

FINAL

Phoenix Lake IRWM/Ross Valley Flood Protection and Watershed Management Program Environmental Compliance Approach

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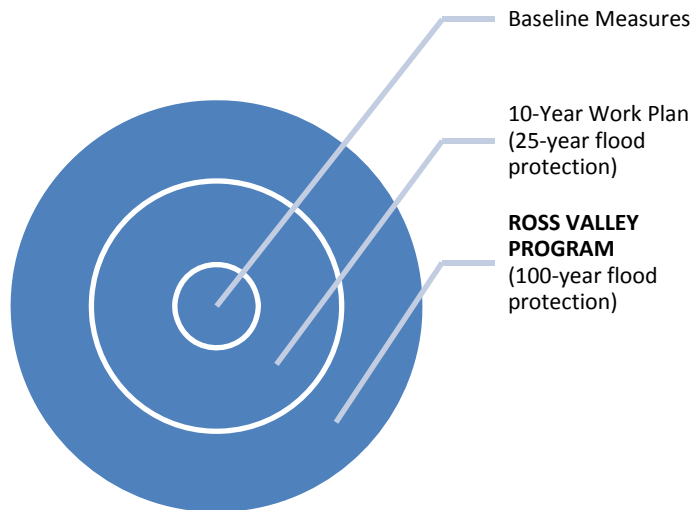
Project Background

This memorandum describes the requirements and approaches for complying with the California Environmental Quality Act (CEQA) for the Ross Valley Flood Protection and Watershed Management Program (Program).

The Program ultimately will provide 100-year flood protection for the citizens of Ross Valley; it will be implemented in phases. The full Program, described in the *Capital Improvement Plan Study for Flood Reduction and Creek Management* (CIP), includes five detention basins and more than 180 channel improvement measures spread throughout the watershed that collectively, and in concert with improvements to Unit 4 by the U.S. Army Corps of Engineers (USACE), provide an approximately 100-year level of flood protection.

To focus initial implementation efforts, Flood Control District staff has proposed a near-term goal of achieving 25-year-flood level of protection valley wide within a 10-year timeframe - known as the 10-Year Work Plan. The 10-Year Work Plan is intended to be consistent and compatible with ultimate build-out of the complete Program to achieve 100-year flood protection. Certain elements of the full Program were designated as Baseline Measures that must be included in the 10-Year Work Plan because of their significant flood reduction benefit or eligibility for funding and implementation under other programs. In this regard, detention basins were deemed Baseline Measures because they significantly reduce peak flow in the channel, bridges because they have funding authorized from the California Department of Transportation (Caltrans) and remove flow constrictions at key points in the watershed, and Lower Corte Madera Creek Improvements because they are needed to prevent localized flooding in the near term. The County has prioritized the Baseline Measures for near-term implementation. The schematic in Figure 1 below shows the "nested" relationship between the Baseline Measures, the 10-Year Work Plan and full Program.

FIGURE 1



A summary of the flood control measures included in the 10-Year Work Plan is shown in Table 1; the core set of Baseline Measures is listed first as these are the priority projects. Additionally, the anticipated CEQA Lead Agency and Responsible Agency for each of the Baseline Measures has been identified in Table 1. Further discussion of Lead and Responsible Agency roles is provided later in this memorandum.

The County has received funding from The Disaster Preparedness and Flood Protection Bond Act of 2006 (Proposition 1E) for the Phoenix Lake Retrofit Project, which includes conditions to complete the project by September 1, 2017. This deadline is an important consideration when reviewing potential approaches to environmental compliance. Similarly, the Town of San Anselmo has received Proposition 1E funding for the Memorial Park Detention Basin with a funding deadline of project completion by December 31, 2017.

This memorandum briefly describes the requirements of CEQA, alternative approaches to compliance for the Program, and the 10-Year Work Plan (with a focus on the Baseline Measures), and the benefits and potential drawbacks of each approach. Based on the benefits and risks of the approaches presented, a recommendation for CEQA compliance is offered.

