APPENDIX E
Scoping Report

US Army Corps of Engineers
Corte Madera Creek Flood Risk Management Project
October 2018

SCOPING REPORT
CORTE MADERA CREEK FLOOD CONTROL PROJECT
ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT

Public Scoping Period December 23, 2015 through March 1, 2016

Prepared for:
U.S. Army Corps of Engineers
San Francisco District

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March 2016

Burleson Consulting Inc.
Woman-Owned Small Business
Environmental Puzzle Masters

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APPENDICES

EXECUTIVE SUMMARY

The scoping report for the Corte Madera Creek Flood Control Project summarizes the comments made during the public scoping period from December 23, 2015 through March 1, 2016. The purpose of this scoping period was to solicit comments and questions for evaluating potential impacts, environmental issues, and alternatives for the proposed project for flood risk management in Unit 4 and the other units of Corte Madera Creek. The comments received are organized into the following categories in this document:

- Project components
- Scope of impacts
- Environmental consequences and mitigation
- Public involvement
- Miscellaneous comments not necessarily pertaining to the content of the EIS/EIR

1.0 BACKGROUND

1.1 Introduction

In accordance with the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (Corps) intends to prepare an Environmental Impact Statement (EIS). The Corps is looking to address channel modification opportunities to Unit 4 of Corte Madera Creek, Marin County, California, in accordance with the Flood Control Act of 1962, Pub. L. No. 87-4, 87th Congress, 2nd Session, approved October 23, 1962, and amended by Section 204 of Pub. L. No. 89-789, the Flood Control Act of 1966, and the Water Resources Development Act of 1986.

Pursuant to the California Environmental Quality Act (CEQA), Marin County Flood Control and Water Conservation District Zone 9 (MCFCWCD) is the lead agency and local sponsor in the preparation of an Environmental Impact Report (EIR). The Corps and MCFCWCD have agreed to jointly prepare a Draft EIS/EIR to optimize efficiency and avoid duplication. The Draft EIS/EIR is intended to be sufficient in scope to address the Federal, state, and local requirements and environmental issues concerning the proposed activities and permit approvals. The public scoping period extended from December 23, 2015 to March 1, 2016. A public scoping meeting was held on January 28, 2016 in the Town of Ross, California.

The Corps' Corte Madera Creek Flood Control Project is consistent and compatible with Marin County's Ross Valley Flood Control Program, the purpose of which is to manage flood risk in the upper reaches of Corte Madera Creek upstream of Unit 4. The purpose of the scoping meeting was to solicit comments from the public regarding potential impacts, environmental concerns, and issues related to the project. Questions and comments provided in the scoping comments will be addressed in the alternative formulation and the NEPA and CEQA environmental review process.

1.2 Purpose of Scoping Report

This scoping report summarizes the public scoping comments collected between December 2015 and March 2016 for the preparation of the EIS/EIR for the Corte Madera Creek Flood Control Project. The EIS/EIR will consider the potential environmental impacts resulting from the construction and implementation of the proposed project of flood risk management in Unit 4 and affected units of Corte Madera Creek. The EIS/EIR will be included in the overall General Reevaluation Report (GRR) and Integrated EIS/EIR, which will recommend the preferred alternative based on the Corps planning process, the EIS/EIR, and other technical analyses. This scoping report is organized into the following sections:

1. Background
2. Scoping Process
3. Summary of Scoping Comments
4. Results of the Scoping Period

1.3 Proposed Project

The purpose of the project is to manage flood risk from Corte Madera Creek associated with Unit 4. The need of the project is to address channel modifications to Unit 4, from the upstream end of the existing Unit 3 concrete channel to Sir Francis Drake Boulevard at the border of Ross and San Anselmo, which may also require modifications to Units 3 and 2. Unit 3 extends from the upstream end of the concrete channel in Ross downstream to College Avenue Bridge. Unit 2 extends from College Avenue Bridge downstream to Bon Air Bridge in Larkspur.

A charrette was held in 2013 to restart the Study under the Corps' Specific, Measureable, Attainable, Risk Informed, and Timely planning (SMART) principles. SMART Planning is intended to complete USACE feasibility studies in a cost-effective and efficient manner. More information on the SMART Planning process is available at: http://planning.usace.army.mil/toolbox/smart.cfm.

Corte Madera Creek drains an area of approximately 28 square miles in Marin County, California and discharges into the San Francisco Bay nine miles north of the Golden Gate Bridge. Although Units 1, 2, and 3 channel modifications were completed in 1971, public concerns led to a delay in the planned actions for Unit 4. In 1996, Marin County requested the completion of Unit 4 by the Corps, and damages incurred by the December 2005 flood also renewed public interest in finding solutions to minimize the risk of future floods. Since 1971, additional technical studies were conducted that provide an opportunity to formulate and review new alternatives. The GRR and Integrated EIS/EIR will consider reasonable alternatives to evaluate potential impacts associated with the proposed project.

1.4 Project Objectives

Project objectives are to reduce the likelihood and consequences of flooding on human life and safety and to reduce the risk of flood damages, including critical infrastructure, in the City of Larkspur, Town of Ross, unincorporated community of Kentfield, and other surrounding unincorporated lands. Project objectives include developing and implementing environmentally

sustainable flood risk management features consistent with natural geomorphic processes and ecological functions of the project area. Objectives also include environmentally sustainable designs and construction methodologies, which will minimize environmental impacts from future operation and maintenance actions in the project area.

Studies conducted by the Corps focused on evaluating the design performance of Units 3 and 4. These studies identified the abrupt transition between Units 3 and 4 created by the existing Denil fish ladder, the narrow channel condition on the east and west bank, and the Lagunitas Road Bridge as constrictions to flood flow. The Town of Ross replaced the Lagunitas Road Bridge in 2010 with a higher bridge profile of greater flow capacity, approximately 5,400 cubic feet per second. The District and the Corps propose to manage flood risk along Corte Madera Creek downstream of Sir Francis Drake Boulevard.

The alternatives evaluated will be developed in consideration of fish passage for threatened and endangered fish species that migrate through the project area, riparian habitat, as well as other potential environmental issues of concern. Pursuant to local, state, and federal guidelines, MCFCWCD is the lead agency under CEQA and the Corps is the lead agency under NEPA for this project. The Marin County Environmental Planning Manager and the Corps have determined that a full scope joint EIS/EIR is required for the project. Therefore, pursuant to CEQA Guidelines Section 15060(c) and CEQ-NEPA Regulations Part 1501.3(a), an Initial Study and Environmental Assessment have not been prepared.

Potentially significant issues associated with the project may include: hydrology, geology, land use and planning, population and housing, water and air quality, climate change, biological resources, transportation, noise, aesthetics, utilities and service systems, cultural resources, human health and safety, and social and economic effects, as well as cumulative impacts from past, present, and reasonably foreseeable future projects. Alternative actions will be evaluated that will consider fish passage for threatened and endangered fish species that migrate through the project area, riparian habitat, as well as other potential environmental issues of concern.

2.0 SCOPING PROCESS

A Notice of Intent (NOI) to prepare an EIS/EIR was published in the Federal Register on December 18, 2015, Vol. 80, No. 243, pages 79034-79035 with subsequent notice “Change in Public Meeting Date and Extension of Comment Period,” January 4, 2016, Vol. 81, No. 1, page 82. The Corps is seeking participation of all interested Federal, state, and local agencies, Native American groups, and other concerned private organizations or individuals through this public notice. An NOI/NOP notice was also developed by the Corps and MCFCWCD on December 21, 2015, and issued on December 23, 2015. The NOI/NOP was sent to local, state, and federal agencies, local landowners, residents, and interested parties through the U.S. Postal Service. The NOI/NOP included background project information, methods for public comment, and notification of one upcoming public scoping meeting.

The public scoping meeting was held on January 28, 2016, at the Marin Arts and Garden Center, 30 Sir Francis Drake Boulevard, Ross, California, 94957-9601. A Public Notice was published in the Marin Independent Journal to inform the public of this meeting. The purpose of the public scoping meeting was to solicit comments regarding the potential impacts, environmental issues, and components associated with the project to be considered in the Draft EIS/EIR. The meeting place, date, and time were advertised in advance in local newspapers, and meeting announcement letters were sent to interested parties. The Draft GRR and Integrated EIS/EIR is expected to be available for public review and comment in the fall of 2016 and a public meeting will be held after its publication. The NEPA and CEQA extended comment period ended on March 1, 2016.

3.0 SUMMARY OF SCOPING COMMENTS

The public meeting held in Ross was attended by over 65 people, where local public agencies and elected officials addressed the crowd and provided project information. The attendees included individuals, stakeholders, local and state government agencies, and Corps representatives. Appendix A contains scoping meeting minutes and handouts; Appendix B contains a comment summary table followed by written public comments; and Appendix C contains the NOI and NOI/NOP.

Eighteen individuals provided verbal comments at the public meeting that are summarized in Appendix A. A total of 31 written comments (mailed or emailed) were received by the end of the comment period that are summarized in Appendix B. To help in the summary process, the comments were reviewed and categorized based on main points or issues. Specific issues and approximate number of comments or references follows:

Notice and Details (26 comments or reference)
Biology (18 comments or reference)
Fisheries or Fish Passage (14 comments or reference)
Dredging (14 comments or reference)
Hydrology/Watershed (8 comments or reference)
Land Use/Land Acquisition (5 comments or reference)

The following categories received four or fewer comments or references in descending order: Recreation, Flooding, Geology, Water Quality, Concrete Channel, Opposition to Floodwalls on Sylvan Lane, Flood Proofing, Detention Basins, Sea Level Rise, Focus Groups, and Starting at Units 1,2, and 3 before Unit 4. There were approximately ten random comments or references made.

The above issues were then categorized into five broad categories: (1) project components; (2) scope of impacts; (3) environmental consequences and mitigation; (4) public involvement; and (5) miscellaneous (not necessarily pertaining to the content of the EIS/EIR). All comments are summarized below.

3.1 Project Components

Comments were raised regarding the existing and proposed project components and concerns were raised about the effects of the project on the surrounding area. Specifically, comments were made concerning the effect of the project on fish passage and structural features. Several comments were made by interested parties who were concerned with the possibility of further concrete channelization, loss of land adjacent to the project area, floodwalls within the project area, and the method of improving fish passage. Residents brought forth comments on possible alternatives.

The general consensus is for the array of alternatives to carry the most environmentally friendly options forward that manage flood risk within the watershed; however, residents on Sylvan Lane are not in agreement with constructing flood walls or structures near their residences that could cause damage from increased flooding. The Friends of Corte Madera Creek support a non-structural alternative and their ultimate goal is to remove the concrete channel and restore the natural floodplain. They support increasing the capacity (through the whole system) and appreciate the intent to remove the existing fish ladder. They also suggest that designs include as much riparian vegetation as feasible.

Other suggestions include upstream detention basins, as well as more detail and description to the existing measures being considered for natural channel and natural grade protection.

3.2 Scope of Impacts

Residents commented on the damage after past floods. Additional comments were received concerning the scope of impacts and included removing the existing fish ladder and the selection of an environmentally friendly fish passage option. Commenters expressed concern about potential flooding in the downstream reaches as a result of the greater amount of water designated to be sent through the system. Some commenters expressed a desire for more non-structural alternatives to be considered and to keep the channel in the most natural state possible. Several commenters suggested looking at the entire watershed, starting with Unit 1 and moving up through Unit 4. Finally, the public interest in the project included suggestions on expanding the current multi-use path adjacent to the creek.

3.3 Environmental Consequences and Mitigation

- **Biological Resources and Habitat:**
  One commenter recommended acquiring land adjacent to the creek to create a riparian canopy to provide food, cover, and stream temperature control for migrating salmon.

  Other comments supported incorporating riparian and in-stream habitat preservation and improvements into the construction and maintenance plans, including the use of native plants and invasive weed control. Many comments supported improving fish passage for migratory fish and wildlife habitat. Specific recommendations from these comments are described in the section concerning project components.

- **Water Quality, Erosion, Sediment Transport, and Turbidity:**
  Comments mentioned various aspects of water and sediment quality and were also directed at rising sea level and/or tidal influx as water moves out to sea. Commenters raised concerns about increased flows through the stream resulting in increased erosion, sedimentation, and turbidity in the channel. Several comments raised concerns about sediment deposits in the lower reaches and suggested that removal of sediments could increase capacity.

- **Endangered Species:**
  Comments were received regarding the potential for improving fish passage and habitat for steelhead and Coho salmon. One agency commented that the assessment should include the reasonably foreseeable direct and indirect changes and impacts to special-status species, sensitive habitats, and stream and riparian environments that may occur with implementation of the project. If appropriate, mitigation measures should also be described in the EIS/EIR.

- **Recreation:**
  Several commenters requested the EIS/EIR to address impacts to pedestrian and bike paths adjacent to Corte Madera Creek. One commenter suggested that the bike/pedestrian path could be flooded for additional capacity.

