

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE ADOPTING THE COYOTE CREEK – SINGLETON ROAD FISH BARRIER, STREAM RESTORATION, AND PEDESTRIAN BRIDGE PROJECT MITIGATED NEGATIVE DECLARATION, FOR WHICH AN INITIAL STUDY WAS PREPARED, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AS AMENDED, AND ADOPTING A RELATED MITIGATION MONITORING AND REPORTING PROGRAM**

**WHEREAS**, prior to the adoption of this Resolution, the Planning Director of the City of San José prepared an Initial Study and approved for circulation a Mitigated Negative Declaration for the Coyote Creek – Singleton Road Fish Barrier, Stream Restoration, and Pedestrian Bridge Project under Planning File No. PP18-040 (the “Initial Study/Mitigated Negative Declaration”), all in accordance with the requirements of the California Environmental Quality Act of 1970, together with state and local guidelines implementing said Act, all as amended to date (collectively “CEQA”); and

**WHEREAS**, the Coyote Creek – Singleton Road Fish Barrier, Stream Restoration, and Pedestrian Bridge Project (the “Project”) analyzed under the Initial Study/Mitigated Negative Declaration consists of removing the existing Singleton Road low-water crossing, restoring a portion of Coyote Creek, and constructing a bicycle and pedestrian bridge. The stream restoration design includes restoring the channel using stream simulation techniques to emulate the natural channel elevation, slope, and geometry consistent with standard stream restoration design practices. The bicycle and pedestrian bridge include the installation of a 280-foot long bridge perpendicular to the stream in the approximate footprint of the existing low-water crossing, located along Coyote Creek between Capital Expressway and Yerba Buena Road on Singleton Road, at the southern portion of the City of San José (Assessor’s Parcel Numbers: 494-22-

015, 494-22-016, 494-24-014, 494-24-015, 494-24-016, 494-24-017, and 494-26-044);  
and

**WHEREAS**, the Initial Study/Mitigated Negative Declaration concluded that implementation of the Project could result in certain significant effects on the environment and identified mitigation measures that would reduce each of those significant effects to a less-than-significant level; and

**WHEREAS**, in connection with the approval of a project involving the preparation of an initial study/mitigated negative declaration that identifies one or more significant environmental effects, CEQA requires the decision-making body of the lead agency to incorporate feasible mitigation measures that would reduce those significant environmental effects to a less-than-significant level; and

**WHEREAS**, whenever a lead agency approves a project requiring the implementation of measures to mitigate or avoid significant effects on the environment, CEQA also requires a lead agency to adopt a mitigation monitoring and reporting program to ensure compliance with the mitigation measures during project implementation, and such a mitigation monitoring and reporting program has been prepared for the Project for consideration by the decision-maker of the City of San José as lead agency for the Project (the “Mitigation Monitoring and Reporting Program”); and

**WHEREAS**, the City of San José is the lead agency on the Project, and the City Council is the decision-making body for the proposed approval to undertake the Project; and

**WHEREAS**, the City Council has reviewed and considered the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the

Project and intends to take actions on the Project in compliance with CEQA and state and local guidelines implementing CEQA; and

**WHEREAS**, the Initial Study/Mitigated Negative Declaration and related Mitigation Monitoring and Reporting Program for the Project are on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, are available for inspection by any interested person at that location and are, by this reference, incorporated into this Resolution as if fully set forth herein;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

**THAT THE CITY COUNCIL** does hereby make the following findings: (1) it has independently reviewed and analyzed the Initial Study/Mitigated Negative Declaration and other information in the record and has considered the information contained therein, prior to acting upon or approving the Project, (2) the Initial Study/Mitigated Negative Declaration prepared for the Project has been completed in compliance with CEQA and is consistent with state and local guidelines implementing CEQA, and (3) the Initial Study/Mitigated Negative Declaration represents the independent judgment and analysis of the City of San José, as lead agency for the Project. The City Council designates the Director of Planning at the Director's Office at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113, as the custodian of documents and records of proceedings on which this decision is based.

**THAT THE CITY COUNCIL** does hereby find that based upon the entire record of proceedings before it and all information received that there is no substantial evidence that the Project will have a significant effect on the environment and does hereby adopt the Mitigated Negative Declaration and related Mitigation Monitoring and Reporting

Program prepared for the Project (Planning File No. PP18-040). The Mitigation Monitoring and Reporting Program for the Project is attached hereto as Exhibit "A" and fully incorporated herein. The Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program are: (1) on file in the Office of the Director of Planning, located at 200 East Santa Clara Street, 3rd Floor Tower, San José, California, 95113 and (2) available for inspection by any interested person.

ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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SAM LICCARDO  
Mayor

ATTEST:

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TONI J. TABER, CMC  
City Clerk

# MITIGATION MONITORING AND REPORTING PROGRAM

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## **Coyote Creek – Singleton Road Fish Barrier, Stream Restoration, and Pedestrian Bridge Project** **File No. PP18-040** **September 2018**

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## **PREFACE**

Section 21081 of the California Environmental Quality Act (CEQA) requires a Lead Agency to adopt a Mitigation Monitoring and Reporting Program whenever it approves a project for which measures have been required to mitigate or avoid significant effects on the environment. The purpose of the monitoring or reporting program is to ensure compliance with the mitigation measures during project implementation.

The Initial Study/Mitigated Negative Declaration prepared for the Coyote Creek – Singleton Road Fish Barrier, Stream Restoration, and Pedestrian Bridge Project (the project) concluded that the implementation of the project could result in significant effects on the environment, and mitigation measures were incorporated into the proposed project or are required as a condition of project approval. This Mitigation Monitoring and Reporting Program addresses those measures in terms of how and when they will be implemented.

This document does *not* discuss those subjects for which the Initial Study/Mitigated Negative Declaration concluded that the impacts from implementation of the project would be less than significant.

The City of San José hereby agrees to fully implement the mitigation measures described below which have been developed in conjunction with the preparation of an Initial Study/Mitigated Negative Declaration for the proposed project. The City understands that these mitigation measures or substantially similar measures will be adopted as conditions of approval to avoid or significantly reduce potential environmental impacts to a less than significant level.



*Planning, Building and Code Enforcement*  
ROSALYNN HUGHEY, DIRECTOR

Coyote Creek – Singleton Road Fish  
Barrier, Stream Restoration, and  
Pedestrian Bridge Project  
File No. PP18-040

MITIGATIONS	MONITORING AND REPORTING PROGRAM				
	Documentation of Compliance [Project Applicant/Proponent Responsibility]		Documentation of Compliance [Lead Agency Responsibility]		
	Method of Compliance Or Mitigation Action	Timing of Compliance	Oversight Responsibility	Actions/Reports	Monitoring Timing or Schedule
<b>BIOLOGICAL RESOURCES</b>					
<b>Impact BIO-1.</b> The construction of the project has the potential to have short-term adverse impacts on Central California Coast steelhead.					
<p><b>Mitigation Measure BIO-1.</b> To minimize potential construction impacts on Central California Coast steelhead, the project applicant shall implement the following measures to make certain individual steelhead are not harmed and the movement of steelhead is not impeded during construction:</p> <ul style="list-style-type: none"> <li>• Construction within the channel shall be restricted to the dry season (June 15 to October 15), when the movement of steelhead within the project area is low. This restriction shall be outlined on project plans and specifications, as applicable.</li> <li>• The project applicant shall retain a qualified fisheries biologist who shall be present during the demolition of the low-water crossing to safely relocate any fish from the work area to suitable habitat in the live stream channel using seines and dipnets.</li> </ul> <p>Confirmation of the implementation of these measures shall be provided to the City of San José Supervising Environmental Planner prior to the start of any ground-disturbing activities.</p>	<p>Restrict construction within the channel to the dry season (June 15 to October 15), which are outlined on project plans and specifications</p> <p>Qualified fisheries biologist present during the demolition of the low-water crossing to relocate fish</p>	<p>During construction activities</p>	<p>City of San José Supervising Environmental Planner</p>	<p>Confirmation of the implementation protection measures</p>	<p>Prior to the start of any ground-disturbing activities</p>



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<b>Impact BIO-2.</b> Project implementation may result in significant adverse impacts to migratory birds covered under the Migratory Bird Treaty Act (MBTA).					
<p><b>Mitigation Measure BIO-2:</b> Construction activities shall be scheduled to avoid the nesting season (February 1st through August 31st, inclusive). If construction activities are scheduled to take place outside the nesting season, impacts on nesting birds shall be avoided. If ground-disturbing activities cannot be scheduled to occur between September 1st and January 31st (inclusive) then preconstruction surveys for nesting birds shall be conducted by a qualified biologist to ensure that no nests will be disturbed during project construction. If work begins during the early part of the nesting season (February 1st to April 30th, inclusive), a qualified biologist shall survey all suitable nesting habitat in the project area for presence of nesting birds. This survey shall occur no more than 14 days prior to the start of ground-disturbing activities. If work begins during the late part of the nesting season (May 1st to August 31st, inclusive), a qualified biologist shall survey all suitable nesting habitat in the project area for presence of nesting birds. This survey shall occur no more than 30 days prior to the start of ground-disturbing activities.</p> <p>During these surveys, the biologist shall inspect all potential nesting habitats in and immediately adjacent to the impact areas for nests. If no nesting activity is observed, work may proceed as planned. If an active</p>	<p>Avoid construction activities during nesting season</p> <p>If construction activities cannot be scheduled to occur outside the nesting season, retain a qualified biologist to conduct preconstruction surveys for nesting birds</p> <p>If an active nest or burrow is discovered, the qualified biologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone</p>	<p>Prior to the start of ground-disturbing activities</p>	<p>City of San José Supervising Environmental Planner</p>	<p>Review report summarizing the results of the preconstruction surveys and subsequent efforts to protect nesting raptors or other migratory birds, if found</p>	<p>Prior to the start of ground-disturbing activities</p>