TABLE 1
10-Year Work Plan Measures and Anticipated Lead and Responsible Agencies

Measure Type	Measure	Anticipated Lead Agency	Anticipated Responsible Agency
BASELINE MEASURES			
Detention Basins	Loma Alta	FC District	Marin Co. Open Space District
	Lefty Gomez	FC District	Ross Valley School District
Channel Improvements (Bridges)	Memorial Park	San Anselmo	FC District
	Phoenix Lake	FC District	MMWD
	Azalea Ave	Fairfax	Caltrans, FC District
	Nokomis Ave	San Anselmo	Caltrans, FC District
	Madrone Ave	San Anselmo	Caltrans, FC District
	Sycamore Ave	San Anselmo	Caltrans, FC District
	Winship Ave	Ross	Caltrans, FC District
	Sir Francis Drake Blvd	Ross	Caltrans, FC District
	Building Bridge No. 2	San Anselmo	FC District
	Channel Improvements (Other)	Lower Corte Madera Creek Improvement Project/Dredge	FC District
Unit 4		Corps of Engineers	FC District
OTHER MEASURES			
Channel Improvements (Bridges)	Merwin Avenue	Fairfax	FC District
	Taylor Street	San Anselmo	
	Broadmoor Ave	San Anselmo	
Channel Improvements (Other)	22 measures	Multiple Agencies	

What is CEQA?

CEQA is a California statute passed in 1970 to institute a statewide policy of environmental protection. CEQA requires state and local agencies within California to follow a protocol of analysis and public disclosure of environmental impacts of proposed projects and adopt all feasible measures to mitigate those impacts. CEQA makes environmental protection a mandatory part of every California state and local agency's decision-making process.

A public agency must comply with CEQA when it undertakes an activity defined by CEQA as a "project." A project is an activity (or group of activities) undertaken by a public agency or a private activity which must receive some discretionary approval from a government agency which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment.

In 1994, the Marin County Board of Supervisors adopted regulations that supplement state procedures and provide a guide for county agencies and departments in carrying out their responsibilities under CEQA. (Marin County Guidelines can be found at: <http://www.marincounty.org/~media/files/departments/cd/planning/environmental-impact/erguide1994.pdf>). The Program, including the 10-Year Work Plan, is subject to CEQA requirements as the Board of Supervisors intends to make discretionary decisions about the Program as a whole as well as the individual Baseline Measures/projects. The Program and individual projects may cause environmental impacts that must be disclosed to the public, and mitigated to the degree feasible, through the CEQA process.

District Goals for the CEQA Process

The District has identified the following goals for the development of the EIR and completion of the CEQA process.

- Provide CEQA compliance necessary to secure required permit approvals for the Phoenix Lake Retrofit Project to meet design and compliance funding deadlines and allow construction to move forward, and minimize risk of losing grant funding
- Provide CEQA coverage for the entire Program addressing 100-year flood protection allowing select individual elements to go forward, minimizing legal risk and accelerating schedule to the extent feasible
- Provide a framework for CEQA review and approval of facilities or improvements that are under the jurisdiction of other agencies, which will provide a streamlined process and avoid duplicative effort by those Responsible Agencies.
- Use CEQA process as a means to disclose the impacts and benefits of the Program and projects and to communicate the public safety and environmental goals of the program
- Describe and demonstrate the self-mitigating aspects of the Program, such as the creek restoration and enhancement measures, that will address creek impacts from other projects within the Program and in some areas provide a net benefit.

Lead Agency and Responsible Agency Approvals

The District recognizes the importance of local agency cooperation in the development and implementation of the overall program, and individual Baseline Measures. As provided for in CEQA, the District would act as the Lead Agency for review and approval of the Program and Phoenix Lake. The District anticipates that several other jurisdictions would use the analysis contained within the EIR to consider approval of facilities or improvements that occur within their jurisdiction, such as Memorial Park in the Town of San Anselmo. Agencies with potential approval authority over facilities or improvements would be Responsible Agencies as provided for under CEQA, and potentially include the individual towns/city within Flood Zone 9, Caltrans, and the U.S Army Corps of Engineers (USACE). Anticipated agency roles are identified in Table 1 for each of the Baseline Measures. In some instances, agencies may elect to complete CEQA independently, based upon the status of their individual projects. As appropriate, the District would incorporate analysis completed by individual agencies into its EIR. Under either scenario, the District will work with individual jurisdictions to address local concerns while meeting the objectives of the overall program.

