

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.

PROJECT NAME: Zanker Material Processing Facility Stormwater Basins Project

PROJECT FILE NUMBERS: PD23-004, PDC22-007

BACKGROUND INFORMATION: The Zanker Material Processing Facility (ZMPF) site is situated on approximately 53 acres of a 76-gross acre property and opened to the public as a resource recovery facility and disposal site in 1999 and continues as such today. New stormwater basins are required to adequately manage stormwater from the planned expansion of the ZMPF.

PROJECT DESCRIPTION: The project consists of a Planned Development rezoning and permit (File Nos. PD23-004, PDC22-007) to allow the construction of two separate, unlined stormwater basins (northwest and southwest basins) to retain, treat, and store stormwater runoff from the existing ZMPF site.

The northwest basin (NW Basin) would be located within the existing Planned Development Zoning boundary of the ZMPF, at the base of landfill perimeter levee in the northwest area of the ZMPF site. The NW Basin would have a total capacity of approximately 8.4-acre feet (approximately 366,000 cubic feet or 2.7 million gallons) and a footprint of approximately 1.55 acres. The NW Basin site is undeveloped and is currently used as an unpaved temporary parking lot.

The southwest basin (SW Basin) would be located adjacent to the ZMPF site but outside of the existing Planned Development Zoning boundary at the southwest corner of the ZMPF site along Los Esteros Road. The applicant proposes to expand the PD Zoning boundary in order to include the SW Basin site within the ZMPF boundary. The SW Basin would have a total capacity of approximately 21.9-acre feet (approximately 950,000 cubic feet or 7.1 million gallons) and a footprint of approximately 3.03 acres. The area where the SW Basin would be located is undeveloped and consists of historically diked baylands that have had limited to no tidal connectivity since at least 1948. The habitat in this area is considered transitional upland, which is a non-sensitive natural community.

PROJECT LOCATION: The project site is located at 675 Los Esteros Road in San José, California. The project site consists of land immediately adjacent to the ZMPF, east of the community of Alviso in north San José, and the ZMPF property. The ZMPF is bordered by Grand Boulevard to the northwest, Coyote Creek and the San José-Santa Clara Regional Wastewater Facility outfall channel to the east, Los Esteros Road to the south and southeast, and existing wetlands habitat to the southwest and west.

APPLICANT CONTACT INFORMATION: Zanker Road Resource Management, LLC, 675 Los Esteros Road, San José, CA 95134; William.lineberry@greenwaste.com; 408-263-2384

FINDING

The Director of Planning, Building and Code Enforcement finds the project described above would not have a significant effect on the environment if certain mitigation measures are incorporated into the project. The attached Initial Study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this Mitigated Negative Declaration (MND), has made or agrees to make project revisions that will clearly mitigate the potentially significant effects to a less than significant level.

ENVIRONMENTAL RESOURCE AREAS AND MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

- A. **AESTHETICS** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- B. **AGRICULTURE AND FORESTRY RESOURCES** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- C. **AIR QUALITY**– The project would not have a significant impact on this resource; therefore no mitigation is required.
- D. **BIOLOGICAL RESOURCES**

Impact BIO-1: The project would result in significant impacts on special-status plant species, including alkali milk-vetch, brittlescale, Congdon’s tarplant, Hoover’s button-celery, San Joaquin spearscale, Contra Costa goldfields, Prostrate vernal pool navarretia, California alkali grass, and saline clover.

MM BIO-1.1: Complete Surveys. Prior to issuance of any grading permit for vegetation removal and ground-disturbing activities at the proposed stormwater basin locations, a focused survey (when rare or endangered species are both “evident” and identifiable) shall be conducted by a qualified biologist to determine the presence of the special-status plant species (i.e., alkali milk-vetch, brittlescale, Congdon’s tarplant, Hoover’s button-celery, San Joaquin spearscale, Contra Costa goldfields, Prostrate vernal pool navarretia, California alkali grass, and saline clover) with potential to occur within the project area. Surveys shall be conducted in accordance with the 2018 California Department of Fish and Wildlife Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities. The following is a condensed summary of this protocol:

- Relevant botanical information shall be compiled for the general project area pre-survey to provide a regional context.
- Surveys shall be floristic in nature (every plant taxon is identified to the taxonomic level necessary to determine rarity and listing status), comprehensive

and systematic over the entire project area, and conducted when plants are evident and identifiable.

