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ENVIRONMENTAL
TRANSPORTATION DIVISION

Via Federal Express and E-Mail

Ms. Cathy Bechtel
Project Development Director
Riverside County Transportation
Commission (RCTC)
4080 Lemon Street, 3rd Floor
P. O. Box 12008
Riverside, CA 92502

U.S. Army Corps of Engineers
Regulatory Division
Attn: Susan A. Meyer
Building 230
Ft. Shafter, HI 96858-5440

Re: Draft EIR/EIS for MCP Project (Application No. 2001-00537)

Dear Ms. Bechtel and Ms. Meyer:

We represent Laing Sequoia Partners LLC, a landowner whose property is bisected by the Mid County Parkway (MCP) route identified in the Joint EIR/EIS as Preferred Alternative No. 9, and/or the "Project" for purposes of CEQA (hereinafter the "Project"). Our client's approved residential Specific Plan Project, the McCanna Hills Specific Plan, is directly and adversely impacted by the Project, and as such, has standing to submit comments on the legal adequacy of the Joint EIR/EIS for the MCP project. Laing Sequoia Partners' ("LSP") comments are divided into two sections: (1) an Overview Section, setting forth the general deficiencies that infect the entire document; and (2) a Detailed Comment Section, addressing specific issues.

I. GENERAL OVERVIEW.

A. NEPA Compliance Does Not Necessarily Equate to CEQA Compliance.

The format of the document and the treatment of various issues bespeaks the assumption that compliance with NEPA, and the preparation of an EIS, will satisfy CEQA's requirements. That is assumption is erroneous. CEQA has specific requirements, for example, with respect to the requirement to impose all feasible mitigation measures until impacts are reduced to a level of less than significant, that far exceed the requirements of NEPA in a preparation of an EIS. So, for example, this Joint EIR/EIS focuses heavily on the analysis of various MCP alignment alternatives, which is common place in an EIS document, but gives short shrift to the consideration of "all feasible mitigation measures" that might further reduce or eliminate impacts to a level of less than significant. This is but one of many examples where the Joint EIR/EIS runs afoul of the differing legal requirements applicable to an EIR under CEQA.

B. Improper Baseline Analysis.

The EIR/EIS improperly finds various impacts less than significant based on future development assumptions in the County's General Plan. A proper baseline analysis must be based on existing physical conditions, not future assumptions. *See County of Amador v. El Dorado Water Agency* (3rd Dist., 1999) 76 Cal.App.4th 931, 952.

C. Improper Mitigation Deferral.

The Joint EIR/EIS repeatedly references the completion of future studies as a pre-condition to determining appropriate mitigation measures to address the Project's impacts. *See e.g.*, discussion of noise impacts, impacts upon natural communities (such as MSHCPs), wetland impacts and impacts upon public facilities, such as the El Cerritos Sports Park. Although NEPA may provide a lower threshold with respect to the identification and imposition of mitigation measures at the time of EIR certification, CEQA does not. CEQA case law, and the CEQA Guidelines, are clear in condemning the improper deferral of mitigation. *See Defend the Bay v. City of Irvine* (4th Dist., 2004) 119 Cal.App.4th 1261, 1275; *Endangered Habitats League v. County of Orange* (4th Dist., 2005) 131 Cal.App.4th 777, 793-94 (improper deferral of noise mitigation); and *Citizens for Quality Growth v. City of Mount Shasta* (3rd Dist., 1988) 198 Cal.App.3d 433, 443 fn. 8.

D. Failure to Adopt All Feasible Mitigation.

The Joint EIR/EIS erroneously assumes that more costly mitigation is "economically infeasible," but does not contain a shred of analysis, either qualitative or quantitative, establishing financial infeasibility. *See Save Round Valley Alliance v. County of Inyo* (4th Dist., 2007) 157 Cal.App.4th 1437, 1461-1462; and *County of San Diego v. Grossmont-Cuyamaca College Dist.* (4th Dist., 2006) 141 Cal.App.4th 86, 107-108. So, for example, the document is deficient in its analysis of feasible mitigation with respect to agricultural resources impacts, such as fee based mitigation. Similarly, the document fails to analyze financially feasible mitigation with respect to impacts upon minority communities, in particular with respect to mobile home park relocation.

E. Failure to Adequately Disclose Impacts.

In each instance where the Joint EIR/EIS promises to analyze future impacts, for example, in a future traffic study, noise study or seismic impact study, it has failed to adequately disclose impacts for purposes of this EIR's compliance with CEQA.

F. Inadequate Alternatives Analysis.

Although the Joint EIR/EIS addresses various alternative MCP routes, its alternatives analysis is nevertheless incomplete. For example, the EIR is effectively devoid of any alternative route analysis east of Murrieta Road, to the termination of the proposed MCP at Highway 79. Significant environmental impacts are identified by the EIR between Murrieta

Road and Highway 79 to the east, but the document wholly fails to consider alternative routes east of Murrieta Road. *See* 14 Cal. Admin. Code § 15126.6(a) and (f)(2); and *San Joaquin Raptor/Wildlife Reserve Center v. County of Stanislaus* (5th Dist., 1994) 27 Cal.App.4th 713, 735-739 (cursory alternative location analysis).

More generally, the EIR/EIS fails to consider green alternatives, such as an east/west commuter train, as an alternative to the proposed MCP. Such an alternative would have fewer biological impacts, fewer land use impacts, and certainly, fewer greenhouse gas impacts. Nevertheless, the Joint EIR/EIS is devoid of any analysis whatsoever of a mass transit alternative that would reduce the vast majority of significant impacts identified in the document, while at the same time assisting the State of California in its efforts to reduce greenhouse gas emissions by 2020 and 2050. Indeed, it is impossible to know from the document, as written, whether such an alternative would actually be less costly, as opposed to more costly, than the proposed preferred Alternative No. 9. Thus, as an informational document, this Joint EIR/EIS is woefully inadequate in allowing the public and decision-makers to consider feasible alternatives that may accomplish project objectives with far fewer impacts, including fewer impacts upon low-income minority communities along the length of the proposed MCP route. *See Friends of the Eel River v. Sonoma County Water Agency* (1st Dist., 2003) 108 Cal.App.4th 859, 873 (considering alternatives that reduce the need for the public works project); and *Save the Niobora River v. Andrus* (D. Neb., 1977) 483 F.Supp. 844 (same).

G. Failure to Identify Cumulative Impacts As Significant and Unavoidable.

Any impact that is not reduced to a level of less than significant must be identified in an EIR as significant and unavoidable, and appropriate overriding considerations must be identified in findings adopted by the public agency. Inexplicably, given the impacts identified in the EIR and, in many instances, impacts that should have been identified as significant but were not, this EIR does not identify certain cumulative impacts to biological resources, air quality and long term operational greenhouse gas emissions, as significant and unavoidable impacts.

