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February 6, 2013

Via E-Mail and U.S. Mail

Darren Bradford
California Regional Water Quality Control
Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340
dbradford@waterboards.ca.gov

Re: Proposed WDRs for Tesoro Extension (Comment - Tentative Order
No. R9-2013-0007, Place 10: 785677)

Dear Mr. Bradford:

On behalf of the Surfrider Foundation, Natural Resources Defense Council, Endangered Habitats League, Sierra Club, California State Parks Foundation, Sea and Sage Audubon Society, Laguna Greenbelt, Inc., Audubon California, California Coastal Protection Network, Defenders of Wildlife, WILD Coast-COSTASALVAjE, and Orange County Coastkeeper, we request that the Regional Board postpone its consideration of the above-referenced tentative order regarding waste discharge requirements for the Tesoro Extension—the first segment of the Foothill South Toll Road (“Toll Road”)—until the Foothill/Eastern Transportation Corridor Agency (“TCA”) has identified the route for the entire Toll Road project and analyzed its environmental impacts in an environmental impact report, as required by CEQA.

The Regional Board has requested that public comments on the tentative order be submitted by February 18, and has calendared a hearing on March 13. But the public has not yet seen the draft CEQA addendum referenced in correspondence between TCA and the Regional Board. At a bare minimum, the Board should reschedule the comment period and hearing until after this and other key documents have been prepared and the public has been given a meaningful opportunity to review them.

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More importantly, the Regional Board may not consider the environmental impacts of the Tesoro Extension separate and apart from those of the Toll Road project as a whole. As discussed below and in the attached letter, the TCA has sought to piecemeal the environmental review of the Toll Road by moving forward with the first phase of the project without analyzing the impacts of the entire project—or even identifying the proposed route of the Toll Road. Because this kind of piecemealing of environmental review is forbidden under CEQA, the Regional Board should refrain from action until an EIR for the Toll Road is complete.

I. The Regional Board Must Consider Final, Valid CEQA Documentation for a Project Before Approving Waste Discharge Requirements.

The Regional Board is a responsible agency for the purpose of compliance with CEQA requirements. Because the Tentative Order may also serve as a Clean Water Act Section 401 water quality certification, both CEQA Guidelines and California water quality regulations require the Regional Board to consider final, valid CEQA documentation for the project before taking action. (Cal. Code Regs., tit. 14 § 15096; Cal. Code Regs., tit. 23, § 3856(f).) The Regional Board must be given ample time to properly review final, valid CEQA documentation before taking action. (*Id.*)

Before the Regional Board may approve waste discharge requirements, the applicant must ensure that the board receives copies of the appropriate environmental analysis. (Cal. Code Regs. tit. 23, § 3741(b); *see also* Cal. Code Regs. tit. 23, § 3740 (“Whenever any person applies to the board for waste discharge requirements, the board may require that person to submit data and information necessary to enable the board to determine whether the project proposed may have a significant effect on the environment.”).) The Regional Board may prohibit, postpone, or condition the discharge of waste for any project subject to CEQA if the information required pursuant to sections 3740 and 3741 has not been timely submitted to the board. (Cal. Code Regs. tit. 23, § 3742.)

Environmental documents that will be considered by the board prior to approval of a project shall be available for public inspection upon request. (Cal. Code Regs. tit. 23, § 3762.) The Regional Board must also take appropriate action to encourage public participation and comment in the preparation and review of environmental documents. (Cal. Code Regs. tit. 23, § 3763.)

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II. The Regional Board Must Consider the Environmental Impacts of the Toll Road as a Whole, and Not the Tesoro Extension in Isolation.

Any environmental review for the Tesoro Extension must include review of the entire Toll Road project. Review of the Tesoro Extension in isolation would represent improper segmentation of environmental review under CEQA. As discussed in more detail in the attached letter regarding the Federal Highway Administration's review of the project under NEPA, the Tesoro Extension has no independent utility apart from the Toll Road as a whole.¹ By itself, the extension is literally a "road to nowhere," terminating at what is presently a dirt road. There is presently no demand for it, nor has any road to which it would connect been built.² Moreover, the future Rancho Mission Viejo development—the yet to be constructed later phases of which would purportedly be served by the Tesoro Extension—already includes a north-south road that would accomplish the identical purpose as Tesoro, except that it would be free for users.

In short, the Tesoro Extension, considered alone, is an unnecessary and irrational project that would never be built except as part of the larger Toll Road project.

Like NEPA, CEQA prohibits the segmentation of a project to avoid environmental review. Indeed, if anything, CEQA imposes even more stringent protections against piecemealing. CEQA requires agencies to analyze impacts of any future development that is "a reasonably foreseeable consequence" of a Project and "will likely change the scope or nature of the initial project or its environmental effects." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.)

¹ See Letter from William J. White et al. to Vincent Mammano, Division Administrator, Federal Highway Administration, NEPA Review of Foothill-South Toll Road/Tesoro Extension Project, Dec. 21, 2012, attached as Exhibit A. The Appendix of Related Documents submitted to the Federal Highway Administration with the Dec. 21, 2012 letter will be provided to the Regional Board under separate cover.

² Any connection to a future Cow Camp Road is speculative at best. The proposed improvements to the road are not even fully funded, much less under construction. Rancho Mission Viejo ("RMV") must fund two thirds of the cost of the first section of Cow Camp Road, pursuant to its development agreement with the County, but RMV has no obligation to finance its share of the road unless and until it has pulled 5,000 equivalent dwelling unit permits, and its final payment is not due until 7,500 permits are pulled. Even now, eight years after the development was approved, RMV has only recently begun construction of the first planning area. RMV's obligation to fund Cow Camp Road is entirely speculative at this point in time, and at best it will be many years before that trigger is reached. Even with RMV's contribution, local Measure M2 funds will add only \$8.3 million, leaving the full funding of Cow Camp Road uncertain.

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There is no question that the Toll Road as a whole is a reasonably foreseeable consequence of the Tesoro Extension, the impacts of which must be considered before TCA's application for WDRs can be approved. If Tesoro is constructed, the impacts of the remainder of the Toll Road will become virtually inevitable. Those impacts are far greater than those of the Tesoro segment. Nor is this coincidental—the TCA has intentionally designed Tesoro to minimize the scope of regulatory and environmental review. For example, the Tesoro Extension would terminate only one-fifth of a mile from San Juan Creek, allowing TCA to evade Army Corps permitting for the segment. But if the first segment gets built, it will become virtually impossible to avoid impacts to the creek as TCA seeks to incrementally proceed with the remainder of the Toll Road project, something it has expressly stated it intends to do.³

The impacts to San Juan Creek and the many other significant impacts of the Toll Road must be considered by the Regional Board now, before it approves the first segment of the project. The Regional Board should postpone action on the WDRs until TCA provides a final EIR for the Toll Road project.

III. The Toll Road Alignment Analyzed and Approved by TCA in 2006 Was Found to Be Illegal, and the TCA Has Not Yet Identified a New Alignment.

The Regional Board cannot rely on the SOCTIIP EIR prepared for the Toll Road alignment approved by the TCA in 2006. That alignment was found to violate the Coastal Zone Management Act, and the TCA has yet to identify—much less approve—an alternative alignment.

The previously approved Toll Road alignment—a six-lane highway that would have extended State Route 241 through 16 miles of virtually undeveloped lands in one of the most environmentally sensitive areas in California—was immediately challenged by three lawsuits filed in state court, including two filed by the California Attorney General. The lawsuits alleged, among other things, that the 2006 EIR violated CEQA on numerous grounds.

³ For example, in a letter to the Southern California Association of Governments (“SCAG”), the TCA asserted that SCAG should revise its Draft Regional Transportation Plan and associated EIR to clearly account for construction of the entire Foothill-South “from Oso Parkway to the San Diego County Border.” *See* Letter from Bill Campbell, Chair, TCA, to Hasan Ikhtrata, Southern California Association of Governments (Feb. 13, 2012), at 6, 8–9, 11, attached as Exhibit B. *See also* Exhibit A at 4–5.

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While those lawsuits were pending, the TCA sought the California Coastal Commission's certification that the Foothill-South was consistent with the Coastal Zone Management Act. The Coastal Commission, recognizing the devastating impacts of the project on the coastal zone and the failure of the TCA to meaningfully consider alternatives, rejected the TCA's determination. The TCA appealed to the U.S. Secretary of Commerce, who upheld the Commission's decision in 2008. Accordingly, the project evaluated in the 2006 EIR and approved by TCA is no longer legally feasible. For this reason, the petitioners in the CEQA litigation conditionally dismissed the suits, reserving a right to reopen the litigation if TCA ever attempts to rely on the 2006 EIR.

Since the rejection of the 2006 Toll Road alignment, the TCA has repeatedly made clear its intention to proceed with the Toll Road project, but has not yet publicly identified how it intends to revise the alignment, particularly of the final segment that was found to violate the CZMA. As of now, the location of at least the final segment of the Toll Road—and the resulting environmental impacts—are completely unknown. Until the TCA prepares a description of the revised Toll Road project and analyzes the impacts of that project, any approvals of the Tesoro portion of the project are premature.

IV. Request for Postponement.

In light of the foregoing, the Tesoro Extension will not be ready for review by the Board until the revised Toll Road project has been identified, described and analyzed by the TCA. The required analysis will almost certainly require either a new or a supplemental EIR, given the likely magnitude of the changes to the project and the potential impacts of those changes.

As you are aware, the TCA has indicated that it is preparing an addendum to the 2006 EIR in connection with the Tesoro Extension. (Email from Richard Beck, RBF Consulting to Daren Bradford, Regional Board, Tesoro Studies Update, Oct. 2, 2012; Transportation Corridor Agencies, Staff Report No. 16, File No. 2011F-032, Initial Segment of the 241 Completion Project (October 13, 2011).) We doubt that the addendum will contain the description and impact analysis for a revised Toll Road alignment that CEQA requires. However, as far as we are aware, the TCA has yet to provide any addendum to the public or the Regional Board. At an absolute minimum, the Regional Board must defer consideration of the WDRs for the Tesoro Extension until the Board, and the public, have had a reasonable opportunity to review whatever CEQA documentation TCA intends to prepare.

Similarly, the Regional Board must also insist that TCA finalize the draft Habitat Mitigation and Monitoring Plan ("HMMP) before WDRs may be issued. As

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currently drafted, the Tentative Order permits TCA to file an updated HMMP in June 2013, three months after the proposed date for considering approval of the WDRs. Until the content of the final HMMP is known, neither the Board nor the public can meaningfully review the mitigation plan or the impacts of the project.

We request that the Regional Board withdraw its tentative order and the hearing thereon, and postpone further action on TCA's WDR application until TCA has submitted its CEQA compliance documents and a final HMMP. Once that occurs, the Board should allow adequate time for public comment on those documents and any proposed WDRs. Given the magnitude of the Toll Road project and the controversy surrounding it, we would expect that the public be given at least 30 days to review and comment on those documents.

We also request an in-person meeting to discuss this matter with you, Executive Officer Gibson, and other appropriate staff. We will contact you separately to schedule a meeting at your earliest convenience.

Thank you for your consideration of these comments.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



William J. White

cc (by E-mail only):

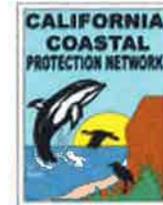
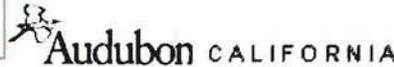
David Gibson, Executive Officer, San Diego RWQCB
James Smith, Assistant Executive Officer, San Diego RWQCB
Kelly Dorsey, Senior engineering Geologist, San Diego RWQCB
David Barker, Supervising WRC Engineer, San Diego RWQCB
Catherine Hagan, Staff Counsel, San Diego RWQCB

Exhibits:

Exhibit A: Letter from William J. White et al. to Vincent Mammano, Division Administrator, Federal Highway Administration, NEPA Review of Foothill-South Toll Road/Tesoro Extension Project, Dec. 21, 2012

Exhibit B: Letter from Bill Campbell, Chair, TCA, to Hasan Ikhrata, Southern California Association of Governments, Feb. 13, 2012

EXHIBIT A



December 21, 2012

Via E-Mail and U.S. Mail

Vincent Mammano, Division Administrator
Federal Highway Administration
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814
E-mail: vincent.mammano@dot.gov

Re: NEPA Review of Foothill-South Toll Road/Tesoro Extension Project

Dear Mr. Mammano:

The undersigned environmental organizations write to express their deep concern over an attempt by the Foothill/Eastern Transportation Corridor Agency ("TCA") to circumvent the requirements of federal law by seeking Federal Highway Administration ("FHWA") funding for the first segment of the Foothill-South Toll Road ("Foothill-South") without review of the environmental impacts of the project as a whole, as required by the National Environmental Policy Act ("NEPA").

Both the California Coastal Commission and the U.S. Secretary of Commerce have declared the Foothill-South to be inconsistent with the federal Coastal Zone Management Act ("CZMA") and have directed the TCA to consider

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alternatives to the project that would avoid the project's devastating environmental impacts. But the TCA has decided on a radically different approach—one that instead seeks to *foreclose* those alternatives by forging ahead with construction of the Foothill-South and making completion of its preferred project inevitable. To this end, the TCA has rebranded the first phase of the Foothill-South as a new, stand-alone project called the “Tesoro Extension,” and seeks to avoid scrutiny of the Foothill-South project as a whole by limiting NEPA review to the first segment. This is precisely the kind of segmentation of environmental review that NEPA prohibits. FWHA should reject this approach and require preparation of an Environmental Impact Statement for the entire Foothill-South before considering whether to provide any funding to the project.¹

I. Background: The Foothill-South Project

The Foothill-South was conceived over 30 years ago as an option for alleviating existing and anticipated congestion on Interstate 5 in southern Orange County. As proposed by the TCA, the Foothill-South is a six-lane highway that would extend State Route 241 through 16 miles of virtually undeveloped lands in one of the most environmentally sensitive areas in California. Almost all of the impacted lands have been set aside for open space and preservation, including The Reserve at Rancho Mission Viejo, the Richard and Donna O'Neill Land Conservancy, and San Onofre State Beach.

The Foothill-South was one of several alternatives being reviewed by a collaborative of federal agencies as part of the South Orange County Transportation Infrastructure Improvement Project (“SOCTIIP”). As part of that process, the TCA and FHWA prepared a joint draft Environmental Impact Statement/Environmental Impact Report (“EIS/EIR”) under NEPA and the California Environmental Quality Act (“CEQA”) for SOCTIIP in 2004. But the collaborative process and the EIS were never completed. Instead, the TCA forged ahead on its own, finalizing its EIR and approving the Foothill-South in 2006. That approval was immediately challenged by three lawsuits filed in state court on behalf of the State of California, environmental groups, and Native American interests, including two filed by the California Attorney General.

¹ It is our understanding that the TCA is requesting approximately \$7 million from FHWA in SAFETEA-LU demonstration funding for the Toll Road. (See Southern California Association of Governments Final 2013 Federal Transportation Improvement Program (“2013 FTIP”), Volume III, Project Listing, Orange County State Highway Project Listing at 5, available at <http://www.scag.ca.gov/ftip/pdf/final/2013/F2013-FTIP-ProjectListing.pdf>.) All documents cited in this letter are included in the Appendix submitted concurrently with this letter.

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While those suits were pending, the TCA sought the California Coastal Commission's certification that the Foothill-South was consistent with the CZMA. The Coastal Commission, recognizing the devastating impacts of the project, rejected the TCA's determination. The view of the Commission was encapsulated by its Executive Director:

Since passage of the California Coastal Act in 1976, I know of no other coastal development project so demonstrably inconsistent with the law This toll road [project] is precisely the kind of project the Coastal Act was intended to prevent.²

The Commission found that, among other things, the TCA had failed to adequately consider six feasible alternatives to the Foothill-South that could accomplish its primary objective—relieving congestion on I-5—while avoiding the impacts of the Foothill-South. Three of the alternatives involved improving I-5 and selected adjacent arterials; three others involved alternate toll road alignments that are closer to existing development and avoid sensitive resources.³ The TCA appealed to the Secretary of Commerce, who upheld the Commission's decision.⁴

Despite the decisions of the Commission and the Secretary, the TCA has chosen not to seriously pursue alternatives to the Foothill-South. On the contrary, the TCA now wants to begin construction of the Foothill-South at the expense of all other alternatives. To do this, the TCA is seeking to secure federal approval for the Foothill-South in separate segments, beginning with the northernmost 4.8 miles. This segment, known as the Tesoro Extension (also known as the "OGX" Extension), would begin at Oso Parkway and end at what is now a dirt road, just north of Ortega Highway (State Route 74).

The Tesoro Extension—a \$200 million project—would, by itself, do nothing to relieve congestion on I-5 or address the traffic problems of the south county. So the TCA has asserted a new rationale for building the segment: the need to serve anticipated future development under the Rancho Mission Viejo project. But that project—if and when it is ever built—has its own transportation

² Reporter's Transcript of Proceedings, California Coastal Commission Consistency Certification No. 018-07, Transportation Corridor Agencies (TCA), Southern Orange County & Northern San Diego County, at 62–63 (February 6, 2008) (testimony of Peter Douglas).

³ California Coastal Commission, Adopted Staff Report and Recommendation on Consistency Certification No. CC-018-07, at 25, 119, 124 (February 6, 2008).

⁴ Decision and Findings by the U.S. Secretary of Commerce In the Consistency Appeal of the Foothill/Eastern Transportation Corridor Agency and the Board of Directors of the Foothill/Eastern Transportation Corridor Agency from an Objection by the California Coastal Commission (December 18, 2008).

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plan that fully provides for the project's circulation needs without a new six-lane tollway. In short, there is no credible justification for the Tesoro Extension as a project separate from the Foothill-South.

The TCA's own statements belie its claim that the Tesoro Extension's purpose is anything other than building the entire Foothill-South. The staff report for the TCA Board's October 13, 2011 action authorizing staff to proceed with the Tesoro Extension was entitled "Initial Segment of the 241 Completion Project," and the report left no doubt as to the TCA's true intentions:

While staff continues work on adjusting the full project alignment to avoid sensitive areas or issues, *the idea of constructing the project in segments was frequently raised during the outreach process.* One option would be to extend the 241 Toll Road approximately four miles from its existing terminus at Oso Parkway south to the vicinity of Ortega Highway, *while continuing to pursue the balance of the alignment that connects to Interstate 5.*⁵

The agenda for the Board's October 13 action likewise repeatedly refers to the Tesoro Extension as the "initial segment" of the Foothill South project.⁶

Soon after the TCA Board's decision to move forward with the Tesoro Extension, the TCA apparently decided that such candor was unwise. At a November 4, 2011 meeting with the Army Corps, the TCA's lobbyist "discouraged the word 'segment,'" according to Corps staff.⁷

But TCA's attempt to reframe the Tesoro Extension as a stand-alone project was transparent. In an email with the subject line "not 100% true when TCA says they don't know what is going to happen further south," Corps staff stated that "We can gather documentation about their plans and intentions from their own documents (e.g., Report No. 16 entitled 'Initial Segment of the 241 Completion Project') . . . [T]heir own report has [the word 'segment'] in the title."⁸ As the Chief of the Corps' Transportation and Special Projects Branch summarized:

⁵ Transportation Corridor Agencies, Staff Report No. 16, File No. 2011F-032, Initial Segment of the 241 Completion Project (October 13, 2011) at 1 (emphasis added); see also *id.* at 5.

⁶ Foothill/Eastern Transportation Corridor Agency, Board of Directors Agenda, October 13, 2011, at 3-4, Items 6 & 7 (e.g., recommending the Board "develop financing options to construct a segment of the 241 completion project. The initial segment includes extending the existing SR 241 from Oso Parkway to the vicinity of Ortega Highway").

⁷ Email from David Castanon, Chief, Regulatory Division, U.S. Army Corps of Engineers ("USACE"), to Susan Meyer, Senior Project Manager, USACE (Nov. 4, 2011).

⁸ *Id.*

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TCA is proposing to segment the project, starting with constructing the first approximately 4 miles and terminating at SR-74 in Orange County. ***That would present a major NEPA problem*** considering the previous environmental document had them evaluating all approximately 16 miles and they still intend ultimately (through construction of future segments) to build all the way to I-5.⁹

Or, as put more bluntly by another Corps staff member:

It seems clear that TCA intends to build a larger (longer) toll road, not just the 4.2-mile segment of new toll road they presented to us earlier this month ***[I]t is beginning to look like a classic case of segmenting under NEPA.***¹⁰

And despite its own attempts to downplay the Foothill-South project as merely “speculative” when advocating for a narrow scope of NEPA review of the Tesoro Extension,¹¹ the TCA in other contexts continues to insist that the entire project will be built. For example, in a letter to the Southern California Association of Governments (“SCAG”), the TCA asserted that SCAG should revise its Draft Regional Transportation Plan (“RTP”) and associated EIR to clearly account for construction of the entire Foothill-South “from Oso Parkway to the San Diego County Border” within the next twenty years.¹²

The TCA cannot have it both ways. The only rational justification for the Tesoro Extension is as part of the Foothill-South. Accordingly, as explained below, any environmental review of an extension must address the entire Foothill-South project, including an analysis of the full range of alternatives to Foothill-South. Anything less would constitute improper segmentation and is prohibited under NEPA.

II. NEPA Prohibits the Segmentation of the Foothill-South Project

The Council on Environmental Quality regulations set forth the circumstances under which broad agency actions must be addressed in a single,

⁹ Email from Spencer MacNeil to David Castanon et al. (Oct. 19, 2011) (copied in email from MacNeil to Corice Farrar (Oct. 19, 2011) (emphasis added).

¹⁰ Email from Susan Meyer to Spencer MacNeil, Corice Farrar (November 28, 2011) (emphasis added); *see also* email from Susan Meyer to Richard Beck, RBF Consulting (undated) (copied in email from Beck to Meyer (Oct. 25, 2011)) (“[t]he new proposal would segment the environmental evaluation, permitting and construction of the 16-mile toll road project into several phases”).

¹¹ *See* Letter from Valerie McFall, Director, Environmental Services, TCA, to David Castanon, (Feb. 4, 2012) (“Castanon Letter”), at 19.

¹² *See* Letter from Bill Campbell, Chair, TCA, to Hasan Ikhrata, Southern California Association of Governments (Feb. 14, 2012), at 8–9, 11.

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programmatic EIS. In general, “proposals or parts of 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.” (40 C.F.R. § 1502.4(a) (emphasis added).) In the context of highway projects, implementing regulations interpret this requirement as prohibiting NEPA review of individual segments of a larger highway project unless the segments:

1. Connect logical termini and [are] of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, *i.e.*, [are] usable and [are] a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. [Do] [n]ot restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(23 C.F.R. § 771.111(f).) As the FHWA has stated in a memo interpreting this regulation, these requirements are needed “[i]n order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated.”¹³

A project must meet the above requirements to avoid improper segmentation. The Tesoro Extension fails to satisfy any of them.

A. The Tesoro Extension Has No Logical Terminus and Is of Insufficient Length to Address Environmental Matters on a Broad Scope

The Tesoro Extension would not extend to an existing highway. Instead, the tollway would stop just shy of the jurisdictional wetlands along San Juan Creek—and only half a mile from Ortega Highway¹⁴—to terminate at the unbuilt “Cow Camp Road.” Today, the Cow Camp Road site contains only a dirt road that runs parallel to the creek.¹⁵ How is this a logical terminus for a six-lane, \$200 million toll road? According to the TCA, it is because Cow Camp Road may be constructed at some point in the future.

But any connection to a future Cow Camp Road is speculative at best. The proposed improvements to the road are not even fully funded, much less under construction. According to the 2013 FTIP, the first section of Cow Camp Road—

¹³ U.S. Department of Transportation, Federal Highway Administration, NEPA and Transportation Decisionmaking, *The Development of Logical Project Termini* (Nov. 5, 1993), available at <http://environment.fhwa.dot.gov/projdev/tdmtermini.asp>.

¹⁴ See Attachment 1 (Tesoro Extension Figure 1, Proximity of Terminus to Waters of the United States).

¹⁵ See Attachment 3 (Tesoro Extension Figure 3, Proposed Terminus).

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between Antonio Parkway and the Tesoro Extension's proposed terminus—would cost \$31.4 million.¹⁶ Of this amount, two thirds would be borne by Rancho Mission Viejo (“RMV”) pursuant to its development agreement with the County.¹⁷ However, RMV has no obligation to finance its share of the road unless and until it has pulled 5,000 equivalent dwelling unit permits, and its final payment is not due until 7,500 permits are pulled.¹⁸ Even now, *eight years* after the development was approved, RMV has only recently begun construction of the first planning area, which will contain roughly 1,200 dwellings when complete.¹⁹ RMV's obligation to fund Cow Camp Road is entirely speculative at this point in time, and at best it will be many years before that trigger is reached. Even with RMV's contribution, local Measure M2 funds will add only \$8.3 million,²⁰ leaving the full funding of Cow Camp Road uncertain.

Even if funding for the first section of Cow Camp Road did exist, the road is hardly a logical terminus for the toll road. The County plans to stripe Cow Camp Road for just two lanes, and the first section of the road would only run from the Tesoro Extension's southern terminus to Antonio Parkway, approximately one mile to the west.²¹ Any later extension of Cow Camp eastward to Ortega has no identified funding source, no timeline, and is even more speculative than construction of the first section of the road.

Unsurprisingly, the TCA does not intend the Cow Camp Road interchange to be permanent. What is surprising is that the proposed “final” terminus of the Tesoro Extension is another nonexistent, proposed road north of Cow Camp called “G” Street. G Street is proposed to be a local road that will only be constructed if and when it is needed as part of Planning Area 2 of the RMV development. There is virtually no information about G Street in the record, but from the little available, it appears that the street would be local-serving with no direct access to Antonio Parkway or even Cow Camp Road—hardly a suitable endpoint for a regionally significant, limited-access, high-speed tollway. In addition, no one knows when development of Planning Area 2 might commence. As even the TCA has stated, “the schedule for constructing ‘G’ Street is undefined at this time.”²² The future construction of G is even more speculative than Cow Camp Road.

¹⁶ See 2013 FTIP, Volume III, Project Listing, Orange County Local Highway Project Listing, at 3 of 7, available at <http://www.scag.ca.gov/ftip/pdf/final/2013/F2013-FTIP-ProjectListing.pdf>.

¹⁷ Rancho Mission Viejo Development Agreement, Ex. E, at 3.

¹⁸ Rancho Mission Viejo Development Agreement, Ex. D, at 34–35.

¹⁹ Fred Swegles, *Rancho Mission Viejo's southernmost section still on the bubble*, ORANGE COUNTY REGISTER, July 13, 2012, available at <http://www.ocregister.com/articles/planning-363593-area-san.html>.

²⁰ Letter from Ignacio Ochoa, Interim Director of Orange County Public Works, to Kia Mortazavi, Executive Director, Planning Division, Orange County Transportation Authority (June 13, 2012).

²¹ *Id.*

²² Castanon Letter at 2.

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As the Army Corps' Regulatory Division Chief observed:

The 4.2 mile-long OGX Extension project could be a “road to nowhere” (i.e., a road without logical termini) if RMV's Planning Area is never developed or at least not developed before the construction of the OGX Extension project is complete.²³

This is precisely the scenario in which courts have found illegal segmentation under NEPA. In *Florida Wildlife Federation v. US Army Corps of Engineers*, 401 F.Supp. 2d 1298, 1316 (S.D. Florida 2005), the court found that ending a proposed roadway extension in a planned but unbuilt development—rather than its further extension to an existing highway—was not a logical terminus. “A highway segment to nowhere . . . should not be evaluated apart from later connectors that will be necessary to make the initial segment useful.” *Id.*

Similarly, in *Indian Lookout Alliance v. Volpe*, 484 F.2d 11 (8th Cir. 1973), the court held that a 14-mile road segment was inappropriate for an EIS because “[i]t does not have an independent utility of its own, which would require that it end in major termini, i.e. present major highways or cities.” (*Id.* at 19 (emphasis added).) The court concluded that the EIS would have to consider an additional 22 miles of roadway from another project and an extension thereof so that the proposed freeway would intersect with U.S. 218, a major highway. (*Id.* at 20; see also *Swain v. Brinegar*, 542 F.2d 364, 370 (7th Cir. 1976) (where a segment's terminus “is near no major crossroad, population center or traffic generator or similar major highway control element,” there is “no logical or major terminus”).)

The same holds here. There is no logic in constructing a regional, limited-access, tolled facility of this size to serve future development whose scale and timing is speculative, or in terminating that facility at a road that does not yet exist and that, in the foreseeable future, would be nothing more than a two lane road.

The artificial truncation of the Foothill-South also prevents assessment “of environmental matters on a broad scope,” as the FHWA's regulations require. (23 C.F.R. § 771.111(f)(1).) This requirement means that a “highway section should be of substantial length that would normally be included in a multiyear highway improvement program.” (*Swain*, 542 F.2d at 368.) The Tesoro Extension has never been identified separately in a multi-year highway improvement program; applicable transportation plans and programs have consistently described the entire Foothill-South. The recently approved 2012 Southern California Association of Governments' RTP, as well as the soon-to-be approved 2013 Federal Transportation Improvement Program (FTIP), describe the entire Foothill-

²³ David Castanon, Memorandum for Record (Nov. 4, 2011) at 5.

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South project substantially as it has been proposed for the last twenty years.²⁴ The Tesoro Extension is not shown as a separate project. Indeed, the Clean Air Act conformity documentation in the RTP, in an effort to show that the Foothill-South project is being timely implemented as a federally approved Transportation Control Measure, emphasizes the TCA's intent to construct the entire Foothill-South.²⁵

The wetlands impacts of the Foothill South project provide just one glaring example of why the Tesoro Extension is *by design* insufficiently long to provide an adequate environmental analysis. It is no coincidence that the Tesoro Extension was designed to stop just short of San Juan Creek and the valuable jurisdictional wetland resources known as the San Juan Creek complex. By doing so, TCA escaped review by the Army Corps under the Clean Water Act.²⁶ But it strains credulity to think that the Tesoro Extension, once built, would not be extended into the wetlands. Impacts to these wetlands, located a mere 300 yards farther south, are all but certain given the TCA's explicit desire to extend Foothill-South all the way to I-5. Limiting the evaluation of impacts to only those caused by the Tesoro Extension would preclude the complete environmental review that NEPA requires.

Courts have rejected attempts to segment a project where, as here, the proposed segments "would 'stand like gun barrels pointing into the heartland'" of natural resources artificially excluded from NEPA review. (*Maryland Conservation Council v. Gilchrist*, 808 F.2d 1039, 1042 (1986) (citation omitted).) In *Florida Wildlife Federation*, the proposed roadway extension—like the Tesoro Extension—terminated just shy of high-value wetlands. In finding improper segmentation, the court noted that "the concept of 'independent utility' should not be manipulated to avoid significance or 'troublesome' environmental issues, in order to expedite the permitting process." (401 F.Supp.2d at 1315; *see also Named*

²⁴ The 2013 FTIP clearly describes the Project as the *entire* Toll Road: "(FTC-S) (I-5 TO OSO PKWY) (15MI) 2 MF EA. DIR BY 2013; AND 1 ADDITIONAL M/F EA. DIR. PLS CLMBNG & AUX LANES AS REQ BY 2030 PER SCAG/TCA MOU 4/05/01." *See* 2013 FTIP, Volume III, Project Listing, Orange County State Highways Project Listing, at 5.

²⁵ Southern California Association of Governments Regional Transportation Plan/Sustainable Communities Strategy (2012), Transportation Conformity Analysis Appendix, at 43 ("ONGOING IMPLEMENTATION PER SCAG/TCA MOU. TCA IS DEVELOPING ENGINEERING PLANS, ENVIRONMENTAL ASSESSMENTS AND FINANCIAL STRATEGY TO BUILD THE 241 EXTENSION FROM THE EXISTING SOUTHERLY TERMINUS AT OSO PARKWAY TO THE VICINITY OF ORTEGA HIGHWAY WHILE CONTINUING TO PURSUE THE BALANCE OF THE ALIGNMENT THAT CONNECTS TO INTERSTATE 5.") (emphasis added).

²⁶ A map showing the location of these jurisdictional wetlands can be found in a slideshow presentation that the TCA gave to the Orange County Board of Supervisors in January 2012 (hereinafter "OC BOS Slide Show"), available at http://bos.ocgov.com/legacy3/newsletters/pdf/FE%20Board%20241%20Extension-1_12_12.pdf, at pages 4–5; *see also* Attachment 1; Letter from David Castanon, U.S. Corps of Engineers, to Valerie McFall, Environmental Services Director, TCA (November 5, 2012), at 2.

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Individual Members of San Antonio Conservation Soc’y v. Texas Highway Dep’t, 446 F.2d 1013, 1023–24 (5th Cir. 1971) (segmentation of expressway unlawful segmentation where construction of segments “to the very border, if not into, the Parklands, will make destruction of further parklands inevitable.”); *Maryland Conservation Council*, 808 F.2d at 1042 (NEPA review could not be avoided by designing highway segment to stop short of a park containing jurisdictional wetlands); *Patterson v. Exxon*, 415 F.Supp. 1276, 1284 (D. Neb. 1976) (placing terminus of road segment at the boundaries of a park was “artificial and arbitrary” and made “further construction through that area . . . almost inevitable”).)

Manipulating the project’s design to avoid troublesome environmental issues appears to be the exact motivation behind the Tesoro Extension. Ending the Tesoro Extension at an illogical terminus short of Ortega Highway only makes sense if the TCA wants to build the first segment of the Foothill-South without triggering U.S. Army Corps of Engineers’ permitting jurisdiction. As designed, the Tesoro Extension takes direct aim at San Juan Creek and environmental resources to the south, but the TCA hopes to avoid evaluating inevitable impacts to these resources. That is precisely the behavior that NEPA’s segmentation rules were intended to prevent.

B. The Tesoro Extension Has No Independent Utility

To avoid unlawful segmentation, a proposed highway project must have independent utility so that it is “a reasonable expenditure even if no additional transportation improvements in the area are made.” (23 C.F.R. § 771.111(f).) Where a roadway segment—like the Tesoro Extension—does not have logical termini, the independent utility is likewise not met. (See *Indian Lookout Alliance, supra*, 484 F.2d at 19-20 (independent utility requires segment to end in major termini; “[w]here, as here, there is a commitment to further extension appearing on the record, we do not believe it can be said that [the project] has the requisite independent utility”); *Swain*, 542 F.2d at 370 (segment without logical termini has no independent utility).) As discussed above, the Tesoro extension is proposed to connect to a one-mile segment of a proposed road that does not yet exist. Because this terminus is not logical, the project has no independent utility.

In the event that the Rancho Mission Viejo project does build out sufficiently to require the construction of Cow Camp Road, there would still be no justification for building this segment of the toll road, because the RMV project *already provides* for a north-south road connecting Cow Camp to Oso Parkway. As shown in the Rancho Mission Viejo planning documents, if the Foothill-South is not built, RMV will construct a non-tolled local arterial road—“F” Street—in

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place of the TCA's proposed six-lane toll road extension.²⁷ Thus, in addition to the absence of a present need for the Tesoro Extension, there is no future need for it.

And yet the TCA intends to spend over \$200 million on the project, which even using the most optimistic assumptions would carry only 41,000 average daily trips by the year 2035.²⁸ The TCA also has a long history of making unrealistically high ridership projections for its tolled facilities. Ridership on the Foothill/Eastern toll roads in 2011 represented only 67% of TCA forecasts, and the TCA has not met its ridership projections for the Foothill/Eastern toll roads for the last 7 years.²⁹ Ridership on the San Joaquin Hills toll roads was only 43% of original projections in 2011, and TCA has *never* met its projections for the San Joaquin Hills toll roads.³⁰ This abysmal record has not only jeopardized the TCA's fiscal health and led to the recent investigation of TCA's finances by the California Debt and Investment Advisory Commission, it also casts doubt on the TCA's ability to accurately predict the number of users that would pay to utilize the Tesoro Extension.

Indeed, because it is a limited-access, tolled facility, the Tesoro Extension would likely *deter* use for local access and egress by future residents compared to a non-tolled facility. A toll-free arterial such as F Street could carry the same traffic volume at a fraction of the cost, while providing the local access and egress that a tolled facility cannot. Because F Street would provide *superior* local use for significantly less money, the TCA has not demonstrated that construction of the Tesoro Extension would be a reasonable expenditure of funds or would serve any independent purpose.

Moreover, the TCA itself has acknowledged that state and county transportation planners object to a permanent toll road connection at Cow Camp Road because it would actually *induce* local traffic congestion, and would impede traffic flow on Ortega Highway.³¹ The Corps noted that these operational issues raised concerns "in terms of substantiating logical termini and independent utility" of the Tesoro Extension, and that TCA had failed to provide "analysis and

²⁷ See Attachment 4 (The Ranch Plan, Draft Environmental Impact Report, Exhibit 4.6-6).

²⁸ See Transportation Corridor Agencies, Staff Report No. 16, File No. 2011F-032, Initial Segment of the 241 Completion Project, October 13, 2011, Attachment 1, at 2.

²⁹ See Transaction Tables, Foothill/Eastern (133/241/261) Toll Roads, Annual Results, available at https://www.thetollroads.com/aboutus/investorinformation/transactiontables/fe_annualresults.php.

³⁰ See Dan Weikel, *State Probes Fiscal Health of O.C. Toll Roads*, L.A. TIMES, Dec. 12, 2012; see also California Transaction Tables, San Joaquin Hills (73) Toll Roads, Annual Results (providing only raw transactions and revenue data), available at https://www.thetollroads.com/aboutus/investorinformation/transactiontables/sj_annualresults.php.

³¹ David Castanon, Memorandum for Record (Dec. 16, 2011) at 1-2.

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documentation to justify why they would propose to terminate the toll road at a connection known to be undesirable and logistically infeasible.”³²

The record is clear that the Tesoro Extension is a project in search of a justification. Months after authorizing staff to proceed with the Tesoro Extension, and despite multiple meetings with federal agencies, the TCA had still failed to articulate the purpose and need for the project.³³ The only information provided to the Corps to show independent utility, despite repeated requests, was described by staff as “rather skimpy.”³⁴

It is no surprise that the TCA has been unable to provide a credible justification for Tesoro as a stand-alone project, as TCA itself has dismissed the utility of such a segment in the past. In connection with the environmental review of the Foothill South, the TCA and the SOCTIIP Collaborative expressly rejected proposed toll road alternatives that did not extend south past Ortega Highway, such as the Far East Corridor-Ortega Highway Variation Alternative (FEC-OHV). The Collaborative found that FEC-OHV “performed poorly for the traffic measures because this Alternative terminates at Ortega Highway and does not provide a connection to I-5.”³⁵

Like the project proponents in *Florida Wildlife Federation*, who only started describing a portion of their planned development project as having “independent utility” once it became clear that the larger project involved troublesome environmental issues (401 F.Supp.2d at 1320), the TCA had never identified any need or desire for a stand-alone Tesoro segment until it was unable to overcome environmental problems with the Foothill-South project. After more than 20 years of trying to build the Foothill South, TCA’s sudden and unsubstantiated assertion of a need for the Tesoro project cannot establish the project’s independent utility:

Representations by the applicant alone, who clearly has an interest in obtaining the permit and whose theory of “independent utility” on a record such as this, can only be considered a post-hoc rationalization to secure a permit as rapidly as possible, cannot be sufficient to establish a project’s independent utility [M]anipulation of a project design to conform to a concept of independent utility, particularly with the intention that a permit be expedited, undermines the underlying purposes of NEPA.

³² *Id.* at 2.

³³ Email from Susan Meyer to Lawrence Minch et al. (March 12, 2012), copied in email from Susan Meyer to Corice Farrar (March 13, 2012).

³⁴ Email from David Castanon to Mark Toy, ACOE Commander and District Engineer (March 2, 2012), copied in email from Toy to Jeanne Imamura (Aug. 24, 2012).

³⁵ SOCTIIP Final Supplemental Environmental Impact Report (2005) at ES-31.

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(*Florida Wildlife Federation*, 401 F.Supp.2d at 1323.)

The Tesoro Extension makes no sense as a stand-alone project. It has no utility independent of the entire Foothill-South and therefore cannot be reviewed under NEPA separate from the larger project.

C. Constructing the Tesoro Extension Would Restrict Consideration of Alternatives

Courts have long recognized that “the location of the first [highway] segment may determine where the continuation of that roadway is to be built.” (*Swain*, 542 F.2d at 368.) “Placement of one segment narrows the range of choices for placement of the remaining highway sections.” (*Patterson, supra*, 415 F.Supp. at 1284.) If the Tesoro Extension is completed without full NEPA review of the entire Foothill-South, alternatives to the Foothill-South will be irrevocably foreclosed. This undermines the core purpose of NEPA, since the consideration of alternatives is “the heart of the environmental impact statement.” (40 C.F.R. § 1502.14.)

The enormous cost of the Tesoro Extension is alone sufficient to financially prejudice any real consideration of alternatives to the Foothill-South. Once the TCA has made an irrevocable \$200 million investment in the first segment of the Foothill-South, any non-toll road alternatives, such as expansion of I-5, the arterial system, or transit services, will be effectively eliminated from consideration. Extension of the first segment “could be too easily justified on the basis of previous commitment of resources in the completion of” that segment. (*Patterson*, 415 F.Supp. at 1284.) This would contravene a fundamental precept of NEPA—to conduct *full* environmental review *before* resources are irretrievably committed. (40 C.F.R. § 1502.2(f) (agencies shall not commit resources prejudicing selection of alternatives before making a final decision).)

Building the Tesoro Extension would also seriously inhibit the adoption of alternative alignments to Foothill-South, including the Central Corridor alignments identified as potentially feasible by the Coastal Commission and the Secretary of Commerce. As is apparent by overlaying the Tesoro route on a map of the alternatives, the Tesoro Extension follows the alignment of the Foothill-South almost exactly, while other alignments diverge substantially from the Tesoro route by the time they reach San Juan Creek.³⁶ Once the Tesoro Extension is built, the TCA has effectively tied its own hands, making alignments other than the Foothill-South much more difficult, if not completely impracticable.

³⁶ See Attachment 2 (Tesoro Extension Figures 2.1 and 2.2, Alternative Toll Road Alignments).

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Until the federal government has analyzed the impacts of the entire Foothill-South under NEPA, it may not approve a project that would effectively foreclose alternatives to the Foothill-South.

III. Conclusion

The Foothill-South project has been soundly rejected by both state and federal agencies as contrary to law. It is time for the TCA to either abandon Foothill-South or to put forward a feasible, fiscally responsible alternative that is consistent with state and federal law so that its impacts can be fully analyzed before any irretrievable commitments are made. What the TCA may not do is pursue through piecemeal approvals a project that has yet to be analyzed in its entirety under NEPA. FHWA must insist that the entire Foothill-South project be analyzed under NEPA before taking any action on the Tesoro Extension.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



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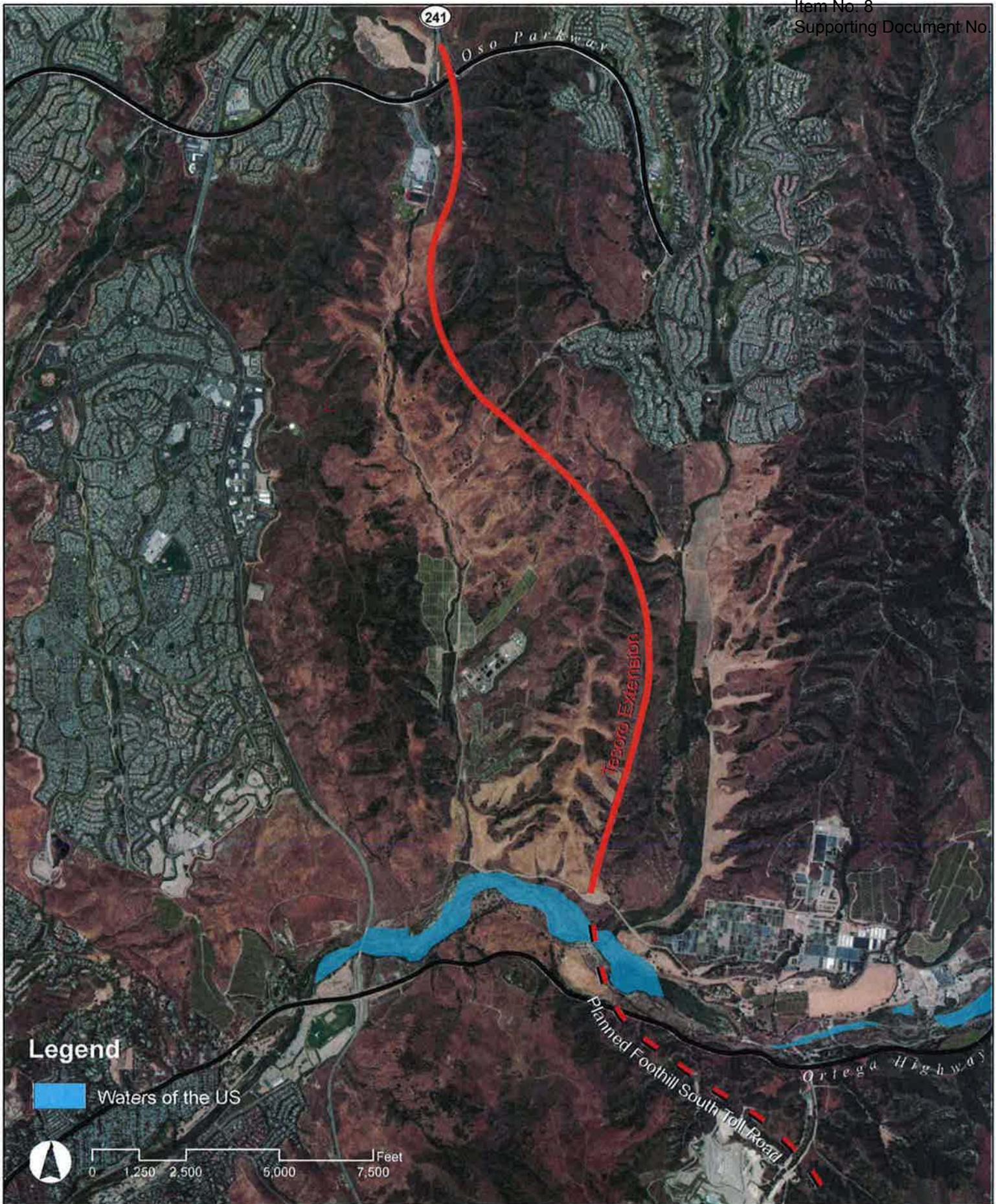
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Eric Raffini, U.S. Environmental Protection Agency
Paul Amato, U.S. Environmental Protection Agency
Karen Goebel, U.S. Fish and Wildlife Service
Jonathan Snyder, U.S. Fish and Wildlife Service
Brian Hembacher, California Department of Justice

ATTACHMENT

1



Tesoro Extension Figure 1
Proximity of Terminus to Waters of the
United States

Sources:
TCA Presentation to Orange County Board of Supervisors (Jan 1, 2012);
Appendix A.1, SOCTIIP EIS/EIR (2003);
Wetlands Delineation Technical Assessment,
SOCTIIP Final EIS/EIR and Response to Comments (2004)

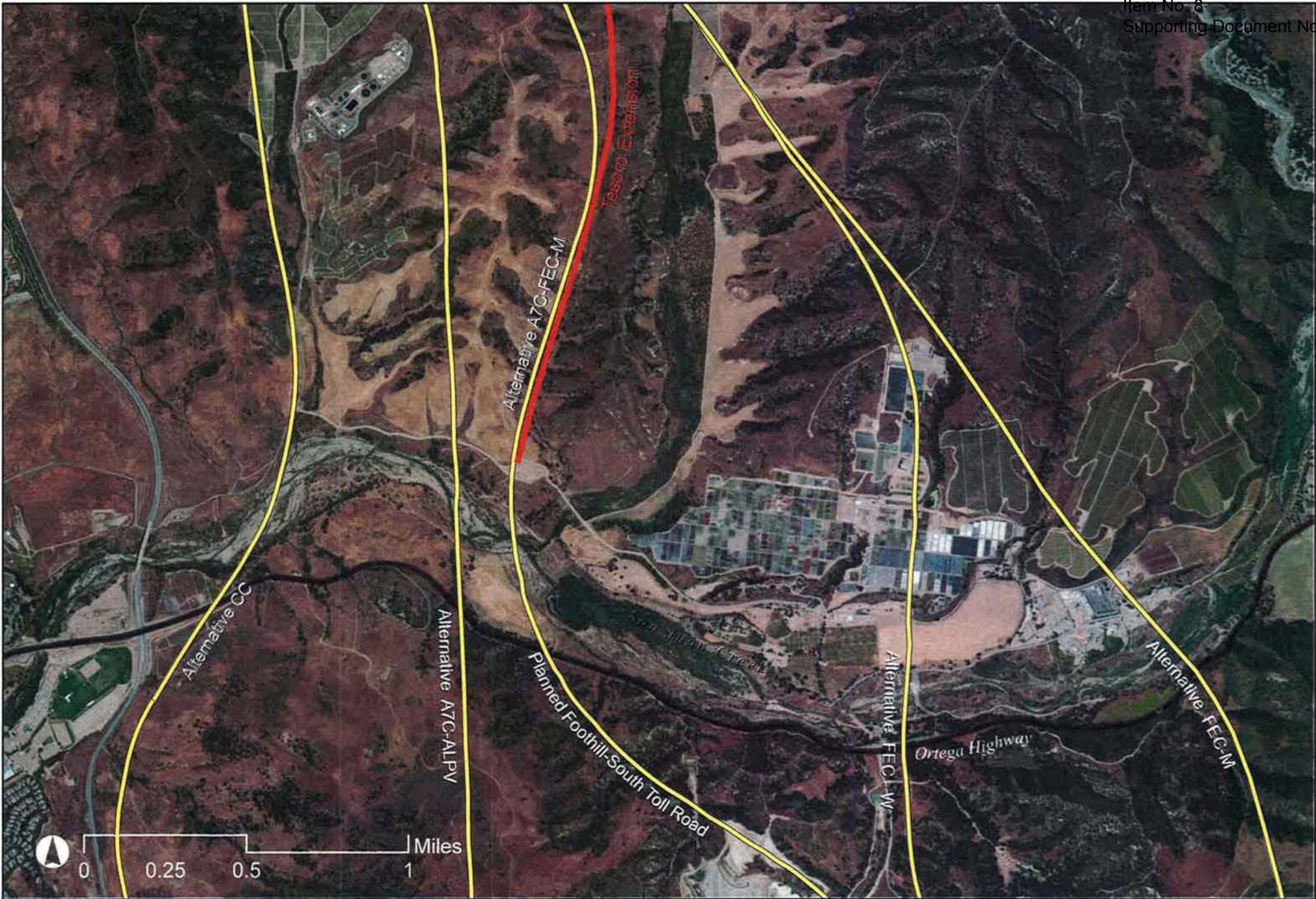
ATTACHMENT

2



Tesoro Extension Figure 2.1
Alternative Toll Road Alignments

Sources:
TCA Presentation to Orange County Board of Supervisors (Jan 1, 2012);
Appendix A.1, SOCTIIP EIS/EIR (2003);
SOCTIIP Final EIS/EIR and Response to Comments (2004)



Tesoro Extension Figure 2.2
Alternative Alignments - Detail

Sources:
TCA Presentation to Orange County Board of Supervisors (Jan 1, 2012);
Appendix A.1, SOCTIIP EIS/EIR (2003);
SOCTIIP Final FIS/FIR and Response to Comments (2004)

ATTACHMENT

3



Tesoro Extension Figure 3
Proposed Terminus

Sources:
TCA Presentation to Orange County Board of Supervisors (Jan 1, 2012)

ATTACHMENT

4

EXHIBIT B

San Joaquin Hills
Corridor Agency

Chairman:
Scott Schoeffel
Dana Point



Transportation Corridor Agencies

Foothill/Eastern
Corridor Agency

Chairman:
Bill Campbell
County of Orange
3rd District

February 13, 2012

Mr. Hasan Ikhata
Executive Director
Southern California Association of Governments
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

RE: Comments on the Draft 2012 Regional Transportation Plan/
Sustainable Communities Strategy and Program Environmental Impact Report

Dear Mr. Ikhata:

The Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Agency (TCA) appreciates the opportunity to review and provide comments on the Draft 2012-2035 Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS) and associated Draft Program Environmental Impact Report (PEIR). TCA commends the SCAG staff for the tremendous amount of work and effort in putting these documents together. TCA also recognizes and supports the timely adoption of the RTP/SCS to enable the Southern California region to proceed with the planning and implementation of regionally significant transportation projects. Further, TCA recognizes that the SCS is particularly important for the region to meet its state mandated greenhouse gas (GHG) emissions reduction targets for 2020 and 2035.

