INITIAL STUDY

Newby Island Sanitary Landfill Coyote Creek Bank Repair Project

City File No. PD19-007

March 2021

Prepared for: Planning, Building, and Code Enforcement Department
200 E. Santa Clara Street
San José, California 95113

Prepared by: Leonard Charles and Associates
7 Roble Court
San Anselmo, California 94960
(415) 454-4575

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1.0 INTRODUCTION AND BACKGROUND

Purpose

This Initial Study*/Mitigated Negative Declaration (IS/MND h*as been prepared by the City of San Jose as the Lead Agency, in accordance with the California Environmental Quality Act (CEQA), Public Resources Code 21000 *et seq*. and the State CEQA Guidelines, California Code of Regulations Section 15000 *et seq. and the regulations and policies of the City of San José, California.*

PUBLIC REVIEW PERIOD

Publication of this IS/MND marks the beginning of a 20-day public review and comment period. During this period, the IS/MND will be available to local, State, and federal agencies and to interested organizations and individuals for review. Written comments concerning the environmental review contained in this IS/MND during the 30-day public review period should be sent to:

Sanhita Ghosal
City of San José
Department of Planning, Building, and Code Enforcement (PBCE)
200 East Santa Clara Street, Third Floor
San José, California 95113
(408) 535-7851

CONSIDERATION OF THE INITIAL STUDY AND PROJECT

Following the conclusion of the public review period, the City will consider the adoption of the IS/MND for the Fuel Station Project at a regularly scheduled meeting. The City shall consider the IS/MND together with any comments received during the public review process. Upon adoption of the IS/MND, the City may proceed with approval actions.–

PROJECT INFORMATION AND DATA

1. Project Title

Newby Island Sanitary Landfill Coyote Creek Bank Repair Project

(City File No. PD19-007)

2. Lead Agency Name and Address

City of San José
Planning, Building, and Code Enforcement Department
200 E. Santa Clara Street
San José, CA 95113

3. Contact Person and Phone Number

Sanhita Ghosal, AICP
Planner III– Environmental Review
City of San José Department of Planning, Building, and Code Enforcement
200 E. Santa Clara Street
San José, CA 95113
(408) 535-7851

4. Project Location:

Newby Island Sanitary Landfill
1601 Dixon Landing Road
Milpitas, CA 94306
Assessor's Parcel Number: 015-40-005
37.271807 - 121.555829

5. Project Sponsor's Name and Address:

Rachelle Huber
Environmental Manager
International Disposal Corporation of California
1601 Dixon Landing Road
Milpitas, CA 95035
(408) 586-2263

6. General Plan Designation

Open Space, Parklands and Habitat (OSPH) and Light Industrial (LI)

7. Zoning

A(PD) Planned Development Zoning District [File No. PDC07-071]

8. Description of Project

The proposed Project is the repair of a failing section (approximately 140 feet in length) of the Coyote Creek bank on the northeasterly side of the Newby Island Sanitary Landfill facility, in conformance with local, state and federal regulatory agency permits. A portion of the levee has eroded away. The Project proposes to reconstruct the bank slope and extend an existing rock revetment through the outside bend in the creek. No rock will be placed above Mean Higher High Water (MHHW). A soil bank slope will extend from MHHW to the top of bank and will be seeded with appropriate species that would be found in this low-lying transitional zone. The Project also proposes to increase habitat value in the site by incorporating a small planting bench for the establishment of alkali bulrush (*Bolboschoenus maritimus*) into the repair. A maximum 7,500-square foot area will be disturbed either temporarily or permanently during this project.

BACKGROUND

The Newby Island Sanitary Landfill (NISL) has been continuously used to landfill solid waste since the 1930s to the present day. The property was annexed into the City of San José on March 12, 1968. Newby Island was reclaimed from tidal marshland by the construction of the perimeter levee system in the late 1800s. The island was used for agricultural production including orchards and pastureland until 1932. In 1932, Newby Island Improvement Company began using the island as an unlined solid waste disposal facility. Between 1931 and 1956, the disposal and incineration of solid waste took place in selected northern and eastern portions of the island. After 1956, burning was discontinued and subsequent waste disposal practices were more conventional landfill operations.

The greater Alviso area was annexed into the City of San José in 1968, including Newby Island as an operating landfill. Current permits allow landfilling and final grading to an elevation of 240 feet National Geodetic Vertical Datum (NGVD).

2.0 PROJECT PURPOSE

The Project consists of repair of approximately 140 feet of streambank for the continued safe operation of an existing, permitted landfill. The Coyote Creek channel meanders along the northern boundary of the approximately 342-acre landfill property. The streambank at the Project site is located on the outside of a bend in the stream where streamflow is undercutting the toe of the bank. The critical area of undercutting is approximately 75 feet long. The Project will reconstruct the bank slope at this location and connect the improvements at the Project site to an existing downstream bank rock revetment. The landfill has a gas collection pipeline that is immediately adjacent to the bank erosion area. The Project's goal is to stabilize the channel to arrest the current bank retreat and protect the integrity of the gas collection system as well as provide viable localized habitat improvement. A bank failure at the Project site could cause the gas collection pipes and possibly the existing flare structure to be undermined and fail into Coyote Creek. This would create an emergency cleanup and repair operation that would entail a larger planned creekbank repair. The proximity of the existing stormwater facilities and the landfill entrance road prevent relocation of these gas collection facilities and mandate that the bank be rebuilt to a much greater extent with corresponding impacts to Coyote Creek, than is proposed for this current project. Without stabilizing the bank now there is an increased risk of catastrophic failure that would result in greater adverse impacts to water quality in Coyote Creek and the bay.

Newby Island Sanitary Landfill and The Recyclery Rezoning Project Final Environmental Impact Report (SCH# 2007122011)

In September 2009, the City prepared a Draft Environmental Impact Report (EIR) entitled the "Newby Island Sanitary Landfill and The Recyclery Rezoning Project." This EIR analyzed the Planned Development rezoning (File No. PDC07-071) at the NISL and the adjacent Recyclery. The purpose of that project was to allow the maximum height of the active portion of the landfill to be raised to 245 feet on the National Geodetic Vertical Datum of 1929 (NGVD29), adding approximately 15.12 million cubic yards to the capacity of the landfill. The EIR and associated Planned Development zoning also conformed to and clarified the legal non-conforming uses on NISL and specified the allowable current and future uses on the landfill property and at the Recyclery.

The Draft EIR stated that independent of the Planned Development rezoning, the landfill operator planned to complete a number of landfill stability improvements as outlined in Section 3.7.2.2 of the Draft EIR including: "repair the areas of toe scour from Coyote Creek along the northern perimeter levee and the slope face should be armored to prevent future scour

events.[1]"[2] This project is not located along the northern perimeter levee and is not associated with the levee stability project.

[1] City of San José, 2009. Newby Island Sanitary Landfill and The Recyclery Rezoning Project Draft EIR, September 2009. Page 154-155. Available at http://www.sanjoseca.gov/DocumentCenter/View/2172.

[2] It is uncertain whether this list of improvements includes a reference to the Project since the Project site is not in the area of liquefaction concern the impact addresses, and it is not part of the "northern perimeter levee" as it is on the west side of NISL. Nevertheless, this Initial Study addresses the issue of addressing toe scour at the Project site and off-site scour that might be caused by the Project.

3.0 PROJECT LOCATION AND SETTING

The Project site is located on the eastern side of the Newby Island Sanitary Landfill (NISL) property, along the northern border of Santa Clara County. The Coyote Creek channel is the boundary between Santa Clara County and Alameda County. The site is bounded by Coyote Creek, open space, and marshlands on the old Fremont Airport to the north; busy roadways, including the 880 freeway, and commercial/industrial development to the east; Dixon Landing Road and agricultural fields to the south; and undeveloped lands/landfill areas associated with the Newby Island Landfill (NISL) property to the west. The site occurs on one parcel (APN 015-40-005) and consists of a small gravel staging area and creekbank access road, Coyote Creek, and surrounding marsh habitat. The Project site is located in the Milpitas 7.5" U.S. Geological Survey (USGS) quadrangle in section 35 of township 5 south, range 1 west.

The NISL property is approximately 342 acres in size (see Figures 1 to 2). Immediately adjacent to the southeast on a separate 10-acre parcel is the Recyclery, a materials recovery facility. NISL and the Recyclery's address is 1601 Dixon Landing Road. It is located in the City of San José at the western terminus of Dixon Landing Road. Although the mailing address and public street access to the site are both in the City of Milpitas, the landfill and Recyclery properties are entirely within the incorporated boundaries of the City of San José.

The existing conditions of the Project site are typical of many San Francisco Bay former tidal lands that have been encircled by levees. The upland areas are primarily ruderal vegetation that consists of non-native grasses and ground covers that are dominated by fennel (*Foeniculum vulgare*) and wild mustard (*Brassica campestris*). This vegetation gives way to bulrush on lower portions of the creekbank as it descends towards the tidally influenced water elevations in Coyote Creek. The bottom of the channel consists of mud and sand that were transported during tidal cycles and runoff periods.

The creekbank is maintained by the Project applicant, International Disposal Corporation of California, to ensure protection of past and existing operations on the NISL. The portion of the creekbank that would be repaired is on an outside bend of the stream channel where the force of the flow of Coyote Creek to the bay is eroding the bank. The creek channel is currently the boundary between Alameda and Santa Clara Counties. The area to be repaired is adjacent to and immediately upstream of a section of creekbank that was previously armored with riprap. The Project would extend that existing bank protection 138 feet upstream.

4.0 PROJECT DESCRIPTION

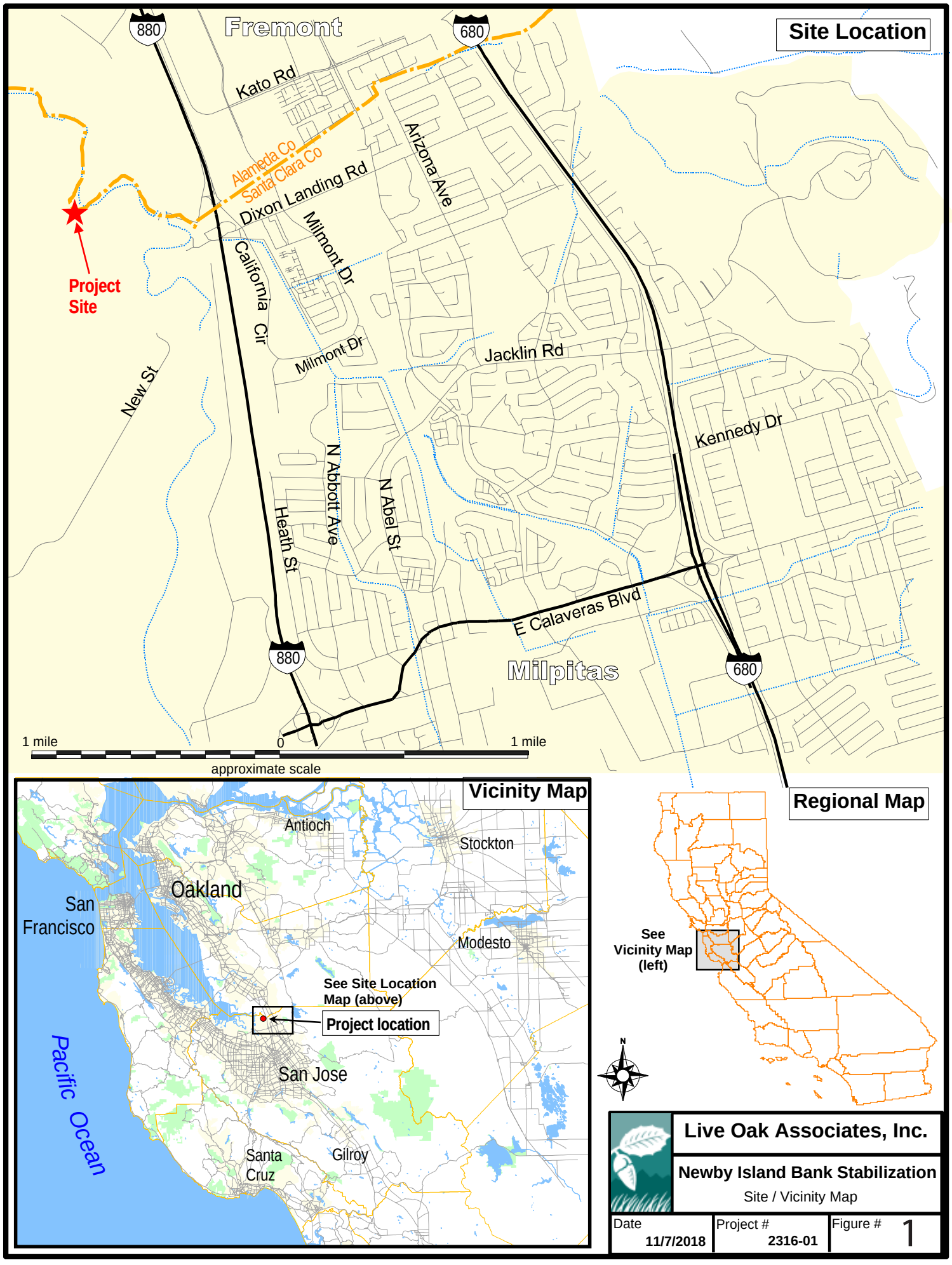
The Project applicant, International Disposal Corporation of California, proposes to complete a bank stabilization project on 138 feet of failing creekbank along Coyote Creek. The proposed stabilization project is shown on Figures 3 to 8 below. The eroding bank is located on the outside of bend and is being undercut and eroding the current bank in a critical area that is 75 feet long (see Photos 1-4). The erosion occurring at the Project site is localized. Past downstream erosion problems were addressed by previous bank riprapping.

The Project will reconstruct the bank slope and extend the existing downstream rock revetment through the outside bend in the creek. A soil bank slope will extend from Mean Higher High Water (MHHW[3]) to the top of bank and will be seeded with appropriate species that would be found in this low-lying transitional zone (see seed mix listed on Figure 8). Length has been added to the Project so it will connect with the existing rock revetment downstream (Photo 3) and transition well into the existing bank upstream. The landfill has a gas collection pipeline that is immediately adjacent to the bank erosion problem.

The goal is to stabilize the channel and arrest the current bank retreat as well as provide localized biological habitat improvement. To increase habitat value, a small planting bench intended for the establishment of Alkali Bulrush *(Bolboschoenus maritimus)* will be incorporated into the repair. This planting bench will be composed of soil placed on top of the rock revetment. A biodegradable COIR (coconut) fiber log and underlying COIR blankets to be used to construct the bench will be composed of soil placed on top of the rock revetment, which will stabilize the placed soil while the bulrush gets established. Five woody debris clusters will be added to provide varied aquatic habitat. These structures will be incorporated into the rock placement and anchored using larger ballast rock and/or cabled rock anchors.

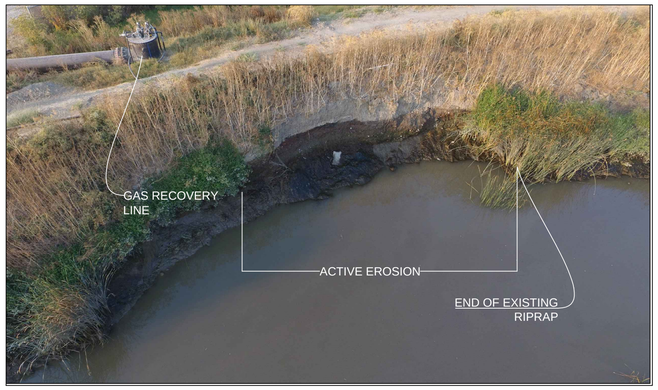
As shown on Figure 4 (Staging), the total area of temporary impact is 15,000 square feet; this includes the access road, staging area, and areas impacted by grading and bank work. Grading and land disturbance alone will impact 7,250 square feet (0.17 acres) and 138 feet of existing bank. The Project will move approximately 240 cubic yards of material and involve the permanent placement of 170 cubic yards of rock and soil below MHHW in the channel.

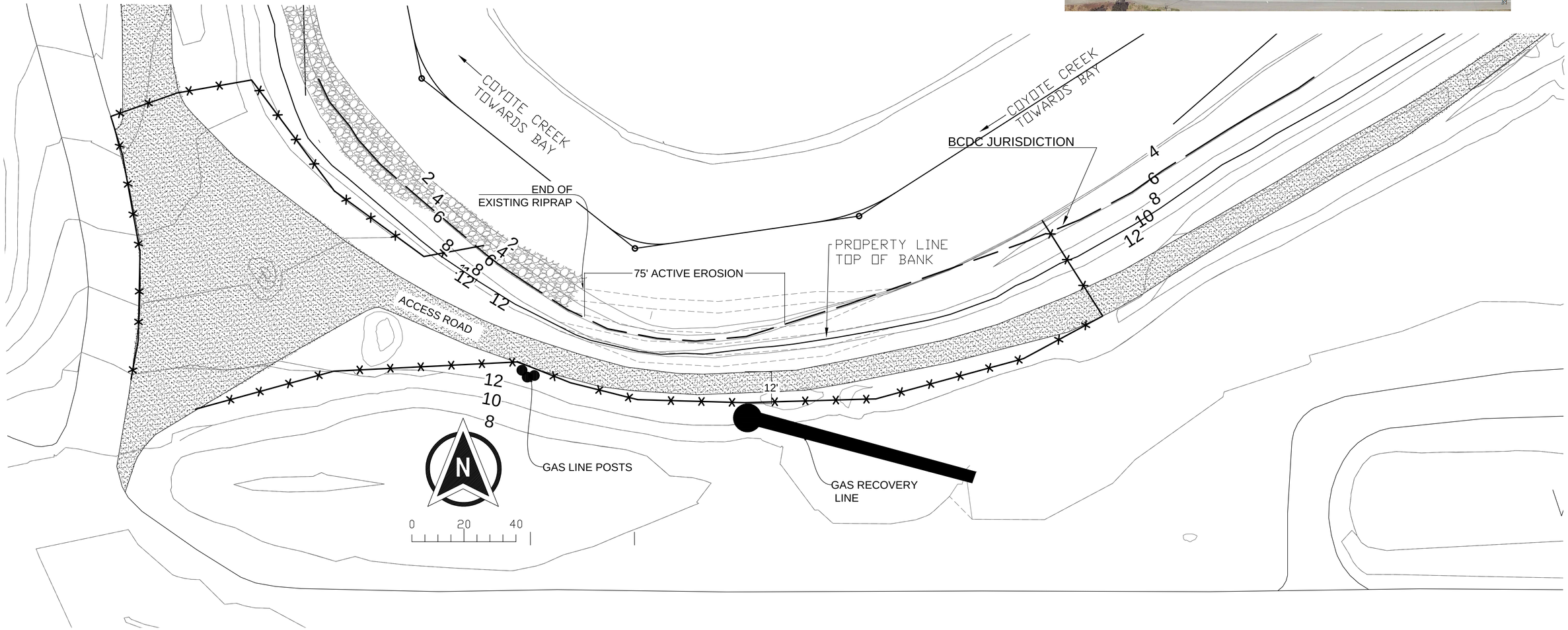
[3] MHHW is the average height of the highest tide recorded at a tide station each day during the recording period) . It denotes the upland edge the limit of BCDC's jurisdiction. of marsh vegetation along the creek and


Site Location
Fremont
880
680
Kato Rd
Alameda Co
Santa Clara Co
Dixon Landing Rd
Arizona Ave
Milmont Dr
California Cir
Project Site
New St
Milmont Dr
Jacklin Rd
Kennedy Dr
N Abbott Ave
N Abel St
Heath St
E Calaveras Blvd
Milpitas
1 mile
0
1 mile
approximate scale
Vicinity Map
Antioch
Stockton
Oakland
San Francisco
Modesto
See Site Location Map (above)
Project location
San Jose
Pacific Ocean
Santa Cruz
Gilroy
Regional Map
See Vicinity Map (left)
N
Live Oak Associates, Inc.
Newby Island Bank Stabilization
Site / Vicinity Map
Date 11/7/2018
Project # 2316-01
Figure # 1

AERIAL PHOTOGRAPH AND SURROUNDING LAND USES

FIGURE 2





NEWBY ISLAND LANDFILL
TIDAL BANK STABILIZATION

REPUBLIC SERVICES
MILPITAS, CA

QUESTA ENGINEERING CORP
Civil
Environmental
& Water Resources
(510) 236-6114
FAX (510) 236-2423
questa@questaec.com
P.O. Box 70356 1220 Brickyard Cove Road Point Richmond, CA 94807

Sht:	Rev:	Date:	By:	Description:	App'd:

Design: ST
Drawn: FP
Checked: ST
Appr'd: ST

EXISTING CONDITIONS AND STAGING
NEWBY ISLAND LANDFILL

COYOTE CREEK
MILPITAS, CA

Size: D
Project: 1700114
Scale: AS NOTED
Date: 11/1/2018
Sheet: Figure 3

IF BAR DOES NOT MEASURE 1" DRAWING IS NOT TO SCALE - ADJUST ACCORDINGLY

LAST SAVED: 11/1/2018 PLOT DATE: 11/1/2018 PLOT STYLE: ----

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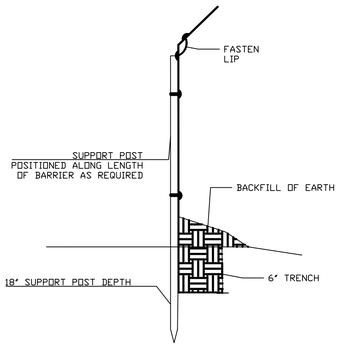
EXCLUSION FENCING DETAIL

MORE DETAILS: https://animexfencing.com/fencing

AMX40/1015 INSTALLATION



NOTES:

BIOLOGICAL MONITOR SHALL BE ON-SITE DURING INSTALLATION OF EXCLUSION FENCING AND TURBIDITY CURTAIN.

ALL VEGETATION SHALL BE CLEARED BY HAND CREWS WHEN THE BIOLOGICAL MONITOR IS PRESENT.

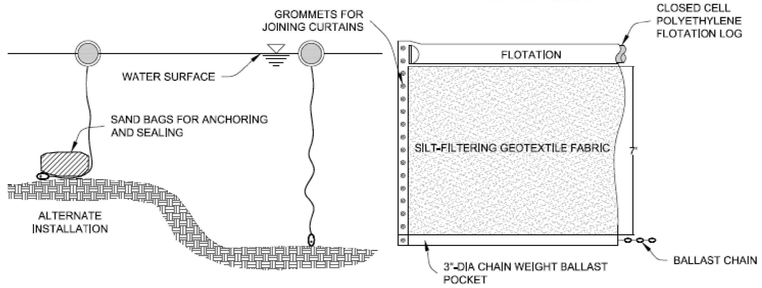
Silt fencing and mesh fencing have been proven to fatally injure wildlife and also allow animals to pass through or climb over them. The solid plastic Animex fence ensures it will not harm animals and prevents animals from entering areas where they could be exposed to harm.

Animex fencing can stand up to vegetation clearance along the fence when mesh and silt fencing can not!

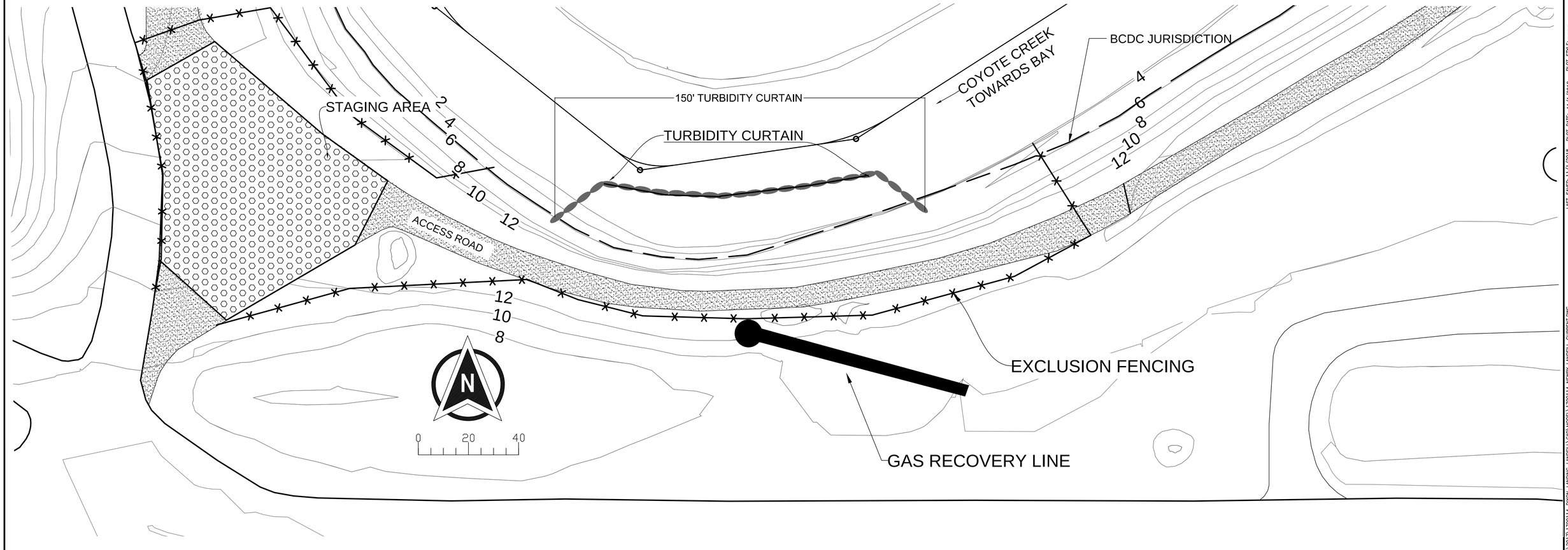
Animex fencing allows water to pass through small perforations preventing the natural water flow of the landscape being altered. It also helps to prevent washouts during extreme weather events meaning less maintenance is required.

The size of the holes have been designed to prevent any small or juvenile animals from being able to penetrate or become trapped within the aperture as they are known to do in mesh products.

TURBIDITY CURTAIN DETAIL



THE BODY OF THE TURBIDITY CURTAIN IS MADE FROM A STRONG, HIGH-FILTRATION FABRIC THAT RETAINS FINE SILT AND SEDIMENTS ON-SITE. THE FLOAT AND BOTTOM SLEEVE ARE CONSTRUCTED FROM A UV-STABLE, HIGH-STRENGTH POLYETHYLENE MATERIAL.



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questa@questaec.com
P.O. Box 70356 1220 Brickyard Cove Road Point Richmond, CA 94807

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STAGING
NEWBY ISLAND LANDFILL
COYOTE CREEK
MILPITAS, CA

Size D | Project 1700114
Scale: AS NOTED
Date: 11/1/2018
Sheet: Figure 4

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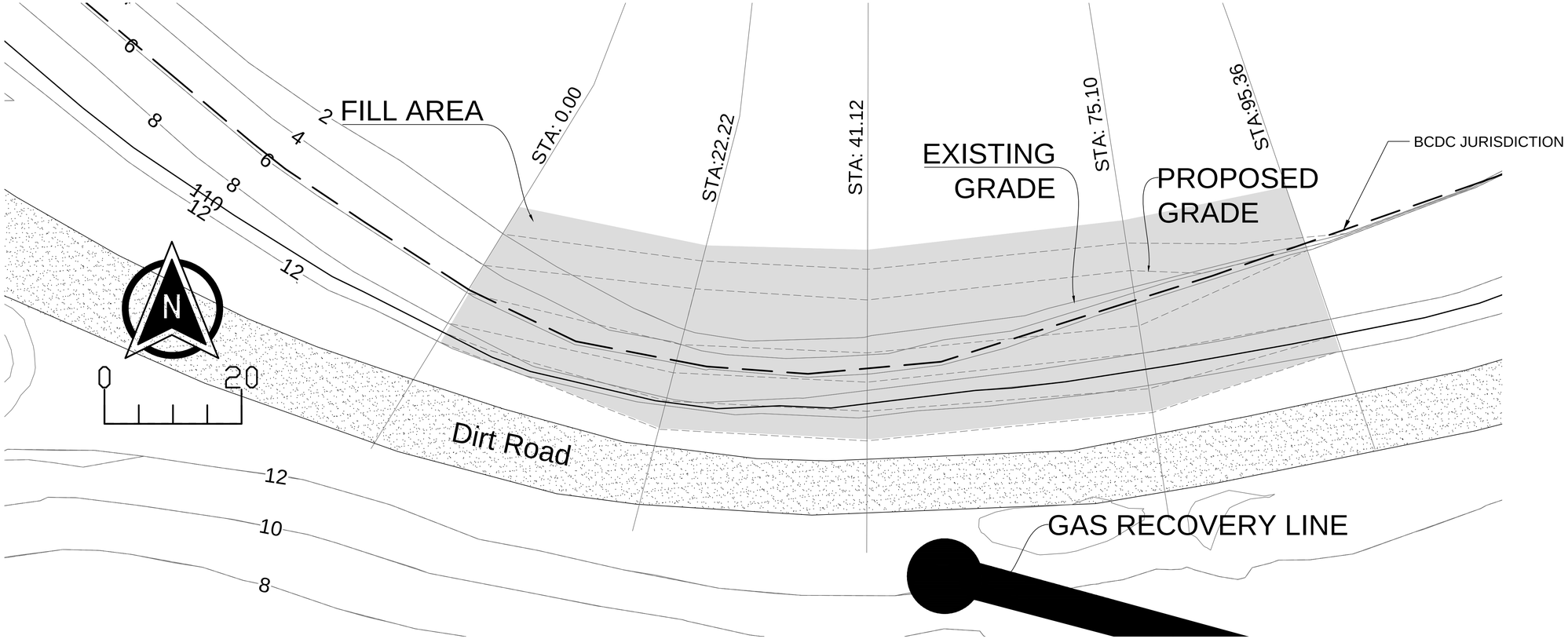

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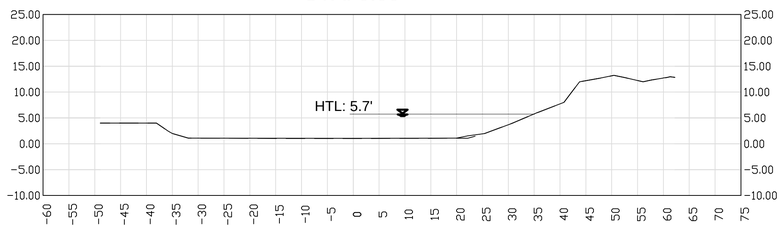

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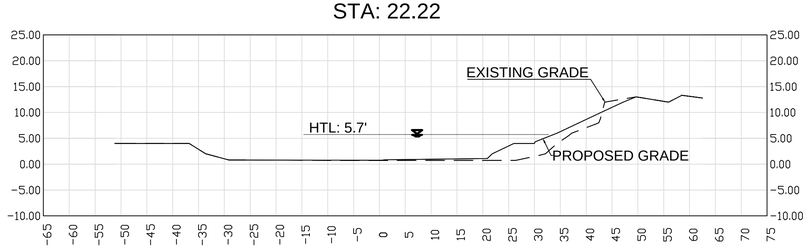

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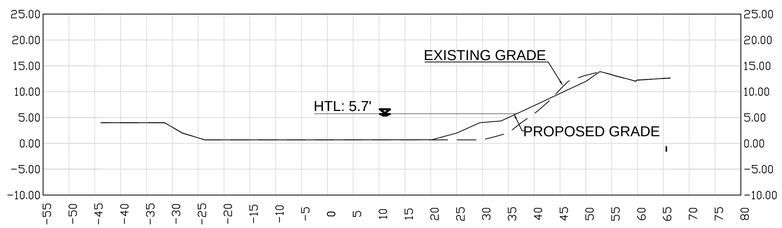

