1. Incorporation of Geotechnical Report The project shall incorporate all recommendations set forth in the geotechnical investigations prepared for the project by Fisher Geotechnical, dated February 5, 2008 and November 8, 2010 (Appendix G).	City of San José	Prior to construction	Ongoing through construction	Check for compliance
Mitigation Measure HAZ-1. Hazardous Materials Management Plan A hazardous materials management plan shall be included in the contractor's requirements. The plan should address the transport, handling and storage of fuels and other equipment fluids and hazardous materials, with emphasis on preventing releases to Upper Penitencia Creek either directly or indirectly. The plan shall address spill prevention, cleanup, and disposal. To the extent feasible, the control measures shall be recognized Best Management Practices (BMPs).	City of San José	Prior to construction	Ongoing through construction	Implement plan

Mitigation Monitoring and Reporting Plan – Alum Rock Park Bank Repair and Stream Restoration Projects				
Mitigation Measure	**Verify Compliance**	**Timing of Initial Action**	**Monitoring Frequency and Duration**	**Action Items**
Mitigation Measure HAZ-2. Potential Soil Contamination If in the event that soil contamination is identified before or during soil grading or excavation, all construction procedures will be halted at the Project Site and the contaminated soil will be removed from the site and disposed of appropriately.	City of San José	During construction	Ongoing through construction	Cease work and report findings
Mitigation Measure HAZ-3. Fire prevention Fire prevention methods shall be enacted to control the potential for wildfire during the project construction phase. These measures shall include restricting parking of vehicles to paved areas whenever practical. Parking of vehicles in vegetated areas shall be limited to those essential for construction activities. Contractor shall keep on site adequate fire prevention hand tools to respond to any small fire caused by construction and shall additionally maintain cellular phones on site to notify emergency agencies of any fire or immediate fire hazard.	City of San José	Start of Construction	Ongoing through Construction	Check for compliance

Appendix C
Photographs

Project 1: Creekside Bridge Undercut Abutment

Project 1: Creekside Bridge Looking Downstream

Project 11: Mature Sycamore Tree and Picnic Area

Project 11: Degraded Bank near Mature Sycamore Tree

Project 3 and 10: Rock Wall Looking Upstream

Project 3 and 10: Rock Wall Looking Downstream

Project 3 and 10: Overview of Floodplain Creation Area

Project 4: Bridge K

Project 2: YSI Bridge looking Downstream, Deodar Cedar at Left

Project 5: Base of Slope with Failed Rock Wall.

Project 5 and 13/CEMAR: Weir Area, Plunge Pool

Project 6: Portion of Failed Slope Protection in Creek

Project 9: Upstream of Visitor Center Bridge

Project 7: Failed Slope

Project 8: Undercut Sack Concrete Wall.

Attachment 1
Response to Comments

RESPONSE TO COMMENTS

Alum Rock Park Bank Repair
and Stream Restoration Projects
Draft Initial Study and Mitigated Negative Declaration (ISMND)
File No. PP08-203

Comment Letters Received on the Draft IS/MND:

1) California Regional Water Quality Control Board- San Francisco Bay Region (RWQCB), Brian Wines
2) National Marine Fisheries Service (NMFS), Darren Howe

COMMENTS AND RESPONSES

RWQCB Comment Letter 1:

Comment 1-1 Water Board Support for the Project
Comment noted. No response needed.

Comment 1-2a, Comment 2, Project Description, Project 1. Creekside Bridge Abutment Repair (pages 2 - 3).
Comment noted. No response needed.

Comment 1-2b, Project Description, Project 11. Expansion of Floodplain (pages 3 - 4).
If sycamore trees in Alum Rock Park have not yet become hybridized, extreme care should be taken to avoid introducing hybridized trees into the park.

