

The Watershed Alliance of Marin (WA)

The Watershed Alliance of Marin submitted a comment letter on the Meadow Way Bridge Replacement Project on the day of the Town meeting which the topic was to be voted on (May 6, 2020). Responses to those comments are provided below.

Comment WA-1

The commenter provides introductory comments about its organization and requests that an Environmental Impact Report (EIR) be prepared for the proposed Meadow Way Bridge Replacement Project. The commenter states that the Initial Study/Mitigated Negative Declaration (IS/MND) prepared for the proposed Project is deficient because it understates or overlooks potentially significant Project impacts.

Response WA-1

The commenter provides introductory comments pertaining to the sufficiency of the IS/MND analysis which are addressed below in the subsequent responses.

Comment WA-2

The commenter states that bridge designs which cover crossings for salmonids typically include allowing migration, and avoid extreme bank hardening and states this is sufficient for requiring alternate designs.

Response WA-2

The proposed Project includes a free span bridge and will eliminate permanent structures within the creek (creosote treated timbers which currently support the bridge), increasing habitat suitability and passage by fish. The National Marine Fisheries Service (NMFS) Biological Opinion (BO) reviewed the design including any bank stabilization and concluded that habitat conditions following completion will be enhanced for steelhead. NMFS BO page 34: "At the Meadow Way Bridge, the Project is expected to incrementally improve CCC steelhead passage in the action area by removing existing in-channel piers." Therefore, the claim by the commenter is unfounded as the review by NMFS states the Project will actually increase habitat suitability at this location.

Comment WA-3

The commenter states that 100-year floods are now occurring "within 10-year periods or less due to climate change"; therefore, the bridge design is not suitable as it will increase velocity.

Response WA-3

The commenter offers no support that the 100-year flood interval is now every 10 years or that the Project would increase velocity in the creek. Page 69 of the Final IS/MND states that the proposed Project would not substantially alter the existing drainage pattern of the area. It explains that as designed, the bridge's soffit (underside) will clear the 100-year flood flow and pass the 50-year flood flow with two feet of freeboard. As the 100-year-flood is predicted to be 141.8-feet, and the bridge deck elevation would be 155-feet, over 11-feet would be available for structure depth. The commenter also fails to provide substantial evidence that the velocity of the creek will increase with the proposed Project. The Project will not result in an increase in flow velocity in the creek (Bridge Design Hydraulic Study Report for the Meadow Way Bridge Replacement Project, Stetson Engineers, February 2018).

Please see response FE-8, and SC-11 in the WRA Memo dated May 1, 2020 for additional details for similar statements especially refuting the channelization claims by the commenter.

Comment WA-4

The commenter claims that San Anselmo Creek supports steelhead.

Response WA-4

Page 39 of the MND states: "The BSA is designated Critical Habitat for steelhead (*Oncorhynchus mykiss*), and the species is presumed present within this section of San Anselmo Creek." Because the species is presumed present, Mitigation Measure BIO-1 – Special-Status Fish Species (MND page 44) is included with avoidance and minimization measures specific to steelhead. Additionally, among the requirements for the Project are to conduct formal consultation with the National Marine Fisheries Service (NMFS) for the effects of the Project on steelhead and their critical habitat. Consultation has been completed and the NMFS BO states on page 37: "the proposed action is not likely to jeopardize the continued existence of CCC steelhead or destroy or adversely modify its designated critical habitat." As such the species was presumed present, minimization measures for impacts to the species were included, consultation with NMFS was completed, and the NMFS BO concludes the Fairfax bridge projects are not likely to jeopardize the continued existence of threatened CCC steelhead, nor are the projects likely to result in the destruction of or adverse modification of critical habitat for steelhead or Coho.

For additional details on very similar questions please see response to comments LB-5, FE-7, SC-2, and SC-3 in the WRA Memo dated May 1, 2020.

Comment WA-5

The commenter states that any projects that potentially impact listed species should be studied thoroughly.

Response WA-5

The Final IS/MND has conducted rare plant surveys to assess potential presence of listed or rare plants, has conducted consultation with NMFS for potential impacts to steelhead, steelhead critical habitat and coho critical habitat, and has conducted consultation with the USFWS for potential impacts to Northern spotted owl. In each case, the agency responsible for these species has approved the analysis for the proposed Project as designed because sufficient information was provided to fully determine effects from the proposed Project as well as to minimize any effects. The commenter offers no suggestion as to what study is missing or absent that was not originally covered in the Final IS/MND.

Comment WA-6

The commenter states that New Zealand mud snails (NZMS) are present in many local streams and without additional measures as recommended by the USFWS or California Department of Fish and Wildlife, this invasive species would "wipe out local macroinvertebrates".

Response WA-6

The commenter does not state whether they feel NZMS is already present in San Anselmo Creek or whether they are present and may be spread elsewhere. The NZMS is discussed in the Natural Environmental Study (NES) submitted to NMFS and the USFWS for consultation on page 23 of Appendix A to the Final IS/MND. The NES states "New Zealand mud snail (NZMS; *Potamopyrgus antipodarum*) are documented within San Anselmo Creek. Measures such as washing equipment are included here to avoid the spread of the mud snail. With implementation of the avoidance and minimization efforts discussed in this text, the proposed Project would not result in the spread of invasive species." Further, the NES states the following measure: "To prevent the spread of NZMS, all construction equipment that comes into contact with a wetted channel will be thoroughly

cleaned to remove all attached soil and all water within the compartments will be dried up. Pumps and tanks will be cleaned and must remain fully dried for 72 hours following cleaning before equipment may be used on another aquatic project.” Therefore, the measure included for the NMFS and USFWS was reviewed and will be required for the Project to prevent the spread of NZMS from San Anselmo Creek to other creeks in the area making effects from NZMS a less than significant impact.

Comment WA-7

The commenter states definitions for perennial vs intermittent creeks, and shows images included with several other letters that San Anselmo Creek is considered perennial.

Response WA-7

The US Fish and Wildlife Service (USFWS) National Wetlands Inventory (NWI) is a publicly available resource that provides detailed information on the abundance, characteristics, and distribution of US wetlands. This database is used to inform project applicants and agencies of the nature of wetlands known in the area of a project. This database classifies the reach of San Anselmo Creek within the vicinity of Meadow Way Bridge as R4SBC, which is (R) riverine, (4) intermittent, (SB) streambed, (C) seasonally flooded. The NWI describes an intermittent stream as a “Subsystem [that] includes channels that contain flowing water only part of the year. When the water is not flowing, it may remain in isolated pools or surface water may be absent.” This description provided by the USFWS NWI was used to classify the stream and observations from site visits to the bridge by the biologists support that classification. Additionally, statements by local residents during the May 6, 2020 Town Council meeting for the Project also support the seasonal drying of the creek. Written comment letters on the Project and Final IS/MND also support the seasonality of the creek. Comment FE-7 in the WRA Memo dated May 1, 2020 states that the commenter has observed fish rescues at Meadow Way because the creek dries down and he has observed steelhead being moved downstream to sections of creek that do not dry out. Comment S-1 in the WRA Memo dated May 1, 2020 describes San Anselmo Creek as drying down in the summer with no surface flow and disconnected pools. All such descriptions support the description provided by the USFWS in the NWI. Therefore, the classification of San Anselmo Creek as intermittent is supported by numerous sources. In addition, this question has been addressed by previous comments received by the Project in response to comment SC-5 in the WRA Memo dated May 1, 2020.