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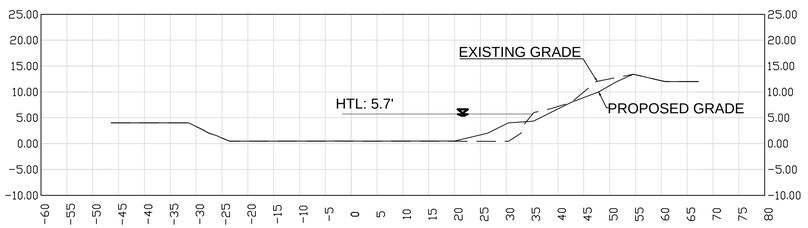

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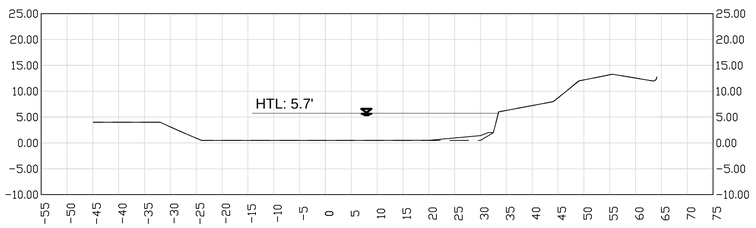

FILL SLOPE AREA BELOW HTL: 1627 SQ FT
TOTAL FILL AREA:3306 SQ FT

TOTAL FILL BELOW HTL: 89.44 CU YD
WOODY DEBRIS FILL ESTIMATE: 55 CU YD

HTL/ MHHW/ BCDC JURISDICTION
ESTIMATED AS THE UPLAND EDGE OF MARSH VEGETATION

IF BAR DOES NOT MEASURE 1" DRAWING IS NOT TO SCALE - ADJUST ACCORDINGLY

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GRADING CROSS SECTION
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COYOTE CREEK
MILPITAS, CA

Size D | Project 1700114
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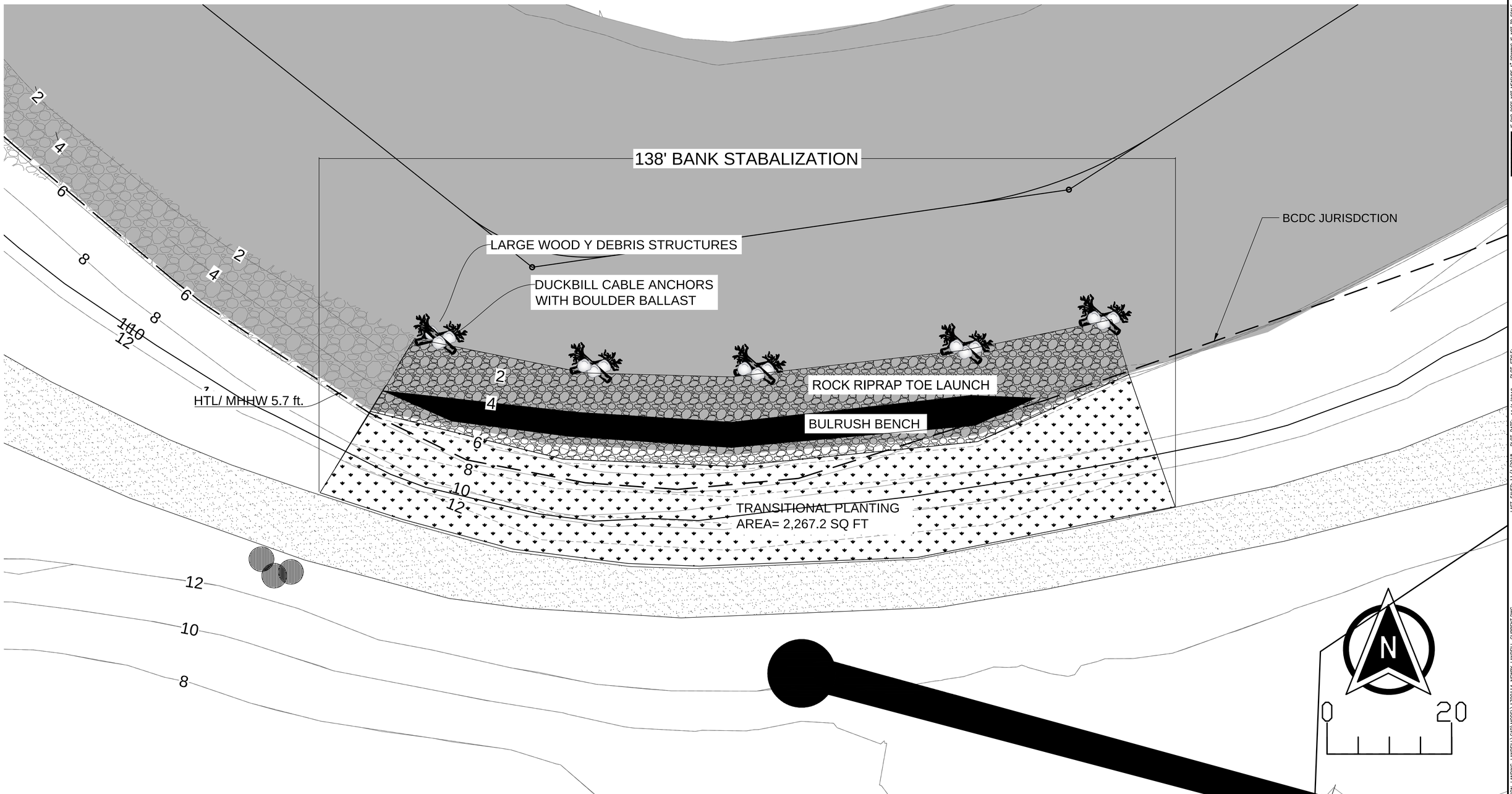

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DETAILED PLAN VIEW
NEWBY ISLAND LANDFILL

COYOTE CREEK
MILPITAS, CA

Size: D
Project: 1700114
Scale: AS NOTED
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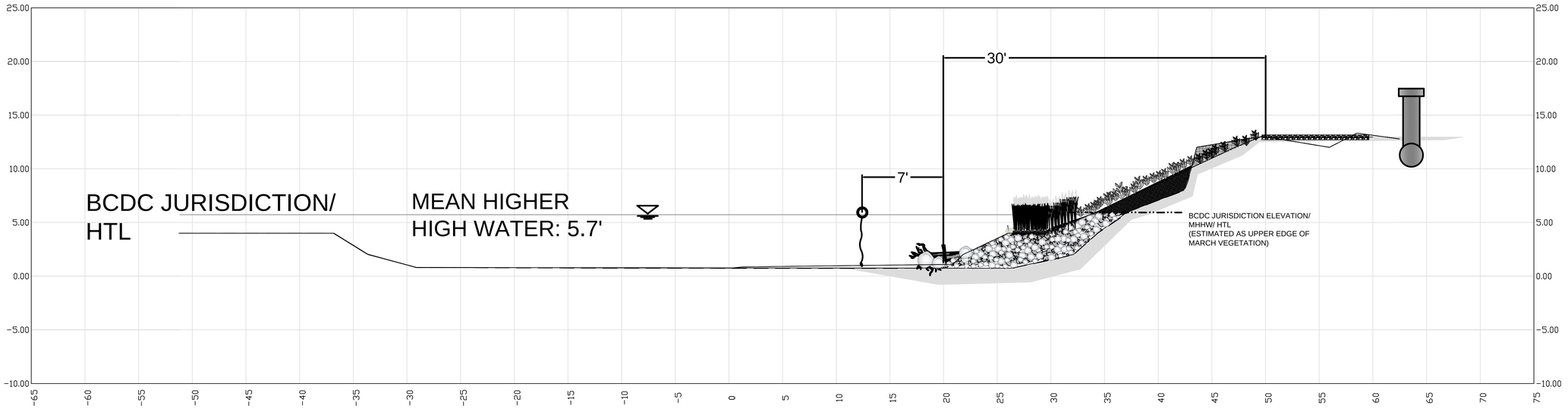
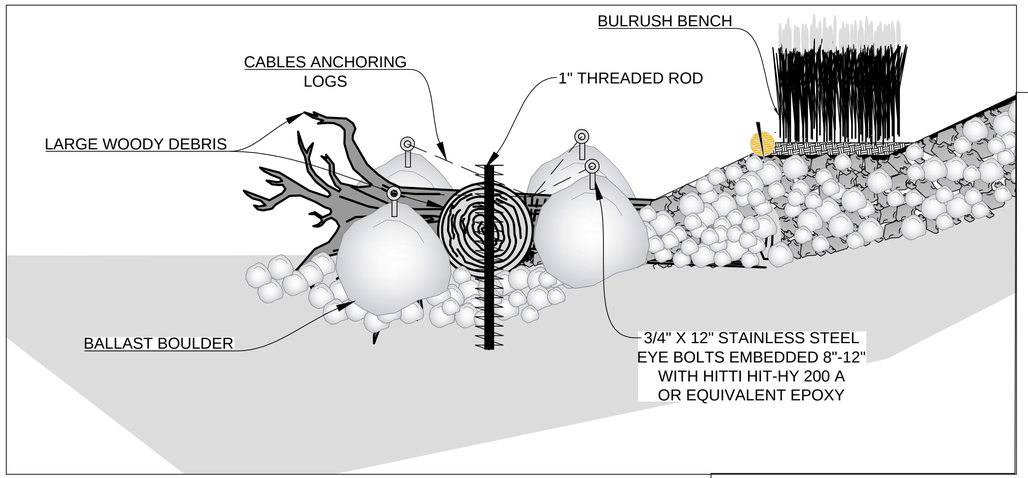




1 LARGE WOODY DEBRIS DETAIL ANCHORING

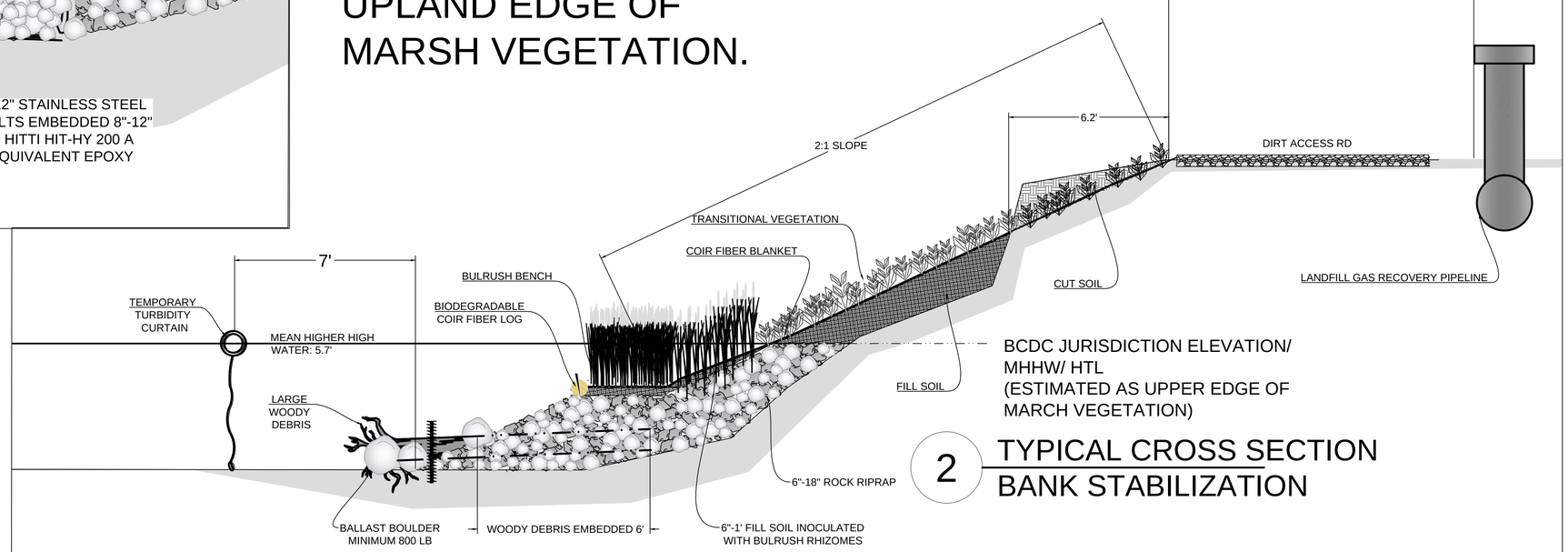
NOTES:

LARGE WOODY DEBRIS STRUCTURES: 12" DIA. TRUNK, 36" MIN. ROOTWAD, 10' TRUNK LENGTH

DUCKBILL ANCHOR CABLES: $\frac{5}{16}$" DIA.
138-DBI, 5,000 LB CAPACITY

ANCHORING CABLES: $\frac{5}{16}$" STAINLESS STEEL

NOTE: MHHW IS ESTIMATED AS THE UPLAND EDGE OF MARSH VEGETATION.



2 TYPICAL CROSS SECTION BANK STABILIZATION

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TYPICAL CROSS SECTION
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COYOTE CREEK
MILPITAS, CA

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Date: 11/1/2018
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STORM WATER POLLUTION PREVENTION PLAN (SWPPP) GUIDELINES - MINIMIZING CONSTRUCTION SITE IMPACTS

CONSTRUCTION ACTIVITIES CAN SIGNIFICANTLY IMPACT WATER QUALITY AND ECOLOGIC PROCESSES. EROSION AND TRANSPORT OF DIRT, DEBRIS, CHEMICALS, AND OTHER CONSTRUCTION WASTE CAN ENTER MUNICIPAL DRAIN SYSTEMS, LOCAL CREEKS, AND REGIONAL WATERWAYS AND CAUSE SEVERE DAMAGE TO NATURAL SYSTEMS AND HUMAN INFRASTRUCTURE. MINIMIZE ENVIRONMENTAL IMPACTS BY FOLLOWING THE BMPS OUTLINED IN THE PROJECT. FAILURE TO COMPLY WITH THE BMPS INCLUDED IN THE PROJECT SPECIFICATIONS AND LOCAL, STATE, AND FEDERAL LAWS GOVERNING CONSTRUCTION SITE IMPACT MANAGEMENT AND WATER QUALITY COULD RESULT IN LEGAL VULNERABILITY AND FINES EXCEEDING $10,000 PER DAY. TO AVOID SUCH INSTANCES, PLAN AHEAD, IMPLEMENT THE SPECIFIC BMPS OUTLINED FOR THIS PROJECT, AND FOLLOW THE GUIDELINES OUTLINED BELOW. MORE INFORMATION ON CONSTRUCTION SITE BMPS AND SWPPPS CAN BE FOUND AT: http://www.dot.ca.gov/hq/construc/stormwater/SWPPP_Prep_ManualJune2011.pdf

NON-HAZARDOUS MATERIAL STORAGE

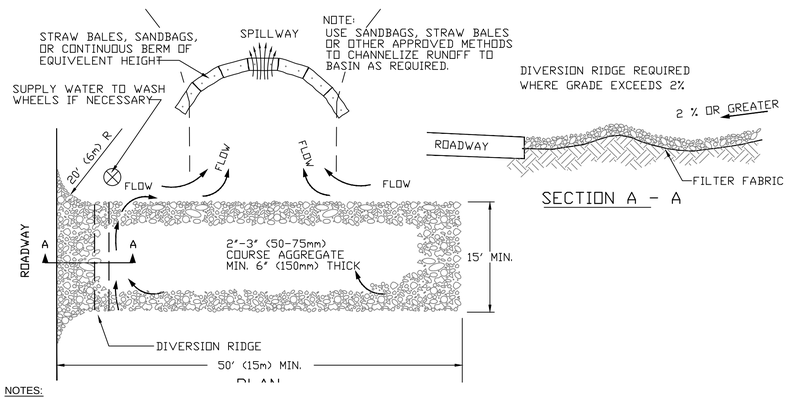
1. STORE ALL SAND, DIRT, AND OTHER ERODIBLE MATERIAL AT LEAST 10 FEET FROM CATCH BASINS AND WHEN FORECASTS CALL FOR RAIN, COVER WITH A TARP, AND SECURE EDGES WITH SANDBAGS, BRICKS, OR OTHER HEAVY OBJECTS.
2. KEEP A CLEAN JOBSITE BY SWEEPING UP PAVED OR OTHER IMPERMEABLE SURFACES DAILY, ESPECIALLY WHEN RAIN IS FORECASTED. DO NOT ADVERTENTLY OR INADVERTENTLY TRANSPORT SEDIMENT OFFSITE, INTO STORM DRAINS, OR ROADWAYS USING WATER, BLOWERS, OR OTHER MECHANICAL DEVICES. DISPOSE ALL NON-HAZARDOUS WASTES INTO THE APPROPRIATE DUMPSTER UNITS.
3. RECYCLE AT LEAST THE MINIMUM REQUIRED AMOUNT OF DEMOLITION MATERIAL INCLUDING CONCRETE, ASPHALT, BASE AGGREGATE, WOOD, ETC. AS OUTLINED IN PROJECT SPECIFICATIONS. PROMOTE RECYCLING OF DAILY CONSUMPTIVE MATERIALS SUCH AS PAPER AND DRINK CANS BY PROVIDING RECYCLE BINS ONSITE.
4. BE SURE DUMPSTERS AND STORAGE CONTAINERS ADEQUATELY MEET ONSITE DEMAND. CHECK FOR ANY LEAKS, CRACKS, OR MATERIAL OVERFLOW ON A REGULAR BASIS. ORDER EXTRA DUMPSTERS AS NECESSARY AND REPAIR ALL LEAKS AND CRACKS IMMEDIATELY.

HAZARDOUS MATERIALS MANAGEMENT AND STORAGE

1. ALL HAZARDOUS MATERIALS AND WASTE MUST BE LABELED (E.G., DIESEL, GASOLINE, ANTIFREEZE, SOLVENTS, THINNERS, PESTICIDES, FERTILIZERS) IN CONFORMITY TO ALL LOCAL, STATE, AND FEDERAL REGULATIONS. FOR GENERAL INFORMATION ON HAZARDOUS WASTE LABELING VISIT: HTTP://WWW.EPA.GOV/EPAOSWER/OSW/HAZWASTE.HTM
2. FOR A COMPLETE LIST OF EPA DEFINED HAZARDOUS WASTES VISIT: HTTP://WWW.EPA.GOV/EPAOSWER/HAZWASTE/LISTING-REF.PDF
3. STORE ALL HAZARDOUS MATERIALS AND WASTES IN APPROVED SECONDARY CONTAINERS PROTECTED FROM THE ELEMENTS (WIND, RAIN, WATER, DIRECT SUNLIGHT). CONSIDER LIMITING THE AVAILABILITY OF HAZARDOUS WASTES BY LOCKING THEM IN SECURED CABINETS/AREAS.
4. FOLLOW THE MANUFACTURER'S INSTRUCTIONS WHEN STORING, TRANSPORTING, APPLYING, AND DISPOSING OF UNUSED HAZARDOUS WASTES. IN GENERAL, OUTDOOR APPLICATION OR USE OF MATERIALS LABELED AS HAZARDOUS WASTES SHOULD BE AVOIDED WHEN FORECASTS CALL FOR RAIN OR HEAVY FOG.

SPILL PREPARATION AND CONTROL

1. PREPARE FOR SPILLS BY STOCKING AN ADEQUATE SUPPLY OF RAGS, ABSORBENTS, SPILL POWDERS, AND SAFETY EQUIPMENT (GLOVES, EYEGLASSES, ETC). FOLLOW ALL HAZARDOUS WASTE STORAGE AND USE RECOMMENDATIONS OUTLINED ABOVE AND CONSULT PROJECT ENGINEERS REGARDING SPILL PREPARATION PLANS THAN MAY BE REQUIRED.
2. COMMUNICATE WITH ALL CONSTRUCTION SITE WORKERS THE IMPORTANCE OF DETECTING AND REPORTING LEAKS TO JOBSITE MANAGERS.
3. CONTAIN ALL SPILLS OR LEAKS UPON DETECTION.
4. PREVENT ALL LEAKS AND SPILLS FROM ENTERING GUTTERS, MUNICIPAL STORM DRAINS, AND ADJACENT CREEKS/WATERWAYS.
5. REPORT ALL HAZARDOUS MATERIAL SPILLS TO THE LOCAL GOVERNMENT ENTITIES OVERSEEING CONSTRUCTION. IN ADDITION, ANY SPILL OF HAZARDOUS MATERIALS, INCLUDING OIL, PAINT, GASOLINE, AND DIESEL, THAT REACH STATE WATERS MUST BE REPORTED THE OFFICE OF SPILL PREVENTION AND RESPONSE. THEY CAN BE REACHED THROUGH THE DEPARTMENT OF FISH AND GAME'S TOLL FREE LINE: CALTIP 1-888-DFG-CALTIP



NOTES:

1. THE ENTRANCE SHALL BE MAINTAINED IN A CONDITION THAT WILL PREVENT TRACKING OR FLOWING OF SEDIMENT ONTO PUBLIC RIGHT-OF-WAYS. THIS MAY REQUIRE TOP DRESSING, REPAIR AND/OR CLEANOUT OF ANY MEASURES USED TO TRAP SEDIMENT.
2. WHEN NECESSARY, WHEELS SHALL BE CLEANED PRIOR TO ENTRANCE ONTO PUBLIC RIGHT-OF-WAY.
3. WHEN WASHING IS REQUIRED, IT SHALL BE DONE ON AN AREA STABLIZED WITH CRUSHED STONE THAT DRAINS INTO AN APPROVED SEDIMENT TRAP OR SEDIMENT BASIN.

VEHICLE MAINTENANCE AND CLEANING

1. INSPECT ALL ON-SITE VEHICLES FOR OIL, FUEL, ANTIFREEZE, OR GENERAL FLUID LEAKS. IF LEAKS ARE DETECTED USE APPROPRIATELY SIZED CATCH BASINS TO CAPTURE FLUIDS AND MAKE NECESSARY REPAIRS IMMEDIATELY IN AN APPROVED STAGING AREA.
2. CONDUCT ALL REFUELING AND MAINTENANCE WORK ON VEHICLES WITHIN DESIGNATED STAGING AREA, USE APPROPRIATELY SIZED DRIP PANS TO CAPTURE ALL FLUIDS, AND PREVENT SOIL AND WATER CONTAMINATION. DO NOT ALLOW FLUIDS TO REACH STORM GUTTERS, RUN-OFF IMPERVIOUS SURFACES, OR ENTER WATER BODIES AT THE SITE (SEE SPILL PREPARATION AND CONTROL, ABOVE).
3. IF VEHICLE CLEANING IS REQUIRED, DO NOT ALLOW WASH WATER TO LEAVE THE STAGING AREA. THIS MAY REQUIRE CONSTRUCTION OF BERMS AND TARPS THAT PROHIBIT RUN-OFF TO GUTTERS, STREETS, STORM DRAINS, OR CREEKS.
4. DO NOT CLEAN VEHICLES WITH DEGREASERS, SOLVENTS, OR STEAM EQUIPMENT.

EROSION CONTROL AND SOIL CONTAMINATION

1. STORE, TRANSPORT, AND TRANSFER ALL EXCAVATED SOIL, SAND, AND MATERIAL IN CONFORMITY WITH THE TECHNICAL SPECIFICATIONS. IN ADDITION, AVOID STORING EXCAVATED MATERIAL WHERE IT CAN EASILY ERODE OR BE TRANSPORTED TO STREAMS, ROADWAYS, AND DRAIN SYSTEMS
2. CLEARING, EXCEPT THAT NECESSARY TO ESTABLISH SEDIMENT CONTROL DEVICES, SHALL NOT BEGIN UNTIL ALL SEDIMENT CONTROL DEVICES HAVE BEEN INSTALLED AND HAVE BEEN STABILIZED.
3. MAJOR GRADING OPERATIONS SHALL BE SCHEDULED DURING DRY MONTHS, AND SHALL ALLOW ADEQUATE TIME BEFORE RAINFALL BEGINS TO STABILIZE THE SOIL WITH EROSION CONTROL MATERIALS.
4.
5. EXAMINE AND FOLLOW THE SPECIFIC EROSION CONTROL PLAN TO MINIMIZE TRANSPORT OF DEBRIS AND SILT OFF THE CONSTRUCTION SITE. THIS MAY INCLUDE INSERTING FIBER ROLLS, SILT FENCING, WATTLES, SEEDING AND OTHER APPROVED BMPS.
6. VEGETATION REDUCES RAINFALL IMPACT AND PROVIDES COHESIVE PROPERTIES TO SOIL. THEREFORE, DURING SITE CLEARING AND GRUBING MINIMIZE THE REMOVAL OF NATURAL VEGETATION INCLUDING FORBS, GRASSES, SHRUBS, GROUND COVERINGS, AND TREES.
7. SLOPES DISTURBED DURING CONSTRUCTION ACTIVITIES WILL REQUIRE SOME FORM OF TEMPORARY AND PERMANENT STABILIZATION. CONSULT THE PROJECT EROSION CONTROL PLANS AND SPECIFICATIONS REGARDING THE SPECIFIC REQUIREMENTS. PROJECT BMPS INCLUDE INSTALLATION OF EROSION CONTROL FABRIC, HYDRO-SEEDING, DRILL-SEEDING, OR DIRECT PLANTING SEEDING AND MULCHING SHALL BE DONE AS SOON AS GRADING IS COMPLETE.
8. SOIL STABILIZATION SHALL BE COMPLETED WITHIN FIVE DAYS OF CLEARING OR INACTIVITY IN CONSTRUCTION
9. SOIL STOCKPILES MUST BE STABILIZED AND/OR SECURELY COVERED AT THE END OF EACH WORKDAY.
10. IN AREAS WHERE PERMANENT RE-SEEDING AND PLANTING IS NOT ESTABLISHED AT THE CLOSE OF THE CONSTRUCTION SEASON, ADDITIONAL CONTROL MEASURES SHALL BE USED, SUCH AS A HEAVY MULCH LAYER OR ANOTHER METHOD THAT DOES NOT REQUIRE GERMINATION, TO ENSURE SOIL STABILIZATION AT THE SITE.
11. WHERE RUNOFF NEEDS TO BE DIVERTED FROM ONE AREA AND CONVEYED TO ANOTHER, EARTH DIKES, DRAINAGE SWALES, SLOPE DRAINS OR OTHER SUITABLE PRACTICE SHALL BE CONSTRUCTED IN ACCORDANCE WITH THE DESIGN CRITERIA SET FORTH IN THE MOST RECENT VERSION OF THE CALIFORNIA STORMWATER QUALITY ASSOCIATION BEST MANAGEMENT PRACTICE HANDBOOK.
12. LINEAR SEDIMENT BARRIERS SHALL BE PLACED BELOW THE TOE OF EXPOSED AND ERODIBLE SLOPES, DOWN-SLOPE OF EXPOSED SOIL AREAS, AROUND SOIL STOCKPILES, AND AT OTHER APPROPRIATE LOCATIONS ALONG THE SITE PERIMETER.
13. STREET SWEEPING SHALL BE CONDUCTED ON AN AS NEEDED BASIS TO REMOVE SEDIMENT FROM STREETS AND ROADWAYS AND TO PREVENT THE SEDIMENT FROM ENTERING STORM DRAINS OR RECEIVING WATERS.
14. EVERY STORM DRAIN INLET WITH THE POTENTIAL TO RECEIVE SEDIMENT-LADEN RUNOFF SHALL BE PROTECTED IN ACCORDANCE WITH THE DESIGN CRITERIA SET FORTH IN THE MOST RECENT VERSION OF THE CALIFORNIA STORMWATER QUALITY ASSOCIATION BEST MANAGEMENT PRACTICE HANDBOOK. INLET PROTECTION SHALL BE INSPECTED AND MAINTAINED FREQUENTLY.
15. SEDIMENT BASINS OR SEDIMENT TRAPS SHALL BE INSTALLED ON PROJECTS WHERE SEDIMENT-LADEN WATER MAY ENTER THE DRAINAGE SYSTEM OR WATERCOURSES AND IN ASSOCIATION WITH DIKES, TEMPORARY CHANNELS, AND PIPES USED TO CONVEY RUNOFF FROM DISTURBED AREAS.
16. OTHER MEASURES, SUCH AS TRACK-OUT PREVENTION DEVICES, OR AS REQUIRED BY THE DISTRICT INSPECTOR IN ORDER TO ENSURE THAT SEDIMENT IS NOT TRACKED ONTO PUBLIC STREETS BY CONSTRUCTION VEHICLES OR WASHED INTO STORM DRAINS.
17. DURING EXCAVATION WORK, LOOK FOR UNDERGROUND STORAGE TANKS, ABANDONED PIPES, OR BURIED DEBRIS THAT WERE NOT IN THE PROJECT PLANS OR JOBSITE BACKGROUND INVESTIGATION. IF FOUND, IMMEDIATELY CONTACT THE PROJECT ENGINEER.
18. IF CONTAMINATED SOIL IS FOUND, IMMEDIATELY CONTACT SITE ENGINEERS AND LOCAL GOVERNMENT ENTITIES OVERSEEING CONSTRUCTION. SPECIAL EXCAVATION, TRANSPORT, AND TREATMENT OF CONTAMINATED SOILS MAY BE REQUIRED.
19. SUFFICIENT EROSION AND SEDIMENT CONTROL SUPPLIES SHALL BE AVAILABLE ON SITE DURING THE RAINY SEASON (OCTOBER THROUGH APRIL) TO PROTECT AREAS SUSCEPTIBLE TO EROSION DURING RAIN EVENTS. CONTRACTORS SHALL BE PREPARED YEAR-ROUND TO DEPLOY EROSION AND SEDIMENT TREATMENT CONTROL PRACTICES.

WATER USE

1. WATER IS A PRECIOUS RESOURCE. RECYCLE AND RE-USE ON-SITE WATER RESOURCES FOR DUST CONTROL, IRRIGATION, AND OTHER USES WHEN POSSIBLE.
2. CONTACT THE LOCAL MUNICIPALITY OR AGENCY RESPONSIBLE FOR DRAINAGE IF STORM GUTTERS, SEWER SYSTEMS, OR WATER BODIES WILL RECEIVE ANY JOBSITE RUN-OFF.
3. WATER CONTAINING HIGH AMOUNTS OF SEDIMENT AND OTHER CONTAMINANTS MAY REQUIRE CONSTRUCTION OF SEDIMENT BASINS, TREATMENT FACILITIES, OR SPECIAL TRANSPORT THAT ARE OUTLINED IN THE PROJECT DRAWINGS AND SPECIFICATIONS.
4. TO REDUCE THE IMPACT OF CONTAMINATED SURFACE WATERS ON LOCAL/REGIONAL GROUNDWATER QUALITY, CONSULT WITH LOCAL OFFICIALS AND PROJECT ENGINEERS REGARDING THE PROPER TESTING, TREATMENT, AND DISPOSAL OF CONTAMINATED WATERS.

