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May 6, 2020

**Via Email**

Fairfax Town Council  
142 Bolinas Road  
Fairfax, CA 94930  
To: mgardner@townoffairfax.org

RE: Comments on Mitigated Negative Declaration for the Meadow Way Bridge Replacement Project

I am writing on behalf of Save Fairfax and Frank Egger regarding the Town of Fairfax's Meadow Way Bridge Replacement Project ("Project") and its accompanying mitigated negative declaration ("MND") prepared pursuant to the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.*

The MND proposes considerable excavation and development directly within the main stream channel for San Anselmo Creek, which comprises important existing and future potential habitat for steelhead, coho salmon and foothill yellow-legged frog. The Project will remove vegetation, including large mature trees along the streambank, as well as disrupt downstream hydrology through its excavation down to eight feet below the Creek surface. The Project will channelize large sections of the Creek bank, thereby increasing scouring and downstream loss of salmonid and foothill yellow-legged frog habitat, as well as increasing the potential for cumulative flash flooding.

MG-1

The MND attempts to rely on mitigation measures to avoid these potentially significant impacts from occurring. However, these measures do not adequately address the significant impacts that may occur. Here, the record contains evidence supporting a 'fair argument' that Project impacts may be significant. Under well-settled CEQA law, this means the City must prepare an EIR.

**LEGAL FRAMEWORK FOR CEQA.**

When a proposed activity is a project and does not qualify for a CEQA exemption, the agency must first undertake an initial study to determine whether the project 'may have a significant effect on the environment. If the initial study finds substantial evidence that the project may have a significant environmental effect or impact, the lead agency must prepare and certify an EIR before approving or proceeding with the project. *See e.g., Union of Medical Marijuana Patients, Inc. v. City*

MG-2

of San Diego (2019) 7 Cal.5th 1171, 1186-1187.

CEQA defines a "significant effect" as a "substantial, or potentially substantial, adverse change." Pub. Res. Code § 21068. This means that an activity has a significant effect if it "has the potential to degrade the quality of the environment." *Azusa Land Reclamation Company, Inc. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 1192.

At the heart of CEQA is the requirement that public agencies prepare an EIR for any 'project' that 'may have a significant effect on the environment. *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944. "Given the statute's text, and its purpose of informing the public about potential environmental consequences, it is quite clear that an EIR is required *even if the project's ultimate effect on the environment is far from certain.*" *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 382-383 (emphasis added). "If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1111.

MG-2 cont

An agency's decision to rely on a negative declaration or a mitigated negative declaration under CEQA 'is reviewed for abuse of discretion under the 'fair argument' standard.' *See Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 886. In evaluating an agency's application of the fair argument standard, a reviewing court may not uphold an agency's decision not to prepare an initial EIR "merely because substantial evidence was presented that the project would not have [a significant environmental] impact." *Berkeley Hillside Preservation v. City of Berkeley, supra*, 60 Cal.4th at p. 1112. If there is substantial evidence that the proposed project might have a significant environmental impact, *evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR* and adopt a negative declaration, because it [can] be "fairly argued" that the project might have a significant environmental impact. *Id.* If the [reviewing] court perceives substantial evidence that the project might have such an impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed "in a manner required by law." *Id.*

### **THE TOWN'S MND RAISES QUESTIONS OF INFORMATIONAL ADEQUACY AND THE POTENTIAL FOR SIGNIFICANT IMPACTS TO OCCUR.'**

In several respects, the MND either lacks or contains accurate information as to the setting of the Project and potentially significant impacts that may occur.

For example, a central CEQA requirement is the environmental review document contain a full description of the 'environmental setting' in which the project will occur. 14 Cal. Code Reg. § 15125; *San Joaquin Raptor v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722, 726 ("[I]nadequate consideration and documentation in the EIR of existing environmental conditions rendered it impossible for the [EIR] to accurately assess the impacts the project would have on

MG-3

wildlife and wildlife habitat...”)