Comment WA-8

The commenter states that locals and CDFW studies have shown steelhead are present in San Anselmo Creek.

Response WA-8

The species presence and habitat use is identified in the Final IS/MND (page 39) and is supported by the commenter's studies further providing evidence of steelhead presence. Presence of the species required the Project to complete consultation with NMFS, which it has done. The species presence is also commented on in response to comments: WA-3, WA-10, WA-17 and WA-22 above, and FE-7 and S-1 in the WRA Memo dated May 1, 2020.

Comment WA-9

The commenter quotes the BO to emphasize that San Anselmo Creek is perennial in many years.

Response WA-9

The commenter quotes the BO out of context, citing all areas covered by the BO for several projects, some of which are perennial. However, at Meadow Way the BO states "Instream habitat conditions for steelhead within the action area of San Anselmo Creek are low to moderate quality" and "the action area at Meadow Way includes a deep pool with an undercut bank upstream of the bridge, providing refuge habitat." An isolated pool indicates flow is not continuous and as such the stream in this section is intermittent. The BO does not state that the stream is perennial at this stage. In addition, the NMFS BO evaluated this potential that rearing fish may be held over in pools through the area as the stream dries and authorized take for a fish rescue to relocate those fish, thereby maintaining compliance with the Endangered Species Act (ESA).

The address of intermittent vs perennial creek have also been addressed in comments: WA-6 above, and S-1 in the WRA Memo dated May 1, 2020.

Comment WA-10

The commenter quotes the NMFS BO, emphasizing that NMFS anticipates take of steelhead would occur.

Response WA-10

The potential for take is not disputed, but take *does not* mean the Project has a significant or unmitigatable impact. Through the consultation process with NMFS and receipt of a BO the regulatory agency has reviewed the Project, prescribed measures and found that the impacts are less than significant as designed. Any impact to species is therefore authorized pursuant to the ESA because impacts are less than significant.

Comment WA-11

The commenter claims an important fisheries study covering the presence of steelhead on San Anselmo Creek was omitted from those resources reviewed for the proposed Project.

Response WA-11

The species presence and habitat use is identified in the Final IS/MND (page 39) and is supported by the commenter's studies. Presence of the species required the Project to complete consultation with NMFS, which it has done. The species presence is also commented on in response to comments: WA-3, WA-7, WA-17 and WA-22 and S-2 in the WRA Memo dated May 1, 2020.

Comment WA-12

The commenter states that lights on the bridge for pedestrian safety will increase predation of salmonids and have an unknown effect on bats.

Response WA-12

The commenter offers no support that light increases salmonid predation to support this claim. As no roosting bat habitat is present around the bridge to be impacted, roosting bats are also not likely to be affected. Because any lighting proposed will be low wattage, below the railing, and aimed at the bridge deck which is solid and cannot pass light through to the stream below, further analysis or comment cannot be offered as no deficiency or access by pedestrian lights to the creek are currently known.

Comment WA-13

The commenter claims that a local resident has knowledge of Northern spotted owl (NSO) nesting near the proposed Project Site.

Response WA-13

The species is presumed present in the area and protocol level surveys are required to be conducted prior to the start of work to determine their location and distance from the proposed Project Site. The Project completed consultation with USFWS in order to have them review potential impacts as a result of the Project. After review they determined that the measures as described were sufficient to reduce impacts to NSO to less than significant levels and no further consultation was necessary.

Comment WA-14

The commenter quotes guidance from the USFWS on the effects of sound in relation to various construction activities and claims that these sound studies show that the way sound travels needs further study.

Response WA-14

The potential effects of noise on NSO are not novel to this proposed Project and are a standard factor assessed in consultation with the USFWS for such projects, as the commenter is quoting from the NSO guidance for projects just like this. During consultation with USFWS for this Project parameters for potential Project related noise were stated in the letter from the USFWS as well as distances which are required to buffer those sounds to prevent take of NSO. The result was that by following the prescribed measures from the IS/MND and those from the USFWS letter that was issued following consultation, effects are not likely to impact owls and no further consultation is required as long as the mitigation is followed.

Comment WA-15

The commenter states that local residents believe foothill yellow-legged frog are present upstream of the proposed Project and could be impacted by the Project, therefore this species requires more study.

Response WA-15

Foothill yellow-legged frog (FYLF) was reviewed in the Final IS/MND and found to be unlikely to occur. Further discussion of the species unlikely presence is covered in responses to comments: SC-3, and SC-9 in the WRA Memo dated May 1, 2020.

Comment WA-16

The commenter states that a review of NZMS was not included in the MND, including introduction of the snail to the creek and that BMPs need to be considered.

Response WA-16

The mud snail was reviewed in the Project NES submitted to the NMFS and USFWS for review during the consultation process. In the NES (page 23, Appendix A of the Final IS/MND) NZMS is stated as already documented within San Anselmo Creek and measures are included to minimize the spread from San Anselmo Creek into other waterbodies by requiring any equipment be

cleaned before and after use including drying out any pooled water in pumps in order to kill snails. See response to comment WA-5 for additional detail on a similar comment.

Comment WA-17

The commenter states that removal of riparian vegetation poses a risk to steelhead spawning due to increased erosion.

Response WA-17

NMFS has reviewed the Project and potential impacts to steelhead critical habitat (which includes spawning areas) and the result is that the following statement on Page 37 of the BO states their conclusion: " As discussed in Section 2.5 Effects of the Action, these temporary and permanent effects to CCC steelhead critical habitat are not expected to adversely affect PBFs of CCC steelhead critical habitat, and the minor permanent improvements (removal of creosote bridge support pilings[at Meadow Way Bridge]) are expected to result in incremental benefits to critical habitat within the action area. Therefore, the Project will actually result in increased habitat suitability for steelhead.

Comment WA-18

The commenter states that Friends of Corte Madera Creek have documented steelhead within the Meadow Way Reach.

Comment WA-18

The species presence and habitat use is identified in the Final IS/MND (page 39) and is supported by the commenter's studies. Presence of the species required the Project to complete consultation with NMFS, which it has done. The species presence is also commented on in response to comments: WA-3, WA-7, WA-10, WA-22, and S-2 in the WRA Memo dated May 1, 2020.

Comment WA-19

The commenter claims there will be impacts to wildlife corridors.

Response WA-19

Effects to wildlife corridors was assessed in the Final IS/MND on page 48. Further discussion of the impact to migratory corridors has been reviewed by response to previous comments including FE-7 in the WRA Memo dated May 1, 2020. The resulting analysis shows that impacts with proposed mitigation are less than significant (Final IS/MND page 48).

Comment WA-20

The commenter states they have concerns about the length of time required to complete the Project.