CUTTING WOOD, ASPHALT, OR CONCRETE MATERIALS

1. CONTAIN AND PROPERLY DISPOSE ALL SAWDUST FROM CUTTING OPERATIONS AT THE JOBSITE. DO NOT ALLOW SAWDUST AND WOOD DEBRIS, ESPECIALLY TREATED LUMBER PRODUCTS, TO ENTER STORM DRAINS OR ENTER ADJACENT WATER BODIES.
2. PRIOR TO FORECASTED RAINFALL EVENTS, CLEAN UP AND DISPOSE OF ALL WOOD WASTE SOURCES.
3. WHEN SAW CUTTING ASPHALT OR CONCRETE MATERIALS BLOCK ALL STORM GUTTERS AND DRAINS TO PROHIBIT SLURRY FROM CONTAMINATING AND CLOGGING INFRASTRUCTURE. IMMEDIATELY REMOVE ANY AND ALL SLURRY WASTE THAT REACHES STORM DRAINS/GUTTERS
4. INSTALLATION OF FILTER FABRICS, SEDIMENT BASINS, STRAW BALES, OR SPECIAL FILTER EQUIPMENT MAY BE REQUIRED. CONSULT THE PROJECT PLANS AND TECHNICAL SPECIFICATIONS.
5. CONTAIN, CLEAN UP, AND PROPERLY DISPOSE ALL CUTTING WASTE AND SLURRIES UPON MOVING LOCATIONS AND COMMENCING DAILY OPERATIONS.

ASPHALTIC PAVING

1. ASPHALTIC PAVING DURING WET WEATHER IS NOT PERMITTED DUE TO APPLICATION GUIDELINES AND ENVIRONMENTAL CONCERNS.
2. COVER ALL DRAINS AND MANHOLES WHEN PAVING OR APPLYING SEAL COATS, TACK COATS, SLURRY SEALS, AND FOG SEALS.
3. ASPHALTIC PAVING MACHINES CAN LEAK WHEN NOT IN USE. PLACE DRIP PANS AND OTHER ABSORBENT MATERIALS IN APPROPRIATE LOCATIONS TO MINIMIZE LEAKS AND SPILLS WHEN ASPHALTIC PAVING EQUIPMENT IS BEING STORED OR NOT IN USE.
4. ALL SAND USED DURING PAVING, SLURRY SEALING, AND COATING SHOULD BE REMOVED FROM THE JOB SITE AND DISPOSED OF AS TRASH. DO NOT ALLOW EXCESS MATERIALS TO ENTER STORM DRAINS OR LOCAL WATER BODIES.

CONCRETE AND CEMENTITIOUS MATERIALS

1. STORE AND CONTAIN ALL CONCRETE AND CEMENTITIOUS PRODUCTS IN DRY AREAS AND AWAY FROM ANY WATER SOURCES.
2. IF TRUCK AND EQUIPMENT CLEANUP OCCURS ON-SITE, DESIGNATE A BASIN/AREA FOR WASHING. ALLOW WATER TO SEEP INTO A VISQUEEN LINED BASIN AND WAIT UNTIL CONCRETE HARDENS. REMOVE AND DISPOSE ALL HARDENED CONCRETE IN THE APPROPRIATE SOLID WASTE UNIT.
3. DO NOT ALLOW TRUCK AND MIXING EQUIPMENT WASH WATER TO ENTER STORM DRAINS, GUTTERS, OR ADJACENT WATER BODIES.

PAINTING

1. RINSING OF PAINT BRUSHES, PANS, SPRAYERS AND ANY ASSOCIATED EQUIPMENT INTO STORM DRAINS, STREETS, OR WATER BODIES IS NOT PERMITTED.
2. PRIOR TO CLEANING WATER BASED PAINTING EQUIPMENT, ROLL, BRUSH, OR SPRAY ANY EXCESS PAINT ONTO A DISCARDABLE SURFACE (WOOD, PAPER, ETC.) WHEN A SINK IS UNAVAILABLE DILUTE WASTE PAINT WITH WATERAND POUR ONTO SOIL WHILE AGITATING WITH A SHOVEL OR RAKE.
3. PRIOR TO CLEANING OIL BASED PAINTING EQUIPMENT WITH A THINNER, ROLL, BRUSH, OR SPRAY ANY EXCESS PAINT ONTO A DISCARDABLE SURFACE. FILTER AND RE-USE PAINT THINNERS FOR FUTURE USE AND DISPOSE UNUSABLE THINNER AS HAZARDOUS WASTE.

GENERAL

1. SANITARY FACILITIES OF SUFFICIENT NUMBER AND SIZE TO ACCOMMODATE CONSTRUCTION CREWS SHALL BE LOCATED AWAY FROM STORM DRAIN INLETS AND DRAINAGE FACILITIES, AND ANCHORED TO PREVENT BEING BLOWN OVER OR TIPPED BY VANDALS. THE FACILITIES SHALL BE MAINTAINED IN GOOD WORKING ORDER AND EMPTIED AT REGULAR INTERVALS BY A LICENSED SANITARY WASTE HAULER.
2. TECHNIQUES SHALL BE EMPLOYED TO PREVENT THE BLOWING OF DUST OR SEDIMENT FROM THE SITE SUCH AS WATERING ACCESS ROADS AND COMPACTION AND SEEDING OF FILL AREAS.

Note: THIS SHEET TO BE REMOVED AND REPLACED BY APPROVED CONTRACTOR SWPPP

FOR CONSTRUCTION ONLY
NOT FOR PERMITTING

IF BAR DOES NOT MEASURE 1" DRAWING IS NOT TO SCALE - ADJUST ACCORDINGLY

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NEWBY ISLAND LANDFILL
TIDAL BANK STABILIZATION
REPUBLIC SERVICES
MILPITAS, CA

QUESTA ENGINEERING CORP.
Civil
Environmental
& Water Resources
(510) 236-6114
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P.O. Box 70356 1220 Brickyard Cove Road Point Richmond, CA 94807

Sht:	Rev:	Date:	By:	Description:	App'd:

Design: ST
Drawn: FP
Checked: ST
Appr'd: ST

EROSION CONTROL
NEWBY ISLAND LANDFILL
COYOTE CREEK
MILPITAS, CA

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Photo 1: Aerial view of erosion area looking south

Photo 2: Aerial view of the erosion area, looking southwest

Photo 3: Existing revetment along Coyote Creek immediately downstream of Project site

Photo 4: Looking upstream at the erosion site. (Tidal elevation estimated at 0' feet NGVD at time of photo)

The design approach is to use the existing downstream revetment rock size and height as the standard for bank protection for the Project site. The current bank revetment along the landfill toe has remained intact and shows little signs of degradation, and it is assumed to be designed to an adequate protection level. The riprap is a combination of rock and broken concrete pieces. The size of these riprap varies from 6 to 18 inches in size. The proposed Project will mimic this size class and match its bank height. The planned bulrush bench will match the elevations found on the opposite bank where bulrush is growing well and appears to be healthy. Placing the bench at this location along with new planting and volunteer colonization will result in rapid revegetation. It is expected that bulrush will colonize areas above and below the planting bench and will blend into the existing channel geometry and adjacent vegetation mosaic. Woody debris at the toe of the Project will be added to provide a diversity of habitat for aquatic species in the creek. The typical cross section was shown previously on Figure 7 and again below on Figure 9.

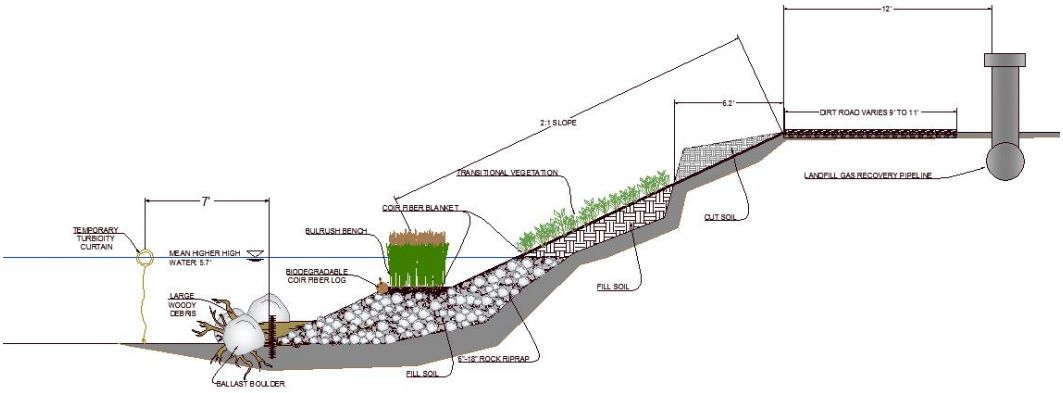


Figure 9: Typical cross section of the proposed Project

Project Construction

Construction Schedule

The anticipated construction schedule for the Project including the activities, equipment, and approximate duration is outlined below. The information provided in Table 1 is based on the information available during the preparation of this Initial Study and is subject to change as the Project moves closer to implementation. The projected construction period is expected to be from June 15 to October 15.

Table 1

Anticipated Construction Schedule

Activity	Equipment	Approximate Duration (days)
Mobilization - Delivery of Equipment and Rock	Delivery Trucks; Front Loader	3
Site Prep (install exclusion fencing and Turbidity Curtain)	Minimal Equipment Use	2
Woody Debris Structure Placement and Anchoring	Excavator	5
Construction of Bank and Placement of Riprap	Excavator and Front Loader	3
Grading and Planting Bulrush Bench	Jumping Jack Compactor	3
Grading and Planting Transitional Planting Zone and Installing Erosion Control Measures	Excavator and Jumping Jack Compactor	3
Removal of Turbidity Curtain and Exclusion Fencing / Site Cleanup	Minimal Equipment Use	3

Total Duration: approximately 22 working days

Construction-Related Activities

Proposed equipment used to construct the Project includes, but is not limited to:

- Long reach excavator for placing material in the channel
- Flatbed truck for delivering equipment and woody debris
- Rock delivery trucks
- Front loader for moving rock
- Compactor

5.0 REQUIRED PERMITS AND REGULATORY APPROVAL

This Initial Study provides decision makers with environmental information to use in considering the proposed Project and to be used for the necessary discretionary approvals. The proposed Project is expected to require the following regulatory permits and other regulatory approvals:

City of San José

- Planned Development Permit
- Public Works Clearances: Grading permit

U.S. Army Corps of Engineers (USACE)

- Verification of Delineation of Jurisdictional Wetlands Report
- Section 404 Nationwide Permit

U.S. Fish and Wildlife Services (USFWS)

- Informal Section 7 Consultation (i.e., no Biological Opinion is expected)

National Marine Fisheries Service

- Informal Section 7 Consultation (i.e., no Biological Opinion is expected)

California Department of Fish and Wildlife (CDFW)

- Section 1600 Lake and Streambed Alteration Agreement

Regional Water Quality Control Board (RWQCB)

- Section 401 Water Quality Certification

San Francisco Bay Conservation and Development Commission

- Abbreviated Regionwide Permit

The City will maintain oversight of implementation for all legally required permits and agreements. The City requires that the applicant provides confirmation to the City that all these permits and agreements are obtained prior to any work occurring at the Project site. The applicant will also be required to implement all conditions of said permits and agreements to the satisfaction of the Responsible Agency and provide the City with a letter report showing successful mitigation completion and monitoring.

Initial Discussions with Regulatory Agencies

Based on initial discussions with the regulatory agencies, the applicant expects to use individual permit applications to cover the above-listed regulatory procedures.

In November 2018, the applicant received a Draft Streambed Alteration Agreement (Notification Number 1600-2018-0213-R3) from the California Department of Fish and Wildlife (CDFW). This draft Agreement cannot be executed by CDFW until the City completes its CEQA process and approves the Project, and when CDFW determines that the CEQA analysis is adequate.

In November 2018, the Project applicant also received authorization for the Project under Nationwide Permit 13 from the U.S. Army Corps of Engineers for Bank Stabilization (File number 2018-00269S). Both of these documents are contained in Appendix C of this Initial Study.

In November 2018, the Project applicant contacted the RWQCB about the Project and its consistency with the requirements for the Section 401 Water Quality Certification. RWQCB staff performed an initial review of the Project and requested some additional information about the Project design. That information was provided to the RWQCB staff person (Tahsa Sturgis) on November 2, 2018. The RWQCB staff person indicated that the Certification would not be finally approved until after the City completed its CEQA review.

6.0 PROTECTION MEASURES INCORPORATED INTO THE PROJECT

Sensitive Wildlife Species

Measures to protect sensitive wildlife species have been incorporated into the Project design and are part of the Project description for permit applications to the regulatory agencies. The permits required for the Project were listed above in Section 5.0. Specific measures that are part of the proposed Project include measures listed on Project figures and described below. These design measures have been reviewed by the California Department of Fish and Wildlife (CDFW) and the U.S. Army Corps of Engineers (ACE) and amended as those Responsible Agencies deemed warranted. The Project and these measures required by CDFW will also be reviewed by the RWQCB and BCDC, and these agencies may add additional changes to the design to address those agencies' concerns. The final emended measures will be incorporated as conditions of approval in the required permits. The permitting agencies will be responsible for monitoring the implementation of permit conditions. For example, the Draft Streambed Alteration Agreement (SAA) includes a full mitigation monitoring and reporting program for SAA permit conditions.

General Control Protections

- All work below the top of bank is proposed to occur between June 15 and October 15, when the flow in Coyote Creek would be at its lowest.

- Other measures include conducting a pre-construction training session for all construction personnel on sensitive species that could be encountered on the site, pre-construction surveys, exclusion of fish and other aquatic species from the in-stream work area prior to installation of the turbidity curtain, and removal of vegetation using hand-held equipment.

- The training session, pre-construction surveys, and fish exclusion will be completed by qualified biologists, and a biological monitor will be present during the vegetation removal.

- All permit conditions, legal requirements, and appropriate engineering practices shall be followed to avoid or minimize environmental impacts associated with the proposed Project.

Non-native Invasive Plants

- The Project will implement measures to reduce the presence and spread of non-native, invasive plant species in the Project area. The overarching goal of these measures is to halt the further expansion of existing invasive species and the introduction of new invasives into sensitive habitats on the site. The Project shall implement the following measures:

- During Project construction, all seeds and straw materials used on the site will be weed-free rice straw.

- During Project construction, all vehicles and equipment will be washed (including wheels, undercarriages, and bumpers) before entering areas within the banks of Coyote Creek. In addition, tools such as chainsaws, hand clippers, pruners, etc., shall be washed before and after entering the Project work area.

- Following Project construction, native seed from a local source will be spread within the temporary upland impact zones on any disturbed ground that will not be landscaped and maintained. This will minimize the potential for the germination of the majority of seeds from non-native, invasive plant species.

Water Quality Control Actions

- Best management practices (BMPs) for erosion control will be implemented during Project construction. Typical erosion control devices including straw wattles, fabric blankets, or silt fencing will be employed to avoid having soil inadvertently fall into the creek during construction. All erosion control materials will be biodegradable and natural fiber, or it will be removed following completion of construction. In addition, the Project will implement measures to protect water quality on the site, including the following:

- All hazardous materials and wastes will be stored in approved secondary containers protected from the elements (wind, rain, water, and direct sunlight).

- An adequate supply of rags, absorbents, spill powders, and safety equipment (gloves, eyeglasses, etc.) will be stockpiled in preparation for any spills.

- All on-site vehicles will be inspected for oil, fuel, antifreeze, or general fluid leaks. If leaks are detected, appropriately sized catch basins will be used to capture fluids and necessary repairs will be made immediately in an approved staging area.

- All refueling and maintenance work on vehicles will occur within the designated staging area. Appropriately sized drip pans will be used to capture all fluids and prevent soil and water contamination. No fluids will be allowed to enter Coyote Creek.

- Clearing, except as necessary to establish sediment control devices, shall not begin until all sediment control devices have been installed and stabilized.

- A site-specific erosion control plan will be followed to minimize transport of debris and silt off the construction site. This may include inserting fiber rolls, silt fencing, wattles, seeding, and other approved BMPs.

- During site clearing and grubbing, the removal of natural vegetation including forbs, grasses, shrubs, and other ground-covering vegetation will be minimized.

- Soil stabilization shall be completed within five days of clearing or during an inactivity in construction.

- A turbidity curtain will be used to minimize the dispersion of silt and sediment within Coyote Creek during in-stream Project activities. The body of the turbidity curtain will be made from a strong, high-filtration fabric that retains fine silt and sediments within the work area. The top of the curtain will float on the surface of the water with a closed-cell polyethylene flotation log, and the bottom of the curtain will be weighted with a ballast chain or anchored with sandbags, if needed. The turbidity curtain will completely enclose the instream portion of the work area to ensure that silt and sediments disturbed during construction activities are retained on-site. As described in the anticipated construction schedule in previous Table 1, the turbidity curtain will remain in place during the construction period and will be removed after the planting is completed.

- The Project design will provide a roughened streambank that will reduce the energy of the streamflow and eliminate streambank scour at the Project site.

Listed Fish Species and Essential Fish Habitat Protections

- To reduce impacts on federally listed and candidate fish species, all work within the bed and banks of Coyote Creek will be conducted between June 15 and October 15. This work window is based on the potential presence of adult salmonids migrating upstream in the winter and out-migrating smolts in the spring, as well as the seasonality of occurrence of SFBD longfin smelt in the South Bay (with the species occurring primarily from late fall to early spring).
- Before any construction activities begin, a qualified biologist will conduct a training session for all construction personnel. At a minimum, the training will include a description of the green sturgeon, CCC steelhead, SFBD longfin smelt, and their habitat, the importance of these species, the general measures that are being implemented to conserve them as they relate to the Project, and the boundaries within which the Project may be accomplished.

7.0 INITIAL STUDY CHECKLIST

This section documents the anticipated environmental effects of the proposed Project using an Initial Study Checklist and providing a brief explanation supporting the findings of each checklist item.

EVALUATION OF ENVIRONMENTAL IMPACTS

This Initial Study is based on CEQA's Environmental Checklist Form. Each item on the checklist is answered as either "potentially significant impact," "less than significant with mitigation incorporated," "less than significant," or "no impact" depending on the anticipated level of impact. The checklist is followed by explanatory comments corresponding to each checklist item.

A "no impact" response indicates that it is clear that the Project will not have any impact. In some cases, the explanation to this response may include reference to an adopted plan or map. A "less than significant impact" response indicates that there will be some impact but that the level of impact is insufficiently substantial to be deemed significant. The text explains the rationale for this conclusion. A "less than significant impact with mitigation incorporated" response indicates that there will be a potentially significant impact, but the Initial Study determines there are adequate mitigations, which are described and have been included in the Project, to reduce the level of impact to an insignificant level. Finally, a "potentially significant impact" response would indicate that the Initial Study cannot identify mitigation measures to adequately reduce the impact to a level that is less than significant. In the latter case, an EIR would be required, but no "potentially significant impacts" have been identified for this proposed Project.

Important Note to the Reader:

The California Supreme Court in a December 2015 opinion [California Building Industry Association v. Bay Area Air Quality Management District, 62 Cal. 4th 369 (No. S 213478)] confirmed that CEQA, with several specific exceptions, is concerned with the impacts of a project on the environment, not the effects the existing environment may have on a project. Therefore, the evaluation of the significance of project impacts under CEQA in the following sections focuses on impacts of the project on the environment, including whether a project may exacerbate existing environmental hazards.

The City of San José currently has policies that address existing conditions (e.g., air quality, noise, and hazards) affecting a proposed project, which are also addressed in this section. This is consistent with one of the primary objectives of CEQA and this document, which is to provide objective information to decision-makers and the public regarding a project as a whole. The CEQA Guidelines and the courts are clear that a CEQA document (e.g., EIR or Initial Study) can

include information of interest even if such information is not an “environmental impact” as defined by CEQA.

Therefore, where applicable, in addition to describing the impacts of the project on the environment, this chapter will discuss project effects related to policies pertaining to existing conditions. Such examples include, but are not limited to, locating a project near sources of air emissions that can pose a health risk, in a floodplain, in a geologic hazard zone, in a high noise environment, or on/adjacent to sites involving hazardous substances.

Discussion of Environmental Impacts

The proposed Project will have potentially adverse short-term impacts on some biological., soils, and water resources. These impacts can be reduced to a level that is less than significant by implementing the resource protection measures described in Section 6 of this Initial Study and the conditions set forth in the Draft Streambed Alteration Agreement issued by the California Department of Fish and Wildlife for the Project or final permit conditions as required in this Initial Study’s Mitigation Measure BR-1 in the subsequent Biological Resources section).

I. Aesthetics

1. Setting

Except as provided in Public Resources Code Section 21099, would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Have a substantial adverse effect on a scenic vista?				x
b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?				x
c. In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?				x
d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?				x

a. Regulatory Framework

State

State Scenic Highways Program

The State Scenic Highways Program is designed to protect and enhance the natural scenic beauty of California highways and adjacent corridors through special conservation treatment. There are no State-designated scenic highways in San José. The Project site is not located near any scenic highways.

City of San José

Envision San José 2040 General Plan

The 2040 General Plan identifies “gateways”, freeways, and rural scenic corridors where preservation and enhancement of views of the natural and man-made environment are crucial. The Project is not located along any scenic corridors per the City’s Scenic Corridors Diagram. The General Plan contains 29 City design policies to protect the City’s aesthetic resources and minimize the effects of new development on these resources and the City’s viewsheds. A review of these policies concludes that none of these policies are pertinent or applicable to the

proposed Project, since the Project is not visible from a public vantage point, and it does not include new buildings, roads, signs, or lighting.

b. Existing Conditions

Standing at the top of the creekbank next to the levee access road, one has a view of an eroded steep creekbank with a band of bulrush near the water. The site is bounded on the downstream section by riprap along the bank (see Photo 3). To the north is a more intact wetland (see Photos 2 to 4). There is no public access to the site access road. The area to the north (across the creek) is managed wetlands. There is no public trail on this site with a view of the Project site, and the site is not visible from Fremont Boulevard (the nearest public street).

2. Impacts

Except as provided in Public Resources Code Section 21099, would the project:

a. *Have a substantial adverse effect on a scenic vista?* **No impact.**

The site is not visible from Fremont Boulevard, SR 680, Dixon Landing Road, or other public roads to the east. To the northeast across Coyote Creek are wetlands. The Project site is visible only from the NISL access road and the marsh area across Coyote Creek. There are no public vantage points providing a view of the site. The Project site is an eroding creekbank bordered to the south, west, and east by the landfill, gas collection pipelines, and buildings on NISL. As such, the Project site is not part of a scenic vista.

The Project would create a more gradual creekbank slope with additional plantings, which would enhance views of the site from the immediately adjacent vantage points. Since the Project site is not visible from any public vantage points and because it is an eroded streambank bordered by industrial development, the Project would have no impact on a scenic vista.

b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway? **No Impact.**

The Project would not affect a scenic resource, including trees, rock outcroppings and historic buildings, and the Project site is not visible from a state-designated scenic highway. Accordingly, the Project would have no impact on scenic resources.

c. *In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?* **No impact.**

The Project site is within the City of San José, which is an urban area. As mentioned above, the Project site is an eroded steep creekbank flanked by an unpaved access road and landfill facilities. As such, the site has low aesthetic value. The proposed Project would improve the quality of the creekbank by stabilizing it and adding new vegetation along the upper portion of the bank and a planting bench to be planted with bulrush on the lower portion of the bank. As such, the Project will not substantially degrade the views of the site from the private vantage points in the immediate area of the site. The Project would be consistent with Envision San José 2040 General Plan policies related to aesthetics and consistent with the existing zoning. Therefore, there would be no adverse impact on the visual character or quality of the site.

d. *Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?* **No impact.**

The Project would not include any lighting and would not result in new surfaces that would create glare. Therefore, there would be no impact from new lights or sources of glare.

II. Agriculture and Forestry Resources

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?				x
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract?				x
c. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?				x
d. Result in the loss of forest land or conversion of forest land to non-forest use?				x
e. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?				x

1. Setting

a. Regulatory Framework

In California, agricultural land is given consideration under CEQA. According to Public Resources Code §21060.1, "agricultural land" is identified as prime farmland, farmland of statewide importance, or unique farmland, as defined by the U.S. Department of Agriculture land inventory and monitoring criteria, as modified for California. CEQA also requires consideration of impacts on lands that are under Williamson Act contract. The Project area is identified as "Urban and Built-Up Land" on the Santa Clara County Important Farmlands Map.

CEQA requires the evaluation of forest and timber resources where they are present. The Project site is located in an urban area and has been used for heavy industrial uses for decades. The site does not contain any forest land as defined in Public Resources Code section 12220(g), timberland as defined by Public Resources Code section 4526, or property zoned for Timberland Production as defined by Government Code section 51104(g).

b. Existing Conditions

The Project site is a creekbank on a property used as a landfill. Land uses within 1,000 feet of the landfill property include the San Francisco Bay National Wildlife Refuge and wetlands southwest, west, and northwest of the site; and the San José/Santa Clara Water Pollution Control Plant (WPCP) and biosolids lagoons south and southeast of the landfill. Lands north, northeast, and east of the Project site are currently being developed for commercial/light industrial uses or are being managed as restored wetlands.

2. Impacts

a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use? **No impact.**

The proposed Project site is not designated as Farmland or used for agricultural purposes, nor is it subject to a Williamson Act contract. In addition, nearby lands are managed wetlands or landfill, and recycling uses, and there are no adjacent or nearby agricultural uses that would be impacted by the proposed Project. For these reasons, the proposed Project would not convert Farmland to non-agricultural uses, conflict with existing zoning for agricultural use or a Williamson Act contract, or result in the conversion of farmland to nonagricultural use.

b. Conflict with existing zoning for agricultural use, or a Williamson Act contract? **No impact.**

The site is zoned A(PD) Planned Development Zoning District. However, the site has been a landfill since the 1930s. The landfill is considered an allowed land use by this Planned Development zoning. Additionally, there is not a Williamson Act contract for the Project site. Therefore, the Project would have no impact on agriculture or Williamson Act contracts.

c. *Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?* **No impact.**

The site is not zoned as forest land or timberland. Accordingly, the Project would not conflict with forest land or timberland zoning.

d. Result in the loss of forest land or conversion of forest land to non-forest use? **No impact.**

The site is a creekbank and does not contain forest land, also it would not result in conversion of such land to other uses.

e. *Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use?* **No impact.**

There is no Farmland in the area, so proposed construction of the Project would not directly or indirectly result in conversion of Farmlands to other uses.

III. Air Quality

An Air Quality Assessment was prepared for the Project by Geoff H. Hornek Environmental Air Quality and Acoustical Consulting (November 2018). This report is contained in Appendix A.

Where available, the significance criteria by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations. Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Conflict with or obstruct implementation of the applicable air quality plan?			X	
b. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?			x	
c. Expose sensitive receptors to substantial pollutant concentrations?			x	
d. Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?			x	

1. Setting

a. Regulatory Framework

Federal and State

The Project site is located within the San Francisco Bay Area (Bay Area) Air Basin. Air quality in the air basin is governed by the Bay Area Air Quality Management District (BAAQMD). The BAAQMD is responsible for implementing emissions standards and other requirements of federal and state laws. The Federal Clean Air Act and the California Clean Air Act mandate the control and reduction of specific air pollutants. Under these Acts, the U.S. Environmental Protection Agency and the California Air Resources Board have established ambient air quality standards for specific "criteria" pollutants, designed to protect public health and welfare. Primary criteria pollutants include carbon monoxide (CO), reactive organic gases (ROG), nitrogen oxides (NOX), particulate matter (PM10), sulfur dioxide (SO2), and lead (Pb). Secondary criteria pollutants include ozone (O3), and fine particulate matter (PM2.5).

The U.S. EPA administers the National Ambient Air Quality Standards (NAAQS) under the Federal Clean Air Act. EPA sets the NAAQS and determines if areas meet those standards. Violations of ambient air quality standards are based on air pollutant monitoring data and judged for each air pollutant. Areas that do not violate ambient air quality standards are considered to have attained the standard. EPA has classified the region as a nonattainment area for the 8-hour O3 standard and the 24- hour PM2.5 standard. The Bay Area has met the

CO standards for over a decade and is classified as an attainment area by the U.S. EPA. The U.S. EPA has deemed the region as attainment/unclassified for all other air pollutants, which include PM10. At the State level, the Bay Area is considered nonattainment for ozone, PM10 and PM2.5.

Regional

The BAAQMD is primarily responsible for assuring that the federal and state ambient air quality standards are attained and maintained in the Bay Area. The BAAQMD's May 2017 CEQA Air Quality Guidelines update the 2010 CEQA Air Quality Guidelines, addressing the California Supreme Court's 2015 opinion in the California Building Industry Association vs. Bay Area Air Quality Management District court case.

The BAAQMD, along with other regional agencies (e.g., ABAG and MTC), develop plans to reduce air pollutant emissions. The most recent clean air plan is the Bay Area 2017 Clean Air Plan: Spare the Air, Cool the Climate (2017 CAP), which was adopted by BAAQMD in April 2017. This is an update to the 2010 CAP, and centers on protecting public health and climate. The 2017 CAP identifies a broad range of control measures. These control measures include specific actions to reduce emissions of air and climate pollutants from the full range of emission sources and is based on the following four key priorities:

- Reduce emissions of criteria air pollutants and toxic air contaminants from all key sources.
- Reduce emissions of "super-GHGs" such as methane, black carbon, and fluorinated gases.
- Decrease demand for fossil fuels (gasoline, diesel, and natural gas).
- Decarbonize our energy system

Toxic Air Contaminants

Toxic air contaminants (TACs) are a broad class of compounds known to cause morbidity or mortality (usually because they cause cancer). TACs are found in ambient air, especially in urban areas, and are caused by industry, agriculture, fuel combustion and commercial operations (e.g., dry cleaners). TACs are typically found in low concentrations, even near their source (e.g., diesel particulate matter near a freeway). Because chronic exposure can result in adverse health effects, TACs are regulated at the regional, state, and federal level.

Diesel exhaust is the predominant TAC in urban air and is estimated to represent about three quarters of the cancer risk from TACs. According to CARB, diesel exhaust is a complex mixture of gases, vapors, and fine particles. This complexity makes the evaluation of health effects of diesel exhaust a complex scientific issue. Some of the chemicals in diesel exhaust, such as

benzene and formaldehyde, have been previously identified as TACs by CARB, and are listed as carcinogens either under California Proposition 65 or under the Federal Hazardous Air Pollutants programs.

Odors

Common sources of odors and odor complaints include wastewater treatment plants, transfer stations, coffee roasters, painting/coating operations, and landfills.

Sensitive Receptors

The BAAQMD defines sensitive receptors as facilities where sensitive population groups are located, including residences, schools, childcare centers, convalescent homes, and medical facilities. Land uses such as schools and hospitals are considered more sensitive than the general public to poor air quality because of an increased susceptibility to respiratory distress within the populations associated with these uses.

City of San José

Various policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to air quality. In addition, goals and policies throughout the 2040 General Plan encourage a reduction in vehicle miles traveled. Relevant policies include:

- **MS-10.1** Assess projected air emissions from new development in conformance with the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines and relative to state and federal standards. Identify and implement feasible air emission reduction measures.
- **MS-10.2** Consider the cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law.
- **MS-13.1** Include dust, particulate matter, and construction equipment exhaust control measures as conditions of approval for subdivision maps, site development and planned development permits, grading permits, and demolition permits. At a minimum, conditions shall conform to construction mitigation measures recommended in the current BAAQMD CEQA Guidelines for the relevant project size and type.

b. Existing Conditions

The Project site is a streambank. There are no emissions generated on the site. The nearest sensitive land use is a residential complex located approximately 0.6 miles southeast of the Project site, east of I-880 and south of Dixon Landing Road.

2. Impacts

a. Conflict with or obstruct implementation of the applicable air quality plan? **Less than significant impact.**

For air quality plan consistency determinations, the BAAQMD recommends that agencies analyze the project with respect to the following questions: (1) does the project support the primary goals of the air quality plan; (2) does the project include applicable control measures from the air quality plan; and (3) does the project not disrupt or hinder implementation of any 2017 CAP control measures? If all the questions are concluded in the affirmative, BAAQMD considers the project consistent with air quality plans prepared for the Bay Area.

