



June 15, 2017

Marin County Redevelopment Agency  
Attn: Rachel Reid, Environmental Planning Manager  
3501 Civic Center Drive, Suite 308  
San Rafael, CA 94903

Re: Comments to Draft 2007 Marin Countywide Plan Supplemental EIR (“Draft SEIR”)

Dear Ms. Reid:

These Comments to the Draft SEIR are submitted by Turtle Island Restoration Network, a California public benefit corporation, and Salmon Protection and Watershed Network, a conservation project of Turtle Island Restoration Network, (collectively “Turtle Island/SPAWN”), in response to the Notice of Availability dated May 1, 2017 by the County of Marin (“County”) as required under Section 15087 of the California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.* (“CEQA”).

As noted in the Draft SEIR, this supplemental analysis under CEQA has been mandated by the California Court of Appeal in a March 2014 opinion<sup>1</sup> which required the County to set aside its approval of the 2007 Marin Countywide Plan Update (2007 CWP) pending preparation of a supplemental SEIR that analyzes the cumulative impacts of such project, and describes mitigation measures to address such impacts, in conformity with the CEQA Guidelines. 14 Cal. Code Reg. § 15000 *et seq.* (“Guidelines”). The County is presently subject to Peremptory Writ of Mandate issued by the Marin County Superior Court issued on December 5, 2014 following remand by the Court of Appeal to prepare and certify a final Supplemental EIR.<sup>2</sup> Until the Writ is returned to the Superior Court, the 2007 CWP

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<sup>1</sup> Salmon Protection and Watershed Network v. County of Marin, No. A137062, 2014 WL845416 (Apr. 3, 2014).

<sup>2</sup> Salmon Protection and Watershed Network v. County of Marin, Marin County Superior Court

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is not in effect in the San Geronimo Valley watershed, and development applications are reviewed under the 1994 Countywide Plan.

These Comments are informed by and rely upon the information sources referenced in the Draft SEIR Sec. 1.3 and the sources identified in the attached List of Additional References that are incorporated by reference. Where possible, specific comments are referenced to the Section number in the Draft SEIR Section in brackets (*e.g.* [1.1]) and/or by page number (*e.g.* “at 2-1”), to which the specific comment pertains. Unless noted otherwise, all defined terms, acronyms and abbreviations in these Comments have the same meaning as specified in the Draft SEIR. (Draft SEIR at v – vi.)

### **Summary of Comments**

- In the analysis of cumulative effects, the Draft SEIR fails to identify and analyze all prospective development allowable under the 2007 CWP, understates the extent of prospective development and other future known and likely projects, and fails to consider the additional development likely to be allowed under the “Expanded SCA Ordinance.” (“Proposed Ordinance”)
- The Draft SEIR provides an incomplete and inadequate description of the environmental baseline of the project area, specifically including the riparian and in-stream habitats, and status of salmonid species listed as endangered or threatened under Federal and California laws.
- The Draft SEIR provides an incomplete and flawed analysis of potential and cumulative impacts from prospective development allowed under the 2007 CWP, including direct and indirect impacts to water quality, riparian habitat, spawning, nursery and rearing habitats, and to endangered and threatened salmonid species.
- The Draft SEIR provides inadequate mitigation for the significant impacts on spawning and rearing salmonid habitat from future development allowable under the 2007 CWP in that the Proposed Ordinance is vague, unenforceable, and lacks any timeline or deadline for the formulation and adoption of the Proposed Ordinance.
- The Draft SEIR is deficient in failing to provide any analysis of the Proposed Ordinance under CEQA, or adequate performance standards by which the future formulation of the Proposed Ordinance may be

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analyzed under CEQA, or providing any explanation of the process or deadlines for analysis of the Proposed Ordinance under CEQA.

- The other measures provided by the Draft SEIR to mitigate the significant impacts on spawning, rearing and Summer salmonid habitat from future development allowable under the 2007 CWP are inadequate in that such measures are vague, unenforceable, lack performance standards, and lack any timeline or deadline for their development and/or implementation.

To satisfy the requirements of CEQA, the Draft SEIR cannot be finalized and certified without the concurrent formulation and adoption of an SCA Ordinance that addresses the specific significant impacts to salmonid species and their habitat from the prospective development allowable under the 2007 CWP.

### **Compliance with CEQA Process**

Preliminarily, the County has failed to adequately explain its plan for future steps in the CEQA process necessary for the 2007 CWP to be fully implemented. The Draft SEIR [1.2.1] states that it is a “program EIR” as defined in Section 15168 of the Guidelines, which may be prepared on a “series of actions” that are related or connected and the basis for future “tiered” environmental analyses of such future actions. Specifically, the Draft SEIR states, “This analysis does not examine the effects of site-specific projects (. . .)” and “The analysis in this program SEIR is considered the first tier of environmental review, creating the foundation upon which future, project-specific CEQA documents can build.” Draft SEIR at 1-6 [emphasis added].

However, merely designating the Draft SEIR as a program EIR does not relieve the County of its obligation to conduct a complete and thorough analysis of the environmental impacts, or sidestep necessary analysis by asserting it will be addressed in future analyses.<sup>3</sup> In this case, the Draft SEIR contemplates future tiered environmental analyses for the full implementation of the 2007 CWP, but

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<sup>3</sup> Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency, 82 Cal. App. 4th 511, 534, 98 Cal. Rptr. 2d 334, 348 (2000), as modified on denial of reh'g (Aug. 21, 2000). (“[A] program EIR is designed for analyzing program-wide effects, broad policy alternatives and mitigation measures, cumulative impacts and basic policy considerations, as opposed to specific projects within the program. (Guidelines, § 15168, subd. (b)). However, the Guidelines also state a program EIR “will be most helpful in dealing with subsequent activities if it deals with the effects of the program *as specifically and comprehensively as possible*.” [emphasis added]).

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notably absent is any discussion of future environmental analyses is any mention of a CEQA-compliant process for the Proposed Ordinance that, once enacted, will be the principal mitigation measure for two significant impacts (Draft SEIR at 5-12, 5-19.)

A CEQA-compliant environmental analysis is required for an action requiring legislative approval that is relied upon for mitigation in an EIR.<sup>4</sup> As discussed in more detail below, the description and discussion of the Proposed Ordinance in the Draft SEIR<sup>5</sup> is inadequate to satisfy CEQA without further analysis. (See “Expanded SCA Ordinance,” *below*.) However, the Draft SEIR neither commits to such further analysis, nor does it provide any guidance when such analysis will be made and available for comment.<sup>6</sup> Further, the Draft SEIR also fails to specify whether or not implementation of the 2007 CWP will be contingent upon the enactment and implementation of the Proposed Ordinance.

Accordingly, to prevent future controversy and to clarify the need for a complete and thorough analysis of the Proposed Ordinance in the Draft SEIR, the County must either specify that the Proposed Ordinance will be the subject of a future CEQA-compliant environmental analysis or that the County considers the analysis of the Proposed Ordinance contained in the Draft SEIR to be adequate to satisfy CEQA. In either event, the County must provide a timeline and deadline for the development, environmental analysis and implementation of the Proposed Ordinance before it is relied upon for mitigation of significant impacts from future development.

### **Draft SEIR Analysis of Cumulative Impacts**

As mandated by the Court of Appeal and the Writ, in the Draft SEIR the County must provide an analysis of potential cumulative impacts, and the range of potential consequences, on salmonids in the San Geronimo Valley in conformity with Guidelines § 15130 and the Court of Appeal opinion. (Draft SEIR at vii.) As discussed below, the Draft SEIR analysis of cumulative impacts is incomplete and

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<sup>4</sup> *Ctr. for Sierra Nevada Conservation v. Cty. of El Dorado*, 202 Cal. App. 4th 1156, 1181, 136 Cal. Rptr. 3d 351, 369 (2012).

<sup>5</sup> Draft SEIR Mitigation Measure § 5.1-1 at 5-12.

<sup>6</sup> At the Draft SEIR public comment hearing held by Marin County Planning Commission on April 22, 2017, Planning Commission staff represented that the Proposed Ordinance would be subject to a separate CEQA analysis as part of the next Countywide Plan update/amendment process, which would occur in approximately four years.

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flawed in its failure to identify and fully analyze all the potential and cumulative impacts of the proposed allowable development in the 2007 Countywide Plan (CWP).<sup>7</sup>

### **Project Description [2]**

An over-arching concern with the project description arises out of the vagueness of the Proposed Ordinance description that relies on reference to the aspirational provisions of Goal BIO-4 of the 2007 CWP and broadly-stated provisions. (See Draft SEIR at 5-12 – 5-13, Table 2-1 at 2-8 – 2-10.) The description of the Proposed Ordinance in the Draft SEIR is relevant to the project description in that the Proposed Ordinance description fails to include (or expressly exclude) certain exemptions and exclusions included in Goal BIO-4.a and in prior versions of an Ordinance, including an exemption for parcels located in conventionally-zoned districts (almost 80% of potential development parcels) and a “by right” exclusion for additional development up to 500 sq.ft. of additional footprint within the SCA. The inclusion of such exemptions and exclusions to the Proposed Ordinance would allow additional future development not considered in the cumulative effects analysis in the Draft SEIR.<sup>8</sup> In addition, as discussed below, such exemptions and exclusions would also result in an ineffective mitigation measure to reduce those key significant impacts from the 2007 CWP both identified in the Draft SEIR and described in these Comments.<sup>9</sup>

#### Natural Systems and Agriculture Element [2.4.1]

The Draft SEIR states, “The *Environmental Hazards, Atmosphere and Climate, Open Space, and Agriculture and Food* topics of the Marin CWP (2007) are not considered further in this document.” (Draft SEIR at 2-4.) This is a serious flaw in determining the impacts of continued development in the San Geronimo Valley, as discussed below.

