

**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](mailto: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 15<sup>th</sup> and October 15<sup>th</sup> unless extended in writing by the permitting agencies. Hand planting and low impact revegetation activities may occur between October 15<sup>th</sup> and June 15<sup>th</sup> 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 1<sup>st</sup> 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 than 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@sanJoseca.gov](mailto:Jaime.Ruiz@sanJoseca.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**.



Deputy

Revised 5-6-11 jam