Response: The sycamore trees within and near Alum Rock Park were not studied for possible hybridization as part of this ISMND or the related biological studies. Mitigation Measure BIO-8 requires that all native trees removed are replaced with natives, pursuant to the size-based ratios required by City policy. Nevertheless, the City agrees that it is important to replant native sycamores and not hybridized trees. As such, the following wording has been added to page 8 of the HMMP, under the heading Riparian Woodland Planting:

> *"Any native sycamore trees removed as a result of the project, including the mature specimen at Project 11, shall be replaced with native (non-hybridized) trees from a certified source."*

Comment 1-3, Project Description, Projects 2, 4, and 8. Repair Undercut Rock Wall Downstream of Historic Bridge, Repair Undercut Rock Wall Downstream of Historic Bridge K, and Repair of Failing North Bank Sack Concrete Wall and Bank (pages 4 – 5 and 7).
There are some projects for which it is not possible to assess the potential for the project to narrow the creek channel slightly. Please provide cross-section views of the proposed work at these locations: Projects 2, 4, and 8.

Response: As noted in the table of contents of the ISMND, several large format or lengthy technical appendices and reports, including project engineering plans, were made available during circulation under separate covers at the City of San Jose Department of Planning, Building, and Code Enforcement 200 E. Santa Clara Street, San Jose, CA 95113. As a result of this comment, plans have also been made available electronically to the commenter for review. The plans provide additional detail of creek channel for all projects.

Comment 1- 4, Project Description, Project 6. Repair of Failed Bank Protection Adjacent to Visitor's Center (pages 5 - 6) and Project 10, Expansion of Floodplain Downstream of Bridge L (page 4)
Water Board staff encourage the City's design team to evaluate whether or not the toe armoring is necessary at Project 6, since the removal of the failed retaining wall should increase channel stability at this location. If possible, Water Board staff would also prefer to see the toe armoring removed when the floodplain is expanded at Project 10.

Response:
Project 6: The project deliberately limits the placement of rock to the toe of the slope where scour is most likely to occur and where a failure would result in instability of the newly constructed bank. In addition, this reach of creek is relatively narrow; therefore, staff and their consultants believe it is prudent to stabilize the bank at the toe to prevent bank failure and sloughing of sediments into the channel.

Project 10: The existing rock wall, located on the east bank at Project 10, was initially considered for complete removal. During the design process the potential for channel adjustment with the wall was removed was considered. A weir currently spans the channel approximately half way along the rock wall in question. This weir controls the grade of the channel at this location. If the rock wall were completely removed, flow within the channel may realign itself to go around the weir, within the new flood plain, which could impact California red-legged frog habitat. If the channel were to adjust, a head cut may move up the channel and could potentially impact the foundations at Bridge L. Because of this concern, the rock wall is only proposed for modification by removing the top portion. The resulting wall will allow overtopping at flows associated with the 1.5 to 2 year event while preventing the channel from adjusting.

Comment 1- 5, Project Description, Project 9. Abutment and Band Protection and Repair at the Visitor Center Bridge (page 6).
Please clarify whether or not moving the weir is part of the project.

Response:

The weir has not been identified as a fish passage barrier. The priority for this site was to minimize work in the creek and to reduce upper bank erosion with a soft approach and minimal associated site disturbance. Therefore the weir will not be moved or altered as part of this project.

Comment 1-6, Other Permits and Approvals Required, State and Local Agencies (page 8).
Please modify the text on page 8 to note that the project will need WDRs from the Water Board.

Response: Comment notes an omission of details on ISMND page 8 regarding the Water Board's jurisdiction above the ordinary high water mark. Comment refers to correct language in ISMND *Section IV. Biological Resources, Jurisdictional Waters,* on page 15. To correct the omission, the following more accurate language has been inserted on page 8:

> ***"Bay Area Regional Water Quality Control Board***
> *The Bay Area Regional Water Quality Control Board must issue a Section 401 certification that the project meets state water quality standards, and in addition may require the issuance of either individual or general waste discharge requirements (WDRs)."*

Comment 1-7a, Section IV. Biological Resources, Table 1: Impacts to Waters and Areas of Restoration (page 17).
Comment notes that Table 1 and discussions relating to the table refer only to impacts and mitigation below the ordinary high water mark, in ACOE Section 404 jurisdiction. Comment notes that Water Board and DFG jurisdiction extend to the top of bank and riparian drip line, respectively. Commenter requests inclusion of the area of impacts below the top of bank and impacts between outer riparian drip lines. Comment further states that the Habitat Mitigation and Monitoring Plan (HMMP) must be revised to show impacts and mitigation for all areas subject to Water Board and DFG jurisdiction.

