



Midpeninsula Regional
Open Space District

R-26-143
Meeting 26-24
September 23, 2026

AGENDA ITEM 10

AGENDA ITEM

Consideration of the Proposed Toad Hollow Wetland Mitigation Project at Bear Creek
Redwoods Open Space Preserve

GENERAL MANAGER'S RECOMMENDATIONS

1. Confirm that the proposed San Jose Water Company mitigation project aligns with the Mitigation Policy.
2. Following confirmation, authorize the General Manager to negotiate a Mitigation Agreement with San Jose Water Company for future consideration and approval.

SUMMARY

The proposed Toad Hollow Wetland Mitigation Project (Project) would allow San Jose Water Company (SJWC) to create approximately 0.75 acre of seasonal wetland, 200 linear feet of stream channel, and associated habitat restoration at Bear Creek Redwoods Open Space Preserve as third-party compensatory mitigation. Based on a feasibility analysis, which is summarized in this report, Midpeninsula Regional Open Space District (District) staff recommend that the Board of Directors (Board) authorize the General Manager to develop a cooperative mitigation agreement with San Jose Water Company. The project value is estimated at \$1.3 million for design, permitting, and implementation, plus approximately \$20,000 per year for monitoring, maintenance, and reporting for up to 10 years. SJWC would fund and implement all project components and reimburse for District staffing costs.

BACKGROUND

External agencies regularly approach the District seeking to provide funding and/or requesting the ability to implement mitigation work on District lands to compensate for impacts caused by their offsite projects. In 2022, the Board adopted a Mitigation Policy Chapter (Attachment 1) as part of the comprehensive [Resource Management Policies](#) that directs staff to evaluate and recommend third-party compensatory mitigation when it fulfills District goals and meets District criteria. External mitigation valued above the General Manager's purchasing authority requires Board approval.

External Project Creating the Mitigation Need

San Jose Water Company's Los Gatos Creek Watershed Maintenance Program (SJW Maintenance Program) is a long-term program for maintaining water-supply, flood-control, access, and watershed infrastructure throughout the Los Gatos Creek watershed. Maintenance activities include sediment removal at dams and intakes, culvert clearing, vegetation

management, access-road maintenance, dam and intake maintenance, and related watershed stewardship activities. The SJWC program supports water-supply reliability, public and infrastructure safety, flood conveyance, and wildfire risk reduction. These activities are generally intermittent and site-specific but recur over the life of the program as sediment accumulates, vegetation regrows, drainage facilities require maintenance, and infrastructure repairs become necessary. The program therefore creates an ongoing need for compensatory mitigation where impacts cannot be avoided.

The SJW Maintenance Program incorporates avoidance and minimization measures, biological safeguards, seasonal work windows, and best management practices before compensatory mitigation is considered. Even with these measures, individual maintenance activities may impact wetlands, riparian habitat, stream channels, or other jurisdictional waters during construction or maintenance. Temporary impacts generally persist for the period of disturbance and subsequent habitat recovery, while permanent impacts remain for the life of the facility or alteration.

Mitigation Ratios and Regulatory Requirements

Compensatory mitigation requirements are determined by regulatory agencies through a review of quantities and types of impacts to protected resources. The remaining impacts are quantified according to the affected resource and may be expressed as acres of wetland or riparian habitat, linear feet of stream channel, or other measures of aquatic-resource function. Agencies then establish mitigation ratios on a case-by-case basis. Factors that may determine mitigation need include considerations such as whether the impact is temporary or permanent, the duration of the impact, the time required for replacement habitat to become functional, the ecological value of the affected resource, and uncertainty that the mitigation will fully replace lost functions. As a result, one acre of impact does not necessarily translate to one acre of mitigation. The sizing and general location of the Toad Hollow mitigation project has been determined based on the potential impacts of the SJWC Maintenance Program and mitigation ratios prescribed by regulatory agencies. The final amount of mitigation credit provided by the Toad Hollow project will be determined by the regulatory agencies through review of the project design, baseline conditions, performance standards, and monitoring requirements.

DISCUSSION

Proposed Toad Hollow Mitigation Project

The proposed Toad Hollow Wetland Mitigation Project would create a seasonal freshwater wetland complex. The wetland would be developed upslope of an existing wetland feature that likely displayed additional wetland characteristics prior to many documented historic land and water disturbances that occurred in the late 1880s and early 1900s on the land. The proposed site is currently comprised of a previously disturbed non-native grassland near existing access facilities at Bear Creek Redwoods Open Space Preserve. The existing site reflects substantial historic alteration of local drainage patterns, which are believed to have resulted in loss of historic wetland and stream features.

Prior to District acquisition, roads and roadside ditches were developed throughout the property, resulting in altered drainage patterns that have concentrated flows in ditches alongside roads. Near the Project area, these drainages lead to a culvert, which is currently angled to divert water from its natural watershed to a concrete-lined channel that runs along Bear Creek Road. The project would redirect all or a controlled portion of the existing culvert flow back to its presumed

natural watershed and to proposed wetland area. Restoring this hydrologic connection would increase the residence time of seasonal runoff, support shallow soil saturation and seasonal wetland vegetation, reduce concentrated runoff and erosion, and allow water to continue downstream after passing through the restored wetland and channel system.

The proposed wetland restoration area shows signs of seasonal hydrology that would benefit from restoration of natural topography and hydrology. Within the project area, an incised drainage indicates historic seasonal flow concentrations. Existing erosion potential within this area would be addressed through wetland feature development sized appropriately to the site hydrology. Additionally, the proposed project site currently contains plant species typically associated with wetlands within the region. Together, these conditions indicate that the site likely historically contained wetland features. The restoration seeks to address historic road, drainage, and other land-use modifications, which may have hydrologically disconnected portions of the site from their contributing watershed and reduced seasonal wetland conditions over time.

As part of the preliminary feasibility review, District staff evaluated three other potential locations for the mitigation project. Toad Hollow provided the strongest overall opportunity based on the combination of available space, existing site disturbance, hydrologic restoration potential, proximity to existing access, compatibility with preserve operations and recreation, and the ability to create meaningful wetland and stream functions without disturbing higher-quality existing habitat. For these reasons, staff identified Toad Hollow as the preferred site for further design and regulatory review.

The planning-level concept includes approximately 0.75 acre of wetland, about 200 linear feet of ephemeral or intermittent stream channel, restoration of surrounding upland and transition habitat, native planting, and invasive species control. The amount of water entering the site would be managed as needed to support seasonal wetland conditions, slow runoff, and reduce erosion.

SJWC would deliver the project on a turn-key basis and fund all project elements including design, CEQA, permitting, construction, monitoring, maintenance, adaptive management, and oversight by District staff. Final design, boundaries, performance standards, and mitigation credit would be established through baseline studies, regulatory review, CEQA, and permitting.

Evaluation of the Mitigation Policy Alignment and Feasibility Analysis

The District's Mitigation Policy directs staff to evaluate and recommend third-party compensatory mitigation when it fulfills District goals and meets District criteria. The Mitigation Policy (Section 2.3) outlines the following areas for analysis. The findings of the analysis are included below:

Alignment with District Mission, Policies, and Goals

The SJWC Maintenance Program generally aligns with District goals by maintaining water-supply and safety infrastructure while using avoidance measures, best management practices, and habitat protection to reduce impacts to natural resources. Where aquatic-resource impacts cannot be avoided, the program requires compensatory mitigation. The proposed Toad Hollow Wetland Mitigation Project further supports District goals by restoring wetland, stream, upland, and hydrologic functions within the same watershed.

