

Response to March 31, 2020 Comment Letter from the Sierra Club RE: Request for an Environmental Impact Report (EIR) for the Meadow Way Bridge Replacement Project and Channelization of San Anselmo Creek

The following includes responses to comments made by Judy Schriebman, Chair Marin Group Sierra Club (SC), in a letter to the Fairfax Town Council dated March 31, 2020 regarding the proposed Meadow Way Bridge Replacement Project. These comments were submitted to the Town after the 37-day public review period for the Draft IS/MND which ended on January 22, 2020. The following responses were prepared by Mr. Geoffrey Reilly, AICP, Senior Environmental Planner of WRA, and Mr. Nicholas Brinton, Associate Fisheries Biologist of WRA. Resumes for Mr. Reilly and Mr. Brinton, as well as for Ms. Patricia Valcarcel, a Senior Biologist of WRA who assisted with the Final IS/MND for the proposed Meadow Way Bridge Replacement Project, are attached.

Comment SC-1

The commenter requests that the Town of Fairfax prepare an EIR for the proposed Meadow Way Bridge Replacement Project. The commenter states that while a bridge may be required for public safety, a smaller project is more appropriate and should be evaluated as a part of a full EIR process.

Response SC-1

Though unrelated to the Town's environmental analysis of the Proposed Project under CEQA, for informational purposes the Town notes that, during the design process the local neighborhood was surveyed several times to determine what type and size of bridge was desired by the people who would use the bridge and other local citizens. While the first design was a two-lane bridge, feedback from the neighborhood and bridge users was solicited to help inform the design and size, including reducing the bridge to a one-lane bridge, with walkway. As such, those people most likely to use the bridge and affected by its construction were surveyed and the resulting design was only settled upon after input was gathered and designs revised according to the wishes of the residents who use the bridge.

The Final IS/MND prepared for the Proposed Project concluded that all significant impacts can be reduced to a less-than-significant level, and, as such, the Town was not required to prepare an EIR or to consider an alternative smaller 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 is not already addressed and mitigated in the Final IS/MND and therefore preparation of an EIR for the Proposed Project is not warranted.

Comment SC-2

The commenter states that the Final IS/MND is inadequate in its assessment of San Anselmo Creek, including that the stream is perennial and supports anadromous fish, calling into question the validity of the overall analysis. The commenter provides a map from the County of Marin showing the presence of steelhead in San Anselmo Creek, as well as a map outlining the house of Frank Egger in relation to Meadow Way Bridge and San Anselmo Creek.

Response SC-2

During site visits by the Town's environmental consultant to the Biological Study Area (BSA) over the previous years, the environmental consultant has observed that the San Anselmo Creek has been dry during the summer time, confirming its status as "intermittent" in this reach of the creek.

While areas upstream or downstream may be perennial, thus resulting in the stream generally being classified as “perennial” (for example in Cascade Canyon Preserve), the stream is not perennial around Meadow Way Bridge. The photographs below show the stream is dry just upstream of the BSA and within the BSA, including one picture taken, during the summer of 2010, the season when work for the Meadow Way Bridge Replacement Project is proposed. The status as “intermittent” does not change the fact that the stream is habitat for steelhead, as stated on page 39 of the Final IS/MND: “The BSA is designated Critical Habitat for steelhead (*Oncorhynchus mykiss*), and the species is presumed present within this section of San Anselmo Creek.” Page 39 of the Final IS/MND further states that “Steelhead and Coho salmon are discussed below, as the Project site is critical habitat for both species.” Therefore, the status of the creek as perennial or intermittent does not diminish the Final IS/MND’s identification of its use as habitat for steelhead at certain times of year when water is present, nor does it change the Final IS/MND’s determination regarding the annual drying of the creek in this reach. The commenter provides additional comments pertaining to the sufficiency of the analysis which are addressed below in the subsequent responses.

	
<p>Photo 1: San Anselmo Creek upstream of the BSA, no flow is present. November 2017.</p>	<p>Photo 2: San Anselmo Creek beneath Meadow Way Bridge, August 2010.</p>

Comment SC-3

The commenter states that there are three federally listed species in the vicinity and their status requires additional study to be offered “the highest level of protection”. The commenter provides states that foothill yellow legged frog (FYLF: *Rana boylli*) is a federally listed species.

Response SC-3

The commenter provides a false statement that FYLF is a federally listed species. FYLF is currently a state candidate for listing, but is not federally protected in any way. FYLF was reviewed as part of the environmental analysis of the Proposed Project and found unlikely to be present within the BSA; therefore, no effects are likely to occur (Appendix A, page 70 and 75).

