

Responses to Comments on the Draft IS-MND

1.0 Introduction

1.1 PURPOSE OF THE RESPONSE TO COMMENTS

This document includes comments received during the circulation of the Draft Initial Study-Mitigated Negative Declaration (IS-MND) prepared for the 22626 4th Street Residential Project (proposed project) and responses to those comments. The Draft IS-MND identifies the likely environmental consequences associated with development of the proposed project, and recommends mitigation measures to reduce potentially significant impacts. This Response to Comments (RTC) Document provides a response to comments on the Draft IS-MND and makes revisions to the Draft IS-MND, as necessary, in response to those comments or to make clarifications to material in the Draft IS-MND. This document, together with the Draft IS-MND, constitutes the Final IS-MND for the proposed project.

1.2 ENVIRONMENTAL REVIEW PROCESS

Pursuant to the California Environmental Quality Act (CEQA), lead agencies are required to circulate a Notice of Intent to Adopt a Mitigated Negative Declaration (NOI) and provide the general public with an opportunity to comment on the Draft IS-MND. The Draft IS-MND was circulated for a public review period that began on May 18, 2018 and ended on July 2, 2018. The City of Hayward received two comment letters on the Draft IS-MND. Copies of the NOI were mailed to the State Clearinghouse and local and state agencies. The Draft IS-MND was posted electronically on the City's website, and a paper copy was available for public review at the Hayward City Hall Permitting Center and at the Hayward Public Library.

1.3 DOCUMENT ORGANIZATION

This Response to Comments (RTC) Document consists of the following chapters:

- **Chapter 1.0: Introduction.** This chapter discusses the purpose and organization of this RTC Document and summarizes the environmental review process for the project.
- **Chapter 2.0: Comments and Responses.** This chapter contains reproductions of all comment letters received on the Draft IS-MND as well as transcripts of verbal comments provided at the public hearings. A written response for each CEQA-related comment received during the public review period is provided. Each response is keyed to the corresponding comment.
- **Chapter 3.0: Draft IS-MND Revisions.** Corrections to the Draft IS-MND that are necessary in light of the comments received and responses provided, or necessary to amplify or clarify material in the Draft IS-MND, are contained in this chapter. Underlined text represents language that has been added to the Draft IS-MND; text with ~~strikeout~~ has been deleted from the Draft IS-MND.

2.0 COMMENTS AND RESPONSES

This chapter includes written comments received during the circulation of the Draft IS-MND prepared for the 22626 4th Street Residential Project.

The Draft IS-MND was circulated for an extended public review period that began on May 18, 2018 and ended on July 2, 2018. The City of Hayward received two comment letters on the Draft IS-MND. The commenters and the page number on which each commenter's letter appear are listed below.

Letter No. and Commenter	Page No.
1 Bruce King on behalf of Friends of San Lorenzo Creek	3
2 J. Michael Goolsby, President and CEO, Better Neighborhoods, Inc.	20

The comment letter and responses follow. Each separate issue raised by the commenter has been assigned a number. The responses to each comment identify first the number of the comment letter, and then the number assigned to each issue (Response 1.1, for example, indicates that the response is for the first issue raised in comment Letter 1).

Revisions to the Draft IS-MND necessary in light of the comments received and responses provided, or necessary to amplify or clarify material in the Draft IS-MND, are included in the responses. Underlined text represents language that has been added to the Draft IS-MND; text with ~~strikeout~~ has been deleted from the Draft IS-MND. These changes did not identify new significant impacts or significant impacts of increased severity compared to the impacts identified in the Draft IS-MND. Because these changes to the IS-MND is not considered substantial in accordance with CEQA Guidelines Section 15073.5(b) and the information added merely clarifies and amplifies the information previously provided in the analysis, recirculation of the MND is not required.

All revisions are then compiled in the order in which they would appear in the Draft IS-MND (by page number) in Chapter 3.0, Text Revisions, of this document.

FRIENDS OF SAN LORENZO CREEK

Date: June 15, 2018

To: Jay Lee
Associate Planner
City of Hayward, Development Services Department
777 B Street
Hayward, CA 94541-5007

From: Bruce King
Friends of San Lorenzo Creek
3127 Terry Court
Castro Valley, CA 94546
BruceKing8@gmail.com

Subject: Friends of San Lorenzo Creek Comments on
The Draft Initial Study - Mitigated Negative Declaration for
The Housing Development at 4th and B Streets

Dear Development Services Department,

1 This letter provides comments made on the behalf of the Friends of San Lorenzo Creek (FSLC) on the Draft Initial Study - Mitigated Negative Declaration (IS-MND) dated May 2018 for the housing development at 4th and B Streets.

According to the City of Hayward, this project (#201704074) is at 22626 4th Street and is described as TTM 8427 and PD for 41 single-family residential units (with 4 open space lots and 1 dedicated lot). Refer to previous April 2, 2018, FSLC comments on the proposed site plans that provide additional background to comments made in this letter.

BACKGROUND TO COMMENTS

2 The science behind healthy creeks, plants & animals, watersheds, and water quality shows the need for a healthy, wider, riparian area and corridor along creeks. If you look at a Google satellite image of our local creeks you will typically see heavily vegetated areas in and surrounding the natural creeks, and the extent of this vegetation is typically in proportion to the lack of current development or past human disturbance. At this proposed housing site, significant natural riparian vegetation has been removed over time by previous urban development on the site. But, there is a continuous natural riparian corridor that extends upstream into the hills above Hayward, downstream to Foothill Boulevard, and up into reaches of the Chabot Creek and Castro Valley Creek tributaries starting at the Japanese Gardens and Carlos Bee Park. It is also notable that in 2016 Caltrans completed a restoration of the San Lorenzo Creek riparian corridor just downstream of this project site.

3 The City of Hayward applies the Alameda County Watercourse Protection Ordinance (WPO) to proposed development along creeks, including this proposed project. See Attachment A of these comments for excerpts from the WPO. The WPO establishes the setback area as a MINIMUM 2:1+20-foot setback with no "development," and states that "...the purpose of setbacks is to safeguard watercourses by preventing activities that would contribute significantly to flooding, erosion or sedimentation, would inhibit access for watercourse maintenance, or would destroy riparian areas or inhibit their restoration." In this case, fences, private back yards, and likely development that does not require permits (e.g., planting grass, paving, etc.) do damage the remaining riparian areas and inhibit their restoration. Fences, for example, block foraging and migration of many animals. Human activity, development, and private ownership inhibits riparian areas and their restoration by inhibiting natural habitat succession and/or future organized & human-directed replanting to achieve the native riparian area habitat.

Under the WPO the director of public works in "certain situations" can permit "limited development" within a setback, if the development is "in the public's interest" and the WPO's purpose and objectives are satisfied. In this case:

- There is no unique, "certain situation" that drives the need to have the backyards, fences, and WPO-defined development within the setback and riparian corridor. The same situation exists at most residential developments along creeks.
- The proposed development is not "limited" and it does not need to occur within the minimum setback. The developer appears to be asking for exceptions for all ten homes on the creek.
- There is no "public's interest" that outweighs the creek as a natural resource and public benefit.
- Fences with private backyards and human "development" do inhibit riparian area restoration, one of the stated objectives under the WPO's purpose.

SPECIFIC COMMENTS ON THE IS-MND

Comment #1

Section 4.0 Biological Resources, Regulatory Setting, City of Hayward (page 29).

Include Watercourse Protection Ordinance in Regulatory Setting

4 The City of Hayward applies the Alameda County Watercourse Protection Ordinance (WPO) to proposed development along creeks, including this proposed project. The following should be included this regulatory setting section of the IS-MND: A discussion of the WPO, the stated purposes of the WPO (including protection of riparian areas and their ability to be restored), the WPO's 2:1 plus minimum 20-foot creek setback, WPO definitions of "development," and the proposed project's backyard encroachment into the WPO setback and riparian area.

Comment #2

Section 4.0 Biological Resources, Question "e" (page 27 and 36).

Include Backyard Development as an Impact & Conflict with Ordinances Protecting Resources

5 Question "e" asks: "Would the project... conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?" The answer to this question is "yes." The noted impact for this item should be changed from "less than significant with mitigation incorporated" to "potentially significant impact," unless the backyards and fences of the creek-side homes are removed from the plans. These backyards will result in foreseeable

↓

5. cont. ↑
WPO-defined “development,” prevent restoration of the riparian setback area, and interfere substantially with the movement of wildlife species and the native resident wildlife corridor.

Comment #3

Section 4.0 Biological Resources, Question “d” (page 27 and 36).

Include Backyard Development as an Impact to the Migratory Wildlife Corridor

6 Question “d” asks: “Would the project 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? The answer to this question is “yes.” As described above, this site is a vital connection and part of the riparian corridor that extends up and down stream of this site. The noted impact for this item should be changed from “less than significant with mitigation incorporated” to “potentially significant impact,” unless the backyards and fences of the creek-side homes are removed from the plans. These backyards will result in foreseeable WPO-defined “development,” prevent restoration of the riparian setback area, and interfere substantially with the movement of wildlife species and the native resident wildlife corridor.

Comment #4

7 Section 4.0 Biological Resources, Question “e,” Mitigation BIO-5, Tree Replacement (page 37).

Include Replacement of Native Trees in the Creek Setback as a Mitigation

Native tree replanting needs to be included in the creek setback areas. Natural riparian areas along creeks typically extend well beyond the minimum setbacks established for urban development and this project. This includes native trees and the wildlife that depend on the creek and trees. Table 5 notes that 52 of the 66 protected (i.e., native) trees will be removed. The project plans do not include planting any of the replacement trees within the creek setback areas. Replanting of native trees in the creek setback areas needs to be included as part of this mitigation.