Proximity to District Lands and Regional Context

The proposed mitigation site is located entirely on District land within Bear Creek Redwoods Open Space Preserve. SJWC's mitigation needs arise from maintenance activities within the upper Los Gatos Creek watershed that can affect wetlands, streams, riparian habitat, and other aquatic resources. Locating the mitigation within the same watershed keeps the mitigation close to the impacts it is intended to offset and provides ecological benefits within the broader Bear Creek and Lexington Reservoir watershed.

Public, Partner, and Social Implications

The SJWC Maintenance Program supports water-supply reliability and public safety for more than one million Santa Clara County residents by maintaining dams, intakes, culverts, access roads, and other watershed infrastructure. The proposed project would also strengthen coordination among SJWC, the District, and regulatory agencies by providing a dedicated, watershed-based site to offset unavoidable aquatic-resource impacts.

The proposed wetland would occupy the existing drainage corridor while existing trails and developed facilities generally occur outside the wetland footprint. Wetlands and low-intensity recreation can be compatible where trails and aquatic features are appropriately located and designed. The project would not create new public access infrastructure and is not expected to materially reduce long-term recreational access. Temporary access restrictions may be needed during construction or major maintenance. SJWC would fund implementation, monitoring, maintenance, adaptive management, and District oversight.

Low-impact Project Design and Appropriate Mitigation

The SJWC Maintenance Program incorporates avoidance and minimization measures, biological safeguards, seasonal work restrictions, and best management practices before compensatory mitigation is required. Remaining impacts may include temporary disturbance or occasional permanent impacts to wetlands, riparian habitat, stream channels, and other aquatic resources. As described above, regulatory agencies determine the amount of compensatory mitigation required based on the type, extent, duration, and ecological function of those impacts.

The proposed Toad Hollow Wetland Mitigation Project is appropriately matched to these aquatic-resource impacts because it would restore wetland, stream, and associated upland habitats within the same watershed. The site also provides an opportunity to restore hydrologic connectivity within an already disturbed area rather than affecting intact natural communities. Final mitigation ratios, credits, performance standards, and monitoring requirements would be established through regulatory review and permitting.

Ecological Impact versus Value

The proposed project would provide long-term ecological value by restoring seasonal wetland, stream, and associated upland habitat within the same watershed as the impacts being mitigated. Expected benefits include improved hydrologic function, water quality, erosion control, native habitat, and invasive species management. Final mitigation credit and performance standards would be established through regulatory review and permitting.

Based on the above evaluation, the General Manager finds that the proposed Project and accompanying mitigation work would result in long-term natural resource benefits and recommends the Board authorize the General Manager to develop a mitigation cooperative agreement with SJWC. SJWC would fund the design, peer review, implementation, and

monitoring of the mitigation work, including reimbursement of District staff time to manage all aspects of the project.

FISCAL IMPACT

Developing and negotiating the mitigation agreement will require minimal staff time. The full fiscal and operational impacts associated with the review, approval, oversight, and long-term monitoring of a typical third-party mitigation project would be presented to the Board for review when the final agreement is brought forward for approval.

PRIOR BOARD AND COMMITTEE REVIEW

In March 2022, the Board adopted a Mitigation Chapter as part of the District's [Resource Management Policies](#) that directs staff to evaluate and recommend third-party compensatory mitigation when it fulfills District goals and meets District criteria ([R-22-41](#), [Minutes](#)).

PUBLIC NOTICE

Public notice was provided as required by the Brown Act. In addition, staff sent notifications to neighbors along Bear Creek Road a quarter mile from the project area and to the following interested parties list: Bear Creek Redwoods and Natural Resource Management.

CEQA COMPLIANCE

This item is not a project subject to the California Environmental Quality Act (CEQA). The proposed action is limited to authorizing development of a mitigation cooperative agreement and does not approve final project design, construction, or implementation. Any future mitigation project would undergo appropriate CEQA review before implementation, with the appropriate agency anticipated to serve as lead agency and the District serving as a responsible agency, as appropriate.

NEXT STEPS

If approved, staff will work with SJWC to negotiate and draft a mitigation agreement. The General Manager will return to the Board to seek approval of the mitigation agreement. Staff will update the Board on this project through the annual Comprehensive Vegetation Management Report.

Attachments

1. Resource Management Policy Chapter XVII: Mitigation
2. Mitigation Site Location
3. Conceptual Plan
4. Toad Hollow Wetlands – Hydrology Overview

Responsible Department Head:
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XVII. MITIGATION

Mitigation refers to a suite of measures that avoids, minimizes, or effectively eliminates the impact(s) for a given activity on the environment.. Project mitigations may come from a California Environmental Quality Act (CEQA) document, state and federal permits, or from county or local ordinances. This policy applies to mitigations that pertain to natural and cultural resources which may be incorporated into local, state and federal permit approvals. CEQA-related mitigation involving natural and cultural resources are considered elsewhere in District policy - specifically other chapters of the Resources Management Policies, the Basic Policy, and other Board Policies such as 4.09- Factors to Consider for Structures Disposition.

This mitigation policy creates the process by which District staff define and consider the **least environmentally damaging practicable alternative** of a project. Mitigation may result from either an **internal** or District-led project occurring on District-owned lands or an **external** project, which is a project led by another agency. Midpen's role in reviewing external projects' where Midpen may be a **CEQA Responsible Agency** is detailed in the "District Guidelines for Implementation of the California Environmental Quality Act."

BACKGROUND

Impacts to the environment come in many forms but can be broadly characterized as **temporary** and/or **permanent**. Temporary impacts are those which do not result in a durable change or are short-term in nature. Permanent impacts are those that convert habitat or affect resources in a durable fashion.

Impacts can be described as **potential** or **actual**. Potential impacts cannot be ruled out or confirmed definitively until a future assessment is completed or the project is implemented. Some permits require defining the **Area of Potential Effect**, which encompasses a larger area around the actual impact location. **Actual impacts** arise from known and definite impacts to a resource, whether temporary or permanent. CEQA analyzes three types of effects: direct, indirect, and cumulative. **Direct effects** occur at the place and at the same time as the project implementation (e.g., ground disturbance, tree removal, etc.). **Indirect effects** are reasonably foreseeable effects that occur at different times or places (e.g. impacts that

An example of a project having a direct effect may include the removal of select trees or other vegetation to construct new bridge footings within a riparian area resulting in the need for replacement plantings.

An example of a project having an indirect effect may include installation of a new trail that may cause an increase or decrease in preserve visitation.

An example of cumulative impacts using the above examples would be removal of the riparian vegetation compounded with an increase in visitor usage that may together cumulatively affect water quality and/or future wildlife usage at the project site.

occur due to the proposed action but beyond the footprint of a project or activity). **Cumulative effects** are two or more effects that compound together or increase other environmental impacts.

The existing condition or **environment baseline** describes the environmental setting, ecology, and resources prior to a proposed activity. **Temporal loss** is an impact arising from a delay between an impact and **compensatory mitigation**.