Further the “highest level of protection” a species can receive is consultation with the agency responsible for its protection, as required under the Endangered Species Act (ESA). In both cases, consultation has been conducted for the Proposed Project. For Central California Coast Distinct Population Segment steelhead (steelhead: *Oncorhynchus mykiss*), steelhead critical

habitat, and Coho salmon critical habitat, the Project description prescribes minimization measures and Project designs that were provided to the National Marine Fisheries Service (NMFS) during formal consultation. The NMFS issued a Biological Opinion outlining their recommended measures and results of their analysis of the Proposed Project. Their conclusion states “After reviewing and analyzing the current status of the listed species and critical habitat, the environmental baseline within the action area, the effects of the proposed action, any effects of interrelated and interdependent activities, and cumulative effects, it is NMFS’ Biological Opinion that the proposed action is not likely to jeopardize the continued existence of CCC steelhead or destroy or adversely modify its designated critical habitat.” Further, with regard to both CCC steelhead and Coho salmon critical habitat, the NMFS found “effects to habitat from proposed actions are expected to be temporary, insignificant, or discountable.” Given such a finding by the agency responsible for protection of this species under the ESA, the Proposed Project will have a less than significant effect.

With regard to northern spotted owl (NSO, *Strix occidentalis caurina*), the Town conducted consultation with the United States Fish and Wildlife Service (USFWS), providing Proposed Project information to the USFWS.. After reviewing the Project, and its anticipated impacts and measures, the USFWS concluded no further consultation was necessary “unless new information reveals effects of the Proposed Project that may affect listed species in a manner or to an extent not considered, or a new species is listed, no further action pursuant to the [Endangered Species] Act is necessary for the Proposed Project.” Again, the Town conducted consultation for the Proposed Project with the agency responsible for its protection under the ESA, and, the potential impact to NSO was found so small that the USFWS agreed further consultation was not required as the Project is not likely to adversely affect the species. In each case the most cautious approach was taken and the respective agencies have found the Project to pose an insignificant threat to these species, when all of the appropriate measures are implemented.

Comment SC-4

The commenter states that there will be adverse impacts to other wildlife including deer, foxes and mountain lions.

Response SC-4

The commenter does not state in what way there will be impacts to wildlife nor do they offer any substantial evidence to support this assertion.

Page 139 of the Final IS/MND states that the construction phase of the Project may discourage the wildlife species from traversing the construction site, particularly during the day when work is in progress. However, the construction phase of the Project would not preclude wildlife from using the site, particularly at night when mammals such as those listed by the commenter are most active. After construction impacts to wildlife movement at the Project site would be negligible as no permanent barriers would be present to prevent access by the animals. The Project would result in a fre-span 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 mountain lions, gray fox, and other locally common species. The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant impact to other wildlife that is not already addressed in the Final IS/MND.

Comment SC-5

The commenter states that the map provided in Figure 5 on page 73 of Appendix A to the Final IS/MND is inadequate.

Response SC-5

Information presented in Figure 5 on page 73 of Appendix A to the Final IS/MND is the most up to date information on occurrences available via the California Department of Fish and Wildlife (CDFW), California Natural Diversity Database (CNDDDB). Observations from projects such as this, scientific collecting, wildlife population monitoring etc., are all reported to this database which is used by agencies like CDFW, USFWS and NMFS to assess species presence, habitat use and occurrence information (historic and present) throughout the state of California. Information from the database is commonly used during formal consultation with the aforementioned agencies to help determine which special-status species are present and require discussion. Because the database is the most comprehensive available in California and the commenter offers no expert substantial evidence to support its critique of Figure 5, no further reply is required.

Comment SC-6

The commenter states that the Project and local fencing will block the historic recreational access enjoyed by the public as well as denying wildlife's critical need to access water. The commenter states that the "promise" of future wildlife and public access is insufficient.

Response SC-6

The current, informal, access to the creek is not considered historic and continues aiding bank and soil erosion at the site. It is through both public and private properties, and its permanence should not be taken for granted. The Project will provide easier access on the south bank of the bridge. This access path will also work in the reverse direction, aiding wildlife that may come up from the creek. No fencing to obstruct access to the creek is planned. Discussions for temporary and permanent easements and agreements with the affected property owners will begin in earnest in the next phase of the Project. The comment raises no environmental impact comments requiring response under CEQA.

Comment SC-7

The commenter states that a review of potential nesting birds and roosting bats in the area is insufficient.

