

City of San Jose - PBCE – Planning Division - Imaging Index Cover Sheet

Address/Location: South side of P. Creek/north side of P. Creek Road, between Noble Ave. and Alum Rock Park.

Permit/Project No.: PP06-111 Issuance Date: 08/28/06

Prepped By: MRHOADES Closed By: SFAUMUI RSN: 1234543

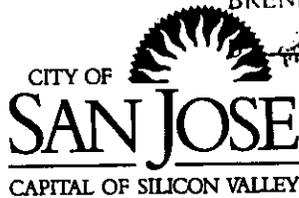
Category	Document Type	Sub Document Type
<input checked="" type="checkbox"/> (EF) Environmental Files (203)	<input checked="" type="checkbox"/> (PP) Public Project Files (203-03)	<input type="checkbox"/> (EN) EIR <input type="checkbox"/> (DA) Approved Document <input type="checkbox"/> (EM) Maps <input type="checkbox"/> (AE) Application <input checked="" type="checkbox"/> (AG) Agency Correspondence <input type="checkbox"/> (EG) General Correspondence <input type="checkbox"/> (TR) Technical Reports <input type="checkbox"/> (RE) Archaeological Reports <input type="checkbox"/> (EP) Plans
<input type="checkbox"/> (GP) General Plan (204)	<input type="checkbox"/> (GA) General Plan Amendments (204-02)	<input type="checkbox"/> (AM) Amendment <input type="checkbox"/> (AA) Application <input type="checkbox"/> (CG) Correspondence
	<input type="checkbox"/> (GE) Environmental Review (for 204 series GP Amendments)	<input type="checkbox"/> (GD) Approved Document <input type="checkbox"/> (GI) EIR <input type="checkbox"/> (GS) Supporting Documents <input type="checkbox"/> (GT) Technical Reports <input type="checkbox"/> (GR) Archaeological
<input type="checkbox"/> (DR) Development Review (207)	<input type="checkbox"/> (PR) Projects (207-02, 207-03, etc.)	<input type="checkbox"/> (ZN) Zoning <input type="checkbox"/> (PE) Permit <input type="checkbox"/> (MP) Maps <input type="checkbox"/> (AP) Application <input type="checkbox"/> (AC) Agency Correspondence <input type="checkbox"/> (GC) General Correspondence <input type="checkbox"/> (PL) Plans
	<input type="checkbox"/> (ER) Environmental Review (for 207 series Project Files)	<input type="checkbox"/> (EA) Approved Document <input type="checkbox"/> (EI) EIR <input type="checkbox"/> (ES) Supporting Documents <input type="checkbox"/> (ET) Technical Reports <input type="checkbox"/> (AR) Archaeological
	<input type="checkbox"/> (AD) Adjustments (207-12)	<input type="checkbox"/> (DO) Documents <input type="checkbox"/> (PA) Plans
	<input type="checkbox"/> (PI) Public Info Letters (207-29)	<input type="checkbox"/> (LE) Letter <input type="checkbox"/> (LS) Supporting Docs

**ENDORSED**

POSTED ON JUL 27 2006 THROUGH AUG 28 2006  
 IN THE OFFICE OF THE COUNTY CLERK-RECORDER  
 BRENDA DAVIS, COUNTY CLERK

JUL 27 2006

BRENDA DAVIS, County Clerk-Recorder  
 Santa Clara County  
 By B. MORIUCHI Deputy

By B. MORIUCHI DEPUTY*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, ACTING DIRECTOR

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

***Project File Number, Description, and Location***

PP06-111. Penitencia Creek Trail Reach 1. Master Plan for development of a 0.5-mile raised concrete path along the north side of Penitencia Creek Road, for pedestrian use. The path would vary from four- to six-feet in width. A six-foot wide path would extend from Noble Avenue to Dorel Drive, which would be reduced to four feet in width east of Dorel Drive. Regulatory signage and accessible ramp improvements at intersections are included. Council District: 4

California State Law requires the City of San José to conduct environmental review for all pending projects that require a public hearing. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. The Director of Planning, Building & Code Enforcement would require the preparation of an Environmental Impact Report if the review concluded that the proposed project could have a significant unavoidable effect on the environment. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present. The project location **does not** contain a listed toxic site.

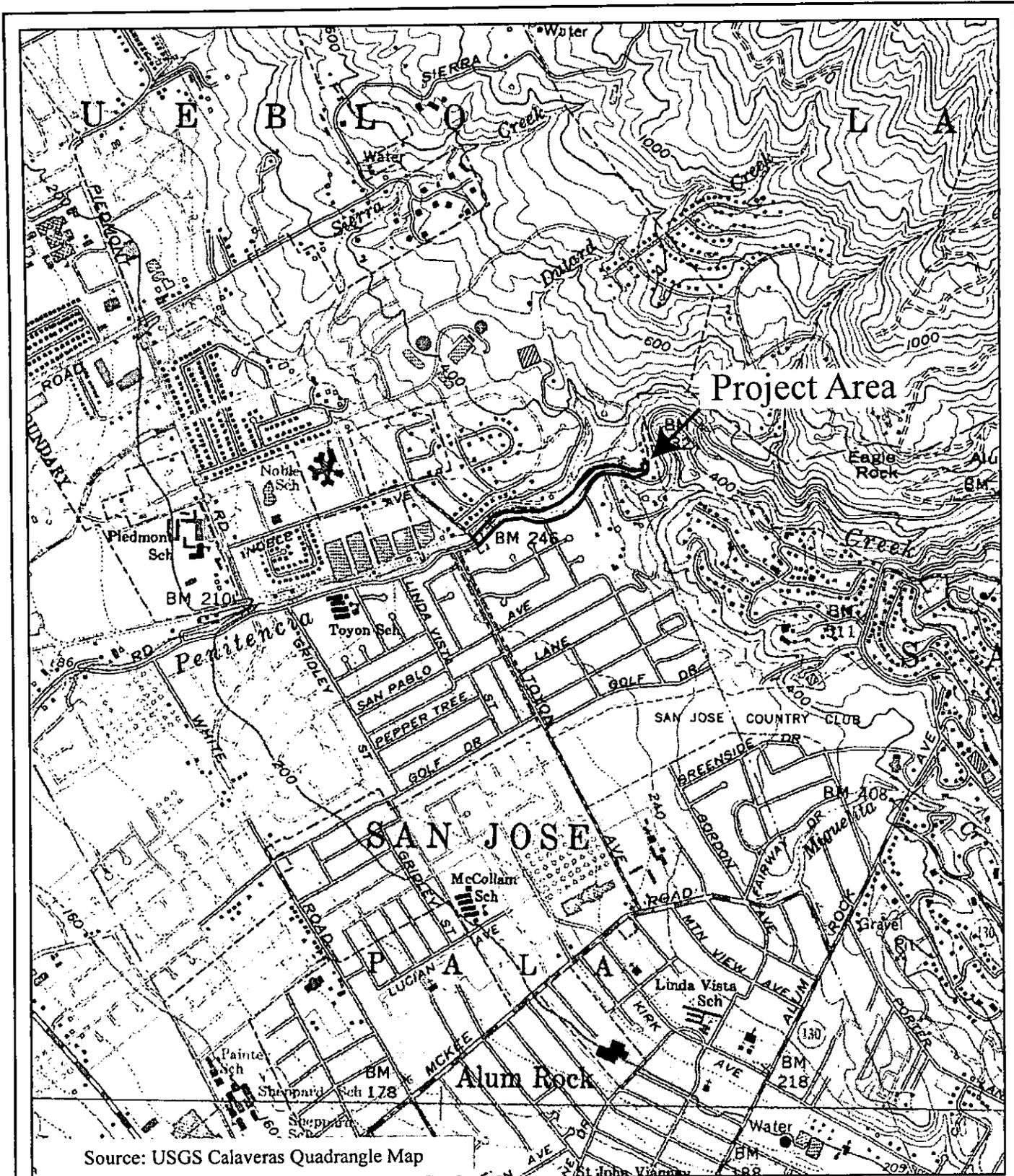
Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 500 feet of the proposed project to inform them of the City's intent to adopt a Mitigated Negative Declaration for the proposed project, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **July 29, 2006** and ends on **August 28, 2006**.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number 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, City Hall, 200 East Santa Clara Street, San José CA 95113-1905. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 150 E. San Fernando St, San José, CA 95112, and the Berryessa Branch Library, San José, CA, and online at <http://www.sanjoseca.gov/planning/eir/MND.asp> Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call Michael Rhoades at (408) 535-3555.

Joseph Horwedel, Acting Director  
 Planning, Building and Code Enforcement

Circulated on: 7/29/06

  
 Deputy



Source: USGS Calaveras Quadrangle Map



Vicinity Map

Figure

2



*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, ACTING DIRECTOR

**DRAFT  
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.

**NAME OF PROJECT:** Penitencia Creek Trail Reach 1

**PROJECT FILE NUMBER:** PP06-111

**PROJECT DESCRIPTION:** Master Plan for development of a 0.5-mile raised concrete path along the north side of Penitencia Creek Road, for pedestrian use. The path would vary from four- to six-feet in width. A six-foot wide path would extend from Noble Avenue to Dorel Drive, which would be reduced to four feet in width east of Dorel Drive. Regulatory signage and accessible ramp improvements at intersections are included.

**PROJECT LOCATION & ASSESSORS PARCEL NO.:** North side of Penitencia Creek Road, between Nobel Ave. and Alum Rock Park.

**COUNCIL DISTRICT:** 4

**APPLICANT CONTACT INFORMATION:** City of San Jose, Department of Public Works;  
Jan Palajac (408) 535-8350. Jan.Palajac@sanjoseca.gov

**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**

**AESTHETICS** – The project will not significantly impact the visual or aesthetic characteristics of the area, since it will be located adjacent to, and appear as an extension of, an existing road. Design measures will insure that the trail retain a rural, rustic appearance consistent with the existing neighborhood and terrain. No new light sources are proposed as part of the trail. Signs associated with this projected shall be of appropriate size and design that does not restrict or impair views as required in a designated scenic corridor. The project would have a less-than-significant impact on aesthetics, since the trail would be designed with specific measures to blend with the surrounding environment and be consistent with Reach 2 of the trail.

**AGRICULTURE RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**AIR QUALITY** – The following standard dust control measures will reduce potential construction impacts on nearby properties.

- Water all active construction areas at least twice daily and more often during windy periods; 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 two feet of freeboard.
- Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Sweep daily (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.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

**BIOLOGICAL RESOURCES** – Within the project area, the City proposes the construction of an approximately 0.5-mile long pedestrian trail within, or immediately adjacent to, the dripline of the Penitencia Creek riparian woodland. Based on the project plans, approximately 1,900 linear feet of the trail would be located within the corridor. The trail would require the removal of 16 riparian trees. Construction activities for the trail would directly impact riparian vegetation in these areas, from the removal and limbing of riparian trees within the woodland. The project is estimated to result in the loss of 13,504 square feet (0.31 acre) of riparian vegetation.

### ***Impacts to Riparian Vegetation***

#### ***Direct Impacts***

The City of San Jose Parks, Recreation and Neighborhood Services shall secure all necessary permits from the regulatory agencies and implement a mitigation program that includes the following features:

Riparian revegetation to compensate for direct removal of 0.31 acre of riparian woodland and four large sized sycamore trees, totaling 1.10 acres. The riparian mitigation shall provide a 3:1 habitat replacement ratio for impacts to the riparian woodland. In addition, the mitigation shall provide a

10:1 tree replacement ratio for the large-sized sycamore trees. To compensate for the removal of the four sycamore trees, 40 trees shall be planted approximately 15 feet o.c. within a 0.17-acre riparian mitigation area. The total riparian mitigation area shall be 1.10 acres. Revegetation shall occur adjacent to the creek on City-owned land; a minimum of 1.1 acres of suitable floodplain lands that are now non-native grassland are suitable for revegetation.

Prepare and implement the revegetation plan for barrier plantings and riparian plantings. The plan shall specify the detailed location of all plantings, the use of locally native riparian plant species and specify a 5-year maintenance and monitoring program. The plan shall specify monitoring of the revegetation areas a minimum of once a year and annual reports submitted to the Environmental Principal Planner in the City of San Jose Planning, Building and Code Enforcement and applicable regulatory agencies at the end of each monitoring year. The reports shall identify the plant survival rate, maintenance actions at the site and include photographs documenting the status of the revegetation. During each year of the 5-year monitoring periods, plantings shall achieve a minimum 80% survival rate for the revegetation to be deemed successful. Remedial measures (such as replacement plantings, an increase in maintenance, or changes to the irrigation regime) shall be implemented if the success criterion is not achieved in any of the five monitoring years. Plant species recommended for the revegetation are listed in Table 3.

<b>Common Name</b>	<b>Scientific Name</b>	<b>Average Spacing</b>
<b>Riparian Plantings</b>		
Coast Live Oak	<i>Quercus agrifolia</i>	15' o.c.
Blue Elderberry	<i>Sambucus mexicana</i>	15' o.c.
Valley Oak	<i>Quercus lobata</i>	15' o.c.
Western Sycamore	<i>Platanus racemosa</i>	15' o.c.*
California Rose	<i>Rosa californica</i>	8' o.c.
Flowering Currant	<i>Ribes sanguineum</i>	8' o.c.
Toyon	<i>Heteromeles arbutifolia</i>	8' o.c.
Coffee Berry	<i>Rhamnus californica</i>	8' o.c.
Coyote Brush	<i>Baccharis pilularis</i>	8' o.c.
*See specific mitigation ratio for Sycamore trees.		

#### *Indirect Impacts*

Additionally, the City will install three-foot high fencing (i.e., open, split-rail type, or similar) between the trail and open areas of the riparian corridor to create a physical barrier between the trail and the adjacent riverine wetlands and open water habitats to protect habitat and public safety. Specific areas

include the open area just east of Noble Avenue and other areas where there is potential for people to access the creek or enter proposed mitigation areas.

***Direct and Indirect Impacts to Nesting Birds in the Riparian Habitat***

Construction shall be scheduled to occur outside the nesting season for sensitive riparian bird species; the nesting season spans February through July. If this is not feasible, have a qualified biologist conduct preconstruction surveys for nesting birds along the trail corridor no more than 30 days prior to onset of tree removal and construction. If nesting sensitive bird species are observed, the qualified biologist shall determine an appropriate buffer zone around the nest, and construction within the buffer zone shall be postponed until all young have fledged, as determined by monitoring by a qualified biologist.

***Direct and Indirect Impacts to California Red-legged Frog, Foothill Yellow-legged Frog, Western Pond Turtle***

No direct impacts to California red-legged frog, foothill yellow-legged frog, and western pond turtle are expected to occur from this trail project, since no major work would occur within the creek channel, no in stream wetland vegetation or overhanging vegetation would be removed, and no creek diversions are proposed. The trail would not cross the creek and would be shielded from the creek by existing and proposed vegetation, therefore the daytime recreational use of the trail is not expected to have long-term impacts to these species. Degradation of the riparian habitat by increased human use may cause cumulative impacts to these species, but with the implementation of identified mitigation, this impact would be reduced to a less-than-significant level.

