



DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

REPLY TO

ATTENTION OF:

April 8, 2013

Office of the Chief,
Regulatory Division

Mr. Tay Dam
Federal Highway Administration
California Division
650 Capitol Mall, Suite 4-100
Sacramento, California 95814

Dear Mr. Dam:

The U.S. Army Corps of Engineers (Corps) has reviewed the combined Re-circulated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) for the **Mid-County Parkway (MCP)** project located in western Riverside County, California. This letter transmits our comments on the proposed 16-mile-long, six-lane limited access transportation facility located between State Route 79 and Interstate 215. The Corps has assigned **File No. SPL-2013-00225** to this project; any future correspondence with our office should reference to this file number.

The RDEIR/SDEIS has been prepared by the Riverside County Transportation Commission (RCTC) and the Federal Highway Administration (FHWA) in cooperation with the State of California Department of Transportation (Caltrans) to comply with the provisions of the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). RCTC is the project proponent and lead agency under CEQA and FHWA is the lead agency under NEPA.

The purpose of the MCP project is to provide effective and efficient regional west-east movement of people, goods and services between and through the cities of Perris and San Jacinto. Four build alternatives are examined in the RDEIR/SDEIS, plus two No Action alternatives and the No Federal/404 Action alternative (i.e., an alternative that would not involve the discharge of dredged or fill material into waters of the United States and therefore, would not require the Corps to render a section 404 permit decision). According to information presented in the RDEIR/SDEIS, approximately 6.6 acres to 7.3 acres of jurisdictional waters of the United States would be permanently impacted, depending on the build alternative selected. Of the total acreage of permanent impacts to waters of the United States, 2.0 to 2.2 acres are wetlands that would be permanently lost as a result of the discharge of fill material.

As a cooperating agency under NEPA, the Corps' participation in the MCP RDEIR/SDEIS and environmental evaluation process has been governed by the procedures set forth in the 2006 *Memorandum of Understanding (MOU) for the NEPA/CWA 404 Integration*

Process for Surface Transportation Projects in California, Council on Environmental Quality (CEQ) NEPA implementing regulations at 40 C.F.R. § 1500 – § 1508, and the Corps Regulatory Program NEPA implementing regulations at 33 C.F.R. § 325, Appendix B. Based on our special expertise and jurisdiction by law pursuant to section 404 of the Clean Water Act (33 U.S.C. 1344) we have provided guidance to RCTC to ensure all practicable measures are taken to avoid and minimize adverse impacts on the aquatic environment. Our involvement has also focused on facilitating the Corps' ability to eventually adopt FHWA's Final EIS for our independent NEPA obligations related to our discretionary federal action (i.e., section 404 permit decisions).

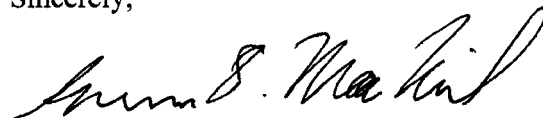
Based on our review of the RDEIR/SDEIS, including Appendices M and P, we did not identify any substantial unresolved issues or significant deficiencies related to the range of alternatives or the assessment of wetlands and other aquatic resources under our geographic jurisdiction. However, we do have several comments that we request be addressed or otherwise resolved prior to the finalization of the joint CEQA/NEPA document. These comments are provided in the attached enclosure. Of most importance, we recommend a more developed conceptual compensatory mitigation plan that presents a greater level of detail as to where, how, when and who will accomplish the compensatory mitigation for unavoidable impacts to waters of the United States. A final compensatory mitigation plan must be approved by the Corps prior to the issuance of a section 404 standard individual permit (33 C.F.R. § 332.4(c)).

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I am providing courtesy copies of this correspondence to the following individuals: Ms. Susan Sturges, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne St, CED-2, San Francisco, California 94105; Ms. Karin Cleary-Rose, U.S. Fish and Wildlife Service, 777 East Tahquitz Canyon Way, Suite 208, Palm Springs, California 92220; Ms. Marie Petry, Caltrans, Division of Environmental Planning, 464 West 4th Street, MS 1222, San Bernardino, California 92401-1400; Mr. Rob McCann, LSA Associates, Inc., 20 Executive Park, Suite 200, Irvine, California 92614; and Ms. Cathy Bechtel, Riverside County Transportation Commission, P.O. Box 12008, Riverside, California 92502.