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<p>nest or burrow is discovered, the qualified biologist, in consultation with CDFW, shall determine the extent of a construction-free buffer zone to be established around the nest (typically 300 feet for raptors and 100 feet for other species) to ensure that no nests of protected birds are disturbed during project implementation. A report summarizing the results of the preconstruction surveys and subsequent efforts to protect nesting raptors or birds (if found to be present) shall be submitted to the City of San José Supervising Environmental Planner.</p>					
<p><b>Impact BIO-3.</b> Project construction in the creek banks and vegetation may result in significant temporary impacts on the western pond turtle.</p>					
<p><b>Mitigation Measures BIO-3:</b> A qualified biologist shall conduct preconstruction surveys for the western pond turtle are required 24 to 48 hours prior to the start of construction activities. If an adult pond turtle is found in any areas planned for disturbance prior to or during project-related construction activities, a qualified biologist shall safely remove the individual turtle from the site and relocate it to a suitable location. If a buried nest of eggs is encountered within the construction area during project-related construction activities, construction shall stop and the CDFW shall be notified. Construction can be reinitiated subsequent to CDFW approval. A report summarizing the results of the preconstruction surveys and any protection measures shall be submitted to the City of San José Supervising Environmental Planner.</p>	<p>Retain a qualified biologist to conduct pre-construction surveys</p> <p>If eggs are encountered, stop construction and notify CDFW of nests with eggs encountered within the construction zone</p>	<p>Prior to the start of construction activities</p>	<p>City of San José Supervising Environmental Planner</p>	<p>Review report summarizing the results of the preconstruction surveys and any protection measures</p>	<p>Prior to the start of construction activities</p>



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<b>Impact BIO-4.</b> Project construction activities requiring tree removal may result in harm or mortality to bats, including the pallid bat and Townsend’s big-eared bat.					
<p><b>Mitigation Measure BIO-4:</b> A qualified biologist shall conduct preconstruction surveys for bats 30 days prior to the commencement of construction activities. No activities that would result in disturbance to active roosts shall proceed prior to the completed surveys. If no active roosts are found, then no further action is warranted. If a roost is present, the qualified bat biologist shall determine the extent of construction-free zones around active nurseries located during surveys. CDFW shall also be notified of any active nurseries within the construction zone. A report summarizing the results of the preconstruction surveys and any protection measures shall be submitted to the City of San José Supervising Environmental Planner.</p>	<p>Retain a qualified biologist to conduct pre-construction surveys</p> <p>If a roost is present, determine the extent of construction-free zones and notify CDFW of active nurseries within the construction zone</p>	<p>Prior to the start of construction activities</p>	<p>City of San José Supervising Environmental Planner</p>	<p>Review report summarizing the results of the preconstruction surveys and any protection measures</p>	<p>Prior to the start of construction activities</p>
<b>Impact BIO-5.</b> Project construction may result in significant adverse impacts to nesting burrowing owls.					
<p><b>Mitigation Measure BIO-5:</b> Prior to any construction activities on or adjacent to the Singleton Road Landfill, a qualified biologist shall conduct preconstruction surveys in all suitable habitat areas. The purpose of the preconstruction surveys is to document the presence or absence of burrowing owls on or adjacent to the project site, particularly in areas within 250 feet of construction activity.</p> <p>To maximize the likelihood of detecting owls, the preconstruction survey shall last a minimum of three</p>	<p>Retain a qualified biologist to conduct pre-construction surveys</p> <p>If evidence of western burrowing owls is found during the breeding season, the construction contractor shall avoid all nest sites. If evidence of western burrowing owls is found</p>	<p>Prior to the start of any construction activities</p>	<p>City of San José Supervising Environmental Planner</p>	<p>A report summarizing the results of the preconstruction surveys documenting the presence or absence of burrowing owls</p>	<p>Prior to the start of any construction activities</p>