The Project consists of the repair of approximately 140 feet of streambank for the continued safe operation of an existing, permitted landfill. As presented in the subsequent impact discussions, proposed Project-related construction and operations would not exceed the identified BAAQMD CEQA Guidelines thresholds for identifying potentially significant emission impacts or a cumulatively considerable contribution to a cumulative air quality impact. These thresholds are used to determine project compliance with CAP emission goals. Therefore, the proposed Project would support the primary goals of the 2017 CAP (Criterion 1 above). As mentioned above, projects that incorporate all feasible air quality plan control measures are considered consistent with the 2017 CAP. The Project, including implementation of the City's standard permit conditions for particulate emissions control, would be consistent with the CAP.

Regarding Consistency with Criterion No. 2 and 3, consistency of the Proposed Project with 2017 Clean Air Plan is demonstrated by assessing whether the Project supports all of the Project-applicable Clean Air Plan control measures. The control strategies of the Clean Air Plan include Stationary Source Measures, Mobile Source Measures, and Transportation Control Measures. The 2017 Clean Air Plan also identifies two additional subcategories of control measures, which are Land Use and Local Impact Measures, which address the exposure of sensitive receptors to TACs, and Energy and Climate Measures, which address greenhouse gas emissions.

Stationary Source Measures in the Clean Air Plan, such as those implemented to control emissions from metal melting facilities, cement kilns, refineries, and glass furnaces, are not applicable to the Proposed Project. Therefore, consistency with the Clean Air Plan Stationary Source Measures is not evaluated further.

Transportation and Mobile Source Control Measures

The BAAQMD identifies transportation and mobile source control measures as part of the Clean Air Plan to reduce ozone precursor emissions from these sources. The transportation control measures are designed to reduce emissions from motor vehicles by reducing vehicle trips and vehicle miles traveled (VMT) in addition to vehicle idling and traffic congestion. The Proposed Project is consistent with the Clean Air Plan's transportation and mobile source control measures in that it a repair project for an existing land use (permitted landfill) located in an existing urban environment. The Project is considered 'infill development' as it proposes to redevelop a built-out property and enhance the physical design of the urban environment. Under PRC section 21061.3, an "infill site" is defined as a site that "has been previously developed for qualified urban uses." In turn, a "qualified urban use" is defined, pursuant to PRC section 21072, as "any residential, commercial, or public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses." Additionally, the Project site is located in an "urbanized area," which is defined under PRC section 21071 as "an incorporate city" that meets the criteria of having a population of at least 100,000 persons.

The Project proposes repair of a streambank for continued operation of an existing use, and it does not increase the intensity of the use. There is no potential for change in VMT or traffic related air pollutant emissions compared to the current condition. As a result, the Proposed Project would not conflict with the identified transportation and mobile source control measures of the Clean Air Plan.

Land Use and Local Impact Measures

The BAAQMD Clean Air Plan includes Land Use and Local Impact Measures to ensure that planned growth is focused in a way that protects people from exposure to air pollution associated with stationary and mobile sources of emissions and to promote mixed-use, compact developments to reduce motor vehicle travel and emissions. The Land Use and Local Impact Measures identified by the BAAQMD are not specifically applicable to the proposed Project as the project consists of one-time repair activity at an existing land use. For this reason, the Project would not conflict with any of the Land Use and Local Impact Measures of the Bay Area Clean Air Plan

Energy and Climate Control Measures

The Clean Air Plan also includes Energy and Climate Control Measures, which are designed to reduce ambient concentrations of criteria pollutants and reduce emissions of CO2. Implementation of these measures is intended to promote energy conservation and efficiency in buildings throughout the community. The proposed Project consists of one-time repair for the continued operation of an existing facility, with no new structure, building or operation proposed. Therefore, the Proposed Project would not conflict with the BAAQMD Energy and Climate Control Measures.

As outlined in Item c below, the *BAAQMD Basic Construction Measures* would ensure that the proposed Project would comply with applicable BAAQMD requirements for control of construction-related emissions and ensure that potential air emissions impacts would be reduced to less-than-significant levels.

The proposed Project would support the primary goals of the 2017 CAP, and it would not disrupt or hinder implementation of any 2017 CAP control measures. Therefore, there would be no impact associated with conflicting or obstructing implementation of the applicable air quality plan.

b. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard? **Less than significant impact.**

Project-related air quality impacts fall into two categories: short-term impacts due to construction, and long-term impacts due to operation. Once the creekbank is repaired, there will be no to minimal vehicle trips (to monitor the status of the creekbank repair) generated by the Project. Therefore, this analysis focuses on the short-term construction impacts.

Short-term Construction Impacts

During Project construction, the proposed Project would affect local particulate concentrations primarily due to fugitive dust sources and equipment exhaust. Particulate matter emissions include particulate matter of 10 microns in diameter or less (PM10) and particulate matter of 2.5 microns in diameter or less (PM2.5). Construction equipment exhaust (including both off-road equipment and on-road trucks) would also produce emissions of ozone precursors, including reactive organic gas (ROG) and nitrogen oxides (NOX).

Criteria pollutant and precursor exhaust emissions of ROG, NOx, PM10, and PM2.5 from construction equipment and vehicles would incrementally add to the regional atmospheric loading of these pollutants during the construction period. Impacts related

to the proposed Project contributing to an existing or projected air quality violation are judged by comparing estimated direct and indirect proposed Project exhaust emissions to the significance thresholds, which for short-term construction emissions are 54 pounds per day for ROG, NOx, and PM2.5; and 82 pounds per day for PM10. Only the exhaust portion of PM2.5 and PM10 emissions are compared against the construction thresholds.

Table 2 summarizes the average daily construction-related emissions. Appendix A contains the calculations used to77 prepare the emissions summary.

As depicted in Table 2, construction-related exhaust emissions would be below the BAAQMD construction thresholds, resulting in a less-than-significant impact. However, BAAQMD recommends the implementation of the Basic Construction Measures to reduce fugitive dust emissions. Therefore, during Project construction, the applicant, through its construction contractor(s), shall ensure compliance with the City's Standard Air Quality Permit (which encapsulates the BAAQMD Basic Construction Measures).

Table 2

Average Daily Unmitigated Construction-Related Emissions (lbs./day)

Emission Source	**ROG**	**NOx**	**Exhaust PM10**	**Exhaust PM 2.5**
Off-Road Construction Equipment	0.75	8.65	0.34	0.32
Haul Trucks	0.03	0.56	< 0.01	< 0.01
Delivery Trucks	< 0.01	0.03	< 0.01	< 0.01
Worker Commutes	< 0.01	0.01	< 0.01	< 0.01
Total	**0.77**	**9.24**	**0.35**	**0.32**
BAAQMD Construction Threshold	**54**	**54**	**82**	**54**
Significant Impact?	**No**	**No**	**No**	**No**

Appendix D to the User's Guide of CalEEMod (Version 2016.3.2) lists all the numerical values in the model database used to calculate development project criteria pollutant emissions. Diesel-powered construction equipment emission factors and on-road motor vehicle emission rates from EMFAC 2014 (the CARB's EPA-approved motor vehicle emission model) for haul/delivery trucks and worker commute vehicles, both from the model database, were used along with project-specific equipment type/number and truck/worker commute trips to estimate project construction emissions by Excel spreadsheet.

Standard Permit Conditions

- Water active construction areas at least twice daily or as often as needed to control dust emissions.
- Cover trucks hauling soil, sand, and other loose materials and/or ensure that all trucks hauling such materials maintain at least 2 feet of freeboard.
- Remove visible mud or dirt track-out onto adjacent public roads by using wet power vacuum street sweepers at least daily. The use of dry power sweeping is prohibited.
- Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (e.g., dirt, sand, etc.).
- Pave new or improved roadways, driveways, and sidewalks as soon as possible.
- Lay building pads as soon as possible after grading unless seeding or soil binders are used.
- Replant vegetation in disturbed areas as quickly as possible.
- Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- Minimize idling times either by shutting off equipment when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, CCR § 2485).
- Provide clear signage for construction workers at all access points.
- Maintain and properly tune construction equipment in accordance with manufacturer's specifications.
- Check all equipment by a certified mechanic and record a determination of "running in proper condition" prior to operation.
- Post a publicly visible sign with the telephone number and person at the Lead Agency to contact regarding dust complaints.

Implementation of measures listed above ensures that construction of the Project would not result in a violation of an air quality standard or contribute significantly to an existing or projected air quality violation.

As described above, construction emissions would be less than the significance thresholds established by BAAQMD and, furthermore, the Project would follow the

City's particulate emissions control measures. Therefore, the Project would not make a cumulatively considerable contribution to a significant cumulative air quality impact.

c. *Expose sensitive receptors to substantial pollutant concentrations?* **Less than significant impact.**

There are no sensitive receptors (e.g., residences, schools) in the immediate vicinity of the Project area. The nearest sensitive land use is a residential complex located approximately 0.6 miles southeast of the Project site, east of I-880 and south of Dixon Landing Road (refer to Figures 1 and 2). The existing San Francisco Bay Trail (ending on Fremont Boulevard to the north of the Project site) comes to within approximately 0.5 miles of the Project site. The proposed Project would have no operational air quality-related impacts, so this section only discusses construction emissions.

BAAQMD considers the relevant zone of influence for an assessment of air quality health risks to be within 1,000 feet. Therefore, Project-related construction emissions would be sufficiently distant from the nearest sensitive receptor locations to avoid localized health risk and hazard impacts. Short-term construction-related impacts associated with the proposed Project would therefore be less than significant.

d. *Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?* **Less than significant impact.**

Odors are typically associated with industrial projects involving the use of chemicals, solvents, petroleum products, and other strong-smelling elements used in manufacturing processes. New operations associated with the proposed Project would be limited to very minimal vehicle use by staff for visual inspections. Thus, the proposed Project operation is not expected to create objectionable odors and the odor impact associated with the proposed Project would be less than significant.

IV. Biological Resources

The following assessment of biological conditions and impacts is based on a Biological Evaluation that was prepared for the Project by Live Oak Associates, Inc. (December 4, 2018). This report is contained in Appendix B. The Project description (see Sections 4 and 6 in this Initial Study) contains a number of actions the applicant proposes to implement as part of the Project to protect and preserve sensitive biological resources. These actions were recommended in a 2018 biological assessment prepared for the applicant by H. T. Harvey & Associates as ways to reduce impacts to biological resources. Those recommendations were incorporated into the Project's Draft Storm Water Pollution Prevention Plan (SWPPP) and the Project description.

Subsequent to initiating preparation of the Initial Study, the Project applicant received a Draft Streambed Alteration Agreement (SAA) (Notification Number 1600-2018-0213-R3) issued for this Project by the California Department of Fish and Wildlife (CDFW) and a United States Army Corps of Engineers (USACE) Nationwide Permit 13 (File number 2018-00269S). Both of these documents are contained in Appendix C of this Initial Study. Both agencies reviewed the proposed Project design that included the aforementioned recommended protections for biological resources. The Draft SAA provides additional details regarding the design and implementation of the originally proposed protective actions in order to fully address impacts to biological resources. The Draft SAA contains 41 permit requirements to mitigate these impacts on biological resources, including a full mitigation monitoring and reporting component. If the Project is approved by the City, CDFW will issue the Final SAA, and the applicant will be legally required to implement all final SAA requirements as well as any other permit requirements from other responsible agencies. Compliance with these regulatory agency permits is included as a CEQA mitigation measure in this Initial Study (see subsequent Mitigation Measure BR-1). Conditions included in the final permits incorporate and elaborate on the protective measures included in the Project description and additional mitigations recommended in the appended Live Oak Associates' report. In addition, including the SAA and other permit conditions as a mitigation in this Initial Study provides the opportunity for the City to monitor SAA implementation to ensure that all SAA conditions are implemented.

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?		x		
b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?		x		
c. Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?		x		
d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?		x		
e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?		x		
f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?				x

1. Setting

Regulatory Framework

State and Federal

Threatened and Endangered Species

State and federal endangered species legislation has provided the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) with a mechanism for conserving and protecting plant and animal species of limited distribution and/or low or declining populations. Species listed as threatened or endangered under provisions of the state and federal endangered species acts, candidate species for such listing, state species of special concern, and some plants listed as endangered by the California Native Plant Society are collectively referred to as "species of special status." Permits may be required from both the

CDFW and USFWS if activities associated with a proposed project will result in the "take" of a listed species. "Take" is defined by the state of California as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill" (California Fish and Game Code, Section 86). "Take" is more broadly defined by the federal Endangered Species Act to include "harm" (16 USC, Section 1532(19), 50 CFR, Section 17.3). Furthermore, the CDFW and the USFWS are responding agencies under the California Environmental Quality Act (CEQA). Both agencies review CEQA documents in order to determine the adequacy of their treatment of endangered species issues and to make project-specific recommendations for their conservation.

Migratory Birds

State and federal laws also protect most birds. The Federal Migratory Bird Treaty Act (16 U.S.C., scc. 703, Supp. I, 1989) prohibits killing, possessing, or trading in migratory birds, except in accordance with regulations prescribed by the Secretary of the Interior. This act encompasses whole birds, parts of birds, and bird nests and eggs. In 2020, the federal government proposed to revise the act to allow incidental take of birds. The proposal is currently in the comment phase.

Migratory birds and their nests are also protected in California under the provisions of sections 3503 and 3513 of the California Fish and Game Code. Section 3503 of the Fish and Game Code makes it "unlawful to take, possess, or needlessly destroy the nests or eggs of any bird, except as otherwise provided by this code or any regulation made pursuant thereto." Section 3513 of the California Fish and Game Code makes it unlawful to "take or possess any migratory nongame bird as designated in the Migratory Bird Treaty Act or any part of such migratory nongame bird except as provided by rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Treaty Act."

Birds of Prey

Birds of prey are also protected in California under provisions of the State Fish and Game Code, Section 3503.5, which states that it is "unlawful to take, possess, or destroy any birds in the order Falconiformes or Strigiformes (birds of prey) or to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by this code or any regulation adopted pursuant thereto." Construction disturbance during the breeding season could result in the incidental loss of fertile eggs or nestlings, or otherwise lead to nest abandonment. Disturbance that causes nest abandonment and/or loss of reproductive effort is considered "taking" by the CDFW.

Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act (16 U.S.C., scc. 668-668c) prohibits anyone from taking bald or golden eagles, including their parts, nests, or eggs, unless authorized under a federal permit. The act prohibits any disturbance that directly affects an eagle or an active

eagle nest as well as any disturbance caused by humans around a previously used nest site during a time when eagles are not present such that it agitates or bothers an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.

Bats

Section 2000 and 4150 of the California Fish and Game Code states that it unlawful to take or possess a number of species, including bats, without a license or permit as required by Section 3007. Additionally, Title 14 of the California Code of Regulations states it is unlawful to harass, herd, or drive a number of species, including bats. To harass is defined as "an intentional act which disrupts an animal's normal behavior patterns, which includes, but is not limited to, breeding, feeding or sheltering."

Wetlands and Other Jurisdictional Waters

The U.S. Army Corps of Engineers (USACE) regulates the filling or grading of waters of the U.S. under the authority of Section 404 of the Clean Water Act (CWA). Natural drainage channels and adjacent wetlands may be considered waters of the United States (hereafter referred to as "jurisdictional waters") subject to the jurisdiction of the USACE. The extent of jurisdiction has been defined in the Code of Federal Regulations and clarified in federal courts.

On April 21, 2020, the Environmental Protection Agency and USACE jointly published the Navigable Waters Protection Rule to define "waters of the United States" (WOTUS) in the Federal Register. The final rule will become on June 22, 2020. The Rule will replace the Rule adopted on October 22, 2019 to repeal the 2015 Clean Water Rule: Definition of "Waters of the United States" ("2015 Rule"), which amended portions of the Code of Federal Regulations (CFR), and to restore the regulatory text that existed prior to the 2015 Rule. The 2020 Rule excludes several classes of waters from the definitions of "waters of the US" and provides less protection for ephemeral waters and wetlands than occurred under the 201 Rule.

The 2020 Navigable Water Protection Rule defines Waters of the U.S. to include the following:

1. All waters used in interstate or foreign commerce (also known as traditional navigable waters), including all waters subject to the ebb and flow of the tide.
2. All interstate waters including interstate wetlands;
3. The territories' seas;
4. All impoundments of Waters of the U.S.;
5. All tributaries of waters defined in Nos. 1 through 4 above, where "tributary" refers to a naturally occurring perennial or intermittent (in a typical year) surface water that

contributes flow to another water and is characterized by the physical indicators of a bed and bank and an ordinary high water (OHW) mark;

6. The term ‘‘tributary’’ includes a ditch that either relocates a tributary, is constructed in a tributary, or is constructed in an adjacent wetland as long as the ditch is perennial or intermittent and contributes surface water flow to a traditional navigable water or territorial sea in a typical year;
7. Adjacent wetlands are defined as wetlands abutting a jurisdictional water; and
8. The 2020 Rule excludes the following from the definition of “waters of the US”: groundwater; ephemeral features that flow only in direct response to precipitation; diffuse stormwater runoff and directional sheet flow; ditches that are not traditional navigable waters, tributaries, or that are not constructed in adjacent wetlands subject to certain limitations; prior converted cropland; racially irrigated areas that would revert to upland if irrigation ceases; artificial lakes and ponds that are not jurisdictional impoundments; water filled depressions related to mining or construction activities; and stormwater control features.

All activities that involve the discharge of dredge or fill material into Waters of the U.S. are subject to the permit requirements of the USACE. No permit can be issued until the RWQCB issues a CWA Section 401 Water Quality Certification (or waiver of such certification) verifying that the proposed activity will meet state water quality standards.

Under the Porter-Cologne Water Quality Control Act of 1969, the State Water Resources Control Board has regulatory authority to protect the water quality of all surface water and groundwater in the State of California (“Waters of the State”). Nine RWQCBs oversee water quality at the local and regional level. The RWQCB for a given region regulates discharges of fill or pollutants into Waters of the State through the issuance of various permits and orders. Discharges into Waters of the State that are also Waters of the U.S. require a Section 401 Water Quality Certification from the RWQCB as a prerequisite to obtaining certain federal permits, such as a Section 404 Clean Water Act permit. Discharges into all Waters of the State, even those that are not also Waters of the U.S., require Waste Discharge Requirements (WDRs), or waivers of WDRs, from the RWQCB.

The RWQCB also administers the Construction Storm Water Program and the federal National Pollution Discharge Elimination System (NPDES) program. Projects that disturb one or more acres of soil must obtain a Construction General Permit under the Construction Storm Water Program. A prerequisite for this permit is the development of a Storm Water Pollution Prevention Plan (SWPPP) by a certified Qualified SWPPP Developer. Projects that discharge wastewater, storm water, or other pollutants into a Water of the U.S. may require a NPDES permit.

CDFW has jurisdiction over the bed and bank of natural drainages and lakes according to provisions of Section 1601 and 1602 of the California Fish and Game Code. Activities that may substantially modify such waters through the diversion or obstruction of their natural flow, change or use of any material from their bed or bank, or the deposition of debris require a Notification of Lake or Streambed Alteration. If CDFW determines that the activity may adversely affect fish and wildlife resources, a Lake or Streambed Alteration Agreement will be prepared. Such an agreement typically stipulates that certain measures will be implemented to protect the habitat values of the lake or drainage in question.

City of San José

Tree Ordinance

The City of San José has a Tree Ordinance (Chapter 13.32 of the Municipal Code), which regulates the removal of trees. The City's Tree Ordinance seeks to:

- Promote the health, safety, and welfare of the city by controlling the removal of trees in the city, as trees enhance the scenic beauty of the city, significantly reduce the erosion of topsoil, contribute to increased storm water quality, reduce flood hazards and risks of landslides, increase property values, reduce the cost of construction and maintenance of draining systems through the reduction of flow and the need to divert surface waters, contribute to energy efficiency and the reduction of urban temperatures, serve as windbreaks and are prime oxygen producers and air purification systems.

- An "ordinance-size tree" is defined as any native or non-native tree with a circumference of 56 inches (diameter of 18 inches) at 24 inches above the natural grade of slope. For multi-trunk trees, the circumference is measured as the sum of the circumferences of all trunks at 24 inches above the natural grade of slope. The ordinance covers both native and non-native species. A tree removal permit is required from the City prior to the removal of any trees covered under the ordinance. Prior to the issuance of a removal permit, the City requires that a formal tree survey be conducted that indicates the number, species, trunk circumference and location of all trees which will be removed or impacted by the project.

Riparian Corridor Protection and Bird-Safe Design Policy

The City has adopted the Riparian Corridor Protection and Bird-Safe Design Policy. The policy requires setbacks from riparian corridors for buildings and various other improvements. The policy does not address setbacks needed for a streambank repair project, which by definition requires work within any setback. Projects within require setbacks need to submit a report(s) by qualified experts that there is no reasonable alternative to encroachment into the setback

area. The bird-safe design guidance does not apply to this project as it does not include new structures.

Envision San José 2040 General Plan

The Envision San José 2040 General Plan (General Plan) aims to protect biological resources when properties are developed in San José. The General Plan includes several policies relevant to biological protections including, but not limited to, the following:

- **Policy MS-21.4**: Encourage the maintenance of mature trees, especially natives, on public and private property as an integral part of the community forest. Prior to allowing the removal of any mature tree, pursue all reasonable measures to preserve it.

- **Policy MS-21.5**: As part of the development review process, preserve protected trees (as defined by the Municipal Code), and other significant trees. Avoid any adverse effect on the health and longevity of protected or other significant trees through appropriate design measures and City of San José 33 Initial Study One South Market Street Residential Project December 2012 construction practices. Special priority should be given to the preservation of native oaks and native sycamores. When tree preservation is not feasible, include appropriate tree replacement, both in number and spread of canopy.

- **Policy MS-21.6**: As a condition of new development, require, where appropriate, the planting and maintenance of both street trees and trees on private property to achieve a level of tree coverage in compliance with and that implements City laws, policies or guidelines.

- **Policy MS-21.9**: Where urban development occurs adjacent to natural plant communities (e.g., oak woodland, riparian forest), landscape plantings shall incorporate tree species native to the area and propagated from local sources (generally from within 5-10 miles and preferably from within the same watershed).

- **Policy ER-1.4**: Minimize the removal of ecologically valuable vegetation such as serpentine and non-serpentine grassland, oak woodland, chaparral, and coastal scrub during development and grading for projects within the City.

- **Policy ER-1.5**: Preserve and protect oak woodlands, and individual oak trees. Any loss of oak woodland and/or native oak trees must be fully mitigated.

- **Policy ER-1.7**: Prohibit planting of invasive non-native plant species in oak woodlands, grasslands, chaparral and coastal scrub habitats, and in hillside areas.

- **Policy ER-4.1**: Preserve and restore, to the greatest extent feasible, habitat areas that support special-status species. Avoid development in such habitats unless no feasible alternatives exist, and mitigation is provided of equivalent value.

- **Policy ER-4.2**: Limit recreational uses in wildlife refuges, nature preserves and wilderness areas in parks to those activities which have minimal impact on sensitive habitats.

- **Policy ER-4.3**: Prohibit planting of invasive non-native plant species in natural habitats that support special-status species.

- **Policy ER-4.4**: Require that development projects incorporate mitigation measures to avoid and minimize impacts to individuals of special-status species.

- **Policy ER-5.2**: Require that development projects incorporate measures to avoid impacts to nesting migratory birds.

- **Policy ER-6.3**: Employ low-glare lighting in areas developed adjacent to natural areas, including riparian woodlands. Any high-intensity lighting used near natural areas will be placed as close to the ground as possible and directed downward or away from natural areas.

- **Policy ER-6.6**: Encourage the use of native plants in the landscaping of developed areas adjacent to natural lands.

- **Policy ER-6.8**: Design and construct development to avoid changes in drainage patterns across adjacent natural areas and for adjacent native trees, such as oaks

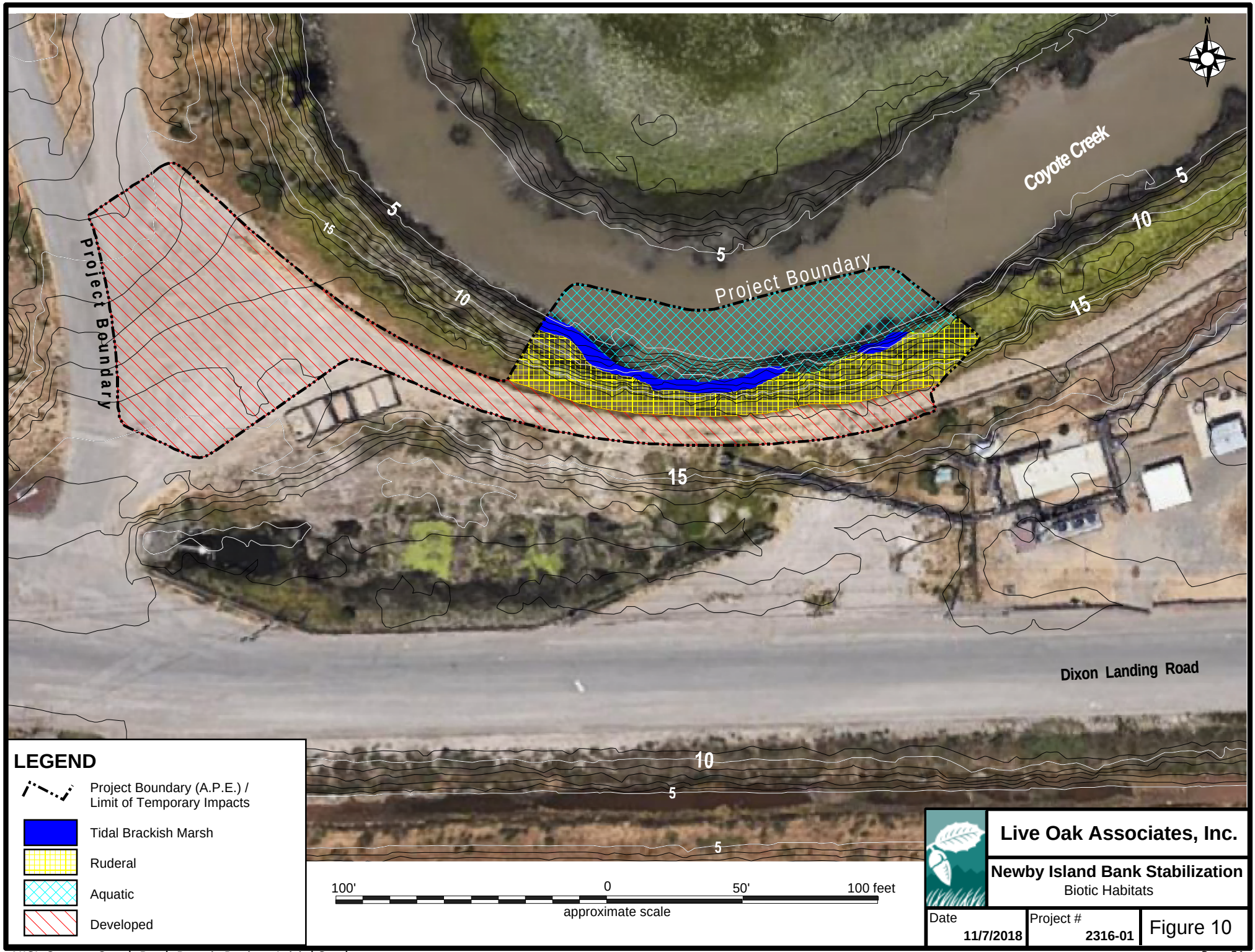
b. Existing Conditions

Biotic Habitats

Three biotic habitats were identified on the 15,000 square feet project site (see Figure 10) including tidal brackish marsh, ruderal, and aquatic. The marsh and aquatic habitats are within the riparian zone. The remainder of the site is developed. Each of these areas and associated biological resources are described below.

Tidal Brackish Marsh

A narrow strip of tidal brackish marsh totaling approximately 80 square feet is present within the Project area between the existing levee access road and Coyote Creek. The strip is discontinuous as there are areas where the habitat has been eroded away. Where present, the strip is approximately one foot wide located just below the MHHW elevation. This marsh area is


Coyote Creek
Project Boundary
Project Boundary
Dixon Landing Road
5
10
15
LEGEND
Project Boundary (A.P.E.) / Limit of Temporary Impacts
Tidal Brackish Marsh
Ruderal
Aquatic
Developed
100' 0 50' 100 feet
approximate scale
Live Oak Associates, Inc.
Newby Island Bank Stabilization
Biotic Habitats
Date 11/7/2018
Project # 2316-01
Figure 10

dominated by hardstem bulrush (*Schoenoplectus acutus*), which transitions to ruderal habitat higher on the creekbank. As shown in the earlier site photographs, this habitat type is common and widespread in this portion of Coyote Creek.

Pacific tree frogs (*Hyla regilla*) could occur in this habitat. Avian species observed include the black-crowned night heron (*Nycticorax nycticorax*), white-crowned sparrow (*Zonotrichia leucophyrys*), golden-crowned sparrow (*Zonotrichia leucophrys*), and red-winged blackbird (*Agelaius phoeniceus*).

Ruderal

Approximately 0.06 acres of ruderal habitat is present within the Project area along the Coyote Creek levee, above the tidal brackish marsh habitat. Ruderal habitat is also present all along the levee access road at the top of the creekbank. The lower slope is dominated by lamb's quarters (*Chenopodium album*), while the upper slope is dominated by such species as fennel (*Foeniculum vulgare*) and broad-leaved pepperweed (*Lepidum latifolium*). Other species occurring on the upper slope and above the top of bank include Italian rye grass (*Festuca perennis*), Bermuda grass (*Cynodon dactylon*), bromegrass (*Bromus diandrus*), annual beard grass (*Polypogon monspeliensus*), mallow (*Malva* sp.), ice plant (*Carpobrotus edulis*), curly dock (*Rumex crispus*), and alkali heath (*Frankenia salina*).

Western fence lizards (*Sceloporus occidentalis*) may seek cover in the ruderal vegetation. Avian species observed in this habitat include the white-crowned sparrow and golden-crowned sparrow.

Aquatic

Approximately 0.07 acres of aquatic habitat is present within the Project area. This is the Coyote Creek channel which is subject to tidal flows. No emergent vegetation was observed within the section of Coyote Creek within the proposed work area. The creek's outer bend is bordered by narrow mudflat.

Avian species observed in this habitat include the mallard (*Anas platyrhynchos*), common merganser (*Mergus merganser*), and American coot (*Fulica americana*). A white-tailed kite (*Elanus leucurus*) was observed in the marshland immediately north of the Coyote Creek channel.

Developed

Approximately 0.20 acres of developed area is present within the Project site. The developed area consists of an existing staging area and the gravel levee access road.

Avian species observed foraging or flying over this habitat included rock pigeon (*Columba livia*), California gull (*Larus californicus*), northern harrier (*Circus hudsonius*), black phoebe (*Sayornis nigricans*), common raven (*Corvus corax*), and Brewer's blackbird (*Euphagus cyanocephalus*). Several Botta's pocket gopher holes and California ground squirrel burrows were present along the edges of the gravel access road. Red fox (*Vulpes vulpes*) and raccoon (*Procyon lotor*) tracks and scat were present on the access road. A feral cat (*Felis catus*) was also observed along the road.

Special Status Plants and Animals

A number of special status plants and animals occur in the vicinity of the study area. These species, and their potential to occur in the study area, are listed in Table 2 of Appendix B. Of the 31 special status animal species known to occur in the region, thirteen (13) have the potential to occur on the site. These thirteen species include: steelhead, longfin smelt, western pond turtle, California black rail, California Ridgway's rail, yellow rail, golden eagle, burrowing owl, peregrine falcon, northern harrier, white-tailed kite, saltmarsh common yellowthroat, and Alameda song sparrow.