Thank you for the opportunity to engage in the MCP environmental review process and provide our input under our section 404 of the CWA authority. Should you have any questions or need additional information, please feel free to contact Ms. Susan A. Meyer of my staff at (808) 835-4599 or at susan.a.meyer@usace.army.mil.

Sincerely,



Spencer D. MacNeil, D.Env.
Chief, Transportation and Special Projects Branch

Enclosure

ENCLOSURE: U.S. Army Corps of Engineers, Comments on the Mid-County Parkway RDEIR/SDEIS (dated January 2013), Riverside County, CA

Comment #	Location	Comment/Question
General Comments		
1	Cover Sheet	Based on CEQ NEPA implementing regulations, the Corps' logo (i.e., Corps castle) and name should appear on the cover page of the RDEIR/SDEIS as a cooperating agency (refer to 40 C.F.R. § 1502.11).
Chapter 2: Alternatives		
2	Section 2.3.2.14, Page 2-43	This section indicates that if the construction contractor chooses to use sites not previously considered and evaluated in the RDEIR/SDEIS for the excavation of borrow material, additional environmental approvals for those sites would be required at that time. To minimize the potential for unauthorized impacts to waters of the United States and/or obviate the need for a Department of the Army (DA) permit modification for any such construction deviations, we recommend RCTC place restrictions on the construction contractor such that any new or additional excavation (borrow) areas not previously identified and permitted be sited in uplands or areas that would avoid adverse impacts to waters of the U.S. and other environmentally sensitive habitats and species. Any unauthorized impacts to waters of the United States would constitute a violation under section 404 of the Clean Water Act and could require RCTC to fund and implement additional compensatory mitigation.
3	Section 2.7, page 2-74	Section 2.7 discusses the Corps as a cooperating agency. We suggest the last sentence in this paragraph delete the reference to USFWS since it implies the USFWS also intends to adopt the Final EIS for its federal action (i.e., consultation under Section 7 of the Endangered Species Act). To the Corps' knowledge, this is not the case since USFWS declined to be a cooperating agency and accordingly, in order for USFWS to adopt FHWA's Final EIS, or portions thereof, they would need to publicly re-circulate the NEPA document.
Section 3.9: Hydrology and Floodplains		
4	Section 3.9.3, page 3.10-1	This section addresses permanent impacts to hydrology and floodplains, including potential encroachments within the floodway of the Perris Valley Storm Drain and the San Jacinto River. As an advisory, any proposed alteration or modification to a federally-authorized/constructed public works facility must be coordinated in advance with the facility's non-Federal sponsor and the Corps pursuant to 33 U.S.C. 408 ("Section 408). Section 408 requires the Chief of Engineers, or his designee, to grant approval for any alteration or modification to a federally-authorized/constructed public works facility to ensure the alteration would not be injurious to the public interest and would not impair the usefulness of the work (facility). We recommend RCTC coordinate with the Corps Los Angeles District, Asset Management Division (AMD) to confirm whether one or both crossings would involve a federally-authorized/constructed public works facility and necessitate the Corps' approval under Section 408. The Los Angeles District Section 408 Program Manager is Mr. Phil Serpa in AMD and may be reached at (213) 452-3402 or phil.serpa@usace.army.mil.
5	Section 3.9.3, page 3.10-1	Generally, the Corps does not support longitudinal encroachments into a stream, channel or floodway/floodplain (i.e., the placement of the roadway within the stream channel or floodway/floodplain parallel to the stream flow,