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<p>hours. The survey shall begin one hour before sunrise and continue until two hours after sunrise (three hours total) or begin two hours before sunset and continue until one hour after sunset. A minimum of two surveys shall be conducted, unless owls are detected during the first survey (if owls are detected on the first survey, a second survey is not needed). All owls observed shall be counted and their locations mapped. Surveys shall conclude no more than two calendar days prior to site disturbance, staging, or construction-related activities. Therefore, the qualified biologist must begin surveys no more than four days prior to construction (two days of surveying plus up to two days between surveys and construction). The project applicant may also conduct a preliminary survey up to 14 days before construction, which may count as the first of the two required surveys as long as the second survey concludes no more than two calendar days in advance of construction. Surveys shall be conducted as described in Santa Clara Valley Habitat Plan Condition 15.</p> <p>If evidence of western burrowing owls is found during the breeding season (February 1st–August 31st), the construction contractor shall avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging). Avoidance will include</p>	<p>during the non-breeding season, the construction contractor shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist.</p>				



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<p>establishment of a 250-foot non-disturbance buffer zone around nests. Construction may occur outside of the 250-foot non-disturbance buffer zone if additional conditions are met as described in Santa Clara Valley Habitat Plan Condition 15.</p> <p>During the non-breeding season (September 1–January 31), the construction contractor shall establish a 250-foot non-disturbance buffer around occupied burrows as determined by a qualified biologist. Construction activities outside of this 250-foot buffer are allowed. Construction activities within the non-disturbance buffer are allowed if additional conditions are met as described in Santa Clara Valley Habitat Plan Condition 15.</p> <p>A report summarizing the results of the preconstruction surveys documenting the presence or absence of burrowing owls shall be submitted to the City of San José Supervising Environmental Planner prior to any construction activities.</p>					
<b>Impact BIO-6.</b> Mature tree removal may result in permanent disturbances to mixed riparian forest and shaded riverine aquatic habitat.					
<p><b>Mitigation Measure BIO-6:</b> The project applicant shall prepare a riparian tree mitigation and monitoring plan. This plan shall outline which native riparian plant species are to be planted onsite adjacent to the riparian canopy. Native riparian plant species recommended for</p>	<p>Prepare and implement riparian tree mitigation and monitoring plan</p>	<p>Prior to the start of any ground-disturbing activities</p>	<p>City of San José Supervising Environmental Planner</p>	<p>Review the riparian tree mitigation and monitoring plan</p>	<p>Prior to the start of any ground-disturbing activities</p>



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the replacement plantings may include, but are not limited to, Fremont’s cottonwood, arroyo willow, red willow, coast live oak, and blue elderberry. Plant species used for revegetation will be native to the Coyote Creek watershed and grown from local planting stock. The riparian tree mitigation and monitoring plan shall be submitted to the City of San José Supervising Environmental Planner prior to the start of any ground-disturbing activities.					
CULTURAL RESOURCES					
<b>Impact CUL-1.</b> Unknown prehistoric and historic era archaeological sites and resources may be present and impacted during project implementation.					
<b>Mitigation Measure CUL-1:</b> To minimize potential impacts on unknown prehistoric and historic era archaeological sites and resources, the project applicant shall implement the following measures: <ul style="list-style-type: none"> <li>• The design engineer shall note on any plans that require ground-disturbing excavation the potential for exposing buried cultural resources.</li> <li>• The construction contractor shall retain a professional archaeologist to provide a preconstruction briefing to supervisory personnel of any excavation contractor to alert them to the possibility of exposing significant prehistoric archaeological resources within the project area. The briefing shall include a discussion of any archaeological objects that</li> </ul>	Note the potential for exposing buried cultural resource on plans  Retain a professional archaeologist to provide a preconstruction briefing and be on an “on-call” basis during ground-disturbing construction.	Before and during the construction activities	City of San José Supervising Environmental Planner	Review plans that require ground-disturbing excavation  Proof that a professional archaeologist provided a preconstruction briefing to supervisory personnel	Before and during the construction activities



