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Refer To File #: 060182-0162

March 29, 2013

Mr. Darren Bradford  
California Regional Water Quality Control Board,  
San Diego Region  
9174 Sky Park Court, Suite 100  
San Diego, CA 92123-4353

Re: Foothill/Eastern Transportation Corridor Agency, Tesoro Extension (SR 241)  
Project, Orange County; Response to Questions for Written Response on  
Tentative Order No. R9-2013-0007

Dear Mr. Bradford

This letter provides the response of the Foothill/Eastern Transportation Corridor Agency ("F/ETCA") to the California Regional Water Quality Control Board, San Diego Region ("Water Board") Questions for Written Response on Tentative Order No. R9-2013-0007 dated March 15, 2013.

**1. HOW DOES TCA DEFINE THE PROJECT FOR WHICH THE SAN DIEGO WATER BOARD IS BEING ASKED TO ISSUE WASTE DISCHARGE REQUIREMENTS? IS THAT DEFINITION OF THE PROJECT THE SAME FOR PURPOSES OF CEQA EVALUATION?**

**A. Answer.**

F/ETCA defines the project for which the San Diego Water Board ("Water Board") is being asked to issue waste discharge requirements as the modification of the South Orange County Transportation Infrastructure Improvement Project ("SOCTIIP") to construct and operate a 5.5 mile extension of the existing State Route (SR) 241 and is referred to herein as the "Tesoro Extension". The Tesoro Extension extends existing SR 241 for 5.5 miles from Oso Parkway to Cow Camp Road in the vicinity of Ortega Highway (SR 74). The above definition is also the definition of the Project for the purposes of the California Environmental Quality Act ("CEQA"). Other details regarding the Tesoro Extension are included in the Addendum approved by the F/ETCA and previously provided to the Water Board.

For the convenience of the Water Board, the location of the Tesoro Extension is shown in Figure 1 on the following page (from information previously provided to the Water Board).

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not to scale  
1016192.JN 1/7/04 10790 MAG

Project Area  
Approved RMV  
Development Area

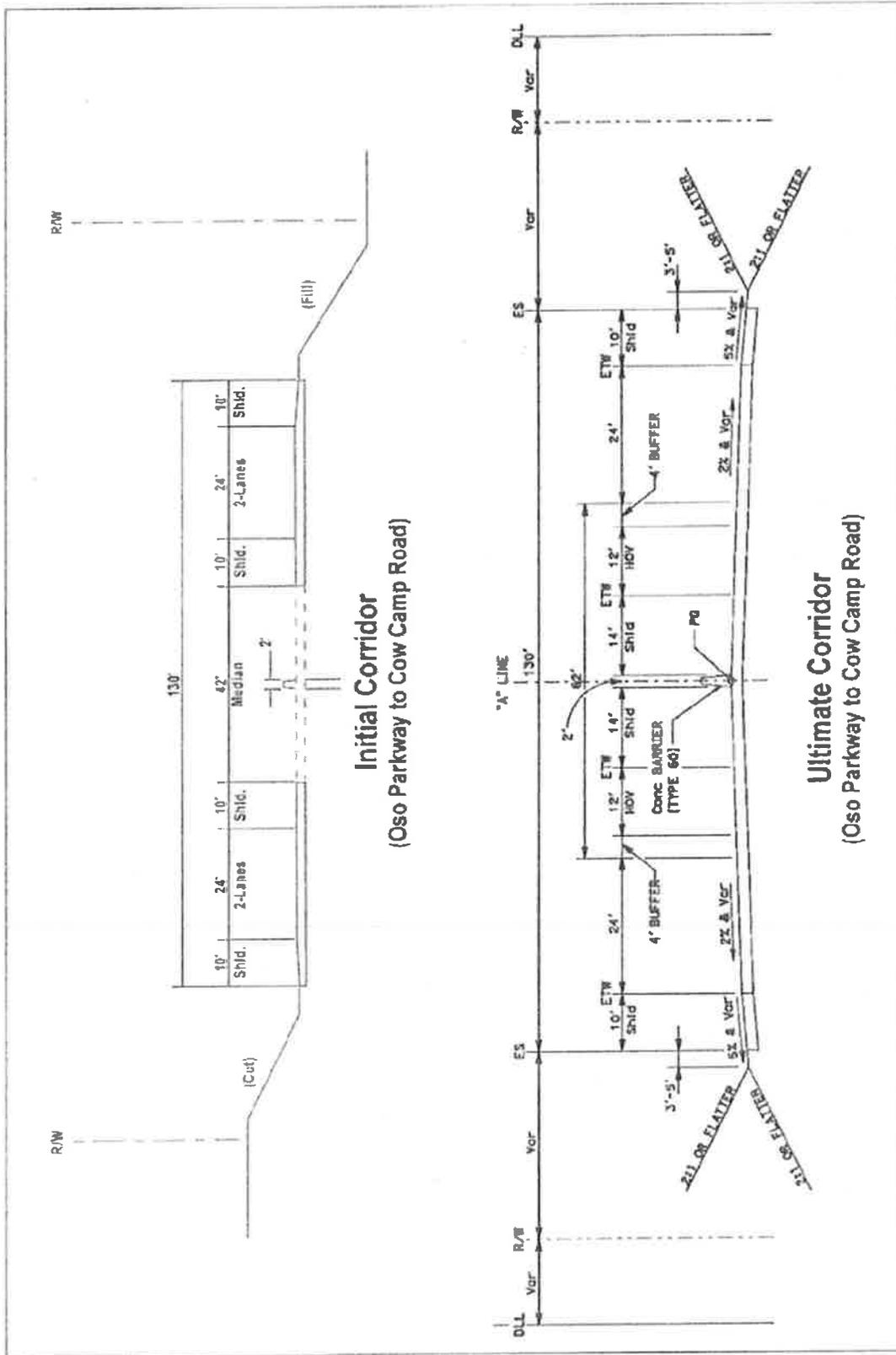
TESORO EXTENSION PROJECT  
**Site Vicinity Map**

Figure 1

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The Tesoro Extension includes four general-purpose travel lanes, two in each direction. The travel lanes will be twelve feet wide. The initial corridor will have a 130 foot width, including shoulders, climbing lanes and a 42 foot median as shown in the typical cross-section in Figure 2 on the following page.

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TESORO EXTENSION PROJECT  
**Typical Cross-Section**

Figure 2

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The center median offers opportunities for future bus rapid transit, light rail, or additional lanes as traffic conditions warrant. SR 241 is a State Highway Route and is part of the State Highway System. The Project will be owned and operated by the California Department of Transportation upon opening of the roadway to traffic. The toll collection facilities will be operated by the F/ETCA. Further details of the Tesoro Extension were provided in TCA's application to the Water Board submitted August 10, 2012, and in the California Environmental Quality Act ("CEQA") Addendum, provided to the Water Board on February 15, 2013.

## **B. Discussion.**

### **1. Overview of CEQA Documents.**

The Tesoro Extension is substantially the same as alignments previously evaluated between Oso Parkway and Ortega Highway in prior environmental documents. Four CEQA documents have been prepared evaluating the extension of SR 241:

- 1981 – Environmental Impact Report 123. EIR 123 analyzed establishment of a transportation corridor at a programmatic level in the southeast portion of Orange County. The County of Orange certified EIR 123 and added the Foothill Transportation Corridor (now designated as SR 241) to the County Master Plan of Arterial Highways.
- 1991 – TCA EIR No. 3 analyzed alignment alternatives for extensions of SR 241.
- 2006 – The South Orange County Transportation Infrastructure Improvement Project ("SOCTIIP") Final Subsequent Environmental Impact Report ("FSEIR") described and analyzed extensions of SR 241 of varying lengths and connections, along with non-corridor alternatives such as widening the I-5 freeway.
- 2013 – The Addendum to the 2006 FSEIR evaluates the Tesoro Extension's modifications to the SOCTIIP and whether the modifications proposed by the Tesoro Extension require the preparation of a subsequent or supplemental EIR. The Addendum concludes that the Tesoro Extension will **not** have any new significant impacts, or more severe significant impacts, that were not addressed in the 2006 SOCTIIP FSEIR and thus CEQA prohibits the F/ETCA and the Water Board from requiring the preparation of a subsequent or supplemental EIR.<sup>1</sup>

The Tesoro Extension is also addressed in other CEQA/National Environmental Policy Act (NEPA) documents, including the Southern Subregion HCP EIR/EIS certified by the County of Orange and approved by the U.S. Fish and Wildlife Service, and the Special Area

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<sup>1</sup> Pub. Resources Code, § 21166; Cal. Code Regs., tit. 14, § 15162 (hereinafter "Guidelines"). Unless otherwise noted, subsequent statutory citations are to the Public Resources Code § 21000 et seq.

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Management Plan Environmental Impact Statement approved by the U.S. Army Corps of Engineers<sup>2</sup>

## **2. Tesoro Extension Objectives and Purpose and Need.**

In the FSEIR for the SOCTIIP, the Project was described broadly to encompass a variety of transportation infrastructure improvements, including multiple variations that extended SR 241. The SOCTIIP Purpose and Need, which was adopted by the U.S. Army Corps of Engineers, the Environmental Protection Agency, the U.S. Fish and Wildlife Service and the Federal Highway Administration, 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.”<sup>3</sup>

The SOCTIIP alternatives evaluation process included alternatives that would extend SR 241 for varying distances and to varying termination points. Six of the alternatives did not extend to the I-5. These alternatives included variations with three terminating at Ortega Highway and three terminating in the vicinity of Avenida Pico in San Clemente.<sup>4</sup>

The alternatives evaluated in the SOCTIIP FSEIR included constructing the SOCTIIP in the configuration and substantially within the same alignment of the Tesoro Extension as well as other extensions of the SR 241 south of Ortega Highway.