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		<p>as opposed to a transverse (perpendicular) spanned crossing of the stream or floodway/floodplain). Structures and manmade embankments that encroach into the floodway/floodplains in this manner tend to have deleterious effects on the hydrologic regime, channel stability, water quality, and the associated biological functions of in-stream habitats, such as wetlands and riparian ecosystems. Specific to the Perris Valley Storm Drain, longitudinal encroachments by the MCP could create a physical constraint that might foreclose on certain future flood control options that involve less channelization/engineered slopes and greater opportunity to reclaim the natural floodplain dynamics through the implementation of bioengineering techniques. For these reasons, we would generally consider those MCP build alternatives that are designed to support crossings of major streams or floodways/floodplains using a bridge structure that spans the stream or floodway to have less adverse impact on the aquatic environment than those MCP build alternatives, such as Alternative 4 Modified, that involve longitudinal encroachments into streams or floodways/floodplains.</p>
Section 3.10: Water Quality and Storm Water Run-off		
6	Section 3.10, pages 3.10-1 through 3.10-2	<p>Discussions pertaining to section 404 of the Clean Water Act, the regulatory setting and Corps permitting options located in Section 3.10 (<i>Water Quality and Storm Water Runoff</i>) should be deleted as these topics are more appropriately addressed in Section 3.18 (<i>Wetlands and Other Waters</i>) and in fact, are repeated verbatim in Section 3.18. Further, the discussion on the types of Corps permits (e.g., standard individual permit, letter of permission, nationwide, regional general permit, etc.) does not seem particularly relevant, but if kept within the RDEIR/SDEIS should be revised within Section 3.18 based on the proposed edits provided in comment #7 below.</p>
Section 3.18: Wetlands and Other Waters		
7	Page 3.18-1, subsection 3.18.1	<p>The Corps recommends the following edits: One purpose of the Under section 404 of the CWA is to regulate the discharge of dredged or fill material into waters of the United States, including wetlands-, is regulated by the USACE. Waters of the U.S. include navigable waters, interstate waters, territorial seas and other waters that may be used in interstate or foreign commerce. To classify wetlands for the purposes of the CWA, a three-parameter approach is used that includes the presence of hydrophytic (water-loving) vegetation, wetland hydrology, and hydric soils (soils formed during saturation/inundation). All three parameters must be present, under normal circumstances, for an area to be designated as a jurisdictional wetland under the CWA. Section 404 of the CWA establishes a regulatory program that provides that prohibits the proposed discharge of dredged or fill material into waters of the U.S. cannot be permitted if a practicable alternative exists that is less damaging to the aquatic environment, so long as it does not result in other significant adverse environmental consequences, or if the nation's waters would be significantly degraded. The Section 404 permit program is run by the U.S. Army Corps of Engineers (USACE) with oversight by the U.S. Environmental Protection Agency (U.S. EPA).</p> <p>USACE issues two types of 404 permits: General and Standard permits. There are two types of General permits: Regional permits and Nationwide permits. Regional permits are issued for a general category of activities when they are similar in nature and cause minimal environmental effect. Nationwide permits are issued to authorize a variety of minor project</p>



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		<p>activities with no more than minimal effects.</p> <p>There are two broad categories of USACE permits: <u>general and individual permits</u>. Within these two categories, there are <u>several two types of permits the USACE issues, including Standard individual permits (SIPs), Individual permits and Letters of Permission (LOPs), programmatic or regional general permits (PGPs or RGPs), and nationwide permits (NWP)</u>. Ordinarily, projects that do not meet the criteria for a <u>general permit, which is the most expedient type of authorization</u>, <u>Nationwide Permit may must be permitted under one of USACE's Standard an individual permits</u>. For <u>Standard individual permits that propose a discharge of dredged or fill material in waters of the U.S., the applicant must demonstrate to the USACE that the proposed discharge decision to approve is based on compliance with U.S. EPA's Section 404(b)(1) Guidelines (U.S. EPA 40 CFR Part 230), and whether permit approval Federal regulations also require the USACE to evaluate and consider all relevant public interest review factors in determining whether the proposed action is in contrary to the public interest</u>. The <u>Section 404 (b)(1) Guidelines were developed by the U.S. EPA in conjunction with USACE, and allow the discharge of dredged or fill material into the aquatic system (waters of the U.S.) only if there is no practicable alternative which would have less adverse effects</u>. The Guidelines <u>states stipulate that USACE may not issue a permit if there is a practicable alternative LEDPA to the proposed discharge that would have fewer adverse effects on waters of the U.S., and as long as it does not have any other significant adverse environmental consequences</u>. Similarly, the USACE may not issue a permit if the <u>proposed action is contrary to the public interest</u>.</p>
8	Page 3.18-3	<p>The Corps recommends sub-section 3.18.2 "<i>Affected Environment</i>" be expanded to provide a general description of the aquatic resources occurring within the project area, describing the general status of the aquatic resources, including whether certain reaches or hydrologic subareas are disturbed and degraded due to human perturbations (e.g., channelization) and/or natural stressors (e.g., presence of invasive species), as well as whether reaches or hydrologic subareas exist that support more pristine aquatic resources. This section should present an introduction to the baseline conditions of wetlands and other waters so the reader gains a general understanding of the type, extent, overall quality and distribution of aquatic resources occurring in the MCP project area. Referring the reader to the appendices and detailed maps embedded in the appendices to find this information is not appropriate.</p>
9	Pages 3.18-3 and 3.18-4	<p>The Corps recommends the following edits: USACE jurisdiction extends laterally to the ordinary high water mark or beyond the ordinary high water mark to the limit of any adjacent wetlands, if present. The ordinary high water mark is defined as "... that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding area." In this section, USACE jurisdictional areas are described as either wetland or non-wetland <u>waters of the U.S. areas</u>. The USACE defines wetlands as "... those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted to life in saturated soil conditions." To satisfy the USACE wetland definition, an area must possess three wetland characteristics: (1) hydrophytic vegetation, (2) hydric soils, and (3) wetland hydrology. Generally, non-wetland waters</p>

