Via Verdi Slope Stabilization Project – CEQA IS/MND

Response to Comments

In accordance with CEQA Guidelines Section 15073, the Via Verdi Slope Stabilization Project Initial Study/ Mitigated Negative Declaration (IS/MND) was circulated for review for 30 days beginning on October 28, 2019 and ending on November 26, 2019. Within the 30-day comment period, three agencies provided comment to the City of Richmond. One comment letter was received after the closing of the comment period and although not required by CEQA (State CEQA Guidelines § 15073 and PRC § 21091), responses are provided. No comments from individuals of the public were received. Copies of each of the four agency comments are included (**Attachment 1**). Responses to each comment are provided in the order which they were received, following each summarized comment:

Comment 1. Contra Costa Mosquito & Vector Control District (CCMVCD), received 11/7/2019: *Potential impacts to human health by disease vectors is not properly addressed under CEQA – an oversight that has created problems for mosquito abatement and vector control agencies throughout California. The analysis for a project should consider evidence of potential environmental impacts, even if such impacts are not specifically addressed on the Appendix G checklist. To determine whether Public Health & Safety may be significantly impacted, lead agencies should refer to the California Health and Safety Code section 2000-2093 for definitions and liabilities associated with the creation of habitat conducive to vector production and to guidance provided by local mosquito and vector control districts/agencies in their determination of environmental impacts. Would the project:*

a. *Increase the potential exposure of the public to disease vectors (e.g., mosquitos, ticks, flies, and rats)?*
b. *Increase potential mosquito/vector breeding habitat (i.e., areas of prolonged standing/ponded water like wetlands or stormwater treatment control BMPs and LID features)?*

Response 1a, 1b: Construction of a culvert within San Pablo Creek would not create habitat conducive to disease vectors, as the intent of the culvert is to convey flowing water within the creek as to not cause ponding or capture of debris and trash which would attract vectors. Additionally, implementation of the proposed mitigation plan, the *Rheem Creek Restoration Planting Plan*, would improve water flows within Rheem Creek by removing overgrowth of invasive species, allowing for better conveyance of

water through the area. Trash and/or debris that may attract vectors would also be removed, resulting in a beneficial effect to vector control.

The project does not include permanent stormwater features that would increase potential breeding habitat for vectors, such as construction of a basin or water retention area, or creation of wetlands; therefore, the project is not anticipated to increase the potential exposure of the public to disease vectors.

Comment 2. East Bay Municipal Utility District (EBMUD), received 11/25/2019: *EBMUD owns and operates distribution pipelines in the public ROW of Via Verdi, which provides continuous service to EBMUD customers in the area. The integrity of these pipelines needs to be maintained at all times. Please coordinate the relocation of existing distribution pipelines with Dustin La Vallee, Associate Civil Engineer, Distribution System Engineering and Corrosion Control Section at (510) 287-1152.*

Response 2: The City of Richmond has coordinated with EBMUD for the temporary relocation of their facilities into the Emergency Access Road right-of-way (ROW) alignment. The City has participated in ongoing coordination with EBMUD to restore their facilities back into the Via Verdi Roadway after the stabilization project is completed. The stabilization of the landslide will protect their facilities from potential future damage associated with continued landslide movement.

Comment 3. Contra Costa County Flood Control District (CCCFCD), received 11/26/2019: *We received notice that the City plans to adopt a Mitigated Negative Declaration (MND) for the Via Verdi Slope Stabilization project. As mitigation for the culvert and stabilization project on San Pablo Creek, the city is planning a creek restoration project on Rheem Creek near Mills Avenue and Shane Drive. We have the following comments related to the MND:*

a. *To mitigate any construction impacts related to the water diversion system, the contractor shall obtain a Contra Costa County Drainage 1010 permit for the portion of the water diversion system that may impact San Pablo Creek in unincorporated county.*

Response 3a: Understood. The requirement for the contractor to obtain a County Drainage 1010 permit will be included in the project construction documents.

b. *The Rheem Creek restoration project could affect the unincorporated community of Rollingwood; therefore, Contra Costa County Flood Control District should be included in the review of the restoration plans.*

