



## MEMORANDUM

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**To:** Garrett Toy, Fairfax Town Manager      **From:** Geoffrey Reilly, AICP

**cc:** Janet Colson  
Sarah Owsowitz

**Date:** May 1, 2020

**Subject:** Town of Fairfax Meadow Way Bridge Replacement Project  
March 4, 2020 Town Council Meeting

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### ***Introduction***

The purpose of this memorandum is to address oral and written comments made by Mr. Larry Bragman and Mr. Frank Egger at the March 4, 2020 Town of Fairfax Town Council Meeting regarding the California Environmental Quality Act (CEQA) Final Initial Study/Mitigated Negative Declaration (Final IS/MND) prepared for the proposed Meadow Way Bridge Replacement Project (Proposed Project) dated February 2020, and to respond to the March 31, 2020 Comment Letter from Judy Schriebman, Chair Marin Group Sierra Club Re: Request for an Environmental Impact Report (EIR) for the Meadow Way Bridge Replacement Project and Channelization of San Anselmo Creek.

This memorandum addresses Mr. Bragman's and Mr. Egger's, and the Marin Group Sierra Club's contention that the Town of Fairfax (Town) should prepare an EIR pursuant to CEQA instead of adopting the February 2020 Final IS/MND for the Proposed Project. This memorandum demonstrates that the commenters fail to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that is not already addressed and mitigated in the Final IS/MND, and therefore preparation of an EIR for the Proposed Project is not warranted.

### ***Project Location***

The Project site consists of Meadow Way Bridge, California Department of Transportation (Caltrans) Bridge Number 27C-0008, which is located over San Anselmo Creek between Cascade Drive and Meadow Way within the western portion of the Town. The Project site consists of Assessor's Parcel Numbers (APNs) 003-102-18 and 003-122-41.

### ***Project Description***

The existing Meadow Way Bridge is reported to have been constructed in the 1950s over San Anselmo Creek in the Town by the U.S. Army Corps of Engineers. The Town proposes to construct a 70-foot long single-span concrete arch replacement bridge. The replacement bridge

would be 21.5-feet wide to allow safe passage for both automobiles and pedestrians. The proposed replacement bridge would also include raised reflective pavement markers at proper intervals to alert the drivers and pedestrians of the two separate travel zones. The new bridge would comply with federal and state design codes and weight limits and would do away with the deficiencies of the existing bridge.

### ***CEQA Project Status***

A Draft Initial Study/Mitigated Negative Declaration (Draft IS/MND) for the Proposed Project was circulated for a 37-day review period starting on December 16, 2019 and ending on January 22, 2020 pursuant to Section 15105 of the CEQA Guidelines. During the 37-day public review period one comment letter was submitted by Mr. Frank Egger on the Draft IS/MND. The Marin Group Sierra Club did not submit any comments on the Draft IS/MND during the 37-day public review period. The February 2020 Final IS/MND was prepared to address Mr. Egger's comments on the Draft IS/MND and to include a Mitigation Monitoring and Reporting Program (MMRP) for the Proposed Project. No edits to the Draft IS/MND were required based on the responses to comments. The Final IS/MND does not describe a project having any new or substantially more severe impacts than those identified and analyzed in the Draft IS/MND. Therefore, in accordance with CEQA Guidelines Section 15073.5, recirculation of a Draft IS/MND is not required.

The Final IS/MND was sent to Mr. Egger in advance of the March 4, 2020 Town Council Meeting and was also made available on the Project's website at <http://fairfaxbridges.com> and at the Town's Planning Department, located at 142 Bolinas Road, Fairfax, CA.

The March 4, 2020 Town Council Meeting included a presentation of the Proposed Project and the Final IS/MND, and included a public hearing to allow interested parties to comment on the adequacy of the CEQA documentation prepared for the Proposed Project, including comments from Mr. Bragman and Mr. Egger. No decisions on the Final IS/MND or the Proposed Project were made by Town Council at the March 4, 2020 Meeting, which was continued to April 1, 2020 and subsequently to April 15, 2020 due to the COVID-19 pandemic. On March 31, 2020, the Town received a late comment Letter from Judy Schriebman, Chair Marin Group Sierra Club regarding the IS/MND.

### ***Response to Comments Made by Larry Bragman and Frank Egger at the March 4, 2020 Fairfax Town Council Meeting***

The following includes responses to comments and questions made by Mr. Larry Bragman (LB) and Mr. Frank Egger (FE) at the March 4, 2020 Town Council Meeting.

#### **Larry Bragman (LB)**

##### ***Comment LB-1***

The commenter stated that the Project area includes rich habitat and that it is "mind boggling" to him that a MND would be considered for the Project. The commenter cited an EIR prepared by the Town of Ross for the Lagunitas Road Bridge Replacement Project, which he said conflicts with the Town of Fairfax's environmental consultant's statement that Central California coast coho salmon is extirpated from San Francisco Bay and its tributaries. The commenter cited page S-6 of the Lagunitas Road Bridge Replacement Project Final EIR, which states that the project area contains designated critical habitat for Central California coast coho salmon and, though the species is unlikely to occur in the project area, the project could result in loss or disturbance of

individuals if present. The commenter provided the Summary section of the Lagunitas Road Bridge Replacement Project Final EIR to the Town Clerk.