While CEQA and permitting agencies have different definitions and frameworks, including the precise use of the term 'mitigation', the principles of mitigation are shared. The main difference is that CEQA mitigations are approved, monitored, and reported by the CEQA **lead agency**, which is usually the District in the case of District-led projects. Mitigations required through permitting are ultimately approved by the permitting agencies yet monitored and reported by the lead agency.

MITIGATION GOALS, POLICIES, AND IMPLEMENTATION MEASURES

Goal M-	Avoid and minimize adverse impacts to natural and cultural resources to the maximum feasible extent and use mitigation for all other unavoidable impacts. Couple mitigation with high priority restoration when feasible.
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Policy M-1 Review and consider all applicable District Policies, programmatic permits, and CEQA documents to develop the project scope, incorporating the following practices (listed in in order of priority): avoidance, minimization and/or mitigation of potential impacts.

- ◆ Refer to Board Policies, including but not limited to the Basic Policy, and other applicable Resource Management Policy Chapters.
- ◆ Review applicable resource agency programmatic permits and/or programmatic CEQA documents to determine if the project can be covered using existing avoidance, minimization or mitigation measures to reduce the need for compensatory mitigation.

Policy M-2 Identify and evaluate sensitive resources to determine the least impactful project design that meets the project goals and objectives.

- ◆ Develop a brief and inclusive project description.
- ◆ Define the maximum Area of Potential Effect.
- ◆ Survey, identify, and map sensitive ecological and cultural resources within the project area.
- ◆ Analyze how different project alternatives may avoid or impact existing resources.
- ◆ Analyze other activities within the watershed and/or Preserve to understand the net effect of the proposed project.
- ◆ Compare potential impacts against the feasibility, cost, and project goals and objectives (including long term maintenance and monitoring).
- ◆ Document the **basis of design** and why the project is the least environmentally impactful alternative.
- ◆ The basis of design can be informed by the CEQA review process and/or an alternatives analysis conducted during permitting review.

The basis of design integrates engineering, constructability, costs, and environmental considerations to explain the rationale behind the selected project and why other alternatives do not sufficiently meet the project goals.

Policy M-3 Evaluate and incorporate measures that minimize the effects of the project on the sensitive resources.

- ◆ Refine the project description into a sequential narrative and refine the resulting Area of Potential Effect.
- ◆ Conduct further detailed and site-specific surveys of natural and cultural resources as needed to adjust and refine the project design to avoid and minimize project impacts.
- ◆ Define and quantify the temporary, permanent, potential, and actual impacts of the project to the extent feasible.
- ◆ Adjust the project scope, extent, seasonality, duration, or other measures to minimize actual or potential impacts to the resources.

Policy M-4 Develop a compensatory mitigation strategy as a measure of last resort.

- ◆ Review the temporary and permanent impacts.
- ◆ Evaluate onsite mitigation for short-term and long-term cost efficiencies, habitat benefit, physical capacity, and staff resources.
- ◆ Evaluate existing voluntary restoration projects for potential use as mitigation, including vegetation management for resiliency work (e.g., wildland fire, climate change, and/or invasive species removal).
- ◆ If the overall impacts and associated mitigations are substantial, review other voluntary restoration work that the District may plan or conduct in the watershed or Preserve that can mitigate the impacts and/or result in a 'net environmental benefit'.
- ◆ When applying restoration and/or recovery work to compensate for project impacts, select high priority species, habitats, populations, and ecological processes first, preferably in high conservation value areas, including Conservation Management Units, to maximize the regional net environmental benefit.
- ◆ When onsite mitigation is not feasible, evaluate the appropriateness of implementing mitigation work in off-site locations (refer to 'like for like' as described above)
- ◆ Prioritize facilitating or supporting regionally significant restoration projects, as defined by a recovery plan, watershed plan, or other collaborative planning document, when using compensatory mitigation funds.
- ◆ Ensure that baseline mitigation ratios are correctly proportioned by accounting for both the uncertainty inherent in mitigation work and the anticipated probability of success.
- ◆ If no other options are cost effective and feasible, search for partner agencies or conservation organizations that may facilitate third-party mitigation. Consider those that support a Natural Community Conservation Plan, Habitat Conservation Plan, Regional Conservation Investment Strategy or other regional conservation planning.

Policy M-5 Weigh the mitigation, maintenance, monitoring, and reporting costs and impacts alongside the project benefits.

- ◆ After defining a third-party compensatory mitigation strategy, evaluate the sum of all mitigation costs (construction expenses, biological or cultural monitoring, revegetation, compensatory mitigation, and post-construction monitoring).
- ◆ If the overall impacts and associated mitigation costs are substantial, determine whether revisiting the project goal(s) and scope is warranted.
- ◆ Consider a recommendation to alter or withdraw the project.

Policy M-6 When needed, evaluate compensatory mitigation proposed by the District for purchase or implementation on other properties.

- ◆ Confirm if the project is using the least environmentally damaging and feasible alternative.
- ◆ If no feasible option or habitat within District lands is available for which to mitigate for an impact, consider a recommendation to alter or withdraw the project.
- ◆ If after evaluation no feasible alternative or option exists, funding of or implementing off-site mitigation may be considered.

Policy M-7 When third-party compensatory mitigation is proposed by outside parties to the District, evaluate proposals using criteria that aligns with the District's Mission, Goals, and Policies.

- ◆ District analysis of third-party proposals will include a summary of the request, a description of the third-party project ("proposed project"), the required mitigation, and a finding that the project and mitigation will likely result in a long-term benefit to the affected resource.
- ◆ Evaluation criteria of third-party proposals shall include:
 - ***Alignment with District Mission, Policies, and Goals***

- Does the proposed project support the District's mission?
- Does the proposed project provide a public benefit?
- Does the proposed project align with the Basic Policy and Good Neighbor policy?
- Is the project proponent's mission aligned with the District and do they have a track record of environmentally sensitive projects?
- o ***Proximity to District Lands and Regional Context***
 - Is the proposed project located within the District's boundaries or sphere of influence, or within the larger nine-county Bay Area region?
 - Is the proposed project at an appropriate scope and scale for the site and/or region?
 - Will the proposed project directly affect District lands or surrounding ecosystems?
- o ***Public, Partner, and Social Implications***
 - What are the potential impacts and/or benefits to the public and our partners? What are the potential impacts and/or benefits to under-resourced and/or vulnerable communities and to Native American tribes?
 - Is there public support for or opposition to the project and/or to the proposed mitigation?
 - Does the project offer opportunities to strengthen relationships or partner with outside agencies, non-profit organizations, and other groups?
 - Does the project improve or reduce public access opportunities?
- o ***Low-impact Project Design and Appropriate Mitigation***
 - Does the proposed project use the least impactful, practicable alternative and if not, did

the proponent first consider how to avoid and minimize impacts to the greatest feasible extent? Are impacts temporary or permanent? Are the impacts too large to offset?

- What are the sources of funding, conditions imposed, monitoring and oversight requirements, and timeline?
- Are the mitigation funds too small to be useful?
- Is the mitigation project consistent with an existing Preserve Plan, Use and Management Plan and/or an existing CEQA document?
- Will the mitigation project require the District to allocate resources to design, peer review, or monitor the mitigation work?
- Does the District already have a voluntary restoration project in mind or one that requires additional funding that would be a good match?