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<sup>7</sup> See Monoham, C, Ltr. to Marin Cty. Planning Comm. *et al.*, re 2007 Marin Countywide Plan Supplemental EIR with a Focus on Potential Cumulative Impacts to Salmonids in San Geronimo Valley (Jun. 12, 2017) (“The Draft SEIR analysis of future development is incomplete and flawed in its failure to identify and fully analyze all the potential and cumulative impacts of the proposed allowable development in the 2007 Countywide Plan (CWP).”).

<sup>8</sup> See Future Development [2.6], *below*.

<sup>9</sup> See Expanded SCA Ordinance” [5.1-1, 5-2.1]; Vagueness, *below*.

(1) Increased Toxins from Increased Development and Sewage Disposal.

Based upon available studies and information, an increase in development within the Lagunitas Creek watershed will result in increased stream pollution from toxins, sewage and pharmaceutical contaminations. Specifically, The environmental baseline described in the Draft SEIR completely fails to address existing levels of toxicity from all sources including road runoff, pharmaceuticals in wastewater<sup>10</sup> and pesticide use. The Draft SEIR further fails to analyze or discuss the likelihood of future levels, the impacts to the stream and riparian habitats from increased levels of toxins, or discuss the direct impacts on salmonid health and survival.

Recent studies indicate that spawning salmon in streams subject to impacts on water quality from toxins in storm runoff and other sources are negatively impacted by decreased water quality.<sup>11</sup> More specifically, daily surveys of a representative urban stream revealed premature spawner mortality rates that ranged from 60-100% of each fall run compared to a of <1% rate in a non-urban stream. The authors concluded that the weight of evidence suggests that freshwater-transitional coho are particularly vulnerable to toxic contaminant (or contaminant mixture) in urban runoff. Stormwater may therefore place important constraints on efforts to conserve and recover coho populations in urban and urbanizing watersheds throughout the western United States.<sup>12</sup>

An increase in development will necessarily result in increased pollution from oil and other toxins from road run-off.<sup>13</sup> Increased automobile traffic

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<sup>10</sup> See *Drugs found in Puget Sound salmon from tainted wastewater*, Seattle Times (Feb. 25, 2016) available at <http://www.seattletimes.com/seattle-news/environment/drugs-flooding-into-puget-sound-and-its-salmon/>.

<sup>11</sup> See Sholz, N. L., et al., *Recurrent die-offs of adult coho salmon returning to spawn in Puget Sound lowland urban streams*, PLoS One. (2011); 6(12):e28013. doi: 10.1371/journal.pone.0028013. Epub 2011 Dec 14.

<sup>12</sup> Scholz, N. L. et al. (2011); See also Spromberg, J. A., Scholz, N. L., *Estimating the future decline of wild coho salmon populations due to early spawner die-offs in urbanizing watersheds of the Pacific Northwest*, Integrated Environmental Management and Assessment 7(4):648-656 (2011); *Water Quality: How Toxic Runoff Affects Pacific Salmon & Steelhead* (NOAA 2016) available at <https://news.wsu.edu/2016/04/12/hope-saving-salmon-lies-reducing-stormwater-pollution/>; Coastal multispecies recovery plan Vol. IV, Central California Coast Steelhead (NMFS 2015).

<sup>13</sup> See Sholtz, N. L. et al. (2011).

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associated with residential and commercial development will increase these known toxins to salmonids, and no specific mitigation for this hazard is provided.

Sewage disposal for all housing and businesses located in the San Geronimo Valley occurs within the Lagunitas Creek watershed, whether through individual or community septic systems or planned centralized wastewater treatment plants. (*See Approach to Impact Analysis [5.1 – 5.2], below.*) Sewage disposal technology does not remove pharmaceuticals from wastewater causing known impacts to salmon species.<sup>14</sup>

Finally, pesticides from agricultural and other sources are known causes of increased toxicity and impacts to salmonids.<sup>15</sup> The Draft SEIR fails to discuss or analyze this important impact on water quality, and no specific mitigation for this hazard is provided.

## (2) Increase in Toxic Metals

The Draft SEIR omits any discussion of toxic metals in the Lagunitas Creek watershed and the impacts of such toxins on salmonids and their food sources. Specifically, in 2009 the San Geronimo Valley Salmon Enhancement Plan Existing Conditions report<sup>16</sup> stated:

Although a number of metal species have been measured in San Geronimo Creek and a few of its major tributaries (Table 3-8), none were measured at water column concentrations of concern (Piovarcsik and Andrew 2008, SFBRWQCB 2007, TBWC 2006). However, sediment concentrations in San Geronimo Creek were high for chromium and nickel (> probable effects concentration [PEC), as well as arsenic, copper, and mercury (> threshold

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<sup>14</sup> *See Drugs found in Puget Sound salmon from tainted wastewater*, Seattle Times (Feb 25, 2016) available at <http://www.seattletimes.com/seattle-news/environment/drugs-flooding-into-puget-sound-and-its-salmon/>.

<sup>15</sup> *See Pesticide Mixtures: Deadly Synergy in Salmon* (NMFS) available at [https://www.nwfsc.noaa.gov/news/features/pesticide\\_mixtures/index.cfm](https://www.nwfsc.noaa.gov/news/features/pesticide_mixtures/index.cfm); Laetz, C.A., et al., *The Synergistic Toxicity of Pesticide Mixtures: Implications for Risk Assessment and the Conservation of Endangered Pacific Salmon*, Environmental Health Perspectives DOI:10.1289/ehp.0800096 (Mar. 2009) available at <https://ehp.niehs.nih.gov/0800096/>; Factsheet: Background Information on Pesticides and Salmon, (Earthjustice 2002) available at [http://earthjustice.org/sites/default/files/library/factsheets/pesticides\\_salmon.pdf](http://earthjustice.org/sites/default/files/library/factsheets/pesticides_salmon.pdf).

<sup>16</sup> San Geronimo Valley Salmon Enhancement Plan Existing Conditions (Stillwater Sciences Jan. 2009) § 3.5.5 at 3-24.

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effects concentrations [TECs]) (Table 3-9). The observed sediment metals concentrations were high enough to support possible acute toxicity to infaunal invertebrates (SFBRWQCB 2007, MacDonald et al. 2000). Additionally, tissues of clams deployed near the Creamery Creek confluence with mainstem San Geronimo (referred to as Creamery Gulch in SFBRWQCB [2007]) as part of the toxicity testing were among the highest mercury concentrations measured anywhere in the Bay Area at 0.03 ug/g. Copper concentrations were also high at 7.68 ug/g. While the tissue results reflect elevated sediment chemistry measurements, the bioavailability and toxicity of sediment metals to salmonids and other local biota is currently uncertain in the San Geronimo Creek watershed. The observed concentrations may be more representative of increased erosion in the watershed than of anthropogenic sources of toxicants (SFBRWQCB 2007), and assessing fish tissue levels would be required to determine possible health effects.

The Draft SEIR's failure to incorporate this available information in its discussion and of baseline environmental conditions and the analysis of cumulative impacts renders such analysis incomplete and inadequate.

### (3) Increase in Fires

The Draft SEIR fails to consider or analyze the impacts on salmonid habitat from wildfires and fire control activities, stochastic events that become more likely with increased levels of development. As stated by NOAA:

Control of wildland fires may include the removal or modification of vegetation due to the construction of firebreaks or setting of backfires to control the spread of fire. This removal of vegetation can trigger post-fire landslides as well as chronic sediment erosion that can negatively affect downstream coho habitat. Also, the use of fire retardants may adversely affect salmonid habitat if used in a manner that does not sufficiently protect streams causing the potential for coho to be exposed to lethal amounts of the retardant. This exposure is most likely to affect summer rearing juvenile coho.<sup>17</sup> Fire retardant has impacted salmon in the San Geronimo

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<sup>17</sup> Biological Opinion on the Proposed Issuance of an Incidental Take Permit to PacifiCorp Energy for Implementation of the PacifiCorp Klamath Hydroelectric Project Interim Operations Habitat Conservation Plan for Coho Salmon (NMFS Feb. 2012) at 184, *available at* [http://www.westcoast.fisheries.noaa.gov/publications/habitat/hcp\\_swr/pacificorps\\_hcp/pacificorp\\_biop\\_finalv4.pdf](http://www.westcoast.fisheries.noaa.gov/publications/habitat/hcp_swr/pacificorps_hcp/pacificorp_biop_finalv4.pdf); *See also* Endangered Species Act Section 7 Consultation Biological and

subwatershed creeks in the past resulting in mortality and harm to salmonids.<sup>18</sup>

#### (4) Increase in Invasive Species

The Draft SEIR fails to identify or analyze the impacts from an increase in invasive species associated with increased levels of development. Invasive species (both plant and animal) impact salmon streams.<sup>19</sup> Research indicates that increased development opens new niches for invasive species<sup>20</sup> that often thrive in newly disturbed habitat.<sup>21</sup> The problem is compounded by the introduction of additional invasive species through development activities.

#### (6) Climate Change

Although not an impact of the Proposed Project, the likely impacts from changes in temperature, precipitation, the frequency and intensity weather events, and other conditions from a changing climate are part of a dynamic environmental baseline that will change over the course of the Proposed Project. Accordingly, consideration of the likely direct and indirect impacts on salmonid species and habitat from climate change should be considered as part of the cumulative effects analysis to the same extent as the effects of known and likely future development.

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Conference Opinion (NMFS Nov. 2011) at 120, *available at* [http://www.nmfs.noaa.gov/pr/pdfs/consultations/biop\\_usfs\\_fire\\_retardant.pdf](http://www.nmfs.noaa.gov/pr/pdfs/consultations/biop_usfs_fire_retardant.pdf).