**Table 4  
Summary of Impacts to Special Status Wildlife Species and Mitigation**

Wildlife Resource	Impact Type	Impact Potential Type P = Potential NP = No Potential	Mitigation Proposed
Potential Steelhead Spawning or Rearing Habitat	Direct impact to open water	NP	None
	Indirect impact to of sedimentation, erosion to open water	P	Construction BMPs
	Direct impact to shaded riverine aquatic habitat	NP	Revegetation
California Red-legged Frog, Foothill Yellow-legged Frog, Pond Turtle	Potential take of individuals during construction	NP	None
	Direct impacts to riparian habitat	P	Revegetation
Riparian Nesting Birds	Potential abandonment of nests, chicks	P	Preconstruction surveys
	Indirect impact from night lighting	NP	No night lighting proposed
	Direct impact of loss of riparian trees and vegetation	P	Revegetation

***Direct and Indirect Impacts to Steelhead Trout***

The project does not propose work within the creek channel, and no creek diversions would be placed for construction, therefore no direct impacts to steelhead trout are expected from the project. Potential indirect impacts that may occur include sedimentation to the creek. Field review determined that the proposed removal of riparian trees and vegetation would not result in loss of shaded riverine habitat, since the trees are set back from the edge of the creek and do not currently provide shade directly to the creek. Indirect impacts can be reduced to a less-than-significant level by implementation of mitigation identified for the riparian habitat and for water quality protection.

***Impacts to Trees in the Project Area***

To mitigate potential damage to retained trees, trees shall be safeguarded during construction through the following measures:

- A certified arborist shall monitor all tree pruning, root cutting, and other disturbance to trees during construction of the project.
- Damage to any tree during construction shall be reported to the City's Environmental Principal Planner, and the contractor or owner shall treat the tree for damage in the manner specified by the Environmental Principal Planner.
- No construction equipment, vehicles or materials shall be stored, parked or standing within the tree dripline; and
- Drains and filling around the base of trees shall be done only after consultation with a certified arborist and then only to the extent authorized by the arborist shall be installed according to city specifications so as to avoid harm to trees due to excess watering; and
- Wires, signs and other similar items shall not be attached to trees; and
- Cutting and filling around the around the base of trees shall be done only after consultation with a certified arborist and then only to the extent authorized by the arborist; and
- No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or wastewater shall be dumped on the ground or into any grate between the dripline and the base of the tree or uphill from any tree where certain substances might reach the roots through a leaching process; and
- Barricades shall be constructed around the trunks of trees as specified by a certified arborist so as to prevent injury to trees making them susceptible to disease causing organisms; and
- Wherever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots.

***Water Quality Impacts***

The City of San Jose Parks, Recreation and Neighborhood Services shall incorporate construction Best Management Practices (BMP's) to preclude erosion or sediments from entering the creek during and after construction of the trail. The following BMP's shall be implemented during all phases of construction on the project site:

- Conduct construction activities during the dry season;

- Divert concentrated runoff away from channel banks;
- Minimize vegetation removal;
- Identify with construction fencing all areas that require clearing, grading revegetation or otherwise disturbed;
- Stabilize disturbed soils to minimize erosion and sediment input to the creek;
- Implement erosion control measures to prevent sediment from entering the creek channel, including the use of silt fencing or fiber rolls to trap sediments;
- Conduct erosion control seeding of all disturbed areas as soon as practicable after disturbance following construction;
- Monitor the effectiveness of the erosion control measures during the first year's rainy season and implement remedial measures (e.g., reseeding, repair of silt fencing) if sedimentation or erosion is noted.

**CULTURAL RESOURCES** – No surface evidence of cultural resources was found during field surveys of the trail alignment, however the following mitigation measures will be implemented:

- Retain a qualified archaeologist to monitor earthmoving activities in the general zone of Scl-207 if excavation is required that will extend more than a foot below the existing surface. In the event that any cultural materials are discovered, the project archeologist shall designate an area where work should be stopped until the presence of additional deposit is verified. If additional midden deposit is identified inside areas to be graded for the project, the project archeologist shall submit a program of mitigation of impacts submitted to the Director of Planning, Building, and Code Enforcement for consideration and approval.
- If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, operations shall be halted within 25 feet of the find and a qualified archaeologist retained for evaluation and further recommendations. Potential recommendations could include evaluation, collection, recordation, analysis, and reporting of any significant cultural materials. If the find is determined to be significant, a mitigation program shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement for consideration and approval.
- Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County 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 their authority, the Coroner shall notify the Native American Heritage Commission to 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.

- Treatment of any Native American burials exposed during construction shall be conducted in accordance with the State of California Public Resources Code in consultation with the Native American Heritage Commission.

**GEOLOGY AND SOILS** – The final trail shall be designed and constructed in accordance with the specific recommendations of a design-level geotechnical investigation. Prior to the issuance of a Public Works Clearance for the project, a design-level geotechnical analysis shall be prepared to the satisfaction of the Director of the Department of Public Works. The geotechnical investigation shall include the following analysis:

- Evaluation of soil liquefaction and lateral spreading potential and identification of appropriate measures to remediate these conditions.
- Delineation of areas of slope instability and identification of appropriate mitigation, such as retaining walls, rock bolting, or other measures to remediate these conditions.
- Identification of the proper size and spacing the helical pier footings proposed for a portion of the trail

**HAZARDS AND HAZARDOUS MATERIALS** – The project would have no impacts associated with hazards and hazardous materials, therefore no mitigation is required .

**HYDROLOGY AND WATER QUALITY** – The project has the potential to impact water quality, therefore the following mitigation is proposed:

- A hydrological study shall be prepared during final trail design, and appropriate measures included to assure that the project would not substantially impede or redirect flood flows. This study and development of any required measures shall be coordinated with the SCVWD.
- At the final design stage, the City Department of Parks, Recreation and Neighborhood Services shall evaluate the existing outlets to Penitencia Creek along the proposed trail to assure the facilities are adequate.
- At the final design stage, the City Department of Parks, Recreation and Neighborhood Services shall identify and include site design measures, post-construction structural controls, and BMPs for reducing the volume of storm water runoff and the contamination in storm water runoff as permanent features of the project. A sufficient number of post-construction treatment measures shall be incorporated into the project in compliance with provision C.3 of the City of San Jose's NPDES permit and all other applicable local, state, and federal requirements.
- During the construction phase, the San Jose Department of Parks, Recreation and Neighborhood Services shall develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities. Such measures could include, but are not limited to, the following:
  - Restrict grading to the dry season or meet City requirements for grading during the rainy season;
  - Use BMPs to retain sediment on the project site;

- Place burlap bags filled with drain rock around storm drains to route sediment and other debris away from drains and drainages;
  - Provide temporary cover of disturbed surfaces to help control erosion during construction;
  - Provide permanent cover to stabilize the disturbed surfaces after construction;
- The City shall file a Notice of Intent (NOI) with the State Water Resources Control Board, in conformance with state regulations, and prepare an erosion control plan to include BMPs specified in the California Storm Water Best Management Practice handbook

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

**MINERAL RESOURCES** – The project will not have a significant impact on this resource, therefore no mitigation is required.

**NOISE** – Noise resulting from construction activity could impact nearby residences, therefore the following standard noise mitigation measures are proposed:

- Limit construction hours to Monday through Friday, between 7 AM and 7 PM for any activities within 500 feet of residential uses, in accordance with local ordinance.
- Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment type.
- Strictly prohibit idling of internal combustion engines.
- Utilize “quiet” air compressors and other stationary noise sources where the technology exists.
- Designate a “noise disturbance coordinator” that will be responsible for responding to any complaints regarding noise. The disturbance coordinator will determine the cause of the noise complaint and require that reasonable measures are implemented to correct the problem. A telephone number for the disturbance coordinator shall be conspicuously posted at the construction site and included in the notice to neighbors regarding the construction schedule. The City shall be responsible for designating the noise coordinator and the contractor will be responsible for posting the phone number and providing construction schedule notices

**POPULATION AND HOUSING** – The proposed trail would not induce population growth, nor would it displace existing housing or persons.

**PUBLIC SERVICES** – The project will not increase demand for Police or Fire Department services therefore no mitigation is required.

**RECREATION** – The project will provide additional recreational opportunities by providing a connection between the existing Penitencia Creek trail and Alum Rock park. The project is expected to meet an existing need for recreational opportunities and will have a positive impact on recreational resources.

**TRANSPORTATION / TRAFFIC** – The project would not result in adverse traffic impacts, therefore no mitigation is required.

**UTILITIES AND SERVICE SYSTEMS** – The project is not expected to require an expansion in wastewater, storm drainage, water, or solid waste facilities, or otherwise impact utilities or services.

**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 additional mitigation is required.

### **PUBLIC REVIEW PERIOD**

Before 5:00 p.m. on August 28, 2006, 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; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 200 East Santa Clara Street, San José CA 95113-1905 and include a \$100 filing fee. The written protest should make a “fair argument” based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Joseph Horwedel, Acting Director  
Planning, Building and Code Enforcement

Circulated on: 7/29/06

  
Deputy

Adopted on: 10/31/06

  
Deputy

Revised 8/26/05 JAC



STATE OF CALIFORNIA - THE RESOURCES AGENCY  
DEPARTMENT OF FISH AND GAME  
ENVIRONMENTAL FILING FEE CASH RECEIPT  
DFG 753.5a (8-03)

265071

Lead Agency: City of SJ Planning Building and Code Enforcement Date: 11/7/06  
County / State Agency of Filing: SCC Clerk Recorder Document No.: EBTID

Project Title: PP 06-111  
Project Applicant Name: City of San Jose Phone Number: \_\_\_\_\_

Project Applicant Address: \_\_\_\_\_  
Project Applicant (check appropriate box): Local Public Agency  School District  Other Special District   
State Agency  Private Entity

**CHECK APPLICABLE FEES:**

- ( ) Environmental Impact Report \$850.00 \$ \_\_\_\_\_
- ( ) Negative Declaration \$1,250.00 \$ 1250.00
- ( ) Application Fee Water Diversion (State Water Resources Control Board Only) \$850.00 \$ \_\_\_\_\_
- ( ) Projects Subject to Certified Regulatory Programs \$850.00 \$ \_\_\_\_\_
- ( ) County Administrative Fee ~~50~~ ~~525.00~~ \$ 50.00
- ( ) Project that is exempt from fees

TOTAL RECEIVED \$ 1300.00

Signature and title of person receiving payment: Patricia City Latina Cotaruna  
WHITE-PROJECT APPLICANT      YELLOW-DFG/FASB      PINK-LEAD AGENCY      GOLDENROD-STATE AGENCY OF FILING



*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, ACTING DIRECTOR

**MITIGATION MONITORING AND REPORTING PROGRAM**  
 For Penitencia Creek Trail Reach 1 Master Plan  
 File no. PP06-111

Environmental Impacts	Mitigation Measures	Responsibility for Compliance	Method of Compliance	Timing of Compliance
<p>The project would result in short-term air quality impacts during construction.</p>	<p style="text-align: center;"><b>Air Quality</b></p> <p>The following dust control measures shall be implemented during construction.</p> <ul style="list-style-type: none"> <li>▪ Water all active construction areas at least twice daily and more often during windy periods; 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.</li> <li>▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.</li> <li>▪ Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.</li> <li>▪ Sweep daily (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.</li> <li>▪ Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.</li> </ul>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>	<p>Include the dust control measures in the contract specifications and documents.</p>	<p>Implement dust control measures during construction.</p>
<b>Biological Resources</b>				
<p>The project would result in significant direct and indirect impacts to the riparian habitat along Penitencia Creek, including indirect impacts to special status species inhabiting the creek.</p>	<p>1. The project proponent shall incorporate construction BMP's to preclude erosion or sediments from entering the creek during and after construction, including the following:</p> <ul style="list-style-type: none"> <li>▪ Conduct construction activities during the dry season;</li> <li>▪ Divert concentrated runoff away from channel banks;</li> <li>▪ Minimize vegetation removal;</li> <li>▪ Identify with construction fencing all areas that require clearing, grading revegetation or otherwise disturbed;</li> <li>▪ Stabilize disturbed soils to minimize erosion and sediment input to the creek;</li> <li>▪ Erosion control measures to prevent sediment from entering the creek channel, including the use of silt</li> </ul>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>	<p>Include the BMPs in the contract specifications and documents. Obtain permits from agencies including mitigation program and incorporate into the contract specifications and documents.</p>	<p>Implement BMPs during construction.</p>