Response: The commenter is correct in noting that the area of upland impacts above the ordinary high water was not calculated for inclusion in the ISMND. However, the ISMND does discuss and depict the nature and extent of the impacts and proposed mitigation in these areas. Based on several studies conducted prior to and concurrent with preparation of the ISMND, the proposed project impact areas on the upland portions of the creek bank were found to be generally degraded with many instances of existing failed banks and hardscape. The proposed project is largely aimed at repairing these degraded and failed natural and constructed features in attempt to improve habitat and water quality in the creek. As discussed in the ISMND, construction in and around a creek may lead to significant environmental impacts if proper measures are not implemented before, during, and after construction. The ISMND recommends mitigation within disturbed areas – including all disturbed creek banks above the ordinary high water mark - to reduce the potential impacts associated with construction to a less than significant level. Mitigation proposed in the ISMND that would lessen impacts in to these areas includes: riparian restoration (BIO-6); pollution control (BIO-7); tree protection, removal, replacement (BIO-8); habitat plan referral (BIO-9); incorporation of geotechnical report (GEO-1); and potential soil

contamination (HAZ-2). Mitigation measure BIO-6 is the requirement for adherence to the Habitat Mitigation and Monitoring Plan prepared for the project, including upland seeding and native riparian woodland replanting for all disturbed upland areas. The project has also incorporated sediment containment and stormwater control measures into the design to reduce the potential for the entrainment of pollutants and introduction of pollutants to water (see ISMND page 35-37). Because the construction impacts predominantly serve the purpose of stabilizing existing failed slopes and hardscape, and because the impacted areas will be subsequently restored to superior condition, the City has determined, based on the analysis conducted as part of the ISMND, that the impacts on the upland banks resulting from the project will be less than significant with implementation of the recommended mitigation measures.

The City recognizes that activities in areas that are outside of the jurisdiction of the ACOE (e.g., the stream banks above the ordinary high water mark) are regulated by the Water Board under the authority of the Porter-Cologne Water Quality Control Act, and may require the issuance of either individual or general WDRs from the Water Board. The City also understands that the Water Board and DFG, as part of separate permit processes, may require tabulation of upland impacts within state jurisdiction, refinement of mitigation measures specified in the ISMND, and the development of additional permit conditions. As discussed in the ISMND, the project would not begin until all applicable local, state, and federal permits have been obtained.

Similarly, the HMMP includes text and figures that disclose the nature and extent of all proposed impacts and mitigation within and beyond both federal and state jurisdictional waters – including the disturbed upland creek banks. The HMMP also incorporates the more detailed project plans and specs, which offer additional detail regarding project impact and mitigation. While the HMMP, like the ISMND, does not include calculations of the impacts ad mitigation within state-jurisdictional upland portions of the creek banks, it does, in fact, show impacts and mitigation for all areas subject to Water Board and DFG jurisdiction – as requested by the commenter.

Regarding distribution of the HMMP monitoring results, Page 9 of the HMMP has been revised as follows:

> *"Annual reports of monitoring results will be submitted to the COE San Francisco District, the Regional Water Quality Control Board, and the Department of Fish and Game."*

Comment 1-7b, Section IV. Biological Resources, Mitigation Measure BIO-7, Pollution Control (page 22).

Areas of fresh concrete or grout must be allowed to cure for 28 days or be treated with a CDFG-approved sealant before contacting water in the creek.

Response: The following wording has been added to Mitigation Measure BIO-7:

"A DFG-approved concrete pH reducer shall be applied to all exposed concrete surfaces per the manufacturer's recommendations."

NMFS Comment Letter 2:

Comment 2-1 Concern regarding suitability of Project 11 for floodplain expansion

My concern when reviewing the plans, and then viewing the site on 11/9/11, is that the proposed approach for floodplain connection may not be the best fit for the reach. Previous development in this site is less than at other locations, rock walls are minimal or absent, and artificial encroachment/stabilization appears to be very minimal – indicating that the project may be proposing to create floodplain in a reach where it may not be best suited. Higher gradient reaches (as this reach appears to be) are often more confined (naturally) and have less floodplain than lower gradient reaches. Establishing a floodplain in a reach where it is not suited could result in instream impacts without improving instream habitat for listed steelhead. That said, it is possible too that the proposed approach may be suitable, or that a modified approach may be warranted—coordination with NMFS engineers/hydrogeomorphologists and the City's will help to resolve this. Has a basis of design report (with modeling) been prepared for this reach? If so, please provide as this will be necessary for NMFS review of this reach.