<sup>18</sup> See *Coho salmon go belly up after toxic spill / Fire retardant floods Marin's Larsen Creek*, SF Gate (Mar. 9, 2002) *available at* <http://www.sfgate.com/bayarea/article/Coho-salmon-go-belly-up-after-toxic-spill-Fire-2865961.php>.

<sup>19</sup> See *Invasive Species and Salmon: Interactions in the Pacific Northwest* (NOAA Fisheries Jul. 21, 2014) *available at* [http://www.nmfs.noaa.gov/stories/2014/07/7\\_21\\_14invasive\\_species\\_and\\_salmon.html](http://www.nmfs.noaa.gov/stories/2014/07/7_21_14invasive_species_and_salmon.html) and <https://www.fws.gov/invasives/faq.html>

<sup>20</sup> Britton, K.O., Dix, M.E. *et al.*, *A Dynamic Invasive Species Research Vision: Opportunities and Priorities 2009–29* (USDA 2010) at 97, *available at* [https://www.fs.fed.us/research/docs/invasive-species/gtr\\_wo79\\_83.pdf](https://www.fs.fed.us/research/docs/invasive-species/gtr_wo79_83.pdf) (“Conversion of forests and rangelands to agricultural and urbanized lands can accelerate fragmentation of the landscape and inadvertently introduce invasive species.”).

<sup>21</sup> Ehrenfeld, J.G., *Exotic invasive species in urban wetlands: environmental correlates and implications for wetland management*, *Journal of Applied Ecology* (May 8, 2008) *available at* <http://onlinelibrary.wiley.com/doi/10.1111/j.1365-2664.2008.01476.x/full> (“Wetlands in urban regions are subjected to a wide variety of anthropogenic disturbances, many of which may promote invasions of exotic plant species.”)

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The impacts of climate change on salmon have already been identified and discussed,<sup>22</sup> including impacts from increases in temperature, rainfall variability, storm frequency, climatic water deficit, and fire frequency,<sup>23</sup> and an increase in non-native species that prey on salmon.<sup>24</sup>

### Future Development [2.6]

This Section, which establishes parameters for the projection and discussion of impacts from future development in the San Geronimo Valley from the 2007 CWP, contains notable flaws regarding several parameters. Specifically, the “Average Building (Unit) Footprint” [Table 2-4] and “Development Metrics for the San Geronimo Valley” [Table 2-5] are based on 2005 data provided by the Community Development Agency (CDA), with the footnote that “no substantial development in the San Geronimo Valley since 2005 and therefore no change” in the estimated TIA or the number of improved parcels. However, there is no indication that the data presented in these two tables includes any information, estimates or allowances for illegal and/or unpermitted development within the San Geronimo Valley. Historical and current unpermitted development within the San Geronimo Valley, including development within the SCA, is an acknowledged

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<sup>22</sup> Crozier, L., *Impacts of Climate Change on Salmon of the Pacific Northwest* (NOAA 2015); Moyle, P. B. et al., *Climate Change Vulnerability of Native and Alien Freshwater Fishes of California: A Systematic Assessment Approach*, PLoS ONE (2013) 8(5): e63883, available at <https://doi.org/10.1371/journal.pone.0063883>; Moyle, P. B., et al., *Effects of Climate Change on the Inland Fishes of California: With Emphasis on the San Francisco Estuary Region*, California Energy Commission Public Interest Energy Research, Document No. CEC-500-2012-029 (2012).

<sup>23</sup> Climate Ready North Bay: Key Vulnerability Assessment Findings for the North Bay Region, California Landscape Conservation Cooperative Climate Commons, available at <http://climate.calcommons.org/crnk/key-findings-northbay-region>; Marin County Climate Action Plan (2015 Update) at 8-1 – 8-5, available at [https://www.marincounty.org/~media/files/departments/cd/planning/sustainability/climate-and-adaptation/chpt8marincapupdate\\_final\\_20150731.pdf?la=en](https://www.marincounty.org/~media/files/departments/cd/planning/sustainability/climate-and-adaptation/chpt8marincapupdate_final_20150731.pdf?la=en); The Impacts of Sea Level Rise in the San Francisco Bay (Pacific Institute Jul 2012) available at <http://www.energy.ca.gov/2012publications/CEC-500-2012-014/CEC-500-2012-014.pdf>.

<sup>24</sup> Charles, J., *Fish Forecast: Swimming Upstream Against Climate Change*, Bay Nature (Jan.-Mar. 2014) available at <https://baynature.org/article/fish-forecast-swimming-upstream/>; Moyle, P.B. et al. (2012).

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significant problem.<sup>25</sup> Failing to acknowledge these existing conditions, and factor them into the development metrics for the number of developed units and the TIA within the watershed, provides an inaccurate basis for the cumulative effects analysis in the Draft SEIR.

Further, this Section fails to use accurate parameters for development that may be allowed by the Proposed Ordinance, which will not only establish measures to regulate future development and mitigate the resulting impacts within the San Geronimo Creek sub-watershed, but are likely to include provisions that will determine the amount of permissible **additional** development on already-developed parcels. For example, an exception provided in Goal BIO-4.a<sup>27</sup> and included in a previous proposed SCA Ordinance<sup>28</sup> provided for by-right “modest additions” to existing residences within the SCA up to 500 sq.ft. that met certain conditions, which could result in a total of almost 500,000 sq.ft. of new residential development within riparian habit in the San Geronimo Valley.<sup>29</sup> Further, the County has not indicated whether the 500 sq.ft. exception would also be eventually allowed on the 474 currently undeveloped parcels in the future after they are developed,<sup>30</sup> could allow an additional 237,000 square feet of future development that which is not considered in the Draft SEIR.

The following Sections contain additional significant incorrect assumptions, misstatements or mischaracterizations of available data:

Watershed Scale Discussion [2.6.2].

(1) Stating that 19 building permits is a “relatively low number” mischaracterizes the data, in that 19 permits relative to the SGV’s population is substantially greater when compared to 1,200 permits relative to the County’s

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<sup>25</sup> See, e.g., San Geronimo Valley Salmon Enhancement Plan (Feb. 9, 2010) at 2-33 (“Small sheds, chicken coops, other small structures, and areas of pavement in close proximity to stream channels are common in San Geronimo Valley. Most of these were likely built before the enactment of stream setbacks; some were constructed illegally.”).

<sup>27</sup> See Note 64, *below*.

<sup>28</sup> See DRAFT Marin Stream Conservation Area Ordinance Revised per Board of Supervisors Hearing, October 29, 2013.

<sup>29</sup> See Monoham (2013) (“The current draft ordinance, will allow 500 sq ft additions to existing structures. In *just* San Geronimo Valley, which currently has 955 developed parcels, this could result in 477,500 sq ft. (955 X 500) of loss of current or potential riparian habitat.”).

<sup>30</sup> See Draft SEIR § 2.6.2 Table 2-5 at 2-30.

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population as a whole. (Draft SEIR at 2-27 – 2-28.) In fact, the rate of per capita development in the San Geronimo Valley is significantly **higher** than Marin County as a whole.<sup>32</sup> Further, this mischaracterization does not take into account that there has been a 2-year building moratorium, followed by a 2-year injunction against development in the San Geronimo Valley during the period under consideration, which likely distorts the data and suggests that development would have actually been significantly higher in the absence of these artificial restraints. Accordingly, the gross number of building permits provides no basis for the conclusion that the anticipated number of additional improved parcels and developed units is likely to be an “overestimate.”

(2) Using the gross number of building permits as the basis for the “overestimated” number of anticipated additional improved parcels and developed units does not include any historical or future unpermitted development discussed above. Accordingly, there is no basis to conclude that the forecast levels of future development are an “overestimate.” Further, there is no basis to conclude that the number of additional improved parcels and units is an overestimate based upon economic conditions or physical limitations of specific parcels. Unless parcels are permanently “removed” by the County as being eligible for possible development, any reduction based upon economic or physical factors is speculative and inappropriate.

(3) The conclusion that it is “unlikely” no new development will use groundwater wells and that the number of wells will remain approximately equal to the existing number of wells is based upon an unsupported assumption that “all new improved parcels would possess municipal water supply.” (Draft SEIR at 2-31, 2-34). The conclusion also ignores the likelihood of new wells drilled for agricultural, animal husbandry or other purposes, which should be considered as either foreseeable future development accessory to existing uses, or as an indirect result of permitted development under the 2007 CWP (*e.g.* a large garden or horse stable accessory to a new rural residence).

#### Subbasin/Reach Scale [2.6.3].

(1) As noted above for the watershed scale, there is no basis to conclude that the number of improved parcels or units anticipated from implementation of the 2007 CWP is “overestimated.” (Draft SEIR at 2-32.)

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<sup>32</sup> 2010 census Marin County: 1200 permits/252409 pop. = .00475; *cf.* San Geronimo Valley: 19 permits/3613 pop. = .00526

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(2) The parsing of data by subbasins and reaches is of questionable utility unless the analysis includes allowances for the quantity and quality of stream and riparian habitat available in such subbasin or reach. For example, characterizing the effect of increase in improved parcels and units in the Lower San Geronimo/Woodacre Creek reaches as “moderate” based upon the lower “relative increase” fails to account for the effect on habitat provided in such subbasin/reach. (Draft SEIR at 2-32.) The same comment applies to the analysis of TIA in each subbasin/reach. (Draft SEIR at 2-33.)

(3) There is also ample evidence that pumping directly from creeks within the Lagunitas Creek watershed occurs that is likely to increase with greater development without regulatory controls. This issue has been discussed at the Lagunitas Creek Technical Advisory Committee on which the County holds a seat and informed of this issue, and it is discussed in the federal Coho Recovery Plan.<sup>33</sup>

SCA Scale [2.6.4].