*Response LB-1*

Page 39 of the Final IS/MND for the Proposed Project states:

**Coho salmon - central California coast (*Oncorhynchus kisutch*, Federal Endangered, State Endangered).** State listing is limited to Coho south of San Francisco Bay. Federal listing is limited to naturally spawning populations in streams between Humboldt County and Santa Cruz County. Spawn in coastal streams 4-14C. Prefer beds of loose, silt-free, coarse gravel and cover nearby. San Anselmo Creek is designated as critical habitat for the species. However, the species is considered extirpated from the tributaries of San Francisco Bay.

The absence of coho salmon, as documented in the Final IS/MND, is also supported by findings in the Biological Opinion issued by the National Marine Fisheries Service (NMFS) following formal consultation for this project. The Biological Opinion states that coho salmon are not present within San Anselmo Creek and will therefore not be affected. Additionally, the Biological Opinion found that Essential Fish Habitat, as well as Critical Habitat for the species, would not be adversely affected or modified as a result of the Proposed Project. Lastly, in a letter to Caltrans Office of Local Assistance, dated July 8, 2019 (Attachment 1) regarding Fairfax bridge projects, including the Proposed Project, the NMFS again stated that the proposed Fairfax bridge projects are not likely to adversely affect individuals or designated critical habitat for coho salmon.

The Final IS/MND and the record before the Town appropriately address the question of whether the Proposed Project would have any significant impact on coho salmon, and, supported by substantial evidence, conclude that it would not. The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact to coho salmon. Expert opinion, for instance from the Lagunitas Road Bridge Replacement Project Final EIR, that is not directly relevant to the project's environmental impacts may be disregarded. *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 194 and *Citizens for Responsible Dev. V. City of W. Hollywood* (1995) 39 Cal.App.4th 490, 502.

*Comment LB-2*

The commenter stated that the assertion that there is not habitat for the foothill yellow-legged frog is not well substantiated because the process of surveying the habitat for this species is ongoing, as noted in the Marin Conservation League's January 2019 Newsletter. The commenter provided the following quote from the newsletter by Lisa Michl of the Open Space District: "We are still in the process of understanding more about this population, so we are taking an adaptive management approach. First we will focus on protecting the currently known breeding area, as this is the most sensitive area of the frog's life cycle. As we learn more in the coming years, this may change." In response to the comment by the consultant that the habitat for this species is denuded, the commenter stated that the habitat for the yellow-legged frog is evolving. . The commenter provided a copy of the Marin Conservation League's January 2019 Newsletter to the Town Clerk.

*Response LB-2*

Page 138 of the Final IS/MND states that the California Natural Diversity Database (CNDDDB) was reviewed as part of the assessment for special-status species including foothill yellow-legged frog. At the time of review in early 2018, there were no records in CNDDDB of foothill yellow-legged frog in San Anselmo Creek. Several occurrences have been entered since this review

including those in Marin County Open Space District upstream of the Biological Study Area (BSA). Although the habitat upstream is suitable, any downstream occurrences (at or below the BSA) are still marked as “extirpated” in the CNDDB. The section of San Anselmo Creek at Meadow Way Bridge is not perennial and foothill yellow-legged frog is typically found within a few meters of water in the dry season. Measures to protect steelhead include limiting work to the dry season, June 1 – October 15 (Appendix A, page 81). This work window measure would protect foothill yellow-legged frog by limiting work to the season when this species is not likely to be present in the BSA because of dry conditions. Based on the habitat conditions within the BSA, foothill yellow-legged frog is not anticipated to be present during the work period and no impacts are anticipated.

The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact to the yellow-legged frog that is not already addressed in the Final IS/MND. Interpretation of technical or scientific information requires an expert evaluation. Testimony by members of the public, such as Mr. Bragman, on such issues does not qualify as substantial evidence. *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583

*Comment LB-3*

The commenter provided an article from the *Point Reyes Light* which stated that a full EIR was required for the Green Bridge Project in Point Reyes Station. The commenter provided the Point Reyes Light article to the Town Clerk.

*Response LB-3*

The Green Bridge project referred by the commenter is more formally known as the State Route 1 Lagunitas Creek Bridge Project. As this bridge is on a state highway, Caltrans served as the lead agency for both CEQA and the National Environmental Policy Act (NEPA) review. Specifically, this project involved the preparation of a joint CEQA EIR and a NEPA Environmental Assessment (EA). This bridge provides one of the main access points to the Point Reyes National Seashore and is located immediately adjacent to the Tomales Bay Ecological Reserve. The location of this bridge is within a different watershed than the Proposed Project, the Meadow Way Bridge..

