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January 6, 2009

Via Federal Express

Ms. Cathy Bechtel
Riverside County Transportation Commission
4080 Lemon Street, 3rd Floor
P.O. Box 12008
Riverside, CA 92502-2208

Mr. Tay Dam
Federal Highway Administration
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814-4708

Re: Mid County Parkway Draft Environmental Impact Report/Environmental Impact Statement and Section 4(F) Evaluation

Dear Ms. Bechtel and Mr. Dam:

This firm represents the San Gorgonio and Angeles Chapters of the Sierra Club and San Bernardino Valley Audubon Society on matters relating to the proposed construction of the Mid County Parkway in Riverside County ("MCP" 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 in western Riverside County.

After carefully reviewing the Mid County Parkway 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: (1) it fails to adequately describe the Project, (2) it fails to analyze the significant environmental impacts of the Project or propose adequate mitigation measures to address those impacts, and (3) it fails to undertake a legally sufficient study of alternatives to the Project. The Project, as described in the DEIR/S, also violates section 4(f) of the Department of Transportation Act.

The Environmental Impact Report ("EIR") 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 Riverside County Transportation Commission and Federal Highway Administration ("RCTC" and "FHWA") must revise and recirculate the DEIR/S in order to permit an adequate understanding of the

environmental issues at stake. Further, the FHWA 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.

This letter, along with the traffic report prepared by MRO Engineers (Exhibit A) and the air quality report prepared by Nathan Miller (Exhibit B), constitutes clients' comments on the DEIR/S. We respectfully refer the RCTC and FHWA to the MRO Engineers and Miller Reports, both here and throughout these comments, for further detail and discussion of the DEIR/S' inadequacies with regard to impacts to transportation and air quality.

I. THE DEIR/S FAILS TO COMPLY WITH NEPA AND CEQA.

A. 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 MCP DEIR/S fails to meet this basic threshold.

1. The Project Description Omits Integral Components of the Project, Including All of the Other Transportation Projects that Would Have to be Implemented as a Result of the MCP.

a. Local Circulation and Access Projects.

Implementation of the MCP would require almost 200 transportation circulation system modifications, including realigning interchanges, widening certain roads, closing other roads and creating cul-de-sacs. DEIR/S at 3.6-25. However, the DEIR/S' text never bothers to clearly identify and describe the massive changes in the circulation system; instead, a list of these projects is buried in the document's technical report. These 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").

These "modifications" appear to be integral project components, yet the DEIR/S lacks any detail about specific roadway modification design geometrics (i.e., number of lanes and lane configuration). Moreover, like the MCP itself, construction and operation of these roadway modifications will undoubtedly have impacts to existing residential, commercial (retail/office) and industrial land uses, transportation (existing roadways and access), agricultural lands, and open space and wildlife habitat. *See* DEIR/S at 3.1-15. In addition, these projects will have air quality and noise impacts and could result in cumulatively considerable increases in greenhouse gas emissions. Unless the details of all of these roadway modifications are clearly identified and described, it is impossible to evaluate impacts from the whole of the Project.

One example of how the DEIR/S fails to describe the full scope of the Project is that it fails to analyze or give adequate information regarding the fact that the Project will include widening existing bridges to accommodate future growth. DEIR/S at 2-75, n.1. There is no description in the DEIR/S' text regarding the width of each bridge or how this will allow for greater traffic and growth in each of the areas. Widening bridges to accommodate growth is an integral component of the Project, and as such must be fully described. Another example showing the scope of these circulation and access projects is that Alternative 4 would require the construction of 3.3 miles of collector/distributor roads for the connection with I-15 *alone*. DEIR/S at 2-34. Presumably, more such roads will be required for the other connections listed on page

2.39, yet the description of this alternative fails to quantify the length of such connector roads for these other interchanges.

b. Freeway and Interchange Projects.

There are numerous other integral components of the Project that receive little or no description in the DEIR/S, thereby understating the full extent of the Project and its impacts. It is unclear whether the impacts from these parts of the Project have been analyzed at all; even if they have, limiting the project description to the MCP mainline itself distorts the full extent of the real project. For instance:

- Alternative 9 would include a 1.8 mile realignment of I-215, while Alternative 4 would include a 3.6 mile realignment and Alternative 5 would require a 2 mile realignment. DEIR/S at 2-58, 2-34, 2-40. The realignment of a major interstate is such an enormous project, it could be the subject of its own EIR/EIS. Yet, the MCP DEIR/S barely gives this project component a passing glance. The DEIR/S' project description contains no specifics regarding the reasoning for the realignment or any description of this project's technical, economic, and environmental characteristics. *See* CEQA Guidelines § 15124(c).

- The Project would add lanes to I-15. DEIR/S at 3.6-19. This would be another potentially massive infrastructure project, yet here too, we could find no further description of this project.

- The Project includes improvements at the Ontario Avenue/I-15 interchange and a modified I-15 interchange at Cajalco Road. DEIR/S at 2-26. Once again, the DEIR/S fails to describe the nature or extent of these improvements and modifications.

Again, the document's failure to supply information on these 200 circulation projects is not a superficial deficiency. Rather, the DEIR/S' glaring omissions of essential Project components impede reasoned and informed consideration of its environmental impacts. *See Santiago County Water Dist.*, 118 Cal. App. 3d at 829; *Whitman*, 88 Cal. App. 3d at 414-15; *San Joaquin Raptor*, 27 Cal. App. 4th at 721-22; *Stanislaus Natural Heritage Project*, 48 Cal. App.4th at 194-95. The DEIR/S must be revised to fully describe these projects and comprehensively evaluate their environmental impacts.

c. Interconnection with Multimodal Transit.

Although one of the purported purposes of the Project is to "[p]rovide a parkway that is compatible with a future multimodal transportation system" (DEIR/S at 1-11; *see also* DEIR/S at 1-26, 1-29), the DEIR/S lacks any substantive description of how this will be accomplished. In addition, the description of the alternatives entirely fails to describe whether they will meet this objective. At best, the DEIR/S gives a vague, two paragraph description of how the Project would help improve accessibility to future train stations by reducing travel time and traffic congestion so that people can get to the stations. DEIR/S at 1-29. The DEIR/S mentions that the routing of the Project through the city of Perris will offer an opportunity to create a linkage between the Project and two planned transit projects; however, there are three different alternative routes through Perris, and the DEIR/S gives no information regarding whether any one of these would be better or worse for tying in to the planned transit projects. This lack of information regarding a critical component of the Project compromises the public's and decision-makers' ability to analyze which alternatives will best meet the objective of connecting with multimodal transit.

d. Compatibility with Future Tunnel Project: Irvine/Corona Expressway.

From the DEIR/S' maps and discussion, it is clear that one purpose underlying the selection of routes and alternatives is the ability of the MCP to tie in with the planned freeway tunnel that would connect to Orange County (the "Irvine/Corona Expressway"). As discussed below, the tunnel project is actually an integral part of the MCP Project, and they should be analyzed together. Even assuming, *arguendo,* that the tunnel portion of the Project is separate, the DEIR/S must still describe the tie-in with this tunnel as one purpose for the routing of the alternatives and as one purpose of the Project. This is a critical reason for the MCP's current routing, and the public should know that the Project route was chosen in part to accommodate the tunnel project. The revised DEIR/S should clearly explain the relationship between the MCP and the Irvine/Corona Expressway. The issue of segmenting environmental review is discussed further below.