Please find below TCA's specific comments on both the draft RTP/SCS and PEIR.

DRAFT 2012-2035 RTP/SCS

Page 23, Vision, Transportation Demand Management

Transportation pricing is not identified as part of the RTP/SCS "vision" either as a transportation demand management method or as a financing tool, even though it is clearly a component of the transportation plan and financial plan for implementation. The Orange County SCS includes a description of the current and planned priced transportation network that should be adapted to address the entire region.

Recommended Clarification:

Add information from the Orange County SCS (pages 126 and 127 of the Subregional Sustainable Community Strategies Technical Appendix) that describes the existing and

Thomas E. Margro, Chief Executive Officer

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planned inter-operable priced transportation network in the region, including toll roads, express lanes and high occupancy toll (HOT) lanes. The text can be expanded to address HOT lanes, toll2 facilities, express lanes and tolled truck lanes in the region as a whole, and should include the following points:

- Tolled centerline miles in the region will increase from 61 in 2008, to 408 in 2035, including toll roads, express lanes, HOT lanes, and tolled truck lanes.
- Priced lanes provide flexibility and options as part of the congestion relief toolbox of measures designed to help meet sustainability and emission reduction goals related to SB 375 and other state and federal mandates.
- “Priced facilities are an especially important tool for providing intra-county, inter-county and interregional capacity.”
- “The existing priced transportation network serves the locations where major employment and housing growth are projected to occur.”
- “Toll roads and express lanes charge users a fee for travel, but typically offer less congested traffic lanes than nearby freeways and roadways. Reduced congestion provides improved and more efficient mobility with fewer air pollutants and greenhouse gas (GHG) emissions caused by congestion.”
- “The toll road system is designed to interrelate with transit service. The toll roads can accommodate Bus Rapid Transit and express bus service, and toll road medians are sized and reserved to provide the flexibility for future transit, if appropriate.”
- Priced facilities such as the Orange County toll roads are privately funded. This insures that these facilities can relieve congestion and associated air pollution and GHG emissions without further stressing limited state, federal and local transportation funding resources.

Page 42, Major Highway Completion Projects, Table 2.2

SR-241 (ORA052) is identified in Table 2.2 as a major highway completion project. However, the completion year is listed as 2020-2030. Although widening will occur in the 2020 to 2030 timeframe, the official project description identifies the completion date as 2030.

Recommended Clarification:

- In Table 2.2, we request that the completion date for SR 241 be clarified as 2030, consistent with the project description for ORA052.
- In the interest of establishing that some major highway projects in Table 2.2 provide emissions reduction benefits without burdening limited federal, state and local

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funding resources, we request the following clarifying footnote: *SR 241 is a privately funded Transportation Control Measure.*

Page 56, Express/HOT Lane Network

This appears to be the only “priced transportation” discussion in the transportation investments chapter. It does not identify how many miles of priced lanes exist now, or how much that network will be expanded in the plan. Toll roads are included in the priced transportation network, along with express lanes, and HOT lanes, but are not included in the discussion. However, TCA’s Toll Roads are depicted in Exhibit 2.6, Regional HOT Lane Network. The terminology should be clarified.

Recommended Clarification:

- Retitle this section, “Express Lanes, HOT Lanes and Toll Roads: The Priced Transportation Network.”
- Table 2.6 should be retitled “Express Lanes, HOT Lanes and Toll Roads”
- The text should provide brief definitions of each type of facility that makes up the priced transportation network, as Express Lanes, Toll Roads and HOT Lanes each operate differently.
- The discussion should include that express lanes, HOT lanes and toll roads generate user fees that pay for construction and operation of their facilities.
- The text should discuss that all priced facilities in the SCAG region insure interoperability by using a common technology, FasTrak, to collect user fees.
- The text should establish the congestion reducing goal of priced transportation, and the associated criteria pollutants and GHG emissions benefits of providing free flow capacity that avoids emissions generated by idling. In addition, user fees provide an economic incentive for cost-sharing that promotes ridesharing, which is beneficial to reduced criteria pollutants and GHG emissions reductions.

Page 76, Conservation Planning Policy

The description of this policy requires clarification to express the intent of SCAG’s Energy and Environment Policy Committee and the coalition of more than 20 public, non-profit and private sector interests, including TCA that urged SCAG to include it.

Recommended Clarification:

Add a paragraph that explains why the conservation program benefits GHG emissions and other criteria pollutants reductions. Specifically, in addition to meeting Safe, Accountable, Flexible, Efficient Transportation Equity Act: A legacy for Users (SAFETEA-LU) requirements, the open space lands conservation program would use natural land acquisition to sequester (store) carbon, avoid GHG emissions, and reduce

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vehicle miles traveled (VMT). This proposed program allows for early implementation and mitigation opportunities. Jurisdictions would have the option to invest early in this open space strategy which offers immediate GHG emissions avoidance benefits, while simultaneously proceeding with the longer term and planning intensive projects to build transportation centers near existing residential areas, or employment centers near transit stations, etc.

Suggested steps to develop a regional conservation planning policy should be expanded to include the following key points supported by SCAG's Energy and Environment Committee and the coalition that recommended this program:

- Build upon existing open space land acquisition and open space programs in the region, tailoring programs to each individual county in the region. These include, but are not limited to, OCTA's Measure M Mitigation Program, and TCA's open space mitigation program, which has protected 2,200 acres in perpetuity to date.
- Pursue open space conservation in a voluntary manner, working with willing private sector landowners.

Page 78, Greenhouse Gases

The draft document states that "The transportation sector, primarily, cars and trucks that move goods and people, is the largest contributor [to greenhouse gas (GHG) emissions] with 36.5 percent of the State's total GHG emissions in 2008. On road emissions (from passenger vehicles and heavy duty trucks) constitute 93 percent of the transportation sector total." This statement covers only part of the transportation system's GHG emissions role. The text must recognize projects that reduce transportation network GHG emissions by relieving congestion and insuring free-flow conditions.

Because GHG emissions from vehicles increase in stop-and-go traffic, congestion relief projects that eliminate bottlenecks and maintain free-flow conditions actually reduce transportation network GHG emissions, much as Transportation Control Measures are transportation projects that reduce criteria pollutants. Further, the SB 375 Regional Targets Advisory Committee (RTAC) recommends tracking the performance of such strategies "to smooth extreme congestion to more carbon-friendly speeds" in its final report to the California Air Resources Board.

Recommended Clarification:

Insert the following statements on page 78:

- Congestion relief projects reduce transportation network GHG emissions, which otherwise result from idling.
- Consistent with the SB 375 RTAC's recommendation in its final report to the California Air Resources Board, the RTP/SCS includes projects and strategies designed "to smooth extreme congestion to more carbon-friendly speeds."

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- A subset of projects included in the Draft RTP/SCS reduce GHG emissions by providing relief of existing and projected congestion. These include toll roads, express lanes, HOT lanes, high occupancy vehicle (HOV) lanes, and dedicated truck toll lanes.
- Congestion pricing is a powerful transportation demand management tool incorporated in the Draft RTP/SCS for reducing GHG emissions. SCAG has launched a two-year study of congestion pricing strategies that can provide needed transportation facilities while reducing the region's GHG emissions associated with vehicle trips.
- Orange County's toll road network is a prime example of priced congestion relief projects. The toll roads have variable pricing incentives that spread out vehicle use to limit peak-hour congestion that leads to increased GHG emissions.
- Other examples of projects that reduce GHG emissions on the regional transportation network include express lanes, HOT lanes, HOV lanes and dedicated truck toll lanes for goods movement.

Page 79, Air Quality

Transportation Control Measures (TCMs) are mentioned as mitigation measures, but are not defined or illustrated. The importance of TCMs needs to be clarified and expanded to clearly communicate their air quality role in the RTP.

Recommended Clarification:

- Provide a brief description of projects that qualify as TCMs.
- Explain the role of TCMs in reducing emissions.
- Provide a reference to the list of TCMs contained in the Conformity Technical Report.

Page 86, Financial Plan, Introduction

The draft document states that "We have successfully implemented toll systems in the past with the Transportation Corridor Agencies' network of toll roads and the SR-91 Express Lanes in Orange County. This kind of innovation in transportation continues as neighboring counties within our region consider a broader network of toll systems." However, the statement needs to clarify the financial planning importance of privately funded toll facilities.

Recommended Clarification:

Priced transportation facilities also provide the opportunity for financial innovation. The Orange County toll roads (SR 73, SR 133, SR 241, and SR 261) are privately funded. They provide congestion relief and associated air pollution and GHG emissions reduction without further stressing limited federal, state, and local transportation funding.

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Page 92, Core Revenues, Regional Revenues

Table 3.6, Regional Revenues, identified federal, state and local sources of transportation funding for the plan. Nowhere in the document is the private sector funding contribution assumed for the plan described, although toll road widenings, expansions, and new tolled facilities that are privately funded are included in the plan and in the total cost of the plan.

Accurately describing the extent of private funding is an important public disclosure, and an important element of the financial plan that relieves the burden on limited federal, state and local transportation funding.

Recommended Clarification:

- Clarify in the text the percentage of total funding contributed by private sources. This sum should include the privately funded Orange County toll roads (SR 73, SR 133, SR 241, and SR 261).
- A companion pie-chart, similar to Table 3.6, showing the split between public and private funding would also clarify this point.

Page 103, Table 3.5 2012 RTP Revenues (in Nominal Dollars, Billions)

Until such time that the TCA Board reviews, considers, and/or approves a VMT-based user fee; TCA is not in a position to support an increase in fees as proposed in the draft Plan. Furthermore, the draft does not clarify how the cost of a proposed new VMT fee, increased gas tax fee, tolls and user fees would layer over each other. It appears that they would accumulate for individual drivers, with a potentially significant economic impact on drivers and households. Drivers paying to use toll roads, express lanes and HOT lanes would be paying twice for the same mileage.

Page 145, Exhibit 4.17, Land Use Pattern Orange County (2035)

The southerly portion of SR 241 (ORA052), from Oso Parkway to the San Diego County border, has been inadvertently left off this map.

Recommended Clarification:

- Please show the SR 241 alignment on Exhibit 4.17 consistent with the project modeling list and other transportation network maps in the Draft RTP/SCS.

Page 161, Performance Outcomes

This text should clearly state that performance measures and outcomes are not intended to apply to individual areas or projects, but rather to the region as a whole.

Recommended Clarification:

We recommend that the following clarification be inserted:

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Page 7

- Performance measures and expected outcomes will be used to monitor the RTP/SCS at the regional level; these measures and outcomes are not proposed for use at the subregional or project-specific level.

Page 207, Strategic Plan

SCAG assumes \$100 billion will be available from a future VMT fee starting in 2025, but funding for mileage-based user fee demonstration projects and implementation strategies are not included in the constrained RTP/SCS; they are listed in the unfunded Strategic Plan. The TCA Board has made no decision on the use of VMT fees and until such time is unable to support its use in the proposed in the draft Plan.

Highways and Arterials Technical Report

Page 15, Express/ High Occupancy Toll (HOT) Lane Network.

As with the comment on page 57 of the main RTP/SCS document, the technical report should clearly include toll facilities in the description of projects included in this category. Orange County toll roads are not categorized as express or HOT lanes, but collect tolls as a means of insuring low-emission free-flow capacity and funding the construction and operation of the facility. Toll roads integrate with express lane and HOT lane facilities via the common FasTrak technology that allows inter-operability and convenience for drivers.

Recommended Clarification:

- Retitle this section, “Express Lanes, HOT Lanes and Toll Roads: The Priced Transportation Network.”
- Table 2.6 should be retitled “Express Lanes, HOT Lanes and Toll Roads”
- The text should provide brief definitions of each type of facility that makes up the priced transportation network, as express lanes, toll roads and HOT lanes each operate differently.
- The text should discuss that all priced facilities in the SCAG region ensure inter-operability by using a common technology, FasTrak, to collect user fees.
- The discussion should include that express lanes, HOT lanes and toll roads generate user fees that pay for construction and operation of their facilities.
- The text should establish the congestion reducing goal of priced transportation, and the associated criteria pollutants and GHG emissions benefits of providing free flow capacity that avoids emissions generated by idling. In addition, user fees provide an economic incentive for cost-sharing that promotes ridesharing which is beneficial to reduced criteria and GHG emissions reductions.

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Performance Measures Technical Report

Page 2, discussion of types of performance measures.

As with the comment on page 160 of the main RTP/SCS document, the text must make clear that the performance indicators are intended to be applied to the RTP/SCS at the regional level and are not proposed for project-specific application.

Recommended Clarification:

We recommend that the following clarification be inserted:

- Performance measures and expected outcomes will be used to monitor the RTP/SCS at the regional level; these measures and outcomes are not proposed for use at the subregional or project-specific level.

SCS Background Documentation

Pages 36 and 37, Land Use Pattern Maps for 2020 and 2035.

Both of these maps are inconsistent with transportation network maps in the document and do not include SR 241 (ORA052), specifically called out in the RTP as a TCM and priced transportation project in southern Orange County.

Recommended Clarification:

Please show the SR 241 alignment on the Land Use Pattern Maps for 2020 and 2035 consistent with the project modeling list and other transportation network maps in the Draft RTP/SCS.

Page 54, Pricing and Vehicle Policy Assumptions.

This discussion only refers to a 2-cent per mile VMT fee; the Plan proposes a 5-cent per mile fee. This inconsistency should be eliminated.

Recommended Clarification:

- Amend the reference to a 2-cent VMT fee to a 5-cent per mile VMT fee starting in 2025, consistent with the RTP/SCS main document.

Add the following sentence:

- Toll roads, express lanes and HOT lanes charge varying tolls per mile for use of their facilities. Tolls are project-specific and typically vary by time of day and day of the week. Tolls collected for existing toll roads in Orange County are dedicated to operational expenses and retiring the bonds issued for construction.

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Page 9

Transportation Conformity Technical Report

Page 14, Toll Roads

The discussion of toll road assumptions specifically mentions express lanes and HOT lanes, but not tolled facilities such as existing toll roads SR 73, SR 241, SR 133 and SR 261 in Orange County.

Recommended Clarification:

- SR 241 should be added to Table 6 as a tolled facility and the effect of the toll charges on it should be incorporated into the highway assignment procedure.
- Table 6 should be retitled appropriately to include “Express Lane, HOT Lane and Toll Road Networks.” This change should also be made in the main RTP/SCS document.

Transportation Security Technical Report

General

This report addresses the need for the transportation system to enhance emergency preparedness, and transportation security and preparedness. Projects that enhance the region’s security are not identified.

Recommended Clarification:

Provide illustrations of transportation projects needed in the RTP/SCS to improve transportation security. For example, the southerly extension of SR 241 provides an alternative route connecting the SCAG and San Diego Association of Governments coastal regions, which have very high current and projected travel volumes. This route will ease future projected congestion to ensure critical capacity for access and evacuation in times of environmental or other emergencies, such as earthquakes, wildfires, traffic accidents, and potential nuclear threats at the San Onofre plant. The need for an alternative route was recently illustrated by the lack of evacuation capacity from the 2007 North San Diego County wildfires.

DRAFT PROGRAM EIR

General

The Draft PEIR sets forth 500 mitigation measures that SCAG states are “feasible” and reasonable to assume that they will be implemented. Further, it is difficult to sort through these voluminous mitigation measures to identify those that are mandatory vs. advisory and those that apply to transportation projects as opposed to other types of developments. This can be improved by reformatting and clarifying the proposed mitigation measures as follows:

Recommended Clarifications:

- Provide a clear statement to the following effect: All mitigation measure recommendations to project sponsors and agencies are advisory. Lead agencies are

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Page 10

responsible for identifying and addressing those measures they deem practical and feasible, or applicable to specific projects.

- Sort out mitigation measures so that those that are mandatory upon SCAG appear first in each category and can be easily distinguished from Best Management Practices or Best Available Control Measures that SCAG is recommending to project sponsors and other agencies.
- For mitigation measures that simply restate existing regulatory agency requirements or recommendations, e.g. California Department of Fish and Game survey protocols and mitigation requirements, reference the specific regulation and include in the description “or successor regulation or guideline” so that as time moves forward the measure does not recommend out of date regulations or guidance.

Page 3.6-15 and 17 Greenhouse Gas Emissions, Transportation Network Improvements.

On page 3.6-15, the Draft PEIR states that the transportation sector is a major source of California’s greenhouse gases. Further, on page 3.6-18, the discussion cites information on the GHG emissions from new vehicle trips. However, in both places, the document does not clarify that certain transportation projects reduce greenhouse gases by virtue of their design, location and operation. Similar to the way that Transportation Control Measures reduce precursors to ozone, projects that reduce congestion and idling reduce GHG emissions from the regional transportation network. The PEIR must explain the relationship between GHG emissions and congestion relief, and the components of the RTP that provide congestion and idling relief on the regional network.

Recommended Clarification:

Consistent with our recommended clarification for page 78 of the Draft RTP/SCS document, the PEIR text should state the following on pages 3.6-15 and 3.6-18:

- Congestion relief projects reduce transportation network GHG emissions due to idling.
- Consistent with the SB 375 RTAC’s recommendation in its final report to the California Air Resources Board, the RTP/SCS includes projects and strategies designed “to smooth extreme congestion to more carbon-friendly speeds.”
- A subset of projects included in the Draft RTP/SCS reduce GHG emissions by providing relief of existing and projected congestion. These include toll roads, express lanes, HOT lanes, HOV lanes, and dedicated truck toll lanes.
- Congestion pricing is a powerful transportation demand management tool incorporated in the Draft RTP/SCS for reducing GHG emissions. SCAG has launched a two-year study of congestion pricing strategies that can provide needed

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Page 11

transportation facilities, while reducing the region's GHG emissions associated with vehicle trips.

- Orange County's toll road network is a prime example of priced congestion relief projects. The toll roads have variable pricing incentives that spread out vehicle use to limit peak-hour congestion that leads to increased GHG emissions.
- Other examples of projects that reduce GHG emissions on the regional transportation network include express lanes, HOT lanes, HOV lanes and dedicated truck toll lanes for goods movement.

Maps 2, Project Description

General, SR 241 Missing from 2035 Base Maps

Please ensure that all 2035 base maps include the southerly extension of SR 241, For example, Map 2.13, 2035 Grade Separation Projects, does not show SR 241, which will be completed by 2030, on the base map, while it is depicted on Map 2.6 and 2.8. Map 2.19, Land Use Pattern in Orange County, does not depict SR 241; this is accurate only if the map is intended to show 2008 land use; SR 241 should be included in all maps for 2020 and 2035.

Recommended Clarifications:

Consistent with the transportation modeling network and TCM timely implementation report, show SR 241 as part of the 2035 base map for all transportation maps in the PEIR. Specifically, add SR 241 to Map 2.13 and Map 2.19.

TCA thanks you in anticipation of your written responses to these comments. We look forward to the amendments in the final 2012-2035 RTP/SCS and PEIR to incorporate the recommended changes. Should you have any questions or require any clarification regarding these comments, please feel free to contact Ms. Valarie McFall, Director, Environmental Services at 949.754.3475 or via email: vmcfall@thetollroads.com.

Sincerely,



Scott Schoeffel, Chair
San Joaquin Hills Transportation Corridor
Agency



Bill Campbell, Chair
Foothill/Eastern Transportation Corridor
Agency

cc: Jacob Lieb, SCAG, Manager of Environmental and Assessment Services
TCA Board of Directors

APPENDIX OF RELATED DOCUMENTS

Submitted with December 21, 2012 Letter from
Shute, Mihaly & Weinberger LLP to the Federal Highway
Administration re NEPA Review of Foothill-South Toll
Road/Tesoro Extension Project

Appendix of Related Documents

Submitted with December 21, 2012 Letter from
 Shute, Mihaly & Weinberger LLP to the Federal Highway Administration re NEPA Review of
 Foothill-South Toll Road/Tesoro Extension Project

1.	Southern California Association of Governments Final 2013 Federal Transportation Improvement Program (“2013 FTIP”), Volume III, Project Listing, Orange County State Highway Project Listing
2.	Reporter’s Transcript of Proceedings, California Coastal Commission Consistency Certification No. 018-07, Transportation Corridor Agencies (TCA), Southern Orange County & Northern San Diego County (February 6, 2008)
3.	California Coastal Commission, Adopted Staff Report and Recommendation on Consistency Certification No. CC-018-07 (February 6, 2008).
4.	Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of the Foothill/Eastern Transportation Corridor Agency and the Board of Directors of the Foothill/Eastern Transportation Corridor Agency from an Objection by the California Coastal Commission (December 18, 2008)
5.	Transportation Corridor Agencies, Staff Report No. 16, File No. 2011F-032, Initial Segment of the 241 Completion Project (October 13, 2011)
6.	Foothill/Eastern Transportation Corridor Agency, Board of Directors Agenda, October 13, 2011
7.	Email from David Castanon, Chief, Regulatory Division, U.S. Army Corps of Engineers (“USACE”), to Susan Meyer, Senior Project Manager, USACE (November 4, 2011)
8.	Email from Spencer MacNeil to Corice Farrar (October 19, 2011)
9.	Email from Susan Meyer to Spencer MacNeil, Corice Farrar (November 28, 2011)
10.	Email from Richard Beck to Susan Meyer (October 25, 2011)
11.	Letter from Valerie McFall, Director, Environmental Services, TCA, to David Castanon, (February 4, 2012)
12.	Letter from Bill Campbell, Chair, TCA, to Hasan Ikhata, Southern California Association of Governments (February 14, 2012)
13.	U.S. Department of Transportation, Federal Highway Administration, NEPA and Transportation Decisionmaking, The Development of Logical Project Termini (November 5, 1993)
14.	2013 FTIP, Volume III, Project Listing, Orange County Local Highway Project Listing
15.	Rancho Mission Viejo Development Agreement, Ex. E
16.	Rancho Mission Viejo Development Agreement, Ex. D
17.	Fred Swegles, <i>Rancho Mission Viejo's southernmost section still on the bubble</i> , ORANGE COUNTY REGISTER, July 13, 2012
18.	Letter from Ignacio Ochoa, Interim Director of Orange County Public Works, to Kia Mortazavi, Executive Director, Planning Division, Orange County Transportation Authority (June 13, 2012)
19.	David Castanon, Memorandum for Record (November 4, 2011)
20.	Southern California Association of Governments Regional Transportation Plan/Sustainable Communities Strategy (2012), Transportation Conformity Analysis Appendix

21.	A map showing jurisdictional wetlands found in a slideshow presentation from the TCA to the Orange County Board of Supervisors (January 2012)
22.	Letter from David Castanon, U.S. Corps of Engineers, to Valerie McFall, Environmental Services Director, TCA (November 5, 2012)
23.	Transaction Tables, Foothill/Eastern (133/241/261) Toll Roads, Annual Results
24.	Dan Weikel, <i>State Probes Fiscal Health of O.C. Toll Roads</i> , L.A. TIMES, December 12, 2012
25.	California Transaction Tables, San Joaquin Hills (73) Toll Roads, Annual Results
26.	David Castanon, Memorandum for Record, (December 16, 2011)
27.	Email from Susan Meyer to Corice Farrar (March 13, 2012)
28.	Email from Mark Toy to Jeanne Imamura (August 24, 2012)
29.	SOCTIIP Final Supplemental Environmental Impact Report (2005)

TAB 1



Final 2013 Federal Transportation Improvement Program

Orange County Project Listing
 State Highway
 (In \$000's)

ProjectID	County	Air Basin	Model	RTP ID	Program	Route	Begin	End	System	Conformity Category	Amendment																																																				
ORA110502	Orange	SCAB		ORA030601	NCR46	91	9.1	15.6	S	EXEMPT - 93.126	0																																																				
Description: Eastbound Rte 91 from Rte 91/55 Connector to east of Weir Canyon Road interchange; Westbound Rte 91 from east of Weir Canyon Rd Interchange to Imperial Hwy Interchange. Replacement Planting/Landscaping. Split from ORA030601																																																															
<table border="1"> <thead> <tr> <th>Fund</th> <th>ENG</th> <th>R/W</th> <th>CON</th> <th>Total</th> <th>Prior</th> <th>2012/2013</th> <th>2013/2014</th> <th>2014/2015</th> <th>2015/2016</th> <th>2016/2017</th> <th>2017/2018</th> <th>Total</th> </tr> </thead> <tbody> <tr> <td>STATE CASH - PRIOR STIP</td> <td>339</td> <td>40</td> <td></td> <td>379</td> <td>379</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>379</td> </tr> <tr> <td>STATE CASH - RIP</td> <td></td> <td></td> <td>2,519</td> <td>2,519</td> <td></td> <td>2,519</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>2,519</td> </tr> <tr> <td>ORA110502 Total</td> <td>339</td> <td>- 40</td> <td>2,519</td> <td>2,898</td> <td>379</td> <td>2,519</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>2,898</td> </tr> </tbody> </table>												Fund	ENG	R/W	CON	Total	Prior	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	Total	STATE CASH - PRIOR STIP	339	40		379	379							379	STATE CASH - RIP			2,519	2,519		2,519						2,519	ORA110502 Total	339	- 40	2,519	2,898	379	2,519						2,898
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ORA110502 Total	339	- 40	2,519	2,898	379	2,519						2,898																																																			
ORA020807	Orange	SCAB		2L224	NCN45	91	18	18	S	EXEMPT - 93.126	0																																																				
Description: IN ORANGE COUNTY, AT THE COAL CANYON ROAD INTERCHANGE. THE PROJECT IS TO INSTALL VEGETATION ENHANCEMENTS. EA12-0K3300																																																															
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ORA020807 Total	104	12	686	802	116	686						802																																																			
ORA052	Orange	SCAB		ORA052	CAN67	241	.01	15.9	S	TCM	0																																																				
Description: (FTC-S) (I-5 TO OSO PKWY) (15MI) 2 MF EA. DIR BY 2013; AND 1 ADDITIONAL M/F EA. DIR. PLS CLMBNG & AUX LANES AS REQ BY 2030 PER SCAG/TCA MOU 4/05/01. #1988																																																															
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ORA051	Orange	SCAB		ORA051	CAR63	241	13.8	26.5	S	TCM	0																																																				
Description: (FTC-N) (OSO PKWY TO ETC) (13MI) EXISTING 2 MF IN EA. DIR, 2 ADDITIONAL M/F LANES, PLS CLMBNG & AUX LANS AS REQ BY 2020 PER SCAG/TCA MOU 4/05/01.																																																															
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ORA111207	Orange	SCAB		2T01135	CAXT7	241	36	39.5	S	TCM	0																																																				
Description: HOV/HOT CONNECTOR: NB SR-241 TO EB SR-91, WB SR-91 TO SB SR-241 (1 LANE EACH DIR) AS REQ, BY 2020 PER SCAG/TCA MOU 4/05/01. Parent project ORA050																																																															
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TAB 2

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STATE OF CALIFORNIA
COASTAL COMMISSION

ORIGINAL
Volume 1 of 2
Pages 1 - 203

TRANSPORTATION CORRIDOR)	
AGENCIES (TCA);)	
SOUTHERN ORANGE COUNTY &)	Consistency Certification
NORTHERN SAN DIEGO COUNTY)	No. 018-07

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Wednesday
February 6, 2008
Agenda Item No. 8.b.

Del Mar Fairgrounds
Wyland Hall
2260 Jimmy Durante Boulevard
Del Mar, California

1 since the San Onofre Nuclear Power Plant in 1974. It is most
2 significant because of the large area of environmentally
3 sensitive habitat, wetlands, and other public resources, it
4 will destroy.

5 The fact is that it is unmitigatable under the
6 law, that it so clearly fails to meet so many Coastal Act
7 policies, and that it raises profound questions about our
8 environmental and social future in coastal California, and
9 the glaring negative precedent it would set, by among other
10 things, destroying a heavily used state park, whose principal
11 infrastructure improvements were installed as Commission
12 required mitigations for loss public beach access in front of
13 the nuclear power plant.

14 Since passage of the California Coastal Act in
15 1976, I know of no other coastal development project so
16 demonstrably inconsistent with the law, that has come this
17 far in the regulatory review process --

18 [Audience Reaction]

19 CHAIR KRUEER: Again, please, you know, if we are
20 going to proceed with the hearing today, and we will never
21 get through all of the speaker slips and everything else, you
22 people please abide by that, or we are going to have to stop
23 the hearing. I am going to ask you for one of the last
24 times, now, not to do that, please.

25 EXECUTIVE DIRECTOR DOUGLAS: This toll road

1 process is precisely the kind of project the *Coastal Act* was
2 intended to prevent, along with new coastal nuclear power
3 plants, new offshore oil and gas leases, coastal freeway
4 projects abandoned long ago, and new commercial ports that
5 also never came to be.

6 This project is the embodiment of the central
7 driver that motivated California voters to enact the coastal
8 initiative, that created the Coastal Commission in 1972.
9 That prime driver was overwhelming public opposition to
10 rampant industrialization and destruction of the coast by
11 massive new development projects, actual and imminent at the
12 time.

13 This toll road project is not only inconsistent
14 with the law, it also raises fundamental questions about what
15 kind of environmental and social future we want for our
16 coastal communities, our families, our children, and theirs.

17 We, especially, those privileged few of us,
18 entrusted with grave responsibilities for making momentous
19 decisions today that affect generations to come, must ask
20 these questions in the context of a larger perspective of
21 where we, as a society, are heading. This is a context that
22 includes a burgeoning population, the exponential loss of
23 environmentally sensitive and critical natural habitat, the
24 loss of affordable and accessible public recreation areas and
25 opportunities, massive disruptions of global climate with

TAB 3

CALIFORNIA COASTAL COMMISSION

45 FREMONT STREET, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200



W8b

**ADOPTED STAFF REPORT AND RECOMMENDATION
ON CONSISTENCY CERTIFICATION**

Consistency Certification No. **CC-018-07**
Staff: ST/CT/MD-SF
File Date: 3/26/2007
3 Months: 6/26/2007
6 Months: 9/26/2007
Extended to: 2/28/2008
Commission Meeting: 2/6/2008
Commission Action: Objection

APPLICANT: Foothill/Eastern Transportation Corridor Agency

**DEVELOPMENT
LOCATION:**

Between the existing terminus of the State Rte. 241 (at Oso Parkway), Orange County, and I-5 (near Basilone Rd.), Marine Corps Base Camp Pendleton, San Diego County (Exhibit 1)

**DEVELOPMENT
DESCRIPTION:**

Construction of 16 mi. long, 6-lane, Foothill Transportation Corridor-South (FTC-S) toll road (Exhibits 1-9)

**SUBSTANTIVE FILE
DOCUMENTS:**

See page: 273

[**Staff Note:** This project requires that the Commission concur in or approve both a consistency certification as well as a coastal development permit (CDP) for the portion of the project within the coastal zone. The CDP functions as the equivalent of a consistency concurrence for the portion of the project to which it pertains. The staff has encouraged TCA to submit a combined consistency certification/CDP application, as it did for the San Joaquin Hills Transportation Corridor that the Commission reviewed in 1992; however TCA has declined to submit a CDP application at this time. As a result, the consistency certification that is before the Commission pertains to the entire project both within and outside of the coastal zone. In addition to the Commission's concurrence in the consistency concurrence before it, TCA will also need to apply for and obtain from the Commission a CDP for the portion of this project in the coastal zone before it can proceed.]

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Foothill Transportation Corridor-South
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applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

As described in the discussed in the ESHA, Wetlands, Public Access and Recreation, Public Views, Surfing, Water Quality and Archaeological, and Energy/Vehicle Miles Traveled Sections below, the proposed project is inconsistent with the CCMP. No measures exist that would enable the proposed alignment to be found consistent with the Coastal Act. However, numerous alternative alignments are feasible and could be found consistent with the Coastal Act, including: (1) the Central Corridor (CC); (2) Central Corridor-Avenida La Pata (CC-ALPV); (3) Alignment 7 Corridor-Avenida La Pata (A7C-ALPV); (4) Arterial Improvements Only (AIO); (5) the I-5 Widening Alternative (I-5), as described in the FSEIR or (6) the Arterial Improvements Plus-Refined (AIP-R) alternative described in "An Alternative to the Proposed Foothill South Toll Road, The Refined AIP Alternative," prepared by Smart Mobility, Inc.(September 2007). Any of these alternatives, if carried forward to a complete level of design, could be designed in a manner to include impact avoidance (where feasible), minimization, mitigation and monitoring measures to a level consistent with the applicable Coastal Act policies.

2. Necessary Information.

Section 930.58(c) of the federal consistency regulations (15 CFR Section 930.58 (c)) requires that, if the Commission's objection is based on a lack of information, the Commission must identify the information necessary for it to assess the project's consistency with the CCMP. That section states:

(c) A State agency objection may be based upon a determination that the applicant has failed, following a written State agency request, to supply the information required pursuant to § 930.58 or other information necessary for the State agency to determine consistency. If the State agency objects on the grounds of insufficient information, the objection shall describe the nature of the information requested and the necessity of having such information to determine the consistency of the activity with the management program. The objection may describe alternative measures (if they exist) which, if adopted by the applicant, may permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the management program.

As described fully in Wetlands, Water Quality, Archaeology, and Energy and Vehicle Miles Traveled Sections of this report below, the Commission has found this consistency certification to lack the information that the Commission has requested TCA to provide to enable the Commission to determine whether the proposed project is consistent with Sections 302233(a), 30233(c), 30231, 30244, and 30253(4) of the Coastal Act. In order to determine the project's consistency with the CCMP, the Commission has requested that TCA provide it with the following necessary information:

1. Wetlands. TCA needs to submit an adequate wetlands assessment based on standard Commission protocols using Coastal Act wetland definitions, and including a

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Foothill Transportation Corridor-South
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Infrastructure Improvement Project” (July 2005), and a second report prepared for the Endangered Habitats League entitled “AIP Alternative Refinement for the San Clemente I-5 Interchanges” (July 2005)). These reports provide substantial evidence documenting that far less costly and less socially disrupting I-5 widening alternatives are available than described by TCA.

Also attached were comments by Conservation Biology (Aug. 4, 2004) stating:

[TCA] ...greatly understates impacts to threatened and endangered species for various alternatives. First, in quantifying only direct (i.e., grading) impacts this table ignores the actual biological effects of the alternatives on the species. Indirect effects – especially habitat fragmentation, impacts to wildlife movement, and changes in water quality – are likely to have far greater biological impact on these species than will direct grading impacts to individuals or populations. ...

Second, using number of individuals as the “metric” for quantifying impacts to listed species is inexact, misleading, and inappropriate. For example, the table shows zero impact to Pacific pocket mouse individuals by any alternative. As detailed in our attached comments, this is a meaningless quantification, based only on the fact that consultant traps did not capture Pacific pocket mice within the limits of grading. However, a legitimate biological analysis of the project impacts reveals that any of the far eastern alignments ... will likely extirpate one and perhaps two of only four remaining Pacific pocket mouse populations. At any rate, the FEC alternatives would preclude recovery of the species under the Pacific pocket mouse Recovery Plan (USFWS 1998). Direct and indirect impacts to suitable habitat of listed species would be a more appropriate way to quantify project impacts.

These NGO’s August 6, 2004, comments on the Draft EIR stated:

The impacts that are addressed in the DEIS/R are presented in such a biased and skewed format so as to undermine efforts by the public and decision-makers to understand and assess the differences among alternatives and compare the impacts to current conditions. Tables that purport to assess and compare the impacts of each alternative merely indicate whether a resource is impacted or not, without distinguishing the extent of this impact. As one of countless examples, the DEIS/R states that each alternative would have significant and unmitigable impacts to coastal sage scrub but fails to note that impacts from the FEC-W Alternative are over 20 times that of the I-5 Alternative. DEIS/R, Table 7.11-1. Indeed, given the immense volume of materials, an accurate portrayal of the extent of impacts from each alternative in the DEIS/R's many comparative tables is critical to enable the public and decision-makers to intelligently take into account the environmental consequences of each alternative. CEQA Guidelines § 15151. In a seeming effort to obstruct such an informed evaluation of the Project, the DEIS/R fails to provide such data.

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questions about the security of areas considered to be set aside in perpetuity as habitat preserves, state parks, and in the case of the campground, mitigation for impacts of previously-approved development.

The Commission therefore finds that the Central Corridor (CC), Central Corridor-Avenida La Pata (CC-ALPV), Alignment 7 Corridor-Avenida La Pata (A7C-ALPV), Arterial Improvements Only (AIO), the I-5 Widening Alternative (I-5), and the Arterial Improvements Plus-Refined (AIP-R) alternative described in “An Alternative to the Proposed Foothill South Toll Road (“Smart Mobility Report, Revised January 2008, with accompanying Peer Review (Bergmann Associates, January 23, 2008)), would all be less environmentally damaging alternatives than the proposed alternative. TCA has provided evidence that any of these alternatives would improve the region’s traffic congestion problems. The Commission finds that that any of these alternatives, if carried forward to a complete level of design, with impact avoidance, minimization, and mitigation measures, would be less environmentally damaging than the proposed alternative.

TCA’s Response to CCC Report, p. 102-126, questions the validity of the September 2007 “Smart Mobility” Report. The report has been revised to respond to these criticisms. The Smart Mobility Report concludes:

CONCLUSIONS

- *At the planning design level of review, the AIP-R is a practicable, prudent and feasible alternative to the proposed Foothill South Toll Road that warrants further development and analysis.*
- *The AIP-Refined (AIP-R) alternative results in limited displacement when carefully designed to avoid private property, consistent with good engineering practice for designing transportation infrastructure in urbanized areas. This negates the primary reason for the rejection of the AIP alternative in the SEIR, impacts to private property.*
- *Based on the SEIR data, the AIP-R alternative will have similar results the toll road in relieving I-5 congestion, regional travel time savings and other typical traffic performance measures.*
- *The design described in this report significantly reduces (about 95% based on preliminary estimates) the displacements identified in the SEIR without sacrificing performance.*

In addition, a peer review has been conducted by Bergmann Associates (January 23, 2008) (Exhibit 11 of the list of exhibits included with the first addendum to the original staff report) on the revised, January 2008, Smart Mobility Report (Appendix F). This peer review concludes:

TAB 4

DECISION AND FINDINGS
BY THE
U.S. SECRETARY OF COMMERCE
IN THE CONSISTENCY APPEAL OF THE
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
AND THE BOARD OF DIRECTORS OF THE
FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
FROM AN OBJECTION BY THE
CALIFORNIA COASTAL COMMISSION
DECEMBER 18, 2008

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I. INTRODUCTION

The Foothill/Eastern Transportation Corridor Agency, a California joint powers agency,¹ and its Board of Directors (collectively, TCA or Appellant) propose to construct a toll road extending approximately 16 miles in length, beginning at the existing terminus of State Route 241 (SR-241) in southern Orange County, California, and connecting to Interstate 5 (I-5) at Cristianitos Road in San Diego County, California (collectively, the Project). The southernmost portion of the Project would pass through a portion of Marine Corps Base Camp Pendleton, on lands currently leased by the Department of the Navy to the State of California for use as San Onofre State Beach. The primary purpose of the Project is to provide improvements to the transportation infrastructure system that would help alleviate future traffic congestion and accommodate the need for mobility, access, goods movement, and future traffic demands on I-5 and the arterial network of existing roads connecting with I-5.²

The California Coastal Commission (Commission)³ reviewed the Project pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA), and implementing regulations of the Department of Commerce (Department) as set forth at 15 C.F.R. Part 930, Subpart D.⁴ The Commission objected to the Project, finding it inconsistent with enforceable policies of the California's Coastal Management Program (Program) related to surfing, public access, environmentally sensitive habitat areas, air quality, and wetlands.⁵ The Commission also found that TCA had not provided sufficient information for the Commission to determine whether the Project was consistent with enforceable policies related to water quality, wetlands, archeological resources, and greenhouse gas

¹ The agency is composed of representatives from Orange County and 12 Orange County cities. See Appellant's Principal Brief of Appeal under the Coastal Zone Management Act, at 5 (Mar. 18, 2008) (hereinafter TCA Initial Brief).

² Draft Environmental Impact Statement/Final Supplemental Environmental Impact Report (Dec. 2005) (Draft EIS/SEIR), Appendix to TCA Initial Brief (App.) Vol. 20, Tab 49, at 1-16. The area studied encompasses the southeast part of Orange County and the northernmost part of San Diego County, and the ten cities bordering or in the vicinity of I-5 between its confluence with Interstate 405 in central Orange County and its intersection with Basilone Road in San Diego County. App. Vol. 20, Tab 48, at ES-20.

³ The Commission is designated as California's "coastal zone planning and management agency" and is endowed with "any and all powers [as] set forth in the [CZMA]." Cal. Pub. Res. Code § 30330.

⁴ The Commission's review of TCA's consistency certification is triggered by the Project's need for a Clean Water Act permit pursuant to Section 404, 33 U.S.C. § 1344. The Project also requires authorization from the Federal Highway Administration for its interconnection with I-5.

⁵ Letter from Mark Delaplaine, Commission, to Thomas E. Magro, TCA (Feb. 13, 2008), App. Vol. 1, Tab 1.

emissions.⁶ TCA filed a timely notice of appeal, requesting an override of the Commission's objection as provided in the CZMA.⁷

The Commission's objection is sustained. As explained more fully below, the record establishes that there is an available and reasonable alternative to the Project that would permit the activity to be conducted in a manner consistent with the enforceable policies of California's Program. Further, the record establishes that the Project is not necessary in the interest of national security. Given these findings, it is not necessary to address the other substantive issues raised by the parties in this appeal. In light of this decision, the Commission's objection to the Project operates as a bar under the CZMA to Federal agencies issuing licenses or permits for the Project. This decision, however, in no way prevents TCA from adopting the alternative discussed in this decision, or other alternatives determined by the Commission to be consistent with California's Program. In addition, the parties are free to agree to other alternatives, including alternatives not yet identified, or modifications to the Project that are acceptable to the parties.

II. STATUTORY FRAMEWORK

The CZMA provides states with Federally approved coastal management programs the opportunity to review a proposed project requiring Federal licenses or permits if the project will affect any land or water use or natural resource of the state's coastal zone. A timely objection raised by a state precludes Federal agencies from issuing licenses or permits for the project, unless the Secretary of Commerce finds that the activity is either:

- "consistent with the objectives of [the CZMA];" or
- "necessary in the interest of national security."⁸

A finding that a project satisfies either results in an override of a state's objection. A license or permit applicant may appeal a state's objection and request that the objection be overridden.

⁶ Id.

⁷ Notice of Appeal of Foothill/Eastern Transportation Corridor Agency and the Board of Directors of the Foothill/Eastern Transportation Corridor Agency from the Objection of the California Coastal Commission (Feb. 15, 2008).

⁸ 16 U.S.C. § 1456(c)(3)(A) ("No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this chapter or is otherwise necessary in the interest of national security.").

III. PUBLIC INVOLVEMENT

This case was the focus of substantial public interest and input. The public was afforded the opportunity to comment on the appeal during three designated public comment periods totaling 74 days. Comments from interested Federal agencies were also solicited. As of the date of the closure of the decision record, the Department had received comments—both in support of and in opposition to the Project—from over 30 Members of Congress, dozens of state legislators, numerous national and local organizations, and tens of thousands of individuals from across the United States. The Department also held a 10-hour public hearing in Del Mar, California, on September 22, 2008. In its analysis of this appeal, the Department has considered the comments received and the testimony provided at the public hearing.

IV. THRESHOLD ISSUES

Several challenges by TCA to the sufficiency of the Commission's objection must be addressed before the merits of the appeal are considered. TCA argues that the Commission's objection should be dismissed because it is not in compliance with Section 307 of the CZMA.⁹ Specifically, TCA argues that: (a) the Project is not located in the "coastal zone," as defined by the CZMA; (b) the California Coastal Act does not authorize the Commission to exercise consistency review of projects located outside of the coastal zone; and (c) the Commission failed to comply with the CZMA and implementing regulations for consistency review of projects located outside of the coastal zone. Further, TCA argues that the Department should override the Commission's objection as procedurally defective because it is grounded in part on insufficient information.

For the reasons set forth below, the Commission's objection is sufficient to withstand dismissal on procedural grounds.

A. Although the Project Is on Federal Land Excluded from the Definition of the Coastal Zone under the CZMA, the Commission Has Consistency Review Jurisdiction over the Project.

TCA argues that the Commission may not review the Project for consistency with its Program because no part of the Project's route runs through the state's "coastal zone," as that term is defined by the CZMA.¹⁰ Specifically, TCA argues that the only portion of the Project located inside the state-defined coastal zone boundary is on lands owned and

⁹ See TCA Initial Brief, at 10-11.

¹⁰ See TCA Initial Brief, at 11-13; Respondent California Coastal Commission's Principal Brief of Appeal under the Federal Coastal Zone Management Act, at 10-11 (Apr. 11, 2008) (hereinafter Commission Initial Brief).

operated by the Federal government as Marine Corps Base Camp Pendleton¹¹ and this area is excluded from California's coastal zone and outside of the Commission's CZMA-review jurisdiction.

At the outset, it is important to note the distinction between a state's "coastal zone" and its "coastal zone boundary." A state's coastal zone is generally composed of a state's coastal waters and adjacent shorelands.¹² The state's coastal zone boundary generally defines the outer margin of the lands and waters comprising the state's coastal zone. Not all lands inside a state's coastal zone boundary, however, are necessarily considered part of a state's coastal zone. Some lands inside a state's coastal zone boundary may be excluded from a state's coastal zone.

The CZMA provides that "[e]xcluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers, or agents."¹³ The CMZA implementing regulations provide that "[t]he boundary of a State's coastal zone must exclude lands owned, leased, held in trust or whose use is otherwise by law subject to the discretion of the Federal Government, its officers or agents."¹⁴ These descriptions of Federal lands excluded from a state's coastal zone are further informed by a 1976 opinion by the U.S. Department of Justice's Office of Legal Counsel interpreting the language of the CZMA. The Office of Legal Counsel

¹¹ See Letter from Colonel J.B. Seaton, United States Marine Corps, to Thomas Street, National Oceanic and Atmospheric Administration (NOAA), at 1 (May 22, 2008). The land upon which Camp Pendleton sits was acquired by the United States through condemnation in 1942. See United States v. Jenkins, 734 F.2d 1322, 1325 n.2 (9th Cir. 1983). The United States accepted exclusive jurisdiction over the lands in 1943 and 1944. See United States v. Fallbrook Pub. Util. Dist., 110 F. Supp. 767, 771 (S.D. Cal. 1953). In 1971, the United States leased the area in which the Project is proposed to the California Department of Parks and Recreation through 2021 for use as a public park. See Agreement of Lease between the State of California, Department of Parks and Recreation and the United States of America (Sept. 1, 1971), App. Vol. 76, Tab 133. The lease reserved the right of the United States, after consultation with California as to location, to grant future leases and rights of way over, across, in and upon the property, provided, *inter alia*, that any such easement or right of way be located so as not to unreasonably interfere with the use improvements erected on the leased property by the state. *Id.* Concurrent jurisdiction over the leased area in question was ceded to California in 1973 and in 1974 for a park and I-5, respectively. See Commission Initial Brief, at 10. In 1998, Congress expressly authorized the Secretary of the Navy to grant an easement through Camp Pendleton to permit the recipient of the easement to construct, operate, and maintain a restricted access highway. See Pub. L. No. 105-261 § 2851 (1998), as amended by Pub. L. No. 107-107 § 2867 (2001), as amended by Pub. L. No. 110-181 § 2841 (2008).

¹² 16 U.S.C. § 1453(1).

¹³ *Id.*

¹⁴ 15 C.F.R. § 923.33(a) (emphasis added). See also NOAA Interim Final Rule Relating to Approval Requirements for State Coastal Zone Management Programs, 43 Fed. Reg. 8,378, 8,388 (Mar. 1, 1978) ("With respect to the commentator's concern about Federal lands leased to private parties, NOAA's position is that the lands themselves, if owned by a Federal agency regardless of whether leased to a private party, are excluded. However, the activities of the private party on those leased lands are subject to the provisions of the State's management program if such activities have effects on the State's coastal zone.").

opined that all lands owned by the Federal government are excluded from the coastal zone.¹⁵ This is true for lands held by the United States as proprietor as well as lands over which the United States and a state exercise concurrent jurisdiction.¹⁶

In the current case, the Federal government owns in fee all of the land upon which the Project would occur inside the coastal zone boundary. Based on the CZMA and its supporting regulations, this land is excluded from the coastal zone regardless of the lease status upon which the Commission bases its arguments. Accordingly, none of the Project is located in the coastal zone.