Of the 14 special status plant species that could potentially occur on the Project site, the preparers of the Biological Evaluation determined that four species were absent from the site and that the remaining 10 species are unlikely to occur given site soils and conditions.

Special Status Birds

The California black rail, California Ridgway's rail, yellow rail, golden eagle, burrowing owl, peregrine falcon, northern harrier, white-tailed kite, saltmarsh common yellowthroat, and Alameda song sparrow may occur as occasional or regular foragers or may be residents on the site. All of these species may forage in the marshlands and ruderal grasslands of the site year-round or during migration.

Jurisdictional Waters

Coyote Creek is a known water of the U.S. that is tributary to the San Francisco Bay, a traditional navigable water of the United States. The limit of USACE jurisdiction, as well as that of the RWQCB, over the creek is the ordinary high water mark. The creek is also subject to the jurisdiction of the CDFW up to the top of bank or the edge of associated riparian vegetation, whichever is greater. No other jurisdictional waters or wetlands are present on the site.

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Regulatory Compliance

At the time this Initial Study was prepared, the applicant had received Project authorization from the USACE under Nationwide Permit 13 (File number 2018-00269S). A Draft Streambed Alteration Agreement (Notification Number 1600-2018-0213-R3) has also been issued for this Project by the CDFW.

2. Impacts

Impact Overview

The impacts caused by the Project construction activities during the 22-day construction period are short-term in nature. Once Project construction is completed, long-term impacts would be from future operation of the bank repair improvements.

Short-term Construction-Related Impacts

The impacts caused by the Project construction activities including staging during the 22-day construction period are short-term in nature. The proposed construction activities involve removing all vegetation from the 7,250-square foot site of the proposed repair. As shown previously on Figure 4 (Staging), the total area of temporary impact is 15,000 square feet (approximately 0.33 acre), which includes the access road, staging area, and areas impacted by grading and bank work. Grading and other site disturbance activities such as vegetation removal will impact 7,250 square feet (0.17 acres) and 138 feet of existing bank. The Project will involve moving approximately 240 cubic yards of material and involve the permanent placement of 170 cubic yards of rock and soil below the Mean Higher High Water (MHHW) level in the channel. The grading and land disturbance will remove existing vegetation and wildlife habitat at the site. Upon completion, the site will be revegetated to provide new plantings and wildlife habitat.

All vegetation will be removed by hand crews under the supervision of a qualified biologist. As shown on the previous Figure 9, the bank slope will be regraded to a 2:1 slope to provide a stable slope that will also allow the installation of the large rocks and wood cluster for stabilizing the lower portion of the bank and installation of a planting bench where bulrush will be planted. As shown on Figure 7, five woody debris clusters will be installed in the revetment along with a planting bench to allow planting of bulrush This planting bench will be composed of soil placed on top of the rock revetment. The area between the MHHW elevation and the access road at the top of the bank will be seeded with native plants local to the Project area.

Materials to be used to construct the Project will be stored on the flat staging area at the east end of the Project site. Rocks, woody debris, and other repair materials will be placed in the channel by a long reach excavator working from the access road at the top of the bank. All vegetation will be removed from the repair site and the slope will be regraded prior to placement of new stone, soil, and wood materials. All construction will be done per the BMPs of the Draft SWPPP (Figure 8) as amended by additional clarifications and conditions required in the permits and agreements the Project will obtain. These BMPs will all be consistent with Construction General Permit requirements and the City's Riparian Corridor Policy.

The Project includes placement of stone, soil, and wood materials below the MHHW elevation in Coyote Creek. Disturbance of this area would be subject to stream flows, especially when

the stream elevation reached the MHHW elevation. To prevent eroded sediments discharged during grading and repair operations from escaping downstream, a turbidity curtain will be installed around the water portion of the repair site. This curtain will trap eroded sediments to prevent them flow off the repair site and adversely affecting water quality downstream and off the site. The curtain will be in place for approximately 20 days before it is removed.

The Project (see Section 6) includes a number of measures to ensure that plants, animals, and water quality are not be significantly affected during the construction phase. As described at the beginning of this Biological Resources section. These preliminary mitigations are part of the Project description and the Project's Draft SWPPP.

A turbidity curtain will be installed in the creek to contain sediment dislodged by bank repair. If not properly installed, the turbidity curtain could adversely affect fish and aquatic wildlife, fish habitat, and fish movement. Installation of rocks and other materials below the MHHW elevation could adversely affect water quality with consequent adverse effects on special status fish species. These short-term effects on special status species are discussed further below.

To summarize, potential short-term construction impacts may include: 1) loss of some natural vegetation and wildlife habitat on the bank repair site; 2) soil erosion from the regraded slope; 3) construction noise impacts on nesting birds; 4) water quality impacts on Coyote Creek from soil erosion and construction within the stream channel; and 5) impacts to special status fish and aquatic species from construction in the channel and placement of the turbidity curtain. These impacts are described in more detail in the subsequent impact analyses.

Long-term Impacts

The purpose of this project is the repair and stabilization of an eroded streambank. The area is not used for any operations of the facility. One long term impact of the Project could be the routine maintenance and any repair needed of the constructed streambank. The need for and the intensity and duration of such activities are speculative in nature. Any such work will require compliance with the regulatory agency permits and may be subject to further CEQA review, as applicable.

The other potential long-term impacts would be possible effects to downstream habitat value for sensitive fish species from future erosion and sediment escape. The US Army Corps of Engineers in the Permit they approved for the Project found that if the Project is constructed per the BMPs and conditions listed in the Project description and USACE permit requirements that the Project would not adversely affect special status species nor designated critical habitat for green sturgeon. Accordingly, assuming Project construction congruent with permit conditions established by CDFW and USACE, the Project operations will have less-than-significant impacts on special status species and other biological resources. Therefore, the following impact assessment discussions focus on construction-related impacts

a. Have a substantial adverse effect, either directly or through habitat modification, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service?
Less than significant with mitigation incorporated.

Special Status Plants

As described on page 33 of the biological report contained in Appendix B, Project construction would have no impacts on any of the fourteen special status plant species that have been documented within the general Project vicinity (as listed in Table 2 in Appendix B), as these species are either absent from or unlikely to occur on the site due to unsuitable habitat conditions and lack of recent occurrences in the immediate vicinity of the site. Therefore, state and federal laws and local policies protecting special status plants would not be relevant to construction of the Project.

Special Status and Protected Species of Birds

While no nests were observed on the site, ruderal and marsh vegetation on the site and immediately adjacent to the site provide suitable habitat for nesting avian species, including California black rail, California Ridgway's rail, yellow rail, golden eagle, peregrine falcon, northern harrier, white-tailed kite, saltmarsh common yellowthroat, Alameda song sparrow, as well as migratory birds and protected birds of prey. Burrowing owls may establish nests in ground squirrel burrows occurring within the Project area. Other ground-nesting species (e.g., northern harriers) may also establish nests or otherwise occur on the site in the future. If a special status bird, migratory bird or bird of prey were to nest on or adjacent to the site prior to or during proposed construction activities, such activities may disrupt nesting behavior or could result in the abandonment of active nests, direct mortality or other harm to these birds.

Construction activities that adversely affect the nesting success of special status birds, migratory birds and other birds of prey or result in mortality, injury, or other harm of individual birds would be considered a significant impact

Avoidance of the non-breeding season, pre-construction surveys conducted by qualified biologists in compliance with regulatory agency protocols and compliance with regulatory agency permits will reduce these potential significant impacts to less than significant.

The potentially significant impacts are addressed by conditions set forth in the Draft SAA. For example, the Draft SAA requires work to be done from June 15 to October 15. Work will be monitored by a CDFW-approved qualified biologist. A CDFW-approved qualified biologist will survey the work site 48 hours prior to work to determine the presence of special status species. Protocols are provided for avoiding or, if necessary,

relocating any special status species found at the site. a nesting bird survey will be conducted by a CDFW-approved qualified biologist within 14 days of the start of construction with a second survey 48 hours prior to the start of construction. If nesting birds are found the SAA requires standard nest buffers.

Special Status Fish

Project construction will result in a less-than-significant direct impact to green sturgeon, steelhead, and longfin smelt. Green sturgeon are not known to occur in south San Francisco Bay. While steelhead and longfin smelt are known to occur in Coyote Creek, the Project area does not constitute spawning habitat. At most, these species would be expected to migrate through the Project area.

Project proposes that during construction, a turbidity curtain will be installed around the in-stream work area to minimize the deposition of fine silt and sediment into the creek channel beyond the work area, resulting in a temporary reduction of aquatic habitat during construction. Because the turbidity curtain will only enclose the work area and not the entire width of the channel, fish would still be able to pass through this reach of Coyote Creek. Following Project completion, the turbidity curtain would be removed, once again allowing full use of the creek channel. The curtain will be in place for approximately 20 days or the duration of the construction period.

As described previously in Section 6 of this Initial Study; protection measures were incorporated into the Project design in order to avoid and minimize impacts to fish. These measures are summarized below. Construction is proposed to occur between June 15 and October 15, when flows within Coyote Creek would be at their lowest and special status fish are not expected to be migrating through the Project area. Fish will be excluded from the work area by qualified biologists during installation of the turbidity curtain, and a biological monitor will be present during installation. Therefore, no fish are expected to occur within the work area during construction. Additionally, as described previously in Section 6 of this Initial Study, construction personnel will be trained on special status fish that could occur in the Project area and measures being taken to protect them.

The Draft Streambed Alteration Agreement issued by the CDFW for the Project includes all protection measures incorporated into the Project as well as additional details on how those measures would be carried out. In addition, the Draft SAA requires pre-construction fish and wildlife surveys within 48 hours prior to each phase of construction. It specifies actions to be taken in case any special status species are encountered during the construction, and if any aquatic wildlife becomes entrapped by the turbidity curtain.

Because impacts to fish habitat would be temporary, and because protection measures included in the Draft SAA will be implemented as part of Project construction, impacts to special status fish will be reduced to a less-than-significant level when the Project is implemented in accordance with the regulatory agency permits. All protection measures for fish and all other resources listed in the SAA will be monitored by CDFW and the City to ensure that the measures are implemented as required.

The USACE has authorized the Project (contingent upon successful completion of the CEQA review process) under Nationwide Permit 13 (File number 2018-00269S) after consulting with the USFWS and the National Marine Fisheries Service (NMFS). The USFWS concurred with the determination that the Project was not likely to adversely affect the California Ridgway's rail or salt marsh harvest mouse, while NMFS concurred with the determination that the Project was not likely to adversely affect green sturgeon or steelhead or designated critical habitat for these species.

Western Pond Turtle

A very small section of Coyote Creek bank will be impacted by the proposed Project, and this section is not current turtle habitat, nor does it constitute a significant amount of the available turtle habitat along Coyote Creek. Accordingly, as described in the Biological Evaluation (see Appendix B), because the Project site does not contain turtle habitat, it will result in a less-than-significant short-term impact to habitat for western pond turtles. As described earlier, the Project also would not result in a significant long-term loss of turtle habitat.

However, individual turtles are known to occur along Coyote Creek and may forage within the Project area. Construction activities associated with the bank repair work (e.g., grading or rock placement) may result in harm, injury, or death of individuals, which would be considered a significant impact.

As identified in Section 6 of this Initial Study; protection measures have been incorporated into the Project design to reduce possible impacts to turtles during construction. These actions have been revised and included as conditions in the Draft SAA. One SAA permit condition is to install exclusionary fencing to ensure turtles do not enter the work area. As noted previously, the Project requires pre-construction surveys of the site by a qualified biologist at the time of installation of the exclusionary fencing. Any turtles discovered inside the perimeter of the fencing will be removed by the biologist. Other conditions include holding pre-construction construction training session for all construction personnel on sensitive species that could be encountered on the site, pre-construction surveys, exclusion of fish and other aquatic species from the in-stream work area prior to installation of the turbidity curtain, and removal of vegetation using hand-held equipment.

The draft SAA includes the protocol for handling any individuals encountered and capturing and relocating turtles or other stranded aquatic life on the Project site. In issuing the Draft SAA, CDFW concludes that compliance with the protection measures required in the Draft SAA would reduce impacts to turtles to a less-than-significant level.

During construction, the Project would implement standard best management practices (BMPs) in compliance with local regulations, including a Construction General Permit for Stormwater and Stormwater Pollution Prevention Plan (SWPPP) (refer to Section 3.10, Hydrology and Water Quality), and the requirements of the City of San José Riparian Corridor Policy, which includes guidance for how Riparian Projects should be designed to protect and preserve the City's Riparian Corridors. As described previously, the Project will be constructed and monitored to comply with all conditions set forth in the final SAA as well as conditions that may be imposed by the Regional Water Quality Control Board (RWQCB (Section 401 Water Quality Certification requirements) and the San Francisco Bay Conservation and Development Commission (Abbreviated Regionwide Permit requirements).

Mitigation Measure BR-1: Obtainment of and compliance with regulatory approval from resource agencies as required: The project proponent shall obtain permits and approvals from US Army Corp of Engineers (USACE), Regional Water Quality Control Board (RWQCB), and/or California Department of Fish and Wildlife (CDFW) and/or any other agency, as applicable.

If necessary, in order to ensure that the Project results in no net loss of habitat functions and values, Project Proponent shall compensate for the loss of resources or habitat through on-site restoration/creation, off-site protection and enhancement of habitat, and/or purchase of mitigation credits consistent with the terms and conditions of permits and approvals from the resource agencies (such as, USACE, RWQCB, and CDFW, and as applicable). On-site or-off-site habitat restoration/creation and/or purchase of mitigation credits consistent with the terms and conditions of the resource agency permits shall be determined in consultation with the resource agencies, as applicable.

Prior to the issuance of any Grading Permit or any site disturbance, the Project proponent shall prepare and submit to the City's Environmental Supervising Planner, a letter report identifying the compliance process with all agency permits; including copies of all permits obtained from these resource agencies. Within three months of the completion of the Project construction, the Project proponent shall prepare and submit to the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement another letter report identifying the compliance process with all agency permits; including any compliance or closure documents obtained from the resource agencies. These plans and reports shall be

prepared to the satisfaction of the Supervising Environmental Planner of the City of San José Department of Planning, Building and Code Enforcement.

Impact Significance After Mitigation

These mitigations would reduce direct impacts to special-status species as well as indirect impacts due to impaired water quality from Project construction to a less-than-significant level. This finding is consistent with CEQA Guidelines Section 15126.4 (a)(1)(B) that states: *Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards*. CDFW is the State agency responsible for protection of biological resources. CDFW finds that their SAA conditions would reduce biological impacts to a less-than-significant level, which conforms to the conclusions reached in this Initial Study's Biological Evaluation.

b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service? **Less than significant with mitigation incorporated.**

As described previously in the Setting section, the site contains three habitat types—tidal brackish marsh, ruderal, and aquatic. The tidal brackish marsh habitat consists of a narrow and discontinuous band of hardstem bulrush on the steep creekbank where the bank is underwater during the higher water elevations (the MHHW marks the upper extent of marsh vegetation). This habitat type is considered a sensitive habitat type. The 80-square feet of this habitat type extends along approximately 130 feet of the bank on the Project site. It is discontinuous as toe scour erosion has removed the bulrush in some locations. As can be seen on Photograph No. 1, the "marsh" is an approximately one-foot-wide band of hardstem bulrush plants located on a steep bank at the water's edge.

The creek channel itself contains 0.7 acres of aquatic habitat; there is no emergent vegetation in this small area of the channel. The aquatic and tidal brackish marsh types are within the riparian zone. This riparian zone contains no trees or shrubs. There are no other riparian habitat types (e.g., riparian woodland) on the site.

Short-term Construction Impacts

As described under the discussion of the previous Checklist item, Project construction will remove the existing tidal brackish marsh and ruderal plant communities on the site and install boulders and large wood clusters in the channel at the toe of the bank. The

ruderal habitat is vegetated primarily with non-native plant species and is not a characterized as a sensitive habitat type. The Project would result in the loss of 80 square feet of tidal brackish marsh habitat. Adding would and rock materials to the creek channel at the toe of the bank would alter the aquatic habitat, which is mud-bottomed with no emergent vegetation.

As described in Section 6.0, the Project includes many measures to protect biological and other resources, including natural habitat on the site. The Project includes a replanting plan to establish a new stand of bulrush on an approximately 5-foot-wide planting bench located just below the MHHW elevation. This bench and planting will be constructed during the construction phase. Other proposed Project measures include planting the regraded bank uphill of the planting bench with native plants and installing large woody debris bundles at the toe of the slope. Other measures prevent contaminants or debris from entering the stream channel; removal of vegetation only with hand labor; revegetation of all disturbed areas with native grasses; and implementation of erosion control measures.

The Project also includes installation of five wood debris clusters at the toe of the bank that will be anchored by large ballast boulder and integrated into the rock placemen. This installation plus other measures listed above will result in a more varied creek bottom that should provide additional niches for aquatic wildlife. In addition, as described above, the toe of the bank will now be stabilized and not at risk from further toe scour and erosion. The Draft SAA also includes these protection measures and itemizes the type and size of rock to be used to ensure that it does not adversely affect the aquatic habitat

Accordingly, the proposed short-term Project impacts to the aquatic habitat is reduced to a less-than-significant level by implementing Draft SAA conditions included in Mitigation Measure BR-1 regarding size and type of materials, proper placement and anchoring of materials, and adding additional habitat value by incorporating five large wood clusters. The new aquatic habitat on the Project sire will be more varied and stable than the existing habitat

The short-term impact of loss of 80 square feet of tidal brackish marsh habitat will be mitigated by the planned construction of the planting bench and replanting with bulrush. This bench and replanting will result in a larger stand of bulrush than currently occurs on the site. The grading and stabilization of the bank will protect this marsh habitat from erosion, which is currently eroding away some of the bulrush plants. The short-term loss of the tidal marsh plant community will be offset by the new planting program. The long-term effect would be a larger tidal brackish marsh community that will be protected from current erosion losses. The Project would be expected to have a beneficial impact on this habitat type,

Long-term Impacts

As described in the impact overview for this section, the improvements on the site made to repair the bank erosion problem would have no long-term impact on riparian habitat types. In addition, as reported in the appended Biological Report and summarized above under the discussion of Short-Term Impacts, the Project incorporates measures to improve habitat conditions on the site. This includes installing an approximately 400-square foot planting bench of alkali bulrush within the planned revetment area as well as placement of five woody debris clusters near the toe of the revetment to increase the diversity of the available marsh and aquatic habitat types. It is expected that the alkali bulrush will colonize areas of the revetment above and below the planting bench, eventually blending with the existing vegetation up- and downstream from the site. Above the revetment area, the reconstructed bank slope will be planted with native seed appropriate to the transitional zone between marsh and upland habitats. It is expected that the Project will improve the ecological value of the site habitat.

Consistency with City's Riparian Corridor Policy

The City's Riparian Corridor Policy requires that Riparian Projects be designed and implemented to minimize intrusion into Riparian Corridors. The Policy identifies setbacks for various types of project. It does not include specific setbacks for bank repair projects such as the current Project. Reduced setbacks are allowed for projects that protect or enhance the riparian value more than the minimum setback would do. Setbacks can be reduced or not required if there is no reasonable alternative for the proposed Riparian other than within the Setback Area and the Project application contains reports by qualified experts stating there is no reasonable alternative, plus the impacts of the Project on the riparian corridor as well as nesting birds, can all be reduced to a less-than-significant level.

Because the Project addresses a streambank problem at this site, there is no alternative site, and the work must occur within the riparian corridor. In addition, the Project, complete with already-described mitigation measures, will reduce impacts to the riparian corridor and nesting birds to a less-than-significant level. The long-term effect of the Project would enhance the riparian value of the site, consistent with this policy

Mitigation Measures

Mitigation Measure BR-1 applies to the impact on sensitive natural communities.

Impact Significance After Mitigation

The conditions listed under the Draft SAA that is referenced in Mitigation Measure BR-1 supplement the protective measures incorporated into the Project to provide protection of native habitat plant communities and Coyote Creek. Indirect water quality impacts from construction would be controlled. The Draft SAA also includes revegetation requirements for areas disturbed by Project construction. As noted previously, CDFW finds that compliance with the Draft SAA conditions would reduce impacts to sensitive natural communities to a less-than-significant level.

Over the long-term, stabilization of the slope, repair of the erosion problem, replanting the site with native marsh vegetation, and enhancing the aquatic habitat diversity would result in a less-than-significant impact on sensitive natural communities.

c. *Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological* interruption, or other means? **Less than significant with mitigation incorporated.**

Possible impacts to marsh and aquatic habitat types were assessed in the previous Checklist item. Impacts to those two riparian habitat types were found to be less than significant with incorporation of Mitigation Measure BR-1.

Coyote Creek is a water of the U.S. and, as such, is subject to the regulatory authority of the USACE and RWQCB. The CDFW has jurisdiction over Coyote Creek as well. As described in the Impact Overview and the previous Checklist item., the proposed Project activities include grading of the channel bank, which can result in erosion, and subsequent placement of rock riprap and large woody debris into the channel below MHHW, which could cause disturbance of the channel bottom and result in dispersal of sediments. As noted previously, the USACE has issued a permit for the Project, finding that Project work within jurisdictional water would have less-than-significant impacts assuming that all proposed protection measures and permit mitigations required for this type of project are implemented (as required in the issued permit).

As described under the previous Checklist item, this construction would have a less-than-significant short-term impact given resource protection measures incorporated into the Project, and these measures would be expanded to include design and construction conditions set forth in the permits required by Mitigation Measure BR-1.

Long-term Impacts

As described in the impact overview for this section, the passive improvements on the site lade to repair the bank erosion problem would have no long-term adverse impact on wetlands or jurisdictional waters.

As reported in Section 6.0 of this report and in the appended Biological Evaluation, the Project includes measures to improve habitat conditions on the site. This includes the planting bench of alkali bulrush within the planned revetment area. It is expected that the alkali bulrush will colonize areas of the revetment above and below the planting bench, eventually blending with the existing vegetation up- and downstream from the site. Above the revetment area, the reconstructed bank slope will be planted with native seed appropriate to the transitional zone between marsh and upland habitats. Accordingly, the Project would be expected to have a beneficial long-term impact on wetlands.

Mitigation Measure

Mitigation Measure BR-1 applies to this impact on wetlands.

Impact Significance After Mitigation

The proposed protection measures incorporated into the Project description as supplemented by permit conditions required in Mitigation Measure BR-1 provide protection of native habitat plant communities and Coyote Creek. Indirect water quality impacts would be controlled. As stated previously, both the USACE and the CDFW have concluded in approving the authorization and the agreement for the proposed Project that the Project would not adversely affect environmental resources for which those agencies are responsible. Therefore, the short-term construction impacts are found by the reviewing agencies to be less than significant with implementation of the conditions set forth in Mitigation Measures BR-1. In the long term, it is expected that impacts to wetlands would be expected to be beneficial, but at the least, they would be a less-than-significant adverse impact.

d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? **Less than significant with mitigation incorporated.**

Short-term Construction Impacts

The importance of an area as a movement corridor depends on the species in question and its consistent use patterns. Animal movements generally can be divided into three major behavioral categories:

- Movements within a home range or territory,
- Movements during migration; and
- Movements during dispersal.

While no detailed study of animal movements has been conducted for the site, the consulting biologists' knowledge of the site, its habitats, and the ecology of the species potentially occurring onsite permits sufficient predictions about the types of movements occurring in the region and whether or not proposed development would constitute a significant impact to animal movements.

A number of reptiles, birds, and mammals may use the ruderal grassland habitats of the site as part of their normal home range with dispersal movements between the site and more open lands to the west. The Coyote Creek channel corridor on the northern boundary of the Project site likely facilitates the movement of fish, amphibians, birds, and mammals within and through the site to adjacent marsh habitats north and west of the site. However, this corridor would not be expected to facilitate regional movements of wildlife in a unique or disproportionate way, as lands immediately east of the site consists of industrial and commercial development, and highway 880 runs north-south just 0.5 miles east of the site. Additional commercial development is also present north of the site. All of these serve as barriers to wildlife movement to the north and east. Open lands are more prevalent to the south and west, and animals moving through the site would be expected to disperse back in this general direction.

The Project would not block movement of fish or other aquatic wildlife from traveling in the stream. The turbidity curtain to be installed to prevent eroded soils from escaping off site, will only enclose the active work area and not the entire channel, so fish and other aquatic wildlife can swim around it.

The Project includes permit-required installation of exclusionary fencing to ensure special status species of wildlife, such as Western Pond Turtle, do not enter the active construction area where they could be injured or killed. The fence starts at the water's edge an extends upslope to include the levee access road adjacent to the repair site (approximately 30 feet wide). Therefore, there will be a short 22-day) period when terrestrial wildlife cannot cross the site. This would not prevent wildlife who do use the streambank as a travel route from detouring around the site on adjacent NISL property. The CDFW and USACE require this temporary fencing. In so doing the permitting

agencies recognize and accept the temporary blocking of wildlife movement across the site. The Project also includes installation of a turbidity curtain around the work site portion of the stream channel. Fish and other aquatic wildlife can move up and downstream around the side of the curtain, so their movement would not be blocked.

Breeding sites for wildlife such as gophers, western fence lizard, California voles, and California ground squirrels could also be disturbed during site grading. The Draft SAA referenced in Mitigation Measure BR-1, requires review of the site by a qualified biologist and requires protection of such sites.

Long-term Impacts

Construction activities may result in a temporary disruption of local wildlife movements, but these activities are not expected to result in any permanent or substantial changes in wildlife use or movement patterns once construction is complete. Following completion, the proposed Project is not expected to reduce the capability of the Coyote Creek channel corridor to facilitate the migration and dispersal of wildlife through the region. Wildlife species presently using the corridor are expected to continue moving along it after Project buildout. Therefore, the proposed Project would have a less-than-significant impact on movements of native wildlife in the region. The site would continue to provide habitat for burrows and other nesting sites.

Mitigation Measures

Mitigation Measure BR-1 applies to the impact on wildlife movement and nesting sites.

Impact Significance After Mitigation

Mitigation Measure BR-1 references permit conditions that will provide protection of breeding sites within the construction zone, aquatic species travel corridors, and Coyote Creek. Indirect water quality impacts would be controlled. As stated previously, both the USACE and the CDFW have concluded in approving the authorization and the agreement for the proposed Project that the Project would not adversely affect environmental resources for which those agencies are responsible. Additionally, the main factor blocking movement is the very fencing that the agencies are requiring. Therefore, the short-term construction impacts are found by the reviewing agencies to be less than significant with implementation of the permit conditions referenced in Mitigation Measure BR-1.

Following the completion of construction, the proposed Project is not expected to reduce the capability of the Coyote Creek channel corridor to facilitate the migration and dispersal of wildlife through the region. Wildlife species presently using the corridor are expected to continue moving along it after Project completion. Therefore, the

proposed Project would have a less-than-significant long-term impact on movements of native wildlife in the region. The site would be expected to provide equal if not better breeding site opportunities than is currently the case.

e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? **Less than significant with mitigation incorporated.**

No trees are present on the site. Therefore, the Project is not subject to the City's tree protection ordinance. As noted above, the Project is consistent with the City's Riparian Corridor Protection and Bird-Safe Design Policy. The Envision San José 2040 General Plan includes policies adopted by the City of San José that aim to protect biological resources during implementation of new projects. The Project would need to be in conformance with the City's tree ordinance, riparian corridor protection policy, and General Plan to ensure there is no significant effect under CEQA. Given compliance with Mitigation Measure BR-1, as discussed under Checklist questions IV(a), (b,) (c) and (d) the Project would not have a significant adverse impact on biological resources and would therefore comply with the General Plan policies.

f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? **No impact.**

The Project does not conflict with an approved local, regional, or state habitat conservation plan. The Project area is situated outside of the Santa Clara Valley Habitat Plan (SCVHP) study area, and therefore the proposed Project is not a covered activity under the SCVHP. No other habitat conservation plans or natural community conservation plans include the Project site. Therefore, there would be no impact as regards plan consistency.

V. Cultural Resources and Tribal Cultural Resources

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5?			x	
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?			x	
c. Disturb any human remains, including those interred outside of dedicated cemeteries?			x	
d. Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place or object with cultural value to a California Native American tribe, and that is:				
(i) Listed or eligible for listing in the Caltrans Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or			x	
(ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe.			x	

Appendix G of the CEQA Guidelines contains two separate sections addressing impacts to cultural resources and tribal cultural resources. Because the two types of resources are often intertwined and it facilitates the understanding of these often-related resources, the assessment of impacts is contained below in one section of this Initial Study.

1. Setting

a. Regulatory Framework

Federal

National Historic Preservation Act

Federal protection is legislated by the National Historic Preservation Act (NHPA) of 1966 and the Archaeological Resource Protection Act of 1979. These laws maintain processes for

determination of the effects on historical properties eligible for listing in the National Register of Historic Places (NRHP). The NRHP is a comprehensive inventory of known historic resources throughout the United States. A historic resource listed in, or formally determined to be eligible for listing in, the NRHP is, by definition, included in the California Register of Historic Resources (CRHR).

State

California Register of Historical Resources

The CRHR is administered by the California Office of Historic Preservation and encourages protection of resources of architectural, historical, archeological, and cultural significance. The CRHR identifies historic resources for state and local planning purposes and afford protections under CEQA.

CEQA

Under CEQA, cultural resources that will be affected by an undertaking must be evaluated to determine their eligibility for listing in the CRHR (PRC Section 5024.1(c)). For a cultural resource to be deemed eligible for listing, it must meet at least one of the following criteria

1. is associated with events that have made a significant contribution to the broad patterns of California History and cultural heritage; or

2. is associated with the lives of persons important to our past; or

3. embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possess high artistic value; or

4. has yielded or is likely to yield, information important to prehistory or history.

The eligibility of archaeological sites is usually evaluated under Criterion 4 –its potential to yield information important to prehistory or history. Whether or not a site is considered important is determined by the capacity of the site to address pertinent local and regional research themes.

Tribal cultural resources are: 1) sites, features, places, cultural landscapes, sacred places, and objects with cultural value to a California Native American tribe that are listed, or determined to be eligible for listing in the California Register of Historical Resources (California Register), or local register of historical resources, as defined in PRC Section 5020.1(k); or, 2) a resource determined by the lead CEQA agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in PRC Section 5024.1(c). For a cultural landscape to be considered a tribal cultural resource, it must be geographically defined in terms of the size

and scope of the landscape (PRC Section 21074[b]). Also, an historical resource, as defined in PRC Section 21084.1, unique archaeological resource, as defined in PRC Section 21083.2(g), or non-unique archaeological resource, as defined in PRC Section 21083.2(h), may also be a tribal cultural resource.

City of San José

Envision San José 2040 General Plan

The City's General Plan includes policies regarding protection of cultural resources. The following Policies are relevant:

- **ER-10.1** For proposed development sites that have been identified as archaeologically or paleontologically sensitive, require investigation during the planning process in order to determine whether potentially significant archaeological or paleontological information may be affected by the Project and then require, if needed, that appropriate mitigation measures be incorporated into the Project design.
- **ER-10.2** Recognizing that Native American human remains may be encountered at unexpected locations, impose a requirement on all development permits and tentative subdivision maps that upon discovery during construction, development activity will cease until professional archaeological examination confirms whether the burial is human. If the remains are determined to be Native American, applicable state laws shall be enforced.
- **ER-10.3** Ensure that City, State, and Federal historic preservation laws, regulations, and codes are enforced, including laws related to archaeological and paleontological resources, to ensure the adequate protection of historic and pre-historic resources.

b. Existing Conditions

According to the City's Archaeological Sensitivity Maps, the eastern portion of the NISL site, including the east portion of the landfill, the D-shaped area, and the Recyclery are designated as archaeologically sensitive areas[4]. Based on an archaeological review completed for the NISL EIR, there are no records or reported archaeological sites identified in or adjacent to the Project site. There are no known Native American ethnographic settlements, traditional Native American use areas, Hispanic Era resources, or American period resources identified in or adjacent to the Project site. In addition, no state and/or federal historically or architecturally significant structures, landmarks, or points of interest are located in or adjacent to the site.