The Addendum to the SOCTIIP FSEIR was submitted to the Water Board on February 15, 2013. The Addendum evaluates the changes to SOCTIIP proposed in the Tesoro Extension, and also evaluated the cumulative impacts of the potential future extension of the SR 241 to the I-5.<sup>5</sup>

## **3. The Tesoro Extension is a Modification of the SOCTIIP. Thus, Section 21166 and Guidelines Sections 15050(c) and 15062 Govern the Water Board’s Consideration of the CEQA Issue.**

The Tesoro Extension is a modification of the SOCTIIP described in the 2006 FSEIR. Therefore, section 21166 and Guidelines sections 15050(c) and 15162 govern the Water Board’s review of the Tesoro Extension under CEQA. Guidelines section 15050(c) provides that the determination of the lead agency whether to prepare an EIR “shall be final and conclusive.” Indeed, counsel to the project opponents conceded that CEQA section 21166 and Guidelines section 15050(c) governs in this circumstance.<sup>6</sup>

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<sup>2</sup> See Addendum to the SOCTIIP Final SEIR, Tesoro Extension Project (2003) pp. 1-1 - 1-5 (hereinafter “Addendum”). In these answers, we focus on the 2013 Addendum and the 2006 SOCTIIP FSEIR.

<sup>3</sup> SOCTIIP FSEIR, Section 1.5.2, pp. 1-16.

<sup>4</sup> See SOCTIIP FSEIR, Table 1.7-1, p. 1-23; Table 1.7-2, p. 1-24.

<sup>5</sup> See TCAs’ February 20, 2013 letter to the Water Board which summarizes the manner in which cumulative impacts have been addressed.

<sup>6</sup> Letter from Shute, Milhaly & Weinberger to Water Board dated February 25, 2013.

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Section 21166 and a long line of cases interpreting this section make it clear that responsible agencies are **prohibited** from requiring the preparation of a supplemental or subsequent EIR unless the responsible agency finds that the changes to the project or changed circumstances will result in significant new environmental effects or an increase in the severity of significant effects identified in the EIR.<sup>7</sup> Changes to a project or changes in circumstances are not sufficient to allow an agency to require a subsequent or supplemental EIR unless the changes also cause significant new impacts or a substantially more severe significant impact.<sup>8</sup>

In *Melom v. City of Madera* (2012) 183 Cal.App.4th 41, a site plan for a shopping center was changed to reduce some retail spaces so the largest retail space could be increased to allow a supercenter store.<sup>9</sup> The Court of Appeal upheld the City of Madera's use of an Addendum to document the finding that there were no new significant environmental effects.<sup>10</sup> In *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, a new use permit was requested for changes to a medical research and laboratory complex, including changes in size, building pattern, water supply requirements and adjacent uses (a wilderness park had been expanded since the original EIR, and by the time the new use permit was sought, the wilderness park surrounded the research and laboratory complex).<sup>11</sup> The Court of Appeal upheld the County's finding that none of the changes required major revisions in the original EIR.<sup>12</sup>

Even substantial modifications to a project are not sufficient to authorize an agency to require a subsequent or supplemental EIR where the lead agency previously certified an EIR and then evaluated the project modifications in an addendum.<sup>13</sup> In *Mani Brothers Real Estate Group, supra*, 153 Cal.App.4th at pages 1398-1403, the court held that substantial evidence supported the agency's determination that changes to a project were considered *modifications* to a project and did not constitute a new project. The agency had approved an office/hotel/retail project with 2.7 million square feet in five buildings.<sup>14</sup> The original project was delayed after the 1989 EIR, and the applicant requested a change to residential development in

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<sup>7</sup> See, e.g., *Bowman v City of Petaluma* (1986) 185 Cal.App.3d 1065; *Fund for Env'tl Defense v County of Orange* (1988) 204 Cal.App.3d 1538; *San Diego Navy Broadway Complex Coalition v City of San Diego* (2010) 185 Cal.App.4th 924; *Melom v. City of Madera* (2010) 183 Cal.App.4th 41; *Moss v. County of Humboldt* (2008) 162 Cal.App.4th 1041; *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91; *River Valley Preservation Project v. Metropolitan Transit Dev. Bd.* (1995) 37 Cal.App.4th 154; *County of Santa Clara v. Redev. Agency* (1993) 18 Cal.App.4th 1008; *Temecula Band of Luiseño Mission Indians v Rancho Cal. Water Dist.* (1996) 43 Cal.App.4th 425; *Snarled Traffic Obstructs Progress v. City & County of San Francisco* (1999) 74 Cal.App.4th 793; see also 2 Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar. 2012) §§ 19.2, 19.42.

<sup>8</sup> See 2 Kosta & Zischke, Practice Under the California Environmental Quality Act (Cont.Ed.Bar. 2012) § 19.2 and cases cited therein.

<sup>9</sup> *City of Madera, supra*, 183 Cal.App.4th at p. 44.

<sup>10</sup> *Id.* at pp. 47-51.

<sup>11</sup> *Fund for Environmental Defense, supra*, 204 Cal.App.3d at pp. 1542-1543.

<sup>12</sup> *Id.* at pp. 1552-1553.

<sup>13</sup> See, e.g., *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385.

<sup>14</sup> *Id.* at p. 1389.

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2004.<sup>15</sup> The agency prepared an Addendum to the EIR to address the change in use, finding that even though the square footage would increase to over 3.2 million square feet, the impacts would be reduced because the lower traffic generation rates for residential use would cause fewer impacts.<sup>16</sup>

The Court emphasized that CEQA focuses solely on “the potential environmental impacts of a project” and, in particular, “where there is a previously certified EIR, changes in the size, ownership, nature, character, etc., of a project are of no consequence in and of themselves. Such factors are meaningful *only* to the extent they affect the environmental impacts of a project.”<sup>17</sup>

The Court noted that *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, did not compel a different result because:

*Save Our Neighborhood*, however, involved an addendum to a previously certified negative declaration and not, as here, an addendum to a previously certified EIR. That is significant because an addendum is only appropriate to a previously certified negative declaration where “minor technical changes or additions are necessary” (Guidelines, § 15164, subd. (b)) and, as noted before and contrary to the contention of Mani Brothers, this limitation does not apply where the addendum is to a previously certified EIR. (Guidelines, § 15164, subd. (a).) Because in the present case the 2005 Addendum was to the FEIR previously certified for the project, not a previously certified negative declaration, *Save Our Neighborhood* is distinguishable and inapplicable.<sup>18</sup>

The relevant facts regarding the Tesoro Extension are indistinguishable from those of *Mani Brothers Real Estate Group, supra*, 153 Cal.App.4th 1385. The F/ETCA certified the FSEIR for the SOCTIIP followed by the Addendum evaluating the modifications to the SOCTIIP. The Addendum to the FSEIR demonstrates that not only will the Tesoro Extension **not** have any new significant impacts, it will reduce the impacts of the Preferred Alternative evaluated in the FSEIR between Oso Parkway and Cow Camp Road. The Tesoro Extension alignment is substantially the same as alignments previously evaluated between Oso Parkway and Ortega Highway. Compared to the Preferred Alternative evaluated in the SOCTIIP FSEIR, the Tesoro Extension changes the prior folded diamond interchange at Cow Camp Road to a simpler T-intersection configuration and includes some shifts to minimize impacts to surface waters and avoid an existing reservoir used for Rancho Mission Viejo (RMV) ranch operations. The Tesoro Extension avoids impacts to Corps of Engineers jurisdictional wetlands and limits permanent impacts to waters of the state to 0.40 acre (four tenths of an acre).

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<sup>15</sup> *Id.* at p. 1391.

<sup>16</sup> *Ibid.*

<sup>17</sup> *Id.* at p. 1401.

<sup>18</sup> *Mani Brothers Real Estate Group, supra*, 153 Cal.App.4th at p. 1400.

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The Addendum determined that the changes to the Tesoro Extension would not result in significant individual or cumulative effects not discussed in the SOCTIIP FSEIR. In addition, impacts associated with the Tesoro Extension would not be more severe, new, or more severe in comparison to the analysis of the Preferred Alternative between Oso Parkway and Cow Camp Road in the SOCTIIP FSEIR.<sup>19</sup>

In addition, the Tesoro Extension modifications do not change any of the options studied for further extension of the SR 241 south of Ortega Highway. F/ETCA may in the future implement other extensions, and other agencies may implement other non-corridor transportation improvements as evaluated in the SOCTIIP FSEIR.

These facts demonstrate that the Tesoro Extension is a modification of the SOCTIIP. The majority of refinements made to the SOCTIIP alignment were made to reduce environmental impacts, consistent with the goals of CEQA. The Tesoro Extension disturbance limits are almost entirely within disturbance limits analyzed in the FSEIR as shown in Attachment A. The only areas that vary slightly from the previously evaluated footprint are: (1) the potential alignment shift to the east to avoid the RMV stock pond which is being made at the request of the landowner, and (2) at the southern end of the Tesoro Extension (around G Street), the alignment is proposed to shift slightly to the west, but this shift occurs entirely within the Ranch Plan PA 2, which is approved for development. The Addendum determined no significant impacts would result from either of these revisions.

The magnitude of the Tesoro Extension modifications to the SOCTIIP footprint are much less than the type of modifications cited by the court in *Mani Brothers Real Estate Group, supra*, 153 Cal.App.4th 1385, for which “courts have upheld the use of addenda and not required preparation of an SEIR,” including projects where “the project’s appearance had changed fairly dramatically, . . . number of buildings increased, [or the] raising the elevation of a segment of a berm by a factor of two to three times the original height.”<sup>20</sup>

The fact that it is not presently known whether or where an additional extension of the SR 241 south of Cow Camp Road might be implemented does not convert the Tesoro Extension into a new project under CEQA. The courts have established the focus of modifications to a project on the impacts of that modification, and the Tesoro Extension will not result in any new significant or substantially more severe impacts as a result of terminating at Cow Camp Road.

In their prior submissions to the Water Board the project opponents cited two cases where the courts held that the evidence indicated that the changes to the previously approved project **would** create new significant effects **not analyzed in the prior EIR**. In one case, the project was changed from a shopping center to a super-center including a Walmart.<sup>21</sup> The evidence indicated that the change from a traditional shopping center to a super-center with a Walmart would cause significant traffic and other impacts not evaluated in the prior EIR.<sup>22</sup> In

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<sup>19</sup> See Addendum, Section 3.0, 3-1; see also *id.*, pp. 1-8 – 1-9 and 3-23 (specific findings).

<sup>20</sup> *Mani Brothers Real Estate Group, supra*, 153 Cal.App.4th at p. 1399.

<sup>21</sup> *American Canyon Community United v. City of American Canyon* (2006) 145 Cal.App.4th 1062.

<sup>22</sup> *Id.* at p. 1078.

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contrast, the evidence before the Water Board here (the Addendum) documents that the Tesoro Extension Project will not result in a new significant effect or an increase in the severity of any significant effect identified in the FSER. Indeed, the Addendum documents that the Tesoro Extension Project will reduce the impacts identified in the FSEIR.