2. The DEIR/S Does Not Identify General Plan Amendments Needed to Implement the MCP.

The DEIR/S finds impacts relating to inconsistencies with numerous goals and policies of several elements of the General Plans for the County and the cities of Corona, Perris and San Jacinto and explains that the MCP may result in appropriate

amendments to these General Plans. DEIR/S at 3.1-34, 35. The document stops short, however, of identifying each of the general plan amendments that would be necessary to implement the proposed Project. The revised DEIR/S must identify the applicable general plan amendments and analyze impacts associated with each amendment. Specifically, some of the amendments may result in environmental impacts, while other amendments may result in internal inconsistencies within each jurisdiction's general plan. The environmental impacts and planning issues that may arise from amending the general plans are indirect impacts of the MCP. As such, they must be identified, analyzed and resolved now; they cannot wait until after approval of the MCP.

3. The DEIR/S Does Not Adequately Describe Other Project Components.

a. 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 DEIR/S states "for design purposes, LOS C was considered to be the desirable operating condition during peak hours for roadways and intersections in the MCP study area. In cases where LOS C was considered to be infeasible, LOS D was considered to be an acceptable operating condition for the purpose of determining traffic impacts." DEIR/S at 3.6-2. Thus, the design standards appear to be based on judgment rather than on standard traffic engineering analysis practices or on definitive, quantifiable criteria. Because no information is presented with respect to what constitutes feasible or infeasible operation at LOS C, it appears that an arbitrary decision was made as to whether LOS C or LOS D was appropriate for any given segment of the MCP. Indeed, the DEIR/S fails to specify where each of the LOS standards apply, that is, which roadways and intersections were held to the LOS C standard and which are allowed to operate at LOS D. MRO Engineers best summarizes the flaws in the DEIR/S approach:

> Because one individual's "judgment" as to what constitutes a significant increase in traffic could certainly differ from another individual's, we must conclude that the standards of significance employed in the traffic analysis are subjective and, furthermore, arbitrary. Therefore, it is impossible to know whether all significant impacts have been identified in the document, as any such impacts are, apparently, subject to the whims of the analyst, rather than to a well-defined, quantitative standard. Since the requirement to provide

> mitigation is only triggered by the identification of significant impacts, the failure to recognize all significant impacts also likely results in a failure to mitigate impacts.

MRO Engineers Report (Exhibit A) at 5.

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.

b. Construction Phasing.

The DEIR/S states that the Project would be built in phases but that the timing of the phases will be determined later. Traffic Technical Report at 2-1. Construction is estimated to take at least five years, yet the DEIR/S lacks any substantive description of how this massive Project would actually be implemented. Details of construction are critical to understanding the impacts of the Project, yet the DEIR/S lacks any description of this critical Project component. The revised DEIR/S must describe the overall plan for construction of this Project.

c. Aesthetic Design Features.

The project description is lacking because it fails to describe the design template for the aesthetic mitigation measures. As stated in mitigation measure VIS-4, prior to completion of the final design, the RCTC will require the Project Engineer to incorporate attractive walls, medians, and other visually pleasing hardscape into the design. However, this defers the freeway's design template until after Project approval, depriving the public and decision-makers of the ability to understand how this freeway would look on the landscape. The design template for aesthetic features must be identified and described now; it cannot be deferred until after project approval.

4. The DEIR/S Improperly Segments the MCP 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 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, the Irvine Corona Expressway tunnel project meets the requirements for a connected action and therefore must be analyzed concurrently with the direct impacts of the MCP 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 MCP DEIR/S' maps and discussion, as well as from outside evidence, it is clear that one purpose underlying the selection of routes and alternatives is the ability of this Project to tie in with the planned Irvine/Corona Expressway tunnel that would connect to Orange County. For instance, all of the MCP Project alternatives terminate west of I-15 at the same location in the immediate vicinity of Cajalco Road. This is the same location where the tunnel project will begin. DEIR/S at 1-35 (stating that the tunnel project would connect Cajalco Road with SR-133 in Orange County). Yet the DEIR/S has no description of why all Project alternatives terminate right at the point where the tunnel project would begin, as opposed to at a point further north or south on I-15. There is also no explanation of why the Project mainline needs to cross over to the western side of I-15. Clearly, the western terminus of the MCP was chosen so that it will tie in with the tunnel, which is actually an interconnected part of the same Project.

The DEIR/S itself describes the tunnel project as a "related project[]" for which transportation agencies have coordinated transportation planning efforts. DEIR/S at 1-29, 1-34, 1-35. It is one of a number of "key elements . . . relevant to the MCP project." DEIR/S at 1-34. As such, the DEIR/S should disclose in its statement of purpose and project description that the MCP and tunnel project have been designed to be integral parts of the same overall project. The tunnel is integral to the MCP because the MCP itself will do nothing to help alleviate traffic traveling west of Corona to Orange County. Instead, it will dump westbound traffic onto I-15, and traffic will then still have to navigate the extremely congested SR-91 or SR-74 to go west. The DEIR/S makes clear that "a majority of west-east trips will be made to the west out of Riverside County using SR-91," yet the "ability to expand capacity on SR-91 is severely restricted by existing development." DEIR/S at 1-16. It is also difficult to expand capacity on parallel routes such as SR-74 and SR-60. Even with planned expansion of existing roadways, the existing roads "will not be able to meet future west-east travel demand." DEIR/S at 1-16. Thus, the Irvine/Corona Expressway is planned in order to relieve this congestion, and it is planned as a direct tie-in with the MCP. Without the tunnel, the MCP will not be able to meet its purpose of facilitating travel "through Corona." DEIR/S at 1-10.

There is also plenty of "telling evidence" within and outside of the DEIR/S regarding the intimate connection between the tunnel project and the MCP. For instance, the RCTC lists the tunnel on its map of planned congestion relief projects. *See* Riverside County Transportation Commission, *Framework for a Journey,* p. 10, 2008, attached as Exhibit C. Also, the DEIR/S specifically refers to the tunnel when it discusses a "major