Response WA-20

Comment noted. The commenter does not state what their concerns are regarding the length of time to complete the Project.

Comment WA-21

The commenter claims important fisheries studies covering the presence of steelhead on San

Anselmo Creek around Meadow Way Bridge was omitted from those resources reviewed for the proposed Project.

Response WA-21

The status of steelhead within San Anselmo Creek was accounted for and formal consultation has been completed as the species was presumed present. The species presence is therefore accounted for and measures included to minimize impacts to less than significant levels. No additions to or updates to the Final IS/MND are warranted.

Comment WA-22

The commenter states that recent droughts and floods have the potential to impact steelhead and an EIR is required to consider climate change issues as they relate to the Project.

Response WA-22

The NMFS BO reviews climate change as a potential impact to steelhead in Section 2.2.1.4, and concluded that the Project at Meadow Way Bridge is likely to increase critical habitat function (NMFS BO, page 34, Appendix A to the Final IS/MND). NMFS also concluded that any other effects of the Project are "not expected to result in significant impacts to CCC steelhead or CCC steelhead critical habitat."

Comment WA-23

The commenter provides studies and surveys to support the presence of steelhead in San Anselmo Creek and habitat use.

Response WA-23

The species presence and habitat use is identified in the Final IS/MND (page 39) and is supported by the commenter's studies. Presence of the species required the Project to complete consultation with NMFS, which it has done. The species presence is also commented on in response to comments: WA-3, WA-7, WA-10, WA-17, and S-2 in the WRA Memo dated May 1, 2020.

Comment WA-24

The commenter quotes text from the NMFS BO to conclude that the bridge project impairs habitat quality for steelhead.

Response WA-24

The commenter quotes text from the NMFS BO out of context to make a false claim that the proposed Project was found to negatively impact steelhead and their critical habitat. They omit the final few sentences of that same paragraph quoted here: "However, while this project does include structures at the bridges that could result in such impairments, proposed actions are not expected to significantly impair Primary Biological Functions of critical habitat for CCC steelhead. Water quantity and quality will not be impaired; scour protection will be buried; and no structures will be installed that would be expected to cause an obstruction to fish passage. At the Meadow Way Bridge, the Project is expected to incrementally improve CCC steelhead passage in the action area by removing existing in-channel piers. Thus, while projects with in-channel structures have the potential to impair Primary Biological Functions necessary for the support of CCC steelhead migration and rearing, generally, the effects of in-channel structures resulting from this

specific project are not expected to result in significant impacts to CCC steelhead or CCC steelhead critical habitat." Therefore the commenter falsely states a conclusion by mis-quoting the NMFS BO which found that the project at Meadow Way is likely to INCREASE habitat suitability for steelhead, and not decrease it.

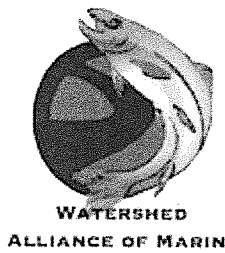
Comment WA-25

The commenter quotes CEQA guidelines stating that if there is discrepancy amongst experts as to the impact of a project, effects shall be treated as significant and an EIR required.

Response WA-25

The commenter does not provide any expert witness that contradicts the findings of the Final IS/MND. The commenter's letter raises no points that have not already been stated by the previous commenters. The commenter's letter also states these claims with similar wording, in nearly the same order as other commenters have phrased them. As such they present no new evidence nor expert opinions that are contrary to the findings of the Final IS/MND. The Project has no impacts that would be considered significant on the environment under CEQA which cannot be reduced to less than significant when using mitigation.

Interpretation of technical or scientific information requires an expert evaluation. Testimony by members of the public on such issues does not qualify as substantial evidence. *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583. Expressions of subjective concerns and personal beliefs do not constitute substantial evidence. (*Newberry Springs Water Ass'n v. County of San Bernardino* (1984) 150 Cal.App.3d 740). Speculation, argument, suppositions, and unfounded conclusions are not substantial evidence. (See, e.g., *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897.



May 5, 2020

Mayor Goddard, Bruce Ackerman, Barbara Coler, Stephanie Hellman and John Reed
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RE: Request for an Environmental Impact Report (EIR) for the Meadow Way Bridge replacement project and channelization of San Anselmo Creek

Dear Mayor Goddard and members of the Fairfax town council, Bruce Ackerman, Barbara Coler, Stephanie Hellman and John Reed:

The Watershed Alliance of Marin (WAM), appreciates the opportunity to comment on the Meadow Way Bridge project. WAM is a public benefit non-profit corporation organized in 2014 that promotes informed watershed stewardship in Marin County, with a specific focus on restoring and protecting imperiled fish and wildlife, including Central California Coastal steelhead trout species protected under the Endangered Species Act. After careful review of the Project of the San Anselmo Creek at Meadow Way Bridge, the location, report inaccuracies and significant environmental constraints found, we request the Town of Fairfax require an Environmental Impact Report.

WA-1

The Initial Study prepared for this Project is deficient because it understates or overlooks potentially significant Project impacts. It presumes there are steelhead in the Meadow Way reach when there is evidence that there are steelhead there. There are many factors and immitigable issues that are not addressed in the Initial Study. Accordingly, the Town may not approve the Initial Study and Mitigated Negative Declaration. Based on this Project's potential for causing significant environmental impacts, an Environmental Impact Report ("EIR") must be prepared, as discussed below.

We echo the concerns expressed in the letter from Sierra Club Marin Group to the Fairfax Town Council on this topic.

We appreciate the need to move forward with a publicly safe vehicle and pedestrian bridge. However, our local knowledge, creek surveying, research and experience finds that the environmental assessment "Initial Study" falls short of best practices and fails the accuracy test at its foundation. Those inaccuracies put the entire Mitigated Negative Declaration (MND) conclusion from the Initial Study into question because proper scientific research was not conducted.

Bridge designs for creek crossings that contain threatened and endangered salmonids usually include allowing creek migration and stay away from extreme bank hardening that contributes to creating concentration of flow velocities that adversely impact young and eggs of steelhead. Therefore, the bridge design bulkheads located within the creek are an issue and a variety of alternative bridge designs should be considered. 100-year flood events are occurring within 10-year periods or less because of climate

WA-2

WA-3

change. Therefore, the bridge design needs rethinking to support the meander and potential increased velocity from constriction and peak storm events.

