

## 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 CNDDDB. 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 discussed 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 get 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.

## **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.

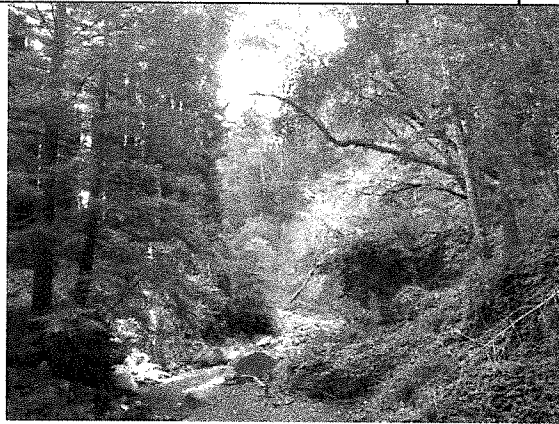


Photo 1: San Anselmo Creek upstream of the BSA, no flow is present. November 2017.



Photo 2: San Anselmo Creek beneath Meadow Way Bridge, August 2010.

*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 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.

*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."<sup>1</sup> 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 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

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

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.



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**Comments to Fairfax Town Council Re: Final Decision, no EIR is necessary for Meadow Way Bridge replacement project, Agenda Item #12.**

12. Adopt resolutions adopting the California Environmental Quality Act (CEQA) Final Initial Study and Mitigated Negative Declaration (IS/MND) and Mitigation Monitoring and Reporting Program (MMRP) for the proposed Meadow Way Bridge Replacement Project and approving the proposed Meadow Way Bridge Replacement Project– Town Manager

Attachment A

Attachment B

Attachment C

Date: March 4, 2020

To: Fairfax Town Council, Item #12 (see above)

Re: Request for a full Environmental Impact Report (EIR) for the 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.

From: Frank Egger, 13 Meadow Way, Fairfax, CA (fegger@pacbell.net)

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.

**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."**

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 it's 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.

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: Tomales 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.

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

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.

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.

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.

In 2005 the Town Council was given a copy of the Northern Spotted Owl Map 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 get 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.

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 \$3,500,000 project has been in planning stages since 2013.

Thank you, Frank Egger



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

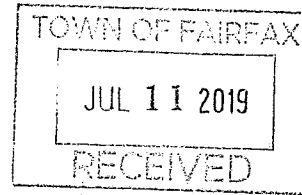
NATIONAL MARINE FISHERIES SERVICE  
West Coast Region  
777 Sonoma Avenue, Room 325  
Santa Rosa, California 95404-4731

ATTACHMENT 1

July 08, 2019

Refer to NMFS No: WCRO-2018-00244

Thomas Holstein  
Environmental Branch Chief  
Caltrans D4 Office of Local Assistance  
P.O. Box 23660, MS-10B  
Oakland, California 94623-0660



Re: Endangered Species Act Section 7(a)(2) Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Response for Seismic Retrofit, Replacement, and Preventative Maintenance Activities at Three Bridges within the Town of Fairfax in Marin County, California (STPL-5277 [025]) (STPL-5277[026]) (STPL-5277[027])

Dear Mr. Holstein:

Thank you for your letters of March 6, 2018, December 6, 2018, and March 27, 2019, requesting initiation of consultation with NOAA's National Marine Fisheries Service (NMFS) pursuant to section 7 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) for seismic retrofit, replacement, and preventative maintenance activities at three bridges located within the Town of Fairfax, Marin County, California.<sup>1</sup> Seismic retrofit is proposed for the Creek Road Bridge; preventative maintenance is proposed at the Canyon Road Bridge; and replacement is proposed for the Meadow Way Bridge. Your letter of March 27, 2019, requested NMFS combined our review and consultations for these three bridges collectively into one consultation.

Thank you, also, for your request for consultation pursuant to the essential fish habitat (EFH) provisions in Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA)(16 U.S.C. 1855(b)) for these actions. The proposed projects will occur within an area identified as EFH for California Central Coast (CCC) coho salmon (*O. kisutch*) managed under the Pacific Coast Salmon Fishery Management Plan. The proposed projects include design and staging considerations to avoid adverse effects to EFH. In this case, NMFS concluded the action would not adversely affect EFH. Thus, consultation under the MSA is not required for this action.

In the enclosed biological opinion, NMFS concludes the proposed bridge projects are not likely to jeopardize the continued existence of threatened CCC steelhead, nor are the projects likely to

<sup>1</sup> Pursuant to 23 USC 327, and through a series of Memorandum of Understandings beginning June 7, 2007, the Federal Highway Administration (FHWA) assigned and Caltrans assumed responsibility for compliance with Section 7 of the federal Endangered Species Act (ESA) and the Magnuson-Stevens Fishery Conservation and Management Act (MSA) for federally-funded transportation projects in California. Therefore, Caltrans is considered the federal action agency for consultations with NMFS for federally funded projects involving FHWA. Caltrans proposes to administer federal funds for the implementation of the proposed action, and is therefore considered the federal action agency for this consultation.



result in the destruction or adverse modification of its critical habitat. However, NMFS anticipates take of CCC steelhead will occur during construction activities as juvenile steelhead are likely to be present during dewatering of the work sites for project implementation. An incidental take statement with non-discretionary terms and conditions is included with the enclosed biological opinion. NMFS has also found that the proposed bridge projects are not likely to adversely affect designated critical habitat for CCC coho salmon.