Response 3b: The proposed conceptual Rheem Creek Restoration Planting Plan (mitigation plan) was provided to the Contra Costa County Flood Control District by the City of Richmond via email on November 27, 2019 after the information was requested by Aleki Mao, Staff Engineer. No additional comments from the County regarding the proposed mitigation plan have been received.

c. *If new trees are proposed for the Rheem Creek restoration project, we recommend that the City consider an operations and maintenance plan, along with maintenance funding, for the proposed trees.*

Response 3c: Ongoing discussions with agencies are occurring to select a mitigation site. Rheem Creek is still under consideration. If chosen, new trees are proposed for the Rheem Creek Restoration Planting Plan. If implemented, supplemental irrigation would be installed to ensure successful establishment. The City has coordinated with the Contra Costa College to assist with operations and maintenance activities of the Rheem Creek mitigation site. Should additional operations and maintenance efforts be required, the City will coordinate to ensure successful implementation of the mitigation plan. The mitigation plan, if approved by the regulatory permitting agencies, would likely have requirements for tree planting success criteria as well as requirements for operations and maintenance.

Comment 4: SF Bay Regional Water Quality Control Board (SFBRWQCB), received 12/2/2019 (Letter received after close of comments period):

a) *We do not agree with the conclusion of the IS/MND, which is stated to be that the installation of a concrete box culvert within San Pablo Creek, backfilled with engineered fill to buttress the landslide, is necessary to reconstruct the roadway damaged in 2017. We also do not agree that the project, as proposed and with the identified mitigation measures, would not have a significant impact on the environment. The project, as proposed, would permanently place fill within a minimum of 350 linear feet of San Pablo Creek. This would result in the loss of 1.35 acres of stream and riparian habitat and extend the existing culvert beneath Via Verdi that will further aggravate fish passage through the reach. As noted in the IS/MND, a Clean Water Act 401-water quality certification is required for the implementation of the project. Demonstration that adverse impacts to San Pablo Creek have been avoided and minimized to the maximum extent practicable is necessary to obtain such certification, and adequate compensatory mitigation for those impacts determined to be unavoidable will be necessary. As discussed in recent correspondence with the City, it has not been demonstrated that other less damaging alternatives are not available to address the earth movement beneath Via Verdi. Further, should the culvert be demonstrated to be*

necessary, the proposed enhancement work along Rheem Creek would not provide adequate compensatory mitigation to offset the permanent impacts to San Pablo Creek.

Response 4a: Please refer to **Attachment 2** for a results summary of the peer reviewed analysis of the alternatives and their feasibility conducted by Cal Engineering & Geology, previously provided to the San Francisco Bay Regional Water Quality Control Board (SFBRWQCB) on February 3, 2020.

Whereas CDFW and SFBRWQCB have agreed with the City's determination that there are no other feasible alternatives to the proposed project, the City will work with California Department of Fish and Wildlife (CDFW) and SFBRWQCB to develop a mitigation plan that incorporates mitigation to offset proposed impacts to San Pablo Creek. CDFW and SFBRWQCB are in agreement that an implemented mitigation plan will provide adequate compensatory mitigation to offset the permanent impacts to San Pablo Creek. Mitigation discussions are ongoing and progressing towards restoring fish passage, riparian habitat, and upland habitat within a portion of a larger watershed in the Bay area. The City retains implementation of this agreed upon mitigation and will ensure potentially significant impacts are adequately mitigated. For purposes of CEQA, the City maintains its determination that there is substantial evidence in the record to support the conclusion that the proposed mitigation will ensure that the proposed project will not substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal. CDFW and the SFBRWQCB have agreed to the Alternatives Analysis that no other feasible alternatives exist.

b) *Section 4.4, Biological Resources, Page 48: In the Answers to Checklist Questions, Item a), the IS/MND states that the project is expected to have no effect on Central California Coast Steelhead (Oncorhynchus mykiss). This is largely based on a phone conversation with Gary Stern at National Marine Fisheries Service on May 9, 2011, which indicated limited concern due to existing obstructions to the historical spawning habitat in San Pablo Creek, including the San Pablo dam. This consultation with NMFS appears to have occurred during planning for the replacement of the culvert located immediately downstream of this proposed project and should be updated for this project. To our knowledge it has not been demonstrated that spawning habitat is unavailable below the San Pablo Dam, in the event that steelhead were to be present in the stream, so the no-effect determination does not seem to be well substantiated.*