WA-3 cont

In a comprehensive biological survey, San Anselmo Creek is considered: “The Corte Madera Creek watershed historically supported steelhead runs and continues to support *O. Mykiss* populations in its main stem and in various tributaries. The most important Corte Madera Creek tributary in terms of salmonid production appears to be San Anselmo Creek.”¹

WA-4

The creek corridor is itself a wildlife corridor used by multiple species including listed threatened species of steelhead. Any project impacting wildlife needs to be studied thoroughly. Dangerous invasive New Zealand Mud Snails that wipe out local macroinvertebrates a primary food for salmonids are already invading many of Eastern Marin County streams. Humans and equipment coming from other areas can exacerbate the spread without new BMPs employed as recommended by US Fish and Wildlife Service and California Department of Fish and Wildlife.²

WA-5

WA-6

Contrary to statements in the MND:

- The Meadow Way reach of San Anselmo creek is officially a perennial creek and not an intermittent creek as stated in the Initial Study and MND. Attached are multiple maps and definitions that verify this perennial creek status including those provided in the Sierra Club letter, USGS, National Wetlands Inventory, U.S. Geological Survey, Marin County Watershed Program, National Marine Fisheries Service (NMFS), EcoAtlas, CEMAR, Fisheries Biologist Alice Rich, etc. (multiple examples below in Attachments 1-5). The following definitions are pertinent:
 - **Stream, Perennial.** A watercourse that flows throughout the year (except for infrequent or extended periods of drought), although surface water flow may be temporarily discontinuous in some reaches of the channel, such as between pools, typically shown as a solid blue line on USGS quadrangle maps. (Perennial streams can be spatially intermittent but flow all year.) *Marin Countywide Plan Glossary Page 5-54* (See Attachment 1)
 - **Stream, Intermittent.** A watercourse that is temporally intermittent or seasonal and that flows during the wet season, continues to flow after the period of precipitation, and ceases surface flow during at least part of the dry season. Intermittent streams are typically shown as a dashed blue line on USGS quadrangle maps. *Marin Countywide Plan Glossary Page 5-54*
 - Perennial Stream Field Identification Protocol, May 2003
<http://newsletters.wetlandstudies.com/docUpload/PerennialStreamFieldIDProtocol.pdf>
- Steelhead (*O. Mykiss*) are present in the perennial Meadow Way reach of creek.³ Evidence is extensive and includes: California Department of Fish and Wildlife’s (CDFW) 2009 San

WA-7

WA-8

¹ Leidy, R.A., G.S. Becker, B.N. Harvey. 2005. *Historical distribution and current status of steelhead/rainbow trout (Oncorhynchus mykiss) in streams of the San Francisco Estuary, California.* Center for Ecosystem Management and Restoration, Oakland, CA. <http://www.cemar.org/pdf/marin.pdf> - Pages 168-169

² <https://www.fws.gov/columbiariver/ans/factsheets/mudsnail.pdf>
<file:///Desktop/NZMS%20Final%20Report%2003.pdf>

³ Leidy, R.A., G.S. Becker, B.N. Harvey. 2005. *Historical distribution and current status of steelhead/rainbow trout (Oncorhynchus mykiss) in streams of the San Francisco Estuary, California.* Center for Ecosystem Management and Restoration, Oakland, CA.

Anselmo Creek Study, numerous sightings by residents including photographs, Marin County Watersheds program, etc.

WA-8 cont

- The Biological Opinion from NMFS states:
 - “2.4.2 Status of CCC Steelhead and Critical Habitat in the Action Area Surveys have consistently documented steelhead in San Anselmo Creek since 1960 (Rich 2000, Leidy et al. 2005a). Habitat conditions in the action area likely support adult steelhead spawning and egg incubation. Although stream flows are low in the action area during the dry season, perennial flow in most years supports summer and fall juvenile steelhead rearing.” (Correspondence, July 8, 2019, between Thomas Holstein Environmental Branch Chief Caltrans D4 Office of Local Assistance and National Marine Fisheries Service, Alecia Van Atta, Assistant Regional Administrator California Coastal Office) provided in MND packet.
 - Re: Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for Seismic Retrofit, Replacement, and Preventative Maintenance Activities at Three Bridges within the Town of Fairfax in Marin County, California (STPL-5277 [025]) (STPL-5277[026]) (STPL-5277[027])
- In the Project biological opinion, NMFS concludes “the proposed bridge projects are not likely to jeopardize the continued existence of threatened CCC steelhead, nor are the projects likely to result in the destruction or adverse modification of its critical habitat. However, NMFS anticipates take of CCC steelhead will occur during construction activities as juvenile steelhead are likely to be present during dewatering of the work sites for project implementation.” (*Letter from July 18, 2019 National Marine Fisheries Service, Alecia Van Atta, Assistant Regional Administrator California Coastal Office*)
- The important survey *2009 San Anselmo Creek Watershed Assessment by California Department of Fish and Wildlife* direct reporting on the steelhead presence was not included in the MND.
- Light pollution on the creek: The design of the lighting system proves that the review consulting firm is wholly unaware of the fact that any “over stream” lighting will have multiple impacts and increase mortality to steelhead, other salmonids and wildlife making predator hunting easier. Impacts to salmonid biology are also known. Bats are also impacted. This issue needs thorough study because of significant impacts to the environment before any implementation. It further indicates the need for a full EIR.⁴
- There are Endangered Species Act (ESA) and California ESA listed Northern Spotted Owls (*Strix occidentalis*) (NSO) using the Meadow Way reach of creek. Other potentially impacted bird special status species include Allen’s hummingbird (*Selasphorus sasin*) and olive-sided flycatcher (*Contopus cooperi*). While the report states: “This species [NSO] has been documented to nest in dense forest approximately 0.28 miles southwest of the project site. No nesting habitat is present in the project site.” Yet, Frank Egger, adjacent 57-year resident states: “There is a known Northern Spotted Owl nest in a Redwood tree between 700 and 800 feet from the project area of the Meadow Way Bridge.”
- NSO are known to be affected by noise to the point of flushing them from areas, impacts to hunting and causing nest abandonment. The proximity of the project and the construction level noise would need to be studied in an EIR. “The estimated harassment distance resulting from the analysis of any particular project conditions requires careful interpretation. Although seemingly precise, the reported distance represents a reasonable approximation of the distance wherein “the

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WA-14

⁴ Perkin, E. K., F. Holker, J. S. Richardson, J. P. Sadler, C. Wolter, and K. Tockner. 2011. *The influence of artificial light on stream and riparian ecosystems: questions, challenges, and perspectives. Ecosphere* 2(11):122. doi:10.1890/ES11-00241.1 “In the presence of artificial light near a waterbody, terrestrial insects could become an even more important food source for fish. On the other hand, juvenile and other vulnerable fish might retreat to overhangs and reduce foraging efforts in order to avoid predation (Nightingale et al. 2006; Fig. 4B).”

likelihood of injury” occurs, as supported by currently available data. *U.S. Fish and Wildlife Service “NSO Harassment Guidance.”*⁵ “Do not exceed 86 dBA at 50 feet from the job site activities from 9 p.m. to 6 a.m.” Additionally, jackhammering exceeds the 86dBA decibel measurements listing in the NSO Harassment Guidance impact report where NSO would be adversely impacted. The way sound carries needs study.⁶

WA-14 cont

- Local residents believe that endangered Yellow Legged Frogs upstream near the Meadow Way reach of creek could be impacted by the project. This would require further study and inclusion.
- We have not found mention in the MND and best practices protocols for treating invasive New Zealand Mud Snail introduction and spread into the creek by workers, contractors or equipment and no treatment is indicated. New Zealand Mud Snails wipe out local macro-invertebrates and wipe out food source for steelhead and aquatic life. These BMPs are not mentioned and need to be considered in the project.
- Removal of riparian vegetation has the potential to cause harm to the creek banks, causing excessive erosion and sediment release during vulnerable spawning and rearing season.
- Friends of Corte Madera Creek have surveyed and identified steelhead in the Meadow Way reach of San Anselmo Creek.
- Wildlife corridor impact: Concerns have been raised by local residents that Mountain Lion and other predators’ usage of the area that will be impacted by the project. *Humans Are “Driving Other Mammals to Become More Nocturnal: The shift could change which prey animals hunt or make it harder to find food”*⁷
- We also have concerns about the length of time that would be required to implement the project which is projected to be two years.