Please contact Darren Howe at (707) 575-3152, or [darren.howe@noaa.gov](mailto:darren.howe@noaa.gov) if you have any questions concerning this section 7 consultation, or if you require additional information.

Sincerely,



Alecia Van Atta  
Assistant Regional Administrator  
California Coastal Office

Enclosure

cc: Hugo Ahumada, Caltrans, Oakland, CA  
Garrett Toy, Town Manager -Town of Fairfax, CA  
Mark Lockaby, Public Works Manager – Town of Fairfax, CA  
Roberta Morganstern, U.S. Army Corps of Engineers, San Francisco, CA  
Xavier Fernandez, RWQCB, San Francisco, CA  
Karen Weiss, CDFW – Bay Delta Office, Sacramento, CA  
Copy to ARN File #151422WCR2019SR00030

**Endangered Species Act (ESA) Section 7(a)(2) Biological Opinion  
for Creek Road, Meadow Way, and Canyon Road Bridge  
Projects in Fairfax, California**

**NMFS Consultation Number: WCRO-2018-00244**

Action Agency: Department of Transportation (Caltrans)

Table 1. Affected Species and NMFS' Determinations:

| ESA-Listed Species  | Status     | Is Action Likely to Adversely Affect Species? | Is Action Likely To Jeopardize the Species? | Is Action Likely to Adversely Affect Critical Habitat? | Is Action Likely To Destroy or Adversely Modify Critical Habitat? |
|---|------------|---|---|--|---|
| Central California Coast steelhead ( <i>Oncorhynchus mykiss</i> ) | Threatened | Yes   | No  | No   | No  |
| Central California Coast coho ( <i>O. kisutch</i> )               | Endangered | No  | No  | No   | No  |

**Consultation Conducted By:** National Marine Fisheries Service, West Coast Region

**Issued By:** 

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Alecia Van Atta  
Assistant Regional Administrator  
California Coastal Office

**Date:** July 08, 2019



# United States Department of the Interior



In Reply Refer to:  
08ESMF00-  
2019-I-1576

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825-1846

MAY 02 2019

Tom Holstein  
Attn: Keevan Harding  
Department of Transportation  
111 Grand Avenue  
P.O. Box 23660  
Oakland, California 94623-0660

Subject: Informal Consultation on the Meadow Way Bridge Replacement Project in the Town of Fairfax, Marin County, California (BRLO-5277(025))

Dear Mr. Holstein:

This letter is in response to the California Department of Transportation's (Caltrans) March 27, 2019, request for initiation of informal consultation with the U.S. Fish and Wildlife Service (Service) on the proposed Meadow Way Bridge Replacement Project (proposed project) over San Anselmo Creek in the Town of Fairfax, Marin County, California (Caltrans file number BRLO-5277(025)). Your request was received by the Service on April 1, 2019. At issue are the proposed project's effects on the federally threatened northern spotted owl (*Strix occidentalis caurina*). Critical habitat has been designated for the northern spotted owl but does not occur within the action area for the proposed project. This response is provided under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), and in accordance with the implementing regulations pertaining to interagency cooperation (50 CFR 402).

The federal action on which we are consulting is Caltrans, acting as the designated federal representative, and the Town of Fairfax, the proposed project sponsor, replacing the structurally deficient Meadow Way Bridge over San Anselmo Creek with a new one-lane single-span bridge. Pursuant to 50 CFR 402.12(j), you submitted a biological assessment and requested concurrence with the findings presented therein. These findings conclude that the proposed project may affect, but is not likely to adversely affect the northern spotted owl.

In considering your request, we based our evaluation on the following: (1) your letter requesting the initiation of informal consultation dated March 27, 2019; (2) the March 2019 *Meadow Way Bridge Project Biological Assessment Meadow Way Bridge, Town of Fairfax, Marin County, Bridge Numbers 27C 0008* (Caltrans 2019); (3) communications between Caltrans and the Service; and (4) other information available to the Service.

The proposed project consists of replacing the structurally deficient Meadow Way Bridge over San Anselmo Creek in the Town of Fairfax with a new one-lane single-span bridge. Meadow Way Bridge is primarily wooden, approximately 20 feet above the creek bed, 70 feet long, and 14 feet wide, with five spans and four bents. It has a narrow single travel lane and adjacent pedestrian path. The bridge is supported at four locations within the creek banks, two of which are in the creek bed, and at each

location there are three 12-inch diameter wooden piles driven into the ground to an unknown depth. Some of the wooden bridge timbers have been preserved with creosote. The site is in a residential area of the Town of Fairfax. It serves as the only egress and ingress facility for nearly two dozen homes on Meadow Way.

