

June 30, 2010

Bill Whitney, P.E.
Transportation Authority of Marin
750 Lindero Street, Suite 200
San Rafael, CA 94901



Re: Central Marin Ferry Connector Multi-Use Pathway Phase 1 Initial Study/Mitigated Negative Declaration

Dear Mr. Whitney:

Marin Conservation League wishes to submit the following comments on the Initial Study/Mitigated Negative Declaration (IS/MND) for the subject project. We have tracked the development of the project for several years and acknowledge that considerable study and preliminary engineering design have gone into it. We also acknowledge that the project (subject to definition of "the project" discussed below) will address a need and serve a beneficial purpose.

We have three concerns, however, with the limitations inherent in an Initial Study/Mitigated Negative Declaration as the appropriate documentation for CEQA analysis of the project: (1) the absence of cumulative impact analysis; (2) the lack of an alternatives analysis, or even the suggestion that there might be an alternative design or alignment for Phase I; and (3) lack of specificity of mitigation measures and failure to mitigate potentially significant impacts to a level of insignificance. For the reasons discussed below, we believe that a Focused Environmental Impact Report should be prepared to enable an informed decision.

1. Cumulative Impacts Are Not Analyzed.

The basic "Description of Project" in Section F (Page 1) of the IS/MND is evident in the project's title: Central Marin Ferry Connector Multi-Use Pathway. This "project" embraces an objective that has been under study by TAM for several years, namely, to promote non-motorized commute alternatives through the Greenbrae Corridor. The general configuration of the project involves connection of the Cal Park Tunnel multi-use pathway (under construction) with the Ferry Terminal and planned SMART station and with Wornum Drive/Sandra Marker pathway (existing) in Corte Madera.

As further described, the proposed project is broken into two phases (Phase I and II). Phase I includes the future Cal Park Hill Tunnel pathway to the existing multi-use pathway located south of East Sir Francis Drake Boulevard along the north bank of the Corte Madera Creek. . . Phase II would include an extension of the Phase I multi-use pathway south over Corte Madera Creek to Wornum Drive (emphasis added).

The next paragraph in Section F asserts: "Phases I and II of the proposed project have independent utility with respect to each other, because each would serve their (sic) own purpose of providing non-motorized travel in the area and would occur regardless of whether the other phase was to occur."

Why, if the two phases are truly independent, is Phase II characterized as "an extension" of the Phase

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I pathway? Why is the only alternative presented for Phase I aligned so obviously with pathway options on the south side of the Creek? Why are the two phases illustrated together and titled “The Project” in graphic displays at Open Houses concerning the project, but not shown as such in this IS/MND? We can only assume that TAM has been advised that they can avoid preparing an EIR by claiming “independent utility” of the two phases.

Legal arguments can be made on both sides of the claim that a Negative Declaration can focus on one project that is arguably part of a larger scheme if the project has “independent utility” that justifies its separate processing and approval. We would argue that because the basic elements of the “larger scheme” (Phase I and Phase II) have been defined by TAM – even to the level of identifying alternative alignments for Phase II – that Phase II is indeed reasonably foreseeable for purposes of assessing cumulative impacts. Therefore, this environmental document should address the larger scheme, at least in a broad-brushed fashion, in an analysis of cumulative impacts.

One requirement of a Negative Declaration (Section VI) is that the lead agency must find that the project will not have any impacts “that may be individually limited but cumulatively considerable.” This MND states: “As described in Section V of this Initial Study, any potential environmental impacts from the proposed project, including the project’s potential contribution to cumulative impacts, would be mitigated to a less than significant level. Therefore, the proposed project does not have impacts that are individually limited but cumulatively considerable” (emphasis added). Since the term “cumulative impact” never appears under any topic in Section V, nor is a cumulative context ever suggested, this finding has no analytical basis.