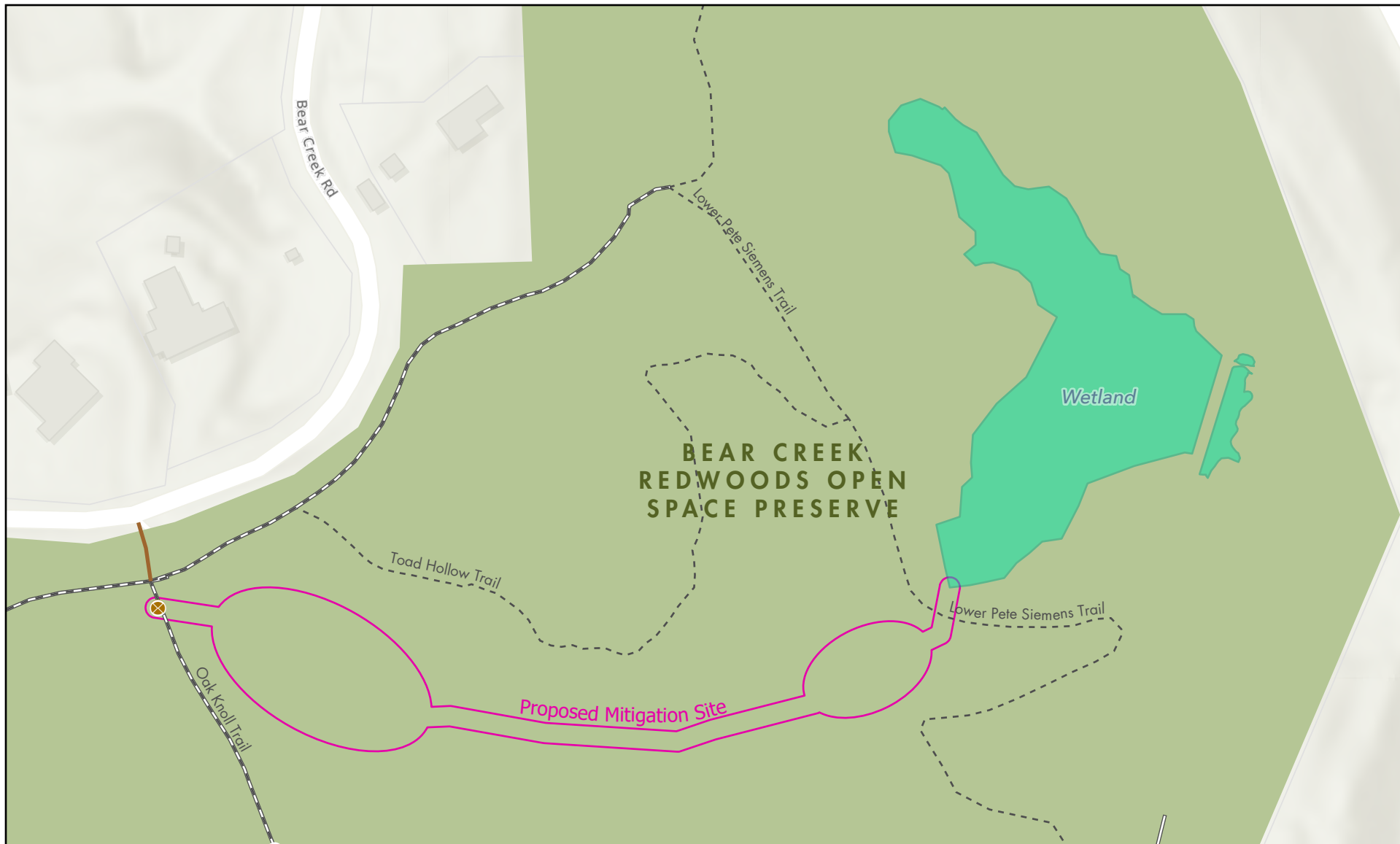
o ***Ecological Impact vs Value***

- Is the affected species for which mitigation is proposed present at the area of impact or do they only have the potential to occur in the area?
- Does the Area of Potential Effect and the proposed off-site mitigation fall within critical habitat, or is part of a habitat linkage, climate refugia, or another sensitive habitat?
- Does the proposed mitigation:
 - ❖ benefit a sensitive species population, habitat assemblage, and/or multiple species?
 - ❖ facilitate regional restoration priorities and/or recovery of species?
 - ❖ restore or provide ecological system function(s)?
 - ❖ promote long-term health of the ecosystem or provide resource benefits?

- ❖ help meet priority land conservation and management goals?
- ❖ support the goals of a Natural Community Conservation Plan, Habitat Conservation Plan, Regional Conservation Investment Strategy or other regional conservation plan?

Policy M-8 Recommend third-party compensatory mitigation that fulfill District goals and meet District criteria.

- ◆ Evaluation criteria will be used to determine whether to further consider outside proposals for acceptance of mitigation funds and/or mitigation work on District lands.
- ◆ Projects are ranked against the evaluation criteria. Although not all projects will meet every criterion, projects must be able to provide a clear benefit to the District to be considered for acceptance.
- ◆ The value of the outside mitigation funds or proposed mitigation work determines the level of approval authority. External mitigation valued at greater than the General Manager's signing authority requires Board approval.
- ◆ Staff findings and recommendations are forwarded to the approving authority. Recommendations will be based on the (ranked) criteria and the particulars of the proposed project and associated compensatory mitigation. Projects that do not meet minimum criteria, do not provide a clear public benefit, and/or are controversial may be denied.
- ◆ Staff will review and ensure a Mitigation Monitoring and Reporting Plan, or Program is in place before accepting funds or mitigation work.

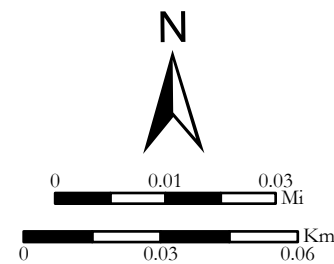


SJWC Mitigation Site

2026

Sources: Esri, Vantor, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap, and the GIS user community, Esri, NASA, NGA, USGS, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Coordinate System: NAD 1983 UTM Zone 10N





2026

BCR Mitigation Concept Package



Jared Lewis
San Jose Water
8/4/2026

Concept Package Checklist

Third-Party Mitigation Concept Package – Submission Checklist

Project identification

External project name	Bear Creek Wetland Mitigation Site (Conceptual)
Proponent / applicant	San Jose Water Company (SJWC)
Primary contact (name/email/phone)	Jared Lewis, Manager Environmental Planning and Natural Resources (SJWC)
Permitting agency(ies)	San Francisco Bay Regional Water Quality Control Board (RWQCB); California Department of Fish and Wildlife (CDFW)
Permit type(s) / application ID(s) (if known)	Clean Water Act Section 401 / Waste Discharge Requirements; Fish and Game Code §1600 et seq.
Proposed schedule / key deadlines	Conceptual concurrence → baseline studies → permit-level design → CEQA / agency approvals → construction → implementation and monitoring

A. External project and mitigation requirement

- ☒ Brief project description (1–2 paragraphs)
- ☒ Project location map
- ☒ Summary of impacts requiring mitigation (resource type, magnitude)
- ☒ Summary of required mitigation (type, ratios/acreage/credits, timing)
- ☒ Any special permit conditions or timing constraints (seasonal windows, deadlines)