Comment #5

8 Mitigation BIO-2, Designated No-Access Area (page 34).

Remove Permanent “No Access” Signs as a Mitigation

The requirement for permanent “no access” signage to be placed along the bank of San Lorenzo Creek should be removed as a mitigation measure. This measure does little to protect the riparian corridor that is not being proposed for restoration as part of this project but does create a future problem if the home-owners or others want or need to access the creek bank areas with appropriate approvals. Signage may be appropriate to control trespassing but should not be included as a permanent requirement in the IS-MND that cannot be changed.

Sincerely,



Bruce King
On Behalf of the Friends of San Lorenzo Creek

ATTACHMENT A

Excerpts of the Watercourse Protection Ordinance Setback and Development Requirements

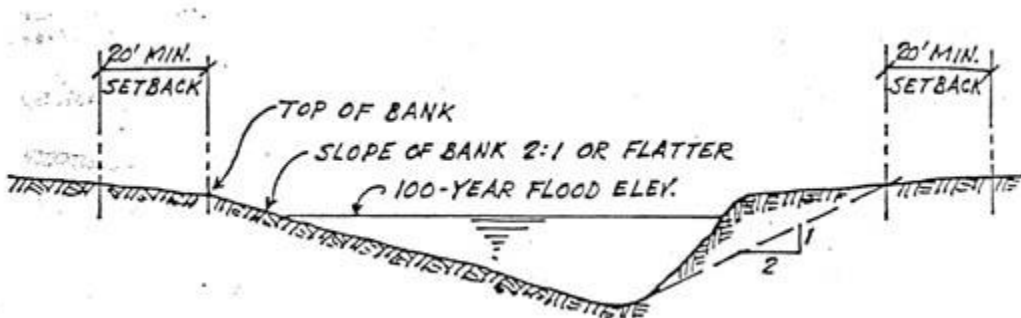
Alameda County General Ordinances, Chapter 13.12

Section 13.12.040 - Jurisdiction

This chapter shall apply to the unincorporated area of Alameda County.

Section 13.12.320: Setback Criteria (Excerpts only)

Section A - Typical where 100-year storm flow is contained within banks of existing watercourse.



Section 13.12.310: Requirements (Excerpts only)

- The purpose of setbacks is to safeguard watercourses by preventing activities that would contribute significantly to flooding, erosion or sedimentation, would inhibit access for watercourse maintenance, or would destroy riparian areas or inhibit their restoration. Accordingly, no development shall be permitted within setbacks, except as otherwise provided herein.
- In certain situations, where, in the opinion of the director of public works, it would be in the public interest to permit limited development within a setback, the director of public works may grant a permit for said development provided that the above-specified purpose would be satisfied.
- The director of public works shall make the determination as to setback limits and any permitted development within a setback.

In addition, WPO Section 13.12.030 defines the following terms:

- "Development" means any act of filling, depositing, excavating or removing any natural material, or constructing, reconstructing or enlarging any structure, which requires a permit issued by the director of public works.
- "Structure" means any works or constructions of any kind, including those of earth or rock, permanent or temporary, and including fences, poles, buildings, pavings, inlets, levees, tide gates, spillways, drop structures and similar facilities.

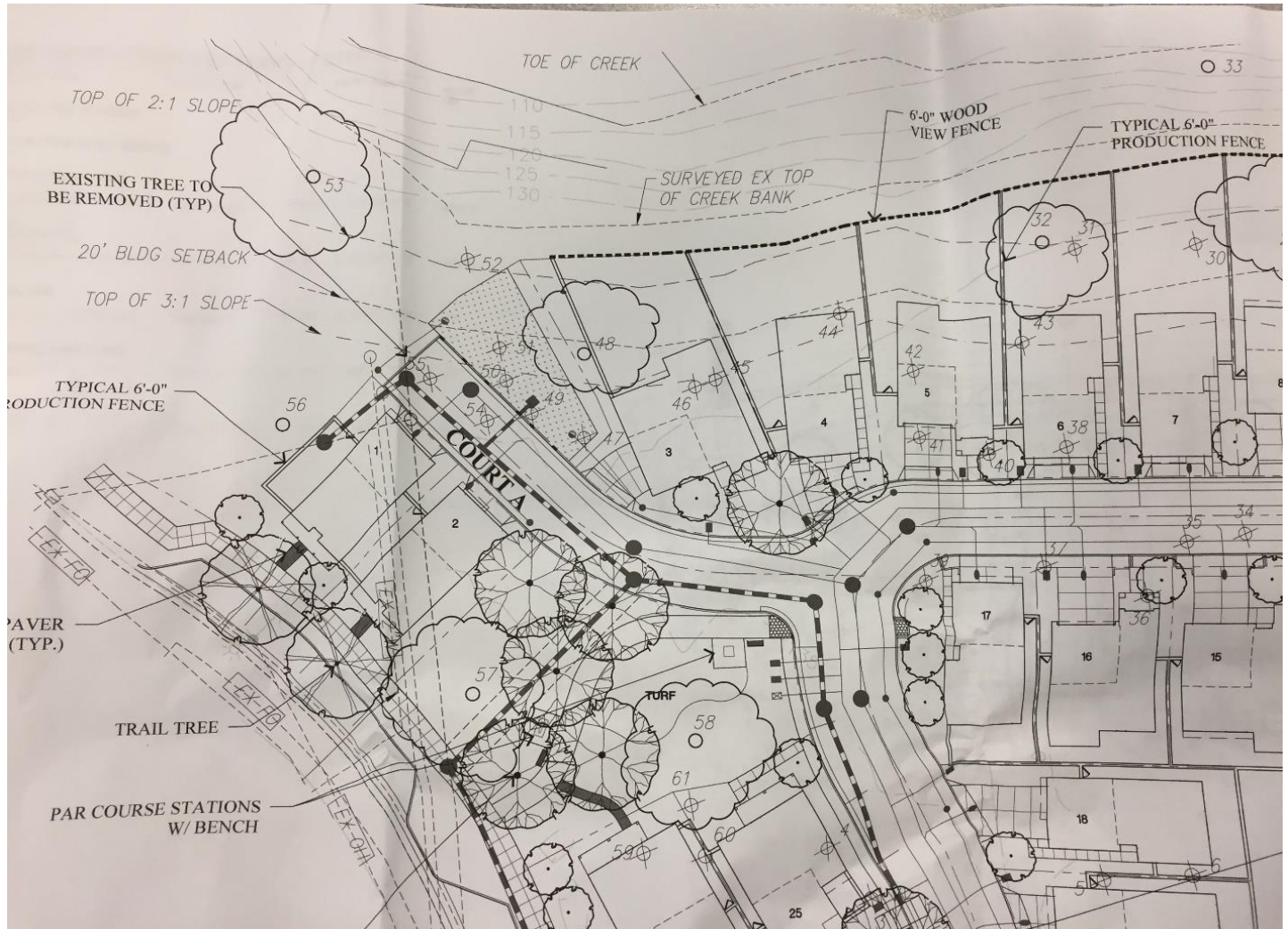
See all definitions and requirements of the WPO (~9 pages) online at:

- The body of the ordinance, but not the setback criteria is at:
https://library.municode.com/ca/alameda_county/codes/code_of_ordinances?nodeId=TIT13P_USE_CH13.12WAPR
- The Set Back Criteria diagrams can be found at: <http://friendsofsanlorenzocreek.org/ord13-12-320.htm>

ATTACHMENT B

Project Site Plan Excerpts

Creekside Houses, Creek Setbacks, Property Lines, and Fences



Excerpted from Site Plans dated November 10, 2017

FRIENDS OF SAN LORENZO CREEK

Date: April 2, 2018

To: Jay Lee
Associate Planner
City of Hayward, Development Services Department
777 B Street
Hayward, CA 94541-5007

From: Bruce King
Friends of San Lorenzo Creek
3127 Terry Court
Castro Valley, CA 94546
BruceKing8@gmail.com

Subject: Friends of San Lorenzo Creek Comments on
Proposed Site Plans for Housing Development at 4th and B Streets

Dear Development Services Department,

This letter provides comments made on the behalf of the Friends of San Lorenzo Creek (FSLC) on the proposed site plans for housing development at 4th and B Streets. Site Plans were dated November 10, 2017.

According to the City of Hayward, this project (#201704074) is at 22626 4th Street and is described as TTM 8427 and PD for 41 single-family residential units (with 4 open space lots and 1 dedicated lot).

FSLC comments and recommendations focus on ensuring:

- The creek banks, riparian areas, and setbacks are protected from development and restored to a healthy riparian corridor.
- The multi-use pedestrian and bicycle trail meets standards and its alignment and connections are efficient for bicycles and safe.

GENERAL CONCERNS AND REQUIREMENTS

San Lorenzo Creek, Riparian Areas, and Setbacks

FSLC is concerned with the entire drainage system and creeks within in the San Lorenzo Creek watershed and neighboring watersheds. The San Lorenzo Creek watershed is a system of many smaller watersheds that drain 50 square miles of Alameda County into the bay via San Lorenzo Creek. This proposed project is located on roughly 500 feet of the banks of San Lorenzo Creek (See Attachment A).

This project needs to protect and restore San Lorenzo Creek, including its aquatic and terrestrial ecosystems. The terrestrial ecosystem includes the riparian area, riparian corridor, and determined setback area.

- The **riparian area** is the area bordering the watercourse where surface or subsurface hydrology directly influence the ecological processes and plant and animal community structure in that area. Riparian areas are transitional areas between the aquatic and terrestrial ecosystems that influence the exchange of energy and materials between those ecosystems.
- The **riparian corridor** is the contiguous, prescribed management area along both sides and the length of the creek where riparian areas are present. Note that breaks in riparian corridor continuity (e.g., fences or buildings) reduce the riparian area's ecological value (e.g., impair wildlife migration).
- When the Alameda County **Watercourse Protection Ordinance (WPO)** is used, the **setback** area that is determined using WPO criteria is the riparian corridor. The City of Hayward reportedly uses the WPO. See Attachment B for excerpts of WPO setback and development requirements. Note that under the WPO, "development" (e.g., filling, depositing, excavating or removing any natural material) and constructing "structures" (e.g., fences) are not permitted within the setback distance of 20+ feet and within riparian areas. The purpose of setbacks is to safeguard watercourses by preventing activities that would contribute significantly to flooding, erosion or sedimentation, would inhibit access for watercourse maintenance, or would destroy riparian areas or inhibit their restoration.