- Reference sites shall be visited by the qualified biologist to confirm that the survey timing is appropriate and to gain familiarity with suitable habitats.
- For each special status plant and sensitive natural community observed, specific locations, site specific characteristics, phenology, and prevalence data shall be recorded and photographs taken.
- Special-status plant data shall be submitted to the California Natural Diversity Database.
- Voucher specimens shall be collected for each special-status plant species observed and deposited in herbaria that are members of the Consortium of California Herbaria.
- A botanical survey report shall be submitted that includes:
 - Project and location description
 - List of potential sensitive botanical resources and list of background references
 - Detailed description of survey methodology and results
 - List of all plants and natural communities detected
 - Assessment of potential project impacts, including avoidance, minimization, or mitigation measures.

These guidelines require special-status plant surveys to be conducted at the proper time of year when rare or endangered species are both “evident” and identifiable. Field surveys shall be scheduled to coincide with known blooming periods, as determined by a qualified biologist, that are necessary to identify the plant species of concern. Table 4.4-3 shows the typical blooming periods for these special-status plant species.

Table 4.4-1: Special-Status Plant Species Typical Blooming Period and Potential for Occurrence

Special- Status Plant Species Common Name	Blooming Period (Inclusive)	Potential for Occurrence
Alkali milk-vetch	March 1 - July 30	Moderate
Brittlescale	June 1 - October 31	Moderate
Congdon’s tarplant	May 1 - October 31	High
Point Reyes bird’s beak	July 1 - July 30	Moderate
Hoover’s button-celery	April 1 - October 31	Moderate
San Joaquin spearscale	March 1 - June 30	Moderate
Contra Costa goldfields	April 1 - July 30	Moderate
Prostrate vernal pool navarretia	March 1 - May 31	Moderate

California alkali grass	April 1 - June 30	Moderate
California seablite	March 1 - July 30	Moderate
Saline clover	June 1 - October 31	Moderate

Prior to the issuance of any grading permit, a botanical survey report indicating the results of the surveys and any measures needed to avoid and reduce impacts to any special status plant species found present (see description of measures below) shall be submitted to the Director of Planning, Building, and Code Enforcement or the Director’s designee for review and approval.

If no special-status plant species are found during the surveys, then the project would not have any impacts to the species and no additional mitigation measures are necessary.

MM BIO-1.2: Establish Exclusion Zones or Provide Compensatory Mitigation. If any of the identified rare plant species are found on-site, option 1 below shall be implemented. If Option 1 is found infeasible, then Option 2 shall be implemented.

1. Option 1: If the survey determines that one or more special-status plant species are present within the project area, direct and indirect impacts of the project on the species shall be avoided where feasible through the establishment of activity exclusion zones, where no ground-disturbing activities shall take place, including construction staging or other temporary work areas. Prior to the issuance of any grading permit for vegetation removal and ground-disturbing activities, activity exclusion zones for special-status plant species shall be established, around each occupied habitat site, the boundaries of which shall be clearly marked with standard orange plastic construction exclusion fencing or its equivalent. The boundaries of the activity exclusion zones shall be identified in the biological survey report described above in MM BIO-1.1 and marked on all construction documents, contracts, and project plans. The establishment of activity exclusion zones shall not be required if construction-related disturbances would not occur within 250 feet of the occupied habitat site. The size of activity exclusion zones may be reduced if a qualified biologist determines that the reduction would not increase impacts to the habitat and the reduction is approved by the Director of Planning, Building, and Code Enforcement or the Director’s designee.

