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Mr. Aaron Burton
California Department of Transportation,
District 8
464 West Street, 6th Floor
San Bernardino, CA 92401

**Re: State Route 91 Corridor Improvement Project Draft
Environmental Impact Report/Environmental Impact Statement
and Section 4(F) Evaluation**

Dear Mr. Burton:

This firm represents Hills For Everyone on matters relating to the proposed construction of the State Route 91 Corridor Improvement Project (“SR-91 Project” or “Project”). On behalf of our clients, we respectfully submit these comments to help ensure that agency decision-makers fully comply with the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.*, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et seq.*, with respect to the proposed Project. Our clients are deeply concerned about the far-ranging environmental impacts the Project may have on Chino Hills State Park (“CHSP” or “Park”).

After carefully reviewing the SR-91 Draft Environmental Impact Report/Statement (“DEIR/S”) for the Project, we have concluded that it fails in numerous respects to comply with the requirements of CEQA and NEPA. As described below, the DEIR/S violates these laws because it fails to adequately describe the Project and fails to analyze the significant environmental impacts of the Project or propose adequate mitigation measures to address those impacts. The Project, as described in the DEIR/S, also violates section 4(f) of the Department of Transportation Act, section 6(f) of the Land and Water Conservation Fund Act, and the California Public Parks Preservation Act.

The environmental impact report is “the heart of CEQA.” *Laurel Heights Improvement Ass’n v. Regents of University of California*, 47 Cal. 3d 376, 392 (1988)

(citations omitted). It “is an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended ‘to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.’ Because the EIR must be certified or rejected by public officials, it is a document of accountability.” *Id.* (citations omitted). Likewise, NEPA requires that federal agencies “consider every significant aspect of the environmental impact of a proposed action . . . [and] inform the public that [they have] indeed considered environmental concerns in [their] decision-making process[es].” *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1300 (9th Cir. 2003) (citations omitted).

Where, as here, the environmental review document fails to fully and accurately inform decision-makers, and the public, of the environmental consequences of proposed actions, it does not satisfy the basic goals of either statute. *See* Pub. Res. Code § 21061 (“The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”); 40 C.F.R. § 1500.1(b) (“NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken.”).

As a result of the DEIR/S’ numerous and serious inadequacies, there can be no meaningful public review of the Project. The California Department of Transportation (“Caltrans”) must revise and recirculate the DEIR/S in order to permit an adequate understanding of the environmental issues at stake. Further, Caltrans must develop feasible and prudent alternatives to using parklands that are protected under section 4(f) of the Department of Transportation Act, and must undertake further planning to minimize harm to any parkland that would be impacted.

I. The DEIR/S’ Flawed Project Description Does Not Permit Meaningful Public Review of the Project.

In order for an environmental document to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal.App.4th 713, 730 (1994), quoting *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 193 (1977). As a result, courts have found that, even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates

CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor*, 27 Cal.App.4th at 730. Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable. While extensive detail is not necessary, the law mandates that EIRs should describe proposed projects with sufficient detail and accuracy to permit informed decision-making. *See* CEQA Guidelines, §15124 (requirements of an EIR). NEPA similarly requires an accurate and consistent project description in order to fulfill its purpose of facilitating informed decision-making. 43 U.S.C. § 4332(2)(C). As explained below, the SR-91 DEIR/S fails to meet this basic threshold.

A. The DEIR/S Does Not Adequately Describe Project Components.

1. Design Standards.

Perhaps one of the most perplexing flaws in the DEIR/S’ project description is the fact that the DEIR/S does not even clearly articulate the design standard for the Project itself. The document identifies the Project purpose as “[i]mprov[ing] the vehicle, person, and goods movement within the SR-91 corridor to more effectively serve existing and future travel demand between and within Riverside and Orange Counties” and “Provid[ing] improvements along the SR-91 and I-15 transportation corridors as well as to related local roads.” DEIR/S at S-2. While the DEIR/S identifies the existing level of service (“LOS”) for various Project segments (at 1-23), it does not identify the desirable operating condition or LOS that Caltrans intends to achieve upon implementation of the Project. In the absence of definitive, quantifiable objectives, it is not possible to measure the ability of the Project to meet its objectives or to effectively develop Project alternatives.

2. Local Circulation and Access Projects.

According to the DEIR/S, implementation of the SR-91 Project would include some level of improvements to local roads. (*See* DEIR/S at S-5 referring to “collector-distributor roads” and “improved local connectivity.”). The document does not, however, identify and describe the necessary changes in the local road system. This is a massive project spanning two separate freeways and the amount of associated local roadway work will likely be enormous. Consequently, these local roadway modifications are not trivial, speculative, or optional—they are *part of the Project*, and therefore must be included in the project description. *See San Joaquin Raptor*, 27 Cal. App 4th at 714-16 (holding EIR inadequate where project description failed to include sewer expansion which was

“required element of the development project”). Moreover, like the Project itself, construction and operation of these roadway modifications will undoubtedly have environmental impacts. Unless the details of these roadway improvements are clearly identified and described, it is impossible to evaluate impacts from the whole of the Project.

Nor does the DEIR/S include the necessary details pertaining to the Project’s drainage improvements. As the DEIR/S explains, the existing drainage system for SR-91 has been in place for many years, and in some places the system may be reaching the end of its expected service life. DEIR/S at 1-39. Repairing and/or replacing this system is a part of the Project. *Id.* Despite this fact, neither Caltrans nor the Riverside County Transportation Commission (“RCTC”) have identified the specific deficiencies in the existing drainage system or the structural integrity of the system. *Id.* Rather than fully investigate the locations of system failure and identify the appropriate corrective measures, the agencies propose to defer this important work to the design-build phase. *Id.* Culvert repair or installation can result in, among other potentially significant impacts, the loss of sensitive habitat, including wetland and riparian areas. Until the DEIR/S identifies the location and nature of these important Project components, it is not possible to evaluate the associated environmental impacts.

B. The DEIR/S Improperly Segments the SR-91 Project From Other Related Actions.

Agencies may not improperly “segment” projects in order to avoid preparing an EIS or EIR; instead, they must consider related actions in a single document. *Thomas v. Peterson*, 753 F.2d 754, 758 (9th Cir. 1985); *Laurel Heights*, 47 Cal.3d. 376-395 (1988). “Not to require this would permit dividing a project into multiple ‘actions,’ each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” *Thomas*, 753 F.2d at 758. The Council on Environmental Quality’s NEPA regulations thus require agencies to consider “connected,” “cumulative,” and “similar” actions within a single EA or EIS. 40 C.F.R. § 1508.25; *Thomas*, 753 F.2d at 758-59. The use of the word “shall” in these regulations makes combined consideration of these three types of actions mandatory. These implementing regulations are mandatory and binding on federal agencies. *The Steamboaters v. FERC*, 759 F.2d 1382, 1393 n.4 (9th Cir. 1985). Similarly, CEQA regulations require that an EIR describe the entirety of a project, including reasonably foreseeable future actions that are part of a project, and must analyze those reasonably foreseeable actions. 14 Cal. Code Regs § 15378(a). As discussed below, at least five transportation projects proposed by Caltrans and/or RCTC meet the requirements for connected actions and therefore must be analyzed concurrently with the direct impacts of the SR-91 Project itself.

For purposes of NEPA, actions are “connected” if they are “interdependent parts of a larger action and depend on the larger action for their justification.” 40 C.F.R. § 1508.25(a)(1). Where it would be “irrational, or at least unwise” to undertake one action without other actions, the actions are connected. *Save the Yaak*, 840 F.2d at 720 (holding that road construction and timber sales had “clear nexus” and were thus “connected actions,” requiring expanded scope of review); *Thomas*, 753 F.2d at 759 (road and timber sales were “inextricably intertwined” where “[i]t is clear that the timber sales cannot proceed without a road, and the road would not be built but for the contemplated timber sales.”). An agency should analyze the impacts from two or more similar projects together “when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.” 40 C.F.R. § 1508.25(a)(3).

Under CEQA, an EIR need not include speculation about future environmental consequences of a project, but an “EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effect.” *Laurel Heights*, 47 Cal.3d at 394-396. Under the *Laurel Heights* standard, “the facts of each case will determine whether and to what extent an EIR must analyze future expansion or other action.” *Id.* at p. 396. However, there must be discussion “in at least general terms” of future activity in connection with a project, even if the project is contingent on uncertain occurrences. *Laurel Heights*, 47 Cal.3d at 398. *Laurel Heights* requires a project proponent to analyze future expansion and other such action in an EIR if there is “telling evidence” that the agency has either made decisions or formulated reasonably definite proposals as to expand a project in the future. *Id.* at 396-397.