In the other case<sup>23</sup> cited by the project opponents, section 21166 and Guidelines section 15050 did not even apply. The court **was not** considering a change to a project evaluated in a prior EIR. Rather, the court determined that the EIR for the project violated CEQA on several grounds.<sup>24</sup>

The project opponents' attempted distinction of *Santa Teresa City Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689 also fails. *Santa Teresa*, like the other section 21166 cases cited by the F/ETCA, stands for the proposition that CEQA does not require an agency to prepare additional CEQA documentation even in circumstances where the agency makes substantial changes to the project – unless the **changes** to the project will result in significant new environmental effects. Nothing in *Santa Teresa* suggests that section 21166 does not apply where the agency elects to proceed with only a portion of a project evaluated in the prior EIR.

#### 4. The Water Board is Required to Assume that the FSEIR Complies with CEQA.

The project opponents have claimed that the Water Board may not rely on the FSEIR as the CEQA document for the Tesoro Extension. The opponents' claim is contrary to the express requirement of CEQA section 21167.3 that requires the Water Board to assume that the FSEIR complies with CEQA.

Section 21167.3 of CEQA states:

If an action or proceeding alleging that an [EIR] . . . does not comply with [CEQA] is commenced . . . ***pending final determination of the issue of such compliance, responsible agencies shall assume that the EIR . . . does comply with [CEQA] . . .***<sup>25</sup>

On March 23, 2006, the project opponents filed a petition for writ of mandate ("Petition") in the Superior Court of San Diego County challenging the certification of the FSEIR and other actions by the F/ETCA with regard to the extension of SR-241. Among other allegations, the Petition alleged that the FSEIR did not comply with CEQA.<sup>26</sup> The petitioners in the lawsuit

<sup>23</sup> *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70.

<sup>24</sup> *Id.* at pp. 75-79.

<sup>25</sup> Pub. Resources Code, § 21167.3, emphasis added; Guidelines, § 15233 ("If a lawsuit is filed challenging an EIR . . . for noncompliance with CEQA, responsible agencies shall act as if the EIR . . . complies with CEQA and continue to process the application for the project according to the time limits for responsible agency action [in the Permit Streamlining Act]").

<sup>26</sup> *California State Parks Foundation et. al. v. Foothill/Eastern Transportation Corridor Agency*, Petition for Writ of Mandate, (San Diego Superior Court Nos. GIN051194 and GIN0513721.)

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subsequently elected to enter into a settlement with the F/ETCA. Pursuant to the settlement, the parties agreed to stay the lawsuit pursuant to the Superior Court Rules and to dismiss the lawsuit without prejudice.

On January 12, 2011 the Superior Court of San Diego County entered the "Stipulated Order Approving Interim Settlement with Tolling Agreement ("Interim Settlement ") and Dismissal Without Prejudice, and Retaining the Court's Jurisdiction to Set Aside Dismissal and Enforce Interim Settlement."<sup>27</sup> As provided in the Interim Settlement, the Court's Order effectuated a stay of the lawsuit. The Order provided that the "stay shall terminate and no longer be in effect upon the written request filed in Court by any Petitioner in either of the consolidated proceedings to set aside the dismissal and reinstate the proceedings."

As the Court of Appeal held in *City of Redding v. Shasta County Local Agency Formation Commission*, (1989) 209 Cal.App.3d 1169, the Legislature enacted section 21167.3 in order to avoid the kind of collateral attack on the validity of the FSEIR advanced here by the project opponents:

The evident intent of section 21167.3 is to expedite CEQA review where a lawsuit contesting CEQA documentation is pending by designating **one forum** for resolution of claims of unlawful documentation [*i.e.*, a negative declaration or EIR] and by requiring project review to proceed while the claims are resolved.  
***That forum is the court.***<sup>28</sup>

The Court of Appeal recognized the intent of the Legislature to preclude a collateral attack on the validity of CEQA documentation (whether it is a negative declaration or an EIR) in two forums. Having filed the lawsuit challenging the FSEIR, and having agreed to stay the litigation, the project opponents are now foreclosed from attacking the adequacy of the FSEIR before the Water Board.

Just as section 21167.3 barred the City of Redding from adjudicating the validity of the lead agency's negative declaration and from assuming the role of lead agency to prepare a subsequent or supplemental EIR, it also bars the Water Board from re-litigating the validity of the Final SEIR or assuming the lead agency role.<sup>29</sup>

Thus, in light of the Legislature's clear mandate in CEQA section 21167.3 and controlling case law, the Regional Board must assume the FSEIR complies with CEQA with regard to the Water Board's approval of the WDR.

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<sup>27</sup> We previously provided to the Water Board a copy of the Interim Settlement and the Stipulated Order regarding the Settlement Agreement.

<sup>28</sup> *City of Redding, supra*, 209 Cal.App.3d at p. 1181, first emphasis in the original, second emphasis added.

<sup>29</sup> See the discussion of CEQA lead agency requirements in the response to Question No. 3 below.

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## 5. Phased Project Implementation is Common and Accepted CEQA Practice.

There is nothing unprecedented or unusual for a transportation agency to complete a CEQA analysis for a segment of a larger project while the precise location and design of subsequent segments has not yet been determined. The following are just a few of the many examples where agencies have analyzed a larger transportation project, and then decided to proceed with the construction of a phase or portion of the larger project before determining the alignment of future phases of the project.

Consider, for example, the California High-Speed Rail Project. The larger project is described as extending from San Francisco and Sacramento through Los Angeles and into San Diego. This project is being analyzed in a number of different environmental documents covering different segments of the project. Of particular interest here is the Merced to Fresno section. Along the Merced to Fresno section, there will be a triangular junction (also called a "wye") where the set of train guideways traveling east-west from San Francisco will branch off into two sets of train guideways, one set heading north to Modesto and the other heading south to Fresno. While the wye is to be located somewhere along the Merced to Fresno section of the project, the California High-Speed Rail Authority (Authority) certified an EIR/EIS for the Merced to Fresno section without determining its location.<sup>30</sup>

Even though the original project was proposed in segments, the wye issue was originally planned to be resolved within the Merced to Fresno section. But, once it realized that resolving the wye location would delay the remainder of the segment, the Authority determined it could properly postpone analysis of the wye to another segment's environmental document. The Authority deferred analysis of the wye and its location to a future environmental document related to a future separate project.<sup>31</sup>

Another example is provided by the Mid-City/Exposition Transit Corridor Light Rail Transit project (Expo line) in Los Angeles. The Los Angeles County Metropolitan Transportation Authority (Metro) undertook CEQA analysis for this project in two distinct segments. In its draft EIR/EIS, Metro considered a light rail transit system operating between downtown Los Angeles and Santa Monica.<sup>32</sup> Because there was controversy regarding the selection of a project alternative west of Culver City, Metro elected to approve a light rail transit project extending from downtown Los Angeles to Culver City and to defer adoption of an alternative from Culver City to Santa Monica pending completion of additional CEQA studies. The Federal Transit Administration, in its Record of Decision issued in 2006, identified the Los

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<sup>30</sup> See Cal. High-Speed Rail Auth. *et al.*, Final California High-Speed Train Project Environmental Impact Report/Environmental Impact Statement and Final Section 4(f) Statement and Draft General Conformity Determination Merced to Fresno (April 2012) Section 2-23 ("This Merced to Fresno Section EIR/EIS does not analyze the...Wye.").

<sup>31</sup> *Id.* at pp. 2-23 – 2-24.

<sup>32</sup> Los Angeles County Metropolitan Transportation Auth. *et al.*, Final Environmental Impact Statement/Environmental Impact Report for the Mid-City/Westside Transit Corridor Mid-City/Exposition LRT Project 2.3-4 (Sept. 2005).

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Angeles to Culver City segment as "Phase 1" of the larger project.<sup>33</sup> After the approval of Phase 1, the lead agency, Metro, initiated the preparation of an environmental impact report evaluating alternatives for extending the light rail project from Culver City to Santa Monica.

These examples demonstrate that the process proposed by the F/ETCA is consistent with CEQA and general practices for constructing regional transportation projects.

**2. WHAT FURTHER APPROVAL(S) DOES TCA INTEND TO MAKE PRIOR TO COMMENCING CONSTRUCTION OF THE TESORO EXTENSION 5.5 MILE TOLL ROAD? AT WHAT POINT IN THE PROCESS DOES TCA INTEND TO MAKE SUCH APPROVAL(S)? WILL PROJECT APPROVAL BE MADE BY THE TCA BOARD OF DIRECTORS OR CAN IT LEGALLY BE MADE BY THE PROJECT MANAGER OR OTHER EXECUTIVE STAFF?**

**A. Answer.**

The F/ETCA Board will be required to make several additional discretionary approvals of the Tesoro Extension prior to commencing construction. The F/ETCA Board will be taking the following discretionary actions, among others, regarding the Tesoro Extension prior to commencing construction:

- Approval of conceptual design and engineering plans;
- Approval of preliminary design and engineering plans;
- Approval of final design and engineering plans;
- Approval of a financing plan and financing documents;
- Approval of construction contracts
- Issuance of notice to proceed with construction.

All of the above approvals will be made by the F/ETCA Board of Directors.

**B. Discussion.**

The process leading to the construction of the TCA projects starts with the regional transportation planning processes, including the Southern California Association of Governments Regional Transportation Plan and the Orange County Transportation Authority Master Plan of Arterial Highways. The regional transportation planning process, and the Tesoro Extension role and consistency in that process, is described in more detail in the answer to Water Board Question 4. F/ETCA implements projects that are on these regional transportation plans through a complex approval process that includes multiple steps. The general steps for that process are as follows:

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<sup>33</sup> Federal Transit Administration, Record of Decision Los Angeles Mid-City Westside Transit Corridor Mid-City/Exposition Corridor Light Rail Transit Project 23 (Feb. 2006).