Pedestrian and Bicycle Trails

This project also needs to meet the standards and guidelines for the Hayward Foothills Trail and align with future north and south pedestrian-bicycle trail connections. See general trail connections and locations for the Hayward Foothills and San Lorenzo Creek Trails in Attachment A. See trail standards and guidelines for the Hayward Foothills Trail in the Special Design District (SD-7), Section 10-1.2640 (pages 12 to 17) in the following overlay district document:

https://www.hayward-ca.gov/sites/default/files/Ch-10_A-1_S-1.2600_special-design-overlay.pdf

SITE PLAN CONDITIONS AND CONCERNS

Site Plan Creek-Related Conditions

Listed below are creek-related conditions that FSLC noted in the site plans. Excerpts of the site plans are shown in Attachment C.

- The back of most houses along San Lorenzo Creek are set at approximately 20 feet from the creek top-of-bank.
- The property line for each creek-side house extends to the creek top-of-bank.
- The backyard of each creek-side house is separated by a 6-foot, wood fence. In addition, each backyard is separated from the creek by a 6-foot, wood-view fence positioned at the creek top-of-bank.
- The backyards of creek-side houses are designated “private open space.”
- The creek bank, and possibly some portion of the creek, are shown as “dedicated open space to the City of Hayward.”

Site Plan Creek-Related Concerns

Creek-related concerns and problems with the November 2017 site plans include:

- The WPO does not allow “development” within the setback, including structures such as fences that are shown in the plans, or the likely movement of soils and natural materials in homeowner’s backyards.
- Fencing each backyard that is in the setback would encourage home owners to “develop their backyards” and would create barriers in the riparian corridor (e.g., impair wildlife migration).
- Creek-side backyards are shown as “private open space,” but no assessments or plans are presented to remove any invasive & non-native plants, restore this open space with appropriate native plants, and manage the space as a riparian area.
- Since “development” is not allowed in the setback, most creek-side houses appear to have little-to-no area in their backyards to use as a walkway around the house or small patio.

RECOMMENDATIONS

Creek-Related Recommendations

- Show locations of property and city-county lines that are in the watercourse or creek-bank areas.
- Show the creek’s watercourse on the plans, including the toe of the creek and 100-year flood elevation.
- Present at least several cross-sectional diagrams of the creek, bank, and setback area that show the setback calculation in accordance with the WPO (e.g., 2:1 slope calculation from the toe of the creek and +20-foot setback).

- Remove from the plans all WPO-defined “development” from the creek setback area, including fences.
- Provide sufficient space between each creek-side home and the creek setback so that homeowners have a sufficient exterior useable space (e.g., walkway, small patio, exterior home access, etc.).
- Designate the creek banks and setback area a common conservation easement owned by the homeowner’s association.
- Show a wire fence on the plan between the homeowner’s property and the conservation easement.
- Conduct an environmental assessment of the creek, riparian area, and native/non-native plant conditions and needs.
- Include a plan to plant, monitor, and maintain appropriate local native and riparian plants on the creek bank and in the setback.
- Establish an endowment and a competent third-party organization to maintain the conservation easement.
- Incorporate a storm-water management system and plan into the project plans. Follow storm-water requirements and best-management practices.

Trail-Related Recommendations

The two-way, multi-use pedestrian and bicycle trail should:

- Be consistent with the standards and guidelines specified in the Hayward Foothills Trail Special Design District (SD-7), including trail widths.
- Meet standards for a Class 1 bike path.
- Be as straight as possible and align well with future north and south trail connections. The north trail connection will cross A Street and proceed along the Castro Valley-side of San Lorenzo Creek. Near-term and better-future connections between the pedestrian-bike trail should be determined and/or conceptualized. Alignments and street-crossings should provide for safety and bicycle-travel efficiency across streets, including traffic-congested A Street.

I look forward to discussing and addressing the above comments with you. Please keep me informed of further actions, plans, or meetings related to this project.

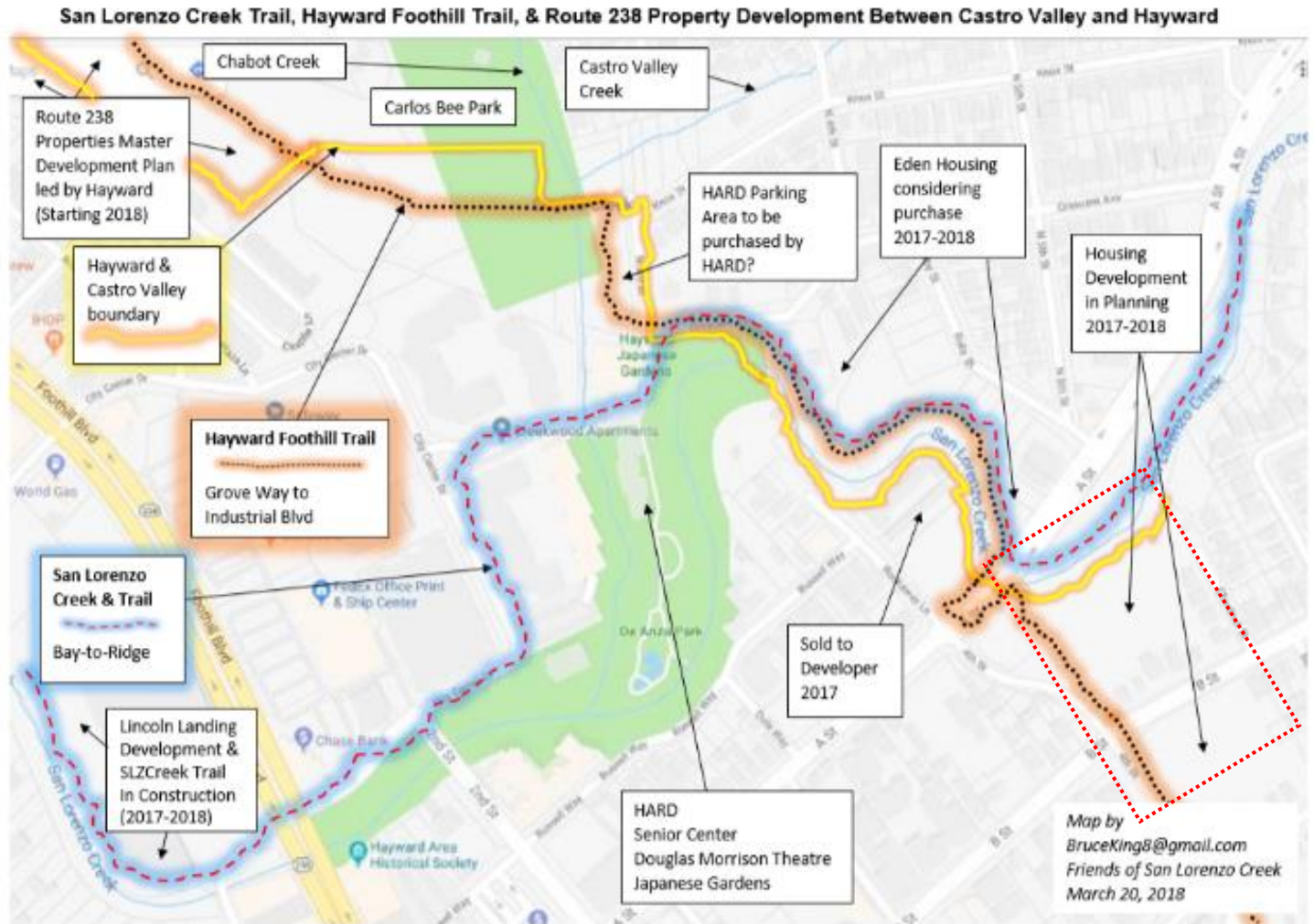
Sincerely,



Bruce King
On Behalf of the Friends of San Lorenzo Creek

ATTACHMENT A

Project, Creek, Trail, Park, and Nearby Development Locations



ATTACHMENT B

Excerpts of the Watercourse Protection Ordinance Setback and Development Requirements

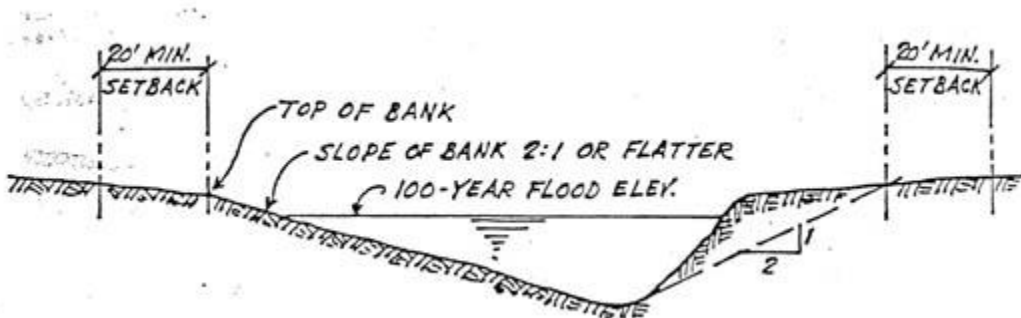
Alameda County General Ordinances, Chapter 13.12

Section 13.12.040 - Jurisdiction

This chapter shall apply to the unincorporated area of Alameda County.

Section 13.12.320: Setback Criteria (Excerpts only)

Section A - Typical where 100-year storm flow is contained within banks of existing watercourse.