From the SR-91 DEIR/S’ text and maps, it is clear that several transportation projects are inextricably related to the SR-91 Project. These related projects include: (a) SR-71/SR-91 Interchange Improvement Project; (b) I-15 Corridor Improvement Project; (c) SR-241/SR-91 Direct Connectors; (d) SR-91 between SR-55 and SR-241; and (e) Future SR-91 Implementation Plan Improvements.¹ See DEIR/S at 2-8 and 2-101

¹ In addition, a sixth project, SR-91 Eastbound Lane Addition Project Between SR-241 and SR-71 is either under construction or construction has recently been completed (the SR-91 DEIR/S provides conflicting status reports). See DEIR/S at 2-8 and 2-105.

through 107. With the exception of the SR-91 between SR-55 and SR-241 project, all of these projects would be constructed within the SR-91 Project study area limits. *See Id.*, Figure 2-16 (Approved and In-Process Projects in the SR-91 CIP Area), and Appendix L2 Index. In fact, certain of the projects, including the SR-91 Eastbound Lane Addition Between SR-241 and SR-71, the I-15 Corridor Improvement Project and possibly the future SR-91 Implementation Plan Improvements, all call for increased capacity on the exact alignments as the proposed Project. *Id.* The SR-91 between SR-55 and SR-241 project would appear to be the westward continuation of the current Project. *Id.*

Although the DEIR/S asserts that these projects would function independently (at 2-7), there is plenty of “telling evidence” regarding the intimate connection between these projects and the SR-91 Project. The DEIR/S, in fact, concedes that several of the projects “could affect the design of the [SR-91 Project],” and therefore may require design coordination. DEIR/S at 2-101. The DEIR/S further admits some of the projects would be constructed concurrently to minimize construction-related impacts to the traveling public. *Id.* at 2-7. Set forth below are the details of these related projects and their relationship to the SR-91 Project.

1. SR-71/SR-91 Interchange Improvement Project.

In November 2010, Caltrans released an initial study/mitigated negative declaration for the SR-91/SR-71 Interchange Improvement Project. *See* SR-91/SR-71 Interchange Improvement Project Initial Study and Proposed Mitigated Negative Declaration, attached as Exhibit A. This project would improve the SR-91/SR-71 interchange by constructing a new direct flyover connector from eastbound SR-91 to northbound SR-71. This interchange project is located within the boundaries of the SR-91 Project and includes, among other components, the restriping of SR-91 eastbound lanes. *Id.* at v. RCTC confirms that the interchange project is “part of a larger effort to improve mobility along the SR-91 Corridor in Riverside County and Orange County.” *See* RCTC SR-91/SR-71 Interchange Improvement Project Information Sheet, attached as Exhibit B. RCTC’s documentation also makes clear that the interchange project has goals almost identical to that of the SR-91 Project: “... this project is designed to reduce the congestion, enhance the safety of motorists, support the movement of goods, and improve mobility and connections between the two freeways and among the counties of Riverside, Orange and San Bernardino.” *Id.*; *see also* RCTC SR-91/SR-71 Interchange Project Newsletter, attached as Exhibit C.

2. I-15 Corridor Improvement Project.

The I-15 Corridor Improvement Project would add either high occupancy vehicle (“HOV”) lanes or tolled express lanes and a general purpose lane on I-15 in each direction from SR-74 to SR-60 and from I-215 to SR-74. *See* I-15 Corridor Improvement Project Overview, attached as Exhibit D. A map of the I-15 Corridor Improvement Project confirms that the alignment of this project includes the SR-91 Project. *See* Project Map, attached as Exhibit E. RCTC’s documentation also makes clear that the objectives of the I-15 Corridor Improvement Project are almost identical to the SR-91 Project objectives: to “reduce traffic delays and travel time” and to “provide capacity and congestion relief.” *See* I-15 Corridor Improvement Project Overview Objectives, attached as Exhibit F.

3. SR-241/SR-91 Direct Connectors.

The Orange County Transportation Agency (“OCTA”) includes in its draft 2011 SR-91 Implementation Plan, the SR-241/SR-91 Express Lanes Connector. *See* draft 2011 SR-91 Implementation Plan, OCTA, attached as Exhibit G. This project, expected to be constructed in 2017, is located within the SR-91 Project’s study area boundaries. As with the other related projects, the purpose of the Express Connector is to improve inter-county travel.

4. SR-91 between SR-55 and SR-241.

OCTA includes in its draft 2011 SR-91 Implementation Plan, a project referred to as the “widen SR-91 Between SR-55 and SR-24.” *See* Exhibit G. This project would appear to be the westward extension of the SR-91 Project. It would add a fifth general purpose lane in each direction along SR-91 and is scheduled for construction in 2013. *Id.*

5. Future SR-91 Implementation Plan Improvements

OCTA is scheduling additional improvements to the SR-91 corridor. This project, which is likely referred to as “Ultimate CIP: Widen SR-91 by One General Plan Lane in Each Direction from SR-241 to SR-71, I-15/SR-91 Direct North Connector, Extension of Express Lanes on I-15 and SR-91 Improvements East of I-15” would be constructed along the same alignment as the current SR-91 Project. *See* Exhibit G.

Taken together, there is clearly compelling evidence that these projects are intimately connected to the SR-91 Project. Accordingly, under CEQA and NEPA, Caltrans may not segment its study of the impacts of the other projects from the impacts of the SR-91 Project: they are actually one, single project. As such, the project described

and analyzed in the DEIR/S should include each of these other projects, which are integral parts of the same overall project.

By omitting the other subsidiary projects, the DEIR/S vastly underestimates all of the Project's impacts. Moreover, such segmentation would unlawfully foreclose Caltrans' ability to analyze an adequate range of alternatives for the interchange and the connectors. The federal Court of Appeals for the Seventh Circuit held in *Swain v. Brinegar*, 542 F.2d 364 (7th Cir. 1976) (en banc) that the "division of a highway into segments such as here 'precludes meaningful compliance with the statutory mandate to assess in detail environmental impacts, as each segment that is approved limits the alternatives for each succeeding segment.'" (Internal citation omitted.) *See also San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal. App. 4th 731-35 (two interdependent projects must be analyzed in same EIR).

Finally, under CEQA, even if the other projects were not integral parts of the SR-91 Project, Caltrans would still be required to discuss these other projects in far more detail than it does. *Laurel Heights I*, 47 Cal.3d at 398 (requiring discussion "in at least general terms" of future activity in connection with a project, even if the project is contingent on uncertain occurrences). Under these circumstances, CEQA and NEPA requires that Caltrans' environmental review be revised to include all highway projects planned for the SR-91 and SR-15 corridors.

The DEIR/S thus fails to provide an "accurate project description" so that there can be an "intelligent evaluation of the potential environmental effects of a proposed activity." *San Joaquin Raptor*, 27 Cal.App.4th at 730.

II. The DEIR/S' Analysis of and Mitigation for the Impacts of the Proposed Project Are Inadequate.

CEQA requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure. CEQA Guidelines § 15151. The document should provide a sufficient degree of analysis to inform the public about the proposed project's adverse environmental impacts and to allow decision-makers to make intelligent judgments. *Id.* Consistent with this requirement, the information regarding the project's impacts must be "painstakingly ferreted out." *Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado*, 131 Cal.App.3d 350, 357 (1982).

Meaningful analysis of impacts effectuates one of CEQA's and NEPA's fundamental purposes: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights II*,

6 Cal.4th at 1123. Similarly, “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality.” 40 C.F.R. § 1500.1 (b). To accomplish this purpose, an EIR must contain facts and analysis, not just an agency’s bare conclusions. *Santiago County Water Dist. v. County of Orange*, 118 Cal.App.3d 818, 831 (1990). An agency may not defer its assessment of important environmental impacts until after the project is approved. *Sundstrom*, 202 Cal.App.3d at 306-07. As documented below, the DEIR/S fails to identify, analyze, or support with substantial evidence its conclusions regarding the Project’s significant environmental impacts. Moreover, where impacts are identified as significant, the DEIR/S fails to evaluate how adverse these impacts will be. *Santiago County Water Dist.*, 118 Cal.App.3d at 831.

“Once a significant effect has been identified, the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified.” *Napa Citizens for Honest Gov’t v. Napa County Bd. of Supervisors*, 91 Cal.App.4th 342, 360 (2001); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989) (requirement that agency discuss mitigation measures is implicit in “NEPA’s demand” and CEQA regulations). CEQA requires that agencies “mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.” Pub. Resources Code § 21002.1(b). Mitigation of a project’s significant environmental impacts is one of the “most important” functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). Therefore, it is the “policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” Pub. Res. Code § 21002; *Laurel Heights Improvement Ass’n v. Regents*, 47 Cal.3d 376, 400-401 (1988) (*Laurel Heights I*).

A. The DEIR/S’ Analysis of and Mitigation for the Project’s Impacts on Biological Resources are Inadequate.

The DEIR/S’ treatment of impacts to biological resources suffers from substantial deficiencies and fails to meet CEQA’s and NEPA’s well-established standards. The document’s analysis both understates the severity of the potential harm to biological resources within and adjacent to the proposed Project’s right-of-way, and neglects to identify sufficient mitigation to minimize these impacts. Given that analysis and mitigation of such impacts are at the heart of CEQA and NEPA, the DEIR/S will not comply with these laws until these serious deficiencies are remedied. *See Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 311 (1988) (“CEQA places the burden of

environmental investigation on government rather than the public.”); *see also Natural Res. Defense Council v. U.S. Forest Service*, 421 F.3d 797 (9th Cir. 2005). The most egregious deficiencies in the DEIR/S’ analysis of biological resources are discussed below.