investment study" undertaken by Riverside and Orange Counties. DEIR/S at 1-31. The purpose of this study was to consider corridors that would connect Riverside and Orange Counties. One of these corridors - originally called "Corridor B," is the tunnel proposal that is also known as the Irvine Corona Expressway. *See* Riverside County - Orange County Major Investment Study, *Final Alternatives Evaluation and Refinement Report*, Introduction, pp. 1, 5, (MIS Introduction), attached as Exhibit D. *See also* DEIR/S at 1-34. This study was undertaken because the "growing population and relatively affordable housing market in Riverside County, coupled with increased employment opportunities in Orange County, have resulted in a large number of Riverside County residents commuting to jobs in Orange County each weekday." *Id.* at 1. This has led to traffic on SR-91-- the only major transportation route for these commuters -- that often flows at less than 30 miles per hour. *Id.* Further, traffic is forecast to increase by 50% by 2030, exacerbating the problem. *Id.* Thus, the RCTC, Orange County Transportation Authority and Transportation Corridor Agencies commissioned the MIS to study ways to relieve the Riverside County to Orange County traffic. As shown by the study, a tunnel that connected with the MCP in Corona would relieve traffic on I-15 south of SR-91. *See* Riverside County - Orange County Major Investment Study, *Final Alternatives Evaluation and Refinement Report,* Conclusions and Recommendations, at p. 123, attached as Exhibit E. It would also reduce traffic on SR-91 by 101,000 to 129,000 vehicle trips per day. *See* Riverside County - Orange County Major Investment Study, *Final Alternatives Evaluation and Refinement Report,* Traffic Evaluation of Strategic Alternatives, at 98-99, attached as Exhibit F. As the MIS map on page 99 clearly shows, the tunnel would connect directly to the MCP. *Id.*

As a result of this study, a "locally preferred strategy" was developed that recommended moving forward with further studies of the tunnel concept, along with improvements to other existing roads. *See* Orange County Transportation Authority website, Riverside Orange Corridor Authority: Riverside Freeway Major Investment Study/Locally Preferred Strategy, attached as Exhibit G. The Riverside Orange Corridor Authority was formed in order to proceed with planning for the tunnel, such as contracting for geotechnical work to study the feasibility of the tunnel. *Id.* The federal government gave $15 million for these studies. *Id.* The initial geotechnical work has now been done, and the studies indicate that there do not appear to be any geologic barriers to tunnel construction. *See* Alicia Robinson, *Corona-to-Orange County Tunnel Appears Feasible After Early Tests, Officials Say*, The Press Enterprise, Nov. 14, 2008, attached as Exhibit H.

Taken together, there is clearly "telling evidence" that the two projects are intimately connected and that the MCP depends on the tunnel for its justification and vice

versa. *See* Exhibit E, p. 123, Riverside County - Orange County Major Investment Study, *Final Alternatives Evaluation and Refinement Report,* Conclusions and Recommendations. (showing that the MIS assumes the MCP will be built and describing the benefits of tying the tunnel in with the MCP). The tunnel project is also a "reasonably foreseeable consequence" of the MCP. The Riverside Orange County Authority was formed for the purpose of studying the tunnel and other corridors, and the tunnel is part of the locally preferred strategy that is being studied. Geotechnical studies have already been completed, and federal money has already been spent on the project. Further, blasting an approximately 12-mile tunnel under the Santa Ana mountains would clearly change the scope, nature and impacts of the MCP, thus necessitating that the tunnel project be analyzed along with the MCP in an EIR. *See Laurel Heights*, 47 Cal.3d at 394-396.

Lastly, under CEQA, even assuming, *arguendo*, that the tunnel project is not an integral part of the MCP, the RCTC must still discuss the tunnel project in far more detail than it does. *Laurel Heights*, 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). Here, the tunnel project may still be contingent on further funding and study, but planning for the tunnel is already far along. Thus, the MCP DEIR/S must at least discuss the current geotechnical studies that have been undertaken for the tunnel, the federal funding for the tunnel studies, the proposed location of the tunnel, how it would connect with the MCP, and the timing of its construction.

In sum, the DEIR/S' incomplete, unstable and vague project description undermines the validity of each section of the EIR/S analyzing its impacts and identifying mitigation. The document should be revised to correct these many deficiencies.

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

The discussion of a proposed project's environmental impacts is at the core of an EIR. *See* CEQA Guidelines § 15126.2(a) ("[a]n EIR shall identify and focus on the significant environmental effects of the proposed project") (emphasis added). 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 its decision-making process." *Earth Island Institute v. U.S. Forest Service*, 351 F.3d 1291, 1300 (9th Cir. 2003) (citations omitted). As explained below, the DEIR/S fails to analyze the Project's myriad environmental impacts, most saliently in the areas of traffic, air quality, noise, agricultural resources,

visual resources, recreational resources and growth inducing consequences. These inadequacies require that the DEIR/S be revised to provide a complete and accurate analysis of the proposed Project's significant environmental impacts and feasible mitigation for those impacts, as required by law. *See* CEQA Guidelines, § 15002(a)(1) (listing as one of the "basic purposes" of CEQA to "[i]nform governmental decision-makers and the public about the potential, significant environmental effects of proposed activities"); 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.").

1. The DEIR/S' Analysis of and Mitigation for the Project's Impacts on Transportation are Inadequate.

The DEIR/S' analysis of the Project's transportation impacts is inadequate because it fails to analyze a reasonable geographical study area, fails to provide an adequate description of all of the related roadway projects that would need to be constructed to support the MCP, fails to rely on accurate and reasonable assumptions, fails to include objective significance criteria, and fails to support its conclusions with the necessary facts.

In addition to these deficiencies which are discussed below, we note a critical flaw in the DEIR/S. The transportation analysis in the DEIR/S is based on information presented in a document prepared by VRPA Technologies, Inc. identified as the Mid County Parkway Traffic Technical Report ("Traffic Report"). Very little of the analysis in the Traffic Report was included in the DEIR/S. More importantly, this Traffic Report *was not* included as a technical appendix to the DEIR/S. *See* DEIR/S Table of Contents at vii). In fact, it took several phone calls and e-mails between George Hague of the Sierra Club and RCTC staff to obtain a copy of the DEIR/S technical reports, including the Traffic Report. California courts require that analysis be presented in the EIR. *See Santa Clarita Organization for Planning the Environment v. County of L.A.* ("*SCOPE*") (2003) 106 Cal. App. 4th 715, 722 (agency's analysis must be contained in the EIR, not "scattered here and there in EIR appendices"). Here, the DEIR/S' omission is even more egregious since the analysis is not even in the technical appendix. Thus, inasmuch as only select portions of the Traffic Report actually appear in the DEIR/S and because the information in the Traffic Report is not written in a manner that is easily discernable for the lay person, the DEIR/S utterly fails in its role as a public information document.

a. The DEIR/S Ignores Critical Project Impacts Because It Uses an Artificially Restricted Study Area.

The DEIR/S's analysis of transportation impacts is hamstrung in part by the document preparer's unwillingness to look beyond the immediate boundaries of the proposed Project area. Indeed, the study area for purposes of evaluating the Project's impacts on area intersections includes only the MCP itself and one intersection to the north and one intersection to the south of the MCP. Traffic Technical Report at 2.2. Because the study area for analysis does not extend much beyond the Project itself, the document concludes – not surprisingly – that the proposed MCP will not cause an adverse increase in traffic in relation to the existing and projected traffic load and capacity of the street system. DEIR/S at 4-15.