Here, the MND misstates the environmental setting in a number of key respects. For example, the MND does not acknowledge the likely and potential presence of wildlife in the Project area, including coho salmon, foothill yellow-legged frog and northern spotted owl. Even for steelhead, which the MND assumes are present for purposes of analysis, there is no acknowledgment that steelhead have been found at, above and below the Project site in recent years.

MG-3 cont

The lack of information on these species’ actual presence, location and use in the Project area undermines the MND’s analysis of potential impacts from the Project. For example, even with regard to steelhead there is no discussion in the MND as to how this species locally use this watershed, and in particular how young steelhead may survive the summer in remnant summer pools at and below the Project site.

MG-4

The same is true for the foothill yellow-legged frog, a listed species that the MND initially did not even acknowledge as occurring in the watershed, despite numerous sightings in recent years. However, this species, as well as steelhead and coho salmon, are extremely sensitive to changes in hydrology that may disrupt natural cycles of winter flooding and summer pool formation.

MG-5

Finally, the MND does not acknowledge the presence of nearby Northern spotted owls, which when confirmed will effectively limit construction on the Project to 45 days a year (September 1 to October 15) thereby prolonging the impacts of the Project construction well beyond the two year period proposed.

MG-6

The MND also fails to adequately describe the stream environment, including incorrectly identifying this stream reach as ephemeral rather than perennial or failing to provide any description of shade environment created by the presently intact native riparian vegetation planned to be removed by the Project. The result is the MND does not acknowledge the likelihood that in years of construction, there will be flowing surface water at the construction location while deep borings are drilled below the excavated stream channel bottom. Here, the MND’s treatment of this reach as dry and ephemeral undermines its analysis that massive excavation and digging of the stream channel will not disrupt the local and downstream hydrology and dependent aquatic and stream side habitat. This lack of information and analysis is further highlighted by the MND’s failure to assess how removing the immediate stream side vegetation in the Project area will affect surface water temperature and hydrology, including the potential elimination of isolated aquatic habitat pools for the affected listed species.

MG-7

Further, partly due to the failure to accurately describe the environmental setting, the MND fails to provide a CEQA compliant analysis of environmental impacts. For example, the MND states describes the excavation and drilling in the Creek channel as follows:

MG-8

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. ...24-inch diameter cast-in-drilled-hole (CIDH) concrete piles...will be used to support the walls. For this, *the creek bed would be excavated approximately eight feet deep* to reach the approximate elevation of the concrete pile heads. After completing the excavations, drilling rigs would be called upon to drill the 24-inch-diameter CIDH piles supporting the future structural elements. The drilling auger would 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 would be spun loose from the auger, dumped in containers, and hauled away. Due to the riverine environment of the operations, underground and surface water may seep into the drilled holes and excavations, potentially threatening their collapse and/or contamination of the concrete that would be poured later on. For this reason, the contractor would use various wet-drilling hole stabilization techniques...

MG-8 cont

MND, p. 18. However, the MND does not provide enough information about how the Project proposes to excavate the creekbed down by eight feet without substantially altering the water flow both at the Project site as well as downstream of the Project area. The MND promises that water will be 'removed' in order to allow construction to occur, but contains no analysis of how this disruption to the local hydrology may adversely affect subsurface flows and surface water presence (in the form of remnant pools) that are critical to the survival of the salmonids and yellow-legged frog in mid to late summer and early fall. The MND's lack of analysis here is but the highlight of a general lack of information provided about the hydrology and dependent ecology of this reach of San Anselmo Creek, or how changes to the Creek hydrology may affect further downstream environments.

Similar concerns arise due the changes in winter hydrology due to the channelization and armoring of the streambanks, which will increase downstream peak flows, thereby contributing to downstream erosion and flooding. In addition, the removal of stream side vegetation will likely reduce the persistence and degrade the quality of the surface water in the Creek within the Project area. These potentially significant impacts are not addressed adequately in the MND.