1. The DEIR/S Fails to Adequately Describe the Project’s Biological Setting.

An EIR’s description of a project’s environmental setting plays a critical part in all of the subsequent parts of the EIR because it provides “the baseline physical conditions by which a lead agency determines whether an impact is significant.” CEQA Guidelines § 15125(a). “Knowledge of the regional setting is critical to the assessment of environmental impacts.” CEQA Guidelines § 15125 (c). Similarly, under NEPA, an EIS must “describe the environment of the area(s) to be affected or created by the alternatives under consideration.” 40 C.F.R. §1502.15. Here, the DEIR/S concedes that the surveys of the Project’s biological survey area (“BSA”) were restricted due to lack of access permission: “Where access was not available (e.g., no permission granted by property owners, inaccessibly steep slopes, or locked gate), areas were analyzed from accessible areas with the aid of binoculars.” Natural Environment Study (“NES”) at 35. Surveys of the BSA using binoculars rather than on-site inspection by foot are likely to provide inadequate observation of species and cannot support the DEIR/S’s conclusions. Moreover, the DEIR/S identifies neither how much of the survey area was merely surveyed with binoculars, nor the specific locations that were subject of this inadequate data-gathering procedure. As a result of these survey constraints, the DEIR/S’ preparers should have erred on the side of caution when determining whether the proposed Project would adversely impact sensitive resources. In several instances, however, they failed to take this cautionary approach. For example, the United States Fish & Wildlife Service (“USFWS”) has designated critical habitat for Braunton’s milk-vetch, a federally endangered species, in Coal Canyon. DEIR/S at 3.21-3. In fact, a known population of Braunton’s milk-vetch has been identified along SR-91 *within the BSA*. *Id.* at 3.21-6 and NES at 99.

Despite the presence of critical habitat along the Project alignment, the DEIR/S inappropriately and incorrectly assumes this endangered species is absent from the BSA, because surveys in the area were negative. *Id.* at 3.21-6, 3.21-9 and NES at 99. Yet, even the experts conducting the surveys concede that it is difficult to determine the complete distribution of Braunton’s milk-vetch. *Id.* Binocular surveys cannot provide sufficient evidence of that distribution.

Clearly, Braunton's milk-vetch could occur within the Project's study area, yet the DEIR/S concludes that the Project would not impact this species. The document relies on the disingenuous claim that critical habitat for this species is located outside the "disturbance limits" for the Project. DEIR/S at 3.21-9. Yet, as the DEIR/S explains, the very purpose of the BSA is intended to establish the conservative boundaries of the Project areas that would be directly affected by the Project:

The study area for this analysis is the BSA. The BSA for the proposed project was determined by incorporating electronic data provided by the design engineer into a GIS layout, which included areas of potential direct effect. The BSA is shown on Figure 3.17-1. The limits of the BSA were extended beyond the maximum extent of potential direct effect where necessary to identify sensitive biological resources within and adjacent to the project area. In general, this provided for a survey area that was larger than the area of potential direct effect. The BSA was then used as the study limit boundaries for all biological studies conducted during 2008 and 2009

DEIR/S at 3.17-1.

The DEIR/S cannot have it both ways. It cannot establish a study area of impact and then assume – when a species' habitat occurs in that area – that the species would not be impacted. Moreover, given the imprecise nature of the surveys, the fact that the Project will traverse habitat for an *endangered* plant species, and the unclear distribution of Braunton's milk-vetch, the DEIR/S certainly should have concluded impacts to this species would be significant.

This approach is consistent with CEQA's requirement that special emphasis "be placed on environmental resources that are rare or unique to that region and would be affected by the project." Guidelines § 15125(b). Here, the DEIR/S fails to place special emphasis on Braunton's milk-vetch. For the reasons described above, the Project has the potential to significantly impact this endangered species. Consequently, the DEIR/S should be revised to provide a thorough analysis of these impacts and identify mitigation if the impacts are deemed to be significant.

2. The DEIR/S' Analysis of the Project's Impacts on Numerous Sensitive Species is Incomplete and Conclusory.

Consistent with the DEIR/S's misleading approach discussed above in the context of Braunton's milk-vetch, the document repeatedly seeks to minimize other significant impacts associated with the proposed Project. For example, the DEIR/S fails to adequately analyze or mitigate impacts to the Least Bell's Vireo, a federal and state endangered species. DEIR/S at 3.21-5.² The document asserts that even with the implementation of avoidance and minimization measures prior to and during construction, "potential impacts to occupied habitat may occur." *Id.* at 3.21-11. The DEIR/S states that Section 7 Consultation under the Federal Endangered Species Act would be required (at 3.21-12), but it never bothers to explain what additional mitigation measures would or could be implemented within the Section 7 process that would further minimize impacts to this endangered species.

The document then suggests that Least Bell's Vireo' impacts would be mitigated through the Project's consistency with the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"). *Id.* At 3.21-17. Yet the DEIR fails to describe how the Project would be consistent with the MSHCP, nor does it identify the specific mitigation measures that would be implemented in association with the MSHCP. Further, Orange County is not a signatory to the MSHCP, and the DEIR/S fails to describe how consistency with the plan will mitigate impacts to the portion of the Project in Orange County. The DEIR/S must be revised to clarify whether impacts to Least Bell's Vireo would be significant. If so, the document must identify appropriate mitigation measures or Project alternatives capable of minimizing or eliminating the impact altogether.

The DEIR/S fares no better in its analysis of indirect impacts to listed and non-listed species that may rely on habitat in areas adjacent to the Project footprint. The document vaguely references potential impacts relating to habitat loss, fragmentation and edge effects such as noise, vibration, dust, and human presence during construction could potentially impact these species. DEIR/S at 3.20-10 through 13. But, other than a passing reference to the burrowing owl, the document never specifically identifies the species that could be impacted. *Id.* Nor does it describe the actual and specific

² This is particularly important, as state wildlife scientists have stated that there has been an explosion of Least Bell's Vireos this season. Given this new information, there should be new studies as part of the DEIR/S.

consequences to each of the potentially affected species from these various effects (e.g., the number of individuals of each species that will be affected or the degree to which the populations will be impacted). Instead, the DEIR/S merely asserts, absent evidence or analysis, that “because of the limited amount of habitat involved and its relatively linear configuration, project’ effects on Western Riverside County MSHCP-covered species are considered nominal and are adequately addressed by the Western Riverside County MSHCP.” DEIR/S at 3.20-11. This conclusion, however, is pure speculation; there is no data or analysis accompanying it.

Moreover, the assertion that a linear configuration of the Project somehow eliminates the potential for biological impacts defies credulity. If this were true, no roadway project or roadway expansion project would ever impact biological resources. There are over 400 acres of Coastal sage scrub and chaparral habitats, and about 160 acres of riparian and woodland habitats in the Project’s study area. NES at 50, Table 3.2. Clearly, the Project has the potential to impact habitat and species within this area. Nor can the document rely on a vague reference to the MSHCP as a justification for not analyzing the Project’s impacts. The MSHCP does not excuse Caltrans from CEQA’s mandate that it fully disclose the impacts to rare and common plant and animal species. CEQA Guidelines § 15065 (a)(1).

The DEIR/S’s treatment of impacts to the Santa Ana Sucker, a federally threatened species, is equally cursory. The document explains that, due to changes in the water quality caused by the Project, this species could be impacted. DEIR/S at 3.21-4 and 3.21-15. Yet, rather than describe this impact, and the effect on this species, the DEIR/S simply looks to compliance with NPDES permit requirements for discharge. *Id.* CEQA requires more than this cursory approach to impact analysis and mitigation. When a lead agency relies on measures to find that project impacts will be reduced to a level of insignificance, there must be substantial evidence in the record demonstrating that the measures are feasible and will be effective. *Sacramento Old City Assn. v. City Council of Sacramento*, 229 Cal.App.3d 1011, 1027 (1991); *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 726-29 (1990). There is no such evidence in the DEIR/S. For example, a stormwater treatment measure necessary to reduce impacts to a level of insignificance may not be practicable, and thus may not be required under the regulations the EIR/S relies upon. Additionally, while the DEIR/S relies extensively on the use of best management practices (“BMP”) to reduce the Project’s water quality impacts (at 3.10-32 and 33), all BMPs are not created equal. *See* Exhibit H, Low Impact Development: A Literature Review, describing cutting edge stormwater treatment measures. Moreover, the DEIR/S contains no evidence that NPDES standards are

sufficient to protect the Santa Ana Sucker. Consequently, the DEIR/S conclusion that impacts to the Santa Ana Sucker would be less than significant cannot be sustained.

Finally the DEIR/S acknowledges that the Project would result in the loss of 5-10 Southern California black walnut trees and 50 Coulter's matilija poppy plants. DEIR/S at 3.19-12. Each of these are covered by the MSHCP and are therefore, by the DEIR/S's own standards, a special-status species. *Id.* The DEIR/S erroneously concludes that the Project's impact on these species would be negligible because "they have no legal or regulatory protection beyond the level afforded by the Western Riverside County MSHCP or a CNPS watch list and because the few individuals potentially removed under Alternatives 1 and 2 are not in any Western Riverside County MSHCP conservation areas." DEIR/S at 3.19-12. Here too, the document provides no evidence to support its conclusion that impacts to these species would be less than significant. These species meet the definition of special-status species; impacts to them must be analyzed at the same level of detail as other special-status species. Moreover, since the species appear to be afforded limited protection under the MSHCP or CNPS, it would seem that mitigation for these impacts would be more, not less, important.

Finally, the DEIR/S acknowledges that these species warrant special consideration under CEQA because they are considered part of coastal sage scrub natural communities (NES at 106, 107), yet the CEQA section of the DEIR/S provides no indication that these species have received this special consideration. (*See* DEIR/S at 4-12 simply repeating the language that the species are afforded no special protection under the MSHCP or CNPS). In violation of CEQA, the document fails to evaluate and mitigate the impacts on these California special plants. Guidelines § 15125(b).