OR

2. Option 2: If exclusion zones and avoidance of impacts to special-status species within the project area are not feasible, then the loss of individuals or occupied habitat of special-status plants shall be compensated for through the on-site or off-site preservation, restoration and/or creation of habitat that would support affected special-status species, prior to the issuance of any grading permit and construction activities. A mitigation plan that details appropriate compensation shall be prepared by a qualified biologist for impacted subject special status species for review and approval by the Director of Planning, Building, and Code

Enforcement or the Director's designee. A mitigation plan shall result in the replacement of the special status plants and habitat lost during project construction at a proportional basis to the impact, which may be achieved through the following:

- Restoration of temporarily impacted special status plant habitat on-site.
- The preservation, enhancement, restoration and/or creation of special status plant habitat at off-site mitigation areas that historically and/or presently support the special-status species within the project area;
- Purchase of credits in a mitigation bank that is approved by a federal or state trustee agency to sell credits for special-status plants; or
- Payment of in-lieu fees to a public agency or conservation organization (e.g., a local land trust) for the preservation and management of existing populations of special-status plants.

If the mitigation plan includes areas to be preserved, restored/enhanced, and/or created by the applicant, the areas shall be managed in perpetuity to encourage persistence and even expansion of the impacted species. A Habitat Mitigation and Monitoring Plan (HMMP) shall be developed by a qualified plant or restoration ecologist and implemented for the mitigation lands. The HMMP shall include, at minimum, the following information:

- A summary of impacts to the special-status plant species in question, including impacts to its habitat, and the proposed mitigation;
- A description of the location and boundaries of the mitigation site and description of existing site conditions;
- A description of measures to be undertaken to enhance (e.g., through focused management that may include removal of invasive species in adjacent suitable but currently unoccupied habitat) the mitigation site for the species;
- A description of measures to transplant individual plants or seeds from the impact area to the mitigation site, if appropriate (which shall be determined by a qualified plant or restoration ecologist);
- Proposed management activities to maintain high-quality habitat conditions for the species;
- A description of habitat and species monitoring measures on the mitigation site, including specific, objective final and performance criteria, monitoring methods, data analysis, reporting requirements, monitoring schedule, etc. At a minimum, performance criteria shall demonstrate that any plant population fluctuations over the monitoring period of a minimum of five years for preserved populations and a minimum of 10 years for enhanced or established populations do not indicate a downward trajectory in terms of reduction in numbers and/or occupied area for the preserved mitigation population that can be attributed to management (i.e., that

- are not the result of local weather patterns, as determined by monitoring of a nearby reference population, or other factors unrelated to management);
- If a new population is established, the new population must contain at least the same number of impacted individuals by year five. If year five is a poor weather year for summer and fall-blooming annual plants and reference populations show a decline, this criterion can be measured in the next year occurring with average or better rainfall; and
 - Contingency measures for mitigation elements that do not meet performance criteria. Potential remediation actions shall be proposed if monitoring observations indicate that performance criteria are not being met. For example, changes in management or timing of management, alterations in monitoring, replacement plantings, irrigation or changes in irrigation management could be recommended for the following monitoring period. Alternative mitigation (purchase of mitigation bank credits, purchase of in-lieu fees) could be proposed as a contingency for performance criteria failures at the end of the monitoring period where no feasible corrective actions can be undertaken.

If an HMMP is required, the HMMP shall be provided to the Director of Planning, Building and Code Enforcement, or the Director's designee for approval, prior to issuance of any grading permit.

Impact BIO-2: The project would have a significant impact on nesting native and migratory birds, including the Northern harrier, white-tailed kite, Alameda song sparrow and San Francisco common yellowthroat.

MM BIO-2.1: Avoid Nesting Season or Complete Pre-construction Surveys. The project applicant shall schedule ground-disturbing and construction activities to avoid the nesting season. The nesting season for most birds, in the San Francisco Bay area, extends from February 1 through August 31 (inclusive) to the extent feasible.

If project activities are initiated during the nesting season (February 1 through August 31, inclusive), a pre-construction nesting bird survey of the project site and surrounding 500 feet shall be conducted by a qualified ornithologist within 14 days and within 48 hours of commencement of ground disturbance or construction activities, whichever occurs first, to avoid disturbance to active nests, eggs, and/or young of nesting birds. If project construction activities (including shrub removal) are initiated outside of the nesting season, no pre-construction surveys are required for nesting birds.