While the Project's route is entirely outside California's coastal zone, the Commission properly exercised its right to review the Project for consistency with the enforceable policies of its Program, because the record indicates that the Project affects land or water uses of California's coastal zone.¹⁷ Pursuant to the CZMA, any applicant for a required Federal license or permit to conduct an activity, inside or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone, shall certify to the coastal state that the proposed activity is consistent with enforceable policies of the state's Federally approved coastal management program.¹⁸ A state has six months to review an applicant's consistency certification for compliance with its coastal management program.¹⁹ This review attaches to any "activity" having reasonably

¹⁵ Memorandum for William C. Brewster, Jr., General Counsel, NOAA, from Antonin Scalia, Assistant Attorney General, Office of Legal Counsel, re: Lands owned by the United States subject to the state planning and regulatory process under the CZMA (Aug. 10, 1976). The memorandum concludes:

In short, the plain language of the statute appears to exclude all lands owned by the United States, since the United States has full power over the use of such lands and "sole discretion" with respect to such use. This conclusion is supported by the legislative history of the [CZMA]. Nowhere is there any suggestion that Congress intended to exclude some federal land from the Coastal Zone, and hence from State regulation, while including other such land within the Zone. We might add that the results of such an intent would be whimsical; as the submission of the Department of Defense notes, by way of example, part of the Naval base at Sewells Point in Norfolk is subject to exclusive federal legislative jurisdiction, part is subject to concurrent jurisdiction and part is held in a purely proprietary capacity. * * * Accordingly, it is my opinion that the exclusionary clause excludes all land owned by the United States from the definition of the Coastal Zone.

Id. at 12 (footnote omitted).

¹⁶ Id. at 3.

¹⁷ 16 U.S.C. § 1456(c)(3)(A) (providing that "any applicant for a required Federal license or permit to conduct an activity, in or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone" must provide a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner consistent with the program) (emphasis added).

¹⁸ Id.

¹⁹ 15 C.F.R. § 930.60; 15 C.F.R. § 930.62.

foreseeable coastal effects, regardless of whether it is located “inside or outside the coastal zone.”²⁰

Although the extent of the Project’s effects is in dispute, the record shows that the Project affects coastal uses and resources to some degree. Effects on coastal uses and resources are not limited to direct effects; rather, effects include “any reasonably foreseeable effect,” including “indirect (cumulative and secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.”²¹ In the present case, the Project has a reasonably foreseeable effect on coastal uses. For example, the Project will affect coastal recreation by developing a portion of San Onofre State Beach, a popular state park used by beachgoers and surfers at Trestles Surf Break. The Project also will have reasonably foreseeable effects on coastal resources. Coastal resources include biological and physical resources (such as vegetation, minerals, and animals) that are found in the state’s coastal zone on a regular or cyclical basis.²² Here, the Project affects, among other things, several coastal species listed as endangered or threatened under the Endangered Species Act,²³ such as the tidewater goby and the coastal California gnatcatcher, which are found in various locations within the coastal zone, and their habitats.²⁴

In sum, while the Project’s route is wholly outside of the coastal zone, the record shows that the Project nevertheless affects—directly, indirectly, or cumulatively—coastal uses and resources. Consequently, the Commission properly exercised its consistency review jurisdiction over the Project.

B. The California Coastal Act Does Not Bar Consistency Review of Activities Located Outside of the Coastal Zone.

TCA argues that the California Coastal Act restricts the Commission’s consistency review jurisdiction to those projects located wholly within the state’s coastal zone.²⁵ In support of its argument, TCA relies upon a 2005 California Supreme Court decision, Sierra Club v. California Coastal Commission.²⁶

In Sierra Club, the California Supreme Court held that the Commission lacked the authority to deny a state permit request based upon impacts within the coastal zone

²⁰ 16 U.S.C. § 1456(c)(3)(A).

²¹ 15 C.F.R. § 930.11(g).

²² 15 C.F.R. § 930.11(b).

²³ 16 U.S.C. § 1533.

²⁴ For a more detailed discussion of the effects of the Project see Section V.A.4, infra.

²⁵ See TCA Initial Brief, at 15-17.

²⁶ 111 P.3d 294 (Cal. 2005).

arising from development outside the coastal zone.²⁷ The project at issue was a housing development and access road that straddled the coastal zone.²⁸ Relying on the plain language of the California Coastal Act, the California Supreme Court found that California state law expressly limits the Commission's state permitting authority to projects or portions of projects occurring within the coastal zone.²⁹

Sierra Club is readily distinguishable from the present appeal. The decision was limited to the Commission's exercise of its state permitting authority, which is explicitly circumscribed in the California Coastal Act³⁰ and distinct from the Commission's Federal consistency review authority under the CZMA. The California Coastal Act explicitly authorizes the Commission to exercise "any and all powers set forth in the Federal Coastal Zone Management Act,"³¹ and, as discussed above, the CZMA does not limit Commission's Federal consistency review authority to activities occurring inside the coastal zone, but rather authorizes it to review Federally licensed or permitted activities "in or outside the coastal zone, affecting any land or water use or natural resource of the coastal zone."³²

In sum, the Commission is not restricted by the California Coastal Act in its Federal consistency review because the Project's route lies entirely outside of the state's coastal zone boundary.

C. The Commission Properly Exercised Consistency Review over the Portion of the Project Lying Outside of the Coastal Zone Boundary.

TCA argues that the Commission lacks jurisdiction to exercise Federal consistency review over the portion of the Project (approximately 14 miles of the proposed toll road) lying outside of California's coastal zone boundary. Specifically, TCA contends that a state is required to describe in its coastal management program the geographic location of activities outside the coastal zone boundary that the state chooses to review and that the Commission failed to do so here.³³ This argument is unpersuasive. The Commission has

²⁷ Id. at 301-10.

²⁸ Id. at 295.

²⁹ Id. at 300-06.

³⁰ See Cal. Pub. Res. Code § 30604.

³¹ See Cal. Pub. Res. Code § 30330.

³² 16 U.S.C. 1456(c)(3)(A).

³³ See TCA Initial Brief, at 13-14 (citing 15 C.F.R. § 930.53(a)(1)). In response, the Commission argues that it need not adhere to the geographic-description regulations because NOAA's approval of California's Program under CZMA regulations in effect in 1977 did not include a requirement to specify geographic locations. See Commission Initial Brief, at 11-12. In support, the Commission cites State of California v. Mack, 693 F. Supp. 821 (1988) (holding that NOAA lacks the authority to revisit the contents of an

Footnote continued on next page

automatic authority to review the Project without the need for a further geographic description in its Program, because a portion of the Project (approximately 2 miles of the proposed toll road) lies inside California's coastal zone boundary on excluded Federal lands. This review authority in turn then extends to all physically connected portions of the Project, regardless of whether they occur inside or outside the coastal zone boundary.

As discussed above, pursuant to the CZMA, states with Federally approved coastal management programs may review activities (inside or outside the coastal zone) requiring a Federal license or permit for impacts to land or water uses or natural resources of the coastal zone.³⁴ States are required to develop a list of Federal license or permit activities affecting coastal uses or resources, which becomes part of the state management program.³⁵ For activities that occur inside the coastal zone or inside the coastal zone boundary on excluded Federal land, no further geographic description of the area where these activities occur is required.³⁶ For activities outside the coastal zone boundary, the state must generally describe in its coastal management program the location of such activities.³⁷

TCA contends that—even if the geographic description requirement does not apply to the portion of the Project occurring within the state's coastal zone boundary on excluded Federal land—for the portion of the Project lying outside of the coastal zone boundary, the Commission was required to, and failed to, provide the necessary geographic description in its Program. By this reasoning, TCA concludes that the Commission

approved coastal management program). The Commission's reliance upon Mack is misplaced. The Mack court was addressing the situation where NOAA conditioned a Federal grant on California's amendment of its Program, which is not the case here. The Mack court acknowledged its decision "does not mean that an approved plan is set in stone." Id. at 825. Even after a coastal management program is approved, later changes to the CZMA regulations apply. The failure of this argument by the Commission notwithstanding, the Commission does have jurisdiction over the Project for the reasons set forth above.

³⁴ 16 U.S.C. § 1456(c)(3)(A).

³⁵ 15 C.F.R. § 930.53(a).

³⁶ 15 C.F.R. § 930.53(a)(1) provides in relevant part:

The geographic location description should encompass areas outside of the coastal zone where coastal effects from federal license or permit activities are reasonably foreseeable. The State agency should exclude geographic areas where coastal effects are not reasonably foreseeable. Listed activities may have different geographic location descriptions, depending on the nature of the activity and its coastal effects. For example, the geographic location for activities affecting water resources or uses could be described by shared water bodies, river basins, boundaries defined under the State's coastal nonpoint pollution control program, or other ecologically identifiable areas. Federal lands located within the boundaries of a State's coastal zone are automatically included within the geographic location description; State agencies do not have to describe these areas. State agencies do have to describe the geographic location of listed activities occurring on federal lands beyond the boundaries of a State's coastal zone.

(Emphasis added).

³⁷ 15 C.F.R. § 930.53(a).

cannot exercise consistency review authority with respect to the approximately 14-mile portion of the Project outside the coastal zone boundary.

Contrary to TCA's argument, once it is determined that part of an activity is subject to consistency review, the review extends to all physically connected portions of the same activity, even if the activity crosses the coastal zone boundary and continues outside of it. The geographic location description for Federal license or permit activities serves only to notify applicants and Federal agencies that a listed activity located entirely outside of the coastal zone boundary has coastal effects and is subject to Federal consistency review. Where an activity bisects the coastal zone boundary, it would make little sense to divide the activity and subject only that portion of the activity located within the state coastal zone boundary to consistency review. Consistency review attaches to an "activity" with reasonably foreseeable coastal effects regardless of where it occurs,³⁸ not some piece of an activity that occurs in a specific geographic region.³⁹

This holistic approach to consistency review is reflected in recent consistency appeal decisions. Most recently, in the AES Sparrows Point Liquefied Natural Gas, LLC consistency appeal, the Department considered, among other issues, the coastal effects of a terminal and associated pipeline in its entirety, notwithstanding the fact that only a 48-mile portion of the 88-mile pipeline was located in the coastal zone, with the balance situated outside.⁴⁰ Notably, this holistic approach is not a vast expansion of a state's jurisdiction, because consistency review of an activity—whether the activity occurs in whole or in part inside or outside the coastal zone—extends only to the activity's reasonably foreseeable effects on coastal uses and resources.

In short, and in accordance with the CZMA and its implementing regulations, if any portion of an activity is subject to Federal consistency review, physically connected portions of the same activity are likewise subject to review to the extent that they impact coastal uses or resources, whether or not the entire project lies in a geographic area described in a state's coastal management program. Here, the Commission has consistency review jurisdiction over the portion of the Project lying inside the coastal zone boundary on excluded Federal land without the need to describe this geographic area in its Program, and the remainder of the Project is a physically connected part of the same activity. Accordingly, the Commission has consistency review jurisdiction over the entire Project.

³⁸ 16 U.S.C. § 1456(c)(3)(A) (subjecting to a state's consistency review activities "in or outside the coastal zone" that require Federal permits and affect coastal uses or resources).

³⁹ This position is consistent with long-standing NOAA policy. See Letter from David W. Kaiser, NOAA, to Mark Delaplaine, Commission (Jan. 26, 2001).

⁴⁰ See Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of AES Sparrow Point LNG, LLC and Mid-Atlantic Express, LLC, from an Objection by the State of Maryland, at 28 (June 26, 2008) (hereinafter AES).

D. The Commission Did Not Improperly Base Its Objection on Insufficient Information.

TCA argues that the Commission's objection is procedurally defective because it was based, in part, upon an allegation of insufficient information and included alternative, inconsistent bases for objection. According to TCA, the Commission was barred by the CZMA regulations from objecting based on insufficient information because the Commission did not dispute that "all necessary data and information" had been submitted for purposes of triggering the commencement of its six-month review period.⁴¹ Further, TCA argues that the Commission cannot concurrently raise alternative, inconsistent objections based upon both the lack of information and project inconsistency. TCA's arguments are not persuasive.

In examining this issue, it is not necessary to review the merits of the Commission's objection based on insufficient information. Instead, the Department's inquiry is limited to assessing whether the Commission followed the proper procedures in making its objection.⁴² Here, the Commission's objection is procedurally proper.

Under the CZMA regulations, a state is entitled to certain information from applicants in order to evaluate a project for consistency with its coastal management program. This information is defined as "necessary data and information,"⁴³ and the state's six-month consistency review period does not begin until this information is provided.⁴⁴ Contrary to TCA's suggestion, however, a state may also require that an applicant provide it with "other information necessary for the State agency to determine consistency" with the enforceable policies of its coastal management program.⁴⁵ If this other information is not provided within the six-month review period, the state may object to the applicant's consistency certification on the basis of insufficient information.⁴⁶ To object properly on this basis, the state must describe in its objection the nature of the information requested and the reason such information is necessary to determine consistency.⁴⁷

Based on the foregoing, TCA's argument—that the Commission is barred from objecting based on insufficient information—is rejected. In its objection (and attached Adopted Staff Report), the Commission described the nature of the information that it had

⁴¹ See TCA Initial Brief, at 17-18 (citing 15 C.F.R. § 930.60).

⁴² See AES, at 7.

⁴³ 15 C.F.R. § 930.58.

⁴⁴ 15 C.F.R. § 930.60(a).

⁴⁵ 15 C.F.R. § 930.63(c).

⁴⁶ Id.

⁴⁷ Id.

requested from TCA (related to wetlands, water quality, archeology, and greenhouse gas emissions), as well as the necessity of having such information to determine consistency with California's Program.⁴⁸ This description satisfies the requirements for objecting based on insufficient information.⁴⁹

TCA's second argument—that the Commission may not base its objection on alternative, inconsistent bases—is likewise rejected. Specifically, TCA argues that the Commission should not be permitted to object because it lacked sufficient information to evaluate adverse effects, but then also object because Project impacts to resources were inconsistent with the enforceable policies of its Program. Put another way, TCA argues that, if the Commission had enough information to determine that the Project effects were inconsistent with its Program, then by definition the Commission possessed sufficient information. TCA's argument is unpersuasive. The Commission's inconsistency objection related to a number of effects that were not the subject of an insufficient information objection (*e.g.*, surfing, public access, recreation, public views, and environmentally sensitive habitat areas). Additionally, even for those effects covered by both objections, the CZMA regulations explicitly allow a state to "assert alternative bases for its objection."⁵⁰ This allows a state agency to object based on inconsistency with the state's coastal management program, as well as insufficient information.⁵¹

Based on the foregoing, the Commission's objection was proper.

V. THE PROJECT IS NOT CONSISTENT WITH THE OBJECTIVES OF THE CZMA

Pursuant to the CZMA, a state's objection must be sustained unless the activity at issue is consistent with the objectives of the CZMA or otherwise necessary in the interest of national security.⁵² These grounds are independent and an affirmative finding on either is sufficient to override. For reasons set forth below, the record establishes that the Project is not consistent with the objectives of the CZMA.

The Project is consistent with the objectives of the CZMA if it satisfies all three regulatory elements required for such a finding: (1) the activity furthers the national interest, as set forth in CZMA sections 302 or 303, in a significant or substantial manner

⁴⁸ See Adopted Staff Report, App. Vol. 1, Tab 2, at 25-26, 127-30.

⁴⁹ 15 C.F.R. § 930.63(c).

⁵⁰ 15 C.F.R. § 930.63(a); see also AES, at 6-7.

⁵¹ 15 C.F.R. § 930.63(a) ("A state agency may assert alternative bases for its objection, as described in paragraphs (b) [program inconsistency] and (c) [insufficient information] of this section."); see also AES, at 6.

⁵² 16 U.S.C. § 1456(c)(3)(A); 15 C.F.R. § 930.120.

(Element 1); (2) the national interest furthered by the activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively (Element 2); and (3) there is no reasonable alternative available that would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's coastal management program (Element 3).⁵³ As described in detail below, the Project fails to satisfy Element 3.

A. A Reasonable Alternative to the Project Is Available.

In determining whether Element 3 is satisfied, an alternative is evaluated with regard to the following criteria: (1) consistency with the state's coastal management program; (2) specificity; (3) availability; and (4) reasonableness.⁵⁴ The burden of proof for the first two criteria rests with the state; once they have been satisfied, the burden shifts to the appellant to demonstrate that the alternative identified is either unavailable or unreasonable.⁵⁵

In this case, the Commission identified a number of potential alternatives to the Project. TCA raises three challenges to the alternatives identified by the Commission: (1) the alternatives identified lack sufficient specificity; (2) certain alternatives are not available because they would not achieve the Project's primary or essential purpose or they have a financial, legal, or technical barrier; and (3) certain alternatives are not reasonable because coastal use and resource advantages do not outweigh increased cost. TCA's arguments are rejected for the reasons set forth below.

1. The Commission Identified Alternatives Consistent with Its Program.

As previously stated, the initial burden of identifying an alternative rests with the state. A state may identify alternatives during an appeal or the state may adopt alternatives proposed by others in lieu of identifying alternatives itself.⁵⁶ In either instance, the state must submit a statement that each alternative would permit the activity to be conducted in a manner consistent with the enforceable policies of the state's coastal management program.⁵⁷

⁵³ 15 C.F.R. § 930.121(a) – (c).

⁵⁴ Decision and Findings by the U.S. Secretary of Commerce in the Consistency Appeal of Millennium Pipeline Company, L.P. from an Objection by the State of New York, at 23 (Dec. 12, 2003) (hereinafter Millennium); Decision and Findings in the Consistency Appeal of the Virginia Electric and Power Company, at 38 (May 19, 1994) (hereinafter VEPCO)).

⁵⁵ Millennium, at 23; VEPCO, at 39.

⁵⁶ Millennium, at 21-22 n.62.

⁵⁷ 15 C.F.R. § 930.121(c); VEPCO, at 39.

In this case, the Commission identified six alternatives that, if implemented, would permit the activity to be conducted in a manner consistent with the enforceable policies of California's Program.⁵⁸ One of those alternatives—the Central Corridor-Avenida La Pata (CC-ALPV) alternative—is discussed in detail in this decision. Because the record shows that this alternative is both available and reasonable, it is unnecessary to examine the remaining alternatives proposed by the Commission.⁵⁹ A single available and reasonable alternative is sufficient to render the Project inconsistent with the objectives of the CZMA.

2. The Commission Described the CC-ALPV Alternative with Sufficient Specificity.

A state must describe an alternative with sufficient specificity to show how the proposed alternative could be implemented consistent with the state's coastal management program and to permit evaluation of whether the alternative is available and reasonable.⁶⁰ In the current case, the record contains substantial information on the CC-ALPV alternative, and this information is sufficiently specific to show the alternative is both available and reasonable.

The CC-ALPV alternative would be approximately 8.7 miles long and extend the existing State Route 241 south from Oso Parkway to Avenida La Pata in San Clemente.⁶¹ Unlike the Project as proposed by TCA, the CC-ALPV alternative does not intersect with I-5; rather, traffic traveling along the CC-ALPV alternative route would use existing arteries

⁵⁸ Commission Initial Brief, at 37-46.

⁵⁹ This decision does not make any determination on the availability or reasonableness of the remaining alternatives, and is made without prejudice to the other alternatives identified by the Commission.

⁶⁰ VEPCO, at 39 (citations omitted). In VEPCO, the State of North Carolina objected to a proposal to construct a pipeline that would withdraw up to 60 million gallons a day of potable water from Lake Gaston for the City of Virginia Beach. As an alternative, North Carolina recommended that the City of Virginia Beach obtain the water from another source. Through the course of the appeal, North Carolina identified sixteen alternatives, several of which failed for lack of specificity. For example, the state proposed a "program which balances Virginia Beach's [water] needs against those of other users" without explaining how this balancing approach might work, how the purpose of the project would be achieved, or how the alternative would be consistent with the enforceable policies of North Carolina's coastal management program. Likewise, North Carolina proposed an alternative of expanding the water capacity at an existing reservoir and establishing a "well-designed and regulated program" to ensure the downstream capacity needs were met, but did not describe the program, or what was meant by "well-designed and regulated." Both of these alternatives failed for lack of specificity.

⁶¹ Commission Initial Brief, at 44 n.21.

for several miles in order to connect with I-5.⁶² Consequently, the entire route of the CC-ALPV alternative occurs more than a mile outside of the coastal zone boundary.⁶³

The CC-ALPV alternative is one of the alternatives examined in detail in the Draft EIS/SEIR, prepared jointly by TCA and the Federal Highway Administration as part of the Federal- and state-level environmental review processes.⁶⁴ The record also contains input on the CC-ALPV alternative from the parties,⁶⁵ interested Federal agencies,⁶⁶ and the public.

Overall, the record provides ample technical, performance, effects, and cost information to evaluate how the CC-ALPV alternative could be implemented consistent with California's Program and whether this alternative is available and reasonable.

3. The CC-ALPV Alternative Is Available.

Because the Commission identified with sufficient specificity an alternative that is consistent with California's Program, the burden now shifts to TCA to demonstrate that the alternative is unavailable or unreasonable.

TCA raises two objections to the CC-ALPV alternative. First, TCA argues that the CC-ALPV alternative is unavailable because it does not adequately improve traffic

⁶² These arteries include Avenida Vista Hermosa (a primary arterial with four travel lanes) and Avenida La Pata (a major arterial with six travel lanes). Draft EIS/SEIR, App. Vol. 20, Tab 49, at 2-46.

⁶³ A map of various alternatives is provided as Attachment A to this decision. On the map, the CC-ALPV alternative appears in gold. The Project, as proposed by TCA, appears in green and is labeled the A7C-FEC-M alternative.

⁶⁴ TCA finalized the state-level SEIR in December 2005, after TCA's board of directors certified the report. App. Vols. 20-32. Until that time, the document was being prepared in conjunction with the EIS pursuant to the National Environmental Policy Act. The EIS is being coordinated by the Federal Highway Administration with input from the Army Corps of Engineers (Corps), the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS), TCA, and the California Department of Transportation (Caltrans), following integration procedures in a 1994 environmental streamlining document entitled the "National Environmental Policy Act and Clean Water Act Section 404 Integration Process for Surface Transportation Projects in Arizona, California, and Nevada" Memorandum of Understanding (NEPA/404 MOU), App. Vol. 73, Tab 104. Letter from Wayne Natri, EPA, to Thomas Street, NOAA, at 1 (May 28, 2008). Unlike the SEIR, the Federal environmental review process and the EIS were still not final at the time the appeal record closed in this case.

⁶⁵ TCA Initial Brief, at 42, 44-47; Commission Initial Brief, at 37, 43-44; TCA's Reply Brief of Appeal under the Coastal Zone Management Act, at 19 (May 5, 2008); TCA's Supplemental Brief under the Coastal Zone Management Act, at 15-16 (Oct. 14, 2008); Commission's Supplemental Brief on Appeal under the Federal Coastal Zone Management Act, at 13 (Oct. 11, 2008);

⁶⁶ See, e.g., Letter from Steven L. Stockton, Corps, to Joel La Bissonniere, NOAA, at 1 (May 28, 2008); see also TCA Supplemental App. (Supp. App.) Vol. 5, Tab 37; Letter from Thomas J. Madison, Jr., Federal Highway Administration, to Conrad C. Lautenbacher, Jr., NOAA, at 3 (Oct. 7, 2008).

conditions. Second, TCA argues that the CC-ALPV alternative is unreasonable due to community disruption and wetland impacts.⁶⁷ Both of these arguments are unpersuasive.

“Availability” refers to the ability of the appellant to implement an alternative that achieves the primary or essential purpose of the project.⁶⁸ If an appellant fails to argue or provide evidence that an alternative is “unavailable,” the alternative is presumed to be “available.”⁶⁹

The primary or essential purpose of the Project in this case is “to provide improvements to the transportation infrastructure system that would help alleviate future traffic congestion and accommodate the need for mobility, access, goods movement and future traffic demands on I-5 and the arterial network in the study area.”⁷⁰ This is the purpose articulated in the Draft EIS/SEIR, and the record shows TCA, together with the Federal Highway Administration and California Department of Transportation, prepared this document.⁷¹

The record reflects that the CC-ALPV alternative achieves this purpose by substantially reducing congestion on I-5 and the arterial network. The Draft EIS/SEIR includes an analysis of the amount of traffic relief afforded by each alternative, including the CC-ALPV alternative. Traffic relief is measured in various ways. Table 1 below shows several measures of traffic relief, and compares performance of the CC-ALPV alternative to the projected traffic conditions on I-5, the arterial networks, and the entire system in the year 2025 if no action is taken. All of the information in the table is from the Draft EIS/SEIR.

⁶⁷ TCA Initial Brief, at 46-47.

⁶⁸ Millennium, at 24 (citing VEPCO, at 38).

⁶⁹ See, e.g., Decision and Findings in the Consistency Appeal of Exxon Company, USA to an Objection from the California Coastal Commission, at 14 (Nov. 14, 1984) (hereinafter Exxon).

⁷⁰ Draft EIS/SEIR, App. Vol. 20, Tab 49, at 1-16. The “study area” encompasses the southeast part of Orange County and the northernmost part of San Diego County. See supra note 2.

⁷¹ TCA is identified as the lead agency in the state-level environmental review process leading to the development of the SEIR. App. Vol. 20, Tab 48, at ES-1. TCA’s Board of Directors adopted and certified the SEIR upon its completion. See TCA Board of Directors’ Resolution, No. F2006-01 (Feb. 23, 2006), App. Vol. 18, Tab 36, at 4 (stating the SEIR “reflects the independent judgment and analysis of the Foothill/Eastern Transportation Corridor Agency.”); see also Letter from Thomas Magro, TCA, to Colonel Thomas Magness, Corps, at 6 (Apr. 15, 2008), Supp. App. Vol. 5, Tab 37.

Table 1. Estimated traffic relief for the CC-ALPV alternative compared to projected traffic conditions on I-5 in 2025.

Parameter	Projected Traffic Conditions in 2025	CC-ALPV Alternative
I-5 congestion (percent of traffic experiencing congestion)	15.9	7.8
Arterial congestion (hours of vehicle delay per day)	9,900	8,200 to 8,300
System-wide Travel Time Savings (vehicle hours saved per day)	None	8,000

These data show that the CC-ALPV alternative reduces traffic congestion on I-5 by over 50 percent and arterial delay by approximately 17 percent and creates substantial (8,000 vehicle hours per day) travel time savings on a system-wide basis. TCA argues that this alternative compares unfavorably to the Project, which would reduce I-5 congestion by over 75 percent, reduce arterial delay by approximately 22 percent, and save up to 21,000 vehicle hours per day system-wide.⁷²

The standard for availability under the CZMA, however, does not require that an alternative be the top performing alternative or that the alternative perform better than the applicant's proposal. An alternative is available under the CZMA even though it is less ambitious than a proposed project so long as the primary or essential purpose can be

⁷² According to data in the Draft EIS/SEIR, the Project would reduce traffic on I-5 experiencing congestion to 2.4 to 3.4 percent, would reduce arterial congestion to approximately 7,700 to 7,900 hours of vehicle delay per day, and would lead to system-wide time savings of approximately 18,000 to 21,000 hours. Draft EIS/SEIR, App. Vol. 20, Tab 48, at ES-46 to ES-47.

achieved.⁷³ This principle is well-established by Department precedent. For example, in an appeal involving a proposed dock, the Department found that the state's alternative, which would have involved the construction of a small dock of eight slips, was available, even though the developer proposed a larger 18-slip structure.⁷⁴ Similarly, in an appeal involving a proposed grocery store complex, the Department found that the state's alternative to the developer's grocery store, strip mall, and adjacent parking lot development was available, even though it would be restricted to a smaller upland area with a smaller footprint than the developer desired.⁷⁵ The Department explained that an alternative may be available even though it includes "a less ambitious project."⁷⁶ Finally, in a case involving a proposed golf-course irrigation and improvement project, the Department found the state's alternative, involving the construction of an upland lake for golf-course irrigation, was available despite the fact that the alternative would not provide the same level of benefits as the developer's proposal, including run-off filtration and water quality and aesthetic improvements.⁷⁷ At bottom, the Department looked to the primary purpose of the project (i.e., golf course irrigation) and found the state's alternative met this purpose. The Department explained that if secondary purposes or site-specific benefits were considered as part of the analysis of availability, it "would likely make site alternatives for all projects unavailable."⁷⁸

TCA relies upon the Department's VEPCO decision to argue that an alternative that does not perform as well as the preferred alternative is not considered available. VEPCO, however, is distinguishable. In VEPCO, the purpose of the project was to supply 60 million gallons of water per day for Virginia Beach to meet a projected water deficit in the year 2030.⁷⁹ Thus, the project needed to meet a specific volume threshold in order to meet the primary or essential purpose, and the Department found that an alternative that could not meet this threshold either individually or in combination with other alternatives was unavailable.⁸⁰ In the present case, the record does not reflect that a specific threshold of traffic relief is required in order to achieve the primary or essential purpose. Rather, the purpose and need statement adopted by TCA in the Draft EIS/SEIR defines a general need for infrastructure improvement for the purpose of congestion relief and

⁷³ Decision and Findings in the Consistency Appeal of Davis Heniford from an Objection by the South Carolina Coastal Council, at 14 (May 21, 1992) (hereinafter Heniford).

⁷⁴ Decision and Findings in the Consistency Appeal of Robert E. Harris from an Objection by the New York State Department of State, at 6, 18-26 (Dec. 2, 1992).

⁷⁵ Heniford, at 13-15.

⁷⁶ Id. at 14.

⁷⁷ In the Consistency Appeal of Yeamans Hall Club from an Objection by the South Carolina Coastal Council, at 5 (August 1, 1992) (hereinafter Yeamans Hall Club).

⁷⁸ Id. at 6.

⁷⁹ VEPCO, at 46.

⁸⁰ Id.

accommodation of the need for mobility on I-5 and the arterial network that is not linked to any specific, quantified threshold of performance.⁸¹

Further, the Draft EIS/SEIR explicitly states that the CC-ALPV alternative meets the Project's purpose and need.⁸² The Draft EIS/SEIR examines a number of alternatives and concludes that eight alternatives, including the CC-ALPV alternative, meet the Project's purpose and need. These alternatives were selected from a much broader array of alternatives that was ultimately narrowed based on a technical evaluation and analysis that took into account the relative performance of the alternatives in relieving traffic congestion, as well as environmental effects and costs. The CC-ALPV alternative was one of those ultimately retained for more detailed analysis in the Draft EIS/SEIR "because of [its] ability to address the purpose and need of the project."⁸³

In short, the record shows that the CC-ALPV alternative, although less ambitious than the Project, nevertheless meets the primary or essential purpose of the Project.

There are other reasons that an alternative may not be available, such as whether there is a technical or legal barrier to implementing the alternative and whether the resources to implement the alternative exist.⁸⁴ However, TCA bears the burden of demonstrating that an alternative is not available, and TCA has not argued or presented evidence that a technical or legal barrier to the CC-ALPV alternative exists. Nor has TCA argued or presented evidence that it lacks the resources to implement the CC-ALPV alternative.

For the foregoing reasons, the record shows that the CC-ALPV alternative is available.

⁸¹ The following is the detailed purpose and need statement from the Draft EIS/SEIR, App. Vol. 20, Tab 49, at 1-15, 1-16:

Need for the Project. Transportation infrastructure improvements are necessary to address the needs for mobility, access, goods movement and projected freeway capacity deficiencies and arterial congestion in south Orange County. Freeway capacity deficiencies and arterial congestion are anticipated as a result of projected traffic demand, which will be generated by projected increases in population, employment, housing and intra- and inter-regional travel estimated by the Southern California Association of Governments (SCAG and San Diego Association of Governments (SANDAG).

* * *

Purpose of the Project. The purpose of the SOCTIIP is to provide improvements to the transportation infrastructure system that would help alleviate future traffic congestion and accommodate the need for mobility, access, goods movement and future traffic demands on I-5 and the arterial network in the study area.

⁸² Draft EIS/SEIR, App. Vol. 20, Tab 49, at 1-23 (Table 1.7-1).

⁸³ Id. at 2-10.

⁸⁴ VEPCO, at 38.

4. The CC-ALPV Alternative Is Reasonable.

In addition to determining whether an alternative is “available,” the Department also must decide whether an alternative is “reasonable.” An alternative is reasonable if the alternative’s advantages to the resources and uses of the state’s coastal zone exceed the alternative’s increased costs, if any.⁸⁵ In the present case, the record demonstrates that the CC-ALPV alternative is reasonable, and TCA has not met its burden to demonstrate that it is not.

The CC-ALPV alternative is less costly than the Project. The CC-ALPV alternative has a total cost of \$609 million,⁸⁶ while the Project would cost \$715 million.⁸⁷ Neither party has disputed these cost estimates. Consequently, when applying the CZMA’s standard for reasonableness, the CC-ALPV alternative does not present any increased costs that need to be offset by advantages to the resources and uses of California’s coastal zone.

Nevertheless, the CC-ALPV alternative does present advantages to the resources and uses of California’s coastal zone. The record demonstrates that the Project would result in a number of reasonably foreseeable effects to the uses and resources of California’s coastal zone. In contrast, the Commission has identified no adverse effects associated with the CC-ALPV alternative, and TCA has failed to demonstrate that the impacts it attributes to the CC-ALPV alternative constitute reasonably foreseeable effects on coastal uses or resources.⁸⁸

⁸⁵ Millennium, at 24; VEPCO, at 38; Yeamans Hall Club, at 6.

⁸⁶ The Draft EIS/SEIR originally reported that the CC-ALPV alternative would cost even less. However, subsequent to the Draft EIS/SEIR’s publication, new construction occurred in a subdivision in the vicinity of the CC-ALPV alternative’s footprint. Thus, TCA added approximately \$97 million to the estimated cost of the CC-ALPV alternative to cover the cost of compensating those displaced by the construction. App. Vol. 26, Tab 54, Attachment 6. Even with these added costs, the CC-ALPV alternative remains over \$100 million less costly in total costs than the Project.

⁸⁷ Supp. App. Vol. 5, Tab 37, at Attachment D (Table 1.1). In examining cost, it is the total cost that is relevant to the Department’s analysis. Derivative measures, such as cost-effectiveness, are not considered in the Department’s examination of reasonableness. Rather, to the extent effectiveness is relevant, it is considered when determining an alternative’s availability. To be “available,” an alternative must meet a project’s primary or essential purpose and is therefore effective to that extent. Thus, the determination that an alternative is available provides the effectiveness benchmark that is relevant to the Department’s determination, and separate measures of effectiveness do not factor into the analysis of reasonableness. See Millennium, at 30 n.96 (“This issue [of reduced efficiency of operations] is not relevant to determining whether a route modification is available unless the inefficiency is of such magnitude as to make construction of the entire project financially infeasible.”).

⁸⁸ When comparing the relative effects of alternatives, reasonably foreseeable direct, indirect, and cumulative effects to coastal uses and resources are germane to the Department’s analysis. See 15 C.F.R. § 930.11 (defining “[e]ffect on any coastal use or resource.”). TCA argues that the Department’s consideration should not be limited to effects on coastal uses and resources, and cites the Department’s

Footnote continued on next page

The Project would have a reasonably foreseeable adverse impact on coastal uses such as recreation and public views. Specifically, the Project would result in the permanent loss of more than 35 acres of the San Onofre State Beach (Park), with over 100 additional acres occupied during construction.⁸⁹ The Commission has explained that users of the Park are users of the Trestles Surf Break as well as other coastal recreational resources, such as swimming.⁹⁰ Accordingly, adverse impacts to the Park have an indirect, but nevertheless reasonably foreseeable, impact on an important coastal recreational use.⁹¹ The Project would also have a reasonably foreseeable adverse impact on public views—a coastal use—by diminishing the visual quality of trails within the Park, including those leading to the beach.⁹² TCA has proposed mitigation for the Project's impacts on the

Millennium decision for the proposition that the "complete route" of an alternative must be found to be reasonable and available. Millennium, however, explicitly states that "[r]easonableness' refers to the conclusion that an alternative's advantages to the resources and uses of the state's coastal zone exceed the alternative's increased costs, if any." Millennium, at 24 (emphasis added). The Millennium formulation is a precise articulation of the balancing test. Some consistency appeal decisions have used the vaguer phrase "environmental advantages" as shorthand for the precise formulation, but the application is the same. This scope of review is also consistent with the general standard for consistency review. See Section IV.A, supra.

⁸⁹ South Orange County Transportation Infrastructure Improvement Project Recreation Resources Final Technical Report, Vol. 1, at 5-253 (Dec. 2003), App. Vol. 50, Tab. 73. The Park is among the five most visited parks in California, and received approximately 2.4 million visitors in fiscal year 2005-2006. See Adopted Staff Report, App. Vol. 1, Tab 2, at 132.

⁹⁰ See Adopted Staff Report, App. Vol. 1, Tab 2, at 135-36 ("[California Department of Parks and Recreation] data suggests that the annual number of campground users during fiscal year 2006-2007 was approximately 108,446 and anecdotal evidence has suggested that many of these users chose to stay at the San Mateo Campground because of its affordability, peaceful and serene natural setting and its proximity to the Panhe Trail which provides easy access to the beach, ocean, and world renowned surf breaks located within the coastal subunits of [the Park].").

⁹¹ See 15 C.F.R. § 930.11(g) ("'[E]ffect on any coastal use or resource' means any reasonably foreseeable effect . . . includ[ing] both direct effects which result from the activity and occur at the same time and place as the activity, and indirect (cumulative or secondary) effects which result from the activity and are later in time or farther removed in distance, but are still reasonably foreseeable."). The Commission also argues that the Project will negatively affect the quality of the Trestles Surf Break by physically altering the delivery of near shore sediment/cobble deposits from the San Mateo Creek watershed that forms the surf break. The parties provided competing expert reports on whether the Trestles Surf Break would be altered, and, on balance, the record shows that the likelihood that the Project will impact the Trestles Surf Break is low. See Letter from Bob Battalio, P.E., Philip Williams & Associates, Ltd., to Mark Rauscher, Surfrider Foundation (Aug. 31, 2007), App. Vol. 1, Tab 3(U); Richard J. Seymour, Ph.D., Review of Documentation Relevant to the Impact of the Foothill-South Project on Surfing Conditions in the Vicinity of San Mateo Creek (May 26, 2008), Supp. App. Vol. 6.3, Tab 72(A); Derrick Coleman, Ph.D., Review and Assessment of Documents Related to the Final Runoff Management Plan, State Route 241 Proposed Extension (July 10, 2008), Id. at Tab 72(B); Howard Chang, Ph.D., P.E., Supplemental Comments on Sediment Issues for San Mateo Creek (Sept. 27, 2008), Supp. App. Vol. 6.1, Tab 56(O). Neither party has claimed the CC-ALPV alternative would have any adverse impact on the Trestles Surf Break.

⁹² Under the CZMA, "scenic and aesthetic" qualities are a coastal use. See 15 C.F.R. § 930.11(b); 65 Fed. Reg. 77,124, 77,129 (Dec. 8, 2000). The Commission also claims the Project will be visible from the waters offshore, citing visual simulations provided in the Draft EIS/SEIR. See Adopted Staff Report, App.

Footnote continued on next page

Park,⁹³ but has not shown that reasonably foreseeable effects on coastal uses can be eliminated. By comparison, neither party has argued or presented evidence demonstrating that the CC-ALPV alternative would have any adverse impact on the coastal recreation or public views.

The Project also would have reasonably foreseeable effects on coastal resources, including impacts to Federally listed species such as the tidewater goby, steelhead trout, and coastal California gnatcatcher.⁹⁴ The FWS determined that the Project would likely affect the endangered tidewater goby as a result of project construction and operation, including the permanent loss of 0.07 percent of suitable goby habitat from San Mateo Creek and 0.10 percent of suitable habitat from San Onofre Creek.⁹⁵ The FWS take authorization for the Project anticipates up to 50 tidewater goby deaths could occur from the capture and relocation of gobies during construction dewatering at San Mateo and San Onofre Creeks.⁹⁶ With respect to the endangered steelhead, although the National Marine Fisheries Service (NMFS) found the Project was unlikely to adversely affect steelhead, it nevertheless voiced concern that the connection of the Project to I-5 occurs directly over San Mateo Creek, just 300 meters upstream of the San Mateo Estuary, which is steelhead critical habitat.⁹⁷ Finally, with respect to the threatened coastal

Vol. 1, Tab 2 at 167-80. TCA admits the Project would be visible to Park visitors, but argues it “would not substantially alter the Trestles ‘experience’ and surrounding atmosphere.” TCA’s Response to Staff Report, App. Vol. 8, Tab 20(B), at 74 and Attachment 15.

⁹³ TCA has proposed avoiding campgrounds, trails, and other facilities for those portions of the Project passing through the Park. TCA Response to Staff Report, App. Vol. 8, Tab 20, at 60-70. TCA also committed to pay \$100 million for improvements to the Park and other nearby state parks. See Letter from Maria Levario, TCA, to Mark Delaplaine, Commission (Oct. 4, 2007), App. Vol. 11, Tab 25. This \$100 million is not included in the total costs TCA reported in the Draft EIS/SEIR. TCA argues that this park improvement payout constitutes an advantage to coastal uses and resources that the other alternatives cannot match. However, TCA has not demonstrated that a similar payout could not be added to the CC-ALPV alternative, or to any other alternative. To the extent the payout results in benefits to coastal uses and resources, these benefits would appear to be equal if applied to each alternative, and thus does not provide a basis for comparison among alternatives. TCA’s decision only to offer the \$100 million payout for its preferred alternative does not alter this analysis. To find otherwise would allow an appellant to skew the comparison of alternatives by providing expensive (but fungible) mitigation to only its preferred option.

⁹⁴ The FWS Biological Opinion explains that members of each of these species may be found in California’s coastal zone on a regular or cyclical basis. See FWS Biological Opinion, Supp. App. Vol. 6, Tab 50, at 28; 40; 51; 68-69; 92; and 112-17; see also 15 C.F.R. § 930.11(b) (explaining that coastal resources include biological resources that are “found within a State’s coastal zone on a regular or cyclical basis.”). The Project may also affect the Pacific pocket mouse, arroyo toad, and thread-leaved brodiaea (a plant), but the record is less clear on whether the Project’s impacts on these species – due to their limited range and, in certain instances, modest level of anticipated Project-related impacts – would have a reasonably foreseeable effect on coastal resources, and these species are not discussed further herein.

⁹⁵ FWS Biological Opinion, supra note 94, at 46.

⁹⁶ Id. at 166.

⁹⁷ NMFS detailed its concern in its comment letter:

Footnote continued on next page

California gnatcatcher, the Project would impact nine observed use areas and approximately 385 acres of Venturan-Diegan coastal sage scrub, which is considered prime gnatcatcher habitat.⁹⁸

By comparison, neither party has identified any adverse effect on the tidewater goby resulting from the CC-ALPV alternative. With respect to steelhead, the record shows that the CC-ALPV alternative crosses one drainage (the San Juan Creek) that steelhead may occupy, but neither party has identified any reasonably foreseeable adverse effect resulting from this crossing.⁹⁹ With respect to the coastal California gnatcatcher, the CC-ALPV alternative impacts fewer use areas (seven) and less coastal sage scrub habitat (approximately 178 acres) than the Project, and these impacts would generally occur farther from the coastal zone.¹⁰⁰

Finally, TCA argues that the CC-ALPV alternative would alter more wetlands (approximately 12 acres) than the Project (less than one acre), and would displace 172 residences and 3 active agricultural operations as opposed to no displacements for the Project.¹⁰¹ These effects, however, occur outside the coastal zone, and TCA has failed to

Under ideal circumstances, and with respect to what is best for the steelhead, the highway connector bridge superstructure * * * would be better positioned someplace other than just upstream of the estuary and directly over San Mateo Creek. There is a risk of accidental fuel spills and/or toxic material spills which could occur from traffic on the [highway connector bridge superstructure], which could result in adverse effects on the creek and estuary. Estuaries in particular have been found to be important for rearing of juvenile steelhead, and are necessary for the acclimation of all adult and juvenile steelhead migrating in and out of the watershed. NMFS believes that the biological integrity of the San Mateo Creek Estuary and vicinity is essential for the survival and recovery of steelhead with the watershed, therefore, a bridge location further from the estuary would have been preferred.

Letter from Rodney McInnis, NMFS, to Thomas Street, NOAA (June 20, 2008).

⁹⁸ Draft EIS/SEIR, App. Vol. 25, Tab 53, at 2-9, 2-19.

⁹⁹ Supp. App. Vol. 5, Tab 37, at Attachment D (Table 1.1). The CC-ALPV alternative does not cross near the San Mateo Creek Estuary, which caused the general concern with the Project voiced by NMFS.

¹⁰⁰ Draft EIS/SEIR, App. Vol. 20, Tab 48, at ES-232; App. Vol. 20, Tab 49, at 2-161. The FWS recommended that TCA, the Federal Highway Administration, and the California Department of Transportation "continue to explore the feasibility of alignment alternatives that are further [sic] west than the proposed project as we believe that such alignments will have less impact on Federally-listed species, primarily arroyo toad and gnatcatcher." FWS Biological Opinion, at 173. The CC-ALPV alternative is situated farther west than the Project as proposed by TCA.

¹⁰¹ TCA Response to Staff Report, App. Vol. 8, Tab 20(B), at 103; Draft EIS/SEIR, App. Vol. 20, Tab 48, at ES-16; App. Vol. 21, Tab 49, at 4.4-9, 4.4-10, 4.4-33. The displacements attributed to the CC-ALPV alternative were initially lower. At the time the SEIR analysis was developed only 2 residential displacements resulting from implementation of the CC-ALPV alternative were reported, but the number of displacements subsequently increased due to recent construction in Talega, a subdivision near San Clemente. App. Vol. 21, Tab 49, at 4.4-8, 4.4-9, 4.4-37. Notably, there is no evidence in the record that TCA has attempted to refine the alignment of the portion of the CC-ALPV alternative that currently goes through Talega to avoid or reduce the potential for displacements resulting from this new construction, nor

Footnote continued on next page

demonstrate that any of them would result in a reasonably foreseeable effect on a coastal use or resource.¹⁰² Thus, these purported impacts are not germane to the Department's effects analysis in this appeal.¹⁰³

In sum, not all of the impacts alleged by the parties would result in reasonably foreseeable effects on coastal uses or resources, but for those that do, the record shows the CC-ALPV alternative has fewer effects than the Project. When combined with the CC-ALPV alternative's lower cost, this clearly indicates that the CC-ALPV alternative is reasonable.

B. Conclusion on the Consistency of the Project with the Objectives of the CZMA.

Based on the foregoing, the record establishes that the Project is not consistent with the objectives of the CZMA because a reasonable alternative is available—namely, the CC-ALPV alternative. The Commission stated that the CC-ALPV alternative can be implemented in a manner consistent with California's Program, and has described the alternative with sufficient specificity. The CC-ALPV alternative is available because it satisfies the Project's primary or essential purpose and presents no financial, legal, or technical barrier to implementation. The CC-ALPV alternative is reasonable because it costs less than the Project and presents a net advantage to coastal uses and resources.

This decision in no way prevents TCA from adopting other alternatives determined by the Commission to be consistent with California's Program. In addition, the parties are free to agree to other alternatives, including alternatives not yet identified, or modifications to the Project that are acceptable to the parties.¹⁰⁴

has TCA alleged in its briefs that these displacements could not be at least partially mitigated. The Draft EIS/SEIR explains that TCA's preferred alternative was refined to avoid 56 residential displacements, Draft EIS/SEIR, App. Vol. 20, Tab 48 at ES-39, and explains that some effort was made to refine the other alternatives as they were being developed, but it does not appear that additional refinement was attempted in order to avoid the new development in Talega, which occurred after the analysis in the Draft EIS/SEIR. At least one organization prepared a study concluding that the CC-ALPV alternative's impacts on the Talega subdivision could be largely reduced by refining the alignment. See Smart Mobility, Alternatives to the Foothill South Toll Road, at 22.

¹⁰² TCA notes that, in light of such effects, the Corps has preliminarily determined that the Project is the "least environmentally damaging practicable alternative" (LEDPA). TCA Initial Brief at 2, 46-47. That preliminary finding, however, is based on the Corps' Clean Water Act § 404 standard and includes the consideration of non-coastal effects not applicable to this appeal. See Letter from Steven L. Stockton, Corps, to Joel La Bissonniere, NOAA, at 1 (May 28, 2008); see also Supp. App. Vol. 5, Tab 37; 40 C.F.R. § 230.10. Thus, contrary to TCA's suggestion, the preliminary LEDPA determination is not controlling of the Department's decision in this case.

¹⁰³ Potential right-of-way costs associated with taking of residences and businesses were taken into account when comparing the total project cost of the CC-ALPV alternative.

¹⁰⁴ See Millennium, at 38 n.125.

VI. THE PROJECT IS NOT NECESSARY IN THE INTEREST OF NATIONAL SECURITY

The second ground for overriding a state's objection to a proposed project is a finding that the activity is "necessary in the interest of national security."¹⁰⁵ A proposed activity is necessary in the interest of national security if "a national defense or other national security interest would be significantly impaired were the activity not permitted to go forward as proposed."¹⁰⁶ The burden of persuasion on this ground rests with the appellant.¹⁰⁷ General statements do not satisfy an appellant's burden.¹⁰⁸

TCA asserts the Project is necessary in the interest of national security because it will provide a number of national security improvements to Camp Pendleton Marine Corps Base, including redesign and reconstruction of entrance and exit points at the San Onofre Gate to meet current Homeland Security and Anti-Terrorist Force Protection Program guidelines and access improvements to Green Beach, an amphibious landing area. TCA also claims that the Project will provide an alternate route for the Marines to access March Air Force Base, a point of debarkation.

In this analysis, considerable weight is given to the views of the Department of Defense and other Federal agencies with national defense or other essential national security interests.¹⁰⁹ Comments were solicited from the Departments of Defense, Navy, Homeland Security, Transportation, State, Energy, Justice, and the Interior, as well as from the Homeland Security Council, National Security Council, Marine Corps, Nuclear Regulatory Commission, Army Corps of Engineers, Environmental Protection Agency, Federal Highway Administration, and Federal Transit Administration.

None of these Federal agencies raised any national defense or other national security concerns with the possibility that the Project might not go forward. Indeed, the Marine Corps stated that "[it] does not agree that [the Project] is necessary in the interest of national security. From the Marine Corps' perspective, neither the toll road nor its associated infrastructure enhancements are necessary to ensure that a proper security posture exists at Camp Pendleton."¹¹⁰

¹⁰⁵ 16 U.S.C. § 1456(c)(3)(A).