B. Proposed mitigation concept (District lands)

- ☒ Proposed mitigation location(s) and map(s)
- ☒ Proposed mitigation actions (restoration/enhancement/preservation/funding)
- ☒ Draft performance standards (high-level is acceptable initially)
- ☒ Draft implementation schedule (including establishment period, if applicable)

C. Delivery model (turn-key preferred)

- ☒ Proposed delivery model (check one):
- ☒ Turn-key (proponent/contractor implements)
- ☐ Funding-only for District implementation

☐ Hybrid

- ☒ Proposed implementer (firm/contractor if known) and qualifications
- ☒ Access, safety, and logistics considerations (staging, routes, closures, equipment)
- ☒ Proposed monitoring and maintenance responsibility and duration

D. Draft monitoring framework (MMRP – can be preliminary at concept stage)

- ☒ Proposed monitoring approach and frequency
- ☒ Proposed reporting frequency and recipients
- ☒ Adaptive management concept (what happens if standards are not met)
- ☒ Funding plan for monitoring/maintenance and adaptive management

E. Budget and funding ("total mitigation value")

- ☒ Itemized cost estimate (implementation, monitoring/reporting, maintenance, contingency)
- ☒ Proposed payment schedule
- ☒ Any requested District reimbursements (review time, staff time, materials, etc.)
- ☒ Proposed approach for long-term obligations (term and funding mechanism)

F. CEQA and regulator coordination (required for formal advancement)

- ☒ CEQA lead agency identified: RWQCB or CDFW
- ☒ Anticipated CEQA pathway: Categorical Exemption / Notice of Exemption, subject to agency confirmation
- ☒ Confirmation that CEQA will cover the proposed mitigation action on District lands
- ☒ Regulator concept concurrence status (check one):
 - ☒ Not yet requested
 - ☐ Requested (date: ____)
 - ☐ Received (attach email/letter)

G. Cost recovery (required to proceed beyond initial inquiry)

- ☒ I understand the District requires full cost recovery for third-party mitigation review and oversight.
- ☒ I understand a flat intake fee is required for initial screening.
- ☒ If the District agrees to proceed, I understand a refundable deposit is required for cost recovery and that the amount is provided by quote.
- ☒ I understand the District will not advance the proposal to formal approval until the deposit is in place and the following are complete: CEQA clearance (external lead agency), a draft MMRP, and written regulator concept concurrence.

- ☒ I understand the proponent must fund implementation, monitoring, reporting, maintenance, and adaptive management needed to meet performance standards.
- ☒ I understand that if the District determines a proposal is not feasible or does not provide clear benefit, the proposal may be declined after intake review.

Attachments included

- ☒ Maps (project + mitigation concept site)
- ☒ Concept narrative / memo / slides
- ☒ Any draft mitigation plan elements or draft MMRP components
- ☐ Regulator correspondence (if available)
- ☐ CEQA schedule/document info (if available)

Bear Creek Wetland Mitigation Site

Conceptual Package

Version: v.4

Prepared for: Midpeninsula Regional Open Space District (Midpen)

Project Proponent: San Jose Water Company (SJWC)

Location: Bear Creek Redwoods Open Space Preserve

Status: Planning-Level Concept – Not for Construction

1. Purpose and Policy Alignment

This Updated Conceptual Plan integrates the requirements of Midpen’s Third-Party Mitigation Policy and Implementation Guidelines and the associated Concept Package Checklist, and is explicitly informed by the Draft v.1 Bear Creek Compensatory Mitigation & Monitoring Plan (CMMP) prepared for SJWC.

This document retains and builds upon the original Bear Creek conceptual design framework while aligning the site-level mitigation concept, delivery model, and CEQA pathway with both Midpen policy and the draft CMMP structure used for SJWC’s existing mitigation programs (e.g., Lake Kittredge).

The concept depends on evaluating the existing northern culvert outfall as the primary hydrologic source for the wetland and channel system, with design options ranging from full diversion to a controlled, adjustable diversion that can be refined through final design, agency review, and adaptive management.

The intent is to present a Board-ready, regulator-ready planning-level package that:

- Demonstrates clear District and ecological benefit;
- Conforms to Midpen’s turn-key mitigation preference;
- Is structured to meet fatal-flaw screening, internal scoping, and policy evaluation criteria;
- Aligns with Concept Package Checklist content expectations; and
- Is consistent with the draft CMMP’s mitigation goals, ratios, performance standards, and long-term stewardship framework.

Important note: The CMMP referenced herein is a working draft (v.1) and is subject to refinement through baseline studies, agency review, CEQA, and permitting. No final

mitigation accounting, credit ledger, or performance commitments are being advanced at this stage.

No final design, construction authorization, funding acceptance, or entitlements are requested at this stage.

2. Project Identification (Checklist Section A)

- **External Project Name:** SJWC Aquatic Resource Mitigation Program (Bear Creek component)
- **Proponent / Applicant:** San Jose Water Company
- **Primary Contact:** Jared Lewis, Manager Environmental Planning and Natural Resources (SJWC)
- **Permitting Agencies:**
 - San Francisco Bay Regional Water Quality Control Board (RWQCB)
 - California Department of Fish and Wildlife (CDFW)
- **Regulatory Drivers:** Clean Water Act Section 401 Water Quality Certification / Waste Discharge Requirements; Fish and Game Code §1600 et seq.
- **Relevant Draft Technical Document:** *Draft v.1 — Bear Creek Compensatory Mitigation & Monitoring Plan (CMMP)*
- **Anticipated Schedule:** Conceptual concurrence (2026) → baseline studies (2026-2027) → permit-level design (2027) → CEQA / agency approvals (2027-2028) → construction (2028) → implementation and monitoring (2028-2038)

3. Los Gatos Creek Watershed Maintenance Program as Mitigation Driver

The Bear Creek Wetland Mitigation Site is being advanced in the context of SJWC's Los Gatos Creek Watershed Maintenance Program, which provides regulatory coverage for routine watershed management activities across SJWC's upper Los Gatos Creek watershed lands, including culvert clearing, sediment removal, vegetation management, access road maintenance, dam maintenance, water supply intake maintenance, ecological restoration, and related facility maintenance.

The Maintenance Program is a long-term, ongoing SJWC program intended to maintain water-supply, flood-control, access, and watershed infrastructure while avoiding, minimizing, and mitigating impacts to aquatic resources and sensitive habitats. The

program supports SJWC's ability to operate and maintain reservoirs, intakes, access roads, roadside culverts, and associated watershed facilities while implementing biological safeguards, best management practices, seasonal work windows, and annual reporting requirements.

Because routine maintenance activities under the Program can result in temporary or permanent impacts to waters of the United States, waters of the State, wetlands, riparian habitat, and stream channels, SJWC must maintain adequate compensatory mitigation capacity to support current and future regulatory authorizations. The Bear Creek Wetland Mitigation Site is therefore not a stand-alone restoration concept; it is intended to function as part of SJWC's broader compensatory mitigation strategy for the Los Gatos Creek Watershed Maintenance Program and related program reauthorization needs.

