

February 25, 2013

Via Email and U.S. Mail

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

Re: Response to Transportation Corridor Agencies Letter Dated February 20, 2013 (Comment - Tentative Order No. R9-2013-0007, Place ID: 785677)

Dear Mr. Bradford:

On behalf of the Save San Onofre Coalition, this letter responds to the recent letter from Ms. Valarie McFall, Director, Environmental Services, Transportation Corridor Agencies ("TCA"), to the Regional Water Quality Control Board ("Regional Board"), dated February 20, 2013.

The TCA letter asserts that the Regional Board's hands are tied with respect to environmental review because the Tesoro Extension was effectively analyzed as part of the 2006 SOCTIIP EIR, and the courts have yet to rule on the adequacy of that document. This claim is a red herring. The issue here is not the adequacy of the 2006 EIR, but the fact that the circumstances surrounding the project have completely changed in the seven years since it was adopted: the route approved by TCA in 2006 is no longer legally viable. Yet TCA wants to forge ahead with the first segment of the road, without telling

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the Regional Board or the public where the remainder of the road will go. The Regional Board is not bound by an earlier CEQA document where, as here, there is significant new information relating to changes in the project or the circumstances under which the project is being undertaken that require further environmental review. Because TCA has failed to provide the documentation, we reiterate that the Regional Board should deny TCA's application.

I. The Regional Board Is Not Bound by the 2006 EIR.

As discussed in our letters dated February 6, 2013 and February 22, 2013, the TCA has failed to provide the "final, valid CEQA documentation" that the Regional Board must review before it may approve TCA's application. (Cal. Code Regs., tit.23, § 3856(f).)

The TCA asserts that, under CEQA, the Regional Board is "required to rely on the CEQA documentation approved by the F/ETCA," and thus is bound by the 2006 EIR for the SOCTIIP project. (TCA letter at 4-5.) But the very regulations cited by TCA state an exception to the general rule regarding responsible agencies: a prior EIR is *not* conclusive on responsible agencies if "[c]ircumstances or conditions change as provided in Section 15162 [of the CEQA Guidelines]." (Cal. Code Regs., tit. 14, § 15050(c).) Section 15162 requires a subsequent EIR where "[s]ubstantial changes are proposed in the project," or where "[s]ubstantial changes occur with respect to the circumstances under which the project is undertaken," which will require major revisions of the previous EIR due to new significant environmental effects or a substantial increase in the severity of previously identified significant effects. (Cal. Code Regs., tit. 14, § 15162(a)(1) and (2).)

The TCA letter states that these conditions are "not applicable." But incredibly, nowhere does the letter mention that the project described in the 2006 EIR and approved by TCA was found by the Coastal Commission and the U.S. Department of Commerce to violate the Coastal Zone Management Act. There can be no doubt that the determination by these state and federal agencies that the Foothill-South (or at least the final segment which impacts the Coastal Zone) is inconsistent with federal law is a "substantial change . . . with respect to the circumstances under which the project is undertaken," or that the determination will require TCA to make "substantial changes . . . to the project." Until the TCA identifies what will replace the invalidated alignment, and analyzes the impacts of the revised alignment, CEQA review is not complete.¹

¹ The 2004 EIR for the Rancho Mission Viejo Ranch Plan approved by Orange County, which TCA also cites in its letter, is even less relevant than the 2006 EIR. The project analyzed in that EIR was a residential subdivision. The toll road was considered only as a potential source of cumulative impacts. (*See* Ranch Plan Program EIR, Comments and Responses, Introduction at 3-67 to -68, attached hereto as Exhibit A.). Indeed, the settlement agreement settling the Ranch Plan EIR litigation to which TCA refers (TCA Letter at 2) expressly *excluded* any challenges to CEQA review of the Toll Road. (*See* RMV Settlement Agreement, excerpts of which are attached hereto as Exhibit B, § 11.4(b)(2) and (3).)

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The TCA letter states that TCA has approved² an addendum to the 2006 EIR determining that the Tesoro Extension will not create any new significant impacts not already analyzed in the 2006 EIR. But this misses the point. The addendum does not describe what alignment the project would take south of Cow Camp Road. It simply states that the Tesoro Extension would “not preclude a connection to any of the 19 toll road alternatives” previously considered by TCA, and provides an attached figure showing how the Tesoro Extension might be connected to “future alternative alignments,” stating that “there is no indication that any of the connections cannot be successfully engineered.” (Addendum at 1-4 and Fig. 4; 2-2.) Setting aside the fact that TCA has never evaluated the impacts of these new “connections,” the fact that the road *could* follow one of 19 alternative alignments previously described³ tells us nothing about the *actual* route the TCA intends to build. Indeed, the TCA has formally rejected every one of those alignments as “infeasible.”⁴ We do not know whether TCA intends to retract its earlier findings of infeasibility and approve a connection to one of the previously rejected alignments, or modify one of those alignments, or identify an altogether new alignment.⁵ Until TCA has identified, analyzed, and approved a substitute alignment for the toll road, the processing of further toll road approvals may not proceed.

“The first step in determining whether supplemental environmental review is required under section 21166 is to identify the changes in the project that were not considered in the original environmental review document.” (*American Canyon Cmty. United for Resp. Growth v. City of Am. Canyon* (2006) 145 Cal.App.4th 1062, 1073–74.) Only then can the agency determine whether those changes will have a significant impact on the environment. (*Id.* at 1078–81 (distinguishing cases in which “the court was able to identify specific, solid evidence in the record supporting the agencies' determinations that project changes would not have significant environmental effects requiring supplemental environmental review.”).) TCA cannot proceed with the project until it undertakes this analysis. *American Canyon* is consistent with a long line of CEQA cases overturning project approvals where the agency failed to “adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project.” *Comm. for a Better Env't v. City of Richmond*, (2010) 184 Cal.App.4th 70, 82–83.