We request that TAM, at a minimum, describe the general parameters of the “reasonably foreseeable” Phase II, including bridging Corte Madera Creek and alternative pathway alignments under consideration, and address the potentially significant cumulative impacts of implementing the second phase when funding does become available. These cumulative impacts could include, but not be limited to: direct cumulative impacts of construction in tidal marsh, cumulative impacts of increased human activity on identified endangered and other special status species habitats; and cumulative impacts of increased bicycle and pedestrian traffic when the two phases are eventually connected, as they concern safety and potential user conflicts and indirect degradation of the tidal marsh. A Focused EIR would facilitate this discussion.

2. Alternatives Analysis is Lacking

Alternatives are typically defined in relation to the objectives that the project is designed to accomplish. In this MND, objectives are presented as Need and Purpose. As the Cal Park Tunnel renovation nears completion, non-motorized East Sir Francis Drake Boulevard will serve as a physical barrier to non-motorized travel between the Tunnel pathway and the existing multi-use pathway located south of the roadway (hence the need for the project). The purpose of the Phase I project is to overcome that barrier and improve public access and connectivity for non-motorized traffic between transit facilities. That the proposed project also would “improve public access to viewpoints for the public to view the Corte Madera Creek salt marsh area and San Francisco Bay by constructing an elevated path along the north bank of Corte Madera Creek” is completely irrelevant to meeting the objectives, even if an appealing afterthought! (A number of other raised viewpoints already exist in the area: the pedestrian overpass from Larkspur Landing to the Ferry Terminal, the pedestrian-bicycle paths along the exit and entrance ramps between Hwy. 101 and Sir Francis Drake Boulevard; the pathway along the shore opposite the Ferry Terminal; etc.)

The purpose of alternatives is to examine less damaging means of accomplishing the objectives of the project. The IS/MND does not offer any alternatives. Since the first choice to mitigate impacts on wetlands is avoidance, no alternative is offered that does this. Construction of an elevated pathway for purposes of viewing the Bay does not justify any impacts on tidal wetlands. Other alternatives that could be considered include: a more compact structure to reach grade at the south end of the overpass; direct access from Cal Park Tunnel to Larkspur Landing and use of the existing Sir Francis Drake overcrossing to the ferry terminal; and a redesigned at-grade crossing at Larkspur Landing Circle to the ferry terminal. These alternatives may already have been considered. If so, the reasons for their rejection should be documented. This would be facilitated by preparation of a Focused EIR.

3. Mitigation Measures are Incomplete

A total of 28 mitigation measures are proposed, 27 of them concerning impacts on biological resources. Without exception the measures deal entirely with construction-related impacts and consist largely of generic "best management practices." Long-term and indirect impacts of the project are not mitigated. The IS/MND identifies indirect effects of the project: e.g., "... increase in pedestrian and bicycle traffic in the salt marsh area, which would also likely result in an increase in the amount of trash and debris that may further degrade the quality of the habitat. Also direct shading from construction of the multi-use pathway would inhibit pickleweed growth, which would reduce salt marsh habitat." These are potentially significant impacts, but no measures are offered to mitigate the impacts to less than significant.

The Natural Resources Study for the IS/MND identifies that 47 trees, including 17 coast live oaks, would be removed by the project. The only mitigation provided is obtaining permits for heritage trees from the City of Larkspur and replacement of "heritage" tree (where??) at approved ratios. The document should provide a more detailed assessment of the location of these trees and their importance as habitat for a variety of birds and other wildlife. The discussion should examine the possibility of alternative alignments that would avoid or reduce the number of trees removed.

In conclusion, the decision by TAM to prepare an IS/MND on this project has resulted in an environmental analysis that is incomplete and denies the public an opportunity for full disclosure of the project and its impacts. One can make a fair argument that one or more significant impacts may potentially result from the project (e.g., indirect impacts of shading and increased trash on the quality of the tidal marsh habitat [see above]), an argument that is supported by substantial evidence in the Natural Resources Study, and that these impacts have not been mitigated in the IS/MND to less than significant. For these reasons, a Focused EIR should be prepared.

Thank you for the opportunity to comment.



Nona Dennis
President

cc. Friends of Corte Madera Creek
Marin Audubon Society