The State Route 1 Lagunitas Creek Bridge Project EIR/EA states that the undeveloped northwestern corner of this project’s BSA supports natural communities of special concern. These communities include wetlands, riparian trees, and grassland, which are foraging habitats for migratory and species of special concern birds and dispersal habitat for California red-legged frog, and which are managed by the Marin County Parks and Open Space District and the National Park Service (NPS) Giacomini Wetlands.

The environmental and regulatory setting for the Lagunitas Creek Bridge Project site is different than the Meadow Way site. Given this, Caltrans’ choice to prepare an EIR/EA has no bearing on the appropriateness of the Town of Fairfax’s preparation of a MND for the Meadow Way Bridge Replacement Project. The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that cannot be fully mitigated and therefore an EIR is not required.

*Comment LB-4*

The commenter cited the Cascade Canyon Bridges Project in Elliot Nature Preserve and that Marin County Parks does not know at this time if an EIR will be required for that project. The

commenter provided information about this project from the Marin County Parks website to the Town Clerk.

*Response LB-4*

As the CEQA lead agency for the Cascades Bridges Project, Marin County Parks, has determined that this project is subject to CEQA – the next step is to determine what level of CEQA analysis is required. The first step in making this determination is typically the preparation of an Initial Study, similar to how the Town of Fairfax processed CEQA for the Meadow Way Bridge Replacement Project. If the Initial Study for that project concludes that all potentially significant impacts can be completely mitigated then the project can qualify for a MND, similar to the Meadow Way Project. If significant project impacts cannot be fully mitigated to a level of less than significant, then an EIR must be prepared, which is not the case for the Meadow Way Bridge Replacement Project. The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that cannot be fully mitigated and therefore an EIR is not required.

*Comment LB-5*

The commenter stated that there was intermittent flow and capture of steelhead below the Project site behind the Gibson property in 2003, and that the upper reach of Cascade Creek is one of the more prolific areas for steelhead runs.

*Response LB-5*

Pages 44 and 45 of the Final IS/MND includes a discussion of the Project's potentially significant impacts to steelhead, and includes feasible mitigation measures such as working in isolation from flowing waters, rescuing fish that are encountered within the naturally drying creek, using screening to preclude fish from pumps, and restoration of the creek bed to ensure such impacts are reduced to a less-than-significant level. Additionally measures included for the protection of intermittent streams will also protect steelhead including: restricting work to the dry season (June 1 - October 15), using site specific erosion control practices, providing fueling and spill prevention guidelines, (pages 46-48). As part of the permitting process the Project was required to, and completed formal consultation with the National Marine Fisheries Service (NMFS, page 44). NMFS issued a Biological Opinion stating that the Project is not likely to jeopardize the continued existence of CCC steelhead, nor is it likely to adversely modify its critical habitat. This was restated in a letter to Caltrans Office of Local Assistance dated July 8, 2019 regarding Fairfax bridge projects, including the Proposed Project, NMFS stated that it concludes the Fairfax bridge projects are not likely to jeopardize the continued existence of threatened CCC steelhead, nor are the projects likely to result in the destruction of or adverse modification of its critical habitat.

*Comment LB-6*

The commenter stated that he thinks the Town needs to prepare an EIR for the Proposed Project.

*Response LB-6*

The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that cannot be fully mitigated and therefore an EIR is not required.

## Frank Egger (FE)

Mr. Egger submitted written comments to the Town Clerk dated March 4, 2020 (Attachment 2) and read the written comments to the Town Council during the public hearing. Each paragraph from Mr. Egger's March 4, 2020 comment letter is quoted below, followed by a response.

### *Comment FE-1*

Request for a full Environmental Impact Report (EIR) for the proposed Meadow Way Bridge Replacement Project and request to continue the action approving the proposed Meadow Way Bridge Replacement Project until an EIR is completed.

### *Response FE-1*

The Town Council agreed to continue the public hearing to April 1, 2020 and subsequently to April 15, 2020 due to the COVID-19 pandemic. The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that is not already addressed and mitigated in the Final IS/MND and therefore preparation of an EIR for the Proposed Project is not required.

### *Comment FE-2*

It is clear that the document you have before you was based on the 2016 Statement by your Bridge Consultant and the report fulfills the Consultant's predictions, No EIR or EIS will be necessary. I spent two weeks reading all 400+ pages and another week putting together my responses with photos. The NMFS Biological Opinion is overly broad, not very well researched, little or no actual on-site work and prepared by a person/s not familiar with the Headwaters of Corte Madera Creek and has been tweaked for justification for a number of bridge replacement projects in the Corte Madera Creek watershed, Bon Air Bridge and a few other bridges in Fairfax, Meadow Way, Canyon Road and Creek Road.