[4] City of San José and Basin Research Associates, Inc. Archaeological Sensitivity Map, Milpitas Quadrangle. March 1993.

2. Impacts

a. Cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5? **Less than significant impact.**

As reported in the NISL EIR, there are no state and/or federal historically or architecturally significant structures, landmarks, or points of interest are located in or adjacent to the Project site, which includes the current Project site. Additionally, the Project will not impact any built structures and, furthermore, not impact structure 45 years old or greater. Therefore, there would be no impact to historical resources.

b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5? **Less than significant impact.**

The NISL EIR reports that no archaeological resources occur on the Project site. For these reasons, the approval of the Project is not anticipated to result in significant impacts to cultural resources. While it is unlikely that construction activities would encounter prehistoric or archaeological deposits, the Project would conform to the following standard permit conditions to further avoid impacts associated with accidental discovery of buried archaeological resources during construction.

Standard Permit Conditions

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 (PBCE) or the Director's designee and the City's Historic Preservation Officer shall be notified, and a qualified archaeologist shall examine the find. The archaeologist 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 prior to issuance of building permits. Recommendations could include collection, recordation, and analysis of any significant cultural materials. A report of findings documenting any data recovery shall be submitted to Director of PBCE or the Director's designee and the City's Historic Preservation Officer and the Northwest Information Center (if applicable). Project personnel shall not collect or move any cultural materials.

c. Disturb any human remains, including those interred outside of dedicated cemeteries? **Less than significant impact.**

There is no indication that the Project area has been used for burial purposes in the recent or distant past. While unlikely, the inadvertent discovery of redeposited human remains cannot be entirely discounted, including in areas of artificial fill. Impacts to human remains would be potentially significant. In the event that human remains are

encountered during ground disturbing activities, the following standard permit conditions would be implemented to reduce impacts to a less-than-significant level.

Standard Permit Conditions

If any human remains are found during any field investigations, grading, or other construction activities, all provisions of California Health and Safety Code Sections 7054 and 7050.5 and Public Resources Code Sections 5097.9 through 5097.99, as amended per Assembly Bill 2641, shall be followed. If human remains are discovered during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Project applicant shall immediately notify the Director of Planning, Building and Code Enforcement (PBCE) or the Director's designee and the qualified archaeologist, who shall then notify the Santa Clara County Coroner. The Coroner will make a determination as to whether the remains are Native American. If the remains are believed to be Native American, the Coroner will contact the Native American Heritage Commission (NAHC) within 24 hours. The NAHC will then designate a Most Likely Descendant (MLD). The MLD will inspect the remains and make a recommendation on the treatment of the remains and associated artifacts. If one of the following conditions occurs, the landowner or his authorized representative shall work with the Coroner to reinter the Native American human remains and associated grave goods with appropriate dignity in a location not subject to further subsurface disturbance:

i. The NAHC is unable to identify a MLD or the MLD failed to make a recommendation within 48 hours after being given access to the site.

ii. The MLD identified fails to make a recommendation; or

iii. The landowner or his authorized representative rejects the recommendation of the MLD, and mediation by the NAHC fails to provide measures acceptable to the landowner.

d(i) Would the project cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place or object with cultural value to a California Native American tribe, and that is:

(i) Listed or eligible for listing in the Caltrans Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k); or,

(ii) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code section 5024.1, the lead agency shall consider the significance of the resource to a California Native American tribe. **Less than significant impact.**

Assembly Bill (AB) 52 requires lead agencies to conduct formal consultations with California Native American tribes during the CEQA process to identify tribal cultural resources that may be subject to significant impacts by a project. Where a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document must discuss the impact and whether feasible alternatives or mitigation measures could avoid or substantially lessen the impact. This consultation requirement applies only if the tribes have sent written requests for notification of projects to the lead agency.

At the time of the preparation of this Initial Study, no tribes have sent written requests for notification of projects to the City of San José except for in Coyote Valley (approximately 30 miles from the site) and downtown San José (approximately 10 miles from the site). Due to the distance of the Project site from these areas, the Project would not have a significant impact on tribal cultural resources.

Additionally, as discussed above, there is no evidence of significant tribal resources on the site. It is possible that there are unknown resources that could be damaged by Project construction; however, the Project would comply with the standard permit conditions outlined in b) and c) above, which would reduce this impact to a less-than-significant level.

VI. Energy

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. *Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?*			x	
b. *Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?*			x	

1. Setting

a. Regulatory Framework

Federal

At the federal level, energy standards set by the U.S. Environmental Protection Agency (EPA) apply to numerous consumer products and appliances (e.g., the EnergyStar™ program). The U.S. EPA also sets fuel efficiency standards for automobiles and other modes of transportation.

Energy Policy and Conservation Act of 1975

The Energy Policy and Conservation Act of 1975 was enacted in December 1975. This act is intended to:

- Grant specific authority to the President to fulfill obligations of the U.S. under the international energy program;
- Provide for the creation of a Strategic Petroleum Reserve capable of reducing the impact of severe energy supply interruptions;
- Conserve energy supplies through energy conservation programs, and the regulation of certain energy uses;
- Provide for improved energy efficiency of motor vehicles, major appliances, and certain other consumer products;
- Provide a means for verification of energy data to assure the reliability of energy data; and
- Conserve water by improving the water efficiency of certain plumbing products and appliances.

EPA Emission Standards for Non-Road Diesel Engines

The U.S. EPA sets nationwide emission standards for mobile sources, which include on-road (highway) motor vehicles such trucks, buses, and automobiles, and non-road (off-road) vehicles and equipment used in construction, agricultural, industrial, and mining activities (such as bulldozers and loaders). The U.S. EPA also sets nationwide fuel standards. California also has the ability to set motor vehicle emission standards and standards for fuel used in California, as long as they are the same or more stringent than the federal standards.

The U.S. EPA has established a number of emission standards for on- and non-road heavy-duty diesel engines used in trucks and other equipment. Heavy-duty diesel on-road vehicle standards and the non-road diesel engine standards are estimated to reduce PM and NOx emissions from diesel engines up to 95 percent in 2030.13 The U.S. EPA has also substantially reduced the amount of sulfur allowed in diesel fuels. The new standards reduced the amount of sulfur allowed by approximately 97 percent for highway diesel fuel and by 99 percent for off-highway diesel. Ultra-low sulfur diesel (ULSD) is currently required for use by all vehicles in the U.S. California has adopted the federal diesel engine and diesel fuel requirements.

State

Renewables Portfolio Standard Program

In 2002, California established its Renewables Portfolio Standard (RPS) Program, with the goal of increasing the percentage of renewable energy in the State's electricity mix to 20 percent of retail sales by 2010. In 2008, Executive Order S-14-08 was signed into law requiring retail sellers of electricity serve 33 percent of their load with renewable energy by 2020. In October 2015, Governor Brown signed SB 350 to codify California's climate and clean energy goals. A key provision of SB 350 requires retail sellers and publicly owned utilities to procure 50 percent of their electricity from renewable sources by 2030. SB 100, passed in 2018, requires 100 percent of electricity in California to be provided by 100 percent renewable and carbon-free sources by 2045.

City of San José

Climate Smart San José

Approved by the City Council in February 2018, Climate Smart San José utilizes a people-focused approach, encouraging the entire San José community to join an ambitious campaign to reduce greenhouse gas emissions, save water and improve quality of life. The adoption of Climate Smart San José made San José one of the first U.S. cities to chart a path to achieving the greenhouse gas emissions reductions contained in the international Paris Agreement on climate change. Climate Smart San José focuses on three areas: energy, mobility, and water. Climate Smart San José encompasses nine overarching strategies:

- Transition to a renewable energy future
- Embrace our California climate
- Densify our city to accommodate our future neighbors
- Make homes efficient and affordable for families
- Create clean, personalized mobility choices
- Develop integrated, accessible public transport infrastructure
- Create local jobs in our city to reduce vehicle miles traveled
- Improve our commercial building stock
- Make commercial goods movement clean and efficient

Sustainable City Strategy

The Sustainable City Strategy is a statement of the City's commitment to becoming an environmentally and economically sustainable city by ensuring that development is designed and built in a manner consistent with the efficient use of resources and environmental protection. Programs promoted under this strategy include recycling, waste disposal, water conservation, transportation demand management and energy efficiency.

Envision San José 2040 General Plan

The 2040 General Plan includes policies for the purpose of reducing or avoiding impacts related to energy. Most these policies apply to new urban development and are not relevant to this construction project. The one policy that has some relevancy is listed below.

MS-2.4 Promote energy efficient construction industry practices.

b. Existing Conditions

The Project site is a creekbank, and there currently is no energy consumed at the site.

2. Impacts

a. Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation. **Less than significant impact**.

The Project involves constructing a streambank repair. This will require the use of heavy equipment and vehicles that use petroleum fuels. No other energy sources would be affected by the Project. The short-term construction Project would involve operating a small number of pieces of equipment (a long reach excavator, a flatbed truck, a front loader, rock delivery trucks, and vehicles used to transport workers) over a 22-day period. The Project is very small, involves few pieces of equipment that consume petrochemical energy, and energy use would occur over a short period.

Therefore, the Project would have a negligible effect on the State's energy resources. In addition, the repair would minimize the chance of creekbank failure, and such failure could result in the extensive use of petrochemical and possibly other energy sources to repair the damage to the creekbank and facilities on NISL. Therefore, there is no evidence that the Project would result in wasteful, inefficient, or unnecessary use of energy that would result in significant environmental effects.

b. Conflict with or obstruct a state or local plan for renewable energy or energy efficiency. **Less than significant impact.**

As discussed above, the Project is a construction project that does not include any ongoing or long-term use of energy. This use of petrochemical energy to construct the bank repair would have a negligible effect on local and State energy resources, and would, therefore, be consistent with State plans (e.g., California Long-Term Energy Efficiency Strategic Plan) and City plans to conserve energy. The City's General Plan contains *Goal IE-7 – Clean Technology* to promote use of Clean Technology products and services to minimize energy consumption. *Goal MS-2 – Energy Conservation and Renewable Energy Use* contains policies to regulate energy use and reduce energy consumption. *Policy MS-2.4* recommends promoting energy efficient construction practices.

The Project would be consistent with these City goals and policies related to energy conservation. As stated previously, the Project would use a negligible amount of energy to provide a long-term environmental benefit. In terms of the potential damage that could result from further streambank failure, the Project would be consistent with State and local plans aimed at reducing long-term energy use as well as other State and local plans aimed at providing protection for environmental resources. Therefore, the Project is not inconsistent with any plan for energy efficiency, and the impact is less than significant.

VII. Geology and Soils

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i. Rupture of known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.			x	
ii. Strong seismic ground shaking?			x	
iii. Seismic-related ground failure, including liquefaction?			x	
iv. Landslides?			x	
b. Result in substantial soil erosion or the loss of topsoil?		x		
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?			x	
d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?			x	
e. Have soils incapable of adequately supporting the use of septic tanks or alternative water disposal systems where sewers are not available for the disposal of waste water?				x
f. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?				x

1. Setting

a. Regulatory Framework

State

Alquist-Priolo Earthquake Fault Zoning Act

The Alquist-Priolo Earthquake Fault Zoning Act (AP) was passed following the 1971 San Fernando earthquake. The AP act regulates development in California near known active faults due to hazards associated with surface fault ruptures. Alquist-Priolo maps are distributed to affected cities, counties, and State agencies for their use in planning and controlling new construction. Areas within an Alquist-Priolo Earthquake Fault Zone require special studies to evaluate the potential for surface rupture to ensure that no structures intended for human occupancy are constructed across an active fault.

Seismic Hazards Mapping Act

The Seismic Hazards Mapping Act (SHMA) was passed in 1990 following the 1989 Loma Prieta earthquake. The SHMA directs the California Geological Survey (CGS) to identify and map areas prone to liquefaction, earthquake-induced landslides, and amplified ground shaking. CGS has completed seismic hazard mapping for the portions of California most susceptible to liquefaction, landslides, and ground shaking, including the central San Francisco Bay Area. The SHMA requires that agencies only approve projects in seismic hazard zones following site-specific geotechnical investigations to determine if the seismic hazard is present and identify measures to reduce earthquake-related hazards.

California Division of Occupational Safety and Health Regulations

Excavation, shoring, and trenching activities during construction are subject to occupational safety standards for stabilization by the California Division of Occupational Safety and Health (Cal/OSHA) under Title 8 of the California Code of Regulations and Excavation Rules. These regulations minimize the potential for instability and collapse that could injure construction workers on the site.

Paleontological Resources Regulations

Paleontological resources are the fossilized remains of organisms from prehistoric environments found in geologic strata. They range from mammoth and dinosaur bones to impressions of ancient animals and plants, trace remains, and microfossils. These are 7valued for the information they yield about the history of the earth and its past ecological settings. The California Public Resources Code (Section 5097.5) specifies that unauthorized removal of a paleontological resource is a misdemeanor. Under the CEQA Guidelines, a project would have a significant impact on paleontological resources if it would disturb or destroy a unique paleontological resource or site or unique geologic feature.

City of San José

City of San José Municipal Code

Title 24 of the San José Municipal Code includes the 2016 California Building, Plumbing, Mechanical, Electrical, Existing Building, and Historical Building Codes. Requirements for building safety and earthquake hazard reduction are also addressed in Chapter 17.40 (Dangerous Buildings) and Chapter 17.10 (Geologic Hazards Regulations) of the Municipal Code. Requirements for grading, excavation, and erosion control are included in Chapter 17.04 (Building Code, Part 6 Excavation and Grading). In accordance with the Municipal Code, the Director of Public Works must issue a Certificate of Geologic Hazard Clearance prior to the issuance of grading and building permits within defined geologic hazard zones, including State Seismic Hazard Zones for Liquefaction.

Envision San José 2040 General Plan

Various policies in the City's 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to geologic and seismic hazards including the following:

- **EC-4.5** Ensure that any development activity that requires grading does not impact adjacent properties, local creeks and storm drainage systems by designing and building the site to drain properly and minimize erosion. An Erosion Control Plan is required for all private development projects that have soil disturbance of one acre or more, are adjacent to a creek/river, and/or are located in hillside areas. Erosion Control Plans are also required for any grading occurring between October 15 and April 15

b. Existing Conditions

As described in the NISL EIR, the Project area is located near the southern end of the San Francisco Bay, which is within the complex California Coast Ranges geomorphic province. Historically, the area of the present San Francisco Bay exhibited significant relief with deposition of fluvial sands, silts, and interbedded clays being largely controlled by changes in sea level. The Santa Clara Valley is estimated to be filled with up to 3,000 feet of Plio-Pleistocene through Holocene-age fluvial and estuary deposits. Bedrock beneath the alluvium of the Santa Clara Valley consists of highly sheared sandstone, shale, chert, conglomerate, and mélange of the Jurassic-Cretaceous Franciscan Formation.

The Project site is located within one of the most seismically active areas in the United States. The Project area is affected by the San Andreas fault system located within the Santa Cruz Mountains west of the bay. The Hayward and Calaveras faults, which are splays of the San Andreas fault, are located in the Diablo Range on the east side of the San Francisco Bay. The Project site is located approximately 2.1 miles southwest of the Hayward fault, 6.1 miles southwest of the Calaveras fault, and 15.5 miles northeast of the San Andreas fault. While no

known active or potentially active faults transect the Project site, the Project area has experienced strong shaking from earthquakes in the past.

The soil materials on the NISL are generally categorized as compacted subgrade and berm fill (silty to sandy clay), young bay mud (sandy to silty clay), older bay alluvium (sandy to silty clay), and sand layers (clean to silty to clayey). The fill soils associated with levee construction was taken from around the perimeter of the site and were found to be composed of sandy silt to silty clay. These materials were generally placed directly above the young bay mud deposits. The young bay mud exists beneath the perimeter levee and at the existing ground surface beyond the levee. The older bay alluvium underlies the young bay mud on the site.

Three soil types from three soil series—Xerorthents, trash substratum; Novato clay; and Campbell silt loam- were identified on the Project site. Xerorthents, trash substratum and Campbell silt loam soils are well drained to moderately well drained, and Novato clay soils are very poorly drained. Novato clay is the only soil type occurring on the site that is considered to be hydric; it is also both alkaline and strongly saline.

The site's topography is level beyond the top of bank to steeply sloping on the Coyote Creek bank. Elevations range from approximately -2 feet National Geodetic Vertical Datum (NGVD) in Coyote Creek to approximately 8 feet NGVD at the top of the bank and in the gravel staging area. Surrounding land uses are primarily undeveloped and landfill. The site itself consists of an existing gravel staging area and levee access road. Coyote Creek runs through the northern section of the Project site, and between the levee access road and the creek is undeveloped vegetation.

2. Impacts

a. Directly or indirectly cause potentially substantial adverse effects, including the risk of loss, injury, or death involving:

i. Rupture of known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42. **Less than significant impact.**

As described in the NISL EIR, there are no faults zoned under the Alquist-Priolo Earthquake Fault Zoning Act, or any other Holocene-active faults that pass through the Project area. The potential for rupture of an unknown fault on site is considered remote. More importantly, the proposed Project would not involve building a structure, bringing people to this location or otherwise increasing exposure to risks from geological hazards. This impact would be less than significant.

ii. *Strong seismic ground shaking?* **Less than significant impact.**

As noted above, the Project area is located within a seismically active region. As a result, the proposed Project could be subject to strong seismic ground shaking, seismic failure, or liquefaction during an earthquake. Strong seismic shaking could occur as a result of seismic activity along any of the faults noted above. However, the proposed Project would incorporate standard engineering and construction techniques related to seismicity. Adherence to these practices and requirements would minimize potential impacts of strong seismic ground shaking, seismic-related ground failure, and liquefaction on site. These impacts would be less than significant.

iii. *Seismic-related ground failure, including liquefaction?* **Less than significant impact.**

See the discussion above under strong seismic ground shaking.

iv. *Landslides?* **Less than significant impact.**

The area near the Project has very limited topographic relief. The adjacent landfill gas facility been designated and constructed to be stable and would not be expected to cause landslides affecting the Project site. The proposed Project would not involve building a structure, bringing people to this location or otherwise increasing exposure to risks from geological hazards. This impact would be less than significant.

b. *Result in substantial soil erosion or the loss of topsoil?* **Less than significant with mitigation incorporated.**

The proposed Project construction would involve repairing an existing streambank that is being eroded away and would involve the placement of fill, rock, and large woody components on a re-graded creekbank. Potential for erosion and loss of sediment from the site during construction would be temporary and minimized via adherence to the applicant's Stormwater Pollution Prevention Plan (SWPPP), any revisions to that plan required by applicable permitting requirements, and conditions established in the Draft Streambed Alteration Agreement issued by CDFW for the Project. After Project completion, the proposed Project would have a beneficial impact on preventing erosion and the loss of topsoil, by stabilizing the streambank and repairing the area currently being eroded.

With implementation of the design-level conditions concerning rock size, anchoring, and other factors related to slope stability that are listed in the draft Streambed Alteration Agreement (or comparable substitute conditions as described in Mitigation Measure BR-

1) and the required compliance with any additional conditions of the Section 401 Water Quality Certification would reduce on-site erosion impacts to a less-than-significant level. CDFW corroborated this conclusion when issuing the Draft SAA. See the discussion of potential off-site soil erosion due to changes in streamflow in the Hydrology and Water Quality section (Checklist Item X(c)(1)).

c. *Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?* **Less than significant impact.**

As noted previously, the Project area has relatively flat topography. Therefore, landslides are not anticipated on site. Liquefaction, subsidence, and soil collapse are existing risks already faced by the location of the levee on Bay Mud. The proposed Project does not add to or change this existing risk or increase human exposure to it. The Project has been designed using appropriately sized rocks and grades to be stable in order to address existing instability problems. Therefore, this impact would be less than significant.

d. *Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?* **Less than significant impact.**

Although native soils underlying the Project area may have moderate shrink-swell potential, the potential for adverse effects from these conditions is limited due to the placement of rocks, backfill, and large woody debris to stabilize the re-graded creekbank, where the fill is anticipated to have limited shrink-swell potential. Additionally, adherence to standard engineering and construction techniques would further minimize potential effects of expansive soils on site. This impact would be less than significant

e. *Have soils incapable of adequately supporting the use of septic tanks or alternative water disposal systems where sewers are not available for the disposal of wastewater?* **No impact.**

The Project does not require construction of waste disposal systems on the site. Therefore, there would be no impact related to on-site disposal of wastewater.

f. *Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?* ***No impact.***

The NISL EIR reports that fill soils used in levee construction on the site were taken from the perimeter of the site. These soils were found to be composed of sandy silt to silty clay. These materials were generally placed directly above the young bay mud deposits.

The young bay mud exists beneath the perimeter levee and at the existing ground surface beyond the levee. Therefore, the Project area overlies artificial fill and young Holocene-age geologic units. Beneath the levees that are constructed of artificial fill lies deposits of mud and silt associated with the present-day bay estuary (bay mud). Artificially deposited fill does not have the potential to contain paleontological resources. The proposed Project would have no impact on paleontological resources. No mitigation is required.

Standard Permit Condition:

If vertebrate fossils are discovered during construction, all work on the site shall stop immediately, the Director of Planning, Building and Code Enforcement or the Director's designee shall be notified, and a qualified professional paleontologist shall assess the nature and importance of the find and recommend appropriate treatment. Treatment may include, but is not limited to, preparation and recovery of fossil materials so that they can be housed in an appropriate museum or university collection and may also include preparation of a report for publication describing the finds. The Project applicant shall be responsible for implementing the recommendations of the qualified paleontologist. A report of all findings shall be submitted to the Director of Planning, Building and Code Enforcement or the Director's designee.

With implementation of the identified Standard Permit Condition, the proposed Project would have a less than significant paleontological resources impact.

VIII. Greenhouse Gas Emissions

Would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a.	*Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?*			x	
b.	*Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?*			x	

1. Setting

a. Regulatory Framework

introduction

Climate change is caused by greenhouse gases (GHGs) emitted into the atmosphere around the world from a variety of sources, including the combustion of fuel for energy and transportation, cement manufacturing, and refrigerant emissions. GHGs are those gases that have the ability to trap heat in the atmosphere, a process that is analogous to the way a greenhouse traps heat. GHGs may be emitted as a result of human activities, as well as through natural processes. GHGs have been accumulating in the earth's atmosphere at a faster rate over the last 150 years than has occurred historically. Increasing GHG concentrations in the atmosphere are leading to global climate change.

State

Assembly Bill 32

Under the California Global Warming Solutions Act, also known as AB 32, CARB established a statewide GHG emissions cap for 2020, adopted mandatory reporting rules for significant sources of GHGs, and adopted a comprehensive plan, known as the Climate Change Scoping Plan, identifying how emission reductions would be achieved from significant GHG sources.

In 2016, SB 32 was signed into law, amending the California Global Warming Solution Act. SB 32, and accompanying Executive Order B-30-15, require CARB to ensure that statewide GHG emissions are reduced to 40 percent below the 1990 level by 2030. CARB updated its Climate Change Scoping Plan in December of 2017 to express the 2030 statewide target in terms of million metric tons of CO2e (MMTCO2e). Based on the emissions reductions directed by SB 32, the annual 2030 statewide target emissions level for California is 260 MMTCO2e.

Senate Bill 375

SB 375, known as the Sustainable Communities Strategy and Climate Protection Act, was signed into law in September 2008. SB 375 builds upon AB 32 by requiring CARB to develop regional GHG reduction targets for automobile and light truck sectors for 2020 and 2035. The per-capita GHG emissions reduction targets for passenger vehicles in the San Francisco Bay Area include a seven-percent reduction by 2020 and a 15-percent reduction by 2035.

Consistent with the requirements of SB 375, the Metropolitan Transportation Commission (MTC) partnered with the Association of Bay Area Governments (ABAG), BAAQMD, and the Bay Conservation and Development Commission to prepare the region's Sustainable Communities Strategy (SCS) as part of the Regional Transportation Plan process. The SCS is referred to as Plan Bay Area 2040. Plan Bay Area 2040 establishes a course for reducing per-capita GHG emissions through the promotion of compact, high-density, mixed-use neighborhoods near transit, particularly within identified Priority Development Areas (PDAs).

Regional and City of San José

2017 Clean Air Plan

To protect the climate, the 2017 CAP (prepared by BAAQMD) includes control measures designed to reduce emissions of methane and other super-GHGs that are potent climate pollutants in the near-term, and to decrease emissions of carbon dioxide by reducing fossil fuel combustion.

CEQA Air Quality Guidelines

The BAAQMD CEQA Air Quality Guidelines are intended to serve as a guide for those who prepare or evaluate air quality impact analyses for projects and plans in the San Francisco Bay Area. The jurisdictions in the San Francisco Bay Area Air Basin utilize the thresholds and methodology for assessing GHG impacts developed by BAAQMD within the CEQA Air Quality Guidelines. The guidelines include information on legal requirements, BAAQMD rules, methods of analyzing impacts, and recommended mitigation measures.

Climate Smart San José

Climate Smart San José was developed by the City to reduce air pollution, save water, and create a healthier community. The plan contains nine strategies to reduce carbon emissions consistent with the Paris Climate Agreement. These strategies include use of renewable energy, densification of neighborhoods, electrification and sharing of vehicle fleets, investments in public infrastructure, creating local jobs, and improving building energy-efficiency.

Envision San José 2040 General Plan and Greenhouse Gas Reduction Strategy

The General Plan includes strategies, policies, and action items that are incorporated in the City's Greenhouse Gas Reduction Strategy (GHGRS) to help reduce GHG emissions. Multiple policies and actions in the General Plan have GHG implications, including land use, housing, transportation, water usage, solid waste generation and recycling, and reuse of historic buildings. The City's Green Vision, as reflected in these policies, also has a monitoring component that allows for adaptation and adjustment of City programs and initiatives related to sustainability and associated reductions in GHG emissions. The GHGRS is intended to meet the mandates outlined in the CEQA Guidelines, as well as the BAAQMD requirements for Qualified GHGRS.

The City's GHGRS identifies GHG emissions reduction measures to be implemented by development projects as part of three categories: built environment and energy, land use and transportation, and recycling and waste reduction. Some measures are mandatory for all proposed development projects and others are voluntary. Voluntary measures could be incorporated as mitigation measures for proposed projects, at the City's discretion.

The primary test for consistency with the City's GHGRS is conformance with the General Plan Land Use/Transportation Diagram and supporting policies. CEQA clearance for development proposals are required to address the consistency of individual projects with the goals and policies in the General Plan designed to reduce GHG emissions. Compliance with the mandatory measures and voluntary measures (if required by the City) would ensure an individual project's consistency with the GHGRS. Projects that are consistent with the GHGRS would have a less than significant impact related to GHG emissions through 2020 and would not conflict with targets in the currently adopted State of California Climate Change Scoping Plan through 2020.

The environmental impacts of the GHGRS were analyzed in the General Plan FEIR as amended. Beyond 2020, the emission reductions in the GHGRS are not large enough to meet the City's identified 3.04 metric tons (MT) carbon dioxide equivalent per service population (CO2e/SP) efficiency metric for 2035. An additional reduction of 5,392,000 MT CO2e per year would be required for the projected service population to meet the City's target for 2035.40F

Achieving the substantial communitywide GHG emissions reductions needed beyond 2020 cannot be done alone with the measures identified in the GHGRS adopted by the City Council in 2015. The General Plan FEIR (as amended) disclosed that it would require an aggressive multiple-pronged approach that includes policy decisions and additional emission controls at the federal and State level, new and substantially advanced technologies, and substantial behavioral changes to reduce single occupant vehicle trips – especially to and from workplaces. Future policy and regulatory decisions by other agencies (such as CARB, California Public Utilities Commission, California Energy Commission, MTC, and BAAQMD) and technological advances are outside the City's control, and therefore could not be relied upon as feasible

mitigation strategies at the time of the latest revisions to the GHGRS (e.g., when the Final General Plan SFEIR was certified on December 15, 2015). Thus, the City Council adopted overriding considerations for the identified cumulative impact for the 2035 timeframe The General Plan includes an implementation program for monitoring, reporting progress on, and updating the GHGRS over time as new technologies or practical measures are identified. Implementation of future updates is called for in General Plan Policies IP-3.7 and IP-17.2 and embodied in the GHGRS. The City of San José recognizes that additional strategies, policies and programs, to supplement those currently identified, would ultimately be required to meet the mid-term 2035 reduction target of 40 percent below 1990 levels in the GHGRS and the target of 80 percent below 1990 emission levels by 2050.

Venous policies in the City's 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to air quality, as listed in the following table. In addition, goals and policies throughout the 2040 General Plan encourage a reduction in vehicle miles traveled through land use, pedestrian, bicycle, and access to transit improvements, parking strategies that reduce automobile travel through parking supply and pricing management, and requirements for Transportation Demand Management programs for large employers. Additional policies have been adopted to reduce energy use (and thus emissions from fuel use). Refer to *Sections 4.6 Energy, and 4.17 Transportation* of this document and *Section 3.1 Air Quality* (in the SEIR)*,* for these policies.

- **MS-5.6***:* Enhance the construction and demolition debris recycling program to increase diversion from the building sector.
- **MS-6.3***:* Encourage the use of locally extracted, manufactured or recycled and reused materials including construction materials and compost.
- **MS-6.12***:* Promote use of recycled materials, including reuse of existing building shells/ elements, as part of new construction or renovations.

b. Existing Conditions

There are currently no GHGs emitted at the Project site.

2. Impact

a. *Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?* **Less than significant impact.**

As noted above, the City has adopted a GHG Reduction Strategy that includes policies and measures to reduce GHG emissions. Adoption of a GHG Reduction Strategy provides environmental clearance for GHG impacts of proposed development as per the BAAQMD CEQA Air Quality Guidelines and CEQA Guidelines Section 15183.5. An evaluation of the proposed Project's GHG emissions is considered in light of City

requirements through an evaluation of proposed Project conformance with the City's GHG Reduction Strategy. Construction-related emissions associated with the proposed Project would be limited due to the relatively short duration of construction activities and modest intensity at the Project site. As described in Appendix A, Project construction would generate an average of about 1,550 pounds per day of carbon dioxide or a total of 15.7 metric tons (MT) over a 22-day construction period. In addition, the BAAQMD has neither adopted nor recommended GHG thresholds for construction emissions in their CEQA Air Quality Guidelines.

However, the BAAQMD's CEQA Air Quality Guidelines recommended a GHG threshold of 1,100 metric tons (MT) per year or 4.6 MT of carbon dioxide equivalent (CO2e) per service population. These thresholds were developed based on meeting the 2020 GHG targets set in the scoping plan that addressed AB 32. Development of the Project would occur beyond 2020, so a threshold that addresses a future target is appropriate. Although BAAQMD has not published a quantified threshold for 2030 yet, this assessment uses a "Substantial Progress" efficiency metric of 2.6 MT CO2e/year/service population and a bright-line threshold of 660 MT CO2e/year based on the GHG reduction goals of EO B-30-15, though requirements of an executive order are applicable to state agencies and not local or regional agencies. The service population metric of 2.6 is calculated for 2030 based on the 1990 inventory and the projected 2030 statewide population and employment levels. The 2030 bright-line threshold is a 40 percent reduction from the 2020 target year's 1,100 MT CO2e/year threshold."