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1. Projects are first identified in regional transportation needs analysis studies. In the case of the SR 241, the County of Orange completed studies for regional transportation studies in southeastern Orange County in the 1970s.
2. Regional transportation projects are then evaluated for inclusion in the Orange County Master Plan of Arterial Highways and in the Southern California Regional Transportation Plan approved by the Southern California Association of Governments. In the case of SR 241, the County of Orange added SR 241 to the Master Plan of Arterial Highways in 1981 and the Southern California Association of Governments added SR 241 to the Regional Transportation Plan in 1989.
3. The F/ETCA Board considers on an annual basis what to include as part of its programmed Capital Improvement Plan.
4. The F/ETCA conducts CEQA analyses as the lead agency, and, if appropriate, NEPA environmental analyses with the appropriate federal lead agency. As described above, two EIRs have been previously certified by the F/ETCA Board concerning the extension of SR 241 south of Oso Parkway. The F/ETCA staff also approved the Addendum in pursuant to authority delegated by the F/ETCA Board. These CEQA documents were in addition to the program level EIR certified by the County of Orange in 1981.
5. The F/ETCA Board approves engineering plans in sequential steps (conceptual, preliminary and final) and project costs are estimated.
6. The F/ETCA staff obtains necessary permits and other approvals to construct the project pursuant to authority delegated by the F/ETCA Board.
7. The F/ETCA Board approves financing plans and financing documents.
8. The F/ETCA Board approves construction contracts.
9. The F/ETCA Board acquires necessary right-of-way.
10. The F/ETCA Board authorizes commencement of construction, and construction is completed under the direction and supervision of the F/ETCA Board.
11. The F/ETCA Board transfers ownership of the project to the California Department of Transportation.
12. The project is opened to traffic.

Subsequent to the 2008 decision of the Secretary of Commerce regarding impacts of the SOCTIIP on coastal zone resources at the connection of SOCTIIP with

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Interstate-5, F/ETCA made a decision to pursue the Tesoro Extension as a modification of the SOCTIIP while deferring decisions regarding future extensions of SR 241 south of the Tesoro Extension. In October 2011, the F/ETCA Board authorized staff to develop conceptual engineering plans, complete environmental assessments and develop a financial strategy for the SR 241 extension from Oso Parkway to the vicinity of Ortega Highway. At that time, the Board also authorized F/ETCA staff to complete environmental analysis regarding the Tesoro Extension.<sup>34</sup>

On August 9, 2012, the F/ETCA Board authorized the TCA staff to obtain environmental clearances and permits from applicable resource agencies for the Tesoro Extension.<sup>35</sup> F/ETCA conducted an environmental analysis of the Tesoro Extension and determined that an Addendum to the SOCTIIP FSEIR was the appropriate CEQA document for the Tesoro Extension. This Addendum was prepared and approved by F/ETCA staff pursuant to the F/ETCA Boards authorizations described above.

**3. WHAT ARE THE CONSEQUENCES FOR CEQA PURPOSES OF THE ADDENDUM PREPARED BY TCA IN FEBRUARY 2013 SINCE IT WAS PREPARED WITHOUT AN ASSOCIATED LEAD AGENCY PROJECT APPROVAL OR NOTICE OF DETERMINATION BEING FILED?**

**A. Answer.**

The question is premised on incorrect assumptions regarding the applicable facts and the law. As provided in CEQA Guidelines section 15164(e), the F/ETCA prepared the Addendum to determine whether the modifications to the Preferred Project identified in the FSEIR as proposed by the F/ETCA and reflected in the Tesoro Extension would require the preparation of a subsequent or supplemental EIR. The F/ETCA prepared and approved the Addendum to be used by the F/ETCA Board and the Water Board, along with the 2006 SOCTIIP FSEIR, in the F/ETCA's discretionary approvals of the Tesoro Extension. CEQA does not require that a lead agency approve a project at the same time that the agency approves an addendum.

The findings and determinations of the F/ETCA in the Addendum are final and conclusive for the Water Board.<sup>36</sup> As discussed above, CEQA prohibits the Water Board from requiring the preparation of a subsequent or supplemental EIR where, as here, the modifications proposed by the Tesoro Extension do not have a significant new environmental effect or a substantially more severe significant effect.<sup>37</sup>

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<sup>34</sup> Report No. 15, 2011F-033.

<sup>35</sup> Report No. 14, 2012F-022.

<sup>36</sup> Guidelines, § 15050, subd. (c).

<sup>37</sup> See § 21166; Guidelines, §§ 15062, subd. (c), 15062.

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**B. Discussion.**

**1. F/ETCA Prepared the Addendum In Association with the F/ETCA's Evaluation of the Tesoro Project. Nothing in CEQA Requires the Lead Agency to Approve a Project at the Time That the Lead Agency Approves an Addendum.**

The premise of the question is that the F/ETCA did not prepare the Addendum in association with the F/ETCA's evaluation to approve the Tesoro Extension. This premise is incorrect as a factual matter. As described, above, the F/ETCA Board will take a number of future discretionary approvals of the Tesoro Extension. The F/ETCA prepared the Addendum so that, prior to taking a discretionary approval, the F/ETCA could document whether the changes to the SOCTIIP proposed by the Tesoro Extension required the preparation of a subsequent or a supplemental EIR. Thus, the F/ETCA did in fact prepare the Addendum in association with contemplated discretionary approvals by the F/ETCA.

The premise of the question is also incorrect as a matter of law. Nothing in CEQA requires the lead agency to approve a project at the same time that the lead agency approves an addendum. Guidelines section 15164, subdivision (d), provides that the agency "shall consider the addendum . . . **prior to making a decision on the project.**"<sup>38</sup> The California courts have made it clear that it is appropriate for an agency to prepare an addendum before the agency determines whether changes to the project require the preparation of a subsequent or supplemental EIR.<sup>39</sup> Thus, it is clear that a lead agency is not required to take an action approving a project when the lead agency approves an addendum.

**2. The F/ETCA is the Lead Agency. The Water Board Is Not Authorized to be the Lead Agency for the Tesoro Extension.**

Section 21067 defines the lead agency as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect on the environment." The Guidelines definition of lead agency adds that the lead agency will decide what type of document to prepare and "will cause the document to be prepared."<sup>40</sup> The Guidelines also provide criteria for identifying the lead agency, stating that the public agency that will carry out a project shall be the lead agency. In *Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, the court held that the appropriate lead agency is the one that has the principal responsibility to implement the project.<sup>41</sup> The project at issue in the case was the amendment of the contracts between the California Department of Water Resources and the state water contractors governing the delivery of water from the State Water Project.<sup>42</sup> In evaluating a challenge to one of the state water contractors

<sup>38</sup> Guidelines, § 15164, subd. (d), emphasis added.

<sup>39</sup> See *Bowman, supra*, 185 Cal.App.3d 1065; *Fund for Env't'l Defense, supra*, 204 Cal.App.3d 1538; *Melom, supra*, 183 Cal.App.4th 41; see also, 2 Kostka & Zischke, Practice Under the California Environmental Quality Act (Cont. Ed. Bar. 2012) § 19.42.

<sup>40</sup> Guidelines, § 15367.

<sup>41</sup> 83 Cal.App.4th at p. 906.

<sup>42</sup> *Id.* at pp. 900-903.

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-serving as the lead agency instead of the Department of Water Resources, the court highlighted the crucial role of the lead agency, stating “the lead agency plays a pivotal role in defining the scope of environmental review, lending its expertise in areas within its particular domain, and in ultimately recommending the most environmentally sound alternative.”<sup>43</sup>

Further, “so significant is the role of the lead agency that CEQA proscribes delegation.”<sup>44</sup> Referencing the Department of Water Resources’ “statutory responsibility to build, manage and operate” the State Water Project, the court found that the Department had the principal responsibility to implement the Monterey Agreement, and thus was the proper lead agency.<sup>45</sup>

F/ETCA is a joint powers authority formed pursuant to the Joint Exercise of Powers Act<sup>46</sup> and other provisions of state law<sup>47</sup> to plan, finance and construct a toll road system in Orange County. Thus, the F/ETCA is the agency with the authority and responsibility to carry out the SR 241 toll road in Orange County including the Tesoro Extension. The F/ETCA is the only agency that may act as lead agency for the Tesoro Extension under CEQA. Indeed, since its formation in 1986, the F/ETCA is the only agency to act as lead agency with regard to the SR 241. No other agency has the statutory responsibility to build, finance, manage and operate the toll road system in Orange County, therefore, no other agency may act as lead agency with regard to the SR 241.

F/ETCA complied with CEQA’s procedural requirements for consulting with the Water Board as a responsible agency.<sup>48</sup> F/ETCA sent the SOCTIIP FSEIR Notice of Preparation to the Water Board in 2001. A copy of the relevant documents is included in Attachment B. F/ETCA has taken various discretionary approvals of the extension of SR 241 since 1986. F/ETCA provided Information about the SOCTIIP and F/ETCA’s status as Lead Agency to the Water Board through the Notice of Preparation, and the Water Board submitted a response to the Notice of Preparation. See Attachment C for the Water Board response to the Notice of Preparation.

### **3. The Water Board is a Responsible Agency for the Tesoro Extension.**

The Water Board is a responsible agency under CEQA because it has discretionary approval authority over the Waste Discharge Requirement Order.<sup>49</sup> As a responsible agency under CEQA, the Water Board’s role is limited. It is “responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve.”<sup>50</sup> Comments by responsible agencies “shall be limited to those project

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<sup>43</sup> *Id.* at p. 904.

<sup>44</sup> *Id.* at p. 907.

<sup>45</sup> *Id.* at pp. 906, 907.

<sup>46</sup> Gov. Code, § 6500 *et seq.*

<sup>47</sup> Gov. Code § 66484.3.

<sup>48</sup> Guidelines, §§ 15052, subd. (a)(3) and 15082.

<sup>49</sup> Pub. Resources Code, § 21069; Guidelines, § 15381.

<sup>50</sup> Pub. Resources Code, § 21002.1, subd. (d).

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activities which are within the agency's area of expertise or which are required to be . . . approved by the agency . . . ."<sup>51</sup>

CEQA and the CEQA Guidelines require the Regional Board to rely on the CEQA documentation approved by the F/ETCA. The determination of the lead agency of whether to prepare an EIR:

[S]hall be final and conclusive for all persons, including Responsible Agencies, unless:

- (1) The decision is successfully challenged as provided in Section 21167 of the Public Resources Code,
- (2) Circumstances or conditions changed as provided in Section 15162, or
- (3) A Responsible Agency becomes a Lead Agency under Section 15052.<sup>52</sup>

None of those conditions are applicable here: the determination not to prepare a subsequent or supplemental EIR has not been successfully challenged in court, no circumstances or conditions have changed that require a subsequent or supplemental EIR (as documented in the Addendum), and the Water Board is not eligible to act as the lead agency for CEQA purposes.<sup>53</sup>

The Water Board is also not eligible to become the lead agency under Guidelines section 15052, which provides limited circumstances for a "shift" in the designation of lead agency. Each of those three circumstances are summarized below, along with an explanation as to why, here, such a shift in lead agency to the Water Board is not authorized under CEQA.