3. The DEIR/S Fails to Meet CEQA and NEPA's Requirements for Analysis of Cumulative Biological Resources Impacts.

NEPA and CEQA require agencies to prepare a cumulative impacts analysis in evaluating the impact of a proposed project. The importance of the cumulative impacts analysis has been repeatedly underscored by both federal and state courts. NEPA defines a cumulative impact as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from

individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7; *see also* 40 C.F.R. §§ 1508.25(a)(2), 1508.27(b)(7). The Ninth Circuit has held that “where several actions have a cumulative or synergistic environmental effect, this consequence must be considered in an EIS.” *City of Tenakee Springs v. Cough*, 915 F.2d 1308, 1312 (9th Cir. 1990). The federal courts further require the cumulative impacts analysis to be detailed and supported with empirical data. *See, e.g., Natural Resources Defense Council v. Hodel*, 865 F.2d 288, 299-300 (D.C. Cir. 1988).

Likewise, CEQA requires a discussion of the environmental impacts, both direct and indirect, of the proposed project in combination with all “closely related past, present and reasonably foreseeable probable future projects.” Guidelines § 15355(b); *see also* Cal. Pub. Res. Code § 21083(b); Guidelines §§ 15021(a)(2), 15130(a), 15358. The discussion of cumulative impacts must “reflect the severity of the impacts and the likelihood of their occurrence” (Guidelines § 15130(b)), and must document its analysis with references to specific scientific and empirical evidence. *Mountain Lion Coalition v. California Fish & Game Comm'n*, 214 Cal.App.3d 1043, 1047, 1052 (1989).

Here the DEIR/S’ analysis of cumulative impacts to biological resources is entirely deficient. The document conducts the first step of the analysis: identification of the transportation, land use, and public utility projects in the vicinity of the proposed Project. *See* DEIR Chapter 3.25. Yet, it fails to conduct the second step: the actual analysis of the combined effects of these anticipated projects. It sidesteps the necessary analysis claiming that “detailed environmental analyses were not available for many of the cumulative projects.” DEIR/S at 3.25-31 and Cumulative Impacts Analysis Report at 5-14 and 5-20. It then simply concludes that “[b]ecause many of those projects are in the same approximate geographic area as the SR-91 CIP, it is reasonable to assume that they could impact the same types of natural communities as the SR-91 CIP Build Alternatives.” *Id.*

Caltrans cannot evade its obligation to conduct an analysis of cumulative environmental impacts. As explained by the Court in *Laurel Heights I*, 47 Cal.3d at 399 (1988) (*Laurel Heights I*), “[w]e find no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency’s task may be difficult.” *Environmental Planning and Information Council of Western El Dorado County v. County of El Dorado*, 131 Cal.App.3d 350, 357 (1982) (information regarding the project’s impacts must be “painstakingly ferreted out.). *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1300 (9th Cir. 2003) (citations omitted)

(federal agencies must “consider every significant aspect of the environmental impact of a proposed action . . . [and] inform the public that [they have] indeed considered environmental concerns in [their] decision-making process[es].”).

The SR-91 Project would result in a host of significant impacts to species and habitat, yet the DEIR/S fails to address these effects under cumulative conditions. Many past and ongoing projects that have also affected, or are affecting, CHSP and other reserves of habitat in the area. For example, Metropolitan Water District recently constructed a secondary access road to its Diemer Water Filtration Plant in Yorba Linda, that goes through, and impacts, CHSP. *See* <http://www.hillsforeveryone.org/projects/mwd-road.html>. The Santa Ana River Flood Control Project Reach 9, Phase 2A will also impact CHSP. *See* http://smmc.ca.gov/pdf/attachment2651_Comment%20Letter.pdf. Likewise, the Santa Ana River Interceptor Relocation Project will impact the area around the Santa Ana River Trail and Coal Canyon. *See* http://www.ocflood.com/SARI_home.aspx. In addition, there are numerous other developments and projects, including the proposed Mountain Park housing development and the Army Corps of Engineers Green River HOA bank protection project, Green River mobile home park bank protection project, Green River Golf Course bank protection, and protection of the Santa Ana River Interceptor line on the north side of Green River HOA at Aliso Creek. The cumulative impacts of these projects in conjunction with this Project must be analyzed.. *See City of Carmel-by-the-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1160 (9th Cir. 1997) (EIS insufficient when it described past projects “with generalities insufficient to permit adequate review of their cumulative impact”); CEQA Guidelines § 15130, 15355.

Analysis of cumulative impacts to the Coal Canyon undercrossing will be particularly important. The undercrossing is part of an essential corridor for wildlife movement through the Chino Hills region, but its ability to support such movement is increasingly tenuous. The projects discussed here, with their overlapping construction schedules, will create noise and human disturbance for the next ten years, severely reducing the corridor’s ability to support wildlife movement. And after that time, the Project under review here will continue to bring noise and disturbance to Coal Canyon. The DEIR/S must be revised to take account of these cumulative impacts, along with of the other impacts of past, pending, and future projects on biological resources.

The DEIR/S must be revised to include a comprehensive analysis of the Project’s cumulative effects on habitats and plant and animal species and identify feasible mitigation for impacts deemed to be significant.

B. The DEIR/S Fails to Adequately Analyze the Project's Impacts on Parks.

Chapter 3.1, section 3.1.3 of the DEIR/S analyzes the Project's impacts on parks and recreational facilities. It also analyzes the Project's compliance with applicable federal laws that protect parklands, including section 4(f) of the Department of Transportation Act of 1966 and section 6(f) of the Land and Water Conservation Fund Act. The Project must comply with the procedural and substantive mandates of sections 4(f) and 6(f). In addition, CEQA and NEPA require that the DEIR/S contain an accurate analysis of the Project's consistency with every "applicable land use plan, policy, or regulation of an agency with jurisdiction over the project." CEQA Guidelines Appx. G § X(b); *See also Senville v. Peters*, 327 F. Supp. 2d 335, 350 (D. VT 2004) (EIS that contained insufficient 4(f) evaluation was inadequate). Under CEQA, any inconsistency between the project and such plans must be disclosed as a significant impact on the environment, and mitigation to reduce or avoid that impact must be identified. *See, e.g., Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 930, 934. Under NEPA, a failure to properly analyze inconsistencies render the EIS inadequate as a matter of law. *Senville*, 327 F. Supp. 2d at 350.

Here, the DEIR/S incorrectly analyzes the impacts of the Project on parkland. In addition, although sections 4(f) and 6(f) constitute applicable policies or regulations of an agency with jurisdiction over the Project, the DEIR/S fails to fully analyze the Project's consistency with the sections. For example, the document incorrectly analyzes the applicability of section 4(f)'s "de minimis" provision and fails entirely to analyze whether the taking of land in CHSP is consistent with the California Outdoor Recreation Plan, a land use plan made applicable to the project by the Conservation Fund Act. Moreover, Caltrans has failed to comply with procedural and substantive mandates of the Department of Transportation Act and Land and Water Conservation Fund Act, as described more fully below.

1. The DEIR/S Underestimates the Amount of Parkland That Will Be Impacted by the Project and Fails to Disclose the Severity of Those Impacts.

The DEIR/S acknowledges that the Project will directly impact land that is a part of the Park. For example, it states that the Project will directly use .06 acres for footings related to an aerial freeway ramp (the Green River Road off-ramp), and would also require a .73 acre aerial easement for the ramp. DEIR/S at 3.1-63. However, the DEIR/S fails to analyze other probable impacts of the Project on CHSP. For example, given that there will be three columns for the freeway ramp located on Park land (DEIR/S at 3.1-

72), presumably Caltrans will also need an easement that would allow it to traverse Park land for maintenance of the ramp and columns. However, the DEIR/S is silent about this likely use of Park land, even though such an easement would preclude other uses of the land. Caltrans must factor this use of Park land into its calculation of feasible minimization and mitigation of impacts. To be a legally adequate informational document, the DEIR/S also must disclose the necessity of any such easement.

Moreover, the EIR inconsistently describes the Project's impacts on CHSP. In most places, it asserts that the Project will only directly impact .06 acres of land. *See, e.g.,* DEIR/S at 3.1-61, 3.1-62, 3.1-77, B-8. Indeed, it only provides measures to mitigate the taking of that amount. DEIR/S at 3.1-77. But this small number is misleading, as it accounts for only the actual footprint of the three columns that will support the Green River Road off-ramp. In addition to these columns, and as described above, there may well be other direct impacts to the Park over time if Caltrans needs to access and maintain the ramp and footings/columns. Also, there will undoubtedly be direct impacts to Park land associated with the .73 acre aerial easement. As the DEIR/S admits, "there may be some restrictions on future uses in the area under the aerial easement, at the ground surface, to avoid adverse impacts to the bridge and to ensure that rail and surface vehicles can continue to safely pass under the bridge." DEIR/S at 4-38. Thus, the actual, direct impacts to the Park include not merely the .06 acres from the ramp footings, but also include "[t]he 0.73 ac area under the aerial easement and the 0.28 ac area in CHSP south of that easement[, which] result[s] in a total 1.01 ac used by Alternatives 1 and 2." DEIR/S at 4-38. The DEIR/S' failure to accurately and consistently describe the full range of impacts from the off-ramp renders it inadequate to carry out its purpose as an informational document.³

Moreover, the DEIR/S fails to analyze the feasibility of using the planned temporary construction easements and permanent subsurface easement in the Park. For example, just west of Coal Canyon Road on the south side of SR-91, Caltrans plans a permanent subsurface easement with an intrusion into the Park of 1.88 acres. But the DEIR/S fails to disclose that there is a conservation easement on this land and fails to analyze whether that easement allows the subsurface easement for the Project. Likewise,

³ Regardless of the DEIR/S inaccuracies regarding the magnitude of impacts to parks, many such impacts, as well as impacts to biological resources, would be reduced if not avoided by elevating the off-ramp now proposed for Coal Canyon and shifting it to a less-sensitive location. Moreover, the alternatives discussed in the comments submitted by the Center for Biological Diversity would similarly reduce or avoid these impacts.