Response SC-7

Table 1 of the Natural Environment Study (NES), (Appendix A, Biological Reports, NES pages 27 through 61) to the Final IS/MND shows that 46 species of special-status bird and eight species of bat were evaluated for the Project. Mitigation Measure BIO-2 on page 45 of the Final IS/MND addresses potentially significant impacts to all nesting birds to reduce potential impacts to less-than-significant levels (including for NSO). Prior to construction a nesting bird survey assesses the area around where the Project will take place to determine if active nests (those with eggs, chicks or young) are present. If an active nest is located, then work within a designated buffer is not allowed, or work is limited to certain acoustic levels. Therefore, even for common species, potentially significant impacts would be reduced to less-than-significant levels. Any species of bat known to the local area are evaluated in Table 1 of the NES. After assessing habitat requirements for those species, all species of bats were found to be unlikely, primarily because habitats were not present within the BSA to support these species (e.g., the bridge does not

contain deep expansion joints or crevices to support stable temperatures and conditions to support roosting bats) (Appendix A, pages 38-40). Therefore, no additional mitigation measures or CEQA analysis was required for bats. The commenter fails to provide any substantial evidence of a fair argument that the Proposed Project would result in a potentially significant avian and bat impacts that are not already addressed in the Final IS/MND; therefore, no further environmental review pursuant to CEQA, such as an EIR, is required.

Comment SC-8

The commenter quotes a disclaimer from Figure 5 on page 73 of Appendix A to the Final IS/MND: “northern spotted owl occurrences are sensitive and not shown on this figure,” and then concludes that the report interprets this disclaimer to mean that NSO are not present.

Response SC-8

The origin of this disclaimer is due to restrictions associated with distribution of location data for NSO managed by CDFW; “CNDDDB data contains information on sensitive resources so there are certain restrictions when using, displaying, and sharing data.”¹ NSO occurrences are “sensitive” in the CNDDDB and as such are not legally allowed to be portrayed “in such a way that the viewers/users cannot determine exact location information of the elements mapped in the system.”

Page 39 of the Final IS/MND states the following regarding NSO: “This species has been documented to nest in dense forest approximately 0.28 miles southwest of 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.

Comment SC-9

The commenter states the Final IS/MND fails to address species information contained in recent reports cited by the commenter, specifically foothill yellow legged frog (FYLF) in Marin County Parks’ website regarding Cascade Canyon.

Response SC-9

FYLF is discussed in Table 1, of the NES (Appendix A, page 43 to the Final IS/MND) and evaluated as having no habitat present and therefore being unlikely to occur. Although the habitat upstream for FYLF is suitable (in areas where perennial stream is present), downstream occurrences are still marked as “extirpated” in the CNDDDB. The section of San Anselmo Creek within the BSA is not perennial and FYLF is typically found within a few meters of water in the dry season.

The “recent reports” cited by the author are specific to Cascade Canyon Preserve, an area managed as a park with perennial streams and suitable habitat for the species. These reports however do not extend downstream to cover the intermittent section of stream within the BSA, therefore they offer no insight to the presence of FYLF, or surveys that have been conducted in

¹ CDFW. 2020. CNDDDB Maps and Data. Available online at: <https://wildlife.ca.gov/Data/CNDDDB/Maps-and-Data>. Accessed April 10, 2020.

the area of the Proposed Project.

Comment SC-10

The commenter states the Final IS/MND fails to address information regarding bats that is contained in websites for One Tam and Marin County Parks.

Response SC-10

All bats known to occur in the vicinity of the BSA were reviewed in Table 1 of the NES (Appendix A, beginning on page 38). After assessing habitat requirements for those species, all species of bats were found to be unlikely primarily because habitats were not present within the BSA to support these species (e.g., the bridge does not contain deep expansion joints or crevices to support stable temperatures and conditions to support roosting bats). Please also see Response to Comment SC-7.

Comment SC-11

The commenter states that the Project will significantly impact the environment in both Fairfax and San Anselmo. The commenter states that data is available and information as to stream depths can be extrapolated for the upper reaches of San Anselmo Creek in Fairfax. Finally, the commenter states that the planned channelization of the creek with concrete and boulders plus the back-filling of the natural detention basin south of the bridge will increase flooding in downtown San Anselmo. The commenter states that channelization merely moves the flooding problem to another area downstream; it does not solve it.

Response to SC-11

San Anselmo Creek is the main tributary to Corte Madera Creek and the source of major flooding in downtown San Anselmo. Its flows are regularly monitored by public agencies. During wet winters, San Anselmo Creek flows at depths of ten feet in Fairfax and has for many years.

Channelization is not considered hydrologically sound by current standards of engineering that seek to keep streams more natural, which result in better ground water infiltration, habitat protection, and in reduced flooding downstream.

The Project is not only bridge replacement, but also bank and creek restoration within its reach, that will improve habitat for fish and other aquatic species. It has the most knowledgeable professionals on its team who deal directly with the hydrology and geomorphology of the Ross Valley Watershed, particularly this site, through engineering and scientific models and stream gauge calibrations, not extrapolations. The 50- and 100-year flow elevations, resulting from rigorous models and analyses, remain the same as those of the pre-project. In fact, the Project opens up the canyon for flows and reduces local flow velocities that cause erosion.

No natural detention basin within or without the Project is being filled in and, in fact, the opposite is true. The Project removes the failed embankments and old structure supports out of the flow, restores the banks and makes them stable, creates a natural log revetment for fish and creates fish pools.