### *Response FE-2*

As stated on page 136 of the Final IS/MND for the Proposed Project, at the initiation of the CEQA and NEPA processes and based on the professional judgement of environmental consultants and staff, the Town of Fairfax and Caltrans Local Assistance preliminarily determined that the Proposed Project would not likely require an EIR pursuant to CEQA nor an EIS pursuant to NEPA. This was based, in part, on the anticipation that all potentially significant impacts related to the Project could be reduced with the implementation of mitigation measures, to a less-significant level. Based on the conclusions of the CEQA Initial Study and NEPA Categorical Exclusion, the Town and Caltrans Local Assistance confirmed that an EIR pursuant to CEQA or an EIS pursuant to NEPA would not be required for the Project, respectively.

The commenter fails to provide any expert evidence to support any of his assertions regarding the NMFS Biological Opinion. As such the commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that is not already addressed and mitigated in the Final IS/MND and the Biological Opinion for the Proposed Project. Expressions of subjective concerns and personal beliefs do not constitute substantial evidence. (*Newberry Springs Water Ass'n v. County of San Bernardino* (1984) 150 Cal.App.3d 740). Speculation, argument, suppositions, and unfounded conclusions are not substantial evidence. (See, e.g., *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. An opinion offered by a person who is not competent to render an opinion on a subject does not amount to substantial evidence. (See, e.g., *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897)

*Comment FE-3*

Mr. Egger's March 4, 2020 comment letter also includes the following paragraph or statement which appears to be from the Fairfax Bridges website: Fairfax Bridges: "Caltrans has determined the NEPA document to be developed **will** reflect Categorical Exclusion (CE) with required technical studies. For CEQA, the document **will** be Initial Study/Mitigated Negative Declaration (IS/MND). We anticipate that any significant impacts identified can be fully mitigated to a, less than significant level and therefore an **Environmental Impact Report (EIR) or Environmental Impact Statement (EIS) is not anticipated to be required.**"

*Response FE-3*

As stated on page 136 of the Final IS/MND for the Proposed Project, at the initiation of the CEQA and NEPA processes and based on the professional judgement of environmental consultants and staff, the Town of Fairfax and Caltrans Local Assistance preliminarily determined that the Proposed Project would not likely require an EIR pursuant to CEQA nor an EIS pursuant to NEPA. This was based in part on the anticipation that all potentially significant impacts related to the Project could be reduced to a less-significant level. Based on the conclusions of the CEQA Initial Study and NEPA Categorical Exclusion, the Town and Caltrans Local Assistance confirmed that an EIR pursuant to CEQA or an EIS pursuant to NEPA would not be required for the Project, respectively.

*Comment FE-4*

The Cascade Canyon is one of the richest wildlife areas in Marin County teeming with Northern Spotted Owls, Yellow-Legged Frogs, steelhead, Mountain Lions, CA Gray Foxes, Black-tail deer and up until recently Coho salmon. The Consultants keep calling San Anselmo Creek an intermittent creek like its dry much of the year. We have had a couple of years of drought but this creek flows all year round and has had water in the Meadow Way reach into August. It flows year round above and below the Meadow Way Bridge, going dry in late August in the vicinity of Meadow Way until first rains in October.

*Response FE-4*

The Final IS/MND for the Proposed Project addresses wildlife habitat and wildlife species in the Project area, including those cited by the commenter. The Final IS/MND concludes that all potentially significant impacts related to biological resources can be mitigated to less-than-significant levels.

Page 37 of the Final IS/MND states that San Anselmo Creek is an intermittent creek with flows that vary with the rainfall patterns of a given season. The watershed that supports it is local, generally the western part of the Town of Fairfax and adjacent open space lands. A picture illustrating the creek's intermittent characteristics is provided below which includes the Project site. This same picture is provided on the cover of the Natural Environment Study which is included in Appendix A to the Final IS/MND.

Page 48 of the Final IS/MND states that a delineation of jurisdictional waters was performed at the Project site and found that there were no wetlands present. However, 0.18-acre of intermittent stream is present. Intermittent stream is considered "other waters" under the Clean Water Act and is considered a Water of the United States subject to the Regional Water Quality Control Board and US Army Corps regulations. No permanent impacts to intermittent stream would occur; and temporary impacts would be reduced to less-than-significant levels with the implementation of Mitigation Measure BIO-3 which will, among other items: limit work to the dry season (June 1-October 15) when flows are lowest or absent, would restore the bed at the conclusion of the Project to create a naturalized channel, limiting the physical extent of work by clearly delineating

the work area with high visibility fencing, requiring a spill-prevention and control plan to prevent and address potential spills, etc. (pages 46, 47, 48). Given there are no wetlands and impacts to other waters would be mitigated to less-than-significant levels, impacts to protected waters are less than significant with mitigation incorporated.