The proposed development would result in a temporary 14.t MT for the year when construction occurs associated with construction activities including operation of construction equipment and emissions from construction workers' personal vehicles traveling to and from the Project site. Neither the City of San José nor BAAQMD have an adopted threshold of significance for construction related GHG emissions; however, BAAQMD recommends disclosing that GHG emissions would occur during construction. Construction-related GHG emissions vary depending on the level of activity, length of the construction period, specific construction operations, types of equipment, and number of personnel. Because construction would be temporary (approximately 22 days) and would not result in a permanent increase in emissions, the Project would not interfere with the implementation of SB 32 in 2030.

Because new operations associated with the proposed Project would be limited to very infrequent vehicle use by staff for visual inspections, operational GHG emissions would be minimal, and operations would therefore be consistent with the City's GHG Strategy and SB 32 targets. Consequently, the proposed Project would have a less-than significant impact associated with operational GHG emissions.

b. *Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?* **Less than significant impact.**

As described above, projects that conform to the General Plan Land Use/Transportation Diagram and supporting policies are considered consistent with the City's GHG Reduction Strategy and are considered to have a less than significant impact related to GHG emissions. The proposed Project is repair of a creekbank to ensure continued and safe operation of an existing landfill, which conforms to the General Plan land use diagram and policies. The Project is not going to modify the use or general visual character of the landfill.

The General Plan includes a number of actions to increase the use of recycled materials used during construction and reduce construction and demolition debris. To ensure that the proposed Project would not conflict with the applicable GHG reduction policies of the General Plan, the proposed Project would comply with applicable General Plan Policies for reduction of GHG emissions, including MS-5.6 and MS-6.3 mentioned in the Setting section above. With implementation of these policies, the proposed Project would not conflict with any applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs, since the proposed Project is consistent with the City's General Plan that includes implementation of a GHG Reduction Strategy. The impact would be less than significant.

IX. Hazards and Hazardous Materials

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?			x	
b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?			X	
c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?				x
d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?			X	
e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?				x
f. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?				X
g. Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?			X	

1. Setting

a. Regulatory Setting

Federal

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress in 1980. This law provided broad Federal authority to respond directly to releases or threatened releases of hazardous substances that may endanger public health or the environment. CERCLA established prohibitions and requirements concerning closed and abandoned hazardous waste sites;

provided for liability of persons responsible for releases of hazardous wastes at these sites; and established a trust fund to provide for cleanup when no

responsible party could be identified. CERCLA was amended by the Superfund Amendments and Reauthorization Act (SARA) on October 17, 1986. The EPA maintains the National Priorities List of Superfund sites.

Resource Conservation and Recovery Act (RCRA)

The Resource Conservation and Recovery Act (RCRA), initially authorized in 1976, gives the U.S.E.P.A the authority to control hazardous waste from "cradle-to-grave." This includes the generation, transportation, treatment, storage, and disposal of hazardous waste. RCRA also set forth a framework for the management of non-hazardous solid wastes. The 1986 amendments to RCRA enabled US EPA to address environmental problems that could result from underground tanks storing petroleum and other hazardous substances.

Hazardous Materials Transportation Act (HMTA)

Transportation of chemicals and hazardous materials is regulated by the U.S. Department of Transportation (DOT) under the Hazardous Materials Transportation Act (HMTA). Hazardous materials regulations for the types of containers, labeling, record keeping, and other requirements for the commercial movement of materials are contained in the Code of Federal Regulations (CFR) Title 49. Transportation requirements vary with the hazard class of each hazardous material.

State

In California, the U.S. EPA has granted most enforcement authority over federal hazardous materials regulations to the California Environmental Protection Agency (Cal/EPA). In turn, local agencies including the San José Fire Department (SJFD) and the Santa Clara County Department of Environmental Health (SCCDEH) have been granted responsibility for implementation and enforcement of many hazardous materials regulations under the Certified Unified Program Agency (CUPA) program.

Unified Hazardous Waste and Hazardous Materials Management Regulatory Program

In January 1996, the California Environmental Protection Agency (Cal/EPA) adopted regulations implementing a Unified Hazardous Waste and Hazardous Materials Management Regulatory Program (Unified Program [California Code of Regulations (CCR) Title 27, Division 1]). The program implements six elements: Hazardous Materials Release Response Plans and Inventories; California Accidental Release Prevention Program; Underground Storage Tank Program; Aboveground Petroleum Storage Act Program; Hazardous Waste Generator and Onsite Hazardous Waste Treatment (tiered permitting) Programs; and California Uniform Fire

Code: Hazardous Material Management Plans and Hazardous Material Inventory Statements. The program is implemented at the local level. The Certified Unified Program Agency (CUPA) is the local agency that is responsible for the implementation of the Unified Program.

The California Department of Toxic Substances Control (DTSC)

The California Department of Toxic Substances Control (DTSC) regulates hazardous waste, remediation of existing contamination, and evaluates procedures to reduce the hazardous waste produced in California. DTSC regulates hazardous waste in California primarily under the authority of the federal Resource Conservation and Recovery Act of 1976 and the California Health and Safety Code. DTSC oversees the cleanup of sites where hazardous substances have been released pursuant to the California Health and Safety Code, Division 20, Chapter 6.8. If remediation activities are required at the Project site, the proposed Project would complete the following analysis: an assessment of air impacts and health impacts associated with the excavation activities; identification of any applicable local standards which may be exceeded by the excavation activities, including dust levels and noise; identification of transportation impacts from the removal or remedial activities; and classification of the risk of upset should be there an accident at the Site.

In California, DTSC administers the federal RCRA program. California's Hazardous Waste Control Act (HWCA) *California Health and Safety Code Sections 25100 et seq.]) is similar to, but more stringent than, the federal RCRA program. The HWCA provides authority for DTSC to regulate the transportation and disposal of hazardous wastes and establishes standards for hazardous waste facilities.

Certified Unified Program Agency (CUPA) Program

The CUPA program was created by Senate Bill 1082 (1993) to consolidate, coordinate, and make consistent the administrative requirements, permits, inspections, and enforcement activities for several environmental and emergency management programs. The unified program is intended to provide relief to businesses complying with the overlapping and sometimes conflicting requirements of formerly independently managed programs. The following six programs are administered locally under the State's Unified Program:

- The Hazardous Waste Generator (HWG) program and the Hazardous Waste Onsite Treatment activities authorized under the permit-by-rule, conditionally authorized, and conditionally exempt tiers – Health and Safety Code Division 20, Chapter 6.5 and California Code of Regulations, Title 22, Division 4.5;
- The Aboveground Storage Tank (AST) Program Spill Prevention Control and Countermeasure Plan requirements – Health and Safety Code Division 20, Chapter 6.67, Section 25270.5(c);
- The Underground Storage Tank (UST) program – Health and Safety Code Division 20, Chapter

6.7 and California Code of Regulations, Title 23, Chapters 16 and 17;

- The Hazardous Materials Release Response Plans and Inventory (HMRRP) program – Health and Safety Code Division 20, Chapter 6.95, Article 1 and California Code of Regulations, Title 19, Sections 2620-2734
- California Accidental Release Prevention (CalARP) program – Health and Safety Code Division 20, Chapter 6.95, Article 2 and California Code of Regulations, Title 19, Sections 2735.1-2785.1;
- The Hazardous Materials Management Plans and the Hazardous Materials Inventory Statement (HMMP/HMIS) requirements – California Fire Code Title 24, Part 9, Sections 2701.5.1 and 2701.5.2.

Regional

Santa Clara County Department of Environmental Health

Some CUPAs have contractual agreements with another local agency, a "Participating Agency," that implements one or more program elements in coordination with the CUPA. The Santa Clara County Department of Environmental Health (SCCDEH) is the CUPA for the City of San José. Additionally, the SCCDEH oversees the management of medical waste in accordance with the Medical Waste Management Act (HSC Sections 117600 to 118360) and Santa Clara County Ordinance Code, Sections B11-260 to B11-268.

Although not included within the CUPA program, the San José Fire Department also administers a local Hazardous Materials Storage Ordinance (San José Municipal Code Chapter 17.68) and Toxic Gas Ordinance (San José Municipal Code Chapter 17.78)

Local

Envision San Jose 2040

The following policies are relevant to the proposed Project:

EC-7.5: On development and redevelopment sites, require all sources of imported fill to have adequate documentation that it is clean and free of contamination and/ acceptable for the proposed land use considering appropriate environmental screening levels for contaminants. Disposal of groundwater from excavations on construction sites shall comply with local, regional, and state requirement.

EC-7.8: Where an environmental review process identifies the presence of hazardous materials on a proposed development site, the City will ensure that feasible mitigation measures that will satisfactorily reduce impacts to human health and safety and to the environment are required

of or incorporated into the projects. This applies to hazardous materials found in the soil, groundwater, soil vapor, or in existing structures.

EC-7.9: Ensure coordination with the County of Santa Clara Department of Environmental Health, Regional Water Quality Control Board, Department of Toxic Substances Control or other applicable regulatory agencies, as appropriate, on projects with contaminated soil and/or groundwater or where historical or active regulatory oversight exists/

b. Existing Conditions

The Newby Island Sanitary Landfill (NISL) is a legal non-conforming land use in the City of San José because it has been continuously used to landfill garbage since the 1930s to the present day. The property was annexed into the City of San José on March 12, 1968. Newby Island was reclaimed from tidal marshland by the construction of the perimeter levee system in the late 1800s. The island was used for agricultural production including orchards and pastureland until 1932. In 1932, Newby Island Improvement Company began using the island as an unlined solid waste disposal facility. Between 1931 and 1956, the disposal and incineration of solid waste took place in selected northern and eastern portions of the island. After 1956, burning was discontinued and subsequent waste disposal practices were more conventional landfill operations.

In September 2009, the City prepared a Draft Environmental Impact Report (EIR) entitled the "Newby Island Sanitary Landfill and The Recyclery Rezoning Project." This EIR analyzed the Planned Development rezoning (File No. PDC07-071) at the NISL and the adjacent Recyclery. The purpose of that project was to allow the maximum height of the active portion of the landfill to be raised to 245 feet on the National Geodetic Vertical Datum of 1929 (NGVD29), adding approximately 15.12 million cubic yards to the capacity of the landfill. The EIR and associated Planned Development zoning also conformed to and clarified the legal non-conforming uses on NISL and specified the allowable current and future uses on the landfill property and at the Recyclery. The City approved a Final EIR for the project in 2016,

According to this EIR, NISL has been used as a landfill since the 1930s. Between 1931 and 1956, the disposal and incineration of solid waste took place in select northern and eastern portions of the landfill. After 1956, burning was discontinued and subsequent waste disposal practices were more conventional. The specific make-up of all the buried waste on the landfill is unknown. Up until the mid-1960's, the D-shaped area was used as a burn dump after which additional fill material was placed on the area. The fill material that covers the D-shaped area (southwest of the Project site) may contain some hazardous materials. While no evidence of their presence has been found during previous testing, the D-shaped area of the site was used as a burn dump and for landfilling for over 70 years, and the specific make-up of all the buried waste on the D-shaped area is unknown.

Leachate from sumps on the landfill is pumped into mobile storage tanks currently located adjacent to the landfill maintenance shop in the center of the landfill. The storage tanks are then loaded into tanker trucks for transport to a permitted treatment plant. The site currently generates leachate at an average of approximately 7.4 million gallons per year.

The EIR found that all hazardous materials-related impacts on groundwater, surface water, and soil quality from expanding the landfill and continuing its use would be less than significant given its maintenance in accordance with applicable regulatory standards contained in 27 CCR, Chapters 3 and 4 and 40 CFR Section 258.61.

Leachate seeps were documented at the landfill site in 2007. According to information provided by the landfill operator, the leachate remained inboard of the perimeter levees and no leachate was discharged to the creek. According to the landfill operator, the potential for leachate seeps is minimized by adequately covering the landfill (as defined by Title 27 CCR Sections 20670-20705) and removing barriers to downward flow of leachate within the landfill. As part of the landfill's ongoing leachate management, if seeps occur, liquid from the seeps is prevented from leaving the landfill area by constructing a soil berm around the seep and excavating into the landfill to redirect any leachate flow back into the waste mass. As discussed in Section 3.8.1.3 Water Quality of the Draft EIR, all surface water is managed and monitored in accordance with the landfill Self Monitoring Program (SMP) that is approved by the Regional Water Quality Control Board (RWQCB) and groundwater at the landfill is monitored in accordance with 40 Code of Federal Regulations (CFR) 258.50-58 (Subtitle D) and the requirements of the RWQCB. In addition, with the continued implementation of the existing Spill Prevention Control and Countermeasure Plan, Hazardous Materials Management Plan, and Best Management Practices (BMPs), and the presence of berms surrounding the landfill, the EIR concluded that the landfill would not result in significant impacts to aquatic habitat or steelhead.

The Project site is on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 known as the Cortese List. The Cortese List is maintained by the Department of Toxic Substances Control (DTSC), the SWRCB, the Santa Clara County leaking underground storage tank program, and CIWMB. The Project site is listed by the SWRCB and CIWMB as a solid waste landfill. The Project site, specifically the Recyclery, was listed in the County of Santa Clara's databases for leaking underground storage tanks (USTs) for a former leaking UST. This case was closed in 1993.

Wildfire Hazards

Based upon fire hazard mapping by the CAL FIRE Forest Resource Assessment Program[5] and the

[5] California Department of Forestry and Fire Protection, Fire and Resource Assessment Program, Fire Hazard Severity Zones in State Responsibility Areas, Santa Clara County, California, November 7, 2007.

http://frap.fire.ca.gov/webdata/maps/santa_clara/fhszs_map.43.pdf accessed September 22, 2018; California Department of

Santa Clara County Wildland Urban Fire Interface Map,[6] the Project area is not located within an identified high fire hazard area.

Airports

The nearest airports to the Project are the Norman Y. Mineta San José International Airport, located over 5 miles south of the Project area and the Moffett Federal Airfield, located over 6 miles southwest of the Project area. No private airstrips occur in the Project vicinity.

Emergency Response

The Santa Clara County Operational Emergency Operations Plan[7] established emergency organization, assigns tasks, specifies policies and general procedures, and provides for coordination of response in the event of an emergency. The plan does not identify specific emergency response or evacuation routes. The streambank is not located on a road and would not be used for emergency response or as an evacuation route. It is noted that the NISL site does not have proximate access to City of San José streets, so it is served by public streets in the City of Milpitas, the closest response to a fire or medical emergency is by the City of Milpitas fire protection personnel.

2. Impacts

a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? **Less than significant impact.**

During construction activities for the proposed Project, limited quantities of miscellaneous hazardous substances, such as gasoline, diesel fuel, hydraulic fluid, etc. would be used for operation of motorized equipment. Use of these types of substances would not occur in significant (that is, regulatory) amounts or frequencies to constitute a potential hazard to the public or environment. Once constructed, the Project would not require long-term operational use of hazardous materials. Potential impacts are restricted to the construction phase.

The applicant has prepared a Draft SWPPP to address how the contractor will avoid spills of hazardous materials. This Draft SWPPP will be replaced by a Final SWPPP after

Forestry and Fire Protection, Fire and Resource Assessment Program, Very Fire Hazard Severity Zones in Local Responsibility Areas, Santa Clara County, California. May 2008.

[6] Santa Clara County Planning Office, *Santa Clara County Wildland Urban Interface Fire Area*, Adopted February 24,2009.

[7] Santa Clara County, 2008, *Santa Clara County Operational Area Emergency Operations Plan*, March 18, 2008,available online at http://www.sccgov.org/sites/oes/Documents/EOP_Complete.pdf

review and comment by reviewing agencies. The Draft SAA conditions will be incorporated into the Final SWPPP. The Draft SAA contains specific protections and protocols to address potential spill or escape of hazardous materials, including controls for contaminants, spill containment protocol, and preparation and implementation of a hazardous spill plan,

The Project would be subject to the requirements of the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit (Order Number R2-2015-0049; 2015), which contains requirements for construction site control and water quality protection measures. Compliance with these requirements and implanting the final SWPPP will reduce the impact of accidental spillage of hazardous materials to a less-than-significant level. The conditions set forth in the Draft SAA issued by CDFW also provides conditions to avoid spillage of such materials as well as what actions would be taken in the case of such an accidental release

b. *Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?* **Less than significant impact.**

The proposed Project would involve re-grading, stabilizing, and replanting an actively eroding creekbank. The Project site has been a levee since before the area was a landfill with no development on the creekbank. The NISL EIR did not report any documented evidence of hazardous materials on the creekbank site that could impact construction workers or the surrounding environment. As noted earlier, all leachate was controlled inside the perimeter levee road. The potential to encounter contaminated soil or to otherwise accidentally release hazardous materials into the environment is very low. The applicant's Draft SWPPP describes the protocol the contractor will use if any evidence of hazardous materials is found during site grading. Reviewing agencies may require additional measures as part of the permits the Project requires. These measures would reduce the impacts to less than significant

c. *Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?* **No impact.**

The Project site is not within one-quarter mile of a school. Even so, the Project only proposes the use of minimal construction-related chemicals, no hazardous emission is expected. Therefore, there would be no impact.

d. *Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?* **Less than significant impact.**

The Project site is on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 known as the Cortese List. The Cortese List is maintained by the Department of Toxic Substances Control (DTSC), the SWRCB, the Santa Clara County leaking underground storage tank program, and CIWMB. The Project site is listed by the SWRCB and CIWMB as a solid waste landfill. The Project site, specifically the Recyclery, was listed in the County of Santa Clara's databases for leaking underground storage tanks (USTs) for a former leaking UST. This case was closed in 1993.

While the landfill site is listed as a hazardous materials site, the repair of a failing streambank would not create a new hazard. In fact, the Project would reduce the risk of streambank failure, and streambank failure could result in exposure and spread of hazardous materials. Accordingly, the Project could have a beneficial effect, but, at the least, there would be no adverse impact.

e. *For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?* **No impact.**

The nearest airports to the Project are the Norman Y. Mineta San José International Airport located approximately over 5 miles south of the Project area and the Moffett Federal Airfield, located over 6 miles from the Project site. Because the Project site is more than two miles from an airport, and because implementation of the proposed Project would not involve the construction of new facilities and would not interfere with air traffic, there would be no impact related to safety hazards in the vicinity of an airport. Therefore, there would be no impact.

f. *Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?* **No impact.**

The Project creekbank is not a road used for public or NISL access and would not be used for emergency response or as an evacuation route. There would be no impact.

g. *Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?* **Less than significant impact.**

The Project site is a creekbank adjacent to a perennial stream. It is not within a high fire hazard area and, in the unlikely event of a fire, the potential to expose people or structures to a significant risk involving fires is low. The use of construction equipment and the possible temporary on-site storage of fuels and/or other flammable construction chemicals could pose an increased fire risk resulting in injury to workers. However, contractors would be required to comply with hazardous materials storage

and fire protection regulations, which would minimize the potential for fire. Therefore, this impact would be less than significant.

X. Hydrology and Water Quality

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?			x	
b. Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?				x
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:			x	
(I). result in substantial erosion or siltation on- or off-site;		x		
(II). substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite;				x
(III). create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or				x
(iv). impede or redirect flood flows?			x	
d. In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?			x	
e. Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?			x	

1. Setting

a. Regulatory Framework

Water Quality Overview

The federal Clean Water Act and California's Porter-Cologne Water Quality Control Act are the primary laws related to water quality in California. Regulations set forth by the U.S. EPA and the State Water Resources Control Board (SWRCB) have been developed to fulfill the requirements of this legislation. EPA regulations include the National Pollutant Discharge Elimination System (NPDES) permit program, which controls sources that discharge pollutants into the waters of

the United States (e.g., streams, lakes, bays, etc.). These regulations are implemented at the regional level by the RWQCBs. The Project site is within the jurisdiction of the San Francisco Bay RWQCB.

Federal

Clean Water Act

The Clean Water Act (CWA) regulates the discharge of pollutants into the waters of the U.S. and the quality standards for surface waters which includes lakes, rivers, streams, wetlands, and coastal areas. The CWA made it unlawful to discharge any pollutant into navigable waters (as defined by the U.S. Army Corps of Engineers) unless an NPDES permit is obtained.

Regional

San Francisco Bay Region Municipal Regional Stormwater NPDES Permits

In 2015, the San Francisco Bay Regional Water Quality Control Board (RWQCB) issued a regional National Pollutant Discharge Elimination System (NPDES) permit (NPDES Order R2-2015-0049 [which updated a prior Order R2-2009-0074], NPDES Permit No. CAS612008) for stormwater consolidating requirements for all Bay Area municipalities and flood control agencies that discharge directly to the San Francisco Bay. Permit conditions would require BMPs to control and prevent sediment and contaminants from reaching surface waters and would include post-development stormwater runoff through source control, site design, and treatment control BMPs.

Waste Discharge Requirements

NISL has its own NPDES General Permit, the landfill's SWPPP identifies sources of stormwater pollution and management practices to minimize pollution in stormwater discharge from the landfill. The landfill facility includes structural and non-structural control measures to reduce pollutants in stormwater runoff.

Clean Water Act Section 401 Water Quality Certification

Procurement and adherence to a Clean Water Act Section 401 Water Quality Certification from the San Francisco RWQCB would also occur once the City has completed its CEQA review of the Project. Direct impacts to waters of the United States (U.S.) are addressed in the earlier Section IV Biological Resources.

Construction General Permit Order 2009-0009-DWQ

Dischargers are required to obtain coverage under the General Permit for Discharges of Storm

Water Associated with Construction Activity Construction General Permit Order 2009-0009-DWQ if their projects disturb one or more acres of soil or disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres. Because the Project does not fall under these requirements, coverage under the Construction General Permit is not required.

b. Existing Conditions

The Project site is located within an area that was once tidal marshlands that drained into San Francisco Bay. The site is adjacent to Coyote Creek, which curves along the eastern perimeter of the NISL property. The Federal Emergency Management Agency (FEMA) has not printed a Flood Insurance Rate Map (FIRM) for the Project site; however, the FIRM index indicates that the Project site is located in the FEMA 100-year flood zone, A1, with a predicted 100-year flood elevation of nine feet (NGVD29). The Project site is also located within an area of potential tidal flooding. The level of tidal flooding in the Alviso area is nine feet (NGVD29).

However, NISL and the adjacent Recyclery are protected from exterior floodwater inundation, run-on, and tidal waters by a perimeter levee system. The perimeter levee, the top of which is approximately 14 feet (NGVD29) adjacent to Coyote Creek, protects NISL and the Recyclery from the 100-year flood with a design flood stage of nine feet (NGVD29) and from tidal influences. Other areas of the perimeter levee vary from 12.5 feet to 22.5 feet (NGVD29). The NISL and the Recyclery are not connected to the City's storm drain system and runoff from the site is not conveyed to the City's storm drain system.

2. Impacts

a. *Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?* **Less than significant impact**

Construction of the proposed Project would involve the use of heavy construction machinery on site, including for the grading of soils, placement of fill, rock, and large woody debris, and revegetation. Though heavy equipment would operate from dry areas only, these activities still could result in potential accidental release of sediment and construction-related water quality pollutants from the Project area. For example, during storms, surface soils and sediment loosened during the construction process could become entrained in stormwater, resulting in erosion on site, increases in sediment loading off site, and potential for sedimentation downstream. Other construction-related water quality pollutants could also become entrained in stormwater, including pollutants associated with heavy construction equipment such as oils, greases, fuels, antifreeze, and other lubricants, as well as other construction-related pollutants such as construction related debris. If entrained in stormwater, these

pollutants could be carried off site and affect downstream waters. No additional impervious surfaces are proposed to be created as a part of the Project.

Prior to work on the streambank, a turbidity curtain will be installed in the channel around the area that would be disturbed by grading and placement of soil, rock, and large woody material. This turbidity curtain will be used to minimize the dispersion of silt and sediment within Coyote Creek during in-stream Project activities. The body of the turbidity curtain will be made from a strong, high-filtration fabric that retains fine silt and sediments within the work area. The top of the curtain will float on the surface of the water with a closed-cell polyethylene flotation log, and the bottom of the curtain will be weighted with a ballast chain or anchored with sandbags, if needed. The turbidity curtain will completely enclose the instream portion of the work area to ensure that silt and sediments disturbed during construction activities are retained on-site.

Impacts related to potential construction period water quality degradation would be permitted via the procurement and adherence to a Clean Water Act Section 401 Water Quality Certification from the San Francisco RWQCB. Permit conditions would include implementation of best management practices (BMPs) to minimize the risk of a hazardous materials release during construction activities. The BMPs would include protection measures for the temporary on-site storage of fuel and other hazardous materials used during construction, including requirements for secondary containment and berming to prevent any such release from reaching an adjacent waterway. All equipment and materials storage would need to be routinely inspected for leaks, and records maintained for documenting compliance with the storage and handling of hazardous materials. Thus, potential adverse effects related to the routine use and possible release of hazardous construction chemicals into the environment would be minimized.

The proposed Project would also be subject to the requirements of the San Francisco Bay Region Municipal Regional Stormwater NPDES Permit. Together, these regulations would require the implementation of construction phase BMPs to reduce and minimize construction-related stormwater pollution, construction phase water quality monitoring for all discharges, and implementation of various industrial site controls designed to minimize and reduce the emission of polluted stormwater from the Project area. The Project would be bound to comply with these requirements under State law.

Additionally, the Draft Streambed Alteration Agreement issued for the Project includes a full suite of required erosion control measures. These include specific design details for rock slope protection, a list of erosion control materials, erosion control installation time period, turbidity curtain installation procedures, and revegetation requirements. Together, these regulations and agreement would require the implementation of construction period BMPs to reduce and minimize construction-related stormwater

pollution, construction period water quality monitoring for all discharges, and implementation of various industrial site controls designed to minimize and reduce the emission of polluted stormwater from the Project area. Implementation of these BMPs and compliance with State laws, along with the implementation of Mitigation Measure BR-1 to ensure the applicant obtains all required agency permits and follows permit conditions, would reduce any potentially significant impacts to water quality to a less-than-significant level.

b. Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin? **No impact.**

The proposed Project would not involve pumping or extraction of groundwater, and therefore would not directly result in the drawdown of groundwater levels nor would the proposed Project involve the construction of new impervious surfaces. Therefore, no impact would occur.

c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:

(i) result in substantial erosion or siltation on- or off-site; **Less than with mitigation incorporated**.

The proposed bank repair project would include re=grading the creekbank and the placement of 170 cubic yards of rock and fill below the Mean Higher High Water (MHHW) level within the stream channel. The Project includes a Draft Stormwater Pollution Prevention Plan (SWPPP—see Figure 8) that includes BMPs to minimize erosion and downstream sedimentation. As noted previously, prior to work on the streambank, a turbidity curtain will be installed in the channel around the area that would be disturbed by grading and placement of soil, rock, and large woody material. This turbidity curtain will be used to minimize the dispersion of silt and sediment within Coyote Creek during in-stream Project activities.

The principal aim of the proposed Project it to address the toe scour of the creekbank at the Project location. The portion of the creekbank that would be improved is on an outside bend of the stream channel where the force of the downstream flow of Coyote Creek is directed at the failing bank thereby eroding the toe of the bank (i.e., causing scour of the toe of the bank). The Project includes armoring the bank from the bank toe to mean higher high water (see Figure 9) and extending that armoring to connect with an adjacent downstream section of the bank that was armored in the past (see Photographs 2 and 3). This will result in a geomorphically stable and armored bank at

the Project site. The bank will then be armored from the upstream edge of the Project through the vulnerable outside bend of the channel where the streamflow is causing the erosion (scour), and downstream past the bend to the previously armored bank.

Downstream of this armored section, the stream channel is approximately straight for about 2,000 feet to the north prior to making a bend towards the bay. An engineering review of site conditions and available aerial imagery of the downstream area shows no areas susceptible to erosion. The Project will not result in any construction in the channel that would cause a change in flows that would affect either the bank on the Project side of the creek or the opposite banks. The Project would not add any object to the channel that would deflect flows towards the opposite banks.

As regards affecting the speed of flow, the Project engineer notes that one of the main purposes of the Project design is to install a rough streambank edge using woody debris and a planting bench buffer to dissipate any erosive flow energy and future streambank scour. The intent of the design is to use techniques to further roughen the streambank., thereby dissipating energy and eliminate any potential scour relocation impacts of the Project.[8]

Accordingly, the Project would be expected to have less-than-significant impacts on bank erosion. Nevertheless, the Draft SWPPP may be revised following additional State and federal review of the Project to incorporate other water quality protections the permitting agencies believe are warranted. As mentioned previously, this includes review by the RWQCB prior to issuance of a Clean Water Act Section 401 Water Quality Certification. Subsequent to City completion of the CEQA process, the RWQCB will review the Project design and stream protection elements to confirm that the Project would not cause erosion or bank instability further downstream of the existing armored section. As noted previously, the USACE has authorized the Project under Nationwide Permit 13, and a draft Streambed Alteration Agreement has been issues by the CDFW. Therefore, implementation of proposed erosion control measures required as part of Mitigation Measure BR-1 and compliance with regulatory permits will reduce Project-generated erosion to a less-than-significant level

(ii) substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or offsite; **No impact.**

[8] Syd Temple, Project Engineer and Principal of Questa Engineering Corporation emails to Leonard Charles dated 4/26/20, 6/23/20, and 8/18/20.

The Project does not include the addition of new impermeable surface to the site nor change the area drainage patterns. Therefore, there would be no increase in runoff from the Project site.

(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; **No impact.**

As noted above, the Project will not increase runoff from the site. Therefore, the Project would not increase runoff that would exceed the capacity of Coyote Creek, and there would be no impact per this criterion.

(iv) impede or redirect flood flows? **Less than significant impact.**

The proposed Project would include the placement of 170 cubic yards of rock and fill below the Mean Higher High Water (MHHW) within the stream channel. However, the floodplain in this location is extensive, and flooding is defined primarily by high tides. Therefore, the small amount of fill that this Project represents will not measurably affect base flood elevations of adjacent properties. As noted above, the Project would not substantially alter the drainage pattern of Coyote Creek so as to result in additional flooding of adjacent or downstream properties. Accordingly, the Project would not substantially impede flood flows nor redirect such flows to areas that do not currently flood due to tidal action and/or peak rainfall events.

d. In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation? **Less than significant impact.**

NISL is protected by a perimeter levee that protects the facility from flooding. The proposed Project will maintain the integrity of the levee at the Project site to reduce the potential for levee failure and possible flooding of that facility. A levee failure could result in pollutants escaping from NISL and entering Coyote Creek and the bay. This is a beneficial environmental effect of the proposed Project.

The proposed Project is not located immediately adjacent to an enclosed water body where it could be affected by seiche. The proposed Project is located in a lowlands area near south San Francisco Bay, and could theoretically be subject to tsunami related hazards. When a suite of tsunami events, including local tsunamis and teletsunamis (tsunamis originating from distant points in the Pacific Ocean), were modeled in support of the Plant Master Plan EIR,[9] the combined upper bound of tsunami inundation at

[9] City of San José. San José/Santa Clara Water Pollution Control Plant Master Plan Final Environmental Impact

mean high water was north of the Project area along the margin of the south San Francisco Bay. No inundation was shown within the Project area. Therefore, tsunamis would not affect the Project area. Therefore, this impact on water quality would be less than significant.

e. *Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?* **Less than significant impact.**

As noted previously, the Project would not require groundwater withdrawals nor increase impermeable surfaces on the site. Therefore, the Project would have no impact on groundwater. The Project will be required to procure and adhere to a Clean Water Act Section 401 Water Quality Certification from the San Francisco RWQCB. The RWQCB could add additional water quality protection requirements beyond those proposed as part of the Project and those required by the ACE and CDFW in their draft approvals of the Project. Implementing these required measures will meet the requirements of the agencies responsible for water quality in the area and reduce the impact to a less-than-significant level. In addition, by protecting the NISL from the effects of a levee failure, the Project would have a long-term benefit on water quality.

