



# TOWN OF FAIRFAX

## STAFF REPORT

June 3, 2020

**TO:** Mayor and Town Council

**FROM:** Garrett Toy, Town Manager

**SUBJECT:** Adopt resolutions A) 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 as well as approving a statutory and categorical exemption from CEQA and B) approving the Meadow Way Bridge Replacement Project; OR in the alternative, directing staff to contract with CIC in an amount not to exceed \$180,000 to prepare an Environmental Impact Report (EIR) for the proposed Meadow Way Bridge Replacement Project

---

### **RECOMMENDATION**

- 1) Conduct public hearing
- 2) Adopt resolution approving the Meadow Way Bridge Replacement Project and 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 as well as approving a statutory and categorical exemption from CEQA; and
- 3) Adopt resolution approving the Meadow Way Bridge Replacement Project.  
OR, in the alternative,
- 4) Authorize staff to contract with CIC, in an amount not to exceed \$180,000, to prepare an Environmental Impact Report (EIR) for the proposed Meadow Way Bridge Replacement Project

### **BACKGROUND**

In October 2013, the Council awarded a master contract to California Infrastructure Consultancy (CIC) to provide preliminary engineering, community outreach, environmental, and design services for five bridges (Canyon, Creek, Marin, Spruce, and Meadow Way) in Fairfax. Meadow Way is a timber bridge located in a quiet, wooded, residential Fairfax neighborhood on Meadow Way near Cascade Drive. The bridge has been programmed for replacement by Caltrans due to its poor condition and Structurally Deficient (SD) status. The project is funded by the Federal Highway Bridge Program (HBP).

In January 2017, the Council approved the preliminary Meadow Way bridge design and authorized staff to move forward with the environmental analysis of the project which included both National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA.)

In January 2018, the Council received a status report on the environmental assessment phase for the Meadow Way Bridge replacement project and approved an alternative “half retaining wall-half rip-rap” design. To address the neighborhood request and reduce the visible concrete surfaces, CIC developed a preliminary concept of a “half-wall-half-riprap” vs. a long retaining wall. The original wall was shortened to nearly half of its length and the rest was replaced with a natural slope below a new, shorter upper-tier wall. The natural slope from the top would be fortified with subterranean riprap and soil reinforcement elements. The slope would be planted with native riparian trees, bushes and vines, which will eventually conceal both the upper and lower walls. At the base of the slope would be a log-rootwad revetment to stabilize the creek bed, provide environmental enhancements and improved fish habitat. At the January 2018 meeting, CIC also reported that environmental studies and preliminary design in support of the studies were currently underway.

In August 2019, CIC reported at the Council meeting that Caltrans had accepted the “half retaining wall-half riprap design” and approved additional funding for the redesign.

A more detailed chronology and description of the Project is contained in Attachment C.

## **DISCUSSION**

WRA, Inc., as a subconsultant to CIC, prepared environmental review documents for the Meadow Way Bridge Replacement Project pursuant to CEQA and NEPA.

At the March 4, 2020 Council meeting, the Council opened the public hearing, received public comment, discussed the project, and continued the meeting to May 6, 2020.

As part of the staff report at the Council’s May 6<sup>th</sup> meeting, the Town attached the following responses (see Attachment D):

- Town’s responses to the oral and written comments made at the March 4<sup>th</sup> meeting.
- Town’s responses to the Sierra Club letter dated March 31, 2020 received subsequent to the March 4<sup>th</sup> meeting.
- Town’s responses to April 27, 2020 Comments from Save Fairfax RE: Meadow Way Bridge Replacement Project Initial Study/Mitigated Negative Declaration.

At the May 6<sup>th</sup> Council meeting, the Town received additional letters and comments prior to the meeting. As a result, staff recommended the Council conduct the public hearing and continue the item to this meeting (June 3, 2020) to allow staff time to prepare the following responses:

- Attachment E contains the Town's responses to the SPAWN letter dated May 1, 2020 but received on May 6, 2020.
- Attachment F contains the Town's responses to the Marin Watershed Alliance letter dated May 5, 2020.
- Attachment G contains the Town's responses to the letter from Michael Graf, attorney writing on behalf of Save Fairfax and Frank Egger, dated May 6, 2020.