<p>fencing or fiber rolls to trap sediments;</p> <ul style="list-style-type: none"> <li>▪ Conduct erosion control seeding of all disturbed areas as soon as practicable after construction;</li> <li>▪ Monitor the effectiveness of the erosion control measures during the first year's rainy season and implement remedial measures (e.g., reseeding, repair of silt fencing) if sedimentation or erosion is noted.</li> </ul> <p>2. The project proponent shall secure all necessary permits from the regulatory agencies and implement a mitigation program that includes the following:</p> <ul style="list-style-type: none"> <li>▪ Riparian revegetation to compensate for direct removal of 0.31 acre of riparian woodland and four large sized sycamore trees, totaling 1.10 acres. The riparian mitigation shall provide a 3:1 habitat replacement ratio for impacts to the riparian woodland. In addition, the mitigation shall provide a 10:1 tree replacement ratio for the large-sized sycamore trees. To compensate for the removal of the four sycamore trees, 40 trees shall be planted approximately 15 feet o.c. within a 0.17-acre riparian mitigation area. The total riparian mitigation area shall be 1.10 acre, as listed in Table 2. The revegetation shall occur adjacent to the creek on City-owned land; a minimum of 1.1 acres of suitable floodplain lands that are now non-native grassland are suitable for revegetation.</li> <li>▪ Install three-foot high fencing (i.e., open, split-rail type, or similar) between the trail and open areas of the riparian corridor to create a physical barrier between the trail and the adjacent riverine wetlands and open water habitats to protect habitat and public safety. Specific areas include the open area just east of Noble Avenue and other areas where there is potential for people to access the creek or enter proposed mitigation areas.</li> </ul> <p>3. To mitigate potential damage to retained trees, trees shall be safeguarded during construction through the following measures:</p> <ul style="list-style-type: none"> <li>▪ An ISA or ASCA-certified arborist shall monitor all tree pruning, root cutting, and other disturbance to trees during construction of the project.</li> <li>▪ Damage to any tree during construction shall be reported to the City's Environmental Principal</li> </ul>	<p>Obtain permits from agencies including mitigation program and incorporate into the contract specifications and documents.</p> <p>Incorporate tree protection measures into the contract specifications and documents. Retain certified arborist to monitor work in field.</p>	<p>Permits to be secured prior to construction. Implement mitigation as set forth in the permit.</p> <p>During construction</p>
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	<p>Planner, and the contractor or owner shall treat the tree for damage in the manner specified by the Environmental Principal Planner.</p> <ul style="list-style-type: none"> <li>▪ No construction equipment, vehicles or materials shall be stored, parked or standing within the tree dripline; and</li> <li>▪ Drains and filling around the base of trees shall be done only after consultation with a certified arborist and then only to the extent authorized by the arborist shall be installed according to city specifications so as to avoid harm to trees due to excess watering; and</li> <li>▪ Wires, signs and other similar items shall not be attached to trees; and</li> <li>▪ Cutting and filling around the around the base of trees shall be done only after consultation with a certified arborist and then only to the extent authorized by the arborist; and</li> <li>▪ No paint thinner, paint, plaster or other liquid or solid excess or waste construction materials or wastewater shall be dumped on the ground or into any grate between the dripline and the base of the tree or uphill from any tree where certain substances might reach the roots through a leaching process; and</li> <li>▪ Barricades shall be constructed around the trunks of trees as specified by a certified arborist so as to prevent injury to trees making them susceptible to disease causing organisms; and</li> <li>▪ Wherever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out and causing damage to tree roots.</li> </ul> <p>4. Prepare and implement the revegetation plan for barrier plantings and riparian plantings. The plan shall specify the detailed location of all plantings, the use of locally native riparian plant species and specify a 5-year maintenance and monitoring program. The plan shall specify monitoring of the revegetation areas a minimum of once a year. During each year of the 5-year monitoring periods, plantings shall achieve a minimum 80% survival rate for the revegetation to be deemed successful. Monitoring reports shall be submitted to the Environmental Principal Planner in the CSJ PBCE and applicable regulatory agencies at the end of each monitoring year. The reports shall identify the plant survival rate, maintenance actions at the site and include photographs documenting the status</p>		<p>Retain qualified biologist to prepare revegetation and monitoring plan and incorporate into contract specifications and documents. Send monitoring reports to Environmental Principal Planner.</p>	<p>Prepare plan prior to construction; implement plan during construction. Monitor plantings for five years following construction.</p>
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<p>The project could result in direct and indirect impacts on nesting birds.</p>	<p>Schedule construction to occur outside the nesting season for sensitive riparian bird species; the nesting season spans February through July. If this is not feasible, have a qualified biologist conduct preconstruction surveys for nesting birds along the trail corridor no more than 30 days prior to onset of tree removal and construction. If nesting sensitive bird species are observed, the qualified biologist shall determine an appropriate buffer zone around the nest, and construction within the buffer zone shall be postponed until all young have fledged, as determined by monitoring by a qualified biologist.</p>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>	<p>The project proponent shall retain a qualified biologist to conduct preconstruction surveys for nesting birds.</p>	<p>Surveys shall be conducted no more than 30 days prior to construction. Buffers shall be created and construction postponed until all young have fledged, as determined by the monitoring biologist. Notify the Environmental Principal Planner in the Department of Planning, Building and Code Enforcement of status.</p>
<p><b>Cultural Resources</b></p>				
<p>Construction of the trail requiring more than one foot of excavation could uncover buried resources associated with Scl-207 or other unrecorded artifacts.</p>	<p>Retain a qualified archaeologist to monitor earthmoving activities in the general zone of Scl-207 if excavation is required that will extend more than a foot below the existing surface. In the event that any cultural materials are discovered, the project archaeologist shall designate an area where work should be stopped until the presence of additional deposit is verified. If additional midden deposit is identified inside areas to be graded for the project, the project archaeologist shall submit a program of mitigation of impacts submitted to the Director of Planning, Building, and Code Enforcement for consideration and approval.</p> <p>If any cultural materials are exposed or discovered during either site preparation or subsurface construction activities, operations shall be halted within 25 feet of the find and a qualified archaeologist retained for evaluation and further recommendations. Potential recommendations could include evaluation, collection, recordation, analysis, and reporting of any significant cultural materials. If the</p>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>	<p>The project proponent shall retain a qualified archaeologist to monitor earthwork in the area of Scl-207. Include the identified mitigation measures in the project specifications and documents. A final report shall be submitted to the City's Environmental Principal Planner when mitigation, if required, is completed.</p>	<p>The identified mitigation shall apply during all earth moving activities. A final report shall be submitted to the City's Environmental Principal Planner when mitigation, if required, is completed.</p>

<p>The project site would be subject to significant seismic and geotechnical hazards.</p>	<p>find is determined to be significant, a mitigation program shall be prepared and submitted to the Director of Planning, Building, and Code Enforcement for consideration and approval.</p> <p>Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County 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 their authority, the Coroner shall notify the Native American Heritage Commission to 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-enter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.</p> <p>Treatment of any Native American burials exposed during construction shall be conducted in accordance with the State of California Public Resources Code in consultation with the Native American Heritage Commission.</p>			
<p>The project site would be subject to significant seismic and geotechnical hazards.</p>	<p><b>Geology &amp; Soils</b></p> <p>The final trail shall be designed and constructed in accordance with the specific recommendations of a design-level geotechnical investigation. Prior to the issuance of a Public Works Clearance for the project, a design-level geotechnical analysis shall be prepared to the satisfaction of the Director of the Department of Public Works. The geotechnical investigation shall include the following analysis:</p> <ul style="list-style-type: none"> <li>X Evaluation of soil liquefaction and lateral spreading potential and identification of appropriate measures to remediate these conditions.</li> <li>X Delineation of areas of slope instability and identification of appropriate mitigation, such as retaining walls, rock bolting, or other measures to remediate these conditions.</li> <li>X Identification of the proper size and spacing of the helical pier footings proposed for a portion of the trail.</li> </ul>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>	<p>Submit geotechnical investigation to Director of Public Works. Incorporate requirements into final design-levels plans.</p>	<p>Prepare geotechnical investigation prior to construction. Incorporate geotechnical design measures during trail construction.</p>

Hydrology & Water Quality		
<p>Construction of the proposed trail would introduce approximately 2,600 linear feet of a 6-inch high raised path into the 100-year floodplain, which could alter flows within the floodplain.</p>	<p>A hydrological study shall be prepared during final trail design, and appropriate measures included to assure that the project would not substantially impede or redirect flood flows. This study and development of any required measures shall be coordinated with the SCVWD.</p>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>
<p>The proposed drainage system would tie into the City's storm drainage system, which ultimately discharges into two outlets into Penitencia Creek. Evaluation of these outlets is beyond the scope of the proposed Master Plan. If required, the outlets can be evaluated at the design-level.</p>	<p>At the final design stage, the City Department of Parks, Recreation and Neighborhood Services shall evaluate the existing outlets to Penitencia Creek along the proposed trail to assure the facilities are adequate.</p>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>
<p>Construction of the proposed trail may result in an increase in erosion affecting the quality of stormwater runoff entering Penitencia Creek.</p>	<p>At the final design stage, the City Department of Parks, Recreation and Neighborhood Services shall identify and include site design measures, post-construction structural controls, and BMPs for reducing the volume of storm water runoff and the contamination in storm water runoff as permanent features of the project. A sufficient number of post-construction treatment measures shall be incorporated into the project in compliance with provision C.3 of the City of San Jose's NPDES permit and all other applicable local, state, and federal requirements. During the construction phase, the San Jose Department of Parks, Recreation and Neighborhood Services shall develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities. Such measures could include, but are not limited to, the following:                      X Restrict grading to the dry season or meet City requirements for grading during the rainy season;                      X Use BMPs to retain sediment on the project site;                      X Place burlap bags filled with drain rock around storm drains to route sediment and other debris away from drains and drainages;                      X Provide temporary cover of disturbed surfaces to help control erosion during construction;                      X Provide permanent cover to stabilize the disturbed surfaces after construction;</p>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>
<p>Prepare hydrological study prior to final design and construction. Implement hydrological design measures during trail construction.</p>	<p>Retain qualified hydrologist to prepare study, in coordination with the SCVWD. Incorporate any requirements into final design plans.</p>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>
<p>Evaluate outlets prior to final design and construction. Implement improvements during construction.</p>	<p>Evaluate outlets to creek and incorporate any required measures into final design plans.</p>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>
<p>Implement water quality mitigation measures during project construction; maintain landscaping and drainage facilities after project completion.</p>	<p>Include the water quality protection measures in contract specifications and documents; submit documentation verifying compliance with identified mitigation to Environmental Principal Planner prior to project completion.</p>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>

	<p>The City shall file a Notice of Intent (NOI) with the State Water Resources Control Board, in conformance with state regulations, and prepare an erosion control plan to include BMPs specified in the California Storm Water Best Management Practice handbook.</p>		<p>File NOI with State Board.</p>	<p>Prior to construction.</p>
<p><b>Noise</b></p>				
<p>The temporary increase in noise during construction would result in potentially significant short-term impacts on nearby residences.</p>	<p>During construction, the contractor shall implement the following measures to minimize construction noise nuisance impacts:</p> <ul style="list-style-type: none"> <li>▪ Limit construction hours to Monday through Friday, between 7 AM and 7 PM for any activities within 500 feet of residential uses, in accordance with local ordinance.</li> <li>▪ Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment type.</li> <li>▪ Strictly prohibit idling of internal combustion engines.</li> <li>▪ Utilize "quiet" air compressors and other stationary noise sources where the technology exists.</li> <li>▪ Designate a "noise disturbance coordinator" that will be responsible for responding to any complaints regarding noise.</li> </ul>	<p>Department of Public Works, Parks, Recreation and Neighborhood Services</p>	<p>Include the identified construction noise abatement measures in contract specifications and documents.</p>	<p>Implement noise control measures during the entire construction period.</p>

STATE OF CALIFORNIA

Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit

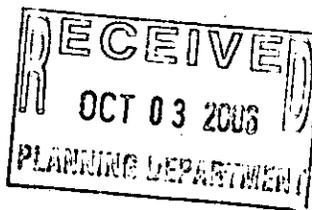


Arnold Schwarzenegger  
Governor



Sean Walsh  
Director

September 26, 2006



M. Rhoades  
City of San Jose  
200 E. Santa Clara Street, 3rd Floor  
San Jose, CA 95110-1905

Subject: Penitencia Creek Trail Reach 1  
SCH#: 2006072117

Dear M. Rhoades:

The enclosed comment (s) on your Negative Declaration was (were) received by the State Clearinghouse after the end of the state review period, which closed on August 28, 2006. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2006072117) when contacting this office.

Sincerely,

A handwritten signature in cursive that reads "Terry Roberts".

Terry Roberts  
Director, State Clearinghouse

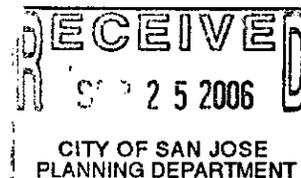
Enclosures  
cc: Resources Agency



## DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>POST OFFICE BOX 47  
YOUNTVILLE, CALIFORNIA 94599  
(707) 944-5500

September 19, 2006

M. Rhoades  
City of San Jose  
200 East Santa Clara Street, Third Floor  
San Jose, CA 95113-1905

Dear M. Rhoades:

Subject: Penitencia Creek Trail Reach 1, San Jose, Santa Clara County,  
SCH# 2006072117

The Department of Fish and Game (DFG) has reviewed the document for the subject project. Please be advised this project may result in changes to fish and wildlife resources as described in the California Code of Regulations, Title 14, Section 753.5(d)(1)(A)-(G). Therefore, a de minimis determination is not appropriate, and an environmental filing fee as required under Fish and Game Code Section 711.4(d) should be paid to the Santa Clara County Clerk on or before filing of the Notice of Determination for this project.

Please note that the above comment is only in regard to the need to pay the environmental filing fee and is not a comment by DFG on the significance of project impacts or any proposed mitigation measures.

If you have any questions, please contact Mr. Dave Johnston, Environmental Scientist, at (805) 466-0234 or Mr. Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

Sincerely,

A handwritten signature in black ink, appearing to read "R. W. Floerke".

Robert W. Floerke  
Regional Manager  
Central Coast Region

cc: State Clearinghouse



*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, ACTING DIRECTOR

September 8, 2006

Mr. Brian Wines  
California Regional Water Quality Control Board  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

Re: Penitencia Creek Trail Reach 1 Project, City File No. PP06-111, State Clearinghouse No. 2006072117.

Dear Mr. Wines,

Thank you for your comments on the Penitencia Creek Trail Reach 1 Master Plan Initial Study/Mitigated Negative Declaration (IS/MND). The following is the City's response to Water Board comments on the IS/MND.

Response to Comment 1

The IS/MND identifies measures to mitigate impacts to the riparian woodland habitat and trees. This includes monitoring measures to assure that replacement plantings, including trees, have an 80% success rate. Final trail design will take into account possible re-routing of the trail to minimize tree removals. If fewer trees are removed, the amount of riparian woodland impacted by the project would likely be reduced.

As the Board has acknowledged in its letter, significant reductions in the Project footprint were made in order to minimize impacts to the riparian corridor. This includes dismissal of an alignment that would have required a bridge over the creek in favor of the proposed roadside alignment. It should be noted that the proposed roadside trail width is over 50% narrower than the 16' overall width favored by the County's multi-use trail standard. This represents a significant compromise that attempts to balance habitat protection with the need to maintain a minimum trail use capacity. This will allow for and encourage public use of the trail by pedestrians and bicyclists, accomplishing a broader community-level goal of using environmentally friendly transportation alternatives.

Response to Comment 2

For purposes of the biological assessment prepared for the IS/MND, Shaded Riverine Habitat Area (SRA) is defined as the area occurring at the interface between the stream and the adjacent woody habitat. It is the area where the bank may be composed of natural, eroding substrates supporting riparian vegetation that overhangs or protrudes into the water. SRA also includes

Mr. Brian Wines, RWQCB  
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woody debris, such as leaves, logs, branches and roots, as well as variable water depths. Since the proposed project does not involve construction within the Penitencia Creek channel, or involve alteration of riparian vegetation in close proximity to the stream channel, it will not affect SRA cover as defined above.

The removal of up to 16 (eight native) trees from the riparian woodland adjacent to the creek is not expected to raise the temperature of the microclimate of the riparian corridor since those trees do not currently provide any shade over the stream channel and their removal will not substantially narrow the width of the riparian corridor. The trees identified for removal are adjacent to Penitencia Creek Road, with most of their canopy overhanging the roadway. Successful implementation of the identified tree removal mitigation will result in a slightly larger riparian woodland adjacent to the Penitencia Creek.

Response to Comment 3.

The trail is proposed within the existing roadway shoulder, not within the creek channel. The project will not encroach into the channel, since the area of the trails/piers is currently occupied by an existing roadway shoulder and fence. Replacement of the currently failing fence will improve the barrier between the creek and the existing road and proposed trail, and provide additional protection to the riparian corridor from disturbance and trash accumulation.

The San Jose City Council will consider approval of the Master Plan and adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan on October 17, 2006.