MG-9

The MND also appears to violate CEQA by adopting as mitigation plans that have yet to be formulated. A CEQA review document is inadequate if "[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review" within the CEQA process. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92. *See also POET, LLC v. Cal. Air Resources Board* (2013) 217 Cal.App.4th 1214, 1269 ("We conclude that ARB's statement that its future rulemaking will 'establish specifications to ensure there is no increase in NOx' suffers from the same defect as the net-zero standard for greenhouse gas emissions adopted in CBE – it established no objective performance criteria for measuring whether the stated goal will be achieved."); *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 309-311 (Agency may not defer the development of mitigation in lieu of collecting the information necessary to assess the accompanying impacts.); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1119 (rejecting mitigation as inadequate where "we conclude that here the County has not committed itself to a specific performance standard" but "has committed itself to a specific mitigation goal – the replacement of water lost by neighboring landowners because of mine operations."); *See San Joaquin*

MG-10

*Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 670 (County's deferral of mitigation until after a qualified Dep't. of Fish & Game biologist prepared a management plan for the burrowing owl improper solely because the County offered no reason for deferral in the EIR.); *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 (rejecting one of several mitigation measures because it did not include any criteria or standards.)

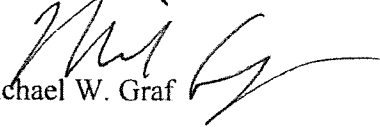
MG-10 cont

## CONCLUSION

The area of San Anselmo Creek is ecologically critical for numerous wildlife species, including the federally listed species discussed above. Given the potentially significant impacts that this Project will have on these wildlife resources, it behooves the Town to conduct a more complete analysis in an EIR of how impacts may be truly avoided, including a scientifically based understanding of the environmental setting in which this Project must occur.

MG-11

Sincerely,

  
Michael W. Graf

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Letter to Town Council.wpd

Michael Graf (MG)

Michael Graf, legal counsel to Save Fairfax and Frank Egger, provided a late comment letter on May 6, 2020 regarding the Meadow Way Bridge Replacement Project Initial Study/Mitigated Negative Declaration (IS/MND). Responses to those comments are provided below.

*Comment MG-1*

The commenter states that he is writing on behalf of Save Fairfax and Frank Egger, presents his clients' belief that there are species that would be impacted by the Project, including steelhead, Coho salmon, and foothill yellow-legged frog, and his clients' believe the habitats for those species would be impacted. The commenter contends that the Project will channelize large sections of the creek, thereby increasing scouring and flooding impacts. Lastly the commenter summarizes his clients' belief that reliance on mitigation measures in the Final IS/MND does not adequately address impacts and that the record contains evidence supporting a fair argument that an Environmental Impact Report (EIR) should be prepared for the Project.

*Response MG-1*

The location of habitats for steelhead and Coho salmon are addressed in detail in the Final IS/MND, specifically in Appendix A, Page iii, 24, 45, 63, 81, 82, and additional pages. Contrary to the commenter's unsupported assertion, Foothill yellow-legged frog habitat and individuals are not present at the Project site, as discussed on page 70 of the Final IS/MND. Further, all measures included with regard to federally listed species have been reviewed by the National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (USFWS), the Federal agencies responsible for their protection and, as those agencies concurred, any potential impacts will be less than significant with the implementation of mitigation.

Contrary to the commenter's claim, there is no channelization proposed as a part of the Project. Pages 20 and 21 of the Final IS/MND explain that the Project includes a program of fish habitat restoration, using bio-engineering techniques, low earth berms and woody nooks, designed specifically for the site. 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.

Also, contrary to the commenter's unsupported assertion, 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 Final 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. Additional details regarding the Project's less than significant scour and flooding impacts are provided in the Bridge Design Hydraulic Study Report for the Meadow Way Bridge Replacement Project (Stetson Engineers, Inc., February 2018).

