



San Bernardino Valley
Audubon Society



VIA FedEx and USPS

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April 9, 2013

Re: Comments on the Mid County Parkway Recirculated Draft Environmental Impact Report/Supplemental Environmental Impact Statement and Revised Draft Section 4(f) Evaluation

Dear Mr. Gross,

These comments are submitted on behalf of the Center for Biological Diversity, San Bernardino Valley Audubon Society, and Sierra Club (collectively Conservation Groups) on the Mid County Parkway (MCP or Project) Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement and Revised Draft Section 4(f) Evaluation (DEIR/DEIS). The MCP proposes to develop a six lane roadway between I-215 and SR-79 adjacent to the San Jacinto Wildlife Area and Lake Perris State Recreation Area, which are home to numerous rare, sensitive, threatened and endangered species. It would establish an automobile transit infrastructure that will encourage massive increases in the emissions of air pollution and greenhouse gases, and encourage 20th century sprawl during a time when California is moving towards 21st century transportation infrastructure to address our long term sustainability and climate change stabilization goals.

Unfortunately, the MCP and DEIR/DEIS demonstrate a fundamental disregard for meeting California's 21st century transportation goals. In particular, the DEIR/DEIS demonstrates a shockingly narrow range of alternatives that all promote a six lane roadway and

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rationalize that approach through an improperly narrow purpose and need for the Project. The DEIR/DEIS further fabricates an inflated future growth and baseline in order to justify the Project and mask its numerous impacts. When the DEIR/DEIS does provide analysis, it is so incomplete and misleading that it forces the public and decision makers on a wild goose chase through varying appendices that cryptically cross-reference each other to provide the analysis and justification that the DEIR/DEIS purports to achieve. These faults, among others that relate to the 2008 Draft Mid County Parkway EIR/EIS and Section 4(f) Evaluation, doom the environmental review. (Shute Mihaly & Weinberger 2009, CBD 2009).

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The Center for Biological Diversity is a non-profit environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center for Biological Diversity has over 500,000 members and e-activists throughout California and the western United States, including residents of western Riverside County. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in the Inland Empire.

The San Bernardino Valley Audubon Society (SBVAS) is a local chapter of the National Audubon Society, a 501(c)3 corporation. The SBVAS chapter area covers almost all of Riverside and San Bernardino Counties and includes the project area. We have about 2,000 members, about half of whom live in Riverside County. Part of our chapter's mission is to preserve habitat in our area, not just for birds, but for other wildlife, and to maintain the quality of life in the Inland Empire.

The Sierra Club is a national nonprofit organization of over 732,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Over 193,500 Sierra Club members reside in California. The San Gorgonio Chapter of the Sierra Club focuses on issues within the inland empire, including western Riverside County.

I. THE EIR FAILS TO PROVIDE AN ADEQUATE DESCRIPTION OF THE PROJECT AND ITS IMPACTS

The DEIR/DEIS for the Project fails to provide the public with a thorough, properly defined, and finite description of the Project and its environmental impacts. CEQA requires that an EIR analyze the whole of the Project including associated project components and impacts, and impacts that are further distant in the future. (*See* CEQA Guidelines, §§ 15126 (impact from all phases of the project), 15358(a) (direct and indirect impacts).) These requirements help ensure that the public and decision makers are reviewing and deciding on the Project know the full scope of the project and its impacts. Environmental review that fails to provide these requirements undermines the fundamental requirement of public disclosure in CEQA and NEPA. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 (an

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enigmatic or unstable project description impedes public input); *See also San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) NEPA similarly requires an accurate and consistent project description in order to fulfill its purpose of facilitating informed decision-making. (43 U.S.C. § 4332(2)(C).) Unfortunately, the EIR contains an incomplete project description and analysis that fails to provide the public and decision makers with the necessary information in order to analyze impacts and mitigation measures.

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The Project description omits integral components of both the project's physical characteristics as well as planning level changes that are necessary to implement the MCP. The MCP would require transportation circulation system modifications, including realigning interchanges, widening certain roads, upgrades to connecting freeways and interchanges, closing other roads, and creating cul-de-sacs. However, the DEIR/DEIS' text fails to adequately identify and describe the massive changes in the circulation system; instead, when these projects are mentioned they are inadequately described or buried in technical reports. Like the MCP itself, construction and operation of these roadway modifications will undoubtedly have impacts to existing residential, commercial and industrial land uses, transportation (existing roadways and access), agricultural lands, open space and wildlife habitat, and air quality and greenhouse gases. There are numerous integral components of the Project that receive little or no description in the DEIR/DEIS, thereby understating the full extent of the Project and its impacts. It is unclear whether the impacts from these parts of the Project have been analyzed at all; even if they have, limiting the project description to the MCP mainline itself distorts the full extent of the real project.

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Interrelated projects that are necessary to implement the Project or are components of the transportation system upgrades that would service the Project are not adequately described, and their relationship to the Project is not properly disclosed or analyzed. For example, the I-215/Cajalco Rd Interchange Project that would service the east-west traffic generated by the Project or the widening of Redlands or Perris Boulevard that would service the north-south traffic generated by the Project are not fully disclosed and analyzed. (DEIR/DEIS at 2-6, 2-7, 2-58). Similarly the changes to I-215, such as the addition of several new lanes and interchanges are not properly disclosed and analyze and prevent the public and decision makers from properly evaluating the Project and its impacts. (DEIR/DEIS at 2-6, 2-7).

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The DEIR/DEIS also recognizes that one of the Project's purposes is to serve multimodal transit, including the Perris Valley Line (PVL) Commuter Rail Extension, the Ramona Station at Cajalco Rd and I-215, and the Perris Multimodal Facility. (DEIR at 2-30). The DEIR/DEIS mentions that the routing of the Project through the city of Perris will offer an opportunity to create a linkage between the Project and two planned transit projects; however, there are three different alternative routes through Perris, and the DEIR/DEIS fails to give adequate information regarding whether anyone of these would be better or worse for tying in to the planned transit projects. This lack of information regarding a critical component of the Project compromises the public's and decision-makers' ability to analyze which alternatives will best meet the objective of connecting with multimodal transit.

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The DEIR/DEIS' project description also does not even clearly articulate the design standard for the Project itself. The design standards appear to be arbitrary and based on judgment rather than on standard traffic engineering analysis practices or on definitive, quantifiable criteria to meet specific level of service objectives. (See DEIR/DEIS § 3.6). Indeed, the design standards fail to achieve a reasonable level of service for the Project itself, frustrating both a reasonable description of the project and the purpose and need.

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The DEIR/DEIS also finds impacts relating to inconsistencies with numerous goals and policies of several elements of the General Plans for the County of Riverside and the cities of Perris and San Jacinto and explains that the MCP may result in inappropriate amendments to these General Plans. (See DEIR/DEIS § 3.1). The document stops short, however, of identifying each of the general plan amendments that would be necessary to implement the proposed Project. The revised DEIR/DEIS must identify the applicable general plan amendments and analyze impacts associated with each amendment. Specifically, some of the amendments may result in environmental impacts, while other amendments may result in internal inconsistencies within each jurisdiction's general plan. The environmental impacts and planning issues that may arise from amending the general plans are indirect impacts of the MCP. As such, they must be identified, analyzed and resolved now; they cannot wait until after approval of the MCP.

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II. THE PROJECT OBJECTIVES, PURPOSE AND NEED VIOLATE CEQA AND NEPA

The DEIR/DEIS in its current state fails to meet the legal requirements under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) with respect to disclosure of project purpose, need, and alternative analysis because the project need is inadequately supported, its purpose and objectives are improperly narrow and limiting, and the alternatives presented do not reflect a reasonable range of alternatives.

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A. THE STATEMENT OF THE MCP'S PURPOSE AND OBJECTIVES IS IMPROPERLY NARROW, REFLECTS SEGMENTATION OF A LARGER PROJECT, AND IS BASED ON SPECULATIVE NEED ANALYSES

Both CEQA and NEPA require public disclosure of any covered project's purpose and need, and an EIR or EIS must sufficiently describe a proposed project to allow for full public disclosure and participation. CEQA requires EIRs to completely and accurately describe the project's (1) precise location and boundaries, (2) purpose and objectives, (3) technical, economic, and environmental characteristics, and (4) the intended uses of the EIR itself. (14 Cal. Code Regs. § 15124). NEPA similarly requires every EIS to clearly specify the "purpose and need" of a proposed federal action, along with alternatives to the proposed action. (40 C.F.R. § 1502.12). The DEIR/DEIS in its current state fails to meet these legal requirements because the project need analysis is inadequately supported and its purpose and objectives are improperly narrow and limiting.

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1. IMPROPERLY NARROW SCOPE OF PROJECT PURPOSE/OBJECTIVES AND PROJECT DESCRIPTION

The improperly limited scope of the MCP's purpose and objectives reflected in the DEIR/DEIS fails to meet the legal requirements under CEQA and NEPA, and generates a limited alternatives analysis. This limited scope of the project purpose affects the environmental review process in a number of ways, including restricting the project description.

CEQA has been interpreted and enforced by courts as requiring a project description to include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. (*Laurel Heights Improvement Assn. v. Regents of the University of California (Laurel Heights I)* (1988) 47 Cal.3d 376.) This has the effect that responsibility for a project cannot be avoided by limiting the title or description of the project. (*Rural Land Owners Association v. Lodi City Council* (3d Dist. 1983) 143 Cal.App.3d 1013, 1025.)

A narrowly defined project purpose also results in restricting the range of reasonable alternatives, which is a cornerstone of the environmental review processes under CEQA and NEPA. When developing a reasonable range of alternatives in an alternatives analysis, under CEQA, only alternatives "that the lead agency determines could feasibly attain most of the basic objectives of the project" must be considered. (14 Cal. Code Reg. § 15126.6(f)).

In the case of the MCP, this problem manifests in the form of the DEIR/DEIS' description of the project's purpose/objective as building a six-lane freeway with very specific criteria, effectively precluding any evaluation of non-freeway project alternatives. While the general project purpose, "to provide a transportation facility that would effectively and efficiently accommodate regional west-east movement of people, goods, and services between and through Perris and San Jacinto" would allow for some variation of project alternatives, the further narrowing of the definition of the project purpose unduly limits the purpose and need description of the project. Specifically, seven criteria are provided for the purpose and need of the project (1) provide capacity for 2040, (2) serve regional movement of people and goods, (3) provide roadway geometrics to meet State Highway design standards, (4) provide a limited-access facility, (5) accommodate STAA trucks, (6) provide a facility that is compatible with a future multimodal transportation system, and (7) provide an effective and efficient connection between and through San Jacinto and Perris. (DEIR/DEIS at 1-12 – 1-13; Appendix J part 2, 139).

In particular, there is no discussion supporting the need for the MCP's purpose to include accommodation of Surface Transportation Assistance Act National Network ("STAA") trucks, trucks that are larger than those permitted on the federal Interstate system and the non-Interstate Federal-aid primary System. Including this design requirement in the project purpose impermissibly narrows the scope of the alternatives to include only roadways substantial enough to accommodate these particularly large trucks.

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2. THE PROJECT DESCRIPTION IMPROPERLY SEGMENTS A LARGER ANALYSIS AND HAS NO LOGICAL TERMINI OR INDEPENDENT UTILITY

In its project description and environmental impacts analysis, a DEIR/DEIS cannot engage in impermissible segmentation. NEPA regulations require analysis of “connected actions,” actions that “[a]utomatically trigger other actions which may require environmental impact statements[;] [c]annot or will not proceed unless other actions are taken previously or simultaneously[;] [or] [a]re interdependent parts of a larger action and depend on the larger action for their justification.” (40 C.F.R. § 1508.25 (a)(1); *see also* 40 C.F.R. § 1502.4(a) (NEPA requires that proposals “which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.”)).

Like NEPA, CEQA prohibits lead agencies from improperly "segmenting" the project into its component parts and subsequently distorting or underestimating the project's effects. (*See City of Santee v. County of San Diego* (1989) 214 Cal. App. 3d 1438, 1452 (CEQA requires the project description to include all phases of a proposed action and precludes segmentation); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 393-399 (1988).) In *Laurel Heights*, 47 Cal. 3d at 396, the California Supreme Court stated that: ‘an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.’”

The test that has developed to determine whether an agency has engaged in impermissible segmentation of the environmental review of a road construction project under NEPA was articulated by the 3rd circuit court in *Daly v Volpe* (514 F.2d 1106 1109-1110 (9th Cir. 1975)), and this rule was adopted by the California court for application in the CEQA context in *Del Mar Terrace Conservancy, Inc., v City Council* (10 Cal. App. 4th 712 732-733). The basic requirements of this *Volpe* test are that a proposed road construction project be of substantial length, have logical termini, and have independent utility, such that it is reasonable to review the project separately instead of in conjunction with other, closely related projects. (*Del Mar Terrace Conservancy, Inc., v. City Council*, 10 Cal. App.4th 712, 732-733, citing *Daly v. Volpe.*)

The MCP is not bounded by logical termini and does not have independent utility. In support of the contention that the MCP has logical termini and independent utility, the DEIR/DEIS simply states “[t]he MCP project provides logical termini since it connects to two major north-south transportation facilities (I-215 and SR-79), (and) has independent utility since the project is usable and a reasonable expenditure even if no additional transportation improvements in the area are made.” (DEIR/DEIS at 1-13; 1-37). I-125 north of Perris and SR-79 north of San Jacinto are not rational end points for a transportation improvement or review of environmental impacts, because the cities of Perris and San Jacinto do not, in themselves, justify such a large and substantial freeway. The utility of the MCP will be as a connector for traffic that continues along, I-125, SR-79, Cajalco Road, or other roadways. However, improperly

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segmenting the Project means that the expansion of those roadways will not be considered in the cumulative context.

As envisioned in the original Community and Environmental Transportation Acceptability Process (CETAP) the original freeway design would have connected “Hemet to Corona/Lake Elsinore Corridor.” San Jacinto and Perris were not identified as a logical termini for the movement of vehicles or individuals east-west, but are a remnant of the eastern half of the original Mid County Parkway design. They are not independent logical termini without addressing the movement further west from I-215 to I-15. Neither does the Project have independent utility unless it further permits traffic to move westbound to I-15 via the Cajalco Road expansion.

Moreover, the DEIR/DEIS does not sufficiently address the impacts from the “connected action” of improving the Cajalco Road. There is “credible and substantial evidence” that the Cajalco Road expansion is a reasonably foreseeable project that will likely change the scope and nature of the MCP’s environmental effects. Despite the claim that “no improvements between I-15 and I-215 are planned, designed, or intended to be implemented as part of the MCP project... (and) [t]he distinct transportation needs between I-15 and I-215 will be addressed by the Riverside County Transportation Department’s General Plan roadway improvements for Cajalco Road,” any common-sense review of these two projects makes clear the proximate interrelation between these roadway improvements. (*Id.* at 1-10).

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The Project is a segment of the CETAP “Hemet to Corona/Lake Elsinore Corridor,” that was developed during the Riverside County Integrated Project (RCIP) intended to address the planning, environmental, and transportation issues arising out of anticipated population growth in the county, and which originally included the Cajalco Road portion. (DEIR/DEIS 1-4-5). Responding to public concerns, RCTC and FHWA decided to limit the scope of the MCP project by cutting the proposed project in half, and ending the MCP at Interstate 215, but the plans to expand Cajalco Road remain.

According to the DEIR/DEIS, “[t]he County of Riverside is currently in the planning stages to widen Cajalco Road from two lanes to four lanes between Harvill Avenue and Temescal Road.” (DEIR/DEIS at 1-36). Harvil Avenue and Temescal Road are the roads adjacent to I-215 and I-15 respectively, and therefore this improvement will effectively extend the transportation corridor from the MCP to connect with I-15. Further reflecting to close connection between these two actions, the MCP was originally named the Cajalco Ramona Corridor. (DEIR/DEIS at 2-1). The Cajalco Road improvements will essentially pick up where the MCP leaves off, and vehicle traffic from one to the other is clearly foreseeable.

Analyzing these improvements as separate project has numerous effects on the analysis of environmental impacts and alternatives. As one example, claims that the CWA 404(b) no action alternative is unreasonably expensive are based on the overall projected project cost, which under the current description of the MCP, only includes the Ramona Expressway portion of the larger CETAP transportation corridor. If the cost of these two interrelated projects were

considered together, the comparative cost of the CWA 404(b) no action alternative would be much lower, and claims of unreasonable expense would be further put into question.

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3. THE DEIR/DEIS RELIES UPON A HYPOTHETICAL AND INFLATED NEED AND JUSTIFICATION OF UNREALISTIC FUTURE GROWTH

The DEIR/DEIS relies upon an improper and unrealistic projection of future growth and project need that would be served by the Project. The DEIR/DEIS justifies its need determination on projections of future conditions in 2035 that predict a growth of over 60% by 2035 and 80% growth in employment. (DEIR/DEIS 1-13). The DEIR/DEIS compares current LOS to projected LOS in 2040 to justify claimed need. According to the DEIR/DEIS, the “Ramona Expressway currently operates at an overall LOS C with a maximum of 27,500 average daily traffic (ADT) in 2010, [and]... [b]y 2040, it is anticipated, even with planned improvements in the Riverside County General Plan Circulation Elements, Ramona Expressway would operate at an unacceptable LOS F.” (DEIR/DEIS 1-14). No citations for these claims are provided in this section of the DEIR/DEIS. Moreover, the basis and legitimacy of these projections are questionable, as discussed in other sections of these comments including the traffic section.

The DEIR/DEIS bases its need determination on growth forecasts from the 2012 RTP Integrated Growth Forecast performed by the Southern California Association of Governments (SCAG). (DEIR/DEIS at 1-13.). The DEIR/DEIS provides a URL for the 2012 RTP Integrated Growth Forecast at the SCAG website, but the forecast presented there is a simple excel spreadsheet with the conclusions of the forecast in numerical terms, but without any discussion of methodology. (See SCAG 2012.) There is some discussion of methodology elsewhere in the website, but a clear description of how these figures were established is not readily available to the public or decision makers, and should be included in the DEIR/DEIS. The spreadsheets for the 2008 growth forecasts are cryptic and technical in nature and are not readily understood by members of the public, thereby frustrating any attempts at meaningful review and comment. (See SCAG 2009).

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Moreover, despite reference to newer growth forecasts, the DEIR/DEIS relies on projections from the outdated 2008 RTP Integrated Growth Forecast for its claims of 60% growth in population and 80% growth in employment.. (See DEIR/DEIS 1-13 – 14). There is no explanation of the use of this outdated forecast as the basis for the DEIR/DEIS need analysis, nor is there any discussion of the differences or similarities between these two different growth forecasts.

More importantly, an overall prediction of 60% growth and 80% employment growth by SCAG cannot be universally applied to the areas served by the Project. The cities of San Jacinto, Hemet, and Perris are not analogous to job sectors in Los Angeles or Orange counties, or the City of Riverside. The DEIR/DEIS’ faulty projections could just as easily be applied to a new freeway connector between Indio and Palm Springs, even though the areas are equally as unlikely to experience the same sort of job growth as more developed economies. The DEIR/DEIS must clearly demonstrate a growth demand for that particular area before blindly extrapolating region wide data to a small rural portion of Riverside County. Similarly the

DEIR/DEIS fails to account for the development of the Sustainable Communities Strategy, which will encourage growth and transportation next to existing urban areas and public transportation areas. The DEIR/DEIS' blind reliance on single person automobile travel in rural areas doesn't accurately project the shift of demographics away from single family development separated from public transit options.

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III. THE DEIR/DEIS FAILS TO ANALYZE A REASONABLE RANGE OF ALTERNATIVES AS REQUIRED BY NEPA AND CEQA

One of the most foundational and essential aspects of the environmental review required by NEPA and CEQA is the requirement that lead agencies analyze reasonable alternatives to a proposed action to assess whether less environmentally damaging options exists. (40 C.F.R. § 1502.2; 14 Cal. Code Regs. § 15126(d)). The DEIR/DEIS for the MCP does not adequately comply with these legal requirements because the build alternatives presented are substantially the same and do not allow for meaningful evaluation by the public and reasoned action by decision makers.

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NEPA requires lead agencies to “rigorously explore and objectively evaluate *all* reasonable alternatives” to a proposed project. (40 C.F.R. § 1502.14(a), emphasis added). The alternatives analysis is commonly called the heart of the EIS environmental review process. (*See* 40 C.F.R. 1502.14).

CEQA also requires an alternative analysis in which the lead agencies must evaluate the alternatives' “comparative merits” in a manner which “foster[s] meaningful public participation and informed decision-making.” (14 Cal Code Regs. § 15126.6 (a)). Furthermore, the lead agency must “publicly disclose its reasoning for selecting” its chosen alternatives, and “shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (14 Cal. Code Reg. § 15126.6 (a)-(b)).

A. EFFECT OF NARROWLY DEFINED PROJECT PURPOSE

The alternatives analysis in the MCP DEIR/DEIS is deficient under these legal standards. In the MCP's alternative analysis, the improperly limited scope of the project purpose “to provide a *freeway* that will effectively and efficiently accommodate regional west-east movement of people and goods between and through Perris and San Jacinto.” (DEIR/DEIS 2-1, emphasis added). This definition of purpose, to provide a freeway, expressly limits the project definition to preclude non-freeway alternatives to achieve the projected transportation needs of western Riverside County.

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Alternative means to address transportation needs, such as expanding the transit oasis concept or expanding public transit, are therefore precluded from fulfilling the project's defined purpose, and consequentially cannot be considered reasonable alternatives. Even road expansions

that accommodate greater transportation needs, but that are not consistent with the list of standards articulated in the MCP’s purpose discussion, are rejected as not meeting the project’s purpose. For example, No Build Alternative 1B, which would involve completing an expansion to the Ramona Expressway to six lanes, is deemed not to meet the project’s purpose. As to be expected, this results in an alternatives analysis consisting of very limited variation.

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B. ATTENUATED DEVELOPMENT OF ALTERNATIVES

Alternatives considered and withdrawn from further study include many so-called alternatives that relate to portions of the previously envisioned project that extended from I-215 west to I-15. However, these are not alternatives to the current project, but are instead alternatives to a former project that is no longer being considered. Also included in this brief section of the DEIR/DEIS are mentions to earlier planning processes, including HCLE Corridor studies conducted for the CETAP, that considered other transit options such as expanded bus and commuter rail services, eventually resulting in a project-level environmental review for the Cajalco Ramona Corridor, later renamed the MCP. (DEIR/DEIS at 2-70). Through various studies and reviews, the alternatives were eventually limited to eight options, none of which included non-highway options. (DEIR/DEIS at 2-70). Once the limits of this MCP project were adjusted to cut the project from 32 miles to 16 miles, the alternatives were further limited to the three build alternatives presented in the current DEIR/DEIS.

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This long, convoluted process resulted in the current parameters of this project and build alternatives, which are too attenuated from the original environmental review process to allow for meaningful review and participation from the public. Essentially, the development of alternatives for the current MCP piggy-backs on (and truncates) an earlier development of alternatives for a project with significant differences in description and scope, and therefore does not fully reflect a reasonable range of alternatives for the current project. The result is a set of alternatives that is imprudently limited based on past considerations related to a suite of projects with sufficiently different descriptions to warrant the development of a new, independent set of alternatives.

C. THE ALTERNATIVES ANALYZED ARE IMPROPERLY NARROW AND DO NOT A REASONABLE RANGE OF ALTERNATIVES AS REQUIRED BY CEQA AND NEPA

The DEIR/DEIS presents a range of alternatives “intended to meet the requirements for alternatives analysis under CEQA, NEPA, Section 404 of the federal Clean Water Act (CWA), and Section 4(f) of the Department of Transportation Act.” (DEIR/DEIS at 2- 6.) Unfortunately, the alternatives presented in the DEIR/DEIS are improperly limited and essentially the same, resulting in a DEIR/DEIS that does not facilitate a legitimate analysis of the available alternatives to the proposed project and their relative environmental impacts.

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This similarity among the so-called alternatives presented is reflected by the content of the alternatives analysis. The analysis essentially assesses the alternatives and their overall impacts together as if describing one proposed option for the project, with the occasional

mention of slight differences among the alternatives relating to the connection to I-215. Unfortunately, the section of the DEIR/DEIS devoted to alternatives merely recites in more general terms, the project specifications contained elsewhere in the DEIR/DEIS. Furthermore, the few “alternatives” that are included are, for the majority of the MCP’s length, nearly identical. The resulting build alternatives all envision a “six-lane controlled access freeway,” all with substantially the same orientation and system interchanges. (DEIR/DEIS at 2-8, 2-12).

