

COASTAL CONSERVANCY

Staff Recommendation

October 3, 2013

**BAY AREA RIDGE TRAIL: PENITENCIA CREEK CONSTRUCTION  
NOBLE AVE. TO DOREL DR.**

File No. 08-043-02

Project Manager: Jeff Melby

**RECOMMENDED ACTION:** Authorization to disburse up to \$200,000 to the City of San José for construction of a segment of the San Francisco Bay Area Ridge Trail along Penitencia Creek, within the City of San José, County of Santa Clara.

**LOCATION:** North of Penitencia Creek Rd. between Noble Ave. and Dorel Dr., City of San José, Santa Clara County

**PROGRAM CATEGORY:** San Francisco Bay Area Conservancy

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**EXHIBITS**

Exhibit 1: [Project Location and Site Maps](#)

Exhibit 2: [Project Photographs](#)

Exhibit 3: [Project Letters](#)

Exhibit 4: [CEQA Documents](#)

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**RESOLUTION AND FINDINGS:**

Staff recommends that the State Coastal Conservancy adopt the following resolution pursuant to Sections 31160 through 31165 of the Public Resources Code:

“The State Coastal Conservancy hereby authorizes disbursement of an amount not to exceed two hundred thousand dollars (\$200,000) to the City of San José for construction of a segment of the San Francisco Bay Area Ridge Trail along Penitencia Creek, within the City of San José, subject to the following conditions:

1. Prior to the disbursement of Conservancy funds for construction, the City of San José shall submit for the review and approval of the Executive Officer of the Conservancy:
  - a. Evidence that the City of San José has obtained all necessary permits and approvals.
  - b. A signing plan for the project acknowledging Conservancy participation and identifying the trail as part of the San Francisco Bay Area Ridge Trail system.

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- c. A final work plan (including the names of any contractors to be used in the completion of the project), project schedule and budget.
2. The City shall ensure that the project is consistent with all applicable federal and state statutes, regulations and guidelines governing barrier-free access for persons with disabilities.

Staff further recommends that the Conservancy adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the State Coastal Conservancy hereby finds that:

1. The proposed project is consistent with the current Project Selection Criteria and Guidelines.
2. The proposed authorization is consistent with the purposes and objectives of Chapter 4.5 of Division 21 of the Public Resources Code, regarding the resource and recreation goals of the San Francisco Bay area.
3. The Conservancy has independently reviewed and considered the Mitigated Negative Declaration adopted by the City of San José on October 31, 2006 and the Addendum to a Mitigated Negative Declaration certified by the City on April 5, 2013 for the proposed project pursuant to the California Environmental Quality Act (attached to the accompanying staff recommendation as Exhibit 4). The Conservancy finds that there is no substantial evidence that the project as mitigated will have a significant effect on the environment as defined in 14 California Code of Regulations Section 15382.”

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**PROJECT SUMMARY:**

Staff is recommending that the Conservancy authorize a grant of up to \$200,000 to the City of San José (City) for its Department of Parks, Recreation & Neighborhood Services to construct approximately 0.3 mile of the San Francisco Bay Area Ridge Trail (Ridge Trail) along the master-planned Penitencia Creek Trail alignment in the City (see Exhibit 1). Penitencia Creek Trail is a linear trail system extending approximately 4 miles along the creek from its confluence with Coyote Creek to Alum Rock Regional Park (Alum Rock Park). The trail system provides access to Penitencia Creek Park (City), Penitencia Creek Park (County), Alum Rock Park (City) and County open space lands. Penitencia Creek Trail is already a well-used trail system that offers the community linkage to surrounding city and county parks, educational facilities, community centers, youth facilities, and local and regional trail and transit systems. The City manages most portions of the trail system in collaboration with the Santa Clara Valley Water District (SCVWD) and the County of Santa Clara through a cooperative agreement executed in 1977 to develop the trail and park system.

The proposed project entails construction of a paved trail along the south bank of Penitencia Creek, north of Penitencia Creek Road, between Noble Avenue and Dorel Drive, known as Penitencia Creek Trail Reach 1b (see Exhibit 1). At present, cyclists typically use the edge of the roadway in this vicinity, while equestrians and walkers follow informal paths adjacent to and within the riparian corridor (see Exhibit 2). Children and adults are routinely seen walking along the informal paths to access Alum Rock Park, public transit, Independence High School, the San José Flea Market, neighborhood-serving retail facilities, and residential developments. The

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informal paths are not encouraged nor managed by the City. They present potential harm to the riparian environment. The project provides a defined pedestrian and bicycle passageway to permit a safer trail for persons using the Ridge Trail. Completion of this trail segment will set the stage for further trail development immediately east and fills a gap in an alternative-transportation route, connecting a park and a school to existing light rail service (Capitol Avenue) and a direct link to the future regional transit hub (BART-Berryessa Station).