¹⁰⁶ 15 C.F.R. § 930.122.

¹⁰⁷ VEPCO, at 53.

¹⁰⁸ Millennium, at 38-39.

¹⁰⁹ 15 C.F.R. § 930.122.

¹¹⁰ Letter from Colonel J.B. Seaton, U.S. Marine Corps, to Thomas Street, NOAA, at 4 (May 22, 2008).

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Based on the foregoing, the record establishes that the Project is not necessary in the interest of national security.

VII. CONCLUSION

The Commission's objection to the Project is sustained. For the reasons set forth above, the record establishes that the Project is not consistent with the objectives of the CZMA. California has identified an available and reasonable alternative that would be consistent with California's Program. The record also does not establish that the Project is necessary in the interest of national security. Given this decision, California's objection to the Project operates as a bar under the CZMA to Federal agencies issuing licenses or permits necessary for the construction and operation of the Project. This decision, however, in no way prevents TCA from adopting the alternative discussed in this decision, or other alternatives determined by the Commission to be consistent with California's Program. In addition, the parties are free to agree to other alternatives, including alternatives not yet identified, or modifications to the Project that are acceptable to the parties.



Carlos M. Gutierrez

TAB 5

- TECHNICAL ADVISORY COMMITTEE
- SAN JOAQUIN HILLS COMMITTEE
- Foothill/Eastern Committee
- JOINT ADMINISTRATION COMMITTEE
- LEGAL AND LEGISLATIVE COMMITTEE
- SAN JOAQUIN HILLS BOARD OF DIRECTORS
- Foothill/Eastern Board of Directors

Report No. 16
File No. 2011F-032

BOARD MEETING DATE: October 13, 2011

SUBJECT: Initial Segment of the 241 Completion Project

STAFF RECOMMENDATION:

Authorize staff to develop engineering plans, complete environmental assessments and develop a financial strategy to build the 241 extension from the existing southerly terminus at Oso Parkway to the vicinity of Ortega Highway while continuing to pursue the balance of the alignment that connects to Interstate 5.

SUMMARY:

Over the past several years staff has performed a comprehensive outreach campaign that consisted of over 250 meetings with elected officials, project supporters, opponents, resource agency personnel, and various other stakeholders to discuss the need to complete the 241 Toll Road and obtain feedback on the alignment. While staff continues work on adjusting the full project alignment to avoid sensitive areas or issues, the idea of constructing the project in segments was frequently raised during the outreach process. One option would be to extend the 241 Toll Road approximately four miles from its existing terminus at Oso Parkway south to the vicinity of Ortega Highway, while continuing to pursue the balance of the alignment that connects to Interstate 5. First steps towards constructing this initial segment would include advancing environmental assessments, engineering plans and developing a finance strategy.

CONTRACTOR/CONSULTANT: N/A

COST: F/E N/A

REPORT WRITTEN BY: Sam Elters, Chief Engineer

REVIEWED BY: Engineering/Environmental
Communications/Public Affairs
Finance
Toll Operations
Chief of Staff



Handwritten signatures and initials over horizontal lines, likely representing the reviewers mentioned in the 'REVIEWED BY' section.



Transportation Corridor Agencies

125 Pacifica, Irvine, CA 92618 949/754-3400 FAX 949/754-3467

DATE: October 13, 2011
TO: Foothill/Eastern Transportation Corridor Agency Board of Directors
FROM: Sam Elters, Chief Engineer
SUBJECT: Initial Segment of the 241 Completion Project

STAFF RECOMMENDATION:

Authorize staff to develop engineering plans, complete environmental assessments and develop a financial strategy to build the 241 extension from the existing southerly terminus at Oso Parkway to the vicinity of Ortega Highway while continuing to pursue the balance of the alignment that connects to Interstate 5.

BACKGROUND:

In 2006, the Foothill/Eastern Transportation Corridor Agency Board of Directors certified the Subsequent Environmental Impact Report (SEIR) for the extension of the 241 Toll Road, also known as the South Orange County Transportation Infrastructure Improvement Project (Project). The Project's objectives, as identified in the SEIR are to:

- Alleviate existing and future peak hour traffic congestion on the existing circulation network in south Orange County.
- Provide benefits to the traveling public and more efficient movement of goods through a reduction in the amount of congestion and delay in southern Orange County.
- Implement the Orange County Master Plan of Arterial Highways (MPAH) by completing the transportation corridor system in south Orange County between the existing State Route (SR) 241 and Interstate 5 (I-5).
- Minimize through traffic use of the existing arterial highway network in south Orange County by diverting traffic on I-5 to a transportation corridor level facility rather than arterial highways. The MPAH states that transportation corridors will provide for efficient movement of traffic where projected volumes exceed major arterial capacities.
- Develop a "priced alternative to high-occupancy vehicle (HOV) lanes" to implement the air quality benefits of Transportation Control Measure (TCM)-01 in the Air Quality Management Plan (AQMP), the State Implementation Plan and the Regional Transportation Plan. TCM-01 includes the toll road extension of the existing Foothill

Transportation Corridor – North (SR 241) as one of many transportation improvements listed in the AQMP. The Toll Road corridor alternatives are a “priced alternative to HOV lanes” which simply means that rather than implementing HOV lanes as part of The Toll Roads when first constructed, the HOV lanes can be delayed and tolls can be used to partially control demand, and maintain high levels of service, on The Toll Roads in the short-term.

- Provide an alternative access route between south Orange County and central and northeastern Orange County to serve existing and developing employment centers and major attractions.
- Provide an alternative access route between South Orange County and central and northeastern Orange County for emergency evacuations and emergency service providers.
- Minimize adverse impacts related to community disruption, acquisition of residences and businesses, noise and aesthetics.
- Minimize adverse impacts to the environment while recognizing the conflicting demands of different types of resources, regulatory requirements and environmental priorities in the study area.

In 2008, the Project went before the California Coastal Commission (CCC) for consistency review with the Coastal Zone Management Act and the CCC objected to the consistency certification. The agency appealed the denial to the U.S. Secretary of Commerce who, in December 2008, sustained the CCC objection, but also suggested other alternatives that the CCC or the Secretary of Commerce concluded were viable, including the construction of a shorter segment. Shortly after receiving denial from the CCC, the Project received its no jeopardy biological opinion (BO) from the U.S. Fish and Wildlife Service and its Streambed Alteration Agreement from the California Department of Fish and Game.

In January 2009, staff launched a comprehensive outreach campaign that included meetings with elected officials, project supporters, opponents, resource agency personnel, and various other stakeholders to discuss the need to complete the 241 Toll Road and feedback on the alignment. Staff and Board Members had more than 250 meetings. Most expressed that there was a traffic problem – either currently or pending -- that needed to be addressed for mobility, safety, goods movement, and quality of life in south Orange County.

DISCUSSION:

Based on feedback from the stakeholder outreach program, review of the written decisions of the CCC and U.S. Secretary of Commerce, and the above listed project objectives, staff began to evaluate options, many of which had been identified in the original environmental process. Besides adjusting the alignment to avoid sensitive areas or issues, the idea of constructing the project in segments, while at the same time working on identifying a route for the final twelve miles that will connect with I-5 was considered. The Foothill/Eastern Mobility Ad Hoc Committee reviewed the concept of an initial segment which would be to extend the 241 Toll Road approximately four miles from its existing terminus at Oso Parkway south to the vicinity of

Ortega Highway. Work on this segment would be advanced while staff continues to pursue the balance of the alignment that connects to I-5.

A direct interchange with Ortega Highway (State Route 74) is not proposed due to the proximity of Ortega Highway to San Juan Creek (and its sensitive habitat areas) and the topography immediately south of Ortega Highway. These two issues make a direct interchange with Ortega Highway very costly and challenging. Agency staff has worked with Caltrans, the County of Orange and Rancho Mission Viejo (RMV) to develop an indirect connection concept which is shown on Exhibit A. Under this concept, an interchange would be constructed at a local roadway north of Ortega Highway currently known as "G" Street. This interchange connects via other local roadways with the proposed Cow Camp Road, which will in the near term be connected to Antonio Parkway to the west of SR 241 and ultimately to Ortega Highway to the east of SR 241. This four lane, four mile proposed southerly extension of SR 241 from Oso Parkway to "G" Street is known as the Oso to G Street Extension, or OGX.

This portion of the alignment was analyzed within the 2006 SEIR. Environmental impacts are minimal and can be successfully mitigated. Construction of this segment would provide a route to and from new developments in RMV, for regional traffic using Ortega Highway to and from the east, for the inland areas of San Juan Capistrano and eventually for San Clemente when the gap segment of Avenida La Pata is completed. Development within the RMV Planning Area (PA) 1 (located near Antonio Parkway and Ortega Highway) has already been initiated. Additional development in PA 2, located just north of Ortega Highway, will begin shortly after completion of PA 1.

OGX would initially be two lanes in each direction with a median wide enough for additional lanes or future transit options. The segment would end at a street that will provide new development direct access to the toll road, as well as access to Antonio Parkway and Ortega Highway. Average daily traffic on the OGX segment is projected to be 41,000 in the year 2035 and will help relieve traffic on city streets in nearby communities as well as I-5.

Traffic and Revenue

At the request of the Foothill/Eastern Mobility Ad Hoc Committee, staff has investigated the potential for the financing of the OGX segment. Barclays Capital has developed two potential financing options which indicate 1) that the revenues from this initial segment are net positive and 2) financing strategies should be marketable. The Barclays analysis is included within Attachment 1 of this report.

BUDGET:

The total estimated cost for the initial segment is approximately \$205.7 million. The estimated cost to be spent in FY12 is \$3,877,113 (detailed in table below) and is included within the FY12 budget.

Item	FY12 Estimated OGX Cost	Total Estimated OGX Cost
Preliminary Engineering	\$ 2,720,000	\$ 3,400,000
Right of Way	-	6,000,000
Environmental	637,113	780,127
Subtotal	\$ 3,357,113	\$ 10,180,127
Construction	-	195,000,000
CIP Subtotal	\$ 3,357,113	\$ 205,180,127
Financial Services	200,000	200,000
Legal/Contingency	320,000	320,000
Grand Total	\$ 3,877,113	\$ 205,700,127

FY12 Estimated Expenditures

Preliminary Engineering

The existing design-build contract for the 241 completion project was placed on hold in FY10 to allow the public outreach process to advance. Today there is \$4,061,457 remaining in that previous contract authorization. In order to advance this initial segment of the project, the preliminary design needs to be modified. No additional contract authorization is needed at this time. The estimated amount for advancing the preliminary design for the initial segment is \$3,400,000 and is expected to take 10 months. The FY12 expenditure amount of \$2,720,000 (8/10 months) is within the FY12 budget. The balance of the \$3,400,000 (or \$680,000) (2/10 months) shall be included within the future FY13 budget.

Environmental

An addendum to the SEIR will need to be developed including supporting technical studies, completing the required resource agency permitting and coordination with the project team. The addendum will include a detailed traffic study showing impacts of the initial project on the existing roadway system in the area. The estimated amount for completing the environmental assessments for the initial segment is \$780,127 and is expected to take 10 months. The FY12 expenditure amount of \$637,113 is within the FY12 budget. The balance of the \$780,127 (or \$143,014) will take place in FY13 and be will in the FY13 budget.

Financial Services

Staff is requesting direction from the Board to begin analyzing and developing financing alternatives and long term cash flow models for the OGX project. Resources needed to complete the recommended financial analysis, planning and modeling will include financial advisory, investment banking, bond counsel and agency legal counsel services. The total estimated budget for the combined effort of all of these consultants (not including actual financial transaction costs such as interest expense, underwriting fees or investment banking management fees) is \$520,000.

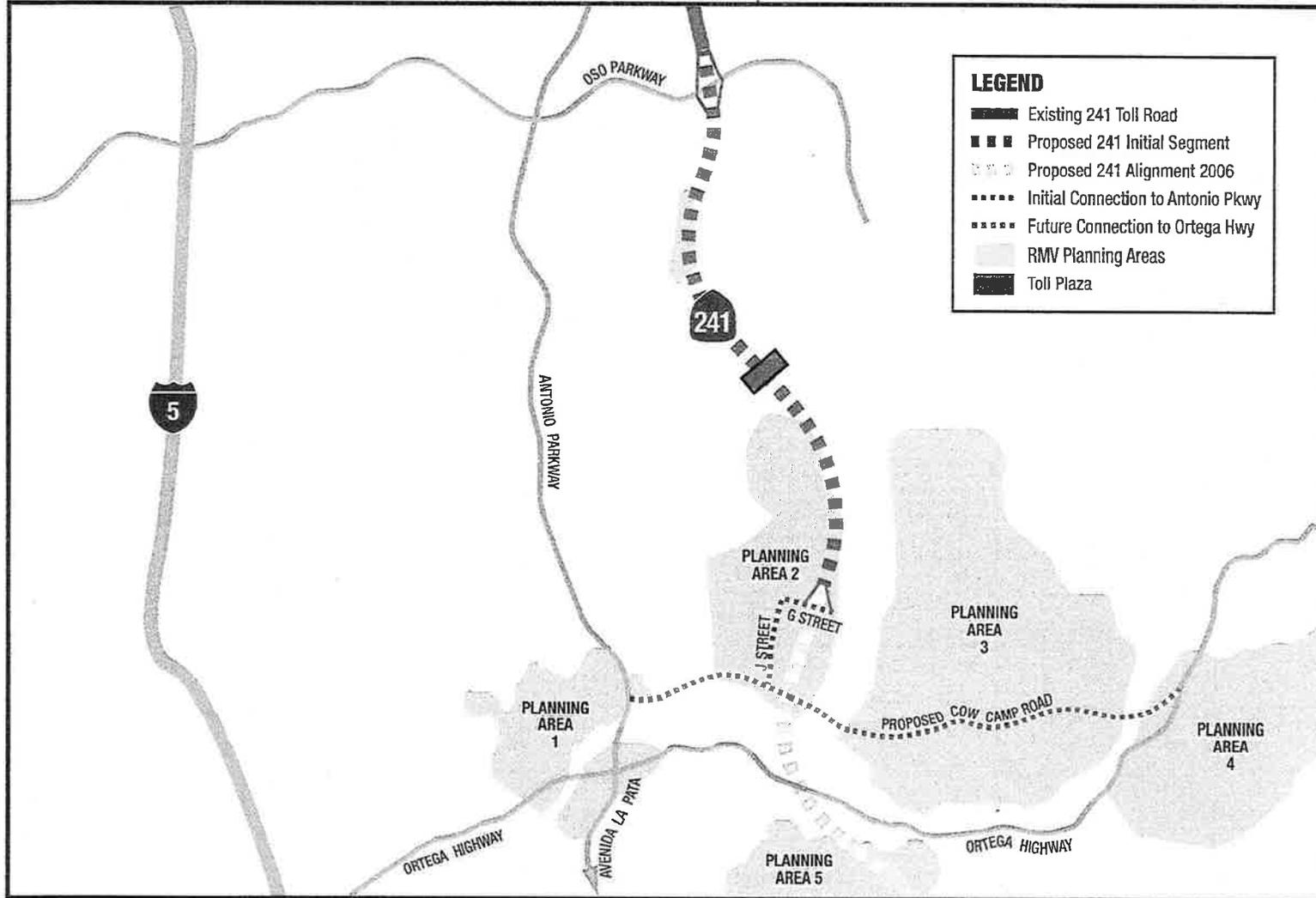
CONCLUSION:

Over the past several years staff has performed a comprehensive outreach campaign that consisted of over 250 meetings with elected officials, project supporters, opponents, resource agency personnel, and various other stakeholders to discuss the need to complete the 241 Toll Road and obtain feedback on the alignment. While staff continues work on adjusting the full project alignment to avoid sensitive areas or issues, the idea of constructing the project in segments was frequently raised during the outreach process. One option would be to extend the 241 Toll Road approximately four miles from its existing terminus at Oso Parkway south to the vicinity of Ortega Highway, while continuing to pursue the balance of the alignment that connects to Interstate 5. First steps towards constructing this initial segment would include advancing environmental assessments, engineering plans and developing a finance strategy.

Attachments: Exhibit A – Map of OGX
Attachment 1 – Barclays Financial Analysis

EXHIBIT A

241 COMPLETION - INITIAL SEGMENT



Preliminary / Subject to Change



Foothill/Eastern Transportation Corridor Agencies

241 Completion - Initial Segment Financing Strategies

October 2011

Barclays Capital Investment Banking Team

Barclays Capital can provide TCA with unparalleled institutional knowledge and a track record of successful financings for TCA agencies



Day-to-Day Banker
Head of Western Region

Tony Hughes
Managing Director

- Serving TCA since 1987
- Senior manager for \$5.8 billion in TCA transactions, including 2011 SJHTCA restructuring



Transportation Specialist

Peter Buffa
Director

- Former Chairman of San Joaquin Hills TCA
- Former Chairman of OCTA



Transportation Group Head

James Henn
Managing Director

- National transportation financing experience



Transportation Specialist

John McCray-Goldsmith
Director

- West Coast transportation expert



Modeling & Structuring

Michael Fleishman
Vice President

- Cash flow projections & bond structuring



Investor Account Specialist
Head of Municipal Sales

Scott Lohan
Managing Director

- Led bondholder outreach for 2011 San Joaquin Hills TCA restructuring

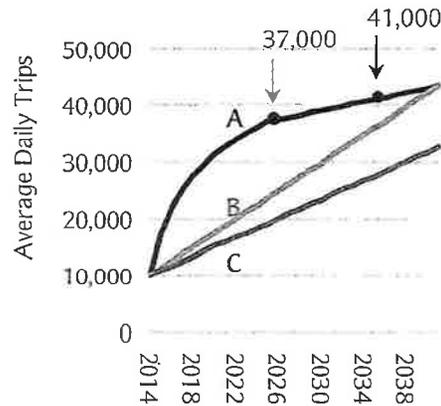
241 Completion - Initial Segment Revenue Model

Average Daily Trips (ADT)

- Approximately 7,000 ADT at southern terminus of SR 241 today
- FETCA traffic study update projection for Initial Segment:

Fiscal Year	ADT
2014	10,000
2025	37,000
2035	41,000

- Three growth trajectories modeled:

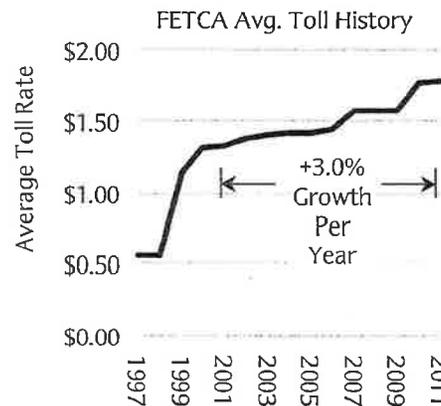


A: Traffic Study Growth
 B: Linear ADT Growth
 C: Linear ADT Growth (75% in 2041)

X

Toll Rate

- System average toll growth for Initial Segment
 - Start at \$2.30 in 2014 based on current SR 241 per mile tolls
- Conservative toll increases at 1.0% per year through 2041 horizon¹
 - FETCA 2001-2011 average annual toll growth rate has been 3.0%



1. Nominal toll rate (not adjusted for inflation)

=

Project Revenue

Annual Project Toll Revenue³ (\$ Millions)

Fiscal Year	ADT Scenario A	ADT Scenario B	ADT Scenario C
2014	7.4	7.4	7.4
2020	24.3	13.6	11.7
2030	33.7	25.7	20.1
2040	50.0	40.2	30.2

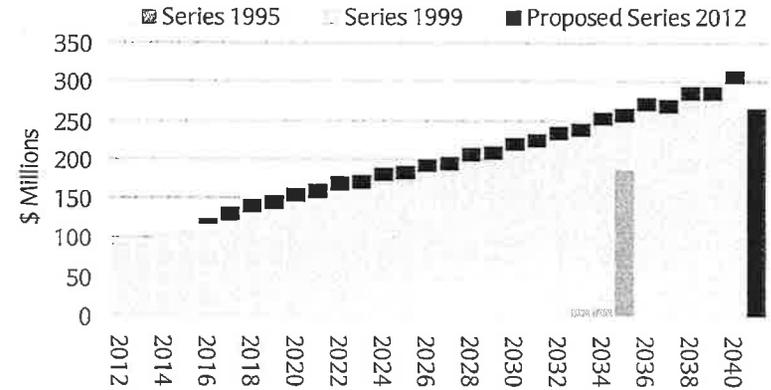
3. Assumes 320 weekdays per year

Financing Strategy #1: New Money Bond Issuance

Financing Strategy

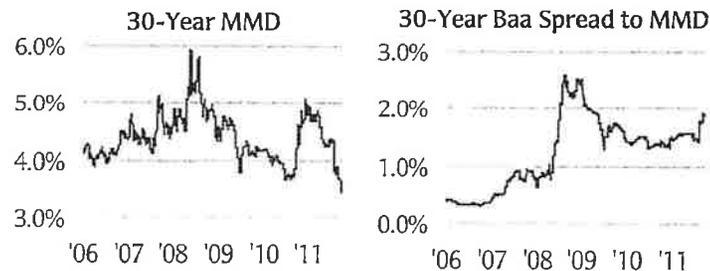
- 30-year “bullet” maturity
- Subordinated Toll Revenue Bond
- Current interest bond maturing 1/15/2041
- 10-year par call option

FETCA Debt Service



Today's Tax Exempt Market

- MMD High Grade Index is near historic lows, however credit spreads remain elevated



- Indicative 30-year rate: 6.44% (MMD+300 bps) assuming BB+/Ba1/BB+ ratings

Series 2011 Sources and Uses

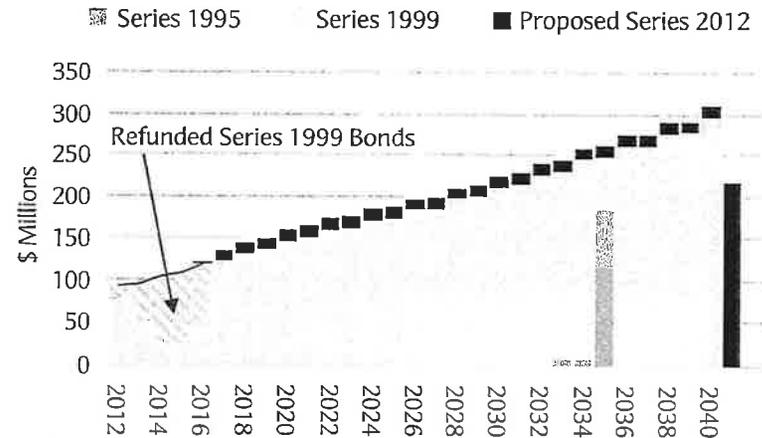
Sources	Dated 9/1/2012
Par Amount	\$267,455,000
Original Issue Discount	\$1,168,778
Total	\$268,623,778
Uses	
Project Fund	\$195,000,000
Debt Service Reserve Fund	\$17,384,575
Capitalized Interest Fund	\$51,926,319
COI/UD	\$4,312,884
Total	\$268,623,778
All-in TIC	6.59%

Financing Strategy #2: Refunding Creates Pay-Go Capacity

Financing Strategy

- Refund the callable Series 1999 current interest bonds maturing 2013-2016 with senior lien refunding bonds maturing 1/15/2041
- Fund Initial Segment costs with freed up cash flows
- Refunding bonds maintain investment grade ratings
 - ▶ Indicative 30-year rate: 5.94% (MMD+250 bps) assuming BBB/Baa3/BBB- ratings
- Indenture definitions allow refunding bonds to be exempt from additional bonds coverage test and reserve fund requirement

FETCA Debt Service



Pay-Go Schedule

Fiscal Year	\$ Available for Construction ¹
2013	\$30.3
2014	\$61.5
2015	\$65.2
2016	\$44.6
Total	\$201.6

Series 2011 Sources and Uses

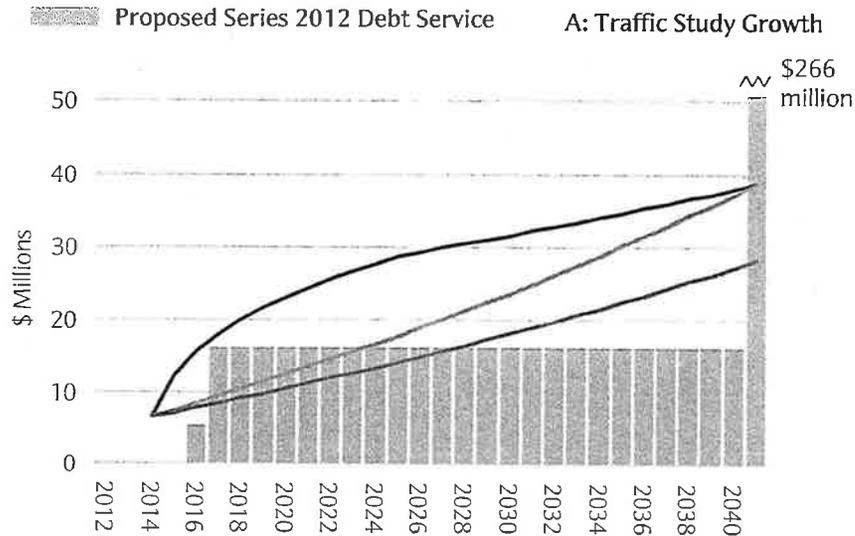
Sources	Dated 9/1/2012
Par Amount	\$205,165,000
Original Issue Discount	\$857,590
Total	\$206,022,590
Uses	
Call Bonds	\$165,712,749
Capitalized Interest Fund	\$36,929,700
COI/UD	\$3,380,141
Total	\$206,022,590
<i>All-in TIC</i>	6.09%

1. Subject to construction and toll revenue risks.

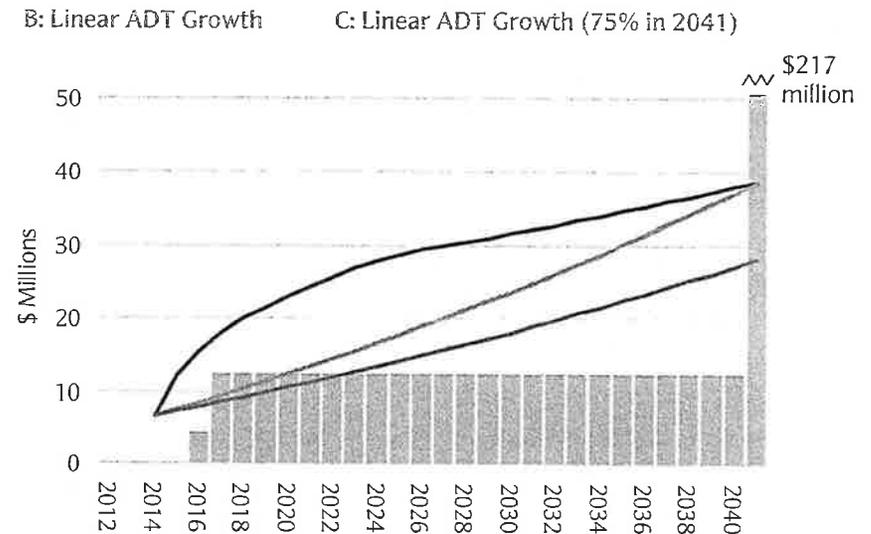
241 Completion Initial Segment Strengthens FETCA Enterprise

Financing to generate \$195 million in construction funds is cumulatively sufficient to pay all interest and in some cases all principal

Financing Strategy #1: New Money



Financing Strategy #2: Refunding & Pay-Go



Total Net Revenue Scenario A	Total Net Revenue Scenario B	Total Net Revenue Scenario C	Total Debt Service Strategy #1	Total Debt Service Strategy #2
\$793 Million	\$599 Million	\$464 Million	Interest: \$461 Million Principal: \$267 Million	Interest: \$349 Million Principal: \$205 Million

Note: Assumes O&M cost is 10% of segment revenues

Conclusion – 241 Completion Initial Segment Financing Solutions Exist

We have identified two initial capital markets strategies that both fund the 241 Completion Initial Segment and maintain or improve FETCA's projected financial results

- These solutions will be attractive to existing investors if 241 Completion Initial Segment revenues are clearly net positive
- Solutions will be attractive to new investors who are attracted to the existing FETCA credit
- Capital markets present options for both new money and refunding bond issuances
- It is too soon to conclusively identify an optimal funding strategy, but Barclays Capital is confident that a viable financing for the 241 Completion Initial Segment can be developed and executed

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TAB 6

**FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY
BOARD OF DIRECTORS
AGENDA**

**October 13 2011
9:30 a.m.**

**TCA Offices
125 Pacifica, Irvine, CA 92618**

AGENDA DESCRIPTIONS

The agenda descriptions are intended to give notice to members of the public of a general summary of items of business to be transacted or discussed. The listed action represents staff's recommendation. The Board of Directors may take any action that it deems to be appropriate on the agenda item and is not limited in any way by the notice of the recommended action. In compliance with the Americans with Disabilities Act, if you require special accommodation for this meeting, you should notify the Clerk of the Board 24 hours prior to the meeting at (949) 754-3492. The agenda for this meeting is posted at the TCA office and also on the Website at www.thetollroads.com. Materials distributed to the majority of the members of the TCA Board of Directors in connection with any matter subject for consideration at this meeting in open session are available for public inspection at the TCA offices.

I. CALL TO ORDER

PLEDGE OF ALLEGIANCE
(Chairman Campbell)

INVOCATION
(Director Allevato)

ROLL CALL

Chairman Bill Campbell	County of Orange, 3 rd District
Director Sam Allevato	City of San Juan Capistrano
Director Jerry Amante	City of Tustin
Vice-Chair Lisa Bartlett	City of Dana Point
Director Pat Bates	County of Orange, 5 th District
Director Tony Beall	City of Rancho Santa Margarita
Director Carolyn Cavecche	City of Orange
Director Jim Dahl	City of San Clemente
Director Peter Herzog	City of Lake Forest
Director Beth Krom	City of Irvine
Director Kris Murray	City of Anaheim
Director Shawn Nelson	County of Orange, 4 th District
Director Vincent Sarmiento	City of Santa Ana
Director Mark Schwing	City of Yorba Linda
Director Frank Ury	City of Mission Viejo
Cindy Quon	Caltrans, Ex-Officio Member

II. PUBLIC COMMENTS

At this time, members of the public may address the Board of Directors regarding any items within the subject matter jurisdiction of the Board of Directors, but no action may be taken on off-agenda items unless authorized by law. Comments shall be limited to three (3) minutes per person and twenty (20) minutes for all comments unless the Chairman, subject to the approval of the Board, sets different time limits.

III. CONSENT CALENDAR (Items 1-4)

All matters listed under the Consent Calendar are considered to be routine and will be enacted by one vote. Board Members may request specific items be removed from the Consent Calendar for separate action.

1. MINUTES OF THE MEETING OF THE FOOTHILL/EASTERN BOARD OF DIRECTORS MEETING – SEPTEMBER 8, 2011
(Kathleen Loch, Clerk of the Board)
REPORT NO. 2: (2011F-001)
ACTION: Approve Minutes.
2. INVESTMENT REPORT F/ETCA
(Diane Farson, Manager - Treasury)
REPORT NO. 6: (2011F-003)
Enclosed are the monthly investment reports for the Foothill/Eastern Transportation Corridor Agency (F/ETCA) as of August 31, 2011. The investment portfolio is in compliance with the California Government Code as of August 31, 2011. The portfolio is also in compliance with the F/ETCA Investment Policy as of August 31, 2011.
ACTION: Receive and file.
3. QUARTERLY REPORT OF ROUTINE BUSINESS CONTRACTS
(Eileen Harrigan, Manager, Contracts & Procurement)
REPORT NO. 7: (2011J-031)
Per the procedures identified in the Contracts and Procurement Services Policies and Procedures Manual, adopted by the Boards of Directors in 2010, staff is providing a quarterly update report regarding the authorization by the chief executive officer (CEO) of routine business expense agreements. The attachments to this report identify those routine business expense agreements that have been approved or executed under CEO authority in the past quarter along with those that are currently anticipated to be executed in the upcoming quarter.
ACTION: Receive and file.

4. TOLLBOOTH AND UTILITY BUILDING ROOF REHABILITATION PROJECT
(Kurt Machtolf, Facilities Manager)

REPORT NO. 8 (2011F-036)

The Foothill/Eastern Transportation Corridor tollbooth, ramp utility building and toll canopy roofs are aging and in need of restoration to protect equipment and personnel. This is the second of two roof restoration projects. The first was completed June 2011 and included the replacement of all mainline toll operations building roofs. For FY12 work, staff worked with AWS Consultants, Inc. to develop a scope of work and specification for the project and subsequently offered a competitive procurement. Of the firms that submitted bids, Howard Roofing Company, Inc. is the lowest responsive and responsible bidder. The bid is below the project estimate and staff recommends award of the contract to Howard Roofing Company, Inc. in the amount of \$68,093.

- ACTION:
1. Authorize the chief executive officer (CEO) to execute a contract with Howard Roofing Company, Inc. in the amount of \$68,093.
 2. Authorize the CEO to make additional changes deemed necessary and execute future amendments within ten percent (\$6,809) of the contract without further action by the Board of Directors.

IV. BOARD BUSINESS (Items 5 – 9)

5. AUDITED FINANCIAL STATEMENTS FOR FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY FOR THE YEAR ENDED JUNE 30, 2011
(Tracy Bowman, Controller)

REPORT NO. 11 (2011F-035)

The Audited Financial Statements for the year ended June 30, 2011 are presented in conformity with U.S. generally accepted accounting principles. The presentation of the agency's financial statements include presenting a section of Management's Discussion and Analysis, a Statement of Net Deficit, a Statement of Revenues, Expenses, and Changes in Net Deficit, a Statement of Cash Flows, and Notes to the Financial Statements for all of the agency's activities.

- ACTION: Approve Audited Financial Statements for the Foothill/Eastern Transportation Corridor Agency for the year ended June 30, 2011

6. INITIAL SEGMENT OF THE 241 COMPLETION PROJECT
(David Lowe, Director, Design & Construction)

REPORT NO: 16 (2011F-032)

Over the past several years staff has performed a comprehensive outreach campaign that consisted of over 250 meetings with elected officials, project supporters, opponents, resource agency personnel, and various other stakeholders to discuss the need to complete the 241 Toll Road and obtain feedback on the alignment. While staff continues work on adjusting the full project alignment to avoid sensitive areas or issues, the idea of constructing the project in segments was frequently raised during the outreach process.

One option would be to extend the 241 Toll Road approximately four miles from its existing terminus at Oso Parkway south to the vicinity of Ortega Highway, while continuing to pursue the balance of the alignment that connects to Interstate 5. First steps towards constructing this initial segment would include advancing environmental assessments, engineering plans and developing a finance strategy.

ACTION: Authorize staff to develop engineering plans, complete environmental assessments and develop a financial strategy to build the 241 extension from the existing southerly terminus at Oso Parkway to the vicinity of Ortega Highway while continuing to pursue the balance of the alignment that connects to Interstate 5.

7. INITIAL SEGMENT OF THE 241 COMPLETION PROJECT - ENVIRONMENTAL AND FINANCIAL SERVICES

(David Lowe, Director, Design & Construction)

REPORT NO: 15 (2011F-033)

Staff recommends the award of contract amendments in the amount of \$744,049 to complete the necessary environmental analysis and clearance as well as develop financing options to construct a segment of the 241 completion project. The initial segment includes extending the existing SR 241 from Oso Parkway to the vicinity of Ortega Highway.

Beginning environmental, engineering and finance work on this segment is prudent while continuing to pursue the balance of the alignment to connect to I-5. Construction of this segment would provide a route north for new developments in Rancho Mission Viejo (RMV), regional traffic using Ortega Highway to the east, the inland areas of San Juan Capistrano and eventually San Clemente when the gap segment of Avenida La Pata is completed. Development within the RMV Planning Area (PA) 1 (located near Antonio Parkway and Ortega Highway) has already been initiated. Additional development in PA 2, located just north of Ortega Highway, will begin shortly after completion of PA 1.

ACTION:

1. Authorize the CEO to execute a contract amendment of \$468,282 with RBF Consulting (Contract K000280) to prepare the necessary environmental and permitting documents in an amount of \$573,477.
2. Authorize the CEO to execute a contract amendment of \$181,767 with BonTerra Consulting (Contract K000418) to conduct biological support services in an amount of \$206,650.
3. Authorize the CEO to execute a contract amendment of \$44,000 with Public Financial Management, Inc. (Contract K000321) to provide the necessary financial oversight advice and guidance, in the amount of \$150,000;
4. Authorize the CEO to execute a contract amendment of \$50,000 with Stradling, Yocca, Carlson and Rauth to provide bond and tax counsel services.
5. Authorize the CEO to make additional changes deemed necessary and execute contract amendments within five percent (\$37,202) of the above contracts approved by the Board through this action.

8. DESIGN/PROGRAM MANAGEMENT SERVICES CORRIDOR DESIGN
MANAGEMENT GROUP (CDMG)

(Thomas Wheeler, Corridor Manager – Design)

REPORT NO. 9

(2011J-035)

Design/Program Management services have been performed by CDMG for the agencies since 1988. These services will be necessary for the agencies to complete the Capital Improvement Programs (CIP) planned for this fiscal year and continue work on the 241 completion project and other projects as described in the FY 2011 CIP and budget. CDMG will continue to provide reviews and design assistance on proposed capital projects, continue right-of-way and utility activities, document control, implement operational and safety improvements with Caltrans, as well as perform other assigned duties under the three task orders.

ACTION:

1. Authorize the chief executive officer (CEO) to execute Amendment No. 17 to Task Order F/E-37 of Contract K000002 with the Corridor Design Management Group (CDMG), for a not-to-exceed amount of \$1,542,020 for SR 241 completion project support.
2. Authorize the chief executive officer (CEO) to execute Amendment No. 11 to Task Order F/E-39 of Contract K000002 with the Corridor Design Management Group (CDMG), for a not-to-exceed amount of \$89,766 for design/program management services for the Foothill/Eastern Transportation Corridor Capital Improvement Program.

9. STRATEGIC AND POLICY PLANNING STUDY – PHASE 3

(Jim Gallagher, Chief Toll Operations Officer)

REPORT NO: 13

(2011J-033)

The progress and status of the Strategic and Policy Planning study to date has produced satisfactory and on-target results. The staff recommends the boards direct agency staff to proceed with the Strategic and Policy Planning study Phase 3B –Design for the All Electronic Tolling, including AET tolling systems design, civil and roadway design, marketing and outreach planning, and related activities. This direction includes the following:

- Issuing a Notice to Proceed to Traffic Technologies Inc. for Phase 3B for detailed tolling system and implementation design in an amount of \$406,890 as approved in Phases 3A & 3B project budget for FY12.
- Proceeding with the marketing and customer research and focus group work within the FY12 approved Marshall Advertising scope.
- Proceeding with the traffic and revenue analysis, through the on-going Stantec contract, for Phase 3B work in an estimated amount of \$42,000 as approved in Phases 3A & 3B project budget for FY12.
- Proceeding with necessary legal assistance through the Nossaman firm in an estimated amount of \$16,000 as approved in the Phase 3A & 3B project budget for FY12.
- Proceeding with a civil design contract for preliminary civil and roadway design services; and for design management services in an amount of \$300,000 scheduled in FY12 as approved in the FY 12 AET project budget for Phases 3A & 3B. The design contract will be presented for approval in the November 2011 board cycle.

ACTION: Direct agency staff to proceed with the Strategic and Policy Planning study Phase 3B –Design for All Electronic Tolling (AET). Phase 3B includes AET tolling systems design, civil and roadway design, marketing and outreach planning, and related activities.

CHIEF EXECUTIVE OFFICER'S REPORT

(Tom Margro, Chief Executive Officer)

DIRECTORS' REPORTS AND NEW BUSINESS

(Bill Campbell, Chairman)

V. CLOSED SESSION

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Government Code Section 54956.9(a)

- California State Parks Foundation, et al. v. Foothill/Eastern Transportation Corridor Agency, et al. (San Diego Superior Court, Case No. GIN 051194)
- People of the State of California, ex rel. Bill Lockyer, et al. v. Foothill/Eastern Transportation Corridor Agency, et al. (San Diego Superior Court, Case No. GIN 051371)
- Native American Heritage Commission v. Foothill/Eastern Transportation Corridor Agency (San Diego Superior Court, Case No. GIN 051370)
- Initiation of litigation- Two potential cases.
- Foothill/Eastern Transportation Corridor Agency v. California Coastal Commission (U. S. Department of Commerce)

CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION

- Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 (Five potential cases)

VI. ADJOURNMENT

The next regularly scheduled meeting of the Foothill/Eastern Board of Directors meeting is November 10, 9:30 a.m., TCA Offices, 125 Pacifica, Irvine, CA 92618.

TAB 7

Meyer, Susan A SPL

From: Castanon, David J SPL
Sent: Friday, November 04, 2011 12:42 PM
To: Meyer, Susan A SPL
Cc: Farrar, Corice J SPL
Subject: RE: not 100% true when TCA says they don't know what is going to happen further south ..
(UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

We can gather documentation about their plans and intentions from their own documents (e.g. Report No. 16 entitled "Initial Segment of the 241 Completion Project").

Funny, the lobbyist discouraged the word 'segment' yet their own report has that in the title.

David J Castanon
Chief, Regulatory Division
U.S. Army Corps of Engineers, Los Angeles District

(805) 585-2141

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-----Original Message-----

From: Meyer, Susan A SPL
Sent: Friday, November 04, 2011 12:01 PM
To: Castanon, David J SPL
Cc: Farrar, Corice J SPL
Subject: not 100% true when TCA says they don't know what is going to happen further south ..
(UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Susan A. Meyer
Biologist, Senior Project Manager
U.S. Army Corps of Engineers, Los Angeles District Regulatory Division, Transportation & Special Projects Branch (CESPL-RG-T)
Tel: (808) 438-2137; Fax: (808) 438-4060 <http://www.spl.usace.army.mil> (USACE, Los Angeles District) <http://www.usace.army.mil/CECW/Pages/Home.aspx> (USACE, Headquarters) BUILDING STRONG® and Taking Care of People! Loyalty * Duty * Respect * Selfless Service * Honor * Integrity * Personal Courage

TAB 8

From: Macneil, Spencer D SPL
To: Farrar, Corice J SPL
Subject: Re: Foothill/Eastern TCA SR 241
Date: Wednesday, October 19, 2011 5:37:28 PM

Thanks, Cori.

----- Original Message -----

From: Farrar, Corice J SPL
Sent: Wednesday, October 19, 2011 05:28 PM
To: Moore, Brian M SPL; Macneil, Spencer D SPL; Castanon, David J SPL; Cohen, Mark D SPL; Meyer, Susan A SPL; Bradford, Therese O. SPL; Troxel, Tiffany A SPL
Subject: RE: Foothill/Eastern TCA SR 241

I am available to participate.

Cori Farrar
Chief, Orange & Riverside Counties Section
South Coast Branch, Regulatory Division
U.S. Army Corps of Engineers, Los Angeles District

Tel. 213/452-3296
Website: www.spl.usace.army.mil/regulatory

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-----Original Message-----

From: Moore, Brian M SPL
Sent: Wednesday, October 19, 2011 1:04 PM
To: Macneil, Spencer D SPL; Castanon, David J SPL; Cohen, Mark D SPL; Meyer, Susan A SPL; Bradford, Therese O. SPL; Troxel, Tiffany A SPL; Farrar, Corice J SPL
Subject: Re: Foothill/Eastern TCA SR 241

I set a tentative time for 4 November at 11 am for this meeting. They will come to our 915 Wilshire office. Will that work?

----- Original Message -----

From: Macneil, Spencer D SPL
Sent: Wednesday, October 19, 2011 12:05 PM
To: Castanon, David J SPL; Cohen, Mark D SPL; Meyer, Susan A SPL; Bradford, Therese O. SPL; Moore, Brian M SPL; Troxel, Tiffany A SPL; Farrar, Corice J SPL
Subject: Re: Foothill/Eastern TCA SR 241

All,

I checked with Susan, and only 11/4 will work for her (participation by phone). Obviously, there is a long and complicated history on this project, and from what Susan has been able to gather on their latest proposal, TCA is proposing to segment the project, starting with constructing the first approximately 4 miles and terminating at SR-74 in Orange County. That would present a major NEPA problem considering the previous environmental document had them evaluating all approximately 16 miles and they still intend ultimately (through construction of future segments) to build all the way to I-5. With such fundamental issues being considered, I recommend Office of Counsel also participate. We need to be clear legally and otherwise what they are facing if they attempt to segment this project.

Thanks,

Spencer

----- Original Message -----

From: Castanon, David J SPL
Sent: Wednesday, October 19, 2011 08:28 AM
To: Macneil, Spencer D SPL; Cohen, Mark D SPL; Meyer, Susan A SPL; Bradford, Therese O. SPL
Subject: Fw: Foothill/Eastern TCA SR 241

Fyl.

Sent from my Blackberry Device

----- Original Message -----

From: Moore, Brian M SPL
Sent: Wednesday, October 19, 2011 08:24 AM
To: Castanon, David J SPL; Cohen, Mark D SPL; Farrar, Corice J SPL; Jaramillo, Mariscela SPL
Subject: Foothill/Eastern TCA SR 241

I was called by a lobbyist for this agency and the TCA wants to set up a meeting with the Corps (probably at your level Dave with Cori and they mentioned they wanted me) to discuss this project. Valerie McFall, Director of Environmental Services, will attend along with their lobbyist, Tyler Krutzk for Carpi, Clay, and Smith. Dates they have available are 1 November, all day, 3 November morning, and 4 November, all day. Meeting I guess would be an hour or so. I am going to ask Mari, my secretary if she can help set this up. Thanks.

Mari, can you contact Dave, Mark, Cori and see if you can propose a time when we could all be available. Thanks.

TAB 9

Building Strong and Taking Care of People

-----Original Message-----

From: Meyer, Susan A SPL
Sent: Monday, November 28, 2011 7:00 PM
To: Macneil, Spencer D SPL; Farrar, Corice J SPL
Subject: (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

I can't quite seem to reconcile Ms. McFall's statement in our November 4, 2011 meeting that "...no plans exist to further extend the SR-241 project beyond the newly proposed OGX extension project" with what is stated in TCA's October 13, 2011 Staff Recommendation Report (Report No. 16, File No. 2011F-032) and now this public Toll Roads "Viewsletter" that I automatically receive in the mail about every other month or so (see attached). It seems clear that TCA intends to build a larger (longer) toll road, not just the 4.2-mile segment of new toll road they presented to us earlier this month. Unless there is a very compelling case substantiated by data and information that TCA has yet to disclose to us, it is beginning to look like a classic case of segmenting under NEPA ;

susan

Susan A. Meyer
Biologist, Senior Project Manager
U.S. Army Corps of Engineers, Los Angeles District Regulatory Division, Transportation & Special Projects Branch (CESPL-RG-T)
Tel: (808) 438-2137; Fax: (808) 438-4060 <http://www.spl.usace.army.mil> (USACE, Los Angeles District) <http://www.usace.army.mil/CECW/Pages/Home.aspx> (USACE, Headquarters) BUILDING STRONG® and Taking Care of People! Loyalty * Duty * Respect * Selfless Service * Honor * Integrity * Personal Courage

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Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: FOUO

TAB 10

McFall, Valarie

From: Richard Beck <RBECK@rbf.com>
Sent: Tuesday, October 25, 2011 8:34 PM
To: Amber Oneal; Jonathan_D_Snyder@; Susan A SPL Meyer; Tannika_Engelhard@fws.gov; McFall, Valarie
Cc: David J SPL Castanon; Spencer D SPL Macneil
Subject: RE: 241 Extension Project Meeting with USFWS (UNCLASSIFIED)
Attachments: Richard Beck.vcf

Good evening Susan,

Thank you for the e-mail. You are correct in the current phased approach and I look forward to discussing the future 404 process with you and Corps staff on the 4th.

Richard Beck, PWS, CEP, CPESC
Director of Regulatory Services | RBF Consulting
949-855-3687 | rbeck@rbf.com | <http://www.rbf.com> 

>>> "Meyer, Susan A SPL" <Susan.A.Meyer@usace.army.mil> 10/25/2011 4:33 PM >>>

Classification: UNCLASSIFIED

Caveats: NONE

Richard,

The Corps is happy to participate in your subject meeting, assuming we are the lead federal action agency (which that appears to be the case since FHWA would not be involved in the initial segments given the absence of a connection to Interstate-5 and no U.S. DOT (FWHA) funding).

The Corps has an initial meeting scheduled with TCA Nov 4th to discuss the new proposal. From what we can ascertain, the new proposal would segment the environmental evaluation, permitting and construction of the 16-mile toll road project into several phases. At this point, the Corps hasn't received a DA application nor have we determined what our scope of analysis might be pursuant to CWA, NEPA, ESA and NHPA. In regards to the latter authorities, I think our initial meeting with TCA in a couple weeks will be very helpful in better understanding the new proposal and what the appropriate strategy for permitting and NEPA evaluation might be. Just as a general comment, if the Corps is the lead (federal) action agency, TCA as the applicant or future applicant should be coordinating with our agency on any Section 7 ESA matters, so it is entirely appropriate for Corps representation and participation in the upcoming USFWS/TCA meeting.

Please feel free to call me should you or others have any questions.

Susan Meyer

Susan A. Meyer

Biologist, Senior Project Manager

U.S. Army Corps of Engineers, Los Angeles District

Regulatory Division, Transportation & Special Projects Branch (CESPL-RG-T)

Richard Beck, PWS, CEP, CPESC
Director of Regulatory Services | RBF Consulting
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Classification: UNCLASSIFIED

Caveats: NONE

TAB 11

San Joaquin Hills
Corridor Agency

Chairman:
Scott Schoeffel
Dana Point



Transportation Corridor Agencies

Foothill/Eastern
Corridor Agency

Chairman:
Bill Campbell
County of Orange
3rd District

February 4, 2012

Mr. David Castanon
Chief, Regulatory Division
U.S. Army Corps of Engineers
P.O. Box 532711
Los Angeles, CA 90053-2325

Subject: Proposed SR 241 Tesoro Extension Project Summary and
Scope of National Environmental Policy Act ("NEPA") Analysis

Dear Mr. Castanon:

The following information has been prepared in response to the U. S Army Corps of Engineers (USACE ") request during our second pre-application meeting of December 16, 2011 and should be considered a supplement to the letter, dated December 7, 2011, for the State Route 241 (SR 2 41") Tesoro Extension Project ("Project").