H. Flawed Growth Inducement Assumptions.

CEQA requires the disclosure of growth inducing impacts caused by the Project. *See* 14 Cal. Admin. Code § 15126(d). The Joint EIR/EIS erroneously concludes that the creation of a new east/west corridor through the Inland Empire will not have any significant growth inducing effects, including expanded residential and commercial development in areas not easily accessible. This erroneous assumption is premised on the notion that entitlement applications are currently pending along the proposed Preferred Alternative No. 9 route, without the presence of the new MCP corridor. Of course, the presence of entitlement applications, and even entitlement approvals, does not mean that development will actually occur. In fact, there are numerous examples along the proposed MCP route of land that has been entitled, including the approval of large Master Specific Plans and Tentative Tract Maps, without any development actually occurring (*see e.g.*, Stoneridge Specific Plan). Some of those approvals date back more than ten years. In truth, the creation of a far more efficient and less congested east/west transportation corridor through the Inland Empire will make residential and commercial development between

I-215 and the 79 freeway in San Jacinto far more attractive, particularly to commuters that will live in the Inland Empire and work in Orange County. In fact, in explaining the necessity of the MCP, the authors boast that it will vastly reduce commute times by as much as one hour each way, surely making actual development near San Jacinto far more attractive. *See City of Antioch v. City Council of the City of Pittsburg* (1st Dist., 1986) 187 Cal.App.3d 1325, 1334 (growth inducement impacts must be addressed where new road opens up areas to more intensive housing development).

The failure to identify any growth inducing impacts to traffic, air quality, water demand, biological impacts, etc., is a fundamental flaw in complying with the information disclosure requirements under CEQA and NEPA.

I. Violation of Applicable General Plan Consistency Requirements.

Throughout the discussion of impacts in the Joint EIR/EIS, the document recognizes that the proposed MCP project is inconsistent with applicable County and City General Plans. Under State Planning Law, any entitlement decision, which is inconsistent with the applicable General Plan, is void at its inception and of no force or effect. Rather than process amendments to General Plans in anticipation of the MCP project, the RCTC appears to assume that General Plan amendments to conform to the MCP project will be processed after the MCP is approved. This approach puts the cart before the horse, and is fundamentally flawed under State Planning Law.

J. Conflicting Impact Disclosure Require Recirculation.

The EIR/EIS's disclosure of impacts, for example, noise impacts, is frequently inconsistent. These inconsistencies are misleading, requiring revision and recirculation of the EIR/EIS.

II. SPECIFIC COMMENTS ON EIR/EIS SECTIONS.

A. Project Description and Alternatives (Chapter 2 of EIR/EIS).

In Chapter 2 of the Joint EIR/EIS, page 2-18, the document states:

"However, the Section 404(b)(1) Alternatives Analysis concludes that the Section 404 No Action Alternative cannot be considered practicable because it would add an additional cost of \$979 million (approximately one-third more than Alternative No. 9) and thus it has been determined to be unreasonably expensive."

CEQA does not authorize a determination of "financial infeasibility" based upon higher costs or, in the private context, less profit alone. *See Save Round Valley, supra*, 157 Cal.App.4th at 1461-62. Rather, there must be financial analysis which demonstrates that a more costly alternative, that accomplishes the project's objectives while avoiding significant environmental impacts, is so financially upside down that the project may not successfully "proceed." There is no evidence or analysis whatsoever in the Joint EIR/EIS which demonstrates that a one-third

increase in the cost of Preferred Alternative No. 9 (the Project), so as to avoid any impacts whatsoever to wetlands and other jurisdictional waters of the United States, would make it impossible to proceed with the Project, given the funding sources available.

Section 2.4 of the Joint EIR/EIS (Alternatives) at page 2-31, states:

"High-occupancy vehicle (HOV) lanes would not be provided with implementation of the MCP project or any of the MCP Build Alternatives since traffic congestion is not expected through the horizon year of 2035; however, the project design does not preclude the addition of HOV lanes later if traffic congestion does occur."

As indicated above, the Joint EIR/EIS erroneously assumes that the opening of an important new east/west corridor through the Inland Empire will not have any growth inducement impacts whatsoever, in terms of expanded residential and commercial development along the length of the corridor. A completed MCP, that reduces commute times by a total of 2 hours each day, will inevitably enhance the development potential of areas near San Jacinto. To assume that many thousands of new homes in and around the City of San Jacinto will not result in congestion until 2035, flies in the face of Riverside County's experience over the past three decades and CEQA case law. *See e.g., City of Antioch v. City Council of the City of Pittsburg* (1st Dist., 1986) 187 Cal.App.3d 1325, 1334-37. Each of the alternatives should reflect proactive planning for high occupancy vehicle lanes at the beginning of operation, rather than after congestion has already occurred. Moreover, the failure to include HOV lanes at the outset of the MCP project is inconsistent with the State of California's efforts to reduce greenhouse gas emissions by reducing vehicle trips, in 2010, 2020 and 2050.

From approximately Murrieta Road east to Highway 79, the Joint EIR/EIS is woefully deficient in considering alternative routes that would avoid substantial environmental impacts identified in the document. For example, many of the impacts identified in the document with respect to land use, biology, etc., could have been avoided by an alternative that considered the use of existing highways and roadways for part of the MCP route, including alternatives that more closely follow the existing Ramona Expressway and/or an alternative route that used I-215 to take traffic further south and then resumed the MCP corridor at an existing east/west roadway, such as Orange Avenue.

Finally, as indicated in the overview of impacts, the Joint EIR/EIS fails to consider any mass transit options whatsoever as an alternative to the MCP project, either as a complete alternative to the proposed MCP or as an option in conjunction with the MCP, within the Project right of way. The failure to even consider such options, given the state's current efforts to reduce greenhouse gas emissions and significantly expand mass transit options, demonstrates a rush to judgment with respect to the MCP project and a failure to consider reasonable alternatives that do not further exacerbate environmental impacts on many levels, including traffic congestion, air pollution, greenhouse gas emissions, and the needless take of more land for the MCP project than would be required for a commuter train.

B. Affected Environment/Environmental Consequences (Chapter 3).

The comments in this section are directed at specific environmental impact discussions in the Joint EIR/EIS.

1. Land Use (Section 3.1).

The Joint EIR/EIS recognizes significant impacts to the Gavilan Hills area, based on the proposed Alternative 9 MCP route. *See* p. 3.1-16, stating:

"Constructing Alternative 9 would introduce a major highway facility and its associated effects such as noise, vehicle emissions and lighting in the Gavilan Hills, which will impact the rural quality of this area."

The Gavilan Hills are one of the most striking topographical features of the valley formed by the San Jacinto River east of Lake Perris. Rather than exploring alternatives which would avoid this significant adverse impact, to one of the few important topographical features in this area, either by following the current Ramona Expressway alignment or jogging south on I-215 and picking up the MCP route at a more southerly location, the proposed project proposes plowing directly through the Gavilan Hills. Doing so will substantially mar this topographical feature, and thus have a significant adverse impact. The Joint EIR/EIS fails to adequately disclose this impact and having failed to disclose it, omits consideration of feasible mitigation measures and feasible alternative that would this the impact. In fact, the EIR concedes that the mitigation measures proposed do not eliminate significant impacts to the maximum extent feasible. For example, in Section 3.1.1.3 (Avoidance, Minimization, and/or Mitigation Measures), page 3.1-20, the document states:

"Mitigation Measures have been identified below to reduce impacts to the existing land uses and communities during construction. While these measures would reduce impacts during construction, they would not completely eliminate the impacts."