² It is unclear that the addendum has been “approved” by TCA. The document is signed by TCA staff, but it is our understanding that the TCA Board has not yet formally considered the addendum or taken any action thereon.

³ In fact, the 2006 EIR analyzed the impacts of only eight (8) toll road alternatives—not nineteen (19),—as well as two non-alignment alternatives, despite the fact that a collaboration of state and federal agencies had originally identified a total of twenty-nine (29) alternatives to the Foothill South. (Addendum at 1-2.) Most of those alternatives were rejected without any environmental analysis at all.

⁴ See Foothill/Eastern Transportation Corridor Agency, Resolution No. F2006-02, Resolution of the Board of Directors of the Foothill/Eastern Transportation Corridor Agency Selecting the Preferred Alternative for the South Orange County Transportation Improvement Project (February 23, 2006), Attachment A: Findings, Facts in Support of Findings and Statement of Overriding Considerations Regarding the Subsequent Environmental Impact Report for the SOCTIIP, at 230, 238 (provided under separate cover).

⁵ For example, TCA has repeatedly suggested other routes through Camp Pendleton that have never been described or analyzed in any environmental document. (See “Navy: No toll road through Camp Pendleton,” ORANGE COUNTY REGISTER, Feb. 26, 2010, attached hereto as Exhibit C.)

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The cases cited by TCA in its letter do not support its position. In *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, the public agency had accurately described the entire modified pipeline route that it later approved in an addendum. This allowed the reviewing court to conclude that the environmental impact of the new alignment was not substantially different from or greater than the impacts considered in previous studies. (114 Cal.App.4th at 705.) Similarly, in *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385, the City of Los Angeles had clearly described the modified development project for which it had prepared an addendum. In fact, in every case that TCA references in its letter, the public agency had clearly described the nature and scope of the modified project. TCA has not done so here.

II. The Tesoro Extension Is the First Phase of the Foothill South Toll Road and Cannot Be Analyzed Apart from the Entire Project.

As discussed in our February 6 letter, the Tesoro Extension does not, by itself, have any independent utility, and can only be analyzed as part of the toll road project as a whole.

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. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376,396.) Tellingly, TCA does not attempt to distinguish *Laurel Heights* with evidence of the Tesoro Extension's independent utility. Rather, it asserts the case is distinguishable because the 2006 EIR analyzed the entire Toll Road project. Again TCA misses the point. As discussed above, the project described in the 2006 EIR must be changed substantially because of the determinations of the Coastal Commission and Commerce Department, and no document has yet described or analyzed those changes.

The only reference to the utility of the Tesoro Extension is TCA's statement that the segment will "provide traffic relief" and "provide important transportation benefits to a rapidly growing area in south Orange County and connect with Cow Camp Road, the new major east-west arterial bypass to Ortega Highway." (TCA Letter at 10-11.) But nothing in this unsupported statement explains the utility of providing a 4-6 lane toll road to serve the future Rancho Mission Viejo development, when that development already includes a 2-lane north-south road ("F Street") that would provide for *all* the transportation needs of RMV if and when future buildout of the project requires it. There is no rational purpose in providing a road with double or triple the capacity needed to serve future development except as the first phase of a larger toll road that will connect to the I-5.

The TCA Letter also fails to provide any evidence that commencement of the first phase of the toll road will not foreclose a reasonable range of alternatives. The enormous cost of the Tesoro Extension is alone sufficient to preclude any serious consideration of non toll-road alternatives to the Foothill-South. Once the TCA has made an irrevocable

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\$200 million investment in the first segment, 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. (*See Patterson v. Exxon* (D. Neb. 1976) 415 F.Supp. 1276, 1284 (holding that the National Environmental Policy Act prohibited terminating a road segment at the boundaries of a park because construction of the first segment made “further construction through that area . . . almost inevitable”).)

TCA simply ignores the effect constructing the project on toll road alternatives. Instead it provides an attached sketch showing how the Tesoro Extension might be connected to “future alternative alignments,” but concedes that these are only conceptual, and provides no evidence of the feasibility or impacts of those connections beyond unsupported assertions. (Addendum at 1-4 and Fig. 4; 2-2.) Moreover, as noted earlier, TCA has previously rejected as “infeasible” each of the alternative alignments shown (other than the now legally infeasible preferred alignment originally approved by TCA).

TCA goes on to make the incredible claim that the environmental effects of the project “will remain the same, with or without a future extension [south of Cow Camp Road].” (TCA Letter at 10-11.) This statement defies reason – the additional ten miles has the potential for vast environmental damage as evidenced by the rejection of the original Foothill-South alignment by the Coastal Commission and Commerce Department. Until we know what the alignment is in full, there is no way to know what the nature or extent of that damage may be.

III. There Have Been Virtually No Opportunities for Public Participation Regarding the Tesoro Extension.

The TCA goes to great lengths to describe the opportunities for public participation on the project that TCA. (TCA Letter at 11). But these opportunities all pre-date TCA’s March 2006 approval of the Foothill-South. Since the invalidation of that project by the Coastal Commission and the Commerce Department, TCA has failed to provide the public with any meaningful opportunity to participate in decisionmaking on the project. Instead, the TCA seems intent on pushing forward with construction on the first phase of the project without telling the public what the full project actually is. Indeed, even the minimal additional CEQA documentation the TCA has prepared—the Addendum—has not been brought before the TCA Board or been the subject of any public review and comment. The few studies that were done in connection with the Addendum—such as the traffic analysis cited in the TCA Letter—have yet to be made public.