Caltrans wants two temporary construction easements of .57 acres in the Park on the north side of SR-91 but fails to disclose the existence of, or the Project's consistency with, a conservation easement on that land.

To be legally complete, the DEIR/S must (1) analyze whether Caltrans will require a maintenance easement and how that easement would limit use of Park land, (2) disclose whether the existence of the ramp and aerial easement will render the portion of the Park beneath the ramp essentially useless for all park purposes, and (3) disclose the conservation easements on Park land and analyze whether those easements allow Caltrans to use Park land for construction work or subsurface improvements. In particular, the DEIR/S must analyze what uses will still be allowed beneath the ramp and what uses will be prohibited or limited. Will the ramp preclude the Park from constructing any buildings in the area, improving its access road, or allowing certain other types of uses? Will the public still be allowed to use the area under the freeway ramp? As described in more detail below, Caltrans must also propose mitigation for the entire impacts, not just the .06 acres directly impacted by the footings.

2. The DEIR/S Fails to Analyze the Impacts of Increased Noise, Lighting and Fire Ignition Risk on Parks.

Increased noise from freeways can negatively affect park users and wildlife. For recreational users of parks, increased noise detracts from the peaceful atmosphere and serenity of a park. For wildlife, noise and lights can deter animals from using areas of habitat that they might otherwise use, thereby decreasing the range of available land for the animals. Of particular concern, the Coal Canyon area serves as a critical wildlife corridor, connecting CHSP on the north with the vast, undeveloped Santa Ana mountains on the south. The recently established wildlife undercrossing at the old Coal Canyon Road exit forms a critical link for wildlife to cross the freeway. *See Janet Wilson, Wildlife Highway Links Vital Habitats, Los Angeles Times, April 19, 2004, attached as Ex. L.*

Although the Project includes a sound barrier in certain areas in order to reduce noise impacts to residences and other human-related sensitive receptors, the DEIR/S appears to ignore the potential impacts of noise to wildlife in parks or other areas. Indeed, the document bluntly admits that “[n]oise abatement is only considered for areas of frequent human use that would benefit from a lowered noise level.” .DEIR/S at 3.15-6; *see also id.* at 3.15-28 – 39 (analyzing feasibility of sound walls only in locations

where residences would be impacted).⁴ The DEIR/S' failure to analyze the potential impacts of noise on wildlife, and in particular on the Coal Canyon Road wildlife undercrossing, renders its analysis legally deficient.

In addition, the DEIR/S fails to analyze the effect of increased lighting along the freeway. Although the DEIR/S states that virtually no new lighting is planned due to the expansion, DEIR/S at 3.7-13, it does not analyze the increased lighting due to headlights from the increased traffic at night, which could deter wildlife from using the undercrossing or other areas near the freeway.

The DEIR/S also ignores the increased risk of fire ignition from the expanded freeway. Given the recent fire history (e.g., the Freeway Complex Fire) in the area, as well as the fire that is burning in Carbon Canyon as of July 7, 2011, this issue is of particular concern. In fact, the DEIR/S asserts, counterintuitively, that "the project would have a beneficial effect related to wildland fire hazards" because it will widen the freeway, creating a wider fire break so that fires will not spread as easily. DEIR/S at 4-5. Even assuming this is accurate, the DEIR/S ignores the fact that fires often begin on roadways. This has historically been true of SR-91, which has been the source of numerous area fires.⁵ Given that the freeway will now carry even more vehicles, there is a greater likelihood of fire ignition from the road. The DEIR/S must analyze this impact.

3. The DEIR/S Fails to Analyze Cumulative Impacts to Parks.

The DEIR/S entirely fails to analyze any impacts to CHSP or other public parks or recreation areas that the Project would cause in conjunction with other past, present or

⁴ The EIR shows that noise barriers are reasonable and feasible along Coal Canyon Road. DEIR/S at Figure 3.15-1, Sheet 2. However, it appears to not actually require noise barriers in that location. DEIR/S at 4-35. Further, the map showing feasible noise barriers at Coal Canyon Road shows that they would be adjacent to open space; yet this contradicts the earlier statement that sound barriers were only considered for areas where residences would be impacted. The DEIR/S' confusing and contradictory noise analysis makes it nearly impossible to tell what was actually analyzed. This flaw is, in itself, a violation of CEQA because the document fails to actually inform the public and decisionmakers of the Project's impacts in a comprehensible fashion.

⁵ Hills For Everyone is presently completing a fire study that shows that this stretch of the 91 freeway is a frequent source of ignition for fires that eventually spread to the Park; we will submit the study to Caltrans when it is complete.

reasonably foreseeable future projects.⁶ Instead, the DEIR/S states that: “[b]ecause Alternatives 1 and 2 (LPA) and their design variations would not result in direct impacts on Section 4(f) properties after mitigation, the potential for the SR-91 CIP to contribute to cumulative impacts related to these resources was not further evaluated in this analysis.” DEIR/S at 3.25-61. First, the fact that there might not be any project-specific impacts, even if true, does not mean that there are no cumulative impacts. *Kings County Farm Bureau*, 221 Cal.App.3d at 719-21. Moreover, the DEIR/S’ assertion that the Project will “not result in direct impacts” on protected properties is demonstrably false. As the DEIR/S freely admits in other sections, the Project *does* directly impact CHSP on a permanent basis and other parks on a temporary basis. *See, e.g.*, DEIR/S at 3.1-63 (the Project would result in the “permanent use” of land in CHSP and temporary use of other parks).

Because the Project would admittedly result in some impacts to park lands, the DEIR/S must analyze these impacts in a cumulative setting. The fact that the Project’s impacts to parks may be small individually is irrelevant to a cumulative analysis. CEQA Guidelines § 15355(b) (“Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”); *Kings County Farm Bureau*, 221 Cal.App.3d at 719-21. Indeed, in a rapidly developing area such as Riverside County, parks and open space are a finite and shrinking resource, and any individually minor impact must be assessed in conjunction with the myriad other impacts occurring due to other projects.

Here, it appears that other highway widening projects in the area may affect CHSP and other parks.⁷ Although it is impossible to tell from the DEIR/S the extent or certainty of any such impacts, the DEIR/S describes numerous other highway projects near the parks affected by this Project. For example, the SR 241/91 interchange project may have impacts on Featherly Regional Park and Canyon RV Park. Also, the SR 91/SR 71 Interchange Improvement Project will impact CHSP, and if the western section of the Mid-County Parkway is constructed, it would impact El Cerrito Sports Park. Similarly, the many projects discussed in section I.A.3, above, would each impact CHSP and other area parks and recreational resources. The DEIR/S must analyze the cumulative impacts of these and other known development and highway projects on CHSP and other area parks.

⁶ *See* discussion of the standard for cumulative analysis, *infra*.

⁷ Indeed, as described in section I.A.2, above, some other highway “projects” are actually part of this Project and should be analyzed together in this EIR/S.

4. The DEIR/S' Mitigation for Park Impacts Is Inadequate.

The DEIR/S admits that impacts to parks constitute a significant impact for CEQA purposes (DEIR/S at 4-18, 3-36 – 37), thus triggering CEQA's requirement that the EIR identify all feasible mitigation that could minimize or avoid these impacts. CEQA Guidelines § 15126.4(a)(1)(A) (discussion of mitigation "shall identify mitigation measures for each significant environmental effect identified in the EIR"). The DEIR/S does propose some mitigation for purposes of meeting requirements of the Land and Water Conservation Act and the Department of Transportation Act. DEIR/S at 3.1-77 – 3.1-78. However, nowhere does the DEIR/S analyze whether the mitigation proposed under these requirements also meets Caltrans' separate obligation to mitigate impacts to parklands under CEQA. *See* DEIR/S at 3.1-76 – 77 (discussing mitigation "to address project impacts under Sections 4(f) and 6(f) . . ." but not CEQA). California courts have long rejected Caltrans' implicit approach of relying on compliance with other legal requirements to satisfy CEQA's mitigation requirements. *See Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 716 (1990) (compliance with agency regulations does not conclusively indicate that a proposed project would not have a significant and adverse impacts requiring mitigation).

In any event, the proposed mitigation is inadequate for any purpose. First, the DEIR/S indicates that Caltrans does not even yet know whether it will replace the parkland taken by the Project. Instead, it states that, during public circulation of the DEIR/S, it "will continue to consult with State Parks" on the issue of compensation for the use of land in CHSP. DEIR/S at 3.1-77. Likewise, it states that, in the future, it will "coordinate with State Parks on the identification" of other mitigation measures to improve the existing trailhead near the Green River Road off-ramp. *Id.* This means that the public has no assurance that any particular mitigation will occur, or knowledge of what the final mitigation will be. Although the document contains a handful of mitigation ideas, it contains no performance standards to ensure that mitigation measures will serve their intended purposes and will adequately reduce impacts. This standard-less deferral of mitigation until after project approval is unacceptable under CEQA. *See Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309 (deferral of mitigation until after project approval is inadequate); *see also San Joaquin Raptor Rescue Ctr.*, 149 Cal.App.4th at 671.