Response 4b: NCE biologist Mack Casterman has conducted follow up consultation with the NMFS to discuss potential project impacts of the proposed project on steelhead and their spawning habitat. Based on conversations between NCE, NMFS head biologist Dan Logan, and EBMUD fisheries biologist Bert Mulchaey, it is believed Steelhead are absent from San Pablo Creek and no spawning habitat is present. This is due largely to significant fish passage impediments in San Pablo Creek at Giant Road and Highway 80. Additionally, the EBMUD monitoring efforts for the species within San Pablo Creek near the proposed project site have resulted in no detections over the past 12 to 15 years. The *Final Coastal Multispecies Recovery Plan Volume IV: 2016 Central California Coast Steelhead* (NOAA, 2016) also states that the species '*appears to be absent from San Pablo Creek as they have not been observed during recent surveys.*' Correspondence with the NMFS is included as **Attachment 3**.

At the request of the CDFW, NCE developed a Proposed Fish Passage Monitoring Plan that will establish locations to collect pre- and post-project data on water quality and flow parameters affecting fish habitat as required by the City's CDFW Section 1600 permit. This plan includes baseline monitoring in the winter of 2021 prior to project activities and post-construction monitoring. The data will be used to inform the project's impact on fish habitat and passage.

The 350 linear foot culvert within San Pablo Creek will be set within the creek channel aiming at establishing a creek bed within the culvert that allows movement of fish within and through the culvert to areas that provide both spawning habitat and riparian cover. A San Pablo Creek Stream Habitat Assessment Report was conducted in 2010 that determined that three fish species (roaches, suckers, and sticklebacks) were present in the San Pablo Creek (California Department of Fish and Wildlife, 2013). To meet these habitat requirements, fine gravel will be placed upstream of the culvert headwall to encourage the formation of breeding habitat for California Roach and Sacramento Suckers. This mirrors a recommendation from the San Pablo Creek 2010 study that due to the lack of suitable size spawning substrate within San Pablo Creek reaches, projects "should be designed at suitable sites to trap and sort spawning gravel" (California Department of Fish and Wildlife, 2013). The placement of spawning gravel in the shallow reaches upstream of the proposed culvert will meet this recommendation. In addition, upstream of the proposed culvert head and wing walls, willow brush mattresses will be installed to provide additional aquatic riparian cover to reduce predation of threespine stickleback.

Based on California and Arizona's culvert guidance from the Department of Fish and Game, light was considered a required culvert design element.

Consequently, the project design team has proposed 'skylights' in the proposed culvert at no more than a 75-foot distance between each skylight as recommended for successful fish use (NCE 2020). Additional fish passage considerations have been incorporated into culvert design that are currently being proposed to regulatory agencies for approval. This proposed updated design (currently in review with CDFW and SFBRWQCB) is attached as **Attachment 4**; final design of the culvert will reflect agency approval.

In addition to these fish habitat and passage protection measures, the project strives to minimize drainage impacts to the extent practicable, and will maintain downstream flows throughout construction, implement Best Management Practices to protect water quality, and restore areas where vegetation is unavoidably removed.

Based on information obtained during recent consultation efforts, and design changes to incorporate fish passage and mitigation requirements the City retains the significance findings in the initial study *Section 4.4, Biological Resources, Answers to Checklist Questions, Item a).*

c) *Answers to Checklist Questions, Item b), we do not agree that implementation of the proposed Rheem Creek enhancement work would adequately mitigate for the permanent impacts to San Pablo Creek. The Water Board's San Francisco Bay Water Quality Control Plan (Basin Plan) includes the California Wetlands Conservation Policy (Executive Order W-59-93, adopted in 1993). This policy, adopted in 1993, establishes guidelines for wetlands conservation. The primary goal is to ensure no overall net loss, and to achieve a long-term net gain in the quantity, quality and permanence of wetland acreage in California. While beneficial, the Rheem Creek work does not result in no-net-loss of stream/wetland habitat, and enhancement at a roughly 2:1 ratio does not conform to expectations for the type of stream impacts currently proposed for the Via Verdi project. The order of preference for mitigation for permanent enclosure of a stream is to daylight an equivalent length and width of creek at another similar location. Secondary preferences, in ranked order, are significant restoration of degraded creek (creation of meander bends, removal of hardscape, etc.), or enhancement of degraded creek areas. The ratio of mitigation goes up from the 1:1 noted above for daylighting, the degree to which depends on the nature and extent of the restoration/enhancement work. However, it should be noted that identification of satisfactory creek mitigation for a Project of this nature is extremely challenging, so again you are urged to very seriously consider ways to achieve the project goal without installing a culvert in San Pablo Creek.*