MM BIO-2.2: Establish Buffer. In the event that an active nest is observed on the project site or is located within the 500 feet surrounding the site, the ornithologist shall establish a no disturbance buffer around the nest. The buffer shall remain in place until all young have fledged or the nest otherwise becomes inactive (e.g., due to predation) as determined by a qualified ornithologist. Suggested buffer zone distances differ depending on species,

location, and placement of nest and shall be determined and implemented in the field by the ornithologist. Prior to the issuance of any grading permit, the ornithologist shall submit a report indicating the results of the survey and any designated buffer zones for review and approval by the Director of Planning, Building and Code Enforcement or the Director's designee.

Impact BIO-3: The project would have a significant impact on salt marsh mammals, specifically the salt marsh harvest mice and salt marsh wandering shrews.

MM BIO-3.1: Avoid Breeding Season or Complete Pre-construction Surveys. To the extent feasible, project construction activities shall be scheduled outside of the salt marsh harvest mouse breeding season (March 1 – November 30, inclusive) and outside of the salt marsh wandering shrew breeding season (February 1 – June 30, inclusive).

If project construction activities are initiated during the breeding season, prior to the start of construction activities in salt marsh habitat, the project proponent shall retain a qualified biologist to conduct pre-construction surveys for salt marsh harvest mouse and salt marsh wandering shrew. Surveys shall take place no more than 24 hours prior to the onset of site preparation and construction activities with the potential to disturb these species or their habitat and shall include inspection of nesting substrate, such as salt marsh vegetation and debris within the work footprint. If the salt marsh harvest mouse and/or salt marsh wandering shrew are discovered during the pre-construction survey, consultation with the USFWS and/or CDFW would be required and necessary protection measures shall be in place prior to the onset of site preparation and construction activities. The results of the pre-construction survey, including results of the consultation with USFWS and/or CDFW and all measures required to reduce and avoid impacts to the salt marsh harvest mouse and/or salt marsh wandering shrews (including required no-work buffers, plans for vegetation removal, and exclusionary fencing outlined below), shall be documented in a report to be submitted to the Director of Planning, Building, and Code Enforcement or the Director's designee for review.

MM BIO-3.2: Establish Buffer or Complete Vegetation Removal. If salt marsh harvest mouse and/or salt marsh wandering shrew are found on-site and cannot be avoided, option 1 shall be implemented. If Option 1 is found infeasible, then Option 2 shall be implemented. The chosen option shall be implemented prior to and during construction to avoid or minimize impacts to salt marsh harvest mice and salt marsh wandering shrews:

1. Option 1: If the salt marsh harvest mouse or salt marsh wandering shrew are found during surveys, a 100 meter no-work buffer shall be established by a qualified biologist around occupied habitat or individual observations of salt marsh harvest mice and salt marsh wandering shrews.

OR

2. Option 2: If salt marsh harvest mouse or salt marsh wandering shrew are not found during surveys, or if they are found during surveys but a 100 meter no-work buffer cannot be established (e.g., because work cannot be avoided within the buffer area), then vegetation removal in work areas taking place in potential salt marsh mammal habitat (e.g., seasonal wetlands and transitional upland) shall

be performed to remove cover and render these areas unattractive to salt marsh harvest mouse and salt marsh wandering shrew.

- Only non-motorized equipment, hand-held motorized equipment (i.e., string trimmers), and high-clearance (minimum six-inch), push-type, motorized mowers shall be used to remove the vegetation.
- The qualified biologist shall inspect areas of vegetation removal immediately prior to the initiation of removal to search for salt marsh harvest mice and “flush”¹ small mammals out of the area and toward adjacent tidal marsh areas that would not be subject to removal.
- Vegetation removal shall start in the position farthest from the highest quality and most accessible salt marsh harvest mouse habitat within the work area, and progress toward that habitat, such that the salt marsh harvest mice are protected to the greatest degree possible as they move out of the focal area.
- Vegetation shall be cut in at least two passes: with the first pass cutting vegetation at approximately half of its height above the ground (mid-canopy) and the next pass, or subsequent passes, cutting vegetation to ground-level or no higher than one inch.
- Cut vegetation shall be removed from the exclusion area (work area) so that no cut vegetation remains there once the exclusionary fence is installed.
- All non-native, invasive vegetation removed shall be discarded at a location outside of any tidal marsh areas to prevent reseeding.