There are three parts to this letter: Part 1 is a Project Description and Background Information, Part 2 is an analysis of the NEPA issues, and Part 3 is a summary of the manner in which the physical impacts of the proposed Project are included in and addressed by existing NEPA environmental documents.

PART 1: PROJECT DESCRIPTION AND BACKGROUND

INTRODUCTION

The Foothill/Eastern Transportation Corridor Agency ("TCA") is proposing to extend the SR 241 Toll Road from its current terminus at Oso Parkway to the proposed Cow Camp Road immediately north of State Route 74 ("SR 74") within the County of Orange.

The Tesoro Extension Project will establish an indirect connection between the existing SR 241 and SR 74. The Project is entirely within the areas addressed in the NEPA Environmental Impact Statements ("EIS") for the Southern Orange County Habitat Conservation Plan ("HCP") approved by the U.S. Fish and Wildlife Service ("USFWS") and the San Juan Creek and Western San Mateo Creek Watershed Special Area Management Plan ("SAMP") approved by the USACE. The Tesoro Extension Project includes the discharge of dredged or fill material of no more than 0.1 acre of waters of the United States; only 0.04 acre is outside of the Ranch Plan development areas, within the infrastructure footprint designated on Figure 8-1 of the SAMP EIS, and the

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remaining 0.06 acre impact is within the Ranch Plan development area, which has already received 404 authorization.

As requested by the USACE, TCA is providing this information which addresses the appropriate scope of the NEPA analysis associated with the USACE issuance of a Section 404 permit for the discharge of dredged or fill material for the construction of the Tesoro Extension Project within the area of the USACE jurisdiction.

TESORO EXTENSION PROJECT DESCRIPTION

The Tesoro Extension Project includes the northern segment of the locally preferred alternative identified during the NEPA and California Environmental Quality Act (CEQA) analysis of the Southern Orange County Transportation Infrastructure Improvement Project ("SOCTIIP"). The Tesoro Extension Project is approximately 4.8 miles in length and would extend from the existing SR 241 terminus at Oso Parkway and connect directly to Cow Camp Road in a temporary at-grade tee-intersection configuration.

Cow Camp Road is a local thoroughfare that is classified as a major highway and will ultimately consist of six lanes in each direction, plus turning lanes, and is projected to carry 30,000+ trips per day (2035). Cow Camp Road is required to be constructed by Rancho Mission Viejo prior to the construction of the Tesoro Extension Project and is scheduled for initiation of construction in December 2012.

In the future, as development within the Ranch Plan and SAMP area occurs, and the local circulation system is complete, an interchange at "G" Street (part of the local circulation system for the Ranch Plan) and SR 241 would be constructed and the interim Cow Camp Road intersection would be eliminated. The "G" Street interchange would be located .6 mile north of Cow Camp Road and would be considered a local County arterial; however, the schedule for constructing "G" Street is undefined at this time. Figure 1 shows the anticipated disturbance limits, which include the grading limits, remedial grading, right-of-way limits, utility relocation, and construction staging areas for the proposed Tesoro Extension Project.

The Tesoro Extension Project includes four general-purpose travel lanes, two in each direction. The center median, from Oso Parkway to the future "G" Street interchange will be revegetated with a native seed mix and will include some drainage improvements, similar to the median along the existing SR 241. The vegetated median will function as a bio-swale. The median offers future opportunities for bus rapid transit, light rail, or additional lanes as traffic conditions warrant. The portion of the extension from "G" Street to Cow Camp Road will be two lanes in each direction with no median.

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Wildlife Movement and Water Quality

Three wildlife undercrossings are proposed for the project (Figure 2). The most northern undercrossing, Chiquita Woods, would consist of a three span bridge. The mid-section undercrossing would consist of a 24-inch diameter multi-plate steel culvert. The most southern wildlife undercrossing would include a corrugated metal pipe.

Five Austin sand filters, five bio-swales, and three extended detention basins are proposed for the project (Figure 2). Note that due to their close location, two of the bio-swales and Austin sand filters, one each at the northern and southern ends of the Project, are overlapping on Figure 2. Sand filters remove particulates from runoff by sedimentation and filtration and are effective for removing dissolved metals and litter. In addition to the sand filters, multiple bio-filtration swales (vegetated channels that receive and convey stormwater flow) and bio-filtration strips (vegetated land that receives overland sheet flow) are proposed.

Tesoro Project Construction

Construction would occur starting in late 2012 and continue through 2014. Project initiation would occur at Oso Parkway and extend south towards its terminus at Cow Camp Road.

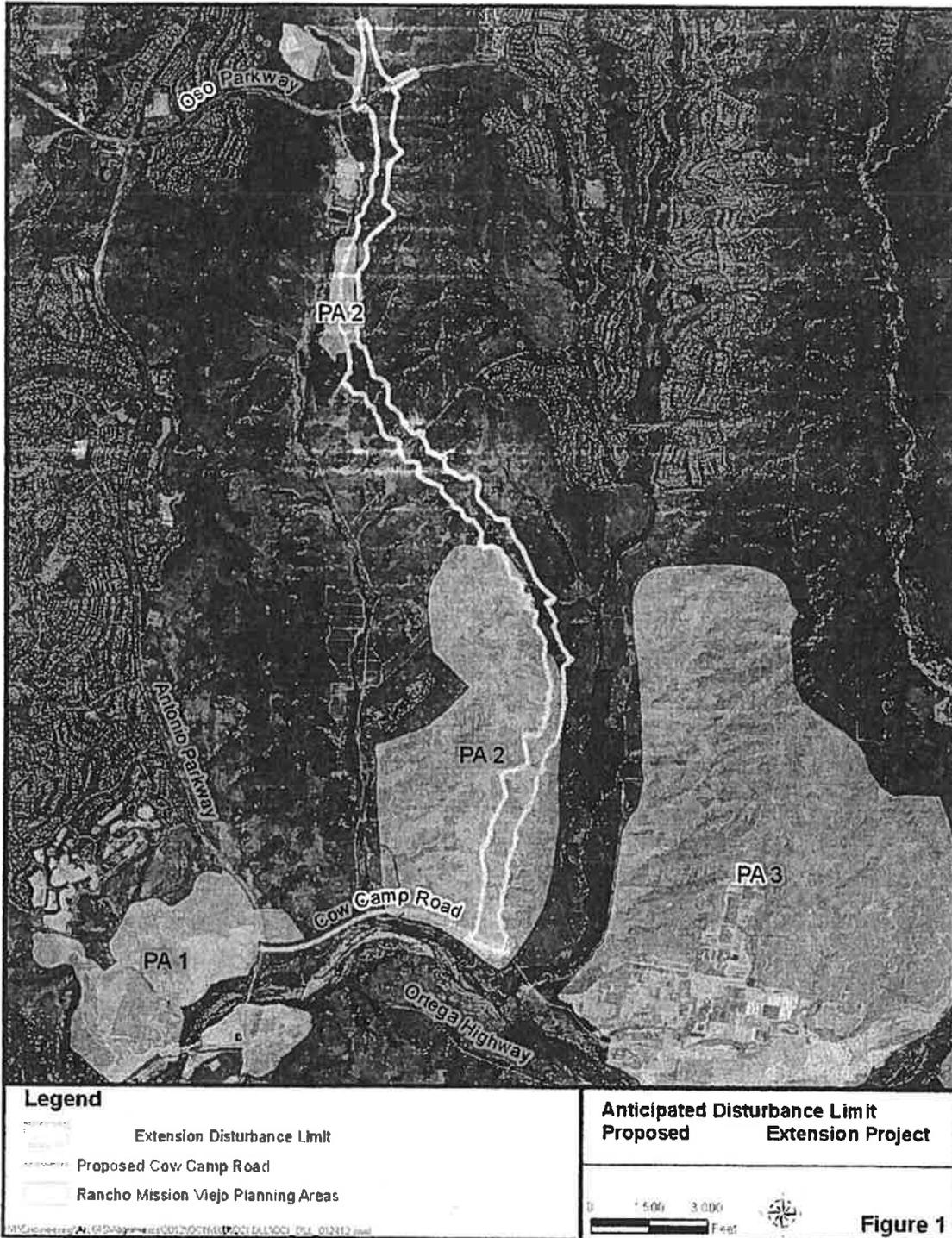
PRIOR NEPA DOCUMENTATION

The Tesoro Extension Project is included in two prior environmental documents prepared pursuant to NEPA: (1) The Environmental Impact Report (EIR)/EIS for the HCP (2006) and (2) the EIS for the SAMP (2007). The HCP provides for both Covered Activities (development, including construction of residential, commercial, industrial and infrastructure facilities for the Ranch Plan, infrastructure and public works projects) and a Conservation Strategy, including creation of a permanent Habitat Reserve. HCP EIR/EIS at Chapter 1.

The Transportation and Circulation section of the HCP EIR/EIS (Section 5.2) is based on the Ranch Plan EIR 589 (see HCP EIR/EIS at 3.4-1, 5.2-4 and 5.2-25). The Ranch Plan EIR describes and illustrates the Tesoro Extension Project (identified as the SR 241 extension) and includes the Project in its analysis of traffic and cumulative impacts. The Ranch Plan EIR also states that if the SR 241 extension is not built, "then the on-site roadway system would include an arterial along the SR 241 alignment, terminating at New Ortega Highway" (now referred to as Cow Camp Road). Ranch Plan EIR 589 at 4.6-15. The physical and operational impacts of that alternative roadway (sometimes referred to as "F" Street) are addressed in the HCP EIR/EIS. Therefore, because the alignment of the Tesoro Extension Project is substantially the same as "F" Street analyzed in the HCP EIR/EIS, the Tesoro Extension Project has been analyzed in the HCP EIR/EIS.

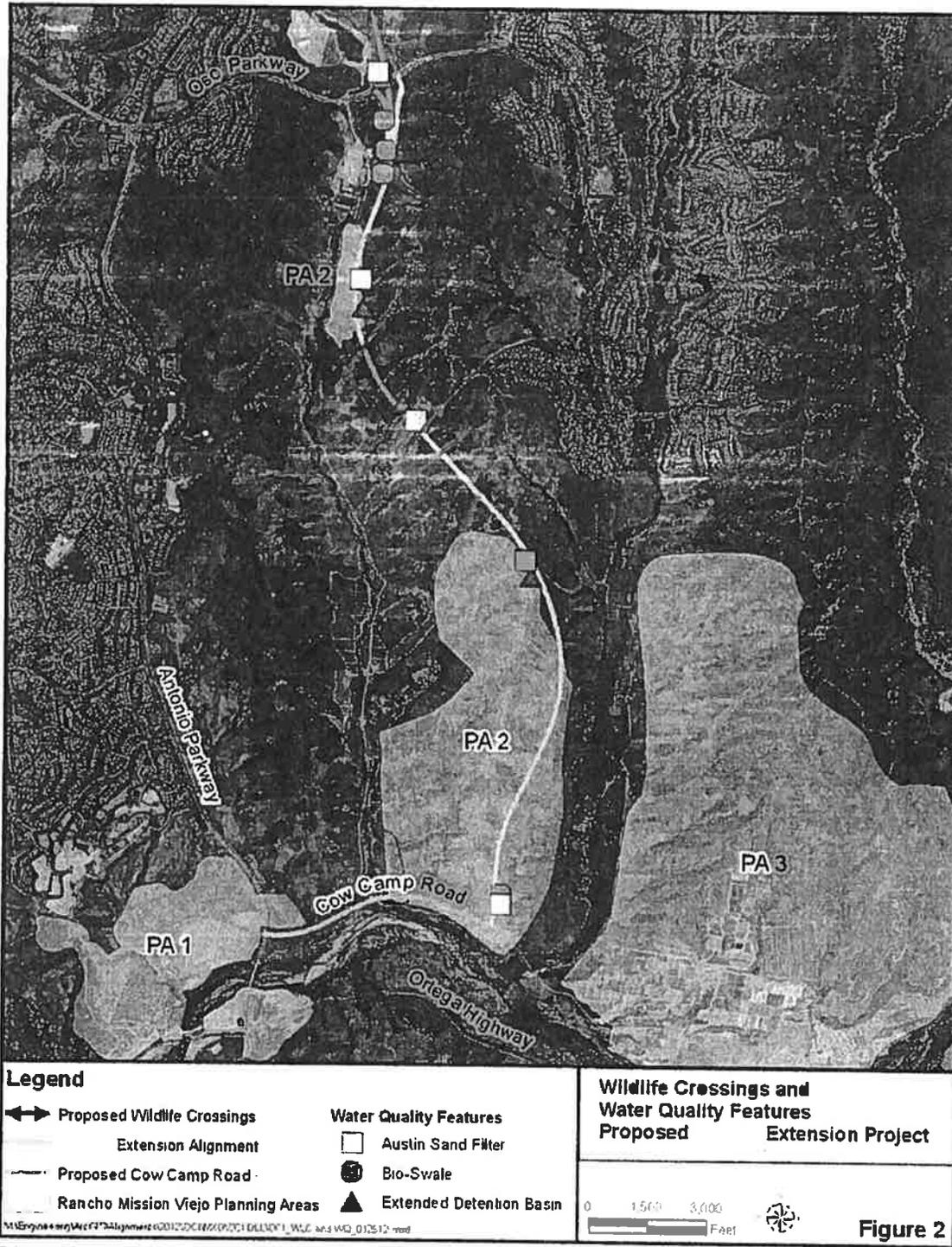
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The purpose of a SAMP "is to provide for reasonable economic development and the protection and long-term management of sensitive aquatic resources (biological and hydrological)." SAMP EIS at i. Further, implementation of the reasonable economic development provided for in the SAMP requires a supporting circulation system. SAMP EIS at 5-37. The SAMP EIS acknowledges the Tesoro Extension Project as a planned regional transportation facility and includes the Project in the traffic and cumulative impacts analysis. See Part 3 of this document for further details on the manner in which the Tesoro Extension Project is included in and addressed in those documents.

PURPOSE AND NEED

The Tesoro Extension Project will:

- Close critical gaps in the transportation network and improve local and regional network connectivity to maximize mobility and accessibility for people and goods as provided for in the HCP and the SAMP;
- Decrease travel time and delay for local and regional traffic;
- Improve transportation between affordable housing and jobs in Orange County;
- Provide sufficient right-of-way to allow for future Bus Rapid Transit, rail or high occupancy vehicle lanes;
- Ensure transportation system redundancy, travel safety, and reliability;
- Improve air quality to protect the environment and health of residents; and
- Stimulate the economy through job creation.

PART 2: NEPA ISSUES

SCOPE OF USACE REVIEW UNDER NEPA

The USACE's Scope of Review Under NEPA is Limited

USACE NEPA Regulations

The USACE's NEPA regulations require the district engineer to establish the scope of the NEPA document as follows: first, based on the impacts of the specific activity requiring a permit, and second, the USACE can expand the scope of its NEPA analysis beyond its jurisdictional limits under section 404 to include an entire project only where there is sufficient federal "control and responsibility." 33 C.F.R. pt 325, App. B. Factors that may be considered to determine whether sufficient control and responsibility exists include:

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- (i) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).
- (ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.
- (iii) The extent to which the entire project will be within USACE jurisdiction.
- (iv) The extent of cumulative Federal control and responsibility, where the cumulative Federal involvement of the USACE and other Federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the project are essentially products of Federal financing, assistance, direction, regulation, or approval (small federal handle).

Id. The regulation was developed by the USACE to address circumstances presented by linear projects (such as roads and pipelines) where the project must, of necessity, cross a USACE jurisdictional area, but where the USACE jurisdiction represents a small portion of the larger project. The regulations provide the following examples in which federal control over the Tesoro Extension Project is *not* sufficient to require the scope of the NEPA analysis to include the entire project:

- An industrial facility on an upland site that only requires a USACE permit for a connecting pipeline;
- A 50-mile electrical transmission cable crossing a 1¼-mile river within the USACE jurisdiction.

33 C.F.R. pt. 3251 App. B(7)(b)(2)(iv)(c)(3). In contrast, the regulations give the following examples where the federal control is sufficient to require the NEPA analysis to evaluate the entire project:

- A 50-mile electrical transmission cable where 30 miles of the 50-mile cable crosses USACE jurisdiction.
- A shipping terminal that requires dredging, wharves and disposal of dredged materials to function.

Id. The limitation on the scope of the USACE's NEPA review of linear projects with limited USACE jurisdiction is consistent with applicable NEPA case law. The federal courts have concluded that the USACE's NEPA analysis was properly limited to the impacts *within* the USACE jurisdictional area in the following circumstances:

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- A 67-mile power line that included the crossing of 1.25 miles of USACE jurisdiction. *Winnebago Tribe of Nebraska v. Ray*, 621 F.2d 269 (8th Cir. 1980).
- A manufacturing facility that required a USACE permit for an outfall pipeline. *Save the Bay, Inc. v. U.S. Army Corps of Engineers*, 610 F.2d 322 (5th Cir. 1980).
- A hotel resort at a ski area where the hotel project also included a golf course that was within the USACE's section 404 jurisdiction. *Sylvester v. U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1989). The Court concluded that the USACE approval of the permit for the golf course did not require the USACE to evaluate the impacts of the rest of the resort because although the golf course and the entire resort complex would benefit from the golf course, they were not sufficiently interrelated to constitute a single federal action.
- A 600-acre phase of a development project that included the discharge of fill material within 16-acres of USACE jurisdiction. *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105 (9th Cir. 2000). The Court substantially relied upon the USACE's regulation discussed above (33 C.F.R. Pt.325 App. B) and concluded that, because the first phase of the project could proceed (and was proceeding) without the USACE permit, the USACE did not have sufficient control over the entire project to require the USACE' NEPA evaluation to include the entire project.

The decision in *Winnebago Tribe of Nebraska v. Ray* is the most applicable to the facts of the Tesoro Extension Project because both involve a linear project where the USACE jurisdiction represents a small part of the larger project.

Nationwide Permit 14 and Treatment of Linear Projects¹

Nationwide Permit 14 applies to "activities required for the construction ... of linear transportation projects (e.g. roads, highways ...) in waters of the United States." The Nationwide Permit general conditions specify that the activity must be a single and complete project. The USACE regulations define "single and complete project" as "the

¹ TCA recognizes that USACE is revoking selected Nationwide Permits within the SAMP area. This discussion is relevant because it demonstrates the Corps' approach to linear projects such as the Tesoro Extension Project. Further, revocation of the Nationwide Permits in the SAMP area does not change the small federal handle regulation and case law.

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total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete Tesoro Extension Project must have independent utility. For linear projects, a "single and complete project" is all crossings of a **single water** of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project." 33 C.F.R. § 330.2(i) (emphasis added).

In the USACE's Proposal to Reissue and Modify Nationwide Permits, the USACE proposes separate definitions of "single and complete linear Project" and "single and complete non-linear project." The proposed definition for linear projects is nearly identical to the current definition; there is some minor rewording, but the concepts are the same. Proposal to Reissue and Modify Nationwide Permits 76 Fed. Reg. 9174, 9203, February 16, 2011.

The USACE's approach to single and complete projects, and the limitation to all crossings of a single water of the United States as one single and complete project, illustrates that the USACE limits the scope of the analysis of impacts of actions under Nationwide Permit No. 14 to impacts within the USACE's jurisdiction and further emphasizes that the scope of any NEPA review should also be limited to impacts within the USACE's jurisdiction.

When the USACE reissues the Nationwide permits, it also prepares a decision document for each nationwide permit. Each decision document contains a 404(b)(1) Guidelines analysis, including a written evaluation/estimate of potential cumulative impacts of the categories of activities to be regulated under the general permit. Reissuance of Nationwide Permits 72 Fed. Reg. 11092, 11094, March 12, 2007. The USACE prepares an environmental assessment (EA) for each NWP and when the NWP is issued, the USACE issues a Finding of No Significant Impact. The EA includes reasonably foreseeable cumulative effects.

"The NWPs authorize activities that have minimal individual and cumulative adverse effects." "The NWPs do not reach the level of significance required for an EIS." *Id.* at 11095. A project that qualifies for an NWP by definition would not have a cumulative impact.

For the assessments described above, the USACE may only consider activities regulated by the USACE. "Adverse impacts resulting from activities outside of the USACE scope of analysis, such as the construction or expansion of upland developments, **cannot be considered in the Corps analysis of cumulative adverse effects on the aquatic environment.**" Decision Document Nationwide Permit 14, March 1, 2007 at 9, "emphasis added".

The public interest review factors also include several environmental factors. Under Land Use, it is noted that land use may change from natural to developed when linear

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transportation projects provide access and that such projects "may induce further development on nearby parcels of land. But, because the primary responsibility for land use decisions is held by others, "the USACE's scope of analysis is limited to **significant issues of overriding national importance, such as navigation and water quality.**"² *Id.* at 20 (emphasis added).

The preamble in the Federal Register addresses comments on the potential for future development activities after the transportation project is constructed. The preamble states that the activities covered by the NWP would result in minimal individual and cumulative adverse effects on the aquatic environment and that it "does not prohibit new projects simply because there may be future development activities. **It would be impractical to condition use of this NWP on consideration of hypothetical effects of potential future activities.** Such effects will be addressed through applicable permitting requirements." Reissuance of Nationwide Permits 72 Fed. Reg. 11092, 11094, March 12, 2007 (emphasis added).

Application of USACE Regulations Regarding Scope of NEPA Review of Tesoro Extension Project.

Evaluation of Federal Control and Responsibility

The USACE regulations and the NEPA case law discussed above indicate that the scope of the USACE's NEPA analysis should be limited to the impacts of the proposed action within and immediately adjacent to the USACE jurisdictional areas. The following evaluates and applies the criteria identified in the USACE's "small federal handle" regulation to the Tesoro Extension Project facts.

a) Whether the regulated act is merely a link in a larger Tesoro Extension Project.

The regulated activity here (the discharge of fill to 0.1 acre of waters of the U.S., 0.06 acre of which is already permitted as part of the Ranch Plan development) is "merely a link" in a linear project. The area of USACE jurisdiction, using the 0.1 acre figure, represents less than four hundredths of

² This section cites to the USACE general policies for evaluating permit applications: "The primary responsibility for determining zoning and land use matters rests with state, local and tribal governments. The district engineer will normally accept those decisions by such governments on those matters unless there are significant issues of overriding national importance. Such issues would include but are not necessarily limited to national security, navigation, national economic development, water quality, preservation of special aquatic areas, including wetlands, with significant interstate importance, and national energy needs." 33 C.F.R. § 320.4(j) (2011).

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one percent (.0004) of the area of the Tesoro Extension Project (approximately 320 acres). The percentage of USACE jurisdiction is much less than the examples cited by the USACE in its regulation. In the regulation, the USACE indicated that the scope of NEPA review of a 50-mile transmission cable would be limited to the area of USACE jurisdiction where the transmission facility crossed a USACE jurisdictional area of 1 and $\frac{1}{4}$ miles. Thus, the USACE's own regulations indicate that the scope of a NEPA review is properly restricted to the USACE jurisdictional area where the USACE jurisdiction constitutes as much as 2.5% of the project. In *Winnebago Tribe of Nebraska v. Ray*, 621 F.2d 269 (8th Cir. 1980), the Court of Appeal held that the scope of NEPA review of a 50-mile pipeline with a 1 and $\frac{1}{4}$ mile river crossing was limited to the area of the USACE jurisdiction.

b) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.

The upland facility here is the portion of the Tesoro Extension Project alignment outside of the USACE jurisdiction. The alignment of the Tesoro Extension Project is controlled by the need to connect the Tesoro Extension Project with the existing terminus of SR 241 and by the need to locate the alignment within the areas approved or contemplated for development in the HCP and the SAMP. Because the Tesoro Extension Project is a linear facility it must by definition cross the waters of the U.S. to traverse from the beginning of the Tesoro Extension Project to the terminus point. As noted in *Wetlands Action Network*, this relationship occurs where fill is needed to build a project. The court in that case found that such a connection was not sufficient to require the scope of the NEPA analysis to include the entire project. *Wetlands Action Network v. U.S. Army Corps of Engineers*, 222 F.3d 1105, 1116-1117 (9th Cir. 2000).

c) The extent to which the entire project will be within USACE jurisdiction.

The USACE jurisdiction is limited to a very small portion of the Tesoro Extension Project, 0.1 acre out of approximately 320 acres of total disturbance area (0.06 acre is within the approved Ranch Plan development).

As discussed earlier under the Scope of USACEs Review Under NEPA, the USACE's NEPA regulations and NWP program recognize the special circumstances presented by linear transportation projects, where a linear project must cross USACE's jurisdictional areas that run perpendicular to the linear Project. Under those circumstances, the appropriate determination of USACE's jurisdiction is based on the questions in this section of this document – the Evaluation of Federal Control and Responsibility, or, the

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small federal handle regulation. A linear transportation project, like the Tesoro Extension Project, is distinguishable from the situation in *White Tank Concerned Citizens v. U.S. Army Corps of Engineers* 563 F. 3d 1033 (9th Cir. 2009). In *White Tank*, the Court evaluated a USACE permit where washes were dispersed throughout a project area and concluded that in those circumstances, no development could occur without filling the waters, which meant that the NEPA analysis should have included the entire property. The court relied on the small handle test, referring to those portions of the project over which the district engineer has sufficient control and responsibility to warrant federal review. *White Tank* involved a large residential master-planned community; without the fill permit, the developer stated that they would not be able to develop a cohesive community, but instead would end up with a series of separate development areas with limited connectivity.

In contrast to the development proposed in *White Tank*, the Tesoro Extension Project is a linear north-south oriented transportation project, which must cross USACE's east-west trending jurisdictional waters in order to serve its transportation function. As recognized by the USACE's own regulation, in such a circumstance, federal control over the Tesoro Extension Project is *not* sufficient to require the scope of the NEPA analysis to include the entire Tesoro Extension Project.

d) The extent of cumulative Federal control and responsibility.

The U.S. Fish and Wildlife Service (USFWS) is the only other federal agency with potential control and responsibility over the Tesoro Extension Project. The jurisdiction and control of the USFWS is limited to the evaluation of the potential impacts of the USACE permit on the California gnatcatcher and the thread-leaved brodiaea.

The Tesoro Extension Project will directly impact four gnatcatcher territories and two brodiaea populations, as previously evaluated and authorized as part of the USFWS Biological Opinions for SOCTIIP and the Southern Subregion HCP. The USFWS previously determined that impacts to the California gnatcatcher and the brodiaea from the development approved in the HCP and from the extension of SR 241, including the northern segment, complied with applicable requirements of the Endangered Species Act (see Biological Opinion 1-6-07-F-812.1 (January 20, 2007) for the Southern Subregion HCP [also relied on for the SAMP] and Biological Opinion 4-3-0-08-F-0487 (April 30, 2008) for the Proposed Toll Road Corridor (Alignment 7 Corridor-Far East Crossover-Modified) Initial Alternative for SOCTIIP.

In summary, the USACE will *not* have control and responsibility over the Tesoro Extension Project that rises to the level of federalizing the entire 4.8-mile alignment.

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Another federal agency, the USFWS, likewise will *not* have a level of control that federalizes the entire Tesoro Extension Project.

THE TESORO EXTENSION PROJECT COMPLIES WITH NEPA REQUIREMENTS REGARDING SEGMENTATION.

The Tesoro Extension Project satisfies NEPA requirements regarding segmentation. NEPA case law and regulations make it clear that a highway project segment complies with NEPA where the project:

1. Connects to a logical terminus (e.g., connecting near another state route and local thoroughfares);
2. Has independent utility (e.g., the Tesoro Extension Project is usable even if no other extensions of SR 241 are approved and constructed);
3. Does not restrict the consideration of alternatives for future foreseeable extensions.
4. Meets state or local needs.

23 C.F.R. §771.111(f); *Daly v. Volpe*, 514 F.2d 1106, 1110 (9th Cir. 1975); *Adler v. Lewis*, 675 F.2d 1085 (9th Cir. 1982). In cases analyzing highway segments in metropolitan areas (such as here), courts give greatest weight to the independent utility factor. *Daly v. Volpe*, 514 F.2d at 1111; *Coalition on Sensible Transportation, Inc. v. Dole*, *Coalition on Sensible Transportation, Inc. v. Dole* (D.C. Cir. 1987) 826 F.2d 60 ["The proper question is whether one project will serve a significant purpose even if a second related project is not built."] 826 F.2d at 69.

The Tesoro Extension Project complies with the segmentation requirements adopted by the courts and reflected in the NEPA regulations of the Federal Highway Administration. The Tesoro Extension Project would extend the existing SR 241 Toll Road from Oso Parkway to the vicinity of SR 74 (Ortega Highway), the closest other state route in the area. The Tesoro Extension Project would connect to local arterials and will allow for the indirect connection of two state highways (SR 241 and SR 74). Cow Camp Road is a logical terminus because it is scheduled to be built before the construction of the Tesoro Extension Project and because Cow Camp Road is a major new east-west arterial that will enhance the east-west capacity of SR 74. Cow Camp Road is part of the infrastructure allowed in the SAMP and evaluated in the SAMP EIS, and is part of the Covered Activities evaluated and approved in the HCP EIR/EIS.

The Tesoro Extension Project has independent utility because it will provide a major new connection between two state highway routes and will reduce local and regional traffic congestion. The Project will be usable without providing a connection south of Ortega Highway. This is supported by the analysis in the SAMP EIS, which included an

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arterial roadway in the same location and the same length as the Tesoro Extension Project.

The Tesoro Extension Project does not restrict the consideration of alternatives for future extensions of SR 241. The SOCTIIP EIR/EIS evaluated eight build alternatives and two no-build alternatives (see Figure 2.2.1 in the SOCTIIP DEIS/EIR). None of the alternatives evaluated in the DEIR/DEIS would be foreclosed by the Tesoro Extension Project. For example, the Tesoro Extension Project would not preclude any of the Central Corridor Alternatives that would connect SR 241 with Interstate (I-) 5 in the vicinity of the Pico Interchange with I-5. The fourth factor, identified specifically by the Ninth Circuit, is whether the project segment meets state or local needs. This factor is analyzed very similarly to the independent utility factor discussed above. In other words, if it meets state or local needs, the Tesoro Extension Project also has independent utility and, therefore, constitutes a valid highway segment.

In *Daly v. Volpe*, the court found that because the challenged segment was part of the interstate highway system and the interstate highway system served state and local needs, there was a strong argument for independent utility despite ambiguous termini. 514 F.2d at p. 1110. Similarly, the Tesoro Extension Project is designed to integrate indirectly into the State highway system (SR 74) in southern California. It is also designed to relieve congestion on existing streets and highways. For these reasons, the Tesoro Extension Project meets state and local needs.

SCOPE OF ENVIRONMENTAL ASSESSMENT OF TESORO EXTENSION PROJECT AND CUMULATIVE IMPACTS

1. Background.

The NEPA regulations of the Council on Environmental Quality ("CEQ") make it clear that potential cumulative impacts of an agency action do not, by themselves, trigger the preparation of an EIS. The regulations also make it clear that the scope of an environmental assessment of a federal agency action is not determined by any potential cumulative impacts of the agency action.

The CEQ regulations define "Environmental assessment" to mean a concise document that serves to:

- (1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

40 C.F.R. § 1508.9. The regulations define "Finding of No Significant Impact", in turn, to mean:

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[A] document . . . presenting the reasons why an action . . . will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared.

40 C.F.R. §1508.19. Notably, the "effects" of an action required to be evaluated in an EA do not include "cumulative impacts." The definition of "Effects" includes "Direct effects" and "Indirect effects". 40 C.F.R. §1508.8. An "effect" is distinct from a "Cumulative Impact" which is defined as:

the impact on the environment which results 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 action."

40 C.F.R § 1508.7.

2. The Extension of the Tesoro Extension Project Beyond Cow Camp Road is Speculative

Regional transportation plans include an SR 241 roadway extending south of Cow Camp Road to connect to I-5. This potential future roadway is referenced in multiple environmental documents for projects in southern Orange County, including the SAMP EIS, the HCP EIR/EIS and the SOCTIIP Draft EIR/EIS (which addressed alternatives to, and alternative alignments for such an extension).

At this time, the TCA does not have an active plan for implementing SR 241 south of Cow Camp Road. Given the constraints and issues related to the southern-most portion of a road that would connect to the I-5, TCA has not developed a feasible alignment for connecting to I-5. In these circumstances, such an extension is speculative, and therefore, not required to be analyzed. The cumulative impacts of such an extension would be addressed in the environmental documentation prepared for such an extension at the time a specific extension project is proposed.

In *Center for Environmental Law and Policy v. U.S. Bureau of Reclamation*, 655 F. 3d 1000 (9th Cir. 2011), the Bureau of Reclamation did not analyze a Special Study as a cumulative project because it found the study was not reasonably foreseeable. Even though there was a Notice of Intent for an EIS for the Special Study, the Court agreed with the Bureau of Reclamation that "there is no danger that [actions taken as a result of the Special Study] would escape NEPA review and upheld the EA for the Reclamation project with the understanding that the cumulative impacts of the Special Study would be addressed in the Special Study's NEPA analysis. 655 F. 3d at 1010.

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3. The Cumulative Impacts of Other Projects Were Evaluated In Prior Environmental Impact Statements. The USACE Should Rely On The Prior Evaluations of Cumulative Impacts In Its Evaluation of the Tesoro Extension Project.

NEPA authorizes agencies to rely on the evaluation of cumulative impacts included in prior NEPA documents. The courts do not require agencies to duplicate an analysis of cumulative impacts included in prior NEPA documents. *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146 (9th Cir. 1998). In *Idaho Sporting Congress*, plaintiffs challenged an EA regarding a timber sale arguing that the Forest Service was required to evaluate the cumulative effects of another timber sale with impacts on the same watershed. The Forest Service evaluated the cumulative effects of the two timber sales in only one of the two EAs. The Ninth Circuit held that since the effects of the two sales were accounted for in one of the EAs, "we do not require duplication" in the second EA. 137 F.3d at 1152.

The cumulative effects of the connection of SR 241 to Ortega Highway have been previously evaluated in **two** prior EISs. The cumulative impacts of the Tesoro Extension Project were evaluated in the 2007 EIS approved by the USACE for the SAMP (see for example the SAMP EIS at 9-46) and in the 2006 EIS for the Southern Subregion HCP approved by the USFWS. The USACE is not required to conduct a new cumulative impact evaluation in its NEPA analysis of the Tesoro Extension Project.

In addition, the cumulative impacts of alternatives to extend SR 241 to I-5 were also evaluated in the Final EIR for SOCTIIP. The USACE may rely on these prior evaluations of potential cumulative impacts of the Tesoro Extension Project and is not required to duplicate the cumulative impact analysis. *The Laguna Greenbelt, Inc. v. U.S. Dep't of Transportation*, 42 F.3d 517, 525 n.6 (9th Cir. 1994); *See Center for Environmental Law and Policy v. U.S. Bureau of Reclamation*, 655 F. 3d 1000, 1012-1013 (relying on alternatives analysis in prior state studies does not violate NEPA). Indeed, as the Ninth Circuit noted in *The Laguna Greenbelt*, "NEPA mandates state and federal coordination of environmental review." 42 F.3d at 525, n.6. Here, the USACE may rely on cumulative impact evaluation included in the prior NEPA and CEQA documents.

3. The Cumulative Impacts of the Tesoro Extension Project On USACE Jurisdictional Resources Are Not Significant.

The Tesoro Extension Project will not have significant effects on the key issues related to the USACE's statutory authority and responsibility under Section 404 of the Clean Water Act. Because the effects of the Tesoro Extension Project are not significant, they will not contribute to significant cumulative impacts. The impacts of the Tesoro

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Extension Project are summarized below, focusing on the key areas of USACE's concern and some other federal issues. Additional analysis will be conducted as part of the environmental review for the project.

USACE Jurisdictional Areas and Wetland Habitats

Permanent impacts to Waters of the U.S. are currently estimated at 0.1 acre, or 0.04 acre outside of the 0.06 acre within the approved Ranch Plan development areas. This is substantially less than the one-half (1/2) acre threshold in several of the Nationwide Permits, including Nationwide Permit 14 for linear transportation projects.

The Tesoro Extension Project avoids and minimizes impacts, consistent with the SAMP Tenets, as follows:

- The project has minimized impacts to ephemeral waters of the U.S. and the majority of the project site is located in upland, grazed areas.
- The project avoids impacts to major high-value aquatic systems, including San Juan Creek, Chiquita Creek, and Canada Gobernadora.
- Maintains/restores/protects: riparian ecosystem integrity, riparian corridors, floodplain connections, sediment sources and transport equilibrium, and adequate buffer for protection of riparian corridors.

In-kind mitigation will be proposed to offset permanent impacts through potential enhancement, restoration and/or preservation of waters. Temporary impacts will consist of returning those areas to pre-project conditions and hydroseeding with appropriate native plant species found within the project vicinity.

TCA anticipates that with the avoidance, minimization and mitigation measures, impacts to USACE jurisdictional areas and wetland habitat would be reduced to a level of less than significant. Because the Project impacts will be less than significant, they will not contribute incrementally to cumulative impacts.

Non-Aquatic Biological Resources

The Tesoro Extension Project will impact a combination of habitat types. About half of the disturbance area is presently disturbed, including historical agricultural use areas. The remaining impacts are primarily to coastal sage scrub and annual grassland. Indirect impacts could also occur related to lighting, invasive species and water quality. These impacts were addressed in the SOCTIIP EIR and mitigation was included.

Mitigation includes avoidance, minimization, and habitat replacement. The Tesoro Extension Project alignment has been adjusted to significantly avoid some of the biologically sensitive resources within the south Orange County area including the natural open space areas associated with the Orange County Southern Subregion

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HCP. Additional shifts were made to avoid wetland habitats, geotechnical hazards, existing utilities, thus reducing remedial grading. Bridges were also incorporated into the Tesoro Extension Project to minimize hydrologic impacts and to accommodate wildlife movement. A Biological Resources Management Plan ("BRMP") will be developed and implemented, which will provide specific design and implementation features of the biological resources mitigation measures outlined in the resource agency approval documents. Issues to be discussed in the BRMP will include, but are not limited to, resource avoidance, minimization, and restoration guidelines, performance standards, maintenance criteria, and monitoring requirements.

Mitigation was also included for the indirect impacts. Relative to lighting and invasive species, these impacts will be fully mitigated. Relative to water quality, the Tesoro Extension Project includes Austin sand filters, bio-swales and extended detention basins as described in the earlier in this letter.

The Tesoro Extension Project impacts were also addressed in the HCP EIR/EIS and the SAMP EIS by virtue of the analysis of the HCP and the SAMP which include Ranch Plan development and infrastructure. A major component of the mitigation included in those projects was the RMV Open Space and the Adaptive Management Plan. The SAMP EIS concluded that through "implementation of the GPA/ZC EIR 589 Adaptive Management Plan, impacts to grassland, coastal sage scrub, and woodland and forest would be reduced to less than significant." SAMP EIS at 7.1-19. One of the elements of the Ranch Plan Open Space and its related Adaptive Management Plan is the Upper Chiquita Conservation Area.

The TCA purchased the right to place a conservation easement over this area in 1996 and has managed it for conservation purposes since that time. Through this protection and management (which has been in place for more than sixteen years and prior to any impacts of the Tesoro Extension Project), and TCA's plan to conduct additional restoration activities in the area to increase habitat values, TCA is participating in the Southern Subregion's HCP Open Space and Adaptive Management Plan, which further reduces habitat impacts to below significance.

Endangered Species

As discussed earlier, the Tesoro Extension Project will directly impact four gnatcatcher territories and two thread-leaved brodiaea populations, as previously evaluated and authorized as part of the USFWS Biological Opinions for SOCTIIP, the HCP and the Ranch Plan and the SAMP (which relied on the HCP Biological Opinion).

The prior Biological Opinions concluded that the Tesoro Extension Project will not jeopardize these species. Impacts will be fully mitigated through a combination of construction mitigation measures, habitat enhancement and restoration at the Upper Chiquita Conservation Area, and translocation of thread-leaved brodiaea corms.

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Cultural Resources

A portion of archaeological site CA-ORA-1559 is within the disturbance limits of the Tesoro Extension Project. This portion of the site has been determined to be disturbed and has no integrity; it does not contribute to the site's National Register eligibility. The Project will not impact the portions of the site that make it eligible for the National Register. Mitigation measures similar to those adopted for the Ranch Plan will be implemented by the Project.

CONCLUSION ON SCOPE OF USACE REVIEW

As demonstrated in the preceding text, the scope of USACE review should be limited to the Corps' jurisdictional areas. But, even if the USACE determines it will evaluate impacts beyond the USACE jurisdictional areas, the scope of review should be no more than the scope of the Tesoro Extension Project. As demonstrated in this document, the Tesoro Extension Project has independent utility. The future extension of the SR 241 beyond the limits of the Tesoro Extension Project is speculative at this time. The Tesoro Extension Project is not dependent on a future extension, and does not limit the alternatives that could be implemented to extend the SR 241 in the future.

USACE Letter of Permission Procedures for the SAMP Area

The SAMP for the San Juan Creek and parts of the San Mateo Creek Watersheds is administered by the USACE with an emphasis on conservation of wetland and waters of the U.S. based on watershed function and values. The three main goals of the SAMP process are to:

- Allow reasonable economic development through one or more proposed permitting procedures that provide regulatory predictability and incentives for comprehensive resource protection, management, and restoration over the long term.
- On a voluntary basis, establish an aquatic resources conservation program that includes preservation, restoration, and management of aquatic resources; and
- Minimize individual and cumulative impacts of future projects within the SAMP watersheds by relating permitting for future activities to the SAMP Aquatic Resources Conservation Program, including studies prepared for the SAMP and the Southern Subregion Coordinated Planning Process.

The SAMP provides a contextual framework to implement a more effective permitting system that provides additional protections to higher value resources while minimizing delays for projects impacting lower value resources. In order to implement the

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alternative permitting process, the USACE proposed to revoke selected Nationwide Permit ("NWP") authorizations within the SAMP area.

Participants in the SAMP are identified as either "current" participants or "future" participants. Current participants have identified proposed projects within the SAMP study area and are eligible for Section 404 permitting by one or more of the proposed permitting procedures: the Regional General Permit ("RGP") or the proposed permitting procedures for authorized activities within the Ranch Planning Area. Under the SAMP, future participants may qualify for use of either the RGP for maintenance activities or for the SAMP Letter of Permission ("LOP") for most other actions.

The LOP authorization is an abbreviated method for issuing an individual permit, whereby a decision to issue a permit authorization is made after coordination with federal and state fish and wildlife agencies and a public interest evaluation. The applicability of a permit system depends on the location of the proposed activity with respect to the Ranch Planning Area boundaries and with respect to the areas identified as ineligible for abbreviated permitting. According to the SAMP Draft EIS, "the proposed use of LOP Procedures for other future qualifying permit applicants whose potential impacts on the waters of the U.S. will be assessed through reliance on the SAMP at future points in time."

Within areas proposed to be eligible for abbreviated permitting, there is no limit on acreage impacts. Impacts to native habitats within these areas are expected to be lower due to past degradation that decreased the riparian integrity of such areas.

Outside the Ranch Planning Area, the following SAMP tenets apply.

- i. No net loss of acreage and functions of waters of the U.S./State.
- ii. Maintain/restore riparian ecosystem integrity.
- iii. Protect headwaters.
- iv. Maintain/protect/restore riparian corridors.
- iv. Maintain and/or restore floodplain connection.
- v. Maintain and/or restore sediment sources and transport equilibrium.
- vi. Maintain adequate buffer for the protection of riparian corridors.
- vii. Protect riparian areas and associated habitats of listed and sensitive species.

The Watershed Planning Principles were developed mainly for the Ranch Planning Area and have little direct application outside the Ranch Planning Area. The USACE, through the SAMP, proposed to issue LOPs for activities outside of the Ranch Planning Area that are consistent with the purposes and goals of the SAMP.

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Eligible activities include: Public and private drainage and flood control facilities, including:

- Construction of outfall and intake structures, construction of bank stabilization structures, and maintenance of all flood control facilities;
- Public and private roads and bridges, including lengthening, widening and maintenance; and
- Habitat restoration and water quality improvement projects, including wetland restoration and creation and construction of stormwater management facilities.

Within the higher value aquatic resources areas that would otherwise be ineligible for abbreviated permitting, some activities, for example, those with permanent impacts up to 0.1 acre of waters of the U.S., would still be eligible for LOPs.

Department of the Army Permit #SPL-1999-16236 Issued to Rancho Mission Viejo LLC

The USACE Permit No. SPL-1999-16236 dated March 21, 2007 ("404 permit") authorizes Ranch Plan activities, with specific activities to be authorized individually in the future through a LOP process. The 404 permit authorizes discharge of dredged and fill material for the Ranch Plan, including infrastructure and roads. In the "Project Description" section, the 404 Permit allows public and private roads and bridges within the development areas. Outside of the development areas, permitted activities include "Permanent impacts associated with reviewed infrastructure projects including: ...b. Crossings of any mainstem stream using complete spans or partial spans with in-channel piers/piles."

Under "Project Design" A. Project Footprint, the 404 Permit states:

1. The permittee shall confine development and supporting infrastructure to the footprint (including infrastructure alignments and facilities within designated open space) shown on Figures 8-1, 8-2, 8-3a, 8-3b, 8-3c, 8-4 and 8-5 in the EIS. [Referencing the San Juan Creek Watershed/Western San Mateo Creek Watershed Special Area Management Plan (SJ/SM SAMP) Environmental Impact Statement (EIS)]

As shown in Figure 3 the Tesoro Extension Project approximates the conceptual road right of way as depicted in the SAMP, Figure 8-1 "Conceptual Road/Stream Crossing Locations."

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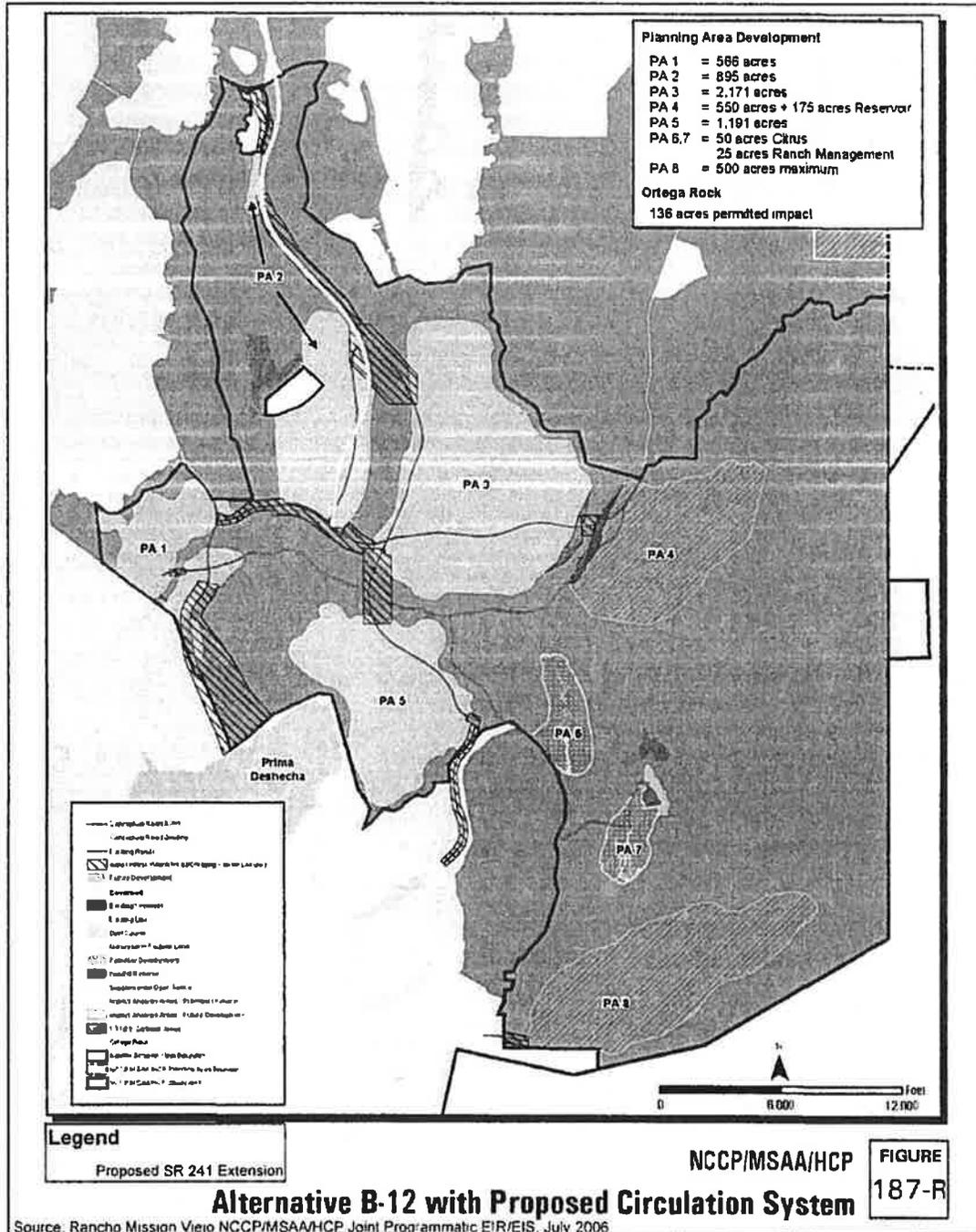


FIGURE 3

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In addition, the Tesoro Extension Project complies with applicable design conditions set forth in the 404 permit to protect wildlife. Specifically, as described in the Project Description, three wildlife undercrossings are proposed along the Tesoro Project Extension: a bridge crossing at Canada Chiquita with a clearance well in excess of 20 feet; a 24-foot diameter multi-plate steel culvert outside a streambed; and a ten-foot diameter concrete culvert suitable for rodents and small carnivores. In addition chain link fencing or functionally similar barrier of 10 feet in height (or as revised/determined through adaptive management) will be installed on both sides of the approaches to the bridge crossing for a distance of 100 feet away from the stream to deter wildlife from entering the roadway. These design features are consistent with the SAMP requirements. Other design conditions relating to residential, commercial and recreational facilities do not apply to the proposed Tesoro Extension Project.

Furthermore, the Tesoro Extension Project will either completely avoid or minimize impacts to aquatic resources in the project area using complete spans or partial spans with in-channel piers/piles. Impacts from the SR 241 will be minimal compared to the construction of the approved Ranch Plan's "F" Street, which would fill most of the identified aquatic features.

The proposed Tesoro Extension Project is clearly an activity that falls under the permitted activities of the SAMP and is consistent with the design and construction requirements set forth in the 404 Permit. If the Corps determines Nationwide Permit 14 cannot be used for the Tesoro Extension Project, then the SAMP's LOP process should be utilized as the 404 permit process for the Tesoro Extension Project.