The existing Lake Kittredge mitigation program has provided mitigation capacity for prior and current maintenance authorizations. The Bear Creek concept is being evaluated as a potential additional mitigation site that could supplement or extend SJWC's mitigation portfolio by creating new seasonal wetland habitat, ephemeral/intermittent channel functions, and associated upland/ecotone buffers under a CMMP-based framework. This approach would allow SJWC to address future maintenance-related mitigation obligations through a unified, defensible, and regulator-reviewed mitigation program rather than relying on isolated, project-by-project mitigation actions.

In this context, the Bear Creek Wetland Mitigation Site is driven by three related program needs:

- **Mitigation capacity:** establishing additional aquatic resource mitigation acreage and linear feet to support future Los Gatos Creek Watershed Maintenance Program impacts;
- **Program continuity:** extending the CMMP-based approach used at Lake Kittredge into a new mitigation site that can support future authorizations and reporting; and
- **Watershed stewardship:** aligning regulatory mitigation obligations with long-term ecological benefits, including wetland creation, channel function, erosion reduction, water quality improvement, habitat enhancement, invasive species control, and adaptive management.

Accordingly, the proposed Bear Creek mitigation concept should be understood as a program-supporting mitigation investment tied directly to SJWC's ongoing watershed maintenance obligations, rather than as an independent enhancement project. Its purpose is to help ensure that SJWC can continue necessary maintenance of watershed infrastructure while meeting compensatory mitigation requirements and advancing broader watershed stewardship objectives.

4. External Project & Mitigation Requirement Summary (Checklist A)

SJWC maintains and anticipates regulatory authorizations for water system operation, maintenance, and capital improvements that require compensatory mitigation for impacts to jurisdictional wetlands and waters. The external mitigation requirement is expected to arise primarily from the Los Gatos Creek Watershed Maintenance Program and related program reauthorization needs. Consistent with SJWC practice, these requirements are addressed through programmatic CMMPs that establish mitigation sites capable of supporting multiple authorizations under a unified framework.

The Draft Bear Creek CMMP (v.1) identifies the Bear Creek Wetland Mitigation Site as a new compensatory mitigation site designed to provide measurable mitigation outputs, including created wetland acreage and approximately 200 linear feet of ephemeral/intermittent channel, consistent with the mitigation ratio framework used at Lake Kittredge.

The mitigation framework is intentionally programmatic, allowing the site to support future regulatory authorizations while maintaining a single, coherent restoration, monitoring, and reporting approach.

5. Proposed Mitigation Concept on District Lands (Checklist B)

5.1 Location and Site Context

The proposed mitigation site is located within a previously disturbed, non-native grassland area near an existing parking and access node in Bear Creek Redwoods Open Space Preserve. As documented in the draft CMMP, baseline conditions are a disturbed upland associated with historic and operational use.

Locating mitigation within a disturbed footprint avoids impacts to intact natural communities, limits new access or infrastructure needs, and aligns with Preserve-wide priorities related to erosion control, invasive species management, and water quality protection.

5.2 Conceptual Mitigation Elements (CMMP-Consistent)

The planning-level mitigation concept reflects the core elements described in the Draft CMMP (v.1), including:

- **Creation of seasonal freshwater wetland habitat** (planning-level assumption: approximately 0.75 acres, subject to delineation and design);
- **Creation of approximately 200 linear feet of ephemeral/intermittent stream channel** integrated with the wetland complex;
- **Restoration of upland/ecotone buffer areas** to support wetland and channel functions, resilience, and invasive species suppression;
- **Diversion or controlled routing of northern culvert flows** into the wetland and channel complex as the primary hydrologic source, subject to final design, agency review, and adaptive management;
- Integrated **invasive species management** consistent with Preserve IPM practices; and
- **Long-term monitoring and adaptive management** consistent with SJWC CMMP and agency expectations.

All acreages, linear feet, habitat classifications, and credit values are illustrative planning assumptions drawn from the draft CMMP and will be finalized through baseline studies, agency concurrence, and permit-level design.

5.3 Conceptual Design Basis and Methodology

At a planning level, the Draft CMMP informs the following design and implementation assumptions:

- Use of **grading and constructed microtopography** to establish wetland hydroperiods within an upland baseline;
- Controlled capture and dispersion of **local runoff and shallow subsurface moisture** to support wetland and channel features while avoiding erosive concentration of flows;
- Construction of a **stable ephemeral/intermittent channel** with vegetated banks and limited hardscape only where necessary for grade control;
- Emphasis on **soil preparation, native planting, and early invasive control** to ensure establishment success and long-term performance.

These methods mirror the CMMP approach and are subject to refinement during design.

5.4 Hydrologic Source: Northern Culvert Diversion

The most likely hydrologic source for the Bear Creek Wetland Mitigation Site is the existing northern culvert that currently outfalls across Bear Creek Road. At the concept level, SJWC is evaluating options to redirect this flow into the mitigation site to establish and sustain seasonal wetland hydrology and the proposed ephemeral/intermittent channel. Design options include full diversion of culvert flow into the site, as well as a controlled diversion structure that would allow a portion of flow to bypass the wetland complex when needed. The control mechanism could be adjustable to support adaptive management, seasonal flow tuning, sediment management, and protection of downstream conveyance conditions.

Using the northern culvert as the primary hydrologic source would convert an existing concentrated road outfall into a designed, vegetated wetland and channel system. This approach is expected to improve site function by slowing runoff, increasing shallow soil saturation, promoting infiltration and groundwater recharge, dispersing erosive flow energy, trapping sediment, and supporting establishment of hydrophytic vegetation. By routing water through constructed microtopography and vegetated treatment areas, the project would also improve water quality functions and reduce the potential for localized erosion at the existing outfall condition.

- **Hydrologic performance:** Provides a reliable seasonal inflow source to support wetland hydroperiods, shallow ponding, soil saturation, and the proposed ephemeral/intermittent channel.
- **Infiltration and water retention:** Slows and spreads runoff through the mitigation area, increasing residence time and improving opportunities for infiltration and shallow groundwater recharge.
- **Erosion and sediment control:** Replaces an unmanaged concentrated outfall with a stable, vegetated conveyance system that dissipates energy, reduces scour risk, and captures sediment before flows continue downslope.
- **Habitat and wildlife connectivity:** Creates a wetter habitat node and ecotone linkage within an existing Preserve landscape, supporting amphibians, birds, pollinators, and other wildlife movement between upland, wetland, and riparian areas.
- **Adaptive management:** Allows future adjustment of inflow volume and timing if monitoring indicates the site is too wet, too dry, or experiencing sedimentation or erosion concerns.

5.5 Conceptual Performance Standards (Derived from Draft CMMP)

Performance standards will be refined in a Mitigation Monitoring and Reporting Plan (MMRP) and are anticipated to mirror the **draft CMMP thresholds**, including:

- Seasonal hydrologic performance sufficient to support wetland indicators;
- Progressive increases in native vegetation cover over a multi-year monitoring period;
- Minimum woody plant survivorship targets;
- Invasive species cover thresholds; and
- Channel stability and sediment control criteria.

6. Delivery Model and Feasibility (Checklist C)

6.1 Delivery Model

Consistent with Midpen policy and the Draft CMMP framework, the project is proposed as **turn-key mitigation**, whereby:

- SJWC (or its qualified restoration contractor) implements construction, planting, monitoring, and adaptive management;
- Midpen provides landowner approval, coordination, and oversight;
- All District staff time for review, coordination, oversight, and monitoring is **fully reimbursed**.