The MCP is expected to carry approximately 6,600 vehicles in the a.m. peak hour (between Ramona Expressway and Bernasconi Road) and just over 7,500 vehicles in the p.m. peak hour (between Town Center Boulevard and Park Center Boulevard). Traffic Report, Table 6-19. Moreover, peak ramp volumes (excluding the freeway-to-freeway ramps) are projected to be almost 1,110 vehicles per hour in the a.m. peak hour (at the westbound Reservoir Avenue on-ramp) and 1,355 vehicles in the p.m. peak hour (at the eastbound Perris Avenue off-ramp). As MRO Engineers confirm, hourly traffic volumes of 1,100 to 1,355 vehicles per hour simply do not dissipate in the space of one intersection in each direction from the proposed corridor.

The DEIR/S fares no better with its purported analysis of impacts to the region's arterials and freeways. The study area for freeways extends only two interchanges in each direction from the proposed MCP on I-15 and I-215. Travel is, of course, a local and regional phenomenon. Cars and trucks would not stop at either end of the MCP but continue -- to Riverside and Orange Counties and beyond. The Traffic Report acknowledges this fact when it asserts that the "MCP is a considered to be a project of regional significance to Southern California." Traffic Report at 4-1.

The California Supreme Court emphasized that an EIR may not ignore the regional impacts of a project approval, including those impacts that occur outside of its borders; on the contrary, a regional perspective is required." *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 575 (1990). An EIR must analyze environmental impacts over the entire area where one might reasonably expect these impacts to occur. *See Kings County Farm Bureau*, 221 Cal.App.3d at 721-23. This principle stems directly from the requirement that an EIR analyze all significant or potentially significant environmental impacts. Pub. Res. Code § 21061, 21068. Similarly, NEPA requires that

an EIS discuss all direct and indirect effects of a project, including those that are reasonably foreseeable even though they are farther removed in distance from the project. 40 C.F.R. §§ 1502.16(a), (b), 1508.8. An EIR/S cannot analyze all such environmental impacts if its study area does not include the geographical area over which these impacts will occur. As will be shown below and in the MRO Report, the DEIR/S' constrained study area results in a failure to study all of the freeways, interchanges, roads and interchanges that would be impacted by the proposed MCP.

b. It is Not Possible to Evaluate the Significance of Transportation Impacts Because the DEIR/S Lacks Adequate Significance Thresholds.

In those isolated instances where the DEIR/S does analyze the effect of the MCP on surrounding transportation systems, the document lacks credibility because it relies on vague and seemingly arbitrary thresholds of significance. Specifically, the DEIR/S states:

> For design purposes, LOS C was considered to be the desirable operating condition during peak hours for roadways and intersections in the MCP study area. In cases where LOS C was considered to be infeasible, LOS D was considered to be an acceptable operating condition for the purpose of determining traffic impacts.

DEIR/S at 3.6-2

Determining whether or not a project may result in a significant adverse environmental effect is one of the key aspects of CEQA. Thresholds are an analytical tool for judging significance. Here, the DEIR/S fails to establish a stable threshold (*e.g.*, level of service ["LOS"] C or LOS D). In addition, the document never bothers to identify the criteria that would be used to determine the infeasibility of a LOS C standard. The document explicitly states: "[i]n cases where roadways and intersections were expected to operate inadequately in the No Build condition and the project was expected to add traffic, *judgment was applied* to determine whether the level of project traffic that was added could be considered significant." (Emphasis added). Traffic Report at 2-4. Such an approach suggests even more strongly the lack of a quantifiable, defensible standard of significance. According to MRO Engineers,

> because one individual's "judgment" as to what constitutes a significant impact increase in traffic could differ from another individual's, we must conclude that the standards of significance employed in the traffic analysis are subjective and, furthermore arbitrary. Therefore, it is impossible to know whether all significant impacts have been identified in the document, as any such impacts are, apparently, subject to the whims of the analyst, rather than a well-defined quantitative standard.

MRO Report at 4(attached as Exhibit A).

Moreover, since the requirement to provide mitigation is triggered by the identification of significant impacts, the failure to identify all of the Project's significant impacts also results in a failure to mitigate these impacts.

c. Vague and Undisclosed Assumptions Preclude a Proper Analysis of the DEIR/S' Traffic and Circulation Analysis.

i. The DEIR/S Relies on An Inappropriate Baseline for Evaluating the Project's Transportation Effects.

As the MRO Engineers' Report explains, basic traffic assumptions in the DEIR/S differ from the universally-accepted source of such information (*e.g.*, guidance provided in the Highway Capacity Manual ["HCM"]), and in fact differ from actual conditions in the study area. For example, the percentages assumed for trucks, buses, and recreational vehicles differ from the HCM default values. More importantly, though, the DEIR/S fails to reflect the actual numbers of trucks on nearby transportation facilities. While the MCP Traffic Report assumes seven percent heavy vehicles (i.e., trucks, buses and recreational vehicles), the number of heavy vehicles on key State highways in the vicinity of the proposed project is considerably higher as shown below:

- State Route 60 (east of I-215): 10.5 percent;
- State Route 74 (between I-15 and State Route 79): 9.0 - 12.0 percent;
- I-15 (between State Route 91 and State Route 74): 5.6 - 10.5 percent, with the higher value near State Route 74;
- I-215 (between D Street and Cactus Avenue): 10.2 - 12.0 percent; and,

- State Route 79 (between State Route 74 and I-10): 9.5 - 10.4 percent.

Caltrans, Annual Average Daily Truck Traffic on the California State Highway System, September 2008.

The truck percentages for State Routes ("SR") 60 and 74 are perhaps the most useful, as they represent parallel routes to the proposed corridor. As shown, those roadways have average truck percentages in the 9.0 - 12.0 percent range, which is substantially higher than the values used in the DEIR/S analysis. In fact, the truck percentages for all of the nearby State highways are fairly consistent, and only on one segment of I-15 are they lower than the values assumed in the DEIR/S. The failure to accurately account for the presence of trucks and other heavy vehicles on the proposed freeway results in unrealistic and overly optimistic findings with respect to the operation of the proposed Project, adjacent roadways, intersections and other freeways in the region.

In addition, the assumptions in the DEIR/S' future baseline (i.e., future year traffic forecasts) routinely defy common engineering practices. For example, rather than base the future-year level of service analysis on any government agency-adopted listing of programmed intersection improvements (*e.g.*, the SCAG Regional Transportation Improvement Program and/or local capital improvement programs), the DEIR/S states that ". . . judgment was applied to determine the appropriate future intersection lane geometry." Traffic Report at 2-3. Such an approach is obviously improper, as there is no certainty that the assumed roadway system improvements will occur. Once again, the DEIR/S' overly optimistic approach fails to identify Project-related significant impacts at the key intersections in the vicinity of the proposed MCP. Only programmed roadway projects should be included in the analysis to ensure they have a reasonable likelihood of occurring. The reference on such a list should be the Regional Transportation Plan or applicable capital improvement program, which present the current listing of programmed roadways improvements for a particular region.