Further reflecting the striking similarity among the alternatives included in the DEIR/DEIS, even one of the three “no build alternatives,” Alternative 1B, which includes implementation of the Ramona Expressway consistent with the Riverside County General Plan Circulation Element, envisions a “six-lane roadway along the Ramona Expressway between I-215 and SR-79. (DEIR/DEIS at 2-59).

The actual discussion comparing the differences among the alternatives is limited to relatively few pages, and while some differences are highlighted by this comparison, on balance, this section highlights the degree of similarity shared by all build alternatives for this project more than it analyzes their differences. (DEIR/DEIS at 2-58 – 2-66). For example, access (the location of local interchanges), design variations, floodplain impacts, and air quality impacts are all identical among the build alternatives according to the comparison provided. (DEIR/DEIS at 2-62 – 2-66). Impacts to many other resources, such as threatened and endangered species, plant communities, Section 4(f) resources, cultural resources, and land use, are substantially the same.

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The DEIR/DEIS fails to analyze any real alternatives to a 6 lane roadway through along the same project route. Alternatives such as public transit (rail or bus service), alternatives routes along SR-74, or combinations of smaller road expansions are not considered or analyzed. Even alternatives that properly avoid jurisdictional waters are dismissed in contravention of CEQA even without a showing that they are economically infeasible. (*See Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 600 (internal citation omitted); *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884 (rejecting economic feasibility analysis of enclosing composting facility based on costs of development for only one other enclosed facility and conclusory statement that private financing would not be available).) The DEIR/DEIS’s attempt to put forward a suite of 6-lane roadways along the same route hardly qualifies as a reasonable range of alternatives and demonstrates a predetermined project that fails to provide the public and decision makers with a necessary choices and information as required by CEQA and NEPA.

D. PROBLEMS WITH DISCLOSURES RELATED TO THE DEVELOPMENT OF CWA SECTION 404 ANALYSIS

In April 2010, the various agencies involved in the NEPA process agreed to coordinate on the development of project alternatives pursuant to the 2006 NEPA/CWA Section 404 Memorandum of Understanding (MOU), which requires coordination at a number of points in the process, including requirements for agencies to issue agreement/disagreement or concurrence/non-concurrence on Purpose and Need, Alternatives, and the selection of the Least Environmentally Damaging and Practicable Alternative. (DEIR/DEIS at 2-7).

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The DEIR/DEIS states that in January 2011, Caltrans received letters from the USACE, the EPA, and the USFWS providing their final agreement on the modified set of alternatives to be evaluated in the Recirculated Draft EIR/Supplemental Draft EIS, and refers the reader to Appendix J for copies of these letters. (DEIR/DEIS at 2-7). Appendix J is presented in two parts, and contains, in addition to the relevant letters referred to in this section of the DEIR/DEIS, volumes of earlier letters and other documents with questionable relevance. To find the letters referenced, the reader must search through more than 400 pages of documents. Furthermore, the letters contained in this appendix are not OCR scanned to allow for computerized searches, and no table of contents or index for this appendix is provided. (See DEIR/DEIS Appendix J). This unreasonably difficult and inconvenient organization and presentation of important information is contrary to NEPA and CEQA's policies of clear, meaningful, and useful disclosure. (Cal. Pub. Res. Code § 21003; 40 C.F.R. 1500.2(d) (NEPA policy to "encourage and facilitate public involvement"; 40 C.F.R. 1500.4(f)).

The decision to reject the Section 404 no action alternative is not supported by the facts presented in the DEIR/DEIS. The Section 404 no action alternative analysis is based on the false assumption that "no feasible alignment exists within the project study area that would completely avoid the waters of the United States." (DEIR/DEIS at 2-60). To avoid the jurisdictional waters of the United States, additional bridge structures and modifications to already designed bridges would be required, costing an additional \$365 million, which, according to the DEIR/DEIS represents an approximately 20% increase in cost. On this basis, the DEIR/DEIS concludes that the Section 404 no build alternative is unreasonably expensive. (DEIR/DEIS at 2-60). This conclusory claim of unreasonable expense is flawed because, as mentioned above, the project segmentation provides a misleading figure for the cost of the project, and what makes an alternative unreasonably expensive is not clearly defined.

IV. DEIR/DEIS RELIES UPON AN IMPROPER BASELINE

It is well established that the purpose of an EIR is to provide public agency decision-makers and members of the public with an informational document that explains potentially significant environmental impacts and feasible mitigation measures. (Cal. Pub. Res. Code § 21002.1; Guidelines § 15121; *Carmel Valley View, Ltd. v. Board of Supervisors* (1976) 58 Cal.App.3d 817, 821-822.) In order to be useful, however, the EIR must accurately identify what significant impacts exist. "[T]he significance of a project's impacts can be ascertained only if the agency first establishes the physical conditions against which those impacts are to be measured." Michael H. Remy et al., *Guide to CEQA California Environmental Quality Act*, 198 (11th ed., Solano Press 2007). The idea is to compare "what will happen if the project is built with what will happen if the site is left alone." (*Woodward Park Homeowners Assn, Inc. v. City of Fresno* (2007) 58 Cal.Rptr.3d 102, 119 (*Woodward Park*)).

The rule for what constitutes an environmental baseline is set forth in Guidelines section 15125(a), which provides that:

An EIR must include a description of the physical environmental conditions in the

vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(Guidelines § 15125(a).) Even when an EIR relies upon an adopted plan, the EIR must still analyze the existing physical conditions as they exist at the time the Notice of Preparation is published. (Guidelines § 15125(a).)

Applying this rule to projects involving the development of raw land or expansion of existing facilities, it follows that significant impacts are determined by comparing the status of the land with the project against the status of the land as it is. An environmental impact report is inadequate as an informational document if it fails to analyze consistently and coherently the impacts of a project relative to leaving the land in its existing undeveloped physical condition. (*Woodward Park*, 58 Cal.Rptr.3d at 122.) Comparing a proposed project to the build out of an existing plan leads to an EIR never presenting a clear or complete description of the project's impacts. (*Id.* at 121-122.) "CEQA nowhere calls for evaluation of [environmental] impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as the existing physical conditions in the affected area." (*Environmental Planning and Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.)

The DEIR/DEIS for the MCP is fundamentally flawed because it relies upon a comparison of inflated future "No build" projections in determining whether many impacts are significant. This improperly masks the massive increase in air pollution and traffic that would result from a comparison with the existing conditions on the ground. The DEIR/DEIS is not permitted to choose an arbitrary date in the future in order to fish for a transportation calculation that improperly masks the significant increase in emissions which would result from the construction of a new six to eight lane freeway. The DEIR/DEIS must determine significance in relation to an analysis of the physical conditions in the project area as they exist at the time of the notice of preparation. (Guidelines § 15125(a) & (e).) The DEIR/DEIS's improper baseline dooms the environmental review throughout the document.

In creating the improperly inflated baseline, the DEIR/DEIS fails to adequately address the induced traffic that would result from the Project. The effects of induced travel on traffic increases throughout the United States particularly impact southern California. Southern California, including San Bernardino and Riverside counties, has continually attempted to build its way out of highway congestion. San Bernardino and Riverside County were estimated to have induced travel increases between 14-62%. (Noland 2000 at 26). Other studies from California have supported the concept that an increase in available lanes will induce additional miles traveled by vehicles. (*See e.g.* Hansen 1997). These factors were not addressed within the DEIR/DEIS, and should be properly analyzed. The project will result in both types of induced traffic resulting in a significant increase in traffic related to the project and should be fully addressed.

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It is also unclear to what degree the DEIR/DEIS's inflated baseline relies upon the MCP itself. The DEIR/DEIS must fully disclose to what degree the traffic forecasts anticipate the construction of additional traffic infrastructure including the MCP. The DEIR/DEIS cannot create a self fulfilling prophecy that employs a baseline that actually incorporates the project itself to mask project impacts.

IP-6-17

V. WETLANDS AND OTHER WATERS, HYDROLOGY AND FLOODPLAINS, AND WATER QUALITY AND STORM WATER RUNOFF

The analysis and disclosure of the MCP's impacts to wetlands and other waters, hydrology and floodplains, and water quality and storm water runoff is inadequate to satisfy the legal requirements of NEPA and CEQA. With respect to wetlands and other waters, the DEIR/DEIS falls short because less impactful alternatives are impermissibly omitted. Concerning hydrology and floodplains, inadequate detail is provided and complete analysis is deferred to a later date. Lastly, impacts to water quality and storm water runoff somewhat speculative future measures are relied upon, and potential impacts to groundwater are inadequately disclosed.

IP-6-18

A. WETLANDS AND OTHER WATERS

The DEIR/DEIS attempts to describe the MCP in relation to the complex regulatory background for wetlands and other waters issues, including a Memorandum of Understanding between Caltrans, FHWA, USACE, USEPA, and USFWS establishing cooperative compliance with NEPA, the Clean Water Act (CWA) (33 U.S.C. § 1344), and the Executive Order for the Protection of Wetlands (E.O. 11990).

In order to comply with the requirements to assess alternatives that do not impact jurisdictional waters, the DEIR/DEIS also provides a cross reference to Appendix M of the DEIR/DEIS which performs the required CWA 404(b) alternatives analysis. A cross reference is also provided to Appendix P, the Conceptual Mitigation Plan to demonstrate required mitigation under CWA and NEPA.

IP-6-19

Under the CWA Section 404(b) requirements, no activities that result in the discharge of dredge or fill material are allowed if there is a practicable alternative that would have a less adverse impact. (40 C.F.R. 230.10(a)). Practicable is defined in the CWA regulations as "available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purposes." (40 C.F.R. 230). Additionally, CWA 404(b) Guidelines provide that "[I]f an alternative is unreasonably expensive to the applicant, the alternative is not 'practicable.'" (DEIR/DEIS Appendix M, at 11 (Citing Guidelines Preamble, "Economic Factors," 45 Federal Register 85343 (December 24, 1980))).

As with the DEIR/DEIS, the CWA 404(b) alternatives analysis suffers from an improperly limited project purpose that precludes non-freeway alternatives. (DEIR/DEIS Appendix M, at 9). The impracticability of satisfying the supposed future transportation need

through further expansion of SR-74, which already connects the Perris and San Jacinto areas, is not adequately demonstrated.

Further, even accepting the project description of the MCP as an expansion of the Ramona Expressway, the conclusion that the Section 404 No Action Alternative is impracticable because the required 20% increase in cost makes the alternative “unreasonably expensive” is unconvincing. (DEIR/DEIS Appendix M at 22). Although the guidelines do not provide a precise definition of how expensive an alternative must be to be “unreasonably expensive” and therefore impracticable, additional EPA guidance explains, “[t]he determination of what constitutes an unreasonable expense should generally consider whether the projected cost is substantially greater than the costs normally associated with the particular type of project.” (Memorandum to the Field, “Appropriate Level of Analysis Required for Evaluating Compliance with the Section 404(b)(1) Guidelines Alternatives Requirements,” available at <http://water.epa.gov/lawsregs/guidance/wetlands/flexible.cfm> (“EPA 2012”).)

The fact that the Section 404(b) No Action Alternative would result in a 20% cost increase does not, in itself, constitute an unreasonable expense justifying a finding of impracticability. Moreover, this cost increase is not fully explained in the DEIR/DEIS, and conflicting information is presented in Appendix M concerning this cost increase. (See DEIR/DEIS Appendix M at 26, citing the cost of the Section 404 No Action Alternative as \$2.48 billion, apparently less than other design variations). This internal contradiction results in a DEIR/DEIS that is not “meaningful and useful to decision-makers and to the public.” (Cal. Pub. Res. Code § 21003). The DEIR/DEIS must present a finding that there are not practicable alternatives to the MCP as proposed to comply with Section 404(b), and in its current state, has failed to do so.

The DEIR/DEIS also cannot ignore CEQA’s requirements that regarding adoption of economically feasible alternatives. Under CEQA, “[e]conomic unfeasibility is not measured by increased cost or lost profit, but upon whether the effect of the proposed mitigation is such that the project is rendered impractical.” (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 600 (internal citation omitted).) Even where an EIR includes some actual discussion of economic infeasibility, it must still be sufficient “to allow informed decision-making.” (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884 (rejecting economic feasibility analysis of enclosing composting facility based on costs of development for only one other enclosed facility and conclusory statement that private financing would not be available).)

Additionally, the MCP must be consistent with E.O. 11990. E.O. 11990 requires that federal agencies “shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use.” (Exec. Order No. 11,990, 42 Fed. Reg. 26961, §2(a) (May 24, 1977)). There are no explicit findings by the lead agency that there is no practicable alternative to the construction nor that the proposed project includes all practicable measures to minimize harm are presented in the DEIR/DEIS. While the obligation of the lead

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agency to comply with E.O. 11990 is recognized, consistency with its mandates are not adequately analyzed in the DEIR/DEIS. The DEIR/DEIS refers to Appendix M which supposedly “presents the full range and scope of all reasonable and practicable alternatives,” (DEIR/DEIS Appendix M at 1), and Appendix P for mitigation measures contained in a conceptual mitigation plan, but neither of these appendices adequately address consistency with E.O. 11990. The DEIR/DEIS never makes a finding that there is no practicable alternative to the construction of the MCP in relation to this executive order.

IP-6-20

B. HYDROLOGY AND FLOODPLAINS

The MCP must comply with the Executive Order of Floodplain Management (E.O. 11988), which prohibits executive agencies from conducting, supporting, or allowing activities in floodplains if there is a practicable alternative, and if there is no practicable alternative, take measures to avoid potential harm, and explain the need for the action within the floodplain. (E.O. 11,988, 42 Fed. Reg. 26951, §2(a) (May 24, 1977)); 23 C.F.R. 650 Subpart A.

Of great concern, the hydrology and floodplains analysis in the DEIR/DEIS relies heavily on substantial future actions that are not yet adequately defined to allow for full public disclosure and comment, which improperly defers analysis and mitigation. This section makes several references to the current 35% design level that precludes a complete analysis of the hydrology and floodplain impacts from bridges constructed as part of the MCP. (*See e.g.* DEIR/DEIS at 2.9-26, “Final Location Hydraulic Studies will be prepared during final design”). This incompleteness of design makes full disclosure of hydrology and floodplain impacts impossible, and without more specificity, the public is denied the meaningful opportunity for project review and comment.

IP-6-21

The DEIR/DEIS concedes that significant portions of the MCP Build Alternatives will be situated within floodplains (*See* DEIR/DEIS Fig. 3.9.2). Specifically, the MCP will cross floodplains in three locations, the Perris Valley Storm Drain, the San Jacinto River at the San Jacinto River Bridge, and the San Jacinto River at the SR-79 interchange. Because of this, if there are any practicable alternatives that avoid floodplains, these alternatives must be implemented. Again, this analysis is hampered by imprudently narrow definitions of project purpose and alternative practicability.

IP-6-22

C. WATER QUALITY AND STORMWATER RUNOFF

The MCP will result in an increase in impervious area, resulting in an increase of the volume of runoff to receiving waters. According to the DEIR/DEIS “Design Pollution Prevention and Permanent Treatment BMPs would completely mitigate these impacts resulting in no adverse impacts to water quality... anticipated to result from implementation of the proposed project.” (DEIR/DEIS at 3.10-28). These BMPs include biofiltration swales, infiltration devices, and detention devices.

IP-6-23

One of the primary legal requirements applicable to this water quality and storm water runoff analysis is the CWA’s prohibition on activities if there is a less environmentally damaging

practicable alternative. A Least Environmentally Damaging Practicable Alternative (LEDPA) determination, as required by CWA 404(b)(1) is not made in this section of the DEIR/DEIS, and instead the reader is referred to the Wetlands and Other Waters Section, which refers to Appendix M, which contains the required analysis. As discussed above, the analysis presented in Appendix M is based on the unsupported premise that the Section 404 No Action Alternative is unreasonably expensive and, therefore, impracticable. By excluding the Section 404 No Build Alternative and Alternative 4 Modified claiming that the expense of these alternatives make them impracticable, the DEIR/DEIS improperly dismisses these alternatives which should be considered LEDPAs. Using these imprudently limited analyses, the DEIR/DEIR arrives at the conclusion that Alternative 9 Modified is the LEDPA. (DEIR/DEIS Appendix M at 44). The DEIR/DEIS continues to limit the scope of what is considered to be practicable, using an additional “unreasonably expensive” argument against selecting Alternative 9 Modified SJN DV as the LEDPA, citing “the extra cost of \$40 million for the longer bridge” as “unreasonably expensive and not practicable.” (DEIR/DEIS Appendix M at 45).

IP-6-23

Further, the excessive cross-referencing in these water quality sections precludes proper disclosure by the public and decision makers, and this organization is contrary to CEQA’s requirement that EIRs be “organized and written in a manner that will be meaningful and useful to decision-makers and to the public.” (Cal. Pub. Res. Code § 21003).

IP-6-24

Additionally, Section 402(p) of the CWA requires permits for Municipal Separate Storm Sewer Systems (MS4s), and Caltrans is subject to this permitting requirement. The DEIR/DEIS relies on Caltrans’ compliance with their existing MS4 permit, but this permit is currently being revised/renewed and the new permit will come into effect on July 1, 2013. (*See* California State Water Resources Control Board 2012). Because the details of this permit are not yet established, and the effect of this new permit is not disclosed by the DEIR/DEIS the full impacts and mitigation measures are not properly disclosed.

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In addition the federal requirements, the MCP must also comply with state laws and regulations protecting waters. Similar to the CWA, discharges to waterways are prohibited under the Porter-Cologne Water Quality Control Act unless permitted by Waste Discharge Requirements (WDRs).

Impacts to groundwater hydrology are not adequately disclosed. The MCP is located in the Perris-North, Lakeview/Hemet-North, and San Jacinto-Upper Pressure Management Zones of the San Jacinto River Basin. Because the MCP includes several infiltration basins, designed to collect stormwater runoff and allow it to infiltrate into the groundwater, the MCP clearly has potential impacts to groundwater. However, the DEIR/DEIS, uses the fact that the MCP will make extensive use of infiltration basins as support for the contention that there would be *no* impacts to groundwater. The DEIR/DEIS claims, “[b]ecause the project includes infiltration basins, runoff from the new impervious surface areas would infiltrate to the groundwater. Therefore, the increase in impervious surface areas would not have a substantial impact on groundwater levels.” (DEIR/DEIS 3.10-34). This line of reasoning, that because the MCP *will* result in infiltration to groundwater there *will not* be substantial impacts to groundwater, is clearly erroneous and cannot be supported by substantial evidence. This unsupported and

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conclusory statement results in an incomplete analysis of the potential impacts from the MCP to groundwater.

IP-6-26

VI. THE DEIR/DEIS FAILS TO ADEQUATELY ANALYZE IMPACTS TO BIOLOGICAL RESOURCES

A Natural Environment Study (NES) and Supplement to the Natural Environment Study (NES Supplement) were prepared for the MCP project as part of the DEIR/DEIS process. Although the Center appreciates the survey information provided in the NES and NES Supplement, the analysis of impacts in these studies leaves much to be desired as far as the actual on-the-ground land management issues and impacts from the alternatives discussed in the DEIR/DEIS.

IP-6-27

Unfortunately, the DEIR/DEIS, falls short of providing full disclosure of the biological resources impacts of the proposed MCP. Relatively little information included in the NES and NES Supplement was incorporated into the DEIR/DEIS, and as a result, the only way to become fully aware of the analysis conducted to assess the project's biological resources impacts is to review both the DEIR/DEIS along with the NES and NES Supplement.¹ The NES and NES Supplement concluded that the MCP Build Alternatives would result in direct and indirect impacts on biological resources.

A. FAILURE TO ADEQUATELY DEMONSTRATE INCONSISTENCIES BETWEEN MCP PROJECT AND IMPACTED HABITAT CONSERVATION PLANS

All MCP Build Alternatives are inconsistent the Western Riverside County MSHCP (MSHCP) and the Stephens' kangaroo rat Habitat Conservation Plan (SKRHCP). These habitat conservation plans were put into place to offset detrimental effects to rare species resulting from other developments and activities, and each has its own set of requirements for activities such as the MCP project. Both NEPA and CEQA require an analysis of potential conflicts between proposed actions and federal, state, regional, and local land use plans and policies. (40 C.F.R. § 1502.16(c); 14 Cal. Code Regs. Appendix G).

IP-6-28

In its current state, the DEIR/DEIS fails to adequately disclose and analyze compliance with these HCPs, and these deficiencies must be corrected. A complete analysis of compliance with these HCPs should be completed at this stage of the environmental review process, and this deferral of analysis restricts the public's opportunity for full and meaningful participation, contrary to CEQA's early disclosure policy goal. (Cal. Pub. Res. Code § 21003.1). A DEIR/DEIS that adequately analyzes the MCP project's compliance with these HCPs must be recirculated for public review and comment. (14 Cal Code Regs. §15088.5).

¹ The NES and NES Supplement were not made available as an appendix to the DEIR/DEIS, and were only made available after requests for access from the public. This hurdle to complete disclosure regarding the scientific foundations for the conclusions presented in the DEIR/DEIS impaired the public's ability for full and meaningful participation during the limited comment period contrary to CEQA's requirement for information disclosure "as soon as possible" and NEPA's requirement for high quality, accurate scientific information. (Cal. Pub. Res. Code § 21003.1(b); 40 C.F.R. § 1500.1(b)).

1. INADEQUATE DISCLOSURE OF INCONSISTENCIES WITH THE WESTERN RIVERSIDE COUNTY MSHCP

The DEIR/DEIS fails to adequately disclose the MCP’s conflicts with the MSHCP. Because all MCP Build Alternatives in the DEIR/DEIS will affect 195 acres of MSHCP Criteria Area, according to the DEIR/DEIS, RCTC and Caltrans must implement specific conditions outlined in sections 13.7 and 13.8 of the MSHCP Implementing Agreement, as well as to abide by the Section 10(a)(1) permit conditions. Unfortunately, the DEIR/DEIS does not completely reflect the obligations of RCTC and Caltrans as outlined in Sections 13.7 and 13.8 of the MSHCP Implementing Agreement. Although the DEIR/DEIS only lists one set of obligations, these sections of the MSHCP Implementing Agreement contain three enumerated sets of obligations. (MSHCP Implementing Agreement at 13.7 (“WRCRCA”)).

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Similarly, several of Caltrans’ obligations are omitted from the abridged description of the requirements of the MSHCP Implementing Agreement in this section of the DEIR/DEIS, most notably, the requirements to “contribute to the assembly of Additional Reserve Lands,” assisting CDFW in monitoring these reserve lands, entering into a “conservation banking agreement,” and to “[c]arry out all other applicable requirements of the MSHCP, this Agreement, and the Permits.” (WRCRCA at 13.8).

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Without clearly and completely disclosing their commitments under these agreements, RCTC and Caltrans cannot fully analyze, and the public cannot effectively review, their consistency with these agreements. The DEIR/DEIS must demonstrate consistency with the requirements of the MSHCP to maintain compliance with the Section 10(a)(1) incidental take permit conditions of the ESA.

The DEIR/DEIS also does not provide sufficient information for the public and decision makers to determine the project’s consistency with the MSHCP as a mitigation, avoidance, and minimization measure to address various significant impacts. First, the DEIR/DEIS does not adequately support the contention that the MCP is a covered activity under the MSHCP. Second, even if the conclusion that the MCP is a covered activity were adequately supported by the DEIR/DEIS, consistency with the requirements of the MSHCP is not adequately assured because many measures necessary to comply with the MSHCP are imprudently deferred and inadequately described in the DEIR/DEIS.

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a. CONSISTENCY WITH MSHCP REQUIREMENTS IS NOT DEMONSTRATED AND NECESSARY ANALYSIS IS IMPROPERLY DEFERRED

The MCP’s consistency with the requirements of the MSHCP is inadequately described by the DEIR/DEIS. Moreover, there is a persistent trend of improper deferral of analysis with respect to the MCP’s consistency with the MSHCP. From future project designs and specifications to Determinations of Biologically Equivalent or Superior Preservation (DBESP) and Consistency Analyses, much of the substance of the claimed consistency with the MSHCP is

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not adequately included in the DEIR/DEIS and deferred until a later time after approval of the Project. Consistency with the MSHCP as an inadequate mitigation, minimization, and avoidance measure is not supported by substantial evidence. (See Cal. Pub. Res. Code § 21168.5; 40 C.F.R. § 1500.2(b)).

IP-6-32

The development of project designs and specifications necessary to demonstrate consistency with the MSHCP should be included in the DEIR/DEIS at this stage of the environmental review process, but are improperly deferred to a later date. (Cal. Pub. Res. Code § 21003.1(b)). For example, to address the MCP's significant impacts to existing and proposed conservation areas, the DEIR/DEIS provides for the future development of designs and specifications, information that is not included for public review in the DEIR/DEIS, to achieve consistency with the MSHCP's Urban/Wildlands Interface Guidelines in Section 6.1.4 of the MSHCP. The DEIR/DEIS states "prior to and during construction, RCTC will require the design contractor and the Construction Contractor to comply with guidelines from the MSHCP," but does not explain with adequate specificity the means that will be employed to actually achieve compliance with MSHCP guidelines. (DEIR/DEIS at 3.17-56). This sort of conclusory statement claiming future compliance lacks the substantial evidence required for determinations made under CEQA. (Cal. Pub. Res. Code § 21168.5).