While it is acknowledged that the commenter lives next to the Project site, he provides no expert substantial evidence to support his lay observations and his expressions of subjective concerns and personal beliefs do not constitute substantial evidence. (*Newberry Springs Water Ass'n v. County of San Bernardino* (1984) 150 Cal.App.3d 740)



*Comment FE-5*

11 miles West, the County of Marin is replacing the Mountain View Bridge in Lagunitas. A final EIR decision has not yet been posted on the County's website. Here is a sampling as to what Marin's consultants found out there- moderate to high potential to occur within the Project area: Tamales roach, Coho salmon, steelhead, California red-legged frog, Cooper's hawk, sharp-shinned hawk, yellow warbler, northern spotted owl, pallid bat, Townsend's big-eared bat, western red bat, hoary bat, long-eared myotis, fringed myotis, long-legged myotis, and Yuma myotis. Yet Fairfax refuses to put a game cam in the creek to see what's here and downplays listed species in the area of the Meadow Way Bridge.

*Response FE-5*

Similar to the discussion of the Lagunitas Creek Bridge Project in response LB-3 above, the Mountain View Bridge in Lagunitas is located within a different watershed than the Meadow Way Project site, and, as such, any information regarding that site does not constitute evidence, let

alone substantial evidence, with regard to the site of the Proposed Project. Further, Page 139 of the Final IS/MND states that the commenter's recommendation for a game camera at the site would be at the discretion of the Town.

*Comment FE-6*

An EIR is being required for replacement of the Green Bridge which crosses Lagunitas (aka Papermill) Creek before Point Reyes Station.

*Response FE-6*

The Green Bridge project referred by the commenter is more formally known as the State Route 1 Lagunitas Creek Bridge Project. As this bridge is on a state highway, Caltrans served as the lead agency for both CEQA and the National Environmental Policy Act (NEPA). Specifically, this project involved the preparation of a joint CEQA EIR and a NEPA Environmental Assessment (EA). This bridge provides one of the main access points to the Point Reyes National Seashore and is located immediately adjacent to the Tomales Bay Ecological Reserve. The location of this bridge is within a different watershed than the Meadow Way Bridge and Lagunitas Creek provides a freshwater migration corridor for aquatic species, including Central California Coast (CCC) steelhead and coho salmon.

The State Route 1 Lagunitas Creek Bridge Project EIR/EA states that undeveloped northwestern corner of this project's BSA supports natural communities of special concern. These communities include wetlands, riparian trees, and grassland, which are foraging habitats for migratory and species of special concern birds and dispersal habitat for California red-legged frog, and which are managed by the Marin County Parks and Open Space District and the National Park Service (NPS) Giacomini Wetlands.

The environmental and regulatory setting for this site is different than the Meadow Way site as is the CEQA and NEPA lead agency. Caltrans' choice to prepare an EIR/EA has no bearing on the Town of Fairfax's preparation of a MND for the Meadow Way Bridge Replacement Project. The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that cannot be fully mitigated and therefore an EIR is not required.

*Comment FE-7*

I have provided a total of 16 photos of wildlife and fishes to Caltrans and 8 to Fairfax including Northern Spotted Owls, Coho, steelhead, steelhead fry, Ca. Gray Foxes. Over the years regular fish rescues have taken place moving hundreds of steelhead further downstream where it never de-waters.

*Response FE-7*

The Final IS/MND for the Proposed Project addresses the potential presence of wildlife habitat and wildlife species in the Project area, including those cited by the commenter. As detailed below, the Final IS/MND concludes that all potentially significant impacts related wildlife habitat and species can be mitigated to less-than-significant levels.

Page 39 of the Final IS/MND states that Northern Spotted Owl's (NSO's) preferred habitat consists of old-growth forests or mixed stands of old-growth and mature trees, and occasionally in younger forests with patches of big trees. NSO prefers high, multistory canopy dominated by big trees, trees with cavities or broken tops, woody debris and space under canopy. The Proposed Project site and immediately surrounding area are low-density residential

developments and riparian woodland; however, riparian redwood forest community is in proximity to the Project site. This species has been documented to nest in dense forest approximately 0.28 miles southwest of the Project site. No nesting habitat is present in the Project site.

Page 44 of the Final IS/MND states that, although the Project site itself does not contain suitable habitat for nesting northern spotted owl, the nearby vicinity does, and noise impacts at the Project site could adversely affect the northern spotted owl. With implementation of Mitigation Measure BIO-2, impacts to nesting avian species would be less than significant.

Mitigation Measure BIO-2 (Nesting Birds) is provided on page 45 of the Final IS/MND and is copied below. This measure was approved by the US Fish and Wildlife Service (USFWS) as a part of informal consultation between the Town's CEQA/NEPA consultant and USFWS. Refer to Appendix A of the Final IS/MND for more detailed biological resources reports (i.e., Natural Environment Study and Biological Assessment).