The TCA has apparently insisted on an expedited process for consideration of its WDR Application, which has further deprived the public of adequate opportunity for review and comment. The Addendum was not made available to the public until February 19, a last-minute submission that gives the public less than one week to review and submit written comments by the February 25 deadline.

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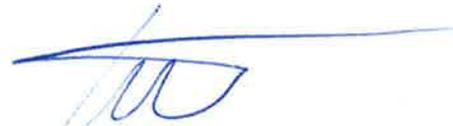
The complexity of the project, the multiplicity of legal and technical issues, and the late availability of key documents mean that neither the Regional Board nor the public will have had sufficient time to consider all of the issues by March 13.

Even with the short time frame available review, it is clear that there are fatal deficiencies in the documents submitted by TCA. For example, as described in the letter from biologist Robert Hamilton dated February 25, 2013, the TCA's HMMP contains glaring deficiencies, including a complete failure to address impacts to the San Diego Cactus Wren. New significant new information about this species that has come to light since the TCA approved the project in 2006 shows that populations in the area have plummeted by more than 90% in recent years, yet there is nothing in the HMMP that will address Tesoro's impacts to this species. This alone would require a subsequent EIR under Section 21166 of the Public Resources Code. Further time for review would be required to fully address the deficiencies in the TCA's environmental documentation.

The Board should deny the TCA's application, and should not consider the matter unless and until the TCA Board has completed all required CEQA documentation for the project. Thank you for your consideration of these additional comments.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



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Defenders of Wildlife

Sea and Sage Audubon Society

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cc (by E-mail only):

David Gibson, Executive Officer, San Diego RWQCB
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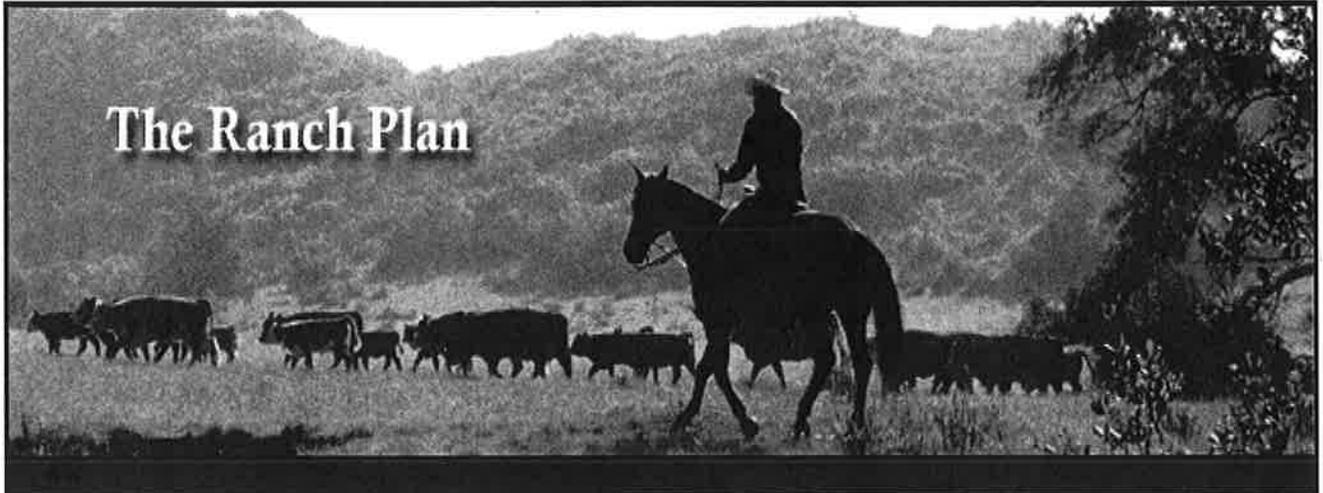
Exhibits:

Exhibit A: Ranch Plan Program EIR, Comments and Responses, Introduction,
(Excerpts).
Exhibit B: RMV Settlement Agreement, (Excerpts).
Exhibit C: "Navy: No toll road through Camp Pendleton," ORANGE COUNTY
REGISTER (Feb. 26, 2010).

Exhibit A

EXHIBIT

Exhibit A



The Ranch Plan Program EIR No. 589
Comments and Responses
INTRODUCTION

A summary table is provided in the Ranch Plan Program EIR traffic report showing the breakdown of internal/external project trip ends by land use; the report notes that the internal capture is 44 percent of trip ends and 28 percent of trips. Table 6 summarizes the ADT trip generation data from this table and shows the trip capture on a trip basis as well as a trip end basis.

**TABLE 6
 PROJECT TRIP GENERATION SUMMARY**

Land Use	ADT Trip Ends	ADT Trips
Residential		
Internal	26,225	13,113
External	61,191	61,191
Total	87,415	74,304
Internal (%)	30.0%	17.6%
Commercial/School		
Internal	42,050	21,025
External	7,421	7,421
Total	49,470	28,446
Internal (%)	85.0%	73.9%
Business		
Internal	13,100	6,550
External	33,354	33,354
Total	46,454	39,904
Internal (%)	28.2%	16.4%
Total		
Internal	81,374	40,687
External	101,965	101,965
Total	183,339	142,652
Internal (%)	44.4%	28.5%

As can be seen in the table, there is a relatively high trip capture rate for local trips such as school and shopping (74 percent) and a relatively low internal capture for business park trips (16 percent). These capture rates are what would be expected from a community of this size which has schools and retail facilities on-site, but which will draw from the surrounding area for a large proportion of the workers. Likewise, the 18 percent internal capture for trips generated by residences reflects the fact that while school trips and some shopping trips will be internal, a large portion of the trips for other purposes such as work will be external.