Section 13.12.310: Requirements (Excerpts only)

- The purpose of setbacks is to safeguard watercourses by preventing activities that would contribute significantly to flooding, erosion or sedimentation, would inhibit access for watercourse maintenance, or would destroy riparian areas or inhibit their restoration. Accordingly, no development shall be permitted within setbacks, except as otherwise provided herein.
- In certain situations, where, in the opinion of the director of public works, it would be in the public interest to permit limited development within a setback, the director of public works may grant a permit for said development provided that the above-specified purpose would be satisfied.
- The director of public works shall make the determination as to setback limits and any permitted development within a setback.

In addition, WPO Section 13.12.030 defines the following terms:

- "Development" means any act of filling, depositing, excavating or removing any natural material, or constructing, reconstructing or enlarging any structure, which requires a permit issued by the director of public works.
- "Structure" means any works or constructions of any kind, including those of earth or rock, permanent or temporary, and including fences, poles, buildings, pavings, inlets, levees, tide gates, spillways, drop structures and similar facilities.

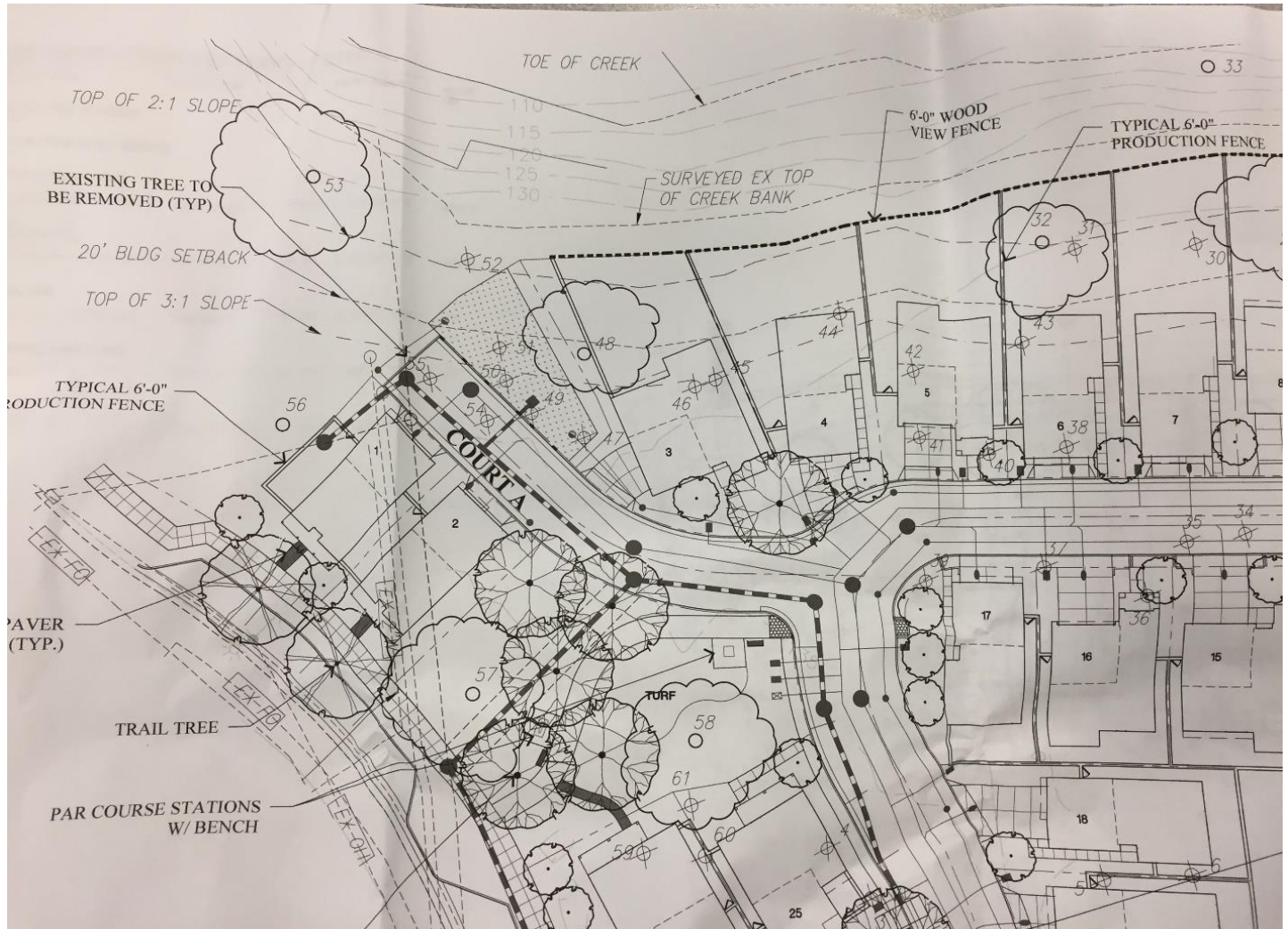
See all definitions and requirements of the WPO (~9 pages) online at:

- The body of the ordinance, but not the setback criteria is at:
https://library.municode.com/ca/alameda_county/codes/code_of_ordinances?nodeId=TIT13P_USE_CH13.12WAPR
- The Set Back Criteria diagrams can be found at: <http://friendsofsanlorenzocreek.org/ord13-12-320.htm>

ATTACHMENT C

Project Site Plan Excerpts

Creekside Houses, Creek Setbacks, Property Lines, and Fences



Excerpted from Site Plans dated November 10, 2017

ATTACHMENT C
Project Site Plan Excerpts
(continued)

Creekside Houses and Designated Open Spaces



Excerpted from Site Plans dated November 10, 2017

Letter 1

COMMENTER: Bruce King on behalf of Friends of San Lorenzo Creek

DATE: June 15, 2018

Response 1.1

The commenter states that the letter provides comments on behalf of Friends of San Lorenzo Creek (FSLC) and provides a brief description of the project. The commenter refers back to previous comments from FSLC on the proposed site plans dated April 2, 2018.

The commenter's description of the project is generally accurate. The letter dated April 2, 2018 was sent prior to public review period for the Draft IS-MND and is not considered a comment letter on the Draft IS-MND. No formal responses have been prepared for that letter. Nevertheless, that comment letter has been forwarded to decision-makers for their consideration.

Response 1.2

The commenter provides background to their comments, explains that there is a need for a healthy, wider, riparian area and corridor along creeks, and states at the project site that significant natural riparian vegetation has been removed over time by previous urban development. The commenter notes there is a continuous natural riparian corridor that extends upstream to the hills above Hayward and downstream to Foothill Boulevard. The commenter notes that in 2016 Caltrans completed a restoration of the San Lorenzo Creek corridor downstream of project site.

The background provided by the commenter is noted. As these comments do not question or challenge the environmental analysis in the Draft IS-MND, no further response is required.

Response 1.3

The commenter states an opinion that the City of Hayward applies the Alameda County Watercourse Protection Ordinance (WPO) to proposed development along creeks and establishes a setback area as a minimum of 2:1+20-foot setback with no development. The commenter further states that under the WPO the director of public works in certain situations can permit limited development within a setback if the development is in the public's interest and the WPO's purpose and objectives are satisfied.

The commenter's interpretation of the WPO and how it applies to the project is incorrect. The project site is in the jurisdiction of the City of Hayward and not unincorporated Alameda County. The County's WPO (Chapter 13.12 of the General Ordinance Code of the County of Alameda) only applies to land within the County's jurisdiction and therefore does not apply to the project. Although the City of Hayward uses the County's WPO as guidance, the requirements have not been codified in the Hayward Municipal Code.

Response 1.4

In regard to the discussion on Page 29 in Section 4, *Biological Resources*, of the Draft IS-MND, the commenter states an opinion that the Water Protection Ordinance should be listed and summarized in the regulatory setting.

Please see Response 1.3. As noted under Response 1.3, the County's WPO does not apply to the project.

Response 1.5

In regard to Section 4, *Biological Resources*, of the Draft IS-MND in the response to checklist question (e), the commenter states an opinion that the project would conflict with the WPO and that the conclusion of the analysis should be changed from "less than significant" to "potentially significant" impact. The commenter states an opinion that the backyards and fences of the creek-side homes would prevent restoration of the riparian setback area and interfere with the movement of wildlife species and native resident wildlife corridor, thus conflicting with the WPO.

Please see Response 1.3. The County's WPO does not apply to the project. For responses to the comments regarding wildlife movement and riparian habitat, please see responses 1.6 and 1.7.

Response 1.6

Regarding Section 4, *Biological Resources*, of the Draft IS-MND in the response to checklist question (d), the commenter states an opinion that backyards and fences of the proposed creek-side residences would prevent restoration of the riparian setback area and interfere substantially with the movement of wildlife species and the native resident wildlife corridor.

The project site is located in a heavily developed and urbanized area, surrounded by existing residences. The entire development area of the project is contained within a site that is currently fenced with an existing chain-link fence. The site within the fence comprises landscaped areas and regularly maintained lawn, and although trees are present within the site, there is little to no understory or habitat continuity between onsite trees and the adjacent riparian habitat. The proposed project would not significantly alter the site conditions adjacent to the riparian habitat, and all proposed development is outside the limits of jurisdictional habitat.

For clarification, Page 28 of the Draft IS-MND has been revised as follows:

The project site currently comprises undeveloped and disturbed vacant land with gravel, rubble piles, bare earth, ruderal non-native species, irregularly maintained lawn, and mature trees on relatively level topography that ranges in elevation from 105 feet to 140 feet above mean sea level. The site gently slopes downward from east to west. In the northwest corner, the site slopes down approximately 10 feet into San Lorenzo Creek. The lowest point of the project site is in the San Lorenzo Creek streambed adjacent to the A Street Bridge in the northwest corner. As recent as 2017, the site contained residential development, which has since been demolished and replaced with ruderal vegetation.