(1) No data or other support is provided for the assertion that “relatively few parcels small enough to lack significant flexibility in development placement (0-0.5 ac) [are] located completely within the SCA.” (Draft SEIR at 2-35.)

(2) The basis for characterizing the effects of developing parcels within the Lower San Geronimo/Woodacre Creek SCA as “moderate” is a purely qualitative analysis based upon a “relative increase,” which masks the actual effect on the stream and riparian habitat. (Draft SEIR at 2-35 – 2-26.)

(3) The discussion concerning the 79% of SCA parcels within conventional zoning districts that would not be subject to design or other discretionary review highlights the significant flaws in using Goal BIO-4 as the basis for the Ordinance. (Draft SEIR at 2-36.) In addition, notwithstanding the acknowledgment of this flaw, no meaningful analysis is made of the increased effects from development of new parcels and units not subject to design or other discretionary review.

**Environmental Setting [3]**

The discussion of the fish species’ and habitat condition in this Section require additional review and clarification to be accurate for the purpose of the analysis and findings made in the Draft SEIR.

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<sup>33</sup> Final Recovery Plan for Central California Coast coho salmon ESU (NMFS 2012) § 3.6.2 at 48.

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Special-Status Anadromous Fish Species [3.1]

The coho salmon that spawn in the Lagunitas Creek watershed are part of the Central California Coast Evolutionary Significant Unit (ESU) that is listed as “endangered” under the federal Endangered Species Act (ESA).<sup>34, 35</sup> This coho salmon population segment is also listed as endangered under the California Endangered Species Act (CESA).<sup>36</sup>

The historical and continuing decline in coho salmon abundance in the Lagunitas Creek watershed is well-documented and includes data that extend well beyond the limited numerical data referenced in the Draft SEIR at 3-1. The statement that recent years’ counts “suggest modest improvements” in coho population is misleading in that the years to which this comment applies are not specified and, given the much-longer trend of declining populations, a few or several years’ increase is biologically insignificant. Further, noting that the coho salmon population in the Lagunitas Creek watershed is the “largest and most stable population south of the Noyo River in Mendocino County” may be technically accurate, but given the severely depressed abundance of the California Central Coast Evolutionary Significant Unit (CCC ESU) it is irrelevant to the Draft SEIR’s analysis and does indicate the importance of protecting the coho salmon which spawn and rear in the Lagunitas Creek watershed to the recovery of the CCC ESU.

More specifically, coho salmon and steelhead trout populations have experienced significant historical population declines in the Lagunitas Creek watershed approaching 90% since the mid 20<sup>th</sup> Century, precipitating listings as “endangered” (coho salmon) and “threatened” (Chinook salmon and steelhead trout) under the ESA, as well as listings under the CESA. Annual coho spawning

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<sup>34</sup> See, 7 Fed.Reg. 37160, 37192 (Jun. 28, 2005) (“the naturally spawned component of the Central California Coast coho ESU is “in danger of extinction.”); Final Recovery Plan for Central California Coast coho salmon ESU (NMFS 2012) § 6.2.5 at 160 – 161.

<sup>35</sup> Section 3 of the ESA defines the term “endangered species” to mean “any species [or ESU] which is in danger of extinction throughout all or a significant portion of its range.” 16 U.S.C. 1532(7).

<sup>36</sup> See Recovery Strategy for California Coho Salmon Progress Report 2004 – 2012 (CDFW 2015) at 11.

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numbers in the watershed have dropped from thousands to hundreds, and some recent years have seen the numbers drop as low as 26 nests (“redds”).<sup>37</sup>

Recent data unequivocally indicates that the coho salmon remain in danger of imminent extinction. The coho salmon in this ESU have been described by NOAA as “gravely close to extinction”<sup>38</sup> and, more recently, as of “critical concern” with “current threats expected to push species to extinction in the wild within 10 – 15 generations.”<sup>39</sup>

The greatest contemporary threat to the continued survival of the coho salmon and steelhead in the greater Lagunitas watershed is the continued impacts from residential and commercial development. (Draft SEIR at 3-8 – 3-9, citing NMFS (2012), NMFS (2015).) Although the Lagunitas Creek watershed has historically been significantly impacted by dams that directly caused spawning and rearing habitat loss and from forest removal,<sup>40</sup> the impacts from continuing development present the greater current threat. (Draft SEIR 3.2 at 3-8, citing NMFS (2012).) Specifically, the Draft SEIR states, “Studies in the Pacific Northwest have shown that coho salmon abundance is significantly lower in rural, urban, and agricultural areas, and areas with high road density, than in watersheds with fewer human land uses (Sharma and Hilborn 2001, Pess *et al.* 2002). Of 14 potential threats to coho salmon in the greater Lagunitas Creek watershed evaluated by NMFS (2012), residential and commercial development was ranked as the greatest overall threat (“very high”) to the viability of the coho salmon population.” The impacts from development and urbanization include loss of riparian habitat, increased stream velocities from impervious surfaces and

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<sup>37</sup> Ettlinger, NPS, SPAWN, *Adult Salmonid Monitoring in the Lagunitas Creek Watershed 2014-15* (2015) available at <https://www.marinwater.org/DocumentCenter/View/3429>.

<sup>38</sup> Final Recovery Plan for Central California Coast coho salmon ESU (NMFS 2012) § 3.1 at 3.11.

<sup>39</sup> Lusardi, R., Moyle, P. *et al.*, *The Future of California’s Unique Salmon and Trout: Good News, Bad News* (May 16, 2017) available at [https://californiawaterblog.com/2017/05/16/the-future-of-californias-unique-salmon-and-trout-good-news-bad-news/?blogsub=confirming-blog\\_subscription-3](https://californiawaterblog.com/2017/05/16/the-future-of-californias-unique-salmon-and-trout-good-news-bad-news/?blogsub=confirming-blog_subscription-3). Given the 3-year life history of CCC coho salmon, this study concludes that this population segment is in serious danger of extinction within the next 50 years. See Final Recovery Plan for Central California Coast coho salmon ESU (NMFS 2012) § 3.4 at 60 – 61 (Coho salmon life history).

<sup>40</sup> Final Recovery Plan for Central California Coast coho salmon ESU (NMFS 2012) § 3.6.1 at 3.6, § 3.6.4 at 3.12, Table 3-5 at 3.12.

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vegetation removal, increased pollution inputs and additional armoring and simplification of stream channels to protect housing structures.<sup>41</sup>

The coho salmon in the Lagunitas Creek watershed is a designated “focus population” for the recovery of the CCC ESU.<sup>42</sup> Given the historical and future impacts from development within the Lagunitas Creek watershed, to stabilize and recover the endangered coho salmon the County must adopt a strategy of both minimizing and mitigating impacts from both future development and reducing current impacts from historical development as proposed by NMFS and referred to as “managed retreat.”<sup>43</sup> Unfortunately, the Draft SEIR fails to recognize or adopt both aspects of this strategy.

#### Water Quality [3-4]

The Draft SEIR states that “reported water temperatures in mainstem San Geronimo Creek and at least two of its major tributaries (i.e., Woodacre Creek, Montezuma Creek) have consistently been below the maximum thresholds for salmonids upper incipient lethal temperature (26.6°C, Brett 1952) and the critical thermal maxima (24.6°C; McGeer et al. 1991), although they have been observed to exceed optimal ranges for coho, steelhead, and Chinook salmon during summer low-flow periods (Stillwater Sciences 2009a).” (Draft SEIR at 3-15.) Notwithstanding the concern that summer water temperatures exceed optimal ranges for salmonids, the Draft SEIR does not address what effects additional development in the stream conservation area would have on water temperatures.

In the discussion of water quality conditions, it is important to emphasize that Lagunitas Creek, which includes San Geronimo Creek, is listed under Clean Water Act § 303(d) as an “impaired waterbody due to increases in the amount of fine sediment (primarily sand) that is being deposited in the streambed.”<sup>44</sup> Accordingly, a TMDL and load allocation has been established for Lagunitas

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<sup>41</sup> *Id.* § 3.6.10 at 3.19.

<sup>42</sup> *Id.*

<sup>43</sup> *See* Final Recovery Plan for Central California Coast coho salmon ESU (NMFS 2012); Coastal multispecies recovery plan Vol. IV, Central California Coast Steelhead (NMFS 2015).

<sup>44</sup> *See* Basin Plan Amendment (SFBRWQCB 2014b) ¶3; *See also* Lagunitas Creek Watershed Fine Sediment Reduction and Habitat Enhancement Plan Staff Report (SFBRWQCB 6-2014) at 14 (“Lagunitas Creek and its tributaries have a greatly diminished capacity to sort, store, and meter sediment because of floodplain disconnection and a significant reduction in large woody debris loading.”).

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Creek upstream of Devils Gulch that requires a 50% reduction in sediment delivery from all sources from the historical load period 1983 – 2008.<sup>45</sup> From this determination, it is evident that regarding fine sediment the water quality of San Geronimo Creek is significantly impaired, which must be considered as both an important part of the environmental baseline in analyzing the cumulative impacts from future development, and in considering the standards for adequate mitigation measures to address such impacts.