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Several scientific reports have been conducted by NMFS (2016 Multispecies recovery plan (Corte Madera Creek), San Anselmo Creek 2009 Watershed Assessment by CDFW Published in 2013 (Attachment 6) Friends of Corte Madera Creek Studies. All those studies should have been considered in the MND because they contain valuable evidence of the state of the creek of the greater watershed and the specific location of the Meadow Way Bridge.

WA-21

Droughts and flood make incidental takes of steelhead impactful to the population’s survival and these are ongoing and increasing threats to survival of California Central Coast steelhead (CCC).⁸ The current 2020 precipitation is significantly below normal and will further impact CCC steelhead populations.

WA-22

⁵ U.S. Fish and Wildlife Service NSO noise harassment study.
<https://www.fws.gov/arcata/es/birds/MM/documents/MAMU-NSO%20Harassment%20Guidance%20NW%20CA%202006Jul31.pdf>

⁶ **High:** Typically 81-90 dB, and would include medium- and large-sized construction equipment, such as backhoes, front end loaders, large pumps and generators, road graders, dozers, dump trucks, drill rigs, and other moderate to large diesel engines. Would include high speed highway traffic including RVs, large trucks and buses, large street legal and trail (not racing) motorcycles. Also includes power saws, large chainsaws, pneumatic drills and impact wrenches, and large gasoline-powered tools. **Very High:** Typically 91-100 dB, and is generally characterized by impacting devices, jackhammers, racing or Enduro-type motorcycles, compression (“jake”) brakes on large trucks, and trains. This category includes both vibratory and impact pile drivers (smaller steel or wood piles) such as used to install piles and guard rails, and large pneumatic tools such as chipping machines. It may also include largest diesel and gasoline engines, especially if in concert with other impacting devices. Felling of large trees (defined as dominant or subdominant trees in mature forests), truck horns, yarding tower whistles, and muffled or underground explosives are also included.

⁷ <https://www.scientificamerican.com/article/humans-are-driving-other-mammals-to-become-more-nocturnal/>

⁸ <https://www.fisheries.noaa.gov/resource/document/final-coastal-multispecies-recovery-plan-california-coastal-chinook-salmon> Pages 116-593.

Recent years have also had massive flooding and drought events – several of them in the past 15 years. An EIR would consider specific climate change issues as they relate to the project.

WA-22 cont

Based on this information, NMFS concludes the CCC steelhead populations in Corte Madera Creek and Novato Creek, followed by the populations in Alameda Creek and Pilarcitos Creek are at most risk from Climate Change. *Coastal Multispecies Recovery Plan (Volume V of V) Volume V. Appendix B October 2016*

Friends of Corte Madera Creek funded an electrofishing survey of San Anselmo Creek that occurred in September and October 1999. A total of 97 *O. mykiss* (43-198 mm FL) were found at 12 of 24 sites that represented 216 meters of stream sampled. Sixty-seven of the *O. mykiss* were found in the headwaters at three sites (a combined 18.3 meters of sampled reach) above the confluence with Cascade Creek (Rich 1999). Five juvenile *O. mykiss* (75-90 mm FL) were observed in a shallow isolated pool just upstream from the bridge on Meadow Way in July 2003 (Harvey 2003). This comports with later surveys.

Assessment:

The Corte Madera Creek watershed historically supported steelhead runs and continues to support *O. mykiss* populations in its main stem and in various tributaries. The most important Corte Madera Creek tributary in terms of salmonid production appears to be San Anselmo Creek. In 1960, DFG determined that San Anselmo Creek contained much of the spawning and rearing habitat in the Corte Madera Creek watershed (Allen 1960d). Abundance estimates reported by DFG in 1969 suggested that San Anselmo Creek supported about 75 percent of the juvenile *O. mykiss* believed to occur in the drainage (Jones 1969). Other tributaries with steelhead populations are Ross, Sleepy Hollow and Cascade Creeks. Sampling within the last ten years consistently indicates multiple *O. mykiss* age classes in the Corte Madera Creek watershed, suggesting good natural propagation. This drainage appears to have considerable ecological importance to Marin County and to the San Francisco Estuary in general for its ability to contribute regionally to steelhead numbers. Efforts to improve fish passage in the Corte Madera Creek channel would allow in-migration to suitable spawning and rearing habitat in Corte Madera Creek tributaries.

WA-23

Page 168-169 *Leidy, R.A., G.S. Becker, B.N. Harvey. 2005. Historical distribution and current status of steelhead/rainbow trout (Oncorhynchus mykiss) in streams of the San Francisco Estuary, California. Center for Ecosystem Management and Restoration, Oakland, CA.*⁹

From the Biological Assessment:

2.5.5. 2 Impaired Habitat Conditions from In-channel Structures

These constraints have the potential to result in poor habitat complexity, including poor cover and poor refugia. However, while habitat limitations do exist in the action area, current conditions are not so severe that steelhead use is likely significantly impaired – riparian cover, substrate, channel complexity, passage conditions, and water quality support steelhead use of the action area.

WA-24

Replacement of the Meadow Way Bridge with a new bridge in the same location as the existing bridge, and repair of the Creek Road and Canyon Road bridges has the potential to perpetuate bridge-related constraints in the action area. The repaired bridges will persist and contain in-bank abutments and scour protection. Such features have the potential to reduce or prevent floodplain

⁹ <http://www.cemar.org/pdf/marin.pdf>

connectivity and channel functions that form and maintain physical habitat conditions. These features may also impair water quality, fish prey species, reduce natural cover, and create obstructions to migration. Such impairments have the potential to degrade PBFs of critical habitat for CCC steelhead. *Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion for Creek Road, Meadow Way, and Canyon Road Bridge Projects in Fairfax, California Page 34*

WA-24 cont

“[T]he lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency **shall treat the effect as significant and shall prepare an EIR** [emphasis ours].” *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 729 (quoting Guidelines § 15064(g)). Thus, if the initial study or proposed mitigated negative declaration and public comment thereon indicate that there is substantial evidence that one or more significant environmental impacts may occur, then the lead agency **must prepare an EIR** [emphasis ours] to analyze those effects and study feasible alternatives and mitigations to reduce or avoid those effects while still achieving most of the basic objectives. Public Resources Code §§ 21002, 21002.1, 21061; Guidelines §§ 15080-15096, 15120-15132, 15160- 15170.