Please feel free to contact me at (408) 535-7821 with any additional questions or comments.

Sincerely,



Michael Rhoades  
Senior Planner



*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, ACTING DIRECTOR

September 8, 2006

Mr. Theodore Hipol  
 Santa Clara Valley Water District  
 5750 Almaden Expressway  
 San Jose, CA 95118

Re: Penitencia Creek Trail Reach 1 Project, City File No. PP06-111, State Clearinghouse No. 2006072117.

Dear Mr. Hipol,

Thank you for providing the Santa Clara Valley Water District comments on the Penitencia Creek Trail Reach 1 Master Plan Initial Study/Mitigated Negative Declaration (IS/MND). The following is the City's response to District comments on the IS/MND.

*Fisheries Biologist Comments*

- As described in Section H., Hydrology/Water Quality of the IS/MND, implementation of the Master Plan would create approximately 20,000 square feet/ 0.46 acres of new impervious surface as concrete paving for the proposed trail. Given the amount impervious surface of Penitencia Creek Road and the lower portions of Dorel Drive and Rock Canyon Circle that currently drain to the creek, the increased quantity of runoff resulting from construction of the trail is considered negligible. However, the use of pervious pavement for the trail will be considered by the City during final design. Additionally, construction of the project is expected to improve the quality of runoff in the area, since it would significantly reduce areas of compacted dirt adjacent to the south side of the creek that currently receive sheetflow from Penitencia Creek Road. The project, therefore, would not interfere with nest success or movement of adult and juvenile steelhead.
- A detailed erosion control plan will be included as part of the construction documents for the project and implemented during trail development, in accordance with City requirements

*Botanist's Comments*

The District's botanist requested a list of plants in the project area, the dates of the plant surveys and an explanation of why three plants (*Sidalcea malachroides*, *Eryngium aristulatum* and *Monardella villosa* ssp. *globosa*) that bloom outside of the survey dates were eliminated from consideration as potentially occurring in the project area. The botanist requested this information prior to district consideration of a construction permit for the project. The City's consulting biologist has provided the following information:

Theodore Hipol, SCVWD  
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- A list of plant species observed on the site is attached. The plant list will be added to the Final IS/MND.
- The field surveys were conducted on October 11 and December 20, 2005 and March 22 and April 21, 2006.
- None of the three species listed were observed during the field surveys; in addition, no plants species within the genus of *Sidalcea*, *Eryngium* or *Monardella* were observed. While it is correct that *Sidalcea malachroides* typically blooms between May and June, this species is a perennial subshrub that would have been identifiable during the March and April 2006 field surveys. No plants in the *Sidalcea* genus were observed on the site, such that additional surveys for this species were not required. As a genus, *Eryngium* (coyote thistles) are very distinctive, even if not blooming. Any plants within the *Eryngium* genus would have been identifiable during the March and April field surveys based on their leaf and stem characteristics. No plants in the *Eryngium* genus were observed on the site; therefore no additional surveys were required. *Monardella villosa* ssp. *globosa* is a perennial coyote mint; plants within the *Monardella* genus would have been identifiable during the March or April 2006 field surveys. As no plants within this genus were observed, no additional surveys for the coyote mint were necessary.

#### *Wildlife Biologist's Comments*

- Mitigation presented in Section D, Biological Resources, of the IS/MND specifies actions to avoid impacts to nesting birds; this measure addresses all nesting birds, including migratory species. The Mitigation Monitoring and Reporting Plan will specify also migratory bird species.
- As stated on P. 24 of the IS/MND, the removal of large, cavity-rich sycamore trees and/or limbs is a significant impact to biological resources. Successful implementation of the proposed 10:1 sycamore replacement/removal will mitigate this impact to a less-than-significant level. Installation of nest boxes for cavity-nesting birds and bats will be considered during development of the detailed riparian mitigation plan depending upon final tree removal. Nest boxes may be installed to provide an enhancement to the riparian habitat.
- Based on the results of the biological assessment conducted for the project, no impacts to the white-tailed kite will occur from the project.

#### *Revegetation Biologist's Comments*

- The City has not yet signed or adopted the *2005 Guidelines and Standards*, nor would the City's adoption necessarily supersede the City's Riparian Corridor Policy Study.
- Tree surveys for the project would be conducted in accordance with the City's Municipal Code, which requires the preparation of the tree inventory and tree evaluation to be

Theodore Hipol, SCVWD  
Penitencia Creek Trail Reach 1 Master Plan  
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completed by a certified arborist. The City recognizes both ISA and ASCA certification of arborists.

- Please see the response regarding large sycamore trees above. As noted in the Master Plan, final trail design will take into account possible re-routing of the trail to minimize tree removals. If fewer trees are removed, the amount of riparian woodland impacted by the project would likely be reduced.
- The BMPs identified in the IS/MND are adequate to mitigate impacts to biological resources. The City will consider the requested additional BMPs upon final design.
- See response to the arborist issue addressed above.
- The IS/MND specifies the use of locally obtained native plant propagules collected from the Penitencia Creek watershed. At the City's discretion, these plants may be contract grown and/or obtained from native plant nurseries, if such nurseries carry suitable local stock. The City is aware of the lead time required for nurseries to contract grow materials. The preliminary revegetation list includes only those plants documented from the project site and/or in nearby areas upstream (i.e., along the riparian corridor within Alum Rock Park)

The San Jose City Council will consider approval of the Master Plan and adoption of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan on October 17, 2006.

Please feel free to contact me at (408) 535-7821 with any additional questions or comments.

Sincerely,

  
Michael Rhoades  
Senior Planner

Attachments

c: Brian Wines, RWQCB  
Jan Palajac, CSJ  
Project File

**Penitencia Creek Trail Reach 1 Project**  
**Vascular Plants Observed – Riparian Woodland**  
**October 2005 – April 2006**

**FERNS AND FERN ALLIES**

**DENNSTAEDTIACEAE**

*Pteridium aquilinum* var. *pubescens* (bracken fern)

**EQUISETACEAE**

*Equisetum arvense* (common horsetail)

**POLYPODIACEAE**

*Polypodium californicum* var. *californicum* (California polypody)

**CONIFERS**

**CUPRESSACEAE**

*Juniperus communis* (common juniper)

**PINACEAE**

*Pinus radiata* (Monterey pine)

**TAXODIACEAE**

*Sequoia sempervirens* (coast redwood)

**FLOWERING PLANTS-DICOTS**

**ACERACEAE**

*Acer macrophyllum* (big leaf maple)

*Acer negundo* var. *californicum* (box elder)

**AIZOACEAE**

*Carpobrotus edulis*\* (sea fig)

**ANACARDIACEAE**

*Schinus molle* \* (pepper tree)

*Toxicodendron diversilobum* (poison oak)

**APIACEAE**

*Anthriscus caucalis*\* (bur chervil)

*Conium maculatum*\* (poison hemlock)

*Daucus carota*\* (carrot)

*Foeniculum vulgare*\* (fennel)

*Torilis arvensis*\* (field hedge parsley)

**APOCYNACEAE**

*Vinca major*\* (periwinkle)

**ARALIACEAE**

*Hedera helix*\* (English ivy)

**ASCLEPIADACEAE**

*Asclepias fascicularis* (narrow-leaf milkweed)

**ASTERACEAE**

*Achillea millefolium* (yarrow)

*Anthemis cotula*\* (dog fennel)

*Artemisia californica* (California sagebrush)

*Artemisia douglasiana* (mugwort)

*Baccharis pilularis* (coyote brush)  
*Carduus pycnocephalus*\* (Italian thistle)  
*Centaurea solstitialis*\* (yellow star thistle)  
*Conyza canadensis* (horseweed)  
*Cirsium sp.*\* (thistle)  
*Delaireia odorata*\* (cape ivy)  
*Filago gallica*\* (common filago)  
*Gnaphalium palustre* (lowland cudweed)  
*Heterotheca grandiflora* (telegraph weed)  
*Hypochoeris glabra*\* (smooth cat's ear)  
*Hypochoeris radicata*\* (rough cat's ear)  
*Lactuca serriola*\* (prickly lettuce)  
*Picris echioides*\* ((bristly ox-tongue)  
*Silybum marianum*\* (milk thistle)  
*Sonchus asper*\* (sow thistle)  
*Xanthium strumarium* (cocklebur)

## BETULACEAE

*Alnus rhombifolia* (white alder)

## BRASSICACEAE

*Brassica rapa*\* (field mustard)  
*Rorippa nasturtium-aquaticum* (water cress)

## CACTACEAE

*Opuntia ficus-indica*\* (cactus)

## CAPRIFOLIACEAE

*Sambucus mexicana* (blue elderberry)  
*Symphoricarpos albus* var. *laevigatus* (snowberry)

## CARYOPHYLLACEAE

*Stellaria sp.* (chickweed)

## FABACEAE

*Medicago polymorpha*\* (California bur clover)  
*Robinia pseudoacacia*\* (black locust)

## FAGACEAE

*Quercus agrifolia* (coast live oak)  
*Quercus lobata* (valley oak)

## GERANIACEAE

*Erodium botrys*\* (long-beaked filaree)

## GROSSULARIACEAE

*Ribes sanguineum* var. *glutinosum* (red flowering currant)

## HIPPOCASTANACEAE

*Aesculus californica* (California buckeye)

## JUGLANDACEAE

*Juglans hindsii* (California walnut)

## LAMIACEAE

*Marrubium vulgare*\* (horehound)  
*Mentha pulegium*\* (pennyroyal)  
*Stachys bullata* (California hedge nettle)

## MALVACEAE

*Malva neglecta*\* (cheeseweed)

## MYRTACEAE

*Eucalyptus globulus*\* (blue gum eucalyptus)

## OLEACEAE

*Olea europea*\* (olive)

## ONAGRACEAE

*Epilobium ciliatum* (willow herb)

## PLANTAGINACEAE

*Plantago lanceolata*\* (English plantain)

## PLATANACEAE

*Platanus racemosa* (western sycamore)

## POLYGONACEAE

*Polygonum* sp. (water smartweed)*Polygonum persicaria*\* (lady's thumb)*Rumex crispus*\* (curly dock)

## RHAMNACEAE

*Rhamnus californica* ssp. *californica* (California coffee berry)

## ROSACEAE

*Cotoneaster* sp.\* (cotoneaster)*Heteromeles arbutifolia* (toyon)*Rosa californica* (California rose)*Rubus discolor*\* (Himalaya berry)*Rubus ursinus* (California blackberry)

## RUBIACEAE

*Galium* sp. (bedstraw)

## SALICACEAE

*Populus fremontii* (Fremont cottonwood)*Salix exigua* (sandbar willow)*Salix* sp. (willow)

## SCROPHULARIACEAE

*Mimulus aurantiacus* (sticky monkey flower)*Scrophularia californica* ssp. *californica* (California bee plant)*Veronica* sp.\* (water speedwell)

## URTICACEAE

*Urtica dioica* (stinging nettle)

## VISCACEAE

*Phoradendron villosum* (oak mistletoe)FLOWERING PLANTS - MONOCOTS

## CYPERACEAE

*Carex* sp. (sedge)*Cyperus* sp. (nutgrass)*Scirpus* sp. (bulrush)

## JUNCACEAE

*Juncus effusus* var. *brunneus* (common rush)  
*Juncus patens* (spreading rush)

POACEAE

*Aira caryophylla*\* (silver European hairgrass)  
*Avena* sp. \* (wild oat)  
*Bromus diandrus*\* (ripgut brome)  
*Bromus hordeaceus*\* (soft chess)  
*Holcus lanatus*\* (velvet grass)  
*Hordeum marinum*\* (Mediterranean barley)  
*Lolium multiflorum*\* (Italian ryegrass)  
*Panicum capillare* (witch grass)  
*Polypogon monspeliensis*\* (rabbitsfoot grass)  
*Vulpia myuros* var. *myuros*\* (rattail fescue)

TYPHACEAE

*Typha* sp. (cattail)

NOTES:

\* = Non-native species

**Rhoades, Michael**

---

**From:** Linda Spahr [lspahr@valleywater.org]  
**Sent:** Monday, August 28, 2006 8:18 PM  
**To:** Theodore Hipol; michael.rhoades@sanjoseca.gov  
**Cc:** Melissa Moore; Linda Spahr; Nina Merrill; Janell Hillman; Linda Spahr; Jennifer Castillo; Steve Bui  
**Subject:** biologist comments on District File 30846(Pen Creek Trail Reach1)

Theo - pls cc: all contributors with the City's response to our comments. thx

#####

**Initial Study/Mitigated Negative Declaration for Penitencia Creek Trail - Reach 1 Master Plan**  
**City of San Jose, July 2006**  
**Submittal Date: 1 August 2006**  
**Review Date: 21 august 2006**

Fish Comments by SCVWD fisheries biologist, Melissa Moore  
 p28 and p29 Table 4.

-An unaddressed indirect impact to the steelhead known to be present in the project reach is the increased area of impervious surface due to the trail. The resulting change in the hydrograph can interfere with a) nest success and/or b) the high flow movement of adults and juveniles. This issue could move the impact category for Biological Resources, items 4a and 4d on page 22 out of 'No Impact.' Pls evaluate and add discussion to the text.

p26. Submittal requested during design phase of detailed erosion control BMP's to protect steelhead habitat.

Botanic Comments by SCVWD botanist, Janell Hillman.  
 Submittals requested prior to issuing the SCVWD permit.

- 1) Project Plant List. [add to Appendix A]
- 2) Exact days of reconnaissance surveys. [add to Appendix A]
- 3) Justification for why listed species [Table 1, Appendix A] which bloom outside of the October to April survey dates were eliminated from further consideration as possibly present on the site. As an example, the following species bloom outside the survey dates. Could they have been overlooked?

- *Sidalcea malachroides* was historically found upstream of the project site on Upper Penitencia Ck. and it blooms only from May to August [CNPS Inventory - CNDDDB] so could have been missed during the survey period.
- *Eryngium aristulatum* var. *hooveri* also blooms only May thru August [CNPS Inventory].
- *Monardella villosa* ssp. *globosa* blooms in an even more narrow period of June-July.

Wildlife Comments from SCVWD wildlife biologist, Nina Merrill.

pg 28. Section titled 'Direct and Indirect Impacts to Nesting Birds in the Riparian Habitat'  
 -Edit first sentence to state 'Construction of the trail has the potential to cause disruption to several sensitive and migratory bird species ....

pg 29. Table 4. Summary of Impacts to Special Status Wildlife Species and Mitigation  
-Add new impact 'loss of cavity habitat for cavity-nesting birds and bats'. These include oak titmouse, chestnut-backed chickadee and woodpeckers. Revegetation will not replace this specialized habitat for decades. Investigate installation of nest boxes.

Appendix A - Biotic Assessment.

-add the white-tailed kite to Table 2, Special Status Wildlife Species ....., Birds, status: FP [fully protected], potential: possible.