Response 4c: Please refer to response to comment 4a, above. The City, in coordination with NCE, CDFW, and SFBRWQCB have reviewed potential mitigation locations across Richmond and San Pablo to identify a site (or sites) with the most potential for implementation of a successful mitigation project. Once a mitigation project is selected (and agreed upon by permitting agencies), NCE will add the proposed mitigation plan into a revised project description and CDFW will incorporate the mitigation project into the Via Verdi Slope Stabilization Project CDFW permit conditions. If a mitigation site is not chosen prior to receipt of a CDFW permit, then a mitigation site commitment from the City of Richmond will be needed and added to the CDFW permit conditions per agreements with the CDFW. The SFBRWQCB has agreed to follow the CDFW mitigation project selection and, therefore, no other mitigation is required.

d) *The IS/MND checks Less Than Significant with Mitigation Incorporated for Section d) which addresses substantial interference with the movement of any native resident or migratory fish or wildlife species or wildlife species or with established native resident or migratory wildlife corridors. This is not appropriate given extending the culvert upstream of the existing structure will further impede fish passage through the area. Although the existing replacement culvert beneath Via Verdi includes baffles intended to facilitate the movement of fish, there is no assurance that the baffles are functioning as intended, or that use of such features in the extended culvert will function to allow effective fish passage. The IS/MND, and the application for 401-certification have not addressed fish passage and minimizes the potential for fish presence in the stream.*

Response 4d: Refer to Response 4a-c above.

Opportunities for fish passage are limited in San Pablo Creek due to existing barriers within the waterway. Per recent discussions with CDFW and the SFBRWQCB, NCE will conduct monitoring within San Pablo Creek prior to and post-construction to determine baseline versus project impact on fish passage and habitat.

The final mitigation plan will be fish passage driven, reflect impacts based on monitoring efforts, and therefore will be determined sufficient for the CDFW Section 1600 and SFBRWQCB Section 401 permits which must satisfy mitigation requirements for fish passage and habitat impacts to ensure significant impacts do not occur (as detailed in CEQA Mitigation Measure BIO-2, which requires the City to obtain all applicable permits).

e) *Section 4.10, Hydrology and Water Quality, Page 94: Less Than Significant Impact is checked for Item a), which addresses violation of water quality*

standards and degradation of surface or ground water quality. This section does not adequately characterize the potential impacts to beneficial uses of San Pablo Creek. In addition to standard parameters such as pH, dissolved oxygen, etc., water quality standards also include beneficial uses of State waters. The beneficial uses of San Pablo Creek identified in the Basin Plan include freshwater replenishment, cold freshwater habitat, fish migration, preservation of rare and endangered species, fish spawning, warm freshwater habitat, wildlife habitat, water contact recreation, and non-contact water recreation. The installation of a 350-foot long culvert will impact beneficial uses, in particular, fish migration, fish spawning, and wildlife habitat. Degradation of water quality may also occur through reduction in allochthonous material discharged to the stream, and a reduction in the quantity and distribution of lower organism such as fungi, bacteria, and macronutrients.

Response 4e: Refer to responses 4c and 4d above. Fish passage within San Pablo Creek is limited due to existing barriers within the waterway; therefore, significant impacts to beneficial uses such as fish migration and spawning are not anticipated to occur. The Biological Opinion of the USFWS has determined that with implementation of required construction controls, installation of the culvert would not significantly impact special status wildlife. However, the City will continue to coordinate with both the SFBRWQCB and CDFW to identify mitigation sufficient to offset potential impacts to beneficial uses of San Pablo Creek including fish passage, spawning habitat, and wildlife habitat. The updated culvert design incorporates fish habitat and passage considerations and would additionally protect the beneficial uses of the creek as aforementioned.