WA-25

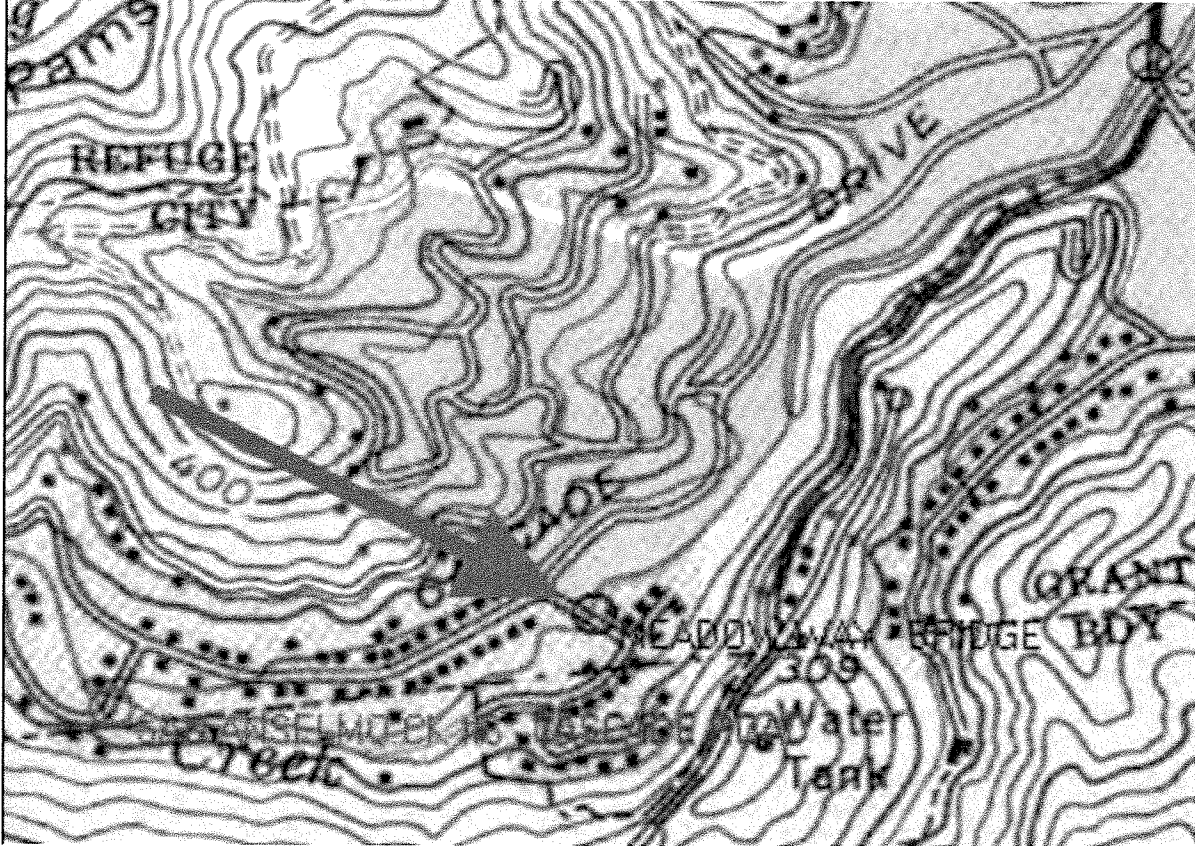
Here, the informed public comment summarized below as well as the Town’s own, albeit deficient, Initial Study show that the Project may have a significant effect on the environment. Therefore, an EIR must be prepared.

Sincerely,

Laura Chariton, MA Riparian Policy and Environmental Restoration, President, Watershed Alliance of Marin

ATTACHMENT 1

US QUADRANGLE DETAIL SHOWS SAN ANSELMO CREEK AT MEADOW WAY BRIDGE TO BE A PERENNIAL CREEK.

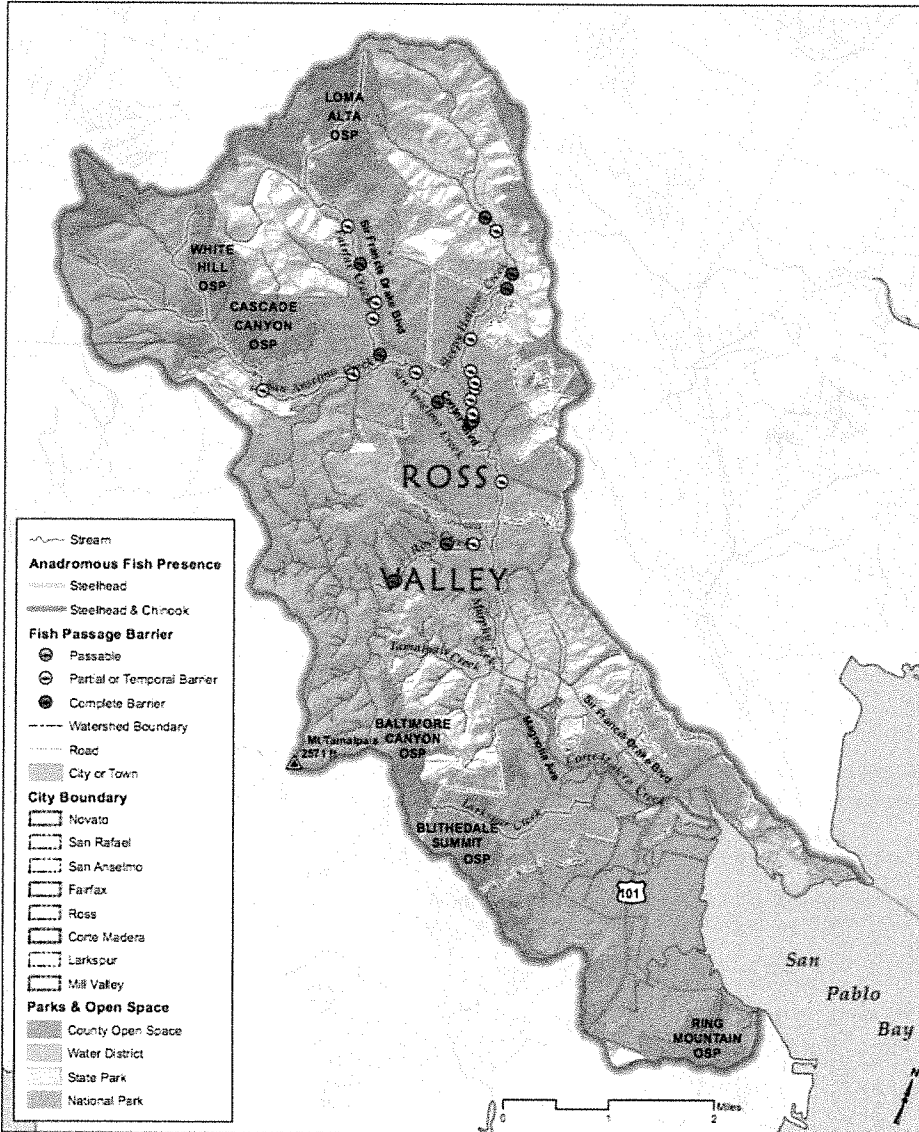


USGS Map on study by Ross Taylor and Associates for Creek Crossings: Client, Friends of Corte Madera Creek. 2003¹⁰