PART 3: THE PHYSICAL AND OPERATIONAL IMPACTS OF THE TESORO EXTENSION PROJECT ARE INCLUDED IN AND ADDRESSED AS PART OF THE SOUTHERN SUBREGION HCP EIR/EIS AND THE SAMP EIS

The Tesoro Extension Project in the HCP EIR/EIS

Figure 217-M depicts the future circulation system in the traffic study area, including buildout of the Orange County MPAH, which includes the Tesoro Extension Project. "If the SR 241 extension is not built, then the on-site roadway system would include an arterial (Cristianitos Road/"F" Street) along the SR 241 alignment." HCP EIR/EIS at 5.2-7. The EIR/EIS includes Figures and impact calculations based on conditions with the Tesoro Extension Project and without the Tesoro Extension Project. See for example EIR/EIS at 5.2-8. Mitigation Measure SC 4.6-14 requires that the applicant (for the Ranch Plan Tesoro Project) enter into an agreement with the TCA to address implementation and responsibilities between the applicant and the TCA relative to all roadway connections to and/or crossings of the SR 241 extension within the Ranch Plan, **and/or funding/phasing/construction of other roadways (i.e., "F" Street) that**

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the even[t] the extension of SR-241 does not occur." HCP EIR/EIS at 5.2-17, emphasis added.

Figure 3 shown earlier is a copy of Figure 187-R from the HCP EIR/EIS, which shows Alternative B-12 with Proposed Circulation System. The Figure includes areas denoted as "Areas Within Which Road/Crossing Can be Located." These areas are outside of development areas, and traverse the Ranch Plan through the Habitat Reserve, to provide a continuous road from north to south, outside of the planning (development) areas.

The impacts of an alternative roadway to the Tesoro Extension Project (i.e., "F" Street) were evaluated in the HCP EIR/EIS, in part through incorporation of the Ranch Plan EIR 589 analysis. As described above, because an arterial road ("F" Street) would be built in the same location without the Tesoro Extension Project, and since this alternative arterial is included in the impact analysis and as a Covered Activity of the HCP, the physical and operational impacts of the Tesoro Extension Project are included in the analysis for the HCP EIR/EIS.

The Tesoro Extension Project in the SAMP EIS

Section 5.6 CIRCULATION SYSTEM ASSUMPTIONS

The text states that implementation of the development associated with the alternatives carried forward for further consideration in Chapter 6.0 "would require a supporting circulation system." (page 5-37). All of the Figures of the alternatives include a north-south roadway traversing the RMV Planning Area in a location that is virtually the same as the alignment of the Proposed Tesoro Extension Project. The circulation assumptions for each "B" Alternative carried forward are described as relevant to the Tesoro Extension Project, these include:

Cow Camp Road – an addition to the MPAH of a new east-west arterial highway on the north side of San Juan Creek. Cow Camp Road would be constructed as a major arterial between Antonio Parkway and SR 241 (SOCTIIP), and as a primary arterial between SOCTIIP and Ortega Highway in a "with SR 241" scenario. In a "without SOCTIIP" scenario, Cow Camp Road would be constructed as a major arterial between Antonio Parkway and F Street and as a primary arterial between F Street and Ortega Highway.

The text also notes that in a "without SOCTIIP" scenario, Cristianitos Road would extend from PA 3 to Oso Parkway. In that scenario, north-south circulation would be provided via a road that traverses the area in the same way as the Proposed Tesoro Extension Project.

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Section 7.3, Transportation and Circulation

This section of the SAMP EIS addresses a future circulation system with the Tesoro Extension Project (addressed as the SR-241 extension).

CONCLUSION

The Tesoro Extension Project impact to Waters of the U.S. is minimal, and the impact will be offset through mitigation. The Tesoro Extension Project is a linear transportation project with impacts that are four-hundredths of an acre out of the total Project disturbance area. As demonstrated in this document, the Tesoro Extension Project has independent utility and represents an appropriate project segment under NEPA. The physical and operational impacts of the Tesoro Extension Project have been analyzed in several environmental documents, including the USFWS HCP EIS and the USACE SAMP EIS, and are consistent with the design conditions the USACE established for the Ranch Plan 404 permit.

All Project impacts were contemplated in prior EISs and previously approved through the HCP, the SAMP and the Biological Opinions for the HCP, the SAMP and SOCTIIP. To require a broader scope of analysis is not consistent with the law or the federal regulations.

The TCA thanks you in advance for reviewing this letter prior to our meeting on Friday, February 10, 2012, and looks forward to working with you on this important transportation project. Should you have any questions regarding this letter, please feel to contact me at (949) 754-3475.

Sincerely,

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY



Valarie McFall
Director, Environmental Services

Cc: Colonel Toy, USACE
Ms. Susan Meyer, USACE
Ms. Cori Farrar, USACE
Mr. Thomas Margro, TCA
Mr. Rob Thornton, Nossaman

TAB 12

San Joaquin Hills
Corridor Agency

Chairman:
Scott Schoeffel
Dana Point



Transportation Corridor Agencies

Foothill/Eastern
Corridor Agency

Chairman:
Bill Campbell
County of Orange
3rd District

February 14, 2012

Mr. Hasan Ikhata
Executive Director
Southern California Association of Governments
818 West Seventh Street, 12th Floor
Los Angeles, CA 90017-3435

RE: Comments on the Draft 2012 Regional Transportation Plan and Program Environmental
Impact Report

Dear Mr. Ikhata:

The Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Agency (TCA) appreciates the opportunity to review and provide comments on the Draft 2012-2035 Regional Transportation Plan (RTP)/Sustainable Communities Strategy (SCS) and associated Draft Programmatic Environmental Impact Report (PEIR). TCA commends the SCAG staff for the tremendous amount of work and effort in putting these documents together. TCA also recognizes and supports the timely adoption of the RTP/SCS to enable the Southern California region to proceed with the planning and implementation of regionally significant transportation projects. Further, TCA recognizes that the SCS is particularly important for the region to meet its state mandated greenhouse gas (GHG) emissions reduction targets for 2020 and 2035.

Please find below TCA's specific comments on both the draft RTP/SCS and PEIR.

DRAFT 2012-2035 RTP/SCS

Page 23, Vision, Transportation Demand Management

Transportation pricing is not identified as part of the RTP/SCS "vision" either as a transportation demand management method or as a financing tool, even though it is clearly a component of the transportation plan and financial plan for implementation. The Orange County SCS includes a description of the current and planned priced transportation network that should be adapted to address the entire region.

Recommended Clarification:

Add information from the Orange County SCS (pages 126 and 127 of the Subregional Sustainable Community Strategies Technical Appendix) that describes the existing and planned inter-operable priced transportation network in the region, including toll roads,

Thomas E. Margio, Chief Executive Officer

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express lanes and high occupancy toll (HOT) lanes. The text can be expanded to address HOT lanes, toll facilities, express lanes and tolled truck lanes in the region as a whole, and should include the following points:

- Tolled centerline miles in the region will increase from 61 in 2008, to 408 in 2035, including toll roads, express lanes, HOT lanes, and tolled truck lanes.
- Priced lanes provide flexibility and options as part of the congestion relief toolbox of measures designed to help meet sustainability and emission reduction goals related to SB 375 and other state and federal mandates.
- “Priced facilities are an especially important tool for providing intra-county, inter-county and interregional capacity.”
- “The existing priced transportation network serves the locations where major employment and housing growth are projected to occur.”
- “Toll roads and express lanes charge users a fee for travel, but typically offer less congested traffic lanes than nearby freeways and roadways. Reduced congestion provides improved and more efficient mobility with fewer air pollutants and greenhouse gas (GHG) emissions caused by congestion.”
- “The toll road system is designed to interrelate with transit service. The toll roads can accommodate Bus Rapid Transit and express bus service, and toll road medians are sized and reserved to provide the flexibility for future transit, if appropriate.”
- Priced facilities such as the Orange County toll roads are privately funded. This insures that these facilities can relieve congestion and associated air pollution and GHG emissions without further stressing limited state, federal and local transportation funding resources.

Page 42, Major Highway Completion Projects, Table 2.2

SR-241 (ORA052) is identified in Table 2.2 as a major highway completion project. However, the completion year is listed as 2020-2030. Although widening will occur in the 2020 to 2030 timeframe, the official project description identifies the completion date as 2030.

Recommended Clarification:

- In Table 2.2, we request that the completion date for SR 241 be clarified as 2030, consistent with the project description for ORA052.
- In the interest of establishing that some major highway projects in Table 2.2 provide emissions reduction benefits without burdening limited federal, state and local funding resources, we request the following clarifying footnote: *SR 241 is a privately funded Transportation Control Measure.*

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Page 56, Express/HOT Lane Network

This appears to be the only “priced transportation” discussion in the transportation investments chapter. It does not identify how many miles of priced lanes exist now, or how much that network will be expanded in the plan. Toll roads are included in the priced transportation network, along with express Lanes, and HOT lanes, but are not included in the discussion. However, TCA’s Toll Roads are depicted in Exhibit 2.6, Regional HOT Lane Network. The terminology should be sorted out.

Recommended Clarification:

- Retitle this section, “Express Lanes, HOT Lanes and Toll Roads: The Priced Transportation Network.”
- Table 2.6 should be retitled “Express Lanes, HOT Lanes and Toll Roads”
- The text should provide brief definitions of each type of facility that makes up the priced transportation network, as Express Lanes, Toll Roads and HOT Lanes each operate differently.
- The discussion should include that express lanes, HOT lanes and toll roads generate user fees that pay for construction and operation of their facilities.
- The text should discuss that all priced facilities in the SCAG region insure interoperability by using a common technology, FasTrak, to collect user fees.
- The text should establish the congestion reducing goal of priced transportation, and the associated criteria pollutants and GHG emissions benefits of providing free flow capacity that avoids emissions generated by idling. In addition, user fees provide an economic incentive for cost-sharing that promotes ridesharing, which is beneficial to reduced criteria and GHG emissions reductions.

Page 76, Conservation Planning Policy

The description of this policy requires clarification to express the intent of SCAG’s Energy and Environment Policy Committee and the coalition of more than 20 public, non-profit and private sector interests, including TCA that urged SCAG to include it.

Recommended Clarification:

Add a paragraph that explains why the conservation program benefits GHG emissions and other criteria pollutants reductions. Specifically, in addition to meeting SAFETEA-LU requirements, the open space lands conservation program would use natural land acquisition to sequester (store) carbon, avoid GHG emissions, and reduce vehicle miles traveled (VMT). This proposed program allows for early implementation and mitigation opportunities. Jurisdictions would have the option to invest early in this open space strategy which offers immediate GHG emissions avoidance benefits, while

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simultaneously proceeding with the longer term and planning intensive projects to build transportation centers near existing residential areas, or employment centers near transit stations, etc.

Suggested steps to develop a regional conservation planning policy should be expanded to include the following key points supported by SCAG's Energy and Environment Committee and the coalition that recommended this program:

- Build upon existing open space land acquisition and open space programs in the region, tailoring programs to each individual county in the region. These include, but are not limited to, OCTA's Measure M Mitigation Program, and TCA's open space mitigation program, which has protected 2,200 acres in perpetuity to date.
- Pursue open space conservation in a voluntary manner, working with willing private sector landowners.

Page 78, Greenhouse Gases

The draft document states that "The transportation sector, primarily, cars and trucks that move goods and people, is the largest contributor [to greenhouse gas (GHG) emissions] with 36.5 percent of the State's total GHG emissions in 2008. On road emissions (from passenger vehicles and heavy duty trucks) constitute 93 percent of the transportation sector total." This statement covers only part of the transportation system's GHG emissions role. The text must recognize projects that reduce transportation network GHG emissions by relieving congestion and insuring free-flow conditions.

Because GHG emissions from vehicles increase in stop-and-go traffic, congestion relief projects that eliminate bottlenecks and maintain free-flow conditions actually reduce transportation network GHG emissions, much as Transportation Control Measures are transportation projects that reduce criteria pollutants. Further, the SB 375 Regional Targets Advisory Committee (RTAC) recommends tracking the performance of such strategies "to smooth extreme congestion to more carbon-friendly speeds" in its final report to the California Air Resources Board.

Recommended Clarification:

Insert the following statements on page 78:

- Congestion relief projects reduce transportation network GHG emissions, which otherwise result from idling.
- Consistent with the SB 375 RTAC's recommendation in its final report to the California Air Resources Board, the RTP/SCS includes projects and strategies designed "to smooth extreme congestion to more carbon-friendly speeds."
- A subset of projects included in the Draft RTP/SCS reduce GHG emissions by providing relief of existing and projected congestion. These include toll roads,

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express lanes, HOT lanes, high occupancy vehicle (HOV) lanes, and dedicated truck toll lanes.

- Congestion pricing is a powerful transportation demand management tool incorporated in the Draft RTP/SCS for reducing GHG emissions. SCAG has launched a two-year study of congestion pricing strategies that can provide needed transportation facilities while reducing the region's GHG emissions associated with vehicle trips.
- Orange County's toll road network is a prime example of priced congestion relief projects. The toll roads have variable pricing incentives that spread out vehicle use to limit peak-hour congestion that leads to increased GHG emissions.
- As a specific example, SR 241 is designed to maintain free flow conditions that reduce congestion on the regional transportation system. The SR 241 environmental analysis documents transportation network GHG reductions from congestion relief by means of variable tolls that maintain free-flow capacity.
- Other specific examples of projects that reduce GHG emissions on the regional transportation network include express lanes, HOT lanes, HOV lanes and dedicated truck toll lanes for goods movement.

Page 79, Air Quality

Transportation Control Measures (TCMs) are mentioned as mitigation measures, but are not defined or illustrated. The importance of TCMs needs to be clarified and expanded to clearly communicate their air quality role in the RTP.

Recommended Clarification:

- Provide a brief description of projects that qualify as TCMs
- Explain the role of TCMs in reducing emissions
- Provide a reference to the list of TCMs contained in the Conformity Technical Report.

Page 86, Financial Plan, Introduction

The draft document states that "We have successfully implemented toll systems in the past with the Transportation Corridor Agencies' network of toll roads and the SR-91 Express Lanes in Orange County. This kind of innovation in transportation continues as neighboring counties within our region consider a broader network of toll systems." However, the statement needs to clarify the financial planning importance of privately funded toll facilities.

Recommended Clarification:

Priced transportation facilities also provide the opportunity for financial innovation. The Orange County toll roads (SR 73, SR 133, SR 241, and SR 261) are privately funded.

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They provide congestion relief and associated air pollution and GHG emissions reduction without further stressing limited federal, state, and local transportation funding.

Page 92, Core Revenues, Regional Revenues

Table 3.6, Regional Revenues, identified federal, state and local sources of transportation funding for the plan. Nowhere in the document is the private sector funding contribution assumed for the plan described, although toll road widenings, expansions, and new tolled facilities that are privately funded are included in the plan and in the total cost of the plan.

Accurately describing the extent of private funding is an important public disclosure, and an important element of the financial plan that relieves the burden on limited federal, state and local transportation funding.

Recommended Clarification:

- Clarify in the text the percentage of total funding contributed by private sources. This sum should include the privately funded Orange County toll roads (SR 73, SR 133, SR 241, and SR 261).
- A companion pie-chart, similar to Table 3.6, showing the split between public and private funding would also clarify this point.

Page 103, Table 3.5 2012 RTP Revenues (in Nominal Dollars, Billions)

The draft does not clarify how the cost of a proposed new VMT fee, increased gas tax fee, and tolls and user fees would layer over each other. It appears that they would accumulate for individual drivers, with a potentially significant economic impact on drivers and households. Drivers paying to use toll roads, express lanes and HOT lanes would be paying twice for the same mileage.

Recommended Clarification:

- The RTP/SCS should establish the principle that only one mileage fee should apply for each mile driven.
- In order to avoid double-charging drivers for the same trip, their common FasTrak monitoring technology should be used to deduct priced mileage from any VMT fee imposed on drivers.

Page 145, Exhibit 4.17, Land Use Pattern Orange County (2035)

The southerly portion of SR 241 (ORA052), from Oso Parkway to the San Diego County border, has been inadvertently left off this map.

Recommended Clarification:

Mr. Hasan Ikhata
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- Please show the SR 241 alignment on Exhibit 4.17 consistent with the project modeling list and other transportation network maps in the Draft RTP/SCS.

Page 161, Performance Outcomes

This text should clearly state that performance measures and outcomes are not intended to apply to individual areas or projects, but rather to the region as a whole.

Recommended Clarification:

We recommend that the following clarification be inserted:

- Performance measures and expected outcomes will be used to monitor the RTP/SCS at the regional level; these measures and outcomes are not proposed for use at the subregional or project-specific level.

Page 207, Strategic Plan

SCAG assumes \$100 billion will be available from a future VMT fee starting in 2025, but funding for mileage-based user fee demonstration projects and implementation strategies are not included in the constrained RTP/SCS; they are listed in the unfunded Strategic Plan.

Recommended Clarification:

- Demonstration projects and testing of the VMT fee should be included in the constrained plan.
- TCA would be amenable to participating in preparations for VMT fee demonstration projects to ensure a common transparent inter-operable technology for pricing and to avoid double-charging express lane, HOT lane and toll road drivers who pay mileage-based tolls.

Highways and Arterials Technical Report

Page 15, Express/ High Occupancy Toll (HOT) Lane Network.

As with the comment on page 57 of the main RTP/SCS document, the technical report should clearly include toll facilities in the description of projects included in this category. Orange County toll roads are not categorized as express or HOT lanes, but collect tolls as a means of insuring low-emission free-flow capacity and funding the construction and operation of the facility. Toll roads integrate with express lane and HOT lane facilities via the common FasTrak technology that allows inter-operability and convenience for drivers.

Recommended Clarification:

- Retitle this section, "Express Lanes, HOT Lanes and Toll Roads: The Priced Transportation Network."
- Table 2.6 should be retitled "Express Lanes, HOT Lanes and Toll Roads"

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- The text should provide brief definitions of each type of facility that makes up the priced transportation network, as express lanes, toll roads and HOT lanes each operate differently.
- The text should discuss that all priced facilities in the SCAG region ensure interoperability by using a common technology, FasTrak, to collect user fees.
- The discussion should include that express lanes, HOT lanes and toll roads generate user fees that pay for construction and operation of their facilities.
- The text should establish the congestion reducing goal of priced transportation, and the associated criteria pollutants and GHG emissions benefits of providing free flow capacity that avoids emissions generated by idling. In addition, user fees provide an economic incentive for cost-sharing that promotes ridesharing which is beneficial to reduced criteria and GHG emissions reductions.

Performance Measures Technical Report

Page 2, discussion of types of performance measures.

As with the comment on page 160 of the main RTP/SCS document, the text must make clear that the performance indicators are intended to be applied to the RTP/SCS at the regional level and are not proposed for project-specific application.

Recommended Clarification:

We recommend that the following clarification be inserted:

- Performance measures and expected outcomes will be used to monitor the RTP/SCS at the regional level; these measures and outcomes are not proposed for use at the subregional or project-specific level.

SCS Background Documentation

Pages 36 and 37, Land Use Pattern Maps for 2020 and 2035.

Both of these maps are inconsistent with transportation network maps in the document and do not include SR 241 (ORA052), specifically called out in the RTP as a TCM and priced transportation project in southern Orange County.

Recommended Clarification:

Please show the SR 241 alignment on the Land Use Pattern Maps for 2020 and 2035 consistent with the project modeling list and other transportation network maps in the Draft RTP/SCS.

Page 54, Pricing and Vehicle Policy Assumptions.

This discussion only refers to a 2-cent per mile VMT fee; the Plan proposes a 5-cent per mile fee. This confusion should be eliminated.

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Recommended Clarification:

- Amend the reference to a 2-cent VMT fee to a 5-cent per mile VMT fee starting in 2025, consistent with the RTP/SCS main document.

Add the following sentence:

- Toll roads, express lanes and HOT lanes charge varying tolls per mile for use of their facilities. Tolls are project-specific and typically vary by time of day and day of the week. Tolls collected for existing toll roads in Orange County are dedicated to operational expenses and retiring the bonds issued for construction.

Transportation Conformity Technical Report

Page 14, Toll Roads

The discussion of toll road assumptions specifically mentions express lanes and HOT lanes, but not tolled facilities such as existing toll roads SR 73, SR 241, SR 133 and SR 261 in Orange County.

Recommended Clarification:

- SR 241 should be added to Table 6 as a tolled facility and the effect of the toll charges on it should be incorporated into the highway assignment procedure.
- Table 6 should be retitled appropriately to include "Express Lane, HOT Lane and Toll Road Networks." This change should also be made in the main RTP/SCS document

Transportation Security Technical Report

General

This report addresses the need for the transportation system to enhance emergency preparedness, and transportation security and preparedness. Projects that enhance the region's security are not identified.

Recommended Clarification:

Provide illustrations of transportation projects needed in the RTP/SCS to improve transportation security. For example, the southerly extension of SR 241 provides an alternative route connecting the SCAG and San Diego Association of Governments coastal regions with very high current and projected travel volumes. This route will ease future projected congestion to ensure critical capacity for access and evacuation in times of environmental or other emergencies, such as earthquakes, wildfires, traffic accidents, and potential nuclear threats at the San Onofre plant. The need for an alternative route was recently illustrated by the lack of evacuation capacity from the 2007 North San Diego County wildfires.

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DRAFT PROGRAM EIR

General

The Draft PEIR sets forth 500 mitigation measures that SCAG states are “feasible” and reasonable to assume that they will be implemented. Further, it is difficult to sort through these voluminous mitigation measures to identify those that are mandatory vs. advisory and those that apply to transportation projects as opposed to other types of developments. This can be improved by reformatting and clarifying the proposed mitigation measures as follows:

Recommended Clarifications:

- Provide a clear statement to the following effect: All mitigation measure recommendations to project sponsors and agencies are advisory. Lead agencies are responsible for identifying and addressing those measures they deem practical and feasible, or applicable to specific projects.
- Sort out mitigation measures so that those that are mandatory upon SCAG appear first in each category and can be easily distinguished from Best Management Practices or Best Available Control Measures that SCAG is recommending to project sponsors and other agencies.
- For mitigation measures that simply restate existing regulatory agency requirements or recommendations, e.g. California Department of Fish and Game survey protocols and mitigation requirements, reference the specific regulation and include in the description “ or successor regulation or guideline” so that as time moves forward the measure does not recommend out of date regulations or guidance.

Page 3.6-15 and 17 Greenhouse Gas Emissions, Transportation Network Improvements.

On page 3.6-15, the Draft PEIR states that the transportation sector is a major source of California’s greenhouse gases. Further, on page 3.6-18, the discussion cites information on the GHG emissions from new vehicle trips. However, in both places, the document does not clarify that certain transportation projects reduce greenhouse gases by virtue of their design, location and operation. Similar to the way that Transportation Control Measures reduce precursors to ozone, projects that reduce congestion and idling reduce GHG emissions from the regional transportation network. The PEIR must explain the relationship between GHG emissions and congestion relief, and the components of the RTP that provide congestion and idling relief on the regional network.

Recommended Clarification:

Consistent with our recommended clarification for page 78 of the Draft RTP/SCS document, the PEIR text should state the following on pages 3.6-15 and 3.6-18:

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- Congestion relief projects reduce transportation network GHG emissions due to idling.
- Consistent with the SB 375 RTAC's recommendation in its final report to the California Air Resources Board, the RTP/SCS includes projects and strategies designed "to smooth extreme congestion to more carbon-friendly speeds."
- A subset of projects included in the Draft RTP/SCS reduce GHG emissions by providing relief of existing and projected congestion. These include toll roads, express lanes, HOT lanes, HOV lanes, and dedicated truck toll lanes.
- Congestion pricing is a powerful transportation demand management tool incorporated in the Draft RTP/SCS for reducing GHG emissions. SCAG has launched a two-year study of congestion pricing strategies that can provide needed transportation facilities, while reducing the region's GHG emissions associated with vehicle trips.
- Orange County's toll road network is a prime example of priced congestion relief projects. The toll roads have variable pricing incentives that spread out vehicle use to limit peak-hour congestion that leads to increased GHG emissions.
- As a specific example, SR 241 is designed to maintain free-flow conditions that reduce congestion on the regional transportation system. The SR 241 environmental analysis documents transportation network GHG reductions from congestion relief by means of variable tolls that maintain free-flow capacity.
- Other specific examples of projects that reduce GHG emissions on the regional transportation network include express lanes, HOT lanes, HOV lanes and dedicated truck toll lanes for goods movement.

Maps 2, Project Description

General, SR 241 Missing from 2035 Base Maps

Please ensure that all 2035 base maps include the southerly extension of SR 241, For example, Map 2.13, 2035 Grade Separation Projects, does not show SR 241, which will be completed by 2030, on the base map, while it is depicted on Map 2.6 and 2.8. Map 2.19, Land Use Pattern in Orange County, does not depict SR 241; this is accurate only if the map is intended to show 2008 land use; SR 241 should be included in all maps for 2020 and 2035.

Recommended Clarifications:

Consistent with the transportation modeling network and TCM timely implementation report, show SR 241 as part of the 2035 base map for all transportation maps in the PEIR. Specifically, add SR 241 to Map 2.13 and Map 2.19

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February 14, 2012
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TCA thanks you in anticipation of your written responses to these comments. We look forward to the amendments in the final 2012-2035 RTP/SCS and PEIR to incorporate the recommended changes. Should you have any questions or require any clarification regarding these comments, please feel free to contact Ms. Valarie McFall, Director, Environmental Services at 949.754.3475 or via email: vmcfall@thetollroads.com.

Sincerely,

Scott Schoeffel, Chair
San Joaquin Hills Transportation Corridor
Agency

Bill Campbell, Chair
Foothill/Eastern Transportation Corridor
Agency

cc: Jacob Lieb, SCAG, Manager of Environmental and Assessment Services
TCA Board of Directors

TAB 13



Environment

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Environmental Review Toolkit

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NEPA and Transportation Decisionmaking

The Development of Logical Project Termini

November 5, 1993

I. Introduction

In developing a project concept which can be advanced through the stages of planning, environment, design, and construction, the project sponsor needs to consider a "whole" or integrated project. This project should satisfy an identified need, such as safety, rehabilitation, economic development, or capacity improvements, and should be considered in the context of the local area socioeconomics and topography, the future travel demand, and other infrastructure improvements in the area. Without framing a project in this way, proposed improvements may miss the mark by only peripherally satisfying the need or by causing unexpected side effects which require additional corrective action. A problem of "segmentation" may also occur where a transportation need extends throughout an entire corridor but environmental issues and transportation need are inappropriately discussed for only a segment of the corridor.

The Federal Highway Administration (FHWA) regulations outline three general principles at 23 CFR 771.111(f) that are to be used to frame a highway project:

In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each environmental impact statement (EIS) or finding of no significant impact (FONSI) shall:

1. Connect logical termini and be of sufficient length to address environmental matters on a broad scope;
2. Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and
3. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

The aim of this paper is to discuss criteria that can be used to select logical termini (project limits) for development of a project. The primary discussion will be on the first of the three factors mentioned above. However, all three are interrelated and necessary to the development of an integrated project.

The remainder of this paper is divided into three sections. Section II will further define logical termini. Section III will discuss several case studies covering factors that can come into play in choosing termini, and Section IV will offer some

conclusions.

II. A Definition of Logical Termini

Logical termini for project development are defined as (1) rational end points for a transportation improvement, and (2) rational end points for a review of the environmental impacts. The environmental impact review frequently covers a broader geographic area than the strict limits of the transportation improvements. In the past, the most common termini have been points of major traffic generation, especially intersecting roadways. This is due to the fact that in most cases traffic generators determine the size and type of facility being proposed. However, there are also cases where the project improvement is not primarily related to congestion due to traffic generators, and the choice of termini based on these generators may not be appropriate. The next section will show some examples where this is the case.

Choosing a corridor of sufficient length to look at all impacts need not preclude staged construction. Therefore, related improvements within a transportation facility should be evaluated as one project, rather than selecting termini based on what is programmed as short range improvements. Construction may then be "staged," or programmed for shorter sections or discrete construction elements as funding permits.

III. Sample Project Concepts and Discussion

A. Case #1

US 22 is a rural two lane facility without access control. A number of high accident locations have been identified, and the need for the project is to correct site specific geometric deficiencies between point A (Route 602) and point B (no intersecting roadway).

Discussion: In this case, the selection of A and B as termini is reasonable, given the scope of the project. In fact, for projects involving safety improvements, almost any termini (e.g., political jurisdictions, geographical features) can be chosen to correspond to those sections where safety improvements are most needed. The first criterion, that the project connect logical termini and be of sufficient length to address matters on a broad scope, is largely irrelevant due to the limited scope of most safety improvements. Furthermore, even if other safety improvements are needed beyond those in segment A-B, the project termini need not be expanded to include these other improvements. The other two criteria still need to be met to choose A and B as termini: the safety improvements have independent utility (i.e., they can function as stand-alone improvements without forcing other improvements which may have impacts), and these improvements do not restrict consideration of other reasonably foreseeable transportation improvements (such as major safety improvements in an adjoining section, e.g., point B to Route 604, which could involve changes in alignment of the segment currently under review). Also, all environmental requirements must still be met. For instance, straightening of a curve through parkland cannot take place without completing the necessary section 4(f) analysis.

B. Case #2

US 26 is on the eastern fringe of a rapidly growing urban area. Over the next 20 years, traffic growth and congestion are predicted for the section of roadway closest to the urban area, between Route 100 and Route 200. Since US 26 also serves as a through facility to points east, congestion will increase on the other sections also. It is proposed to deal with the worst of the congestion problems by widening the road to four lanes between point A (Route 100) and point B (Route 200).

Discussion: Widening between point A and point B could be implemented as a reasonable project with logical termini, but several conditions would have to be met:

- The project serves an identified need to upgrade US 26 in the suburban area, and stands on its own from point A to point B.
- The improvement will not force immediate transportation improvements on the remainder of the facility (i.e., the project will not substantially increase congestion or safety problems on the mountainous section of US 26 beyond the problems under the no-build case). If improvements are forced, there could be project impacts severe enough (e.g., 4(f), endangered species) to complicate completion of US 26 in the mountainous section, and this should be investigated now. This would be to see whether alternatives for other foreseeable transportation improvements have been restricted to the point where environmental requirements will be difficult or impossible to satisfy.
- If there is a demonstrated need for improvements in the entire corridor from point A to point C, there may still be no funding available and no likelihood of improving the entire corridor in the near future. In this case, the project from point A to point B could still be implemented providing the above conditions were met.
- If there is potential for improvements to the whole US 26 corridor in the near future, and if there may be alternate alignments to satisfy the project need that will change the alignment in the AB section, it would be prudent to evaluate the entire corridor from A to C. Assuming limited funds, the suburban section could be programmed for staged construction first, and subsequent sections could be reevaluated at the appropriate time. However, as long as the AB segment represents a stand-alone project (i.e., all three of the criteria in 23 CFR 771.111(f) are met), there is no environmental requirement to consider the entire corridor in one document. The only issue that needs to be treated with care is to leave enough flexibility in alternative selection in future upgrading of the entire corridor so that environmental requirements can be satisfied (e.g., don't build the AB segment in a way that it would be a "loaded gun" forcing the upgrading to point C to take 4(f) property, which otherwise would have been avoided).

C. Case #3

The proposed project is a new interchange with I-28 at the north edge of a growing urban area with options to upgrade an existing north-south feeder/collector route, Kellogg Rd., on a new location. The next interchange south is at capacity now due to 1) new housing in the north end of town, and 2) a rapidly expanding commercial area at the existing interchange. The identified purposes of this project are to reduce circuitous travel for north end residents and to reduce congestion at the next interchange south.

Discussion: At first glance, the logical termini for analysis are the points where the new interchange ties in with existing facilities (Kellogg Rd. and Drury Rd.). Would this action force other project improvements? In this example, Kellogg Rd. and Drury Rd. may be overloaded by interchange traffic. If this is considered now, there may be design options to address this without substantial change or disruption. If this is dealt with later, the options may be more limited. If the only remaining option in the future is to widen Kellogg Rd. and Drury Rd., there may be considerable disruption, relocations, etc., which could possibly have been avoided. For this particular project, the eastern project terminus was the intersection of Coleman St. and Drury Rd., since there was adequate capacity on Drury Rd. to absorb the traffic and no additional improvements would be forced. The western project terminus was further away from the intersection, since Kellogg Rd. did not have enough capacity to handle the traffic from the interchange. The terminus in this case was where Kellogg

Rd. intersected with Chris Rd. It was demonstrated that Chris Rd. had the capacity to handle the additional traffic and that no additional improvements would be forced. Options for upgrading Kellogg Rd. included widening of the existing Kellogg Rd. or a north-south feeder road on new alignment. Even if the project sponsor had decided not to upgrade Kellogg Rd., the environmental document should have covered the environmental impacts resulting from the congestion of this route (e.g., community disruption, possible air quality violations).

D. Case #4

This proposed facility is on new alignment, connecting Route 91 with I-17. Alternative 1 is shorter, connecting to I-17 at point A, and alternative 2 would tie in further east, at point B. The primary travel on this new facility is to and from points east on I-17. I-17 is four lanes west of point B and six lanes east of point B. Alternative 2 has been designated as the preferred by the project sponsor. Alternative 1 was proposed by a citizen's group to reduce the number of relocations and community disruption. Cost estimates are \$50 million for alternative 1 (to tie in at point A) and \$63 million for alternative 2 (to tie in at point B).

Discussion: It is likely that an incomplete picture of the costs and impacts of alternative 1 is being provided by only carrying the analysis as far as point A. For both alternatives, consideration of impacts should continue to point B, or east of B if there are likely to be any weaving or merging problems which will force changes in the facility beyond B. In this example, the four lane section between A and B, if overloaded by alternative 1, would force further improvements on I-17 which would likely have additional impacts. Failure to take this into account would underestimate the cost and overall impacts of alternative 1 and skew decisionmaking. As a result of these factors, if Alternative 1 is considered a reasonable alternative, the discussion of impacts should extend to impacts occurring at point B. If I-17 will be able to handle the increased traffic from alternative 1 without widening, then the discussion could simply be a demonstration of that fact.

IV. Conclusions

The aim of this paper has not been to present all possible ways of determining logical project termini, but rather to present a thought process that can be used to make these determinations on a case by case basis. For the vast majority of highway projects, the choice of logical termini will be obvious and non-controversial. For those few major projects where other considerations are important, the termini chosen must be such that:

- environmental issues can be treated on a sufficiently broad scope to ensure that the project will function properly without requiring additional improvements elsewhere, and
- the project will not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

By following this guidance, proposed highway projects will be more defensible against litigation claims of project segmentation, and decision makers and the public will have a clearer picture of the transportation requirements in the project area and a better understanding of the project purpose and need.

For questions or feedback on this subject matter content, please contact [Ruth Rentch](#). For general questions or web problems, please send feedback to the [web administrator](#).

Federal Highway Administration | 1200 New Jersey Avenue, SE | Washington, DC 20590 | 202-366-4000

TAB 14



Final 2013 Federal Transportation Improvement Program

Orange County Project Listing
 Local Highway
 (In \$000's)

ProjectID	County	Air Basin	Model	RTP ID	Program	Route	Begin	End	System	Conformity Category	Amendment
ORA000173	Orange	SCAB		ORA000173	CAR63				L	NON-EXEMPT	0

Description: PTC 12,250 Agency MISSION VIEJO

LA PAZ RD (MURILANDS/I-5 TO CHRISANTA DR) WIDENING FROM 4 TO 6 LANES BRIDGE # 55C0215

Fund	ENG	R/W	CON	Total	Prior	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	Total
BRIDGE - LOCAL	980	560	5,420	6,960	1,540	5,420						6,960
CITY FUNDS	245	72	702	1,019	317	702						1,019
ORANGE M - GMA	200			200	200							200
ORANGE M - MPAH			1,521	1,521	1,521							1,521
ORANGE CO. MEASURE M2 - REGIONAL CAPACITY			1,275	1,275	1,275							1,275
STATE LOCAL PARTNER			1,275	1,275	1,275							1,275
ORA000173 Total	1,425	632	10,193	12,250	6,128	6,122						12,250

ProjectID	County	Air Basin	Model	RTP ID	Program	Route	Begin	End	System	Conformity Category	Amendment
ORA082405	Orange	SCAB		2A0801	CAR63				L	NON-EXEMPT	0

Description: PTC 11,408 Agency MISSION VIEJO
 Widen Oso Parkway from Country Club Drive to Interstate 5 - Project will widen both the east bound and west bound directions from the current three lanes in each direction to four lanes in each direction.

Fund	ENG	R/W	CON	Total	Prior	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	Total
DEVELOPER FEES	350	1,500	6,800	8,650	8,650							8,650
ORANGE M - MPAH	350			350	350							350
ORANGE CO. MEASURE M2 - REGIONAL CAPACITY			1,204	1,204		1,204						1,204
STATE LOCAL PARTNER			1,204	1,204		1,204						1,204
ORA082405 Total	700	1,500	9,208	11,408	9,000	2,408						11,408

ProjectID	County	Air Basin	Model	RTP ID	Program	Route	Begin	End	System	Conformity Category	Amendment
ORA082401	Orange	SCAB		2A0804	CAY67				L	NON-EXEMPT	0

Description: PTC 31,434 Agency ORANGE COUNTY

COW CAMP ROAD (4 LANES) FROM ANTONIO TO "I" STREET (Segment 1 of Antonio to Foothill Transportation Corridor)

Fund	ENG	R/W	CON	Total	Prior	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	Total
COUNTY	1,000		22,000	23,000	1,000	22,000						23,000
ORANGE CO. MEASURE M2 - REGIONAL CAPACITY	1,000		3,717	4,717	1,000	3,717						4,717
STATE LOCAL PARTNER			3,717	3,717		3,717						3,717
ORA082401 Total	2,000		29,434	31,434	2,000	29,434						31,434

ProjectID	County	Air Basin	Model	RTP ID	Program	Route	Begin	End	System	Conformity Category	Amendment
ORA112001	Orange	SCAB		2A0704	NCRH3				L	TCM	0

Description: PTC 7,986 Agency ORANGE COUNTY

Moulton Parkway Smart Street Segment 3 Phase II - From approximately 400' north of El Toro Road to 500' north of Santa Maria Avenue (0.7 miles) - Improve roadway traffic capacity and smooth traffic flow through traffic signal synchronization (3), bus turnouts, intersection improvements, additional sidewalk, additional turning lanes and on-road bike lanes within the project limits.

Fund	ENG	R/W	CON	Total	Prior	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	Total
AGENCY			3,421	3,421		3,421						3,421

TAB 15

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RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

November 8, 2004

WHEREAS, Sections 65864 *et seq.* of the Government Code authorize the County to enter into binding development agreements to achieve certain public purposes; and

WHEREAS, pursuant to the statutory authorization cited above, the County has established procedures and requirements for the processing of proposed development agreements; and

WHEREAS, Board of Supervisors Resolution No. 02-066 establishes procedures for the processing of development agreements in the County; and

WHEREAS, pursuant to Government Code Section 65300 *et seq.*, the County has adopted a General Plan that provides for residential, commercial, industrial and public facilities to meet the future needs of the County population as projected in adopted population and growth forecasts; and

WHEREAS, on November 8, 2004, this Board approved a General Plan Amendment (GPA01-01) and Zone Change (ZC01-02) authorizing the development of the Ranch Plan Planned Community Project (the "Project") upon a 22,815 parcel of real property owned by Rancho Mission Viejo ("RMV") and located in southern Orange County (the "Property") (*see* Board of Supervisors Resolution Nos. 04-291 and 04-292 and Ordinance No. 04-014); and

WHEREAS, this Board's approvals of GPA01-01 and ZC01-02 were expressly conditioned upon RMV's satisfaction of certain conditions ("Conditions of Approval") obligating RMV to provide specific public improvements to ensure that no public facility or service deficiencies would occur as a result of development of the Project upon the Property; and

WHEREAS, RMV proposes to enter into a development agreement ("Development Agreement") with the County for the Property whereby RMV would provide a series of public benefits to the County in exchange for the County's assurance that (i) RMV's development rights relative to the Project would immediately vest and (ii) the planned community development regulations and ordinances, development plan and other existing land use ordinances and regulations of the County would remain unchanged relative to the Project and the Property for a period of not less than 30 years; and

WHEREAS, the proposed Development Agreement provides significant public benefits to the County and the public that exceed those that the County could otherwise be lawfully obtained or exacted through the entitlement process; and

WHEREAS, through commitments contained in the proposed Development Agreement, RMV has agreed to pay or provide more than its pro-rata share of certain public facilities required in connection with the development of the Property as one element of consideration to the County for the Development Agreement; and

Development Milestone	D.A. Item No.	Circulation Improvements	Cost of Improvements inc. Contingency (000's)	Engineering, Admin and Indirects (000's)	Project Fair Share (%)	Project Fair Share (000's)	Total Project Share (000's)	Other (Non-Project) Funding Req's (000's)	Jurisdictions
5001 EDU – 7500 EDU	29.	Saddleback/I-5 Connectors	\$70,000	Note 2.	10%	\$7,000	\$7,000	\$63,000	Caltrans/Mission Viejo
	30.	Extend Cow Camp Road easterly to existing Ortega	\$48,000	(INC)	67%	\$32,160	\$32,160	\$15,840	TCA/RMV
	31.	Antonio Parkway Widening	\$11,000	(INC)	67%	\$7,370	\$7,370	\$3,630	RMV/County
	32.	Crown Valley Parkway and Cabot Road	\$2,699	\$235	4%	\$103	\$977	\$1,957	Laguna Niguel
	33.	Crown Valley Parkway and Forbes	\$1,866	\$162	4%	\$71	\$676	\$1,353	Laguna Niguel
	34.	Widen Railroad Bridge along Crown Valley Parkway	\$2,013	\$175	4%	\$77	\$728	\$1,459	Laguna Niguel
	35.	Oso Parkway Widening in Mission Viejo-Marguerite to I-5	\$8,262	\$1,190	29%	\$2,741	\$4,726	\$4,726	Mission Viejo
	--	Allocate 50% of Remaining Admin/Contingency		\$24,400	0%	\$0	\$0	\$24,400	All
7501 EDU – 10000 EDU	36.	La Pata Avenue - Phase 2	\$25,000	(INC)	21%	\$5,250	\$10,000	\$15,000	County
	37.	Road Improvements to Junipero Serra At I-5 Interchange	\$4,000	Note 2.	4%	\$160	\$160	\$3,840	Caltrans/SJC
	38.	Ramp Improvements to SR 241	\$10	(N/A)	7%	\$1	\$1	\$9	TCA
	--	Extend FTC-South or Arterial Connector (Cow Camp Road to FTC at Oso) (Contingency Project)	(TBD)			(TBD)			County/TCA/RMV
Totals			\$304,652	\$51,813		\$93,500	\$143,775	\$212,690	
Grand Total					\$356,465				
Contribution in Excess of Fair Share								\$50,275	

NOTES:

- 1 These projects are fully funded by OCTA/CALTRANS. Project's Fair Share assumed to be available for re-allocation to other State Highway projects
- 2 Caltrans Support Costs/Overhead (inc design) is not included and is assumed to be the total responsibility of Caltrans as administrator of State Highway system

TAB 16

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RESOLUTION OF THE BOARD OF SUPERVISORS OF
ORANGE COUNTY, CALIFORNIA

November 8, 2004

WHEREAS, Sections 65864 *et seq.* of the Government Code authorize the County to enter into binding development agreements to achieve certain public purposes; and

WHEREAS, pursuant to the statutory authorization cited above, the County has established procedures and requirements for the processing of proposed development agreements; and

WHEREAS, Board of Supervisors Resolution No. 02-066 establishes procedures for the processing of development agreements in the County; and

WHEREAS, pursuant to Government Code Section 65300 *et seq.*, the County has adopted a General Plan that provides for residential, commercial, industrial and public facilities to meet the future needs of the County population as projected in adopted population and growth forecasts; and

WHEREAS, on November 8, 2004, this Board approved a General Plan Amendment (GPA01-01) and Zone Change (ZC01-02) authorizing the development of the Ranch Plan Planned Community Project (the "Project") upon a 22,815 parcel of real property owned by Rancho Mission Viejo ("RMV") and located in southern Orange County (the "Property") (*see* Board of Supervisors Resolution Nos. 04-291 and 04-292 and Ordinance No. 04-014); and

WHEREAS, this Board's approvals of GPA01-01 and ZC01-02 were expressly conditioned upon RMV's satisfaction of certain conditions ("Conditions of Approval") obligating RMV to provide specific public improvements to ensure that no public facility or service deficiencies would occur as a result of development of the Project upon the Property; and

WHEREAS, RMV proposes to enter into a development agreement ("Development Agreement") with the County for the Property whereby RMV would provide a series of public benefits to the County in exchange for the County's assurance that (i) RMV's development rights relative to the Project would immediately vest and (ii) the planned community development regulations and ordinances, development plan and other existing land use ordinances and regulations of the County would remain unchanged relative to the Project and the Property for a period of not less than 30 years; and

WHEREAS, the proposed Development Agreement provides significant public benefits to the County and the public that exceed those that the County could otherwise be lawfully obtained or exacted through the entitlement process; and

WHEREAS, through commitments contained in the proposed Development Agreement, RMV has agreed to pay or provide more than its pro-rata share of certain public facilities required in connection with the development of the Property as one element of consideration to the County for the Development Agreement; and

that OWNERS will contribute a Fair Share payment of \$7,000,000 toward the construction of the Saddleback College / I-5 connector ramps. In order to facilitate the implementation of these improvements, OWNERS are willing to accelerate the payment of their Fair Share obligation, subject to the following terms and conditions.

a. Timing of Accelerated Payment. OWNERS shall pay the aforesaid \$7,000,000 obligation into the SCRIP prior to COUNTY's issuance of a building permit for the 7,500th EDU for the Project. Payments are proposed in 1,000 EDU increments for building permits issued from the 5,001st to the 7,000th EDU, and in 500 EDU increments thereafter until issuance of the building permit for the 7,500th EDU. Namely:

Milestone Event	Contribution
Following Issuance of Building Permit for 5,001st EDU, But Not Later than Issuance of Building Permit for 6,000th EDU	\$2,800,000
Following Issuance of Building Permit for 6,001st EDU, But Not Later than Issuance of Building Permit for 7,000th EDU	\$2,800,000
Following Issuance of Building Permit for 7,001st EDU, But Not Later than Issuance of Building Permit for 7,500th EDU	\$1,400,000

A matrix of the proposed performance schedule for all Exhibit D contributions/obligations (including the foregoing) is provided in the attached Exhibit E (Transportation Improvement Phasing Plan).

b. Use of Contribution. Consistent with the provisions of the SCRIP, all portions of the accelerated contribution identified in this Section shall be used for the implementation of the connector ramp improvements described above.

Item No. 30 *Extension of Cow Camp Road*

The Conditions obligate OWNERS to financially participate in the easterly extension of Cow Camp Road to Ortega Highway. Specifically, the Conditions provide that OWNERS shall tender a Fair Share contribution in the amount of \$32,160,000 toward the construction of said extension improvements. In order to facilitate the implementation of these improvements, OWNERS are willing to accelerate the payment of their Fair Share obligation, subject to the following terms and conditions.

a. Timing of Accelerated Payment. OWNERS shall pay the aforesaid \$32,160,000 obligation into the SCRIP prior to COUNTY's issuance of a building permit for the 7,500th EDU for the Project. Payments are proposed in 1,000 EDU increments for building permits issued from the 5,001st to the 7,000th EDU, and in 500 EDU increments thereafter until issuance of the building permit for the 7,500th EDU. Namely:

Milestone Event	Contribution
Following Issuance of Building Permit for 5,001st EDU, But Not Later than Issuance of Building Permit for 6,000th EDU	\$12,864,000
Following Issuance of Building Permit for 6,001st EDU, But Not Later than Issuance of Building Permit for 7,000th EDU	\$12,864,000
Following Issuance of Building Permit for 7,001st EDU, But Not Later than Issuance of Building Permit for 7,500th EDU	\$6,432,000

A matrix of the proposed performance schedule for all Exhibit D contributions/obligations (including the foregoing) is provided in the attached Exhibit E (Transportation Improvement Phasing Plan).

b. Use of Contribution. Consistent with the provisions of the SCRIP, all portions of the accelerated contribution identified in this Section shall be used for the implementation of the improvements described above.

Item No. 31 *Antonio Parkway Widening*

OWNERS have been determined to have a Fair Share obligation of \$7,370,000 toward the costs of widening that portion of Antonio Highway (located within the unincorporated County) extending southerly from Ladera Ranch Planned Community to Ortega Highway as a Major arterial (hereafter, the Antonio Parkway Widening Project). The specific improvements contemplate the addition of one lane in each north/south direction (and the attendant widening of the Antonio Parkway bridge). In order to facilitate the prompt implementation of these improvements, OWNERS are willing to accelerate the payment of their Fair Share obligation, and to undertake certain other obligations as described below, subject to the following terms and conditions.

a. Timing of Accelerated Payment. OWNERS shall pay the aforesaid \$7,370,000 obligation into the SCRIP prior to COUNTY's issuance of a building permit for the 7,500th EDU for the Project. Payments are proposed in 1,000 EDU increments for building permits issued from the 5,001st to the 7,000th EDU, and in 500 EDU increments thereafter until issuance of the building permit for the 7,500th EDU. Namely:

TAB 17

THE ORANGE COUNTY REGISTER

Rancho Mission Viejo's southernmost section still on the bubble

By FRED SWEGLES
2012-07-13 08:27:51



Someday, a hilly section of Rancho Mission Viejo east of San Clemente could become the site of untold numbers of homes and businesses.

The numbers are untold because Planning Area 8 – as the development bubble is known – is on hold.

It's part of an overall plan that calls for 14,000 homes and 5 million square feet of commercial development on nearly 23,000 sprawling acres of south Orange County during the next 20-plus years. The 500-acre bubble bordering San Clemente and the north end of Camp Pendleton is isolated from the other project sites and may be the last section built.

Three-quarters of the ranch's total acreage is to be kept as permanent open space.

Rancho Mission Viejo has begun grading the first development bubble, known as Planning Area 1, or Sendero, 690 acres at Ortega Highway and Antonio Parkway east of San Juan Capistrano. The ranch is working toward a summer 2013 grand opening for the first of 1,140 planned homes and apartments in Sendero, plus parks, trails, a 10-acre retail plaza, offices and a fire station.

The ranch plan approved by Orange County supervisors in 2004 had eight planning areas. Of the three areas closest to San Clemente, two were eliminated in 2005 to provide a wider expanse of open space next to the 1,200-acre Richard and Donna O'Neill Conservancy.

