

**RESPONSE TO COMMENTS**

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

**Comment Letters Received on the Draft IS/MND:**

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

**COMMENTS AND RESPONSES**

**RWQCB Comment Letter 1:**

**Comment 1-1 Water Board Support for the Project**

Comment noted. No response needed.

**Comment 1-2a, Comment 2, Project Description, Project 1. Creekside Bridge Abutment Repair (pages 2 - 3).**

Comment noted. No response needed.

**Comment 1-2b, Project Description, Project 11. Expansion of Floodplain (pages 3 - 4).**

If sycamore trees in Alum Rock Park have not yet become hybridized, extreme care should be taken to avoid introducing hybridized trees into the park.

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

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

**Comment 1-3, Project Description, Projects 2, 4, and 8. Repair Undercut Rock Wall Downstream of Historic Bridge, Repair Undercut Rock Wall Downstream of Historic Bridge K, and Repair of Failing North Bank Sack Concrete Wall and Bank (pages 4 – 5 and 7).**

There are some projects for which it is not possible to assess the potential for the project to narrow the creek channel slightly. Please provide cross-section views of the proposed work at these locations: Projects 2, 4, and 8.

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

**Comment 1- 4, Project Description, Project 6. Repair of Failed Bank Protection Adjacent to Visitor's Center (pages 5 - 6) and Project 10, Expansion of Floodplain Downstream of Bridge L (page 4)**

Water Board staff encourage the City's design team to evaluate whether or not the toe armoring is necessary at Project 6, since the removal of the failed retaining wall should increase channel stability at this location. If possible, Water Board staff would also prefer to see the toe armoring removed when the floodplain is expanded at Project 10.

Response:

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

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

**Comment 1- 5, Project Description, Project 9. Abutment and Band Protection and Repair at the Visitor Center Bridge (page 6).**

Please clarify whether or not moving the weir is part of the project.

Response:

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

**Comment 1-6, Other Permits and Approvals Required, State and Local Agencies (page 8).**

Please modify the text on page 8 to note that the project will need WDRs from the Water Board.

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

***“Bay Area Regional Water Quality Control Board***

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

**Comment 1-7a, Section IV. Biological Resources, Table 1: Impacts to Waters and Areas of Restoration (page 17).**

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

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

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

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

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

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

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

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

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

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

*“A DFG-approved concrete pH reducer shall be applied to all exposed concrete surfaces per the manufacturer’s recommendations.”*

**NMFS Comment Letter 2:**

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

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

**Response:**

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



# California Regional Water Quality Control Board

## San Francisco Bay Region



Matthew Rodriguez  
Secretary for  
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Edmund G. Brown, Jr.  
Governor

November 15, 2011  
CIWQS Place ID No. 773127

Sent via electronic mail: No hardcopy to follow

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

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

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

**SCH # 2011102049**

Dear Mr. Davidson:

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

### **Comment 1, Water Board Support for the Project**

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

**Comment 2, Project Description, Project 1. Creekside Bridge Abutment Repair (pages 2 - 3).**

The project description in the MND appears to place less hardscape in the creek channel than the proposed design in the Geotechnical Assessment in Appendix G to the MND. Water Board staff appreciate any effort to minimize the amount of hardscape placed along the creek channel.

**Comment 2, Project Description, Project 11. Expansion of Floodplain (pages 3 - 4).**

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

**Comment 3, Project Description, Projects 2, 4, and 8. Repair Undercut Rock Wall Downstream of Historic Bridge, Repair Undercut Rock Wall Downstream of Historic Bridge K, and Repair of Failing North Bank Sack Concrete Wall and Bank (pages 4 – 5 and 7).**

Because of the many constraints on the width of the creek channel, which have contributed to channel instability in the park, it is important to avoid any further reductions in the cross section of the creek channel. Most of the proposed projects either have no impact on the creek's cross section or actually increase the available area for the creek. Since the figures in the MND and the supporting appendices only include plan views of the proposed projects, there are some projects for which it is not possible to assess the potential for the project to narrow the creek channel slightly. Projects 2, 4, and 8 are such projects. Please provide cross-section views of the proposed work at these locations.

**Comment 4, Project Description, Project 6. Repair of Failed Bank Protection Adjacent to Visitor's Center (pages 5 - 6) and Project 10, Expansion of Floodplain Downstream of Bridge L (page 4).**

At the location of Project 6, a failed section of bank armoring will be removed and the bank will be laid back to provide a more stable slope. The design at Project 6 includes rock armoring at the toe of the slope below the laid back bank. Water Board staff encourage the City's design team to evaluate whether or not the toe armoring is actually necessary at this location, since the removal of the failed retaining wall should increase channel stability at this location.

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

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

**Comment 5, Project Description, Project 9. Abutment and Band Protection and Repair at the Visitor Center Bridge (page 6).**

At this project site, the Geotechnical Assessment in Appendix G to the MND recommends moving the location of weir in the creek channel. Please clarify whether or not moving the weir is part of the Project.

**Comment 6, Other Permits and Approvals Required, State and Local Agencies (page 8).**

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

Please modify the text on page 8 to note that the project will need WDRs from the Water Board.

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

**Comment 7, Section IV. Biological Resources, Table 1: Impacts to Waters and Areas of Restoration (page 17).**

Table 1 and any text that refers to this table are the most seriously flawed components of the MND. Table 1 only includes impacts to areas of the creek channel that are below OHW and subject to ACOE jurisdiction. Water Board jurisdiction extends to the top of bank and CDFG jurisdiction extends to the outer dripline of riparian vegetation.

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

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

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

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

In addition to the measures already included in this mitigation measure, please add the isolation of fresh concrete or grout from water in the creek. Areas of fresh concrete or grout must be allowed to cure for 28 days or be treated with a CDFG-approved sealant before contacting water in the creek. Until the concrete has cured, it can elevate pH in the creek water to levels that may be harmful to aquatic life.

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

Sincerely,

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

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

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

Hi John,

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

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

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

Hi John,

I left a voicemail earlier this week. Thank you for sending the public notice and supporting documents regarding the proposed Alum Rock Park Bank Repair and Stream Restoration Projects. NMFS is very interested in this project due to the importance of Upper Penitencia Creek to CCC steelhead within the region, and project's proposal to remedy conditions currently limiting steelhead within the Park. NMFS would like to begin our coordination and design review for this project as soon as possible.

Have detailed plans (beyond those presented in the Biological Assessment, Mitigation Monitoring Plan, and Fish Passage Report) been prepared? If so, can you please provide these?

Call when you have an opportunity and we can discuss the project further.

Regards,

Darren Howe  
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