Riparian Comments from SCVWD reveg biologist, Linda Spahr

pg 3. Project Objectives.

-Add compliance with the 2005 'Guidelines and Standards for Land Use near Streams' a document that grew out of the Watershed Protection Collaborative and to which both SCVWD and the City of San Jose are signatories along with most of the municipalities in Santa Clara County. City to pls introduce your consultants to this document as its content supersedes the CSJ Riparian Corridor Policy on many topics. Particularly relevant information for this project can be found in Chapter 4 - Design Guides. It can be found at this address on the SCVWD website :

[http://www.valleywater.org/Water/Watersheds\\_-\\_streams\\_and\\_floods/Taking\\_care\\_of\\_streams/ Guidelines & standards/Guidelines & Standards.shtm](http://www.valleywater.org/Water/Watersheds_-_streams_and_floods/Taking_care_of_streams/Guidelines_&_standards/Guidelines_&_Standards.shtm)

-pg 23, par 1, last sentence. Edit to say 'Tree surveys would be conducted during the design phase of the project **by arborists certified by the International Society of Arboriculture [ISA] or the American Society of Consulting Arborists [ASCA] and experienced in construction impacts to trees and hazard tree assessment. They will consult with trail designers regarding tactics for minimizing collateral damage and delayed impacted to trees due to trail construction and review designs at all stages.**

p23. Table 1, Trees Expected to be Removed

-The loss of 5 large CA sycamores is significant and permanent. Can't the trail alignment wiggle through this short section so a few of these trees can be saved? If this trail section is designated as a mandatory bike walking zone, S-curves around the best trees will not be a traffic hazard.

p26. Construction BMPS's

-add 'Minimize damage to vegetation by employing an on-site arborist [ISA or ASCA certified] to prevent construction contractor from accidentally damaging riparian plants and to enforce compliance with riparian tree preservation specifications.'

-edit 6th bullet to say 'Implement erosion control measures to prevent sediment from entering the creek channel, including the use of silt fencing or fiber rolls, **erosion control blankets, or seedless hydromulch** to trap sediment.'

-edit 7th bullet to say 'Conduct erosion control seeding of all disturbed areas **which have not received an abiotic treatment such as those listed above, using a temporary, non-returning, non-invasive seed mix or locally native grasses & forbs, if available.**

p27. BMP's to mitigate potential damage to retained trees

-Edit first bullet to say 'An **ISA or ASCA**-certified arborist shall monitor all tree pruning .... '

p27. BMP to prepare and implement the revegetation plan....

-Add City-funded contract with a native plant nursery started 1 yr in advance of project

installation to a) collect propagules from the project site and Upper Penitencia watershed and b) to grow container stock from same and to c) collect acorns and buckeye seed for direct seeding.

-Pls submit the Project Plant List [existing condition] ASAP so we have a basis for evaluating the adequacy of the revegetation plant list.

-Later, City to provide nursery submittal for the mitigation plants with source locale for each species and nursery contact info.

-----Original Message-----

**From:** Theodore Hipol

**Sent:** Friday, August 25, 2006 5:20 PM

**To:** 'michael.rhoades@sanjoseca.gov'

**Cc:** Theodore Hipol; Linda Spahr; Steve Bui; Jennifer Castillo

**Subject:** District File 30846(Pen Creek Trail Reach1)

Mike,

I know that I said I was going to email you by today, but I wanted to give you more comments from additional staff, which I will not be receiving until Monday(8/28/06). I know I told that I will be out of town, but I will have that additional information sent to you, since I should still have access to a computer while I am away.

In the meantime, general comments are as was briefly mentioned in our phone conversation. The District and Corps have a future flood improvement project, in which the design details with respect to the proposed trail can be coordinated with Steve Bui. In addition, there is a proposal to remove large natives along the trail. It appears from the plan that the trees do not pose a conflict, therefore please verify their removal.

Please email with any immediate comments.

Thanks,

Theo Hipol

**Rhoades, Michael**

---

**From:** Palajac, Jan  
**Sent:** Monday, August 28, 2006 3:29 PM  
**To:** 'mheise45@comcast.net'  
**Cc:** Rhoades, Michael  
**Subject:** FW: Penitencia Creek Trail Reach 1

Dear Ms. Heise,

I am the project manager for the Penitencia Creek Trail Reach 1 Master Plan. Callander Associates was hired as our consultant on this project and I forwarded your questions to them. Please see their responses below.

If you have further questions, please feel free to contact me directly.

Thank you for your interest in this project.

**Jan Palajac**

Assoc. Landscape Architect

City Facilities Architectural Services

Public Works

City of San José

200 East Santa Clara St.

San José, CA 95113-1905

408.535.8408

408.292.6288 fax

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**From:** Marie Mai [mailto:mmai@callanderassociates.com]  
**Sent:** Monday, August 28, 2006 1:31 PM  
**To:** 'Palajac, Jan'  
**Subject:** RE: Penitencia Creek Trail Reach 1

Jan,

We're happy to see that the community continues to express an interest in the project. Please see my responses below, numbered to correspond to the sequence set forth in Ms. Heise's e-mail.

1) ***Why is the trail on the north side of the road?*** Placement of the trail on the north side of the creek as implemented for Reach 2 was initially pursued as the preferred alignment since the access road would afford a much more pleasant experience. However, further evaluation revealed that the alignment would be infeasible for the following reasons:

- a) Thru access on the north side of the creek is not possible due to private property (San Jose Water Company west of Dorel, private residences east of Dorel) restrictions and steep grades; therefore, a creek crossing is required downstream of Rock Canyon Circle.
- b) The creek crossing would require a lengthy bridge structure that would present a significant visual impact on the neighborhood and could affect flood flows.
- c) Even if the above issues could be addressed, it was likely that the alignment would not receive the required regulatory construction permits because of the riparian impacts that would result.

8/28/2006

d) The proposed alignment (on south side of the creek) will improve pedestrian access by providing a designated pedestrian facility separate from the road. Since it is within an existing impacted corridor (road), it is likely that the required permits would be granted. Its roadside location also allows the police to easily survey the trail for safety considerations.

2) **Does a 6' wide trail with curb really fit?** We can see why there would be a perception that the shoulder area is too narrow to fit our path. The growth of grass and other plants along the roadside likely contributes to this perception. Some trimming of this grass would be required, and a recently conducted topographic survey confirms that there is room for a 6' wide path and curb for the segment between Noble Avenue and Dorel. East of Dorel, the path becomes 4' wide due to the narrower conditions along the segment between Dorel and the Park.

3) **Has a wildlife evaluation been completed?** Please see Michael Rhoades' comments.

4) **Are there plans to calm traffic?** With the implementation of the path, a non-vehicular alternative to accessing the Penitencia Creek Park Chain and Alum Rock Park will be provided to area residents. This will likely encourage more trail and park users to walk or bike in lieu of using their cars, potentially helping to reduce the volume and speed of cars along the roadway. Also, the addition of the curb's 'hard edge' will likely cause some drivers to slow down as they will perceive it to be a structure to avoid. Additional speed-specific measures would need to be evaluated and approved by the City's Department of Transportation. Your comment will be forwarded to them for their consideration.

Regards,  
Marie Mai

Callander Associates  
Landscape Architecture, Inc.  
255 N. Market Street, Suite 110  
San Jose, CA 95110-2445  
Phone (408) 275-0565  
Fax (408) 275-8047

---

**From:** Rhoades, Michael  
**Sent:** Friday, August 25, 2006 12:57 PM  
**To:** 'Mary Heise'  
**Cc:** Palajac, Jan  
**Subject:** RE: Penitencia Creek Trail Reach 1

Dear Ms. Heise,

Thank you for your interest in the environmental review for the Penitencia Creek trail project. As my involvement with the project is to manage the environmental review for the project, I will address your question regarding the biological study.

I am passing your message on to Jan Palajac, Project Manager, with the City's Department of Public Works, who can address the design-related issues in your message.

In regard to your question: Has a real evaluation of the wildlife that use the creek been done?

Yes, potential impacts to wildlife, including steelhead, nesting birds, amphibians, etc. were evaluated and are addressed in the Biotic Assessment prepared for the project. This is available on-line as Appendix "A" to the Initial Study (click on the blue "IS" link from the webpage; click on Appendix A in the bookmarks).

The focus of the Biotic Assessment is to determine if project construction and use would impact special-status (i.e. endangered or threatened) species. Deer and other common mammals are typically not studied in detail, as they are abundant or overabundant as you suggest, are therefore not special-status species.

The construction and use of the trail is unlikely to effect local deer populations in any way.

8/28/2006

Please review the Biotic Assessment and feel free to contact me if you have additional questions. Please note that the comment period for the environmental review closes August 28, 2006 at 5:00, so if you wish to comment on or question the conclusions of the Initial Study/ Mitigated Negative Declaration, please do so in writing by that time.

The question you raise about the trail location and design will be answered by Ms. Palajac.

Feel free to call or email me with any other questions. Again, thank you for your interest in the project.

Michael Rhoades  
Senior Planner, Environmental Review Team  
Department of Planning Building and Code Enforcement  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113-1905  
(408) 535-3555  
fax (408) 292-6055

-----Original Message-----

**From:** Mary Heise [mailto:mheise45@comcast.net]  
**Sent:** Wednesday, August 23, 2006 11:49 AM  
**To:** michael.rhoades@sanjoseca.gov  
**Cc:** Donna Gordon  
**Subject:** Penitencia Creek Trail Reach 1

Michael Rhoades  
City of San Jose  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113

Re: PP06-111, Penitencia Creek Trail Reach 1

Dear Sir:

I (Mary Heise, 15000 Penitencia Creek Rd.) live across from the creek between Noble Ave. and Tallent and was unable to attend the meetings covering the proposed Penitencia Creek Trail Reach 1. However, after receiving a letter about the intent to adopt the Mitigated Negative Declaration on this plan, I got on-line and skimmed the draft report. Therefore, I have some questions and comments I hope you will be able address.

1. Why is Reach 1 of the trail going to be on the north side of the road (south side of the creek)?

Reach 2 of the trail from Piedmont Rd. to Nobel Ave. is on the north side of the creek, away from the road. It would appear that the hundred-year floodplain line (Figure 3A) could impact placement of a trail, although there is an access road on the north side of the creek. More important is the very narrow roadway and shoulder of Penitencia Creek Rd. from Noble Ave. east for about 100 to 200 feet encompassing a blind curve--a very real hazard for both pedestrians and bikes.

2. Is there really room for a 6 foot wide concrete trail with a 6 inch wide curb along this narrow part of the road?

In particular, where the fire hydrant and utility pole near the east end of section A-1 (Figure 3A) the shoulder is at its narrowest. In the mid-90's, I think, the creek at its high running level had nearly begun to undercut the road. Large boulders were dropped into the creek to build up this southside of the creek bed. However, the shoulder remains much narrower than it once was.

3. Has a real evaluation of the wildlife that use the creek been done?

In the draft document mention is only made of small amphibian animals, fish, and birds. However, several mammals use the creek and road to access residential yards. In particular, deer come down the creek and crossover the road to feed on plants in residential yards. That's why I have fences around my rose bushes to prevent the deer from eating all of my rosebuds. They even come down the drive to part of my back yard. While they mostly come at night, in the fall they even cross during the day. Other smaller mammals do the same thing, like skunks, raccoons, and opossums.

4. Are there plans to help reduce vehicular speed along this narrow stretch of Penitencia Creek Rd.?

The draft document mentions speed bumps near the entrance to Alum Rock Park. However, the real dangerous stretch of the road is from Noble Ave. to near Tallent. When Penitencia Creek Rd. became the only vehicular entrance to Alum Rock Park, the city engineer, after reviewing the narrow roadway and blind curve, agreed to reduce the speed limit to 25 mph. That doesn't mean that people drive at that speed limit. Often there are people racing up and down the road, even though many people use the roadway for walking, running, and biking. While the trail would help for walkers and runners (not biking), the speed of the vehicles so close to the path is still a real problem. I would suggest that speed "humps" be placed in the roadway between Noble Ave. and Tallent at about 100 ft intervals. I have seen these "humps" in other areas of the southbay and they seem to work.

Thank you for your consideration of these questions.

Sincerely,  
Mary M. Heise  
15000 Penitencia Creek Rd.  
San Jose, CA 95132

(408) 926-3677



Linda S. Adams  
Secretary for  
Environmental  
Protection

Exhibit 3: CEQA Documents  
**California Regional Water Quality Control Board**  
**San Francisco Bay Region**

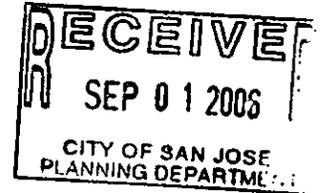
Internet Address: <http://www.swrcb.ca.gov>  
1515 Clay Street, Suite 1400, Oakland, California 94612  
Phone (510) 622-2300 FAX (510) 622-2460



Arnold Schwarzenegger  
Governor

August 28, 2006  
File No. 2188.05 (BKW)

Department of Planning, Building and Code Enforcement  
City of San Jose  
Attn: Michael Rhodes  
200 East Santa Clara Street, 3<sup>rd</sup> Floor  
San Jose, CA 95113-1905



**Re: Initial Study and Mitigated Negative Declaration for the Penitencia Creek Trail – Reach 1, Master Plan, San Jose, California (City File #PP06-111) SCH # 2006072117**

Dear Mr. Rhodes:

Regional Water Quality Control Board (Water Board) staff have reviewed the *Initial Study and Mitigated Negative Declaration (ISMND) for the Penitencia Creek Trail -- Reach 1 Master Plan, San Jose, California* (City File #PP06-111). The ISMND evaluates the potential environmental impacts that might reasonably be anticipated to result from the construction of a 0.5-mile-long raised concrete path along the north side of Penitencia Creek Road, for pedestrian use (Project). The path would run along and, in places, through the riparian vegetation along the left bank of Upper Penitencia Creek. Water Board staff have the following comments on the ISMND.

**Comment 1**

***Chapter 3. Environmental Setting, Impacts and Mitigation, D. Biological Resources, Riparian Woodland (pages 18, 23, and 24).***

The Project footprint has been reduced significantly in comparison with the 2005 site analysis plan for this reach of the proposed Penitencia Creek Trail, which featured trails on both sides of the channel and included several bridges over the channel. While Water Board staff appreciate the efforts that have been made to reduce impacts associated with the proposed trail, we are still concerned by the Project's proposed impacts on riparian habitat. Since Upper Penitencia Creek is considered to be the best steelhead habitat in the South Bay, all measures that can be taken to avoid disturbing this habitat are important.

Text on page 23 states:

. . . approximately 1,500 linear feet of the trail would be located within the corridor. The Trail would require the removal of 16 riparian trees. Construction activities for the trial would directly impact riparian vegetation in these areas, from the removal and limbing of riparian trees within the woodland. The Project is estimated to result in the loss of 13,504 square feet (0.31 acre) of riparian vegetation.