As indicated in that quote, the proposed mitigation measures are focused on the temporary construction process, rather than minimizing long-term impacts from the build-out of the Project.

Section 3.1.2 (Consistency With State, Regional, and Local Plans) addresses the consistency of the proposed MCP project alternative with applicable county and local General Plan elements. So, for example, Riverside County Circulation Element Policy C1.4 states:

"Utilize existing infrastructure and utilities to the maximum extent practicable...."
See Joint EIR/EIS, p. 3.1-23.

The proposed MCP Project flies in the face of that General Plan policy. The proposed route is not an example of using existing infrastructure to the maximum extent

practicable. Such an approach would require an MCP project that sought more closely to follow the existing Ramona Expressway alignment or, if that were not possible, given some of the reasons identified in the EIR, then alternatives should have been considered that used I-215 to take traffic further south before again resuming the MCP route to take it further east. This is the situation that prevailed for many years with respect to traffic proceeding east/west on the 210 and 10 freeways, which for some short distance, relied upon I-15 running north/south, before resuming their track on either the 210 or the 10 freeway.

This section of the EIR also fails to address County General Plan policies directed towards use of mass transit to reduce traffic, congestion, air quality impacts and greenhouse gas emissions.

Riverside County Land Use Element policies require the conservation and preservation of the County's agricultural resources. So, the following text is set forth at page 3.1-23 of the Joint EIR/EIS:

"LU 16-4. Encourage conservation of productive agricultural lands. Preserve prime agricultural lands for high value crop production."

The Joint EIR/EIS concedes that MCP project Alternative 9, is inconsistent with the County's agricultural preservation policy, stating:

"... since Alternative 9 would impact 355 HA (878 acres) of designated agricultural land, it is inconsistent with [General Plan] Land Use Policy 16.4, which encourages conservation of agricultural land. Alternative 9 is inconsistent with both the Mead Valley and Lake Mathews/Wood Crest Area Plans, as it traverses areas designated for very low density and rural residential uses." Joint EIR/EIS, p. 3.1-31.

As such, approval of the Project (Alternative 9) will be void at its inception, because RCTC is admitting that it is inconsistent with the current County General Plan. To rectify this problem, RCTC should be processing necessary General Plan amendments as part of its entitlement package for the proposed MCP project. Its failure to do so will result in a violation of State Planning Law and render the MCP project void as a matter of law. The Joint EIR/EIS has attempted to address this problem with the following statement:

"Following approval of MCP project, the RCTC shall request the County of Riverside and the Cities of Corona, Perris and San Jacinto amend their respective General Plans to reflect the final MCP alignment...."

As indicated above, State Planning Law and California Supreme Court cases interpreting State Planning Law, do not sanction post-project approvals cures for inconsistency with applicable General Plans. The amendment must be processed concurrently with the proposed

project and/or before approval of the project, to avoid a violation of State Planning Law consistency requirements.

2. Growth Impacts (Section 3.2).

The following two statements summarize best the Joint EIR/EIS position regarding growth inducing impacts:

"Lack of transportation system capacity and accessibility has not been a major constraint to development in the area, as evidenced by extensive development occurring in advance of planned major transportation improvements, such as widening of the Interstate 15 (I-15) and Interstate 215 (I-215) freeways Based on the above review of land development trends within the MCP study area, implementation of the MCP project is expected to have little influence on the location, amount, rate or type of growth in the area." *See* p. 3.2-4.

Those statements fly in the face of numerous CEQA cases addressing the causes of growth inducing impacts, *i.e.*, the extension of public utilities and/or roadways to areas not previously served by such infrastructure or inadequately served by such infrastructure. *See e.g., City of Antioch, supra*, 187 Cal.App.3d at 1334-1337; and *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (1st Dist., 2001) 91 Cal.App.4th 347, 369-371.

As indicated previously, the authors of this Joint EIR/EIS have erroneously assumed that current entitlement activity near I-15 and I-215, necessarily means that there are no constraints to growth and that, therefore, the creation of a new MCP east/west corridor in the Inland Empire will not further accelerate residential and commercial growth in areas that have had more constrained development activity due to lack of efficient access. Entitlement approvals along the proposed Alternative 9 route have, in many instances, languished for years with no development activity, in part because of the lack of an efficient east/west transportation corridor as now proposed with the MCP project. The circuitous route now required to access areas, such as San Jacinto, will now be eliminated by the proposed MCP project. As such, the joint EIR/EIS should be revised to accurately disclose significant growth inducing impacts for opening such areas to much faster commuter access.

Figure 3.2.1 erroneously shows the McCanna Hills Specific Plan Project as "proposed for development," rather than "approved for development." In fact, a new updated Specific Plan has been approved for the McCanna Hills, Project, Tentative Tract Maps have been approved for some phases, and final map(s) have been recorded.

On page 3.2-16, the Joint EIR/EIS states that there will be no growth impacts on agricultural lands because "development proposals are proceeding anyway." As indicated above, the processing of entitlement applications does not mean that growth will actually occur without a better east/west access transportation corridor, particularly in lands further to the east around San Jacinto. Consequently, the Joint EIR/EIS fails to adequately disclose likely impacts on agricultural resources from the construction of the MCP project.

Section 3.2.4 (Avoidance, Minimization, and/or Mitigation Measures With Respect to Growth Impacts) contains the following statement:

"Because of its prior inclusion as a CETAP corridor in the overall Riverside County Integrated Project (RCIP) planning process that led to the adoption of the updated Riverside County General Plan and the Western Riverside County MSHCP, the MCP project is expected to have limited possibility to result in growth-related effects." See Joint EIR/EIS at p. 3.2-18.

The assumptions in the above-quoted statement are not supported by any analysis of whether the Project (Alternative 9) is entirely consistent with the assumptions in the Riverside County General Plan and the Western Riverside County MSHCP. To the contrary, the General Plan Consistency text already reviewed above, admits that the proposed MCP project is inconsistent with various policies and assumptions in both the Riverside County General Plan and the Riverside County MSHCP.

C. Farmland Impacts.

Figure 3.3.1 (sheet 3 of 4) shows designated farmlands in the MCP study area, including prime farm lands, farmlands of local importance, farmland of state-wide importance, etc. The Figure shows major impacts to existing farmlands in all of those categories along the proposed Alternative 9 MCP route east of I-215 all the way to I-79. The Joint EIR/EIS impact analysis for farmlands is based upon the federal FPPA scoring process which, in this case, shows a final score for Alternative 9 and its associated design variations at 139. Since the NRCS-CPA-106 Instructions state that a score of less than 160 shall be given "minimum level of consideration or protection," the Joint EIR/EIS concludes that the farmland impacted should be given "a minimum level of protection," and that therefore no further analysis need be evaluated for farmland issues under the FPPA.