Construction will take two seasons to complete, and work in the creek will be performed only after June 1 and must end prior to October 15 in order to avoid the spawning and migration season for the protected Central California Coast steelhead. Work near or above the top of bank and at the roadway level may occur outside this work window. Therefore, the bridge will be installed in its temporary location during one season, and the proposed project will be completed within the following season. In compliance with the Town's Noise Ordinance, construction activities will be limited to the hours of 8:00 a.m. to 5:00 p.m. on weekdays, and 9:00 a.m. to 5:00 p.m. on Saturdays, with no noise-generating construction on Sundays or holidays. Placement of the new bridge in its permanent location would be the one exception regarding construction hours. As traffic will need to be shut down in order to move the bridge to its permanent location, this will occur in one evening after 5:00 p.m. in order to provide the least disruption for local residences that depend on this bridge for access.

The new bridge will be designed to clear the greater of the 50-year flows and two feet of freeboard, or the 100-year design flows, the former controlling in this case. It will be a 70-foot long single-span concrete arch bridge supported on two new abutments and no additional supports in the creek. The abutments will connect with wingwalls and retaining walls of varying lengths and heights at its four corners. The existing bridge is only 14-feet wide, and Caltrans has determined the bridge is currently too narrow for both automobiles and pedestrians to use the bridge safely. The replacement bridge will be 21.5 feet wide to allow safe passage for both automobiles and pedestrians.

The new bridge will be built on the south side of the existing bridge while the existing bridge remains in service, and moved sideways to its permanent location after the existing bridge is removed. Thus, the existing bridge will be replaced in stages. The first season of construction will be spent on Stage 1 of the improvements. During this stage, traffic will continue using the existing bridge. The southern halves of each of the two new cast-in-place concrete abutments will be constructed approximately in line with the existing bridge abutments. These are only portions of the permanent abutments, and are designed to support the new bridge in its temporary location adjacent to and south of the existing bridge during Stage 1.

For Stage 1 construction, an access ramp to the creek will be necessary. This earthen ramp will be used to transport materials and heavy equipment, such as pile drilling rigs, dump trucks, cranes, loaders, excavators, large containers, etc., to the creek bed elevation and back. The ramp will be located on the southwest quadrant of the bridge behind a proposed retaining wall connecting with the bridge.

The access road will be an approximately 230-foot-long ramp at 10 percent grade, half of which will be behind the above-referenced retaining wall, the rest winding around the wall's lower end and doubling back on the creek bed in front of the wall. For the second half of the ramp, temporary fill on the creek bed will be necessary. This ramp will facilitate the equipment for wall and abutment foundation excavations on both sides of the creek. To build the ramp, temporary earth retention, using soil nails next to private property and the inside edge of the ramp, will be necessary. Excavation spoils, required for backfilling later on, will be stored in containers placed on the creek bed temporarily due to lack of space above at the roadway level. The remainder of the spoils will be



hauled away on a daily basis. Any creosote treated timber piles or surrounding contaminated soils will be disposed of at an appropriate facility permitted to handle hazardous waste.

Removal of a California bay tree and invasive Himalayan blackberry bushes on the southwest corner of the new bridge as well as pruning of other trees and removal of other vegetation in the construction zones will be necessary. The creek bed within the action area will be used by the construction operations. Very little to no creek flow is expected during the peak summer construction months. However, the contractor will be required to install a bypass pipe to convey certain minimum low-flow volumes through the construction site and release downstream of the bridge. This will be accomplished through installation of a low dam across the creek bed upstream of the bridge to collect the summer flows and guide it to the pipe. Turbidity and water quality tests will be performed regularly, as required by permits. Any water collected in excavation pits or pools on the creek bed will be run through sediment control tanks, such as a Baker Tank, before being released to the creek.

To construct the initial halves of the new abutments, the approach embankments behind them and next to the current approach roads will also need to be excavated. In order to avoid undermining the approach roadways and abutments of the existing bridge while it is still in operation, the embankments behind and in front of the existing abutments will be retained temporarily with soil nails perpendicular to the roadway alignment. Traffic will be separated from the construction area with temporary concrete barrier railings (Type K) during this stage.

Since geotechnical borings and investigations have been conducted at the site, it is known that the bridge abutments and retaining walls attached to the abutments will need to be supported on piles. To minimize disturbance to the residents, 24-inch diameter cast-in-drilled-hole concrete piles, which are significantly quieter to install than driven piles, will be used to support the walls. For this, the creek bed will be excavated approximately eight feet deep to reach the approximate elevation of the concrete pile heads. After completing the excavations, drilling rigs will be used to drill the 24-inch-diameter cast-in-drilled-hole piles supporting the future structural elements. The drilling auger will be mounted on a truck that can negotiate the access road and be capable of drilling deep holes with augers added on progressively. The drilling spoils will be spun loose from the auger, dumped in containers, and hauled away.

Once the concrete pile caps are constructed, their top surface would be five to six feet below the creek bed. At this point, these foundations of the new walls and bridge abutments will be protected with filter fabric and a 2- to 2.5-foot layer of rock riprap on top for scour control. Ultimately, the underground riprap will crawl up on the wall face to some height and be subsequently covered with three feet of creek bed materials, restoring the creek bed and embankment slopes to their original levels through the site.