Finally, the DEIR/S' assumptions relating to travel demand forecasting are also fraught with problems. As the MRO Engineers' Report explains, the MCP Traffic Report lacks one of the key characteristics of any travel demand forecasting procedure: consistency. Specifically, the Report's identification of future year traffic estimates states:

> Whenever the model provided reasonable ADT [average daily traffic] forecasts for local streets, they were used directly. In other cases, ADT forecasts were taken from local Circulation Elements of General Plans. Where sufficient detail was not provided in these documents, ADT forecasts were assumed to correspond to level of service C conditions for the type of roadway specified in the Circulation Element of the General Plan.

Traffic Report at 4-8.

Thus, rather than use a consistent – and objective – approach to estimate future traffic volumes, the DEIR/S uses three different approaches. The criterion for determining whether to use the forecasts derived from the Southern California Association of Governments ("SCAG") model was whether they were considered "reasonable." Unfortunately, no standards are set forth to describe what constitutes a reasonable forecast. Again, the analysis seems to be dependent upon the judgment of the analyst, with no meaningful criteria serving as the basis for the analysis results.

ii. The DEIR/S Underestimates the Increase in Vehicle Miles Traveled That Would Occur Upon Implementation of the MCP.

The MCP would result in a substantial increase in roadway capacity and, as a result, would facilitate increased travel. As MRO Engineers confirm, the reduction in traffic congestion accompanied by increases in vehicle speeds that occur with increases in highway capacity would result in induced travel. "Additional lanes in the corridor will clearly attract additional traffic, either from parallel facilities or as a result of 'induced demand' that will be satisfied by the additional roadway capacity." Appendix A at 9. Yet the MCP DEIR/S does not take into account induced travel and therefore underestimates the MCP's environmental impacts (*e.g.*, increased traffic, increased air pollution (criteria pollutants, toxic air contaminants and greenhouse gas emissions)), and increased development in the undeveloped portions of Riverside County.

Numerous transportation studies demonstrate that there is a significant relationship between highway capacity, as measured by lane miles, and the level of travel, measured by daily VMT:

> The preponderance of empirical evidence to date suggests that induced effects [of road projects] are substantial. A widely cited study by Hansen and Huang (1997), based on 18 years of data from 14 metropolitan areas, found every 10 percent increase in lanes miles was associated with a 9 percent increase in vehicle miles traveled (VMT) four years after road expansion, controlling for other factors. Another study of 70 U.S. metropolitan areas over a 15-year time period concluded that areas investing heavily in road capacity fared no better in easing traffic congestion than areas that did not (Surface Transportation Policy Project, 1998). Based on a meta-analysis of more than 100 road expansion projects in the United Kingdom, Goodwin (1996) found that proportional savings in travel time were matched by proportional increases in traffic on almost a one to one basis, a finding that prompted the U.K. Government to jettison its longstanding policy, "predict and provide", of responding to traffic-growth forecasts by building more motorways.

Robert Cervero, *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis*, attached as Exhibit I.

The Surface Transportation Policy Project[2] cites a growing body of research showing that widening highways is a temporary solution, at best, to the complex problems of traffic congestion. In the long run, new and wider highways actually create additional traffic above and beyond what can be attributed to population increases and economic growth. This phenomenon is referred to as "induced traffic." According to the Surface Transportation Policy Project website, 100% of additional VMT in Los Angeles County is attributable to "induced traffic"; 72.6% of additional VMT in San Diego County is attributable to it. *See* Surface Transportation Policy Project, *Build It and*

[2] The Surface Transportation Policy Project ("STPP") is a diverse, nationwide coalition working to ensure safer communities and smarter transportation choices that enhance the economy, improve public health, promote social equity, and protect the environment. STPP's California field offices provide assistance to local transportation agencies, elected officials and citizen groups in order to help stakeholders take advantage of the new opportunities available under the federal transportation bill to link transportation to land use, housing, social equity, livable communities and smart growth. STPP California is helping to build regional and statewide coalitions, to conduct research and analysis, and to identify funding sources for innovative transportation projects and programs throughout the state.

They'll Come, attached as Exhibit J. These studies indicate that highway-widening projects, such as the proposed Project, actually induce additional traffic—they do not simply "accommodate" existing or predicted traffic.

The revised DEIR/S should evaluate the travel-inducing consequences of the MCP through travel demand modeling. Only by modeling various land use, destination, mode choice and route choice scenarios is it possible to understand travel behavior. It is likely that the revised DEIR/S will determine that the MCP will result in considerably greater VMT than assumed in the current environmental analysis.

d. The DEIR/S Analyzes Only a Fraction of the Transportation Impacts that Would Occur With the Proposed MCP.

i. The DEIR/S Fails to Disclose Impacts to Parallel Roadways and Interchanges.

Although the Traffic Report asserts that the traffic analysis evaluated impacts on freeways parallel to the MCP, this is not the case. While extensive traffic volume information is presented for the parallel roadways (for both 2005 and 2035 conditions), no level of service analysis is provided. *See, e.g.*, Figures 6-73 and 6-74. Traffic volumes alone are virtually meaningless, as they provide no perspective with regard to the quality of traffic operations (*e.g.*, whether the roadway's level of service is acceptable or unacceptable). Indeed, it is impossible to establish the impacts of the proposed Project based solely on traffic forecasts.

The lack of *any* level of service analysis is a particular concern with respect to the key freeway system connections that will be affected by the proposed Project. Those system interchanges fall beyond the "two interchange" study area boundary established in the analysis, as described above. With the major redistribution of traffic that is likely to occur upon implementation of the proposed freeway, major system interchanges including the following could certainly be significantly impacted:

- I-15 / SR 91,
- I-215 / SR 60, and
- I-215 / SR 74.

At a minimum, the DEIR/S should be revised to evaluate impacts to the following key links in the regional freeway system:

- I-15, north of SR 91,
- SR 91, east of I-15,
- SR 91, west of I-15,
- SR 91, west/south of I-215,
- SR 60, east of I-215,
- SR 60, west of I-10,
- I-215, north of SR 60,
- SR 79, north of Gilman Springs, and
- Proposed SR 79, in the vicinity of the eastern terminus of the MCP corridor and south of that point.

Because the DEIR/S never discloses the actual and specific consequences that the MCP would have on these transportation systems, the public and decision-makers are left in the dark as to the severity and extent of the MCP's impacts. The DEIR/S must be revised to include an analysis of Project-related impacts on these critical transportation system linkages.

ii. The DEIR/S Fails to Adequately Analyze Impacts to Local Circulation and Access.

As discussed above, implementation of the MCP would require almost 200 transportation circulation system modifications including realigning interchanges, widening certain roads, closing other roads and creating cul-de-sacs. The DEIR/S text never bothers to clearly identify or describe the massive changes in the circulation system; instead, a list of these projects is simply buried in the Traffic Report.

Implementation of these modifications will have profound impacts on the entire local and regional circulation system. For example, Alternative 9 would include a 1.8 mile realignment of the I-215. DEIR/S at 2-58. The DEIR/S also admits that "the project proposes to add lanes to I-15." *Id.* at 3.6-19. These would be massive infrastructure projects, yet the MCP DEIR/S lacks *any* real description of the projects or their environmental implications. For example, the document inexplicably fails to describe the new alignment of I-215, and it also fails to identify the number of lanes that would be added to I-15. Moreover, the document lacks a description of how these projects, and the construction of these projects, would affect local and regional traffic conditions.