More importantly, the DEIR/S fails to propose mitigation that addresses all of the Project's impacts on parklands. Rather, it merely proposes mitigation for the .06 acres of land directly impacted by the freeway ramp columns. DEIR/S at 3.1-77. Given that the aerial easement will also significantly impact the Park, and that the Project will actually

“result in a total of 1.01 ac used” in the Park, the DEIR/S must propose mitigation for all of these impacts. DEIR/S at 4-38.

5. The DEIR/S Fails to Satisfy the Procedural and Substantive Mandates of Section 4(f) of the Department of Transportation Act and Fails to Analyze the Project’s Consistency with the Act.

In enacting section 4(f) of the Department of Transportation Act of 1966, Congress declared that “special effort should be made to preserve the natural beauty of the countryside and public park and recreation lands [and] wildlife and waterfowl refuges” 49 U.S.C. § 303. As a means of realizing these broad goals, Congress specified two fundamental substantive mandates: (1) prohibiting federal agencies from approving transportation projects that require use of a public park, recreation area or wildlife refuge unless there are no feasible and prudent alternatives to using such land; and (2) requiring transportation projects that use a public park, recreation area or wildlife refuge to use *all possible planning* to minimize harm to the land. 49 U.S.C. § 303(c) (emphasis added).

The Transportation Act thus codified the requirement that federal agencies consider alternatives to environmentally damaging proposals even before this principle was enshrined as a core provision in NEPA. Indeed, the Act’s provisions are even more stringent than NEPA’s, as they include the substantive requirement that an agency *actually select* a feasible and prudent alternative to proposed highway routes that would otherwise damage these protected areas. Further, as the DEIR/S recognizes, agencies often seek to comply with section 4(f) by purchasing or paying for replacement park land. *See* DEIR/S at 3.1-77 (recognizing Caltrans’ obligation to provide replacement land for property protected under section 4(f) that is taken as part of the Project).

a. The DEIR/S Improperly Concludes that Impacts On Parkland are “De Minimis.”

Recent amendments to the Department of Transportation Act allow agencies to find that a project’s impacts to protected resources are only “de minimis,” and that section 4(f) protections therefore do not apply. In order to properly make de minimis findings, an agency must show that the “impact is one that will not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f).” 23 C.F.R. § 774.17. The Federal Highway Administration states that:

The purpose of the language [regarding de minimis findings] is to clarify that the portions of the resource important to protect, such as playground equipment at a public park, should be distinguished from areas such as

parking facilities. While a minor but adverse effect on the use of playground equipment should not be considered a *de minimis* impact under section 4(f), encroachment on the parking lot may be deemed *de minimis*, as long as the public's ability to access and use the site is not reduced.⁸

Thus, for purposes of public parks such as CHSP, a *de minimis* finding is not proper if a project, together with mitigation measures, would adversely affect the natural setting, views of hikers, accessibility for hiking and other recreation, habitat for wildlife, or other features or attributes that qualify the area for protection under section 4(f). Here, with regard to CHSP, the Project would unquestionably adversely “affect the features, attributes, or activities qualifying the property for protection under Section 4(f).” The Project will not merely encroach on a parking lot or impact unimportant or fungible features of the Park. Rather, it will place a *freeway entrance ramp* over $\frac{3}{4}$ of an acre of parkland *immediately adjacent* to a trailhead and that provides access to a rare natural stretch of the Santa Ana River. DEIR/S at 3.1-72. It will also make it so that “[u]sers of that trail in CHSP would have very close views of a large retaining wall on the north side of SR-91.” *Id.* Although the DEIR/S does not state how large the retaining wall would be in this location, it may be up to 40 feet high. DEIR/S at 5.25-18 (retaining walls will be anywhere from 3 ft high to 40 ft high).

Despite this unequivocal evidence of direct adverse impacts to key Park attributes, the DEIR/S concludes, inexplicably, that a *de minimis* finding is justified because “[t]he changes to CHSP as a result of the project would be minimal [and t]here would be *no interference* with the features, activities, attributes, or purposes of CHSP, on either a temporary or permanent basis.” DEIR/S at 3.1-75 (emphasis added). As described above, the Project unequivocally has *some* interference with important features of CHSP. Thus, the DEIR/S’ conclusion regarding the *de minimis* finding is baseless.

Though Caltrans fails to explain its reasoning for finding “no interference,” there are two possible explanations, neither of which is valid. First, earlier in DEIR/S, the document states that “[t]here are no park amenities in the part of CHSP adjacent to the project segment of SR-91. The user amenities (trails, etc.) are located farther in CHSP so park patrons are not directly adjacent to the freeway and do not have views of SR-91.” DEIR/S at 3.1-55. If this were true, Caltrans might have a non-frivolous argument that

⁸ Federal Highway Administration, *Questions and Answers on the Application of the Section 4(f) De Minimis Impact Criteria*, <http://www.fhwa.dot.gov/hep/qasdemimus.htm>, last accessed June 22, 2011.

the Project did not impact important features of the Park. However, this assertion is directly contradicted by other statements in the DEIR/S, which clearly indicate that there is a “trailhead located immediately north of the area where the columns [of the new off-ramp] would be located” and that “[u]sers of that trail in CHSP would have very close views of a large retaining wall” in that area. DEIR at 3.1-72. Thus, the DEIR/S’ finding of de minimis impacts cannot be justified by an allegation that important Park amenities are not near the Project site. Moreover, because the DEIR/S contains internal contradictions regarding whether there is a trailhead at the part of the Park impacted by the Project, it is legally deficient as an informative public document under CEQA and NEPA. *See San Joaquin Raptor*, 27 Cal.App.4th at 730 (“[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.”).

Second, Caltrans may be relying on possible mitigation to the Project’s impacts on the Park to make its de minimis finding. For instance, the DEIR/S states that various mitigation measures will be undertaken in order to address the taking of .06 acres of CHSP and the “visual impacts of the retaining wall and the elevated [] off-ramp.” DEIR/S at 3.1-77. However, the DEIR/S’ findings regarding de minimis impacts do not appear to take this mitigation into account; rather, they state that there “would be *no interference* with the features, activities, attributes, or purposes of CHSP.” DEIR/S at 3.1-75 (emphasis added). Moreover, the DEIR/S admits that the impacts to trail users of their views due to the retaining wall would only be “*partially* mitigated with visual/aesthetics treatments.” DEIR/S at 3.1-75 (emphasis added). Moreover, as described above, to fully mitigate the Project’s impacts to parks, Caltrans would need to mitigate not just for the .06 acres of land taken due to the ramp footings, but also for the land impacted by the aerial easement. Thus, the de minimis finding could not be justified even with current mitigation.

The improper analysis of the de minimis standard renders the DEIR/S’ analysis of the Project’s consistency with section 4(f) inaccurate, in violation of CEQA and NEPA. *See Senville*, 327 F. Supp. 2d at 350 (EIS that contained insufficient 4(f) evaluation was inadequate). Further, because the de minimis findings are not justified, Caltrans must comply with section 4(f)’s substantive mandate to avoid using any part of CHSP for the Project unless there are no feasible and prudent alternatives, and to use all possible planning to minimize harm to the Park. 49 U.S.C. § 303(c).

b. The DEIR/S Fails to Accurately Analyze Consistency With Section 4(f) Because Its Constructive Use Analysis is Improper.

Section 4(f) protects park lands not only from direct uses, but also from “constructive uses.” A “constructive use” of 4(f) lands occurs when:

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

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

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

Here, the DEIR/S fails to analyze or describe whether the Project would result in constructive use of protected lands due to increased noise, runoff, vibration or other impacts. Although Appendix B contains some information regarding constructive use of parks, courts have held that an agency’s analysis must be contained in the EIR, not “scattered here and there in EIR appendices.” *Santa Clarita Organization for Planning the Environment v. County of L.A.*, 106 Cal. App. 4th 715, 722 (2003).

Moreover, the DEIR/S (including Appendix B) fails to analyze “constructive uses” for all relevant protected areas, including CHSP, the Santa Ana River Trail, and the Featherly Regional Park, among other areas. Appendix B at B-5 – B-8. Because the

Project will be constructed adjacent to all three protected areas, the DEIR/S must analyze potential constructive use of these areas. Given that the Project would result in construction of 2-4 lanes of new freeway adjacent to these areas, which will result in aesthetic, noise, runoff and other impacts, the Project will undoubtedly substantially impair the visual and recreational attributes in portions of all three protected areas.

In particular, the Project's noise will impact park areas significantly. The DEIR/S discloses that the Project will result in a 10 decibel increase from existing conditions in either nine or twelve different locations along the length of the Project, depending whether Alternative 1 or 2 is selected. DEIR/S at 3.15-19 – 3.15-24. However, the DEIR/S does not disclose whether this level of noise increase is expected in protected park areas. *Id.* In particular, it does not disclose whether there would be a high level of noise increase at Canyon RV park in Featherly Regional Park.

Courts have found “constructive use” where a freeway project will result in a 10 decibel increase in noise levels in parks. *Davis v. Mineta*, 302 F.3d 1104 (10th Cir. 2002). Moreover, noise increases are particularly impactful in areas such as campgrounds. *See Brooks*, 460 F.2d 1193 (9th Cir. 1972) (noise increase in campground due to highway project resulted in constructive use). Thus, the DEIR/S must analyze whether the Project will result in significant noise increases in protected areas, thereby causing a constructive use. If so, Caltrans must also undertake all possible planning to reduce the impacts, as required by section 4(f).