Once the southern (upstream) halves of the abutments and the two upstream connecting retaining walls are constructed, the new concrete superstructure will be cast to span them immediately adjacent to and south of the existing bridge. The bridge will be 21.5 feet wide from edge to edge and have a 12-foot lane, a one-foot buffer, a five-foot wide sidewalk, and barrier and hand railings on both edges of the deck.

At the conclusion of Stage 1, the southern halves of the abutment walls and the retaining walls connecting to them, as well as the new bridge superstructure, will be completed. Construction at the bridge deck level and the existing roadway may continue beyond October 15 if work remains to be done in order to complete Stage 1. The underground riprap fortifications in front of the completed

abutments and walls will be in place, the access road into the creek terminated, and the creek bed in the area of the Stage 1 construction will be restored. The new bridge, in its temporary location, will be ready for service, and traffic will be conveyed away from the existing bridge to the new bridge.

At the end of the season, the site will be cleaned up and debris removed, the equipment will be taken away, and the site winterized until the next season. No materials will remain in the creek bed after the first season of work, and the surface of the creek bed will be returned to pre-project conditions prior to the start of the wet season. If the bridge is not ready for traffic, the existing bridge will remain in service during the following winter and early spring.

Stage 2 construction will take place during the second season of construction. By the end of the first season, the new bridge will be in its temporary location, the temporary approach roadways will be constructed south of the existing bridge, and the vehicular and non-motorized traffic will be using the new bridge. Cars and pedestrians will be kept within the small detour area with temporary railing (Type K) and temporary fencing. Prior to the removal of the old bridge, the existing "wet" utility pipes (sewer, water, and gas) will be placed on a shoofly north of the existing bridge and supported in place during construction. They will eventually be relocated and housed and hung under the existing bridge deck well above the 50- and 100-year flow elevations.

At this stage, the existing bridge will be removed piece by piece with a crane or two, starting with its superstructure members. To avoid dropping pieces of the bridge into the creek, special catchment containers and bridge removal methods will be specified. After the removal of the superstructure, the wooden pile extensions will be cut at least three feet below the creek bed elevations and the holes backfilled with existing creek materials. The creosote-laden wood timbers will be disposed by the contractor at an appropriate facility permitted to handle hazardous waste.

After the bridge removal, the northern halves of each of the two abutments and the two downstream wingwalls connecting with the abutment corners will be constructed. Excavations, cast-in-drilled-hole pile and rock riprap installations, and backfilling over the riprap will be completed similar to Stage 1 construction, and the same access route will be reopened and used. The slopes above the retaining walls and wingwalls will be contour-graded. This aspect of the work can continue into the final stage, described below. During this stage, the excavations for the north abutments and wingwalls will continue to be protected from traffic with Temporary Railing Type K. The areas behind the walls will be backfilled and approach slabs and the approach roadways will be constructed in line with the alignment of the bridge in its final position, which will be approximately in the middle of Meadow Way's right-of-way.

In the final stage of construction, the new bridge will be closed for a few hours during a one-night operation when little or no traffic is expected. The new bridge superstructure will be either pushed hydraulically sideways to the north or lifted with a crane on each side and placed back on the abutment seats at its final location near the middle of Meadow Way. The remaining 1-foot-9-inch-wide strip of the deck width will be cast after this move. After the relocation of the new bridge to its final position, the bridge will be reopened to traffic. Approach railings at all four bridge corners, landscaping and vegetation restoration with native plants (trees, bushes, and other ground cover) on all affected slopes, fencing, and other surface improvements around the bridge will continue until project completion.

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 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 of the revetment structure will be re-contoured to create pools for fish.

The wet utilities will be rerouted under the new bridge and the smaller "dry" utilities may be placed inside the barrier railings, the deck, or the sidewalk. A Revegetation Plan for the site will be prepared. The Revegetation Plan will be implemented once all construction is complete. Planting below the top of the creek bank will be monitored annually for five years. The primary focus of the monitoring will be on the lower part of the creek bank. Evidence of erosion, sedimentation, or other problems will be documented. Photos will be taken from fixed photo points.

#### Conservation Measures

The following avoidance and minimization measures will be implemented to avoid and minimize the effects of the proposed project on the northern spotted owl and other special-status species and their habitats.

1. The primary construction or access in the creek bed and banks will be completed between June 1 and October 15, and work within the creek bed and banks will occur when the work area is dry, or dewatered.
2. Final grading in the creek bed will conform to the existing creek channel both downstream and upstream (except in the areas of permanent fill or fish habitat creation), and existing bed materials will be replaced with similar sized materials.
3. Prior to clearing, grubbing, pruning, or groundbreaking activity, the limits of construction will be fenced with temporary high-visibility construction fencing to protect environmentally sensitive areas and to prevent any equipment from unnecessarily extending the work area or entering the creek bed. In addition, silt fencing will be installed where appropriate to prevent debris from entering the creek. All fencing will be removed upon project completion.
4. Prior to construction, the contractor will be required to prepare an Accidental Spill Prevention and Cleanup Plan.
5. To minimize fluid leaks during operation, refueling, and maintenance of stationary equipment, spill control absorbent material will be in place underneath this equipment at all times to capture potential leaks. All refueling and maintenance of equipment, other than stationary equipment, will occur outside the creek's top-of-bank. Any hazardous chemical spills will be cleaned immediately.
6. Stockpiling of construction materials and supplies will occur outside the creek channel.
7. If there are drilling activities related to construction of the proposed project, the contractor will be required to use a drilling mud and slurry seal that is nontoxic to aquatic life. All drilling muds and fluid will be contained on-site in tanks and disposed of in a permitted manner. Fluids from saw cutting and other activities will be collected and not allowed to flow into the creek.
8. No equipment, including concrete trucks, will be washed within the channel of the creek, or where wash water could flow into the channel. Prior to proposed project construction, the