In addition, Page 31 of the Draft IS-MND has been revised as follows:

The project site primarily consists of non-native grassland with a variety of native and non-native trees scattered throughout. The site is entirely ruderal having historically been developed with several small single-family residences. All buildings on the site were demolished and removed as recently as early 2017. Patches of nearly bare ground remain in places where house foundations or paved driveways once stood. An existing chain-link fence is currently in place along the margin of San Lorenzo Creek. Inside the fence-line ongoing, irregular lawn maintenance has resulted in little to no understory, and as a result, the fence essentially demarcates the limits of riparian habitat along San Lorenzo Creek where it borders the project site.

Further, Page 33 of the Draft IS-MND has been revised as follows:

San Lorenzo Creek provides a wildlife movement corridor through the otherwise heavily developed urban landscape and the presence of vegetation, including large trees, along the creek provides abundant nesting opportunities for resident and migratory birds. However, project design has avoided direct impacts to the jurisdictional limits of San Lorenzo Creek and associated riparian habitat. A number of large trees are also present on the project site and on properties adjacent to the project site. An inactive nest was observed in a large eucalyptus tree on the property at the end of Chestnut Street off the northeast corner of project site. A single red-shouldered hawk was observed perched in a eucalyptus tree along San Lorenzo Creek at the northeast corner of the project site. The hawk was calling frequently, but no other red-shouldered hawk was observed at the time of the reconnaissance survey and no nesting behavior was observed.

Lastly, Page 35 of the Draft IS-MND has been revised as follows:

San Lorenzo Creek crosses the northern boundary of the project site and disturbed riparian vegetation community occurs along its banks. Portions of the creek channel near A Street and along the south bank adjacent to the project site have historically been lined with concrete to reinforce the banks and the development has resulted in considerable disturbance to the creek channel and surrounding vegetation. The riparian community is in poor condition and consists almost entirely of non-native vegetation regrowth, with the only native vegetation consisting of two California bay (*Umbellularia californica*) trees. Additionally, project design has avoided all direct impacts to the jurisdictional limits of San Lorenzo Creek and associated riparian habitat. Despite the very low presence of native vegetation, the vegetation that is present functionally serves as a riparian corridor for wildlife, providing nesting opportunities for native and migratory birds, and movement and dispersal through the urban environment for other wildlife. Project site plans call for an approximately 15-foot setback from the current property fence line. However, implementation of mitigation measures BIO-2 and BIO-3 would ensure that vegetation along San Lorenzo Creek would not be impacted by construction or operation of the project. Therefore, impacts will be less than significant with mitigation.

The existing disturbance within the fenced project site and the presence of the chain-link fence represents an existing disruption to wildlife movement onto the project site. The proposed project would not significantly change the current conditions relating to wildlife movement. As stated in the response to question (d) on Page 36 of the Draft IS-MND, the project site itself does not support wildlife movement because of the recent historical disturbance, lack of native habit, existing fencing and urban surroundings. San Lorenzo Creek provides some opportunity for wildlife movement and dispersal, but the proposed project would not create new barriers to wildlife movement within the existing riparian corridor of San Lorenzo Creek. Implementation of mitigation measures BIO-1 through BIO-4 listed in the response to checklist question (a) in the IS-MND would ensure that no habitat in the creek is disturbed. Therefore, impacts to wildlife movement corridors will be less than significant with implementation of mitigation measures.

Response 1.7

With respect to the response to question (e) and Mitigation Measure BIO-5, "Tree Replacement," in Section 4, *Biological Resources*, of the Draft IS-MND, the commenter states an opinion that native

tree replanting should be included in the creek setback area. The commenter also suggests that the replacement protected trees that are planted on the site should be planted in the setback area.

There is no City requirement for replacing planting trees in the creek setback area and the proposed project would not affect riparian habitat such that replacement of riparian habitat would be required. The intent of the City's Tree Preservation Ordinance is to "protect and preserve significant trees and control the re-shaping, removal or relocation of those trees that provide benefits for the neighborhood or the entire community while recognizing that there are rights to develop private property" (HMC Section 10-15.10). As stated in the Draft IS-MND, with mitigation measures BIO-5 through BIO-7, impacts related to tree loss would be less than significant.

Response 1.8

With respect to Mitigation Measure BIO-2, "Designated No-Access Area," in Section 4, *Biological Resources*, of the Draft IS-MND, the commenter suggests that the requirement for permanent no access signage should be removed. The commenter states an opinion that the measure would do little to protect the riparian corridor that is not being proposed as restoration for the project but would create a problem if homeowners want or need access to the creek bank. The commenter states an opinion that signage may be appropriate to control trespassing but should not be included as a permanent requirement.

The placement of signage warning residents and visitors not to access the creek area is intended to prevent impacts to the creek (i.e., water quality or habitat impacts from pet disturbance or trash) and would not preclude future restoration activities.



17901 Von Karman Ave, Suite 600
Irvine, CA 92614
(949) 556-8714
www.better-neighborhoods.com/

June 26, 2018

Mr. Jay Lee
Associate Planner
City of Hayward, Planning Division
777 B Street
Hayward, CA 94541
Via email: jay.lee@hayward-ca.go

Re: Re: The 4th and B Street Residential Project
Application No. 201704074 (the "Project")

Dear Mr. Lee,

Thank you for extending the deadline for comments and questions to July 2, 2018 regarding the above-referenced Project.

Better Neighborhoods Inc. is an organization established to help people have a voice in local development decisions that will be heard equally to that of the planners and developers, to encourage smart growth that is consistent with the needs of the community, to protect the natural environment and our places of historical and esthetic significance, to support affordable housing, and to balance the needs for growth and livable cities.

We have reviewed the Initial Study, MND and the Notice to Adopt the MND prepared for the pending Planning Commission hearing scheduled for June 28, 2018 with respect to the above-referenced Project. Unfortunately, one of our staff will be unable to attend the hearing to provide oral testimony. Accordingly, please provide this letter to the Planning Commission as one of the public comments for the hearing and include this letter in the administrative record for this project.

Also, it is our understanding that the Planning Commission will merely make a recommendation to the City Council for consideration and final action, and that the City Council meeting is tentatively scheduled for July 10, 2018. Please let us know when the City Council meeting date for this Project is finalized.

We have a number of comments, issues and concerns with the Project, as stated below.

The Project

2 The Project requires a Planned Development (PD) rezoning, Tentative Tract Map, and Site Plan Review to subdivide an approximately 5.1-acre site into 45 lots and develop 41 detached single-family residences, common open space, and private streets. Forty-one of the 45 lots would be developed with single-family residences and the other four parcels would contain designated open space totaling 46,126 square feet and a bioretention area containing 1,702 square feet. The residential lots would range in size from 2,012 to 5,020 square feet. Twenty-five of the homes would be located in the northern portion of the Project site north of B Street and 16 units would be located in the southern portion of the project site south of B Street. The Project includes a request for a zone change from the existing RS (Single-Family Residential) District to a new PD (Planned Development) District to accommodate the Project. Currently, the 5.1-acre site is undeveloped but previously was developed with five single-family residences that were demolished in 2017.

Historic Character/Aesthetics

3 The Project is located in a low and medium density, single-family neighborhood with some multifamily and commercial buildings no more than two stories high. Architectural styles, including Queen Ann cottages, Folk Victorian houses, Neoclassical rowhouses and cottages, make the neighborhood a potential historic district. According to the report, the district is one of the city's first residential neighborhoods and is a noteworthy example of residential development in pre-World War II Hayward. An estimated 125 of maybe 230 properties within the district were identified as contributors to the neighborhood's historic status.

4 An important component of the neighborhood's historic significance is scarcity. Indeed, previous development demolished at the now vacant site consisted of only five homes while the proposed development calls for a whopping 41 homes. Although 41 new houses in the neighborhood may not exceed the maximum permitted under the General Plan, the proposed zoning change would override well-reasoned and no doubt vigorously argued lot size minimums, which are intended to ensure residents have adequate green space and privacy thereby preventing the stress of overcrowding all too common in the urban environment.

Land Use and Planning

5 The MRD designation permits a maximum density of 17.4 units per acre or 43 units at the project site, which suggests the proposed 41 units are within range. However, assessing the impact of density requires a comparison between the current number of units per acre in the neighborhood and the number of units per acre if the project were approved. That information is not in the report.

6 In fact, the only way to achieve the proposed 41 units would be with approval for a zoning change.

6,
cont.

A PD rezone is necessary for the project as proposed because the project does not otherwise meet the RS District development standards related to lot size and yard size. The project involves lot sizes ranging from 2,012 to 5,020 square feet. All but one of the lots would be smaller than the minimum lot size requirement of 5,000 square feet required by HMC Section 10-1.230. Additionally, only 10 of the 41 units would meet or exceed the 20-foot rear yard setback required by HMC Section 10-1.230. Finally, the combined driveways and paving surface area in the front yards of 17 of the 41 residences exceed a maximum of 50 percent of the required front area, contrary to what is required by Section 10-1.245(k)(3)(d).

Inadequate lot sizing and setback along with an excess of paving and the loss of increasingly rare neighborhood green space, including a significant number of mature trees, would substantially degrade the existing visual character and quality of the site and its surroundings. The sudden addition of new homes so close together would reduce the historic significance of the area and also create a new source of light, glare and noise as an estimated 133 new residents, not including their visitors, come and go.

Biological Resources

7

As the report indicates, San Lorenzo Creek provides a wildlife movement corridor through a heavily developed urban landscape, and the presence of vegetation along the creek, including large trees, provides abundant nesting opportunities for resident and migratory birds. The single red-shouldered hawk observed during the site visit was perched in a eucalyptus tree to the west of the site and displayed courting calls. There are also a number of large trees at the project site and adjacent to it, which would provide nesting opportunities. The report states that the potentially significant impact of the project on birds will be reduced to less than significant levels with the implementation of Mitigation Measure BIO-1, but how exactly does weed control protect birds?