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Another area in which the DEIR/DEIS does not demonstrate compliance with the MSHCP is the Urban/Wildlands Interface Guidelines in MSHCP Section 6.1.4. This section addresses indirect effects of projects in proximity to MSHCP Conservation Areas, and provides guidelines to minimize edge effects of such developments. (MSHCP at 6.1.4). The MCP's claimed consistency with the MSHCP's guidelines to limit impacts from drainage and toxics management contained in the DEIR/DEIS is uncertain and improperly deferred. The DEIR/DEIS claims the MCP Build Alternatives "would include measures to reduce the discharge of untreated surface runoff," but only provides vague examples of "[p]roposed Treatment BMPs." (DEIR/DEIS at 3.17-35). This explanation concludes with the unsupported claim that "[t]he MCP project will comply with all NPDES requirements." (DEIR/DEIS 3.17-35). The same inadequate analysis is applied to the MCP's consistency with the MSHCP's requirements regarding toxics.

IP-6-34

Similarly, the DEIR/DEIS claims consistency with the MSHCP's Urban/Wildlands Interface Guidelines on noise and light by relying on design features that will be finalized at a later date. (DEIR/DEIS at 3.17-36-37). According to Mitigation Measure MC-4, Design and Construction Management Measures, design and construction management specifications to address noise and light impacts will be developed through future coordination among the RCTC Project Engineer, the Contract Biologist, the Design Coordinator, and the Project Biologist, and will be included in the final design for the MCP. (DEIR/DEIS at 3.17-55). These design measures and specifications do not contain adequate performance standards to make these future design specifications proper as a mitigation measure.

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Yet another important area in which the DEIR/DEIS does not adequately demonstrate consistency with the MSHCP is regarding wildlife corridors and habitat fragmentation. To demonstrate consistency with the MSHCP, the wildlife crossings described in the DEIR/DEIS

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must conform to the requirements of the MSHCP's Siting and Design Criteria and the Guidelines for Construction of Wildlife Crossings provided in Sections 7.5.1 and 7.5.2 of the MSHCP. Despite claiming habitat movement impacts would not be "significantly new or different... than already experienced along the existing Ramona Expressway, because the Ramona Expressway currently creates edge effects and in an impediment to the wildlife movement in this already fragmented habitat," the DEIR/DEIS does in fact recognize the MCP project will have impacts on habitat fragmentation. (DEIR/DEIS at 3.17-22-3.17-23). To minimize these impacts, the MCP project includes a fenced in right-of-way with a variety of wildlife crossings, however, the adequacy of these measures is not supported by substantial evidence within the DEIR/DEIS.

Section 7.5.1 of the MSHCP provides guidelines for facilities within the criteria area and public/quasi-public lands. These guidelines are,

- Planned roads will be located in the least environmentally sensitive location Feasible, including disturbed and developed areas or areas that have been previously altered. Alignments will follow existing roads, easements, right-of-ways, and disturbed areas, as appropriate to minimize habitat fragmentation.
- Planned roads will avoid, to the greatest extent Feasible, impacts to Covered Species and wetlands. If wetlands avoidance is not possible, then any impacts to wetlands will require issuance of and mitigation in accordance with a federal 404 and /or state 1600 permit.
- Design of planned roads will consider wildlife movement requirements, as further outlined below under Guidelines for Construction of Wildlife Corridors.
- Narrow Endemic Plant Species will be avoided; if avoidance is not Feasible, then mitigation as described in the Narrow Endemics Plant Policy will be implemented.
- Any construction, maintenance and operation activities that involve clearing of natural vegetation will be conducted outside the active breeding season (March 1 through June 30).
- Prior to design and construction of transportation facilities, biological surveys will be conducted within the study area for the facility including vegetation mapping and species surveys and/or wetland delineations. The appropriate biological surveys to be conducted will be based on field conditions and recommendations of the project manager in consultation with a qualified biologist. The results of the biological resources investigations will be mapped and documented. The documentation will include preliminary conclusions and recommendations regarding potential effects of facility construction on MSHCP Conservation Area resources and methods to avoid and minimize impacts to MSHCP Conservation Area resources in conjunction with project siting, design, construction and operation. The project biologist will work with

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facility designers during the design and construction phase to ensure implementation of feasible recommendations.

(MSHCP at 7.5.1.)

The feasibility analyses urged by the MSHCP guidelines concerning less environmentally damaging siting, impacts to covered species and wetlands, and avoidance of narrow endemic plants are not contained within the DEIR/DEIS, and therefore consistency with the provisions of Section 7.5.1 is not established and that inconsistency is not disclosed. Further, the surveys, investigation, documentation, conclusions, and recommendations mandated by Section 7.5.1 are not adequately reflected in the DEIR/DEIS.

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The DEIR/DEIS is also inadequate in demonstrating consistency with Section 7.5.2 of the MSHCP, which provides the specific guidelines for wildlife crossings mandated for “roads that have the potential to result in impediments to wildlife movement.” (MSHCP at 7.5.2). In regards to impacts to the movement of large mammalian wildlife, Section 7.5.2 of the MSHCP requires siting of wildlife passages to be “well researched in order to make the most beneficial use of ridges, valleys, normal movement routes, or other natural (or manufactured) funneling mechanisms.” (MSHCP 7.5.2) This Section goes on to recognize the impediments to wildlife crossings posed by human interference, requiring “careful management of human uses in critical crossing areas.” (MSHCP at 7.5.2) In order to protect small mammals and reptiles from road kill incidents, the MSHCP requires that “[b]arriers to small terrestrial wildlife movement will be encouraged along new and modified roadways, so that they are guided toward appropriate undercrossings, culverts, and viaducts.” (MSHCP at 7.5.2). In fact, the MSHCP specifically provides a guideline to “construct 3-foot walls with an 18-inch lip projecting into the adjacent open space which direct small wildlife toward culverts, undercrossings, and overcrossings” for roadways near wildlife corridors. (MSHCP at 7.5.2).

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Yet, the DEIR/DEIS concedes that, despite fencing the right-of-way, smaller animal species, including rodents and reptiles, would be susceptible to road kill, resulting in a probable reduction in population size of small mammals and reptiles in proximity to the MCP Built Alternatives. (DEIR/DEIS at 3.17-23). This impact is especially troubling considering the MCP project runs directly adjacent to a Core Reserve area for the endangered Stephens’ kangaroo rat. In order to achieve consistency with the MSHCP and to protect this important biological resource, barriers must be provided that will be effective in limiting the potential for road kill impacts to small animal species.

In its specific initial guidelines for wildlife movement design consideration within the MSHCP Criteria Area, Section 7.5.2 of the MSHCP lays out a number of design guidelines including, but not limited to, crossings for large mammals at least every 1.5 kilometers, small and medium mammal crossings at least every 300 meters, various procedures to limit human interference, and a number of additional design specifications to ensure effectiveness of these wildlife crossings. (MSHCP at 7.5.2).

The DEIR/DEIS does not adequately disclose whether the MCP Build Alternatives’ complies with the specific design guidelines for wildlife crossings provided by the MSHCP.

Despite referencing numerous wildlife crossings and referring the reader figures provided in an appendix, the DEIR/DEIS does not outline its compliance with the various design requirements provided in the guidelines in Section 7.5.2 of the MSHCP. For example, there is no explicit demonstration of consistency with the minimum spacing requirements for various types of crossings. Additionally, the MCP Build Alternatives do not include sufficient numbers of wildlife crossings to comply with the guidelines provides by the MSHCP in Section 7.5.2. In Attachment E of Appendix I supplemental Chapter 2 Attachments, only one specifically designated wildlife crossing is presented. Finally, there is no indication that the required one-way wildlife doors, Texas gates or cattle gates, or jump-out and one-way gates will be included in the MCP project design. These required design features, or alternatively clear disclosure of the MCP's inconsistency with these requirements, must be included in the documentation provided during the DEIR/DEIS process in a way that allows for a full public review. (Cal. Pub. Res. Code § 21003.1).

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These poorly defined project specifications and designs that will supposedly ensure consistency with the MSHCP guidelines cannot be reviewed and commented upon by the public due to the lack of substantive description in the DEIR/DEIS. (Cal. Pub. Res. Code § 21003). This sort of unsupported, indefinite, and conclusory discussion of future compliance with environmental requirements is contrary to the purpose and spirit and substance of both NEPA and CEQA.

A further example of deferred analysis and reliance on uncertain future measures are the DBESPs, the details of which are omitted from the DEIR/DEIS. The failure of the EIR to properly disclose and analyze the impacts to riparian/riverine features prohibits the Project's compliance with the MSHCP. The MSHCP requires a specific analysis for riparian/riverine resources. (MSHCP Section 6.1.2). The MSHCP defines riparian/riverine areas as lands which contain habitat dominated by plants which occur close to or which depend upon soil moisture from a nearby fresh water source, or areas with fresh water flow during all or a portion of the year. (MSHCP Section 6.1.2). Because the Project will impact these resources a DBESP is required. (MSHCP Section 6.1.2). A DBESP analysis requires, at a minimum, a determination of whether avoidance is feasible, minimization measures for indirect impacts, mitigation that would fully offset any impacts, and a determination that mitigation proposed is biologically equivalent or superior. (MSHCP Section 6.1.2).

IP-6-38

The DBESPs are imprudently relied upon throughout the Biological Resources sections of the DEIR/DEIS as mitigation for significant impacts to a wide variety of biological resources. As a threshold issue, this reliance on DBESPs is inconsistent with the MSHCP because the DEIR/DEIS does not adequately demonstrate that "an avoidance alternative is not feasible" as required by the MSHCP before a permittee may rely on a DBESP. (MSHCP at 6.1.2). The MSHCP requires every DBESP to demonstrate that avoidance of the impacted habitat is infeasible.

Even if the DBESP process were warranted here, it is inadequately analyzed as a mitigation measure to provide for meaningful public review and comment. (Cal. Pub. Res. Code § 21003). For example, to address impacts to Riparian/Riverine Areas, the DEIR/DEIS relies

IP-6-39

upon a planned DBESP pursuant to Section 6.1.3 of the MSHCP, but offers no description of this DBESP. (DEIR/DEIS at 3.17-26). DBESPs are also used as mitigation for impacts to threatened and endangered species, MSHCP narrow endemic plant species, and impacts to other special status plants and animals. This reliance on DBESPs is improper as mitigation under CEQA and NEPA because the details of these DBESPs are not adequately described to provide for meaningful public review and comment (*See* Cal. Pub. Res. Code § 21003.1; 40 C.F.R. § 1500.1 (b)). This runs contrary to the requirements of CEQA and the MSHCP regarding the proper timeframe for environmental review and disclosure of a Project’s impacts. (MBA 2008; MBA 2009). The DBESP process does not allow for full public opportunity to assess and comment because the 60-day “review and response period” required for DBESPs is only for the benefit of “the Wildlife Agencies.” (MSHCP at 6.1.2). Furthermore, future development of DBESPs defers analysis and mitigation of the potential impacts that could be caused by the mitigation measures themselves. (Cal. Pub. Res. Code § 21003).

IP-6-39

Similar to the reliance on DBESPs, regarding the MCP’s potential impacts to Public/Quasi-Public Lands, the DEIR/DEIS promises a “MSHCP Section 3.2.1 Equivalency Determination” for a 1:1 replacement of Public/Quasi-Public Lands. Section 3.2.1 of the MSHCP requires, “[i]n the event that a Permittee elects to use property currently depicted as PQP Lands on the MSHCP Plan map (*Figure 3-1*) in a way that alters the land use such that it would not contribute to Reserve Assembly the Permittee shall locate and acquire or otherwise encumber replacement acreage at a minimum ratio of 1:1 replacement taking into account direct and indirect effects of PQP Lands in one location with PQP Lands in another location. The Permittee must make findings that the replacement acreage is biologically equivalent or superior to the existing property as set forth in *Section 6.5* of the *MSHCP, Volume I*.” (MSHCP at 3.2.1). However, this analysis and determination are not adequately disclosed or analyzed in the DEIR/DEIS.

IP-6-40

Finally, the DEIR/DEIS provides that RCTC will complete a Joint Project Review process including a MSHCP Consistency Analysis that will be subject to the approval of a number of state and federal agencies, including USFWS, CDFW, and the Western Riverside County Regional Conservation Authority. (DEIR/DEIS at 3.17-47). This Consistency Analysis would analyze the MCP project’s consistency with Section 6.1.2, 6.1.3, 6.1.4, and 6.3.2 of the MSHCP, along with any required DBESP, and would also address minimizing edge effects through the implementation of BMPs. (DEIR/DEIS at 3.17-52). These analyses must be included in the DEIR/DEIS to comply with the disclosure requirements of CEQA. (Cal. Pub. Res. Code § 21003.1). This deferral of analysis full public participation and informed decision-making by restricting public review. Furthermore, reliance on future a MSHCP Consistency Analysis that is improper and contrary to the information disclosure purpose of CEQA and NEPA. (*See* 14 Cal. Code Regs. § 15126.4; 40 C.F.R. § 1500.1 (b))

IP-6-41

b. THE DEIR/DEIS’ PROPOSED MSHCP MITIGATION MEASURES ARE INADEQUATE TO MITIGATE THE PROJECT’S IMPACTS

IP-6-42

The DEIR/DEIS relies upon the MSHCP for mitigation of both direct and cumulative biological impacts related to this project. However, the EIR fails to disclose the uncertainty

regarding the implementation of mitigation measures contemplated in the MSHCP to provide for the mitigation of potentially significant impacts to biological resources relied upon in the MSHCP and DEIR/DEIS. The failure to require binding and effective mitigation, disclose the uncertainties associated with mitigation, and analyze the provision of other sources of mitigation and the environmental impacts of those mitigation measures violates CEQA.

In order to address several issues related to the cost, revenue sources, and plan benefits associated with the MSHCP, the Western Riverside County Regional Conservation Authority contracted with the RAND Corporation to provide an independent and objective analysis. (RAND 2008). Entitled “Balancing Environment and Development: Costs, Revenues, and Benefits of the Western Riverside County Multiple Species Habitat Conservation Plan” the study revealed some troubling issues related to the ability of projected revenue to acquire lands relied upon by the MSHCP for mitigation and the ability of the MSHCP to achieve the reserve strategy relied upon by the US Fish and Wildlife Service in their Biological Opinion and CEQA analysis.

First, the RAND study revealed that the operating cost “exceeds the original forecast in MSHCP planning documents by \$345 million (increasing from \$937 million to \$1,282 million).” (RAND 2008 at xxvi). This was due primarily to the failure to integrate costs into the original estimate. (RAND 2008 at xxvi). Second, the expected revenue sources do not correlate to the strategy for acquiring land outlined in the MSHCP, and the RAND study did not conclude that “existing local revenue streams will be sufficient to finance the local share of reserve assembly and operation costs.” (RAND 2008 at xxvii). Notwithstanding these revenue shortages, the RAND study further concluded that the “individual acreage goals cannot all be met using the USFWS CRD [conceptual reserve design].” (RAND 2008 at xxx). In other words, the reserve design relied upon by the US Fish and Wildlife Service and California Department of Fish and Wildlife in determining that biological impacts would be mitigated below a level of significance cannot be achieved. The DEIR/DEIS’ failure to disclose, analyze, and plan for the failure of the MSHCP to mitigate impacts does not meet CEQA’s information mandate on disclosure to the decision makers and the public or the substantive mandate to adopt all feasible mitigation measures for potentially significant impacts.

IP-6-42

The DEIR/DEIS cannot simply rely entirely on the MSHCP because there are areas of significant environmental and public concern that the MSHCP simply does not, and was not meant to, address. This includes the potentially significant impacts from direct deaths to special status species from vehicles. The impacts of vehicular deaths to species such as the Stephen’s Kangaroo Rat or burrowing owl for instance, are nowhere discussed in the DEIR/DEIS or any supporting document. This is cause for concern as the identified impacts to species such as the burrowing owls from collisions with vehicles is documented within the MSHCP, and this project will significantly increase the amount of traffic in the area. (MSHCP, Volume 2 – Threats to Species). Undoubtedly, there will be vehicular caused death as a result of the project.

Additionally, the DEIR/DEIS presents no information regarding impacts to covered species from pesticide use associated with the project. Pesticide use is currently harming many of the species covered in the MSHCP. (See generally, MSHCP at 5.2.1) That the DEIR/DEIS does not address these issues violates both the MSHCP and CEQA.

IP-6-43

The DEIR/DEIS cannot simply conclude that it complies with the MSHCP, and that even if the project does comply with the MSHCP, this compliance is enough to ensure that the long-term survival of special-status species will be ensured for the project. Instead, the DEIR/DEIS needs to provide detailed analysis as to how it specifically complies with all of the MSHCP's requirements. Further, it must insure that even with MSHCP compliance, the project still will not result in significant impacts to biological resources and protected species.

2. FAILURE TO ADEQUATELY DISCLOSE AND ANALYZE CONSISTENCY WITH HABITAT CONSERVATION PLAN FOR THE STEPHENS' KANGAROO RAT (SKRHCP)

The DEIR/DEIS fails to adequately disclose the MCP project's consistency with the requirements of the SKRHCP. The SKRHCP established a regional system of seven core areas comprising public and private lands for conservation of SKR. One of these core reserves, the San Jacinto-Lake Perris Core Reserve, extends into the MCP Biological Study Area (BSA) and will be impacted by the MCP project. The DEIR/DEIS claims consistency with the SKRHCP primarily based on the claim that no Core Reserves are included in the MCP study area, and exemption from mitigation fee provisions as a public works project. (DEIR/DEIS at 3.17-47). Additionally, the DEIR/DEIS claims that the MCP project is identified as a covered activity in the SKRHCP. (DEIR/DEIS at 3.17-47).

IP-6-44

The claim that the "MCP study area is within the Plan Area of the Habitat Conservation Plan for the Stephens' kangaroo rat and is adjacent to reserve lands of the Habitat Conservation Plan for the Stephens' kangaroo rat," (DEIR/DEIS at 3.17-7), and will not impact Core Reserves is not supported by the DEIR/DEIS. Figure 3.17.2 clearly shows that the BSA extends into this important Core Reserve. (DEIR/DEIS at 3.17-9). The Threatened and Endangered Species section of the DEIR/DEIS clearly anticipates impacts to core reserve areas. Specifically, the potential impacts of the MCP project, according the DEIR/DEIS, are "loss of potential habitat and habitat fragmentation, particularly along the San-Jacinto-Lake Perris Reserve (a *Core Reserve* of the Habitat Conservation Plan for the Stephens' Kangaroo Rat)." (DEIR/DEIS at 3.21-14, emphasis added). The failure to adequately disclose inconsistency with the SKRHCP runs contrary to NEPA and CEQA. (40 C.F.R. § 1502.16(c); 14 Cal. Code Regs. Code Appendix G).

While the SKRHCP does permit construction of roadways in Core Reserve areas, it requires sponsoring agencies to "mitigate on a 1:1 basis for all SKR occupied habitat disturbed as a result of the project." (SKRHCP at (5)(C)(1)(s)(4)). Because the MCP project will impact the San Jacinto-Lake Perris Core Reserve, this 1:1 mitigation must be performed to achieve consistency with the SKRHCP. Approval of the Project without demonstrating this 1:1 requirement and to assure compliance with the SKRHCP would constitute a failure to proceed in a manner required by law. (Cal. Pub. Res. Code § 21168.5).

IP-6-45

Impacts to SKR are more fully discussed in these comments in the section concerning threatened and endangered species. (*See infra*).

IP-6-46

B. INCOMPLETE DISCLOSURE AND ANALYSIS OF IMPACTS TO SAN JACINTO WILDLIFE AREA (SJWA)

The DEIR/DEIS fails to adequately demonstrate the MCP project’s impacts on the SJWA. The MCP Build Alternatives all run along a significant portion of the southern boundary of the SJWA in the area surrounding Lake Perris, including a significant portion of the San Jacinto-Lake Perris Stephens’ Kangaroo Rat Core Reserve.² (DEIR/DEIS at 3.17-11; RCHCA 1995). Under the quasi-public lands provisions of the MSHCP, replacement of this affected habitat is required at a ratio of at least 1:1. (MSHCP at 3.2.1).

IP-6-47

The DEIR/DEIS explains that the MCP project will use 3.4 acres of land within the SJWA, and because this land is subject to the replacement requirements for Public/Quasi-Public lands under the MSHCP, the RCTC will purchase and dedicate new land to the MSHCP Conservation Area in a ratio of at least 1:1. The DEIR/DEIS must disclose the project’s impacts and measures taken to avoid, mitigate, and minimize those impacts, not merely describe potential mitigation options being explored by project proponents. (Cal. Pub. Res. Code § 21003.1).

C. FAILURE TO FULLY ANALYZE IMPACTS TO NATURAL COMMUNITIES OF SPECIAL CONCERN

Project-specific vegetation mapping was conducted to determine natural communities within the BSA that may be affected by the MCP. This mapping resulted in a finding of numerous natural communities of special concern, including, Marsh, Riparian Scrub, Riversidean Upland Sage Scrub, and San Jacinto alkali communities. (DEIR/DEIS at 3.17-12). Specifically, within the BSA for the MCP, there are 2.6 acres of Marsh, 35.4 acres of Riparian scrub, 203.8 acres of Riversidean Upland Sage Scrub, and 266.3 acres of Alkali Grassland. (DEIR/DEIS at 3.17-12, Table 3.17.A).

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Impacts to these natural communities of special concern range from a total of 117 acres to 124.6 acres. (DEIR/DEIS at 3.17-21, Table 3.17.D). Avoidance, minimization, and mitigation measure for these expansive impacts to natural communities of special concern include required implementation of various BMPs, future designation and delineation of environmentally sensitive areas, future design and construction management measures, future coordination to identify and protect existing and proposed conservation areas, and future DBESPs for Riparian/Riverine areas. (DEIR/DEIS at 3.17-53-57).

These mitigation measures must be adequately developed, analyzed, and presented for public review and comment prior to project approval, not merely presented in a conclusory fashion are improperly deferred to a later date.

² See http://www.skrplan.org/docs/habitat_conservation_plan/images/hab_fig_25.gif

D. FAILURE TO ADEQUATELY ANALYZE IMPACTS TO SPECIAL STATUS ANIMAL AND PLANT SPECIES

IP-6-49

In addition to inadequacies regarding the treatment of Threatened and Endangered species in the DEIR/DEIS, *infra*, impacts to other special status species are also inadequately addressed.

1. IMPACTS TO SPECIAL STATUS ANIMAL SPECIES

According to the DEIR/DEIS, a literature review resulted in a list of 52 sensitive animal species that may occur in or within the vicinity of the BSA. 15 of these species are listed as threatened or endangered and are therefore addressed in Section 3.21 of the DEIR/DEIS,³ and seven of these species were not analyzed at all, because, according to the DEIR/DEIS, these species are “considered to be absent from the BSA and the surrounding area due to lack of suitable habitat.” (DEIR/DEIS at 3.20-1).

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Therefore, the analysis in this section is restricted to the 31 remaining special status animal species on the list generated from the literature review conducted for the BSA. Of these 31 animal species, focused surveys pursuant to the MSHCP requirements were only conducted for two species: burrowing owl and Los Angeles pocket mouse. (DEIR/DEIS at 3.20-2). In addition, two other special status species, northwestern San Diego pocket mouse and San Diego desert woodrat, were observed within the BSA during field studies in 2005 and 2006, but further surveys were not conducted. For the remaining 27 special status species with habitat that may be suitable within the BSA, impacts were not analyzed, because they were not observed during 2005, 2006, and 2011 field surveys. (DEIR/DEIS at 3.20-3). These limitations have the potential to restrict the analysis of the actual impacts to species resulting from the MCP, and surveys should be conducted for each species listed during the literature review to comply with CEQA’s and NEPA’s information disclosure requirements. (*See* Guidelines § 15065(a); 40 C.F.R. § 1508.27(b)(9)). Impacts to special status species that were addressed in the DEIR/DEIS are discussed below.

a. SWAINSON’S HAWK

The Swainson’s hawk is listed as threatened on the California list of threatened and endangered species, is on the National Audubon’s List of Special Concern, and is an included species under the MSHCP. The MCP will impact habitat for this species.