The latest maps released by the ranch show Planning Areas 1, 2, 3, 4, 5 and 8. The first five are somewhat contiguous, buffered by open space, and have well-defined borders. Area 8, south of the others and bordering San Clemente, is shown only as a circle.

"PA 8 is a circle rather than an organic boundary like the other planning areas because we have to do five years of arroyo toad migration-pattern analysis," said Dan Kelly, the ranch's senior vice president for government relations. "And then use that data to determine the ultimate boundary for the planning area. We understand that PA 8 is generally 500 acres."

Area 8 is the former site of an aerospace test facility run by TRW and Northrop Grumman. In 2004, the area was shown as 1,264 acres and the plan was for up to 1,200 homes there, plus a 25-acre golf resort, an 80-acre business park and a neighborhood retail center. Two other development bubbles, Planning Areas 6 and 7, were behind it, separated by open space.

Environmental groups filed suit to challenge the county-approved ranch plan and, in a 2005 settlement, the ranch eliminated Areas 6 and 7, essentially shifting those homes into planning areas closer to Ortega Highway and leaving more open space beside the conservancy. Planning Area 8 shrank from 1,264 acres to 500 acres, but there was no indication of how much development might go there.

Jeff Hook, a principal planner with the city of San Clemente, said the city has a keen interest in what happens.

The Planning Center, a consulting firm working with San Clemente city staff and a residents advisory committee to craft a new San Clemente General Plan, will include Rancho Mission Viejo in a chapter on growth

management. Hook said a draft of the document could be ready in a matter of weeks.

"I think the General Plan Advisory Committee is going to be very interested in it," Hook said. The potential development's traffic effects on Avenida Pico are one area of concern, he said, along with any urban runoff that would drain into San Clemente.

Diane Gaynor, a ranch spokeswoman, said each planning area will be better defined as the project moves forward.

"The environmental-impact report identifies Planning Area 8 as an area for employment," Gaynor said. "That seems logical today and could be logical in the future. However, when we get to PA 8 in the coming decades, we will have a better idea of what is appropriate for the site – all within the limitations of the approved program-level EIR. However, there is no site plan for PA 8 today."

Contact the writer: fsweqles@ocregister.com or 949-492-5127

TAB 18



Jess A. Carbajal, Director
300 N. Flower Street
Santa Ana, CA
P.O. Box 4048
Santa Ana, CA 92702-4048
Telephone: (714) 834-2300
Fax: (714) 967-0896

June 13, 2012

Mr. Kia Mortazavi, Executive Director
Planning Division
Orange County Transportation Authority
550 South Main Street
Orange, California 92863-1584

Subject: Cow Camp Road

Dear Mr. Mortazavi:

The Cow Camp Road (CCR) is shown on the Master Plan of Arterial Highways (MPAH) as a six-lane road from Antonio Parkway to I Street/future SR 241 Foothill Transportation Corridor – South (FTC-S) and transitions to a four-lane road from I Street/FTC-S, east to Ortega Highway. The roadway between Antonio Parkway and I Street (Segment 1) is approximately 1.2 miles, and contains two 1,400 foot bridges and would cost approximately \$60M.

The County applied for Measure M2 (M2) funds for Cow Camp Road Segment 1 (construction phase) on January 28, 2011 and was awarded \$8.3M on June 27, 2011. The application specifies a six-lane roadway between Antonio Parkway to I Street/FTC-S at a cost of \$30M.

Subsequent to the M2 funding award, the County determined that the cost of the six-lane project was \$60M and the \$30M project estimate in the M2 application was only for half-width of the six-lane roadway. The County contacted Orange County Transportation Authority (OCTA) and advised them of this discrepancy through the Combined Transportation Funding Program (CTFP) bi-annual update process so the error could be corrected. OCTA advised the County that the County would either need to build the project per the M2 application or should return the M2 funds and reapply for a lesser facility in the future.

The County has prepared an analysis of a "revised" M2 application, showing two-lanes (half-width) on Cow Camp Road between Antonio and FTC-S and rated the application per the M2 review criteria. The analysis showed that such an application would likely score at least 44 points instead of 55 points (per the awarded M2 application). Since OCTA funded the M2 project applications that scored up to 37 points, the County feels that even a revised Cow Camp Road application could have received funding had it been submitted as a two-lane facility at \$30M.

The intent of the Cow Camp Road M2 application was to seek funding for the non-developer funding contribution for the cost to build a roadway connection between Antonio Parkway and I Street/FTC-S that would improve South County mobility; provide traffic relief to Ortega Highway and Antonio Parkway; support extension of the Tesoro extension of the FTC-S; and provide the local funding match for the non-developer funding for this facility. These goals can still be

achieved by building a \$30M, two-lane roadway connections between Antonio Parkway and I Street/FTC-S.

The County would like to request OCTA's support to use the awarded M2/\$8.3M to add to the developer funding to build a roadway connection between Antonio Parkway and I Street/FTC-S. The proposed project will grade Cow Camp Road for all six-lanes, pave three-lanes, and stripe two-lanes between Antonio Parkway and I Street/FTC-S. This work will also include the completion of the storm drain system, detention basin, and water quality systems for the ultimate six-lane roadway project. Other project elements would include the relocation of the SDG&E 138 KV transmission main for the roadway; relocation of various existing RMV improvements; access to the SDG&E Sub-Station in PA-2; and dedication of the full width right-of-way.

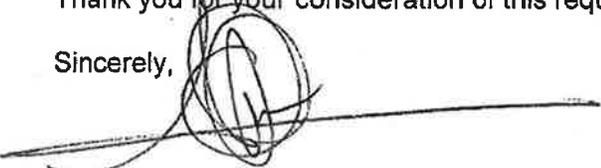
In a future construction phase, the second half-width of the roadway between these limits can be paved and the second half-width of the 1,400 feet bridge can be built per traffic demand and funding availability.

The County is committed to carefully reviewing all components of the proposed design cost for Cow Camp Road including utility cost to identify and fund only those project costs consistent with the Measure M2 guidelines.

Without the M2 local funding match, construction of this segment of Cow Camp Road will likely be left to an implementation schedule and strategy consistent with development phasing. This approach will compromise South County mobility and will likely jeopardize the FTC-S/Tesoro extension as a timely connection of Cow Camp Road to the future SR 241 Foothill Transportation Corridor that is necessary in order to obtain funding for the FTC-S/Tesoro extension.

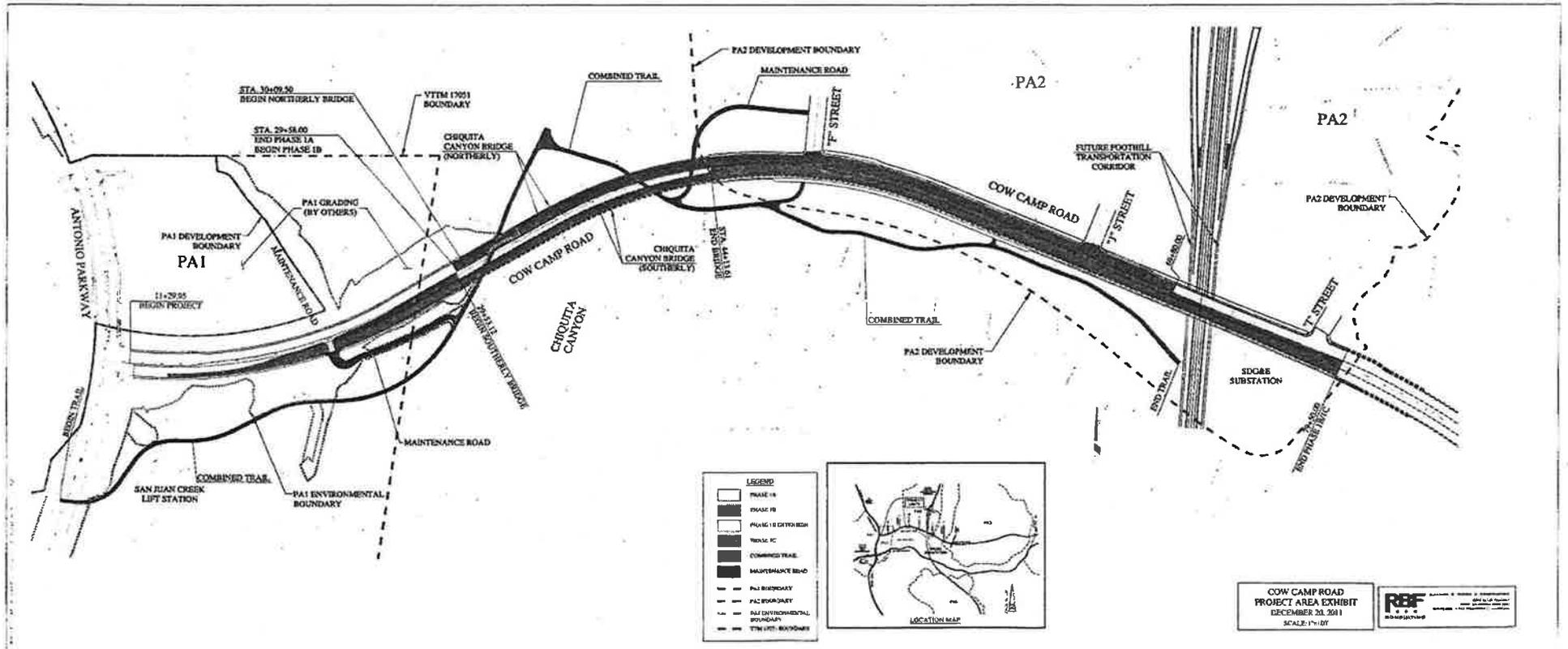
Thank you for your consideration of this request. Please call me with any questions.

Sincerely,



Ignacio G. Ochoa, P.E., Interim Director, OC Public Works

Attachments:
Cow Camp Road Project Area Exhibit



TAB 19

RECEIVED

27 FEB 2012

FEB 13 2012
B.R.T.
REGULATORY DIVISION
LOS ANGELES OFFICE

4 November 2011

CESPL-RG (1145)

MEMORANDUM FOR RECORD

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for State Route (SR)-241 Extension

1. A meeting was held November 4, 2011 between the Transportation Corridor Agencies (Valarie McFall), U.S. Army Corps of Engineers, Los Angeles District (Brian Moore, David Castanon, Cori Farrar, Susan Méyer), RBF Consulting (Ruth Villalobos, Richard Beck), BonTerra Consulting (Ann Johnston) and the lobbying firm Capri, Clay & Smith (Tyler Kruzich) to discuss TCA's newest proposal for designing, evaluating, permitting and constructing a portion of the originally proposed South Orange County Transportation Infrastructure Improvement Project (SOCTIIP; otherwise known as the "SR-241 extension") between Oso Parkway in Mission Viejo, Orange County, California and Interstate-5 (I-5) near the Marine Corps Base at Camp Pendleton in northern San Diego County, California.

2. TCA provided a summary of the status of several pending transportation and development projects planned within or near the SR-241 project area, including Cow Camp Road, Avenida La Pata widening, I-5/Ortega Highway (SR-74) Interchange, SR-74 widening, and Rancho Mission Viejo (RMV) Planning Area 1 (refer to map provided by TCA entitled "Near-Term South County Capital Projects" for details). According to TCA, Cow Camp Road will be a six-lane major arterial constructed by the County of Orange and is in its final stages of design; Cow Camp Road is scheduled to begin construction in 2012 and when complete would provide a connection between RMV's Planning Areas 1, 2, 3 and 4 and Ortega Highway. The Avenida La Pata construction is targeted to commence in 2013 and RMV's Planning Area 1 is currently being graded and will support approximately 1,300 single dwelling units when completed. With respect to RMV's Planning Areas 2, 3 and 4 no dates for construction start and/or completion were disclosed to the Corps.

3. TCA summarized the outreach efforts conducted by its staff between 2009 and 2011 after the California Coastal Commission (CCC) denied coastal zone consistency certification in 2008 for the originally proposed 16-mile-long toll road project, which at the time was known as the Alignment 7 Corridor-Far East Crossover-Modified (A7C-FEC-M) alternative¹. TCA explained that during their outreach efforts one of the more common suggestions received from stakeholders and others was for TCA to develop and implement the 16-mile toll road project in phases, or segments. TCA also highlighted the recommendation put forth by the Secretary of Commerce in his December 2008 letter to TCA sustaining the CCC's denial of coastal zone consistency certification that TCA reconsider pursuing other SOCTIIP alternatives that would

¹ Under the SOCTIIP, the A7C-FEC-M alternative extended south from the SR-241 terminus at Oso Parkway and continued to traverse south and just east of Rancho Mission Viejo's Planning Area 2 and west of Planning Area 3 where it crossed Ortega Highway, then passed through the Donna O'Neill Land Conservancy and through the inland portion of the San Onofre State Beach Park where it ultimately connected to the I-5 at the Orange/San Diego county line. It should be noted that the Donna O'Neill Land Conservancy is a 1,200-acre conservation area that was established as compensatory mitigation for environmental impacts resulting from the construction of the Telega development in San Clemente, California.

CESPL-RG (1145)

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for State Route (SR)-241 Extension

avoid coastal zone encroachments, such as the Central Corridor-Avenida La Pata Variation (CC-ALPV) alternative. Based on the latter and coupled with public feedback solicited during the outreach campaign, TCA developed a conceptual engineering design for an initial segment that would extend the toll road 4.2 miles south and terminate several miles inland from the coastal zone. TCA indicated they were uncertain what, if any, additional segments would be constructed following this initial phase of construction and did not offer any detailed information as to how a shortened alternative without a direct connection to Ortega Highway and/or I-5 would achieve the primary purpose of reducing future traffic congestion on I-5.

4. TCA and its representatives described the newly proposed project, referred to as the "OGX" Extension project because of its proposed connection between Oso Parkway ("O") and the proposed (future) "G" Street. The OGX Extension project would entail 4.2 miles of new toll road with four general purpose lanes (two lanes in each direction) and a center median that could accommodate future vehicular lanes, transit or rail. The project limits would encompass a 120-foot-wide corridor extending from the existing SR-241 terminus at Oso Parkway south to the vicinity of Ortega Highway and would terminate at the north end of RMV Planning Area 2 and just before San Juan Creek. The overall viability and operation of the proposed OGX Extension project would depend largely on planned and yet-to-be constructed county roadways, interchanges and RMV's future local arterials in order to provide an indirect connection with Ortega Highway and ultimately I-5. The OGX Extension project would also include the construction and operation of a toll plaza, although TCA indicated it may eliminate this project feature if and when the Toll Roads implement an all electronic toll collection system.

a. The proposed OGX Extension project would closely—if not precisely—follow the alignment of the first four miles (+/-) of the original A7C-FEC-M alternative that had been evaluated in the 2004 SOCTIIP Draft Environmental Impact Statement/Subsequent Environmental Impact Report (DEIS/SEIR), which was also the alternative identified by the Corps and U.S. Environmental Protection Agency as the "preliminary" LEDPA as part of the formal coordination procedures prescribed in the *NEPA/CWA Section 404 Integration Process for Surface Transportation Projects in Arizona, California and Nevada* memorandum of understanding. However, unlike the original SOCTIIP alternatives which ranged between 8.7 miles and 16.9 miles in total length, the new OGX Extension project would be approximately 4.2 miles long and end at the intersection of the yet-to-be constructed "G" Street in RMV's undeveloped Planning Area 2.

b. TCA indicated they are uncertain what will "...happen further south..." and that the exact alignment of any future segments has not been determined due to further engineering studies, environmental constraints at San Juan Creek, needed regulatory approvals, and unresolved

CESPL-RG (1145)

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for State Route (SR)-241 Extension

stakeholder concerns that precipitated the denial of coastal zone consistency certification from the CCC.

5. At the meeting, the Corps made clear the need for TCA to submit, in writing, its rationale and supporting documentation that the newly proposed 4.2-mile extension project is a "single and complete project" with independent utility. The Corps conveyed concerns to TCA related to National Environmental Policy Act (NEPA), specifically "segmenting" multiple projects requiring Federal approvals to avoid a more rigorous and/or public environmental review process; or in other words, dividing the larger SOCTIIP (SR-241 toll road extension project) into multiple segments, each of which individually may have minimal environmental impacts, but if considered collectively would have "significant" impacts. The Corps asked for additional information from TCA to support their assertion that the initial segment has logical termini, would function without other segments ever being constructed and that the initial "segment" would not foreclose alternatives for other reasonably foreseeable transportation improvements. TCA committed to submitting the information within a month (that is, on or around December 5, 2011).

6. RBF indicated they are in the process of updating the Corps-verified jurisdictional determination (JD) issued in September 2005 for the original SOCTIIP. Based on the information collected to date, RBF estimates approximately 0.1-acre of non-wetland waters of the U.S. would be directly impacted by the proposed OGX Extension project. The Corps explained that a new (updated) approved JD will be required for this project since the September 2005 JD issued for the SOCTIIP has expired and that the new JD must follow the Rapanos JD guidance. In addition, TCA mentioned that as the lead agency under the California Environmental Quality Act (CEQA) they are in the process of preparing an addendum to their 2006 SOCTIIP Final SEIR and will incorporate updated focused biological surveys and traffic forecasts and modeling results into the supplemental CEQA documentation.

7. The Corps briefly described some of the relevant factors that would be considered in defining the Corps' scope of analysis under Section 404 of the CWA, NEPA, National Historic Preservation Act and the Endangered Species Act (ESA), although it was mutually agreed that until additional information is provided to the Corps it was premature to specify a recommended permitting strategy. Regarding possible permitting approaches, the Corps discussed the anticipated schedule for the reissuance of the March 18, 2012 nationwide permits (NWP) and alerted TCA to the Los Angeles District's proposed 2012 regional conditions, one of which will revoke the use of a number of NWPs within specific geographic areas upon the 2012 re-issuance. Corps Regulatory Division representatives highlighted that NWP 14 will be one of those NWPs revoked and therefore, will not be available for use (i.e., verification) within most of the San Juan Creek and San Mateo Creek watersheds, including the OGX Extension project area.

CESPL-RG (1145)

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for State Route (SR)-241 Extension

8. Based on the project vicinity and conceptual design maps referred to during the meeting, the Corps noted that the OGX Extension project appears to traverse the Aquatic Resource Conservation Areas (ARCAs) that have been designated as conservation areas through the Corps' *San Juan Creek and Western San Mateo Creek Watersheds Special Area Management Plan (SAMP)* planning process and Final EIS (and Record of Decision). The Corps also noted that the proposed OGX Extension project appears to impact conserved ephemeral drainages and contributing upland conservation areas that are considered integral components to the overall ecological success of the ARCAs. This might affect or limit the DA permitting options and could preclude the authorization of certain development projects, like the OGX Extension project, from occurring within designated conservation areas, depending on allowable activities as defined by the SAMP. The Corps committed to research the details of the SAMP and review it closely with regards to the proposed TCA project as well as the other proposed local arterials and interchanges, the conservation commitments and requirements of RMV and available permitting options.

a. With respect to the subject of permitting options, one of the questions raised during the meeting was whether development projects proposed by entities other than RMV and the Santa Margarita Water District (who are the sole parties to the SAMP and as such have a separate permitting system approved by the Corps that was based on the environmental review process conducted as part of the Corps' EIS) would be eligible for abbreviated permitting (e.g., RGP). TCA asserted that while the proposed OGX Extension project is essentially the same project as RMV's proposed arterial roadway for accessing the future Planning Area 2, it is environmentally superior to RMV's design because TCA included wildlife crossings whereas RMV's arterial system does not. TCA then made the argument that because of this factor it would be more advantageous to authorize the OGX Extension project through an abbreviated permitting process and consequently usurp the need for this portion of RMV's arterial network needed to support its master planned development.

b. The Corps explained that a decision will need to be made whether the Corps would review TCA's forthcoming DA permit application under the existing NWP², an RGP, a Standard Individual Permit (SIP) that only considers the OGX Extension project, or an SIP that evaluates the entire proposed toll road extension project. In the case of an SIP, whether an EA or an EIS is appropriate will depend on the decision of how the project will be evaluated under the Corps' permitting process, the scope of analysis, and whether the Corps' federal action would result in "significant" impacts affecting the quality of the human environment.

² The grandfathering provision for expiring NWP states that activities authorized by the current NWP issued on March 12, 2007 that have commenced or are under contract to commence construction by March 18, 2012, will have until March 18, 2013 to complete the activity under the terms and conditions of the current NWP.

CESPL-RG (1145)

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for State Route (SR)-241 Extension

9. TCA explained they plan to submit a DA permit application in February 2012 and the proposed schedule is to complete the necessary environmental reviews and obtain all Federal and state permits within 10-11 months (no later than October 2012), then begin construction in 18 months from now (spring 2013). The Corps (D. Castanon) expressed a concern in meeting TCA's proposed schedule, particularly with the Corps' limited resources and budget constraints.

10. The Corps also expressed concern with TCA's expectation that the Corps would rely upon a portion of the April 30, 2008 biological opinion (FWS-ORIMCBCP-08B0352/08F0487) issued by the U.S. Fish and Wildlife Service (Service) to FHWA for the SOCTIIP's A7C-FEC-M alternative for purposes of fulfilling its Section 7 of the ESA consultation responsibilities on the OGX Extension project³. Notwithstanding this unresolved legal concern, the Corps clarified and emphasized to TCA that once a DA permit application is received the Corps will be the lead Federal action agency under Section 7 and therefore will expect to lead and/or be directly involved in all correspondence and communications with the Service at that time going forward.

11. Additional Corps' concerns not yet communicated to TCA include the reliance upon the assumption that local transportation infrastructure projects will be permitted and built as proposed. The 4.2-mile-long OGX Extension project could be a "road to nowhere" (i.e., a road without logical termini) if RMV's Planning Area 2 is never developed or at least not developed before the construction of the OGX Extension project is complete. If the OGX Extension project essentially replaces RMV's planned arterial, then the proposed project could be viewed as facilitating development and necessitate the development and environmental evaluation of a range of other alternatives that would provide access to the future development area(s). Another issue that requires further vetting is the intent of the SAMP to place approximately 18,000 acres into conservation versus what infrastructure was planned as part of the permitting and conservation plans developed and to be implemented under the SAMP. To address some of these matters, the Corps will consult with others, including Dr. Jae Chung, former Los Angeles District SAMP Program Manager.

12. The Corps asked TCA about what, if any, role Caltrans would have in the OGX Extension project as well as the status of the four lawsuits that had been filed against TCA for the SOCTIIP A7C-FEC-M alternative following TCA's issuance of the CEQA Notice of Decision in 2006. Regarding Caltrans' involvement, TCA explained that they will closely coordinate the project with Caltrans since the state will be the owner and operator of the toll road upon construction completion. Ms. McFall indicated Sylvia Vega and Smith Deshpande from Caltrans District 12

³ Although the OGX Extension project represents a portion of the larger A7C-FEC-M alternative that was evaluated by the USFWS in their April 2008 biological opinion (BO), there is legal concern if the Corps were to attempt to enforce the terms and conditions in the BO and rely upon an incidental take statement that was issued to a different lead action agency several years prior.

CESPL-RG (1145)

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for State Route (SR)-241 Extension

will oversee the various Caltrans reviews and provide technical as well as policy guidance, as they did during the original SOCTIP environmental review process. Ms. McFall also reported that all the lawsuits were indefinitely stayed without prejudice.

13. A follow-up meeting was scheduled for 1100 hours on 16 December 2011 at the LAD offices.



David J. Castanon
Chief, Regulatory Division

CF:

CESPL-RG-T (MacNeil, Meyer)

CESPL-RG-S (Bradford, Farrar)

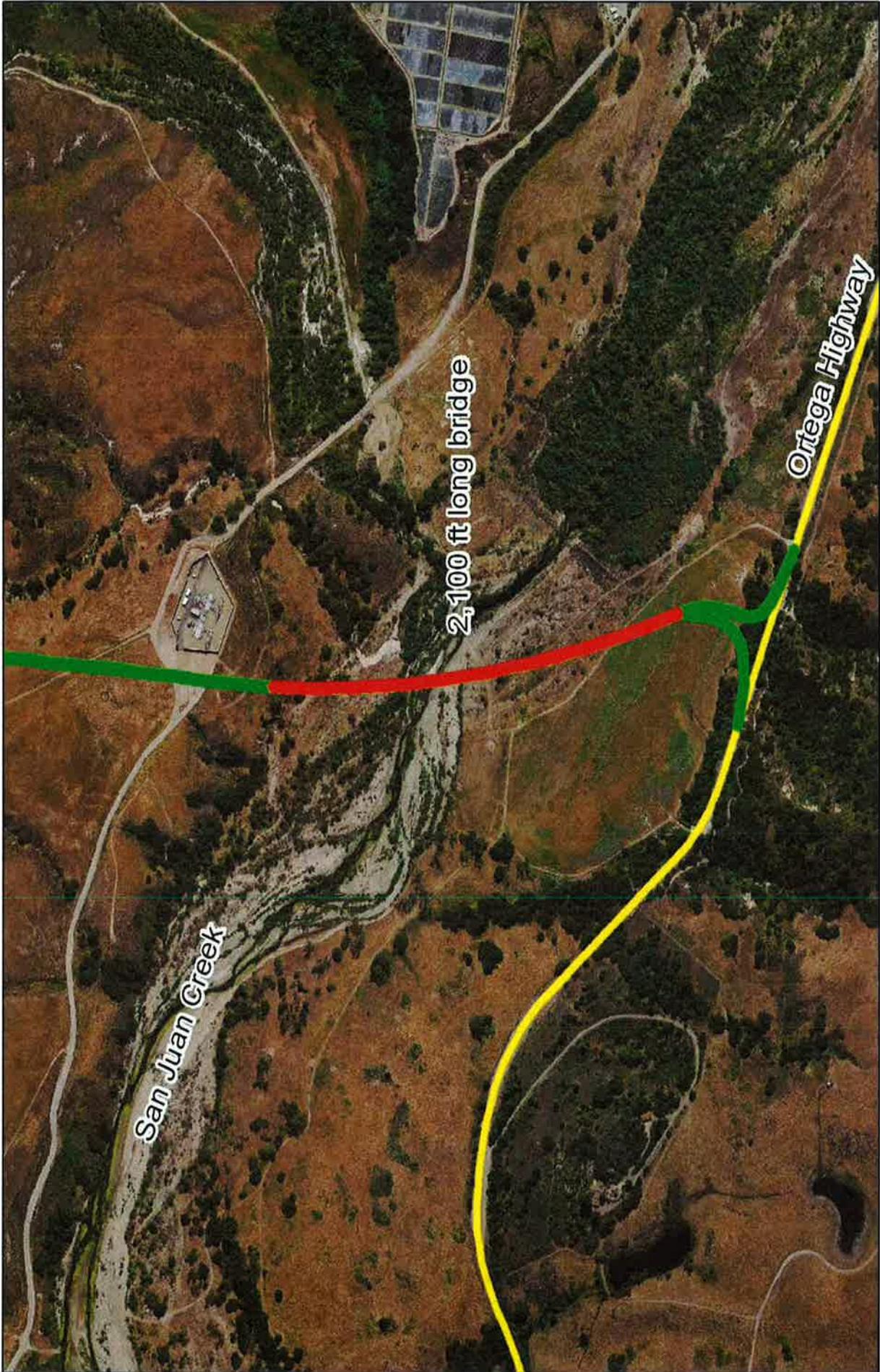
CESPL-OC (Minch, Troxel)

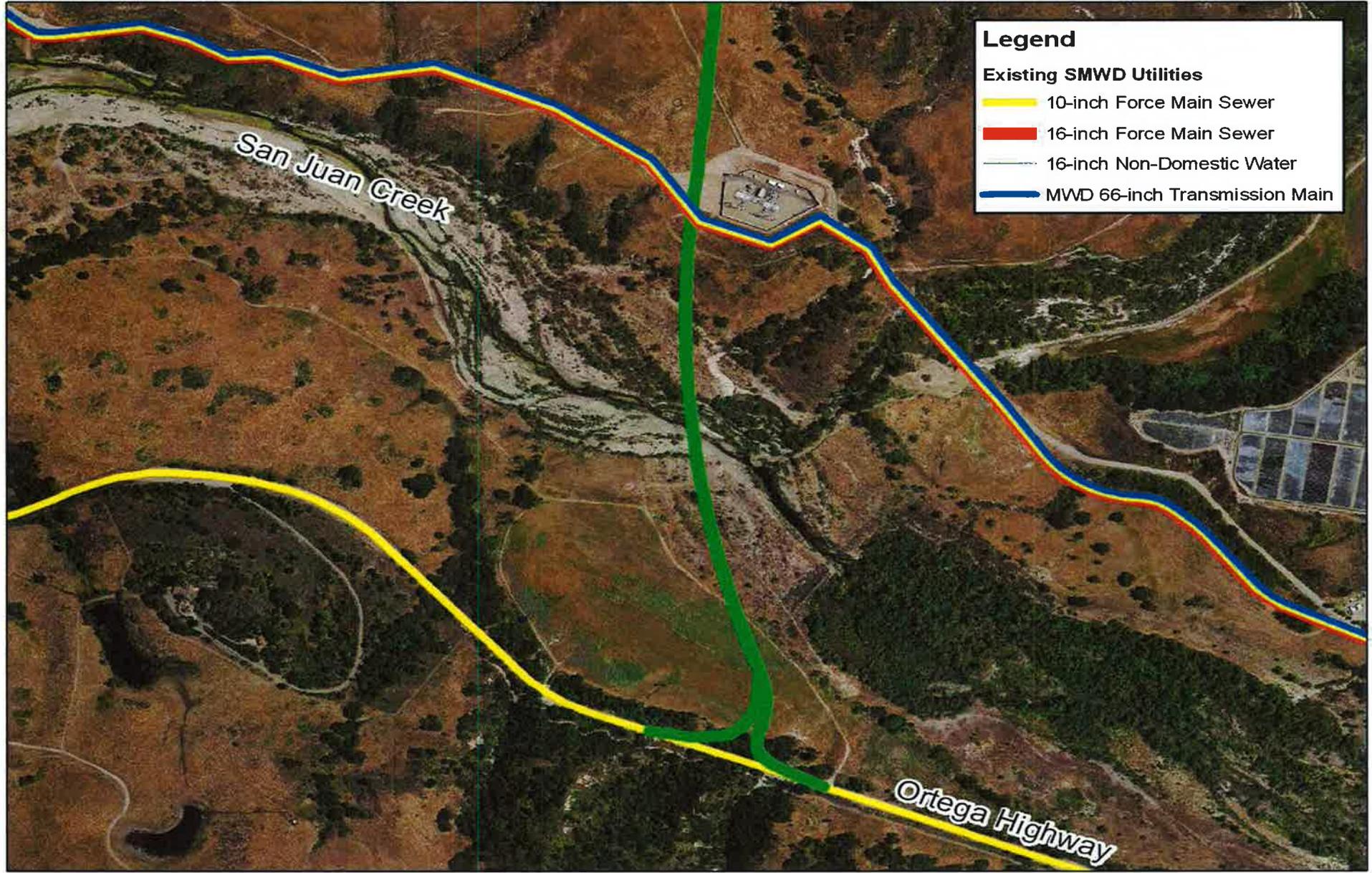
CESPL-RG (reader file)

TAB 20

Lead Agency	Project ID	Project Description	Original Completion Date	2011 FTIP Completion Date	2012 RTP Completion Date	2012 RTP Project Status
ORANGE COUNTY TRANS AUTHORITY (OCTA)	ORA082618	PURCHASE PARATRANSIT VEHICLES EXPANSION (MISSION VIEJO) (11) IN FY09/10. ON-GOING PROJECT.	6/30/2030	6/30/2030	6/30/2030	NO CHANGE IN COMPLETION DATE FROM 2011 FTIP TCM REPORT. DUE TO CUT TO TRANSIT SERVICES, THERE IS NO NEED FOR ADDITIONAL BUSES FOR THE TIME BEING.
TCA	10254	SJHC, 15 MI TOLL RD BETWEEN I-5 IN SAN JUAN CAPISTRANO & RTE 73 IN IRVINE, EXISTING 3/M/F EA.DIR.1 ADD'L M/F EA DIR, PLUS CLIMBING & AUX LNS AS REQ, BY 2020 PER SCAG/TCA MOU 4/5/01	2015/2008	12/31/2020	12/31/2020	NO CHANGE IN COMPLETION DATE FROM 2011 FTIP TCM REPORT. ONGOING IMPLEMENTATION PER SCAG/TCA MOU.
TCA	ORA050	ETC (RTE 241/261/133) (RTE 91 TO I-5/JAMBOREE) EXISTING 2 M/F EA.DIR, 2 ADD'L M/F IN EA. DIR, PLUS CLIMB AND AUX LNS AS REQ, BY 2020 PER SCAG/TCA MOU 4/05/01.	2015/2010	12/31/2020	12/31/2020	NO CHANGE IN COMPLETION DATE FROM 2011 FTIP TCM REPORT. ONGOING IMPLEMENTATION PER SCAG/TCA MOU.
TCA	ORA051	(FTC-N) (OSO PKWY TO ETC) (13MI) EXISTING 2 MF IN EA. DIR, 2 ADDITIONAL M/F LANES, PLS CLMBNG & AUX LANS AS REQ BY 2020 PER SCAG/TCA MOU 4/05/01.	2015/2010	12/31/2020	12/31/2020	NO CHANGE IN COMPLETION DATE FROM 2011 FTIP TCM REPORT. ONGOING IMPLEMENTATION PER SCAG/TCA MOU.
TCA	ORA052	(FTC-S) (I-5 TO OSO PKWY) (15MI) 2 MF EA. DIR BY 2013; AND 1 ADDITIONAL M/F EA. DIR. PLS CLMBNG & AUX LANES AS REQ BY 2030 PER SCAG/TCA MOU 4/05/01. #1988	2015/2010	6/15/2030	6/15/2030	NO CHANGE IN COMPLETION DATE FROM 2011 FTIP TCM REPORT. ONGOING IMPLEMENTATION PER SCAG/TCA MOU. TCA IS DEVELOPING ENGINEERING PLANS, ENVIRONMENTAL ASSESSMENTS AND FINANCIAL STRATEGY TO BUILD THE 241 EXTENSION FROM THE EXISTING SOUTHERLY TERMINUS AT OSO PARKWAY TO THE VICINITY OF ORTEGA HIGHWAY WHILE CONTINUING TO PURSUE THE BALANCE OF THE ALIGNMENT THAT CONNECTS TO INTERSTATE 5.
ORANGE COUNTY TRANS AUTHORITY (OCTA)	ORA120357	TRAFFIC SIGNAL SYNCHRONIZATION SUBSTITUTION TCM (REPLACING BRTS)	6/15/2012	6/15/2012	6/15/2012	NO CHANGE IN COMPLETION DATE FROM 2011 FTIP TCM REPORT. UNDER CONSTRUCTION.

TAB 21





TAB 22



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

REPLY TO

ATTENTION OF:

November 5, 2012

Office of the Chief
Regulatory Division

Ms. Valarie McFall
Environmental Services Director
Transportation Corridor Agencies
125 Pacifica, Suite 100
Irvine, California 92618-3304

SUBJECT: Determination regarding requirement for Department of the Army Permit

Dear Ms. McFall:

I am responding to a letter transmitted to our office on October 24, 2012 from RBF Consulting and a preceding email request, dated October 15, 2012, for clarification on whether a Department of the Army (DA) permit is required for the proposed State Route 241 (SR-241) Tesoro Toll Road Extension project, located in southern Orange County, California (Corps File No. SPL-2012-00196-SAM).

The U.S. Army Corps of Engineers (Corps) evaluation process for determining whether a DA permit is needed involves two tests. The first test determines whether or not the proposed project is located within or contains a water of the United States (i.e., whether it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project includes an activity potentially regulated under section 404 of the Clean Water Act (CWA) or section 10 of the Rivers and Harbors Act. If both tests are met and the activity(s) in question is located within the Corps' geographic jurisdiction, then a permit would be required. As part of our evaluation process for the proposed project, we have made the determination below.

Geographic jurisdiction:

Based on the previously-mailed approved jurisdictional determination, dated August 13, 2012, we have determined the proposed SR-241 Tesoro Toll Road Extension project site contains waters of the United States pursuant to 33 C.F.R. § 325.9.

Activity:

Based on the project description you have furnished, we have determined the proposed work is not an activity exempt under section 404 of the CWA and therefore, were it to occur in waters of the United States (refer to "*Geographic jurisdiction*" above), it would involve a discharge of dredged or fill material and would be regulated under section 404 of the CWA.

-2-

Requirement for a Department of the Army Permit:

Based on the aforementioned and the project information provided to our office, we have determined your proposed project is not subject to our jurisdiction under section 404 of the CWA and a DA permit would not be required as long as the activities are performed in the manner described in the October 24, 2012 correspondence from RBF Consulting and as shown on the preliminary engineering plans prepared by CH2M Hill and Saddleback Constructors (TCA, April 25, 2012; Enclosures 1-5). More specifically, while waters of the United States occur within the project area, your engineering design and plans indicate these features would be avoided and no discharge of fill material would take place in waters of the United States. Notwithstanding our determination above, your proposed project may be regulated under other Federal, State, and local laws.

If you have any questions, please contact Ms. Susan A. Meyer of my staff at 808-835-4599 or via e-mail at susan.a.meyer@usace.army.mil. Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: <http://per2.nwp.usace.army.mil/survey.html>.

Sincerely,



David J. Castanon
Chief, Regulatory Division

Enclosures (5)

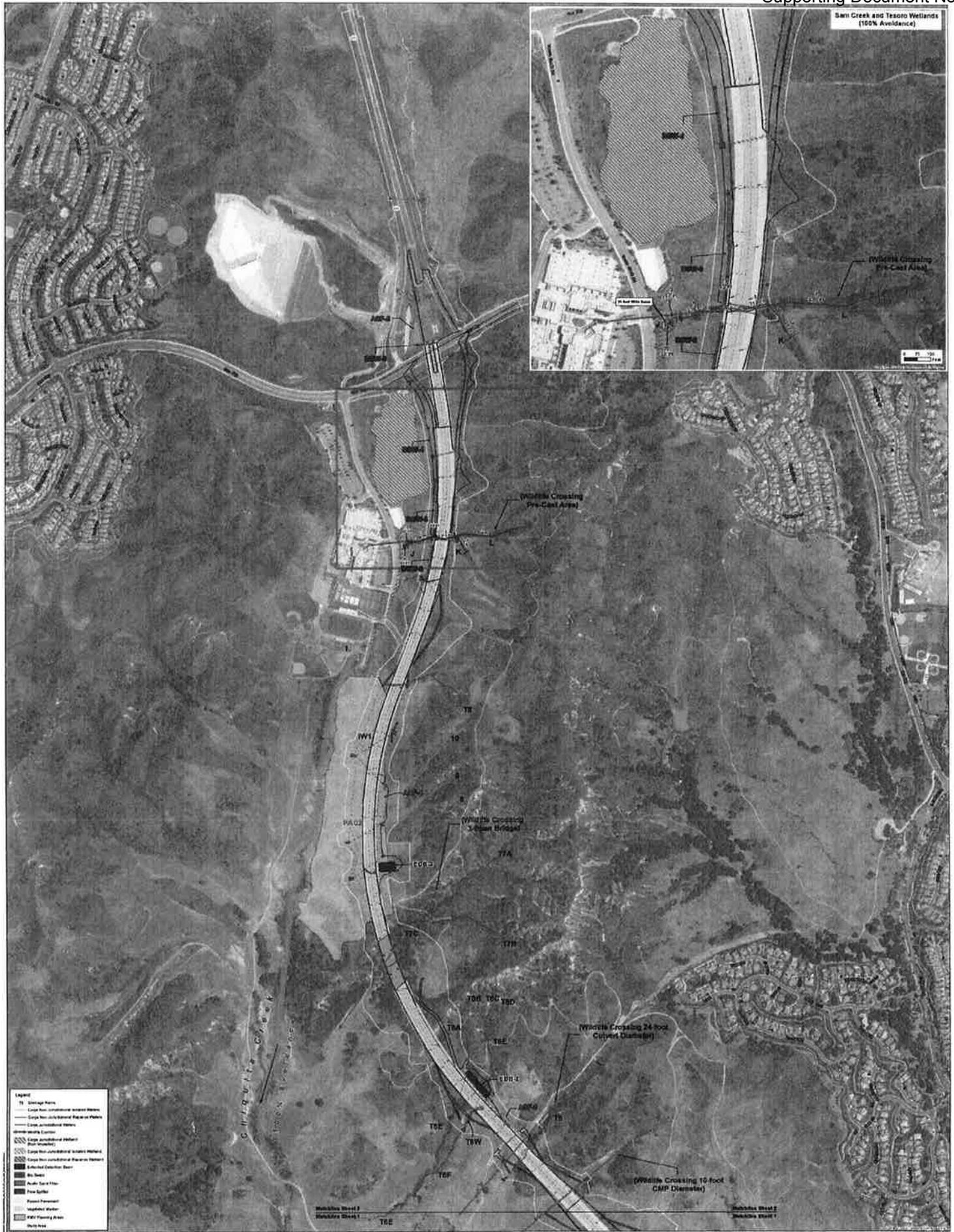
1. Exhibit 1 – Corps Jurisdiction Map 1 of 2 w/ Proposed Project Superimposed
2. Exhibit 2 – Corps Jurisdiction Map 2 of 2 w/ Proposed Project Superimposed
3. Sam Creek (Drainage J) Bridge – General Plan
4. Sam Creek Bridge (Drainage J) – Foundation Plan
5. Sam Creek Crossing (Drainage J) – Sections

CF:

Mr. Tay Dam, Federal Highway Administration
Ms. Sylvia Vega, California Department of Transportation, District 12
Mr. Darren Bradford, Regional Water Quality Control Board
Mr. Richard Beck, RBF Consulting

Enclosure 1

**Exhibit 1 – Corps Jurisdiction Map 1 of 2
w/ Proposed Project Superimposed
(Corps File No. SPL-2012-00196-SAM)**

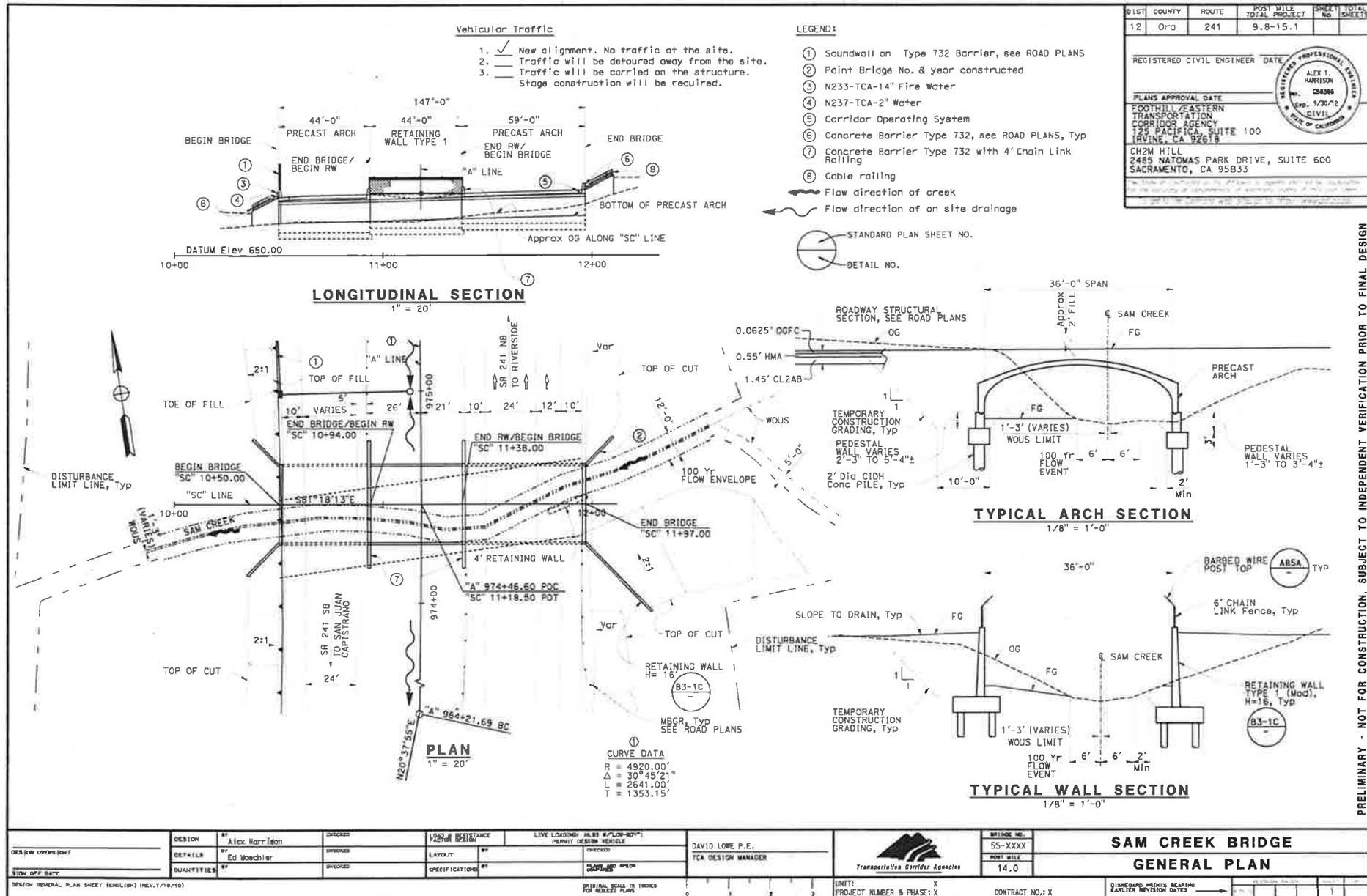


Enclosure 2

**Exhibit 2 – Corps Jurisdiction Map 2 of 2
w/ Proposed Project Superimposed
(Corps File No. SPL-2012-00196-SAM)**

Enclosure 3

Sam Creek (Drainage J) Bridge – General Plan
(Corps File No. SPL-2012-00196-SAM)



01ST	COUNTY	ROUTE	POST MILE TOTAL PROJECT	SHEET NO.	TOTAL SHEETS
12	Or	241	9.8-15.1		

REGISTERED CIVIL ENGINEER DATE

ALEX I. HARRISON
 CS8266
 Exp. 5/30/12
 CIVIL
 STATE OF CALIFORNIA

PLANS APPROVAL DATE

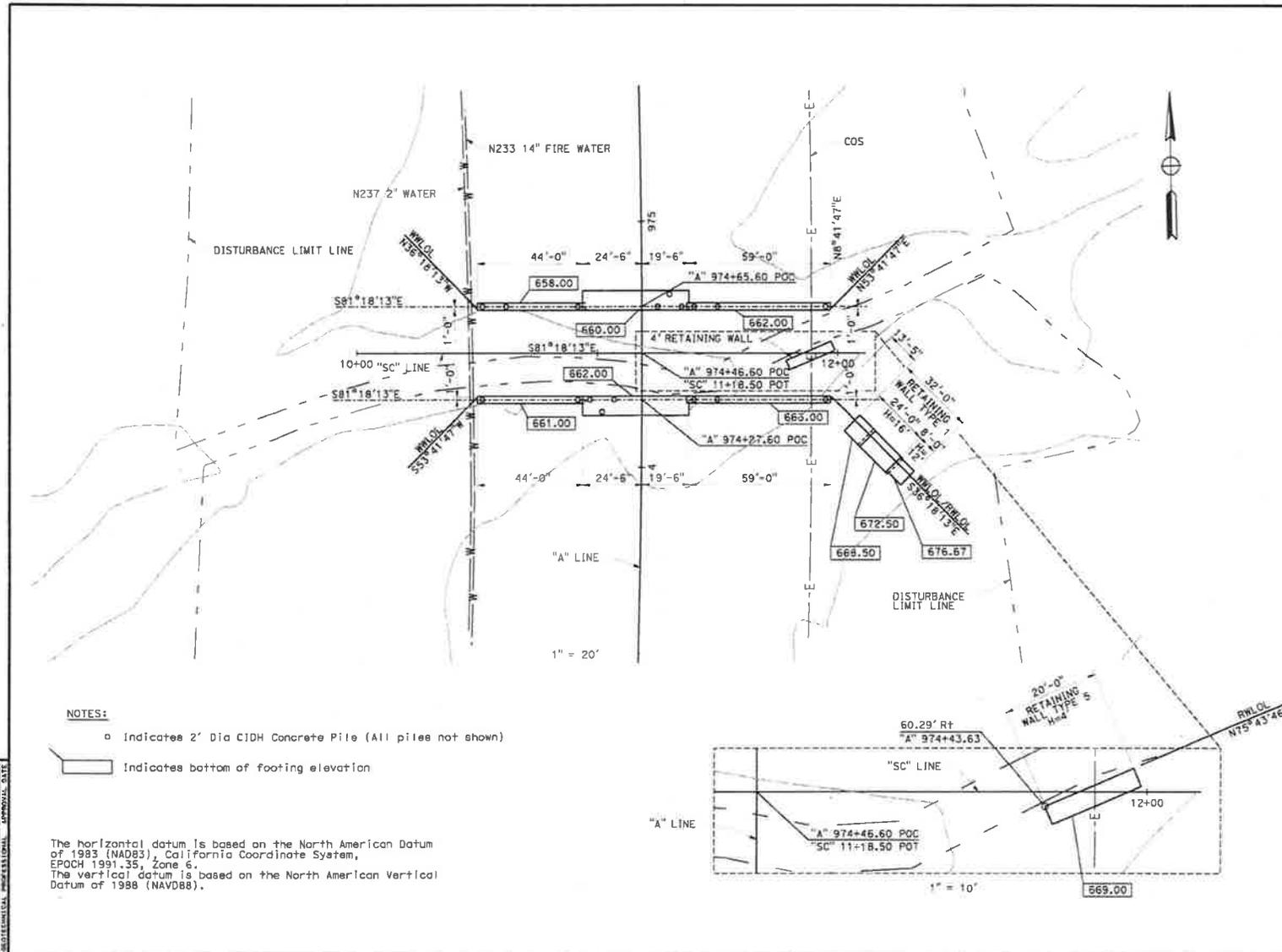
FOOTHILL/EASTERN
 TRANSPORTATION
 CORRIDOR AGENCY
 125 PACIFIC SUITE 100
 IRVINE, CA 92618

CH2M HILL
 2485 NATOMAS PARK DRIVE, SUITE 600
 SACRAMENTO, CA 95833

PRELIMINARY - NOT FOR CONSTRUCTION. SUBJECT TO INDEPENDENT VERIFICATION PRIOR TO FINAL DESIGN

Enclosure 4

Sam Creek Bridge (Drainage J) – Foundation Plan
(Corps File No. SPL-2012-00196-SAM)



DIST	COUNTY	ROUTE	POST MILE TOTAL PROJECT	SHEET NO	TOTAL
12	Orca	241	9.8-15.1		

REGISTERED CIVIL ENGINEER	DATE	PROFESSIONAL SEAL
ALEX T. HARRISON		
NO. CS2386	EXPI. 1/30/12	
PLANS APPROVAL DATE		

CH2M HILL
 2485 NATOMAS PARK DRIVE, SUITE 600
 SACRAMENTO, CA 95833

NOTES:

- Indicates 2' Dia CIDH Concrete Pile (All piles not shown)
- ▭ Indicates bottom of footing elevation

The horizontal datum is based on the North American Datum of 1983 (NAD83), California Coordinate System, EPOCH 1991.35, Zone 6.
 The vertical datum is based on the North American Vertical Datum of 1988 (NAVD88).