The proposed trail will be a hybrid structure consisting of an 8-foot wide asphalt-paved, multi-use trail, with 2-foot wide compacted aggregate gravel shoulders as well as a 6-8 foot-wide boardwalk structure at points where the design seeks to minimize impacts to large-sized native western sycamore trees. This trail will be consistent with the requirements of state law and federal Americans with Disabilities Act (ADA) guidelines. This new segment, whose alignment runs approximately midway between the creek bank and Penitencia Creek Road, extends the existing Penitencia Creek Trail east from Noble Avenue, continuing the riparian forest experience that trail users now enjoy further west. In addition to trail construction, the proposed project includes the restoration of approximately 40 linear feet of stream bank using bio-stabilization measures and planting of willow stakes. The project also includes the development of a trailhead with interpretive signage at the Dorel Drive end of the trail.

To provide the space necessary and meet mitigation requirements, the proposed project also includes: removal of four non-native trees, restoration of an acre of riparian forest habitat (invasive plant removal, native plant propagation and cultivation, planting of trees), and moving overhead electric wires away from the sycamore trees to reduce pruning activities.

The construction of approximately 0.2 mile of trail between Dorel Drive and Alum Rock Park is not part of the proposed project because it necessitates acquisition of easements from an adjacent property owner who has been unwilling to negotiate with the City.

**Site Description:** The proposed project is located north of Penitencia Creek Road between its intersection with Nobel Avenue and Dorel Drive in the Berryessa District neighborhood of the City. The project location is along Penitencia Creek, which offers opportunities for hikers, bicyclists, equestrians, and nature lovers. Alum Rock Park, the State's oldest city park, was a spectacular destination in the early 20th century, with mineral baths, an indoor swimming pool, tea garden, dance pavilion and the Alum Rock Steam Railroad which ran from 1890 to 1911 before being destroyed by heavy floods. Today, Alum Rock Park continues to be an important regional attraction offering open space along the edge of a highly urbanized city. The project area contains a mix of grassland and oak woodland, and is hot and dry in late spring and summer, and cool and moist in late fall and winter.

The proposed trail alignment is along the environmentally-sensitive Penitencia Creek, through and adjacent to the riparian woodland, which is dominated by large-sized western sycamore trees. Mature riparian and upland trees provide critical habitat for a variety of wildlife. There are a number of special status species that have been observed along Penitencia Creek, including California red-legged frog and steelhead trout.

**Project History:** The vision for the Bay Area Ridge Trail is a 550-mile trail that rings San Francisco Bay high on the ridgeline and serves hikers, mountain bicyclists and equestrians. Under the leadership of the Conservancy and the Bay Area Ridge Trail Council (BARTC), and supported by a diverse group of project participants, the Ridge Trail creates an interconnected

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system of open space and trails that provide recreational opportunities and scenic views to the public. Begun over 20 years ago, over 340 miles of Ridge Trail are now dedicated and open to the public in all nine Bay Area counties. This authorization will further the Conservancy's statutory and strategic goal of improving access around San Francisco Bay and is consistent with previous Conservancy authorizations to negotiate and acquire trail easements, prepare trail construction plans and designs, and construct and open trail segments to the public. The proposed project will continue to build connections between existing trail segments and help complete the 550-mile Ridge Trail by connecting the Diablo Range to the Santa Cruz Mountain range via the Santa Clara Valley.

The City is in the process of closing several gaps in the Ridge Trail and related creek trails and has developed other portions of the Penitencia Creek Trail which have been designated as part of the Ridge Trail. The City adopted a master plan for this project in November 2006. In June 2008, the Conservancy Board authorized disbursement of \$150,000 to the City to construct a segment of the Ridge Trail along Penitencia Creek north of the intersection of North King Road and Mabury Road. Additionally, in May 2007, the Conservancy authorized disbursement of \$50,640 to Santa Clara County for its Parks and Recreation Department to relocate a severely eroding segment of the Ridge Trail in Penitencia Creek County Park.