contractor will establish a concrete washout area for concrete trucks in a location where wash water will not enter the creek or adjacent areas. The washout area will follow the practices outlined in the San Francisco Bay Regional Water Quality Control Board Erosion and Sediment Control Field Manual (page 107-108, July 1999) or more recent guidelines. Substitution of the designated concrete washout area or methods will require prior approval of the Town of Fairfax.

9. All water that comes in contact with wet concrete will be pumped directly into tanks and disposed of at a permitted location.
10. When working on the roadway and bridge approaches during the October 15 to June 1 period, all drainage inlets within the proposed project site will be protected from receiving polluted storm water through the use of filters such as fabrics, gravel bags, straw wattles, or other appropriate best management practices (BMPs).
11. Water encountered during construction of the bridge foundations will be managed in accordance with an approved dewatering plan.
12. All workers will ensure that food scraps, paper wrappers, food containers, cans, bottles, and other trash from the action area are deposited in covered or closed trash containers. The trash containers will not be left open and unattended overnight.
13. At the end of construction, the Town of Fairfax will require that seed and certified weed-free straw will be placed on disturbed areas in the proposed project site (with the exception of the lower creek banks, creek bed, and areas below the ordinary high water mark). A jute mesh type or equivalent matting will be placed over the straw, installed per the manufacturer's instructions. This matting will have no plastic incorporated into it. Substitution of materials or erosion control methods will require prior approval of the Town of Fairfax.
14. After construction, the proposed project site will be inspected following the first heavy rain, during the middle of the rainy season and at the end of the rainy season. During each visit areas of significant erosion or erosion control device failure will be noted and appropriate remedial actions taken.
15. If construction activities have the potential to exceed 101 decibels (dB) (extreme levels), this work will be conducted to the extent feasible outside the nesting season (September 1 through January 31) to avoid disrupting nesting northern spotted owls adjacent to the action area. Work generating extreme sound levels during the nesting season will require protocol-level surveys to determine northern spotted owl nesting status and location and consultation with the Service and California Department of Fish and Wildlife (CDFW).
16. If work within the action area generating extreme sound levels (101 dB or higher) must occur during the northern spotted owl's nesting season (February 1 through August 31), protocol-level surveys in accordance with the Service's "Protocol for Surveying Proposed Management Activities that may Impact Northern Spotted Owls" (Service 2012) will be conducted. For "disturbance only" projects (i.e. projects that will not impact northern spotted owl habitat directly, but will generate acoustic and/or visible disturbances potentially leading to nest abandonment), six surveys will be required during the nesting season in the action area and the surrounding 0.25-mile area (survey area).
17. If protocol-level surveys indicate that northern spotted owls are nesting within the potential acoustic impact distance to be determined in consultation with the Service, 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 Service. Service (2006) provides an acoustic analysis matrix that compares ambient conditions to project conditions, and then derives an estimated linear distance from disturbance point-sources at which nesting northern spotted owls have been documented (and/or should be expected) to be harassed/disturbed. The harassment distance is the

- minimum buffer necessary to avoid acoustic impacts to an active northern spotted owl nest (see Tables 1 and 2 below).
18. If protocol-level surveys determine that northern spotted owls 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.
  19. If project work begins in the non-nesting season and is to continue into the nesting season, project work generating extreme levels of noise (101 dB or higher) will cease January 31 and will not recommence until protocol-level surveys as described above determine the nesting status of the survey area. Work generating noise levels below 100 dB (“Very High” or lower levels of disturbance) may continue into the nesting season (Tables 1 and 2).
  20. No more than one night of nighttime work will occur within the action area.
  21. An environmental training program will be implemented by a Service-approved biologist to train all the proposed project construction employees in the avoidance measures and the identification of the northern spotted owl.
  22. A Service-approved biologist will supervise all work in the action area.
  23. No suitable nest trees for the northern spotted owl will be removed.