According to Table 1 (page 24) five of the trees that would be impacted are mature sycamore trees. Although the ISMND proposes to replace these trees at a 10:1 ratio, attempts to grow new sycamores in Santa Clara County have had a high failure rate. Because of this, greater efforts should be made to avoid these mature, significant riparian trees.

**Comment 2*****Chapter 3. Environmental Setting, Impacts and Mitigation, D. Biological Resources, Riparian Woodland (pages 23, 24, and 26).***

Table 1 summarizes the trees that are proposed for removal from within the Riparian Corridor of Upper Penitencia Creek. The fifth column of the table states that none of these trees constitute, "Shaded Riverine Habitat". According to text on page 28, this statement means that these trees do not provide direct shade for the creek channel. However, Shaded Riverine Habitat is not restricted to those trees directly adjacent to the active channel. Temperature in the riparian corridor is affected directly by the width of the riparian corridor. The micro-climate effect of a wider riparian corridor vs. a narrower one provides cooler air temperature, which helps to keep water temperatures cool. Maintaining cool water in the creek is important to the viability of the steelhead population in Upper Penitencia Creek.

**Comment 3*****Chapter 3. Environmental Setting, Impacts and Mitigation, D. Biological Resources, Riparian Woodland (page 24).***

Text on page 24 states:

Upstream of Dorel Avenue, a 100-foot section of the trail would be supported on helical piers. These screw-like piers would be installed from the existing roadway, such that impacts to Upper Penitencia Creek and its associated riparian corridor would be avoided.

Although the proposed use of helical piers will be less intrusive than the use of a retaining wall to support the trail, the proposed trail segment would still impact the riparian corridor. Putting the trail in the channel cross-section on helical piers will encroach on riparian habitat, creating opportunities for disturbance of habitat and accumulation of trash. As noted in the prior comment, construction within the riparian corridor will also impact the micro-climate of the riparian corridor, even if trees immediately adjacent to the active channel are not impacted.

While significant efforts have been made to reduce impacts associated with a trail along this reach of Upper Penitencia Creek, it is crucial to the viability of the important steelhead

Mr. Rhoades

- 3 -

ISMND Penitencia Creek Trail Reach 1

population in this creek to avoid any impacts to the riparian corridor. Therefore, Water Board staff encourage the City to continue to pursue less intrusive alternatives for the trail alignment that avoid native vegetation and keep the trail out of the cross-section of the creek channel.

If you have any questions, please contact me at (510) 622-5680 or e-mail [bwines@waterboards.ca.gov](mailto:bwines@waterboards.ca.gov).

Sincerely,



Brian Wines  
Water Resources Control Engineer

cc: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044  
Santa Clara Valley Water Control District, Attn: Sue Tippets, Community Projects  
Review Unit 5750 Almaden Expressway, San Jose, Ca 95118-3686  
CDFG, Central Coast Region, Attn: Robert Floerke, Regional Manager, P.O. Box  
47, Yountville CA 94599  
National Marine Fisheries Service, Attn: Gary Stern, 777 Sonoma Avenue, Suite  
325, Santa Rosa, CA 95404

**Rhoades, Michael**

---

**From:** Palajac, Jan  
**Sent:** Monday, August 28, 2006 3:29 PM  
**To:** 'mheise45@comcast.net'  
**Cc:** Rhoades, Michael  
**Subject:** FW: Penitencia Creek Trail Reach 1

Dear Ms. Heise,

I am the project manager for the Penitencia Creek Trail Reach 1 Master Plan. Callander Associates was hired as our consultant on this project and I forwarded your questions to them. Please see their responses below.

If you have further questions, please feel free to contact me directly.

Thank you for your interest in this project.

**Jan Palajac**

Assoc. Landscape Architect

City Facilities Architectural Services

Public Works

City of San José

200 East Santa Clara St.

San José, CA 95113-1905

408.535.8408

408.292.6288 fax

---

**From:** Marie Mai [mailto:mmai@callanderassociates.com]  
**Sent:** Monday, August 28, 2006 1:31 PM  
**To:** 'Palajac, Jan'  
**Subject:** RE: Penitencia Creek Trail Reach 1

Jan,

We're happy to see that the community continues to express an interest in the project. Please see my responses below, numbered to correspond to the sequence set forth in Ms. Heise's e-mail.

1) **Why is the trail on the north side of the road?** Placement of the trail on the north side of the creek as implemented for Reach 2 was initially pursued as the preferred alignment since the access road would afford a much more pleasant experience. However, further evaluation revealed that the alignment would be infeasible for the following reasons:

- a) Thru access on the north side of the creek is not possible due to private property (San Jose Water Company west of Dorel, private residences east of Dorel) restrictions and steep grades; therefore, a creek crossing is required downstream of Rock Canyon Circle.
- b) The creek crossing would require a lengthy bridge structure that would present a significant visual impact on the neighborhood and could affect flood flows.
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8/28/2006

d) The proposed alignment (on south side of the creek) will improve pedestrian access by providing a designated pedestrian facility separate from the road. Since it is within an existing impacted corridor (road), it is likely that the required permits would be granted. Its roadside location also allows the police to easily survey the trail for safety considerations.

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3) **Has a wildlife evaluation been completed?** Please see Michael Rhoades' comments.

4) **Are there plans to calm traffic?** With the implementation of the path, a non-vehicular alternative to accessing the Penitencia Creek Park Chain and Alum Rock Park will be provided to area residents. This will likely encourage more trail and park users to walk or bike in lieu of using their cars, potentially helping to reduce the volume and speed of cars along the roadway. Also, the addition of the curb's 'hard edge' will likely cause some drivers to slow down as they will perceive it to be a structure to avoid. Additional speed-specific measures would need to be evaluated and approved by the City's Department of Transportation. Your comment will be forwarded to them for their consideration.

Regards,  
Marie Mai

Callander Associates  
Landscape Architecture, Inc.  
255 N. Market Street, Suite 110  
San Jose, CA 95110-2445  
Phone (408) 275-0565  
Fax (408) 275-8047

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**From:** Rhoades, Michael  
**Sent:** Friday, August 25, 2006 12:57 PM  
**To:** 'Mary Heise'  
**Cc:** Palajac, Jan  
**Subject:** RE: Penitencia Creek Trail Reach 1

Dear Ms. Heise,

Thank you for your interest in the environmental review for the Penitencia Creek trail project. As my involvement with the project is to manage the environmental review for the project, I will address your question regarding the biological study.

I am passing your message on to Jan Palajac, Project Manager, with the City's Department of Public Works, who can address the design-related issues in your message.

In regard to your question: Has a real evaluation of the wildlife that use the creek been done?

Yes, potential impacts to wildlife, including steelhead, nesting birds, amphibians, etc. were evaluated and are addressed in the Biotic Assessment prepared for the project. This is available on-line as Appendix "A" to the Initial Study (click on the blue "IS" link from the webpage; click on Appendix A in the bookmarks).

The focus of the Biotic Assessment is to determine if project construction and use would impact special-status (i.e. endangered or threatened) species. Deer and other common mammals are typically not studied in detail, as they are abundant or overabundant as you suggest, and are therefore not special-status species.

The construction and use of the trail is unlikely to effect local deer populations in any way.

8/28/2006

Please review the Biotic Assessment and feel free to contact me if you have additional questions. Please note that the comment period for the environmental review closes August 28, 2006 at 5:00, so if you wish to comment on or question the conclusions of the Initial Study/ Mitigated Negative Declaration, please do so in writing by that time.

The question you raise about the trail location and design will be answered by Ms. Palajac.

Feel free to call or email me with any other questions. Again, thank you for your interest in the project.

Michael Rhoades  
Senior Planner, Environmental Review Team  
Department of Planning Building and Code Enforcement  
City of San Jose  
200 East Santa Clara Street  
San Jose, CA 95113-1905  
(408) 535-3555  
fax (408) 292-6055

-----Original Message-----

**From:** Mary Heise [mailto:mheise45@comcast.net]  
**Sent:** Wednesday, August 23, 2006 11:49 AM  
**To:** michael.rhoades@sanjoseca.gov  
**Cc:** Donna Gordon  
**Subject:** Penitencia Creek Trail Reach 1

Michael Rhoades  
City of San Jose  
Department of Planning, Building and Code Enforcement  
200 East Santa Clara Street  
San Jose, CA 95113

Re: PP06-111, Penitencia Creek Trail Reach 1

Dear Sir:

I (Mary Heise, 15000 Penitencia Creek Rd.) live across from the creek between Noble Ave. and Tallent and was unable to attend the meetings covering the proposed Penitencia Creek Trail Reach 1. However, after receiving a letter about the intent to adopt the Mitigated Negative Declaration on this plan, I got on-line and skimmed the draft report. Therefore, I have some questions and comments I hope you will be able address.

1. Why is Reach 1 of the trail going to be on the north side of the road (south side of the creek)?

Reach 2 of the trail from Piedmont Rd. to Nobel Ave. is on the north side of the creek, away from the road. It would appear that the hundred-year floodplain line (Figure 3A) could impact placement of a trail, although there is an access road on the north side of the creek. More important is the very narrow roadway and shoulder of Penitencia Creek Rd. from Noble Ave. east for about 100 to 200 feet encompassing a blind curve--a very real hazard for both pedestrians and bikes.

2. Is there really room for a 6 foot wide concrete trail with a 6 inch wide curb along this narrow part of the road?

In particular, where the fire hydrant and utility pole near the east end of section A-1 (Figure 3A) the shoulder is at its narrowest. In the mid-90's, I think, the creek at its high running level had nearly begun to undercut the road. Large boulders were dropped into the creek to build up this southside of the creek bed. However, the shoulder remains much narrower than it once was.

3. Has a real evaluation of the wildlife that use the creek been done?

In the draft document mention is only made of small amphibian animals, fish, and birds. However, several mammals use the creek and road to access residential yards. In particular, deer come down the creek and crossover the road to feed on plants in residential yards. That's why I have fences around my rose bushes to prevent the deer from eating all of my rosebuds. They even come down the drive to part of my back yard. While they mostly come at night, in the fall they even cross during the day. Other smaller mammals do the same thing, like skunks, raccoons, and opossums.

4. Are there plans to help reduce vehicular speed along this narrow stretch of Penitencia Creek Rd.?

The draft document mentions speed bumps near the entrance to Alum Rock Park. However, the real dangerous stretch of the road is from Noble Ave. to near Tallent. When Penitencia Creek Rd. became the only vehicular entrance to Alum Rock Park, the city engineer, after reviewing the narrow roadway and blind curve, agreed to reduce the speed limit to 25 mph. That doesn't mean that people drive at that speed limit. Often there are people racing up and down the road, even though many people use the roadway for walking, running, and biking. While the trail would help for walkers and runners (not biking), the speed of the vehicles so close to the path is still a real problem. I would suggest that speed "humps" be placed in the roadway between Noble Ave. and Tallent at about 100 ft intervals. I have seen these "humps" in other areas of the southbay and they seem to work.

Thank you for your consideration of these questions.

Sincerely,  
Mary M. Heise  
15000 Penitencia Creek Rd.  
San Jose, CA 95132

(408) 926-3677

**SCH#** 2006072117  
**Project Title** Penitencia Creek Trail Reach 1  
**Lead Agency** San Jose, City of

**Type** Neg Negative Declaration  
**Description** Master Plan for development of a 0.5-mile raised concrete path along the north side of Penitencia Creek Road, for pedestrian use. The path would vary from four- to six-feet in width. A six-foot wide path would extend from Noble Avenue to Dorel Drive, which would be reduced to four feet in width east of Dorel Drive. Regulatory signage and accessible ramp improvements at intersections are included.

**Lead Agency Contact**

**Name** M. Rhoades  
**Agency** City of San Jose  
**Phone** (408) 535-7800 **Fax**  
**email**  
**Address** 200 E. Santa Clara Street, 3rd Floor  
**City** San Jose **State** CA **Zip** 95110-1905

**Project Location**

**County** Santa Clara  
**City** San Jose  
**Region**  
**Cross Streets** Penitencia Creek Road  
**Parcel No.** Public ROW  

Township	Range	Section	Base

**Proximity to:**

**Highways** 680  
**Airports**  
**Railways**  
**Waterways** Penitencia Creek  
**Schools** Berryessa Union  
**Land Use** Project is located in an area of medium to low-density residential development.  
 Z: R-1-8  
 GP: Medium-Low Density Residential

**Project Issues**

**Reviewing Agencies** Resources Agency; Regional Water Quality Control Board, Region 2; Department of Parks and Recreation; Native American Heritage Commission; Department of Fish and Game, Region 3; Department of Water Resources; California Highway Patrol; Caltrans, District 4; Department of Toxic Substances Control; Air Resources Board, Transportation Projects

**Date Received** 07/28/2006 **Start of Review** 07/28/2006 **End of Review** 08/28/2006

STATE OF CALIFORNIA

Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit

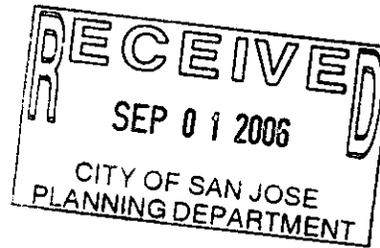


Arnold Schwarzenegger  
Governor



Sean Walsh  
Director

August 29, 2006



M. Rhoades  
City of San Jose  
200 E. Santa Clara Street, 3rd Floor  
San Jose, CA 95110-1905

Subject: Penitencia Creek Trail Reach 1  
SCH#: 2006072117

Dear M. Rhoades:

The State Clearinghouse submitted the above named Negative Declaration to selected state agencies for review. The review period closed on August 28, 2006, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

A handwritten signature in cursive script that reads "Terry Roberts".

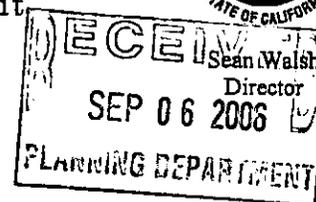
Terry Roberts  
Director, State Clearinghouse

STATE OF CALIFORNIA

Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Arnold Schwarzenegger  
Governor



August 31, 2006

M. Rhoades  
City of San Jose  
200 E. Santa Clara Street, 3rd Floor  
San Jose, CA 95110-1905

Subject: Penitencia Creek Trail Reach 1  
SCH#: 2006072117

Dear M. Rhoades:

The enclosed comment (s) on your Negative Declaration was (were) received by the State Clearinghouse after the end of the state review period, which closed on August 28, 2006. We are forwarding these comments to you because they provide information or raise issues that should be addressed in your final environmental document.

The California Environmental Quality Act does not require Lead Agencies to respond to late comments. However, we encourage you to incorporate these additional comments into your final environmental document and to consider them prior to taking final action on the proposed project.

Please contact the State Clearinghouse at (916) 445-0613 if you have any questions concerning the environmental review process. If you have a question regarding the above-named project, please refer to the ten-digit State Clearinghouse number (2006072117) when contacting this office.

