

ENVIRONMENTAL COLLABORATIVE

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MEMORANDUM

TO: Olivia Ervin
Principal Environmental Planner
City of Petaluma

FROM: Jim Martin
ENVIRONMENTAL COLLABORATIVE

DATE: 27 February 2023

SUBJECT: Review of Additional Comment Letter from Dr. Smallwood
Scott Ranch Project FEIR, dated July 2, 2022 and submitted to the City of
Petaluma on February 24, 2023

As requested, I reviewed the additional comment letter from Dr. Shawn Smallwood (dated 2 July 2022)¹ that I received last week. I carefully deliberated these latest additional comments from Dr. Smallwood and compared them to the extensive responses to comments provided in the FEIR, both in the Master Responses related to biological resources (**Master Response 1 – Need for Updated Biological Surveys** through **Master Response 5 – Revisions to Proposed Project and Associated Reduction of Impacts on Biological Resources**) and to individual comments (including responses to Dr. Smallwood's comments **I-Smallwood-1** through **32** and **O-PRP-5-3** through **33**). In general, Dr. Smallwood continues to dispute the adequacy of the species descriptions and impact assessments in the RDEIR and FEIR, is of the opinion that additional detailed studies are necessary to accurately characterize conditions on the site, and that additional mitigation is required to address potential impacts of the project on biological resources. Rather than delving into a continued back and forth responding to each of the latest comments by Dr. Smallwood, I have prepared this memo to confirm the findings of adequacy in the FEIR and clarify a number of points raised by Dr. Smallwood.

Based on my review of these additional comments by Dr. Smallwood, I've concluded that the issues raised have already been adequately addressed in the extensive responses to comments in the FEIR. Beyond the clarifications provided below, the latest additional comments by Dr. Smallwood reiterate those made in his comment letter of February 28, 2021 and have been addressed in detail in the FEIR. Dr. Smallwood repeats his opinion in his latest additional comments that the FEIR is inadequate, disputing the conclusions reached in the detailed responses to comments. While the opinions and concerns of Dr. Smallwood are noted, I am in strong disagreement with Dr. Smallwood's assertion that the FEIR has not thoroughly evaluated the potential impacts of the proposed project and defined detailed mitigation measures that would serve to address the significant impacts and effectively reduce them to a

¹ Smallwood, Shawn, PhD, 2022. *RE: Scott Ranch Project FEIR*. Letter to Attn: Heather Hines, Planning Manager, City of Petaluma. 2 July.

less-than-significant level. In my more than 40 years of experience as a consulting biologist, I have never seen a project site so thoroughly studied, a CEQA review that so comprehensively disclosed project impacts and defined adequate mitigation, or a proposed project evolved in such substantial ways in reducing potential adverse impacts on biological resources.

While Dr. Smallwood continues to assert that the FEIR remains inadequate, it is important to point out that disagreements among experts over standards of adequacy, or level of exhaustive information of an EIR are not uncommon or necessarily an indication that an EIR is in fact inadequate. Section 15151 of the CEQA Guidelines provides a definition on the “Standards for Adequacy of an EIR” (see excerpt below – yellow highlight added). These standards acknowledge that disagreement among experts does not make an EIR inadequate. The FEIR has provided a thorough review of all comments addressing the adequacy of the RDEIR, including those made by Dr. Smallwood, in accordance with Section 15151 of the CEQA Guidelines.

15151. STANDARDS FOR ADEQUACY OF AN EIR. An EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Special-Status Invertebrate Species

Dr. Smallwood in his latest comments pointed out that two special-status invertebrate species – monarch butterfly (*Danaus plexippus plexippus*) and western bumblebee (*Bombus occidentalis*) - were identified as present on the site according to the list of wildlife species contained in **Table 2** of the memo I prepared presenting the results of the Floristic Surveys and Wildlife Habitat Assessment” (FSWHA) conducted in 2021.² Clarification on the possible presence of these two species and the potential impacts of the proposed project is warranted and summarized below. Other invertebrate special-status species known from Sonoma County – such as California freshwater shrimp (*Syncaris pacifica*), California Linderiella (*Linderiella occidentalis*), Blennosperma vernal pool andrenid bee (*Andrena blennospermatis*), western ridged mussel (*Gonidea angulata*), Giuliani's dubiraphian riffle beetle (*Dubiraphia giulianii*), and mimic tryonia (*Tryonia imitatorare*) - are not suspected to occur on the project site due to the lack of suitable habitat such as vernal pools or perennial streams, or absence of larval host plants and other essential habitat features