Table 1. Acoustic disturbance analysis for the northern spotted owl per Service (2006).

| Disturbance regime            | Disturbance  | Decibel level (“standardized”)  | Relative sound level        |
|-------------------------------|--|---|-----------------------------|
| Bridge maintenance            | Yelling  | 70  | Moderate                    |
|                               | Flatbed pickup truck   | 77  | Moderate                    |
|                               | Generator (low end)  | 78  | Moderate                    |
|                               | Backhoe (high end)   | 84  | High                        |
|                               | Generator (high end)   | 84  | High                        |
|                               | Concrete mixer (high end)  | 85  | High                        |
|                               | Pumps, generators, compressors (high end)  | 87  | High                        |
|                               | Jackhammer   | 89  | High                        |
|                               | Medium construction (high end)   | 89  | High                        |
| Ambient (existing conditions) | Power tool use from adjacent properties, light vehicle traffic, birds singing, wind. | 45 - 79 (measured at Canyon Road Bridge over San Anselmo Creek on March 15, 2016) | Natural Ambient to Moderate |

Table 2. Estimated harassment distance due to elevated action-generated sound levels for proposed actions affecting the northern spotted owl, by sound level (Service 2006).

| Existing (ambient) pre-project sound level (dB) <sup>1,2</sup> | Anticipated action-generated sound level (dB) <sup>2,3</sup> |              |                    |                   |
|--|--|--------------|--------------------|-------------------|
|  | Moderate (71-80)   | High (81-90) | Very High (91-100) | Extreme (101-110) |
| “Natural Ambient” <sup>4</sup> (<=50)                          | 165 feet   | 500 feet     | 1,320 feet         | 1,320 feet        |
| Very Low (51-60)   | 0 feet   | 330 feet     | 825 feet           | 1,320 feet        |
| Low (61-70)  | 0 feet   | 165 feet     | 825 feet           | 1,320 feet        |
| Moderate (71-80)   | 0 feet   | 165 feet     | 330 feet           | 1,320 feet        |
| High (81-90)   | 0 feet   | 165 feet     | 165 feet           | 500 feet          |

<sup>1</sup> Existing (ambient) sound levels includes all natural and human-induced sounds occurring at the project site prior to the proposed action, and are not casually related to the proposed action.

<sup>2</sup> Sound levels provided in Service technical guidance document (Service 2006).

<sup>3</sup> Action-generated sound levels are given in decibels (dB) experienced by a receiver, when measured or estimated at 50 feet from the sound source.

<sup>4</sup> “Natural Ambient” refers to sound levels generally experienced in habitats not substantially influenced by human activities.

### Habitats and Occurrences

The action area is a low-density residential community set within a forested landscape. San Anselmo Creek is an intermittent creek within the action area with flows that vary with the rainfall patterns of a given season. The creek substrate is a mix of small gravel to larger cobbles. Within portions of the action area, there are wooden or cement retaining walls along the lower banks. The rest of the bank areas are natural substrate.

Within the action area, the riparian redwood forest habitat consists primarily of California bay trees, buckeye, oaks, and arroyo willow. The understory is comprised mainly of California blackberry, Himalayan blackberry, English ivy, and various grasses. This woodland is low density within and directly adjacent to the action area because of the presence of the creek channel and residential development in the immediate area. However, dense, undeveloped coniferous forest is located adjacent to the action area to the south and upslope.

Per the CDFW Spotted Owl Viewer database, there are no northern spotted owl observations within 0.25 mile (1,320 feet) of the action area; however, there are two northern spotted owl observations within 0.3 mile (1,584 feet) of the action area including a northern spotted owl activity center in 2015 (CDFW 2019). There are 51 documented northern spotted owl observations between the years of 1998 and 2016 within 0.5 mile of the action area (CDFW 2019). All of these observations are located within entirely forested areas over 1,300 feet south and west of the action area. Northern spotted owls have been documented to nest in several different trees in this area in 2000, 2001, 2003, 2005, 2006, 2009, 2011, and 2015.

No northern spotted owls or indication of presence of this species (e.g., pellets or feces stains below potential nest or roost sites) were observed during the February 2018 site visit. Within the action area, the canopy is more open and trees do not contain platform-like structures that are found in adjacent forest to the southwest of the action area. The trees within the action area are therefore unlikely to support nesting northern spotted owls. Although northern spotted owls in the area are unlikely to nest within the action area, they may use the action area as foraging habitat. The nearest nesting habitat and potentially suitable nest tree is 1,000 feet southwest of the action area. Based on the known occurrence of the northern spotted owl near the action area and the availability of suitable nesting habitat within 1,000 feet of the action area, the Service believes the northern spotted owl is likely to forage within the action area and nest near the action area.

Ambient noise levels in the immediate vicinity of the action area range from 45 to 79 dB (measured at Canyon Road Bridge over San Anselmo Creek on March 15, 2016) which are in the "Very Low" to "Moderate" range in Tables 1 and 2 and in Service (2006). Using a conservative approach in which ambient conditions are considered with an average level of 54 dB, or "Very Low," and proposed project conditions considered "Very High", the estimated harassment distance is 825 feet (Table 1). The nearest documented northern spotted owl nesting occurrence is located over 1,300 feet southwest of the action area. Therefore, the action area would be outside the area of potential acoustic impact if "Very Low" ambient sound levels are used as the basis for existing conditions even if a nest was present at the closest suitable habitat (1,000 feet). However, for extreme sound generating activities (101 dB or higher), the disturbance buffer is 0.25 mile (1,320 feet), and although no documented nest site is within 1,320 feet, potential nesting habitat is present within this distance. Therefore, the action area may be within the area of potential acoustic impact if extreme sound levels are generated but is dependent upon northern spotted owl nest locations in the year of construction.