The commenter fails to provide any substantial evidence of a fair argument that the proposed Project would result in a potentially significant impacts that are 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.

*Comment MG-2*

The commenter provides his characterization of the California Environmental Quality Act (CEQA)

process, and references the so-called “fair argument” standard under which an EIR must be prepared if there is substantial evidence that a project may have a significant impact on the environment.

#### *Response MG-2*

This comment does not pertain to the Project as it only presents commenter’s truncated view of CEQA. The commenter does not include in his summary the case law regarding what constitutes substantial evidence that a project may have a significant impact on the environment. For instance: Testimony by members of the public – such as the commenter - 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 – such as those presented by the commenter - 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 – such as those presented by the commenter - are not substantial evidence. (See, e.g., *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897.

#### *Comment MG-3*

The commenter states that “the MND either lacks or contains accurate information as to the setting of the Project and potentially significant impacts that may occur.” Specifically, the commenter states that the MND does not include a full description of the environmental setting as it relates to various species including Coho salmon, foothill yellow-legged frog and northern spotted owl. Additionally the commenter states that the MND is insufficient because it “assumes” the presence of steelhead, rather than acknowledge that steelhead are found in San Anselmo Creek.

#### *Response MG-3*

The commenter makes a false and entirely unsupported claim that the MND does not acknowledge the presence of Coho salmon, foothill yellow legged frog, northern spotted owl, and steelhead. Table 1 of Appendix A (Natural Environmental Study, Pages 27 through 61) to the Final IS/MND provides an evaluation of all species considered for this Project. All of the species mentioned, including their habitats and setting, were reviewed. One species, Coho salmon is absent from San Anselmo Creek and is acknowledged as such by NMFS in their attached Biological Opinion (BO) for the Project. Foothill yellow-legged frog is also absent, as the species cannot persist without perennial water. As the creek at Meadow Way is intermittent, no suitable habitat is present at this location to support the species. Further the MND not only acknowledges and assesses potential impacts to northern spotted owl and steelhead, but consultation was conducted with USFWS and NMFS. Both agencies reviewed and approved the Project as designed. Therefore, the agencies responsible for the protection of these species found the environmental setting description sufficient to evaluate effects to the species, including steelhead which are presumed present at the Project site thereby accounting for any potential impacts.

Responses to comments MG-4 through MG-8 further address how the Final IS/MND adequately addresses the Project’s environmental setting and the potentially significant project impacts that may occur, which were found to be mitigated to a less than significant level.

#### *Comment MG-4*

The commenter states that the MND does not provide sufficient analysis on how steelhead survive the summer using “remnant summer pools” at or below the Project site.

*Response MG-4*

The MND addresses habitat function for steelhead on page 29 of Appendix A to the Final IS/MND, and acknowledges that steelhead may rear within the remnant pools of the area. Additionally, once the Project is complete, Appendix A notes that rearing habitat would be improved by the installation of root wads (Appendix A, page 32 to the Final IS/MND). NMFS also acknowledged on page 34 of their BO that following construction of the Project, habitat conditions will be improved at Meadow Way. Therefore, the Project not only identifies the use of habitats by steelhead, it also increases their suitability through the Project design.

*Comment MG-5*

The commenter states that foothill yellow-legged frog is a listed species and numerous sightings are known for the area in recent years. The commenter also asserts that foothill yellow-legged frog, steelhead and Coho salmon are sensitive to changes in hydrology.

*Response MG-5*

The commenter misrepresents the status of foothill yellow-legged frog in the Project area. The California Department of Fish and Wildlife (CDFW) has rejected the Northwest/North Coast population of the foothill yellow-legged frog (which covers Marin County) for listing under the California Endangered Species Act (CESA). Therefore, the species has no formal protections under CESA. Additionally, as stated on page 43 of Appendix A to the Final IS/MND, the species was evaluated and due to the lack of perennial flows, was found to be unlikely to occur.

The commenter does not explain or support his claim that how changes in hydrology could affect these species; refer to response to comment MG-1 regarding the Project's less than significant hydrology impacts.