The first circumstance is where the lead agency did not prepare "**any**" environmental document for the project and the time for filing a CEQA lawsuit has expired.<sup>54</sup> This exception does not apply here since the TCA prepared two EIRs and an Addendum for the Tesoro Extension. As previously referenced, for the 2006 SOCTIIP Final SEIR, F/ETCA sent both a Notice of Preparation and the Draft SEIR to the Water Board for review. F/ETCA submitted the Addendum to the Water Board in February, 2013.

The second circumstance is where the lead agency prepared an environmental document, but **all** of the following conditions occur: (a) a subsequent EIR is required; (b) the lead agency has granted final approval for the project; and (c) the statute of limitations for filing a CEQA lawsuit has expired.<sup>55</sup> This exception does not apply here because the Addendum

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<sup>51</sup> Guidelines, § 15096, subd. (d); see also *id.*, § 15086, subd. (c) (same).

<sup>52</sup> Guidelines, § 15050, subd. (c).

<sup>53</sup> Guidelines, § 15052, subd. (a).

<sup>54</sup> Guidelines, § 15052, subd. (a)(1).

<sup>55</sup> Guidelines, § 15052, subd. (a)(2).

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prepared for the Tesoro Extension documents that the Tesoro Extension will not result in a new significant impact, or more severe significant impacts, than were disclosed in the 2006 FSEIR. Thus, no subsequent EIR is required and CEQA prohibits the Water Board from requiring the preparation of a subsequent EIR.<sup>56</sup> As detailed above, the TCA has not issued a final approval of the Tesoro Extension.

The third circumstance is where the lead agency prepared inadequate environmental documents without consulting with the responsible agency by sending the responsible agency notice of the preparation of the EIR, and the time for filing a CEQA lawsuit against the lead agency has expired.<sup>57</sup> F/ETCA sent the Notice of Preparation regarding the 2006 Draft SEIR to the Water Board. In addition, the time for filing challenges to the F/ETCA's approval of the Tesoro Extension has not expired. Therefore, this exception does not apply.

In conclusion, the Water Board cannot assume the role of lead agency since none of the conditions in CEQA Guidelines section 15052 have occurred. Furthermore, the Water Board does not have the authority to unilaterally assume lead agency status over the TCA's objection.<sup>58</sup>

**4. EXPLAIN HOW THE TESORO EXTENSION 5.5 MILE TOLL ROAD CONSTRUCTION RELATES TO THE PROGRAM LAID OUT BY AB 32.**

**A. Answer.**

The Tesoro Extension relates to the AB 32 program through consistency and compliance with plans adopted by the California Air Resources Board and the Southern California Association of Governments to implement AB 32 and related legislation governing greenhouse gas emissions.

**B. Discussion.**

**1. AB 32, SB 375 and SCAG's RTP/SCS.**

AB 32, the Global Warming Solutions Act of 2006, established the objective of reducing greenhouse gas ("GHG") emissions in California to 1990 levels by 2020.<sup>59</sup> AB 32 delegated to the California Air Resources Board ("CARB") the responsibility to develop regulations to achieve the GHG emission reduction objective. In the AB 32 Scoping Plan CARB adopted a set of control strategies for different industries and sectors to achieve the required GHG reduction. The AB 32 Scoping Plan identifies a 5 million metric ton reduction in GHG emissions reduction from regional transportation sources throughout the state.<sup>60</sup> In addition, the AB 32 Scoping Plan identified other substantial GHG emissions reductions required to be achieved from California's motor vehicle emissions standards.

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<sup>56</sup> Pub. Resources Code, § 21166.

<sup>57</sup> Guidelines, § 15052, subd. (a)(3).

<sup>58</sup> Guidelines, § 15053, subd. (e).

<sup>59</sup> Cal. Health & Safety Code, § 38550.

<sup>60</sup> California Air Resources Board for the State of California, Climate Change Scoping Plan (2008), p. ES-5.

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Subsequent to the enactment of SB 32, the Legislature adopted SB 375, the Sustainable Communities and Climate Protection Act of 2008, to establish detailed requirements for reducing regional transportation GHG emissions through the regional transportation planning process applicable to local, regional and state transportation project.<sup>61</sup> CARB adopted regional GHG reduction targets for each Metropolitan Planning Organization ("MPO") in California (such as the Southern California Association of Governments – SCAG). Meeting the targets is to be demonstrated through the Sustainable Community Strategy (SCS) adopted by the MPO.<sup>62</sup> The SCS is a GHG reduction plan that is coordinated with the Regional Transportation Plan prepared by the MPO and that is consistent with the regional housing needs that are also determined by the MPO.

The SCAG Region incorporated its SCS into the 2012-2035 RTP/SCS to insure consistency between the region's transportation plan and land use strategies to reduce GHG emissions from motor vehicles.

SB 375 allowed subregions within the SCAG Region to prepare their own Sustainable Community Strategies to and to be incorporated into the SCS adopted by the MPO.<sup>63</sup> The Orange County subregion, in which Tesoro Extension is located, prepared the Orange County SCS, based on OCTA's Long Range Transportation Plan 2035. The Orange County SCS included a package of 15 land use and transportation strategies that together reduce GHG emissions from motor vehicles to achieve Orange County's share of the SCAG GHG emission reduction targets.

SCAG's 2012-2035 RTP/SCS, which includes the Orange County SCS, not only met but exceeded the GHG reduction targets set by CARB pursuant to SB 375:

**SCAG Region GHG Reduction Performance Per SB 375**

<b>Year</b>	<b>Target</b>	<b>Reduction Achieved</b>
<b>2020</b>	8%	9%
<b>2035</b>	13%	16%

Source: SCAG 2012-2035 RTP/SCS, Adopting Resolution, April 2012.

The following discussion identifies specific locations within SCAG's regional RTP/SCS where the Tesoro Extension is assumed and modeled as part of the plan that reduces GHG emissions. These include the Tesoro Extension's role as part of the transportation network assumed and modeled in the RTP/SCS; a transportation project assumed in the development of the RTP/SCS regional growth forecast; and its consistency with RTP/SCS strategies for strategic highway system completion to reduce congestion and emissions.

The following discussion also identifies specific locations in the Orange County SCS, adopted as part of the regional RTP/SCS, that further describe the Tesoro Extension's

<sup>61</sup> Gov. Code, § 65080.

<sup>62</sup> Regional Council of the Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (2012).

<sup>63</sup> Gov. Code, § 65080, subd. (b)(2)(B).

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role in, and consistency with, the GHG emission reduction strategy for the Orange County subregion.

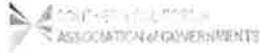
**2. SCAG's RTP/SCS Transportation Modeling Assumptions for Tesoro Extension.**

SCAG's 2012-2035 RTP/SCS, adopted in April 2012, includes the Tesoro Extension in its transportation network designed to reduce regional GHG emissions. The Tesoro Extension is included in project listing ORA052 from the 2013 Federal Transportation Improvement Program. SCAG has stated explicitly that the Tesoro Extension is included in ORA052. The Tesoro Extension has been part of ORA052 since 1991 when it was added to the SCAG RTP. ORA052 is also included in the RTP/SCS Project List appendix of modeled project on page 65.<sup>64</sup>

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<sup>64</sup> See Regional Council of the Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (2012), p. 65 <<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>> (as of Mar. 29, 2013).

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Project Sheet

2013 FTIP (FY 2012/2013 - FY 2017/2018)  
 County Approved  
 Cost In Thousands

Project ID	ORAS2	County: Orange	Version: 1	Amendment: 5
Agency	TCA			
System	S	Route	241	CTC Update 1/16/2013 1:21 PM
Begin #M	01	Conform Cat	TCM	By Ben
End #M	15 9	Air Basin	SCAB	SCAQ Update
Phase	Engineering/Plans, Specifications and Estimates (PS&E)			By
Program Code	CAN87	NEW HIGHWAY (NO HOV LANES) : NRS		FTIP ID DRA052
Scheduled Dates	Starting	Ending	Completion Date	OTIPS ID 20930003057
PAED			6/15/2000	Model No
PS&E/FIN			Conformity Category	Env. Dec. Type FEIR
ROW			TCM	Env. Dec. Date 2/1/2006
CON			Current Project Status	Year Added 0
			County Approved (as of 2/5/2013 11:23:40 AM)	

Change Reason: MINOR CHG

Project Description: Project Total Cost 1,416,992  
 (FTC-S) (I-5 TO OSO PKWY) (15MI) 2 MF EA, DIR BY 2013; AND 1 ADDITIONAL MF EA, DIR, PLS CLMBNG & AUX LANES AS REQ BY 2030 PER  
 SCAQ/TCA MOU 4/05/01. #1988

Fund Type	Fiscal Year	ENG	ROW	CON	Fund Total
	2013/2014			7,119	7,119
DEMO-SAFETY & LU				7,119	7,119
	2006/2006	5,000			5,000
	2006/2007	20,000	35,000		55,000
	2007/2008	10,000		80,000	90,000
	2008/2009			100,000	100,000
	2009/2010			8,000	8,000
	2010/2011	6,443			6,443
	2011/2012	8,272	1,780		8,052
	2012/2013	6,677	25,513	220,000	252,190
	2013/2014	20,306		249,775	270,081
	2014/2015			249,775	249,775
	2015/2016			249,775	249,775
	2017/2018			38,519	38,519
	2018/2019			38,519	38,519
	2019/2020			38,519	38,519
PRIVATE FUNDS		74,636	62,293	1,272,982	1,409,911
Total		74,636	62,293	1,280,001	1,416,992

Comments

general DRA052 includes Tesoro Extension, the portion of SR 241 between Ono Parkway and Cow Camp Road. Cow Camp Road is listed separately in the FTIP as DRA082901  
 tcm 2011 FTIP Timely Implementation Status - no change

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### **3. SCAG's RTP/SCS Growth Assumptions Reflect Tesoro Extension.**

The RTP/SCS regional growth forecast is based on the RTP/SCS transportation modeling network for Orange County, which includes the Tesoro Extension. The 2012 RTP/SCS regional growth forecast assumes population and employment growth served by the proposed Tesoro Extension, including Rancho Mission Viejo's Ranch Plan development of 14,000 housing units and 5 million square feet of commercial development.