The analysis of farmland impacts under a federal scoring system may be sufficient for consideration by Federal agencies as part of its compliance with NEPA, however, it is not sufficient for analysis of agricultural impacts for purposes of CEQA compliance nor for purposes of assessing consistency with the Riverside County General Plan, which seeks to preserve such agricultural resources whether or not they are deemed deserving of protection under a federal scoring system.

The mitigation measures set forth at section 3.3.4 (Avoidance, Minimization, and/or Mitigation Measures) at pages 3.3-23 to 3.3-24 are process related mitigation measures that do not, in fact, seek to reduce or mitigate the project's substantial impacts to over 800 acres of the County's agricultural resources. So, for example, there is no discussion of feasible mitigation measures that might involve the purchase of conservation easements, and/or for comprehensive efforts at avoidance through alternative route locations east of I-215. CEQA case law recognizes fee based mitigation programs as feasible mitigation. The failure of this EIR/EIS to even consider such mitigation is a fatal defect in its compliance with CEQA's requirements for the

adoption of substantive mitigation measures to address environmental impacts. This is a prime example of where the Joint EIR/EIS has geared its compliance towards NEPA, which does not necessarily require the adoption of all feasible mitigation measures, as opposed to the substantive requirements of CEQA, which does require the adoption of all feasible mitigation measures that reduce or eliminate impacts to a less than significant level.

D. Community Impacts.

The Joint EIR/EIS concedes that Preferred Alternative 9 "will result in a 4 to 8 lane parkway throughout the MCP study area and would cause impacts to community character and cohesion ... particularly the ... Lakeview/Nuevo Area" *See* Joint EIR/EIS, p. 3.4-23. In particular, the Joint EIR/EIS recognizes that there would be significant mobile home displacement, for which there are not other mobile home units or parks within the region for relocation. With respect to such impacts, the Joint EIR/EIS states:

"Recent foreclosures in the area will increase the number of properties available for residential relocations. The exception is those displaced from mobile homes. The current inventory for mobile home unit sales and rentals is scarce, and the area lacks in-kind mobile home replacement housing suitable as decent, safe and sanitary. One option is for mobile home displacees to relocate into slightly larger single-family residences, resulting in a housing-of-last-resort entitlement under the Uniform Act ... Compliance with the Uniform Act offsets any potential impacts to communities due to relocation; therefore, no mitigation is required." Joint EIR/EIS, p. 3.4-46.

This quoted discussion from the EIR is deficient in several respects: (1) it does not disclose the number of mobile homes that will be impacted, and thus fails to disclose the true environmental justice impact of the project; (2) there is no guarantee of relocating residents to new replacement units in the same community; (3) there is no disclosure of minority impacts in mobile homes; and (4) it fails to address the potential violation of federal and state fair housing laws due to a disproportionate impact upon minorities.

Although the EIR relies upon the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 in asserting that there is no need for mitigation with respect to such impacts, the EIR fails to summarize the provisions of that Act which would ensure the relocation of affected low-income and minority populations to equivalent housing, at equivalent prices or rental rates, within the same community.

Section 3.4.3 of the Joint EIR/EIS entitled "Environmental Justice," sets forth the requirements of Executive Order 12898, which in part "direct federal agencies to take the appropriate necessary steps to identify and address disproportionately high and adverse effects of federal projects on health or environment of minority and low-income populations to the greatest extent practicable and permitted by law." *See* Joint EIR/EIS at p. 3.4-47. Section 3.4.3 of the EIR/EIS does not demonstrate that the relevant federal and local agencies have addressed, "to the greatest extent practicable and permitted by law," the impacts of the MCP project on low-income

and minority populations impacted by the Project. As such, the proposed action violates Executive Order 12898, and Federal and State Housing Law.

With respect to mitigating such impacts, the Joint EIR/EIS contains the following highly misleading statement:

"Based on the above discussion and analysis, the MCP Build Alternatives will not cause disproportionately high and adverse effects of any minority or low-income populations as per EO 12898 regarding Environmental Justice. Therefore, no avoidance, minimization, and/or mitigation measures are required. Mitigation measures stipulated in other sections of this EIR/EIS (land use, air quality, visual, noise, etc.), will reduce impacts to all affected populations, including environmental justice populations." Joint EIR/EIS, p. 3.4-58.

This statement is misleading in light of the substantial impact upon low income and minority populations along the Preferred Alternative 9 route. For example, the EIR discloses that 39% of the population in the study area is non-white, and that 38% of the population in the study area is Hispanic. In the City of Perris, the Hispanic population rises to 56% within the study area. Furthermore, the EIR fails to address the impacts upon those minority populations and poor populations who elect to stay in the severed community, that remains after construction of the MCP. No mitigation is discussed for them. For example, there is no analysis in the EIR indicating whether certain minority populations and very low-income populations may be deprived of access to important public services, grocery stores, etc., by construction of the MCP through their existing neighborhoods, nor the physical blight that would likely occur as a result. *See Bakersfield Citizens for Local Control v. City of Bakersfield* (5th Dist., 2004) 124 Cal.App.4th 1184, 1212 (EIR flawed for failing to disclose potential urban decay). Simply focusing on relocation assistance for those whose residences are destroyed by the MCP project, does not address the impacts upon those that remain in the severed community.

E. Traffic Impacts.

The Joint EIR/EIS concludes that: "Travel would not actually be induced by the MCP project" As previously indicated, the MCP will open up access to areas east of I-215 that have not previously had the benefit of fast moving and efficient highways running in an east/west direction. The assumption that the MCP project will not generate growth, development, etc., flies in the face of 30 years of development experience in Riverside County, near improved highway facilities. Consequently, the above quoted statement in the EIR is misleading, and fails to comply with CEQA's full and fair disclosure requirements.

The Joint EIR/EIS does recognize, however, that "some trips that would already be made on other roadways/highways will be diverted to the MCP, either because they will experience shorter travel distances, shorter travel times, or both." *See* Joint EIR/EIS, p. 3.6-27 to 3.6-31. With respect to this recognition of impacts, the EIR/EIS totally defers the imposition of any mitigation plan or program. For example, mitigation measures TR-1 provides:

"Prior to the opening of any segment of the project that substantially impacts traffic operations along I-15, RCTC shall implement the transportation improvements recommended by the study. It is not feasible to conduct this study now, because RCTC has initiated two other transportation projects in I-15 and SR91 that may impact this section at I-15." See p. 3.6.-31.

By taking this approach, the County has failed to disclose potential impacts to I-15 in this EIR/EIS, but rather has deferred the disclosure of such impacts to some future study, which will then identify potential mitigation measures. This approach deprives decision-makers and the public of any opportunity to evaluate impacts and mitigation in this EIR/EIS. See *Citizens to Preserve the Ojai v. County of Ventura* (2nd Dist., 1985) 176 Cal.App.3d 421, 430-432.