Response:
This site was identified in the City of San Jose's Alum Rock Park Riparian Management Plan as being a suitable location for floodplain expansion and riparian cover. There are many constraints in selecting a site for floodplain expansion in the park, including existing park infrastructure (roads, parking lots, buildings, picnic grounds), cultural resources (historic bridges and grottos), long stretches of creek that are further confined and heavily armored, and grade control structures. This project site addresses removal of anthroprogenic fill at this site. The Alum Rock Park Riparian Management Plan considered these issues, and identified this site as an opportunity to re-create a floodplain and vegetative cover with limited impact on other resources.

California Regional Water Quality Control Board
San Francisco Bay Region

Matthew Rodriquez
Secretary for
Environmental Protection

1515 Clay Street, Suite 1400, Oakland, California 94612
(510) 622-2300 • Fax (510) 622-2460
http://www.waterboards.ca.gov/sanfranciscobay

Edmund G. Brown, Jr.
Governor

November 15, 2011
CIWQS Place ID No. 773127

Sent via electronic mail: No hardcopy to follow

City of San Jose
Planning, Building and Code Enforcement
200 East Santa Clara Street, T-3
San Jose, CA 94113

Attn: John Davidson (john.davidson@sanjoseca.gov)

Subject: Initial Study / Mitigated Negative Declaration for the Alum Rock Park Bank Repair and Stream Restoration Projects (File No. PP08-203) in the City of San Jose in Santa Clara County

SCH # 2011102049

Dear Mr. Davidson:

San Francisco Bay Regional Water Quality Control Board (Water Board) staff have reviewed the *Initial Study / Mitigated Negative Declaration for the Alum Rock Park Bank Repair and Stream Restoration Projects (File No. PP08-203) in the City of San Jose in Santa Clara County (MND).* The MND evaluates the potential impacts of two bridge abutment repairs, ten bank repair projects, floodplain restoration, and fish passage improvements along Upper Penitencia Creek in Alum Rock Park in the City of San Jose (Project). Water Board staff have the following comments on the MND.

Comment 1, Water Board Support for the Project
Water Board staff understand the challenges of performing work along Upper Penitencia Creek in Alum Rock Park. In addition to the presence of important spawning habitat for steelhead trout within Alum Rock Park, the Park also contains historical structures and popular recreation facilities. The Project has been designed to accommodate the needs of listed species, while maintaining access to the park and retaining historic structures as much as possible. We would like to acknowledge the significant effort that the City of San Jose has made in the design of the Project. The following comments are made with the intention of clarifying the Project description and suggesting areas in which Project documentation can be improved. At a few of the Project sites, we would like the City of San Jose to consider minor modifications to the Project plans and would welcome an opportunity to discuss the feasibility of these suggested changes.

Comment 2, Project Description, Project 1. Creekside Bridge Abutment Repair (pages 2 - 3).
The project description in the MND appears to place less hardscape in the creek channel than the proposed design in the Geotechnical Assessment in Appendix G to the MND. Water Board staff appreciate any effort to minimize the amount of hardscape placed along the creek channel.

Comment 2, Project Description, Project 11. Expansion of Floodplain (pages 3 - 4).
This project is likely to be very beneficial to creek stability and habitat value along the Creek. Unfortunately, this project will also require the removal of a mature sycamore tree with roots that have been exposed by bank erosion. Mature sycamore trees provide habitat that young sycamore trees do not provide. Therefore, mitigation for the loss of this tree should be carefully implemented. In recent years, agency staff have become aware of hybridization between sycamores and London plane trees. If sycamore trees in Alum Rock Park have not yet become hybridized, extreme care should be taken to avoid introducing hybridized trees into the park. This may include genetic analysis of any new sycamores planted as mitigation for the Project's impacts. Genetic testing of newly planted sycamores may be necessary for several years after they are planted in the park to confirm that the replacement trees are not hybridized.