Following completion of vegetation removal, temporary exclusionary fencing shall be installed.

- The fencing shall be installed between suitable habitat areas (e.g., tidal marsh and other pickleweed-dominated areas) and the defined work area (or areas) immediately following vegetation removal and prior to the start of other construction/excavation activities. A figure showing the location(s) of proposed fencing shall be provided to the City for approval prior to the initiation of vegetation removal and construction.
- The fence shall consist of a material that does not allow salt marsh harvest mice to pass through or climb, or a standard silt fence with slick tape (or an effectively similar material) a minimum of six inches wide fixed to the fence to render it non-climbable. The bottom shall be buried to a depth of at least four inches so that animals cannot crawl under the fence. Fence height shall be at least 12 inches higher than the highest adjacent vegetation with a maximum height of four feet.

¹ Flushing refers to the agitation or moving of vegetation to reveal the species.

- Fence posts shall be placed facing the work area side (i.e., vegetation-cleared side) and not the side of the fencing facing intact habitat areas. The fencing shall be installed under the supervision of a qualified biologist.
- The qualified biologist shall routinely inspect exclusionary fencing daily to ensure that it remains intact and effective. Fencing deficiencies noted during the daily inspection or during construction shall immediately be repaired by the Contractor. The project applicant shall submit proof of contracting with a qualified biologist for daily fence inspection to the Director of Planning, Building, and Code Enforcement or the Director's designee.

Impact BIO-4: The project would have a significant impact on marsh birds, specifically the California Ridgway's rail and the California black rail.

MM BIO-4.1: Avoid Breeding Season or Complete Pre-construction Surveys. No construction work, except as noted below, shall not occur within 200 meters (656 feet) of potential rail nesting habitat from February 1 to August 31, inclusive, to avoid impacts to nesting rails. Only the following limited construction work may be performed from June 1 to August 31, inclusive, within 200 meters of rail nesting habitat:

- Installation of temporary construction fencing
- Installation of any stormwater pollution prevention measures
- Clearing and grubbing of vegetation within the project site using hand-held equipment.

Construction work within 200 meters (656 feet) of potential rail nesting habitat may be performed outside of both the rail breeding and nesting rail survey period of September 1 to January 14, inclusive.

If construction work must take place during the rail nesting season from February 1 to August 31 (inclusive), then a qualified biologist shall perform a protocol-level survey for the California Ridgway's rail and California black rail in areas where habitat for these species may be present, as determined by the biologist. The results of the pre-construction, protocol-level survey, including results of the consultation with USFWS and/or CDFW (required if California Ridgway's rail and the California black rail are identified) and all measures required to reduce and avoid impacts to the California Ridgway's rail and the California black rail (including the 200 meter no-work buffer), shall be submitted via a report to the Director of Planning, Building and Code Enforcement or the Director's designee for review and approval prior to the issuance of any grading permit.

The California Ridgway's rail protocol-level survey shall be conducted in accordance with the June 2015 USFWS California Clapper Rail Survey Protocol and must be conducted between January 15 through April 15 (inclusive). A total of four surveys shall be completed during this time period: two passive surveys, followed by two active surveys. Surveys shall be spaced at least two weeks apart. For the California black rail protocol survey, no protocol has been published for this species; therefore, the protocol survey shall follow the 2015

California Clapper Rail Survey Protocol.² A total of four surveys (two passive and two active surveys) shall be conducted for the California black rail protocol survey between March 15 and May 31 (inclusive) with each of the surveys conducted at least two weeks apart.

- If no species are detected during protocol-level surveys for California Ridgway's rail and California black rail, then the project would not have any impacts to the species and no additional measures are necessary.
- If California Ridgway's rail and/or California black rail are detected during protocol level surveys, the detections shall be recorded and a 200 meter (656 feet) no-work buffer shall be established around each detection of California Ridgway's rail and California black rail. Construction work shall not occur within the 200 meters (656 feet) no-work buffers from February 1 to August 31 (inclusive), which is the greater rail breeding season).