PHOTOMETRIC SURVEY APPROVAL DATE

DESIGN OVERSIGHT	SCALE: PHOTOGRAMMETRY AS OF 1:X	VERT. DATUM	HORIZ. DATUM	DESIGN	Alex Harrison	CHECKED	DAVID LOWE P.E.	BOOK NO. 55-XXXX	SAM CREEK BRIDGE FOUNDATION PLAN
DRAFTED	SURVEYED	ALIGNMENT TIES	DETAILS	Ed Moschler	CHECKED	TCA DESIGN MANAGER	POST MILE 14.0		
FIELD CHECKED	CHECKED	QUANTITIES							

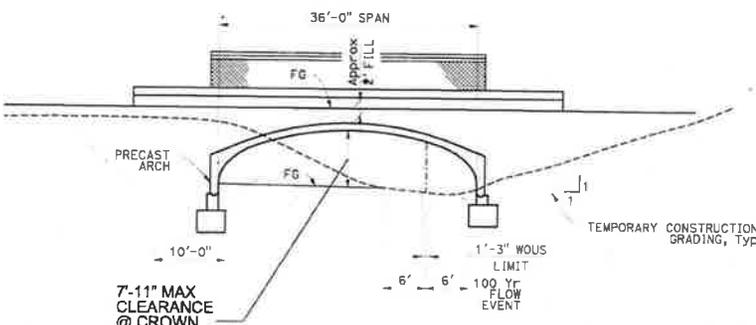
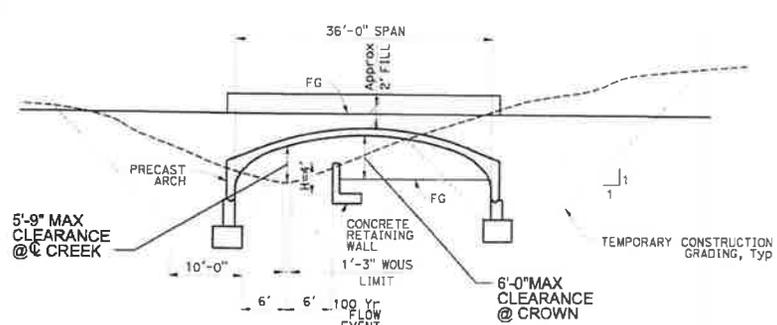
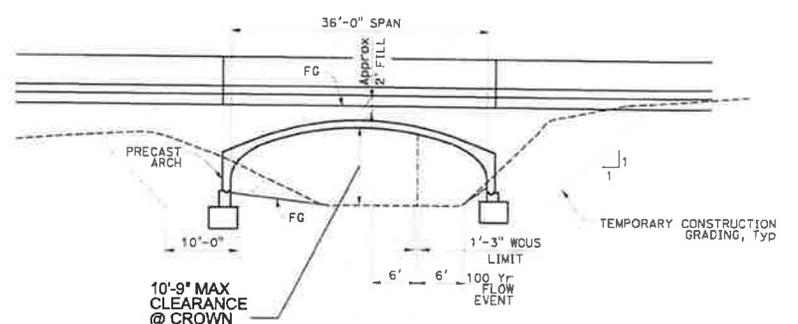
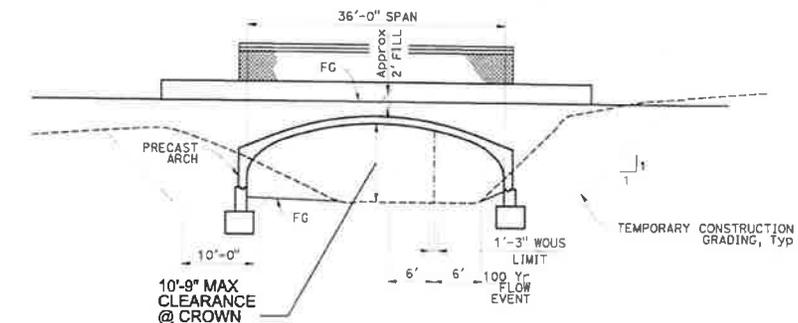
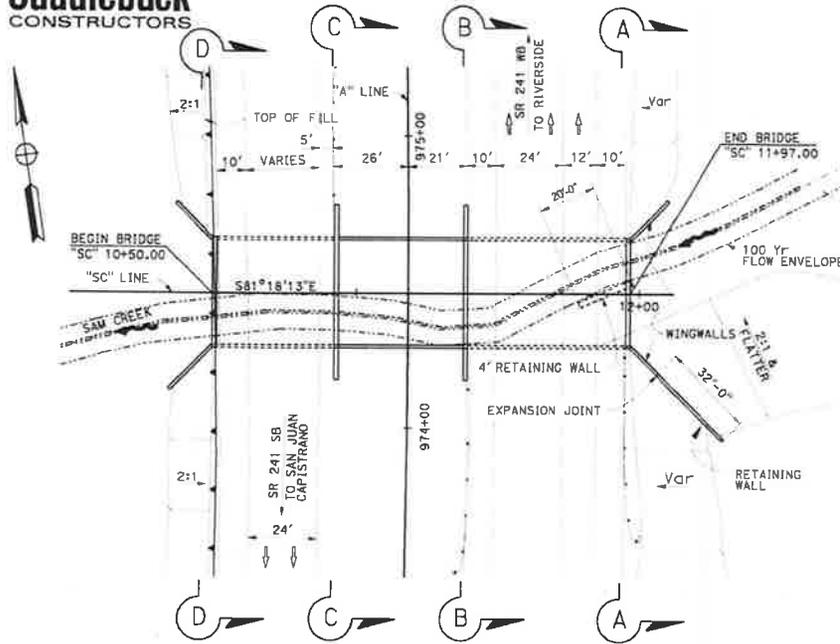
ORIGINAL SCALE IN INCHES FOR REDUCED PLANS

UNIT: PROJECT NUMBER & PHASE: X CONTRACT NO. 1 X

DESIGNER'S PRINTS BEARING EARLIER REVISION DATES

Enclosure 5

Sam Creek Crossing (Drainage J) – Sections
(Corps File No. SPL-2012-00196-SAM)



241 TESORO EXTENSION

SAM CREEK CROSSING SECTIONS

TAB 23

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Annual Results (133/241/261)

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FOOTHILL/EASTERN (133/241/261) TOLL ROADS

ANNUAL RESULTS

FISCAL YEAR	ACTUAL TRANSACTIONS	PROJECTED TRANSACTIONS	% OF PROJECTION	ACTUAL TOLL REVENUE	PROJECTED TOLL REVENUE	% OF PROJECTION
2012	56,173,061	85,240,000	65.9%	\$107,149,502	\$143,085,000	74.9%
2011	56,160,818	83,621,000	67.2%	\$100,144,095	\$133,448,000	75.0%
2010	56,395,279	80,060,000	70.4%	\$99,677,910	\$127,535,000	78.2%
2009	59,780,382	78,113,000	76.5%	\$94,078,936	\$115,275,000	81.6%
2008	64,741,974	74,193,000	87.3%	\$102,321,187	\$109,355,000	93.6%
2007	67,558,927	71,446,000	94.6%	\$106,394,717	\$100,455,000	105.9%
2006	67,135,340	67,562,000	99.4%	\$97,088,790	\$94,921,000	102.3%
2005	64,453,054	64,387,000	100.1%	\$91,832,285	\$87,257,000	105.2%
2004	60,192,752	60,919,000	98.8%	\$85,674,767	\$82,806,000	103.5%
2003	56,136,264	58,562,000	95.9%	\$79,383,504	\$75,261,000	105.5%
2002	55,998,440	55,255,000	101.3%	\$77,336,314	\$71,533,000	108.1%
2001	54,813,265	51,946,000	105.5%	\$73,009,651	\$67,102,000	108.8%
2000	48,614,099	46,381,000	104.8%	\$64,010,927	\$60,132,000	106.5%
1999	30,500,925	30,339,000	100.5%	\$34,653,672	\$34,389,000	100.8%
1998	13,075,041	13,336,000	98.0%	\$7,201,240	\$7,735,000	93.1%
1997	11,964,616	11,828,000	101.2%	\$6,636,326	\$6,860,000	98.7%

Transaction Tables

Foothill/Eastern (133/241/261) Toll Roads

[Current Month Transactions](#)

[Monthly Statistics](#)

Fiscal Year = July 1 - June 30

[Month-over-Month Comparison](#)

[Annual Results](#)

San Joaquin Hills (73) Toll Road

[Current Month Transactions](#)

[Monthly Statistics](#)

Fiscal Year = July 1 - June 30

[Month-over-Month Comparison](#)

[Annual Results](#)

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TAB 24

Los Angeles Times

\$1.50 DESIGNATED AREAS HIGHER 64 PAGES © 2012 WST

WEDNESDAY, DECEMBER 12, 2012

latimes.com



Photographs by JAY L. CLEMMERIN Los Angeles Times

A POLICE OFFICER in Seaside Heights, N.J., patrols the beach near the storm-wrecked pier and its roller-coaster that still sits in the water six weeks after Sandy devastated the state's coastal areas.

COLUMN ONE

Sandy's Samaritan

The storm trashed Lisa Brocco-Collia's home, but that can wait. She's busy helping others along the Jersey Shore.

BY MOLLY HENNESSY-FISKE
REPORTING FROM WILDWOOD, N.J.

This boardwalk beach town, packed in summer and ghostly in winter, has become the last refuge for several hundred homeless survivors of Superstorm Sandy. Many place their hope in Lisa Brocco-Collia.

At 41, she seems as much a force of nature as the storm itself. Her home was partially condemned after floodwater surged through the first floor. But she's been far too busy as a volunteer relief coordinator to move — setting up a donation center at the VFW post, arranging free dinners at a downtown restaurant, visiting families with her clipboard, keeping tabs on state and federal agencies, pestering politicians.

On a recent morning, Brocco-Collia was meeting displaced families housed at the Blue Palms Resort, one of a string of retro doo-wop motels that reopened off season to serve storm victims.

Kathleen Clancy, 51, told Brocco-Collia that she was trying to care for a schizophrenic niece, repair her flooded home, find a place to stay and hold

[See Sandy, A12]



IN ORTLEY BEACH, Mike Bolin, left, Tyler Flint and Laurel Barbot search the remains of Bolin's home for his late mother's ashes. About 25,000 New Jersey families need housing because of the storm.

State probes fiscal health of O.C. toll roads

With ridership and revenue falling short of projections, some are questioning their long-term viability.

BY DAN WEIKEL

When it opened during the 1990s, Orange County's \$2.4-billion tollway system was touted as an innovative way to build public highways without taxpayer money.

Today, the roads offer smooth sailing for gridlock-weary commuters willing to pay the price. But far fewer people are using the turnpikes than officials predicted, which means the highways generate far less revenue than expected to retire their debts.

There have long been questions about the long-term financial viability of the San Joaquin Hills and Foothill-Eastern corridors. But those concerns have now heightened, and a government oversight panel chaired by state Treasurer Bill Lockyer has launched a formal inquiry into whether the roads can cover mounting interest payments to private investors who purchased tollway bonds.

The review was prompted by former Orange County Assemblywoman Marilyn Brewer, who questions whether the debt-laden toll road agency is "viable as a going concern."

"I think they are in trouble," Brewer said. "I don't believe there is malfeasance, but it's no way to run a railroad or a toll road."

The roads, which rely on motorist tolls and fees from new developments in the area, have been battered by economic recessions, lower-than-expected population growth and competing public highways, such as Interstates 5 and 405, both of which have been widened and improved by Caltrans.

Wall Street ratings agencies have reduced the San Joaquin Hills toll road's bonds to junk status and the

[See Toll roads, A15]

Too little traffic

Not enough drivers are using the 51-mile toll road system in Orange County.

- Foothill-Eastern Transportation Corridor
- San Joaquin Hills Transportation Corridor



Source: The Transportation Corridor Agencies
Los Angeles Times

U.S. TO SHARPLY REDUCE AFGHAN MISSION

As few as 6,000 troops may remain after 2014 despite calls from commanders for a larger presence.

BY DAVID S. CLOUD

WASHINGTON — The Obama administration plans on keeping 6,000 to 9,000 U.S. troops in Afghanistan after 2014, fewer than

Toll roads' viability under scrutiny

[Toll roads, from A1] notes for the Foothill-Eastern corridor to the lowest investment grade.

To meet expenses and debt payments, the corridor agency has renounced the San Joaquin Hills bonds, raised tolls more than originally planned, slashed administrative costs and obtained repayment concessions from bondholders. Early next year, officials plan to refinance about \$2.4 billion in notes issued to build the Foothill-Eastern tollway.

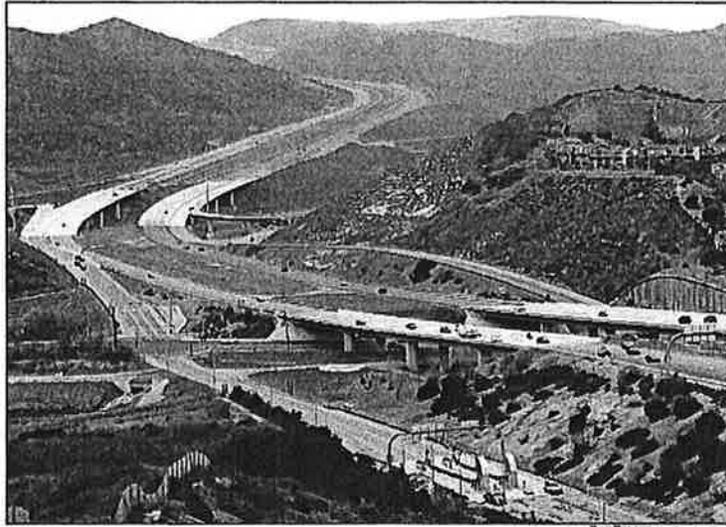
In 2010, ridership on the San Joaquin Hills, which has never performed as predicted, was only 43% of original forecasts, and its revenue was 6% of projections. The road parallels the Orange County coast, slicing south from Irvine through Newport Beach, Laguna Beach and Aliso Viejo to the San Diego Freeway.

Motorists on the Foothill-Eastern last year numbered 33% less than projected, and revenue was 73% of forecasts. Previously, the part of the corridor between Yorba Linda and Rancho Santa Margarita had a revenue surplus and ridership that was often 8% to 10% ahead of projections. The extra money was used to help shore up the finances of the San Joaquin Hills road.

Last year, the San Joaquin Hills restructured about \$2.1 billion in debt and pushed back the retirement of bonds to 2022, meaning motorists will have to pay tolls for an additional six years before the road becomes a free highway. It is the second time the original deadline of 2013 has been reset.

"Extending the payment time to make sure we can make our debt payments is a necessary step," said Amy Porter, the Transportation Corridor Agencies' chief financial officer. "We have to be realistic."

Overall, the agency has borrowed about \$4.4 billion for the two roads and faces at least \$3.5 billion in debt payments by the time its bonds mature, according to financial statements.



THE SAN JOAQUIN HILLS toll road, shown in 2004 heading west from Aliso Viejo, has never performed as predicted. Ridership last year was only 43% of original forecasts, and revenue was 6% of projections.

Despite the roads' sagging ridership, the agency has increased tolls repeatedly to keep pace with expenses and debt payments — at least 12 times since 1992 on the San Joaquin Hills alone.

The tolls on both corridors are now among the highest in the nation per mile. A round trip at peak travel times on the San Joaquin Hills costs \$11, almost three times what it was in 2004. The maximum toll for a round trip on the Foothill-Eastern has roughly doubled to between \$140 and \$450 during peak times, depending on the section.

Tollway officials acknowledge the financial distress but say that they have never missed a debt payment and that the latest traffic figures show revenue has been increasing this year, though less than had

been hoped. "We have a responsibility to make sure this works," said Lisa Tellen, acting chief executive of the Irvine-based toll agency, which operates 61 miles of highways. "Tolling is being talked about more and more throughout the country as a way to build infrastructure. People still look at us today as a model, but we have had to adjust with the times and the recession, which has hit everybody."

In addition to being reviewed by the California Debt and Investment Advisory Commission, the toll roads are receiving scrutiny from a major Los Angeles law firm that helped to draft plans to extend the Foothill-Eastern corridor through San Onofre State Park.

Among other things, SWA Denton found that the

tollway agency renegotiated an agreement with San Joaquin Hills bondholders in 2011 that lowered by almost 33% the amount of revenue the agency had promised to take in for every dollar of debt.

In exchange, the agency agreed to increase debt payments to bondholders by more than \$500 million based on the deferral of \$430 million in principal payments for up to 10 years.

"It is hard to see how they can grow their revenue to keep up with the rapidly increasing levels of debt service," said attorney Tom Vandiver, a public finance expert at the law firm.

Vandiver described the toll road's situation as "a time bomb waiting to happen," adding that the economic problems could lead to a default on bond payments or a potential bank-

ruptcy. Retired professor G.J. "Pete" Fielding, formerly of UC Irvine's Institute of Transportation Studies, blamed the financial problems on inaccurate revenue and ridership forecasts by private consultants, resulting in six- and eight-lane highways that were larger and more expensive to build than necessary.

Fielding predicted in the mid-2000s that the San Joaquin Hills, for example, would suffer from a lack of motorists. He suggested that a four-lane road would have been adequate for many years as long as tolls were raised and lowered based on demand — so-called congestion pricing.

Given the current situation, Brewer and the Denton firm question whether the toll road agency can afford to extend the southern end of

'It is hard to see how they can grow their revenue to keep up with the rapidly increasing levels of debt service.'

— TOM VANDIVER, attorney

the Foothill-Eastern corridor — a proposal the agency is still pursuing despite years of political and legal setbacks for a route through San Onofre.

The revised project would cost an estimated \$200 million and run five miles between Oso Parkway in Rancho Santa Margarita and Ortega Highway east of San Juan Capistrano.

Denton's investigation notes that if the Foothill extension cannot be built, the San Joaquin Hills might have to return a \$200-million payment from the Foothill-Eastern corridor made in 2006.

The money was compensation for the possibility that the new road would siphon traffic away from the San Joaquin Hills.

"An assessment needs to be done before further debt is incurred and the citizens of Orange County are made to suffer serious consequences," Brewer stated in her letter to Lockyer.

Should the agency be unable to cover its debt, Tellen, the acting chief, said interest and principal payments to bondholders might have to be reduced and spread out over more time. Tellen also could be adjusted to increase revenue, and further budget cuts might have to be made.

"We will be monitoring things," Tellen said. "If we get close to that point, obviously we will look at possible solutions."

dan.welzel@latimes.com

Parkinson's Study





TAB 25

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Annual Results (73)

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SAN JOAQUIN HILLS (73) TOLL ROAD

ANNUAL RESULTS

FISCAL YEAR	ACTUAL TRANSACTIONS	ACTUAL TOLL REVENUE
2012	25,424,605	\$92,972,084
2011	25,451,120	\$88,103,663
2010	25,308,372	\$87,095,815
2009	26,810,468	\$86,419,923
2008	30,057,878	\$91,434,068
2007	31,096,854	\$89,058,936
2006	30,622,020	\$81,928,005
2005	29,585,828	\$75,645,139
2004	29,416,339	\$87,031,360
2003	27,024,334	\$61,147,499
2002	26,055,147	\$56,864,910
2001	26,054,876	\$50,901,371
2000	26,660,797	\$46,818,996
1999	24,853,673	\$42,646,223
1998	20,902,595	\$33,927,997
1997	11,153,013	\$16,868,231

Transaction Tables

Foothill/Eastern (133/241/261) Toll Roads

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TAB 26

CESPL-RG (1145)

16 December 2011

MEMORANDUM FOR RECORD

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for the Proposed State Route (SR)-241 Extension

1. A meeting was held December 16, 2011 between the Transportation Corridor Agencies (Valarie McFall), U.S. Army Corps of Engineers, Los Angeles District (David Castanon, Larry Minch, Cori Farrar, Spencer MacNeil, Susan Meyer), RBF Consulting (Ruth Villalobos, Richard Beck), U.S. Fish and Wildlife Service (Tannika Engelhard) and the lobbying firm Capri, Clay & Smith (Tyler Kruzich) to discuss TCA's proposal for designing, evaluating, permitting and constructing an approximate 4.5-mile-long toll road extension between Oso Parkway in Mission Viejo and Cow Camp Road located within Rancho Mission Viejo's (RMV) yet-to-be constructed Planning Area (PA) 2 in south Orange County, California. The meeting purpose was to advance pre-application discussions between the Corps and TCA (the future Department of the Army permit applicant) regarding the proposed SR-241 toll road extension project and gain a clearer understanding of the project purpose and need, the project description and the appropriate section 404 of the Clean Water Act (CWA) permitting approach.

2. In reference to the meeting agenda (enclosed) and Ms. Valarie McFall's correspondence to Mr. David Castanon, dated December 7, 2011, no clear or succinct project purpose was articulated by TCA, although TCA emphasized the purported economic benefits the proposed toll road extension project would generate in terms of job creation. TCA then described some of the modifications that were made to the project description since the last pre-application meeting held with the Corps. Specifically, TCA explained the proposed project has been modified to now extend 4.5 miles south from Oso Parkway, following the same alignment as the 2009 A7C-FEC-M alternative¹, and terminate at Cow Camp Road with an at-grade connection. Originally, TCA had proposed the project's terminus at "G Street", a yet-to-be-constructed arterial that is part of RMV's planned circulation element for its PA 2. According to TCA (Valarie McFall), the Cow Camp Road connection would serve as an "interim" connection and eventually if and when RMV constructs the PA 2 transportation infrastructure (i.e., I, J and G streets) the Cow Camp Road connection would be removed (or abandoned) and relocated to the future "G" Street where a new SR-241/"G" Street connection would be constructed. According to TCA, their preliminary traffic analysis suggests a connection at "G" Street would be favorable to a connection at Cow Camp Road in terms of overall mobility and circulation, particularly with

¹ The Alignment 7 Corridor-Far East Crossover-Modified (A7C-FEC-M) alternative was the preferred alternative selected by TCA and Federal Highway Administration following the public circulation of the Draft Environmental Impact Statement/Subsequent Environmental Impact Report for the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP). The A7C-FEC-M alternative was later denied coastal consistency under the Coastal Zone Management Act by the California Coastal Commission and as a consequence, TCA withdrew its DA permit application. Under the SOCTIIP, the A7C-FEC-M alternative was 16 miles in length and extended south from the SR-241 terminus at Oso Parkway and continued to traverse south and just east of Rancho Mission Viejo's Planning Area 2 and west of Planning Area 3 where it crossed Ortega Highway, then passed through the Donna O'Neill Land Conservancy and through the inland portion of the San Onofre State Beach Park where it ultimately connected to I-5 at the Orange/San Diego county line.

CESPL-RG (1145)

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for the Proposed State Route (SR)-241 Extension

respect to future traffic flow on Cow Camp Road and Ortega Highway (SR-74). On this point TCA and RBF noted that transportation planners at the county and state (Caltrans) object to a long-term/permanent connection of a four-lane (or greater) facility with Cow Camp Road purportedly due to induced congestion on Cow Camp Road that would be created by the installation of additional traffic lights needed to accommodate such a major connection. TCA explained that transportation planners have indicated the close proximity of such intersections would impede traffic flow and exacerbate an already congested segment of Ortega Highway. These foreseeable operational issues raised concerns for the Corps in terms of substantiating logical termini and independent utility of the 4.5-mile-long segment and as a consequence, the Corps indicated to TCA they will likely need to provide additional analysis and documentation to justify why they would propose to terminate the toll road at a connection known to be undesirable and logistically infeasible.

a. Based on TCA's presentation and the back-and-forth discussion that ensued, it appeared to the Corps the overall viability and operation of the modified SR-241 extension project would be dependent upon implementation of new or improved county roadways, new interchanges and implementation of RMV's future local arterials (many of which are unpermitted at this point in time). While TCA did not articulate the project need or project purpose, the Corps inferred from the information provided by TCA during the meeting that a connection to one or more of RMV's future arterial roads or the planned improvements to Cow Camp Road is necessary in order to provide adequate local and regional circulation and mobility; without such connections the proposed SR-241 extension project could constitute a 'road to nowhere'

b. According to TCA, RMV's development plan includes a supporting circulation system and associated infrastructure, including a north-south arterial ("F" Street) that closely resembles the proposed SR-241 toll road extension, although the two differ at their northern limits near the upper PA 2 and Oso Parkway, where TCA's toll road encroaches into areas designated for phased conservation under the *San Juan Creek/Western San Mateo Creek Watersheds Special Area Management Plan* (SAMP) and USFWS' Habitat Conservation Plan. The TCA explained that as planned "F" Street would have an 80-foot-wide right-of-way and two lanes of traffic in either direction, similar in capacity to the proposed SR-241 extension project. Although the two conceptual facilities would be similar in terms of length and number of lanes, TCA asserted the toll road would be superior to RMV's "F" Street due to several design features that were elaborated upon later in the pre-application meeting (reference paragraph 5.a below).

3. The Corps questioned TCA about the timing of RMV's development plans and whether the downturn in the local economy has affected, or would be expected to affect, the schedule of RMV's implementation of their eight planning areas and associated infrastructure or whether possible delays in RMV's construction would adversely impact the utilization and/or need for the toll road. TCA committed to providing the Corps with RMV's construction schedules for Planning Areas 1-8 to help gauge when certain areas of the overall RMV development master plan would be implemented. According to RBF and TCA, the existing Cow Camp Road is a

CESPL-RG (1145)

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for the Proposed State Route (SR)-241 Extension

privately owned road used for agricultural access. The Corps (Cori Farrar) pointed out that RMV's PA 1 and "upgrades/improvements" to a portion of Cow Camp Road have been permitted by the Corps, but RMV has not submitted a DA permit application for PA 2 nor for the eastern segment of Cow Camp Road and therefore neither of these development projects are authorized under section 404 of the CWA.

4. TCA reiterated the fact they have no definitive plans to construct any additional segments beyond the proposed 4.5-mile-long extension project. However, there was concern expressed by the Corps (Spencer MacNeil) on this point, particularly since TCA's own documents indicate plans to the contrary. While an exact alignment may not be identified at this time, TCA publications and internal staff recommendation reports document the intent to build additional toll road segments that would connect to I-5. In this context, the Corps reiterated its previous guidance to TCA that they provide data and information to the Corps in order to develop a clear understanding of the project need, overall project purpose and cumulative impacts, all of which would be expected to help determine whether the proposed 4.5-mile-long toll road segment would constitute impermissible segmentation under the National Environmental Policy Act (NEPA) based on 9th Circuit case law. The Corps (Larry Minch) conveyed legal concerns to TCA related to NEPA, specifically "segmenting" multiple projects requiring Federal approvals to avoid a more rigorous and/or public environmental review process; or in other words, dividing the larger SR-241 toll road extension project into multiple segments, each of which individually may have minimal or less than significant environmental impacts, but if considered collectively would have "significant" impacts, individually or cumulatively. The Corps asked for additional information from TCA to support their assertion that the initial segment would not have to consider cumulative impacts and there would be no impermissible segmentation under NEPA; TCA committed to submitting the requested information.

a. In the context of legal concerns, the Corps briefly explained to TCA the meaning behind "connected", "similar", and "cumulative" actions (40 C.F.R. § 1508.25 and § 1508.23) as well as cumulative "impacts" (40 C.F.R. § 1508.7) and the applicability (or lack thereof) of these requirements to the proposed SR-241 toll road extension project. The Corps indicated to TCA these factors, among others, will influence how the Corps determines its NEPA, Endangered Species Act (ESA) and National Historic Preservation Act (NHPA) scope of analysis and the overall breadth of the NEPA analysis (i.e., EA versus EIS).

b. Notwithstanding the uncertainty surrounding a full toll road alignment that connects to the I-5 as envisioned by TCA in its SOCTIIP documentation or the outcome of RMV's future development plans, TCA emphasized their desire to complete the federal and state environmental documentation and obtain all necessary clearances (e.g., permits) by October 2012 so they would be in a position to commence construction in early 2013.

5. Regarding possible permitting approaches, the Corps discussed the anticipated schedule (March 18, 2012) for the reissuance of the nationwide permits (NWP) and alerted TCA to the Los Angeles District's proposed 2012 regional conditions, one of which will revoke the use of a

CESPL-RG (1145)

SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for the Proposed State Route (SR)-241 Extension

number of NWP's within specific geographic areas upon the 2012 NWP re-issuance. Corps Regulatory Division representatives highlighted that NWP 14 (*Linear Transportation Projects*) will be one of those NWP's revoked and therefore, will not be available for use (i.e., verification) within most of the San Juan Creek and San Mateo Creek watersheds, including the proposed SR-241 extension project area. The Corps (Cori Farrar) further explained the Final EIS and record of decision (ROD) for the SAMP never envisioned a toll road being evaluated under a letter of permission (LOP), largely due to the fact that up until 2008/09 TCA was pursuing the toll road project under a separate NEPA/CEQA process, including a standard individual permit (SIP). Furthermore, TCA was not a participating party (applicant) in the SAMP process; RMV and the Santa Margarita Water District are the only signatories to the SAMP and therefore, the only entities subject to all agreements, commitments and processes stemming from the SAMP. The Corps (Cori Farrar) conveyed to TCA that the toll road, whether in its entirety or in segments, is not a covered activity that could be evaluated under the abbreviated permitting options available vis-à-vis the SAMP and as a result, TCA would not be eligible for abbreviated Letter of Permission (LOP) permitting under the SAMP. Specifically TCA would be ineligible for an LOP or a nationwide permit (NWP) and therefore would need to apply for DA authorization under an SIP.

a. TCA explained the SR-241 toll road would in essence replace the need for RMV's proposed "F" Street and then rebutted the Corps' opinion on the ineligibility of the toll road for abbreviated permitting by asserting that while they were not a party to the SAMP, the proposed SR-241 toll road extension project would be consistent with the principle tenets of the SAMP and would be environmentally superior to RMV's proposed "F" Street due to the planned wildlife crossings, vegetated center median that could accommodate future general purpose lanes or support transit, and the added water quality treatment design features (e.g., Austin sand filters and bioswales). The Corps disagreed with TCA's premise that the toll road is environmentally superior to "F" Street and specifically explained concerns related to the proposed toll road alignment in the northernmost portion of the study area (adjacent to Planning Area 1) where the toll road alignment would deviate from RMV's arterial roadway route by a measurable distance. According to TCA's preliminary design maps, a portion of the SR-241 toll road extension project would encroach into designated conservation areas located within Chiquita Canyon which is considered a valuable ecological component to sustaining the integrity of both the SAMP's aquatic resource conservation areas and the U.S. Fish and Wildlife Services' Habitat Conservation Plan. The Corps further stated that the wildlife crossings and state-of-the-art water quality features for treating road surface run-off proposed by TCA are not design features that are unique or limited to a toll road and in fact, could be design features incorporated into RMV's "F" Street as part of the Corps future permit application review process under the SAMP umbrella, if needed for purposes of the public interest and/or avoidance and minimization of impacts.

6. TCA provided a summary of the status of several pending actions as follows:

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SUBJECT: Pre-Application Meeting with Transportation Corridor Agencies (TCA) on TCA's Proposed Permitting Strategy for Clean Water Act (CWA) Section 404 Review and Authorization for the Proposed State Route (SR)-241 Extension

a. RBF is almost complete with the updates to the Corps-verified jurisdictional determination (JD) issued in September 2005 for the original SOCTIIP and plans to submit the draft report to the Corps prior to the next pre-application meeting. Although time was short to address details, the Corps mentioned the need to conduct a functional or condition assessment, such as CRAM, on the first and second order streams that would be impacted by the proposed project.

b. An amended Clean Water Act section 401 water quality certification is being sought by TCA. According to TCA (Valarie McFall), the San Diego Regional Water Quality Board requested TCA replace the originally designed extended detention basins with Austin sand filters (roughly four sand filters) and include some bioswales. TCA indicated they are amenable to the RWQCB's request and will accommodate these design changes.

c. The California Department of Fish and Game (CDFG) section 1602 streambed alteration agreement (SAA) issued in 2008 is valid through 2013. Accordingly, TCA does not plan to re-apply for a new SAA, although CDFG requested TCA submit a two-page amendment for CDFG's administrative record. TCA's consultant is working on this documentation.

d. The draft biological assessment (BA) that will be necessary for the Corps to initiate consultation with the U.S. Fish and Wildlife Service (USFWS) under section 7 of the ESA has been prepared by BonTerra Consulting and TCA intends to submit the draft document simultaneously to the Corps and USFWS for review.

7. Since NWP, RGP and LOP are not or will not be available to TCA, the proposed project will most likely be evaluated under an SIP. Without additional information from TCA, the Corps could not determine whether an EA or an EIS would be appropriate. The Corps' NEPA, ESA and NHPA scope of analysis and determination of whether the Corps' federal action would result in a "significant" effect on the quality of the human environment would depend on a number of factors that currently require further discussion with TCA and others as well as additional data, analysis and information. If the SR-241 extension project is constructed with the intent and effect of replacing RMV's planned "F" Street arterial, then TCA's proposed toll road could be viewed as facilitating development and in turn may necessitate an evaluation of a range of reasonable alternatives that could fulfill the project purpose of providing access to the future development area(s). In other words, if the primary need or justification for the 4.5-mile-long toll road segment is to accommodate future local access to RMV's planning areas and improve future mobility to/from and within the planning areas based on projections of future growth (i.e., increased ridership and average daily trips attributed to the build out of RMV's "Ranch Plan"), then RMV's own transportation infrastructure already achieves this basic need since RMV designed their circulation element to be independent of the need for any toll road. If, however, TCA's project purpose is to improve future traffic congestion on I-5 and increase regional mobility and goods movement on the regional arterial network, then under NEPA it would be intuitive that TCA (and ostensibly the Corps) consider alternatives other than, or in addition to, a 4.5-mile-long segment that terminates at a location far from the I-5. The point stressed by the

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Corps was that the statement of need and project purpose is critical because it will drive the range of alternatives. Hence, the Corps staff reinforced the importance of TCA formally articulating its project need and purpose.

8. Action items included the following:

- a. TCA to provide the Corps with RMV's construction schedules for PAs 1-8;
- b. TCA to provide the Corps with a written statement of the project need and proposed project purpose from the applicant's perspective;
- c. Corps to look into how the Final EIS and ROD for the San Juan Creek/Western San Mateo Creek Watersheds SAMP treated "F" Street in the overall analysis;
- d. Corps to investigate how future outside or non-SAMP participants were envisioned to use (or not) LOPs in the SAMP area; and
- e. TCA to compile information on cumulative impacts and impermissible segmentation under NEPA to assist the Corps' determination of whether an EA or EIS would be needed.

9. A follow-up meeting was scheduled for January 27, 2012 at 10:00 a.m. in the Los Angeles District office.



David J. Castanon
Chief, Regulatory Division

Encl

CF:
CESPL-RG-T (MacNeil, Meyer)
CESPL-RG-S (Bradford, Farrar)
CESPL-OC (Minch, Troxel)

TAB 27

Meyer, Susan A SPL

From: Meyer, Susan A SPL
Sent: Tuesday, March 13, 2012 8:15 AM
To: Farrar, Corice J SPL
Subject: RE: SR-241 Tesoro Toll Road discussion re: economics/financial data and independent utility (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Thursday sounds good ... I didn't have a specific timeline in mind for assembling all our updates, but probably the sooner, the better so we're not caught in a completely reactive mode with our external communications with TCA. That being said, I suspect it will take some time on the part of OC to develop their legal responses, etc.

That would be great to see you in Portland. I guess Monday and Friday of that week are considered travel days, but I'm planning to fly in late the preceding week since I'm bringing Noah with me so he can stay with my family while I'm at the training. Hope you make it!

Susan

-----Original Message-----

From: Farrar, Corice J SPL
Sent: Tuesday, March 13, 2012 9:16 AM
To: Meyer, Susan A SPL
Subject: RE: SR-241 Tesoro Toll Road discussion re: economics/financial data and independent utility (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Thanks Susan. Hope all is well.

I'm going to focus on this on Thursday. I have a meeting tomorrow that I have to prepare for today. Hope that works okay with your schedule.

P.S. I may see you in Portland in April at the workshop.

Cori Farrar
Chief, Orange & Riverside Counties Section South Coast Branch, Regulatory Division U.S. Army
Corps of Engineers, Los Angeles District

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-----Original Message-----
From: Meyer, Susan A SPL

Sent: Monday, March 12, 2012 4:10 PM
To: Minch, Lawrence N SPL; Castanon, David J SPL; Troxel, Tiffany A SPL; Farrar, Corice J SPL; Macneil, Spencer D SPL; Lambert, Jason P SPL
Subject: RE: SR-241 Tesoro Toll Road discussion re: economics/financial data and independent utility (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Hi All,

I'd like to align as many of our individual activities and assignments as possible in order to share a "big picture" view and status update with the applicant. Based on feedback from Spencer, I understand there were a few action items and commitments made during COL Toy's meeting with TCA et. al. last month as well as the field meeting that took place more recently with Dave, Spencer, Cori and Jason. March 9th seemed to be a date in which we had tentatively agreed to reconnect with TCA and provide some of (if not all) the requested information. Obviously, March 9th has come and gone, but here is what I understand to be required of us, all of which I could use your help in providing a status update or any corrections if I got it wrong in terms of the key action items on our end:

1. A clear and final decision (accompanied by an appropriate level of explanation) on whether TCA could apply for an LOP under the SAMP provisions (Corps Lead: CORI);
2. An approved jurisdictional determination of all tributaries and wetlands occurring within the proposed 4.8-mile-long SR-241 Tesoro Toll Road Project area. RBF will be providing our office with updated field information and a draft JD report of some sort, which is expected to include data to facilitate the significant nexus evaluations that will be required for all non-isolated ephemeral and intermittent tributaries (i.e., non-RPWs) (Corps Leads: JASON/CORI);
3. Based on the results of the above JD and consideration of TCA's engineering design plans, a determination as to whether the proposed project would result in the discharge of fill material into waters of the U.S. -- that is, a determination whether TCA can, and will, avoid Corps jurisdiction and therefore obviate the need to obtain a DA permit (Corps Leads: JASON/CORI/SPENCER);
4. Legal review and rebuttals to TCA's February 4, 2012 letter addressed to Dave based on case law and legal interpretation from the Corps perspective. General legal topics include impermissible segmentation under NEPA, independent utility and cumulative impacts as they pertain to defining the Corps scope of analysis and the type (scope) of the NEPA document (EA v. EIS), currently assuming the Corps is the lead federal agency (Corps Lead: LARRY/TIFFANY); and
5. Corps review of financial data with respect to establishing the proposed toll road segment as having "independent utility". This information was submitted by TCA in response to Larry's request made during the February 10, 2012 meeting with COL Toy, Tom Margro, et. al. CESPL-RG and CESPL-OC need to re-schedule a time to discuss (Corps Leads: LARRY/SPENCER/SUSAN);

Did I forget or leave anything off our "to do" list?

For those of you who are still reading, I should take the time to mention I had an opportunity to speak with Chris Newman of FHWA, Los Angeles office. Chris has committed to keeping in touch with the Corps as FHWA continues their informal and peripheral involvement in TCA's recent toll road proposal. FHWA, Caltrans and TCA met in the field just last week (March 5th) so that FHWA could gain a better understanding of the proposed toll road project.

While FHWA shares very similar legal concerns as the Corps, TCA didn't offer anything new to FHWA that we didn't already know in terms of the Purpose & Need (still undefined by TCA); possibility of receiving federal funding (still unclear what TCA's intent is and who would be the appropriate lead agency); and/or traffic analysis that would substantiate the need for the 4.8-mile-long project as well as demonstrate there would be no significant operational deficiencies with the proposed Cow Camp Road connection. In addition to NEPA concerns, FHWA pointed out TCA is on the hook to demonstrate how the SR-241 Tesoro Toll Road project would address SCAG's requirements based on the existing TIP/RTIP. Evidently, the air quality benefits that SCAG is claiming are dependent upon the implementation of the entire 16-mile toll road (i.e., improvements to I-5 mobility/congestion), and not just a 4.8-mile toll road segment. Also, according to Chris, TCA has hired a firm to conduct a traffic analysis for their new proposal, but the results of this modeling and analysis won't be available for several more months. In general, Chris said TCA (Sam Elters) was very evasive about most questions posed by FHWA regarding the pursuit of federal funding and the articulation of the project's P&N.

And, for any of you who know Sam Elters and hadn't yet heard, Chris indicated Sam is leaving TCA this week. As of last week, there had been no announcement as to who would replace Sam as the lead engineer for TCA.

Thanks in advance--I appreciate your input!

Susan

Susan A. Meyer
Biologist, Senior Project Manager
U.S. Army Corps of Engineers, Los Angeles District Regulatory Division, Transportation &
Special Projects Branch (CESPL-RG-T)
Tel: (808) 438-2137; Fax: (808) 438-4060 susan.a.meyer@usace.army.mil

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

TAB 28

Witt, Julie SPL

From: Toy, R. Mark COL SPL
Sent: Friday, August 24, 2012 7:53 AM
To: Imamura, Jeanne H SPL
Subject: FW: Tom Margro (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: FOUO

Colonel R. Mark Toy, P.E.
Commander and District Engineer
Los Angeles District, U.S. Army Corps of Engineers

Office: 213-452-3961
Fax: 213-452-4214
<http://www.spl.usace.army.mil/>

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-----Original Message-----

From: Castanon, David J SPL
Sent: Friday, March 02, 2012 5:12 PM
To: Toy, R. Mark COL SPL
Subject: RE: Tom Margro (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir,

Also, I forgot to mention some other issues that might be prompting Mr. Margro to call you.

In the 10 Feb meeting with TCA that you attended, we had told them that we would try to make progress on a number of items by 9 March and either meet then or at least provide them an update. We needed some time because Susan had just started 2 weeks of leave.

One of the items was to work on establishing the extent of CWA jurisdiction, which I described earlier.

Another item was to respond to their 25 page letter provided to us just a few days (6 Feb) before our 10 Feb meeting. The primary issues in that letter were:

1. Type of permitting vehicle available: They want to use a nationwide permit or a streamlined 404 Letter of Permission process that was established in the SAMP. The other option (if they actually need a permit) would be to process a Standard Individual Permit (SIP) which would entail a public notice and comment period.
2. NEPA Compliance: In the past, and with the assumption that we had many jurisdictional crossings throughout the road alignment, we have told them that an SIP was necessary and that our scope of analysis would be to evaluate the entire alignment as one project (rather than each crossing as a separate permit action). With a scope of analysis incorporating the entire 4.5 mile alignment, the question becomes whether an EA and FONSI are sufficient or

whether an EIS is necessary. Larry Minch requested that they provide some kind of traffic and financial analysis to show that their proposed 4.5 file segment would actually function. This is needed to establish that the project has "independent utility" a concept that often needs to be addressed in transportation projects proposed to be build in segments. They have provided some info. I haven't reviewed it yet, but am hearing that it is rather skimpy. Again, if it turns out they don't need a permit, then this issue is moot. The other thing that could drive the need for an EIS is whether "reasonably foreseeable future actions" by others or by TCA together with their current proposal could result in potentially significant impacts. Again, if there is no need for a permit all of these considerations become moot.

Now that Susan is back, she and Spencer will be working with Counsel on those issue so that we can have be in a position to provide responses to their 6 Feb letter.

David J Castanon
Chief, Regulatory Division
U.S. Army Corps of Engineers, Los Angeles District

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-----Original Message-----

From: Toy, R. Mark COL SPL
Sent: Friday, March 02, 2012 4:19 PM
To: Castanon, David J SPL
Subject: Re: Tom Margro (UNCLASSIFIED)

Thanks Dave.

Colonel Mark Toy, P.E.
Commander and District Engineer
Los Angeles District
U.S. Army Corps of Engineers

Building Strong and Taking Care of People!

----- Original Message -----

From: Castanon, David J SPL
Sent: Friday, March 02, 2012 04:01 PM
To: Toy, R. Mark COL SPL
Cc: Imamura, Jeanne H SPL
Subject: RE: Tom Margro (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir,

FYI, Spencer, Cori and I visited the TCA's State Route 241 Extension project alignment in southern Orange County (land owned by Rancho Mission Viejo, RMV) on Tuesday 28 Feb. We met reps from TCA, their environmental consultants and RMV to review the consultant's preliminary jurisdictional determination.

We walked much of the alignment and walked up drainage features to closely inspect them. We also took measurements, photos and notes. We found that there is substantially less jurisdiction along the alignment than we had anticipated based on looking at the last JD done there (as part of the SAMP) about 9 years ago.

Spencer and I had a follow-up conversation with the TCA and the consultants on 1 March to review our notes and to give them direction on how to complete their proposed JD. They indicated it would take a week or two to finalize their package and send it to us. Then we would need to review adjust the documents to make them ours, then transmit to EPA for their 15 day review.

The bottom line is that it appears there will be very limited CWA jurisdiction (maybe none) within the areas they would build their road. Based on discussions with the TCA staff they indicated that even if there is a small amount of jurisdiction, they should be able to design their structure to span the drainages and design fill areas to avoid the drainages. It seems that they may be able to proceed without the need for a permit, but right now it is too early to tell for sure.

I don't know why Margro is calling you. Maybe he has heard that there may be little to no jurisdiction and wants to tell you how pleased he is. Maybe he has some other issue to discuss. I'll see if I can find out.

Dave

-----Original Message-----

From: Imamura, Jeanne H SPL
Sent: Friday, March 02, 2012 2:21 PM
To: Toy, R. Mark COL SPL
Cc: Castanon, David J SPL
Subject: Tom Margro (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sir:

Tom Margro asked to speak to you yesterday - feels it's important as a follow-up to his recent meeting with you. His office is closed today but if you could call him on his mobile at 213-892-7014.

Jeanne H. Imamura
Secretary to the District Commander
U.S. Army Corps of Engineers, Los Angeles District
213-452-3964 (Ofc) - 213-452-4214 (Fax) jeanne.h.imamura@usace.army.mil

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Caveats: FOUO

TAB 29

South Orange County Transportation Infrastructure Improvement Project (SOCTIIP)



TCA EIR 4
FHWA-CA-EIS-04-01-D



Final Subsequent Environmental Impact Report

December 2005

total hours of total travel time savings; moderately related to total project costs; and moderately well on cost per hour of travel time saved and it displaces no residences. Based on the poor performance of the FEC Alternative for the biological resource measures and the availability of similar Alternatives which perform well on the traffic, socioeconomics and costs measures and better on the biological resource measures, the Collaborative agreed to delete the FEC Alternative from consideration in the EIS/SEIR. The FEC-M and FEC-W Alternatives, described earlier, were substituted for the FEC Alternative and were carried forward for detailed consideration in the EIS/SEIR. The FEC-M and FEC-W Alternatives are refinements of the FEC Alternative designed to substantially reduce biological resource impacts. For further discussion of the alternatives refinement process, refer to Section ES.4.3.3 later in this Executive Summary.

Far East Corridor-Talega Variation (FEC-TV) Alternative. This Alternative performed poorly for impacts to waters of the United States; moderately in impacts to CSS; very high in impacts to gnatcatchers; moderately well for congestion relief on I-5; moderately for hours of travel time saved and for the total project cost; moderately well for the cost per hour of travel time saved; and it displaces 703 residences. Based on the low performance of the FEC-TV Alternative for the biological resource measures and the availability of similar Alternatives which perform well on the traffic, socioeconomics and cost measures and better on biological resources measures, the Collaborative agreed to delete the FEC-TV Alternative from consideration in the EIS/SEIR.

Far East Corridor-Ortega Highway Variation (FEC-OHV) Alternative. This Alternative performed poorly for the traffic measures because this Alternative terminates at Ortega Highway and does not provide a connection to I-5. It performed well on total project costs; moderately for cost per hour of travel time saved; moderately well for impacts to riparian ecosystems and CSS; moderately on impacts to the coastal California gnatcatcher; and it displaces no residences. Based on the poor traffic performance and the high cost per hour of travel time saved under this Alternative and the only moderate performance related to the biological resource measures, the Collaborative agreed to delete the FEC-OHV Alternative from consideration in the EIS/SEIR.

Far East Corridor-Avenida Pico Variation (FEC-APV) Alternative. This Alternative performed poorly for impacts to riparian resources; moderately for impacts to CSS and gnatcatchers; moderately for traffic congestion relief on I-5 and hours of travel time savings; and it displaces no residences. The traffic benefits under this Alternative are better than the Alternatives that terminate at Ortega Highway, because this Alternative extends to Avenida Pico, but it still does not provide a connection to I-5. Based on the poor performance of this Alternative related to the biological resource measures and the only moderate level of traffic benefits, the Collaborative agreed to eliminate the FEC-APV Alternative from consideration in the EIS/SEIR.

Central Corridor-Ortega Highway Variation (CC-OHV) Alternative. This Alternative performed poorly for the traffic measures, because it terminates at Ortega Highway and does not provide a connection to I-5. It performed well for total project costs; poorly for cost per hour of travel time saved and it displaces no residences. Based on the poor traffic performance and the high cost per hour of travel time saved, the Collaborative agreed to delete the CC-OHV Alternative from consideration in the EIS/SEIR.

Alignment 7 Corridor (A7C) Alternative. This Alternative performed moderately well on impacts to riparian ecosystems; moderately for impacts to CSS; poorly for impacts to gnatcatchers; well for congestion relief on I-5; moderately well for hours of vehicle travel time saved; poorly based on project costs; moderately on cost per hour of travel time savings and it displaces 704 residences. Based on the moderate performance of the A7C Alternative for the biological resource measures; the poor performance related to the socioeconomics measures and the availability of other Alternatives which provide similar