6.2 Feasibility Considerations

- **Access and safety:** Utilizes existing Preserve access and parking; no new public access infrastructure required.
- **Operational compatibility:** Avoids conflicts with Preserve operations and visitor use.
- **Constructability:** Restoration methods are standard, scalable, and consistent with CMMP implementation experience.
- **Staff burden:** Long-term obligations are addressed through CMMP monitoring budgets and financial assurances; no unfunded District commitments are proposed.

7. Monitoring, Reporting, and Adaptive Management (Checklist D)

The Draft CMMP (v.1) establishes a **template-level monitoring framework** anticipated to be applied to Bear Creek, including:

- Annual monitoring and reporting over a multi-year period (anticipated up to 10 years);
- Vegetation, hydrology, erosion, and channel stability metrics;
- Permanent photo-monitoring points;
- Clearly defined **adaptive management triggers** and corrective actions; and
- Agency review and approval of substantive changes to mitigation design or monitoring protocols.

A site-specific MMRP will be finalized through permitting.

8. Budget, Mitigation Value, and Cost Recovery (Checklist E)

This section identifies the planning-level mitigation value and District cost-recovery obligations consistent with Midpen's Third-Party Mitigation Policy. All costs are planning-level estimates and will be refined through final design, CEQA, permitting, and agreement negotiation.

8.1 Total Mitigation Budget (Planning-Level)

The anticipated **total mitigation value** for the Bear Creek Wetland Mitigation Site includes:

- **Planning, design, permitting, and restoration implementation:** approximately **\$1.3 million**
- **Annual monitoring, maintenance, and reporting:** approximately **\$20,000 per year**, for the duration required by regulatory approvals (anticipated up to 10 years, subject to agency concurrence)

These amounts represent the **full cost of mitigation**, inclusive of implementation, long-term stewardship, and District cost recovery, as defined in the Third-Party Mitigation Policy.

8.2 District (Midpen) Cost Recovery

Consistent with Midpen policy, the proponent will provide **full reimbursement of all District staff time and associated costs**, including but not limited to:

- Initial intake, fatal-flaw screening, and completeness review
- Detailed feasibility evaluation and internal coordination (Natural Resources, Planning/CEQA, Legal, Finance, Operations)
- Preparation of staff materials and Board consideration support (if required)
- Oversight during construction and implementation
- Review of annual monitoring reports and adaptive management actions
- Ongoing compliance coordination and record management

District costs will be recovered through **policy-defined intake fees, deposits, and staff-hour charges**, consistent with the adopted fee schedule, and will be incorporated into the final mitigation agreement.

8.3 Monitoring, Maintenance, and Adaptive Management Funding

The estimated **\$20,000 per year** monitoring and maintenance budget is intended to cover:

- Annual biological and physical monitoring
- Evaluation of performance against approved standards
- Invasive species management and routine maintenance
- Preparation and submittal of annual monitoring reports
- District review and regulatory coordination
- Adaptive management actions triggered by performance thresholds

All monitoring, maintenance, reporting, and adaptive management costs will be **fully funded by the proponent** for the duration required by regulatory authorizations.

8.4 Financial Assurances

Consistent with Midpen policy and CMMP practice, appropriate **financial assurance mechanisms** (e.g., bond or letter of credit) will be established to ensure:

- Completion of mitigation implementation;
- Long-term monitoring and maintenance; and
- Availability of contingency funds if corrective actions or adaptive management are required.

The form, amount, and timing of financial assurances will be finalized during permitting and documented in the final mitigation agreement.

All budget values are planning-level estimates and do not constitute final cost commitments. Final mitigation value will be established through approved plans, CEQA documentation, regulator concurrence, and an executed mitigation agreement with the District.

9. CEQA and Regulator Coordination (Checklist F)

9.1 CEQA Pathway

The mitigation project will be processed under **state-led CEQA**, with Midpen serving as a **Responsible Agency**. Depending on the regulatory driver, the CEQA lead agency is anticipated to be:

- **RWQCB**, if mitigation is implemented primarily to satisfy Section 401 / WDR requirements; or
- **CDFW**, if mitigation is implemented primarily to satisfy Streambed Alteration Agreement requirements.

9.2 Anticipated CEQA Document Type and Schedule

Anticipated pathway: CEQA **Categorical Exemption (CatEx)**, filed by the CEQA lead agency (e.g., the RWQCB) as a Notice of Exemption.

Likely CatEx classes if the RWQCB is lead agency (to be confirmed during agency review):

- **Class 4 (CEQA Guidelines §15304)** — Minor Alterations to Land (commonly used by the Water Board for habitat restoration/earthwork projects).

- **Class 33 (CEQA Guidelines §15333)** — Small Habitat Restoration Projects (projects ≤5 acres), if applicable.

9.3 Regulator Concept Concurrence

Consistent with both Midpen policy and the Draft CMMP framework, **written agency concurrence** on the mitigation approach and general location will be obtained prior to formal District approval actions.

10. Cost Recovery Acknowledgements

The Proponent acknowledges Midpen’s third-party mitigation cost recovery requirements, including intake screening fees, refundable deposits (as quoted), reimbursement of District staff time and costs, and prerequisites for formal advancement.

11. Long-Term Benefit and District Findings

At a conceptual level, and as supported by the Draft CMMP, the Bear Creek Wetland Mitigation Site meets Midpen’s findings that:

- The project provides **long-term ecological benefit** through creation of wetland and stream functions in a disturbed area;
- The project provides a **clear District benefit** by advancing Preserve stewardship goals related to habitat enhancement, erosion control, and water quality;
- The likely use of the northern culvert as the primary hydrologic source provides an additional functional benefit by converting existing concentrated runoff into a managed wetland inflow that improves infiltration, reduces erosion risk, enhances water quality, and supports habitat connectivity.
- The mitigation package is **proportional, feasible, and fully funded**; and
- The project avoids creation of unfunded operational burdens or adverse precedent.