The Service concurs that the proposed project is not likely to adversely affect the northern spotted owl because: (1) no suitable nest trees for the northern spotted owl will be removed by the proposed project; (2) the nearest suitable nesting habitat for the northern spotted owl (1,000 feet away) is further than the estimated harassment distance of 825 feet for proposed project activities with "Very High" noise levels (91-100 dB) in an action area with "Very Low" ambient noise levels (Table 2); (3) if work within the action area generating extreme sound levels (101 dB or higher) must occur during the nesting season (February 1 through August 31), protocol-level surveys will be conducted for the northern spotted owl following the guidelines in Service (2012) in the same year as the proposed nesting season work; (4) if protocol-level surveys indicate that northern spotted owls are nesting within the potential acoustic impact distance to be determined in consultation with the Service, 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 Service; (5) foraging northern spotted owls are unlikely to be significantly disturbed because nighttime construction work will be limited to only one night; (6) all trash will be removed from the project area to prevent attracting predators that may prey on northern spotted owl chicks; (7) all work will be supervised by a Service-approved biologist; and (8) BMPs and spill prevention measures will be implemented to minimize the potential for the degradation or contamination of northern spotted owl foraging habitat.

Therefore, 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 Act is necessary for the proposed project.

If you have any questions regarding this letter, please contact Joseph Terry (joseph\_terry@fws.gov), Senior Biologist, or Ryan Olah (ryan\_olah@fws.gov), Coast/Bay Division Chief, at the letterhead address, or telephone (916) 943-6721 or (916) 414-6623.

Sincerely,

A handwritten signature in black ink, appearing to read "Ryan Olah", with a stylized flourish at the end.

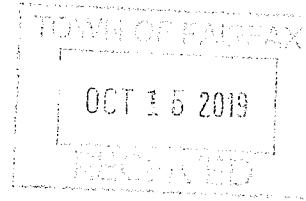
Ryan Olah  
Coast/Bay Division Chief



**LITERATURE CITED**

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- California Department of Transportation (Caltrans). 2019. Meadow Way Bridge Project Biological Assessment, Meadow Way Bridge, Town of Fairfax, Marin County, Bridge Numbers 27C 0008. Project Number BRLO-5277(025). March. Prepared by WRA, Inc., San Rafael, California, for Caltrans, District 4, Oakland, California. 50 pp. plus appendices.
- U.S. Fish and Wildlife Service (Service). 2006. Transmittal of Guidance: Estimating the Auditory and Visual Disturbance to Northern Spotted Owls and Marbled Murrelets in Northwestern California. U.S. Fish and Wildlife Service, Arcata, California. July. 12 pp.  
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- U.S. Fish and Wildlife Service (Service). 2012. Protocol for surveying proposed management activities that may impact northern spotted owl. Revised January 2012.  
<http://www.fws.gov/yreka/ES/2012RevisedNSOprotocol-2-15-12.pdf>. Accessed on April 8, 2019.

**DEPARTMENT OF TRANSPORTATION**  
DISTRICT 4 OFFICE OF LOCAL ASSISTANCE  
P.O. BOX 23660, MS-10B  
OAKLAND, CA 94623-0660  
PHONE (510) 286-5900  
FAX (510) 286-6301  
TTY 711  
www.dot.ca.gov



Making Conservation  
a California Way of Life.

October 1, 2019

04-MRN-0-FRFX  
BRLO-5277(025)  
Replace Existing Meadow Way  
Bridge (Br. No. 27C-0008)

Mr. Garrett Toy, Town Manager  
Town of Fairfax  
142 Bolinas Road  
Fairfax, CA 94903

Dear Mr. Toy:

This will confirm that your environmental document has been reviewed and approved in conformance with the National Environmental Policy Act (NEPA). A copy of the signed document is attached.

With this environmental clearance, you may now proceed with final design activities and preparation of right of way documents as necessary. You are reminded that if Federal participation is desired for the right of way and utility relocation phases, you must request and receive a separate "Authorization to Proceed" for right of way before advancing with the property appraisal and acquisition, or utility relocation work.

If you have any questions, please contact me at 510-286-5227 or Robert T Le at 510-622-5917.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jae Lee".

Jae-Myung Lee, P.E.  
Senior Transportation Engineer  
Office of Local Assistance

Enclosure  
NEPA document

**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Meadow Way Bridge Replacement**

04-MRN-0-FRFX  
 Dist.-Co.-Rte. (or Local Agency) P.M./P.M. E.A/Project No. BRLO-5277 (025)  
 Federal-Aid Project No. (Local Project)/Project No.

**PROJECT DESCRIPTION:** (Briefly describe project including need, purpose, location, limits, right-of-way requirements, and activities involved in this box. Use Continuation Sheet, if necessary.)

The Town of Fairfax plans to replace the existing functionally obsolete bridge (27C-0008) which carries Meadow Way over San Anselmo Creek. The new bridge will be a 70 foot long single-span concrete arch bridge, supported on two new abutments, with no additional supports in the creek. The abutments would connect with wingwalls and retaining walls of varying lengths and heights at its four corners. The replacement bridge would be 21.5 feet wide to allow safe passage for both automobiles and pedestrians. Two temporary construction easements and two permanent easements will be needed in the vicinity of the project site.