Regarding the impaired status of Tomales Bay for pathogens, and the presence of elevated levels of coliform bacteria and nitrate levels in the San Geronimo Creek and Woodacre Creek, a significant tributary, the Draft SEIR states “While high coliform levels are not expected to affect salmonids, excessive algal growth from high nutrient levels may decrease dissolved oxygen levels in the creek (Stillwater Sciences 2009a).” (Draft SEIR 3-15 – 3-16.) However, although the Draft SEIR states that high coliform and nitrate levels are “not expected” to affect salmonids, the presence of fecal coliform has been identified as a cause of the decrease in aquatic insect diversity and biomass in freshwater streams where fecal coliform bacteria exceed daily load standards according to section 303(d) of the Federal Clean Water Act.<sup>46</sup> Because aquatic invertebrates are a major food source for rearing salmonids and that the effects of invertebrate biomass and diversity are negatively impacted by coliform bacteria, the Draft SEIR fails to adequately address the impact of coliform bacteria on salmonids.

#### Basic Water Quality [3.1.2]

In the discussion of “water quality,” the Draft SEIR states that the analysis focuses on “water temperature and dissolved oxygen which the water quality parameters previously identified as most likely to limit salmonid populations in San Geronimo Creek and most likely to be affected by the Proposed Project.” Draft SEIR at 3-6 [emphasis added]. However, this focus excludes other parameters that can have a significant adverse effects on water quality and adversely limit salmonid populations, even if not the “most likely.” Such parameters include items that are commonly associated with increasing urbanization of rural areas, including

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<sup>45</sup> Basin Plan Amendment (SFBRWQCB 2014b) Exhibit A at 6.

<sup>46</sup> Sarai, D. S.; *Total and Fecal Coliform Bacteria in Some Aquatic and Other Insects*. Environmental Entomology (1976); 5 (2) at 365-367 available at <https://academic.oup.com/ee/article-abstract/5/2/365/2395804/Total-and-Fecal-Coliform-Bacteria-in-Some-Aquatic?redirectedFrom=PDF>.

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oil and other toxins from roadway runoff, pesticides and herbicides, and elevated nitrate levels from sewage which are currently documented in San Geronimo Creek and part of the water quality baseline (*See* Draft SEIR at 3-15). These additional stressors on water quality must also be considered in the water quality analysis of the effects from implementation of the 2007 CWP.

#### Riparian Zone [3.5]

The importance of the riparian zone to the preservation and recovery of salmonids is central to the cumulative effects analysis. Unfortunately, the Draft SEIR is deficient in its discussion and analysis of the current conditions and the effects from increased development in the riparian from the 2007 CWP, and the direct and indirect impacts on salmonids. These deficiencies are discussed below:

(1) In the discussion of vegetation coverage, the Draft SEIR states, “Data summarized by Ettlinger et al. (2013) from 1998, 2003, 2006, and 2011 indicate a decline in vegetation covering the stream banks (bank cover) from 1998 to 2006, followed by an increase from 2006 (53% bank cover) to 2011 (> 70% bank cover).” (Draft SEIR at 3-16.) Unfortunately, this data is only for the mainstem of San Geronimo Creek and provides no data on the majority of the stream length of San Geronimo Creek which occurs on the many tributary streams. In fact these tributaries provide 25-35% of annual spawning habitat for coho salmon. These tributary streams also provide the majority of current and future development parcels and thus are likely to have significantly less vegetation cover.

The San Geronimo Valley Existing Conditions report, which this data is derived, actually states, “General trends in dominant bank vegetation, percent of bank vegetated, percent total canopy, and percent deciduous and evergreen trees are apparent from 1998, 2003, and 2006 data, including a consistent dominance of deciduous trees and shrubs along the banks, and an overall decline in bank cover from 75% in 1998 to 53% in 2006 (Ettlinger 2008).”<sup>47</sup>

While the Draft SEIR suggests an improvement the original Existing Conditions Report suggests a decline, and even when the new data is considered through 2011 (“followed by an increase from 2006 (53% bank cover) to 2011 (> 70% bank cover)”) vegetation cover remains below the 75% level recorded in 1998.

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<sup>47</sup> San Geronimo Valley Salmon Enhancement Plan Existing Conditions (Stillwater Sciences Jan. 2009) § 3.6 at 3-26.

(2) In the discussion of vegetation coverage, the methodology of the referenced data further inaccurately portrays the overall amount and trend of coverage in the riparian zone. Draft SEIR at 3-16 – 3-17. Specifically, the data collected and summarize by Ettinger *et al.* and Stillwater Sciences indicating an increase in coverage in the two most recent surveys only measures the coverage over the stream, and does not account for the width of the forested zone, and is not a conclusive indicator of increasing riparian health. While shade is important, this is one only one function of riparian habitat that is critical to salmonid survival and recovery. This conclusion is buttressed by the noted lack of large DBH trees as a future supply of LWD, and by the contra-indicator of concentrated TIA within the riparian zone of San Geronimo Creek.

As stated in the San Geronimo Valley Salmon Enhancement Plan (2009):

A dense riparian forest strip adjacent to the stream that transitions to shrubs and herbaceous vegetation is a vital feature in most, but not all, riparian zones. Intact riparian zones provide filtration of sediment and other pollutants, streambank stabilization, shade for temperature regulation, shelter, and food sources for a range of fauna. Riparian zones also hold water in winter to recharge in-stream flows in summer months. Another important function of the riparian zone in salmon-bearing streams such as San Geronimo is delivery of both large and small downed wood. Large woody debris (LWD) is essential in these stream systems to create pools, trap coarse sediment, generate channel complexity, and provide shelter from high velocities and predators. Without significant amounts of LWD, channel beds become simplified and unstable, prone to incision. Small wood also provides intricate shelter components during summer low-flow conditions, and its incorporation into large-wood structures improves their functioning during high flow events.<sup>48</sup>

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<sup>48</sup> San Geronimo Valley Salmon Enhancement Plan (Feb. 9, 2010) at 4-102; *Id.* (“The **riparian zone** is an area adjacent to the streams that supports or has the potential to support plant and animal species adapted to living near water. The riparian zone provides important ecological services including filtration and storage of water, temperature control, wood production, and wildlife refugia habitat. It can encompass homes and other infrastructure. A **riparian corridor** is the linear extent of intact riparian habitat, often providing linkage between other distinct habitat patches. A **riparian buffer** is an undisturbed area immediately adjacent to a stream. Its purpose is to protect the stream from human land uses, and human infrastructure from erosion and flooding.”).

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The Plan further states, (Table 7) that the science-based goal is “100 feet or more, depending on location,” though it sets an unexplained “target” of 35 feet.<sup>49</sup> The mitigation measures proposed in the Draft SEIR fail to note how even the “target” goal of 35 feet will be met.

(3) The discussion of vegetation coverage fails to accurately describe and document the current conditions, specifically including the amount of vegetation destroyed by past development activities, disease (*e.g.* Sudden Oak Death Syndrome) and other causes and amount remaining, the levels of patchiness and continuous coverages with discussion of the impacts of these differences, and a discussion of the amount of coverage necessary to foster self-sustaining recruitment.

(4) The discussion of vegetation coverage also fails to accurately describe and analyze the effects of projected development from the 2007 CWP, including a projection of the types and extent of coverage loss from development within the SCA, a similar projection for loss from other activities outside of the SCA (*e.g.* increased run-off from expanded TIA), a similar projection for loss from fire protection activities, a similar projection for loss from disease (*e.g.* SODS) either caused or spread by development and for loss from removal of diseased vegetation for public safety reasons.

There is no doubt that an increase in TIA from increased development under the 2007 CWP and not mitigated by the Proposed Ordinance will adversely impact the riparian habitat and be detrimental to the survival and recovery of salmonids.<sup>50</sup> The Draft SEIR does indicate that TIA within 100 foot riparian zone already exceeds the 5% threshold in all reaches of San Geronimo Creek. (Draft SEIR at 3-18 (Fig. 3-4).) Yet, TIA only measures reduction of riparian vegetation replaced by impervious surfaces such as houses/roads/driveways, but fails to measure development impacts that would also include dirt roads, lawns, wooden decks, sheds not requiring permits, grassy parking areas and the general living areas surrounding homes. Since most parcels are small, the majority of riparian habitat has been removed from most parcels.

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<sup>49</sup> *Id.* at 4-104 (Table 7).

<sup>50</sup> Monoham (2013) (“In my opinion, the potential loss of habitat and increase in impervious area resulting from actions permitted by the draft ordinance are incompatible with the conservation objectives and will be detrimental to the long term survival of salmon within the watershed.”).

(5) The discussion further fails to consider the projected losses from inadequate regulatory protections for riparian zone vegetation in the face of increased development from the 2007 CWP, including the lack of a comprehensive tree ordinance and lack of a comprehensive vegetation ordinance.

(6) The discussion further fails to consider the direct and indirect impacts on salmonids from the effects of changes in riparian zone (*e.g.* decreased or loss of vegetation coverage, lack of source material for LWD), including impacts to food resources and changes in species composition. As summarized by Monoham (2013), “In my opinion, further development in areas that have a patchwork of riparian habitat due to development within the 100-ft buffer along streams (areas without contiguous riparian buffer strips) can lead to cumulative impacts that can decimate salmonid populations.”

(7) The discussion further fails to analyze the economic costs of decreased biological services from a functionally-impaired riparian zone, including decreased water quality.

#### Spawning Habitat [3.6.1]

The discussion of spawning habitat in San Geronimo Creek highlights the significant challenges of addressing and mitigating the significant adverse impacts from increased development forecast under the 2007 CWP. Draft SEIR at 3-19 – 3-22.) Of particular note is the current state of degraded spawning habitat that is “below targets” in much of San Geronimo Creek due to fine sedimentation and low dissolved oxygen levels. (Draft SEIR Table 3-1.) Significant impacts from red scouring are also noted. (Draft SEIR at 3-21.) These conditions highlight the challenges of mitigating additional impacts from implementation of the 2007 CWP.