As noted above, the trip distribution relationships are derived by the countywide OCTAM model that takes into account surrounding residential, retail, and employment based land uses. The internal capture rates for different uses reflect the characteristics of those uses and also the type and general proximity of the project to surrounding development. Because the proposed Ranch Plan project is somewhat remote (e.g., no land uses to the east), the internal trip capture is slightly higher than would occur if it were totally surrounded by development (see Section 3.1.1.1 for prior Rancho Santa Margarita example).

3.1.7.3 Toll Roads

Theme of Comments: A number of the comments received were comments on the merits of the proposed extension of Foothill Transportation Corridor (FTC) South, known as State Route (SR-241).

Response: The County of Orange, the lead agency for the Ranch Plan project, does not have jurisdiction over the alignment or construction of SR-241. The Transportation Corridor Agencies (TCA)³ and Federal Highway Administration (FHWA) have prepared an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) evaluating the impacts associated with the extension of SR-241, as part of the South Orange County Transportation Infrastructure Improvement Program (SOCTIIP).

The first consideration of the potential need for a major transportation corridor to facilitate the efficient circulation of traffic was in the early 1970's in conjunction with land use planning in southeastern Orange County. This need was confirmed in 1976 with the Southeast Orange County Circulation Study and the 1979 Multimodal Transportation Study conducted by the Orange County Transportation Commission. The FTC was placed on the County of Orange Master Plan of Arterial Highways on August 26, 1981. As noted in Section 3, Project Description, of the Ranch Plan Draft Program EIR, SR-241 has been built from SR-91 to Oso Parkway. The roadway terminates at the northern Ranch Plan boundary. Currently, the MPAH, local General Plans, and regional planning documents, such as the Regional Transportation Plan, depict the southern extension of SR-241 traversing the project study area, extending into San Diego County and connecting with I-5 in the vicinity of Basiline Road. The graphics in the Draft Program EIR reflect this alignment for consistency with local and regional planning documents.

The SOCTIIP study assesses the transportation needs in south Orange County. The TCA and FHWA through the NEPA/Section 404 Integration Process have identified the purpose and need for circulation improvements in south Orange County in conjunction with the U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), U.S. Army Corps of Engineers (USACE), and the U.S. Environmental Protection Agency (U.S. EPA). These agencies also participated in the development of the alternatives to be evaluated as part of SOCTIIP.

Several of the alternatives include the extension of SR-241 through the Ranch Plan area. The selection of a SOCTIIP alternative is anticipated to occur by mid-2005. Should the TCA and FHWA select a SOCTIIP alternative that includes an alignment for the SR-241 extension that is different from what is depicted in the local General Plans, regional planning documents, and Ranch Plan Program EIR, the Ranch Plan project would be modified, as needed, to reflect the adopted alignment and additional environmental review would be conducted. The County of Orange, as a member of the joint powers agreement for the toll road, would be responsible for the preservation and acquisition through dedication of right-of-way for the SR-241 extension.

Because the construction of the toll road is not part of the Ranch Plan project and the Ranch Plan project is not dependent on the completion of the toll road, the Draft Program EIR does not

³ The Foothill/Eastern Transportation Corridor Agency is a joint powers authority composed of the County of Orange and the local cities within the area of benefit of the Foothill Transportation Corridor (FTC) and Eastern Transportation Corridor (ETC) to oversee the planning, design, and construction of the Foothill and Eastern Transportation Corridors. The member agencies are: the cities of Anaheim, Dana Point, Irvine, Lake Forest, Mission Viejo, Orange, Rancho Santa Margarita, San Clemente, San Juan Capistrano, Santa Ana, Tustin, Yorba Linda, and the County of Orange.

evaluate the impacts associated with the toll road to the same extent as the Ranch Plan project. However, Section 7 of this Draft Program EIR does take into consideration the potential environmental impacts of SR-241 as a part of the cumulative analysis. Similarly, the EIS/EIR prepared by the TCA and FHWA considers the Ranch Plan as a cumulative project.

Comments have also been raised about the cost of the toll roads on the local taxpayer. Though not part of the Ranch Plan project, it should be noted that the SR-73 and the SR-241 have been planned, designed and built using developer fees and toll revenue, not taxpayer money. The project would be required to pay fees for the Major Thoroughfare and Bridge Free Program for the Foothill/Eastern Transportation Corridor (Standard Condition 4.6-5).

3.1.7.4 Impacts to Interstate 5 (I-5)

Theme of Comments: Comments were made that the Ranch Plan Draft Program EIR did not use the correct criteria for assessing potential impacts to freeway mainline facilities and that measures should be imposed on the project to mitigate impacts.

Response: The Ranch Plan Program EIR traffic analysis defines significance criteria for impacts to I-5 based on Congestion Management Plan (CMP) criteria. The traffic report also contains a section in which project traffic shares on mainline freeway segments are calculated using the formula given in the Caltrans guidelines for traffic studies. Under the stated significance criteria, the project does not have significant project-specific impacts to the I-5 mainline. However, the Draft Program EIR does identify that the proposed project would contribute to cumulative impacts to the I-5 mainline.