When discussing the potential impacts to this species, the DEIR/DEIS states that the MCP Build Alternatives “may result in the minimal loss of potential foraging habitat,” but claims that impacts to foraging habitat would be minimal because, although foraging habitat will be disturbed by the MCP project, there are adjacent foraging habitats that would remain undisturbed. (MSHCP at 3.21-11). The potential indirect effects to Swainson’s hawk are dismissed in the same conclusory sentences as those to the Arroyo toad and bald eagle, and

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³ Two of these fifteen species discussed in Section 3.21, bald eagle and Swainson’s hawk, are not listed as threatened or endangered under the Federal Endangered Species Act. Therefore, they are addressed in these comments as special status animal species.



southwestern flycatcher that simply states substantial indirect effects “are not anticipated.” (DEIR/DEIS at 3.21-15). Because the DEIR/DEIS claims the impacts will be minimal, there is no discussion of means to address the potential impacts on foraging habitat for this species. This incomplete impacts analysis fails to provide the public with adequate information to facilitate complete review and comment on the MCP’s impacts to this species, in violation of CEQA and NEPA. (Cal. Pub. Res. Code § 21003; 40 C.F.R. § 1508.27(b)(9)).

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b. BALD EAGLE

Although bald eagle was delisted from the Federal list of endangered species, the species remains listed as endangered in the California list of endangered species, is protected by the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, and is a covered species under the MSHCP. The DEIR/DEIS does not adequately analyze or address the impacts of the MCP to this species and its habitat.

The discussion of bald eagles is nearly identical to that of the Swainson’s hawk, above. The DEIR/DEIS claims that there is no suitable nesting habitat within the BSA, and that the impacts to foraging habitat would be minimal because, although foraging habitat will be disturbed by the MCP project, there are adjacent foraging habitats that would remain undisturbed. (DEIR/DEIS at 3.20-8). The indirect impacts to bald eagle are dismissed in one sentence that states substantial indirect impacts “are not anticipated.” (DEIR/DEIS at 3.21-15). This impacts analysis is inadequate, because instead of actually analyzing and disclosing the impacts to this species and its habitat within the project area, the DEIR/DEIS relies on the existence of unspecified foraging habitat outside the project area. This precludes the public from having adequate knowledge of the actual impacts the MCP project might have on bald eagle.

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In regards to avoidance, minimization, and mitigation, the DEIR/DEIS cites their planned compliance with the MSHCP, pursuant to which no take of bald eagle is permitted, and concludes the MCP Build Alternatives will not result in the take of any bald eagles. (DEIR/DEIS at 3.21-12). The DEIR/DEIS also relies on consistency with the MSHCP in order to ensure compliance with the Migratory Bird Treaty Act. (DEIR/DEIS at 3.20-7). As noted above, consistency between the MCP and the MSHCP is not adequately demonstrated by the DEIR/DEIS, and, therefore, cannot rightfully be claimed as an avoidance, minimization, or mitigation measure.

IP-6-53

c. BURROWING OWL

The Western Burrowing Owl (*Athene cunicularia hypugaea*) is considered to be a Bird of Conservation Concern by the U.S. Fish and Wildlife Service (USFWS). Burrowing Owls are listed as a Species of Concern in California. California's remaining burrowing owls are threatened primarily by habitat loss to urban development, persecution of ground squirrels, and intensive agricultural practices. The state-approved practice of evicting owls from development sites is accelerating local extinction of owls from rapidly urbanizing areas. Other factors contributing to the decline of owls statewide include destruction of burrows through disking and grading, impacts of pesticides, increased predation by nonnative or feral species, habitat

fragmentation, and other human-caused mortality from vehicle strikes, electrified fences, collisions with wind turbines, shooting, and vandalism of nesting sites.

The number of breeding owl colonies located in study areas in California has declined by nearly 60 percent from the 1980s to the early 1990s, and the statewide number of owls is currently thought to be declining at about 8 percent per year due to urban development. Breeding burrowing owls have been extirpated from almost one-quarter of their former geographic range in California over the past two decades. (CBD 2003). Surveys in California in 1986-91 found population decreases of 23-52% in the number of breeding groups and 12- 27% in the number of breeding pairs of owls. (DeSante et al. 1997). In southwestern California studies demonstrating overall decline of the burrowing owl populations also predict extirpation of burrowing owls from southwestern California. (Kidd 2007).

The DEIR/DEIS describes the observation of one burrowing owl in 2011 in the BSA for the MCP project, and the presence of suitable habitat “located throughout the BSA that the burrowing owl may subsequently occupy due to the transitory nature of the species.” (DEIR/DEIS at 3.20-2). Based on the 2011 observation of a burrowing owl and the estimated foraging radius of 300 feet taken from a 1993 consortium, according to the DEIR/DEIS, all MCP Build Alternatives would directly impact 3.1 acres of burrowing owl habitat. (DEIR/DEIS at 3.20-4).

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This understates the impacts to burrowing owl habitat because, as the DEIR/DEIS recognizes, due to the transitory nature of the species, it benefits from the availability of extended habitat areas, not merely a 300-foot radius. Further, the observation of an owl in 2011 in one area of the BSA does not mean that the owl is still present in that particular area, and additional surveys should be conducted to accurately reflect the baseline environmental conditions for this species, the results of which must be made available to the public during the DEIR/DEIS stage of the environmental review process. Greater detail concerning this survey and the implications of its results must be included in the DEIR/DEIS to fulfill RCTC’s and Caltrans’ information disclosure requirements under CEQA and NEPA.

The impacts to these habitat areas described in the DEIR/DEIS include direct impacts from increases in lighting at night, headlamp glare, and noise, as well as indirect impacts from a variety of edge effects. (DEIR/DEIS at 3.20-4).

The avoidance, minimization, and mitigation measures presented to address impacts to this species are inadequate. The DEIR/DEIS claims, “[b]y minimizing the project footprint in the preliminary design of the MCP Build Alternatives, impacts (loss of suitable burrowing owl habitat) were greatly minimized.” (DEIR/DEIS at 3.20-4, 3.20-9). In other words, the DEIR/DEIS contends that because the proposed project is not as harmful as it could be, this somehow mitigates its environmental impact. In addition, the DEIR/DEIS claims that consistency with the MSHCP will achieve mitigation for remaining impacts to burrowing owl (DEIR/DEIS at 3.20-9). However, as discussed above, consistency with the MSHCP does not provide adequate mitigation measures to fully mitigate the potentially significant impacts.

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In addition to these general avoidance, minimization, and mitigation measures, the DEIR/DEIS provides specific measures that seek to address impacts to burrowing owl. The first of these measures requires coordination with the Project Biologist to determine potential habitat

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areas within the project footprint prior during final design, and subsequent, more targeted preconstruction surveys within 30 days prior to any phase of constructing within the areas designated as potential habitat. (DEIR/DEIS at 3.20-10). The determination of potential habitat areas should be completed at this stage of the environmental review process to allow for the level of information disclosure and public participation envisioned by CEQA and NEPA. (Cal. Pub. Res. Code § 21003.1(b); 40 C.F.R. § 1508.27(b)(9)).

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IP-6-56

The next two mitigation measures proposed provide for the relocation or translocation of any burrowing owls that are found to be present in the project disturbance limits. (DEIR/DEIS at 3.20-10-11). The details of this removal and relocation/translocation are not provided by the DEIR/DEIS. Instead, the DEIR/DEIS provides that the RCTC Project Manager and Project Biologist will prepare a removal plan for submission to the California Department of Fish and Game for approval. (DEIR/DEIS at 3.20-11). Although the general contents of this required plan are provided in the DEIR/DEIS, neither the details nor the potential effectiveness of this plan are provided, and therefore, the public has inadequate information to assess the impacts of the MCP project on burrowing owl and its habitat. (Cal. Pub. Res. Code § 21003). The mitigation measures of avoiding burrowing owls only when they are present will not mitigate the decline in population and loss of habitat that the project contributes to. Considering the magnitude of threats, and ongoing population decline in the Project area the Project poses a substantial threat to the Burrowing Owl.

IP-6-57

d. LOS ANGELES POCKET MOUSE (LAPM)

The DEIR/DEIS describes areas determined to be occupied by LAPM and to have long-term conservation value for the species within the MCP project footprint, noting direct impacts to between 44.07 and 44.26 acres of LAPM occupied habitat suitable for long-term conservation. (DEIR/DEIS at 3.20-2, 3.20-5). Indirect effects are also noted by the DEIR/DEIS. (DEIR/DEIS at 3.20-5).

As with impacts to burrowing owl, the DEIR/DEIS cites earlier project redesigns that avoided LAPM habitat as an avoidance, minimization, and/or mitigation measure. (DEIR/DEIS at 3.20-9). These earlier project redesigns, however, are different from avoidance, minimization, and mitigation from the impacts of the current project, and this is what the DEIR/DEIS must analyze. Also, as with impacts to burrowing owl, reliance on consistency with the MSHCP as mitigation is imprudent. Finally, the DEIR/DEIS also claims a DBESP will be conducted for the substantial acreage of LAPM habitat that will be directly impacted by the MCP Build Alternatives. As with the numerous other DBESP commitments throughout the biological resources section of this DEIR/DEIS, the feasibility of securing this DBESP is not addressed, and therefore, the effectiveness of this mitigation measure cannot be adequately evaluated by the public.

IP-6-58

e. BAT SPECIES

Eight special status bat species were identified as possibly occurring within the BSA, which might be directly impacted by extending existing structures in bridges and culverts that might be used as maternity and foraging roosts for these bat species. (DEIR/DEIS at 3.20-6). The

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only baseline information provided as the presence of these special status bats in the BSA is a habitat suitability assessment for bats conducted on bridge structures at the western end of the BSA in 2007. (DEIR/DEIS at 3.20-2). Additional surveys should be conducted at this stage of the environmental review process to provide sufficient information for public review and comment. (Cal. Pub. Res. Code § 21003).

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IP-6-59

As mitigation to potential impacts to bat species from the MCP project, a system of bat maternity roosting surveys, humane bat eviction/exclusion, and retention of existing bat roosting habitat and creation of habitat replacement structures is proposed. (DEIR/DEIS at 3.20-12-13). These mitigation measures as presented in the DEIR/DEIS are insufficiently described because the maternity roosting surveys will result in reports and analysis, including later avoidance and minimization recommendations, that will not be subject to public review as required by CEQA. (DEIR/DEIS at 3.20-12) (Cal. Pub. Res. Code § 21000 et seq.). Additionally, the potential impacts resulting from these mitigation measures, which conceivably could be significant, are not analyzed.

IP-6-60

Reliance on these future surveys, removal, relocation, and potential construction of new habitat, without presenting evidence of the measures' potential for success or enforceable performance standards, is insufficient to ensure the impacts from the MCP project on bat species are adequately addressed. Further, this reliance fails to provide the public with adequate information as early as possible in the environmental review process. (Cal. Pub. Res. Code § 21003.1(b)).

f. OTHER NON-LISTED ANIMAL SPECIES

In addition to the species that were observed during 2005, 2006, and 2011 field surveys, 27 species listed from the literature review may be present in the MCP BSA. (DEIR/DEIS at 3.20-6). About half are covered under the MSHCP; however, the MSHCP cannot be relied upon for full avoidance, minimization, or mitigation measure for impacts to these species. For the remainder of these non-listed species with a low to moderate probability of occurrence within the BSA, but which were not observed during field studies, the DEIR/DEIS offers a cross-reference to a Species Occurrence Table in Appendix N and habitat impact analysis contained in Section 3.17 on natural communities. (DEIR/DEIS at 3.20-7). Neither specific impacts, nor proposed mitigation for potential impacts to these species are analyzed in the DEIR/DEIS.

IP-6-61

g. IMPACTS TO SPECIAL STATUS PLANT SPECIES AND INADEQUATE AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES

The MCP will result in impacts to special status plant species, both species covered under the MSHCP, and other special status species. The DEIR/DEIS is inadequate because it does not fully analyze the baseline environmental conditions or the full extent of the potential impacts to these special status plant species, and for those impacts that are recognized, mitigation measures are improperly indefinite and speculative.

IP-6-62

**(i) IMPACTS TO PLANT SPECIES COVERED BY THE MSHCP
NARROW ENDEMIC PLANT SPECIES SURVEY AREA (NEPSSA)
AND CRITERIA AREA SPECIES SURVEY AREA (CASSA)**

Pursuant to the MSHCP requirements, habitat assessments and surveys were conducted for 15 NEPSSA and CASSA species, four of which were found within their designated survey areas. Two of which, SJVC and spreading navarretia, are federally listed, and were therefore addressed in Section 3.21 and are discussed in these comments in the section discussing threatened and endangered species. The other two species, smooth tarplant (*Centromadia pungen* ssp. *laevis*) and Coulter's goldfields (*Lasthenia glabrata* ssp. *coulteri*), are analyzed in this section. There are a number of impacts to these special status plant species reflected in the DEIR/DEIS, both direct and indirect are summarized below. Impacts to these special status plant beyond the survey limits set by the MSHCP must be considered to adequately assess potential impacts of the MCP.

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All MCP Build Alternatives would result in between 2.72 and 2.73 acres of direct impacts to areas of long-term conservation value for smooth tarplant. (DEIR/DEIS at 3.19-4). In addition, a number of indirect impacts from increased fire risk, invasive species infestations, unauthorized recreational use, pollutants, and localized changes in hydrology. (DEIR/DEIS at 3.19-5).

According to the DEIR/DEIS, all MCP Build Alternatives would result in direct impacts to 1.99 acres – 2.72 acres of long-term conservation value for Coulter's goldfields. (DEIR/DEIS at 3.19-4). In addition, a number of indirect impacts from increased fire risk, invasive species infestations, unauthorized recreational use, pollutants, and localized changes in hydrology. (DEIR/DEIS at 3.19-5).

Mitigation measures for these NEPSSA and CASSA plant species are discussed with measures for non-NEPSSA/CASSA plant species, below.

(ii) IMPACTS TO NON-NEPSSA/CASSA PLANT SPECIES

Seven special status plant species not included in the MSHCP survey species will also be impacted by the all of the MCP Build Alternatives. These species include chaparral sand-verbena (*Abronia villosa* var. *aurita*), Peirson's milk-vetch (*Astragalus pachypus* var. *jaegeri*), Plummer's mariposa lily (*Calochortus plummerae*), Parry's spineflower (*Chorizanthe parryi* var. *parryi*), long-spined spineflower (*Chorizanthe polygonoides* var. *longispina*), Robinson's pepper-grass (*Lepidium virginicum* var. *robinsonii*), and San Bernardino aster (*Symphyotrichum defoliatum* [*Aster defoliatus*]).

The DEIR/DEIS improperly dismisses impacts to these species based on the claim that none were observed in the BSA during surveys. Additionally, the DEIR/DEIS minimizes potential impacts to Pierson's milkvetch, Plummer's mariposa lily, Parry's spineflower, long-spined spineflower, and San Bernardino aster, claiming these species have a "low probability of occurrence within the BSA" based on habitat requirements and known distribution. (DEIR/DEIS at 3.19-3). Targeted surveys should be conducted to more accurately reflect the environmental baselines for these plant species.

IP-6-64

More troubling, the DEIR/DEIS improperly dismisses potential impacts to species known to be present within the project footprint, chaparral sand-verbena and Robinson's pepper-grass, without conducting focused surveys for the entire BSA. (DEIR/DEIS at 3.19-3).

IP-6-64

(iii) CHAPARRAL SAND-VERBENNA

The analysis of potential impacts to chaparral sand-verbenna is flawed because it is based on an incomplete assessment of the baseline conditions in the BSA. The DEIR/DEIS claims that because most of the suitable habitat for chaparral sand-verbenna within the BSA was surveyed during two earlier focused species surveys, surveys conducted in the MSHCP NEPSSA and CASSA, and because the remaining habitat within the project footprint is expected to have few, if any, individuals of chaparral sand-verbenna, further surveys are not required. Here, RCTC fails to proceed in a manner required by law by not surveying outside the NEPSSA and CASSA based on the contention that "no more than a few individuals of this species are expected to occur within the part of the MCP project footprint not surveyed during the focused surveys." (DEIR/DEIS at 3.19-3). RCTC must conduct targeted surveys in all areas of potential habitat for chaparral sand-verbenna before making conclusory statements that the impacts to this species would be insignificant.

IP-6-65

(iv) ROBINSON'S PEPPER-GRASS

The analysis of potential impacts to Robinson's pepper-grass is also flawed because it is based on an incomplete assessment of the baseline conditions in the BSA. Similar to the incomplete analysis of potential impacts to chaparral sand-verbenna, DEIR/DEIS concludes that impacts to Robinson's pepper-grass "would not be expected to impair the long-term existence of large or important populations" without conducting focused surveys. (DEIR/DEIS at 3.19-5). Even despite conceding the species may occur in parts of the BSA that were not part of the plant surveys, because Robinson's pepper-grass is "not threatened or endangered, is relatively widespread in the region, and occupies relatively common habitats," the DEIR/DEIS claims focused surveys were not warranted. (DEIR/DEIS at 3.19-3). The presence of this species outside the MCP's footprint does not justify an incomplete analysis of the project's impacts to this species.

IP-6-66

This incomplete and inadequate discussion of Robinson's pepper-grass misleadingly downplays the vulnerability of this species and the potential for the MCP to negatively impact its habitat. Although it is true that Robinson's pepper grass is not federally listed as threatened or endangered, it is nonetheless considered to be rare, threatened, or endangered in California and elsewhere by the California Native Plant Society, and is a special plant monitored by the Natural Diversity Data Base, indicating that the species warrants special consideration. (See DEIR/DEIS at Appendix N). Moreover, claims that this species is "relatively widespread" and "occupies relatively common habitats" do not establish a basis for this relativity, and as such, are too general to support a conclusion that focused surveys are not warranted. RCTC and Caltrans must make target surveys of this species to provide the public with adequate information under CEQA and NEPA. (Cal. Pub. Res. Code § 21003).

(v) INSUFFICIENT AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES FOR IMPACTS TO SPECIAL STATUS PLANT SPECIES

In addition to incomplete analysis of the impacts to special status plant species, the proposed avoidance, minimization, and mitigation measures proposed are inadequate. To address the impacts to the special status plant species listed above, the DEIR/DEIS cites Measures NC-1 and NC-2 in Section 3.17 (requiring a both the design contractor and construction contractor to have a Project Biologist to ensure adherence to BMPs, and future delineation and special care for environmentally sensitive areas respectively) and Measures U&ES-5 and U&ES-6 in Section 3.5 (requiring fire protection during construction and the inclusion of brush management zones in the final design respectively). In addition, this section includes its own measure, Measure PS-1, which requires a DBESP for impacts to smooth tarplant and Coultrer’s goldfields. Because impacts to other special status plants were dismissed as minimal, no mitigation for impact to those species is included in the DEIR/DEIS.

IP-6-67

These measures are inadequate to ensure impacts to these special status plant species are sufficiently addressed. In particular, Measures NC-2 and PS-1 and deferred analysis and incomplete disclosure.

First, NC-2, which requires that environmentally sensitive areas within the project footprint be delineated, and that barriers be constructed to prevent the disturbance of these environmentally sensitive areas. (DEIR/DEIS at 3.17-54). These environmentally sensitive area designations should be completed and included in the DEIR/DEIS at this stage in the environmental review process to comply with CEQA’s goal of early and thorough disclosure. (Cal. Pub. Res. Code § 21003.1(b)). Further, although NC-2 prohibits construction related activities within the environmentally sensitive areas, it does not specify what would happen if an environmentally sensitive area is delineated that cannot be feasibly avoided. This possibility must be considered.

IP-6-68

Next, reliance on DBESPs as the only mitigation measure specific to the impacts to special status species is insufficient, as it is imprudently speculative. This ambitious mitigation measure, which requires “equivalent or superior conservation of the species... through either location and preservation of populations that are not already proposed for conservation in the MSHCP, and/or restoration or enhancement of existing populations within the proposed conservation... within the San Jacinto River floodplain” is not assessed for feasibility. (DEIR/DEIS at 3.19-17). Without reflecting the feasibility of this mitigation measure, the DEIR/DEIS does not allow the public to adequately evaluate the potential effectiveness of this measure in mitigating the impacts to various special status plants.

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E. FAILURE TO ADEQUATELY ANALYZE IMPACTS TO THREATENED AND ENDANGERED SPECIES AND THEIR CRITICAL HABITAT AREAS

The MCP Build Alternatives would impact final designated critical habitat areas within the BSA for a several federally listed species including San Jacinto Valley crowscale (SJVC), Spreading navaretia, California gnatcatcher, least Bell’s vireo, San Bernardino kangaroo rat, and Stephens’ kangaroo rat. Because the DEIR/DEIS fails to consider impacts to areas that support listed species which may occur outside designated survey areas yet within the project footprint

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(DEIR/DEIS at 3.21-2), does not demonstrate consistency with existing habitat conservation plans (*See supra*), and fails fully address potential impacts to these species, the analysis of impacts to threatened and endangered species is insufficient to satisfy the requirements of CEQA and NEPA. Furthermore, because much of the foundational scientific data supporting the conclusions of the DEIR/DEIS are contained in separate documents the NES and NES Supplement, as a stand-alone document, the DEIR/DEIS does not satisfy the information disclosure requirements of CEQA and NEPA. (Cal. Pub. Res. Code § 21003; 40 C.F.R. § 1508.27(b)(9)). This analysis significantly underestimates the impact to habitat that is critical to the survival and recovery of the CAGN. Under the ESA, analysis of an action’s affect on critical habitat must consider not only whether it diminishes the value of that habitat for the species’ survival, but its recovery as well. (*Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service* (9th Cir. 2004) 378 F.3d 1059.)

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1. SAN JACINTO VALLEY CROWNSCALE (SJVC)

According to the DEIR/DEIS, all of the MCP Build Alternatives will directly impact SJVC within the MSHCP-designated survey area. The MCP project will impact critical habitat areas of long-term conservation value for SJVC, a species not only under ESA protection, but that is only known from a very small range in the San Jacinto Valley and nearby alkali playas. Further, this species is an annual plant (germinates, grows, flowers and produces fruit all within a few months), and it is imperative that adequate habitat remains available for SJVC to complete this annual cycle.

The DEIR/DEIS concedes that “[a]ll of the MCP Build Alternatives would directly impact 0.36 acres (ac) of San Jacinto Valley crownscale within the MSHCP-designated survey area for this species.” (DEIR/DEIS at 3.21-5). This misleadingly downplays the baseline environmental conditions and the potential impacts of the MCP on SJVC habitat for at least two reasons: only habitat areas within MSHCP-designated survey areas are considered and newly designated critical habitat for this species is inadequately addressed.

IP-6-71

First, the DEIR/DEIS only accounts for the habitat areas within the MSHCP-designated survey areas, and does not consider impacts to SJVC outside this designated area. The RCTC should analyze all potential impacts to SJVC within the project footprint and BSA, not just within pre-designated habitat areas. The claim that impacts to these non-designated areas will be mitigated by virtue of RCTC’s participation as a permittee under the MSHCP assumes consistency of the MCP to the MSHCP and compliance with the MSHCP’s provisions in practice. Unfortunately, the consistency with the MSHCP is far from guaranteed by the DEIR/DEIS. The DEIR/DEIS must fully disclose the MCP’s inconsistency with the implementing procedures of the MSHCP and the conservation objectives for species recovery listed in the MSCHP to provide the information relevant to the effects of the MCP Build Alternatives as required by CEQA and NEPA (Cal. Pub. Res. Code § 21003.1; 40 C.F.R. § 1508.27(b)(9)).

Additionally, although the DEIR/DEIS does disclose that additional critical habitat for SJVC was proposed by USFWS on April 16, 2012, it does not clearly disclose how this designation dramatically expands the potential impacts on SJVC habitat. (DEIR/DEIS at 3.21-6). Table 3.21.B in the DEIR/DEIS reflects this designation’s effect on the MCP’s potential impacts

IP-6-72

on SJVC habitat: an increase from .36 impacted acres to an area ranging from 19.27 to 21.39 acres (DEIR/DEIS at 3.21-7), but the impacts are nonetheless analyzed as if only .36 acres are affected. The newly-designated critical habitat was not included in the analysis contained in the NES, NES Supplement, nor the DEIR/DEIS. This substantial increase in affected SJVC habitat must be more clearly and thoroughly addressed in the DEIR/DEIS to provide proper disclosure to the public, and to ensure that the conclusions and determinations contained in the DEIR/DEIS are based on substantial evidence in the record. (Cal. Pub. Res. Code § 21003; Cal. Pub. Res. Code § 21081.5).