BARTC and Conservancy staff rank this project as a high priority due to the regional significance of the trail system, the location of the proposed trail within a major population center, and the importance of the partnership with the City to complete the Ridge Trail in its jurisdiction.

**PROJECT FINANCING:**

Coastal Conservancy	\$200,000
Santa Clara Valley Water District	300,000
City of San José	<u>990,000</u>
<b>Total Project Cost</b>	<b>\$1,490,000</b>

The anticipated source of Conservancy funds for this grant is the fiscal year 2008/09 appropriation to the Conservancy from the "Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006" (Proposition 84), Public Resources Code section 75001 et seq. Proposition 84 funds may be used for projects of the San Francisco Bay Area Conservancy Program, Chapter 4.5 of Division 21 of the Public Resources Code, that promote access to and enjoyment of the coastal resources of the state (Public Resources Code section 75060(c)). The proposed project is an appropriate use of Proposition 84 funds because it will promote access to and enjoyment of the coastal resources of San Francisco Bay by extending a ridge top trail. The proposed project is consistent with Chapter 4.5 of Division 21 of the Public Resources Code, as described below.

The City has committed to providing matching funds in the amount of approximately eighty-six percent of the total cost of the project. The City's Trail Manager will provide project management oversight, but not charge his time to the project.

**CONSISTENCY WITH CONSERVANCY’S ENABLING LEGISLATION:**

This proposed project is consistent with the San Francisco Bay Area Conservancy Program of the Conservancy’s enabling legislation at Chapter 4.5 of Division 21 of the Public Resources Code (Sections 31160 to 31165). That chapter directs the Conservancy to address the resource and recreational goals of the nine bay area counties in a “coordinated, comprehensive, and effective way.”

Pursuant to Section 31162(a) of the Public Resources Code, the Conservancy may award grants in the nine-county San Francisco Bay Area that will help to improve public access to, within, and around the ridge tops, consistent with the rights of private property owners, and without having a significant adverse impact on agricultural operations and environmentally sensitive areas and wildlife, through completion of trail systems which are part of a regional trail system and are consistent with locally and regionally adopted master plans and general plans. Consistent with Section 31162(a), the proposed project will help to complete the Ridge Trail through the City in northeastern Santa Clara County, one of the nine Bay Area counties. Further, as discussed in greater detail below, the proposed project will not have significant adverse impacts on agricultural operations, environmentally sensitive areas or wildlife, and it is consistent with locally and regionally adopted master plans and general plans.

Consistent with Section 31163(a), the Conservancy cooperates with nonprofit land trusts and other organizations in identifying and adopting long-term resource and outdoor recreational goals for the San Francisco Bay Area. Completion of the Ridge Trail is identified in (1) *The San Francisco Bay Area Conservancy Program Regional Needs Briefing Book* (Bay Area Open Space Council, July 1999) and (2) *400 Miles and Beyond: A Strategic Plan for Completing the Bay Area Ridge Trail* (BARTC, 2006).

The proposed project satisfies the criteria for determining project priorities under Section 31163(c) in the following respects:

- 1) The project is consistent with approved plans including:
  - a) The Ridge Trail alignment that has been adopted by the BARTC;
  - b) Penitencia Creek Trail Reach 1 Master Plan, adopted by the City Council on October 31, 2006. The plan defines the trail alignment from Noble Avenue to the Alum Rock Park entrance;
  - c) Trail alignment R5-B (Bay Area Ridge Trail, Diablo Range) as identified in the *Santa Clara County Parks and Recreation Countywide Trails Master Plan*, adopted by the Board of Supervisors in November of 1995;
  - d) The City’s *Greenprint for Parks and Community Facilities and Programs, Citywide Trail Strategy*, C2, adopted by the San José City Council in September of 2000, which supports the proposed routes in the Countywide Trails Master Plan.
  - e) Green Vision, adopted in October 2008 by the City Council, which defines a 2022 deadline for completion of the 100-mile Trail Network composed of 35 interconnected trail systems, including the Penitencia Creek Trail system; and
  - f) Bike Plan 2020 (the City’s on-street bikeway development plan), adopted by the City Council in November 2009, which defines the 100-mile Trail Network with its 35 trail

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systems in the context of the City's planned 400-mile on-street bikeway network.

- 2) The Ridge Trail is a multijurisdictional resource that extends throughout all nine counties of the San Francisco Bay Area and serves a regional constituency;
- 3) The project can be implemented in a timely way as the grantee is prepared to begin work upon project approval;
- 4) The construction of the Ridge Trail through the lands managed by the City provides an opportunity for benefits to public access and safety that could be lost if the City does not receive Conservancy funding; and
- 5) The project includes significant matching contributions from the City.