With respect to Caltrans guidelines, an introductory statement to the traffic share section in the Caltrans guidelines notes that *"the methodology below is neither intended as nor does it establish a legal standard for determining equitable responsibility and cost of the projects' traffic impact."* In this regard, it should be noted that the mitigation program does include improvements and/or funding to various Caltrans facilities. Currently, Caltrans has no established mechanism to mitigate. However, the Draft Program EIR states: "Improvements to the I-5 mainline are a part of regional transportation programs with associated timing and funding sources. If the responsible agencies establish a cumulative mitigation program, the project applicant shall participate on a fair share basis." Please also refer to Topical Response 3.1.7.5, which addresses mitigation for the Ranch Plan project in further detail.

3.1.7.5 Traffic Mitigation Methodology

Theme of Comments: Several commenters suggested that the traffic impacts associated with the proposed Ranch Plan project will not be mitigated by the mitigation program set forth in the Program EIR.

Response: The impact analysis in the Ranch Plan Draft Program EIR traffic report follows the required CEQA procedures in which the stand-alone impacts of the project are first identified (existing conditions versus existing plus project conditions) and then cumulative projects are added to those existing plus project conditions. The cumulative setting in the Draft Program EIR is year 2025 which includes demographic data projections from the surrounding areas as described in the Draft Program EIR and the EIR traffic report.

The project impacts on the circulation system are determined by a set of performance criteria and thresholds of significance included in Section 4.6.1 of the Draft Program EIR and Section 1.0 of the Ranch Plan traffic study. These performance criteria and thresholds are consistent

Exhibit B

EXHIBIT

Exhibit B

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of this 16th day of August, 2005, by and between DMB SAN JUAN INVESTMENT NORTH, LLC, a Delaware limited liability company, RMV MIDDLE CHIQUITA, LLC, a California limited liability company, RMV RANCH HOUSE, LLC, a California limited liability company, RMV HEADQUARTERS, LLC, a California limited liability company, RMV SAN JUAN WATERSHED, LLC, a California limited liability company, RMV SAN MATEO WATERSHED, LLC, a California limited liability company, RMV BLIND CANYON, LLC, a California limited liability company, and RANCHO MISSION VIEJO, LLC, a Delaware limited liability company (collectively "RMV" and individually an "RMV Entity"), the COUNTY OF ORANGE, a political subdivision of the State of California (the "County"), and the ENDANGERED HABITATS LEAGUE, a California not-for-profit corporation, NATURAL RESOURCES DEFENSE COUNCIL, INC., a not-for-profit corporation organized under the laws of the State of New York, SEA AND SAGE AUDUBON SOCIETY, a California not-for-profit corporation and a chapter of The National Audubon Society, LAGUNA GREENBELT, INC., a California not-for-profit corporation, and SIERRA CLUB, a California not-for-profit corporation (collectively the "Resource Organizations" and individually a "Resource Entity"). The County and each of the RMV Entities and each of the Resource Entities are referred to collectively herein as the "Parties" and each individually as a "Party."

RECITALS

- A. RMV is the owner of approximately 22,815 acres of real property located in the unincorporated area of Orange County, California, commonly known as the "Rancho Mission Viejo" and referred to herein as the "Ranch Plan Area."
- B. In November, 2001, RMV, acting through its duly authorized agent and manager, submitted planning application PA01-114 to the County seeking a General Plan Amendment (GPA01-01), Zone Change (ZC01-02) and Development Agreement (DA04-01) for the Ranch Plan Area. The collective elements of PA01-114, commonly known as "The Ranch Plan," set forth a comprehensive land development and conservation plan for the Ranch Plan Area.
- C. The County prepared Program Environmental Impact Report No. 589 ("Program EIR No. 589") to address the environmental impacts of the Ranch Plan.
- D. Throughout the County's processing of the Ranch Plan, the Resource Organizations, individually and/or collectively, participated in the review process and expressed their concerns regarding the potential impacts the Ranch Plan could have on the environment, and particularly the impacts related to biological resources.
- E. At the conclusion of a public hearing on November 8, 2004, the Orange County Board of Supervisors: (i) adopted Resolution No. 04-290, certifying Program EIR No. 589 as complete, adequate and in full compliance with the requirements of CEQA and the State CEQA Guidelines; (ii) adopted Resolution No. 04-291, amending the Land Use Element, Transportation Element and Resources Element of the Orange County General Plan relative to the Ranch Plan Area; (iii) adopted Resolution No. 04-292 and Ordinance No. 04-014, rezoning the entire Ranch

and other public contexts in support of the Project, the Project Approvals, the Subsequent Project Approvals and any other matter relative to the entitlement, implementation and/or construction of the Project. Endangered Habitats League and Sea and Sage Audubon shall commit to support the Project, as modified by this Agreement, in the context of an approved NCCP.

(b) Specific Support. In addition to the comprehensive support described in Section 11.3(a), above, the Resource Organizations and their respective employees, officers, governing boards and committees covenant that they shall provide the following specific assistance:

(i) Support the extension of Avenida Pico (or similar roadway) from San Clemente to Planning Area 8 in a form that avoids or minimizes impacts to biological resources and is consistent with Wildlife/Resources Agency approvals and with the intended purpose of the roadway.

11.4 Future Challenges.

(a) Comprehensive Restrictions. The Resource Organizations and their respective employees, officers, governing boards and committees covenant not to take any action to challenge, administratively or judicially, RMV's actions in pursuing the development of the Project as permitted by the Project Approvals and Subsequent Project Approvals, all as modified by this Agreement. The Resource Organizations also covenant that neither they nor their respective employees, officers, governing boards or committees shall counsel others to challenge, administratively or judicially, RMV's actions in pursuing the development of the Project as permitted by the Project Approvals and the Subsequent Project Approvals, all as modified by this Agreement.