Sincerely,

A handwritten signature in cursive script that reads "Terry Roberts".

Terry Roberts  
Director, State Clearinghouse

Enclosures  
cc: Resources Agency



*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, DIRECTOR

## ADDENDUM TO A MITIGATED NEGATIVE DECLARATION

Pursuant to Section 15164 of the CEQA Guidelines, the City of San Jose has prepared an Addendum to a Mitigated Negative Declaration (MND) adopted for a previous project. Because minor changes made to the project described below do not raise important new issues about the effects on the environment, this project is adequately covered by this Addendum to the Mitigated Negative Declaration from the previous project.

### PROJECT DESCRIPTION AND LOCATION

**PP13-031.** Revised trail design and alignment for Penitencia Creek Trail Reach 1, which includes changing from a 6-foot (ft) wide attached sidewalk for pedestrian use from Noble Avenue to Alum Rock Regional Park to the following:

- An effective 8-foot wide multi-use trail with 2-foot shoulders with a meandering alignment separate from the Penitencia creek roadway that will reduce the number of trees impacted during construction and provide better trail features for pedestrians and bicyclists.
- An elevated Ipe wood boardwalk varying in width between six to eight feet at specific locations to minimize impacts to large-sized native western sycamore trees and provide roots access to surface runoff similar to the existing condition.
- Termination of the trail at Dorel Drive, instead of at Alum Rock Park, as previously proposed, resulting in a shorter length of trail.

### Council District 4.

### CERTIFICATION

The environmental impacts of this project were addressed by an Initial Study and documented by a Mitigated Negative Declaration for the Penitencia Creek Trail Reach 1 Master Plan, File No. PP06-111, and certified as final on August 28, 2006. Specifically, the following impacts were reviewed and found to be adequately considered by the MND:

<input checked="" type="checkbox"/> Traffic and Circulation	<input checked="" type="checkbox"/> Soils and Geology	<input checked="" type="checkbox"/> Noise
<input checked="" type="checkbox"/> Cultural Resources	<input checked="" type="checkbox"/> Hazardous Materials	<input checked="" type="checkbox"/> Land Use
<input type="checkbox"/> Urban Services	<input checked="" type="checkbox"/> Biotics	<input checked="" type="checkbox"/> Air Quality
<input checked="" type="checkbox"/> Aesthetics	<input type="checkbox"/> Airport Considerations	<input type="checkbox"/> Microclimate
<input type="checkbox"/> Energy	<input type="checkbox"/> Relocation Issues	<input checked="" type="checkbox"/> Construction Period Impacts
<input checked="" type="checkbox"/> Transportation	<input type="checkbox"/> Utilities	<input type="checkbox"/> Facilities and Services
<input checked="" type="checkbox"/> Water Quality	<input checked="" type="checkbox"/> Flooding	<input type="checkbox"/>

### ANALYSIS:

The trail alignment and design have been modified to reduce impacts to the riparian corridor and to provide better access for a wider range of recreational users. The trail alignment has been revised to meander through the riparian corridor and avoid large-size native riparian trees

Exhibit 3: CEQA Documents

previously identified for removal in the IS/ND. A total of sixteen trees were originally identified for removal, including eight native trees. As a result of the project revisions, only four non-native trees will be removed. Mitigation ratios proposed in the original Initial Study remain in effect. For a full description of all proposed changes, see the attached Biological Constraints memorandum dated October 8, 2012.

John Davidson  
Project Manager

Joseph Horwedel, Director  
Planning, Building and Code Enforcement

4/5/12

Date

John Davidson

Deputy

# Memorandum

**To:** Ron Cheung, CSJ Project Manager  
John Davidson, CSJ Environmental Planner

**Date:** October 8, 2012

**From:** Danielle Tannourji, CH2M HILL Biologist  
Connie Gazaway, CH2M HILL PM

**Subject:** Penitencia Creek Trail Reach 1 CEQA Addendum - Biological Constraints

## Introduction

As part of the Penitencia Creek Trail Reach 1 Project (Project), CH2M HILL has been contracted to assist with amending the Initial Study/Mitigated Negative Declaration (IS/MND) adopted on October 31, 2006. The trail alignment and design have been modified to reduce impacts to the riparian corridor and to provide better access for a wider range of recreational users. The trail alignment has been revised to meander through the riparian corridor and avoid large-size native riparian trees previously identified for removal in the IS/ND. This Addendum will describe the revised trail design and alignment which includes changing from a 6-foot (ft) wide attached sidewalk for pedestrian use from Noble Avenue to Alum Rock Regional Park to the following:

- An effective 8-ft wide multi-use trail with 2-ft shoulders with a meandering alignment separate from the Penitencia creek roadway that will reduce the number of trees impacted during construction and provide better trail features for pedestrians and bicyclists..
- An elevated IPE wood boardwalk varying in width between six to eight feet at specific locations to minimize impacts to large-sized native western sycamore trees and provide roots access to surface runoff similar to the existing condition.

Construction of the proposed cantilevered boardwalk structure along the south bank of Penitencia Creek will require acquisition of temporary construction easements from an adjacent property owner unwilling to negotiate with the City that may result in condemnation. Therefore the portion of the trail from Dorel Road to Alum Rock Park has been put on hold indefinitely resulting in a shorter length of trail and fewer project impacts. The revised trail alignment now ends at Dorel Drive and is shown in Figure 1. This section of trail may be constructed at a later date pending resolution of right-of-way acquisition and therefore will require a separate CEQA analysis at some time in the future.

The trail alignment was modified from what was described in the IS/ND to provide an eight-foot wide detached meandering asphalt trail between Noble Avenue and Dorel Drive. The number of trees impacted by construction was significantly reduced even though there was a wider trail footprint under the existing riparian canopy. The project also recommended bank restoration along approximately 40 feet of bank upstream of an existing concrete weir in the creek that has been subject to some erosion over time. This revised

project with the proposed alignment was shared with the permitting agencies during the July 16 field visit (see below).

On July 16, 2012, a meeting was held at the Project site with representatives from the California Department of Fish and Game (CDFG) and the Regional Water Quality Control Board (RWQCB) to discuss potential environmental impacts of the proposed trail as well as the additional efforts made since the adoption of the Mitigated Negative Declaration to further minimize impacts to the creek's riparian vegetation. During this meeting, the City of San Jose (City) also agreed to evaluate constructing an elevated boardwalk to minimize impacts to 5 large western sycamores (*Platanus racemosa*) previously identified for removal under the IS/ND.

This memorandum describes the modifications to the IS/MND project description and provides a discussion of how the proposed modifications affect the existing biological resources.

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## Revisions to Project Description

### Project Location

The Project is located within the corporate limits of the City of San Jose, in the northeast hills of Santa Clara County (Figure 1). The IS/MND described the project site as extending along an approximately 0.5-mile (mi) stretch of Penitencia Creek Road, between Noble Avenue and Alum Rock Regional Park. With the revised project design, the alignment would be shortened to approximately 0.3 mi. The western end of the proposed trail alignment will begin near the eastern terminus of Reach 2 of the Penitencia Creek Trail on the north side of the Penitencia Creek and will end at Dorel Drive, about 0.2 miles from Alum Rock Regional Park. The section from Dorel Drive to Alum Rock Regional Park has been put on hold indefinitely until temporary construction easements can be acquired from adjacent property owner to construct the proposed cantilevered boardwalk section along the south bank of the creek. The updated proposed trail alignment is located on City of San Jose land: Assessor's Parcel Number (APN) 599-23-055 and Santa Clara Valley Water District (SCVWD) land: APN 599-23-045 and 599-23-046.

### Project Description

The IS/MND proposed a 6-foot wide concrete pedestrian path with an attached six-inch curb and gutter along the existing north shoulder of Penitencia Creek Road. The proposed trail alignment has been revised to minimize impacts to the mature trees in the riparian corridor including several large-sized native western sycamores located along the existing shoulder of Penitencia Creek Road. Conceptual design drawings for the proposed trail are presented in the Attachments. Proposed changes to the IS/MND project description includes several new features:

- Project limits have been significantly reduced from 0.5 miles to 0.3 mile of proposed trail improvements and elimination of a cantilevered boardwalk structure with piles along the south bank of the creek.
- Slightly increased the size of the footprint of impacts beneath the shaded canopy area between Noble Avenue and Dorel Avenue but significantly reduces the number of trees that need to be removed as compared to the attached sidewalks/trail. The detached meandering eight foot wide asphalt trail with two foot gravel shoulders will accommodate bicyclists as well as pedestrians.
- Significantly reduce impacts to large native western sycamore trees located between the top of bank and gravel shoulder of Penitencia Creek Road by constructing a 6-ft-wide elevated boardwalk along three distinct sections of the trail. The elevated boardwalk section will avoid existing stands of western sycamores. The boardwalk will be placed at least 1.5 ft from all existing sycamore trees and will be raised no more than 2 ft from the ground surface. To minimize damage to the underlying root systems, alternate methods of excavation will be investigated near sycamore trees.
- Minor bank restoration is another new component of the Project. Isolated erosion has occurred along approximately 40 ft of creek bank resulting in encroachment of the

creek bank into the existing gravel roadway shoulder. Bio-stabilization measures are proposed to restore this section of the creek bank including installation of willow wattles, live oak stakes and possibly root wads to stabilize the slope beneath the proposed boardwalk structure. These materials will be placed along the exposed slope from the top of bank down to the toe of slope. Bank restoration activities will be conducted during the dry season (June 15 to October 15) when flows are relatively low or absent to avoid disruption to the active flow channel of Upper Penitencia Creek.

- There will be a change in materials as well. The proposed trail materials include asphalt and Portland Cement Concrete (PCC) paved surface with gravel shoulders, while the boardwalk materials consist of Brazilian hardwood (or IPC) with concrete footings and redwood structural members. A concrete trail-head, sidewalk improvements, and other trail amenities are also included in the project at the termination points of this trail segment.

See the Attachments for Drawings and Typical Sections of the trail alignment. Table 1 summarizes the main differences between the 2006 Upper Penitencia Creek Trail – Reach 1 project description and the currently proposed project.

**Table 1. Revised Project Features By Station**

Stationing	2006 Project	Currently Proposed Project
100+00 to 102+50	6-foot concrete pedestrian path with 0.5 foot curb	8- foot A/C with 2-ft shoulders
102+50 to 105+70	6-foot concrete pedestrian path with 0.5 foot curb	6 foot elevated boardwalk
103+40 to 103+80	6-foot concrete pedestrian path with 0.5 foot curb	Bank restoration with willow wattles and root wads and soil fill as necessary
105+70 to 107+40	6-foot concrete pedestrian path with 0.5 foot curb	8- foot A/C with 2-ft shoulders
107+40 to 108+40	6-foot concrete pedestrian path with 0.5 foot curb	6 foot elevated boardwalk
108+40 to 113+20	6-foot concrete pedestrian path with 0.5 foot curb	8- foot A/C with 2-ft shoulders
113+20 to 114+00	6-foot concrete pedestrian path with 0.5 foot curb	6 foot elevated boardwalk
114+00 to 117+00	6-foot concrete pedestrian path with 0.5 foot curb	8- foot A/C with 2-ft shoulders

From Rock Canyon Circle to Dorel Drive 117+00 to 119+00	6-foot concrete pedestrian path with 0.5 foot curb	4-foot concrete pedestrian path with 0.5 curb and asphalt temporary parking area for mail pick up
Dorel Drive to Alum Rock Park 119+00 to 128+00	200 feet of 4 foot wide cantilevered boardwalk and 700 feet of 4-foot concrete pedestrian path with 0.5 foot curb	Deleted from project

## Effect of Project Changes on Biological Resources (Section D of the IS/MND)

A biotic assessment was conducted for the Project by Biotic Resources Group (2006). This assessment consisted of field review, identification of major plant communities on site, potential for sensitive biotic resources, and evaluation of project impacts as per the proposed project impacts as stated in the IS/MND.

CH2M HILL biologist updated the 2006 biotic assessment with a literature review and several field reconnaissance surveys in the spring and summer of 2012 including a tree survey conducted on November 9, 2009. A technical memorandum summarizing the 2012 biotic survey results as well as the tree survey report are included in the Attachments. The U.S. Fish and Wildlife Service (USFWS) Information, Planning, and Conservation System (IPaC), California Native Plant Society (CNPS) Rare Plant Inventory, and the California Diversity Database (CNDDDB) were reviewed on November 2, 2012 and compared to the 2006 survey reports. This review did not result in the addition of new species with the potential to occur within the project area. Special-status species known to occur within or near the Upper Penitencia Creek riparian corridor include: Central California Coast steelhead (*Oncorhynchus mykiss*) Distinct Population Segment (DPS), Central Valley fall-run Chinook salmon (*O. tshawytscha*), California red-legged frog (*Rana draytonii*), and foothill yellow-legged frog (*Rana boylei*) (CNDDDB, 2012).

An analysis of the revised direct impacts to biological resources and associated mitigation measures is provided below following the outline of the IS/MND. Indirect impacts as described in the IS/MND remain current.

### Revised Direct Impacts to Riparian Trees

A total of 16 trees were identified for removal (8 native) in the IS/MND project description for the 6-ft wide attached concrete trail. Under the revised plan, no riparian canopy will be removed; therefore shading of Upper Penitencia Creek will not be affected. Although the trail would now be widened to 12 ft, the incorporation of three new 6-ft-wide boardwalk trail sections will result in the avoidance of the 5 mature western sycamore trees and 3 other native riparian trees originally identified for removal. In addition, the new meandering alignment will only require removal of 4 non-native trees (1 Peruvian pepper, 1 olive, 1 cherry, and 1 English walnut), instead of the 7 non-native trees initially identified for

removal. The Revised IS/MND Table 1 outlines the species and diameter of the trees impacted under the revised Project. Only the Peruvian pepper tree listed below as tree #2492 is of the original 16 trees identified for removal in the 2006 IS/MND Table 1. The other 15 trees will be avoided with the new trail alignment and design.

**Mitigation for Non-Native Tree Impacts**

Approximately 12 Arroyo willow (*Salix lasiolepis*) trees will be planted along the banks in open areas of the creek within the project area to mitigate for the loss of these 4 non-native trees. Mitigation and monitoring details on these plantings as well as the proposed mitigation site are described in further detail below.

Revised IS/MND Table 1. Trees To Be Removed Within the Riparian Corridor, Penitencia Creek Trail-Reach 1				
Tree Identification Number from Tree Survey (Biotic Resources Group, 2009)	Tree Species	Diameter (inches)	Shaded Riverine Habitat?	Recommended Mitigation Ratio
2492	Peruvian Pepper ( <i>Schinus molle</i> )	20, 10	No	3:1
2507	Olive ( <i>Olea europaea</i> )	12	No	3:1
2607	Cherry ( <i>Prunus</i> sp.)	8	No	3:1
2832	English walnut ( <i>Juglans regia</i> )	9	No	3:1

**Revised Direct Impacts to Riparian Woodland Habitat**

The revised trail alignment for Reach 1 located along the existing gravel roadway shoulder will permanently impact approximately 0.31 acre (ac) and 1,290 linear feet (lf). Of this total, approximately 490 lineal feet currently has riparian woodland vegetation and approximately 800 lineal feet consist of gravel shoulder with little or no vegetation. Approximately 0.06 ac (376 lf) of impact will result from the proposed 6-ft wide elevated boardwalk trail, while 0.25 ac (914 lf) of impacts are expected from the proposed 12-ft wide asphalt trail.