Although the County allows a level of service D at certain highway intersections, the County's general standards requires level of service of C. The performance standard proposed for the future mitigation measures, that will be the product of some future study, is level of service D or better on "this section of I-15." See p. 3.6-31. Unfortunately, the phrase "this section of I-15" is undefined. To the extent impacts extend beyond the I-15 intersection with the MCP, the proposed performance standard violates the County General Plan's standard of LOS C, and is thus void.

F. Visual/Aesthetics (Section 3.7).

Figure 3.7.12, key view 24, purports to show the visual impact of the MCP cut slopes through the McCanna Hills Specific Plan site. The rendering is misleading, in that it substantially underplays the visual and aesthetic impact of a highway being blasted through the prominent hills on the McCanna Hills Specific Plan site. In fact, a prior section of the EIR conceded that the MCP would have significant impacts to such topography. The visual simulations shown on key view 24 make that impact appear almost non-existent. Because of this underplaying of the impact, the EIR itself also misleadingly defines the view impact as moderate for future residents. See EIR/EIS, p. 3.7-39. That statement is contradicted on page 3.7-45, where the Joint EIR/EIS concedes that because this area "is proposed for residential development, future activity and awareness will be high. Viewer sensitivity will increase as residents move into the area."

Despite the existence of these visual and aesthetic impacts to the most prominent topographical feature in the area, the EIR sets forth no alternatives or mitigation measures to avoid and/or reduce the impact to a level of less than significant.

G. Seismic Impacts (Section 3.11).

As is so often the case, the EIR/EIS defers analysis and mitigation with respect to seismic impacts. GEO-1 states:

"Prior to completion of final design, RCTC will prepare a design level geotechnical report. It is not feasible to prepare such a study at this time because

the design is at a preliminary, conceptual stage. This report will document soil related constraints and hazards such as slope instability settlement, liquefaction, or related secondary seismic impacts that may be present." See EIR/EIS at p. 3.11-19.

Not only does the EIR fail to identify mitigation, but its deferral of a study analyzing soil related constraints and hazards deprives the public and decision-makers of information they need to evaluate potential seismic impacts and approval of the MCP project. As such, the EIR/EIS is fatally flawed. See *Citizens to Preserve the Ojai v. County of Ventura* (2nd Dist., 1985) 176 Cal.App.3d 421, 430-432.

The same improper deferral occurs with respect to well abandonment. See GEO-4. With respect to that issue, at page 3.11-21, the EIR/EIS states:

"Prior to completion of final design, the RCTC will undertake a detailed review of available well information to locate all groundwater wells within the MCP project right-of-way. Any groundwater wells within the MCP project right-of-way will be identified on a well management plan and abandoned properly during project construction in accordance with Cal Department of Water Resources standards (Bulletin 74-90)" P. 3.11-21.

The above-quoted text represents a total deferral of both well closure impact analysis and an analysis of alternate supply availability to provide replacement water.

H. Hazardous Substances Impacts (Section 3.13).

With respect to hazardous substances impacts, the Joint EIR/EIS defers all testing until some future date, claiming that it is not feasible to conduct that testing now for purposes of disclosing potential impacts in this EIR/EIS. See EIR/EIS, p. 3.13-42 to 3.13-45. As such, decision-makers and members of the public are deprived of information about potential hazardous substances that may be present along the Project's Alternative 9 route.

I. Air Quality Impacts (Section 3.14).

The air quality section is deficient in failing to include a health risk assessment. See p. 3.14-20. Rather, the document merely says that such health risk assessments are not useful. The use of health risk assessment with respect to residential development in or near freeways is now common place in the state of California and the failure to prepare one for this document is a fatal flaw. Without the health risk assessment, it is not possible for decision-makers and the public to determine whether a sufficient right-of-way buffer is being planned to protect residents from diesel fumes which have been identified in numerous studies as causing cancer. Many jurisdictions are now imposing buffers of at least 500 feet to reduce cancer-related impacts upon children and the elderly.

Having failed to conduct any appropriate health risk assessment, the EIR concludes: "The health effects cannot be estimated." *See* p. 3.14-22. The failure to investigate and disclose potential environmental impacts is a fatal flaw in the EIR/EIS. With respect to mitigation, section 3.14.4 states: "The operation of the MCP project will not result in adverse long term air quality impacts; therefore, no avoidance, minimization or mitigation measures are required." *See* EIR/EIS, p. 3.14-28. Had the air quality section included a health risk assessment and the proper analysis of potential buffers to minimize impacts on existing or future residences along the Preferred Alternative 9, both decision-makers and the public would have had an opportunity to adequately assess the true impacts of the proposed MCP project. Furthermore, the disclosure of such impacts from car and truck generated diesel fumes would, on a comparative basis, increase the attractiveness of a mass transit option, such as a commuter train, which does not generate such potential carcinogenic impacts.

J. Noise Impacts (Section 3.15).

The EIR/EIS contends that soundwalls are not feasible if the cost exceeds a "reasonable allowance," which is undefined. In Table 3.15.G, the vast majority of potential soundwalls to address noise impacts are deemed, not surprisingly, "not reasonable." *See* p. 3.15-118. Nevertheless, the EIR concedes that receptors behind modeled soundwall barriers, which have been deemed "not reasonable," would experience severe traffic noise impacts of "75 dBA L_{eq} or higher." *See* EIR/EIS, p. 3.15-126.

With respect to potential mitigation, the EIR states that some form of "insulation analysis" will be required prior to final design but that funding of such an analysis will only occur if the FHWA agrees to fund noise insulation for each of the affected properties. *Id.*

There are numerous problems with the treatment of this issue in the EIR/EIS. First, "reasonable allowance or cost" does not equate with "financially feasible" under CEQA. The EIR/EIS is devoid of any analysis demonstrating that mitigation soundwalls are "financially infeasible" as that term is used and defined in CEQA case law.

Second, the text above reflects deferral of mitigation to a future study, which may or may not occur based upon the funding available by FHWA. In essence, this issue has been punted, and may never be addressed if FHWA elects not to fund noise insulation for affected properties. *See Endangered Habitats League v. County of Orange* (4th Dist., 2005) 131 Cal.App.4th 777, 793-94 (future acoustic mitigation plan constituted improper deferral of mitigation). Finally, there is no discussion in the EIR/EIS of the efficacy of noise insulation, as a mitigation measure, to reduce impacts that the EIR concedes will be at 75 dBA L_{eq} or higher.

K. Energy Impacts (Section 3.16).

As previously mentioned in the overview section, the EIR/EIS assumes no increase in energy use based on its assumption that there will be no increase in vehicle trips as a result of the MCP project. Of course, as before, this analysis ignores the growth inducing impact of improved

freeway access to the undeveloped lands between I-215 and I-79, which will have much improved access to Orange County if the east/west MCP corridor is, in fact, built.

L. Greenhouse Gas Emissions.

The discussion of greenhouse gas issues in the EIR/EIS is totally inadequate. There is no analysis of greenhouse gas emission increases from construction of the MCP project itself, including the production of asphalt and cement, nor the construction traffic related to construction of the MCP. Second, there is no analysis of feasible mitigation measures, for example, the use of a commuter train, instead of increased vehicle use on the MCP. Finally, the EIR fails to assume an increase in density to the east of Highway 215, due to increased vehicle trips generated by new development in and around the San Jacinto area.