3.4 Public Involvement

Comments were received by several parties regarding the public involvement process. A number of parties commented about the need for additional project design information that was limited within the NOI/NOP. Several parties felt the NOI/NOP was inadequate due to lack of information (a detailed project description and feature location maps). Further concerns were expressed regarding the notification process and the limited distribution within the study area.

3.5 Miscellaneous

Comments were received about other elements outside of Unit 4. One person commented on federal and non-federal cost sharing for the project. Another commenter expressed that “this project needs to be a group effort” with focus groups working together.

4.0 RESULTS OF THE SCOPING PROCESS

The comments received during the scoping period will be addressed and/or incorporated into the EIS/EIR and the GRR. The future steps for the project will be to establish the without-project conditions which will likely include further research and technical studies. The study team will also continue to consult with resource agencies and seek input from the public in determining the potential impacts to the surrounding environment.

MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

AND

U.S. ARMY CORPS OF ENGINEERS

PUBLIC SCOPING SESSION

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WRITTEN COMMENT FORM
JANUARY 28, 2016

[redacted]

Please provide comments and concerns regarding the environmental effects of the proposed project or the environmental process below.

#8 SYLVAN LN. HOUSE flooded in 2005 raised it 5.5' after. Barrier proposed on Sylvan Ln will entrap water on my property.

Please use backside of page for additional comments, if needed. This comment form may be handed in at the scoping session to County Staff, USACE staff, or mailed to the attention of Stephen Willis, prior to **February 16, 2016**, at the following address: Department of the Army, San Francisco District, U.S. Army Corps of Engineers, 1455 Market Street, 17th Floor, San Francisco, CA 94103-1398,
Fax: (415) 503-6692, Email: *Stephen.M.Willis2@usace.army.mil*.

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JANUARY 28, 2016

[redacted]

Please provide comments and concerns regarding the environmental effects of the proposed project or the environmental process below.

(1) The entire town of Ross should receive mailings pertaining to this project since every town resident must come to the post office which is next to the creek to get their mail. There is only ~700 households to mail to, so not a big deal to mail to everyone.

(2) Also send a notice to Linda Lopez at Town of Ross & ask her to disseminate to the town email list.

Please use backside of page for additional comments, if needed. This comment form may be handed in at the scoping session to County Staff, USACE staff, or mailed to the attention of Stephen Willis, prior to **February 16, 2016**, at the following address: Department of the Army, San Francisco District, U.S. Army Corps of Engineers, 1455 Market Street, 17th Floor, San Francisco, CA 94103-1398,
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JANUARY 28, 2016

[redacted]

Please provide comments and concerns regarding the environmental effects of the proposed project or the environmental process below.

Unit 3 is a critical bike path thoroughfare In the future it will become more important as regional trains stop @ Larkspur landing. Lowering ~~the~~ & widening the bike/ped path, ideally on both sides, would accomodate this. Please ~~request~~ study possible transportation improvents related to bike/peds. Thanks

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Fax: (415) 503-6692, Email: *Stephen.M.Willis2@usace.army.mil*.

Marin County Flood Control and Water Conservation District and the U.S. Army Corps of Engineers January 28, 2016 Scoping Meeting for a Proposed Joint Environmental Impact Statement and Report for the Corte Madera Creek Flood Control Project

[redacted]

Good evening. My name is [redacted] and I am a resident of Greenbrae and Larkspur, California. I also am a member of the Larkspur City Council, and I am serving this year as Larkspur's Vice Mayor. I am appearing tonight, however, only as an interested member of the public and not in any official capacity.

The Corte Madera Creek Flood Control Project is a matter of significant public concern to all of us who live in Ross Valley watershed. The watershed has experienced major flooding events in the past, with disastrous consequences to residents and business owners throughout the valley. We face the prospect of even more damage as a result of El Nino-driven storms this winter.

The project is a critical component of the overall Ross Valley Flood Protection and Watershed Program. Other than the preparation of studies and reports by highly paid consultants, virtually nothing has been done to implement that program in the last ten years since funding was made available from Ross Valley property owners. The time for action to protect the interests of our community is long overdue.

For that reason, it is critical that the current project move forward expeditiously and with full transparency to the public. My concern is that the process initiated by the County and the Corps with their December 23, 2015 notice of intent to prepare a joint environmental impact statement and report will not achieve that goal.

Under the California Environmental Quality Act, for example, a notice of preparation for an EIR must provide sufficient information to enable those providing comments to make a "meaningful response." At a minimum, that means the NOP must provide a description of the project and its probable environmental effects.

In this case, the NOP has done neither of those things. All that is provided is a brief statement that the purpose of the project is manage flood risks from Corte Madera Creek associated with Unit 4. No details are provided to describe the features of the project that are intended to accomplish that purpose or the specific location where those features are proposed to be constructed.

In the absence of this information, the NOP fails to provide the public with the opportunity to provide the kind of meaningful response that the law clearly requires. This is fundamentally inconsistent with the principles of openness and transparency that underlie our state and federal environmental laws.

I urge both the County and the Corps to reconsider the strategy you have adopted to comply with those laws. If that does not happen, the result will only be further delay in taking critical actions to protect the public against the risks of future flooding throughout the watershed.

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WRITTEN COMMENT FORM
JANUARY 28, 2016

[redacted]

Please provide comments and concerns regarding the environmental effects of the proposed project or the environmental process below.

1) Need clear drawings, cross-sections and visual simulations of all types of creek modifications with clear map identifying exact locations of proposed improvements (the NOP said almost what's proposed and was totally inadequate)

2) Unlike the original Memorial Park proposal, it is imperative that you not propose the "worst case" design (with highest walls etc.) but instead propose a realistic project and also address environmentally sound alternatives such as multiple, small detention basins throughout the watershed

3) Stop using terms Unit 2, 3, 4; instead provide names that give this a sense of place; these numbers say nothing of where this is

4) DEIR/EIS review period should be no less than 60-90 days; we've waited 10 years to get even the planning process done, so we need 60 day for document review

over

Please use backside of page for additional comments, if needed. This comment form may be handed in at the scoping session to County Staff, USACE staff, or mailed to the attention of Stephen Willis, prior to **February 16, 2016**, at the following address: Department of the Army, San Francisco District, U.S. Army Corps of Engineers, 1455 Market Street, 17th Floor, San Francisco, CA 94103-1398,
Fax: (415) 503-6692, Email: *Stephen.M.Willis2@usace.army.mil*.

5) It's ironic that concrete channels are being considered when LA is now working to UNDO old concrete channels; You need to address the visual, biological and hydrologic impacts of these proposals for concrete vs. earthen channels

6) Need to address sea level rise as related to proposed improvements using latest, scientific data available

7) Impacts on recreation will be critical. This creek and uses nearby are heavy recreational amenities that may be impacted; think outside the box: we will not want to walk along concrete channels in the future; just compare use of path near Marin General and to use along the concrete portion between College of Marin and Ross Post office

8) Need to identify ongoing dredging requirements; will creeks need to be dredged as the creek in Ross was year after year with associate habitat destruction

9) Other issues →
- Fish passage
- Vegetation and shading
- Floodplain restoration + habitat restoration

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JANUARY 28, 2016

[redacted]

Please provide comments and concerns regarding the environmental effects of the proposed project or the environmental process below.

Unfortunately I will be out of town on January 28. However I was on the Corte Madera Advisory committee for several years around 2005 discussing this project. What I learned from 2 plus years on this committee was Unit 4 cannot be treated in isolation Units 1, 2, 3 must be fully considered and upstream into San Anselmo and Fairfax. The optimum and long term Unit 4 solution must integrate with upstream and downstream solutions. As a minimum don't do anything in Unit 4 that would compromise current or future efforts for a basin wide approach which hopefully will be embraced and implemented by the entire Ross Valley populace.

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Fax: (415) 503-6692, Email: *Stephen.M.Willis2@usace.army.mil*.

January 30, 2016

Attn: Stephen Willis
Dept. of the Army, San Francisco District
U.S. Army Corps of Engineers
1455 Market Street, 17th Floor
San Francisco, CA 94103-1398

Re: EIS/EIR for Corte Madera Creek Flood Control Project
Subject: Additional Comments to the Jan. 28, 2016 Public Scoping Session

To All Whom It May Concern:

[redacted]

I briefly spoke at the end of the public comment section of the Public Scoping Session of the Corte Madera Creek Flood Control Project held at the Marin Art and Garden Center in Ross, CA on Jan. 28, 2016. I wish to expand on those oral comments with the following written comments and concerns:

I propose that any effort to control flooding along Corte Madera Creek should first and foremost begin with immediately lowering the creek bed of Unit 4 to its original (i.e. "pre-developement era" of Ross Valley) level. Taking this initial step will provide the following benefits:

1. **Aesthetic/Visual Resources:** Removing the rock, gravel, and sand (hereinafter referred to as "silt") that has built up over the past century will expose the creek's subterranean rock formations that previously created natural-forming aquatic pools along with their connecting water channels. Compared to the flat, gray plain of silt that currently occupies and blocks Corte Madera Creek, recreating its former and natural riparian environment will greatly improve the creek's visual appearance both for the creek's adjacent home owners and its recreational visitors.

2. **Biological Resources:** Exposing the creek's historic stream beds with connecting water courses between deep pools will allow aquatic life (e.g. salmon, trout, minnows, crawdads, etc.) to re-establish and flourish again.

3. **Hydrology:** Lowering the creek bed back down to its original level will indisputably improve the Unit 4's hydro-capacity and hydro-velocity while waiting on other related construction projects to be completed.

4. **Mineral Resources:** The silt that is removed will be a valuable natural resource that can be used to help control floods in other locations:
   A. It can be transported upstream to raise, reinforce, and/or replace the banks of Corte Madera Creek in Units 4, 5, and 6;
   B. It can be transported downstream to raise, reinforce, and/or replace the banks of Corte Madera Creek in Units 1 and 2; and/or
   C. It can be transported across the county to repair and raise Marin's levies bordering San Pablo Bay thereby helping to combat expected rises in future sea levels.

Most importantly, establishing the natural, historic creek beds along Unit 4 will help determine if (and where) further improvements to widen and/or raise the channel of Corte Madera Creek are needed. Furthermore, since a program of annual silt removal for the lower end of Unit 4 already exists, augmentation of that current program can be immediately undertaken while waiting for the proposals of other construction projects to wend their way through the various regulatory processes by the year 2021 (at the earliest). **Therefore, it is within the U.S. Army Corps of Engineers' power to dramatically improve Unit 4's hydro-capacity and ease the risk of flooding in Ross Valley immediately!**

Finally, I estimate that removing perhaps five feet of silt around fifteen feet wide for approximately one-half mile from the downstream "fish ladder" up towards the San Anselmo border will create approximately 20,000 cubic yards (3' x 3' x 3') of fill. Assuming such a project will take more than one year to complete, I suggest that closely surveying and monitoring the changing elevations of the creek bed in between the rainy winter seasons will help to calculate the expected future expenses of maintaining the creek bed at its desired levels because silt will continue to flow and accumulate downstream over time.

If you have any questions and/or comments regarding this matter, please feel free to contact me. In the meantime, I wish you luck, thank you, and remain

cc: Katie Rice, Marin County Supervisor, District 2
Christopher Martin, former Mayor of Ross

[redacted]

February 4, 2016

Mr. Stephen M. Willis
Environmental Manager
U.S. Army Corps of Engineers
1455 Market Street, 17th Floor
San Francisco, CA 94103

RE: Corte Madera Flood Control Project

Dear Mr. Willis:

I am writing to comment on the Notice of Preparation/Intent ("NOP/NOI") for the Joint Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") for the Corte Madera Creek Flood Control Project (the "Project"). My primary concern with the NOP/NOI is that its project description does not satisfy the standards of either the National Environmental Policy Act ("NEPA"; 42 U.S.C. §4321 et seq.), or the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 et seq.), and is therefore legally inadequate. Accordingly, I respectfully request that you reissue the NOP/NOI with a legally adequate project description that describes the actual project that is being studied so that the public can provide meaningful comments.

Background

The US Army Corps of Engineers ("Army Corps") and the County of Marin ("County") issued the NOP/NOI on December 23, 2015. The NOP/NOI stated that a scoping meeting would be held on January 28, 2016 (the "Scoping Meeting") and that comments would be due 20 days later on February 16, 2016.

The NOP/NOI's project description describes why the County and Army Corps are pursuing the Project, summarizes the SMART planning process that will be utilized to evaluate alternatives to the Project, gives a vague description of where the Project will occur and even discusses some previous planning efforts. **However, the Project Description never actually says what the Project will do.** The public cannot provide meaningful comments on the potential environmental impacts of a proposed project if they are not given any of the details of the project.

It was not until the Scoping Meeting that the Army Corps and the County revealed any details of what was being considered, and even then the information provided was vague and confusing. The Scoping Meeting provided a list of "conceptual measures" that would be studied, but did not say where the measures would be implemented or provide specifics about the measures. For example, the presentation indicated that segments of the earthen channel may be widened, but neglected to say where that might occur or how much wider the channel could become. Those details are important when trying to assess the potential environmental impacts of the Project.