Regarding barriers to fish passage, the discussion of existing barriers is incomplete and understates the actual number and extent of such barriers.<sup>51</sup> In addition, the statement “spawning activity in Woodacre Creek and other tributaries to San Geronimo Creek since the 2007-2008 spawning season has been negligible” is misleading if intended to unplay the importance of these historically important tributaries. Biological significance can only be determined over a statistically

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<sup>51</sup> See *e.g.*, San Geronimo Valley Salmon Enhancement Plan Existing Conditions (Stillwater Sciences Jan. 2009) § 3.9.1.1 at 3-54 – 3-55.

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significant period, as may be suggested by the recent reversal in the “negligible” spawning activity in these tributaries.

The discussion of available large DBH trees in lower Montezuma Creek as the source of future LWD highlights the importance of mitigation measures that address protection of large DBH trees to preserve and maintain quality riparian habitat. (Draft SEIR at 3-27.)

### **Analysis of Significant Impacts [5.1 – 5.2]**

As noted in the Draft SEIR’s discussion of “Significance Criteria” [4.1], “cumulatively considerable” means that the incremental effects of the of proposed project when viewed in connection with the effects of past projects, the effects of other current projects and the effects of probably future projects. While the Draft SEIR notes that its analysis of significance complies with the Guidelines and the Court of Appeal Order, the analysis is limited to the evaluation of the cumulative effects from the adoption and implementation of the 2007 CWP in the San Geronimo Valley. Draft SEIR at 4-1.

However, notably absent from either the description of the San Geronimo Valley environment and potentially affected resources, or the future development projected to result from implementation of the 2007 CWP, is consideration of “other current projects and the effects of probably future projects.” No list of “past, present and probably future projects” is provided in the Draft SEIR to inform the cumulative impacts analysis as required under the Guidelines.<sup>52</sup> One example of a known current project that is in the CEQA planning stage is the proposal for a Woodacre – San Geronimo Wastewater Recycling facility, for which the County commissioned a Draft Project Report prepared for the County dated March 2017.<sup>53</sup> This facility, which will potentially be located within the SCA of San Geronimo Creek, is currently proceeding to the draft EIR stage of

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<sup>52</sup> Guidelines § 15130(b) (“The following elements are necessary to an adequate discussion of significant cumulative impacts: (1) Either: (A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or (B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect. (. . .)”).

<sup>53</sup> Draft Project Report Woodacre – San Geronimo Wastewater Recycling Study (Questa Engineering Corporation Mar. 2017), *available at* [www.marincounty.org/~media/files/departments/cd/ehs/wasg/wasg\\_projectreport\\_draft030217.pdf?la=en](http://www.marincounty.org/~media/files/departments/cd/ehs/wasg/wasg_projectreport_draft030217.pdf?la=en).

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environmental review under CEQA, and raises significant issues regarding potential impacts to San Geronimo Creek.<sup>54</sup> A second example of the failure to consider the impacts of other current and probably future projects is omission of the proposed development under the Spirit Rock Meditation Center – Master Plan Amendment (Sept. 2010), which was approved by the Marin County Board of Supervisors on July 19, 2011.<sup>55</sup> The failure to include the potential impacts of this and other current and likely future projects in the planning and proposed project stages and lack of analysis as part of the cumulative impacts discussion renders the Draft SEIR deficient under applicable CEQA Guidelines.<sup>56</sup>

In addition to the deficiencies discussed above, the approach to impact analysis states that the “predictions of impacts are of necessity qualitative and conservative (i.e. potentially overestimated) except where quantitative information is readily available” and that adverse impacts can result from conditions that are not a “direct consequence” of the 2007 CWP. Draft SEIR at 5-2. These limitations on the validity of the cumulative impacts analysis, without greater explanation as to their application (*e.g.* all qualitative cumulative effect or just specific effects), or providing a confidence range for effects, undermines the integrity of the impacts analysis. If “overestimation” is being used to reduce uncertainty as to any or all effects, then it should be noted that such use of the precautionary principal is commonly considered appropriate, and often mandated, when dealing with potential effects to ESA-listed species.

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<sup>54</sup> See *e.g.* SFBRWQCB (2017) at 3 (“Location of pressurized collection system and treatment system: The systems are located close to the creek in many locations. This leads to higher risk of impact to the creek if there is a failure in the system.”); *Id.* at 3 – 4 (“Preventing the discharge of treated wastewater to the tributaries and creek is essential to protect the health of endangered and threatened aquatic species and creek water quality. In addition to the previously mentioned endangered and threatened coho, steelhead and Freshwater shrimp, California red-legged frog may also be present on the golf course property. The EIR should evaluate and identify measures that will prevent discharge of treated wastewater to the creek and its tributary channels, including golf course drainage channels.”).

<sup>55</sup> See Community Development Agency, County of Marin, Spirit Rock Meditation Center Master Plan Amendment, *available at* <https://www.marincounty.org/depts/cd/divisions/environmental-review/archived-eir-projects/spirit-rock>.

<sup>56</sup> See; Guidelines § 15130(b); § 15064(h)(1); § 15065(a)(3).

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Also with regard to the impacts analysis, the Draft SEIR states that “because incremental changes in the salmonid populations that utilize San Geronimo Creek during their freshwater life states may not be discernable at the scale of the population (e.g., coho salmon in the Lagunitas Creek watershed) or ESU (e.g., Central California Coast coho salmon” that the analysis will, in essence, disregard such population changes in its analysis of incremental effects. Draft SEIR at 5-2. While focusing the effects analysis on those biological features, functions and processes that impact the life cycle stages of salmonids, the purported inability to note “discernable” changes in populations from incremental changes is insufficient basis to ignore decades of data reflecting trends in population abundance at least at the watershed level where populations are most likely to be directly impacted. Such data is the clearest evidence available that documents the adverse effect on salmonid populations from the effects of development, and failing to factor it into the analysis of continued and increased development on the populations is a clear failure to use readily available and relevant scientific information and data.

As described above, the Draft SEIR provides an incomplete and flawed analysis of potential and cumulative impacts from prospective development allowed under the 2007 CWP, and the analysis of the significance of such impacts is incomplete and fails to comply with CEQA.<sup>57</sup>

### **Proposed Measures to Mitigate Significant Impacts**

As mandated by the Court of Appeal and the Writ, in the Draft SEIR the County must provide a description of mitigation measures relevant to salmonids in the San Geronimo Valley in conformity with Guidelines § 15126.4 and the Court of Appeal opinion. Draft SEIR at vii. Guidelines § 15126.4(a)(1)(B) specifically requires that the discussion of mitigation measures shall identify measures for each significant environmental effect identified in the Draft SEIR.

As described below, the mandatory mitigation measures described in the Draft SEIR are inadequate to satisfy the Court of Appeal’s order and the requirements of CEQA.<sup>58</sup> As such, the Draft SEIR fails to remedy the inadequacies of the 2007 CWP Final EIR<sup>59</sup> to provide the kind of specific, concrete, and

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<sup>57</sup> See Guidelines § 15064(d), §15064(h)(1).

<sup>58</sup> See Guidelines § 15126.4(a).

<sup>59</sup> See Marin Countywide Plan Update Final Environmental Impact Report (Nov. 2007) § 4.6.1, 4.6-30 – 4.6-35.

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enforceable mitigation measures necessary to reduce the impacts of significant impacts identified in the Draft SEIR and as described in these Comments.<sup>60</sup>

Accordingly, based on the information and analysis provided in the Draft SEIR, it is not possible to reach a conclusion that the significant impacts identified in the Draft SEIR will be mitigated to “less than significant” for the reasons discussed below.<sup>61</sup>

Expanded SCA Ordinance [5.1-1, 5.2-1]

As the principal measure to mitigate the significant impacts of additional development allowable under the 2007 CWP on winter rearing habitat [5.1-1] and spawning habitat [5.2-1], the Draft SEIR proposes adoption of an “Expanded SCA Ordinance consistent with Goal BIO-4 and associated implementing programs under the Proposed Project.” (Draft SEIR at 5-12, 5-19.) The Draft SEIR’s reliance on the Proposed Ordinance” fails to satisfy CEQA’s requirements for an adequate measure to mitigate significant impacts in a variety of ways, including vagueness, lack of enforceability, the lack of any deadline or timeline for formulation and adoption of the Ordinance, and the lack of any discussion tying specific proposed mitigation provisions to measurable performance standards.<sup>62</sup> Each of these shortcomings is discussed below.

(1) Vagueness. Although vaguely described in the Draft SEIR, no draft of the Proposed Ordinance or sufficient detail regarding its provisions is provided upon which to base any meaningful analysis of its effectiveness to address each of the significant impacts from additional development allowable under the 2007 CWP that the County asserts will be mitigated with enactment of the Proposed Ordinance. The Draft SEIR’s reliance on the unformulated and unanalyzed

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<sup>60</sup> SPAWN v. Cty. of Marin, 2014 WL 845416 at \*9 (“Mitigation Measure 4.6–1 simply defers the formulation of meaningful mitigation measures to abate this significant impact and fails to comply with the mandates of CEQA.”).

<sup>61</sup> *See* Monoham (2017).

<sup>62</sup> Monoham (2017) (“The Draft SEIR relies on mitigating those significant impacts that it does identify and analyze to “less than significant” primarily through an Expanded Stream Conservation Area (SCA) Ordinance, which is only vaguely described by reference to broadly stated goals and a general description of provisions that are not tied to any specific standards necessary to address and mitigate specific significant impacts.”).