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In addition to direct impacts, the MCP would have numerous potential indirect impacts. Indirect impacts from edge effects, which are shared by spreading navarretia, CAGN, least Bell's vireo, SBKR and SKR, include increased potential for fire, exotic plant infestations, unauthorized recreational use, and pollutants. Moreover, another potential indirect impact to SJVC critical habitat arises out of effects from changes in localized changes in hydrology. (DEIR/DEIS at 3.21-15) The DEIR/DEIS claims, however, that because these changes in hydrology will be "negligible," substantial indirect effects from hydrology changes "would not be expected." (DEIR/DEIS at 3.21-15, citing Section 3.9 on Hydrology and Floodplains). This sort of conclusory language does not serve the purpose of CEQA and NEPA, and reflects determinations not based on substantial evidence. (Cal. Pub. Res. Code § 21168.5; 40 C.F.R. § 1502.1).

IP-6-73

The avoidance, minimization, and mitigation measures set out in the DEIR/DEIS to address impacts to SJVC are inadequate. As with spreading navarretia, least Bell's vireo, and SBKR, the DEIR/DEIS relies on the future preparation of a "Determination of Biological Equivalent or Superior Preservation (DBESP)... pursuant to MSHCP, Section 6.1.3" to address impacts to SJVC. (DEIR/DEIS at 3.21-6, 3.21-18). Unfortunately, the feasibility this DBESP and the availability of adequate replacement habitat is not analyzed by the DEIR/DEIS. This indefinite and poorly defined measure is inadequate to insure that negative impacts are adequately minimized. This reliance on uncertain future events as mitigation is contrary to CEQA and NEPA and limits the opportunity for public review and comment. (See Cal. Pub. Res. Code § 21081.5; 40 C.F.R. § 1500.1 (b)).

IP-6-74

2. SPREADING NAVARRETIA

According to the DEIR/DEIS, all of the MCP Build Alternatives would directly impact 1.09 acres of critical habitat with primary constituent elements for spreading navarretia within the MSHCP-designated survey area for this species." (DEIR/DEIS at 3.21-6). The MSHCP includes several objectives related to spreading navarretia. Objective 2 in the MSHCP states

Include within the MSHCP Conservation Area at least 13 of the known locations of spreading navarretia at the Skunk Hollow, the Santa Rosa Plateau and core locations: the San Jacinto Wildlife Area, floodplains of the San Jacinto River from the Ramona Expressway south to Railroad Canyon, and upper Salt Creek west of Hemet.

(MSHCP at P-418).

The Conservation Levels section of the MSHCP for spreading navarretia states:

Eleven of the 14 known populations comprise three Core Areas (the San Jacinto Wildlife Area, the floodplains of the San Jacinto River from Ramona Expressway south to Railroad Canyon and the upper Salt Creek drainage area west of Hemet). These three Core Areas will be conserved within the Criteria Area and existing Public/Quasi-Public Lands.

(MSHCP at P-420).

Clearly all of the proposed alternatives directly impact an area identified in the MSHCP that is essential for long-term conservation of the federally threatened spreading navarretia. The DEIR/DEIS must clearly describe how the project will impact the Conservation and Core Areas of the MSHCP and the MCP's inconsistencies with the objectives of the MSHCP.

IP-6-75

Impacts to habitat areas outside MSHCP-designated habitat areas should also be considered. However, as with the discussion of impact to SJVC, the disclosure of the impacts to this species appear to be confined within the MSHCP-designated survey areas, and does not include the entire project area, resulting in potentially skewed baselines.

IP-6-76

Additionally, similar to the discussion of SJVC, the actual amount of potentially impacted critical habitat is substantially larger than claimed by the DEIR/DEIS, further exacerbating issues with baseline inaccuracies. While the actual number of critical habitat acres that would be affected range from 16.5-18.6 acres, the DEIR/DEIS claims that only 1.09 of these acres constitute critical habitat with primary constituent elements, and therefore, it is only these 1.09 acres of Spreading navarretia habitat that is analyzed by the DEIR/DEIS. (DEIR/DEIS at 3.21-6). The DEIR/DEIS provides no citation or source for its determination that only 1.09 acres of these 16.5-18.6 acres "support ponding of sufficient duration to provide spreading navarretia habitat." (DEIR/DEIS at 3.21-6).

IP-6-77

The DEIR/DEIS must consider *all* critical habitat for spreading navarretia, not just those portions that RCTC decides are suitable without adequate justification, to provide for meaningful baseline data for public review. (Cal. Pub. Res. Code § 21003). RCTC cannot disregard USFWS' critical habitat designations by simply claiming that designated critical habitat is "mostly unsuitable for spreading navarretia." (DEIR/DEIS at 3.21-6).

In addition to direct impacts to this species, indirect impacts to spreading navarretia listed in the DEIR/DEIS are identical to those claimed for SJVC, that is, a number of edge effects and potential indirect impacts from changes in hydrology. These hydrology impacts are dismissed in a conclusory fashion as "negligible." (DEIR/DEIS at 3.21-15, citing Section 3.9 on Hydrology and Floodplains).

IP-6-78

As with SJVC, least Bell's vireo, and SBKR, the DEIR/DEIS relies on the future preparation of a "Determination of Biological Equivalent or Superior Preservation (DBESP)... pursuant to MSHCP, Section 6.1.3" for mitigation of the impacts to this threatened species. (DEIR/DEIS at 3.21-6, 3.21-18). The feasibility this DBESP and the availability of adequate habitat is not addressed by the DEIR/DEIS. This indefinite and poorly defined measure is

IP-6-79

inadequate to insure that negative impacts from the MCP project are minimized. This reliance on uncertain future events is contrary to CEQA and NEPA. (Cal. Pub. Res. Code § 21081.5; *Wyoming Outdoor Council v. Corps of Engineers*, 351 F.Supp.2d 1232 (D. Wy. 2005) (mitigation measures have to be “more than a possibility.”).

IP-6-79

3. ARROYO TOAD

The DEIR/DEIS claims that there will be “no effect” to arroyo toad under the MCP Build Alternatives based on unsupported conclusions. (DEIR/DEIS at 3.21-11). The conclusion that there is a “low likelihood that the arroyo toad would be found within the BSA,” and that therefore the MCP will not result in impacts on the species is based on incomplete and outdated data. (DEIR/DEIS at 3.21-11). In support of this claim, the DEIR/DEIS cites a study used in the 1999 USFWS Recovery Plan for the arroyo toad that appears to have been conducted in 1975, and cites another survey conducted in 2000. (DEIR/DEIS at 3.21-11). RCTC failed to conduct any surveys of its own, claiming the arroyo toad is not present within the MSHCP-designated survey area, and therefore that surveys are not required. (DEIR/DEIS at 3.21-11).

This does not accurately characterize arroyo toad habitat and the occurrence of the Arroyo Toad. The eastern end of the project lies within proposed core 5 (MSHCP at 3-25), which is also identified as a conservation area for the arroyo toad (MSHCP at A-6). Specifically,

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Modeled arroyo toad habitat is distributed throughout the MSHCP Conservation Area where described. These areas occur within the following Core Areas: Vail Lake (portion of Proposed Core 7; 1,017 acres), San Juan Creek (portion of Existing Core B; 1,414 acres), Los Alamos Creek (portion of Existing Core B; 7,898 acres), San Jacinto River (portions of Proposed Core 5 and Existing Core K; 3,096 acres)...

(MSHCP at A-6). Therefore, the DEIR/DEIS and NES improperly dismiss impacts to the arroyo toad, even when all of the alternatives will impact a core area for the arroyo toad. The determination of “no effect” to arroyo toad is therefore not supported by substantial evidence in violation of CEQA. (Cal. Pub. Res. Code § 21168.5).

While indirect impacts are mentioned for this species, no meaningful assessment of those impacts is provided as the DEIR/DEIS simply concludes substantial indirect effects “are not anticipated.” (DEIR/DEIS at 3.21-15). The DEIR/DEIS fails to fully analyze the impacts and propose meaningful avoidance, minimization or mitigation regarding indirect impacts, and therefore, fails to proceed in a manner required by law (Cal. Pub. Res. Code § 21168.5).

IP-6-81

4. COASTAL CALIFORNIA GNATCATCHER (CAGN)

The DEIR/DEIS states “the MCP project may result in the loss of potential habitat... and habitat fragmentation.” (DEIR/DEIS at 3.21-12). Potential direct impacts to CAGN, listed under the ESA, and CAGN critical habitat (issued on 12/19/2007) would result from habitat impacts ranging from 88.1 – 93.6 acres, a portion of which “may be suitable for or occupied by” CAGN. (DEIR/DEIS 3.21-12). Potential indirect impacts include, in addition a variety of indirect

impacts from edge effects including increased potential for fire, exotic plant infestations, unauthorized recreational use, and pollutants. CAGN may suffer additional indirect effects from increases in light, glare and noise from increased vehicular traffic and from daytime and nighttime construction, and from increases in litter. (DEIR/DEIS 3.21-15).

The DEIR/DEIS claims that seasonal restrictions requiring that vegetation be cleared only outside of the nesting season for CAGN will “eliminate” direct impacts to individual CAGN, but continues to concede that substantial habitat will be impacted by the MCP Build Alternatives. Despite mentioning habitat fragmentation as a concern, the DEIR/DEIS provides no discussion of minimizing this negative impact. There is no discussion of mitigation of these habitat impacts beyond anticipated compliance with the MSHCP and formal consultation with the USFWS as required by Section 7 of the ESA. These deferred mitigation measures are insufficient under CEQA to provide the public a meaningful opportunity for review and comment. (Cal. Pub. Res. Code § 21003.1).

IP-6-82

5. LEAST BELL’S VIREO

The analysis of potential impacts to least Bell’s vireo is flawed from the outset, as the baseline environmental conditions are based on assumptions extrapolated from outdated observations contrary to CEQA’s requirement for up-to-date environmental baseline data on conditions “as they exist at the time the notice of preparation is published.” (Cal. Code Regs. tit. 14, § 15125).

The MSHCP requires, “if riparian scrub and/or woodland is identified on the wetland maps and the habitat will not be avoided as part of the project, a focused survey for least Bell’s vireo shall be conducted by a qualified biologist in accordance with accepted protocol.” (MSHCP Vol. 2 Species Accounts least Bell’s vireo, Objective 3). However, despite the MCP project footprint impacting 35.4 acres of riparian scrub (DEIR/DEIS at 3.17-12), RCTC failed to conduct a focus survey as required by the MSHCP. Instead, the DEIR/DEIS bases its determination of the presence of least Bell’s vireo on a sighting one pair within the BSA in 2008, using that data as the basis for estimating that one to two pairs could currently occupy the riparian habitat that was the location of the 2008 sighting. (DEIR/DEIS 3.21-12).

IP-6-83

This estimation based on an observation in 2008 sets an improper baseline for the presence of least Bell’s vireo habitat in the BSA, and focused surveys must be conducted to ascertain the actual potential for impacts to least Bell’s vireo and its habitat, and to allow for meaningful disclosure to the public of the effects of the MCP. (Cal. Code Regs. tit. 14, § 15125; Cal. Pub. Res. Code § 21003.1). Moreover, habitat impacts should not be limited solely based on the observed presence of individuals, but rather should include considerations of maintaining adequate habitat for the recovery of the species. In other words, habitat should be retained to provide for future populations of least Bell’s vireo that develop as a result of the recovery efforts in place for this species.

Further limiting the apparent impacts to this endangered species, the DEIR/DEIS only considered impacts to nesting habitat. The DEIR/DEIS describes the impacts to least Bell’s vireo habitat as ranging from 3.59 – 3.66 acres in the form of loss of nesting habitat within the project footprint. The decision to include impacts only to nesting habitat, and to omit discussion of

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potential impacts to other types of habitat, such as foraging habitat is not explained by the DEIR/DEIS. ↑ IP-6-84

In addition to direct impacts, least Bell's vireo faces a number of potential indirect impacts from increases in light, glare and noise from increased vehicular traffic and from daytime and nighttime construction, and from increases in litter, in addition to a variety of indirect impacts from edge effects including increased potential for fire, exotic plant infestations, unauthorized recreational use, and pollutants. (DEIR/DEIS at 3.21-15). IP-6-85

The mitigation measures proposed by the DEIR/DEIS are insufficient. The DEIR/DEIS claims direct mortality impacts resulting from the destruction of nests or the killing of young will be "avoided by conducting vegetation clearing outside March 1 to September 15." (DEIR/DEIS at 3.21-13). There is no discussion of minimizing other impacts to least Bell's vireo habitat, including impacts to non-nesting habitat, beyond anticipated compliance with the MSHCP, and the preparation of a DBESP. As with SJVC, spreading navarretia, and SBKR, the DEIR/DEIS relies on the future preparation of a "Determination of Biological Equivalent or Superior Preservation (DBESP)... pursuant to MSHCP, Section 6.1.3" (DEIR/DEIS 3.21-18). The feasibility this DBESP and the availability of adequate habitat is not addressed by the DEIR/DEIS. This is inadequate to assure that negative impacts are minimized. This reliance on uncertain future events is contrary to CEQA and NEPA. (Cal. Pub. Res. Code § 21081.5; 40 C.F.R. § 1500.1 (b)). IP-6-86

6. SOUTHWESTERN WILLOW FLYCATCHER

Despite conceding that all MCP Build Alternatives may result in the loss of potential foraging habitat used by the southwestern willow flycatcher during migration, the DEIR/DEIS shifts the attention to the claim that there will be no impact on nesting habitat. (DEIR/DEIS 3.21-13). Using this shifted focus on nesting habitat over foraging habitat, the DEIR/DEIS concludes Section 7 formal consultation will not be required because the MCP Build Alternatives would have "no effect" on the species. (DEIR/DEIS at 3.21-13). The recognition that foraging habitat for this species will be impacts by this project, yet would have "no effect" on the species defies logic. This must be clarified to comply with CEQA's requirements for EIRs to be organized and written in a way that is "meaningful and useful to decision-makers and to the public." (Cal. Pub. Res. Code § 21003(b)). Additionally, unexplained limitation on scope of review to only include nesting habitat is contrary to CEQA's requirement of disclosure of the impacts of projects requiring and EIR. (Cal. Pub. Res. Code § 21003). As with the analysis of other threatened and endangered species, the DEIR/DEIS cites compliance with the MSHCP to support its contention that any potential impacts will be avoided. (DEIR/DEIS at 3.21-13). IP-6-87

7. SAN BERNARDINO KANGAROO RAT (SBKR)

SBKR would suffer a number of direct and indirect impacts from the MCP project. All MCP Build Alternatives would directly impact between 4.25 and 4.32 acres of SBKR-occupied habitat, and 2.9 acres of SBKR critical habitat. (DEIR/DEIS at 3.21-13 – 14). Indirect impacts would include, in addition to a variety of indirect impacts from edge effects including increased potential for fire, exotic plant infestations, unauthorized recreational use, and pollutants, indirect IP-6-88

effects from increases in light, glare and noise from increased vehicular traffic and from daytime and nighttime construction, and from increases in litter. (DEIR/DEIS at 3.21-15).

IP-6-88

The DEIR/DEIS again cites anticipated compliance with the MSHCP and conducting formal Section 7 consultation with USFWS. (DEIR/DEIS at 3.21-14). Additionally, as with spreading navarretia, SJVC, and least Bell's vireo, the DEIR/DEIS relies on the future preparation of a "Determination of Biological Equivalent or Superior Preservation (DBESP)... pursuant to MSHCP, Section 6.1.3" (DEIR/DEIS 3.21-18). The feasibility this DBESP and the availability of adequate habitat is not addressed by the DEIR/DEIS. This indefinite and is inadequate to insure that negative impacts are minimized. This reliance on uncertain future events is contrary to CEQA and NEPA. (Cal. Pub. Res. Code § 21081.5; 40 C.F.R. § 1500.1 (b)).

IP-6-89

8. STEPHENS' KANGAROO RAT (SKR)

The DEIR/DEIS anticipates that the MCP will result in take of SKR. (DEIR/DEIS at 3.21-14) A substantial amount of Riversidean sage scrub and nonnative grassland habitat, 138.4 – 145.6 acres, will be affected by the MCP build alternatives, a portion of which *may*, according to the DEIR/DEIS, be suitable for or occupied by SKR. (DEIR/DEIS at 3.21-14). This uncertainty is unacceptable in an analysis of the MCP project's potential impacts on this species, and RCTC must conduct surveys in these areas to determine the presence of SKR to comply with CEQA's requirement for disclosure of relevant information regarding a project's impacts. (Cal. Pub. Res. Code § 21003).

IP-6-90

The potential impacts of the MCP project, according the DEIR/DEIS, are "loss of potential habitat and habitat fragmentation, particularly along the San-Jacinto-Lake Perris Reserve (a *Core Reserve* of the Habitat Conservation Plan for the Stephens' Kangaroo Rat)." (DEIR/DEIS at 3.21-14, emphasis added). The DEIR/DEIS then goes on to minimize the impacts to this species by stating that no SKR were captured during a trapping effort focused on two separate species, SBKR and the Los Angeles pocket mouse. (DEIR/DEIS 3.21-14).

Regarding indirect impacts, in addition to a variety of indirect impacts from edge effects including increased potential for fire, exotic plant infestations, unauthorized recreational use, and pollutants, SKR may suffer indirect effects from increases in light, glare and noise from increased vehicular traffic and from daytime and nighttime construction, and from increases in litter. (DEIR/DEIS at 3.21-15).

IP-6-91

The DEIR/DEIS contends that any take of SKR under California ESA is accounted for by the anticipated consistency with the MSHCP and SKRHCP. (DEIR/DEIS 3.21-14). With respect to take of SKR under the ESA, the DEIR/DEIS anticipates that payment of the SKR mitigation fee through the SKRHCP, and alternatively, that take authorization can be secured through Section 7 consultation with USFWS. (DEIR/DEIS at 3.21-14 – 15). In addition to this prospective take authorization, the DEIR/DEIS states RCTC will voluntarily pay mitigation fees of \$500 per acre for disturbance of *occupied* SKR habitat. (DEIR/DEIS at 3.21-19). This emphasis on occupied habitat only is improper, and in fact, Riverside County made an express finding that "[i]mpacts to the Stephens' Kangaroo Rat are *not* limited to loss or degradation of actually occupied habitat only." (Riverside County Ordinance No. 663 §2(f), emphasis added).

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It should also be noted that this occupied habitat will be substantially less than the entire 138.4 – 145.6 acres of potential habitat, and is left completely undefined. Conceptually, if no SKR individuals are surveyed, the amount of occupied SKR habitat could be zero, resulting in no mitigation payments whatsoever. Without a clear explanation of how occupied SKR habitat will be determined, or what steps, if any, will be taken in this determination, this supposed commitment to pay mitigation fees is toothless and fails to provide sufficient information to allow for meaningful public review and comment. (Cal. Pub. Res. Code § 21000 et seq.).

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F. FAILURE TO ADEQUATELY ANALYZE IMPACTS FROM INVASIVE SPECIES

Executive Order 13112 (EO), signed February 3, 1999, requires federal agencies to: (1) identify actions which may affect the status of invasive species; (2) take a number of steps to better understand and address existing invasive species issues; and (3) only authorize, fund or carry out activities likely to cause or promote the introduction of invasive species without weighing the benefits and harms, and taking all feasible and prudent measures to minimize risk harm. (Exec. Order No. 13,112, 65 Fed. Reg. 6183, §2(a) (Feb. 8, 1999).) As a federal agency, the Federal Highway Administration’s guidance issued August 10, 1999 directing the use of the State’s invasive species list and steps for compliance with this EO. (Federal Highway Administration (FHWA) Guidance on Invasive Species, August 10, 1999).

Chapter 3.22 of the DEIR/DEIR does not adequately demonstrate compliance with this EO, nor does the analysis presented in Chapter 4, which lists invasive species as a potentially significant impact (DEIR/DEIR at 4-95), adequately address invasive species under CEQA. The only analysis of invasive species in Chapter 4 is in a chart toward the end of this Chapter: “The construction of the MCP Build Alternatives may spread invasive species... [and] [d]uring the operation of the MCP, vehicles using the facility may also spread invasive species; however, these impacts would be minimal because areas adjacent to the facility will be landscaped with native species that should outcompete the invasive species.” (DEIR/DEIS at 4-126, Table 4.10). This falls short of the information disclosure of CEQA and NEPA.

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1. THE DEIR/DEIS MUST USE CURRENT AND ACCURATE DATA TO ASSESS THE POTENTIAL IMPACTS FROM INVASIVE SPECIES

In preparing the inventory of invasive species present in the project area which may be affected by the MCP Build Alternatives, the DEIR/DEIS uses the California Invasive Plant Council (Cal-IPC) 2006 Invasive Plant Inventory. However, in 2007, Cal-IPC released an invasive species update that added new weeds to the inventory. (Cal-IPC 2007). Multiple species added to the Cal-IPC inventory in this 2007 update have specimen records in Riverside County, including silver wattle (Cal-IPC Taxon Report 29), purple false brome (Cal-IPC Taxon Report 1137), Japanese brome (Cal-IPC Taxon Report 1205), and others, and therefore should have been considered in the impacts analysis in this section of the DEIR/DEIS. The DEIR/DEIS should include this updated information in their analysis on potential impacts from invasive species to comply with CEQA’s information disclosure requirements. (Cal. Pub. Res. Code § 21000 et seq.).

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a. THE DEIR/DEIS MUST CONSIDER ALL POTENTIAL INVASIVE SPECIES IMPACTS

The DEIR/DEIS only touches upon two sources of invasive species impacts: impacts during construction and impacts arising from vehicles spreading invasive species during the operation of the MCP. In neither of these impact areas does the DEIR/DEIS address potential impacts from increased fire potential, and the ensuing type conversion that can occur after fires. As an unintentional dissemination of a species into an ecosystem as a result of human activity, the spread of invasive species from anthropogenic fires is considered an “introduction” under EO 13112. (EO 13112 §1(g)). Therefore, this potential impact must be analyzed in this section of the DEIR/DEIS to comply with EO 13112.

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b. THE DEIR/DEIS PROVIDES INSUFFICIENT AVOIDANCE, MINIMIZATION, AND MITIGATION MEASURES TO ADDRESS IMPACTS FROM INVASIVE SPECIES

The mitigation measures presented in Chapter 3.22 are insufficient. The primary deficiencies in these mitigation measures are products of an improperly limited analysis of impacts; however, even where impacts are acknowledged in the DEIR/DEIS, the mitigation measures provided fall short of assuring these potential impacts are adequately addressed.

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A number of mitigation measures in this section are imprudently indefinite. For example, Mitigation Measure IS-5, which supposedly addresses the potential for introducing invasive species through the use of “material obtained from a borrow site” requires that the material be “inspected for the presence of noxious weeds and invasive plants.” (DEIR/DEIS at 3.22-5). The specifics of this inspection process are not provided by the DEIR/DEIS, the feasibility of detecting invasive plants in this borrow site material, including, for example, potentially very small seeds, is not assessed, and enforceable performance standards are not adequately set. This mitigation measure provides inadequate assurances to the public that impacts from introducing invasive species through borrow site material will be avoided.

Other mitigation measures are inadequate and incomplete because of insufficient information. For example, the use of the invasive plant species list contained in the MSHCP to ensure that no invasive species are planted in the project area is inadequate. (DEIR/DEIS 3.22-3). RCTC should use up-to-date invasive species inventories provided by Cal-ICP to ensure against planting invasive species within the project area.

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Finally, because of this section’s incomplete impacts analysis, no mitigation measures are proposed for impacts that were not considered. The only reference to avoidance of impacts from increased fire potential in this section on invasive species is a brief reference to Measure U&ES-5 in Section 3.5, Utilities/Emergency Services. (DEIR/DEIS at 3.22-3). This measure addresses increased fire potential during construction. (DEIR/DEIS at 3.5-12). The decision to omit reference in this section to the five additional mitigation measures in Section 3.5 that address increased fire potential is not explained in the DEIR/DEIS. (See DEIR/DEIS at 3.5-10-13). Risks of spreading invasive species from increased fire risks must be expressly acknowledged, and

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further, must be fully addressed at every stage of the MCP, including site preparation, construction, and operation.

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The full range of potentially significant impacts, as well as reasonably prudent avoidance, minimization, and mitigation measures must be included in the DEIR/DEIS to comply with CEQA's and NEPA's information disclosure requirements. (Cal. Pub. Res. Code § 21000 et seq; 40 C.F.R. § 1500.1 (b)).

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VII. THE ANALYSIS OF THE PROJECT'S GHG EMISSION IMPACTS IS FUNDAMENTALLY FLAWED AND INCOMPLETE

The DEIR/DEIS' greenhouse gas (GHG) emissions analysis for the Project is woefully inadequate and in contravention of its CEQA and NEPA obligations. The DEIR/DEIS fails to take into account all sources of the GHG emissions resulting from the Project, thereby underestimating the impact the Project will have on GHG emissions and climate change. The DEIR/DEIS also fails to consider all feasible mitigation measures and instead relies heavily on state-level and national mitigation measures to alleviate the Project's GHG emissions impacts. Most troublingly, the DEIR/DEIS fails to make a significance determination regarding the direct and indirect impacts of the MCP to GHG emissions. (DEIR/DEIS at 4-31.) By erroneously claiming that the current regulatory and scientific information related to GHG emissions and CEQA significance make a significance determination too speculative, the DEIR/DEIS has failed to comply with CEQA's Guidelines.