[redacted]

The NOP/NOI Is Legally Deficient

The project description in the NOP/NOI is impermissibly vague and therefore fails to meet the standards for a project description under both CEQA and NEPA. Specifically, both CEQA and NEPA require that a project description contain sufficient detail to allow an adequate review and analysis of its environmental impacts. (CEQA Guidelines § 15124 ("Guidelines"; 14 Cal. Code Regs., § 15000 et seq.).) It has thus been held that "an accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR" under CEQA. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655, quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199. See also *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1448.)

NEPA sets a similar standard, requiring that a NOI "[d]escribe the proposed action and possible alternatives." (40 CFR § 1508.22.) And the courts have repeatedly held that public involvement is critical to NEPA's function. (See, e.g., *California v. Block* (9th Cir.1982) 690 F.2d 753, 770 ("NEPA's public comment procedures are at the heart of the NEPA review process."). "NEPA ensures that [an] agency will not act on incomplete information," *Marsh v. Oregon Natural Res. Council* (1989) 490 U.S. 360, 371, at least in part, by "ensur[ing] that the public will be able to analyze and comment on [an] action's environmental implications." *Nat'l Audubon Society v. Dep't of Navy* (4th Cir.2005) 422 F.3d 174, 184 (citing *Hodges v. Abraham* (4th Cir.2002) 300 F.3d 432, 438).

The project description contained in the NOP/NOI fails to meet CEQA's and NEPA's standards. The public cannot discern from reading the project description what exactly the County and the Army Corps are proposing to do or where they are proposing to do it. Therefore, the public is effectively shut out from commenting on how the Project might impact the environment or the sixteen stated subject areas (i.e., aesthetics, biological resources, etc.) that the EIR/EIS will study.

The Scoping Meeting Does Not Cure The Defects In The NOP/NOI

The additional information provided at the Scoping Meeting does not cure the defects in the NOP/NOI. First, both CEQA and NEPA require a complete and stable project description in the NOP/NOI. Neither CEQA nor NEPA allow a lead agency to supplement a legally inadequate project description at a later date, thereby avoiding the need to recirculate the NOP/NOI and restart the clock on public comment.

Second, the Scoping Meeting did not occur until January 28, 2016. By not releasing any details on the Project until January 20, 2016, the Army Corps and County effectively cut the public review period down from 56 days to 20 days. Even if the Army Corps and County could somehow legally justify using the Scoping Meeting to supplement the inadequate project description, they should have, at a minimum, extended the public comment period to provide the public a legitimate opportunity to comment. That simple action – extending the comment period – would have gone a long way in preserving the public's trust that the outcome of this process is not predetermined.

Finally, the additional information provided during the Scoping Meeting cannot cure the defects in the project description because it is still not clear what is being proposed. How can anyone opine as to whether the Project might have an impact on aesthetics or biological resources or hydrology, et cetera, without knowing what will be done and where it will be done? Widening or deepening a channel may have no impacts if done in a less sensitive area, but could have grave impacts if done in a more sensitive area. Unfortunately, there is no way to know which will be the case based on the inadequate project description in the NOP/NOI.

The Quickest Solution Is Fixing And Reissuing The NOP/NOI

The Army Corps and County should immediately work to develop an accurate and complete project description that meets the standards of both CEQA and NEPA and then reissue the NOP/NOI and restart the public comment period. If the Army Corps and County quickly recognize their mistake and take corrective action, they can minimize the delay to the Project and rebuild trust with the community. However, if they proceed with the EIS/EIR built on a defective NOP/NOI, they risk far greater delays if a court were to overturn any approvals granted due to a failure to follow the procedural requirements of CEQA/NEPA.

I want to be clear – I am not writing because I oppose the Project. I do not know whether I support or oppose the Project because I do not know, at this point, what the Project entails. I recognize that flood control plans are vitally important and it is for that reason that I think the decision making process needs to occur in the light of day. Decisions about flood control require a balancing of security from flooding with preservation of the natural environment. NEPA and CEQA exist specifically for the purpose of ensuring that the decision makers and the public have a complete understanding of the pros and cons of whatever decision is made. Additionally, these decisions are very personal and emotional to the local community, as they have the potential to reshape the character of our community. It is for those reasons that the Army Corps and County should err on the side of transparency and public process and reissue the NOP/NOI to allow meaningful review and comment.

I appreciate your consideration of my comments.

[redacted]

cc: Senator Diane Feinstein
Senator Barbara Boxer
Congressman Jared Huffman
Marin County Supervisor Katie Rice

Copies sent to:

Senator Diane Feinstein
One Post Street, Suite 2450
San Francisco, CA 94104

Senator Diane Feinstein
331 Hart Senate Office Bldg.
Washington, DC 20510

Senator Barbara Boxer
70 Washington Street, Suite 203
Oakland, CA 94607

Senator Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Congressman Jared Huffman
999 Fifth Ave., Suite 290
San Rafael, CA 94901

Congressman Jared Huffman
1630 Longworth House Office Building
Washington, DC 20515

The Honorable Katie Rice
Supervisor, Marin County
3501 Civic Center Drive, Room 329
San Rafael, CA 94903

Friends of Corte Madera Creek Watershed
P.O. Box 415 • Larkspur • California 94977

February 4, 2016

Stephen M. Willis
Environmental Manager
Department of the Army, U.S. Army Corps of Engineers
San Francisco District
1455 Market Street, 17th Floor
San Francisco CA 94103
Stephen.m.willis2@usace.army.mil

Re: Corte Madera Creek Flood Control Project EIS/EIR

Dear Mr. Willis,

Since its founding in 1995, Friends of Corte Madera Creek Watershed has been following this project. As you know, that is a short period compared to the attenuated life of the project. However, we are pleased that Congress was finally persuaded to fund the current effort to complete the project.

As proponents of the watershed, we have had concerns about the Corte Madera Creek Flood Control Project, particularly the concrete channel, for many years and strongly urge you to use work we have had done. The following reports are available on our website (www.friendsofcortemaderacreek.org) under Reports and Positions.

Fluvial Geomorphology Consulting. 2007.
Summary Report of 2006 Unit 4 Design Alternatives.
Prepared for Friends of Corte Madera Creek Watershed with funding from the Marin County Flood Control District and the National Fish and Wildlife Foundation by Matt Smeltzer, with assistance from Sandra Guldman. February 2, 2007.

Fluvial Geomorphology Consulting and Stetson Engineers. 2006.
Corte Madera Creek Flood Control Project Unit 4 Design Alternatives. Prepared for Friends of Corte Madera Creek Watershed with funding from the National Fish and Wildlife Foundation by Fluvial Geomorphology Consulting (Matt Smeltzer) and Stetson Engineers (Joe DeMaggio). October 31, 2006.

Michael Love & Associates. 2006.
Preliminary Fish Ladder Design for Unit3/Unit 4 Transition in Corte Madera Creek, Ross, California
Prepared for Friends of Corte Madera Creek Watershed with funding from the National Fish and Wildlife Foundation. May 30, 2006.

A. A. Rich and Associates. 2000.
Fishery Resources Conditions of the Corte Madera Creek Watershed, Marin County, California.

Our concerns focus on environmental issues: biology and hydraulics.

Fish Passage: The temporary fish ladder at the upstream end of Unit 3 is both a barrier to fish passage and a flow constriction. We are confident it will be removed. However, problems with passage are not limited to the fish ladder. The channel itself, particularly the upper portion of Unit 3, is a velocity barrier to spawning salmonids at most fish flows. Although the upper 1,900 feet of Unit 3 contains small concrete pools intended to create resting areas for returning coho salmon and steelhead trout, these pools are not adequate. We expect the EIS/EIR to address all deficiencies and suggest adequate mitigation. The report prepared by Michael Love and Associates, referenced above, includes designs for differently configured resting pools, which would address the velocity barrier issue.

Wildlife Movement: Concrete walls that separate the creek from the surrounding areas make it challenging for all wildlife to move within the watershed. At low flows, the creek channel provides a movement corridor; at high flows, movement is limited wherever walls are installed.

Riparian Habitat: Riparian habitat improves water quality and contributes multiple benefits for fish. Riparian habitat provides protection from predators, beneficial thermal refugia during summer months, and physical refugia during high flows.

Water in the concrete channel is too warm for smolts migrating to the estuary and bay (A. A. Rich 2000). While water temperature is a problem throughout the watershed, areas with significant groundwater inflows do exhibit lower temperatures. Using Hobo temperature loggers, we recorded temperatures in 2013 and 2014 in Unit 4 near the mouth of Ross Creek. There were only a few days when they were too high for salmonids. To maintain these cooler temperatures, Unit 4 should retain abundant riparian vegetation and vegetation should be added to Unit 3.

Any solution that seeks to increase the capacity of Unit 4 should include structures (e.g., large woody debris) that will provide deep, cool pools and refugia for fish moving through the reach. The structure currently installed on the left bank immediately downstream of the Lagunitas Road Bridge is a good example.

Unit 3 provides no protection from predators, such as herons, raccoons, and river otters. Serious thought should be given to designing features that will provide some shelter for fish in the channel. Structures added to provide shelter from predators can also help moderate temperatures and provide flow refugia.

Hydraulics and Concrete Channel Integrity: The volume of water arriving from upstream challenges the capacity of the channel and the channel does not convey the original design flow. Although upstream detention basins could provide some relief, local neighborhoods have rejected some of these proposals, and at this time it is unclear if any will ever be constructed. The concrete channel was designed over fifty years ago. We would like to ensure that this analysis includes updated geometry and hydraulics. Two large floods, one in 1982 and another in 2005, have provided new data that shows how quickly the channel responds to heavy rain events. We suggest that your analysis use updated tools, including unsteady rather than steady flow modeling.

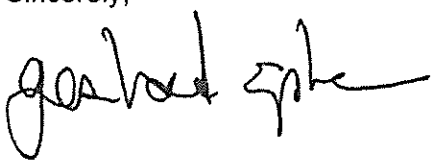
By the time the current project is built, the concrete channel will be 50 years old. It is showing its age: cracked concrete and exposed, rusting rebar. Simply raising the wall on top of it in Unit 3 would be a serious mistake. We request that you include in your report some discussion of the expected useful life of this channel. As it ages, will its performance diminish? Is water flowing underneath the channel? What is the risk of failure?

Alternatives: We suggest a range of alternatives that accomplish some or all of the following:

- Remove as much of the existing concrete as possible,
- Widen the top of the channel and place the multi-use path inside the channel on a ledge above the low flow channel, where for most of the year, flow is low enough that use of the path would be completely safe,
- Maximize vegetation adjacent to or in the channel,
- Recapture the floodplain, particularly within the College of Marin Campus, and
- Connect the upstream end of the McAllister Slough, formerly a meander in the main channel of Corte Madera Creek, to the concrete channel.

We look forward to participating in additional meetings about the project as the alternatives are developed and to seeing the draft EIS/EIR. Thank you for this opportunity to comment.

Sincerely,



Gerhard Epke
President

MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

AND

U.S. ARMY CORPS OF ENGINEERS

PUBLIC SCOPING SESSION

ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT FOR CORTE MADERA CREEK FLOOD CONTROL PROJECT

WRITTEN COMMENT FORM
JANUARY 28, 2016

[redacted]

Please provide comments and concerns regarding the environmental effects of the proposed project or the environmental process below.

1) It is impossible to provide input into a project about which there is so little information.

2) Unless San Anselmo and Fairfax provide ways to catch and slow water before it enters Ross Creek, nothing done in Ross will make a difference. The water leaves the creek head up in San Anselmo, floods the Town of San Anselmo, goes onto Shady Lane, the Ross Commons, the school, and the Town, goes down Poplar over the Kentfield, and goes down Sir Francis Drake for a part of Ross.

3) Check on safety of Phoenix Lake dam + feasibility of raising spillway release in order to retain more water.

4) Uneducated in hydrology, I would hope the Creek could be deepened upon widened.

5) Remove fish ladder but provide manner by which fish can migrate upstream to spawn.

(over)

Please use backside of page for additional comments, if needed. This comment form may be handed in at the scoping session to County Staff, USACE staff, or mailed to the attention of Stephen Willis, prior to **February 16, 2016**, at the following address: Department of the Army, San Francisco District, U.S. Army Corps of Engineers, 1455 Market Street, 17th Floor, San Francisco, CA 94103-1398,
Fax: (415) 503-6692, Email: *Stephen.M.Willis2@usace.army.mil*.

6) Retain vegetation, esp. behind post office, or plant anew.

7) Ross residents have fought a concrete channel for over 40 yrs. That is a given. Provide rip rap to protect sides of creek.

8) Is it feasible to make plans to dredge creek periodically to clear silt? It's been years since dredging at bottom of concrete channel. Did it not prove worthwhile?

Thank you for your time and patience with a frustrated constituency.