Comment 3, Project Description, Projects 2, 4, and 8. Repair Undercut Rock Wall Downstream of Historic Bridge, Repair Undercut Rock Wall Downstream of Historic Bridge K, and Repair of Failing North Bank Sack Concrete Wall and Bank (pages 4 – 5 and 7).
Because of the many constraints on the width of the creek channel, which have contributed to channel instability in the park, it is important to avoid any further reductions in the cross section of the creek channel. Most of the proposed projects either have no impact on the creek's cross section or actually increase the available area for the creek. Since the figures in the MND and the supporting appendices only include plan views of the proposed projects, there are some projects for which it is not possible to assess the potential for the project to narrow the creek channel slightly. Projects 2, 4, and 8 are such projects. Please provide cross-section views of the proposed work at these locations.

Comment 4, Project Description, Project 6. Repair of Failed Bank Protection Adjacent to Visitor's Center (pages 5 - 6) and Project 10, Expansion of Floodplain Downstream of Bridge L (page 4).
At the location of Project 6, a failed section of bank armoring will be removed and the bank will be laid back to provide a more stable slope. The design at Project 6 includes rock armoring at the toe of the slope below the laid back bank. Water Board staff encourage the City's design team to evaluate whether or not the toe armoring is actually necessary at this location, since the removal of the failed retaining wall should increase channel stability at this location.

Water Board staff have similar questions about Project 10, which will expand the floodplain by leaving back the bank. Some figures appear to show rock armoring remaining along the edge of the low flow channel. But Figure 4 in the HMMP suggests that the existing toe armoring will be

removed when the floodplain is expanded. If possible, Water Board staff would prefer to see the toe armoring removed when the floodplain is expanded.

Comment 5, Project Description, Project 9. Abutment and Band Protection and Repair at the Visitor Center Bridge (page 6).
At this project site, the Geotechnical Assessment in Appendix G to the MND recommends moving the location of weir in the creek channel. Please clarify whether or not moving the weir is part of the Project.

Comment 6, Other Permits and Approvals Required, State and Local Agencies (page 8).
The text under the heading "Bay Area Regional Water Quality Control Board", only mentions the need to obtain a Section 401 Certification. The Water Board's authorities under both the federal Clean Water Act and the State of California's Porter-Cologne Act are correctly identified in *Section IV. Biological Resources, Jurisdictional Waters*, on page 15. As this text correctly notes, the Water Board has regulatory authority over wetlands and waterways under both the federal Clean Water Act (CWA) and the State of California's Porter-Cologne Water Quality Control Act (California Water Code, Division 7). Under the CWA, the Water Board has regulatory authority over actions in waters of the United States, through the issuance of water quality certifications (certifications) under Section 401 of the CWA, which are issued in conjunction with permits issued by the Army Corps of Engineers (ACOE), under Section 404 of the CWA. When the Water Board issues Section 401 certifications, it simultaneously issues general Waste Discharge Requirements for the project, under the Porter-Cologne Water Quality Control Act. Activities in areas that are outside of the jurisdiction of the ACOE (e.g., isolated wetlands, vernal pools, seasonal streams, intermittent streams, channels that lack a nexus to navigable waters, or stream banks above the ordinary high water mark) are regulated by the Water Board, under the authority of the Porter-Cologne Water Quality Control Act. Activities that lie outside of ACOE jurisdiction may require the issuance of either individual or general waste discharge requirements (WDRs).

Please modify the text on page 8 to note that the project will need WDRs from the Water Board. This is an important revision, since much of the Project work will be take place above the ordinary high water mark (OHW), in areas that are outside of ACOE jurisdiction, but subject to Water Board jurisdiction, as well as California Department of Fish and Game (CDFG) jurisdiction.

Comment 7, **Section IV. Biological Resources, Table 1: Impacts to Waters and Areas of Restoration (page 17).**
Table 1 and any text that refers to this table are the most seriously flawed components of the MND. Table 1 only includes impacts to areas of the creek channel that are below OHW and subject to ACOE jurisdiction. Water Board jurisdiction extends to the top of bank and CDFG jurisdiction extends to the outer dripline of riparian vegetation.