Public Involvement

One of the key objectives of the CEQA process is to provide for public involvement at various points in the project review process. Key opportunities for public input include the Notice of Preparation and Public Scoping periods, which occur at the beginning of an EIR process and provide for a minimum 30-day public comment period for agencies and individuals to provide input into the scope of analysis in the EIR. It is anticipated that the District would hold a series of public scoping meetings during this timeframe both to provide information on the project, and to provide an opportunity for public comment regarding the proposed scope of analysis. Following completion of the Draft EIR, CEQA provides a minimum 45-day public review period for individuals and agencies to comment on the impact analysis. This 45-day public review period also provides an opportunity for public meetings to present the project, the impact analysis and mitigation measures, and to receive public comments. It is anticipated that the District would hold a series of public meetings within local jurisdictions during the public review period. Following the public review period, responses to written comments, and any changes to the analysis, would be prepared and circulated prior to consideration by the Board of Supervisors for certification and project approval.

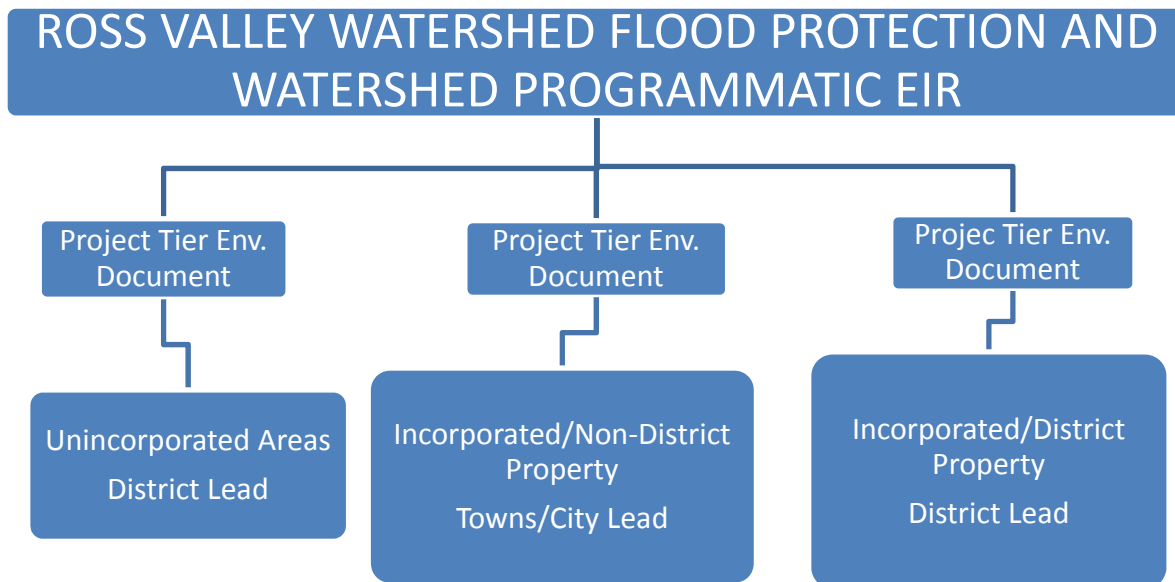
CEQA Approach

Based upon the above goals identified for the CEQA process, the County has reviewed potential approaches to completing the CEQA process for the 10-Year Work Plan and the projects within the Program. A brief discussion of these potential approaches is provided below.