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A. GLOBAL WARMING POSES GRAVE RISKS TO CALIFORNIA THAT CAN ONLY BE AVOIDED THROUGH DEEP CUTS IN ATMOSPHERIC CONCENTRATIONS OF GREENHOUSE GAS EMISSIONS

"The harms associated with climate change are serious and well recognized." *Massachusetts v. EPA*, 127 S. Ct. 1438, 1455 (2007). In enacting Assembly Bill 32 (AB 32), the California Global Warming Solutions Act of 2006, the State of California confirmed that "[g]lobal warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California." Health & Safety Code § 38501(a). Concentrations of greenhouse gases are increasing in the earth's atmosphere, primarily from society's burning of fossil fuels for energy and destruction of forests. These gases, including but not limited to carbon dioxide (CO₂), methane (CH₄), and nitrous oxide (N₂O), absorb solar radiation that would otherwise be radiated back into space. This phenomenon is referred to as global warming or climate change and is leading to profound changes in the earth's and California's environment as acknowledged by the DEIR/DEIS.

California has set greenhouse gas emission reduction targets in an effort to avoid the catastrophic impacts projected with higher emissions scenarios. AB 32 requires California to return to 1990 levels of greenhouse gas emissions by the year 2020. (Health & Safety Code § 38550.) Looking beyond 2020, Executive Order S-3-05 sets an emissions reduction target of 80 percent below 1990 levels by 2050. (Cal. EO S-3-05, June 1, 2005.) The emission reduction targets set by AB 32 and Executive Order S-3-05 are consistent with a trajectory that aims to

stabilize atmospheric concentrations of greenhouse gases at approximately 450 ppm, a level at which climatologists estimate would provide a 50-50 chance of limiting global average temperature increases to 2°C from pre-industrial levels. (UNDP 2007, CARB 2008). A 2°C temperature increase is commonly identified “as a potential ‘tipping point’ for long-run catastrophic outcomes.” (*Id.*; Hansen 2008).

Accordingly, “remaining within the 2°C threshold should be seen as a reasonable and prudent long term objective for avoiding dangerous climate change.” (UNDP 2007). However, based in part on recent rapid on-going climate changes and the realization that the earth is already out of energy balance, scientists have now concluded that “[i]f humanity wishes to preserve a planet similar to that on which civilization developed, paleoclimate evidence and ongoing climate change suggest that CO₂ will need to be reduced from its current 385 ppm to at most 350 ppm.” (Hansen 2008).

B. ANALYZING GLOBAL WARMING IMPACTS UNDER CEQA

The State of California has further recognized CEQA’s role in addressing impacts from the greenhouse gas emissions generated by proposed projects. In August 2007, the State enacted Senate Bill 97, which requires the Governor’s Office of Planning and Research (OPR) to prepare guidelines “for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions *as required by* [CEQA], including, but not limited to, effects associated with transportation or energy consumption.” SB 97 (2007), codified as Pub. Res. Code § 21083.05 (emphasis added.) SB 97 “confirm[s] that GHG emissions are a significant adverse effect under” CEQA.

To facilitate the analysis of global warming impacts under CEQA, OPR issued a Technical Advisory calling for lead agencies to first “make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO₂ and other GHG emissions from a project.” (OPR 2008). In order to perform the good faith analysis under CEQA the lead agency must include “emissions associated with vehicular traffic, energy consumption, water usage and construction activities.” (OPR 2008). Once the total emissions have been calculated the lead agency must determine whether these emissions constitute a significant impact. (OPR 2008). Consistent with the CEQA Guidelines, the Technical Advisory also noted that “climate change is ultimately a cumulative impact.”

Climate change is the classic example of a cumulative effects problem; emissions from numerous sources combine to create the most pressing environmental and societal problem of our time. (*Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172, 1217 (9th Cir. 2008); (“the impact of greenhouse gas emissions on climate change is precisely the kind of cumulative impacts analysis that NEPA requires agencies to conduct.”); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720 (“Perhaps the best example [of a cumulative impact] is air pollution, where thousands of relatively small sources of pollution cause serious a serious environmental health problem.”); *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 (impact sources may “appear

insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact”).)

The California Air Pollution Control Officers Association (CAPCOA) has also issued a “CEQA & Climate Change” white paper intended to serve as a resource to assist lead agencies in analyzing greenhouse gas impacts under CEQA. (CAPCOA 2008). CAPCOA is an association of air pollution control officers representing all thirty-five local air quality agencies and air districts throughout California. Its CEQA & Climate Change document was reviewed by air quality specialists from numerous air districts as well at the Air Resources Board. Noting that “the absence of an adopted threshold does not relieve the agency from the obligation to determine significance”, CAPCOA explored various potential approaches to determining significance and then evaluated the effectiveness of each of these approaches. (CAPCOA 2008). In evaluating the effectiveness of its proposed approaches, CAPCOA determined that only a threshold of zero or a threshold of 900 tons of CO2 equivalent (CO2 eq.) emissions had a “high” GHG emission reduction effectiveness and “high” consistency with the emission reduction targets set forth in AB 32 and Executive Order S-3-05. (CAPCOA 2008). Other methods, such as a 28- 33% reduction from project business-as-usual emissions, had “low” GHG emission reduction effectiveness and consistency with emission reduction targets. (CAPCOA 2008).

In developing interim significance thresholds to determine the significance of greenhouse gases, the California Air Resources Board has also acknowledged that lead agencies are “obligated to determine whether a project’s climate change-related effects may be significant [] and to impose feasible mitigation to substantially lessen any significant effects.” (CARB 2008). CARB recognized that it is critical to estimate and minimize emissions from all CEQA projects because “the collective greenhouse gas emissions from the industrial, residential and commercial sectors, together with the transportation sector, represent approximately 80% of the statewide greenhouse gas emissions inventory in 2004.” (CARB 2008). Because of the cumulative impacts of greenhouse gas emissions, a threshold trending towards zero is most appropriate. However, any “non-zero threshold must be sufficiently stringent to make substantial contributions to reducing the State’s GHG emissions peak, to causing that peak to occur sooner, and to putting California on track to meet its interim (2020) and long-term (2050) emissions reduction targets.” (CARB 2008). Furthermore, CARB emphasized the need for a rigorous performance based measures to determine significance. (CARB 2008).

C. THE DEIR/DEIS’ REFUSAL TO DETERMINE THE SIGNIFICANCE OF THE PROJECT’S GHG IMPACTS IS INAPPROPRIATE AND A VIOLATION OF CEQA

When describing the proposed MCP’s GHG emissions impact, the DEIR/DEIS concludes that “the existing conditions plus MCP project alternative would result in a 5 percent reduction in CO2 emissions within the region when compared to the existing conditions.” (DEIR/DEIS 4-109.) The MCP project would also result in small increase (less than 1 percent) in CO2 emissions within the region in 2020 and 2040 when compared to the 2020 and 2040 without project conditions. (DEIR/DEIS 4-109.) However, the DEIR/DEIS then states that “in the

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absence of further regulatory or scientific information related to GHG emissions and CEQA significance, it is too speculative to make a determination regarding significance of the project's direct impact and its contribution on the cumulative scale of climate change. However, RCTC is firmly committed to implement measures to help reduce the potential effects of the project." (DEIR/DEIS 4-109.)

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1. STATE REGULATIONS REQUIRE A DETERMINATION OF SIGNIFICANCE FOR GHG EMISSIONS FROM THE MCP

DEIR/DEIS failure to determine the significance of Project-related greenhouse gas emissions is a violation of established CEQA principles. (*See Communities for a Better Env't. v. Cal. Res. Agency*, 103 Cal. App. 4th 98, 110 (2003); *see also* Pub. Res. Code § 21082.2(a) ("The lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in light of the whole record."); 14 Cal. Code Regs. § 15064(a) ("Determining whether a project may have a significant effect plays a critical role in the CEQA process.")) The language of CEQA requires lead agencies to establish whether an adverse environmental impact is significant, the determination is not a discretionary one but rather a mandatory one. In light of this statutory and legal framework, others have cautioned that the lack of published thresholds of significance for greenhouse gas emissions does not relieve a lead agency of its responsibility under CEQA to make a significance determination. (Hendrix 2007)

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The CEQA Guidelines require agencies to "make a good-faith effort ... to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project." (14 Cal. Code Regs. §15064.4.) Indeed the Guidelines were updated with a new section entitled "Determining the Significance of Impacts from Greenhouse Gas Emissions." *Id.* There is nothing in CEQA that relieves a lead agency from its obligation to determine significant effects simply because the impact is related to a rapidly-evolving area of science and policy. (*See Protect the Historic Amador Waterways v. Amador Water Agency* (2005) 116 Cal. App. 4th 1099, 106-12 (CEQA does not allow impact analysis to be labeled too "speculative" based on a lack of threshold).) Therefore there is no justification under CEQA for RCTC to refuse to make a significance finding for GHG emissions.

Additionally, the DEIR/DEIS refusal to complete a significance analysis in part because there are no state guidance or established threshold for evaluating GHG emissions has been rejected by several state agencies for several years. Specifically as early as 2007, the California DOJ stated "[w]hether or not the state or any agency ultimately adopts regulatory thresholds and or mitigation guidelines that would apply to this type of project, the lack of official thresholds and guidelines does not absolve the County from the obligation under CEQA to determine the significance of, or adopt feasible mitigation for, the anticipated greenhouse gas emissions of the project.⁴ This position was adopted by CAPCOA in its January 2008 Report on CEQA and climate change.⁵

⁴ See Comment Letter from Cal DOJ to the Santa Barbara County Planning and Development Department (January 25, 2008); see also Comment Letter from Cal DOJ to Kern County Planning Department on Draft EIR for Proposed Corn Ethanol Plant (February 29, 2008); Comment Letter from Cal DOJ to the City of San Jose on the Draft EIR for the Coyote Valley Specific Plan (June 19, 2007); Comment Letter from Cal DOJ to City of Richmond on Draft EIR

2. THE DEIR/DEIS CONCLUSION IGNORES THE WORK DONE BY OTHER LOCAL AND REGIONAL AGENCIES

The DEIR/DEIS declaration that regulation and science related to GHG emissions is too uncertain and makes any significance analysis too speculative disregards expert analyses and work done by other local agencies on significance thresholds for GHG emissions. For example, the Bay Area Air Quality Management District (BAAQMD) conducted an extensive analysis of the "gap" between state actions to reduce emissions identified in the Scoping Plan and the need for local government to further reduce emissions from land use driven sectors.⁶ After a series of calculations, BAAQMD arrived at a several different thresholds for stationary and non-stationary sources as well as for new development. The BAAQMD significance threshold is supported by the Attorney General and has been adopted by other jurisdictions, including Santa Barbara County.⁷

Additionally other public agencies have used the readily available EMFAC2007 model, in combination with project-related traffic data, to quantify greenhouse gas emissions associated with construction and operation of highway projects. Other lead agencies in Riverside County have conducted a quantified inventory for greenhouse gas emissions and determined that the project was significant based on thresholds provided by the South Coast Air Quality Management District (SCAQMD). (Moreno Valley 2013; SCAQMD 2011). A public agency must make a good-faith effort to disclose all that it reasonably can about a project's impacts. *See* 14 Cal. Code Regs. §§ 15144, 15151. Where a methodology for evaluating a particular impact exists, the agency must use it. (*See Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Comm'rs* (2001) 91 Cal. App. 4th 1344, 1370-71.)

Many of the DEIR/DEIS excuses for not fully analyzing GHG emissions or completing a significance analysis ring hollow. Potential changes in vehicle fuel economy, introduction of near zero carbon vehicles to the market, California's adoption of low-carbon fuel standard in 2009, and changes in driver behavior due to changes in the U.S. economy and oil prices do not excuse RCTC from fulfilling its obligation to inform decision makers about the climate change impacts resulting from this Project. (DEIR/DEIS at 4-105-6.) The RCTC cannot avoid its obligation to determine the significance of the GHG emissions by stating that the science or regulatory framework is too uncertain or that any significance analysis would be too speculative. Such a claim is in direct contradiction to the years of work done by state and federal agencies to address and limit GHG emissions and climate change. The DEIR/DEIS attempts to avoid its responsibility to fully analyze the significance of the Project's impact on GHG emissions and withhold vital information from the public and decision makers.

Prepared for Chevron Energy Project (July 9, 2007).

5 CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (CAPCOA Report) (2008).

6 BAAQMD, CEQA AIR QUALITY GUIDELINES (May 2010); BAAQMD, THRESHOLDS REPORT (May 2010).

7 Letter from California Attorney General to BAAQMD (2009); SANTA BARBARA COUNTY INTERIM PROCEDURES FOR EVALUATING GHGs UNDER CEQA (2010); SANTA BARBARA COUNTY, SUPPORT FOR USE on BAAQMD THRESHOLDS (2010).

D. THE DEIR/DEIS SHOULD INCLUDE A FULL INVENTORY AND ANALYSIS OF THE PROJECT’S PROJECTED GLOBAL WARMING POLLUTION

The first step in determining a project’s global warming pollution impact is to complete a full inventory of all emissions sources that contribute to global warming. In conducting such an inventory, all phases of the proposed project must be considered. (See 14 Cal. Code Regs. § 15126). The California Office of Planning and Research—the state agency charged with oversight of CEQA documents and development of CEQA guidelines—has also stated that “lead agencies should make a good-faith effort, based on available information, to calculate, model, or estimate the amount of CO2 and other GHG emissions from a project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities.” (OPR 2008). Contrary to OPR Guidance, the DEIR/DEIS fails to quantify emissions from many of these sources.

A greenhouse gas inventory for the project must include the project’s direct and indirect greenhouse gas emissions. (See 14 Cal. Code Regs § 15358(a)(1)). Consequently, a complete inventory of a project’s emissions should include, at minimum, an estimate of emissions from the following:

- Fugitive emissions of greenhouses gases, such as methane, from the proposed project;
- Emissions during construction from vehicles and machinery;
- Manufacturing and transport of building materials;
- Electricity generation and transmission for the lighting and other energy demands of the Project;
- Vehicle trips and transportation emissions generated by the project;
- Black carbon emissions resulting from the Project;
- Outsourced activities and contracting.

Methodologies are readily available to inventory the emissions from the proposed project. In its white paper, CEQA & Climate Change, Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act (Jan. 2008), the California Air Pollution Control Officers Association (CAPCOA) sets forth methodologies for analyzing greenhouse gas pollution (CAPCOA 2008) (See Table 1. CEQA and Greenhouse Gas Emissions Methodologies). In its Guidance, OPR also provides references to methodologies to quantify greenhouse gas emissions.

1. AS PART OF ITS CLIMATE CHANGE ANALYSIS, THE DEIR/DEIS MUST ALSO ANALYZE BLACK CARBON EMISSIONS RESULTING FROM THE PROJECT

As part of its analysis of global warming impacts, the DEIR/DEIS must also address black carbon, an important short-lived pollutant that contributes to global and regional warming. Black carbon is produced by incomplete combustion and is the black component of soot. Although combustion produces a mixture of black carbon and organic carbon, the proportion of

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black carbon produced by burning fossil fuels, such as diesel, is much greater than that produced by burning biomass.

Black carbon heats the atmosphere through a variety of mechanisms. First, it is highly efficient at absorbing solar radiation and in turn heating the surrounding atmosphere. Second, atmospheric black carbon absorbs reflected radiation from the surface. Third, when black carbon lands on snow and ice, it reduces the reflectivity of the white surface which causes increased atmospheric warming as well as accelerates the rate of snow and ice melt. Fourth, it evaporates low clouds. Notably, black carbon is often complexed with other aerosols such as sulfates, which greatly increases its heating potential. (Ramanathan & Carmichael 2008; Jacobson 2001).

Due to black carbon's short atmospheric life span and high global warming potential, decreasing black carbon emissions offers an opportunity to mitigate the effects of global warming trends in the short term. (Ramanathan & Carmichael 2008). Black carbon is considered a 'short-lived pollutant' (SLP) because it remains in the atmosphere for only about a week in contrast to carbon dioxide, which remains in the atmosphere for over 100 years. Furthermore, the global warming potential of black carbon is approximately 760 times greater than that of carbon dioxide over 100 years (Reddy & Boucher 2007) and approximately 2200 times greater over 20 years. (Bond & Sun 2005). It is estimated that black carbon is the second greatest contributor to global warming behind carbon dioxide. (Ramanathan & Carmichael 2008).

Unlike traditional greenhouse gases, which become relatively uniformly distributed and mixed throughout the Earth's atmosphere, black carbon exerts a regional influence. The impacts of black carbon on a regional level include both atmospheric heating, as discussed above, and hydrological changes. Hydrological changes occur due to alterations in cloud formation and heat gradients. (Ramanathan & Carmichael 2008). For instance, aerosol pollution has been linked to decreases in the summer monsoon season in tropical areas as well as the drought in the Sahel region of Africa. (Ramanathan & Carmichael 2008). California is an area of particular concern because of the drought-fire cycle. The more drought conditions prevail, the more forest fires burn, and the forest fires in turn emit massive quantities of black and organic carbon. The release of these aerosols intensifies the drought effect.

Another impact of black carbon is accelerated snowmelt; for instance, black carbon is likely contributing to the retreat of Himalayan glaciers and the resulting water shortage in areas of Asia. (Ramanathan & Carmichael 2008). When black carbon settles on snow, it makes the snow darker so that it absorbs more solar radiation. This directly leads to snow melt. In addition, local atmospheric heating due to black carbon increases the melting rate. These same effects may well be operating on the Sierra Nevada, which would reduce water availability throughout California at crucial times of the year. These localized impacts could also be contributing to a decreased snow pack and earlier snow melt for the San Gabriel, San Bernardino, and San Jacinto mountains.

Black carbon is also detrimental to human health. Black carbon has been linked to a variety of circulatory diseases. One study found an increased mortality rate was correlated with exposure to black carbon. (Maynard 2007). The same is true for heart attacks. (Tonne 2007).

Another study found that residential black carbon exposure was associated with increased rates of infant mortality due to pneumonia, increased chronic bronchitis, and increased blood pressure. (Schwartz 2007).

In developed countries, diesel burning is the main source of black carbon. Diesel emissions include a number of compounds such as sulfur oxides, nitrogen oxides, hydrocarbons, carbon monoxide, and particulate matter. Diesel particulate matter is approximately 75% elemental carbon. (EPA 2002, "Diesel Health Assessment"). The proposed project will require the use of diesel-powered heavy duty trucks, construction equipment, and yard/warehouse equipment. Thus, it is crucial that black carbon be addressed as part of the environmental review for the Project.

a. ANALYZING PARTICULATE MATTER IS INSUFFICIENT TO ADDRESS BLACK CARBON

Particulate matter (PM) refers to the particles that make up atmospheric aerosols. The primary constituents of PM are sulfates, nitrates, and carbon compounds. Sulfates and nitrates form in the atmosphere from the chemical reaction of sulfur and nitrogen dioxides. These may often be present as ammonium sulfate or nitrate salts. Carbon compounds may be directly emitted, e.g. black carbon emitted from combustion, or may form in the atmosphere from other organic vapors, e.g. oxidation of volatile organic compounds.

Because PM can be reduced through mitigation of other constituents of PM than black carbon, it is essential that black carbon emission reduction strategies be considered independently from PM reductions. The proportions of the constituents of PM vary over time and by location. According to a recent series of surveys conducted at various U.S. cities under the EPA's "Supersite" program, black carbon was often only about 10% of total measured PM_{2.5.8}. In contrast to total PM_{2.5}, diesel PM is composed largely of black carbon. Nonetheless, some diesel PM reduction strategies do not affect black carbon. For instance, diesel oxidation catalysts can reduce diesel PM emissions as a whole by approximately 20 to 40%, yet they do not decrease black carbon emissions. (Walker 2004). In addition, while low-sulfur fuel will reduce sulfate emissions, in and of itself low-sulfur fuel will not reduce black carbon. Low-sulfur fuel is important because it *allows* for better technology to reduce black carbon.

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b. METHODS ARE AVAILABLE TO SPECIFICALLY QUANTIFY BLACK CARBON EMISSIONS FROM THE PROJECT

Like greenhouse gases, black carbon emissions from various types of engines and activities can be estimated through numerical calculations. (Bond 2004). Thus, there is no reason why black carbon can reasonably be omitted from these estimates. The estimated black carbon emissions from the project can be inventoried similarly to other greenhouse gas emissions:

- Estimate the mass of diesel fuel consumed by each type of diesel engine, e.g. ship, machinery, truck, construction equipment, and locomotive.
- Calculate a black carbon emission factor (EF) using reference values available in the literature. For instance, Bond and colleagues provide an equation for

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“EFBC” from various types of diesel engines that takes into account 4 different factors

- Multiply the emission factor times the mass of diesel (in kilograms) used for each engine type. This will provide the grams of black carbon emitted by that engine type.
- Sum all black carbon emissions from each engine category to obtain total black carbon emissions from the project.

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After obtaining the total black carbon emissions from the Project, the relative global warming impact of the emissions can be compared to other global warming pollutants. Carbon dioxide-equivalent values can be obtained by multiplying total black carbon emissions (in kilograms) from the project by the global warming potential (GWP) for black carbon. Although there is some variation in estimated GWP values, representative black carbon GWP values are 760 over 100 years or 2200 over 20 years (Bond & Sun 2005).

2. OTHER SUBSTANTIAL CONTRIBUTORS TO GHG IMPACTS FROM THE PROJECT WERE ALSO NOT ANALYZED IN THE DEIR/DEIS

In addition to the absence of black carbon from its GHG analysis, the DEIR/DEIS also fails to properly calculate the total greenhouse gas pollution resulting from the Project by omitting emissions related to manufacturing and transport of building materials, trips taken by workers during construction to the Project site and water use. The GHG emissions analysis examined some construction GHG emissions including material processing, on-site construction equipment, and traffic delays due to construction, but omits important areas. However there are a wide array of models and methodologies to determine the emissions generated from construction machinery such as URBEMIS and EMFAC. (OPR 2008). The DEIR/DEIS is not permitted to exclude a crucial component of the project in such a fashion, failing to disclose such information to the public or disclosing construction impacts and emissions at another phase in a piecemeal fashion. The DEIR/DEIS also fails to analyze the impacts of black carbon emissions during both the construction and operation phase of the project, even though the Project will result in a large increase in diesel exhaust from the existing conditions.

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The proposed MCP will require 460 ac and 525 ac of new pavement in the MCP study area which will necessitate thousands of hours of operation of heavy duty construction equipment. (DEIR/DEIS 4-41.) Nowhere in the DEIR/DEIS is any quantified analysis performed to determine how these significant impacts could be avoided, reduced, or mitigated. The DEIR/DEIS also fails to account for the emissions associated with manufacturing and transport of building materials for the project. The lifecycle emissions of the products used to produce the project should be analyzed in order to determine the full carbon footprint. The construction of the MCP will take thousands of cubic yards of construction material including concrete. Cement and concrete manufacture is extremely energy intensive producing a large amount of greenhouse gas emissions. The manufacture of concrete accounts for roughly 3% of California’s greenhouse gas emissions. (Masanet 2005). In order to determine ways to reduce greenhouse gas emissions from concrete the Lawrence Berkeley National Laboratory and others have developed methods for analyzing the lifecycle emissions of concrete manufacture. (Masanet

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2005, Flower 2007). These numbers must be integrated into the greenhouse gas emissions significance determination in order to perform the good faith analysis required under CEQA.

The DEIR/DEIS also fails to conduct any analysis or quantification of the greenhouse gas emissions associated with water use related to the project. Transport of water throughout the state is extremely energy intensive. The water sector is the largest consumer of energy in California, estimated to account for 19 percent of total electricity and 32 percent of total natural gas consumed in the state. (CEC 2005). Finally, the DEIR/DEIS neglects project related trips for the transportation of workers and materials to the construction phase of the project. The GHG analysis fails to take into account trips to and from the project site while the Project will be under construction.

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It is vital the DEIR/DEIS “disclose all it can” about project impacts and educate itself on methodologies that are available to measure project emissions. *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm’rs (Berkeley Jets)*, 91 Cal. App. 4th 1344, 1370 (2001). Without a complete inventory, the DEIR/DEIS cannot adequately inform the public and decision-makers about the Project’s impacts. Similarly, without a complete inventory and analysis of greenhouse gas emissions that will result from the project, there is simply no way that the DEIR/DEIS can then adequately discuss avoidance and mitigation measures to reduce those impacts.