(b) Limitations. Nothing in this Section 11.4 shall preclude the Resource Organizations from the following:

(i) Submitting comments to the Wildlife/Resource Agencies on any proposed NCCP, SAMP or MSAA insofar as those agreements pertain to lands outside of the Project Boundary shown in Exhibit A ("Project Boundary").

(ii) Submitting comments to the Wildlife/Resource Agencies on any proposed NCCP, SAMP or MSAA insofar as those agreements pertain to the proposed Foothill South Toll Road extension ("Toll Road").

(iii) Challenging or otherwise opposing the Toll Road in any manner.

(iv) Challenging or otherwise opposing any project to be undertaken by a public agency on land to be condemned within the Project Boundary, including the reservoir identified in Section 4.7(b), but not including any infrastructure required for the Project as set forth in Section 1.6 above.

(v) Supporting, challenging, or otherwise opposing any decision by the Wildlife Agencies with respect to listing or de-listing any species as threatened or endangered, or designating or modifying the designation of critical habitat.

(vi) If the Resources Organizations take any action pursuant to subsections (i) through (v), inclusive, of this Section 11.4(b), the Resource Organizations shall not use such listing or critical habitat designation as a basis for modification of the Project and shall state that the Resource Organizations have agreed that the species listing and/or the designation of critical habitat does not create the need for any additional protection associated with the Project for species within the Project Boundary.

(vii) In any litigation relating to the Toll Road, the Resource Organizations shall:

(1) refrain from taking any action to make RMV a party to such action, unless a court of competent jurisdiction makes a determination that RMV is a necessary and indispensable party or otherwise requires RMV to be named as a party, provided however no Party makes any admission with respect to such determination.

(2) refrain from seeking any form of relief that would require modification of the Project;

(3) oppose any motion to join RMV as a party, whether made under Rule 19 of the Federal Rule of Civil Procedure, or otherwise;

(4) represent to the court, through competent evidence, that the Resource Organizations have agreed that species listing and/or the designation of critical habitat does not create the need for any additional protection associated with the Project for species within the Project Boundary; and

(5) release, covenant not to enforce, and oppose the enforcement of, any provision of any judgment or other order in such action that requires modification of the Project.

(c) Specific Restrictions. In addition to the comprehensive restrictions/covenants set forth in Section 11.4(a), above, the Resource Organizations and their respective employees, officers, governing boards and committees covenant not to engage in (or counsel others to engage in) the following specific conduct/activities:

(i) Administratively or judicially oppose any permits granted by the Wildlife/Resource Agencies relative to the PA 8 Development Area. Nothing in this Section shall preclude the Resource Organizations from submitting to the Wildlife/Resource Agencies comments on or objections to RMV's proposed configuration of the PA 8 Development Area in connection with the meet and confer sessions set forth in Section 4.3(a)(iii)(3) above.

(ii) Administratively or judicially oppose any development application that seeks, consistent with Section 3.3, to relocate and/or reallocate residential units,

residential uses, and non-residential square footage and uses among and between individual Planning Areas within Development Areas.

11.5 Sierra Club. Notwithstanding any other provision to the contrary, the obligations of Petitioner Sierra Club under this Section 11, and Section 12 below, shall be limited to the obligations set forth in this Section 11.5. The Sierra Club and its respective employees, officers, governing boards and committees covenant not to take any action to challenge, in a formal administrative or judicial proceeding, any of the following:

(a) RMV's actions in pursuing the development of the Project as permitted by the Project Approvals and Subsequent Project Approvals, all as modified by this Agreement. Nothing in this Section 11.5(a) shall preclude the Sierra Club from the following:

(i) Submitting comments to the Wildlife/Resource Agencies on any proposed NCCP, SAMP or MSAA insofar as those agreements pertain to lands outside of the Project Boundary.

(ii) Submitting comments to the Wildlife/Resource Agencies on any proposed NCCP, SAMP or MSAA insofar as those agreements pertain to the proposed Foothill South Toll Road extension ("Toll Road").

(iii) Challenging or otherwise opposing the Toll Road in any manner.

(iv) Challenging or otherwise opposing any project to be undertaken by a public agency on land to be condemned within the Project Boundary, including the reservoir identified in Section 4.7(b), but not including any infrastructure required for the Project as set forth in Section 1.6 above.

(v) Supporting, challenging, or otherwise opposing any decision by the Wildlife Agencies with respect to listing or de-listing any species as threatened or endangered, or designating or modifying the designation of critical habitat.

(vi) If the Sierra Club takes any action pursuant to subsections (i) through (v), inclusive, of this Section 11.5(a), the Sierra Club shall not use such listing or critical habitat designation as a basis for modification of the Project or for seeking any additional protection associated with the Project for species within the Project Boundary.

(b) The extension of Avenida Pico (or similar roadway) from San Clemente to Planning Area 8 in a form that avoids or minimizes impacts to biological resources consistent with Wildlife/Resources Agency approvals and with the intended purpose of the roadway.

(c) Any permits granted by the Wildlife/Resource Agencies relative to the PA 8 Development Area, provided that nothing in this Section 11.5 shall preclude the Sierra Club from submitting to the Wildlife/Resource Agencies comments on or objections to RMV's proposed configuration of the PA 8 Development Area in connection with the meet and confer sessions set forth in Section 4.3(a)(iii)(3), above.

(d) Any development application that seeks, consistent with Section 3.3, to relocate and/or reallocate residential units, residential uses, and non-residential square footage and uses among and between individual Planning Areas within Development Areas.