Please revise Table 1 to show all impacts and areas of restoration below top of bank for Water Board jurisdiction and all impacts between the outer riparian driplines for CDFG jurisdiction. Table 1 significantly underestimates the Project's impacts to jurisdictional waters. Projects 2, 3,

4, 7, and 10 have no permanent impacts to ACOE jurisdictional areas. But all of these projects have permanent impacts to areas subject to Water Board and CDFG jurisdiction.

This flaw also seriously compromises the *Habitat Mitigation and Monitoring Plan, Alum Rock Park Bank Repair and Stream Restoration Projects*, (HMMP) in Appendix E to the MND. The HMMP must be revised to show impacts and mitigation for all areas subject to Water Board and CDFG jurisdiction. The HMMP also only requires that annual reports be submitted to the ACOE. The revised HMMP should note that reports must also be submitted to the Water Board and CDFG.

Comment 7, **Section IV. Biological Resources, Mitigation Measure BIO-7, Pollution Control (page 22).**
In addition to the measures already included in this mitigation measure, please add the isolation of fresh concrete or grout from water in the creek. Areas of fresh concrete or grout must be allowed to cure for 28 days or be treated with a CDFG-approved sealant before contacting water in the creek. Until the concrete has cured, it can elevate pH in the creek water to levels that may be harmful to aquatic life.

Please contact me at (510) 622-5680 or bwines@waterboards.ca.gov if you have any questions.

Sincerely,

Brian Wines
Water Resources Control Engineer
South East Bay Counties
Watershed Division

cc: State Clearinghouse (state.clearinghouse@opr.ca.gov)
CDFG, David Johnson (mjohnson@dfg.ca.gov)
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Davidson, John

From: Darren Howe [Darren.Howe@noaa.gov]
Sent: Tuesday, November 29, 2011 11:52 AM
To: Davidson, John
Subject: RE: Alum Rock Park

Hi John,
Just following up on our phone conversation last week (11/21/11). I had previously indicated that NMFS may be sending a comment letter regarding the Alum Rock Park projects. To clarify, we won't be sending a comment letter. The purpose of the letter would have been to encourage/request coordination with NMFS during our review of the proposed projects, and discuss potential concerns regarding the approach to Project 11. We appreciate the current coordination with the City on this project and hope this can continue prior to official section 7 consultation. Regarding Project 11: We would like to have our NMFS engineers and hydrogeomorphologists review the proposed project in this reach. My concern when reviewing the plans, and then viewing the site on 11/9/11, is that the proposed approach for floodplain connection may not be the best fit for the reach. Previous development in this site is less than at other locations, rock walls are minimal or absent, and artificial encroachment/stabilization appears to be very minimal – indicating that the project may be proposing to create floodplain in a reach where it may not be best suited. Higher gradient reaches (as this reach appears to be) are often more confined (naturally) and have less floodplain than lower gradient reaches. Establishing a floodplain in a reach where it is not suited could result in instream impacts without improving instream habitat for listed steelhead. That said, it is possible too that the proposed approach may be suitable, or that a modified approach may be warranted - coordination with NMFS engineers/hydrogeomorphologists and the City's will help to resolve this. Has a basis of design report (with modeling) been prepared for this reach? If so, please provide as this will be necessary for NMFS review of this reach.

Regards,
Darren Howe
Fisheries Biologist
NMFS
(707) 575-3152

From: Darren Howe [mailto:Darren.Howe@noaa.gov]
Sent: Friday, October 28, 2011 10:01 AM
To: 'john.davidson@sanjoseca.gov'
Subject: Alum Rock Park

Hi John,
I left a voicemail earlier this week. Thank you for sending the public notice and supporting documents regarding the proposed Alum Rock Park Bank Repair and Stream Restoration Projects. NMFS is very interested in this project due to the importance of Upper Penitencia Creek to CCC steelhead within the region, and project's proposal to remedy conditions currently limiting steelhead within the Park. NMFS would like to begin our coordination and design review for this project as soon as possible.
Have detailed plans (beyond those presented in the Biological Assessment, Mitigation Monitoring Plan, and Fish Passage Report) been prepared? If so, can you please provide these?
Call when you have an opportunity and we can discuss the project further.

Regards,

Darren Howe
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