Although installation of the proposed culvert may reduce the total amount of beneficial organic material and nutrients discharging into the stream, impacts are anticipated to be less than significant as the culvert structure is localized and has been reduced to the size necessary to stabilize the landslide. Incorporating 'skylights' and natural bottom substrate is anticipated to provide beneficial impact to habitat within the culvert structure as discussed in Attachment 4 documentation. A minor reduction of allochthonous material into the stream is not anticipated to result in significant impact to protected species and their habitats. As mentioned, NCE will implement a fish monitoring plan to verify presence/absence of protected species within the stream and will continue coordination with SFBRWQCB and CDFW for culvert design and monitoring plan approval.

Implementation of required mitigation identified through the permitting efforts of the U.S. Army Corps of Engineers (USACE), SFBRWQCB, and CDFW is specifically

designed by these agencies to offset ecosystem impacts resulting from the proposed project. As discussed in 4a above, San Pablo Creek in the vicinity of the project area does not contain spawning habitat for Steelhead. This assumption is based on a discussion with the National Marine Fisheries Service (NMFS) about the presence of Central California Coast Steelhead within San Pablo Creek. Mr. Gary Stern of NMFS said that there is no presence of steelhead in San Pablo Creek due to the obstructions within the creek (Attachment 3).

As stated, the City is working with SFBRWQCB, USACE, and CDFW to satisfy mitigation requirements to offset the permanent loss of open stream habitat in San Pablo Creek, as detailed in CEQA Mitigation Measure BIO-2. This will include any required mitigation to offset potential impact to fish migration and beneficial uses of the stream.

f) *The Answers to Checklist Questions for this segment states that overall, the project proposes features that would have a beneficial effect on water quality. Noted is a 'failing creek bank.' Referring to the creek bank as 'failing' seems to mis-characterize the situation. The creek bank itself is not failing, or contributing to the degradation of water quality, rather, it appears that the constructed fill placed in the 1970s is unstable. According to the inclinometers placed at the site for measurement of the landslide, there is movement within the underlying Orinda formation. However, such movement may, or may not have occurred naturally without the overburden of fill and would not typically be characterized as a failing creek bank, but rather would be considered as a natural occurrence along streams in the area. It is understood that should the landslide move into the creek at a rapid rate, blockage of stream flows would occur, resulting in the discharge of soil to State waters. But to characterize the project as an improvement to water quality seems opportunistic. While the proposed project would, in fact, eliminate this concern, it has yet to be demonstrated that other methods that would allow the stream to remain as an open channel with riparian vegetation are not feasible.*

Response 4f: Refer to Response 4a above. CEQA requires analysis of a project's effect on existing conditions; although it may technically be constructed fill, it has been in place for 50 years and serves as a creek bank. Either way it is defined, it is failing, and providing permanent stabilization against continuing slope movement will have a beneficial effect on water quality over existing conditions.

As requested by the SFBRWQCB and CDFW, the City has undergone the effort to obtain a third-party peer review of the Alternatives Analysis and Geotechnical Report to demonstrate there are no other methods to stabilize the landslide which would allow the stream to remain as an open channel with riparian vegetation. The CDFW

and SFBRWQCB have agreed to the Alternatives Analysis and peer review and no further analysis of alternatives is needed. Determined through this effort is that the proposed 'toe buttress with culvert' within San Pablo Creek provides the most technically viable and reliable long-term landslide stabilization alternative.

Therefore, the City believes there is sufficient and substantial evidence in the record to demonstrate there is no feasible method to retain San Pablo Creek as an open channel.

References

California Department of Fish and Wildlife, Marin County. 2013. "Stream Inventory Report, San Pablo Creek, Surveyed 2010."

"Culvert Criteria for Fish Passage." 2002. State of California, Resources Agency, Department of Fish and Game.

"Guidelines for Culvert Construction to Accommodate Fish & Wildlife Movement and Passage." 2006. Arizona Game and Fish Department, Habitat Branch. http://www.conservewildlifenj.org/downloads/cwnj_281.pdf.

NCE. 2020. "Via Verdi Culvert Fish Mitigation Memorandum."

Wallace, Edward. 2015. "Appendix A Fish Passage Assessment and Preliminary Design at Evans Lake Drain Levee." April 21, 2015. http://www.uppersarhcp.com/documents/UpperSAR_Restoration_Draft_EIR_Apr2019-6b.pdf.