8

BIO-2 Designated No-Access Area involves raising a six-foot fence along the property boundary to prevent access along the top bank of the creek, but how would a fence protect the wildlife corridor? Wouldn't a fence impede wildlife access to the corridor even more?

9

BIO-4 Nesting Bird Avoidance and Minimization Efforts requires a qualified biologist to monitor nesting birds to determine if construction activities are causing any disturbance to the birds and shall increase the buffer if birds show signs of unusual or distressed behavior associated with project activities. What is meant by increasing the buffer? What kind of buffer? Increase how and how long would the buffer be in place? How long might distressed nesting birds delay the project or preclude it altogether? More information about these important mitigation measures is required to properly assess the project's impact on neighborhood birds and wildlife.

10

Although no formal jurisdictional delineation was conducted during the site visit, the creek is likely under the jurisdiction of the USACE as Waters of the U.S. and under the jurisdiction of the CDFW and San Francisco Bay RWQCB (SFRWQCB) as Waters of the State. Were these agencies notified of the proposed development?

Trees

- 11 | As the report indicates, 79 of 109 trees at the project site qualify as protected trees. Of the 84 trees the project has slated for removal, 55 are protected. Their protection would require a number of onerous, very labor-intensive mitigation measures, which continue for an extended period of years. How many similar measures is the city currently monitoring at other project sites and is there a progress report available? How would the city ensure the monitoring program continues when the Homeowner Association (HOA) is appointed?
- 12 | BIO-6 Tree Preservation Measures require that any herbicides placed under paving materials must be safe for use around trees and labeled for that use. Which herbicides, if any, are contemplated and what notice, if any, to surrounding residents would be required?

Geology and Soils

- 13 | The site is located in an area of relatively high seismic potential. The faults in the area are capable of generating large earthquakes that could produce strong to violent ground shaking at the project site. The active fault nearest the site is the Hayward fault, which is located approximately half a mile away. The project site is also in a state-designated Liquefaction Hazard Zone. Development of the lots could be susceptible to soil instability resulting from erosion of the creek banks. Of the lots adjacent to the creek, seven lots would require slope stabilization measures, which would remove the creek bank erosion risk but not the risk of earthquake damage. Why not simply reduce project density by those lots at risk of soil erosion, thereby also reducing the risk of death and injury in an earthquake?

GHG

- 14 | Houses at the project would include solar panels to reduce energy use and associated greenhouse gas (GHG) emissions. However, the report fails to consider the likely significant impact of an estimated 133 new residents' cars and those of their visitors.

Hazardous Materials

- 15 | As the report observes, soil samples detected lead concentrations above residential screening levels, arsenic above its published background concentration, and organochlorine pesticides (OCP) compounds chlordane and dieldrin above their residential screening levels. These elevated concentrations were detected in several samples within the upper approximately 0.5 foot of soil. In addition, concentrations of soluble lead and chlordane exceeded their respective non-RCRA hazardous waste limits. Based on these site conditions, construction activities could expose construction workers and nearby residents to potentially unacceptable health risks from contaminated media. Therefore, impacts associated with lead, arsenic, and OCP compounds chlordane and dieldrin are potentially significant.

15,
cont.

↑
The report assures us that implementation of Mitigation Measure HAZ-1 would reduce the potential for construction workers and adjacent residences to be exposed to subsurface contaminants. Would merely reducing the potential of catastrophic injury constitute sufficient mitigation? Has this mitigation measure been applied to a similar project? More information is required.

Hydrology and Water Quality

16

The project would alter the drainage pattern of the site by adding approximately 95,281 square feet of impervious surface area, increasing the potential to introduce pollutants to receiving waters, including San Lorenzo Creek, which borders the Project site to the north. Might a reduction in the number of houses to be built reduce impervious surface area and thus reduce this risk?

Further, the disruption and potential release during construction into the nearby creek of the identified hazardous substances present in the soil is a significant impact that has not been studied, addressed or mitigated.

Noise

17

At the school located approximately 400 feet from the project site, construction activity would generate noise levels likely to disturb students in classrooms and outdoor activity areas. The construction of 41 houses would mean an extended period of perhaps intolerable noise during school hours. What is the estimated duration of construction? Could students lose a year of study because of noise? Would a reduction in the size of the project make a difference?

The report also reveals that the project could expose future residents to noise levels beyond General Plan standards, which could be a very significant environmental impact.

Traffic

18

The project also poses traffic safety hazards. Vehicles using the project driveways may conflict with westbound queues at the intersection of 4th Street and B Street, which provides a single shared westbound left-through-right lane. Queue length is forecasted to exceed the distance between the intersection and the driveway to the northern portion of the project site during both peak hours. Further, vehicles using the Chestnut Street northern driveway to access the northern portion of the site may face excessive queues during the morning peak. How would the proposed signs and stripes mitigate anticipated traffic congestion?

Mandatory Findings of Significance

19

↓
The proposed development would reduce the number of large trees thus habitat for birds. It would impede an important corridor for wildlife and by its size and density reduce the historic value and significance of a neighborhood notable for its rare historic architectural style. Rezoning to reduce lot size would reduce future residents' privacy and green space, both of which are crucial to urban

19,
cont.

livability. In addition, a substantial number of the lots contemplated in the proposed development would be at serious risk of soil erosion.

Disturbing toxic soil during construction would pose a substantial health risk to construction workers and nearby residents, including students at a neighborhood school. Noise levels could have a significant impact on students and, even after construction, could exceed the maximum for single-family dwellings in the General Plan.

The large addition of impervious surface area created by the project would increase the risk of pollutants entering receiving waters, a potentially devastating consequence.

The project would also pose traffic safety hazards in addition to an increase in traffic congestion during peak hours.

20

Conclusion

Despite an earnest effort to mitigate the many significant environmental impacts and dangers posed by a project of this size and density at the proposed location, it appears that the cumulative impact of negatives is not only considerable but completely unacceptable.

Sincerely,



J. Michael Goolsby
President and CEO
Better Neighborhoods, Inc.

Letter 2

COMMENTER: J. Michael Goolsby, President and CEO, Better Neighborhoods, Inc.

DATE: June 26, 2018

Response 2.1

The commenter thanks the City for extending the deadline for comments, introduces the purpose of the organization Better Neighborhoods Inc., and explains that they have reviewed the IS-MND. The commenter states that they are unable to attend the Planning Commission hearing to provide verbal comments but want a copy of the letter to be provided to the Planning Commission as one of the public comments. The commenter also requests to be alerted to the final City Council date.

A copy of this comment letter has been provided to the Planning Commission in advance of the June 28, 2018 hearing. The City Council hearing is scheduled for July 10, 2018. The commenter will be notified if the hearing date changes.

Response 2.2

The commenter states they have a number of comments, concerns, and issues with the project and summarizes the project description and project components.

The commenter's summary of the project is generally accurate. Specific responses to specific comments raised in the IS-MND are addressed below in Responses 2.3-2.20.

Response 2.3

The commenter summarizes setting information from the aesthetics and historic resources analyses in the IS-MND such as the surrounding building heights and architectural styles and that the project is located in a potential historic district.

The commenter's summary of the project setting and context is generally accurate.

Response 2.4

The commenter states an opinion that an important component of the neighborhood's historic significance is scarcity and that previously the site consisted of five homes and the project proposes 41. The commenter states that although the 41 residences would not exceed the permitted density under the General Plan, they would conflict with the minimum lot size requirements for the RS zone. The commenter states the opinion that the lot size minimums for the RS zone were vigorously debated and are intended to ensure residents have adequate green space and privacy.

As discussed in Section 10, *Land Use and Planning*, of the Draft IS-MND, the project includes a request to rezone the existing RS-zoned parcels into a new PD District to accommodate the proposed development. A PD rezone is necessary for the project as proposed because the project does not otherwise meet the RS District development standards related to lot size and yard size. If the project is approved, the proposed development standards and residential land use would be consistent with the PD zoning provisions of the HMC. With respect to the commenters concern about adequate green space and privacy, that the project would provide common open space for use by project residents. Further, privacy issues are not typically considered significant

environmental impacts in CEQA analysis, as a loss of privacy does not pertain to a physical environmental effect. The comments about the merits of the proposed rezone and project and the design of the project are not comments on the IS-MND analysis, but are noted and will be forwarded to the City's decision makers for their consideration.

Response 2.5

The commenter states an opinion that assessing the impact of density requires a comparison between the current number of units per acre in the neighborhood and the number of units per acre if the project were approved.

Parcels in the vicinity of the project site have a variety of General Plan land use designations. East and south of the project site are parcels designated LDR (Low Density Residential) and MDR (Medium Density Residential) and west of the project site are parcels designated LDR and Commercial/High-Density Residential. The project site itself has designations of LDR and MDR. Each land use designation has a different allowed density range. As discussed in Section 10, *Land Use and Planning*, of the Draft IS-MND, the project site is within the allowed density for the LDR and MDR designations. Therefore, the project is consistent with city density requirements. Other impacts associated with density (such as aesthetics and traffic) were analyzed in the Draft IS-MND and were found to be less than significant.

Response 2.6

The commenter states that a zoning change is necessary for the project to include 41 units and explains the proposed rezone to PD that is necessary for the project because it does not meet the RS District development standards related to lot size and yard size. The commenter states an opinion that inadequate lot sizing and setback, loss of green space, and loss of mature trees would substantially degrade the visual quality of the site and its surroundings. The commenter suggests that the addition of new residences at the proposed density would reduce the historic significance of the area and create new sources of light, glare, and noise.