11.6 Limitations. Nothing in this Section 11 shall preclude Resource Organizations from opposing or challenging any action of RMV that is inconsistent with the Project Approvals, Subsequent Approvals, or this Agreement.

12. ASSISTANCE IN ACHIEVING GLOBAL ACCEPTANCE OF RESOLUTION. The Parties shall work cooperatively and use their best efforts to obtain global acceptance of the terms, provisions and conditions of this Agreement by the Center for Biological Diversity, the California Native Plant Society, the Surfrider Foundation, and the Friends of Harbors, Beaches and Parks.

13. NO ACQUISITION FUNDING. The Parties acknowledge that no acquisition funding is necessary or otherwise required precedent to the Parties' execution and performance of the terms and provisions of this Agreement. Notwithstanding this acknowledgement, RMV shall have the right, and not the obligation, to seek funding from other public and private sources in connection with development of the Ranch Plan Area.

14. REMEDIES.

14.1 Available Remedies In The Event Of Breach.

(a) The Parties agree that, in the event of a breach under this Agreement, and following exhaustion of the process set forth in Section 14.2 below, the sole and exclusive remedies available to the other Parties shall be: (i) to enforce, by specific performance, the obligations hereunder of the breaching party; or, (ii) obtain an appropriate injunction to ensure compliance with the terms of this Agreement; or, (iii) to exercise any other rights or remedies specifically set forth herein. No Party shall be required or compelled to take any action, or refrain from taking any action, other than those actions required by this Agreement.

(b) The Parties agree, that in the event of a breach by the Resource Organizations, or any one of them, of the provisions of Section 11.4(a) or Section 11.5(a) of this Agreement, the Resource Organization(s) shall provide an official letter disavowing any action taken by the Resource Organization(s) or a member of the Resource Organization(s) which is prohibited by Section 11.4 and shall provide said letter to RMV and the County.

(c) The Parties agree, that in the event of a breach by the Resource Organizations, or any one of them, of the provisions of Section 11.4(b) of this Agreement, RMV shall have the right to submit this form of letter to the appropriate agency in the form attached hereto as Exhibit K.

(d) The Parties agree, that if the Sierra Club takes any action pursuant to subsections (i) through (v), inclusive, of Section 11.5(a), and does not affirmatively state that the Sierra Club has agreed that the species listing and/or the designation of critical habitat does not create the need for any additional protection associated with the Project for species within the

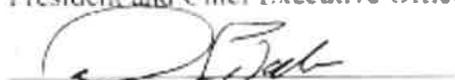
IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the date first set forth above.

"RMV"

DMB SAN JUAN INVESTMENT NORTH, LLC,
a Delaware limited liability company

By: **Rancho Mission Viejo, LLC,**
a Delaware limited liability company,
as authorized agent and manager

By: 
Anthony R. Moiso
President and Chief Executive Officer

By: 
Donald L. Vodra
Chief Operating Officer

RMV MIDDLE CHIQUITA, LLC,
a California limited liability company

By: **Rancho Mission Viejo, LLC,**
a Delaware limited liability company,
as authorized agent and manager

By: 
Anthony R. Moiso
President and Chief Executive Officer

By: 
Donald L. Vodra
Chief Operating Officer

RMV RANCH HOUSE, LLC,
a California limited liability company

By: Rancho Mission Viejo, LLC,
a Delaware limited liability company,
as authorized agent and manager

By: 
Anthony R. Moiso
President and Chief Executive Officer

By: 
Donald L. Vodra
Chief Operating Officer

RMV HEADQUARTERS, LLC,
a California limited liability company

By: Rancho Mission Viejo, LLC,
a Delaware limited liability company,
as authorized agent and manager

By: 
Anthony R. Moiso
President and Chief Executive Officer

By: 
Donald L. Vodra
Chief Operating Officer

RMV SAN JUAN WATERSHED, L.L.C.
a California limited liability company

By: Rancho Mission Viejo, LLC,
a Delaware limited liability company,
as authorized agent and manager

By: 
Anthony R. Moiso
President and Chief Executive Officer

By: 
Donald L. Vodra
Chief Operating Officer

RMV SAN MATEO WATERSHED, L.L.C.
a California limited liability company

By: Rancho Mission Viejo, LLC,
a Delaware limited liability company,
as authorized agent and manager

By: 
Anthony R. Moiso
President and Chief Executive Officer

By: 
Donald L. Vodra
Chief Operating Officer

RMV BLIND CANYON, LLC,
a California limited liability company

By: Rancho Mission Viejo, L.L.C.,
a Delaware limited liability company,
as authorized agent and manager

By: 
Anthony R. Moiso
President and Chief Executive Officer

By: 
Donald L. Vodra
Chief Operating Officer

RANCHO MISSION VIEJO, LLC,
a Delaware limited liability company

By: 
Anthony R. Moiso
President and Chief Executive Officer

By: 
Donald L. Vodra
Chief Operating Officer

Approved as to Form
Morgan, Lewis & Bockius LLP

By: 
Rollin B. Chippey II

"County"

**COUNTY OF ORANGE,
a political subdivision of the State of California**

By: Orange County Board of Supervisors

**By: Office of the County Counsel, County of Orange
Its: Authorized Agent and Delegate**

By: Benjamin P. de Mayo, County Counsel

By:



**Jack W. Golden
Supervising Deputy**

Exhibit C

EXHIBIT

Exhibit C

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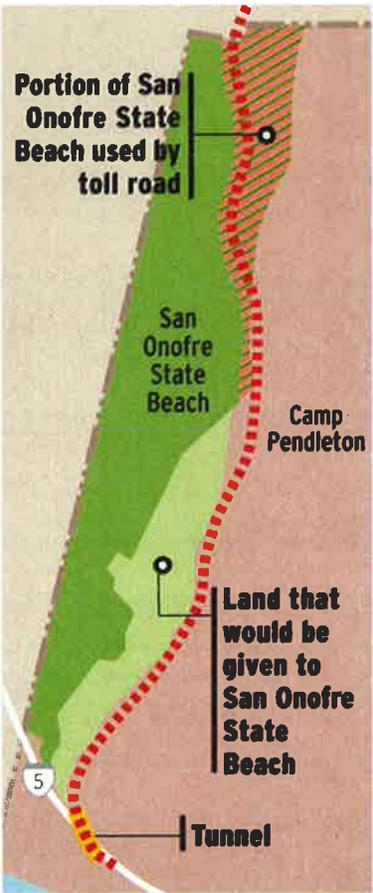
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Navy: No toll road through Camp Pendleton

February 26th, 2010, 5:25 pm · 62 Comments · posted by Pat Brennan, science, environment editor

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A possible new route for the Foothill South toll road through part of Camp Pendleton has been rejected by the Navy, sending Orange County's tollway agency back to the drawing board to try to complete its toll road network.



The Register

The Foothill/Eastern Transportation Corridor Agency began working on the new proposed route after state and federal officials rejected its previous proposal in 2008. That road would have cut through San Onofre State Park, igniting fierce opposition from State Parks officials and conservationists.

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Monday, Feb 25, 7:00 pm
 Glen A. Wilson High School, Hacienda Heights

25 Mon	26 Tue	27 Wed	28 Thu	1 Fri	2 Sat	3 Sun	All events
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The new proposal gets around that problem in a novel way: by changing the boundaries of the park itself. The new road would shift the northeastern park boundary to the west to make room for the toll road, then add acreage to the park's southern section — overall, a net gain of about 14 acres for the park, which is leased to the state by the Navy.

"The lease has been modified numerous times," said the toll road agency's engineering manager, Paul Bopp, including in 1977 and 1985. "Ultimately, that's how we get out of the state park."

On Friday, however, the tollway agency released a copy of a Feb. 22 letter from Navy Secretary Ray Mabus to Sen. Dianne Feinstein, D-Calif., rejecting the plan.

"Based upon the thorough review and the fact that Camp Pendleton training is already constrained by environmental and other restrictions, I have determined that the proposed new TCA route would unacceptably impact the Marine Corps' ability to train and prepare for all contingency operations," Mabus wrote.

The affected land, known as the Sierra Training Area, is used for improvised explosive device training, field operations and land navigation, he wrote; future uses could include training with heavy equipment and convoy operations.

Tollway agency officials said Friday they view the letter as an opening to discussions with the military about a possible Pendleton route, not a final rejection.

"It was designed as a talking point, a concept," agency chairman Peter Herzog said of the new proposal. "Quite frankly this letter provides us with what we've been asking for. Now we look forward to getting the engineers down to work to look into those issues."

He said the tollway agency would continue talking to the military and try to modify the proposal to meet their concerns. Other possible routes that don't go through Camp Pendleton might also one day be considered, he said.

The tollway agency's plan includes construction of a wall along the route as it passes through Pendleton, so that Marines could train on the site without being visible to motorists.

It is one of a series of intricate modifications to the road devised by toll road engineers to overcome the objections of a variety of groups.

Shifting the park boundaries, for example, is meant to eliminate objections to cutting through a state park. The engineers also propose linking to I-5 via tunnel to give the freeway connection a low profile, eliminating worries that an unsightly ramp might be visible from nearby beaches.

To forestall complaints about intrusion on the view from the San Onofre State Beach park campground, the engineers proposed changes they say might enhance the camping experience.

First, the 358-acre section added to the southern part of the park would include an area that is now off-limits to park visitors. Instead, they could hike through the area, a dry creek bed and former farmland.

And a berm along the toll road topped with native trees and other vegetation would screen the tollway from view by campers. Because of the trees, and because the proposed route was on the far side of the creek bed, it also would likely be inaudible from the campground, Bopp said.

"The trees on the roadway embankment would take care of the noise and the visual impact," he said. "The agency even proposes placing power lines underground in the Pendleton training area to remove large transmission towers, improving the site's safety and increasing acreage for training."

The new route still has a few difficulties as it cuts through wildland farther inland to connect to the existing 241 toll road, which ends at Oso Parkway. The agency's suggested route would still cut through the Donna O'Neill Land Conservancy, likely rousing objections from habitat conservation groups.

The route also would pass close to sensitive breeding habitat for the endangered arroyo toad, though Bopp said the proposed route is far enough away to avoid disrupting the toad's territory.

The original route for the Foothill South toll road was killed by the State Coastal Commission in February 2008 after throngs of protesters made their objections known at a commission meeting in Del Mar.

The opposition was led in large part by the Surfrider Foundation. Their studies suggested construction of the road could wash sediment downstream, possibly harming surfing conditions at the famed Trestles beach, although the tollway agency's own studies showed the opposite: no effect whatever on Trestles. The agency appealed the Coastal Commission's decision to the U.S. Commerce secretary, who declined to overrule the commission's decision in December 2008.

Since then, tollway officials have held some 125 meetings with community groups about creating an alternate route, including environmental activists and other opponents.

The tollway agency says Foothill South is needed to avoid future traffic congestion along I-5 in south Orange County.

"We still have a traffic problem in Orange County," Bopp said. "The Secretary of Commerce decision has not made that go away."

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