E. THE DEIR/DEIS MUST ANALYZE AND ADOPT ALL FEASIBLE MITIGATION MEASURES AND ALTERNATIVES TO REDUCE THE PROJECT’S SIGNIFICANT ADVERSE IMPACTS INCLUDING GLOBAL WARMING

The EIR must analyze and adopt all feasible mitigation measures and alternatives to reduce this cumulatively significant impact of greenhouse gas emissions. CEQA requires agencies to adopt feasible mitigation measures or feasible environmentally superior alternatives in order to substantially lessen or avoid the otherwise significant environmental impacts of a proposed project. Pub. Res. Code §§21002, 21081(a); 14 Cal Code Regs. §§ 15002(a)(3), 15021(a)(2), 15091(a)(1). The EIR’s cursory analysis of mitigation and alternatives violates CEQA.

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CEQA requires that agencies “mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” Pub. Res. Code § 21002.1(b). Mitigation of a project’s significant impacts is one of the “most important” functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). Therefore, it is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which will avoid or substantially lessen the significant environmental effects of such projects.” Pub. Res. Code § 21002. Importantly, mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development.” *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles*, 83 Cal.App.4th 1252, 1261 (2000).

When discussing mitigation strategies, the DEIR/DEIS points to several Executive Orders by California Governor Jerry Brown, legislation passed by California. (DEIR/DEIS 4-109.) DEIR/DEIS also cites RCTC supporting efforts to reduce vehicle miles traveled by planning and implementing smart land use strategies job/housing proximity, developing transit-oriented communities, high-density housing along transit corridors, and increased fuel economy in vehicles while acknowledging RCTC does not have land use planning authority or control over national fuel economy standards. (RDIER 4-110.) Although RCTC does not have local land use planning authority. However RCTC cannot rely on state and national measures out of its control as viable mitigation for the Project. Instead, RCTC must consider all feasible mitigation measures that it can implement. Other air quality related mitigation measures are South Coast Air Quality Management District and Caltrans standards applicable to all construction Project. (DEIR/DEIS 3.14-44-5.) The DEIR/DEIS takes credit for significant reductions through the presumed effectiveness of future statewide measures and on state regulatory action. This approach largely relieves the Project applicant of any independent obligation to adopt needed additional measures to further reduce Project emissions. This outcome flies in the face of the findings in the Scoping Plan, which recognize that local governments "are essential partners" in achieving California's emissions reduction goals. Scoping Plan at 26; *see also Californians for Alternatives to Toxics v. Dept. of Food & Agric.*, 136 Cal. App. 4th 1, 17 (2005) (compliance with existing environmental laws or regulations is not sufficient to support a finding that a project will not have significant environmental impacts).

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The DEIR/DEIS' only Project specific mitigation strategies are limited and include landscaping, energy-efficient lighting and complying with California law on restricting idling of construction vehicles to 5 minutes. (DEIR/DEIS 4-112.) However this meager list does not include meaningful mitigation measures specific to the Project or the Project' GHG emissions impacts and includes no enforcement mechanisms. These vague mitigation measures, along with DEIR/DEIS' refusal to complete a significance analysis for GHG emissions impacts, amounts to an improper end-run around CEQA's requirement to adopt all feasible mitigation and alternatives.

There are any number of feasible measures that can be incorporated to reduce vehicle miles traveled, energy use, waste, water consumption and other sources of emissions. The California Air Pollution Control Officer's Association (CAPCOA) White Paper on CEQA and Climate Change identifies existing and potential mitigation measures that could be applied to projects during the CEQA process to reduce a project's GHG emissions. (CAPCOA 2008 at Appendix B). The California Office of the Attorney General also has developed a list of reduction mechanisms to be incorporated through the CEQA process. (California Office of the Attorney General 2010). These resources provide a rich and varied array of mitigation measures to be incorporated in both the programmatic and project level. These mitigation measures are included at Attachment B and must be analyzed to determine whether they are feasible in reducing the Project's significant greenhouse gas impacts. The EIR includes a paltry list of mitigation measures that fails to meet CEQA's substantive requirement to adopt all feasible mitigation. (DEIR/DEIS at 1-54, DEIR/DEIS App. D at 2-8).

VIII. THE DEIR/DEIS' AIR QUALITY ANALYSIS IS INADEQUATE AND INCONSISTENT

As part of NEPA's and CEQA's environmental review requirements, lead agencies must disclose a project's air quality impacts. Under the Federal Clean Air Act (CAA), National Ambient Air Quality Standards (NAAQS) for six transportation-related criteria pollutants and three "visibility reducing particles," and states, as part of their State Implementation Plans (SIP), establish State ambient air quality standards. In western Riverside County, air quality is managed by the South Coast Air Quality Management District (SCAQMD). Federal agencies cannot approve a project without first determining that the project conforms to the applicable SIP required under the CAA, at both the planning and programming level, and the project level. These conformity requirements apply to nonattainment and maintenance areas. (40 C.F.R. § 93).

The DEIR/DEIS inadequately discloses air quality impacts from the MCP and presents its analysis in a way that does not allow for meaningful public review and comment. The air quality impacts analysis presented in the DEIR/DEIS is inadequate for a number of reasons. First, the much of the data in support of impacts claims is inadequately substantiated or simply out of date. Second, measures to reduce Vehicle Miles Traveled (VMTs) and Vehicle Hours Traveled (VHTs) such as high occupancy vehicle (HOV) lanes, park and ride facilities, and expansion of public transit are not considered. Third, ozone (O₃) impacts are impermissibly omitted without any explanation or justification. Finally, temporary air quality impacts from construction activities are inadequately disclosed.

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In addition to these significant issues with the air quality impacts analysis in the DEIR/DEIS, certain assumptions, including that all vehicles in the project intersection will be operating in "fully warmed-up mode" and that "traffic distribution at the intersections under study does not vary from the EMFAC2007 standards" are used without adequate justification or explanation. This calls into question the credibility of the air quality impacts analysis as a whole.

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A. FAILURE TO ADEQUATELY DISCLOSE AND ANALYZE AIR QUALITY IMPACTS

Because of certain fundamental inadequacies in providing information in the DEIR/DEIS, the scientific accuracy and quality of information is inadequate to demonstrate to an apprehensive citizenry that sufficient analysis and consideration of the MCP's air quality impacts has been conducted by the agencies as required by NEPA and CEQA. (40 C.F.R. § 1500.2(f); 14 Cal. Code Regs. § 15003(d)). Additionally, the air quality impact claims in the DEIR/DEIS are based on the *Air Quality Analysis* (March 2012), a nearly 200-page document that was not provided as an appendix to the DEIR/DEIS, but was eventually made available on RCTC's MCP website at the request of the public. In particular, claims related to impacts from carbon monoxide (CO), particulate matter (PM), mobile source air toxics (MSATs), and regional emissions are inadequately supported by the data presented in the DEIR/DEIS.

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To support its claim of regional air quality conformity, the DEIR/DEIS relies on the MCP's inclusion in the 2012 RTP and 2011 FTIP, both of which were determined to conform to

the California's SIP under the CAA. (DEIR/DEIS at 3.14-11). Because, the DEIR/DEIS claims, the MCP's design and scope are consistent with the project's description in these two plans that have already been approved, regional air quality conformity has been achieved. (DEIR/DEIS at 3.14-11). However, this fails to analyze the Project's potential impacts with other air quality significance thresholds, such as exposure to sensitive receptors, violations of 1 hour or 8 hour thresholds, and contributions to cumulatively significant impacts.

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With respect to CO impacts, the DEIR/DEIS improperly relies on standards from a lapsed SCAQMD CO attainment plan. Additionally, the DEIR/DEIS routinely presents supporting scientific information in a way that hinders meaningful public review and repeatedly relies on technical studies that are not practically available to the public for review.

In addressing the MCP's CO impacts, the DEIR/DEIS claims "[b]ecause the background CO concentrations are lower at the MCP study area intersection(s) than for the intersections in the attainment plan, the project is not expected to result in any concentrations exceeding the 1-hour or 8-hour CO standards." (DEIR/DEIS at 3.14-19). The same justification is used for the agencies' decision not to conduct a CALINE4 CO hot-spot analysis. (DEIR/DEIS at 3.14-19.) One fundamental problem with this justification is that the 1997 attainment plan referenced lapsed and is no longer in effect. According to the SCAQMD Final 2003 Air Quality Management Plan (AQMP), this 1997 attainment demonstration lapsed at the end of 2000 and was replaced by a 2003 revision. (See SCAQMD 2003 Final AQMP at 5-1, "The 2003 CO Plan will serve as a replacement for the 1997 CO Plan that lapsed in 2000 and will provide the basis for a future maintenance plan for the Basin..."). The DEIR/DEIS also fails to adequately analyze the Project's consistency with the SCAQMD Carbon Monoxide Redesignation Request and Maintenance Plan. (SCAQMD 2005). The DEIR/DEIS cannot rely on an outdated plan in its analysis, but instead must analyze whether the Project will conflict with any applicable air quality management plan. Contrary to CEQA, the EIR fails to analyze what to what extent they would contribute to significant impacts to applicable air quality standards. (Guidelines § 15125(d); App. G § III(b).) More discussion of the CO attainment standards that should have been used in this DEIR/DEIS is contained in Chapter 5 and Appendix V of the 2003 AQMP. (See SCAQMD 2003 AQMP at 5-7 – 5-8). The use of this CO attainment demonstration that lapsed roughly 13 years ago is clearly erroneous, misleads the public, and results in faulty CO impacts analysis. Moreover, the inclusion of this clearly outdated data calls into question the scientific foundations of other conclusions throughout the DEIR/DEIS.

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When discussing air impacts resulting from other criteria pollutants, the scientific basis for the conclusions presented in the DEIR/DEIS is practically unavailable for meaningful review, either as a result of misleading cross referencing, unavailability, or both. The DEIR/DEIS explains chronic nonattainment of PM standards in the project area, including PM₁₀ in excess of state standards in the past five years and in excess of federal standards in 2007, federal 24-hour PM_{2.5} in excess of federal standards in each of the past five years, and annual PM_{2.5} in excess of both state and federal standards in each of the past 5 years. (DEIR/DEIS at 3.14-5) In discussing PM air quality impacts from the MCP, there is no substantial evidence for the conclusion that the project would not result in new violations of PM_{2.5} and PM₁₀ standards (DEIR/DEIS at 3.14-19). Not only does the DEIR/DEIS claim that there would be no new

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violations of PM standards, it claims a 5 to 6 percent reduction in PM_{2.5} and PM₁₀ emissions when compared to existing conditions. (DEIR/DEIS at 3.14-22). The EIR relies upon an improperly inflated baseline to mask the Project's significant impacts. Additionally, the use of average daily truck volumes from the 2012 TTR as support for the claims related to PM is suspect because of the faults contained the impacts traffic analysis, including inadequate assessment of impacts of the STAA requirement in the MCP project purpose and the failure to address impacts from the World Logistics Center.

In support of its PM impact claims, the DEIR/DEIS provides a list of rationales, many of which with only tangential implications to PM emissions. Moreover, the explanations that do directly support the DEIR/DEIS' claims surrounding PM cite to data contained in various tables in the DEIR/DEIS to assert that project-related PM emission increases would not result in any new exceedences of the federal standards and the project would result in a 5 to 6 percent reduction in regional PM emissions compared to existing conditions. Although these tables superficially support the contentions concerning PM impacts in the DEIR/DEIS, when the reader refers to the *2012 Air Quality Analysis* (cited as the source for this data) the reader finds the same rationale and data presented in the DEIR/DEIS without substantial evidence, if any additional analysis, and yet another citation to yet another study, cited as "*LSA Associates, Inc., May 2011.*" (*2012 Air Quality Analysis* at 24, 40). Information scattered here and there in EIR appendices or a report buried in an appendix is not a substitute for a good faith reasoned analysis. (*Vineyard Area Citizens v. City of Rancho Cordova* (2007)40 Cal.4th 412, 442. (citations omitted).)

Similarly, claims concerning impacts from MSATs and regional emissions are based on studies that are not adequately provided for public review. Because the MCP would result in the construction of a highway facility within 500 to 1000 ft of sensitive land uses (e.g., residences, schools, day-care centers, playgrounds, and medical facilities), the project is considered to have "higher potential for MSAT effects, and a quantitative analysis of MSAT emissions is required." (DEIR/DEIS at 3.14-32). As with the PM analysis, the DEIR/DEIS provides a chart for MSAT impacts and cites the 2012 Air Impact Study, (DEIR/DEIS at 3.14-34) and the Air Impact Study provides a nearly identical chart, and cites a third study, this time "*LSA Associates, Inc., 2011.*" (*2012 Air Quality Study* at 52). This study, from which the data presented in the DEIR/DEIS is apparently generated, is not adequately available to the public.

Finally, the analysis of regional emissions contained in the DEIR/DEIS, is also misleading and based on practically unavailable scientific data. The DEIR/DEIS claims although the MCP would increase emissions when compared to the 2020 and 2040 No Build conditions, the increase would be "less than 1 percent," and therefore the project would not contribute substantially to region-wide emissions." (DEIR/DEIS at 3.14-36). The basis for this claim is inadequately supported by the DEIR/DEIS. First, the claim "[t]he Build Alternatives would not generate new vehicular traffic trips because they would not construct new homes or businesses" misleadingly omits the MCP's growth inducing impacts. (DEIR/DEIS at 3.14-35). Also, to calculate emissions of CO, reactive organic gasses (ROGs), mono-nitrogen oxides (NO_x), oxides of sulfur (SO_x), PM₁₀, and PM₂₅ for the 2008, 2020, and 2040 regional conditions, the DEIR/DEIS uses emission rates from the EMFAC2007 model in conjunction with VMT and VHT data from a supplemental traffic analysis from 2012. (DEIR/DEIS at 3.14-36). The

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“supplemental traffic analysis” referenced here, cited as “Iteris, May 2012,” is not provided on the MCP website and is not readily available to the public.

It is unclear why the DEIR/DEIS does not cite directly to these outside studies which are apparently the sources for the data relied upon in the DEIR/DEIS. Furthermore, neither the “*LSA Associates, Inc., May 2011*,” the “*LSA Associates, Inc., 2011*,” nor the “Iteris, May 2012” supplemental traffic analysis studies are provided in the technical documents on the MCP website, and it is unclear where these studies can be found by the public, in violation of NEPA’s prohibition of incorporating by reference material that is not “reasonably available for inspection by potentially interested persons within the time allowed for comment.” (40 C.F.R. § 1502.21).

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Therefore, the reader is led on a wild goose chase that frustrates the information disclosure purposes of NEPA and CEQA, and the basis for the claims regarding CO, PM, MSAT, and regional emissions from the MCP cannot be meaningfully assessed by the public and decision makers as envisioned by NEPA and CEQA. (40 C.F.R. § 1500.2(d); 14 Cal. Code Regs. § 15003(d)). In addition, to the unavailability these studies, the excessive use of cross referencing and citing to outside sources that cite to additional outside sources violates CEQA’s mandate to present information “in a manner that will be meaningful and useful to decision-makers and to the public.” (Cal. Pub. Res. Code § 21003).

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The DEIR/DEIS discussion of “sensitive receptors” is cursory and somewhat misleading. The DEIR/DEIS states the majority of the sensitive receptors in the area are residential uses. ((DEIR/DEIS at 3.14-5). While this may be true, this statement over simplifies and minimizes the reality in the project area with respect to sensitive receptors, most notably omitting reference to numerous schools in the area, including, among others, Val Verde High School, Sierra Vista Elementary School, Rancho Verde High School, and various schools in the Lakeview area. Additional sensitive receptors are similarly omitted. The worsening of air quality impacts from the temperature inversions, significant in determining O₃, CO and PM₁₀ impacts, although mentioned in the DER/DEIS, are not fully disclosed and analyzed. (DEIR/DEIS at 3.14-4.)

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According to the DEIR/DEIS, one-hour O₃ and eight-hour O₃ levels exceeded state standards in each of the past five years, including “extreme nonattainment” of the federal eight-hour O₃ standard. (DEIR/DEIS at 3.14-5, 3.14-9). Despite explicitly recognizing “extreme nonattainment” of O₃ standards and the added difficulty of achieving acceptable O₃ levels caused by temperature inversions in the environmental setting portion of the air quality impacts analysis, O₃ impacts are completely omitted from DEIR/DEIS without any justification or explanation. This omission constitutes a failure to fully disclose the MCP’s air quality impacts as required by NEPA and CEQA. (40 C.F.R. § 1502.16; 14 Cal. Code Regs. § 15125(d); App. G § III(b).)

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Although the DEIR/DEIS does address temporary air quality impacts resulting from construction activities, including dust, emissions from construction, and increased traffic as a result of road work delays, the timeframe for construction used in this section of the DEIR/DEIS fails to fully account for the potential construction-related air quality impacts. The DEIR/DEIS assesses these temporary impacts based on a proposed construction schedule of 48 months (DEIR/DEIS at 3.14-41); however, elsewhere in the DEIR/DEIS, the construction is anticipated

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to be done in phases lasting significantly longer than the 48 months proposed here which would increase temporary environmental impacts. This potential for extended phased construction must be disclosed, analyzed, and mitigated by the DEIR/DEIS.

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The failure of the DEIR/DEIS to consider alternative means to reduce air quality impacts through reducing overall vehicle traffic and emissions by considering measures such as HOV lanes, park-and-ride facilities, and improvements to public transportation infrastructure is contrary to the requirement is NEPA and CEQA to provide all feasible alternatives, and feasible mitigation measures to avoid or minimize the MCP's impacts on air quality. (40 C.F.R. § 1502.14; 14 Cal Code Regs. §§ 15126.6, 15126.4).

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IX. THE DEIR/DEIS'S TRAFFIC ANALYSIS IS INADEQUATE AND INCONSISTENT

The DEIR/DEIS disclosed traffic-related impacts of the MCP in Section 3.6 Traffic and Transportation/Pedestrian and Bicycle Facilities and in the 2012 Traffic Technical Report (TTR) prepared by VRPA Technologies, Inc. Despite anticipating increased traffic on other roadways and impacts during construction, the DEIR/DEIS and TTR analysis conclude that the MCP is not expected to have any significant traffic impacts and therefore no mitigation measures are recommended. (TTR 8-2, 2012; DEIR/DEIS 3.6-2; DEIR/DEIS 3.6-49.) Neither of these two documents provides adequate or consistent analysis of the traffic related impacts of the MCP. (MRO 1-2, 2013)

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The study area used in the TTR and DEIR/DEIS is confined to a limited area the inappropriately narrows analysis of MPC's impacts. The TTR states that the study area it examined extends "one intersection to the north and south of the MCP. (TTR 2-3, 2012). Similarly, the DEIR/DEIS states that the "MCP traffic study area is focused along Cajalco Road and Ramona Expressway for analysis of capacity and transportation demand since it is the main existing wet-east connecting route between SR-79 and I-15." (DEIR/DEIS 3.6-17.) The study area's limited scope makes the conclusion that the proposed MCP will not cause adverse traffic impacts and that the Build Alternatives will not cause substantial increases in traffic and not require any avoidance, minimization or mitigation measures for permanent traffic impacts unsurprising. (DEIR/DEIS 3.6-25;52.)

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Additionally the traffic volume forecasts for build alternatives (TTR: Table 7-7, 7-11, 7-15) and the proposed MCP carry maximum bi-directional volumes of approximately 7,400 – 7,500 vehicles in the AM peak hour and over 8,400 vehicles in the PM peak hour (between Ramona Expressway and Bernasconi Road). As shown in the MRO Engineers Report, peak ramp volumes are also projected to be substantial with volumes as high as 1,317 in the PM peak hour. (MRO 3-4, 2013.) These high traffic volume forecast suggest that the effects of the MCP will extend further than the study area evaluated in the DEIR/DEIS. As noted by in the MRO Engineers Report "Hourly traffic volumes of 1,000 – 1,300 vehicles simply don't dissipate in the space of one intersection in each direction from the proposed corridor. The impacts of these vehicles will be felt substantially farther from the new parkway than this." (MRO 3, 2013.) The TTR acknowledges the far reaching impacts of the Project and states, "While I-15 and Cajalco

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Road are relatively far away from the modified project alternatives, the potential for the project to increase traffic in these areas was considered to be worthy of consideration.” (TTR 5-1, 2012.) Nonetheless, the study area was created to extend to a tiny area that fails to capture the true impacts of the Project. CEQA has been interpreted as requiring “an EIR may not ignore the regional impacts of a project...on the contrary, a regional perspective is required.” (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, at 575). The DEIR/DEIS should be revised to include studies of all of the freeways, interchanges, roads and interchanges that would be impacted by the proposed MCP.

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X. GROWTH INDUCING IMPACTS

Both NEPA and CEQA require analyses of the MCP’s potential growth inducing impacts. (40 C.F.R. § 1508.8(b); 14 Cal. Code Regs. §15126.2(d)). NEPA requires consideration of “reasonably foreseeable” indirect effects, including growth inducing effects. (40 C.F.R. § 1508.8(b)). CEQA requires discussion and evaluation of “growth-inducing impacts,” that is, “the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” (14 Cal. Code Reg. § 15126.2(d)).

The MCP Build Alternatives all have the potential to accelerate growth trends in western Riverside County, especially immediately surrounding the MCP. As a project that “would remove obstacles to population growth” and that “may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively” the MCP’s growth-inducing impacts must be disclosed and analyzed in the DEIR/DEIS. (14 Cal. Code Reg. § 15126.2 (d)).

While the DEIR/DEIS recognizes that the MCP will increase growth, many efforts are made to support the notion that the MCP is more a response to pre-existing growth trends, and not a catalyst for further growth. In support of the contention that the western Riverside County is experiencing rapid growth, the DEIR/DEIS cites a 2008 study that found an expected 60% increase in population and an 80% increase in employment between 2010 and 2035. (DEIR/DEIS 3.2-1). The DEIR/DEIS touches on the potential for the economic recession to slow this anticipated growth, but claims “[e]ven with the economic slowdown that began in 2008” the 2008 study incorporated this into its analysis and therefore still supports this projected growth. (DEIR/DEIS 3.2-2). This 2008 study could not have possibly incorporated the impacts from the economic recession in its projections.

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Regardless of the accuracy of these growth projections, the question whether the MCP will induce further growth or accelerate these existing growth trends remains and must be addressed by the DEIR/DEIS. As a dramatic expansion of transportation capacity and access to undeveloped areas of western Riverside County it is hard to conceive of how this MCP would not induce growth. When the on-the-ground reality of the area in which the MCP is planned to be built is assessed, the virtual certainty of significant growth inducement becomes readily apparent. Other planned projects that will have cumulative and synergistic growth inducing effects with

the MCP including, but not limited to, the World Logistics Center⁸, Motte Lakeview Ranch Project⁹, and the County's projections to create a city of Lakeview. While the growth inducing effects of the Villages of Lakeview project in conjunction with the MCP are mentioned by the DEIR/DEIS (DEIR/DEIS at 3.2-13), impacts from the World Logistics Center are completely omitted.

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The potential growth inducing impacts arising out of the interaction between the MCP and the World Logistics Center must be included in the DEIR/DEIS to adequately address the potential growth inducing impacts and region wide impacts of the MCP. (Moreno Valley 2013, designated as a Regionally Significant Project). The World Logistics Center is planned to be constructed directly north of the MCP and would drive traffic to the MCP via Perris Boulevard or the Gilman Springs Road and Bridge Street connection. Envisioned as a center of employment and commerce, it is foreseeable that there will be transit between the MCP and the World Logistics Center, and that the increased access provided by the MCP will accelerate any growth induced by the World Logistics Center. Also, the draw of the World Logistics Center will likely contribute to and accelerate growth induced by the MCP itself. Omitting analysis of the growth inducing impacts related to the World Logistics Center discloses an incomplete analysis to the public and decision makers.

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These growth impacts will affect a number of resources, including threatened and endangered species, aquatic resources, cultural resources, and farmlands. (DEIR/DEIS 3.2-14). Regarding growth implication on farmlands, the DEIR/DEIS concedes "[t]he MCP project would result in conversion of farmlands and other land uses to transportation uses... [and] it could also lead to acceleration of loss of farmlands among other land uses being impacted." (DEIR/DEIS at 3.2-17). The DEIR/DEIS goes on to claim because there are other development proposals independent from the MCP, the MCP will not be a "sole-source catalyst" for the growth effects that will impact farmlands. (DEIR/DEIS 3.1-18). This "sole-source catalyst" is not the question that must be addressed by the growth inducing impacts analysis in the DEIR/DEIS; the lead agencies must analyze and disclose the extent to which the MCP will contribute to these growth trends, and, further, must present avoidance, minimization, and mitigation measures for these impacts.