The Orange County Projection 2010-Modified is Orange County's portion of the regional growth forecast. OCP-2010 Modified was developed by the Center for Demographic Research at Cal State University, Fullerton, in collaboration with the Orange County Council of Governments (OCCOG). SCAG adopted OCP-2010 Modified into the regional growth forecast. Both the SCAG regional growth forecast and OCP-2010 Modified assume construction of the Tesoro Extension.

By 2035, SCAG's Regional Growth Forecast/OCP-2010 Modified assumes that South Orange County population will grow by 27 percent and employment growth is estimated at 32 percent. A large portion of the growth is approved for the Ranch Plan area, parts of which are adjacent to the north and south ends of the Tesoro Extension. Growth in other parts of South Orange County represents the build-out of the remaining areas in accordance with adopted plans, consistent with the SCAG Sustainable Communities Strategy. The future growth pattern adjacent to the Tesoro Extension is depicted on Page 147 of the RTP/SCS in Exhibit 4.17.<sup>65</sup>

The table below presents the specific growth assumptions for the South Orange County area SCAG's regional growth forecast that contains OCP-2010 Modified.

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<sup>65</sup> See Regional Council of the Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (2012), exh. 4.17 <<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>> (as of Mar. 29, 2013).

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**Existing and 2035 Demographic Data Project  
Contained in SCAG Regional Projections and OCP-2010 Modified**

Jurisdiction/ Category	OCP-2010		Growth
	2010	2035	
<b>City of San Juan Capistrano</b>			
Housing	11,945	12,874	8%
Population	34,649	37,838	9%
Employment	13,787	15,833	15%
<b>City of Mission Viejo</b>			
Housing	34,196	34,846	2%
Population	93,390	97,039	4%
Employment	37,310	38,813	4%
<b>City of San Clemente</b>			
Housing	25,987	27,243	5%
Population	63,620	68,297	7%
Employment	22,569	26,592	18%
<b>Ladera (Unincorporated)</b>			
Housing	8,475	9,338	10%
Population	25,777	29,197	13%
Employment	3,926	4,134	5%
<b>Ranch Plan (Unincorporated)</b>			
Housing	0	14,000	--
Population	0	44,355	--
Employment	0	16,748	--
<b>Total for Subarea</b>			
Housing	80,603	98,301	22%
Population	217,436	276,726	27%
Employment	77,592	102,120	32%

Source: OCP-2010 Modified (CDR, January 2012).

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#### 4. SCAG's RTP/SCS Strategies Incorporate the Tesoro Extension.

The 2012 RTP/SCS includes transportation and land use strategies to reduce air emissions, including GHG emissions. These programs are designed to reduce congestion, increase access to public transportation, reduce and shorten trips, and enhance coordination between land use and transportation decisions. Specifically, the RTP/SCS includes the Tesoro extension in the following strategies:

1. System Completion/Highways and Arterials. Page 42 of the RTP/SCS calls for projects needed to complete the highway and arterial system necessary for access to jobs, education, healthcare and recreation:

“Highways and Local Arterials. The expansion of highways and local arterials has slowed down over the last decade. This has occurred in part due to increasing costs and environmental concerns. However, there are still critical gaps and congestion chokepoints in the network that hinder access to certain parts of the region. Locally developed county transportation plans have identified projects to close these gaps, eliminate congestion chokepoints and complete the system. They are included in the RTP/SCS.”

SR 241 Improvements, which include the Tesoro Extension, are included in Table 2.2, Major Highway Completion Projects that were analyzed in the RTP/SCS modeling and regional criteria pollutant and greenhouse gas emissions analysis at <http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 42.

The Tesoro Extension is also depicted on Exhibit 2.1 as a toll project assumed in the transportation and greenhouse gas emission modeling for the TP/SCS: <http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 45.

2. Priced Transportation System. The Orange County toll roads pioneered the concept of priced transportation in the SCAG region. The Tesoro Extension is a priced facility that will implement the Orange County toll system, and provide interoperability with new priced HOT lanes and Express Lanes in the region as envisioned in the RTP/SCS as a means of cutting congestion and attendant emissions, as the following two citations illustrate:

Transportation investments that support the integrated RTP/SCS that achieves SB 375 GHG reduction targets include “Toll Facilities -- closure of critical gaps in the highway network to provide access to all parts of the region.”

<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 6.

“[R]ecent planning efforts have focused on enhanced system management, including integration of pricing to better utilize existing capacity and to offer users greater travel time reliability and choices. Express/HOT lanes that are appropriately priced

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can outperform non-priced lanes in terms of throughput, especially during congested periods. Moreover, revenue generated from priced lanes can be used to deliver the needed capacity provided by the Express/HOT lanes sooner and to support complementary transit investments.”

<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 56.

3. Increased Transit Access. The median of the Tesoro Extension is reserved for future transit use (such as dedicated bus lanes or for rail). Further, the Tesoro Extension will be available for express bus routes as of the opening date. In this regard, the Tesoro Extension supports the RTP/SCS transportation strategies related to increased transit access as a means of reducing GHG emissions:

“Expand the use of transit modes in our subregions such as BRT, rail, limited-stop service, and point –to-point express services utilizing the HOV and HOT lane networks [i.e., congestion-managed, priced transportation facilities such as the Tesoro Extension].”

<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 154.

“Encourage transit providers to increase frequency and span of service in TOD/HQTA and along targeted corridors where cost-effective and where there is latent demand for transit usage.”

<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>, page 154.

4. Regional Open Space. Tesoro Extension supports the RTP/SCS strategy of setting aside regional open space to reduce GHG emissions. The regional open space strategy is designed to keep the region more compact and more efficiently served by the transportation system, thus reducing trips, VMT and congestion. The strategy also provides open space GHG sequestration. The Tesoro Extension, as part of Orange County's toll road system, contributes to permanent open space dedication mitigation measures already in place in South Orange County. A total of 2,200 acres of open space have been permanently protected as toll road mitigation.<sup>66</sup>

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<sup>66</sup> See Regional Council of the Southern California Association of Governments, 2012-2035 Regional Transportation Plan/Sustainable Communities Strategy (2012), p. 153 <<http://rtpscs.scag.ca.gov/Documents/2012/final/f2012RTPSCS.pdf>> (as of Mar. 29, 2013); Regional Council of the Southern Association of Governments, 2012-2034 Regional Transportation Plan/Sustainable Communities Strategy, Subregional Sustainable Communities Strategies Appendix, Orange County Subregional SCS, pp. 247-249 <[http://rtpscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP\\_SubregionalSustainableCommunitiesStrategies.pdf](http://rtpscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP_SubregionalSustainableCommunitiesStrategies.pdf)> (as of Mar. 29, 2013.)

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## **5. Tesoro Extension in the Orange County SCS.**

The Tesoro Extension is part of the SCS transportation network and land use strategy to reduce GHG emissions at the local level, as well as at the regional level. SB 375 allowed subregions within the SCAG region to prepare their own SCS plans and strategies for reducing GHG emissions. The Orange County Transportation Authority (OCTA) and Orange County Council of Governments (OCCOG), acting on behalf of the Orange County subregion, prepared a detailed Orange County SCS. The Orange County SCS was adopted as part of the regional RTP/SCS, and is included in its entirety as an appendix to the RTP/SCS.

## **6. Consistency with Orange County SCS Strategies.**

The Tesoro Extension is consistent with, and included in, all applicable Orange County SCS strategies:

**“Increase regional accessibility in order to reduce vehicle miles traveled.”**

The Tesoro Extension increases accessibility to and from South Orange County, and results in reduced vehicle miles traveled, as documented in the traffic study.

**“Support natural land restoration and conservation and/or protection offering significant carbon mitigation potential via both sequestration and avoidance of increased emissions due to land conversion.”**

The Tesoro Extension, as part of the Orange County toll road system, has already contributed to dedication of 2,200 acres of open space as toll road mitigation that provides carbon sequestration benefits and prevents land conversion in strategic areas. The TCA also contributed substantial funds to endow the management of the 38,000 acre wildlife habitat reserve established pursuant to the Orange County Central-Coastal Natural Community Conservation Plan and Habitat Conservation Plan approved by the U.S. Fish and Wildlife Service and the California Department of Fish and Wildlife. The Orange County SCS further details TCA's open space program on page 252, and key open space projects are described on page 278. TCA open space mitigation areas are mapped in Figure 62, page 289.

**“Eliminate bottlenecks and reduce delay on freeways, toll roads and arterials.”**

The Tesoro Extension is a tolled facility that will be priced to achieve free-flow conditions that avoid GHG emissions that spike up due to congestion and idling.

**“Continue existing, and explore expansion of, highway pricing strategies.”**

As a priced highway facility, the Tesoro Extension directly supports this SCS strategy. The Orange County SCS discussion on page 252 identifies SR 241 Improvements, which include the Tesoro Extension, as an example of this strategy. Further, Figure 45 (page

Mr. Darren Bradford  
California Regional Water Quality Control Board,  
San Diego Region  
March 29, 2013  
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253) shows the Tesoro Extension as part of committed toll improvements along the SR 241 corridor. The discussion on page 263 clarifies that completion of SR 241, which includes the Tesoro Extension, is included in the SCS:

“Planned future toll projects in Orange County include the Foothill Transportation Corridor South project [which includes the Tesoro Extension]...When completed, the southern portion for State Route 241 would enhance the network by adding 105 new tolled lane-miles . . .

“Further, TCA is planning to convert its operations to all-electronic tolling, eliminating any potential congestion at toll booths due to cash transactions. This streamlining program will result in further GHG emission reduction associated with congestion.”

**“Improve transit modes through enhanced service frequency, convenience, and choices.”**

The median of the Tesoro Extension is reserved for future transit uses. In addition, the Extension can accommodate express bus service. On page 260, the Orange County SCS specifically calls for exploration of additional express bus routes for inter-county and intra-county service. On page 263, the Orange County SCS states:

“In addition, TCA’s public toll roads can accommodate and facilitate additional future intra-county and inter-county express bus service. The Toll Roads access major future employment growth concentrations in Irvine, Anaheim, Orange and south Orange County, where express bus service may be viable.”