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<p>could be exposed, the need to stop excavation at the discovery, and the procedures to follow regarding discovery protection and notification of the City and archaeological team.</p> <ul style="list-style-type: none"> <li>The construction contractor shall retain a professional archaeologist on an “on-call” basis during ground-disturbing construction for the project to review, identify, and evaluate cultural resources that may be inadvertently exposed during construction. Should previously unidentified cultural resources be discovered during construction of the project, the contractor shall cease work within 50 feet of the resources and notify the City of San José Supervising Environmental Planner immediately. The archaeologist shall review and evaluate any discoveries to determine if they are historical resource(s) or unique archaeological resources under CEQA.</li> <li>If the professional archaeologist determines that any cultural resources exposed during construction constitute a historical resource or unique archaeological resource, the archeologist shall notify the City of San José Supervising Environmental Planner of the evaluation and recommended mitigation measures to mitigate to a less-than-significant impact. Mitigation measures may include, but are not limited to, avoidance, preservation in</li> </ul>	<p>If previously unidentified cultural resources are discovered, work shall be ceased within 50 feet of any resources and notify the City immediately</p> <p>If cultural resources exposed during construction constitute a historical resource or unique archaeological resource, the professional archaeologist will document resources using DPR 523 forms and prepare a report outlining the findings and method of</p>			<p>Proof that a professional archaeologist will be retained on an “on-call” basis during ground-disturbing construction</p> <p>Review a report of the findings and method of curation or protection of resources.</p>	



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<p>place, recordation, additional archaeological testing, and/or data recovery. Treatment of any significant cultural resources shall be undertaken with the approval of the City’s Director of Planning, Building and Code Enforcement. The archaeologist shall document the resources using California Department of Parks and Recreation 523 forms and file those forms with the NWIC of the CHRIS. The archaeologist shall submit a report of the findings and method of curation or protection of the resources to the City of San José Supervising Environmental Planner for review and approval prior to resuming work. Further grading or site work within the area of discovery will not be allowed until the preceding steps have been taken.</p>	<p>curation or protection of the resources</p>				
<b>HAZARDS AND HAZARDOUS MATERIALS</b>					
<b>Impact HAZ-1.</b> Due to the location of the project site, project construction may disrupt the Singleton Road Landfill property which has the potential risk of spreading environmental contamination.					
<p><b>MM HAZ-1:</b> To minimize potential hazardous material impacts from the project, the project applicant shall implement the following measures:</p> <ul style="list-style-type: none"> <li>• Prior to construction, non-invasive (i.e., geophysical methods) and invasive (i.e., potholing or boring) investigation techniques shall be conducted to confirm the extent and</li> </ul>	<p>Retain a qualified professional to conduct pre-project investigations to confirm the extent and risk of potential impacts.</p>	<p>Before and during the construction activities</p>	<p>City of San José Supervising Environmental Planner</p> <p>Local Enforcement Agency (LEA)</p>	<p>Review Waste Excavation and Material Management Plan.</p>	<p>Before and during the construction activities</p>



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<p>risk of potential impacts associated with existing site conditions. If the pre-project studies find that landfill waste would be encountered during construction, then a Waste Excavation and Material Management Plan shall be developed by the project applicant and provided to the LEA and the City of San José Supervising Environmental Planner for review.</p> <ul style="list-style-type: none"> <li>• Appropriate construction methods shall be incorporated into plans and specifications to minimize the potential for landfill gas migration, air intrusion, groundwater migration, groundwater contact, and construction-derived waste requiring special handling and disposal. Preparation of the project’s final construction plans and specifications shall require a licensed engineer with expertise in landfills to provide compliance with applicable provisions of CCR Title 27 guidance for closed landfill structures and other regulatory requirements.</li> <li>• Excavated materials shall be managed in accordance with the approved Waste Excavation and Material Management Plan, which will include properly storing, relocating onsite, or disposing of the excavated waste, as applicable.</li> </ul>	<p>If landfill waste would be encountered during construction, develop a Waste Excavation and Material Management Plan</p> <p>Incorporate appropriate construction methods into plans and specifications</p> <p>Retain licensed engineer to prepare project’s final construction plans and specifications in compliance with regulatory requirements</p> <p>Comply with the Waste Excavation and Material Management Plan</p>				





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<ul style="list-style-type: none"> <li>Appropriate regulatory approval shall be obtained prior to construction. At a minimum, the LEA and the City of San José shall review and approve the project’s final construction plans and specifications. If the LEA determines that additional permitting may be necessary (for example, revisions to the PCMP), it will lead the permitting processes in consultation with CalRecycle. To protect workers and the public from environmental contamination, any additional permitting would need to demonstrate the continued ability to meet post-closure maintenance requirements for municipal solid waste landfills, including final cover and slope requirements, precipitation and drainage controls, and continued maintenance and monitoring, consistent with CCR Title 27, Section 21090.</li> </ul>	If additional permitting is necessary, comply with the requirements of LEA in consultation with CalRecycle				

*Source: Source: City of San José. Draft Initial Study Coyote Creek – Singleton Road Fish Barrier, Stream Restoration, and Pedestrian Bridge Project. Prepared by CH2M. September 2018.*