*Comment MG-6*

The commenter states that the MND does not acknowledge the nearby presence of northern spotted owl (NSO) and that construction of the Project would be limited to a 45-day window following full avoidance of their nesting season which they predict will push past the two-year construction timeframe.

*Response MG-6*

NSO is discussed on page 39 of the Final IS/MND, stating "In addition to CCC steelhead, the Project site has the potential to support three special-status bird species," the first species covered following this statement is NSO. Additionally, the discussion of impacts again acknowledges the presence of NSO in the area on page 44 of the Final IS/MND, and Mitigation Measure BIO-2 - Nesting Birds on page 45 details how the Project would avoid impacts to nesting NSO. Lastly, consultation with the USFWS was completed and after reviewing the measures included in the Natural Environmental Study (NES, Appendix A to the Final IS/MND) they found that no further consultation is necessary, as any potential effects were avoided via the recommended mitigation. Therefore, the commenter not only mis-states the Final IS/MND's analysis of NSO, but also fails to recognize that measures and surveys used will guide when work starts, allowing the Project to proceed with various activities during the nesting season so long as they meet the criteria provided by the USFWS, thereby allowing the Project to meet the two-year timeline. Finally, the commenter provides no substantial evidence to support his claim regarding construction impacts on NSO.

*Comment MG-7*

The commenter states that MND fails to describe the environment of the Project by incorrectly



classifying the stream as ephemeral, rather than perennial, or failing to provide a description of how removed vegetation will affect temperatures and hydrology.

*Response MG-7*

The Final IS/MND relies on the USFWS National Wetlands Inventory (NWI), a publicly available resource that provides detailed information on the abundance, characteristics, and distribution of US wetlands. This database which classifies wetlands and waters at a finer scale than USGS maps, classifies the reach of San Anselmo Creek within the vicinity of Meadow Way Bridge as R4SBC, which is (R) riverine, (4) intermittent, (SB) streambed, (C) seasonally flooded. The NWI describes an intermittent stream as a "Subsystem [that] includes channels that contain flowing water only part of the year. When the water is not flowing, it may remain in isolated pools or surface water may be absent." Therefore, the commenter mis-states the classification in the MND, claiming that the IS/MND classified the stream as "ephemeral" when it is actually classified in the MND and the NWI as intermittent.

With regard to the impact on vegetation on temperatures and hydrology, NMFS reviewed shading with emphasis on steelhead spawning or rearing and found the following on Page 34 of the attached BO: "Considering the small amount of riparian vegetation to be removed at each site and the existing condition of the riparian zone at the three bridge work sites, riparian habitat impacts by this Project are not expected to reach the scale where any PBFs of steelhead critical habitat will be altered, temporarily or permanently. With minimal temporal loss of vegetation and some vegetative cover remaining intact at the work sites, no measureable increase in water temperature or reduction in the amount of terrestrial food input into San Anselmo Creek is anticipated." Therefore, as determined in the IS/MND, the effects of shading loss are less than significant.

Finally, the commenter provides no substantial evidence to support his claims the Project area's stream environment or the impact of the Project on the stream.

*Comment MG-8*

The commenter asserts that the MND fails to analyze or describe the local environment sufficiently, and this has led, based on what the commenter presents as a quotation from the Final IS/MND, to insufficient analysis of how drilling of holes for supporting piles would occur. The commenter claims that the MND does not provide information about how the Project will excavate for the bridge abutments without "substantially altering the water flow both at the Project site as well as downstream". In addition the commenter contends that these areas are critical for steelhead and foothill yellow-legged frog which use remnant pools to survive, and concludes that the MND lacks information analyzing the hydrology and ecology of the site.