Impacts related to the change in visual character, visual quality, and light and glare are assessed in Section 1, *Aesthetics*, of the Draft IS-MND. As discussed in that section, although the project would substantially change the visual character of the site and increase light and glare compared to existing undeveloped conditions, these impacts would be less than significant. Further, impacts related to the loss of mature trees and potential impacts to historic resources are assessed in Section 4, *Biological Resources*, and Section 5, *Cultural Resources*, of the Draft IS-MND and were found to be less than significant. The commenter does not provide specific information or analysis on these issues or the IS-MND analysis on which to base a more specific response.

Response 2.7

The commenter summarizes the biological resources setting and existing conditions and asks how Mitigation Measure BIO-1, which addresses weed control, would mitigate the potential effects to nesting birds.

The reference to Mitigation Measure BIO-1 to reduce impacts to nesting birds is an error. The reference should be to Mitigation Measure BIO-4. In response to this comment, the following change has been made to Page 34 of the IS-MND:

Native bird nests are protected by CFGC Section 3503 and the MBTA. The nesting season generally extends from February through August in California but can vary based upon annual climatic conditions. Thus, construction activities could result in impacts to birds or their nests as the result of tree removal, or disturbance related nest abandonment. Impacts to these species and nesting birds would be potentially significant. However, potential impacts to migratory nesting birds will be reduced to less than significant levels with implementation of Mitigation Measure ~~BIO-1~~ BIO-4.

Response 2.8

Related to Mitigation Measure BIO-2, the commenter asks how a fence along the property boundary would protect the wildlife corridor and suggests the fence would impede wildlife access to the corridor.

As discussed in Response 1.6, there is no riparian habitat in the proposed area of disturbance for the project that provides riparian habitat or linkages to the creek. Therefore, the project would not impede wildlife access to the corridor as none is currently occurring from the area of disturbance. Further, Mitigation Measure BIO-2 is designed to prevent pedestrian access to the riparian corridor to address potential impacts to amphibian species or water quality could occur from human disturbance.

Response 2.9

Related to Mitigation Measure BIO-4, the commenter asks what is meant by increasing the buffer, asks what kind of buffer, asks how it would be increased, and asks how long the buffer would be in place. The commenter also asks how long distressed nesting birds might delay the project or preclude it altogether. The commenter states more information about mitigation measures is required.

As discussed in Mitigation Measure BIO-4 on pages 34-35 of the MND, if nests are found during the pre-construction survey, a qualified biologist shall establish an appropriate species-specific avoidance buffer of sufficient size to prevent disturbance by project activity to the nest. This is typically up to 300 feet for raptors (more for special status or listed species) and up to 150 feet for all other birds. Avoidance buffers are established on the specific needs of the individual species and the specific conditions at and in the vicinity of the nest. Avoidance buffers are generally marked by flags and ropes or other temporary fencing. To increase the buffer means to extend the radius of the buffer to cover more area around the nest if it is determined that nesting birds are showing evidence of being disturbed. This would occur at the discretion of the qualified biologist, and is standard industry practice. The buffer would be in place until the young have fledged or the nest has been abandoned as confirmed by the qualified biologist. Each species has a different duration for incubation and chick rearing; therefore, the duration that avoidance buffers would be in place is variable and dependent on the nest status and species. The proposed mitigation encapsulates this information by requiring that a qualified biologist have authority to assess nest status and establish avoidance-buffer size and duration. No changes to the mitigation measure are necessary based on this comment.

Response 2.10

The commenter states an opinion that the creek is likely to be under the jurisdiction of the U.S. Army Corps of Engineers, California Department of Fish and Wildlife, and San Francisco Bay Regional Water Quality Control Board and asks if these agencies were notified about the project.

The Notice of Intent to Adopt a Mitigated Negative Declaration was sent to the State Clearinghouse as part of the notification process. The State Clearinghouse is responsible for circulating the notice to state agencies including CDFW and SFBRWQCB. The State Clearinghouse responded to the NOI indicating that no state agencies provided comments on the Draft IS-MND. To date, these agencies have not provided comments on the project or the Draft IS-MND.

Response 2.11

The commenter summarizes that 55 of 84 trees that would be removed for the project qualify as protected trees in the City of Hayward. The commenter states an opinion that their protection would require onerous, labor-intensive mitigation measures for an extended period of years. The commenter asks how many similar measures the city is monitoring at other project sites and if progress reports are available. The commenter asks how the City would ensure the monitoring program continues when the Homeowner's Association (HOA) is appointed.

As discussed in Section 4, *Biological Resources*, of the Draft IS-MND, in order to mitigate the loss of protected trees and ensure protection of trees that would not be removed during construction, mitigation measures BIO-5 through BIO-7 are required. Contrary to the commenter's assertion that tree protection would be onerous and would continue for an extended period of years, these types of tree replacement and protection requirements are standard throughout the City to ensure that projects comply with the City's tree protection ordinance and throughout the area to ensure tree protection during construction. The tree protection measures would only be required during construction, although ongoing maintenance would be required to ensure the health of newly planted and preserved trees. The City's Landscape Architect monitors activities throughout the building permit process. Regular monitoring and inspections do not occur after project construction unless a resident or neighbor complains to the City.

Response 2.12

With respect to Mitigation Measure BIO-6, the commenter asks which herbicides, if any, are contemplated and what notice, if any, to surrounding residences would be required.

Mitigation Measure BIO-1 on Page 34 of the Draft IS-MND prohibits the use of herbicides and other plant pesticides during construction and operation of the project. This requirement would be included in the CC&Rs. In response to this comment, the following change has been made to Mitigation Measure BIO-6 on page 38 of the MND:

- ~~2. Any herbicides placed under paving materials must be safe for use around trees and labeled for that use.~~
- ~~32.~~ As trees withdraw water from the soil, expansive soils may shrink in the root area.
- ~~43.~~ Therefore, foundations, footings and pavements on expansive soils near trees should be designed to withstand differential displacement.
- ~~54.~~ Apply and maintain 4–6 inches of wood chip mulch within the TPZ or tree-well area. Keep mulch 2 inches from the base of the tree.

65. Tree Preservation Guidelines prepared by the Project Arborist, which include specifications for tree protection during demolition and construction, should be included on all plans.

Response 2.13

The commenter states that the project site is located in an area of relatively high seismic potential and is located approximately 0.5-mile from the Hayward fault. The commenter states an opinion that the slope stabilization requirements for the creek-side lots reduce the risk of soil erosion but not the risk of earthquake damage. The commenter suggests reducing the project density by not developing the lots at risk of soil erosion and thereby reducing the risk of death and injury in an earthquake.

As discussed in Section 6, *Geology and Soils*, of the Draft IS-MND in response to checklist question (a), ENGEO provided separate slope stability recommendations in a letter dated June 30, 2017 for the seven residences within the 3:1 line of projection from the toe of the creek bank to the top of the creek bank. These slope stability recommendations are provided to address potential hazards related to geology and soils, including seismic hazards. According to ENGEO's June 30, 2017 letter (included in Appendix B of the Draft IS-MND), provided the mitigation is incorporated, the project is feasible from a geotechnical standpoint. Further, as required by Mitigation Measure GEO-1, a comprehensive site-specific, design-level geotechnical exploration shall be prepared for review and approval by the City of Hayward and the recommendations set forth in the design-level geotechnical exploration shall be implemented. Incorporation of the more site-specific geotechnical recommendations would reduce potential seismic hazards for the future residences.

Response 2.14

The commenter states that future project residences would have solar panels to reduce energy use and GHG emissions; however, the commenter states that the report fails to consider the "significant" impact of 133 new residents' cars and cars of their visitors.

As discussed in Section 7, *Greenhouse Gas Emissions*, of the Draft IS-MND, the BAAQMD developed screening criteria to provide lead agencies and project applicants with a conservative indication of whether a project could result in potentially significant GHG impacts. If all of the screening criteria are met by a project, then the lead agency or applicant would not need to perform a detailed GHG assessment of their project's GHG emissions. The screening criteria takes into account potential emissions associated with trips to and from the project. For single-family residences, the operational GHG screening size is 56 dwelling units. The proposed project includes 41 dwelling units and is therefore below the screening level. Thus, a detailed GHG assessment was not required for the project and GHG impacts would be less than significant.

Response 2.15

The commenter summarizes the conclusions of the Draft IS-MND related to hazards and asks if reducing the potential of catastrophic injury with implementation of Mitigation Measure HAZ-1 constitutes sufficient mitigation. The commenter asks if this mitigation has been applied to a similar project.

As discussed in Section 8, *Hazards and Hazardous Materials*, of the Draft IS-MND, Mitigation Measure HAZ-1 requires preparation of a Site Risk Management Plan (SRMP) health and safety

measures to reduce construction worker and nearby resident exposure to contaminated soil and groundwater that may be unearthed during construction. Preparation of an SRMP, or development of similar procedures, is a standard practice for construction on sites with contaminated media. Development and implementation of a SRMP, which would be reviewed and approved by the City of Hayward, would reduce impacts to construction workers, residents, and the environment from on-site contamination to less than significant levels.

Response 2.16

The commenter states that the project would alter the drainage pattern of the site by adding approximately 95,281 square feet of impervious surface area, increasing the potential to introduce pollutants to San Lorenzo Creek. The commenter asks if a reduction in the number of houses to reduce impervious surface area would reduce the risk. The commenter also asks if the potential release of contaminated soil during construction to the creek has been studied and addressed.

Reducing the amount of impervious surface area would reduce the amount of stormwater flow from the project site by allowing additional on-site infiltration and treatment of stormwater.

Nonetheless, as discussed in Section 9, *Hydrology and Water Quality*, of the Draft IS-MND, with implementation of mitigation measures HYD-1 and HYD-2, runoff from the site would be minimized and would not flow to the creek. Therefore, runoff would not impact San Lorenzo Creek. The potential release of hazardous soil or other substances to the creek has been studied and addressed with implementation of Mitigation Measure HAZ-1, discussed in Response 2.15, and required development and implementation of a SWPPP as discussed in Section 9, *Hydrology and Water Quality*, of the Draft IS-MND.