Approach 1: Programmatic EIR

This approach involves preparing a programmatic environmental impact report (Program EIR) on the overall Program, including the 10-Year Work Plan. A Program EIR is a mechanism used under CEQA to evaluate the environmental impacts on a series of actions that can be characterized as one large project, such as a Long Range Development Plan or in this case, a multi-year flood control program. A Program EIR generally establishes a framework for “tiered” or project level environmental documents that are prepared in accordance with the overall program. All of the analysis would be completed at a “program-level”. Individual agencies, including the District, would then complete a series of separate Project-level environmental documents tiered from this Program level EIR to review individual facilities for project approval. The relationship between the Programmatic EIR, and the following Project Level environmental documents implemented by each agency, is illustrated in Figure 2 below. The lead agency for the tiered documents would be determined based on the location (unincorporated areas of the County vs. incorporated) and the ownership of the parcels where the facility would be located (County/District owned vs. non-County/District owned.)

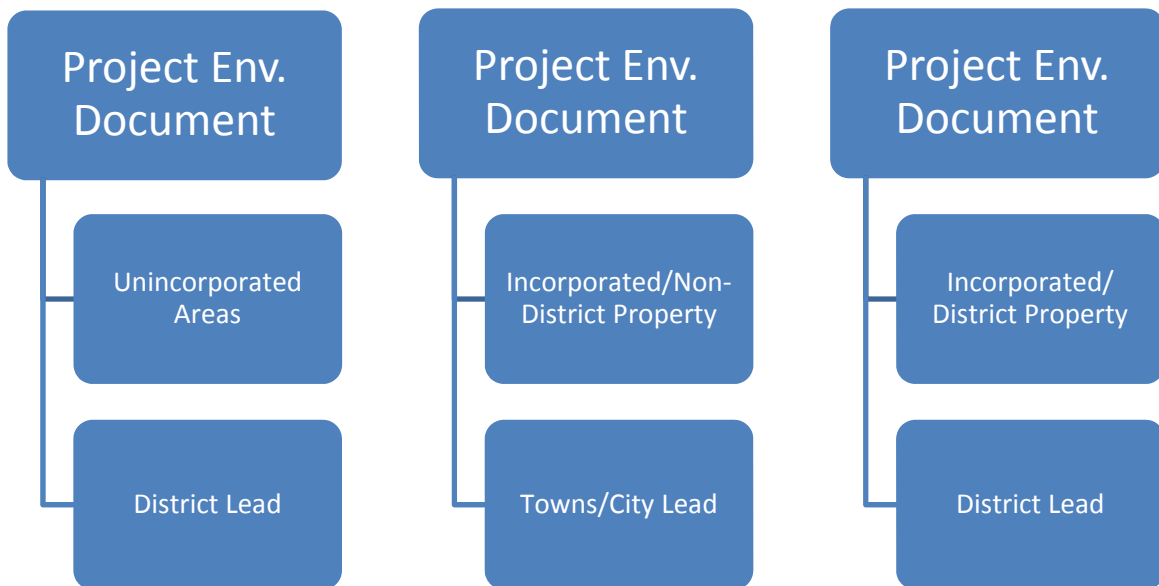
Figure 2: Programmatic EIR



Approach 2: A Series of Independent Project Environmental Documents

The second approach is to do environmental compliance on individual projects in the 10-Year Work Plan separately through a series of Project-level CEQA documents on individual projects as the County wishes to move ahead with each of them, rather than evaluate the overall impacts of the 10-Year Work Plan and Program in its entirety. In the short-term, the County would proceed with a project-level EIR on the Phoenix Lake Retrofit Project. Currently, Caltrans, the Town of San Anselmo, and the Town of Ross are proceeding with separate environmental compliance for the bridges. Additional environmental documents ultimately would be required for the other detention basins, creek measures, and the Lower Corte Madera Creek flood improvements. This approach, where individual environmental documents would be prepared by each Lead Agency depending upon jurisdiction, is illustrated in Figure 3 below.

Figure 3: Independent Project Environmental Documents



Approach 3: Program/Project EIR

This approach involves preparing a programmatic environmental impact report (Program EIR) on the overall Program, including the 10-Year Work Plan that also contains project-level analysis for the components that the County has prioritized for permitting because of availability of funding, specifically the Phoenix Lake Retrofit Project.