**“Implement near term (Transportation Improvement Program and Measure M2 Early Capital Action Plan) and long-term (LRTP 2035 Preferred Plan) transportation improvements to provide mobility choices and sustainable transportation options.”**

The Tesoro Extension is included as Project Number ORA052 in OCTA’s Transportation Improvement Program. The project listing is the same as included under section B. above.

SCAG RTP/SCS Appendix, Orange County SCS, Page 210, Sustainability Strategies.  
[http://rtpscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP\\_SubregionalSustainableCommunitiesStrategies.pdf](http://rtpscs.scag.ca.gov/Documents/2012/final/SR/2012fRTP_SubregionalSustainableCommunitiesStrategies.pdf)

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In addition, the Tesoro Extension is depicted on Figure 24, page 230, which shows significant housing growth to achieve regional housing needs immediately adjacent to the Extension by 2035. Figures 32 and 33 (pages 235 and 236) chart robust job growth in areas served by the Tesoro Extension by 2020 and 2035.

Very truly yours,

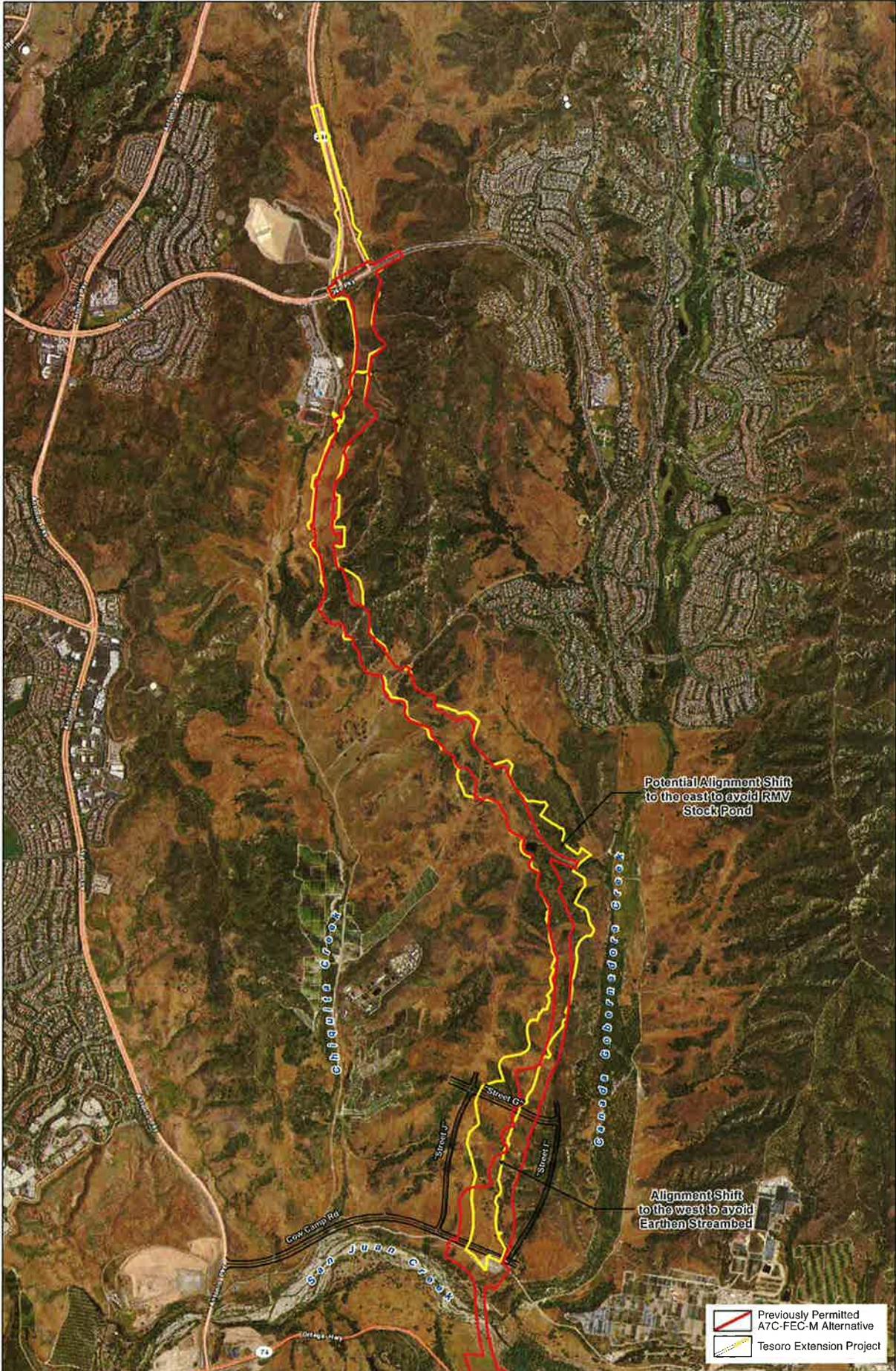
A handwritten signature in black ink, appearing to read "Robert Thornton". The signature is stylized with a large initial "R" and a long, sweeping underline.

Robert D. Thornton  
of Nossaman LLP

RDT/lmb

cc: Catherine George Hagan, San Diego Water Board  
David Gibson, San Diego Water Board  
Kelly Dorsey, San Diego Water Board  
Valarie McFall, TCA

# **ATTACHMENT A**



Source: TCA, Eagle Aerial Imaging, 2011.



TESORO EXTENSION PROJECT  
**SOCTIIP and Tesoro Extension Comparison**

# **ATTACHMENT B**

SAN JOAQUIN  
COUNTY AGENCY  
  
CHAIRMAN  
JOEL LOUENSCHEIDER  
LAGUNA HILLS



**TRANSPORTATION CORRIDOR AGENCIES**

FOOTHILL/EASTERN  
CORRIDOR AGENCY  
  
CHAIRMAN  
SUZAN WILSON  
MISSION Viejo

Date: June 7, 2001

To: Interested Parties

Subject: Notice of Preparation of a Draft Subsequent Environmental Impact Report

The Foothill/Eastern Transportation Corridor Agency (TCA) is preparing a Subsequent Environmental Impact Report for proposed transportation improvements in southern Orange County and northern San Diego County. The proposed transportation improvements being reviewed are three toll road corridor extensions, arterial roadway improvements and widening of the Interstate 5. These transportation improvements and the potential impacts are described in more detail in the attached Notice of Preparation (NOP).

The NOP is being sent to you based on your interest in the project or proximity to potentially impacted project areas. The NOP is required under the California Environmental Quality Act (CEQA) and provides a description of the proposed project, the probable environmental effects of the project and where written comments on the project can be sent. This NOP is also being sent to federal, state and local agencies and cities for their review and comment.

We welcome any input you may have regarding the project and the various environmental resource areas that may be affected. In accordance with CEQA, comments will need to be submitted to the TCA within 30 days of receipt of this NOP.

Sincerely,

Macie Cleary-Milan  
Deputy Director, Environmental and Planning

Walter D. Krawinkel, Chief Executive Officer

125 PACIFICA, SUITE 100, IRVINE CA 92618-3304 • PO BOX 50770, IRVINE CA 92619-3770 • 949/754-3400 FAX 949/754-3457  
www.metroroads.com

Members: Anaheim • Costa Mesa • County of Orange • Dana Point • Irvine • Lake Forest • Laguna Hills • Laguna Niguel • Laguna Woods  
Mission Viejo • Orange • Newport Beach • Rancho Santa Margarita • Santa Ana • San Clemente • San Juan Capistrano • Tustin • Tustin Hills

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VERIFICATION (C.C.P. 446 AND 2015.5)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I have read the foregoing \_\_\_\_\_ and know its contents.

CHECK APPLICABLE PARAGRAPHS

I am a party to this action. The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am  an officer  a partner \_\_\_\_\_  a \_\_\_\_\_ of \_\_\_\_\_

\_\_\_\_\_ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason.

I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

The matters stated in the foregoing document are true of my own knowledge, except as to those matters which are stated on information and belief, and as to those matters, I believe them to be true.

I am one of the attorneys for \_\_\_\_\_, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on (date) \_\_\_\_\_, at \_\_\_\_\_, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Signature

PROOF OF SERVICE

CCP 1013a(3) Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 7 Cushing, Irvine, California 92618

On (date) 6/7/01, \*\*I served the foregoing document described as Notice of Preparation on prop. owners, interested parties, etc. in this action

by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:  
 by placing  the original  a true copy thereof enclosed in sealed envelopes addressed as follows:

BY MAIL

\*I deposited such envelope in the mail at Irvine Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid at \_\_\_\_\_, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on (date) 6/7/01, at Irvine Santa Ana, California. I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Josie Pimentel  
Type or Print Name

Josie Pimentel  
Signature

\*(BY MAIL, SIGNATURE MUST BE OF PERSON DEPOSITING ENVELOPE IN MAIL SLOT, BOX OR BAG)  
\*\*FOR PERSONAL SERVICE, SIGNATURE MUST BE THAT OF MESSENGER)

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

7000 1670 0011 1278 9585  
 Richard Baker  
 California Dept. of Conservation  
 5816 Corporate Ave Ste 200  
 Cypress, CA 90630-4747

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) *Senta Watson* B. Date of Delivery *6-15-01*

C. Signature *Senta Watson*  Agent  Addressee

X  Addressee

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

7000 1670 0011 1279 0758  
 San Diego Regional Water Quality Control Board  
 9771 Clairemont Mesa Blvd  
 San Diego, CA 92124-1324

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery *6/15*

C. Signature *Dennis Smith*  Agent  Addressee

X  Addressee

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

7000 1670 0011 1280 6992  
 Mr. John Sibley  
 Director  
 County of Orange, Public Facilities & Resources  
 PO Box 4048  
 Santa Ana, CA 92702-4048

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

C. Signature *C. Brock*  Agent  Addressee

X  Addressee

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number (Copy from service label)

PS Form 3811, July 1999 Domestic Return Receipt 102595-00-M-0952

# **ATTACHMENT C**

# California Regional Water Quality Control Board

## San Diego Region

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Internet Address: <http://www.swrcb.ca.gov/~rwqcb9/>  
9771 Clairemont Mesa Boulevard, Suite A, San Diego, California 92124-1324  
Phone (858) 467-2952 • FAX (858) 571-6972

June 14, 2001

Foothill-Eastern Transportation Corridor Agencies  
125 Pacifica, Suite 100  
Irvine, CA 92618-3304

Page 1 of 6

ATTN: Macie Cleary-Milan

Subject: **South Orange County Transportation Infrastructure Improvement Project**

Dear Ms. Cleary-Milan,

We have received the subject documents and offer the following comments. We are also providing some additional information regarding the possible regulatory requirements for the subject project since this information has not been selected to be project-specific. Some of the information might not apply to this project.

