

## ATTACHMENT F

### Response to April 27, 2020 Comments from Save Fairfax RE: Meadow Way Bridge Replacement Project Initial Study/Mitigated Negative Declaration

The following includes responses to comments made by Save Fairfax, dated April 27, 2020 regarding the proposed Meadow Way Bridge Replacement Project.

#### Save Fairfax APRIL 2020 Newsletter

Fairfax mulls strain on wildlife from \$4.7M bridge rebuild

<https://www.marinij.com/2020/03/06/fairfax-mulls-strain-on-wildlife-from-4-7m-bridge-rebuild/>

Dear Friends of Fairfax,

Please ask the Fairfax Town Council to reject the one size fits all Mitigated Negative Declaration (MND) prepared for the Meadow Way Bridge Replacement and Creek Channelization Project and require a real Environmental Impact Report (EIR) before project approval. They are voting at the next Town Council meeting, May 6th. An EIR would allow the Town Council to look at alternatives like a less expensive drop-in bridge, no concrete channelization of the creek, prevent back filling of the natural floodplain and keep public access to the creek on public property. Eliminating the creek's flood plain will add to downstream flooding in San Anselmo and Ross. Fairfax's Sacramento bridge consultant selected the WRA environmental firm to prepare the MND report that also redefines San Anselmo Creek from a perennial stream to an intermittent stream. Work done last summer on the bridge keeps it safe for fire engines to cross while an EIR is prepared.

A number of local residents, the Sierra Club Marin Group, the Marin Watershed Alliance and Save Fairfax & San Anselmo Creeks have asked for a real EIR. Please join them, email the Town Council and Town Clerk today for the record:

rgoddard@townoffairfax.org, backerman@townoffairfax.org, bcoler@townoffairfax.org,  
shellman@townoffairfax.org, jreed@townoffairfax.org, mgardner@townoffairfax.org

Dear Fairfax Town Council,

Please continue Fairfax's admired environmental legacy. The Cascade Canyon is one of the richest environmental treasures in all of Marin. The Canyon is host to Northern Spotted Owls, Yellow-Legged Frogs, California Gray Foxes, Mountain Lions and California Black-tail Deer. However, the National Marine Fishery Service says Coho salmon are now extinct in Corte Madera Creek and her tributaries; and Steelhead are on the brink of extinction in this watershed.

San Anselmo Creek is a perennial stream. Reject the proposed Mitigated Negative Declaration that redefines San Anselmo Creek as an intermittent stream; and require a real Environmental Impact Report (EIR) for the proposed Meadow Way Bridge replacement project.

President Trump's EPA & Corps of Engineers are now dropping Federal Clean Water Act protections from intermittent streams, which means our creeks will lose Clean Water Act protections. An EIR could offer an alternative that costs less money, keeps public access to the creek on public property, uses no pesticides to remove all the blackberries, keeps the perennial creek designation, does not clear-cut all trees south of the bridge and protects native species.

Signed, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

## **Response to Save Fairfax April 2020 Newsletter**

The following response is based in part on the memorandum prepared for the Town of Fairfax dated May 1, 2020, and is hereby incorporated by reference. Though unrelated to the Town's environmental analysis of the Proposed Project under the California Environmental Quality Act (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 Initial Study/Mitigated Negative Declaration (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 Environmental Impact Report (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.

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.

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 summertime, 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.

	
<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>

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.

Foothill yellow legged frog (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 California Natural Diversity Database (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.

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 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 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.

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 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 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 IS/MND’s determination regarding the annual drying of the creek in this reach.

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.

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.”

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 47 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.*

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 newsletter 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.