As discussed under Approach 1, a Program EIR is a mechanism used under CEQA to evaluate the environmental impacts on a series of actions that can be characterized as one large project, and generally establishes a framework for “tiered” or project level environmental documents that are prepared in accordance with the overall program. A Program EIR also can be combined with a Project EIR and address the specific impacts of one or more of the projects that are contained in the Program, such as in this situation with the Phoenix Lake Retrofit Project. Figure 4 (below) shows how the Program/Project EIR would be structured. Approach 3 affords the County with a significant amount of flexibility. While the document addresses the entire Program and one or more elements at a project level, when the Board of Supervisors elects to make Findings, it can select only those elements with which it wishes to move forward. This flexibility will be useful in the event one or more elements are not ripe for approval (because of limited information or controversy), but other elements need to be approved to keep on schedule.

This structure also allows other agencies with jurisdiction over individual projects to use the Program/Project EIR to provide either the basis for approval of local individual projects, or the basis for additional CEQA documentation if more detailed environmental assessment is needed. This provides both the County and individual jurisdictions with flexibility in the project approval process, while still providing a unified approach to impact analysis, mitigation measures, project approvals and associated findings for the 10-year Program.

Figure 4: Program/Project EIR



The anticipated approvals stemming from certification of the Program/Project EIR by the Board of Supervisors are shown in Figure 5. It is anticipated that that the Board would consider project approval of the Phoenix Lake Project, and any other elements that have been reviewed at a project level. The Board would also consider the program level analysis of the 10-Year Work Plan. This approval would allow for local jurisdictions to continue development of the Baseline Measures contained within the 10-Year Work Plan, and would provide the framework for future CEQA analysis, as appropriate.

Figure 6 illustrates use of the Program/Project EIR by Responsible Agencies to support consideration of Baseline Measures for approval. Agencies with jurisdiction over individual Baseline Measures would use the Program/Project EIR to provide either the basis for approval of local individual projects, or the basis for additional CEQA documentation if more detailed environmental assessment is needed.

Figure 5: Anticipated Approvals Using a Program/Project EIR



Figure 6: Additional CEQA Assessment and Agency Approval For Baseline Measures



Considerations in Selecting a CEQA Approach

The primary considerations in selecting a CEQA approach include:

- Does the approach meet schedule constraints?
- How well do the approaches communicate the program/project with the public and the regulatory agencies and does it address their concerns and interests?
- How well do the approaches communicate the self-mitigating aspects of the Program?
- The overall legal defensibility of the document in the event of legal action against the County
- Cost

Schedule

With the Phoenix Lake Proposition 1E grant funding schedule conditions, completing the project before the grant deadline (Sept. 1, 2017) is a priority for the County. Approach 1: Use of a Programmatic EIR would not include a project-level approval for Phoenix Lake, as analysis would only be at a program level, in part due to the need for foundational studies to be completed. Although the District could complete a Program EIR examining the 10-Year Work Plan, additional project level CEQA analysis would be required for Phoenix Lake. Therefore, this approach would not meet the schedule requirements necessary to meet this grant deadline. As such, it would not meet the County's goals for the CEQA process.

With respect to Approach 2, Project EIRs and Approach 3, Program/Project EIR, the schedule for both of these approaches are anticipated to be very similar. While a Program/Project EIR may require a greater level of effort (resources) than a project-level EIR for the Phoenix Lake Retrofit Project, because of the timing of availability of information, the overall schedule is not expected to extend beyond that required to prepare a project-level EIR.

As shown in Table 2, these two CEQA approaches basically have the same schedule, in large part because the detailed description needed for project-level impact analysis of the Phoenix Lake Retrofit Project (necessary for both options) depends on the results of the "foundational studies," slated for completion in mid-2015. Foundational studies required for the Phoenix Lake Retrofit Project include the geotechnical feasibility study and conceptual design (currently ongoing), biological surveys, and other impact analyses for the project area. These studies are the critical path for completing both documents. To compensate for the additional analysis required for Approach 3: Program/Project EIR, much of the analysis of the Program elements (cumulative effects and alternative analysis of multiple program elements) can move forward now while the foundational studies for the Phoenix Lake Retrofit Project are being completed.