It is unclear what channelization the commenter is referring to. The term is reserved for reaches of a creek or river that are covered with concrete, as is the case with the Los Angeles River, where even the natural creek bed is replaced with concrete. No hardscaped creek bed is planned on

this Project. For vertical surfaces, this single-span crossing includes concrete abutments on the two banks of the creek that are as wide as the bridge itself, plus wingwalls transitioning from the bridge's four corners to the natural banks, helping to guide the flows through. The below-creek bridge elements will be protected with rock riprap that will be buried about three feet below the bed and bank surfaces. There is no channelization proposed as a part of the Project. The creek will remain a fish-friendly trough of soil meandering through the site.

Comment SC-12

The commenter states that removal of vegetation associated with the Project will cause temperatures in San Anselmo Creek to rise, impacting steelhead, and that such an impact is a violation of the ESA.

Response SC-12

The Project has already completed formal consultation with the NMFS in order to comply with the ESA and mitigate all potential impacts to steelhead, or their critical habitat. The NMFS found that any effects of the projects to critical habitat are "from proposed actions are expected to be temporary, insignificant, or discountable." See Response to Comment SC-3 for additional details concerning the results of formal consultation with NMFS and USFWS.

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 bridge wingwall 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 riprap 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 and downstream of the revetment structure will be re-contoured to create pools for fish. All rock riprap placed to support the structure foundations will be buried under three feet of creek bed soil throughout the site. 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.

Comment SC-13

The commenter states that removing blackberries will also impact the natural habitat adversely as these bushes slow down winter creek flows, protecting creek banks, while providing shade, cover and food for wildlife.

Response SC-13

Himalayan blackberry (*Rubus armeniacus*) exists at the Project site and vicinity and while it does provide habitat and food for wildlife, as well slowing down creek flows, it is an invasive species (Appendix A to the Final IS/MND, page iv). No toxic chemicals would be used to remove the blackberry bushes. 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.”

Comment SC-14

The commenter states that there are impacts of bulldozing a 230 foot road into San Anselmo Creek to be used by heavy earth moving equipment for two years—especially if we have two very wet winters as we had in 2018-2019—must have further study that only an EIR can fulfill. The commenter also states that an EIR would include alternatives like lifting heavy equipment into the creek with a crane.

Response SC-14

The temporary access road it was evaluated in the IS/MND as it may be needed by the contractor. The contractor’s means and methods will determine how best to approach the Project and construct the bridge. It may include lifting equipment and materials to and from the creek. However, some heavy equipment, such as pile drilling and other truck mounted gear, dump trucks, etc., will likely need to get to the creek bed level. The narrow and steep temporary access road is not bulldozed down the creek bank, but slowly and methodically built because of its location and to be extra resilient for the possible two seasons it may be needed. For a two-season project, the specifications will clearly define how the contractor would winterize the site and reopen it, done routinely for such projects.

Comment SC-15

The commenter states that they “point out the disagreement by environmental experts” that Coho salmon are extirpated from San Anselmo Creek and offer two literature citations which they say support their assertion that Coho salmon are still present, followed by photographs of spawning steelhead.

Response SC-15

The citations presented do not provide any substantial evidence that Coho salmon are present within San Anselmo Creek. The commenter’s first excerpt outlines the formal federal listing of Coho salmon, but offers no evidence that the species is present. The second excerpt outlines how various streams in the San Francisco estuary may have historically been present in eight streams around San Francisco and San Pablo Bay, including San Anselmo Creek. Therefore, the commenter misinterprets the quoted statement which actually states only that in the past San Anselmo Creek *may* have supported Coho Salmon. Therefore, while the commenter presents

evidence that the Coho salmon is state and federally listed, and that it *may* have once existed in San Anselmo Creek, the commenter fails to provide any substantial evidence of a fair argument that the species is currently present.

The last three pages of the commenter's letter include photographs that show spawning steelhead in San Anselmo Creek, a species already known to be present in the Creek. The conclusion they draw is that if steelhead are present, then other similar species (Coho) must also be present. But, during formal consultation with NMFS, the NMFS stated that "the last sighting of Coho [in San Anselmo Creek] was in 1984 ... [and therefore] based on this information, NMFS considers endangered CCC Coho extirpated from San Anselmo Creek and the greater Corte Madera Creek watershed." Therefore regardless of the photos provided by the commenter, there is no evidence that any potential impacts to Coho are possible.

Comment SC-16

The commenter states that for many given reasons, a MND is insufficient to satisfy CEQA and a full EIR must be completed before the Project proceeds.

Response SC-16

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 warranted under CEQA. Interpretation of technical or scientific information requires an expert evaluation. Testimony by members of the public on such issues does not qualify as substantial evidence. *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 583. 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.