MM BIO-4.2: Prepare a Worker Education Program. A worker education program shall be developed and implemented by a qualified biologist to train workers on identification of the California Ridgway's rail and the California black rail and avoiding impacts (e.g., educate about the nesting season, potential nesting habitat, and the measures described in MM BIO-4.1 to avoid impacts) to these species. Construction personnel working in or near wetlands shall participate in environmental training prior to beginning work in or near wetlands. Prior to the issuance of any grading permit, the project applicant shall submit a copy of the worker education program with evidence that a qualified biologist has been contracted to perform the training to the Director of Planning, Building and Code Enforcement or the Director's designee.

Impact BIO-5: The project would have a significant impact on burrowing owls during vegetation removal and ground disturbance.

MM BIO-5.1: Complete Pre-construction Surveys. Prior to issuance of any grading permit, a qualified biologist shall conduct pre-construction surveys in all suitable habitat areas within the project site and within 250 feet of the project site, as accessible. A minimum of two site visits shall occur as part of pre-construction surveys (if owls are detected, a second site visit is not needed): one within 14 days prior to commencement of construction work, and one within 48 hours of commencement of construction work. To maximize the likelihood of detecting owls, the pre-construction survey shall last a minimum of three hours. The survey shall begin one hour before sunrise and continue until two hours after sunrise (three hours total) or begin two hours before sunset and continue until one hour after sunset. Any owls observed location of the occupied burrow shall be mapped. A qualified biologist shall submit results of the pre-construction burrowing owl surveys, including a description of all measures required to reduce and avoid impacts to the burrowing owl (if present), to the City of San José Director of Planning, Building and Code Enforcement or the Director's designee for review prior to issuance of any grading permit.

² The California Ridgeway Rail was formerly known as the California Clapper rail.

MM BIO-5.2: Establish Buffer. If nesting owls are encountered during the breeding season (February 1 to August 31, inclusive), active nests shall be avoided by maintaining a 250 foot no-disturbance buffer either until the end of the breeding season or until the nest can be confirmed to be inactive by a qualified biologist. If work must occur within this buffer, consultation with CDFW may be required.

If owls are encountered during the non-breeding season (September 1 to January 31, inclusive), the occupied burrow shall be avoided by maintaining a 250-foot no-disturbance buffer until such time as a qualified biologist can confirm that the owl is no longer utilizing the burrow site.

Prior to issuance of any grading permit, qualified biologist must establish the 250-foot buffers. The established buffers shall be marked in the field (e.g., with flagging, fencing, paint, or other means appropriate for the location in question). This marking shall be maintained intact and in good condition throughout project-related construction activities.

Impact BIO-6: The project would result in a significant impact on sensitive wetland habitat.

See **MM BIO-7.1** through **MM BIO-7.5** (below).

Impact BIO-7: The project would result in a significant impact to seasonal wetlands within the area of disturbance, and potential significant impacts to seasonal wetland and muted tidal wetland outside of the proposed area of disturbance.

MM BIO-7.1: Prepare a Wetland Delineation Report. Prior to issuance of grading permit for any vegetation removal or ground-disturbing activities, a formal wetland delineation report shall be prepared for the project area by a qualified biologist. Based on the findings of the delineation report, relevant permits through the USACE, RWQCB, and BCDC shall be acquired prior to the fill of seasonal wetlands. The formal wetland delineation report and proof of permits (as applicable) shall be submitted by the project applicant to the Director of Planning, Building and Code Enforcement or the Director's designee for review prior to the issuance of any grading permit.

MM BIO-7.2: Demarcate Wetlands Within the Project Site to be Avoided. Delineated wetlands to be avoided during construction activities shall be demarcated with barrier fencing around the boundaries of the wetlands prior to construction activities. The installation of the fencing shall be overseen by a qualified biologist. Demarcated wetlands shall be designated as an environmentally sensitive area and clearly identified on construction documents, contracts, and project plans. A qualified biologist shall review the construction documents, contracts, and project plans prior to the commencement of construction. The project applicant shall submit all construction documents, contracts, and project plans with the demarcated wetlands identified prior to the issuance of any grading permit.