Monarch Butterfly. Monarch butterfly is known for its long-distance annual migration and reliance on native milkweed (*Asclepias* spp.) as its obligate larval host plant. There are two subpopulations of monarchs in North America, with the eastern population overwintering in Mexico and breeding in the midwestern states, and the western population generally overwintering in coastal California and fanning out across the west from Arizona to Idaho. Both migratory populations have declined dramatically over the past twenty years due to a number of

² Environmental Collaborative, 2021. *Subject: Results of Floristic Surveys and Wildlife Habitat Assessment, Scott Ranch Site, Petaluma, California.* Memorandum to Rima Ghannam, Impact Sciences from Jim Martin. 13 September.

interrelated factors. These include habitat loss in breeding and overwintering locations, habitat degradation, disease, pesticide exposure, and climate change, among others. Based on the Xerces Society Western Monarch County, the number of monarchs making the annual journey to coastal California has experienced erratic swings in population estimates with declined >95% in some recent years.

Monarchs were petitioned to be listed under the federal Endangered Species Act in 2014. In December 2020, the USFWS found that listing was warranted but precluded by other listing actions on its National Priority List and the monarch is currently slated to be listed in 2024. In California, monarchs are included on the CDFW Terrestrial and Vernal Pool Invertebrates of Conservation Priority list. They are identified as a Species of Greatest Conservation Need in California's State Wildlife Action Plan. Section 1002 of the California Fish and Game Code prohibits the take or possession of wildlife for scientific research, education, or propagation purposes without a valid Scientific Collection Permit (SCP) issued by CDFW. This applies to handling monarchs, removing them from the wild, or otherwise taking them for scientific or propagation purposes, including captive rearing. Due to the current status of the migratory monarch population, CDFW has also issued a moratorium on certain activities covered with an SCP.

A single monarch butterfly was observed during the surveys conducted in 2021 as part of the FSWHA. This individual was observed flying at low elevation in the field to the north of the blue gum eucalyptus grove along the D Street frontage of the site. Adult monarchs range widely and may be attracted to the eucalyptus grove on the site for feeding and possibly roosting. However, no monarch overwintering congregations have been observed or reported from the eucalyptus grove on the site by the CNDDDB or by the Xerces Society as part of their report on the *State of the Monarch Butterfly Overwintering Sites in California*.³ No milkweed species (the larval host plant for monarchs) were identified during the systematic surveys conducted in 2021, or earlier surveys for rare plants conducted in 2003/2004 and 2013. Given the absence of any larval host plants or overwintering colonies on the site, and that the eucalyptus grove and much of the uplands habitat would remain for continued foraging and roosting, no significant adverse impacts on monarch butterfly are anticipated, and no additional mitigation is considered necessary. Adult monarchs would likely continue to disperse and possibly forage on the site and throughout the Petaluma vicinity.

Bumble Bees. Of the close to 40 bumble bee species known from North America, western bumble bee and several of the other species - including obscure bumble bee (*Bombus caliginosus*) and Crotch bumble bee (*Bombus crotchii*) - have seen considerable declines in their distribution and numbers over the past two decades. These special-status bumble bee species all have similar habitat requirements, generally inhabiting undisturbed prairies and meadows. They require floral resources for nectaring and undisturbed underground cavities to use as nests, primarily in the form of small burrows. Threats facing bumble bees include habitat loss, pesticides, disease, invasive insects, and climate change.