We would like to see the following questions/concerns addressed in your Environmental Impact Report regarding the subject project:

- a) Would the proposed project create a potentially significant adverse environmental impact to drainage patterns or the rate, or quantity of surface water and runoff?
- b) Would the proposed project result in discharges into surface waters during or following construction, or in any way lead to a significant alteration of surface water quality including, but not limited to temperature, dissolved oxygen, turbidity or other typical urban storm water pollutants (e.g., metals, pathogens, synthetics, organics, sediment, nutrients, oxygen demanding substances.)?
- c) Would the proposed project have a potentially significant adverse impact to groundwater flow though the alteration of pressure head (water table level) within the aquifer or though the interception of groundwater flow via cuts or excavation?
- d) Would the proposed project result in the loss or degradation of any beneficial uses that have been designated for the water bodies that will be directly or indirectly affected by the project?
- e) What mitigation measures are being proposed to eliminate or compensate for the adverse effects identified in (a) through (d) above?

---

*California Environmental Protection Agency*

Recycled Paper



Page 6

### **Permits**

There are six potential permits or approvals that might be needed from the Regional Quality Control Board during the life of a project. Additional information on these permits is provided to assist you in determining the permits that may be required for the proposed project; as well as to encourage project design modifications that may assist in obtaining all needed permits from the RWQCB or SWRCB.

During the construction and development phases of a project, the project could be subject to any one or more of four types of RWQCB permits or approvals. These include; (1) the Statewide National Pollutant Discharge Elimination System (NPDES) General Construction Activity Storm Water Permit, (2) the Clean Water Act 401 water quality Certification, (3) General Dewatering Permit, and (4) Dredging Permit. Upon completion of construction, and throughout the project's operational life, the project may be also subject to one or both of the following two types of RWQCB permits: (1) NPDES permit for any point source discharge of wastes to surface waters; and (2) State Waste Discharge Requirements (WDRs) for any waste discharge to land. Examples of discharges to land requiring WDRs include landfills, reclaimed water discharges from sewage treatment plants for irrigation purposes, sand and gravel operations, and animal confinement facilities.

Water quality degradation is regulated by the Federal National Pollutant Discharge Elimination System (NPDES) Program, established by the Clean Water Act, which controls and reduces pollutants to water bodies from point and non-point discharges. In California, the program is administered by the California Regional Water Quality Control Boards. The Regional Board issues NPDES permits for discharges to water bodies in the San Diego area, including Municipal (area- or county-wide) Storm Water Discharge Permits.

#### ***Construction SWPPP***

Projects disturbing more than five acres of land during construction must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Construction Activity. This can be accomplished by filing a Notice of Intent (NOI). The project sponsor must propose and implement control measures that are consistent with this State Construction Storm Water General Permit, and with recommendations and policies of the local agency and the RWQCB.

#### ***Industrial SWPPP***

Page 3 of 6

Projects that include facilities with discharges of Storm Water Associated with Industrial Activity must be covered under the State NPDES General Permit for Discharges of Storm Water Associated with Industrial Activity. This may be accomplished by filing a Notice of Intent. The project sponsor must propose control measures that are consistent with this, and with recommendations and policies of the local agency and the RWQCB. In a few cases, the project sponsor may apply for (or the RWQCB may require) issuance of an individual (industry- or facility-specific) permit.

***Municipal SWPPP***

The RWQCB's San Diego Urban Runoff Municipal Permit requires San Diego area municipalities to develop and implement Storm Water Management Plans (SWMPs) The SWMPs must include a program for implementing new development and construction site storm water quality controls. The objective of this component is to ensure that appropriate measures to control pollutants from new development are: considered during the planning phase, before construction begins; implemented during the construction phase; and maintained after construction, throughout the life of the project.

***Water Quality Certification***

The RWQCB must certify that any permit issued by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act (covering, dredging, or filling of wetlands) complies with state water quality standards. Section 401 Water Quality Certification, or waiver, is necessary for all 404 Nationwide Permits, reporting and non-reporting, as well as individual permits.

Wetlands enhance water quality through such natural functions as flood and erosion control, stream bank stabilization, and filtration and purification of contaminants. Wetlands also provide critical habitats for hundreds of species of fish, birds, and other wildlife; offer open space; and provide many recreational opportunities. Adverse Water quality impacts can occur in wetlands from construction of structures in waterways, dredging, filling, and, otherwise altering the drainage to wetlands.

All projects must be evaluated for the presence of jurisdictional wetlands. Destruction or impact to wetlands should be avoided. Water quality certification may be denied based on significant adverse impacts to "Waters of the State." The goals of the California Wetlands Conservation Policy, include ensuring "no overall net loss and achieving a long-term net gain in the quantity, quality, and permanence of wetlands acreage and values." In the event wetland loss is unavoidable, mitigation will be preferably in-kind and on-site, with no net destruction of habitat value. Mitigation will preferably be completed prior to, or at least simultaneous to, the filling or other loss of existing wetlands.

Successful mitigation projects are complex tasks and difficult to achieve. This issue will be strongly considered during agency review of any proposed wetland fill. Wetland features or ponds created as mitigation for the loss of existing "jurisdictional wetlands" or "waters of the United States" cannot be used as storm water treatment controls.

CEQA requires monitoring of all mitigation efforts as a condition of project approval. Although monitoring programs are not required to be included in environmental documents, it is helpful to know what sort of mitigation monitoring the applicant intends to implement, and who will be accountable for seeing that any proposed mitigation's are successfully executed.

Page 4 of 6

### Project/ Site Planning

Evidence of filing for a NOI and development of a SWPPP should be a condition of development plan approval by all municipalities. Implementation of the SWPPP should be enforced during construction via appropriate options such as citations, stop work orders, or withholding occupancy permits. Impacts identified should be avoided and minimized by developing and implementing the following.

The project should minimize impacts from project development by incorporating appropriate site planning concepts. This should be accomplished by designing and proposing site planning options as early in the project planning phases as possible. Appropriate site planning concepts to include, but are not limited to the following:

- Phase construction to limit areas and periods of impact.
- Minimize directly connected impervious areas.
- Preserve natural topography, existing drainage courses and existing vegetation.
- Locate construction and structures as far as possible from streams, wetlands, drainage areas, etc.
- Reduce paved area through cluster development, narrower streets, use of porous pavement and/or retaining natural surfaces.
- Minimize the use of gutters and curbs that concentrate and direct runoff to impermeable surfaces.
- Use existing vegetation and create new vegetated areas to promote infiltration.
- Design and lay out communities to reduce reliance on cars.
- Include green areas for people to walk their pets, thereby reducing build-up of bacteria, worms, viruses, nutrients, etc. in impermeable areas, or institute ordinances requiring owners to collect pets' excrement.
- Incorporate low-maintenance landscaping.
- Design and lay out streets and storm drain systems to facilitate easy maintenance and cleaning.
- Consider the need for runoff collection and treatment systems.
- Label storm drains to discourage dumping of pollutants into them.

Page 5 of 6

## **Construction- Phase Management**

### ***Erosion Prevention***

The project should minimize erosion and control sediment during and after construction. This should be done by developing and implementing an erosion control plan, or equivalent plan. This plan should be included in the SWPPP. The plan should specify all control measures that will be used or which are anticipated to be used, including, but not limited to, the following:

- Limit access routes and stabilize access points.
- Stabilize denuded areas as soon as possible with seeding, mulching, or other effective methods.
- Protect adjacent properties with vegetative buffer strips, sediment barriers, or other effective methods.
- Delineate clearing limits, easements, setbacks, sensitive areas, vegetation and drainage courses by marking them in the field.
- Stabilize and prevent erosion from temporary conveyance channels and outlets.
- Use sediment controls and filtration to remove sediment from water generated by dewatering or collected on-site during construction. For large sites, stormwater settling basins will often be necessary.
- Schedule grading for the dry season (May-Sept.)

### ***Chemical and Waste Management***

The project should minimize impacts from chemicals and wastes used or generated during construction. This should be done by developing and implementing a plan or set of control measures. The plan or control measures should be included in the Storm Water Pollution Prevention Plan. The plan should specify all control measures that will be used or which are anticipated to be used, including, but not limited to, the following:

- Designate specific areas of the site, away from streams or storm drain inlets, for storage, preparation, and disposal of building materials, chemical products, and wastes.
- Store stockpiled materials and wastes under a roof or plastic sheeting.
- Store containers of paint, chemicals, solvents, and other hazardous materials stored in containers under cover during rainy periods.



Winston H. Hickox  
Secretary for  
Environmental  
Protection

Page 6 of 6



Gray Davis  
Governor

- Berm around storage areas to prevent contact with runoff.
- Cover open Dumpsters securely with plastic sheeting, a tarp, or other cover during rainy periods.
- Designate specific areas of the site, away from streams or storm drain inlets, for auto and equipment parking and for routine vehicle and equipment maintenance.
- Routinely maintain all vehicles and heavy equipment to avoid leaks.
- Perform major maintenance, repair, and vehicle and equipment washing off-site, or in designated and controlled areas on-site.
- Collect used motor oil, radiator coolant or other fluids with drip pans or drop cloths. Store and label spent fluids carefully prior to recycling or proper disposal.
- Sweep up spilled dry materials (cement, mortar, fertilizers, etc.) immediately—do not use water to wash them away.
- Clean up liquid spills on paved or impermeable surfaces using “dry” cleanup methods (e.g., absorbent materials, cat litter, rags) and dispose of cleanup materials properly.
- Clean up spills on dirt areas by digging up and properly disposing of the soil.
- Keep paint removal wastes, fresh concrete, cement mortars, cleared vegetation, and demolition wastes out of gutters, streams, and storm drains by using proper containment and disposal.

We appreciate the opportunity to comment on the subject environmental document and look forward to your response. If you have any questions regarding our concerns or questions, please do not hesitate to contact me at (858) 467-2705 or at [lemop@rb9.swrcb.ca.gov](mailto:lemop@rb9.swrcb.ca.gov).

Sincerely,

Paul Lemons