Response 2.17

With respect to noise at the nearby school, the commenter asks the estimated duration of construction, if students could lose a year of study because of noise, and would a reduction in the size of the project make a difference. The commenter also states an opinion that the project could exposure future residents to noise levels beyond General Plan standards which could be a significant environmental impact.

The estimated length of construction has not been determined at this time. Construction of residences would occur as they lots are purchased. As shown in Table 8 of the Draft IS-MND, noise levels during project construction at the school would range between an estimated 58 and 71 dBA depending on the construction equipment in use. Therefore, construction-related noise could result in a substantial temporary or periodic increase in ambient noise levels. However, the construction noise level estimate is highly conservative because it does not account for noise attenuation from the presence of intervening structures which would attenuate noise and assumes equipment would be operating at the closest point on the project site to the school when in reality construction would occur on the entire project site between approximately 400 feet and 1,000 feet from the school. In addition, noise levels during construction are temporary and only occur when construction equipment is operating. Nonetheless, to ensure construction of the project does not cause annoyance for school staff and students and adjacent residences, Mitigation Measure N-1 is required. With implementation of Mitigation Measure N-1, construction-related noise would not substantially disrupt school activities.

In addition, although the commenter states that exposure of future residents to noise above General Plan standards could be a significant environmental impact, as discussed in the Draft IS-

MND, the California Building Code (CBC) requires that interior noise levels for new residences be below 45 dBA CNEL. Therefore, with adherence to CBC requirements, the proposed project would not result in exposure of future residents to noise levels in excess of standards established in the City's General Plan. Further, as noted on Page 84 of the Draft IS-MND, the California Supreme Court in a December 2015 opinion confirmed that CEQA is concerned with the impacts of a project on the environment, not the effects the existing environment may have on a project. Therefore, the effects of ambient noise levels on future residents is not pertinent to CEQA.

Response 2.18

The commenter states an opinion that the project poses traffic safety hazards. Related to queuing at the intersection of 4th and B Street and on Chestnut Street, the commenter asks how the proposed signs and strips would mitigate anticipated traffic congestion.

As discussed in the project traffic study included in Appendix D of the Draft IS-MND, traffic congestion and queuing in the area is primarily related to existing traffic and not a project-related impact that would need to be mitigated by the project. The requirements for "Keep Clear" markings on the road at all the project driveways under mitigation measures T-1 and T-2 (two driveways on the north side of B Street, including one at Chestnut Avenue, and two driveways on the south side of B Street) would help provide the room for vehicles to safely enter and exit the project driveways when queues are present. In addition, the cautionary signage along B Street warning of new driveway locations would work to slow vehicles down, also allowing vehicles to more safely and comfortably enter and exit the project driveways.

Response 2.19

Regarding Section 19, *Mandatory Findings of Significance*, in the Draft IS-MND, the commenter restates and summarizes concerns related to removing trees, affecting birds, impeding a wildlife corridor, reducing the historic value and significance of the neighborhood, rezoning the site, soil erosion, disturbing toxic soil, construction-related noise, water quality, and traffic hazards.

Please see responses 2.3 through 2.18 for responses to these specific comments raised. Please also see responses 1.6 and 1.7 in Letter 1.

Response 2.20

The commenter states an opinion that the environmental impacts and dangers posed by a project of this size and density are unacceptable.

The commenter's opinion about the project will be provided to City decision-makers for their consideration. Responses to specific comments on the Draft IS-MND raised by the commenter are provided in responses 2.3 through 2.19.

3.0 DRAFT IS-MND TEXT REVISIONS

This chapter presents specific changes to the text of the Draft IS-MND that are being made to correct minor errors or omissions or clarify information presented in the Draft IS-MND in response to comments received during the public review period. In no case do these revisions result in a greater number of impacts or impacts of a substantially greater severity than those set forth in the Draft IS-MND. Where revisions to the main text are called for, the page and paragraph are set forth, followed by the appropriate revision. Added text is indicated with underlined text. Text deleted from the Draft IS-MND is shown in ~~strikeout~~. Page numbers correspond to the page numbers of the Draft IS-MND.

Page 28 of the Draft IS-MND is revised to include the following change:

The project site currently comprises undeveloped and disturbed vacant land with gravel, rubble piles, bare earth, ruderal non-native species, irregularly maintained lawn, and mature trees on relatively level topography that ranges in elevation from 105 feet to 140 feet above mean sea level. The site gently slopes downward from east to west. In the northwest corner, the site slopes down approximately 10 feet into San Lorenzo Creek. The lowest point of the project site is in the San Lorenzo Creek streambed adjacent to the A Street Bridge in the northwest corner. As recent as 2017, the site contained residential development, which has since been demolished and replaced with ruderal vegetation.

Page 31 of the Draft IS-MND is revised to include the following change:

The project site primarily consists of non-native grassland with a variety of native and non-native trees scattered throughout. The site is entirely ruderal having historically been developed with several small single-family residences. All buildings on the site were demolished and removed as recently as early 2017. Patches of nearly bare ground remain in places where house foundations or paved driveways once stood. An existing chain-link fence is currently in place along the margin of San Lorenzo Creek. Inside the fence-line ongoing, irregular lawn maintenance has resulted in little to no understory, and as a result, the fence essentially demarcates the limits of riparian habitat along San Lorenzo Creek where it borders the project site.

Page 33 of the Draft IS-MND is revised to include the following change:

San Lorenzo Creek provides a wildlife movement corridor through the otherwise heavily developed urban landscape and the presence of vegetation, including large trees, along the creek provides abundant nesting opportunities for resident and migratory birds. However, project design has avoided direct impacts to the jurisdictional limits of San Lorenzo Creek and associated riparian habitat. A number of large trees are also present on the project site and on properties adjacent to the project site. An inactive nest was observed in a large eucalyptus tree on the property at the end of Chestnut Street off the northeast corner of project site. A single red-shouldered hawk was observed perched in a eucalyptus tree along San Lorenzo Creek at the northeast corner of the project site. The hawk was calling frequently, but no other red-shouldered hawk was observed at the time of the reconnaissance survey and no nesting behavior was observed.

Mitigation Measure BIO-2 on Page 34 of the Draft IS-MND is revised to include the following correction:

- BIO-2 Designated No-Access Area.** To prevent impacts to San Lorenzo Creek during construction or operation of the project, no work or general access shall be permitted along the top of bank of San Lorenzo Creek beyond the designated six-foot ~~wood~~ fence along the property boundary.
- Updated site plans shall be provided prior to issuance of a grading permit that clearly indicate the property limits, the distance of the six-foot wood fence setback from the measured top of bank of San Lorenzo Creek, and the designated “no access” area between the six-foot wood fence and the top of bank of San Lorenzo Creek.
 - Posted “no access” signs shall be placed along the six-foot wood fence and along the bank of San Lorenzo Creek at the intersection of A Street and 4th Street to prevent access along the top of back along San Lorenzo Creek.
 - All “no access” signage shall be permanent, and the no access zone shall be described in the CC&Rs.

Page 35 of the Draft IS-MND is revised to include the following change:

San Lorenzo Creek crosses the northern boundary of the project site and disturbed riparian vegetation community occurs along its banks. Portions of the creek channel near A Street and along the south bank adjacent to the project site have historically been lined with concrete to reinforce the banks and the development has resulted in considerable disturbance to the creek channel and surrounding vegetation. The riparian community is in poor condition and consists almost entirely of non-native vegetation regrowth, with the only native vegetation consisting of two California bay (*Umbellularia californica*) trees. Additionally, project design has avoided all direct impacts to the jurisdictional limits of San Lorenzo Creek and associated riparian habitat. Despite the very low presence of native vegetation, the vegetation that is present functionally serves as a riparian corridor for wildlife, providing nesting opportunities for native and migratory birds, and movement and dispersal through the urban environment for other wildlife. Project site plans call for an approximately 15-foot setback from the current property fence line. However, implementation of mitigation measures BIO-2 and BIO-3 would ensure that vegetation along San Lorenzo Creek would not be impacted by construction or operation of the project. Therefore, impacts will be less than significant with mitigation.

Table 5 on Page 37 is revised to include the following corrections:

Table 5 Location and Number of Trees to be Removed

	On-site	Off-site Adjacent (with Canopy On-site)	Street	Total
Existing number of trees	96 <u>95</u>	5	9	109
Existing number of protected trees	66 <u>65</u>	5	9	79
Number of trees removed	81	0	3	84
Number of protected trees removed	52	0	3	55
Number of trees preserved	9	5	6	25
Number of protected trees preserved	8	5	6	24
Notes: Numbers reflect the preliminary development plan, existing conditions and demolition plan (RJA 2017a) and arborist report (HortScience, Inc. 2017)				

Mitigation Measure BIO-6 on Page 38 of the Draft IS-MND is revised to include the following change:

- ~~2.~~ Any herbicides placed under paving materials must be safe for use around trees and labeled for that use.
- ~~32.~~ As trees withdraw water from the soil, expansive soils may shrink in the root area.
- ~~43.~~ Therefore, foundations, footings and pavements on expansive soils near trees should be designed to withstand differential displacement.
- ~~54.~~ Apply and maintain 4–6 inches of wood chip mulch within the TPZ or tree-well area. Keep mulch 2 inches from the base of the tree.
- ~~65.~~ Tree Preservation Guidelines prepared by the Project Arborist, which include specifications for tree protection during demolition and construction, should be included on all plans.

Mitigation Measure T-4 on Page 107 of the Draft IS-MND is revised to include the following change:

- T-4 Bus Bulbout.** The project applicant shall coordinate with the City of Hayward and AC Transit to install a bus bulbout at the bus stop along the project site's B Street frontage at the southern quadrant of 4th Street and B Street, as needed. The applicant shall also install signage warning pedestrians of entering and exiting vehicles at the project driveways.