M. Biological Impacts (Section 3.17).

The EIR/EIS concedes that Alternative 9 would impact more suitable habitat for the following wildlife species: "Bell's sage sparrow, coastal cactus wren, white-tailed kite, northern harrier, southern California rufous crowned sparrow, loggerhead shrike, Belding's orange-throated whiptail, Stephen's kangaroo rat, bobcat, mountain lion, and the federally threatened coastal California gnatcatcher and the federally endangered Quino checkerspot butterfly." The EIR/EIS also notes that the "many stemmed dudleya and long-spined spine flower, as well as the federally endangered species Munz's onion and slender-horn spine flower also lose more habitat with Alternative 9 TWSDV." *See* EIR/EIS, p. 3.17-58. Despite identifying these impacts, the EIR/EIS does not identify substantive mitigation measures, either fee based or otherwise, to reduce these impacts to a less than significant level.

Not all protected species are included in the MSHCP list. Unfortunately, the EIR/EIS does not compare plant and animal species impacted by the MCP project with those that are within the scope of the MSHCP, nor does it analyze the effectiveness of the MSHCP as mitigation where a project such as the MCP is destroying protected lands within the MSHCP.

The Joint EIR/EIS asserts that the wildlife crossings provided as part of the project will mitigate the impacts that the Project will have on large mammal movement. *See* p. 3.17-83. Unfortunately, this is a conclusory statement unsupported by any data or factual analysis. For example, there are no maps showing the locations of the underpass/bridge locations for wildlife crossings, nor any analysis of the number of crossings required for certain amounts of acreage impacted.

With respect to proposed soundwalls, the EIR states that such soundwalls will be provided "where necessary" for existing noise sensitive land uses but that "no walls are proposed adjacent to conservation areas, as these areas are meant to be kept as open and permeable as possible for wildlife ... and that "creating soundwalls along these areas would conflict with other considerations meant to enhance wildlife." *See* EIR/EIS, p. 3.17-96. These statements make no sense whatsoever. The EIR indicates that bridge underpasses are being provided for wildlife crossings, which presumably is intended to avoid road kill. The rejection of soundwalls to

provide noise attenuation appears to be entirely a financial decision rather than a sound biological mitigation decision. Since the EIR fails to contain any analysis of the financial feasibility of soundwall mitigation measures, the document is deficient. The reference to using fencing instead, at EIR/EIS page 3.17-97, obviously does not mitigate for sound impacts upon conservation areas.

Animal Impacts.

Section 3.20 of the Joint EIR/EIS addresses Burrowing owl impacts. It provides for mitigation by relocation. However, there is no analysis of relocation options, nor whether there is adequate space in close proximity for purposes of successful relocation. As such, the EIR/EIS is deficient as an informational document in that the reader cannot adequately evaluate the efficacy of the relocation mitigation measure.

N. Cumulative Impacts (Section 3.25).

In Figure 3.25.1, the EIR/EIS erroneously shows the McCanna Hills Specific Plan site as unapproved development, *i.e.*, identifying it as "application submitted." Please correct this error and identify the McCanna Hills site as "project approved." As explained above, the County has previously approved a Specific Plan and Tentative Tract Maps for the McCanna Hills site.

With respect to cumulative growth-related effects, the EIR/EIS states: "... intensification of land use in this area is not anticipated." Referring to the MCP project study area. *See* p. 3.25-25. As explained above, this statement is entirely misleading and inconsistent with decades of experience in Riverside County. The opening of a new east/west corridor, extending out to relatively remote areas such as San Jacinto, will undoubtedly facilitate more intense development in those areas.

With respect to the cumulative loss of farmland, the EIR/EIS claims that no mitigation is necessary for cumulative loss of farmland because such losses were assumed in the General Plan. *See* p. 3.25-27. That statement is utter nonsense. The General Plan did not specifically assume the Project's Alternative 9 alignment. Furthermore, contrary to the statement that the General Plan assumed the loss of this farmland, the General Plan actually requires maximum efforts to preserve existing farmland in Riverside County. Finally, the County General Plan does not address what CEQA requires, which is the adoption of all feasible mitigation measures to address an impact such as loss of farmland, including, in this case, a fee-based mitigation measure. Finally, the baseline for environmental analysis is the existing agricultural land, not some assumption in a General Plan and General Plan EIR that there may be some development of an east/west transportation corridor in the County.

With respect to the cumulative loss of affordable housing, the EIR/EIS states that there is plenty of housing for relocation. *See* p. 3.25.-28. Unfortunately, there is no analysis whatsoever addressing the affordability of such "relocation housing." Nor is there any analysis of whether the "relocation housing" is within the same community affected by the MCP project.

With respect to cumulative biological impacts, the EIR/EIS assumes that consistency with the MSHCP would ensure that the cumulative impacts are effectively mitigated. As a result, the EIR states: "Additional mitigation for cumulative effects of the MCP to threatened and endangered animal species, is not warranted." See p. 3.25-49. The EIR/EIS fails to discuss whether each and every affected species identified in the biological section of the EIR is, in fact, covered by the MSHCP. The MSHCP does not cover all potentially affected sensitive species that are present in Riverside County. Without further analysis confirming that each and every sensitive species affected by the MCP is, in fact, covered by the MSHCP, the assumption of the document is conclusory and devoid of sufficient information for the public and decision-makers to evaluate the claim that no additional mitigation is required.

With respect to the Summary Analysis of Cumulative Impacts, the EIR/EIS states: "Cumulative loss of farmlands has been previously acknowledged by the County and the Cities of Corona, Perris and San Jacinto, as an unavoidable adverse impact resulting from the planned growth within western Riverside County." See p. 3.25-51. The prior assumption that such impacts are "unavoidable" is erroneous, in that it does not consider potential fee based mitigation options, which have been repeatedly held by California courts to be a feasible means of mitigation, including but not limited to biological impacts and impacts to other resources, such as agricultural lands.

Finally, the EIR/EIS violates CEQA's requirements for a complete cumulative impacts analysis, in that it does not list and address the impacts of other planned freeway projects in Riverside County. See 14 Cal. Admin. Code § 15130; and *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1st Dist., 1989) 151 Cal.App.3d 61, 75-79.

III. THE CEQA STATEMENT.

As almost an afterthought, the Joint EIR/EIS contains a relatively brief CEQA compliance statement in Chapter 4. This section of our comment letter addresses relevant points in the CEQA compliance statement.

A. Impacts of No Significance.

Section 4.2.16 (Noise) states:

"Highways typically are not major sources of ground borne noise or vibration. Alternative 9 TWSDV and the other MCP Build alternatives are not expected to expose persons to or generate excessive ground borne noise levels...." See Joint EIR/EIS, p. 4-4.