Rather than conduct this comprehensive analysis, the DEIR/S merely selects a handful of projects and generally opines that they would not cause "any

significant change in travel patterns along any particular route of travel." DEIR/S at 3.6-25. Under CEQA, conclusions must be supported with substantial evidence. *Pub. Res. Code § 21080(e)(1)-(2)*. Similarly, NEPA requires that agencies take a "hard look" at the environmental impacts of a project, and not merely rest on "bald conclusions." *Maryland-Nat'l Capital Park & Planning Comm'n v. U.S. Postal Serv.*, 487 F.2d 1029, 1040 (D.C. Cir 1973). Here, the DEIR/S provides *no* facts to support its conclusion that these projects would not impact travel patterns.

The DEIR/S authors deny their obligation to conduct this analysis as evidenced by the following statement: "a detailed comparison of travel distances and times is difficult due to the diverse range of travel origins and destination routes." DEIR/S at 3.6-25. Such dismissive treatment of impacts is not adequate under CEQA or NEPA. The DEIR/S authors use their failure to gather data as an excuse for their inability to document the Project's impacts. Such an approach violates a fundamental tenet of CEQA. Without this information, it is all but impossible to accurately and effectively gauge the severity and extent of the local and regional access and circulation impacts that would result from implementation of the MCP. In that regard, RCTC has a duty to "painstakingly ferret out" the Project's impacts. *Envt'l Planning and Information Council of W. El Dorado County v. County of El Dorado* (1982) 131 Cal. App. 3d 350, 357 RCTC must "use its best effort to find out and disclose all that it reasonably can" regarding the extent of these impacts. *Citizens to Preserve the Ojai v. Ventura*, 176 Cal.App.3d 421, 431 (1986); *see also Laurel Heights Improvement Assn. v. Regents of the University of California*, 47 Cal.3d 376, 399 (1988) (*Laurel Heights I*) ("We find no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency's task may be difficult.").

Finally, it is important to note that realigning almost two miles of I-215 would have extensive impacts beyond those affecting local and regional transportation. For example, such a project would certainly require the relocation of existing land uses. In addition, it could potentially result in impacts to cultural resources, a loss of agricultural land, open space, parklands and biological resources habitat as well as increased noise, air pollution and greenhouse gas emissions. The revised DEIR/S must analyze these impacts.

e. The DEIR Fails to Analyze the Project's Construction-related Transportation Effects.

Although the DEIR/S purports to address the Project's construction impacts "in detail" (*see* DEIR/S at 4-27), this is simply not the case. Indeed, the document

devotes only two paragraphs to traffic related construction impacts and specifically states that "[a]s is typical with major highway improvements, many of the details of the construction process will be determined in the design plan of the project." DEIR/S at 3.6-30. The document looks to the eventual preparation of a traffic management plan and suggests that local agencies have "specific procedures" for construction and that "steps will be taken to minimize the traffic impacts of the construction." *Id.*

Amazingly, the DEIR/S never bothers to identify the agencies that would purportedly be responsible, never specifically identifies or describes the specific construction procedures, and omits any serious consideration about the steps that would be taken to address construction-related traffic impacts. Indeed, the DEIR/S' language is a "mere expression[] of hope" that responsible agencies will be able to devise a way around the problems created by construction of this massive Project. *Lincoln Place Tenants Ass'n v. City of Los Angeles*, Cal. App. 4th, 2005 WL 1635178, at 10 (July 13, 2005).

The document's failure to supply this information is not a superficial deficiency. Construction of a project of this magnitude would take several years, would generate substantial traffic volumes (*e.g.*, construction employees commuting to/from the job site, delivery of materials, hauling of excavated material, etc.), and cause substantial traffic congestion. The routes to be used for these trips are not identified, and no analysis of any sort is presented to allow the public and decision-makers to identify and understand potential problem areas during the construction process. The revised DEIR/S must address this impact and identify feasible mitigation measures.

f. The DEIR/S Fails to Evaluate the Project's Cumulative Traffic Impacts.

An EIR must discuss significant "cumulative impacts." CEQA Guidelines § 15130(a). "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355(a). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." CEQA Guidelines § 15355(a). A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines § 15355(b). The cumulative impacts concept recognizes that "[t]he full environmental

impact of a proposed . . . action cannot be gauged in a vacuum." *Whitman*, 88 Cal. App. 3d at 408. NEPA also requires analysis of cumulative, connected and similar actions that will lead to cumulative impacts. 40 C.F.R. § 1508.25(a), (c); *see also Florida Wildlife Fed'n v. U.S. Army Corps of Eng'rs*, 401 F. Supp. 2d 1298 (D. Fla. 2005). NEPA regulations define 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 . . . ." 40 C.F.R. § 1508.7.

Although we could find no actual analysis of the Project's cumulative traffic impacts, the DEIR/S suggests that the Project, combined with other cumulative projects, has the potential to result in significant unavoidable adverse impacts on traffic. DEIR/S at 4-36 and 4-37. As discussed above, CEQA and NEPA require an analysis of this potential impact. Such an analysis is of paramount importance in this instance because other large scale roadway projects are on the planning horizon. Indeed, RCTC itself has initiated two other projects on I-15 and SR-91. DEIR/S at 3.6-31. Clearly the revised DEIR/S must analyze the cumulative impacts from all past, present, and reasonably foreseeable future projects. One critical project that certainly cannot be overlooked in the document's cumulative impact analysis is the Irvine Corona Expressway.

2. The DEIR/S' Analysis of Air Quality Impacts is Inadequate.

The DEIR/S' analysis of impacts to local and regional air quality is deeply flawed. Because the attached report by Nathan Miller discusses the inadequacies of the DEIR/S' air quality analysis in detail (*see* Exhibit B), this letter will highlight just a few of these deficiencies.[3] We respectfully refer RCTC and FHWA to the Miller Report and request that the agencies respond separately to each of the points made therein.

Of critical concern is the DEIR/S' apparent failure to specifically evaluate the air quality impacts of the Project itself. As the Miller Report notes, the document's analysis of impacts relating to the Project's increase in certain pollutants (*e.g.*, particulate matter) is based on the MCP study area, not the MCP itself. The DEIR/S confirms that the air quality analysis is cumulative, not project-specific, in nature: "[t]he analysis of air quality provided in Section 3.14 of this EIR/EIS is a cumulative analysis in that it

[3]. Note that the Miller Report constitutes Nathan Miller's preliminary comments on the DEIR/S' air quality analysis. As Mr. Miller notes, the DEIR/S is incomplete and lacks adequate information for public participation. We may modify our comments upon receipt of the missing and/or corrected documentation.

considers the emissions of traffic generated by future planned land uses and the effects of other future planned transportation improvements." DEIR/S at 3.25-5. While an assessment of regional emissions must be undertaken in the context of examining the Project's cumulative impacts, it cannot substitute for an analysis of the impacts from the MCP project itself. In this regard, the DEIR/S is fatally flawed in that it fails to achieve CEQA's and NEPA's most basic purposes of informing governmental decision-makers and the public about the potential significant environmental effects of a proposed activity. CEQA Guidelines § 15002 (a) (1); 40 C.F.R. § 1500.1(b).

a. The DEIR/S Fails to Adequately Describe the Project's Environmental 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). 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. "Knowledge of the regional setting is critical to the assessment of environmental impacts." CEQA Guidelines § 15125 (c).