¹⁰ https://friendsofcortemaderacreek.org/new_site/wp-content/uploads/StreamXingCatalogFAIRFAXCK.pdf

ATTACHMENT 2

https://www.marinwatersheds.org/sites/default/files/2017-07/W_RossValley_Fish3.pdf



Ross Valley Watershed
Anadromous Fish

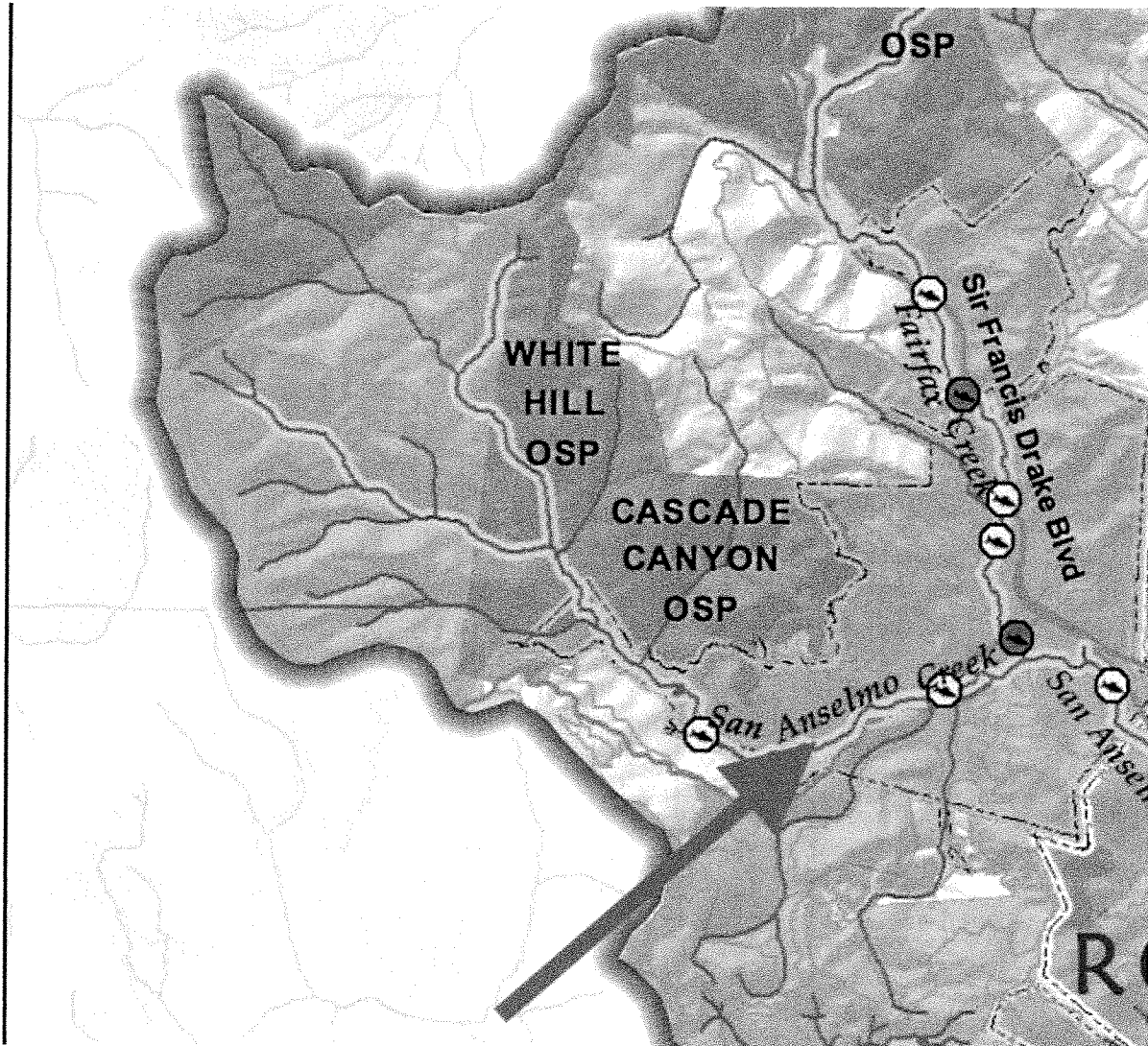
Map for general purposes only; not for site-specific planning purposes.

County of Marin
Department of Public Works
www.marinwatersheds.org



Watershed

ATTACHMENT 3



Approximate location of Meadow Way on County map shows full perennial creek that is an important major tributary of the Corte Madera Creek Watershed.

ATTACHMENT 4



Google Maps shows perennial creek.

ATTACHMENT 5

San Anselmo Creek Marin Maps. Shows three GIS data sources: National Wetland Inventory, Marin Maps showing Blue Line Perennial Creek all considered official verifiable sources.

MarinMap Map Viewer



**California Department of Fish and Wildlife
East Marin County
San Francisco Bay Watersheds
Stream Habitat Assessment Reports**

San Anselmo Creek

Surveyed 2009

Report Completed in 2013



San Anselmo Creek 2009 Watershed Assessment by CDFW
<file:///Desktop/CDFW%20Corte%20Madera%20Creek%20Stream%20Habitat%20Assesment%20report.pdf>

Following excerpts from California Department of Fish and Wildlife (CDFW) Assessment Corte Madera Creek 2009. This Assessment was taken at the driest time of the year in August.

Page 2

INTRODUCTION

A stream inventory was conducted during 8/18/2009 to 8/25/2009 on San Anselmo Creek. The survey began at the confluence with Corte Madera Creek and extended upstream 6.6 miles. Stream inventories and reports were also completed for five tributaries to San Anselmo Creek (Cascade Creek, Carey Camp Creek, Sleepy Hollow Creek, Deer Park Creek, and Fairfax Creek). The San Anselmo Creek inventory was conducted in two parts: habitat inventory and biological inventory. The objective of the habitat inventory was to document the habitat available to anadromous salmonids in San Anselmo Creek. The objective of the biological inventory was to document the presence and distribution of juvenile salmonid species. The objective of this report is to document the current habitat conditions and recommend options for the potential enhancement of habitat for steelhead trout. Recommendations for habitat improvement activities are based upon target habitat values suitable for salmonids in California's north coast streams.

Page 10

GENERAL RECOMMENDATIONS San Anselmo Creek should be managed as an anadromous, natural production stream. Winter storms often bring down large trees and other woody debris into the stream, which increases the number and quality of pools. This woody debris, if left undisturbed, will provide fish shelter and rearing habitat, and offset channel incision. Landowners should be sensitive about the natural and positive role woody debris plays in the system, and encouraged not to remove woody debris from the stream, except under extreme buildup and only under guidance by a fishery professional.

Page 9

Cobble embeddedness measured to be 25% or less, a rating of 1, is considered to indicate good quality spawning substrate for salmon and steelhead. Sediment sources in San Anselmo Creek should be mapped and rated according to their potential sediment yields, and control measures should be taken. Forty-seven of the 58 pool tail-outs measured had gravel or small cobble as the dominant substrate. This is generally considered good for spawning salmonids.