Western bumble bee historically had a range extending across the western U.S. and southern Canada. In California, it was known to occur in the northern part of the state, the coastal region, and the mountains. It has experienced a considerable range contraction, relative abundance has declined by 84%, and currently now is believed to persist largely in the Sierra Nevada

³ Pelton, E., S. Jepsen, C. Schultz, C. Fallon, and S.H. Black, 2026. *State of the Monarch Butterfly Overwintering Sites in California*. 40+vi pp. Portland, OR: The Xerces Society for Invertebrate Conservation. (Available online at www.xerces.org)

range.⁴ It is a candidate for endangered species status under California Endangered Species Act (CESA), following a State Supreme Court ruling on September 21, 2022.

Given the current status of western bumble bee, I reconsidered the findings from the 2021 FSWHA regarding the certainty of this species identification. While monarch butterfly is easily identified, western bumble bees are not. Review of guides on bumble bees⁵ notes the complexities with identifying , which can't be done without controlled observation of the individual to identify sex, physical characteristics, and wide variations in coloration necessary to positively identify one to species. Given these challenges in identifying any species of bumble bee, the brief observation I made during the surveys performed as part of the FSWHA were not sufficient to confirm the individual to species. Based on the current severe declines in distribution of western bumble bee, in all likelihood the bumble bee observed on the site was a more common species. Accordingly, the reference to western bumble bee in **Table 2** of the FSWHA should be revised to indicate a bumble bee that just the genus was identified, as follows, with deletions in ~~everstrike~~ and additions underlined:

~~Western~~ bumble bee (*Bomus* sp.-~~occidentalis~~)

The bumble bee observed in 2021 was a single individual nectaring on a lupine plant in the upper southern elevations of the site. No other bumble bees were observed elsewhere on the site at any time during the course of the surveys in 2021. No development or open space improvements are proposed anywhere near the observed occurrence of the bumble bee. The area where the bumble bee was observed will be permanently protected as open space under the proposed project, and future habitat management activities and native grassland mitigation would likely improve conditions for use by bumble bees. Residential development would occur in the northwestern portion of the site, over 900 feet from the area where the bumblebee was observed. Given the limited observations on the site, the severe decline in numbers and distribution of western bumble bee to primarily the Sierra Nevada mountains, and the fact that existing habitat would be retained and enhanced as part of the proposed project, no significant adverse impacts on special-status bumble bee species are anticipated and no additional mitigation is required.

Although no colonies of special-status bumble bee species are believed to occur in the limits of proposed development and improvements on the site, there remains a remote possibility that a new colony could be established on the site in the future before construction proceeds. As was done in Master Response 1 – Need for Updated Biological Surveys to provide confirmation on absence of American badger, western burrowing owl, and other special-status species, Mitigation Measure BIO-1b on page 4.3-42 of the RDEIR has been revised as follows to require that preconstruction surveys also address the remote potential impact on colonies of special-status bumble bees if individuals were to occupy the site in the future in advance of construction. This precautionary measure would ensure no adverse impacts on special-status bumble bee species would occur as a result of project implementation.

The following additional revisions regarding special-status bumble bees (see **yellow highlights** below) have been made to Mitigation Measure BIO-1b on page 4.3-42 of the RDEIR and Master

⁴ Xerces Society for Invertebrate Conservation, 2022. *California Supreme Court lets Decision Stand that bees can be protected by the California Endangered Species Act*. Press & Media Release 22 September.

⁵ Koch, J., J. Strange, and P. Williams, 2012. *Bumble Bees of the Western United States*. A project of the U.S. Forest Service and the Pollinator Partnership with funding from the National Fish and Wildlife Foundation.

Preconstruction and Construction Avoidance Provision

a. Preconstruction surveys shall be conducted by a Service-approved biologist prior to any grading or major vegetation clearance to ensure that no individual CRLF are lost during construction. These preconstruction surveys shall also verify the presence or absence of occupied dens of American badger, burrows of western burrowing owl, colonies of special-status bumble bees, and individuals of western pond turtle and foothill yellow-legged frog in the remote instance individuals were to disperse onto the site in advance of construction-related disturbance. The Final CRLFMP shall: 1) describe in detail the survey approach and methodology, and 2) specify that grading or vegetation clearance may not occur in any area where individual CRLF, American badger, western burrowing owl, western pond turtle, special-status bumble bees, and/or foothill yellow-legged frog are located until such time as the individual has either moved out of the disturbance zone or has been physically relocated by a Service-approved biologist legally authorized to handle the species. Any relocation effort for CRLF, American badger, western burrowing owl, western pond turtle, special-status bumble bees, and/or foothill yellow-legged frog shall be formulated in consultation with and approved by CDFW and USFWS, and shall be implemented by a qualified biologist.