[redacted]

February 14, 2016

Attn: Stephen Willis
Dept. of the Army, San Francisco District
U.S. Army Corps of Engineers
1455 Market Street, 17th Floor
San Francisco, CA 94103-1398

Re: EIS/EIR for Corte Madera Creek Flood Control Project
Subject: Additional Comments to the Jan. 28, 2016 Public Scoping Session

To All Whom It May Concern:

[redacted]

I briefly spoke at the end of the public comment section of the Public Scoping Session of the Corte Madera Creek Flood Control Project held at the Marin Art and Garden Center in Ross, CA on Jan. 28, 2016. In addition, I expanded on those comments with a letter sent to the Army Corps of Engineers dated January 30, 2016. I now wish to add to my previous comments with the following observations:

Concerning the extensive excavation that would be needed to lower the Corte Madera Creek bed down to its natural (i.e. nineteenth century "pre-construction" era) levels, the resulting rock and gravel material being removed can be partly (or perhaps fully) transported downstream along Unit 3 and onto barges operated by The Dutra Group, 2350 Kerner Blvd., Suite 200, San Rafael, CA 94901 (415) 258-6876. From there, the material could be redeposited along the banks on Units 1 and 2 where needed to mitigate any possible erosion damage that might occur from the wakes of the transporting barges as well as along Marin County's levies that border and hold back San Pablo Bay.

This downstream transport of material from the "fish ladder" transition point to a spot for loading onto barges presumably near the College of Marin's pedestrian bridge and College Avenue can follow one of two routes:

1) Along the eastern bank of the creek where there is enough open space to accommodate the flow of truck traffic needed for such a project; and/or
2) Along the basin of Unit 3 which would be less intrusive in noise and sound pollution to the surrounding neighborhood.

While recognizing the latter proposal might possibly cause some structural damage to the base of the concrete channel, such damage would be completely mitigated if the final plan of the flood control project included provisions to reconfigure Unit 3's current V-shaped creek bed with a flat, smoother (and *deeper* if not *wider*) surface as proposed by San Anselmo Mayor Ford Greene at the Jan. 28th Public Scoping Session.

But more importantly, utilizing either of the two downstream routes for transportation of excavated material will help allay fears that such a large project would inflict an otherwise unacceptable burden on the surrounding communities of Ross, San Anselmo, Kentfield, and beyond if all of the excavated material were to be hauled over their roadways causing traffic tie ups and road damage.

In conclusion, please keep in mind that the contemporary Western history of Corte Madera Creek practically had its origins as a tributary used extensively to transport all the redwood trees that were harvested from the northern slopes of Mt. Tamalpais and brought down Lagunitas Road and loaded onto sea-worthy vessels that were able to sail all the way up to a place called Ross Landing.

Yes, the Corte Madera Creek bed originally ran that deep. So, it would be well within its historical character if the creek could once again be of service to help clean out the rock and gravel that has accumulated over the years in order to help alleviate the threat of future floods and, within that process, bring back the natural beauty and aquatic balance of life that once existed on the creek.

If you have any questions and/or comments regarding these matters, please feel free to contact me. In the meantime, I thank you for your kind attention to these issues while I remain

Very truly yours,

[redacted]

p.s. Please feel free to share this proposal with the young lady who represented the Federal agency whose jurisdiction includes subject matter involving the San Francisco Bay and who spoke briefly to introduce herself at the beginning of the Jan. 28th Public Scoping Session before she departed for the evening.

cc: Katie Rice, Marin County Supervisor, District 2
Christopher Martin, former Mayor of Ross
The Dutra Group

Marin County Community Development Agency
Planning Division
and
U.S. Army CORPS of Engineers
Public Scoping Session

Environmental Impact Statement/ Environmental Impact Report for
Corte Madera Creek Flood Control Project

Written Comment Document
For the January 28, 2016 Meeting
Town of Ross, Marin

February 16, 2016

Stephen Willis
Department of the Army,
San Francisco District,
U.S. Army Corps of Engineers
1455 Market Street, 17th Floor
San Francisco, CA 94103-1398
Fax (415) 503-6692
Stephen.m.willis2@usace.army.mil

Subject: Comments and concerns regarding the environmental effects of the proposed project or the environmental process for Unit 4 USACE flood control (Unit 4 being the end of the present Cement channel below the Ross post office to the Sir Francis Drake Bridge roughly the Ross / San Anselmo boarder.)

Dear Sir

First I am a resident of Sylvan Lane in Ross and I am in favor of flood mitigation.

I am in favor flood mitigation that is based upon a watershed approach, one that looks at the whole watershed system as an integrated model and integrated system. This integrated model approach is based upon the entire watershed, is shape, its character, how it has been developed and not develop been developed, its communities, including the ability in real time to model incoming rain events and their immediate potential towards possible flooding events. This requires a much higher level of review, modeling to explore true flood mitigation

measures. As an example of this integrated system approach one can get only a glimpse by looking at the Bay Model in Sausalito the working hydrologic scale model of San Francisco Bay, it is much more. There has been many past studies and while I do not have any real catalog of all these efforts what I do now is that any approach of flood mitigation that is a piece meal of patch work will inevitably fail because water always wins, it finds the weakness we failed to fully understand.

Comments regarding Unit 4 flood control and Sylvan Lane:

What proposed project? My definition of a project is "an individual or collaborative enterprise that is carefully planned and designed to achieve a particular aim" What we are asked to give you advice on were general examples of the proposed concepts but no single unified individual defined project, I cannot make an intelligent decision or comment if I do not have specifics, I do not know anyone who can.

These proposed concepts did have Graphics, "cartoons", that depicted Unit 4 flood mitigation, these being channel widening, concrete walls along east and west banks and a concrete wall on the east bank and some where down of Sylvan Lane, along with raising of houses. There are no plans to understand the why, where, when and how. There was no discussion on what hypothetical flood control level was going to be addressed. There was no discussion of how high, how thick or where these cement walls or Berms were to be located. The real kicker here is that there was no addressing the elevation height you are targeting.

Quite frankly none of these options I will support. Below are my concerns as there are no plans to address only concepts.

Flood control mitigation Unit 4 Comments:

a) Back to my opening statement, to predicate flood mitigation on a piecemeal basis is not an integrated watershed approach.

b) I am in favor of an integrated model approach that is based upon the entire watershed, is shape, its character, how it has been developed and not develop been developed, its communities, including the ability in real time to model incoming rain events and their immediate potential towards possible flooding events. This requires a much higher level of review, modeling to explore true flood mitigation measures.

c) Going forward any flood control measures that are clearly defined must be place into the hands an independent standing Design Review Committee , must have broad based

community support and pass a vote of approval by the Town of Ross and each of the before any implementation can take place. If true flood mitigation has taken place the approval will be fourth coming.

d) Watershed broad based community support means Corte Madera, Kentfield, Ross, San Anselmo and Fairfax are all joined together for flood mitigation on a common goal. Water that comes from upstream affects each city downstream. Minimizing though each town reduces the overall flood mitigation efforts downstream.

e) I am not in favor of a rush to a fast track process just to say we have accomplished flood mitigation.

f) Before any flood control measure on Unit 4 should even be considered the flawed units 2 and 3 need to be addressed first and repaired.

g) The stretch of Corte Madera Creek from the end of the present concrete channel below the Ross Post Office up to San Anselmo is a relatively speaking running naturally as one could expect present day. It is lined with natural vegetation and tree canopy. Loosing this changes the very essence and character of Sylvan Lane.

h) Appling Wall flood mitigation efforts within, along Corte Madera Creek proper and adjacent to Sylvan Lane up to San Anselmo will directly cause loss of tree canopy. Even if tree canopy loss is mitigated one will lose the benefits of accessing this riparian corridor.

i) Applying flood mitigation efforts along Sylvan Lane, I ask where without losing tree canopy and vegetation that presently exits. Again loosing this changes the very essence and character of Sylvan Lane.

j) Any replacement tree canopy will take 10 to 15 years to realize.

k) Loosing tree canopy and or realize flood mitigation will directly affect the present effective vegetation transpiration rate. This process of water evaporation from plants cools the surrounding environment. What is this cooling rate presently and how will this increase temperatures overall to the riparian right of way along Sylvan Lane, to the riparian right off way throughout the watershed.

l) I am in favor of channel clean out to maintain peak stream flow. Channel clean out would entail open up the channel from encroaching evasive vegetation, fallen trees, and unwanted debris that presently is choking present stream flow. As an example willow trees while being great bank stabilizers actually encroach into the stream channel over time causing reduced flow capacity.

m) Geologic sediment gauging along the entire watershed to understand build up and our or scouring that is taking place. This should be done before and after any flood mitigation efforts are introduced.

n) Where does it flood? The correct answer is, it floods everywhere given the right circumstances. Unfortunately, Marin County as a whole did not address building into the flood areas and this is hind sight and is true for practically every city and town across the world.

   The point here is to raise all of the housing stock that resides within designated FEMA flood zones may not be feasible as a whole. But this should not prevent us from exploring a financial instrument that would ride with the parcel of land owner to owner that could be entered into at some future point in time to allow that structure to be raised out of the flood zone.

o) The roadways should be review as a natural flood causeway to direct a floodwater overflow event. While this would require extensive unwanted disruptive development it should be considered. The roadways could be redesigned to channel water from Ross to the beginning of Unit 2. Is this feasible maybe not but is should be considered as they are the low points.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

February 16, 2016

Lieutenant Colonel John C. Morrow
U.S. Army Corps of Engineers
San Francisco District, Planning Branch
ATTN: Stephen Willis
1445 Market St
San Francisco, California 94103-1398

Subject: Notice of Intent to Prepare a Draft Environmental Impact Statement for the Corte Madera Creek Flood Control Project General Reevaluation Report and Integrated EIS/EIR, Marin County, CA

Dear Lieutenant Colonel Morrow:

The U.S. Environmental Protection Agency has reviewed the Federal Register Notice published December 18, 2015 requesting comments on the U.S. Army Corps of Engineers' decision to prepare a joint draft Environmental Impact Statement / Environmental Impact Report for the Corte Madera Creek Flood Control Project General Reevaluation Report. Our comments are provided pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

As stated in the Notice of Intent, the purpose of the general reevaluation is to manage flood risk in Corte Madera Creek associated with Unit 4, which may also require modifications to Units 2 and 3. The NOI further indicates that alternatives will consider fish passage and riparian habitat. To assist in the scoping process for the project, EPA has identified several issues for consideration in the development of the Draft EIS.

Purpose and Need

The Draft EIS for the proposed project should clearly identify the underlying purpose and need that is the basis for proposing the range of alternatives (40 CFR 1502.13). The *purpose* of the proposed action is typically the specific objectives of the activity, while the *need* for the proposed action may be to eliminate a broader underlying problem or take advantage of an opportunity.

The purpose and need should be a clear, objective statement of the rationale for the proposed project, as it provides the framework for identifying project alternatives. The Draft EIS should concisely identify why the project is being proposed, why it is being proposed now, and should focus on the specific desired outcomes of the project (e.g. improved flood protection) rather than prescribing a predetermined resolution.

Range of Alternatives and Clean Water Act 404

All reasonable alternatives that fulfill the project's purpose and need should be evaluated in detail, including alternatives outside the legal jurisdiction of the Corps (40 CFR Section 1502.14(c)). The Draft EIS should provide a clear discussion of the reasons for the elimination of alternatives which are not evaluated in detail.

A robust range of alternatives will include options for avoiding significant environmental impacts. The Draft EIS should clearly describe the rationale used to determine whether impacts of an alternative are significant or not. Thresholds of significance should be determined by considering the context and intensity of an action and its effects (40 CFR 1508.27).

The environmental impacts – beneficial and adverse – of the proposal and alternatives should be presented in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public (40 CFR 1502.14). The potential environmental impacts of each alternative should be quantified to the greatest extent possible (e.g. acres of wetlands impacted; change to water quality).

EPA encourages the Corps to integrate Clean Water Act (CWA) Section 404 regulatory requirements into the NEPA process – for both regulatory and planning programs – to streamline environmental review by using NEPA documents for multiple permitting processes. Pursuant to the Federal Guidelines promulgated at 40 CFR 230 under Section 404(b)(1) of the CWA, the Corps is required to clearly and independently demonstrate that the preferred alternative for a proposed action is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the overall project purpose. An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. The LEDPA is the alternative with the fewest direct, secondary, and cumulative impacts to aquatic resources, so long as it does not have other significant adverse environmental consequences.

In order to assure that the Corte Madera Creek Project complies with the Guidelines, the pending Draft EIS should: 1) provide sufficient information regarding appropriate hydrogeomorphic and habitat design considerations to make a reasonable judgment discerning the LEDPA, and 2) demonstrate that the preferred project alternative would minimize potential adverse impacts to the aquatic environment to the maximum extent practicable. EPA believes both these objectives could be realized by considering alternatives that improve channel functions throughout the watershed – maximizing opportunities to incorporate marsh and floodplain terraces, bioengineered bank stabilization techniques, and water detention basins that reconnect the creek with the floodplain – rather than exclusively deploying hardscape structural methods within the project reach that impede natural channel function. The Napa River Flood Protection Project, in which the Corps is a lead federal partner, provides a successful model for a project designed to achieve flood protection while also adhering to 'living river' principles.[1] EPA believes the LEDPA for the Corte Madera Creek project will be an alternative that presents a design based on geomorphic equilibrium informed by a robust sediment budget analysis.