This statement is ludicrous on its face. Highways are, in fact, major sources of noise pollution, particularly for sensitive land uses near highway corridors. See *Los Angeles Unified School Dist. v. City of Los Angeles* (2nd Dist., 1997) 58 Cal.App.4th 1019, 1024-26 (school deemed sensitive receptor to relatively small noise impact). In fact, prior sections of the Joint EIR/EIS conceded

that highway noise could be severe, in excess of 75 dBA. Accordingly, the EIR's disclosure of impacts is internally inconsistent and misleading.

B. Less than Significant Impacts (Section 4.2.2.).

1. Agricultural Resources (Section 4.2.2.).

As before, the CEQA compliance statement in the Joint EIR/EIS states that "the Project is not expected to result in additional conversion of designated farmlands to nonagricultural uses." See EIR/EIS, p. 4-5. As explained previously, the assumption in that statement is belied by the fact that a new east/west transportation corridor in Riverside County, will open up areas of the County in and around San Jacinto that were not previously subject to easy access from Western Riverside County and Orange County. That type of new infrastructure almost always generates growth-inducing impacts which will, in fact, result in the conversion of the County's agricultural resources between I-215 and I-79, and in all likelihood, further east of I-79.

2. Air Quality Impacts (Section 4.2.2.2.).

This section of the EIR purports to contain a health risk assessment of diesel fumes, and concludes that:

"The cancer risk threshold of 10 in 1 million and the chronic risk threshold at 1, would not be exceeded by any of the MCP alternatives. Therefore, the proposed Project would not result in any significant health risk to persons near the Project, and no mitigation measures will be required." See EIR/EIS, p. 4-9.

This purported health risk assessment is inadequate in that it fails to contain any analysis of the proximity of the MCP route to existing playgrounds, schools, parks, nursing homes, hospitals, and other sensitive land uses. Several recent studies have concluded that exposure of sensitive receptors, such as children and the elderly, within 500 feet of a highway, markedly increases cancer risks. Nevertheless, this EIR/EIS blithely dismisses such risks as not significant. Based on the number of recent studies, which conclude otherwise, and the establishment of State Regulatory Guidelines, which assume such increased cancer risks for receptors within 500 feet of state highways, one can only conclude that the methodology of the study relied up by the EIR/EIS authors is inherently suspect and flawed. It is certainly rebutted by the great body of evidence to the contrary. The failure of the EIR/EIS to truthfully disclose impacts associated with diesel fumes within 500 feet of the proposed Project route, is a fatal flaw in complying with the information disclosure requirements applicable to this EIR/EIS. See *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comm.* (1st Dist., 2001) 91 Cal.App.4th 1344 (failure to disclose toxic air contaminants).

3. Biological Resources Impacts (Section 4.2.2.3.).

The EIR/EIS concludes that trees removed during construction will be replaced in accordance with Caltrans policies, and therefore, there would not be any significant impact nor

any inconsistency with local policies or ordinances governing tree preservation. This analysis in the EIR/EIS is deficient. It does not disclose whether there are any protected oak woodlands that may be impacted by the proposed project nor, if so, how the project will comply with California's new oak woodland protection statute, *Public Resources Code* section 21083.4. Furthermore, the reference to Caltrans policies for the protection or replacement of trees is not explained, nor is the relevant information made available to the public reviewing this EIR/EIS.

4. Population and Housing (Section 4.2.2.7).

As in the prior sections of the EIR, the authors dismiss population and housing impacts by stating that:

"... there has been no indication of developers intensifying or substantially modifying their development proposal in response to Alternative 9 TWSDV, or the other MCP Build alternatives."

See EIR/EIS, p. 4-14. As explained previously, many entitlements, either approved or pending, may never actually result in development absent the completion of the east/west corridor proposed for the MCP. For example, there is no evidence cited in this record that previously approved entitlements between Highway 215 and Highway 79 will, in fact, proceed to actual development without the improvement of an east/west corridor, such as the MCP. The fact that many of those entitlements have languished for years after approval, strongly suggests otherwise.

5. Utilities and Service Systems (Section 4.2.2.10).

The EIR/EIS is devoid of any analysis of cumulative impacts on landfill capacity, as that may be affected by the substantial debris generated by the Project. See EIR/EIS, p. 4-16.

6. Agricultural Resources Impacts (Section 4.2.3.1).

This section of the EIR identifies the loss of designated farmlands as an impact, but only adopts mitigation for Williamson Act land affected, rather than adopting all feasible mitigation measures to address impacts to both Williamson Act and non-Williamson Act land. See EIR/EIS, p. 4-17. Consequently, this section of the EIR is flawed in that it fails to identify and adopt all feasible mitigation measures to address impacts to the County's agricultural resources.

7. Biological Resources (Section 4.2.3.3).

This section of the EIR/EIS assumes that biological impacts will be mitigated through compliance with the Section 7 consultation process under NEPA. As indicated previously, that process does not guarantee any particular mitigation outcome and constitutes an improper deferral of the imposition of mitigation measures under CEQA. Indeed, with respect to wetlands impacts, which are identified as having direct and indirect impacts, the EIR/EIS assumes that mitigation will occur "by negotiation with federal and state agencies." That type of ephemeral mitigation is not legally sufficient under CEQA.

8. Hazardous Materials Impacts (Section 4.2.3.6).

The EIR/EIS concedes that the relevant local and federal agencies have not conducted any preliminary site investigations to determine if the preferred Project route bisects any hazardous release sites. *See* EIR/EIS, p. 4-23. This constitutes a fundamental failure to disclose with respect to the alignment route selected, *i.e.*, Alternative 9. Moreover, with respect to mitigation, the EIR/EIS simply commits to remediate any hazardous sites prior to construction, without any analysis of the scope or feasibility of the proposed mitigation.

9. Land Use Impacts (Section 4.2.3.8).

The EIR/EIS concedes that the MCP will result in "impacts to community cohesiveness in the Gavilan Hills and Perris areas." *See* EIR/EIS, p. 4-25.

The mitigation measure to address this impact, *i.e.*, replacement parks and park facilities, to offset the loss of acreage in Paragon Park, does not address impacts to the cohesiveness of the community.

10. Noise Impacts (Section 4.2.3.9).

This section of the EIR/EIS only addresses construction noise impacts, and does not address permanent noise impacts from highway traffic.

C. Significant and Unavoidable Impacts.

1. Agricultural Resources (Section 4.2.4.2).

This section of the EIR states: "... because the farmlands cannot be replaced in kind, the project impacts to designated farmlands are unavoidable and significant." *See* EIR/EIS, p. 4-29. As explained above, this assumption is erroneous. There is no analysis in the EIR/EIS concerning fee based mitigation to address this impact, nor does the EIR/EIS address the potential purchase of conservation easements by the applicant. Since CEQA requires the identification of, and the imposition of, all feasible mitigation, this section of the EIR/EIS is inherently flawed.

2. Cultural Resources Impacts (Section 4.2.3.3).

This section of the EIR/EIS states:

"Alternative 9 TWSDV will impact, and at least partially demolish three historical resources: "P-33-1512, P-33-1650/P-33-16687, and P-33-16679. As a result, under CEQA, there will be a substantial adverse change to these three resources under Alternative 9" *See* EIR/EIS, p. 4-30.