MM BIO-7.3: Purchase Mitigation Credits for Permanent Loss of Wetlands. If there would be a permanent loss of Waters of the US and State, then the project shall purchase appropriate mitigation credits from either an approved mitigation bank or via permittee responsible mitigation which would involve creating, restoring, or enhancing analogous

habitat types. The ratio for acres of mitigation to acres impacted shall be no less than 1:1. The project applicant shall submit proof of purchase of mitigation credits to the Director of Planning, Building, and Code Enforcement or the Director's designee prior to the issuance of any grading permit.

MM BIO-7.4: Prepare Best Management Practices for Wetlands. Best Management Practices (BMPs) shall be devised by a qualified biologist and implemented by the general contractor to prevent discharge of any project-related materials such as fuel, engine lubricants or sediment into potentially jurisdictional wetlands and water features. If wattles are used, only natural fiber or biodegradable wattles shall be installed. Silt fencing is recommended for erosion control as it would double as a wildlife exclusion fence. All erosion control products shall be removed at the completion of construction activities. All BMPS shall be printed on all construction documents, contracts, and project plans.

MM BIO-7.5: Prepare a Worker Education Program for Wetlands. Prior to the issuance of any grading permit, a worker education program shall be developed and implemented by a qualified biologist to train workers on identification of wetlands and avoiding impacts to project area wetlands. Construction personnel working in or near wetlands shall participate in environmental training prior to beginning work in or near wetlands. The project applicant shall submit evidence that a worker education program was developed and implemented by a qualified biologist, prior to ground disturbance, to the Director of Planning, Building and Code Enforcement or the Director's designee.

Impact BIO-8: The project would result in significant impacts on the movement of nesting birds (Northern harrier, white-tailed kite, Alameda song sparrow and San Francisco common yellowthroat), burrowing owls, salt marsh mammals (salt marsh harvest mice and salt marsh wandering shrews), and marsh birds (California Ridgway's rail and the California black rail).

See **MM BIO-1.1, -1.2, -2.1, -2.2, -3.1, -3.2, -4.1, -4.2, -5.1, -5.2,**

E. CULTURAL RESOURCES

Impact CUL-1: Project ground-disturbing construction activities could result in the accidental disturbance and/or destruction of undocumented archaeological resources.

MM CUL-1.1: Subsurface Cultural Resources. If prehistoric or historic resources are encountered during excavation and/or grading of the site, all activity within a 50-foot radius of the find shall be stopped, the Director of Planning, Building and Code Enforcement or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist in consultation with a Native American Tribal representative that is traditionally and culturally affiliated with the geographic area as described in Public Resources Code Section 21080.3 shall examine the find. The archaeologist in consultation with the Tribal representative shall 1) evaluate the find(s) to determine if they meet the definition of a historical or archaeological resource; and (2) make appropriate recommendations regarding the disposition of such finds. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee, the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials. The 50-foot no-work buffer shall remain in effect

until the Director of Planning, Building and Code Enforcement or the Director's designee has been provided documentation that all recommendations have been implemented and the Director of Planning, Building and Code Enforcement or the Director's designee issues the project applicant notice to proceed with construction in the no-work buffer.

- F. **ENERGY** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- G. **GEOLOGY AND SOILS** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- H. **GREENHOUSE GAS EMISSIONS** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- I. **HAZARDS AND HAZARDOUS MATERIALS**

Impact HAZ-1: The project would result in the replacement and relocation of groundwater monitoring wells which could pose a hazard to construction workers if they are exposed to hazardous materials present in contaminated groundwater. Additionally, the destruction of groundwater monitoring wells, if not replaced appropriately, could disrupt ongoing groundwater monitoring on-site related to the existing contaminated groundwater

MM HAZ-1.1: Obtain a Valley Water Well Destruction Permit and Well Construction Permit. The deconstruction of existing wells and construction of new wells shall be completed in accordance with Valley Water Ordinance 90-1 under the oversight of Valley Water and the RWQCB. The project applicant shall provide proof of obtaining a Well Destruction Permit and Well Construction Permit from Valley Water to the Director of Planning, Building and Code Enforcement or the Director's designee for review prior to issuance of any grading permits.