In the tidal reach of the project, we recommend ensuring the project design is consistent with the scientific consensus of the Baylands Ecosystem Habitat Goals Science Update 2015, which seeks to maximize baylands resilience by restoring complete wetland systems with many interconnected habitat

[1]Karr, J.R. and E.W. Chu. 2000. Sustaining living rivers. Hydrobiologia 422/423: 1–14, 2000. M. Jungwirth, S. Muhar & S. Schmutz (eds), Assessing the Ecological Integrity of Running Waters.

types.[2] For the Corte Madera Creek project there may be opportunities to create connectivity from the creek mouth to the nearest tidal marsh habitat if there is sufficient sediment supply. In areas where habitat connectivity is not feasible, consider furthering natural sediment transport or employing the beneficial reuse of dredged materials to baylands that need augmented sediment supply to adapt to sea level rise.

As the project is occurring in a highly constrained urban watershed, EPA understands that environmental and economic concerns must be integrated and balanced for the Ross Valley community and local project sponsors; therefore, EPA continues to support the Corps in a strong stakeholder and community coalition engagement process to refine the LEDPA analysis and to integrate hydrologic models from multiple agencies. The Napa River Flood Protection Project also provides a model for coordinating with local sponsors in a watershed with multiple constraints from a built environment. Napa River, along with more recent projects such as the South Bay Shoreline Study, recognize the critical need for flood protection plans to incorporate watershed management elements both in and adjacent to the project area.

Aquatic Resources

Corte Madera Creek has been identified as an "anchor watershed" for steelhead trout recovery;[3] anchor watersheds are the eight watersheds that account for approximately 75 percent of the region's habitat resources. Investments made in these watersheds can help ensure the sustainability of steelhead populations in San Francisco Bay. The Draft EIS for this project should account for the current and future habitat values in the project area required to sustain anadromous fish populations. Alternatives should minimize stress and enhance habitat for steelhead inhabiting and migrating through all portions of the watershed, including tidal reaches.

The National Marine Fisheries Service (NMFS) recently released its Multi-Species Recovery Plan, which includes Bay Area steelhead.[4] The alternatives in the Draft EIS for the Corte Madera Creek project should include designs that consider factors highlighted in the Recovery Plan. Consider opportunities to improve steelhead habitat by adding habitat complexity, including woody debris; building in areas for refugia during winter high flows and summer low flows; and improving passage, spawning and rearing habitat.

Air Quality

For each alternative, the Draft EIS should provide a detailed discussion of existing ambient air conditions, National Ambient Air Quality Standards (NAAQS) and nonattainment areas, and potential air quality impacts of the project, including cumulative and indirect impacts. Emissions should be estimated for any construction phases and for maintenance activities. Construction-related mitigation measures should be discussed. EPA's General Conformity Rule, established under Section 176(c)(4) of the Clean Air Act, provides a specific process for ensuring federal actions will conform with State Implementation Plans to achieve National Ambient Air Quality Standards. The Draft EIS should include a discussion of the applicability of the General Conformity Rule to the project.

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[2] Goals Project 2015. The Baylands and Climate Change: What We Can Do. Baylands Ecosystem Habitat Goals Science Update 2015, prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project. California State Coastal Conservancy, Oakland, CA. Available: http://baylandsgoals.org/

[3] http://www.cemar.org/SFEWE/Full%20report.pdf

[4] http://www.westcoast.fisheries.noaa.gov/protected_species/salmon_steelhead/recovery_planning_and_implementation/north_central_california_coast/coastal_multispecies_recovery_plan.html

Climate Change

The EPA recommends that the Draft EIS include an estimate of the greenhouse gas (GHG) emissions associated with the project during construction and operation, qualitatively describe relevant climate change impacts, and analyze reasonable alternatives and/or practicable mitigation measures to reduce project-related GHG emissions. In addition, we recommend that the Draft EIS address the appropriateness of including design elements in the proposal to incorporate resilience to foreseeable climate change, including sea level rise as discussed above. We suggest that the EIS make clear whether commitments have been made to ensure implementation of design or other measures to adapt to potential climate change impacts.

More specifically, we recommend that the "Affected Environment" section of the Draft EIS include a summary discussion of climate change and ongoing and reasonably foreseeable climate change impacts relevant to the project based on U.S. Global Change Research Program[5] assessments. This can aid in the identification of potential project impacts that may be exacerbated by climate change and inform consideration of measures to adapt to climate change impacts. Among other things, this will assist in identifying resilience-related measures to consider in the alternatives.

We recommend that the "Environmental Consequences" section include an estimate of the GHG emissions associated with the proposed activities and alternatives. Example tools for estimating and quantifying GHG emissions can be found on CEQ's NEPA.gov website. The estimated GHG emissions can serve as a reasonable proxy for climate change impacts when comparing the proposal and alternatives. In disclosing the potential impacts of the proposal and reasonable alternatives, consideration should be given to whether and to what extent the impacts may be exacerbated by expected climate change in the action area, as discussed in the "Affected Environment" section.

Recognizing that climate impacts are not attributable to any single action, but are exacerbated by a series of smaller decisions, we do not recommend comparing GHG emissions from a proposed action to global emissions or total U.S. emissions, as this approach is limited by the cumulative nature of GHG concentrations and the impacts of climate change. Because of these limitations, these comparisons do not provide meaningful information for a project level analysis.

We recommend that the Draft EIS commits to evaluating the implementation of reasonable mitigation measures that would reduce or eliminate management activity-related GHG emissions. Additionally, we suggest that the Draft EIS alternatives analysis, as appropriate, consider practicable changes to the proposed management activities to make the flood control project more resilient to anticipated climate change. For example, potential changes in storm strength and flash flooding due to climate change would alter anticipated flow rates and could lead to changes in the project's ability to meet its flood protection objectives, while also altering sediment transportation, habitat, and water quality among other potential impacts.

Floodplain Executive Orders

On January 30, 2015 President Obama issued Executive Order 13690 – Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input, which amends Executive Order 11988 – Floodplain Management. Section 2(i) of E.O. 13690 establishes a new definition of the term "floodplain." Rather than basing the floodplain on the area subject to a one percent or greater chance of flooding in any given year, the floodplain would be established using one of the following approaches:

[5] www.globalchange.gov

Unless an exception is made under paragraph (2), the floodplain shall be:

(i) the elevation and flood hazard area that result from using a climate-informed science approach that uses the best-available, actionable hydrologic and hydraulic data and methods that integrate current and future changes in flooding based on climate science. This approach will also include an emphasis on whether the action is a critical action as one of the factors to be considered when conducting the analysis;

(ii) the elevation and flood hazard area that result from using the freeboard value, reached by adding an additional 2 feet to the base flood elevation for non-critical actions and by adding an additional 3 feet to the base flood elevation for critical actions;

(iii) the area subject to flooding by the 0.2 percent annual chance flood; or

(iv) the elevation and flood hazard area that result from using any other method identified in an update to the Federal Flood Risk Management Standards.

EPA recommends that the Draft EIS explain how each alternative would be consistent with the directives in Executive Order 13690. For more information, go to: https://www.fema.gov/federal-flood-risk-management-standard-ffrms.

Cumulative Impacts

Cumulative impact analyses describe the threat to resources as a whole, presented from the perspective of the resource instead of from the individual project. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR §1508.7). Discussions of cumulative impacts are usually more effective when included in the larger discussions of environmental impacts from the action (the environmental consequences chapter), as opposed to discussing cumulative impact analyses in a separate chapter.

The DEIS should describe the methodology used to assess cumulative impacts. We recommend the Corps consider the methodology developed jointly by EPA, the Federal Highway Administration, and the California Department of Transportation.[6] While this methodology was developed for transportation projects, the principles and steps in this guidance offer a systematic way to analyze cumulative impacts for any project.

Environmental Justice

Executive Order 12898 addresses Environmental Justice in minority and low-income populations, and the Council on Environmental Quality (CEQ) has developed guidance concerning how to address Environmental Justice in the environmental review process.[7] We note that the implementation guidelines for the Floodplain EO 13690 discussed above also recognize the importance of considering the impacts to and engagement of vulnerable populations who may be at increased risk to the impacts of flooding due to their location or access to services. The DEIS should include a description of the area of potential impact used for the environmental justice impact analysis and provide the source of the demographic information. The DEIS should identify whether the proposed alternatives may disproportionately and adversely affect low-income or minority populations in the surrounding area and should provide appropriate mitigation measures for any adverse impacts.

[6] www.dot.ca.gov/ser/cumulative_guidance/approach.htm

[7] http://ceq.hss.doe.gov/nepa/regs/ej/justice.pdf

We appreciate the opportunity to provide comments on the preparation of the DEIS. Please send one hard copy and one CD of the DEIS to this office at the same time it is officially filed with our Washington D.C. Office. If you have any questions, please contact me at (415) 947-4167 or prijatel.jean@epa.gov.

Sincerely,

Jean Prijatel
Environmental Review Section

[redacted]

Subject: **Corte Madera Creek Flood Control Project- EIS/EIR Comment Request**
Date: February 20, 2016 10:03:13 AM PST
To: stephen.m.willis@usace.army.mil
[redacted]

Stephen M Willis
Environmental Manager
Dept. of the Army
USACE, SF District
1455 Market Street, 17th Floor, SF
CA 94103

Feb 20, 2016

Dear M Willis:
Further to your request to provide comments prior to March 1 for the Ross Valley Flood Protection and Watershed Program, please accept the following considerations:
1. As the current home owner since 2001 at 1 Sylvan Lane, Ross, we request a copy of the EIR/EIS referenced in the Public Notice on Dec 23, 2015.
2. Are flood mitigation measures currently being implemented ? (maintenance Dredging at Ross Bridge)
3. Do the plans call for storm water storage facilities to be constructed at the catchment areas upstream to reduce the downstream flood hazards during flood time of concentration ?
4. We request that any flood channel improvement structures proposed for 1 Sylvan Lane be submitted for my architectural review and approval during the course of the study, planning and engineering review periods.
Please don't hesitate to call me (Jack) at 415-272-0877 if you have any questions.
Very Truly Yours
[redacted]

Hard Copy with attachments to follow by US mail.

Feb. 20, 2016 Stephen M. Willis, Environmental Manager

attached is a hard copy of the email sent to you this morning. Also attached is a two page memo from our neighbor, Charlie Hackman, dated February 2, 2016.

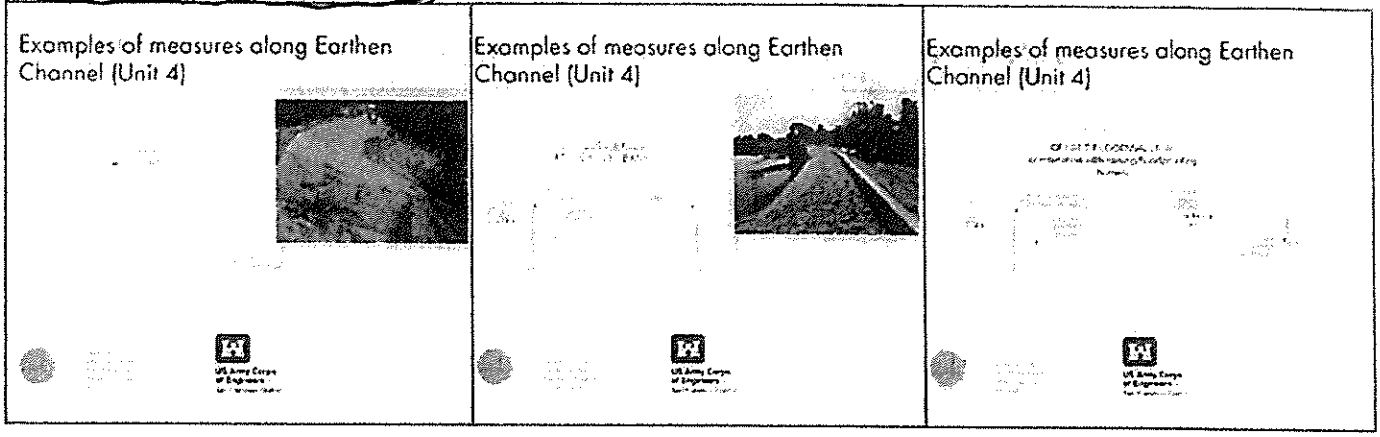
[redacted]

[redacted]

Like Tweet Share

Dear Neighbor,

Once again, our community faces changes as a result of the Corte Madera Creek Flood Control Project. Your participation will help us determine whether these changes have potentially devastating environmental impacts on Ross, or if they will actually mitigate future floods. The following information regards the presentation held Thursday, January 28, a joint Environmental Impact Statement/Environmental Public Report (EIS/EIR) meeting for review and comment on what turned out to be a purely *conceptual* project. At the meeting the Corps presented line drawing depiction of channel widening, floodwalls on top of creek bank, offset floodwalls (in combination of raising/flood proofing homes), and raising walls in the existing concrete channel.