#### *Mitigation Measure BIO-2 – Nesting Birds*

*Prior to the issuance of construction permits, final avoidance and minimization measures shall be determined in consultation with the USFWS to ensure project design including avoidance and minimization measures do not result in adverse effects to NSO. The project shall adopt measures as mandated by USFWS, which may include, but is not limited to, the following:*

- *Work within the project site will be conducted outside the nesting season (September 1 through January 31) to avoid disrupting nesting NSO within and adjacent to the site. Work outside of this period during the nesting season will require protocol-level surveys to determine nesting status and location and consultation with the USFWS and CDFW.*
  - *If protocol-level surveys indicate that NSOs are nesting within the potential acoustic impact distance to be determined in consultation with the USFWS, project work may not commence until the end of the nesting season, i.e. September 1, or be limited to work within certain acoustic levels based upon distance from the nest and in consultation with the USFWS.*
  - *If protocol-level surveys determine that NSO are not nesting or not nesting within the potential acoustic impact zone during the year of the surveys, project work may commence June 1. June 1 is the earliest date non-nesting status can be confirmed.*
- *If project work begins in the non-nesting season and is to continue into the nesting season, project work will cease January 31 and will not recommence until protocol-level surveys as described above determine the nesting status of the survey area.*

As discussion in Response LB-1 above, the absence of coho salmon, as stated in the Final IS/MND, is also supported by findings in the Biological Opinion issued by NMFS following formal consultation for this Project. The Biological Opinion stated that coho salmon are not present within San Anselmo Creek and will therefore not be affected.

Pages 44 and 45 of the Final IS/MND includes a discussion of the Proposed Project's potentially significant impacts to steelhead and includes Mitigation Measure BIO-1 (copied below) to ensure such impacts are reduced to a less-than-significant level.

#### *Mitigation Measure BIO-1 – Special-Status Fish Species*

*Prior to the issuance of construction permits, consultation with NMFS shall be conducted to ensure proposed project design will not result in permanent adverse effects to*

*steelhead, critical habitat, or EFH. The project shall adopt measures as mandated by NMFS, which may include, but is not limited to, the following:*

- *Work shall be conducted in isolation from flowing water. If water is present, prior to the start of in-water activities, the work area will be isolated using temporary cofferdams, and flowing water shall be temporarily diverted around the isolated area.*
- *A fish salvage will be completed if water remains in the project site after the start of construction. A fish rescue and relocation plan shall be developed prior to the onset of any in-water work. The plan shall be implemented by a qualified biologist during dewatering activities in San Anselmo Creek. The fish rescue and relocation plan shall include an overview of the proposed methods for dewatering, expected location and duration of dewatering activities, and methods for conducting fish rescue and relocation during dewatering activities.*
- *If de-watering is necessary, pumps with 0.2-inch mesh will be used to remove standing water from the work area within the coffer dams to a filtration basin to prevent direct discharge into the creek. If a filtration basin is not available, filter bags will be placed surrounding the hose-release and the hose-release end will be placed on a level area outside of the wetted creek channel to allow water to settle prior to returning to the creek. No pumped water will be directly discharged into the creek. Allowing the pumped water to settle in a filtration basin or release through filter bags will prevent increase in turbidity or sediment loads during the de-watering process.*
- *Concrete, dust, and other debris from concrete removal activities will be captured and removed from the work site so as not to enter the creek channel.*
- *Where disturbed, the creek bed and channel shall be restored to pre-project conditions following the completion of work.*

Also, in a letter to Caltrans Office of Local Assistance, dated July 8, 2019, regarding Fairfax bridge projects, including the Proposed Project, NMFS stated that it concludes the Fairfax bridge projects are not likely to jeopardize the continued existence of threatened CCC steelhead, nor are the projects likely to result in the destruction of or adverse modification of its critical habitat.

Page 139 of the Final IS/MND states that the construction phase of the Proposed Project may discourage the wildlife species cited by the commenter from traversing the construction site, particularly during the day when work is in progress. However, the Final IS/MND concludes, based on that the construction phase would not preclude wildlife from using the site, particularly at night, and as such construction impacts would be less than significant. After construction, wildlife movement impacts at the Proposed Project site would be insignificant, as such species adapt to the rural residential character to the Project area. The Proposed Project would result in a freespan bridge and remove piles from the creek bed. The removal of piles and fish restoration program proposed by the Project would reduce existing obstructions to wildlife movement in the creek bed, including current obstructions to mountain lions, gray fox, and other locally common species.

*Comment FE-8*

This Project as proposed will eliminate a natural detention basin south of the bridge, build new

hardened walls, will speed up the flood flows and increase flooding in downtown San Anselmo.

*Response FE-8*

There is no substantial evidence to support any of these allegations.

Page 69 of the Final IS/MND states that the Proposed Project would not substantially alter the existing drainage pattern of the area. It explains that as designed, the bridge's soffit (underside) will clear the 100-year flood flow and pass the 50-year flood flow with two feet of freeboard. As the 100-year-flood is predicted to be 141.8-feet, and the bridge deck elevation would be 155-feet, over 11-feet would be available for structure depth.