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		<p><u>of the U.S. are those streams or drainages that exhibit within the an ordinary high water mark but that do not meet the definition of a are not wetlands and can include perennial, intermittent and ephemeral drainages. Non-wetland waters of the U.S. are still regulated by the USACE when they have a surface hydrologic connection to a traditional navigable water (TNW) (e.g., the Pacific Ocean) and when the surface hydrologic connection provides a significant nexus to the downstream TNW. In other words, when it can be demonstrated the waterway contributes to the biological, chemical and/or physical integrity of a TNW. Note that a consistent ordinary high water mark is not needed for a significant nexus to exist.</u></p>
10	Page 3.18-11	<p>Subsection 3.18.2.3 “Wetland Functions” should first explain what a functional or condition assessment is and why one was conducted for the MCP. Previous Corps comments questioned why the Wetland Evaluation Technique (WET) was used in addition to the ERDC riparian ecosystem integrity assessment, although it appears the WET findings remain in the evaluation. It some regards, it makes the discussions within this section of the RDEIR/SDEIS confusing in terms of understanding the difference between the two methods and the purpose or need for conducting both assessments. Therefore, we recommend an added discussion in the RDEIR/SDEIS that helps to explain how the WET information is expected to be used by agency decision-makers and whether the WET results and ERDC scores will be considered together or separately.</p>
11	General comment	<p>The ERDC riparian ecosystem integrity assessment methodology that was originally developed for the Corps’ San Jacinto and Santa Margarita Watersheds Special Area Management Plan (SAMP) and then later expanded/updated for use on the MCP project is more or less equivalent to a Level II assessment as defined in EPA’s Level 1-2-3 Watershed Approach. However, it is not a true “functional assessment” or rigorous Level III assessment, such as an IBI. While many, including the Corps, have defaulted to referring to the ERDC riparian ecosystem integrity assessment as a “functional assessment”, it really is not and therefore, using such terminology may be misleading. Therefore, we recommend the text within the RDEIR/SDEIS and appendices refer to the ERDC report as a riparian ecosystem integrity assessment, not a functional assessment.</p>
12	Page 3.18-12, Table 3.18.A	<p>For Reach 5, the table includes a footnote for all wetland functions that have been ranked as “low”. The footnote explains all functions in Reach 5 are considered low because no wetlands or earthen channels are present within the footprint of the Build alternative alignments. The Corps recommends the first column (Reach 5) in the table be changed to indicate wetlands are not present, rather than providing a ranking of “low”. As is, it seems to imply that wetlands exist, but just in a lower functional capacity or degraded condition, which is misleading.</p>
13	Page 3.18-12, Table 3.18.A	<p>The assessment of wetland functions should include all wetlands occurring within the MCP project area, not just within the footprint of the Build alternatives as what seems to be implied by footnote 1. The affected environment (baseline conditions) should reflect the distribution and conditions of all wetlands within the entire study area, particularly as this information may relate to estimating indirect impacts to wetland functions occurring outside the direct footprint of disturbance.</p>
14	Page 3.18-12, Table 3.18.A	<p>The manner in which the information is displayed in the table makes it difficult to discern the difference amongst the alternatives as compared to the No Action alternative. We suggest the table either be modified or that</p>