From these rough sketches, the Corps of Engineers expects us to comment on the following extensive "Environmental Effects" list: Aesthetics/Visual Resources , Agricultural/Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Energy, Geology/Soils, Greenhouse Gas Emissions, Hazards/Hazardous Servicers, Recreation, Transportation, Greenhouse Gas Emissions, Hazards/Hazardous Servicers, Recreation, Transportation/Traffic, Utilities/Service Systems.

At the January 28 meeting, requests for specifics remained unanswered.

1. We don't know any factual details of proposed locations, heights, width, lengths of any creek bed changes or floodwalls.
2. We have no concept of how many and which trees will be removed.
3. No information about design elements such as level of flood protection, or whose home will be protected and whose will be harmed was presented.

How can we possibly make meaningful comments from such inadequate information?
The County has said we, the public, have been given 56 days to submit comments for the EIR/EIS because the notice was dated December 23, 2015, and the deadline for submitting **comments to the Corps office in San Francisco is Feb. 16, 2016 at 4:00pm. However, the first presentation of this conception was the January 28, 2016 meeting. We now have approximately 10 business days to submit our comments before the Corps proceeds with the next phase.**

Comments can be faxed or written before the February 16,2016 deadline:
Email: stephen.m.willis2@usace.army.mil ***Fax:*** (415)503-6692 - Attn: Stephen M. Willis
Mail: *Stephen M. Willis, Environmental Manager, Department of the Army, U.S. Army Corps of Engineers, San Francisco District, 1455 Market Street, 17th Floor, San Francisco, CA 94103.*

Please share this information with your neighbors, and ask interested residents who have not received it to email me too.
This affects everyone in town, not just the residents on the creek. This is how your "flood tax" money is spent.
If you think this process is wrong, please email Katie Rice, your Supervisor at: KRice@marincounty.org

My letter to the Marin IJ Editor in February 2, 2016 edition of newspaper:

The 'No Plan' Plan

At the January 28, 2016 Army Corps of Engineers' "Scoping Meeting", the Corps presented a conceptual Plan that had no specifics, absolutely nothing for the Community to comment on by a Feb 16, 2016 Comment deadline. One cross-section of Corte Madera Creek in the earthen channel of Ross was meant to illustrate lowering the creek bottom and widening the creek bank, however, no site location, nor scaled plan giving

actual size of this "concept" were presented. ✓

When showing a sample of concrete walls on top of a bank, again there were no location, height or length for what is proposed. One design element was clear: there were no trees near this wall. None. The audience then was tasked with public comment on this conceptual non-plan.

A time line: on December 23, 2015, the Public Notice was mailed to certain selected recipients. This Notice announced a delivery deadline of Feb 16, 2016 by 4 PM, to Corps San Francisco office for public comments covering over 20 topics that will included in the project EIS/EIR. This leaves 11 business days for public participation in this conceptual plan before the Corps and County begin moving forward on project guidelines. Requiring state and federal comment guidelines for public participation in a non-topic for a non-project is silly.

In my allotted speaking time, before I could ask for specifics about the level of flood level in this conceptual plan or determine the height, and length and location of these concrete walls, Supervisor Rice took the microphone from my hand. Her subsequent monologue contained no specific project information.

At a prior meeting on January 5,2016 Supervisor Rice witnessed Sylvan Lane residents being told there would be berms on either the west side of Sylvan Lane or behind our houses. Concrete Flood walls were never mentioned at that meeting. And, berms were not mentioned on January 28, 2016.

The conceptual plan of the Army Corps of Engineers, dated November 17, 2015, does not appear on the Army Corps' website as of this writing, and when asked for assistance, the Corps representative himself was unable to locate it.

What is going on here? Why is factual information not available to the public?
We cannot be expected to comment on "concepts" completely lacking in specifics.

Is this to deliver flood protection or a piecemeal band aid for the Ross Valley?

[redacted]

MARIN COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DIVISION

AND

U.S. ARMY CORPS OF ENGINEERS

PUBLIC SCOPING SESSION

ENVIRONMENTAL IMPACT STATEMENT/ENVIRONMENTAL IMPACT REPORT FOR CORTE MADERA CREEK FLOOD CONTROL PROJECT

WRITTEN COMMENT FORM

[redacted]

environmental process below:

I am profoundly disappointed. Ten years of study and this is the best you can do!

Why have you not priced-out what it would cost to restore the concrete channel to a natural state?

And digging out the upper stretch could have been done nine years ago.

You folks sure are not being paid to exercise some imagination, apparently.

Please use backside of page for additional comments, if needed. This comment form may be handed in at the scoping session to County Staff, USACE staff, or mailed to the attention of Stephen Willis, prior to **February 16, 2016**, at the following address: Department of the Army, San Francisco District, U.S. Army Corps of Engineers, 1455 Market Street, 17th Floor, San Francisco, CA 94103-1398,
Fax: (415) 503-6692, Email: *Stephen.M.Willis2@usace.army.mil*.

February 25, 2016

By Electronic Delivery

Stephen M. Willis, Environmental Manager
U.S. Army Corps of Engineers, San Francisco District
1455 Market Street, 17th Floor
San Francisco, CA 94103

Corps Scoping Report by Implementation of Corte Madera Creek Project

I feel this Public Process is flawed.

Under CEQA requirements we were not given enough information to make a meaningful response to the Corps proposals.

The Notice may have been mailed on December 23, 2015, but it contained:

- No Specific Plan for Ross
- No Master Plan to include all towns in Ross Valley
- No Pertinent Facts
- No Level of Flood Protection

The information provided for the Public to comment was wholly insufficient.

I reside at [redacted] Ross California. I am being asked to comment on a plan that does not exist. How do you plan to access my property? How much property will be taken? What is the decrease in property value? How many trees will be removed from my property and the adjacent properties to me? How high are the walls? How long are the walls? How can you guarantee that additional flooding to my property will not occur?

In the Corte Madera Creek Flood Control Study, Baseline Report dated December 2010, it is stated that: "only by implementing all of the practical maximum capacity measures and detention basins, can 100% containment of the 1%-annual-chance flood be achieved in all flood-prone areas."

However, in the November 2015 election, the measure to include Memorial Park, which represents almost 1/3 of the capacity in your Detention Basin, *was defeated*. With the loss of the Memorial Park Detention Basin, what is the maximum level of Flood Protection through Ross?

Similarly, in Fairfax, the Lefty Gomez Field Detention Basin proposal has a large public opposition and will most likely be denied, too. If Lefty Gomez Field is lost, what is the level of flood Protection through Ross?

Additionally, "the Sleepy Hollow Creek sub watershed is identified as contributing 26% of the total bed-load sediment inflow at the Town of Ross." Lowering the creek bed in Ross will only provide temporary relief and require repeated cleaning to maintain maximum flow at the Lagunitas Road Bridge.

- What specific properties will be helped in Ross?

- What specific properties will be helped in Kentfield?
- What properties are being removed?
    - Refer to: Ross Valley Flood Study, (page3, paragraph 2)
- What properties are being raised? What is the cost of raising the house at 1 Sylvan Lane? What is the cost of the flood walls around the structure?
    - Refer to: Ross Valley Flood Study (page 3, paragraph 2)
- How many trees and which trees, will be removed, from end of the concrete channel (the "Fish Ladder") up to the Sir Francis Drake Bridge? The removal of tress will have a dramatic adverse effect on all of the Fish and Wildlife as well as the water quality. You need to recheck your calculations for flows coming from San Anselmo as they exceed the maximum capacity of the Lagunitas Road Bridge.

The following is an additional exclusion in your Corte Madera Creek Flood Control Study (December 2010 Final):

> *"Flood overflows originating near downtown San Anselmo run down Sycamore Avenue and San Anselmo Avenue in San Anselmo, along Shady Lane in Ross, through Ross Commons and along Poplar Avenue..."*

However, in the previous EIR that the Corps submitted, it stated that floodwalls would not function on Sylvan Lane because the overland flooding flows down Shady lane:

Trying to pump the water from behind the floodwalls from Sylvan lane into Corte Madera Creek was deemed impractical. However, at your January, 28th meeting you presented floodwalls on Sylvan Lane, again. If the Corps has already determined that this type of work would not help the situation, why continuing to propose this for Ross?

Before any approval of an EIR/EIS, the Corps must address the walls downstream in Kentfield and the channel walls, sediment and maintenance. If the Corps does not address these issues, then the County must incorporate and justify the cost/benefit ratio.

In neither the current Corps Scoping plans nor the Corte Madera Creek Flood Project, December 2010 is interior drainage systems addressed. In fact, the latter document *specifically* excludes it (see Section 5.4.4). Why should we be continuing the Corte Madera Creek Project in Ross at this time, with all of the issues still surrounding it? The Congressional Mandate clearly states a project shall " do no harm".

Sincerely,

[redacted]

Stephen M. Willis, Environmental Manager
USACE San Francisco District
1455 Market Street, 17th Floor
San Francisco CA 94957-9601

Hugh Davis Marin County DPW
Civic Center #304
San Rafael CA 94903

February 26, 2016

Comment on Joint EIS/EIR for the Corte Madera Creek Flood Control Project

Gentlemen:

Although comments are addressed to the San Francisco District USACE (**Corps**), I understand from the Public Notice of December 23, 2015, this EIS/EIR is a joint venture of the Corps and the Marin County Flood Control and Water Conservation District (**County**). Therefore, my comments and requests for response are directed to both the **Corps** and the **County**.

1. Notice

The December 23, 2015, Public Notice, which may have met minimal legal requirements, is woefully inadequate either to enable public participation or to meet standards of decency in informing those affected by this flood control venture. Those of us who have been made aware of this comment period are asked quite literally to make something of nothing.

The more recent Notice for the extended Comment period mentions the effect of the project on Kentfield, Greenbrae and Larkspur. How were residents of those areas made aware of this joint EIS/EIR, the Comment issues and new deadline?

Deficient Notice coupled with a failed public process has created uncertainty, suspicion, and anger about this project. The result: San Anselmo's rejection of Memorial Park's use as a detention basin, and now similar outcry against Lefty Gomez Field as a dual-use dry basin. Absent meaningful comment by residents who live near existing or proposed baseline project features such as detention basins, bypass channel/culvert

routes, creeks, ephemeral streams, waterways and local drainage, this EIS/EIR becomes an indefensible document. Additionally, to ensure a thorough and adequate review and comment, the scope of the EIS/EIR should indicate clearly that it includes the manner in which Unit 4 affects, or is affected by, Units 3, 2, and 1.

2. Liability

To the degree Unit 4 proposals and other upstream measures increase in-channel flows, exceeding the capacity of the existing downstream project, *before* corrective measures to deficient channel capacity and function in Units 3, 2, & 1, harm will have been done through increased flows. Overtopping in Units 2 & 3 is documented at levels well below the 100-year flood. How do the Corps and the County each respond to this question?

Approval of measures and projects that cause harm carries intrinsic liability. Upon whom does the consequence of such liability fall?

Generally, inclusion is a productive path to public participation. Extending the Comment Deadline from Feb 16th to March 1 was a positive step. Notice to residents in Greenbrae, Kentfield and Larkspur who remain unaware of the Comment opportunity, and believe the project is limited to Ross, continues to be a troubling aspect of this process.

3. Project Description

Purportedly, the project under discussion is Unit 4. However, Unit 3 creates a backwater that affects Unit 4. Projected "resmoothing" the concrete channel walls does not address failures in hydraulic modeling due to incorrect clear water assumptions. Dredging and design of Unit 2 affects the function of Until 3. Unit 1 receives almost no mention yet it is the Bay gateway to tidal action that extends to the Kentfield Rehab hospital bridge. Why is there no mention of Unit 1 as the least disruptive, most efficient way to remove sediment from the lower reaches of this project? Overland flows from upstream regions of San Anselmo and Fairfax, Ross Creek, Murphy Creek, Tamalpais creek, local waterways and drawdown from Phoenix Lake, all have created flows that outflank the current channel.

Increased flow from upstream reaches threatens additional flooding to Kentfield, Greenbrae and Larkspur. Proposed culverts and bypass channels may impact local drainage and maintenance, especially in the event of serial storms.

None of the above is isolated from the others.

Please, provide a full description of the project area APE (Area of Potential Effect), an explanation where improvement may be expected, and upon what calculations, hydraulic principles, and design criteria these assumptions are based.

4. Aesthetics

Trees and natural creek beds fit the local pastoral ambiance; no one wants to see denuded channels lined with hardscape unless substantial benefit **will be** delivered. Specific deliverables requested:

a.) a full inventory of vegetation in the APE and details of changes proposed, including removal, replacement or additions;
b.) where fence installation is proposed, there should be clear representation, including elevations, of location, type, material, height, and maintenance responsibility specified;
c.) where hardscape features replace native areas should be described in detail with elevations of the proposed changes;
d.) proposed added or enlarged elements such as benched paths, berms, walls, and the like, should be clearly described including location, materials, height, width, vegetation, with a full discussion of freeboard or additional potential alterations that might be included later.