Page 17

Surveys Upstream of Meadow Way Bridge.

Position (ft) Habitat Unit # Comments

20,910 0226.00 Bridge #24 is made of wood on Meadow Way. The width is 66 ft, the height is 19 ft, and the length is 14 ft. It was not retaining gravel or down cutting. The bridge is not likely a barrier to salmonids. 20,924 0227.00 There is a utility crossing 1412 ft into the unit.

23,042 0228.00 Dam #5 is not a flashboard dam. The length is 54 ft, the height is not applicable, and the entire width is 27 ft. Down cutting was occurring, and the height of the downcut was 6.2 ft. The dam is not a barrier to salmonids.

23,042 0228.00 Bridge #25 is made of cement on Canyon Road. The width is 27 ft, the height is 11 ft, and the length is 15 ft. It was not retaining gravel or down cutting. The bridge is not likely a barrier to salmonids.

23,096 0229.00 There is a utility crossing 1856 ft into the unit.

23,096 0229.00 Tributary #7 on the left bank is dry, unnamed tributary enters San Anselmo Creek. The discharge is 0 cfs. Downstream, upstream, and the tributary are dry. It is accessible to fish (we checked 93 ft up the tributary). The slope was measured at 2.9% using a hand level. No fish were observed while we were San Anselmo Creek 2009 18 Position (ft.) Habitat Unit # Comments there.

25,909 0230.00 Bridge #26 is a private footbridge made of wood. The width is 26 ft, the height is 9 ft, and the length is 4 ft. The water to sill height is 0 ft. It was not retaining gravel or down cutting. The bridge is not a barrier to salmonids.

26,055 0232.00 Bridge #27 is a private driveway made of wood. The width is 25 ft, the height is 9 ft, and the length is 4 ft. It was not retaining gravel or down cutting. The bridge is not likely a barrier to salmonids.

26,740 0234.00 Bridge #28 is made of natural bottom at the Elliot Nature Preserve ford crossing. The width is 65 ft, the height is 0 ft, and the length is 9 ft. It was not retaining gravel or down cutting. The bridge is not likely a barrier to salmonids.

27,190 0236.00 Bridge #29 is the Elliot Nature Preserve ford crossing. The width is 88 ft, the height is 0 ft, and the length is 8 ft. The water to sill height is 0 ft. It was not retaining gravel or down cutting. The bridge is not likely a barrier to salmonids.

27,198 0237.00 Tributary #6 on the right bank is Carey Camp Creek which enters San Anselmo Creek 51 ft into the unit. The discharge is 0 cfs. Downstream, upstream, and the tributary are dry. The tributary is inaccessible to fish due to placed riprap at the mouth. We surveyed the entire tributary. The slope was measured at 29.7% at the mouth using a hand level. Fish were observed upstream during the survey.

27,371 0238.00 Bridge #30 is the Elliot Nature Preserve ford crossing. The width is 36 ft, the height is 0 ft, and the length is 7 ft. It was not retaining gravel or down cutting. The bridge is not likely a barrier to salmonids.

27,795 0242.00 Bridge #31 is a footpath in the Elliot Nature Preserve made of natural bottom. The width is 37 ft, the height is 0 ft, and the length is 8 ft. It was not retaining gravel or down cutting. The bridge is not likely a barrier to salmonids.

27,984 0244.00 One possible salmonid young of the year was observed from the bank.

28,181 0249.00 Tributary #8 on the left bank is a dry, unnamed tributary which enters San Anselmo Creek. The discharge is 0 cfs. The water temperature downstream was 63F, the temperature upstream was 63F, and the tributary was dry. It is accessible to fish (we checked 20 ft up the tributary). The slope is estimated to be greater than 10%. Fish (possibly salmonids) were observed while we were there. San Anselmo Creek 2009 19 Position (ft.) Habitat Unit # Comments

28,181 0249.00 One salmonid young of the year and one 6 inch steelhead/rainbow trout were observed from the bank.

28,396 0255.00 Tributary #9 on the left bank is Cascade Creek which enters San Anselmo Creek. The discharge was estimated to be less than 1 cfs, and it contributes 100% of its flow to the stream. The water temperature downstream was 62F, the temperature upstream was 64F, and the tributary was 62F. It is accessible to fish (we checked 120 ft up the tributary). The slope was measured at 4.4% with a hand level. Fish were observed during the full survey. Please see report for further information. The coordinate point of the confluence is: N37.98134 W122.61995.

29,765 0260.00 Bridge #32 is the Nature Preserve footpath ford crossing made of natural bottom. The width is 21 ft, the height is 0 ft, and the length is 5 ft. It was not retaining gravel or down cutting. The bridge is not likely a barrier to salmonids.

31,139 0270.00 Salamanders were observed from the bank.

31,299 0272.00 Tributary #10 on the left bank is a dry, unnamed tributary which enters San Anselmo Creek. The discharge is 0 cfs, and it contributes 0% of its flow to the stream. The water temperature downstream was 58F, and upstream and the tributary were dry. It is inaccessible to fish (we checked 20 ft up the tributary). The slope was estimated to be 45%. No fish were observed while we were there.

31,414 0277.00 Tributary #7 on the right bank is a dry, unnamed tributary which enters San Anselmo Creek 190 ft into the unit. The discharge is 0 cfs. Upstream, downstream, and the tributary were dry. It is inaccessible to fish (we checked 30 ft up the tributary). The slope was estimated at 26%. No fish were observed while we were there.

32,867 0289.00 Tributary #8 on the right bank is an unnamed tributary which enters San Anselmo Creek. The discharge is estimated to be less than 1 cfs, and it contributes 100% of its flow to the stream. The water temperature downstream was 61F, upstream was dry, and the tributary was 60F. It is inaccessible to fish (we checked 44 ft up the tributary). The slope was estimated at 15%. No fish were observed while we were there.

33,306 0298.00 Tributary #9 on the right bank is a dry, unnamed tributary which enters San Anselmo Creek. The discharge is 0 cfs. The water temperature downstream was 60F, the temperature upstream is unknown, and the tributary was dry. It is inaccessible to fish (we checked 15 ft up the tributary). The slope was estimated at 38%. No fish were observed while we were there.

33,342 0300.00 There is a 12 foot vertical drop at the top of the unit.

33,625 0305.00 Tributary #11 on the left bank is a dry, unnamed tributary which enters San Anselmo Creek. The discharge is 0 cfs. Downstream, upstream, and the tributary were dry. It is inaccessible to fish (we checked 10 ft up the tributary). The slope was estimated at 42%. No fish were observed while we were there.

34,019 0306.00 Tributary #12 on the left bank is a dry, unnamed tributary which enters San Anselmo Creek. The discharge is 0 cfs. Downstream, upstream, and the tributary were dry. It is inaccessible to fish (we checked 10 ft up the tributary). The slope was estimated at 40%. No fish were observed while we were there.

San Anselmo Creek Surveys: 2009 CDFW

San Anselmo Creek 2009