The existing bridge is only 14-feet wide and Caltrans has determined the bridge is too narrow for both automobiles and pedestrians to use the bridge safely. Therefore, the replacement bridge would include a 21-foot and 6-inch wide deck, increasing the number of impervious surfaces on the site. However, due to the design elevation of the bridge and predicted flow elevations, the creek would have the capacity for the minimal increase in runoff that would result from this increase in impervious surface. As a result, the IS/MND concludes that no flooding on- or off-site would be expected as a result of the replacement bridge. Therefore, impacts related to drainage and flooding would be less than significant.

Pages 20 and 21 of the Final IS/MND explain that a program of fish habitat restoration, using bio-engineering techniques, low earth berms and woody nooks, designed specifically for the site, will be implemented. The current proposed location of the large wood is the bank along the access route, immediately upstream of the new retaining wall on the north side. A layer of large logs will be laid in a grid at the bottom of the excavation and on the creek bed, to be incorporated in the log-root wad revetment structure. The logs will be rot-resistant species, such as eucalyptus and redwood, typically obtained as re-purposed salvage from local urban tree removal companies. The structure will be designed so that the log grid is made integral with large rock rip-rap pieces placed within it and stacked under the new overtopping embankment slope. The ends of the logs perpendicular to the creek centerline will protrude out of the base of the embankment into the creek's edge flow, catching small woody drift. The base of the embankment will be planted with native plants and small trees to create near-shore overhanging vegetation. In conjunction with the revetment, the creek bed in front of the revetment structure will be re-contoured to create pools for fish. The net effect will be restoring the site to a deep and wide soil "trough" traversing the bridge site for natural fish passage without any obstructions in the creek other than creek materials and native plants.

The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant flooding impact that is not already addressed in the Final IS/MND. Expressions of subjective concerns and personal beliefs do not constitute substantial evidence. (*Newberry Springs Water Ass'n v. County of San Bernardino* (1984) 150 Cal.App.3d 740). Speculation, argument, suppositions, and unfounded conclusions are not substantial evidence. (See, e.g., *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. An opinion offered by a person who is not competent to render an opinion on a subject does not amount to substantial evidence. (See, e.g., *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897)

*Comment FE-9*

This proposal removes all vegetation, Buckeyes, Bays, Willows and Blackberries south of Meadow Way Bridge on both sides of the Creek. The only way to eliminate Blackberries is with Roundup which Caltrans uses all the time along Marin roadways. An EIR would describe how

the consultants will not only remove Blackberries but keep them from returning. The Blackberries provide food for critters and locals hike into the Creek at the Historic trail easement to pick Blackberries. Fairfax has an ordinance prohibiting the use of pesticides on the commons which the Town owned bridge parcel is.

#### *Response FE-9*

Pages 140 and 141 of the Final IS/MND state that the Proposed Project will not permanently block public access to the creek and that other access points to the creek will remain unaffected by the Project. Page 49 of the Final IS/MND includes the following impact analysis and mitigation measures related to tree removal and blackberry bushes:

*As stated in the Project Description above, the proposed project would include the removal of a bay tree and invasive blackberry bushes on the southwest corner of the new bridge, and pruning and removal of other vegetation in the construction zones. The Town's Tree Ordinance requires a permit for the removal or relocation of any tree with a circumference of 24-inches or more measures at 24 inches above the ground. The removal of the bay tree on-site would result in a potentially significant impact. However, implementation of Mitigation Measure BIO-4 would require the Applicant to submit an application for a tree removal permit, comply with all conditions of approval listed within the permit, and prepare a Tree Protection Plan for the other surrounding trees. A Planting Plan will be prepared for revegetation of the site, which includes native riparian trees, shrubs, vines, groundcover, and willows. The planting plan will consider native blackberry bushes in its development. Implementation of Mitigation Measures BIO-4 would reduce this potentially significant impact to a less-than-significant level. The proposed project would not conflict with any other applicable policies for the purpose of protecting biological resources.*

#### *Mitigation Measure BIO-4*

*Prior to issuance of a grading permit, the Town shall apply in writing to the Director for a tree removal permit, mark each tree to be considered for removal, and provide public notice per the Town's requirements.*

- The Tree Committee may require the Applicant to submit his or her application to a Qualified Arborist designated by the town for a report and recommendation, for which the Applicant shall bear all expenses.*
- Reasonable conditions of approval may be attached to any tree removal permit including, but not limited to, the replacement of removed trees.*
- The project shall replace any removed trees shall at a minimum ratio of 1:1.*
- A Qualified Arborist shall prepare a Tree Protection Plan in order to protect trees during construction of the proposed project and to maximize their chances for survival.*

It is anticipated the size of the trees to be replanted will be 5 to 15 gallons size which could take up to five years for moderate shading. Also, the removal of the blackberry bushes is not anticipated to result in any significant impacts to birds. Roundup would not be used for the Proposed Project.