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It is important to note, that these are merely some examples of resources that will be impacted by growth, and by no means is a complete or exhaustive list. Other resources that will likely be impacted include noise and light pollution, air quality impacts, impacts to other plants and animals, and a host of other vulnerable resources.

With respect to the implication of this growth on biological resources, the DEIR/DEIS claims "although adverse growth-related effects to threatened and endangered species (and other biological resources) may occur as a result of the MCP project, these effects have been considered and mitigated through the MSHCP." (DEIR/DEIS at 3.2-15). However, as discussed above, the MSHCP mitigation is inadequate.

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8 City of Moreno Valley. World Logistics Center Project: General Plan Amendment, Specific Plan, Zone Change, Tentative Parcel Map, Development Agreement, Annexation (SCH # 2012021045).

9 Riverside County, Motte Lakeview Ranch Project: GPA 00835, Change of Zone 07446, EIR 523, TPM 35872.

Concerning aquatic resources, again consistency with the MSHCP is relied upon, including speculative future DBESPs for unavoidable impacts to aquatic resources. Additionally, compliance with Section 404 of the CWA is also cited as a mitigation measure for aquatic resources impacts arising out of the growth effects of the MCP. (DEIR/DEIS at 3.2-19).

IP-6-129

In addressing growth impacts to cultural resources, the DEIR/DEIS claims “[b]ecause these development proposals are proceeding irrespective of the MCP project, the MCP project is not anticipated to have any growth-related effects on cultural resources.” (DEIR/DEIS at 3.2-17). This claim does not address the impacts on cultural resources that are likely to arise out of the increased access, accelerated pace of development, and other impacts from the growth facilitated by the MCP on cultural resources. Additionally, planned consistency with the Riverside County General EIR is used by the DEIR/DEIS as a minimization measure against growth impacts to cultural resources. For any remaining impacts, the DEIR/DEIS claims that through compliance with the Riverside County General Plan, these impacts will be minimized. (DEIR/DEIS 3.2-20). However, these claims cannot be supported by substantial evidence.

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In conclusion, the growth inducing impacts of the MCP are inadequately disclosed, and where these impacts are recognized avoidance, minimization, and mitigation measures presented are inadequate.

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XI. CUMULATIVE IMPACTS

NEPA requires an EIS to analyze “cumulative actions, which when viewed together have cumulatively significant impacts.” (40 C.F.R. § 1508.25(a)(2)). Cumulative impact is defined by the NEPA regulations as environmental impacts resulting from “the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions.” (40 C.F.R. § 1508.7).

CEQA requires discussion of cumulative impacts of a project’s incremental effects that are cumulatively considerable, and if the lead agency determines the effects are not cumulatively considerable, it must explain its basis for this conclusion (14 Cal. Code. Regs. § 15130 (a)). CEQA regulations define cumulative impacts as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (14 Cal. Code. Regs. § 15355). Further, an EIR must adequately reflect the severity of the impacts and the likelihood of occurrence. (14 Cal. Code. Regs. § 15130 (b)). The minimum requirements for a cumulative analysis under CEQA are:

- (1) Either:
 - (A) A list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or
 - (B) A summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions

contributing to the cumulative effect. Such plans may include: a general plan, regional transportation plan, or plans for the reduction of greenhouse gas emissions. A summary of projections may also be contained in an adopted or certified prior environmental document for such a plan. Such projections may be supplemented with additional information such as a regional modeling program. Any such document shall be referenced and made available to the public at a location specified by the lead agency.

(2) When utilizing a list, as suggested in paragraph (1) of subdivision (b), factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project and its type. Location may be important, for example, when water quality impacts are at issue since projects outside the watershed would probably not contribute to a cumulative effect. Project type may be important, for example, when the impact is specialized, such as a particular air pollutant or mode of traffic.

(3) Lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.

(4) A summary of the expected environmental effects to be produced by those projects with specific reference to additional information stating where that information is available, and

(5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects.

(14 Cal. Code. Regs. § 15130.)

Here, the DEIR/DEIS is deficient for at least three reasons, cumulative impacts to climate changes are inadequately addressed, the cumulative impacts from other planned projects including the planned World Logistics Center, to be built just north of the MCP, Motte Ranch and other proposed development, are not disclosed, and the assurances of consistency with HCPs and local plans used consistently as support for claims of insignificant cumulative impacts are inadequately supported.

The DEIR/DEIS recognizes that the MCP will have a number of cumulative impacts to a variety of resources, including farmlands, visual/aesthetic resources, cultural resources, visual/aesthetic impacts, paleontological resources, natural communities, wetlands and other waters, plant species, animal species, and threatened and endangered species. This falls short of complete disclosure. The deficiency is the result of baselines that exclude potentially significant sources cumulative impacts and reliance on inadequately demonstrated consistency with existing HCPs and General Plans.

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A. THE SCOPE OF THE CUMULATIVE IMPACTS ANALYSIS IS IMPROPERLY NARROW AND MUST CONSIDER CUMULATIVELY CONSIDERABLE IMPACTS IN RELATION TO OTHER PROJECTS

The omission of other projects that could considerably increase the MCP’s cumulative impacts substantially and an improperly narrow scope of the cumulative impacts analysis area fail to disclose the reasonably foreseeable cumulative impacts of the MCP project. Under CEQA, future expansions or other actions that will likely change the scope or nature of the initial project’s environmental effects must be considered, and “[l]ead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used.” (Guidelines, § 15130, subd. (b)(3).) When analyzing the scope of the cumulative impacts included in an EIR, the issue is whether inclusion was reasonable and practical, and whether without their inclusion, the severity and significance of the cumulative impacts were reflected adequately. (*Envtl. Prot. Info. Ctr. v. California Dept. of Forestry & Fire Prot.*, 44 Cal.4th 459, 525 (2008)).

To fully analyze impacts to these resources, the DEIR/DEIS must look beyond the imprudently limited study area, and should look to other cumulatively considerable impacts such as the World Logistics Center. The World Logistics Center is a planned project that will be built between the proposed MCP and HWY 60, directly north of the San Jacinto Wildlife Area. The World Logistics Center shares numerous impacts in common with the MCP and these impacts from these projects are likely to be cumulatively considerable. Significant impacts from the World Logistics Project will include impacts to aesthetics, farmland, air quality, greenhouse gas emissions, noise, and transportation facilities. (World Logistics Center Project Draft Environmental Impact Report at 1-7). The impacts from the World Logistics Center in combination with the impacts from the MCP will be greater than the impacts as described by the DEIR/DEIS.

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Here, because the World Logistics Center is not even mentioned, let alone its impacts disclosed and addressed, the cumulative impacts analysis unreasonably omits a cumulative impact resulting in inadequate disclosure. The DEIR/DEIS limits the geographical scope of its cumulative impacts analysis in a way that excludes the World Logistic Center, despite the project having environmental impacts that will likely make impacts from the MCP project “cumulatively considerable.” (Guidelines, § 15130 (a)). According to the DEIR/DEIS, the study area for cumulative impacts was the MCP study area “in most cases.” (DEIR/DEIS at 3.25-2). Even in the cases where the cumulative impacts study area was expanded, the World Logistics Center is never included.

The World Logistics Center is more than a foreseeable project; it is a project that is in the process of environmental review itself and it all but certain to be built. As a project that will impact many of the same resources in the general area of the MCP, it is likely that the World Logistics Center will change the scope and nature of the MCP’s environmental impacts, and is therefore a cumulative impact that must be included in the DEIR/DEIS.

Impacts arising from the World Logistics Center that will make impacts from the MCP cumulatively considerable include, but are not limited to, impacts to natural communities, impacts to plant and animal species including threatened and endangered species, farmland conversion, air quality impairment, and historic and archeological resources. (See World Logistics Center Project Draft Environmental Impact Report).

As an example of a specific impact arising out of the World Logistics Center that will exacerbate impacts from the MCP, cumulative impacts to burrowing owls are inadequately disclosed and addressed. While impacts from the Villages of Lakeview and SR-79 Realignment projects are disclosed, the impacts to burrowing owl habitat from the World Logistics Center, which is within areas requiring burrowing owl surveys, are not disclosed because this project is outside the designated MCP study area. Taking into account the cumulative habitat loss for this species, however, the impacts to habitat resulting from the World Logistics Center should also be disclosed in the DEIR/DEIS to present the public with a complete picture of the cumulative impacts on this special status species.

Because the cumulative impacts arising out of the World Logistics Center are not discussed, the public and decision-makers cannot meaningfully assess whether potential significant environmental impacts were minimized, avoided, or mitigated. If the cumulative impacts arising from the World Logistics Center in conjunction with the MCP were addressed in a prior EIR for a general plan of for the MSHCP, the DEIR/DEIS must disclose this and incorporate these analyses by reference. (Guidelines, § 15130 (d), & (e)).

B. RELIANCE ON SPECULATIVE CONSISTENCY WITH MSHCP AND OTHER MEASURES AS IMPROPERLY SKEWS BASELINE IMPACTS AND IS INADEQUATE AS A MITIGATION MEASURE

Further skewing the analysis of cumulative impacts, where cumulative impacts are discussed, the DEIR/DEIS consistently relies on anticipated consistency with various HCPs and General Plans, future agreements, and other speculative measures to mitigate cumulative impacts. The primary projects that are recognized as having cumulatively considerable impacts are the Villages of Lakeview Specific Plan and the SR-79 Realignment Project, both of which are anticipated to have significant cumulative impacts.

These projects affect a number of resources, for example, in the area of threatened and endangered species, habitat affected by the MCP will also be impacted. First, according to the EIR for the Villages of Lakeview Specific Plan, that project will impact habitat for SKR and CCGN. (Villages of Lakeview FEIR 2.0-26-3 (2009).) Second, according to preliminary studies of the SR-79 Realignment Project, that project will impact “up to 331 ac of critical habitat for spreading navarretia, 356.8 ac of [SKR] habitat, 6,548 SJVC, 101.41 ac of CCGN suitable habitat” in addition to impacting other species. (DEIR/DEIS 3.25-51). Similarly cumulatively considerable impacts from these projects extend into other areas as well.

Reliance on the MSHCP is pervasive in the DEIR/DEIS in its discussion of cumulative impacts, despite inadequate assurances of mitigation by the MSHCP. For example, the

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DEIR/DEIS claims “[c]umulative impacts to natural communities, plant species, animal species, and threatened and endangered species will be mitigated through compliance by RCTC and other permittees with the Western Riverside County MSHCP.” (DEIR/DEIS 3.25-53). As noted in the Center’s comments of the Biological Resources section of this DEIR/DEIS, the MSHCP mitigation scheme is inadequate to fully mitigate impacts.

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As another example of reliance on speculative future measures, in addressing cumulative impacts to cultural and historic sites, the DEIR/DEIS explains mitigation will not be fully defined until a Preferred Alternative is identified and a Memorandum of Agreement, to be included in the Final EIR/EIS, has been developed and agree to between FHWA and the consulting parties for National Register eligible resources. (DEIR/DEIS 3.25-38). This deferral of analysis prevents the public and decision-makers from having an opportunity to analyze and comment on the cumulative impacts to cultural and historic resources and is contrary to CEQA’s early disclosure policy. (Cal. Pub. Res. Code § 21003.1(b)).

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XII. THE DEIR/DEIS FAILS TO ADEQUATELY ANALYZE THE GEOLOGIC IMPACTS AND GEOLOGIC SETTING

The Project fails to adequately analyze the environmental setting and impacts as it relates to the Project’s potential impact to and be affected by local and regional geology. The Project would cross the Alquist-Priolo Earthquake Fault Zone, Casa Loma Fault, and is located in the vicinity of the San Jacinto Fault Zone. The east end of the project is within an area of relatively rapid subsidence due to combination of tectonic and groundwater conditions. (Morton pers. comm.¹⁰). This has caused necessary repairs to the Ramona Expressway, which has had to be repaired due to offset pavement where it crosses the Casa Loma Fault. (Morton pers. comm.). Metropolitan Water District’s aqueduct has been offset and realigned on two occasions due to displacement on the Casa Loma Fault. (Morton pers. comm.).

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The DEIR fails to adequately analyze subsidence-related fissures that extend west from the San Jacinto pull-apart basin, across Davis Road (just north of the San Jacinto River channel) to the area of Bernasconi Road. This is due, in part, to the DEIS/DEIR’s failure to include an adequate geologic map in the DEIR/DEIS itself in order to fully disclose and analyze the actual geologic conditions in the Project area. In order to properly describe the environmental setting, which will promote an adequate analysis, there must be a detailed geologic map with an accurate location of the proposed highway, a discussion on subsidence and impacts on the Project, and a discussion on fissuring and impacts on the Project.

XIII. THE DEIS/DEIR VIOLATES SECTION 4(f) OF THE DEPARTMENT OF TRANSPORTATION ACT.

In enacting section 4(f) of the Department of Transportation Act of 1966, Congress declared that "special effort should be made to preserve the natural beauty of the countryside and

¹⁰Doug Morton, UC Riverside, Adjunct Professor of Regional Geology of Southern California; personal communication (April 4, 2013)”

public park and recreation lands [and] wildlife and waterfowl refuges...." 49 U.S.C. § 303. As a means of realizing these broad goals, Congress specified two fundamental substantive mandates under the Act: (1) prohibiting federal agencies from approving transportation projects that require use of a public park, recreation area or wildlife refuge unless there are no feasible and prudent alternatives to using the parkland; and (2) requiring transportation projects which use a public park, recreation area or wildlife refuge to include all possible planning to minimize harm to the parkland. 49 U.S.C. § 303(c). The Transportation Act thus codified the requirement that federal agencies consider alternatives to environmentally damaging proposals several years before this principle was enshrined as a core provision in NEPA. The Act's provisions are even more stringent than NEPA's, however, in that they provide substantive direction that alternatives to proposed highway routes which would destroy public parks must be selected when such alternatives are feasible and prudent.

Authoritative interpretation of federal agencies' duties under this provision was first established and continues to be provided by the 1971 Supreme Court decision in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, in which the Court overturned the Secretary of Transportation's approval of a six-lane highway through a park in Memphis, Tennessee. In reaching its decision, the Court held that "only the most unusual situations are exempted" from the 4(f) mandate. The Court further elaborated that only "unique problems" such as extreme financial costs or community disruption of "extraordinary magnitudes" would constitute such "unusual situations." *Id.* at 411,413.

As Justice Marshall explained, the "very existence" of section 4(f) demonstrates "that protection of parkland was to be given paramount importance." (*Id.* at 412-413.) By holding that only alternatives which included additive costs or community disruption of "extraordinary magnitude" could justify an exemption to section 4(f), the Court made clear that choosing a siting alternative that requires use of a public park or recreation area simply because it is the least expensive or most efficient choice does not meet the rigorous mandate of the provision. *Overton Park* thus sharply limits the discretion of federal agencies in approving proposed transportation projects affecting 4(f) resources.¹¹

A. THE DEIR/DEIS FAILS TO ADEQUATELY CONSIDER THE PROJECT'S CONSTRUCTIVE USE OF 4(F) RESOURCES.

The MCP alternatives will undeniably have serious impacts on numerous 4(f) resources. Each of the MCP alignments would impact hundreds of acres within various parks and habitat reserves through direct impacts caused by the actual siting of the Project. Yet, while the DEIR/DEIS acknowledges many of these direct impacts, it fails to adequately address "constructive use" impacts to 4(f) lands that will be adjacent to, but not directly used by, the Project.

A "constructive use" of 4(f) lands occurs when:

¹¹ The standards outlined in the *Overton Park* case have been codified by the Department of Transportation's section 4(f) implementing regulations at 23 C.F.R. § 771.135.

[A]-transportation project does not incorporate land from a section 4(f) resource, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the resource are substantially diminished.

(23 C.F.R. §771.135(p)(2).) Examples of constructive uses include noise increases, substantial aesthetic impairment, restriction of access, vibration impacts, and ecological intrusions, among others. (See 23 C.F.R. § 771.135(p)(4).)

The application of section 4(f) to constructive use has been recognized by the courts in a wide variety of circumstances. The 9th Circuit was the first to recognize such circumstances and has continued to do so. In *Brooks v. Volpe*, 460 F.2d 1193, 1194 (9th Cir. 1972), for example, the court found that a highway encircling a campground was subject to section 4(f) despite the fact that there was no actual use of protected lands. Since then, federal courts have found constructive use of section 4(f) lands resulting from such impairments as increased noise, unsightliness, and impaired access. (See, e.g., *Citizens Against Burlington, Inc. v. Busey* (D.C. Cir. 1991) 938 F.2d 190,202 (holding noise from airport expansion would impact nearby park); *Citizen Advocates for Responsible Expansion, Inc. v. Dole* (5th Cir. 1985) 770 F.2d 423,439 (holding highway project would cause aesthetic and visual intrusion on protected park and historic buildings); *Monroe County Conservation Council v. Adams* (2d Cir. 1977) 566 F.2d 419,424 (holding highway would restrict access to park because nearby residents would have to cross four lanes of heavy traffic).)

The DEIR/DEIS contains a confusing and contradictory analysis of whether a constructive use analysis was conducted properly or even accomplished at all. (See DEIR/DEIS App. B.) The DEIR/DEIS must contain a constructive use analysis for parks, such as the San Jacinto Wildlife Area, the Lake Perris State Recreation Area, Liberty Park, Paragon Park, Morgan Park, May Ranch Park, Colonel Lewis Millett Park, Val Verde High School, Val Verde Elementary School, Triple Crown Elementary School, May Ranch Elementary School, Southwest High School, Avalon Elementary School, Sierra Vista Elementary School, Lakeside Middle School, Mountain Shadows Middle School, Nuvview Bridge Early College High School, BLM Managed Lands in the Lakeview Mountains, on and off street trails designated in the General Plans for the cities of Perris, San Jacinto, and the County of Riverside.

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The Revised Section 4(f) Evaluation claims that the DEIR/DEIS did not identify any significant impacts that would affect nearby 4(f) resources. (DEIR/DEIS App. B at A-1). This assertion is not supported by the EIR, which finds a significant adverse impact to aesthetics, cultural resources, noise, and farmlands. (DEIR/DEIS at S-14). The proximity of a 6 lane freeway with significant impacts to noise and aesthetics, which will directly impacts some parklands and have a substantial impairment on 4(f) resources. It would also directly and indirectly impact cultural resources. It would also prohibit access to some of these areas for short and long term periods.

The EIR also fails to analyze all feasible alternatives or mitigation measures to avoid or reduce the impacts of developing parklands and wildlife areas. (49 U.S.C. § 303(c).) The Project would result in permanent use of the San Jacinto Wildlife Area, P-33-16598 (CA-RIV-8712) Multi-Use Prehistoric Site, and P-33-19862, P-33-19863, P-33-19864, and P-33-19866. However, it fails to properly conduct an alternatives or mitigation analysis that demonstrates there are no feasible and prudent alternatives or additional planning mechanisms to reduce impacts. This is due, in part, to the EIR's flawed alternatives analysis that essentially relegates all alternatives a six-lane roadway along the same route due to an improperly constrained purpose and need. This faulty 4(f) analysis must be rejected.

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XIV. THE PROJECT FAILS TO ADEQUATELY ANALYZE OR MITIGATE THE PROJECT'S NOISE IMPACTS

Another inadequacy of the MCP DEIR/DEIS is its analysis of and mitigation for the Project's noise impacts. The proposed Project will result in two separate types of noise impacts: construction equipment noise and traffic noise from the cars and trucks that would travel along this six to eight lane freeway. The closest frequent outdoor use areas are within 50 ft of the Project construction areas and could experience noise from construction at levels as high as 95 dBA (i.e., similar to a gas lawn mower at a distance of one meter), while noise from the traffic traveling along the freeway would substantial increases compared to current noise levels. (DEIR/DEIS 3.15-100; 4-53.) The DEIR/DEIS acknowledges that some sensitive receptors would be exposed to noise level approaching or exceeding 67 dBA or experience a substantial increase of 12 dBA over their existing noise level even after mitigation measures are put in place. (DEIR/DEIS 4-55.) Given the severity of the Project's potential noise impacts, coupled with the effect that elevated noise levels has on public health, the DEIR/DEIS should have rigorously examined this issue. Unfortunately, the document's analysis of noise impacts is inadequate and includes several errors, some of which are briefly reviewed here.

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For example, the DEIR/DEIS does not provide sufficient information on specific sensitive receptor locations were selected, whether these locations are in fact representative of all potentially affected sensitive receptors, or the distance between the sensitive receptors. If the DEIR/DEIS underrepresented the number and type of potentially affected receptor locations, it also necessarily underestimated the Project's noise impacts on these receptors. It is also important to note that where existing ambient noise is already elevated, tolerance is very low for *any* increase in noise. Existing ambient noise at the Val Verde High School is already elevated. (DEIR/DEIS 3.15-17.) Here and at other sensitive receptor locations currently exposed to elevated noise levels, the proper question is not the relative amount of noise resulting from the Project, but "whether *any* additional amount of [] noise should be considered significant ... " in light of existing conditions. (*Los Angeles Unified School District v. City of Los Angeles*, 58 Cal.App.4th 1019, 1025-26 (1997) (emphasis added).)

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Another inadequacy in the DEIR/DEIS noise impact analysis, is the DEIR/DEIS failure to evaluate single noise events or nighttime noise during the operation of the MCP. Motor vehicle noise is often characterized by a high number of individual events, which can create a higher sustained noise level in proximity to areas sensitive to noise exposure. Moreover, heavy

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trucks and tractor-trailers generate significantly more single noise events than other vehicle types, as noted by the DEIR/DEIS. (DEIR/DEIS at 3.15-67.) The DEIRIS' noise analysis should have evaluated how single noise events from trucks traveling along the freeway would impact sensitive receptors, some of which would be no more than 50 feet from the freeway. Analyzing only average noise impacts has been rejected by California courts because impacted residents do not hear noise averages, but single events. (*See Berkeley Keep Jets Over the Bay Committee v. Port of Oakland* (2001) 91 Cal.App.4th 1344, 1382 (2001).) Single event noise levels have been shown to be likely to result in sleep disruption and speech interference, and heightened levels of stress and annoyance, all of which should have been analyzed in the noise impacts analysis. Lastly, even when abatement and mitigation measures are proposed for the noise impacts, the implementation of those measures is left uncertain. (DEIR/DEIS 3-15-103.)

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The MCP DEIRIS thus fails to fulfill the fundamental purpose of CEQA and NEPA. An EIR is meant to be an informational document, a means of "inform[ing] the public and its responsible officials of the environmental consequences of their decisions before they are made." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.) Likewise, NEPA's fundamental purpose is to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." (40 C.F.R. § 1500.1(b).) Here, the DEIR/DEIS fails to fulfill this fundamental purpose with regard to noise impacts from the Project.

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XV. THE EIR MUST BE RECIRCULATED FOR PUBLIC REVIEW AND COMMENT

A lead agency must re-circulate an EIR for further public comment under any of four circumstances:

- (1) When the new information shows a new, substantial environmental impact resulting either from the project or from a mitigation measure;
- (2) When the new information shows a substantial increase in the severity of an environmental impact, except that recirculation would not be required if mitigation that reduces the impact to insignificance is adopted;
- (3) When the new information shows a feasible alternative or mitigation measure that clearly would lessen the environmental impacts of a project and the project proponent declines to adopt the mitigation measure; or
- (4) When the draft EIR was "so fundamentally and basically inadequate and conclusory in nature" that public comment on the draft EIR was essentially meaningless.

(14 Cal Code Regs. §15088.5.)

Based on the comments above, it is clear that the EIR must be re-drafted and re-circulated. Conditions (1) and (2) above will be met by meaningful and adequate discussion of the project itself and the project's impacts to biological resources and greenhouse gases. Failure to address these impacts is inadequate and requires further analysis and recirculation. The combined effect of these omissions makes it clear that the fourth condition has also been met.

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CONCLUSION

Thank you for your attention to these comments. We look forward to working to assure that the Project and environmental review conforms to the requirements of state and federal law and to assure that all significant impacts to the environment are fully analyzed, mitigated or avoided. Should you have any questions feel free to contact Jonathan Evans at the contact information listed above.

The Center for Biological Diversity, San Bernardino Valley Audubon Society, and Sierra Club wish to be placed on the mailing list for all future notices regarding this project. Please mail all notices to CBD at the address listed above (via email at jevans@biologicaldiversity.org); San Bernardino Valley Audubon Society at and P. O. Box 10973, San Bernardino, California 92423-0973; and Sierra Club, San Gorgonio Chapter, Moreno Valley Group, 26711 Ironwood Ave, Moreno Valley, CA. 92555.

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Sincerely,



Jonathan Evans
Aruna Prabhala
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/s/

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Sierra Club

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