5. Cultural Resources

I raise the following concerns over areas needing additional study, research and response:

a.) Ross' five John B. Leonard bridges: Lagunitas, Glenwood, Norwood, Shady Lane, Sir Francis Drake, were listed in the Federal Register Vol 46, No. 22, dated February 3, 1981. The Lagunitas bridge has been demolished. Four John B. Leonard bridges determined Eligible for listing in the National Register of Historic Places (NRHP) remain in Ross.

b.) Archeological sites: Past review (Nelson 1907), and discrepancies noted by Kandler (1978) led to review by Cartier (June 1979), producing the designation of 'imported'. However, a subsequent study by EarthTouch/Historic Resource Associates (2007) lists two shell midden areas as "undetermined". These archeological resources should be reexamined and reconciled with Northwest Information center (NWIC) records. I have intentionally omitted the CA-MRN site identification numbers.
c.) The same April 2007 Cultural Resources Study evaluates the Ross Town Hall and Ross Firehouse, stating they appear to be individually eligible for the NRHP under Criteria A and C. Nomination and determination of Eligiblity for these important municipal buildings must be completed.
d.) According to the Office of Historic Preservation, the Lt. Linton D. Stables report (1979) on architectural resources was "not sufficient to to demonstrate the historic significance or lack of significance of the properties discussed. Moreover no photographs or maps depicting the character or location of the properties described were provided...". Now that Sylvan Lane has been specifically mentioned as included in the current project, a complete and accurate Resources Study should be undertaken for *all* structures in the APE.
e.) A cluster of significant historic sites within the Town of Ross is a matter of great interest and importance to the residents. The Corps and the County should cooperate by documenting these resources to improve proper understanding of the flood control project's impact on the Town.
f.) Cultural, Archealogical and Historic Resources throughout the Kentfield, Greenbrae and Larkspur APE should be identified, documented, and publicized for the appreciation and education of residents and researchers. (Excepting precise identification of numerous shell middens and Native American resources, which should be listed by number and general location only.)

6. Geology/Soils

I have not heard Marin's Countywide Plan (CWP) referenced nor mentioned at public flood forums. Please, respond with an indication that County staff work expended in preparing this document has not been wasted, and that relevant portions of the CWP will be incorporated in to the EIS/EIR.

7. Hazards

I raise the following concerns and request a response on the following:

a.) In connection with CWP map 2-10, Fault Hazards, I ask that the EIS/EIR address: fault creep; the number and variety of faults, including the one directly under Phoenix Lake, and assess the liability posed by these factors, particularly the instability of 11 landslide areas and the dam face of Phoenix Lake.
b.) In connection with CWP map 2-11, Liquefaction Susceptibility Hazards, please, note the multiple areas of High, to Very High expected liquefaction failures. The CWP states "it is expected that at least 80% of future liquefaction failures will take place in areas judges to have High or Very high susceptibilities". Please, indicate the liability of concrete structures, walls and berms, conduits, and other project elements with regard to their placement in such areas from Ross to Larkspur. Response should include detention basins and other project elements in Fairfax or San Anselmo as these areas are clearly identified in CWP maps and affect the flood levels in The Project.
c.) In connection with CWP map 2-12, Flooding: the Dam Inundation clearly shows the effects of water from Phoenix lake outflanking the project. Since residents have experienced similar effects from overland flows, channel backwater events, failure to provide for local drainage and rapid drawdowns of Phoenix Lake, this is a map that deserves careful study and response to past events lest flooding be worsened by new proposals.
d.) Where do the proposed bypass channels meet the existing waterways and how will calculated flow increase into these areas? Every calculation of local drainage amelioration should include an offsetting and corresponding increase in project channel conveyance. Please, be prepared to supply proof of these offsets.
e.) Every aspect of this project should fully, carefully and honestly address maintenance requirements needed to assure expected function. What funds will be added to the annual County Budget to assure residents the necessary maintenance work will be reliably and regularly accomplished in the future? Please, supply documentation assuring funding.
f.) In attempting to provide flood control or mitigation, the Corps and County must not create hazards. I believe this mandate should be at the forefront of any project, not a matter of 20-20 hindsight. Is that a correct interpretation of the Congressional mandate to the Corps and the County's intent?

8. Hydrology

I raise the following concerns and request a response on the following:

a.)I believe it has been made abundantly clear that calculations used in the Corps project to date have been deficient. The difference between sedimen*tation* and sediment in flow must be quantified, calculated, and measures taken to address past deficiencies. There can be no excuse for repeated design flaws, erroneous calibration, and consequent performance failure (Kissimmee redux).
b.) Where new and disparate design elements are suggested, such as extensive benched paths and walls, please, provide ample evidence that function is assured and calculations on which the assumption is based.
c.) where culverts and/or bypass channels are considered, please, address scour, and transit of debris such as boulders carried in past high flow conditions.

9. Utilities and Service Systems

The responsibility and costs of relocating and/or repair of any utility, sewerage system or other service infrastructure affected by this project must be clearly revealed, researched, and allocated prior to contract or commencement of construction. Please, document how these infrastructure needs will be met.

10. Social and Economic Effects

I raise the following concerns and request a response on each of the following:

a.) The Corte Madera Creek project is burdened with unwelcome baggage. Past experiences with the Corps, an unpopular and ill-managed flood fee, and poorly-crafted public processes have engendered negative perception and reaction to flood control. Escalating costs with little perceived results weigh heavily on the project.
b.) The term flood 'control', especially the 100-year flood control, should be

abandoned and replaced with the more realistic flood goals that can be met. Such measures are needed, are more factually correct, and have a higher likelihood of implementation in the Ross Valley.

c.) Evasive "trust us" messages and subsequent deficient projects, have earned forty years of failure. At one time, on behalf of Marin residents, the County demanded accountability, reparation and remediation. Since 2005, that stance has taken on the appearance of acquiescence, compliance and capitulation.

d.) There needs to be clarification as to who is being represented and by whom? If the County is to be burdened with great liability, such costs must be revealed and weighed against any claimed benefits.

11. Conclusion

I offer these comments with the understanding that we, collectively, have an opportunity to try again with this joint EIS/EIR. Answering questions and concerns of residents and taxpayers is essential to achieve understanding. Understanding leads to definition and development of plans. Absent honesty and trust, there can be no public approval or progress.

Many flood measures will be bitter pills. **The off-setting benefits *must be proven* worth the costs.**

[stephen.m.willis2@usace.army.mil]
[hdavis@marincounty.org]

[redacted]

February 29, 2016

Stephen M. Willis, Environmental Manager
U.S. Army Corps of Engineers, San Francisco District
1455 Market Street, 17th Floor
San Francisco, CA 94103

stephen.m.willis2@usace.army.mil

Dear Mr. Willis:

Thank you for the opportunity to provide scoping comments for the Corte Madera Creek Flood Control Project (Units1-4). The following comments are submitted for consideration.

The US Army Corps of Engineers Corte Madera Creek Flood Control Study Baseline Report dated December 2010, describes the setting, the history of flooding, and the project objectives, which include:

- manage flood risk in a manner that is fully implementable and supported by the local community;
- reduce flooding associated with Unit 4 of Corte Madera Creek;
- improve fish passage in Corte Madera Creek;
- minimize future erosion of unprotected creek banks within Unit 4;
- improve bank stability within Unit 4;
- preserve, to the extent practicable, the natural creek bed and associated riparian habitat within Unit 4 of Corte Madera Creek;
- preserve, to the extent practicable, the recreational experience and aesthetic quality of Corte Madera Creek;
- Modify the existing concrete channel in Units 2 and 3 to properly carry increased volumes of stormwater.

and

- minimize long-term maintenance requirements of the Project.

Please refine these and other potential measures further. They also are a critical part of the Ross Valley Flood Protection and Watershed Program, which have a number of improvements upstream from Unit 4, including replacement of several upstream bridges, creek deepening, bank side capacity improvements, and detention basins. It is critical that the phasing and implementation of Units 2-4 be coordinated with the County's flood protection improvements. Considerable portions of creek banks in Unit 4 in a fragile condition, prone to erosion, and need to be stabilized.

Past Army Corps of Engineer studies describe a "sediment basin" in the vicinity of Lagunitas Road Bridge. This sediment basin was designed to collect coarse rock and other abrasive creek bed materials, which would otherwise accumulate and damage the concrete channel below in Unit 3. What will be the size of this sediment basin? Please describe the required care and

maintenance necessary of the sediment basin to properly function? What entity will bear the responsibility and cost for the ongoing maintenance of the sediment basin?

Flood protection is the Town's number one infrastructure priority. Please include a thorough analysis of alternative measures to reduce flooding on business and residential properties along Sylvan Lane, Poplar Avenue, and Kent Avenue in Ross and Kentfield.

Please calculate projected sea level rise when determining tidal influence on the design flow for the project.

Short and long-term negative effects on the creek due to increased runoff volumes, velocities and sediment transport needs to be understood. Measures need to be developed to properly transport maximum volumes of stormwater, debris, and sediment through Units 1-4 during the useful life of the channel improvements.

The design of Unit 3 concrete channel was flawed and needs modification to properly facilitate the desired volume of stormwater. How will the existing concrete channel be repaired or modified to better transport volumes of stormwater?

The project should be design in an environmentally sensitive manner to provide and maintain native plants and improve riparian and fish spawning habitat while providing the required level of flood protection.

The project within the boundaries of Unit 4 should consistent with the Town of Ross General Plan, including the following policies:
Policy 1.1 Protection of Environmental Resources. Protect environmental resources such as hillsides, ridgelines, creeks, drainage ways, trees, tree groves, threatened and endangered species habitat, riparian vegetation, cultural places, and other resources (see Section 4.6 – Biological Resources and Section 4.7 – Cultural Resources);
Policy 1.2 Tree Canopy Preservation. Protect and expand the tree canopy of Ross to enhance the beauty of the natural landscape. Recognize that the tree canopy is critical to provide shade, reduce ambient temperatures, improve the uptake of carbon dioxide, prevent erosion and excess stormwater runoff, provide habitat for wildlife and birds, and protect the ecosystem of the under-story vegetation (see Sections 4.1 – Hydrology, 4.2 - Water Quality, and 4.6 – Biological Resources);
Policy 1.4 Natural Areas Retention. Maximize the amount of land retained in its natural state. Wherever possible, residential development should be designed to preserve, protect, and restore native site vegetation and habitat. In addition, where possible and appropriate, invasive vegetation should be removed (see Section 4.6 – Biological Resources)
Policy 6.2 Flood Control Improvements. The Town supports the construction of flood control improvements consistent with the natural environment, the design character of the Town of Ross and the safety and protection of persons and property (see Section 4.1 – Hydrology and Section 5.1 – Aesthetics.);

Policy 6.3 Ross Valley Flood and Watershed Protection. The Town will work with other jurisdictions within the Ross Valley watershed to develop a comprehensive approach to flood protection and resource preservation strategies (see Section 4.1 – Hydrology and Section 4.6 – Biological Resources);

Policy 6.4 Runoff and Drainage. Stormwater runoff should be maintained in its natural path. Water should not be concentrated and flow onto adjacent property. Instead, runoff should be directed toward storm drains or, preferably to other areas where it can be retained, detained, and/or absorbed into the ground (see Section 4.1 –Hydrology);

Policy 6.5 Permeable Surfaces. To the greatest extent possible, development should use permeable surfaces and other techniques to minimize runoff into underground drain systems and to allow water to percolate into the ground. Landscaped areas should be designed to provide potential runoff absorption and infiltration (see Section 4.1 – Hydrology and Section 5.4 – Land Use); and

Policy 6.6 Creek and Drainageway Setbacks, Maintenance and Restoration. Keep development away from creeks and drainageways. Setbacks from creeks shall be maximized to protect riparian areas and to protect residents from flooding and other hazards. Encourage restoration of runoff areas, to include but not be limited to such actions as sloping banks, providing native vegetation, protecting habitat, etc., and work with property owners to identify means of keeping debris from blocking drainageways (see Sections 4.1 – Hydrology, 4.6 – Biological Resources, and 5.4 – Land Use).

Thanks for your consideration.

[redacted]

MARTEN LAW

February 29, 2016

By Electronic Delivery

Stephen M. Willis, Environmental Manager
U.S. Army Corps of Engineers, San Francisco District
1455 Market Street, 17th Floor
San Francisco, CA 94103

Re: Notice of Preparation and Intent to Prepare a Joint Environmental Impact Statement and Report for the Proposed Corte Madera Creek Flood Control Project, Marin County, California

Dear Mr. Willis:

Thank you for the opportunity to provide comments to the Marin County Flood Control and Water Conservation District ("District") and the U.S. Army Corps of Engineers ("Corps") regarding the scope of a joint environmental impact statement and report ("EIS/R") for the proposed Corte Madera Creek Flood Control Project ("Project").