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Ordinance as a measure to mitigate the significant impacts from additional development renders the Draft SEIR inadequate under CEQA.<sup>63</sup>

The Draft SEIR is also misleading in its description of the Proposed Ordinance by reference to Goal BIO-4 *Riparian Conservation* but excluding key provisions in Goal BIO-4 that would affect the Proposed Ordinance's efficacy to address and mitigate the significant impacts. (See Draft SEIR at 2-4 – 2-5, 5-12.) Specifically, Goal BIO-4 provides for exceptions to its application to development within the SCA, including by-right “modest additions” up to 500 sq.ft. that meet certain conditions,<sup>64</sup> which would allow the average existing single family residence to increase its existing footprint by over 40%.<sup>65</sup> Such a broad exception could result in development of over 500,000 sq.ft. of riparian habitat.<sup>67</sup> Other notable exceptions to the Proposed Ordinance coverage include exemption of almost 80% of potential development parcels in conventionally-zoned districts that would impact the SCA which would require the County to “enact consistent permit and site assessment requirements for development in planned zoning districts and conventional zoning districts. (Draft SEIR at 5-12.) The Draft SCA fails to identify

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<sup>63</sup> *Pres. Wild Santee v. City of Santee*, 210 Cal. App. 4th 260, 281, 148 Cal. Rptr. 3d 310, 325 (2012) (“An EIR is inadequate if ‘[t]he success or failure of mitigation efforts ... may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.’ ” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92, 108 Cal.Rptr.3d 478, quoting *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670, 57 Cal.Rptr.3d 663.)).

<sup>64</sup> BIO-4.a states: “Adopt Expanded SCA Ordinance. Adopt a new SCA ordinance that would implement the SCA standards for parcels traversed by or adjacent to a mapped anadromous fish stream and tributary. Such an ordinance could, by way of example, require compliance with the incorporation of best management practices into the proposed project and could consider modest additions to existing buildings that would not result in significant impact to riparian resources, such as additions that do not exceed 500 square feet of total floor area and that do not increase the existing horizontal encroachment into the SCA, provided a site assessment first confirms the absence of adverse impacts to riparian habitats. As part of the new ordinance, consider including additional incentives, such as reduced fees or other similar incentives, to reduce the extent of existing development within an SCA or improve conditions that may be impacting sensitive resources.”

<sup>65</sup> See Draft SEIR § 2.6.1 Table 2-4 at 2-29.

<sup>67</sup> See Note 28, *above*. Using data provided in the Draft SEIR, approximately 370,000 sq.ft. could be added to improved parcels located wholly or partially within the San Geronimo SCA. See Draft SEIR Table 2-11 at 2-38 (741 parcels X 500 sq.ft. = 370,550 sq.ft.).

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these and any other possible exceptions to the Ordinance or discuss the effects of these exceptions to the Ordinance's effectiveness to mitigate Impact 5.1 and 5.2.

(2) Performance Standards. Guidelines § 15126(a)(1)(B) provide that “mitigation measures should not be deferred until some future time.” An EIR is deficient under CEQA if it relies on an undeveloped and unapproved mitigation measure that is not subject to analysis and review in the EIR.<sup>68</sup> However, under certain circumstances, mitigation measures may be subject to future development and analysis; specifically, if mitigation is “feasible but impractical” at the time of a general plan amendment, then if the EIR articulates “specific performance criteria” and makes further approvals contingent on meeting such criteria.<sup>69</sup>

The Draft SEIR relies upon the adoption of the Proposed Ordinance as the principal mitigation measure to address significant impacts to salmonid habitat. (Draft SEIR at 5-12, 5-19.) The Proposed Ordinance has not been formulated, and it has not been analyzed or reviewed in the Draft SEIR. Further, the County has not asserted that it is impracticable to develop the Proposed Ordinance. However, even if the formulation of the Ordinance is not practicable at the time the Draft SEIR was prepared, the Draft SEIR is deficient in that it fails to provide adequate “performance standards” for the Proposed Ordinance to satisfy if and when it is formulated.

As noted, the Draft SEIR describes the proposed Ordinance to be “consistent with” Goal BIO-4 and implementing programs. (Draft SEIR at 5-12.) However, neither BIO-4.a nor the general description provided in BIO-4.1 [*See* Table 2.1 at 2-8] provides insufficient performance standards by which to measure the effectiveness of the Ordinance, or to provide adequate criteria upon which to base

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<sup>68</sup> Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 92, 108 Cal.Rptr.3d 478, quoting San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 670, 57 Cal.Rptr.3d 663 (“An EIR is inadequate if ‘[t]he success or failure of mitigation efforts ... may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.’”).

<sup>69</sup> Endangered Habitats League Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 793, 32 Cal.Rptr.3d 177 (“If mitigation is feasible but impractical at the time of a general plan or zoning amendment, it is sufficient to articulate specific performance criteria and make further approvals contingent on finding a way to meet them.’ [Citation.]”); Guidelines § 15126(a)(1)(B) (“[M]easures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way.”).

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the future development of the Ordinance as an effective mitigation measure.<sup>71</sup> For example, “Development shall be set back to protect the stream and provide and [sic] upland buffer, which is important to protect the significant resources that may be present and provides a transitional zone.” does not provide any measurable performance standard criteria. Nor do the implementing programs provide more than a series of steps to implement the provisions of the Ordinance *after adoption*.

The lack of performance standards in Goal BIO-4 is not remedied by the generalized and conflicting additional “provisions” discussed in the Draft SEIR. For example, “Expand the set of development activities that require a permit and site assessment to include any activity that requires vegetation clearing, increases impermeable area, alters surface runoff, or results in exposed soil.” (Draft SEIR at 5-12.) This broadly-stated provision encompasses a range of activities that are contemplated as possible exceptions under Goal BIO-4.a, and likely includes activities that are in conflict with activities required under other County rules and ordinances, such as the clearing of brush adjacent to structures for fire mitigation. In the same vein, the requirement for Standard Management Practices to be incorporated into all projects lacks specificity as to the scope of such practices and standards to be met to “ensure that the SMPs are adequate to avoid or minimize impacts to salmonids.” (*Id.*)

In addition, the Proposed Ordinance fails to provide any performance standard necessary to comply with the “no net loss” standard for sensitive habitat under Goal BIO-2.1 of the 2007 CWP.<sup>72</sup> Although Goal BIO-2.1 provides that the “no net loss” standard of “sensitive habitat acreage, values and function” will be achieved, in part, by the adoption of an SCA ordinance, the qualitative description of the Proposed Ordinance in the Draft SEIR adds nothing to Goal BIO-4 in providing a performance standard to achieve this standard.

(3) Proposed Ordinance Enforcement. As noted previously, unpermitted or unauthorized development is a known problem in the San Geronimo Valley, as is the lack of enforcement of building and development permit programs and

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<sup>71</sup> See also 2007 CWP at 2.4-30 – 2.4-33.

<sup>72</sup> 2007 CWP at 2.4-13 (“Require adequate mitigation measures for ensuring the protection of any sensitive resources and achieving “no net loss” of sensitive habitat acreage, values, and function.”).

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ordinances.<sup>73</sup> In addition to failing to address the problem of unpermitted development under existing programs and ordinances, , the Draft SEIR is silent as to the importance of robust and effective enforcement of the Proposed Ordinance to be an effective mitigation measure for Impacts 5.1 and 5.2, and fails to offer any plan for the effective enforcement of its provisions. The Draft SEIR also does not offer any analysis of the Proposed Ordinance’s effectiveness as a mitigation measure if it is not fully enforced and the resulting effect on cumulative impacts. Given the past history of lax enforcement of County regulations regarding building and development in the San Geronimo Valley, the complete failure to acknowledge this problem and its effect on the Draft SEIR’s analysis renders it deficient as a mitigation measure.

(4) Enforceability of Mitigation Measure. Guidelines § 15126.4(a)(2) provides that, in the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design. However, although reliance on the Proposed Ordinance to provide mitigation is provided for in CEQA, the Draft SEIR fails to provide the required that the Ordinance will be enacted.

First, the Draft SEIR does not provide a deadline or even a timeline for the adoption of the Proposed Ordinance and implementation of its provisions to mitigate the significant impacts from future development under the 2007 CWP. A deadline or timeline is required when future mitigation depends on the adoption of a plan, policy or regulation that will contain specific mitigation measures.<sup>74</sup>

Second, the Draft SEIR fails to specify a monitoring program for the Proposed Ordinance that incorporated as a mitigation measure for the significant impacts from future development under the 2007 CWP.<sup>75</sup> The purpose of the

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<sup>73</sup> See Final Recovery Plan for Central California Coast coho salmon ESU (NMFS 2012) Recovery Action ID LagC-CCC 22.2 (“Enforce existing building permit programs to minimize unpermitted construction.”).

<sup>74</sup> See Sierra Club v. Cty. of San Diego, 231 Cal. App. 4th 1152, 1169, 180 Cal. Rptr. 3d 154, 168 (2014).

<sup>75</sup> Cal. Pub. Res. Code § 21081.6(a)(1); Sierra Club v. Cty. of San Diego, 231 Cal. App. 4th 1152, 1165, 180 Cal. Rptr. 3d 154, 164–65 (2014) (“If the agency finds that mitigation measures have been incorporated into the project to mitigate or avoid a project's significant effects, a ‘public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the

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monitoring requirements is to ensure that mitigation measures will be actually implemented and not merely adopted and then disregarded.<sup>76</sup>

Finally, the Draft SEIR fails to specify that implementation of the 2007 CWP is conditioned upon the enactment and implementation of the Proposed Ordinance. However, the County cannot implement the 2007 CWP prior to adopting the Proposed Ordinance to mitigate its significant effects.<sup>77</sup>

As demonstrated by the ongoing litigation between Turtle Island/SPAWN and the County, the Peremptory Writ of Mandate process is inadequate to enforce the requirements of CEQA on the County. The over two-year passage of time from issuance of the Writ and the County's release of the Draft SEIR evidences the County's ability to delay and forestall compliance with the CEQA process, and the lack of meaningful options to compel its compliance. The County's actions to date provide no assurance that the development and adoption of the Proposed Ordinance would proceed in a timely manner, effectively making the proposed mitigation unenforceable.