According to the American Lung Association's annual air-quality report, Riverside County has the distinction of having the nation's dirtiest air. *See* The Press Enterprise, "Dirtiest Air in Riverside County," April 26, 2006, attached as Exhibit K. Moreover, air pollution studies indicate that living close to high traffic and the associated emissions may lead to adverse health effects beyond those associated with regional air pollution in urban areas. *See* California Air Resources Board, *Air Quality and Land Use Handbook: A Community Health Perspective* (excerpts), attached as Exhibit L. The alignment of the proposed MCP would traverse several residential communities including Corona, Perris, and San Jacinto. Consequently, one would expect the DEIR/S to vigorously examine the MCP's impact on sensitive receptors in these communities.

Despite the certain increase in air pollutants in the immediate area of the proposed freeway as well as the entire airshed, the DEIS/R entirely fails to describe a number of factors critical to understanding the effects of this increased air pollution. For instance, the document contains no information regarding the number of people who live within the MCP study area, or more importantly, who live within a mile of the proposed new freeway. Section 3.2 of the DEIR/S has population numbers for the region as a whole, but this information is not helpful in determining how many people will be

affected by certain types of air pollution that are known to be greatest at a short distance from highways.

Some land uses are considered more sensitive to air pollution than others due to the types of population groups or activities involved. The South Coast Air Quality Management District ("SCAQMD") includes in its list of sensitive receptors, residences, schools, playgrounds, childcare centers, convalescent homes, retirement homes, rehabilitation centers, and athletic facilities. Sensitive population groups include children, the elderly, and the acutely and chronically ill, especially those with cardio-respiratory diseases. Residential areas are also considered to be sensitive to air pollution because residents tend to be home for extended periods of time, resulting in sustained exposure to any pollutant present. Although the MCP would be built immediately adjacent to many established neighborhoods, the DEIR/S completely fails to quantitatively, or even qualitatively, identify the number and type of sensitive receptors that would be affected by this proposed Project. Such information must be provided for each alternative alignment location so that the public and decision-makers can understand who will be at particular risk due to poor air quality under each Project alternative.

Moreover, the DEIR/S fails to adequately identify and describe local air quality. For example, the document reports that the SCAQMD maintains ambient air quality monitoring stations throughout the air basin, but the closest stations appear to be within 9 and 20 miles of the proposed MCP alignment. Air Quality Report at 39.[4] None of the monitors established by the SCAQMD are close enough to the proposed alignment to provide a valid baseline concentration for use in evaluating the Project's air quality impacts. It is our understanding that George Hague (Sierra Club) requested to RCTC in July 2008 that air quality be monitored at stations in immediate proximity to the proposed MCP alignment. The revised DEIR/S should include data from these stations.

b. The DEIS/R Fails to Analyze the Project's Construction-related Air Quality Impacts.

The DEIR/S makes no attempt to quantify the construction-related impacts of any MCP alternatives. Instead, it relies on an unfounded assertion that construction-related impacts from the No Build alternatives would be similar to those for the Build alternatives because of the assumed construction of other transportation projects included in the No Build alternatives.

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[4]. The document mentions a monitoring station in Perris, but does not identify the proximity of this station to the proposed MCP alignment.

As the Miller Report explains, this is an unsupportable position. Air quality impacts from construction vary significantly depending on a number of variables, including the type and extent of land disturbance, types and models of construction machinery required, and amounts and types of required resources (both material and human). To assert that air quality impacts from two slates of construction projects would be similar simply because both involve construction of transportation projects is illogical and meaningless.

Rather than conduct an analysis of construction-related air quality impacts, the DEIR/S looks to the Project's compliance with applicable rules and mitigation measures to conclude that impacts would be reduced to a less than significant level. Air Quality Report at 63. Yet once again, the DEIR/S fails to provide any evidentiary support for this conclusion. The document never bothers, for example, to quantify the construction-related emissions. Nor does it disclose the assumed control efficiencies of the various regulations and mitigation measures. Finally, there is no record of what is considered an appropriate level of significance for either emissions or impacts. Without this information, the DEIR/S' conclusion that construction-related air quality impacts would be less than significant cannot be sustained.

According to preliminary calculations included in the Miller Report, construction of the MCP would generate a substantial increase in PM_{10} emissions. Miller estimates that over a four-year construction period, about 10,000 tons of PM_{10} could be generated. This is equivalent to about 2,500 tons per year or about 14,000 pounds per day ("lbs/day"). Even without considering the exhaust emissions from construction equipment, this amount vastly exceeds the 150 lbs/day SCAQMD significance threshold for PM_{10} construction emissions. Moreover, the DEIR/S identifies potentially lead-laden soils near existing or former roadways which would be disturbed by MCP earthwork. The DEIR/S fails to analyze the impact of increased emissions of air-borne lead on nearby sensitive receptors. This is particularly significant in light of the recent tenfold lowering of the federal lead standard from 1.5 ug/m3 to 0.15 ug/m3.

Miller's approximate analysis, which does not include emissions from construction worker travel, illustrates the importance of a thorough evaluation of construction-related emissions. The DEIR/S should be revised to include details such as estimated construction fleet composition, construction schedules, estimated efficiency of mitigation controls, impacts of emissions on ambient air quality, and potential health impacts on sensitive receptors. Without this, the DEIR/S is legally inadequate.

c. The DEIR/S Fails to Support with Substantial Evidence its Conclusion That the Project Would Not Result in a Significant Increase in Long-Term Regional Emissions.

Absent any evidence or analysis, the DEIR/S concludes that no new long-term regional emissions would result from implementation of the MCP because the Project would not generate *any* additional traffic. DEIR/S at 3.14-14 (emphasis added). In fact, the DEIR/S concludes that the MCP would actually result in lower total pollutants emitted by motor vehicles than if the freeway were not constructed. *Id.*

Contrary to these unsupported assertions, the Project would add about one million vehicle miles to the region's circulation system.[5] *See* DEIR/S Table 3.6.K, pg. 3.6-27. Motor vehicle emissions contribute to emission inventories of criteria pollutants and air toxics and thus have the potential to significantly impact air quality. Mobile sources are responsible for more than 50 percent of carbon monoxide, 34 percent of nitrogen oxide (NO_x) emissions, and more than 29 percent of hydrocarbon emissions (which combine with NO_x in sunlight to form ozone). *See* Smart Mobility Memorandum, April 2006, attached as Exhibit M. Clearly, the Project's increase in vehicle miles traveled ("VMT") would result in an increase in air pollutants.