These comments are submitted on behalf of Mr. Charles Goodman, a longtime resident of the Town of Ross. Mr. Goodman owns property on Sylvan Lane, which is within the scoping boundary of Corte Madera Creek "Unit 4." Mr. Goodman and his neighbors will experience the most direct impacts of any actions that may be proposed by Corps or the County to address the potential for flooding in the vicinity of the Project.

Our principal concern at this point is that the Corps and the County have acted prematurely in starting the environmental review process for the proposed Project. The Notice of Preparation and Intent fails to provide even a simple description of the project, which is among the most basic requirements of both the National Environmental Protection Act ("NEPA"), 42 U.S.C. Section 4321 et seq., and the California Environmental Quality Act ("CEQA"), California Public Resources Code, Section 21000 et seq.

The Council on Environmental Quality ("CEQ") has adopted specific regulations under NEPA that require a Notice of Intent ("NOI") to "briefly . . . [d]escribe the proposed action and possible alternatives."[1] The U.S. Army Corps of Engineers' ("Corps") own NEPA regulations likewise require that an NOI "[b]riefly describe the proposed action."[2] For CEQA purposes, a Notice of Preparation ("NOP") must provide "a brief description

[1] 40 C.F.R. §1508.22(a).
[2] 33 C.F.R. Appendix C to Part 230.

of the proposed action and its location."[3] The state's CEQA Guidelines clarify that an NOP must provide "sufficient information describing the project and the potential environmental effects to enable . . . a meaningful response."[4] A "description of the project," the "location of the project," and the "[p]robable environmental effects of the project" are the very "minimum" requirements of the NOP.[5] While the project description need not be as extensive as the description in the final environmental impact report, the NOP must still fulfill the purpose of CEQA to alert the public to what the proposed project actually is, so that interested persons can assess and comment on its potential environmental impacts.[6]

The NOP/NOI provided for the Corte Madera Creek Flood Control Project does not meet these minimum requirements; indeed, it fails to describe the project *at all.* While the document lists a number of Project objectives, it fails to describe possible means of accomplishing those objectives or any actions that the project might entail. Without this information, the public cannot meaningfully provide input on the scope of issues that the Corps and County will need to consider in its environmental review. Under federal regulations, a project cannot go through environmental review until the government "has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated."[7]

We appreciate that planning is important in agency decision-making.[8] For this reason, federal agencies are permitted to undertake a scoping process before they issue an NOI.[9] But a pre-NOI scoping process must still provide enough public notice and enough infor-

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[3] Cal. Pub. Res. Code § 21092(b)(1).
[4] 14 C.C.R. §15082(a)(1).
[5] 14 C.C.R. §15082(a)(1)(A)-(C).
[6] *Maintain Our Desert Environment v. Town of Apple Valley*, 120 Cal.App.4th 396, 441-42 (2004), *as modified July 2, 2004.*
[7] 40 C.F.R. § 1508.23.
[8] *See* CEQ Memorandum for Heads of Federal Departments and Agencies, "Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act" (Mar. 6, 2012), *available at* https://ceq.doe.gov/current_developments/docs/Improving_NEPA_Efficiencies_06Mar2012.pdf.
[9] *See id.* (citing CEQ Memorandum to Agencies, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (Mar. 16, 1981), *available at* ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#13 (Question 13 and Answer)).

mation on a project proposal to allow the public and relevant agencies to effectively participate in the government's planning process.[10] Unless very specific procedures are followed, early scoping cannot be a substitute for the normal scoping process that occurs after the publication of a proper NOI.[11]

For the reasons discussed above, we do not believe that a proper NOP/NOI has yet been issued. Nor have any pre-scoping procedures provided enough information to allow effective public participation. We therefore urge the Corps and County to issue a new NOP/NOI as soon as practicable and give the public the opportunity the law requires to provide effective scoping comments on the Project.

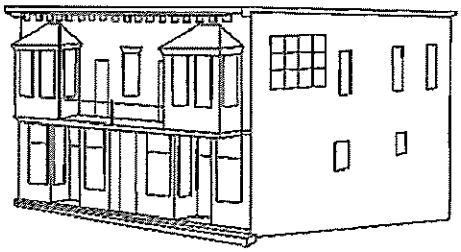
Sincerely,

Kevin T. Haroff

cc: Hugh Davis, P.E.
Associate Civil Engineer
Marin County Flood Control & Water Conservation District,
Department of Public Works
3501 Civic Center Dr # 304, San Rafael, CA 94903

[10] CEQ Memorandum to Agencies, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (Mar. 16, 1981), *available at* ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#13 (Question 13 and Answer).

[11] CEQ Memorandum to Agencies, "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" (Mar. 16, 1981), *available at* ceq.hss.doe.gov/nepa/regs/40/11-19.HTM#13 (Question 13 and Answer).



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Tuesday, March 1, 2016

Stephen M. Willis, Environmental Manager
USACE SAN FRANCISCO DISTRICT
1455 Market Street, 17th Floor
San Francisco CA 94957-9601

Hugh Davis
MARIN COUNTY DEPARTMENT OF PUBLIC WORKS
Civic Center #304
San Rafael CA 94903

RE: Comment on Joint EIS/EIR for the Corte Madera Creek Flood Control Project

Gentlemen:

I am a three-term San Anselmo Town Councilman and the Town's current Mayor.

I submit the following comments on my own behalf and not on behalf of the Town of San Anselmo.

My comments on the above are as follows:

1. Because no project has been identified, the December 23, 2015 commencement of the related EIR public review process is legally inadequate. There is no project on which the public can comment. This inadequacy is not cured by employment of the "programmatic" EIR nomenclature.

2. The engineering for the original and existing concrete ditch constructed in Unit 2 and Unit 3 is predicated on the erroneous assumption that the storm water carried down the Corte Madera Creek from Fairfax was "pure," that is, without sediment suspended therein. The failure to reflect the contents and make up reality of local storm water led to the construction of too small a ditch. This results in creek water to be contained by the ditch jumping its banks. In any future project, this defect must be cured.

3. The construction of the original and existing concrete ditch in Unit 2 and Unit 3 is defective and must be replaced based on the following reasons:

    a. The V-shape of the ditch transforms to a flat bottom which contributes to the water jumping the confines of the ditch;

    b. The walls of the ditch are made of material that is rough such that the coefficient of friction in the engineering calculations fails to correspond to the actual construction. This contributes to the water jumping the confines of the ditch;

    c. The existing concrete of the walls of the ditch currently support colonization by concrete-eating worms which increases the friction of the walls vis-à-vis the flow of storm water. This contributes to the water jumping the confines of the ditch;

    d. The current Bon Air overpass is too low to allow for the pass-through of dredging machinery, making dredging impossible. The failure to dredge at Unit 1 will increase the likelihood that water will jump the confines of the ditch at Unit 2 and Unit 3.

4. In order for the project to be practically effective, the bottom of the drain for the watershed as presently constructed at Unit 1 (dredging), Unit 2 (existing concrete wall) and Unit 3 (existing concrete wall), must be demolished an built in such a way as to be able to evacuate the water flowing from Fairfax, San Anselmo and Ross into Unit 3 and below.

In short, if one is to effectively fix a clogged drainage system, one must remove the impediments to effective drainage at the bottom of the drain first. The failure to specify a project leaves all of these defective existing conditions unaddressed. Any project which fails to adequately address them will fail.

Sincerely Yours:

HUB LAW OFFICES

By: /s/

Ford Greene, Esq.

:acg

California Water Boards

Edmund G. Brown Jr.
Governor

Matthew Rodriquez
Secretary for
Environmental Protection

San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy to follow

March 1, 2016

U.S. Army Corps of Engineers
1455 Market Street, 17th Floor
San Francisco, CA 94103
Attn: Stephen Willis
stephen.m.willis@usace.army.mil

Subject: Comments on Notice of Preparation of a Joint Environmental Impact Statement/Environmental Impact Report for the Corte Madera Creek Flood Control Project

Dear Mr. Willis:

The San Francisco Bay Regional Water Quality Control Board (Water Board) appreciates the opportunity to comment on the Notice of Preparation (NOP) for the joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Corte Madera Creek Flood Control Project (Project). The Project has so far identified a suite of conceptual measures to reduce flooding within Units 2, 3, and 4 of the Creek, including channel widening and deepening, offset floodwalls, floodwalls at top of bank, and raising homes and related infrastructure. We look forward to engaging the Corps and other stakeholders early and often as these conceptual measures are refined into feasible design alternatives and shepherded into the regulatory compliance processes.

Based on the information provided in the NOP, we offer the following comments. These comments are intended to advise the Corps of State and Regional Water Board policies and requirements, so they may be incorporated into the planning and design processes at an early date.

Beneficial Uses

The conceptual measures described in the NOP could result in impacts to Corte Madera Creek, which is listed in the Water Board's San Francisco Bay Basin Water Quality Control Plan (Basin Plan) as supporting the following beneficial uses: cold freshwater habitat, fish migration, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, non-contact water recreation, navigation, and commercial and sport fishing. The Project must protect these beneficial uses, and the EIS/EIR should consider how short-term implementation and long-term operation and maintenance of the Project could impact beneficial uses.

Special Status Species

The conceptual measures described in the NOP could result in impacts to special-status plant and animal species, including (but not limited to) steelhead (*Onorhynchus mykiss*), California red-legged frog (*Rana draytonii*), and western pond turtle (*Emmys marmorata*). Although the Water Board often defers to the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service and National Marie Fisheries Service when they are involved in the permitting, the EIR should include a discussion of the Water Board's jurisdiction in this area. The Water Board's jurisdiction in this area includes the beneficial uses of Corte Madera Creek that relates to special-status species (e.g. cold freshwater habitat, fish migration, fish spawning, warm freshwater habitat, and wildlife habitat). The EIS/EIR should assess how Project activities will directly and indirectly impact special-status species, as well as the physical and ecological processes within and adjacent to the creek that sustain their habitats and populations.

Permitting

The conceptual measures described in the NOP could result in impacts to aquatic resources including wetlands, riparian habitat, streams or tributaries, or other waters of the State. A Clean Water Act (CWA) Section 401 water quality certification from the Water Board will be necessary for excavation impacts to waters of the U.S. Additionally, the project proponent may need to file a Report of Waste Discharge if the project may impact waters of the State, even if such waters have been excluded from federal jurisdiction (e.g., stream banks above the ordinary high water mark). A Streambed Alteration Agreement from the California Department of Fish and Wildlife may also be necessary since the proposed Project involves work within stream channels and riparian habitat.

Aquatic Resources

Conceptual measures such as creek widening, creek deepening, and related actions (e.g. vegetation removal) could negatively impact the extent and quality of creek, riparian, and wetland habitats, and trigger the development of hydraulic and geomorphic conditions that can further degrade these habitats. Specifically, we request that the Corps consider the site-specific and reach-wide impacts of creek widening, deepening, and related actions on:

- Hydrologic, hydraulic, and geomorphic conditions and processes, including:
    - Creek velocities and their relationship to sediment transport/erosion/deposition, bank erosion, upstream/downstream fish passage, and velocity refugia for migrating fish;
    - The ability of the channel to sustain relatively stable geomorphic characteristics, including bankfull dimensions, floodplains, and channel banks; and

  - The ability of the channel to sustain appropriate complexity (e.g. riffles, shallow pools, deeper scour pools, floodplain terraces, off-channel ponds, etc.) to support a broad range of aquatic and riparian species.

- Ecological conditions and processes, including:

  - Riparian communities, including the creek's ability to recruit and sustain new riparian communities in impacted areas;

  - Vegetative shading of the channel, to maintain appropriate water temperatures for steelhead and other aquatic life;

  - Channel-floodplain connectivity, especially as it relates to support of the aquatic and riparian food webs;

  - The extent and distribution of steelhead spawning habitat within the channel; and

  - The distribution of large woody debris in the channel.

Construction Activities

The NOP does not disclose the estimated area of land that will be disturbed nor the amount of excavation spoils that will be generated. Projects that disturb over an acre of land must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit). This can be accomplished by filing a Notice of Intent (NOI) with the State Water Resources Control Board (State Board). The General Construction Permit is available at http://www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml. The General Construction Permit also requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP) to prevent impacts from stormwater runoff. The Corps should allow the Water Board 30 days to review and comment on the adequacy of the SWPPP.

Closing

Again, we appreciate the opportunity to comment on the NOP, and look forward to working with the Corps during the Project's planning, design, and regulatory phases. Please contact Christina Toms at 5110-622-2506 or christina.toms@waterboards.ca.gov with any questions or comments.

Sincerely,

Digitally signed by Bill Hurley
Date: 2016.03.01 17:34:26 -08'00'

William B. Hurley
Senior Engineer, Leader
North Bay Watershed Section

Cc: State Clearinghouse
Corps, SF Regulatory Branch:
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