The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that cannot be fully mitigated and therefore an EIR is not required.

#### *Comment FE-10*

In 2005 the Town Council was given a copy of the Northern Spotted Owl Map [NSO] showing NSO sites in Cascade Canyon. I included that map in my original comments but your staff says you cannot see it. Fairfax's consultant says there are no NSOs close to the project. I have a January 24, 2020 recording of NSOs within 200 feet of the Meadow Way Bridge. An EIR will show this project cannot go forward during the NSO nesting and foraging season which means no work can take place between Feb 1st and August 31st. That gives Fairfax a one and one-half month window to work, Sept 1st to Oct 15th. This will be a three year project but an EIR could come up with an alternative like we did for the Canyon Road Bridge when we replaced it, a two week project, maybe even a drop-in steel bridge for Meadow. Meadow Bridge Project can be shorter construction time and save \$1,000,000 in costs.

#### *Response FE-10*

As stated on page 143 of the Final IS/MND, the "2001 Spotted Owl Nest Site in Cascade Canyon, Fairfax, California" map provided by the commenter has not been included in the Final IS/MND as the map states "Sensitive Information – Not for Public Distribution".

Page 44 of the Final IS/MND states that although the Project site itself does not contain suitable habitat for nesting northern spotted owl, the nearby vicinity does, and noise impacts at the Proposed Project site could adversely affect the NSO nesting in those areas. In order to determine where nesting is located in relation to the Proposed Project and when it will be completed, surveys as described in Mitigation Measure BIO-2 (below) will be used to inform what construction activities may occur based on the sound levels produced and the distance to active nests. No activities will occur that would create noise levels significant enough to cause take of NSO. Those distances, anticipated noise thresholds, and construction activities are discussed fully in Appendix A, pages 75 through 79. Therefore the "one and one half month window" stated by the commenter is entirely incorrect as all work is not prohibited before August 31, only work which is loud enough to create sounds which would be disruptive to nesting NSO at the nest would need to be delayed until nesting is completed. Following consultation with the USFWS who reviewed the analysis provided in Appendix A as well as Mitigation Measure BIO-2 below, agreed that the measures as described by the Proposed Project will have less than significant impacts to NSO. With implementation of Mitigation Measure BIO-2, impacts to nesting avian species would be less than significant.

Mitigation Measure BIO-2 (Nesting Birds) is provided on page 45 of the Final IS/MND and is copied below. This measure was approved by the US Fish and Wildlife Service (USFWS) as a part of informal consultation between the Town's CEQA/NEPA consultant and USFWS. Refer to Appendix A of the Final IS/MND for more detailed biological resources reports (i.e., Natural Environment Study and Biological Assessment).

#### *Mitigation Measure BIO-2 – Nesting Birds*

*Prior to the issuance of construction permits, final avoidance and minimization measures shall be determined in consultation with the USFWS to ensure project design including avoidance and minimization measures do not result in adverse effects to NSO. The project shall adopt measures as mandated by USFWS, which may include, but is not limited to, the following:*

- *Work within the project site will be conducted outside the nesting season (September 1 through January 31) to avoid disrupting nesting NSO within and adjacent to the site. Work outside of this period during the nesting season will require protocol-level surveys to determine nesting status and location and consultation with the USFWS and CDFW.*
  - *If protocol-level surveys indicate that NSOs are nesting within the potential acoustic impact distance to be determined in consultation with the USFWS, project*

*work may not commence until the end of the nesting season, i.e. September 1, or be limited to work within certain acoustic levels based upon distance from the nest and in consultation with the USFWS.*

- *If protocol-level surveys determine that NSO are not nesting or not nesting within the potential acoustic impact zone during the year of the surveys, project work may commence June 1. June 1 is the earliest date non-nesting status can be confirmed.*
- *If project work begins in the non-nesting season and is to continue into the nesting season, project work will cease January 31 and will not recommence until protocol-level surveys as described above determine the nesting status of the survey area.*

With regard to the commenters claim that an EIR “will show this Project cannot get forward during the NSO nesting and foraging season” he offers no evidence as to why this would be the case that either an EIR or different project would be less impactful. As stated above consultation with the USFWS for potential impacts to NSO was completed, just the same as it would be under an EIR. Following a review of the Proposed Project, the USFWS concluded that the Proposed Project will have a less than significant impact as described. Because the commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that cannot be fully mitigated, therefore an EIR is not required.

*Comment FE-11*

This is obviously why your manager, lawyers and \$900,000 consultant do not want Fairfax to do a full EIR. Your Bridge Consultant is paid based on the cost of the project. You are being told it will be too expensive and hold up the project. This \$3,500,00 project has been in planning stages since 2013.

*Response FE-11*

Comment noted. This memorandum demonstrates that Mr. Bragman and Mr. Egger fail to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant environmental impact that is not already addressed and mitigated in the Final IS/MND and therefore preparation of an EIR for the Proposed Project is not warranted.