Report. November, 2013. Accessible at the City of San José Planning Division website.

XI. Land Use and Planning

Would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a.	*Physically divide an established community?*				x
b.	*Cause a significant environmental impact due to a conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?*			x	

1. Setting

a. Regulatory Framework

City of San José

Envision San José 2040 General Plan

The following policies in the City's General Plan have been adopted for the purpose of reducing or avoiding impacts related to land use and are applicable to the Project.

- **LU-1.8** Collaborate with appropriate external agencies with land use authority or regulations in San José. Consider applicable Airport Land Use Commission, Santa Clara Valley Water District, Local Area Formation Commission, and other policies from outside agencies when reviewing new or expanded uses.

The City's General Plan Land Use/Transportation Diagram designates the Project site as Open Space, Parklands and Habitat (OSPH) and Light Industrial (LI). The Project site is located within the Alviso Master Plan area and is identified as Private Open Space with a solid waste landfill overlay. The site is zoned A(PD) Planned Development Zoning District.

b. Existing Conditions

The proposed Project site is located on the south bank of Coyote Creek. The Project would repair a section of the levee bank that is eroding.

2. Impacts

a. Physically divide an established community? **No impact.**

The Project would not include any construction within or near an established community, and therefore would not physically divide or interfere with any established community. No impact would occur.

b. Cause a significant environmental impact due to a conflict with any applicable land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect? **Less than significant impact.**

With respect to the City's General Plan Land Use/Transportation Diagram designation, the Project site is designated as Open Space, Parklands, and Habitat. The Project site is also located within the Alviso Master Plan area and is identified as private open space with a solid waste landfill overlay. The site is zoned A(PD) (Planned Development Zoning District). This zoning is intended to allow the landfill to continue operations until it reaches its permitted capacity. The proposed Project would not add additional facilities to the site and would therefore be consistent with existing land use designation and zoning applicable to the Project area. As described in other sections of this report, the Project would not result in significant environmental effects on natural resources nor cause any hazards to humans. As such, it is consistent with City General Plan policies involving protection of natural resources and human safety. In maintaining the integrity of the levee at the Project site, the proposed Project would maintain General Plan policies aimed at ensuring that solid waste facilities are operated and maintained to minimize the risk of escape of hazardous materials and pollutants into the environment. The impact would be less than significant.

XII. Mineral Resources

Would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a.	*Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?*				x
b.	*Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?*				x

1. Setting

a. Regulatory Framework

State

Surface Mining and Reclamation Act

The Surface Mining and Reclamation Act (SMARA) was enacted by the California Legislature in 1975 to address the need for a continuing supply of mineral resources, and to prevent or minimize the negative impacts of surface mining to public health, property and the environment. As mandated under SMARA, the State Geologist has designated mineral land classifications in order to help identify and protect mineral resources in areas within the State subject to urban expansion or other irreversible land uses which would preclude mineral extraction. SMARA also allowed the State Mining and Geology Board (SMGB), after receiving classification information from the State Geologist, to designate lands containing mineral deposits of regional or Statewide significance

The State Mining and Geology Board under the Surface Mining and Reclamation Act of 1975 (SMARA) has designated an area of Communications Hill in Central San José, bounded by the Union Pacific Railroad, Curtner Avenue, State Route 87, and Hillsdale Avenue, as a regional source of construction aggregate materials. Other than the Communications Hills area, San José does not have mineral deposits subject to SMARA.

b. Existing Conditions

The Project area is not within an aggregate resource area. According to the USGS Mineral Resources Data System, there are no known mineral occurrences, prospects, or past or present

mineral producers within or immediately adjacent to the Project area.[10] Moreover, the Project site is part of the NISL, which is an existing facility already using the levee for its approved purposes that do not involve any mining or mineral extraction. The proposed repairs would not change those uses or otherwise change the current or future availability of mineral resources.

2. Impacts

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state? **No impact.**

The proposed Project is not located in an area containing known mineral resources. The physical distance between the Project site and the Communications Hill area is approximately 12 miles. As noted above, no known mineral resources of importance to the state or region are located on site. Therefore, the proposed Project would not result in the loss of availability of mineral resources, or otherwise interfere with the extraction of existing mineral resources. No impact would occur.

b. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? **No impact.**

No locally important mineral resource recovery sites are delineated for the Project area, including in a general plan or other land use plan.

[10] U.S. Geologic Survey, *Mineral Resources Data System (MRDS), Mineral Resources On-Line Spatial Data*,available http://mrdata.usgs.gov/mineral-resources/mrds-us.html. Accessed 4/10/2017.

XIII. Noise

Would the project result in:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a.	*Generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?*			x	
b.	*Generation of excessive groundborne vibration of groundborne noise levels?*			x	
c.	*For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?*				x

1. Setting

a. Regulatory Framework

City of San José

Envision San José 2040 General Plan

The City's Envision San José 2040 General Plan includes goals and policies pertaining to noise and vibration. Community Noise Levels and Land Use Compatibility (commonly referred to as the Noise Element) of the General Plan utilizes the DNL descriptor and identifies interior and exterior noise standards for residential uses. The Envision San José 2040 General Plan and the San José Municipal Code include the following criteria for land use compatibility and acceptable noise levels in the City:

EXTERIOR NOISE EXPOSURE (DNL IN DECIBELS DBA) FROM GENERAL PLAN TABLE EC-1: Land Use Compatibility Guidelines for Community Noise in San José							
Land Use Category		**Exterior DNL Value In Decibels**					
		55	**60**	**65**	**70**	**75**	**80**
1.	Residential, Hotels and Motels, Hospitals and Residential Care						
2.	Outdoor Sports and Recreation, Neighborhood Parks and Playgrounds						
3.	Schools, Libraries, Museums, Meeting Halls, and Churches						
4.	Office Buildings, Business Commercial, and Professional Offices						
5.	Sports Arenas, Outdoor Spectator Sports						
6.	Public and Quasi-Public Auditoriums, Concert Halls, and Amphitheaters						
	Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.						
	Conditionally Acceptable: Specified land use may be permitted only after detailed analysis of the noise reduction requirements and noise mitigation features included in the design.						
	Unacceptable: New construction or development should generally not be undertaken because mitigation is usually not feasible to comply with noise element policies. (Development will only be considered when technically feasible mitigation is identified that is also compatible with relevant design guidelines.)						

The following policies would apply:

EC-1.1 calls for locating new development in areas where noise levels are appropriate for the proposed uses. Consider federal, state and City noise standards and guidelines as a part of new development review. Applicable exterior noise exposure standards and guidelines for land uses in San José are described in the table above. The City's standard for interior noise levels in residences, hotels, motels, residential care facilities, and hospitals is 45 dBA DNL. Development should include appropriate site and building design, building construction and noise attenuation techniques to meet this standard.

EC-1.2 considers noise impacts significant if a project would increase noise levels on adjacent sensitive land uses including residences as follows:

- Cause the DNL at noise sensitive receptors to increase by five dBA DNL or more where the noise levels would remain "Normally Acceptable": or
- Cause the DNL at noise sensitive receptors to increase by three dBA DNL or more where noise levels would equal or exceed the "Normally Acceptable" Policy EC-1.7 of the General Plan requires construction operations to use best available noise suppression devices and techniques and limit construction hours near residential uses per the City's Municipal Code. The City considers significant construction noise impacts to occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would:
- Involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.
- For large or complex projects, a construction noise logistics plan is required that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints, to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses.

EC-2.3 requires new development to minimize vibration impacts to adjacent uses during demolition and construction. For sensitive historic structures, a vibration limit of 0.08 in/sec PPV (peak particle velocity) will be used to minimize the potential for cosmetic damage to a building. A vibration limit of 0.20 in/sec PPV will be used to minimize the potential for cosmetic damage at buildings of normal conventional construction.

Municipal Code

The City's Municipal Code considers construction noise impacts to be significant if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would involve substantial noise generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months.

b. Existing Conditions

The Project site is located on a property that is used as a sanitary landfill. There are no noise sensitive receptors (e.g., residences, schools) in the immediate vicinity of the Project area. The nearest sensitive land use is a residential complex located approximately 0.6 miles southeast of the p Project site, east of I-880 and south of Dixon Landing Road.

The NISL EIR reports that landfill noise is not perceptible in this residential neighborhood due to noise from the intervening freeway interchange. The existing San Francisco Bay Trail (ending on Fremont Boulevard to the north of the Project site) comes to within approximately 0.5 miles of

the Project site.

2. Impacts

a. Generation a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? **Less than significant impact.**

Construction of the Project will generate noise due to the use of heavy construction equipment. The Project will include use of a long reach excavator for placing material in the channel, flatbed trucks for delivering equipment and woody debris, rock delivery trucks, a front loader for moving rock, and a compactor. The Project will take 22 working days to complete. This type of equipment typically generates a maximum noise of 85 decibels (dBA Lmax) at 50 feet. Assuming a 7.5 dB decrease per doubling of distance from the noise source, the nearest sensitive receptor (3,000 feet distant) would be exposed to a maximum noise level of 40 dBA from Project construction. This level of noise would be inaudible over ambient noise levels at the nearest sensitive receptor (lying east of I-880). In addition, the Project would not take longer than 12 months to construct, so it would be consistent with City's General Plan and Zoning Ordinance requirements for construction noise. Accordingly, the construction noise impact would be less than significant. Once construction is completed, the Project would not generate any noise, so there would be no permanent operational noise increase from the Project.

b. Generation of excessive groundborne vibration of groundborne noise levels? **Less than significant impact.**

The use of blasting and/or pile drivers would not be included as part of the Project. The Project would involve temporary sources of groundborne vibration and groundborne noise during operation of heavy equipment. This groundborne vibration and groundborne noise could be perceptible on the NISL property, but not at the more distant sensitive receptors. In addition, since the impact from heavy equipment would occur during less sensitive daytime hours and for only three weeks, the impact from construction-related groundborne vibration and groundborne noise would be less than significant. The Project would be consistent with General Plan Policy EC-2.3 because of the substantial distance between the construction site and the nearest sensitive receptor as well as the short period of time that heavy equipment would be used at the site.

c. For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? **No impact.**

The Project does not include housing or jobs. The Project is 4.5 miles from the nearest airport and there is no private airstrip in the area. The Project proposes no uses that would be affected by local aircraft operations. There would be no noise impact on the Project site resulting from aircraft operations.

XIV. Population and Housing

Would the project:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a.	*Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?*				x
b.	*Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?*				x

1. Setting

The population of San José was estimated to be approximately 1,043,058 in January 2019 with an average of 3.20 persons per household.[11] As of January 2019, the City had approximately 335,887 housing units and, by 2040, the City's population is projected to reach 1,334,100.[12]

The Project would be located on a site managed by the applicant as part of its landfill operations. There are no residences or public roads on the Project site. The proposed Project would repair a levee to prevent further erosion of the levee and possible damage to the gas collection pipeline that is immediately adjacent to the bank erosion problem. The Project would not add capacity for landfill operations.

2. Impacts

a. *Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?* **No impact**.

The proposed Project would not involve or result in major new housing, business, or industrial developments that could drive population growth. The proposed Project would involve repairing an existing levee. The proposed Project would not contribute to or support the construction of new facilities. Therefore, the proposed Project would not lift an existing indirect impediment to growth, such as by increasing available capacity at a wastewater treatment plant. Therefore, no impact would occur.

[11]

[12] City of San José. "Population." Accessed December 18, 2019.. https://www.sanjoseca.gov/your-government/departments/planning-building-code-enforcement/planning-division/data-and-maps/demographics/population

b. *Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere?* **No impact.**

The proposed Project would involve repair of an existing levee. It would not result in the demolition of existing housing, or otherwise cause a reduction in housing units on site or elsewhere. Therefore, no impact would occur.

XV. Public Services

Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
Fire protection?			x	
Police protection?				x
Schools?				x
Parks?				x
Other public facilities?				x

1. Setting

a. Regulatory Framework

City of San José

Envision San José 2040 General Plan

Various policies in the City's 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts associated with public facilities and services, including the following that are applicable to the proposed Project:

- **ES-3.1** Provide rapid and timely Level of Service response time to all emergencies:

  1. For police protection, use as a goal a response time of six minutes or less for 60 percent of all Priority 1 cal7ls, and of eleven minutes or less for 60 percent of all Priority 2 calls.

  2. For fire protection, use as a goal a total response time (reflex) of eight minutes and a total travel time of four minutes for 80 percent of emergency incidents.

  3. Enhance service delivery through the adoption and effective use of innovative, emerging techniques, technologies and operating models.

  4. Measure service delivery to identify the degree to which services are meeting the needs of San Jose's community.

5. Ensure that development of police and fire service facilities and delivery of services keeps pace with development and growth in the city.

b. Existing Conditions

The Project site is a creekbank. Accordingly, it does not require public services or utilities. The NISL is served by a well on the Recyclery property. At the NISL, the well water is mainly used for dust control, with minor amounts used for other nonpotable uses. Bottled water is utilized for all drinking purposes at NISL. Bottled water is available at the employee trailer, maintenance building, scale houses, the Recyclery, and IDC offices

The NISL site does not have proximate access to City of San José streets, so it is served by public streets in the City of Milpitas. The closest response to a fire or medical emergency is by the City of Milpitas fire protection personnel. The City of San José participates in several automatic aid programs with the cities of Milpitas and Santa Clara, and the Santa Clara County Central Fire Protection District. These automatic aid programs assign the closest responding units, when they are available, within designated areas of San José and the other participating jurisdictions. These agreements provide improved Emergency Medical Services (EMS) and fire protection services to the participating jurisdictions.

The nearest first station in Milpitas is located at the northeast corner of Milpitas Boulevard and Midwick Drive, approximately 1.5 miles and 4.5 minutes travel time from the Project site. The nearest fire stations in San José are No. 25 located at 1590 Gold Street and No. 29 located at Innovation Drive. Both San José fire stations are approximately 5.7 miles and eight-minute travel time from the Project site.

Police protection services are provided by the City of San José Police Department (SJPD) from its main station located at 201 W. Mission Street in San José.

2. Impacts

a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection? **Less than significant impact.**

The proposed Project would involve repair of an existing levee. There are no wildland fuels near the Project site. In the unlikely event of a fire within the Project area, including a fuel fire, fire response would be provided by the Milpitas Fire Department (first responder). The proposed Project would not result in new activities on site that

would increase demand for fire protection. Therefore, the proposed Project would not adversely affect fire department response times, and the impact would be less than significant.

Police protection, Schools, Parks, and Other Public Facilities? **No impact.**

The proposed Project would involve construction of components relating to the repair of an existing levee. No operational activities beyond routine maintenance inspections are associated with the proposed Project. The proposed construction components and activities would not require additional police protection or response, need for schools, demand for parks, or need for other public facilities, such that new or physically altered public facilities would be needed. Additionally, the proposed Project would not create demand for police services such that response times would be altered. As noted above, implementing the Project would alleviate a potential for risks associated with threats to the NISL gas pipeline. It would not increase those risks. Therefore, there would be no impact.

XVI. Recreation

		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a.	*Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?*				x
b.	*Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?*				x

1. Setting

The City of San José operates 195 neighborhood parks, 50 community centers, nine regional parks, and over 60 miles of trails. The City's Departments of Parks, Recreation, and Neighborhood Services is responsible for the development, operation, and maintenance of all City park facilities.

There are no parks or recreational facilities on the NISL site. The nearest section of the completed San Francisco Bay Trail is approximately 0.5 miles north of the Project site. There is no public access between the Project site and that trail.

2. Impacts

a. *Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?* **No impact.**

The proposed Project would involve temporary construction activities of less than one month. These activities would involve repairing an existing levee. The proposed Project would not permanently affect any existing recreational uses of nearby features. The proposed Project would not result in new housing development or other activities that would increase use, alter usage patterns, or increase demand for existing recreational facilities, thereby causing increased physical deterioration of recreation related facilities or demand for new facilities. Therefore, no impact would occur.

b. *Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?* **No impact.**

The Project does not include any new recreational facilities nor require the construction or expansion of such facilities. The Bay Trail plan shows a future section of the trail looping around the perimeter of Newby Island. It is assumed that the alignment would be along the levee road. The Project will not block or affect this road, so it would remain available for possible future recreational use. Therefore, no impact would occur.

XV. Transportation

Would the project result in:		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a.	*Conflict with program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?*			x	
b.	*Would the project conflict or be inconsistent with CEQA Guidelines section 15064.3, subdivision (b)?*			x	
c.	*Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?*				x
e.	*Result in inadequate emergency access?*				x

1. Setting

a. Regulatory Framework

State and Regional

There are numerous State and regional laws regulating and providing policy guidance regarding transportation modes and land use in the City and the region. These programs, including Senate Bill 743, the region's Sustainable Community Strategy, the Congestion Management Program, and the City's "Transportation Analysis Policy" are aimed at reducing traffic congestion and Vehicle Miles Travelled in the City and the region. These State and regional policies and programs are not pertinent to the proposed Project, which would not generate trips once the short construction period is completed.

City of San José

Transportation Analysis Policy (City Council Policy 5-1)

As established in City Council Policy 5-1, "Transportation Analysis Policy" (2018), the City of San José uses vehicle miles traveled (VMT) as the metric to assess transportation impacts from new development. According to the policy, an employment (e.g., office or research and development) or residential project's transportation impact would be less than significant if the project VMT is at least 15 percent below the existing average regional per capita VMT. For industrial projects (e.g., warehouse, manufacturing, distribution), the impact would be less than significant if the project VMT is less than or equal to existing average regional per capita VMT.

The threshold for a retail project is whether it generates net new regional VMT, as new retail typically redistributes existing trips and miles traveled as opposed to inducing new travel. If a project's VMT does not meet the established thresholds, mitigation measures would be required, where feasible. The policy also requires preparation of a Local Transportation Analysis to analyze non-CEQA transportation issues, including local transportation operations, intersection level of service, site access and circulation, neighborhood transportation issues such as pedestrian and bicycle access, and to recommend needed transportation improvements.

Screening criteria have been established to determine which projects require a detailed VMT analysis. If a project meets the relevant screening criteria, it is considered to a have a less than significant VMT impact.

Envision San José 2040 General Plan

Various policies in the City's 2040 General Plan have been adopted for the purpose of reducing or avoiding impacts related to transportation. The following are applicable to this Project which would only generate traffic during construction.

- **TR-1.5**: Design, construct, operate, and maintain public streets to enable safe, comfortable, and attractive access and travel for motorists and for pedestrians, bicyclists, and transit users of all ages, abilities, and preferences

b. Existing Conditions

The Project site is located on a levee access road that is only accessible to the staff of the NISL and its contractors. Dixon Landing Road provides access to the NISL site. This road connects with the street system of the City of Milpitas to the east as well as to Interstate Highways 880 and 680.

2. Impacts

a. Conflict with program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities? **Less than significant impact.**

The proposed Project would repair a section of eroding levee that is part of the NISL. The NISL's plans for managing its facilities provide for such occasional repairs as necessary to maintain its infrastructure. The proposed Project would not change the existing or future roadways or other circulation system elements in any way. There would be a limited amount of construction equipment associated with Project implementation (an excavator, a loader, a compacter, etc.), but these would only go in and out once. There would be several haul trucks to bring materials (wood, rock). Crew

vehicles would be limited because typical crew sizes would be less than 10 people. It is expected that construction equipment and workers would access the site from Dixon Landing Road and I-880 (via Dixon Landing Road). Site access would be only to and from the NISL entrance.

The most likely intersections that could be affected by an increase in construction traffic are the intersections analyzed in the NISL EIR. They are the I-880 southbound ramps with Dixon Landing Road and the I-880 northbound ramps with Dixon Landing Road. According to the NISL EIR, the southbound ramp intersections operated at LOS B for the a.m. peak hour and LOS A for the p.m. peak hours while the northbound ramp intersections operate at LOS B for the a.m. peak hour and LOC C for the p.m. peak hour. The landfill generates 142 to 1,269 trips per day (there is a wide range depending on the season and day of the week). The Project will generate approximately 30 truck roundtrips for rock delivery and other supplies plus a daily average of 5 roundtrips for workers. This number of trips would be generated for 22 working days. Given the wide range of daily trips generated by the landfill, this small number of added trips would not be noticeable.

The addition of 11-13 trips per day over the construction period would result in negligible changes to existing traffic patterns along Project area access roads. These additional trips are not anticipated to measurably reduce level of service, plus they would occur for a very short period of time. Therefore, there would be no potential to conflict with the City's General Plan or any circulation policy.

The levee is not part of any adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities. Therefore, the proposed Project would have no impact regarding such policies, plans, or programs. Given the limited scope of the Project, the construction would not generate enough traffic to cause a conflict with any plan or policy addressing the City's circulation system. Therefore, the impact would be less than significant.

b. Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)? **Less than significant impact.**

The Project does not include new housing or improvements that would generate new long-term employment. The only new trips would be during the short construction phase. In March 2018, City Council adopted the Transportation Analysis Policy (Council Policy 5-1) which aligned with Senate Bill 743 and the City's goals as set forth in the City's General Plan. The policy replaces its predecessor (Council Policy 5-3) and establishes the thresholds for transportation impacts under the CEQA based on vehicle miles traveled (VMT) instead of level of service (LOS). The intent of this change is to shift the focus of transportation analysis under CEQA from vehicle delay and roadway auto

capacity to a reduction in vehicle emissions, and the creation of robust multi-modal networks that support integrated land uses. The new transportation policy aligns with the currently adopted General Plan, which seeks to focus new development growth within Planned Growth Areas, bringing together office, residential, and supporting service land uses to internalize trips and reduce VMT.

Operationally the Project will not generate any new vehicle trips. For that reason, the Project will not reduce or increase VMT. Therefore, this Project will support the goals of the City and State by reducing significant traffic impacts to a less than significant level or being neutral. Therefore, the Vehicle Miles Travelled (VMT) impact would be less than significant.

c. Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? **No impact.**

The proposed Project's designs would not change existing roadways or their intended uses. There would be no impact.

d. Result in inadequate emergency access? **No impact.**

The levee repair associated with the proposed Project would result in no changes to existing emergency access or impede future emergency access on the NISL. There would be no impact.

XVIII. Utilities and Service Systems

Would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Require or result in the relocation or construction of new or expanded water, wastewater treatment facilities, or storm water drainage, electric power, natural gas, or telecommunications facilities or expansion of existing facilities, the construction or relocation of which could cause significant environmental effects?				x
b. Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?				x
c. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?				x
d. Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?			x	
e. Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?				x

1. Setting

The Project site is a creekbank. Accordingly, it does not require public services or utilities. The NISL is served by a well on the Recyclery property. At the NISL, the well water is mainly used for dust control, with minor amounts used for other non-potable uses. Bottled water is utilized for all drinking purposes at NISL. Bottled water is available at the employee trailer, maintenance building, scale houses, the Recyclery, and IDC offices. Sanitary facilities are also available at existing buildings immediately east of the Project site.

2. Impacts

a. Require or result in the relocation or construction of new or expanded water, wastewater treatment facilities, or storm water drainage, electric power, natural gas, or telecommunications facilities or expansion of existing facilities, the construction or relocation of which could cause significant environmental effects? **No impact.**

The proposed Project would involve construction activities relating to the repair of an existing levee that would maintain the integrity of the existing landfill. The Project does not include any new housing or long-term employment opportunities that might require service by utilities or public service providers. The Project would not require the relocation or construction of any new facilities listed under this criterion. Therefore, there would be no impact relevant to utilities and public services.

b. *Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?* **No impact.**

The proposed Project may require limited water during construction in support of dust suppression. Water is available for dust suppression on the landfill site. Otherwise, because no ongoing operations, except routine maintenance, would be associated with the Project, no water use would be required. There would be no impact on water supplies or entitlements.

c. *Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?* **No impact.**

After construction, the Project would not generate wastewater, and thus would not use any capacity in any wastewater treatment and disposal facility.

d. *Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?* **Less than significant impact.**

During construction, the proposed Project would generate minimal construction-related waste and debris such as construction-related wastes such as wood, rock, dirt, and other common materials. To the extent feasible, recyclable construction materials would be recycled at the nearby Recyclery. Non-recyclable materials would be landfilled at the adjacent landfill. The NISL has sufficient capacity to dispose of the small amount of solid waste generated by the Project. This impact is considered less than significant.

e. *Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?* **No impact.**

The proposed Project construction would comply with all applicable regulatory requirements related to solid waste. Specifications for Project construction would contain requirements for the handling, storage, cleanup, and disposal of any hazardous materials, or other construction pollutants. This impact is considered less than significant.

XIX. Wildfire

If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:	Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a. Substantially impair an adopted emergency response plan or emergency evacuation plan?				x
b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?				x
c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?				x
d. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?				x

1. Setting

The Project site is creekbank vegetated with grasses and forbs. It contains no structures. It is adjacent to Coyote Creek. The Project site is not located within a Very-High Fire Hazard Severity Zone for wildland fires, as designated by the California Department of Forestry and Fire Protection.[13]. Therefore, there is minimal fire hazard at the site.

2. Impacts

a. *Substantially impair an adopted emergency response plan or emergency evacuation plan?* **No impact.**

The levee repair associated with the proposed Project would result in no changes to existing emergency access or impede future emergency access on the NISL. Additionally, the Project would not create any barriers to emergency or other vehicle movement in

[13] CALFIRE, Fire Hazard Severity Map, 2008;l available at: https://osfm.fire.ca.gov/media/5935/san_josepdf

the area and final design would incorporate all Fire Code requirements. There would be no impact on emergency response or evacuation.

b. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire? **No impact**.

The Project site is not located within an area of moderate, high, or very High Fire Hazard Severity for the Local Responsibility Area nor does it contain any areas of moderate, high, or very high Fire Hazard Severity for the State Responsibility Area. Furthermore, there would be no occupants of the Project site, and therefore no impact to humans from wildfires in the area.

c. Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment? **No impact**.

The Project is a short-term construction of a creekbank repair. The Project site does not require protection from a wildfire, so no new infrastructure or utilizes are requited. Therefore, there would be no impact regarding installation or maintenance of new facilities.

d. Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes? **No impact.**

No structures or people will be on the site, so there will be no impact from the potential ramifications of a wildfire in the area.

XX. Mandatory Findings of Significance

		Potentially Significant Impact	Less than Significant with Mitigation Incorporated	Less than Significant Impact	No Impact
a.	*Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?*		x		
b.	*Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?*			x	
c.	*Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?*			x	

a. *Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?* **Less than significant with mitigation incorporated.**

The proposed Project would involve placing small amounts of fill in the form of rock and soil backfill materials in Coyote Creek. The creek is classified as a water of the United States, as well as being potential habitat for several special-status species of fish and wildlife. However, as explained in Section IV, Biological Resources, the proposed Project contains a number of resource protection measures to reduce the potential for direct and indirect effects to individuals of these species to a level that is less than significant. Further, the total area of habitat loss is less than one acre, which is less than the amount that would substantially reduce the habitat for a species or affect population dynamics or migration. More importantly the creekbank repair will enhance the habitat value of the site by including plantings of bulrush at the water's edge and native grasses and forbs above the Mean Higher High Water elevation. The California Department of Fish and Wildlife has issued a Draft Streambed Alteration Agreement for the Project that

includes additional conditions that the applicant must comply with when repairing the creekbank; these conditions and any additional permit conditions imposed by Responsible Agencies are included in Mitigation Measure BR-1 and Appendix C in this Initial Study. The Project applicant has also received authorization for the Project under Army Nationwide Permit (NWP) 13 for Bank Stabilization from the U. S. Army Corps of Engineers (see Appendix C) (assuming the completion of the CEQA process and City approval of the Project). That authorization states that NMFS concurred with the determination that the Project is unlikely to adversely affect North American green sturgeon and Central California Coast steelhead and designated critical habitat for those species.

As discussed for potential impacts to cultural resources, there are no known historical resources, archaeological resources, or tribal cultural resources in the Project area. With the implementation of Standard Permit Conditions, potential impacts to inadvertently discovered archaeological resources, tribal cultural resources or human remains would be a less-than-significant level. No other cultural resources would be affected, and the proposed Project would not eliminate important examples of the major periods of California history or prehistory.

b. *Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?* **Less than significant impact.**

Cumulative environmental effects are multiple individual effects that, when considered together, are considerable or may compound or increase other environmental impacts. The proposed Project is a minor repair to a levee in order to return it to prevent further erosion. The environmental impacts from Project construction are very small.

The Project site is a small part of the NISL facility. The continued disposal of landfill at this facility has numerous environmental impacts as identified in the NISL EIR. That EIR found that ongoing operations of the landfill, including repair of levees as needed, would have less-than-significant cumulative impacts. The short-term Project construction impacts would not result in a new cumulative impact on NISL or in the surrounding area. Even if there was a cumulative impact from development beyond the NISL, the Project would make a less than cumulatively considerable contribution to said impact. In fact, by repairing the levee the Project would have a cumulatively beneficial effect in that it would reduce the chance of levee failure and pollution of Coyote Creek and the bay.

This benefit would offset even the small amounts of fill necessary to repair this levee. The Project's air quality impacts would be limited to the construction period. Temporary construction-related air quality and GHG emissions would be minimized through the adherence to BAAQMD standards and requirements, and BAAQMD Basic Construction Measures. As described in Section III, Air Quality, the proposed Project would not result in a cumulatively considerable net increase in criteria air pollutants. The analysis of greenhouse gas emissions is inherently a cumulative analysis (with the geographic scope of the impact being the global climate). As described in Section VII, the proposed Project would not result in significant impacts related to greenhouse gas emissions. As explained in Section IV, Biological resources, the proposed Project would implement Project-proposed biological mitigation measures plus implement conditions set forth in the Draft Streambed Alteration Agreement and the USACE Permit so that the Project would have either no impacts or less-than-significant impacts on riparian habitat or other sensitive natural communities, migration of species, or applicable biological resources protection ordinances. Therefore, the proposed Project would not contribute to any cumulative impact for these resources. The cumulative impacts would be less than significant

c. *Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?* **Less than significant impact.**

The proposed Project involves minor repairs to an existing levee to avoid loss of a public service. It would take place in an area that is not accessible to the general public and that involves no changes in the landscape, land uses, services, or other aspects of human activities. It will have no measurable increase in ongoing operational or management relative to the pre-Project conditions. All potential environmental impacts on human beings identified in support of the proposed Project would be minimal or less than significant without mitigation. All potential hazards and hazardous materials impacts would be minimized. It would not cause changes in the environment that have any potential to cause substantial adverse direct or indirect effects on human beings.

8.0 REPORT PREPARATION

Lead Agency

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Environmental Consultants

The City of San José retained the firm of Leonard Charles and Associates to prepare this Initial Study. The following staff worked on this study:

- Leonard Charles, Ph.D., Project Manager and Environmental Analyst
- Lynn Milliman, M.A., Environmental Analyst
- Jacoba Charles, M.A. & M.S., Biologist and Environmental Analyst

Live Oak Associates, Inc., an ecological consulting firm, prepared the Biological Evaluation. The following staff worked on that evaluation:

- Rick Hopkins, Ph.D., Principal and Senior Conservation Biologist
- Davinna Ohlson, M.A., Director of Ecological Services and Wildlife & Plant Ecologist
- Emily Moffitt, M.S., Assistant Project Manager/Wildlife Ecologist

Geoff Hornek of Geoff H. Hornek Environmental Air Quality and Acoustical Consulting served as an air quality subconsultant.