6. The DEIR/S Fails to Abide by the Requirements of Section 6(f) of the Land and Water Conservation Fund Act and to Adequately Analyze the Project's Consistency with Section 6(f).

When local governments receive federal funding through the Land and Water Conservation Fund Act program, they agree to comply with 36 CFR § 800, Executive Order 11593, § 106 of the National Historic Preservation Act of 1966 and Section 6(f)(3) of the Land and Water Conservation Fund Act (“Conservation Fund Act”), which states: “No property acquired or developed with assistance under this section shall, without the approval of the National Secretary of the Interior, be converted to other than public outdoor recreation uses.” 16 U.S.C. § 4601–8(f). The Secretary of the Interior may approve conversions only if the local agency complies with the terms of the conversion provisions of the Conservation Fund Act and provides replacement parkland that satisfies the requirement that the public recreation estate remain undiminished. *Id.*

CHSP received funds through the Conservation Fund Act. DEIR/S at 3.1-54. Thus, Caltrans must abide by the various provisions of federal law outlined above,

including the obligation to provide replacement parkland to ensure that the Park's attributes remain undiminished. As explained above, the DEIR/S also must fully analyze the Project's consistency with section 6(f). However, the DEIR/S fails to meet the requirements of CEQA and NEPA, and Caltrans fails to show that it will comply with the various substantive requirements of federal law before approving the Project.

First, although Caltrans has apparently consulted with State Parks regarding its obligations under section 6(f), there is no indication that it has received approval of the Department of the Interior or National Park Service, or that it intends to seek such approval. *See* DEIR/S at 3.1-76 (stating that “[c]onsultation with State Parks has been ongoing” but not mentioning consultation with the National Park Service). Yet consultation with the National Park Service is required, as “The NPS Regional Director has the authority to disapprove conversion requests and/or to reject proposed property substitutions.” *See* Exhibit K, Land and Water Conservation Fund State Assistance Program Manual, Chapter 8 p. 8-4 (2008). Without approval from National Park Service, there is no assurance that the federal government will allow Caltrans' proposed conversion of recreational land in CHSP or its proposed substitution of land. Given that the Green River Road off-ramp, with its footings in CHSP, is an integral part of the Project, and that the DEIR/S contains no alternative that avoids use of Park land, Caltrans must obtain the approval of the National Park Service in order to proceed with the Project. Caltrans' failure to obtain or seek this approval is a glaring omission that must be remedied.

Second, Caltrans improperly relies on the Conservation Fund Act's streamlined provisions for “small conversions” that amount to less than 10% of a property's area. DEIR/S at 3.1-76. In order to satisfy the criteria for a “small conversion,” Caltrans must demonstrate that the proposed conversion is not controversial and that the replacement property is contiguous to the original Section 6(f) area. *See* Ex. K, p. 8-10. But here, as demonstrated by this letter, the conversion *is* controversial. Riverside County and Caltrans should not be taking more precious parkland to build ever-larger freeways. SR 91 is already 10 lanes, and this Project would widen it to 12 or even *14 lanes*. What next? 18 lanes? 20? We simply cannot build ourselves out of traffic jams, and taking more parkland as part of Caltrans' misguided attempt to pave over the rest of southern California should be, and is, controversial. Moreover, the DEIR/S does not assure that replacement parkland would be contiguous to CHSP. Indeed, it does not even ensure that replacement parkland will be provided; rather, it states that Caltrans will *either* provide contiguous, replacement parkland *or* monetary compensation to address the conversion of parkland under section 6(f). DEIR/S at 3.1-77. However, section 6(f) contemplates that

an agency will provide replacement parkland, not monetary compensation. 16 U.S.C. § 460l-8(f)(3).

Lastly, The DEIR/S fails to make any mention of the California Outdoor Recreation Plan in Chapter 3.1, Land Use, which purports to identify and evaluate all of the Project's "impacts related to land use." DEIR/S at 3.1-1. Furthermore, the California Outdoor Recreation Plan and its consistency with the Project are not discussed in any other section of the DEIR/S. The complete failure to evaluate and disclose the Project's consistency with this state-wide plan is a failure to comply with CEQA, and renders the DEIR/S inadequate.

7. The DEIR/S Fails To Discuss Caltrans' Obligations Under the Public Park Preservation Act.

The DEIR/S also fails entirely to acknowledge the Public Park Preservation Act of 1971, Pub. Res. Code § 5400 *et seq.*, and its relevance to the Project. The Public Park Preservation Act, which applies to any park operated by a public agency, provides in part:

No city, city and county, county, public district, or agency of the state, including any division, department or agency of the state government, or public utility, shall acquire (by purchase, exchange, condemnation, or otherwise) any real property, which property is in use as a public park at the time of such acquisition, for the purpose of utilizing such property for any nonpark purpose, unless the acquiring entity pays or transfers to the legislative body of the entity operating the park sufficient compensation or land, or both, as required by the provisions of this chapter to enable the operating entity to replace the park land and the facilities thereon.

Pub. Res. Code § 5401. The replacement land or compensation must be sufficient to provide substitute park land of comparable characteristics, substantially equal size, and capable of being used by generally the same persons as use the existing park. Pub. Res. Code § 5405.

Caltrans' obligations under the Park Preservation Act extend at a minimum to CHSP. The DEIR/S must discuss Caltrans' obligation to replace any park land it acquires with similar park land elsewhere and how it intends to comply with this requirement. *See, e.g., City of Fremont v. San Francisco Bay Area Transit Dist.*, 34 Cal.App.4th 1780, 1790 (legally adequate EIR where BART fully discussed obligation

under the Public Park Preservation Act). Though the DEIR/S discusses similar obligations under federal law, *see* DEIR at 3.1-77, Caltrans' obligations under the state Park Preservation Act are not necessarily identical. For example, where, as here, the amount of land acquired from a public park is less than 10% of the park's area, the acquiring entity may opt to improve the remaining park instead of acquiring new, replacement park land. Pub. Res. Code § 5404. Although the DEIR/S indicates that, for purposes of federal law, Caltrans intends to replace the acquired parkland and also to improve the existing parkland (*see* DEIR/S at 3.1-77), the DEIR/S should address whether Caltrans intends to use the same method to comply with the Park Preservation Act. If so, as discussed above, Caltrans may not rely on uncertain, possible plans to mitigate taken parkland, but must commit to a definite course of action that will fully mitigate the land in CHSP that will be taken under the proposed Project.

III. The DEIR/S Reaches the Bizarre and Unsupportable Conclusion that the Project Has No Potential to Induce Growth.

In one of the DEIR/S' most blatant shortcomings, it concludes that the Project will have no growth-inducing impacts whatsoever. DEIR/S at S-30 (Chapter 4), 3.2-9. There is no credible evidence to support this conclusion, which is contrary to established research regarding the likelihood of freeway projects to induce growth.⁹ The conclusion is also contrary to Caltrans' own guidance documents, and common sense. The DEIR/S must be recirculated after Caltrans undertakes a new analysis of growth inducing impacts.

Both NEPA and CEQA require analysis of the growth-inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); 40 C.F.R. § 1508.8(b). CEQA requires that an EIR include a "detailed statement" setting forth the growth-inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg*, 187 Cal.App.3d 1325, 1337 (1986). The statement must "[d]iscuss the ways in which the proposed project could foster economic growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." CEQA Guidelines § 15126.2(d). It must also discuss how projects "may encourage and facilitate

⁹ "Research has shown that . . . changes in accessibility can influence the direction of growth in a region and the rate of growth in local areas." Caltrans, "Guidance for Preparers of Growth-related, Indirect Impact Analyses," p. 3-4, attached as Exhibit I; *see also Sierra Club, Ill. Chapter v. US Dept. of Transp.*, 962 F. Supp. 1037, 1043 (N.D. Ill 1997) ("Highways create demand for travel and expansion by their very existence.") (citing *Swain v. Brinegar*, 517 F.2d 766, 777 (7th Cir.1975)).

other activities that could significantly affect the environment, either individually or cumulatively” or “remove obstacles to population growth.” *Id.*

According to NEPA, an EIS must consider “growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.8(b). “Induced growth consists not only of growth that would not have occurred absent the project, however, but of relocated or redirected growth due to changes in accessibility.” *Senville v. Peters*, 327 F. Supp. 2d 335, 368 (D. VT 2004). The purpose of this analysis is “to evaluate the possibilities [for new growth induced by the project] in light of current and contemplated plans and to produce an informed estimate of the environmental consequences.” *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975). In conducting this analysis, “an agency must use its best efforts to find out all it reasonably can.” *Id.* Applying this standard, the Ninth Circuit in *City of Davis* found “totally inadequate” the government agency’s conclusion that a proposed freeway interchange would not have significant growth-inducing effects. *Id.* Indeed, the court found the interchange an “indispensable prerequisite” and “essential catalyst” for future development. *Id.* at 674.

A. The DEIR/S’ Analysis of Growth Inducing Impacts is Woefully Inadequate.

The DEIR/S purports to use a “first cut screening analysis” to determine the Project’s potential for inducing or affecting growth. DEIR/S at 3.2-9. This type of analysis is described in detail in Caltrans’ 2008 guidance document entitled “Guidance for Preparers of Growth-related, Indirect Impact Analyses.” *See* Exhibit I. Yet in the DEIR/S, Caltrans fails to follow its own guidance regarding how to undertake this screening analysis, and it flatly ignores most of the factors listed in its guidance regarding how to determine if a highway project will induce growth. For example, in its guidance, Caltrans states that “screening factors to consider include accessibility, project type, project location, and growth pressures in the area. *Id.* at 5-4. According to the guidance, a project may have growth-related impacts due to increased accessibility to the area if:

- Development that would have occurred anyway could be arranged in a different pattern. For example, new commercial activities might choose sites that the proposed project makes more accessible rather than other sites in the study area.
- The proposed project could cause some businesses or households to locate in the study area instead of other places in the region. For example, if access is improved

to land on the urban fringe, developers may capitalize on the improved access and build homes in these areas instead of elsewhere in the region.