Additionally, Approach 3 is less likely to be vulnerable to a legal challenge thereby reducing the possibility of unforeseen schedule delays.

TABLE 2
Schedule Framework for CEQA Process Approaches

	Month		Approach 3: Program/ Project EIR	Approach 2: Phoenix Lake Project EIR	Permitting – Phoenix Lake
	Dec 2014-Jan 2015		CEQA Compliance Approach Development		
1	February	Phoenix Lake – Foundational Studies Detention Basin Site Selection Review	EIR Project Description development for Program Elements (Total program and 10 Year Work Plan)	Develop description of Program/10 Year Work Plan to use in Cumulative and Alts Chapters	
2	March				
3	March		NOP Preparation and Public Scoping Meetings	NOP Preparation and Public Scoping Meetings	Informal Agency consultation - scoping
4	April				
5	May		Impact analysis of program elements (focus on 10-year CIP). Biological Surveys for Phoenix Lake project.	Bio Surveys	
6	May				
7	May		Detailed EIR Project description for Phoenix Lake based on input from foundation studies. Impact Analysis for Phoenix Lake.	Detailed EIR Project description for Phoenix Lake based on input from foundation studies. Impact Analysis for Phoenix Lake.	
8	June				
9	August		Admin Draft Program/Project EIR	Admin Draft Project EIR	Agency briefing – update on project details
10	August		County Review	County Review	
11	September		Revise EIR – Prepare Draft EIR	Revise EIR – Prepare Draft EIR	
12	October		Public Hearings before Board of Supervisors/Public Review Period	Public Hearings before Board of Supervisors/Public Review Period	
13	November				
14	December		Response to Comments / Prepare Final EIR	Response to Comments / Prepare Final EIR	Permitting – draft permit applications – refine with input from Final EIR. Submit applications. Respond to Agency comments. Obtain permits
15	January-2016				
16	February	Public Hearing, Certification and Program/Project Approval by Board of Supervisors	Public Hearing, Certification and Program/Project Approval by Board of Supervisors		
17	March				
18	April	Design and Construction			
19	May				
20	June				
21	Sept. 2017			Funding Deadline for Project Completion	

Clarity of Communicating Program/Project to Regulatory and Community Stakeholders

Memories of the costly and damaging 2005 flood event and ongoing occasional flooding contribute to the high degree of interest throughout Ross Valley in the Program and the 10-Year Work Plan; and with that interest there is concern and controversy over specific elements of the Program. The Department of Public Works has consistently referred to the collection of projects as a Program in multiple community meetings and on the website. Achieving the desired flood control protection, ultimately of 100-year protection and 25-year protection in the 10-Year Work Plan is dependent on a collection of projects that work together to reduce flood risk. A major benefit of Approach 3 is that it presents the Program to the public and the permitting agencies in a format that is consistent with other County messaging about the Program. A critical part of that message is that ultimately, all of the Program elements are required to meet the desired level of flood protection for Ross Valley. The Approach 3 document also will set the stage for future project-level documents that may be required for other elements such as additional detention basins and creek measures. By setting the stage in the Program/Project EIR now, the environmental documentation for these elements will be greatly simplified. Approach 2, in contrast, would address Phoenix Lake Retrofit Project and Memorial Park Detention Basin independently, with separate Lead Agencies, and may not as effectively communicate the Program context and importance of the collection of projects in working together to reduce flood risk in the region.

Similarly, Approach 3 will provide the regulatory agencies with a comprehensive view of the work to be completed over time in the sensitive creek areas and of the “self-mitigating” elements of the Program that will not only mitigate some of the project impacts to the creeks but will also provide a net benefit of creek enhancement in some areas. This Program context for individual projects will be important to demonstrate to the regulatory agencies as they review and permit individual projects within the Program.