12. Board Decision Context

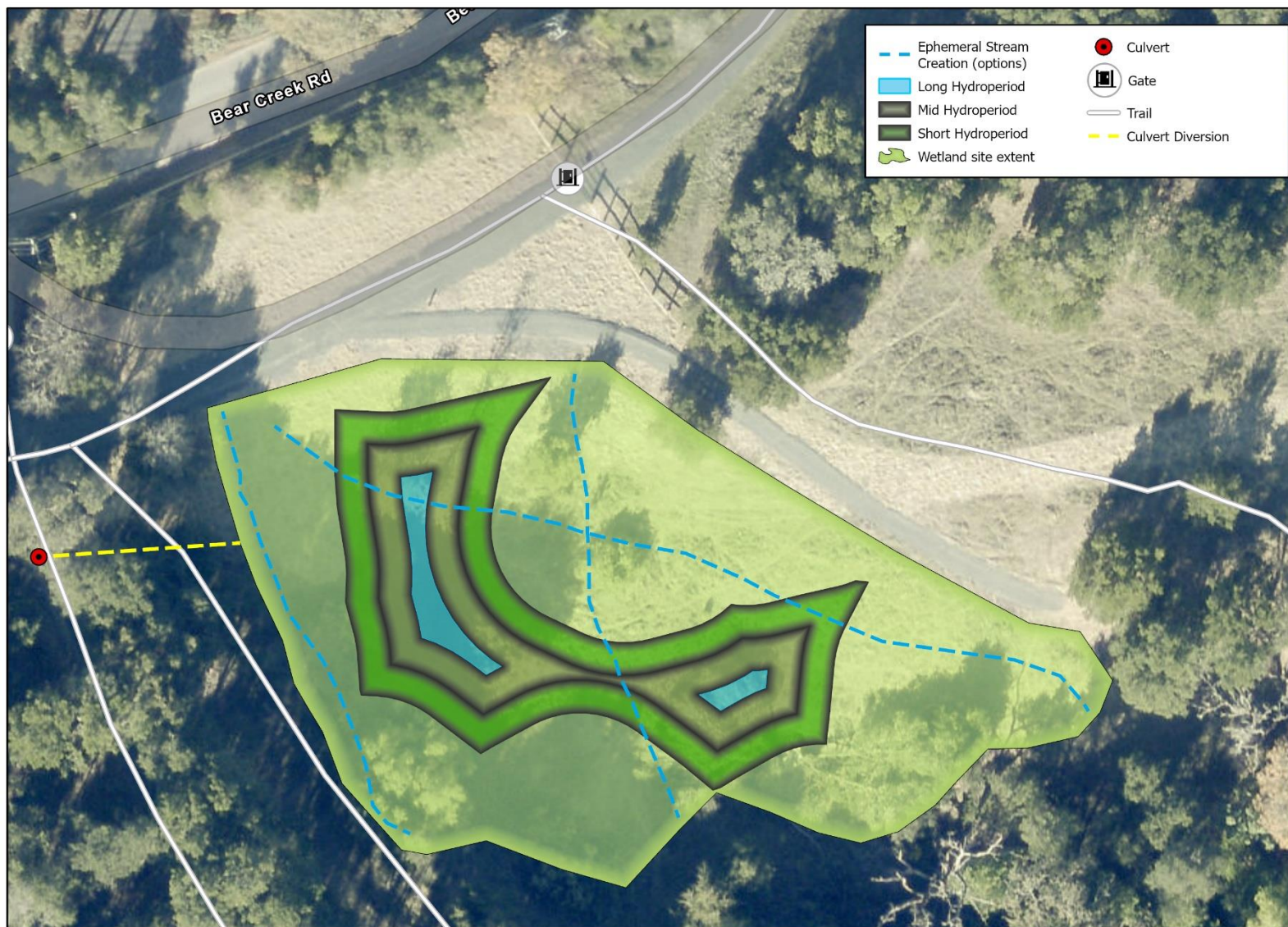
Board consideration at this stage is limited to:

- Conceptual concurrence with the proposed mitigation use of the site, including evaluation of the northern culvert diversion or controlled routing strategy as the primary hydrologic source for the wetland and channel complex;
- Acknowledgement of the turn-key delivery and CMMP-based framework; and
- Authorization for continued coordination toward agency concurrence, CEQA processing, and future approval actions.

No acceptance of funds, construction authorization, or final agreement approval is requested.

MAPS AND FIGURES

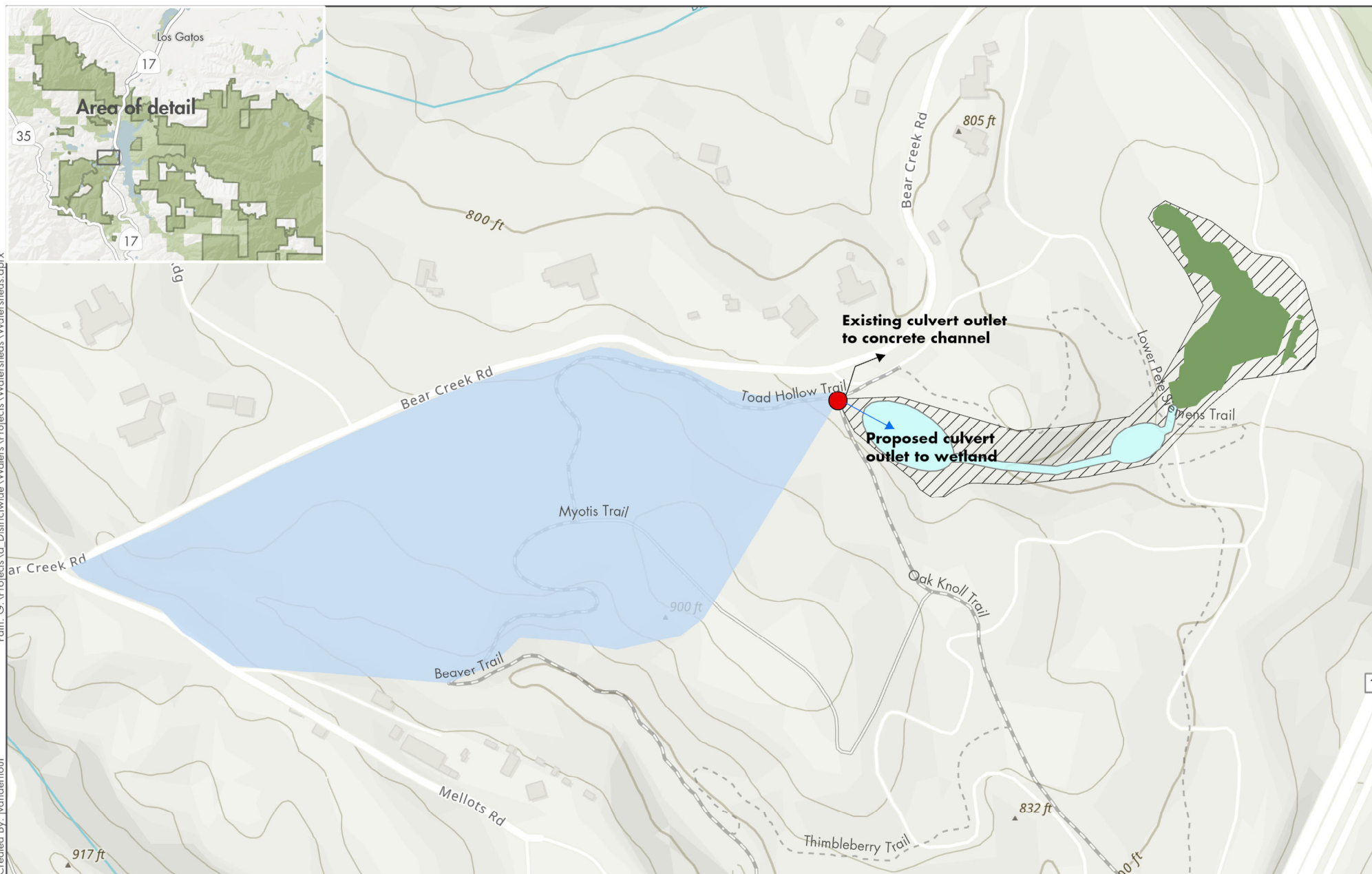




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FIGURE 1
BCR Mitigation Site Conceptual
San Jose Water Company



Toad Hollow Wetlands Hydrology Overview