- The proposed project could stimulate new real estate development that changes existing land uses and increases intensities in already developed areas. For example, residential properties near a new interchange might be redeveloped into commercial buildings because the changes in accessibility will make the land more attractive to commercial users who will offer higher prices for the land.

Ex. I at 5-4.

Here, the DEIR/S admits that the Project will cause “improved travel times” and will improve interchanges and widen freeways. DEIR/S at 3.2-10 – 3.2-11. Yet the DEIR/S fails to analyze whether developers may capitalize on the improved access, whether development that may have occurred anyway may be arranged in a different pattern, or whether residential property near a newly improved interchange might be redeveloped. In short, the DEIR/S fails to analyze the very factors that its own guidance document declare to be essential factors in determining the growth-inducing potential of a highway project.

Similarly, Caltrans’ own guidance states that projects such as this, which are in an urban/suburban fringe, and which add HOV or HOT lanes, are precisely the types of projects that may have growth-inducing impacts:

Adding high occupancy vehicle (HOV) lanes or mixed-flow lanes are examples of projects that could cause growth-related impacts because they add capacity to an existing facility. (Ex. I at 5-5).

Urban/Suburban Fringe. Undeveloped parcels adjacent to an expanding urban/suburban area can be prime growth areas. Fringe areas generally have high land availability and lower land prices. *Transportation projects in these areas have a high potential to cause growth-related impacts, particularly if the land is suitable, development regulations are favorable, and the area is in the path of an expanding urban/suburban core.* (Ex. I at 5-6 (emphasis added)).

Overall, Caltrans’ own guidance states that a first-cut screening analysis is generally insufficient to measure growth-related impacts when a project (1) adds new capacity on an existing roadway, (2) is located in an urban/suburban fringe area, and (3) is located in an area with lots of growth pressure. Ex. I at 5-8. All of these factors are

present here,¹⁰ yet Caltrans undertook only the most cursory first-cut screening analysis, and no follow-up analysis. Indeed, its “analysis” consists of nothing more than bare assertions and unsupported conclusions, which cannot provide the substantial evidence necessary to support its conclusion that the Project will have no growth inducing impacts.

As an example of its shoddy analysis, the DEIR/S admits that the Project will improve accessibility in the Project area, yet concludes, with no analysis, that the Project would not induce growth because it allegedly “would not substantially modify local, intra-regional or inter-regional accessibility to and/or from SR-91 and I-15.” DEIR/S at 3.2-10. In other words, many more people will be able to use the freeways to reach distant jobs, thereby making commute times shorter and living in Riverside County more appealing. However, because the Project does not create more *entrances* to the freeways, the Project does not modify freeway accessibility; thus, the Project cannot possibly change development patterns.

This cramped analysis of accessibility fails to account for the fact that accessibility to an area is measured not just by the number of entrances to roads, but also “reflects both the attractiveness of potential destinations and ease of reaching them.” Ex. I at 3-3. Indeed, as Caltrans’ guidance states, “Transportation projects may reduce the time-cost of travel, thereby enhancing the attractiveness of surrounding land to developers and consumers.” *Id.* Here, this is precisely what the Project would do, making commute times from Riverside County to Orange County shorter and thereby making surrounding land more attractive to consumers and developers. Yet the EIR fails to even acknowledge, much less analyze, this critical component of accessibility. This failure renders the DEIR/S inadequate under CEQA and NEPA.

Moreover, the DEIR/S is even internally inconsistent regarding the potential for growth in the area. On the one hand, it states that the Project “area is projected to continue to experience growth in population and jobs even in jurisdictions relatively constrained by limited land available for development.” DEIR/S at 3.2-11. It also states that “On average, the [Project] study area is about 50 percent built out.” DEIR/S at 3.1-1. Yet on the other hand, the DEIR/S states that “The project area includes highly urbanized areas (City of Corona, the part of Riverside County within the project limits) with little remaining development capacity.” DEIR/S at 3.2-11. Caltrans uses this second “fact” to

¹⁰ See DEIR/S at 1-3 (showing Project in regional context, on the fringe between urban parts of Orange and Riverside Counties, and suburban/rural parts of Riverside County).

conclude that, because there is little developable land left, the Project cannot be expected to induce growth. *Id.* However, there is no evidence to support the DEIR/S' conclusion that the area is built out, and that growth therefore will not occur. On the contrary, the DEIR/S repeatedly discusses the continuing growth expected in the Project area. *See, e.g.,* DEIR/S at 3.1-1 (“The study area is forecast to continue to grow rapidly over the next 20 years”).

The DEIR/S also meekly attempts to support its conclusion that the Project will not impact growth by stating that “SR-91 is also constrained on the south by the C[leveland] N[ational] F[orest] and New O[range] C[ounty] Park [], and constrained on the north by CHSP, the Santa Ana River, and Featherly Regional Park.” DEIR/S at 3.2-11. But these parks constrain development along only a small percentage of the Project corridor. *See* DEIR/S at Figure B-1 (showing that parks only abut Project for small percentage of corridor length, and that lots of developable land remain in vicinity of Project). Besides, the Project includes widening a significant section of the I-15, yet the DEIR/S does not even attempt to explain whether or to what extent growth is constrained along this section of freeway.

In sum, the DEIR/S relies on unsupported assumptions to dismiss the idea that a massive widening of two freeways could induce growth at all. This reasoning flies in the face of current research, which shows that such roadway expansions do induce development. *See* Reid Ewing & Allan Lichtenstein, *Induced Traffic and Induced Development*, October 2002, attached as Exhibit J.¹¹ If Caltrans and FHWA have contrary data—and there is no indication in the DEIR/S that they do—they must reference it in the DEIR/S. 40 CFR § 1502.24 (agencies must “identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions relied upon in the [EIS].”). However, they cannot rely on unsupported assumptions to summarily conclude that the “proposed project is not expected to influence the amount, timing, or location of growth in the project area.” DEIR/S at 3.2-11.

¹¹ This study, in its summary on the first page, states that “research that has been done on induced development suggests it is a real phenomenon. While the cause and effect between road construction and development is not totally clear, the studies suggest that some level of development is likely to occur specifically as a result of the additional road capacity.”

B. The DEIR/S Fails to Analyze Cumulative Growth Inducing Impacts.

It is undisputed that this Project is an integral part of dozens of other planned highway expansions in the region, all of which will affect the movement of goods and people—and induce further growth—in the region. *See* DEIR/S at 3.25-41 – 3.25-51 (listing cumulative projects). The DEIR/S’ wholesale failure to analyze the cumulative growth-inducing impacts of these inter-connected projects violates CEQA and NEPA. CEQA Guidelines § 15130(a) (stating requirements for cumulative impacts); *San Joaquin Raptor*, 27 Cal.App.4th at 732-33; 40 C.F.R. § 1508.25(a), (c). The DEIR/S must be revised to include this critical analysis.

IV. CONCLUSION

In order to cure the panoply of defects identified in this letter, the DEIR/S must be revised to fully and accurately describe all components of the proposed Project. Substantial new information must be obtained to adequately assess the environmental impacts of the whole of the Project, and to identify effective mitigation measures and alternatives capable of alleviating these impacts. Both CEQA and NEPA require that the public have a meaningful opportunity to review and comment upon this significant new information, which should be presented in the form of a recirculated draft EIR/S. In addition, more analysis needs to be conducted to ensure that Caltrans has considered all feasible and prudent alternatives to using section 4(f) parkland and has undertaken all possible planning to minimize harm to such protected lands.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Gabriel M.B. Ross
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Exhibits:

Exhibit A: SR-91/SR-71 Interchange Improvement Project Initial Study and Proposed Mitigated Negative Declaration, Caltrans, November 2010

- Exhibit B: RCTC SR-91/SR-71 Interchange Improvement Project Information Sheet, RCTC
- Exhibit C: RCTC SR-91/SR-71 Interchange Project Newsletter, RCTC
- Exhibit D: I-15 Corridor Improvement Project Overview, RCTC
- Exhibit E: I-15 Corridor Improvement Project Map, RCTC
- Exhibit F: I-15 Corridor Improvement Project Objectives, RCTC
- Exhibit G: Draft 2011 SR-91 Implementation Plan, OCTA
- Exhibit H: Low Impact Development: A Literature Review, U.S. EPA, 2000
- Exhibit I: *Guidance for Preparers of Growth-related, Indirect Impact Analyses*, Caltrans, 2006
- Exhibit J: *Induced Traffic and Induced Development*, Reid Ewing & Allan Lichtenstein, October 2002
- Exhibit K: *Federal Financial Assistance Manual*, National Park Service, Land And Water Conservation Fund State Assistance Program, 2008
- Exhibit L: *Wildlife Highway Links Vital Habitats*, Janet Wilson, Los Angeles Times, April 19, 2004

cc: Claire Schlotterbeck; Hills For Everyone
Jonathan Snyder; United State Fish and Wildlife Service
Judi Tamasi; Wildlife Corridor Conservation Authority
Jay Chamberlain; Chief Resources Division, Department of Parks and Recreation
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