Review of “Comments without Responses”

At the end of Dr. Smallwood’s latest comment letter, he claims that the FEIR did not respond to a number of comments he provided in his comment letter of February 2nd, 2021. This assertion is incorrect as all of his comments were responded to in detail in the FEIR. Below is a bulleted listing of specific comments Dr. Smallwood believes were not addressed in the FEIR, excerpted from pages 44 and 45 of his latest comment letter. A brief explanation of where each comment was addressed in the FEIR follows in italics. Again, these and all other comments raised by Dr. Smallwood have been adequately and thoroughly addressed in the FEIR and this follow-up memo.

- I commented that the status of many species has changed since the earlier surveys at the project site – those surveys prior to 2021.

*This was reviewed in detail in **Master Response 4 – Special-Status Species Present at the Project Site** and other responses to comments from Dr. Smallwood.*

- I commented on the ongoing consequences of cumulative impacts, such as the recent finding that North America has lost nearly a third of its birds over the past half-century.

*This was reviewed in the response to **I-Smallwood-23** and elsewhere in the FEIR.*

- Species of wildlife detected in the earlier surveys are not reported in the RDEIR. They remain unreported. If the City did not retain the results of those earlier surveys, then neither the RDEIR nor the FEIR should refer to them.

*This was reviewed in detail in **Master Response 1 – Need for Updated Biological Studies** and elsewhere in the FEIR.*

- Methods of the earlier surveys were never reported, and they remain unreported.

*This was reviewed in detail in **Master Response 1 – Need for Updated Biological Studies** and elsewhere in the FEIR.*

- I commented that the RDEIR misleadingly decouples nesting habitat from other categories of habitat, and then relies on its indefensible assertion that nesting habitat is generally unavailable to dismiss occurrence likelihoods of one species after another.

*This was reviewed in detail in **Master Response 1 – Need for Updated Biological Studies, Master Response 4 – Special-Status Species Present at the Project Site, and elsewhere in the FEIR.***

- I recommended habitat protection as a mitigation measure.

*Habitat protection has been included in numerous mitigation measures in the FEIR. A detailed discussion of the need for additional mitigation is provided in **Responses to I-Smallwood-20, I-Smallwood-21, I-Smallwood-22 and I-Smallwood-28**, among other responses in the FEIR. The conclusion in the FEIR was that no additional habitat protection was considered necessary.*

- I recommended use of native and xeric-adapted plants in yards as a mitigation measure.

*The Landscape and Vegetation Management Plan required under Mitigation Measure BIO-2a calls for an emphasis on the use of native plant species as explained in the response to **I-Smallwood-28**.*

- I recommended 15 years of monitoring to assess cumulative impacts to targeted special-status species on and around the conserved lands and within the neighborhood itself. “Comment noted” is not a serious response, and is not made in good faith or with reasoned analysis.

*Response to Dr. Smallwood’s suggestion of 15-years of monitoring is provided in the responses to **I-Smallwood-20, I-Smallwood-28, and I-Smallwood-29**, among other response in the FEIR. No additional analysis or mitigation is considered necessary in response to the comment.*

- I recommended measures to minimize wildlife mortality from project-generated traffic, windows of homes, and house cats. “Comment noted” is not a serious response, and is not made in good faith or with reasoned analysis.

*Responses to Dr. Smallwood’s comments on wildlife mortality from project-generated traffic, windows and house cats is provided in the responses to **I-Smallwood-20, I-Smallwood-21 I-Smallwood-22, I-Smallwood-27, and I-Smallwood-29**, among other response in the FEIR. No additional analysis or mitigation is considered necessary in response to the comments.*

Please let me know if you have any questions regarding the above conclusions and clarifications. You can reach me by phone at 510-393-0770 or email at beach127@aol.com.