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		additional tables be created to present the WET scores/rankings for all aquatic resources occurring in each of the Build alternative and the No Action alternatives.
15	Pages 3.18-13 through 3.18-14	Section 3.18.3/1 " <i>Permanent Impacts</i> " should clarify whether the permanent loss to waters of the United States includes both direct and indirect effects.
Section 3.25 Cumulative Impacts		
	Pages 3.25-43 through 3.25-46	The Corps, as part of its cumulative impacts analysis, has to identify areas in which the effects of the proposed action will be felt; the effects that are expected in the area(s) from the proposed action; past, present, and reasonably foreseeable future actions that have or that are expected to have impacts in the same area; the impacts or expected impacts from these other actions; and the overall impact(s) that can be expected if the individual impacts are allowed to accumulate (refer to <i>Fritiofson v. Alexander</i> , 772 F.2d 1225, 1245 (5th Cir. 1985)). Section 3.25.5.8 presents the existing and reasonably foreseeable future actions within the MCP project area, although it does not provide a sufficient disclosure of the expected aggregate or overall impacts should the individual project impacts accumulate. The Corps recommends a clarifying presentation of the MCP project's direct and indirect impacts of the MCP in the context of the overall cumulative impacts stemming from the reasonably foreseeable future projects shown in Figure 3.25.1. In other words, a brief discussion of the degree and intensity of the MCP impacts in relationship to the aggregate effects of other past, current and future projects.
Appendix M: Draft Section 404(b)(1) Alternatives Analysis		
16	General comment	Ideally, the NEPA alternatives analysis should be developed to a sufficient level so that it serves both the NEPA requirement to take a hard, objective look at alternatives to the proposed action as well as to fulfill the substantive requirements of the Section 404(b)(1) Guidelines. 40 C.F.R. § 230.10(a)(4) indicates the analysis of alternatives required for a NEPA document where a Corps section 404 SIP decision is involved will in most cases provide the information for the evaluation of alternatives under the Guidelines. Corps national standard operating procedures also address this topic by directing Corps districts to avoid duplication between the NEPA alternatives analysis and the section 404(b)(1) alternatives analysis. That is, documentation of a separate alternatives analysis for NEPA and the Section 404(b)(1) Guidelines should be avoided whenever possible. Since the draft section 404(b)(1) alternatives analysis has been completed (Appendix M) it may be most prudent to keep this document and make any necessary corrections and/or additions rather than doing away with Appendix M.
17	General comment	The draft section 404(b)(1) alternatives analysis designates the LEDPA, which is premature and a Corps determination that is not yet ripe for decision-making. The NEPA/Section 404 Integration Process MOU calls for the Corps' concurrence on the Preferred Alternative and "preliminary" LEDPA at Checkpoint 3, which is to follow the close of the public review of the RDEIR/SDEIS. In doing so, it enables the Corps to consider public input and comment when determining the "preliminary" LEDPA. Therefore, the Corps requests all references to the LEDPA be removed or that the appendix makes it clear a final LEDPA determination has not been rendered (but rather a "preliminary" LEDPA decision will be forthcoming with Checkpoint 3). The final LEDPA determination will be documented in the Corps' Record of Decision, which will follow the Corps' adoption of FHWA's Final EIS.
Appendix P: Conceptual Mitigation Plan		



Comment #	Location	Comment/Question
18	General comment	<p>The conceptual mitigation plan will require substantial and additional site-specific information in order to comply with the standards of the 2008 Mitigation Rule. While only a conceptual mitigation plan is required for the NEPA/Section 404 Integration Process MOU Checkpoint 3 (<i>Preliminary LEDPA and Conceptual Mitigation Plan</i>), the lack of site-specific or detailed information in this plan makes it difficult to determine whether the proposed/conceptual mitigation plan is sufficient and practicable in terms of off-setting the unavoidable impacts to waters of the U.S., which ultimately has a bearing on the compliance with the Guidelines. Assuming the primary compensatory mitigation will be Permittee-responsible mitigation, the conceptual compensatory mitigation plan should give some level of assurance that available and suitable mitigation sites exist. The conceptual plan should also address the type of mitigation proposed (e.g., restoration, enhancement, establishment, preservation), restoration objectives, priority areas or reaches for restoration, candidate mitigation sites, and more information regarding the proposed long-term management arrangements (who?) and possible financial assurances. As required by the 2008 Mitigation Rule, a final compensatory mitigation plan <u>must be approved by the Corps prior to a section 404 individual permit decision</u> (emphasis added).</p>
19	General comment	<p>The conceptual mitigation plan acknowledges the need to implement the Corps' South Pacific Division Mitigation Ratio Checklist in determining the amount of compensatory mitigation. However, it is unclear in the conceptual mitigation plan and elsewhere in the RDEIR/SDEIS whether the results of the WET and/or ERDC's riparian ecosystem integrity assessment are intended to be used in the checklist (refer to Mitigation Ratio Setting Checklist step 3). While this information may not be necessary or appropriate for inclusion in the next version of the conceptual mitigation plan, RCTC should work in cooperation with the Corps and EPA to establish how the WET and/or ERDC scores will be used in the SPD Mitigation Ratio checklist, if at all.</p>



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