**CONSISTENCY WITH CONSERVANCY'S 2013  
STRATEGIC PLAN GOAL(S) & OBJECTIVE(S):**

Consistent with **Goal 12, Objective G** of the Conservancy's 2013-2018 Strategic Plan, which seeks to develop an additional 30 miles of the Ridge Trail, the proposed project will create 0.3 mile of the Bay Area Ridge Trail.

**CONSISTENCY WITH CONSERVANCY'S  
PROJECT SELECTION CRITERIA & GUIDELINES:**

The proposed project is consistent with the Conservancy's Project Selection Criteria and Guidelines, last updated on November 10, 2011, in the following respects:

**Required Criteria**

1. **Promotion of the Conservancy's statutory programs and purposes:** See the "Consistency with Conservancy's Enabling Legislation" section above.
2. **Consistency with purposes of the funding source:** See the "Project Financing" section above.
3. **Support of the public:** There is strong support for the project. Letters of support were received from Santa Clara County Open Space Authority, BARTC, Santa Clara Valley Water District Director Richard Santos, City Councilman Kansen Chu, State Senator Ellen Corbett and State Assembly member Bob Wieckowski. See Exhibit 3.
4. **Location:** The proposed project is in Santa Clara County, within the jurisdiction of the San Francisco Bay Area Conservancy Program.
5. **Need:** Conservancy funding is needed to enable the City to implement this trail construction project. No other source of funding is currently available to complete the project.
6. **Greater-than-local interest:** The Ridge Trail is truly a regional attraction. The Ridge Trail offers spectacular views of the Bay Area and links many parklands and open space preserves. In addition, the Ridge Trail will be tied to the San Francisco Bay Trail and the California Coastal Trail systems, creating an extensive trail network. Completion of the Ridge Trail is

one of the goals identified in the Bay Area Open Space Council's *Regional Needs Briefing Book*.

7. **Sea level rise vulnerability:** The project is not expected to be impacted by sea level rise as it is located near the San José foothills, approximately 14 miles from the San Francisco Bay shoreline at an elevation of approximately 250 feet above sea level.

### **Additional Criteria**

8. **Leverage:** See the “Project Financing” section above.
9. **Readiness:** The City is prepared to start construction immediately upon approval.
10. **Realization of prior Conservancy goals:** “See “Project History” above.
11. **Cooperation:** The San Francisco Bay Area Program of the State Coastal Conservancy has been working cooperatively with BARTC and the City to identify the highest priority projects that help implement the Ridge Trail.
12. **Minimization of greenhouse gas emissions:** The project is part of the City’s planned 100 miles of connected trail network for pedestrian and bicycle travel. The project provides a link to public transit. Use of the City’s interconnected trail network will allow more people to use either biking or walking as an alternative mode of transit versus conventional fossil fueled vehicles. By developing its trails and bikeways, the City will reduce the amount of Greenhouse Gas emissions produced from the transportation sector, one of the largest and most difficult sectors to address. Also, the grantee will employ Bay Area Air Quality Management District best management practices to minimize greenhouse gas emissions during construction.<sup>[1]</sup>

### **COMPLIANCE WITH CEQA:**

Pursuant to the California Environmental Quality Act (CEQA), the City, as lead agency, adopted a Mitigated Negative Declaration (MND) and a Mitigation Monitoring and Reporting Program (MMRP) (Exhibit 4) and approved the project on October 31, 2006. The City filed a Notice of Determination with the County Clerk of Santa Clara County on November 7, 2006. The City has also paid the filing fee required by the Department of Fish and Wildlife pursuant to Fish and Game Code section 711.4(c). On April 5, 2013 the City certified an Addendum to the MND (Exhibit 4) to address modifications to the project to reduce impacts to the riparian corridor and to provide better access for a wider range of recreational users, including construction of an eight-foot wide trail in some locations and an elevated six-foot wide boardwalk to maintain existing drainage patterns and protect the roots of existing mature sycamore trees along the project alignment.