#### Winter Enhancement Projects [5.1-2]

To further mitigate the significant impact of additional development allowable under the 2007 CWP on coho winter rearing success by mitigating adverse impacts to salmonid habitat, the Draft SEIR provides that the County will provide funding to third parties to facilitate "small enhancement projects on private property" to achieve "targets" set forth in the Salmon Enhancement Plan and Table 3.2 in the Draft SEIR, that are also consistent with four specific "goals" from such Plan. (Draft SEIR at 5-13.). The Draft SIR's reliance on the facilitation of habitat enhancement projects on private property fails to satisfy CEQA's requirements for an adequate measure to mitigate significant impacts in a variety of ways as follows:

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environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation.' (*Pub. Resources Code, § 21081.6, subd. (a)(1).*)").

<sup>76</sup> *Lincoln Place Tenants Ass'n v. City of Los Angeles*, 155 Cal. App. 4th 425, 446, 66 Cal. Rptr. 3d 120, 134 (2007), as modified on denial of reh'g (Oct. 10, 2007).

<sup>77</sup> *Sierra Club v. Cty. of San Diego*, 231 Cal. App. 4th at 1167, 180 Cal. Rptr. 3d 166 ("Once incorporated, mitigation measures cannot be defeated by ignoring them or by 'attempting to render them meaningless by moving ahead with the project in spite of them.'" citing *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th at 450, 66 Cal.Rptr.3d 120).

(1) There are no enforceable targets or standards in the measure as to the amount or timing of the funding to facilitate the enhancement projects, nor is there any deadline or timeline for the implementation of such projects.

(2) The Draft SEIR fails to specify a monitoring program for this mitigation measure to ensure its implementation.

(3) The potential effectiveness of the proposed enhancement projects is limited by vague restrictions to “small projects” on private property.

(4) Although the mitigation measure references some qualitative and quantitative goals and targets, such goals and targets describe the desired conditions relative to the existing baseline conditions, and do not describe specific measures designed to address the significant impacts from future development allowed under the 2007 CWP or provide performance standards for such measures.

(5) The Draft SEIR fails to address if and how these enhancements will be maintained, preserved and not reversed when private properties are sold to new owners.

#### Control and Reduction of Fine Sediment Delivery [5.2-1]

To mitigate the significant impacts from the delivery of fine sediment to streams, the Draft SEIR states that “the Expanded SCA Ordinance described under Mitigation Measure 5.1-1 shall avoid or minimize the hydrologic effects and stream sedimentation associated with additional development in the watershed (. . .).” (Draft SEIR at 5-19.) The Draft SEIR goes on to state that, “Marin County DPW shall continue to develop and implement measures and guidelines to control and reduce production and delivery of fine sediment to streams and minimize its effects on redd scour and other components of salmonid habitat, in keeping with the requirements of the Basin Plan Amendment (SFBRWQCB 2014b).” (*Id.*) However, even though the Basin Plan Amendment describes certain actions and guidelines, this mitigation measure is inadequate to address the significant impact of fine sediment deliveries as follows:

(1) The Proposed Ordinance fails to satisfy the requirements for a mitigation measure required by CEQA as discussed above.

(2) The Draft SEIR relies on actions and guidelines described in the Basin Plan Amendment; however, no analysis or explanation is provided that the targets and actions outlined in such document are adequate to achieve mitigation of impacts from future development under the 2007 CWP. Rather, the targets and

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actions described in the Amendment are necessary to achieve reduction from historical mean annual sediment deliveries to targeted TMDLs, and does not provide measures to address impacts from future development. For example, regarding sediment delivery from roads the Plan Amendment requires a 50% reduction from the 1983 – 2008 historical delivery level to achieve the targeted load allocation.<sup>79</sup> The required reduction does not address what further reductions will be required to address sediment deliveries from new or expanded roads that will result from additional development allowable under the 2007 CWP.

(3) The referenced standard of “≤350 cubic yards per mile per 20-year period” is too long-range to provide a meaningful performance standard for mitigation and fails to provide measurable interim goals necessary to address the impacts of likely development during such period under the 2007 CWP and as described in these Comments.

(4) The proposed mitigation measure relying on the Basin Plan Amendment lacks time parameters for implementation. Even though developing a “Report of Waste Discharge” by 2019 is provided in the Plan Amendment, such report is inadequate as a mitigation measure by failing to provide the interim objectives and measures necessary for adequate performance standards. Reliance on a future report for implementation fails to provide a mitigation measure that addresses the impacts from cumulative future development allowed under the 2007 CWP.

(5) The Draft SEIR fails to specify a monitoring program to ensure implementation of this mitigation measure.

#### Stream Habitat Enhancement Projects [5.2-2]

The Draft SEIR provides as a mitigation measure for “projects to enhance stream habitat complexity and connectivity, enhance riparian function and LWD loading/recruitment, increase natural hydraulic sediment sorting and gravel retention, and reduce development-related erosion in the watershed.” (Draft SEIR at 5-20.) This mitigation measure is inadequate in a variety aspects vague, lacks performance standards, is not enforceable in failing to identify the parties responsible for implementation, the nature of the projects intended to achieve the stated mitigation of identified significant impacts, and the fails to specify a monitoring program to ensure implementation of this mitigation measure. Further, the proposed mitigation is contingent upon the approval of projects by the

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<sup>79</sup> See Basin Plan Amendment (SFBRWQCB 2014b) Table 3a at 6.

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SFBRWQCB as being compatible with the Basin Plan Amendment, and relies on the development of future studies and plans for the mitigation to proceed.

Degraded Summer Habitat Conditions [5.3-1, 5.3-2]

The Draft SEIR asserts “While the Proposed Project is not capable of fully avoiding or eliminating impacts to hydrology, sediment delivery, and instream habitat complexity associated with future development, planned development impacts are not expected to contribute considerably to the existing degradation of salmonid summer rearing habitat or measurably reduce coho salmon and steelhead summer rearing success in the watershed.” (Draft SEIR at 5-25.) Based on such assertion, the Draft SEIR concludes that “the Proposed Project would have a **less than significant cumulative impact** on summer rearing success by juvenile coho salmon (. . .).” [emphasis in original]. (*Id.*)

However, the assertion that the impacts of development allowable under the 2007 CWP are “not expected” to degrade the existing impaired Summer habitat conditions—an assertion that is wholly lacking adequate scientific support and runs counter to the preceding discussion of degraded Summer habitat conditions and adverse impacts on salmonids rearing success and survival—the conclusion ignores the principal that incremental impacts, even if individually minor, can be “significant” in the cumulative effects analysis of impacts from all other past, current and projects.”<sup>80</sup> Viewed in this light, the Draft SEIR’s conclusion of “less than significant cumulative impact” on Summer rearing coho salmon is flawed and deficient. As such, the “voluntary mitigation measures” set forth in the Draft SEIR fail are inadequate to satisfy the requirements under CEQA for enforceable mitigation measures to minimize significant impacts.<sup>81</sup>

**Proposed Actions and Conclusion**

Although the Draft SEIR does an adequate job of discussing a number of the threats to coho salmon and steelhead trout survival and recovery (subject to some important omissions as discussed in these Comments), it falls short in its analysis of the impacts from additional development allowable under the 2007 CWP and its failure to explain how the proposed mitigations will reduce these impacts to “less than significance.” The Draft SEIR highlights the critical importance of mitigation

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<sup>80</sup> *Los Angeles Unified Sch. Dist. v. City of Los Angeles*, 58 Cal. App. 4th 1019, 1024–25, 68 Cal. Rptr. 2d 367, 370 (1997).

<sup>81</sup> Guidelines § 15126.4(a)(2).

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to address the most damaging impacts from urbanization and the “irreversibility of these effects” on impairment of watershed processes and stress on rearing juvenile salmonids. (Draft SEIR at 3-9.)

However, the Proposed Ordinance and other measures described in the Draft SEIR to mitigate the significant impacts for the increase in development allowed under the 2007 CWP are largely vague and aspirational, and fail to provide measurable standards to evaluate if they will be effective to mitigate such significant impacts. The Draft SEIR relies on an amorphous process with no schedule or deadlines for the development and adoption of the Proposed Ordinance which, like the other mitigation measures, lack monitoring programs to ensure implementation. As a result, if the Draft SEIR were to be finalized and certified in its current form, development under the 2007 CWP in the San Geronimo Valley would proceed without the existence of enforceable mitigation measures as required under the CEQA.

In addition to informing decision-making, the CEQA must be interpreted “to afford the fullest *possible* protection to the environment.”<sup>82</sup> Given the crucial role of the Proposed Ordinance and other mitigation measures to the protection of federally and state-protected salmonid species and their habit, and to provide regulatory certainty to all stakeholders in the San Geronimo Valley, it is imperative that the preparation and adoption of the Proposed Ordinance must take place concurrently with—not after—the finalization and certification of the Draft SEIR. There is simply no basis to argue that the CEQA process for the 2007 CWP can be completed without the finalization of the Proposed Ordinance. Turtle Island/SPAWN is ready to participate as one of the stakeholder parties in the process necessary to complete this last step of the CEQA process.

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<sup>82</sup> Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 259, 104 Cal.Rptr. 761, 502 P.2d 1049.

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Turtle Island/SPAWN looks forward to the County's due consideration of, and responses to, these comments within the requirements of CEQA.<sup>83</sup>

Respectfully submitted,



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<sup>83</sup> Guidelines § 15088(a), (c).

List of Additional References  
Scoping Comments to Draft SEIR

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