**CALTRANS CEQA DETERMINATION** (Check one)

Not Applicable – Caltrans is not the CEQA Lead Agency  Not Applicable – Caltrans has prepared an Initial Study or Environmental Impact Report under CEQA

Based on an examination of this proposal, supporting information, and the above statements, the project is:

Exempt by Statute. (PRC 21080[b]; 14 CCR 15260 et seq.)  
 Categorically Exempt Class . (PRC 21084; 14 CCR 15300 et seq.)

Based on an examination of this proposal and supporting information, the following statements are true and exceptions do not apply:

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law.
- There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 ("Cortese List").
- This project does not cause a substantial adverse change in the significance of a historical resource.

Common Sense Exemption. [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (14 CCR 15061[b][3].)]

Print Name: Senior Environmental Planner or Environmental Branch Chief

Print Name: Project Manager

Signature

Date

Signature

Date

**NEPA COMPLIANCE**

In accordance with 23 CFR 771.117, and based on an examination of this proposal and supporting information, the State has determined that this project:

- does not individually or cumulatively have a significant impact on the environment as defined by NEPA, and is excluded from the requirements to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS), and
- has considered unusual circumstances pursuant to 23 CFR 771.117(b).

**CALTRANS NEPA DETERMINATION** (Check one)

23 USC 326: The State has determined that this project has no significant impacts on the environment as defined by NEPA, and that there are no unusual circumstances as described in 23 CFR 771.117(b). As such, the project is categorically excluded from the requirements to prepare an EA or EIS under the National Environmental Policy Act. The State has been assigned, and hereby certifies that it has carried out the responsibility to make this determination pursuant to Chapter 3 of Title 23, United States Code, Section 326 and a Memorandum of Understanding dated May 31, 2016, executed between the FHWA and the State. The State has determined that the project is a Categorical Exclusion under:


- 23 CFR 771.117(c): activity (c) ( )
- 23 CFR 771.117(d): activity (d) (13)
- Activity \_\_\_ listed in Appendix A of the MOU between FHWA and the State

23 USC 327: Based on an examination of this proposal and supporting information, the State has determined that the project is a Categorical Exclusion under 23 USC 327. The environmental review, consultation, and any other actions required by applicable Federal environmental laws for this project are being, or have been, carried out by Caltrans pursuant to 23 USC 327 and the Memorandum of Understanding dated December 23, 2016 and executed by FHWA and Caltrans.

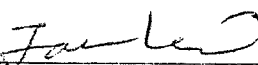
Thomas Holstein

Print Name: Senior Environmental Planner or Environmental Branch Chief

Jaemyung Lee  
 Print Name: Project Manager/DLA Engineer

  
 Signature

25 Sep 2019  
 Date

  
 Signature

9-26-19  
 Date

Date of Categorical Exclusion Checklist completion: 09/24/19

Date of ECR or equivalent : 09/24/19

Briefly list environmental commitments on continuation sheet. Reference additional information, as appropriate (e.g., CE checklist, additional studies and design conditions).

**CATEGORICAL EXEMPTION/CATEGORICAL EXCLUSION DETERMINATION FORM**  
**Continuation Sheet**

|   |           |   |
|---|-----------|---|
| <b>04-MRN-0-FRFX</b>  |           | <b>BRLO-5277 (025)</b>                              |
| Dist.-Co.-Rte. (or Local Agency)  | P.M./P.M. | Federal-Aid Project No. (Local Project)/Project No. |
| Continued from page 1:  |           |   |
| <u>Environmental Commitments</u>  |           |   |
| <br>  |           |   |
| <u>Noise</u>  |           |   |
| Technical Noise Memorandum dated August 23, 2019  |           |   |
| <br>  |           |   |
| <u>Biological Resources</u>   |           |   |
| Natural Environment Study dated August 2019   |           |   |
| Biological Assistance dated March 2019  |           |   |
| Addendum to the BA dated May 6, 2019  |           |   |
| USFWS Concurrence Letter dated May 2, 2019  |           |   |
| NMFS Biological Opinion dated July 8, 2019  |           |   |
| <br>  |           |   |
| <u>Visual Resources</u>   |           |   |
| Technical Visual Resources Memorandum dated August 23, 2019   |           |   |
| <br>  |           |   |
| <u>Hazardous Material</u>   |           |   |
| Technical Hazardous Material Memorandum dated August 23, 2019   |           |   |
| <br>  |           |   |
| <u>Equipment Staging</u>  |           |   |
| Staging will occur within the existing paved roadway of Summit Drive, from Hillside Circle to Easton/Canyon Road. The City will also make sure the contractor will implement the additional environmental criteria for staging requirement, as per technical memo dated January 18, 2019. |           |   |
| <br>  |           |   |
| <u>Traffic</u>  |           |   |
| Technical Traffic Memorandum dated August 23, 2019  |           |   |
| <br>  |           |   |
| <u>Equipment Staging</u>  |           |   |
| Technical Equipment Staging Memorandum dated August 23, 2019  |           |   |

**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.



Photo 1: San Anselmo Creek upstream of the BSA, no flow is present. November 2017.



Photo 2: San Anselmo Creek beneath Meadow Way Bridge, August 2010.

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.