*Response MG-8*

Please see responses to comments MG-4 through MG-8 regarding how the Final IS/MND adequately addresses the Project's environmental setting and the potentially significant project impacts that may occur, which were found to be mitigated to a less than significant level. Further, in quoting the Final IS/MND, the commenter excludes several key phrases that explain why cast in place piles were chosen – specifically "to minimize disturbance to the residents" and because they are "significantly quieter to install than driven piles." The commenter's "quote" also excludes those sections of the Final IS/MND describing how the excavation and casting will occur. Much of page 18 in the Final IS/MND is dedicated to describing the process by which excavation and drilling would occur, including options such as "driving a steel pipe sleeve into the hole all the way to the bottom, simultaneous with drilling." In order to address seepage from ground water and

even includes a process described later for minimizing the contact of wet concrete on groundwater, "in this case, the reinforcement cage is placed in the hole using a crane and the concrete is pumped from the bottom of the hole up using a tremie pipe. This way, any water in the hole is displaced to the top, and then vacuumed and collected in containers." Additionally, Mitigation Measure BIO-3 –Intermittent Streams provides processes by which water will be protected from general activities. Finally, Page 17 of the Final IS/MND outlines in the Project Description how surface flow, if present, when work is able to begin will be bypassed to assure downstream connectivity thereby minimizing any downstream effects.

The commenter also offers contradictory statements in this comment by saying the MND doesn't analyze how this process will "substantially alter... water flow both at the Project site, as well as downstream..." followed by a description of "surface water presence (in the form of remnant pools)." As stated in Response MG-7 and S-1 in the WRA Memo dated May 1, 2020, the stream is classified as intermittent, meaning surface flows are not present part of the year. Remnant pools are not the same as surface flow therefore any effect to remnant pools will not impact surface flows downstream in perennial sections of the creek. Any waters encountered will be processed in accordance with the procedures in the Project Description to bypass, remove sediment, or be disposed of (if in contact with wet concrete), thereby protecting any waters within the site and downstream.

#### *Comment MG-9*

The commenter states that he has concerns over winter hydrology and claims "channelization" of the streambed will increase flooding, and that removal of vegetation will decrease water quality, which he asserts is a significant impact not mitigated by the Project.

#### *Response MG-9*

The commenter presents no substantial evidence to support these claims. 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 commenter fails to provide substantial evidence that the velocity of the creek will increase with the proposed Project. The Project will not result in an increase in flow velocity in the creek (Bridge Design Hydraulic Study Report for the Meadow Way Bridge Replacement Project, Stetson Engineers, February 2018).

Please also see response FE-8 and SC-11 in the WRA Memo dated May 1, 2020. .

#### *Comment MG-10*

The commenter states that MND appears to violate CEQA by relying on mitigation plans that have not been formulated.

#### *Response MG-10*

The commenter fails to state what mitigation plans he believes have yet to be drafted or reviewed, and which plans he believes may be required to mitigate potentially significant impacts of the Project. The Final IS/MND includes a variety of feasible mitigation measures that address potentially significant impacts of the Project. Where appropriate, in compliance with the requirements of CEQA, these mitigation measures include performance standards to ensure the standards by which adequate mitigation will be provided is insured, and that all potentially significant impacts are fully mitigated. A Mitigation Monitoring and Reporting Program for the

Project is included in Section 8.0 of the Final IS/MND. The Project would also be required to conform to any mitigation plans that may be required as a part of the regulatory permits from CDFW, US Army Corps, and the Regional Water Quality Control Board.

*Comment MG-11*

The commenter states that the area of San Anselmo Creek where the Project is located is ecologically significant, and that there are potentially significant impacts described in their letter which requires a more thorough review through an EIR, including a more thorough understanding of the environmental setting.

*Response MG-11*

All comments presented by the commenter are addressed within the Final IS/MND and supporting documents. The commenter presents no new or previously unexamined topics that might require further analysis. The commenter does not provide any expert substantial evidence that contradicts the findings of the Final IS/MND. The Project has no impacts that would be considered significant on the environment under CEQA which cannot be reduced to less than significant when using mitigation.

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.