Such a finding under CEQA is only appropriate if there are no feasible mitigation measures or alternatives to reduce or lessen the impact to a level of insignificance. This EIR/EIS fails to address relatively small MCP alignment changes that would avoid some or all of these impacts, and thus it is impermissible to define them at this stage as "significant and unavoidable."

3. Land Use Impacts (Section 4.2.4.4).

The EIR assumes a significant and unavoidable impact to Habitat Conservation Plans in the area, unless those plans are amended. Of course a paper amendment does not eliminate the physical impact on the HCPs. Moreover, as with cultural resources, the EIR fails to consider relatively minor changes in the alignment of the proposed project that might avoid the impact altogether, and therefore fails to identify and impose "all feasible mitigation measures," which lessen the impact to a level of insignificance.

4. Noise Impacts (Section 4.2.4.5).

Unlike the prior section of the EIR, which falsely represented that highways do not generate significant noise impacts, this section of the EIR concedes that they do, and admits the following:

"Alternative 9 would increase the noise levels at the following receptors where soundwalls were not found to be reasonable and feasible and, as a result, the noise levels would exceed or continue to exceed the NAC...." *See* EIR/EIS, p. 4-35.

"As discussed above, Alternative 9 will result in long term noise impacts at sensitive receptor locations," and therefore, the MCP project would result in generation of noise levels in excess of any NAC standards and substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the Project, even with implementation of soundwalls, therefore, impacts are significant and unavoidable." *See* EIR/EIS, p. 4-35.

Such conflicting and misleading discussion of noise impacts requires revision and recirculation of the EIR/EIS. This analysis in the significant and unavoidable section of the CEQA compliance statement is also flawed, in that it does not demonstrate that mitigation soundwalls in all the locations, deemed "not reasonable," are, in fact, "financially infeasible" under CEQA. It is not sufficient under CEQA that a mitigation measure or alternative is more costly. Rather, it must be demonstrated that the cost is of such magnitude that the Project may not "proceed." *See Save Round Valley Alliance, supra*, 157 Cal.App.4th at 1461-1462; and *Grossmont, supra*, 141 Cal.App.4th at 107-108.

D. Mandatory Findings of Significance (Section 4.3.4.7).

This section of the EIR discloses very significant adverse impacts on the environment, both human and non-human. *See* discussion at pp. 4-36 and 4-37. Many of these mandatory findings of significant adverse impacts are contradicted by language in the EIR/EIS, which

falsely assures the reader that there are no such significant impacts. It is not permissible to bury these adverse impact disclosures at the very end of the document, after prior text assures the reader that the impacts are less than significant. So, for example, this section of the EIR discloses that traffic impacts are significant and unavoidable, that noise impacts are significant and unavoidable, and that the permanent loss of farmland is significant and unavoidable, despite prior sections of the EIR/EIS which state the opposite.

E. Global Warming Impacts (Section 4.2.6).

The EIR/EIS sets forth a brief discussion of greenhouse gas impacts at pages 4-37 through 4-46.

The EIR/EIS discussion of greenhouse gas emissions is – to be charitable – simplistic at best. It assumes that there are no material impacts because this highway project does not propose to construct new houses that might generate traffic, and that because it will reduce current traffic congestion, it actually has a beneficial impact on greenhouse gas emissions. Of course, that analysis misses the forest for the trees. Building more freeways rather than mass transit does not facilitate the state's statutory command to reduce greenhouse gas levels to 1990 levels by 2020, and 80% below 1990 levels by 2050.

With respect to short term emissions from the construction of the MCP itself, the EIR/EIS totally punts. It states:

"Due to a lack of construction phasing and equipment information, it is not possible to estimate the greenhouse gas emissions that would be generated by the materials and equipment needed to complete Alternative 9 TWSDV and the other MCP Build alternatives."

Having failed to analyze the short-term impacts on greenhouse gas emissions, the EIR/EIS simply concedes that there is a potentially significant increase in greenhouse gas emissions. *See* EIR/EIS, p. 4-46.

The EIR/EIS concludes that the greenhouse gas impact, despite the application of mitigation measures, would remain significant and unavoidable. *See* EIR/EIS, p. 4-46. Unfortunately, having failed to consider more green alternatives to the MCP corridor project, such as mass transit options, the conclusion of a significant and unavoidable impact is legally impermissible under CEQA, in that the EIR has failed to identify and carefully assess alternatives and mitigation measures that would reduce greenhouse gas emissions to a less than significant level, or at least reduce them, even if not to a less than significant level.

F. Environmentally Superior Alternative (Section 4.5).

In analyzing the various alternatives to determine which is the environmentally superior alternative, the EIR/EIS make certain admissions, which are entirely inconsistent with the assumptions and conclusions stated in prior sections of the document. For example, the EIR/EIS concedes that the MCP Preferred Alternative 9 (*i.e.*, the Project), will reduce commute times one

hour in each direction. *See* EIR/EIS, p. 4-28. To suggest that that substantial reduction in commute times will not have an impact on land use patterns and development further east of I-215, is ludicrous. In addition, in connection with its review of Alternative 1A, essentially the existing road system, the EIR/EIS concedes that the existing system cannot accommodate STAA National Network Trucks. *See* EIR/EIS, p. 4-48. To the extent that the new MCP can accommodate such truck traffic, there will obviously be an increase in truck traffic using the new MCP corridor. This fact contradicts various assumptions in the EIR/EIS, including but not limited to the assumptions that there will be no increase in vehicle trips or air pollution resulting from vehicle trips.

The EIR/EIS concludes that Alternative Route 9 is the environmentally superior alternative under CEQA, in part because it is the lowest impact upon minorities. However, this fails to analyze the impact of Alternative 9 on mobile home parks, which is an impact unique to Alternative 9.

G. Consultation/Comments.

We here adopt and incorporate critical comments previously submitted by the California Native Plant Society, the Center for Biological Diversity, Endangered Habitats League, Friends of the Northern San Jacinto Valley, the Sierra Club, and the Sierra Club San Geronimo Chapter.

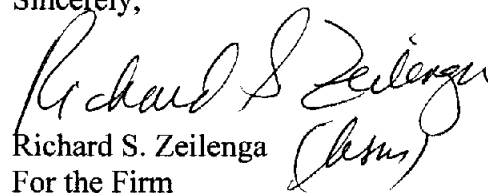
H. Compliance with SB18 (Section 5.7.4.3).

In discussing compliance with Senate Bill 18, requiring prior consultation with Indian Tribes for General Plan Amendments, the document concludes that such compliance will take place in the future, when General Plans are amended. As indicated above, those General Plan Amendments should be occurring prior to or – at least concurrently with – processing of entitlements by RCTC for the MCP Project. Under that scenario, those consultations should be occurring prior to approval of the General Plan Amendments, and thus prior to approval of the MCP Project itself.

Conclusion.

Given the significant procedural and substantive errors in the EIR/EIS, the document should be thoroughly revised and recirculated for public review and comment.

Sincerely,


Richard S. Zeilenga
For the Firm