Legal Defensibility

While Approaches 1, 2, and 3 are legally defensible under CEQA, Approach 3 is the safest approach from a legal standpoint. There is valid argument to be made that the Phoenix Lake Retrofit Project is a standalone project with independent utility that the County would implement independent of the rest of the Program; therefore, doing an EIR on that project alone (Approach 2) could be justified and potentially simpler. However, opponents of the plan might argue that the County has discussed the Phoenix Lake Retrofit Project as part of the overall Program and therefore argue that the County is “piece-mealing” the project by looking at the Phoenix Lake Retrofit Project independently and not addressing the impacts of the Program as a whole, including the cumulative effects of all of the elements in one Program document.

Under Approach 3, the impacts and alternatives to the Baseline Measures would be identified and analyzed, creating important documentation to support siting decisions for each of the Baseline Measures. These analyses would be central to the Program EIR and important foundations for the environmental compliance documents that will follow for the additional elements in the Program, such as additional detention basins and the creek measures.

Costs

The overall CEQA costs for Approach 2 are expected to be lower than for Approach 3. Although the Program/Project EIR would likely be marginally (~15-20%) more costly than a stand-alone Phoenix Lake EIR, when factoring in future documents for other projects in the Program and the potential cost of a legal challenge, Approach 3 is the more prudent choice from a cost perspective. Approach 3 is also anticipated to have cost savings related to the permitting process as alternatives analysis and cumulative impacts related to the entirety of the Program will likely be required by the regulatory agencies and would not be available in the Phoenix Lake stand-alone EIR. Additionally, Approach 3, more readily affords the potential cost-savings of applying some Program measures as mitigation for impacts.

National Environmental Policy Act Compliance

The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. The activities that trigger NEPA compliance include (among others) issuance of a permit from a federal agency and the provision of federal funding.

Two areas of federal nexus are anticipated for this project, the first being the Unit 4 project where USACE is a partner with the Flood Control District, and the second being the issuance of federal permits to address potential impacts to “waters of the US” associated with construction of improvements at Phoenix Lake and associated with construction of measures in the creek. USACE generally conducts its own NEPA compliance on their projects (e.g., Unit 4) and on their permitting actions. USACE will likely rely on the environmental documentation prepared by the County, and it will be important to coordinate with USACE closely; however, USACE will issue its own separate NEPA document.

Both Approaches 2 and 3 can be readily coordinated with NEPA, however, Approach 3 may be preferable to the federal agencies as they generally prefer to understand a broader Program context for projects, particularly as related to consideration of project alternatives.

Recommended Approach: Approach 3 - Program/Project EIR

Based upon the above discussion, Approach 3: Preparation of a Program/Project EIR provides the District with the greatest flexibility and legal defensibility, without adding time to the schedule. An additional considerable benefit of this approach is that it places each of the 10-Year Program elements (Phoenix Lake, creek elements, and individual detention basins) in the broader context of flood protection for the Ross Valley Watershed and will demonstrate to the community that each of these elements are needed to reach the overall flood protection goals. The cumulative impacts analysis and the alternatives analysis in the Program/Project EIR will look at the entire system and thus provide explanations and justification for siting decisions as well as provide important documentation and foundation for the permitting processes for Phoenix Lake and future projects.

Based upon review of the 10-Year Work Plan and the need for the Phoenix Lake Project to proceed, it is recommended that the Memorial Park Basin be examined at a program level, consistent with other detention basins, within the context of the 10-Year Work Plan. Examination of detention basins at a program-level will provide for future tiering of project specific CEQA analyses for the implementation of these components of the 10-Year Work Plan, as appropriate.

The District recognizes that in some instances, local agencies may elect to complete CEQA independently, based on the status of their individual projects and potential funding opportunities. The use of a Program/Project EIR by the District that examines the effects of the 10-Year Work Plan as a whole will capture the effects of these individual projects, and the District will incorporate those analyses into the Program/Project EIR, as appropriate. Throughout the CEQA process, the District intends to work with individual jurisdictions to address local concerns, while meeting the objectives of the overall program. Approach 3 - Program/Project EIR, provides the District with the most flexible and schedule efficient approach to completing the CEQA process for the Ross Valley Flood Protection and Watershed Management Program (Program).