MM HAZ-1.2: Develop a Health and Safety Plan. All contractors and subcontractors for the project shall develop a Health and Safety Plan (HSP) specific to their scope of work and based upon the known environmental conditions. Components of the HSP shall include, but shall not be limited to, the following elements, as applicable:

- Provisions for personal protection and monitoring exposure to construction workers;
- Procedures to be undertaken in the event that contamination is identified above action levels or previously unknown contamination is discovered;
- Procedures for the safe storage, stockpiling, and disposal of contaminated soils, should they be encountered;
- Provisions for the on-site management and/or treatment of contaminated groundwater that may be encountered during well destruction and construction activities; and
- Emergency procedures and responsible personnel.

The HSP(s) shall be submitted to the Director of Planning, Building and Code Enforcement, or the Director's designee, for review and approval prior to issuance of grading permit.

- J. HYDROLOGY AND WATER QUALITY** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- K. LAND USE AND PLANNING** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- L. MINERAL RESOURCES** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- M. NOISE** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- N. POPULATION AND HOUSING** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- O. PUBLIC SERVICES** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- P. RECREATION** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- Q. TRANSPORTATION** – The project would not have a significant impact on this resource; therefore no mitigation is required.
- R. TRIBAL CULTURAL RESOURCES**

Impact TCR-1: Development of the proposed project could potentially result in impacts to undiscovered tribal cultural resources.

MM TCR-1.1: Cultural Sensitivity Training. A qualified Native American Tribal representative who is traditionally and culturally affiliated with the geographic area as determined by the Native American Heritage Commission, shall provide cultural sensitivity training to all construction personnel involved with ground disturbing work prior to the initial ground-breaking activities. Prior to the issuance of any grading permit, written evidence that the cultural sensitivity training has been provided to all construction personnel working on ground disturbing activities shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's Designee.

MM TCR-1.2: Tribal Monitoring. A qualified Native American Tribal monitor who is traditionally and culturally affiliated with the geographic area as determined by the Native American Heritage Commission, shall be present during all applicable earthmoving activities such as, but not limited to, trenching, initial or full grading, lifting of foundation, or boring on site. Evidence of a Tribal monitoring agreement shall be provided to the Director of Planning, Building and Code Enforcement or the Director's Designee, prior to

the issuance of any grading permit.

S. UTILITIES AND SERVICE SYSTEMS

Impact UTL-1: The construction of the stormwater basins would result in significant impacts to special-status plant and wildlife species, nesting birds, and sensitive wetland habitat.

See mitigation measures MM BIO-1.1, -1.2, -2.1, -2.2, -3.1, -3.2, -4.1, -4.2, -5.1, -7.1, -7.2, -7.3, -7.4, and -7.5 above.

S. WILDFIRE – The project would not have a significant impact on this resource; therefore no mitigation is required.

T. MANDATORY FINDINGS OF SIGNIFICANCE

Cumulative impacts would be less than significant. The proposed project would comply with existing regulations and City standard conditions of approval. The proposed project would implement the identified mitigation measures and would either have no impacts or less than significant impacts on riparian habitat or other sensitive natural communities, migration of species, applicable biological resources protection ordinances, cultural resources (including tribal cultural resources), and hazards and hazardous materials. Therefore, the proposed project would not contribute to any cumulative impact for these resources. The project would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **November 12, 2024** any person may:

1. Review the Draft Mitigated Negative Declaration (MND) and attached Initial Study as an informational document only; or
2. Submit written comments regarding the information and analysis in the Draft MND/Initial Study. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND/Initial Study, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND.

CHRISTOPHER BURTON, Director
Planning, Building and Code Enforcement



Deputy

10/5/24

Date

Cort Hitchens
Environmental Project Manager

Circulation period: October 11, 2024 to November 12, 2024