With the removal of the easternmost portion of Reach 1 (from Dorel Drive to Alum Rock Regional Park), approximately 0.05 ac (510 lf) of proposed impacts to the riparian woodland are no longer part of the Project. However with the addition of a wider trail design over a shorter distance (1,290 lf), the revised impact acreage to the riparian woodland equals the same amount (approximately 0.31 ac) as what was anticipated in the IS/MND. Although there is no change to the impact acreage, the new trail design and alignment will avoid high quality riparian habitat and old growth sycamore trees. Figure 2 depicts the updated trail alignment and design, the associated impacts, and the location of the proposed mitigation area.

### Mitigation for Direct Impacts to Riparian Woodland Habitat

Keeping with the 3:1 mitigation ratio stated in the IS/MND for loss of all riparian woodland habitat, approximately 0.75 ac of mitigation will be required for 0.25 ac of riparian woodland impacts. A 1:1 mitigation ratio is proposed for the estimated 0.06 ac of boardwalk impacts to the riparian corridor as this trail design will minimize impacts to the root systems of the adjacent riparian trees and only remove the existing shrub understory. Approximately 0.06 ac of mitigation is proposed for the elevated boardwalk design located within the riparian corridor, for a total of 0.81 ac of riparian woodland mitigation. The Revised IS/MND Table 2 summarizes the updated direct impacts and mitigation for the Project below.

Revised IS/MND Table 2 – Riparian Habitat: Impact Acreage and Proposed Mitigation, Penitencia Creek Trail - Reach 1							
Habitat Type/Resource	Impact Type	Impact Acreage		Mitigation Acreage Recommended		Mitigation Ratio	
		2006	2012	2006	2012	2006	2012
<b>Riparian Woodland</b>	Direct removal of riparian woodland for trail construction, limbing of trees to be retained	0.31 ac	0.25 ac	0.93 ac of riparian revegetation	0.75 ac of riparian revegetation	3:1	3:1
	Direct removal of riparian shrub understory for boardwalk construction	--	0.06 ac	--	0.06 ac of riparian revegetation	--	1:1
	Direct removal of large sycamore trees and shaded riverine habitat	4 Trees	0 Trees	40 Trees planted 15' o.c. w/n 0.17-ac area	No mitigation necessary	10:1	--
		<b>2006</b>	<b>2012</b>	<b>2006</b>	<b>2012</b>	<b>2006</b>	<b>2012</b>
	Indirect impact to riparian woodland from close proximity of trail to woodland	1,800 linear feet	1,290 linear feet	Protective fencing at select locations	Protective fencing at select locations	--	--
	Indirect impact by side cast materials or sedimentation	None	None	See minimization/mitigation measures*	See minimization/mitigation measures*	N/A	N/A
<b>Freshwater marsh (in-</b>	Direct impacts to	None	None	None	None	N/A	N/A

<b>stream wetlands)</b>	wetlands						
	Direct impacts to active flow channel due to bank repairs	--	0.01 ac (40 lf)	--	Willow cuttings at bank repair site and all open bank areas within the project boundaries	N/A	N/A
	Indirect impact by side cast materials or sedimentation	None	None	See minimization/mitigation measures*	See minimization/mitigation measures*	N/A	N/A
<b>Total</b>				0.81 ac of riparian woodland. Protective fencing where needed.			

\*The minimization/mitigation measures are described in the IS/MND and MMRP.

**Impacts to Shaded Riverine Habitat**

Based on recent field reconnaissance surveys, there will be no loss of shaded riverine habitat due to the proposed project as the creek in this area is already heavily shaded by trees along the toe of the southern bank which will remain intact after project completion. Furthermore, the trail design has been revised to reduce impacts to the mature native trees in the riparian corridor previously identified for removal in the IS/MND. The remaining 4 trees to be removed are located along the existing roadway shoulder, away from the flow channel, and beneath active overhead power lines primarily shading the northern shoulder of Penitencia Creek Road and the edges of the floodplain throughout the day. The revised trail alignment avoids impacts to shaded riverine habitat and actually has the potential to increase shaded areas upon completion of the mitigation site and the bank stabilization where little or no shade exists currently.

**Bank Restoration Impacts**

Permanent impacts associated with the bank restoration will be approximately 0.01 ac (40 lf). Efforts will be made to limit the placement of all fill material to above the OHWM to the extent feasible in this location. Currently there is little or no vegetation along the 40-ft section of eroded creek bank. Using bio-stabilization techniques to create in a natural revegetated bank as described below, permanent impacts from the bank restoration will be mitigated in-kind at this location.

**Mitigation for Bank Restoration**

Currently, mitigation proposed for the bank restoration includes the revegetation of the repaired bank site through the use of bio-stabilization measures to re-establish a natural bank setting. Bio-stabilization measures could include willow wattles, willow plantings, as well as root wattles and logs salvaged from the proposed tree removal. These techniques will restore the bank and create shaded riverine habitat for Central California Coast

steelhead, in addition to western pond turtle, California red-legged frog, and foothill yellow-legged frog.

### **Updated Revegetation Plan**

The Mitigation and Monitoring Reporting Plan (MMRP) was adopted by the City Council when it adopted the MND on October 30, 2006. The MMRP includes a requirement to prepare a revegetation plan to specify the species to be used, where they will be planted, and a five-year maintenance and monitoring program, as well as establish mitigation success criteria. The MMRP also establishes the mitigation ratios associated with impacts to the riparian woodland. These ratios would remain the same, except for the areas where boardwalks will be installed, which would be mitigated at a 1:1 ratio because no riparian vegetation would be negatively affected and installation of above-ground boardwalk will allow for surface water to continue to permeate through the ground to the roots as it does under the existing condition and construction methods will minimize impacts to the trees.

### ***Proposed Revegetation Site***

To mitigate for the riparian woodland impacts, the City is proposing to create riparian woodland habitat in an open section of floodplain along the north side of the Upper Penitencia Creek riparian corridor, opposite of the proposed trail alignment. Unbeknownst to the City, this open area is currently slated to be re-contoured and lowered approximately 1.5 to 2 ft as part of the future U.S. Army Corps of Engineers (USACE) Upper Penitencia Creek Flood Control Project to allow for a larger flood capacity in this area of the creek.

As of September 2012, the City plans to incorporate a portion of this proposed grading plan into the proposed revegetation plan through coordination with the USACE. Therefore, the City is prepared to implement the grading plan during site preparation activities so that impacts to this mitigation site can be minimized when the USACE constructs the Upper Penitencia Creek Flood Control Project. It is anticipated that following the implementation of the grading plan, the newly established vegetation area will have increased access to groundwater and may experience more frequent inundation during storm events. This will improve the probability of meeting the planting success criteria within the five year monitoring period.

The original Five-Year Riparian Mitigation, Maintenance, and Monitoring Plan (Revegetation Plan) (Biotic Resources Group 2010) proposed a 1.29-ac oak-dominated riparian woodland mitigation site. As per CDFG and RWQCB requests, the reduction in project impacts, and the implementation of the USACE grading plan, a 0.81 ac mixed riparian planting plan will be included as an Addendum to the Revegetation Plan. In addition to the riparian plantings at the mitigation site, additional willow cuttings will be planted along the banks of the creek in several open areas immediately adjacent to the active flow channel within the project area to mitigate for the removal of the 4 non-native trees and to enhance the existing shaded riverine corridor. These measures, as well as the USACE grading plan and irrigation plan are described in the Revegetation Plan Addendum. Please see the Attachments and the revised Table 3 below for details.

<p><b>Revised IS/MND Table 3 - Recommended Planting List for Riparian Woodland Revegetation Areas</b></p>
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Common Name	Scientific Name	Average Spacing
Fremont's Cottonwood	<i>Populus fremontii</i>	16' o.c.
Arroyo Willow	<i>Salix lasiolepis</i>	8' o.c.
Red Willow	<i>Salix laevigata</i>	8' o.c.
Coast live oak	<i>Quercus agrifolia</i>	16' o.c.
Valley Oak	<i>Quercus lobata</i>	16' o.c.
California buckeye	<i>Aesculus californica</i>	16' o.c.
Blue elderberry	<i>Sambucus Mexicana</i>	16' o.c.
Mugwort	<i>Artemisia douglasiana</i>	6' o.c.
Mulefat	<i>Baccharis salicifolia</i>	6' o.c.
Coffeeberry	<i>Rhamnus californica</i>	6' o.c.
Toyon	<i>Heteromeles arbutifolia</i>	8' o.c.

**Direct Impacts to Special-Status Species including steelhead, California red-legged frog, foothill yellow-legged frog, western pond turtle, and nesting birds**

As described in the IS/MND, the proposed trail will be built at the top of bank and no major work within the creek will occur. This still holds true for the proposed trail design. Therefore direct impacts to special-status species including steelhead, California red-legged frog, foothill yellow-legged frog, or other aquatic species known from the watershed, are not expected to occur. In regards to the newly proposed bank restoration, all work will be conducted during the dry season, outside of the steelhead and salmon migration and spawning periods when flows are very low or not present. In addition, due to the existing urban setting and presence of urban predators, it would be unlikely for California red-legged frog to occur in this section of the creek. Therefore, no direct impacts to special-status species relating to bank restoration construction are expected.

Although temporary impacts associated with the implementation of the USACE's grading plan at the proposed mitigation site will occur in the northern floodplain, no direct impacts to special-status species or the adjacent riparian corridor are expected to occur. Grading activities will be restricted to the open areas of the floodplain, outside of all existing tree canopies, and will occur during the dry season. Therefore, no changes to Table 4 - Summary of Impacts to Special Status Wildlife Species and Mitigation are currently proposed.

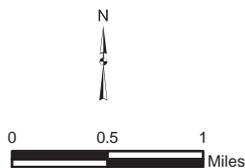
## Conclusion

Based on the updated evaluation the new trail design does not propose additional impacts to the riparian corridor, in fact it reduces the number of native trees for removal, maintains existing drainage patterns and includes some bank restoration not previously included in the IS/MND. The proposed bank repair and USACE grading plan will occur in the dry season outside of the steelhead migration and spawning period. Therefore, there are no revisions necessary to the original CEQA checklist findings in with regards to biological resources.

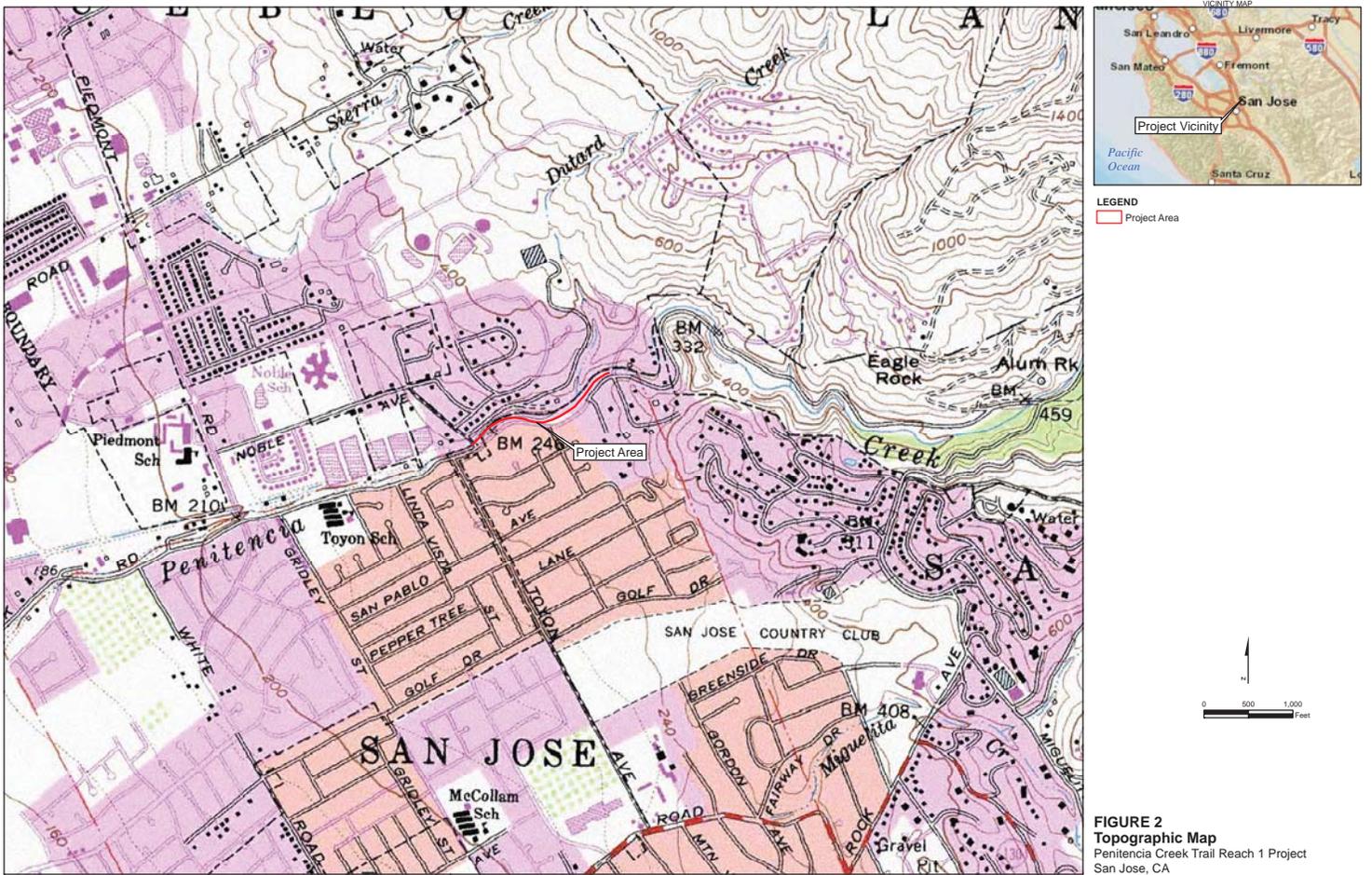
If you have any questions regarding the information above, feel free to contact me at (408) 887-3414.

Sincerely,

Danielle Tannourji, CH2M HILL Biologist



**FIGURE 1**  
**Project Location**  
Penitencia Creek Trail Reach 1 Project  
San Jose, CA



**FIGURE 2**  
**Topographic Map**  
 Penitencia Creek Trail Reach 1 Project  
 San Jose, CA

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