The MND and Addendum identify potentially significant impacts in the areas of air quality, biological resources, cultural resources, geology and soils, hydrology and water quality, and noise; however, mitigation measures have been incorporated into the project to assure that these

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<sup>[1]</sup> [Bay Area Air Quality Management District, California Environmental Quality Act Air Quality Guidelines \(Updated May 2012\).](#)

potential impacts were eliminated or reduced to less than significant levels, as summarized below:

Air Quality

The following dust control measures will be implemented during construction:

- 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

1. The City will incorporate construction Best Management Practices (BMPs) to preclude erosion or sediment from entering the creek during and after construction, including the following:

- 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 are otherwise disturbed;
- Stabilize disturbed soils to minimize erosion and sediment input to the creek;
- Incorporate 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 construction;
- Monitor the effectiveness of the erosion control measures during the first year's rainy season and implement remedial measures (e.g., reseeded, repair of silt fencing) if sedimentation or erosion is noted.

2. The City will implement a program to mitigate the loss of riparian trees and vegetation that will occur as a result of the trail construction; the mitigation program includes the following:

- Riparian revegetation to compensate for direct removal of 0.31 acre of riparian woodland, along the roadway shoulder, and removal of four non-native trees. The riparian mitigation will provide a 3:1 habitat replacement ratio for impacts to the riparian woodland. The total riparian mitigation area will be 1.00 acre. The revegetation will occur adjacent to the active

channel of the creek on City-owned land. This proposed mitigation site is floodplain lands that are now occupied by non-native grassland. Moving forward with the project requires permits from the SCVWD, United States Army Corps of Engineers, California Department of Fish and Wildlife, Regional Water Quality Control Board, and per the National Pollutant Discharge Elimination System (NPDES). (The planting plan may be refined to comply with specific permit requirements). In addition, the mitigation will provide a 3:1 tree replacement ratio for the non-native trees. To compensate for the removal of the four non-native trees, 12 willow trees shall be planted approximately 8 feet on-center in open areas adjacent to the active flow channel within the project area as directed by a biologist.

- The proposed mitigation area is currently slated to be re-contoured and lowered approximately 1.5 to 2 feet 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 April 2013, 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 at a later date. 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.
- Install three-foot high fencing (i.e., open, split-rail type, or similar), as necessary, 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 improve 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.

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

- An International Society of Arboriculture or American Society of Consulting Arborists-certified arborist shall monitor all tree pruning, root cutting, and other disturbance to trees during construction of the project, and boardwalk footings will be located to minimize excavation in the vicinity of the sycamore tree root systems.
- 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 drip line.
- 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

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or wastewater shall be dumped on the ground or into any grate between the drip line 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 ,where possible, and 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.

4. The City will prepare and implement a revegetation plan for riparian plantings. The plan will specify the detailed location of all plantings, the use of locally native riparian plant species and specify 5-year maintenance and monitoring program. The plan will 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 will be submitted to the Environmental Principal Planner in the City's Department of Planning, Building and Code Enforcement and applicable regulatory agencies at the end of each monitoring year. The reports will identify the plant survival rate, maintenance actions at the site and include photographs documenting the status of revegetation. The City will implement remedial measures if the success criteria are not achieved in any of the five monitoring years. Remedial measures may include replacement plantings, an increase in maintenance or changes to the irrigation regime. (Note: These activities may be revised to comply with specific permit requirements.)

In addition, the City will schedule construction to occur before or after the bird nesting season for sensitive riparian bird species; the nesting season spans February through July. If this is not feasible, a qualified biologist shall 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.

#### Cultural Resources

The City will retain a qualified archaeologist to monitor earthmoving activities in the general zone identified as 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 any additional midden deposit is identified inside areas to be graded for the project, the project archeologist shall submit a program of mitigation of impacts 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, 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 its 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 will 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 will be prepared to the satisfaction of the Director of the Department of Public Works. The geotechnical investigation will 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 of the helical pier footings proposed for a portion of the trail.

#### Hydrology and Water Quality

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 will be coordinated with the SCVWD.

At the final design stage, the City Department of Parks, Recreation and Neighborhood Services will 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 will 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 will be incorporated into the project in compliance with provision C.3 of the City's NPDES permit and all other applicable local, state, and federal requirements.

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During the construction phase, the San José Department of Parks, Recreation and Neighborhood Services will 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 in the creek and bank restoration activities 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.

#### Noise

During construction, the City will insure that the contractor implements the following measures to minimize construction noise:

- 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.

Staff has reviewed the MND and Addendum, and recommends that the Conservancy find that the project as mitigated will not have a significant effect on the environment as defined in 14 California Code of Regulations Section 15382. Upon approval, staff will file a Notice of Determination for the project.