*All the attached memoranda and responses demonstrate that the commenters failed 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.*

However, should the Town Council wish to prepare an EIR for the Project, the cost and process for doing so is detailed below in the CEQA section. It should be noted that staff does not believe the EIR would result in any significant revisions to the mitigation measures already identified in the IS/MND. Also, while the EIR would, as required by CEQA, consider a reasonable range of alternatives, CEQA would not consider alternatives that are not technically or scientifically feasible, such as a steel bridge placed on top of the existing bridge. This is because, to operate properly and safely, any new bridge must sit on abutments and those abutments must be protected from scour and erosion.

#### CEQA- IS/MND

**Note: The IS/MND is available at: [http://fairfaxbridges.com/wp-content/uploads/2020/02/1 Meadow-Way-Final-IS MND.pdf](http://fairfaxbridges.com/wp-content/uploads/2020/02/1_Meadow-Way-Final-IS_MND.pdf).**

A Draft Initial Study pursuant to CEQA was prepared for the Project that addresses twenty environmental topics as set forth in Appendix G of the CEQA Guidelines. The Draft Initial Study determined that the Project could result in potentially significant impacts to the following environmental topics: Aesthetics, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Noise, Transportation, Tribal Cultural Resources, and Wildfire. Mitigation measures were included in the Draft Initial Study to mitigate all of the above-referenced potentially significant impacts to a less-than-significant level. *As all potentially significant impacts can be fully mitigated, the Town, acting as the CEQA Lead Agency, can conclude that the Project would qualify for an MND and therefore would not require the preparation of an EIR pursuant to CEQA.*

On December 16, 2019 the Town released for public review the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Project pursuant to Section 15105 of the CEQA Guidelines. The public review and comment period on the Draft IS/MND

began on December 16, 2019 and closed on January 22, 2020. A Notice of Availability and Intent to Adopt an IS/MND was circulated to interested parties and posted on the Town's website along with the Draft IS/MND and its Technical Appendices. The Draft IS/MND was also made available at the Town Hall lobby, located at 142 Bolinas Road, Fairfax, CA 94930. As required by CEQA, a Notice of Completion, along with copies of the Draft IS/MND were sent to the State Clearinghouse on December 16, 2019 soliciting review and comment on the report by relevant State agencies. The State Clearinghouse subsequently assigned the following State Clearinghouse Number for the Draft IS/MND: 2019129045.

In a letter to the Town dated January 24, 2020, the State Clearinghouse acknowledged that no State agencies provided comments on the Draft IS/MND and that the Town had complied with State Clearinghouse Review requirements for draft environmental documents pursuant to CEQA. The letter is available on the Town's website. During the 37-day public review period, one comment letter on the Draft IS/MND was submitted to the Town by Mr. Frank Egger. A Final IS/MND was prepared to address comments provided on the Draft IS/MND. In addition to the response to comments (see Chapter 7, pg. 135), the Final IS/MND includes the Draft IS/MND (Chapters 1-6) and a Mitigation Monitoring and Reporting Program (MMRP, Chapter 8). No edits to the Draft IS/MND are 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 notice was circulated to Mr. Egger and other interested parties on the Town's mailing list in advance of the March 4, 2020 Public Hearing on the Final IS/MND, MMRP, and Project. The continuation of the Public Hearing was duly noticed on each subsequent Town Council agenda. The Final IS/MND is an informational document prepared by the Lead Agency (Town of Fairfax) that must be considered by decision-makers before approving the Project and that must reflect the Lead Agency's independent judgment and analysis (CEQA Guidelines, Section 15090).

In addition to consideration of adoption of the Final IS/MND, the Town can also consider finding the Project exempt from CEQA under one or both of the following CEQA exemptions. The first would be a finding that the Project is exempt under State CEQA Guidelines section 15269, which provides that "[s]pecific actions necessary to prevent or mitigate an emergency" are statutorily exempt from CEQA. An "emergency" is defined as "a sudden, unexpected occurrence, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services." (State CEQA Guidelines, § 15359.) Here, the Town is concerned that the Bridge's potential collapse due to the scouring and undermining of the

areas where the Bridge is attached to the banks, constitutes an imminent danger. As well, the substantially increased risk of wildfires and number of catastrophic wildfires in the Northern San Francisco Bay Area and Northern California in general, over the last three years due to the effects of climate change, pose an imminent danger of a wildfire destroying the Bridge and leaving residents of Meadow Way unable to escape the wildfire as well as firefighters unable to reach the homes on Meadow Way.

Second, the Town could also make a finding that the Project is exempt under State CEQA Guidelines section 15302 for replacement of existing structures, as the Project replaces the existing Bridge.

If the Town Council approves the Project the Town shall file a CEQA Notice of Determination, and if a CEQA exemption is adopted, a Notice of Exemption, with the County Clerk within five working days of Project approval. A copy of the Notice of Determination filed by the County Clerk shall also be sent to the State Clearinghouse.

### CEQA- EIR

If the Council directs the Town to prepare an EIR for the Project, we requested WRA, the environmental firm who prepared the IS/MND under contract with CIC, the bridge engineering firm, to prepare a proposal for an EIR (see Attachment I). The proposed cost is approximately \$180,000. WRA estimates it will take approximately 7-9 months to complete the EIR process depending on such items as public and governmental agency comments on the draft EIR. In addition, we anticipate needing upwards of 75 hours for the Town Attorney's office to review and assist with the EIR. This would cost approximately \$22,000. The EIR would rely on many of the studies already prepared for the Project, which results in the lower cost and shorter timeline for the EIR.

Please note the cost to prepare an EIR is NOT reimbursable under the Federal Highway Bridge Project. The Town is responsible for paying all CEQA-related costs. The total estimated cost is approximately \$200,000 to prepare the EIR.

### PROJECT TIMING

If the Town approves the IS/MND and a CEQA exemption, the next phase is the acquisition of needed temporary and/or permanent right-of-way (ROW) such as construction easements. After the ROW phase, the Town would begin construction drawings and the permitting approval process with the various regional, state, and federal agencies (e.g., Regional Water Quality Board, Fish and Wildlife). The current schedule anticipates that project construction could begin as early as Spring 2022.

If the Town pursues an EIR, it would need to be completed and approved by February/March 2021 to stay on schedule to begin construction in Spring 2022. This would give the Town 12 months to prepare construction drawings and to obtain approvals from the various governmental agencies. Any delays in the EIR schedule would defer construction to Spring 2023.

## NEPA

As the Project involves Federal funding it also must comply with NEPA. Caltrans Local Assistance served as the NEPA Lead Agency for the Project, which started with the preparation of a Preliminary Environmental Study (PES) and field review to determine what level of NEPA analysis would be required for the Project. Caltrans Local Assistance determined that the project would likely qualify for a NEPA Categorical Exclusion (CE) with various technical reports and memoranda to support the CE (e.g., Natural Environment Study, Biological Assessment, Traffic Memo, Noise Memo, Visual Memo, Hazardous Materials Memo, etc.). This process included public outreach meetings to introduce the Project to the public and relevant agencies and to assess whether any controversy may exist regarding the Project. After review and comment on the various technical reports, Caltrans Local Assistance concluded that the Project would qualify for a NEPA CE. In a letter to the Town dated October 1, 2019, Caltrans Local Assistance confirmed that the CE had been reviewed and approved in conformance with NEPA. The letter is available on the town's website and is also an exhibit to Attachment D.

## FISCAL IMPACT

The Meadow Way Bridge is funded by the federal Highway Bridge Program (HBP) which is administered by Caltrans. The Town's share of design and environmental review costs is approximately 11.5%. *Construction costs are 100% covered by HBP funds.* The total estimated cost to the Town is approximately \$200,000 which includes design and CEQA costs for the IS/MND.

Please note that CEQA costs are not covered by HBP and are funded 100% by the Town. However, many of the studies prepared for NEPA were also required for the CEQA analysis.

## ATTACHMENTS

- A. Resolution for IS/MND including MMRP
- B. Resolution for Project
- C. Chronology
- D. Memo with attachments responding to public comments prior to the May 6<sup>th</sup> meeting
- E. Responses to the SPAWN letter dated May 1, 2020
- F. Responses to the Marin Watershed Alliance letter dated May 5, 2020.
- G. Responses to the letter from Michael Graff dated May 6, 2020.
- H. All written public comments received after May 6<sup>th</sup>, but prior to noon May 29, 2020.
- I. EIR proposal from WRA