Yet, rather than conduct a quantitative analysis of this increase in emissions and their effect on regional air quality, the DEIR/S states that emissions associated with the Project are difficult to quantify and therefore no emission calculations were undertaken. *Id.* Here, as in numerous other sections of the DEIR/S, the document makes no attempt to provide the necessary facts and analysis to support its conclusions and thus falls far short of satisfying CEQA and NEPA's mandates. *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990); *Maryland-Nat'l Capital Park & Planning Comm'n v. U.S. Postal Serv.*, 487 F.2d 1029, 1040 (D.C. Cir 1973) (requiring agencies to take a "hard look" at the environmental impacts of a project, and not merely rest on "bald conclusions").

The DEIR/S should be revised to include an accurate assessment of the Project's contribution to regional air pollution. Once this assessment is undertaken, the DEIR/S' preparers will be in a position to identify mitigation measures and/or Project alternatives to mitigate the Project's regional air quality impacts.

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[5]. As discussed above, the DEIR/S actually understates the increase in VMT because the analysis fails to account for induced traffic demand.

d. The DEIR/S Fails to Adequately Analyze the Project's Increase in Particulate Matter Emissions.

As discussed above, studies conducted by the California Air Resources Board and others confirm that living close to high traffic and the associated emissions may lead to adverse health effects beyond those associated with regional air pollution in urban areas. *See* Exhibit L (CARB Air Quality and Land Use Handbook). Specifically, these studies found reduced lung function and increased asthma in children within 1,000 feet of heavy traffic. *Id.* In addition to the respiratory health effects, proximity to freeways increases potential cancer risk. *Id.*

Unfortunately, rather than provide a comprehensive and accurate study of the effect that the proposed MCP would have on particulate matter ("PM") concentrations, the DEIR/S' analysis of PM impacts contains extensive flaws. As the Miller Report clearly articulates, future ambient $PM_{2.5}$ concentrations are underestimated, assuming better future air quality than is warranted. Project-related emissions are almost entirely undocumented and cannot be verified. Applicable air quality standards are ignored. Future traffic volumes are questionable, and truck fractions are almost certainly underestimated. As Miller explains, once these errors and omissions are rectified, the air quality analysis would likely conclude that Project-related PM impacts would be significant.

e. The DEIR/S Fails to Adequately Examine the Project's Health Risks.

The flaws in the DEIR/S air quality analysis extend to the document's examination of the Project's effect on the community's health. Although the DEIR/S acknowledges that proximity to roads is related to adverse health outcomes, including respiratory problems, the document concludes that it is not possible to analyze the risks associated with mobile source toxics because of the "uncertainties associated with the modeling and risk assessment process." Air Quality Report at 67. The failure to conduct this critical study constitutes yet another fatal flaw in the DEIR/S. As with other important impact analyses, it appears that the DEIR/S authors use their failure to gather data as an excuse for their inability to document the Project's impacts. Such an approach violates the fundamental tenets of CEQA and NEPA. Without this information, it is all but impossible to accurately and effectively gauge the severity and extent of the health effects that would result from building the proposed freeway through established communities. Again, the agencies have a duty to "painstakingly ferret out" the Project's impacts. *Envt'l Planning and Information Council of W. El Dorado County v. County of*

El Dorado (1982) 131 Cal. App. 3d 350, 357; *see also Maryland-Nat'l Capital Park & Planning Comm'n v. U.S. Postal Serv.*, 487 F.2d 1029, 1040 (D.C. Cir 1973) (requiring agencies to take a "hard look" at impacts).

Moreover, as the Miller Report clearly demonstrates, health risk assessment procedures for mobile source toxics are in fact well established. Uncertainties are an inherent part of estimating future conditions and do not themselves preclude analysis. The DEIR/S itself later uses some of these analytical techniques to erroneously conclude that impacts from diesel particulate matter ("DPM") are not significant.

Although the DEIR/S does attempt to address health impacts from exposure to elevated DPM concentrations, it is impossible to verify the accuracy of this assessment inasmuch as it omits essential details. As the Miller Report states, the DEIR/S does not identify the emissions rates used to calculate emissions and therefore it is not possible to determine whether the analysis accurately evaluates DPM emission concentrations. Nor does the DEIR/S analysis include the input parameters for the ambient air quality modeling program. The receptor height and modeling study area appear to be erroneous and arbitrary, leading to an underestimation of Project impacts. In addition, the calculations used to estimate long-term cancer and non-cancer risk contain several errors. We again direct the agencies to the Miller Report for a detailed accounting of the DEIR/S' myriad deficiencies.

f. The DEIR/S Fails to Adequately Examine the Project's Cumulative Air Quality Impacts.

The DEIR/S fails to actually analyze the Project's cumulative air quality impacts. Indeed, the document appears to contain only one sentence regarding these impacts: "[t]he analysis of air quality provided in Section 3.14 of this EIR/EIS is a cumulative analysis in that it considers the emissions of traffic generated by future planned land uses and the effects of other future planned transportation improvements." DEIR/S at 3.25-5. While it would appear that the DEIR/S analysis *may* take into account emissions from traffic on other roadways, it is impossible to verify the accuracy of the analysis because the document never segregates the emissions of the proposed MCP from those that would be generated by other transportation projects in the region. Nor does the DEIR/S appear to take into account emissions from non-mobile sources of pollution (e.g., stationary sources such as manufacturing, combustion and mechanical facilities). Unless the DEIR/S identifies all past, present, and reasonably foreseeable sources of air pollution, it is not possible to determine whether the DEIR/S actually evaluated the Project's cumulative air quality impacts. The revised DEIR/S should include this

information. In addition, this detailed accounting must include all sources of pollution for the entire South Coast Air Basin, not just projects located within the MCP study area.

3. The DEIR/S Fails to Adequately Analyze or Mitigate the Project's Noise Impacts.

A particularly glaring inadequacy of the MCP DEIR/S is its analysis of and mitigation for the Project's noise impacts. The proposed MCP will generate two distinct categories of noise impacts: construction equipment noise, and traffic noise from the cars and trucks that would travel along this six to eight lane freeway. Some of the closest sensitive receptors will be no more than 50 feet from the freeway. The DEIR/S admits that noise from construction of the Project could be as high as 95 dBA (i.e., similar to a gas lawn mower at a distance of one meter), while noise from the traffic traveling along the freeway would be considered *severe* in certain locations. DEIR/S at 3.15-54 and 3.15-125.

The World Health Organization recognizes noise, and in particular traffic noise, as a serious public health problem. *See* excerpts from Traffic Noise Reduction in Europe, attached as Exhibit N. Given the severity of the Project's potential noise impacts, coupled with the effect that elevated noise levels has on public health, the DEIR/S should have rigorously examined this issue. Unfortunately, the document's analysis of noise impacts is riddled with errors and critical omissions. A few of the most troubling errors are briefly reviewed here.

a. The DEIR/S Analysis of Noise Impacts is Hamstrung by Its Failure to Consider All of the Impacted Receptor Locations.

Given the freeway's proposed alignment through established communities, it is likely that the proposed MCP would impact thousands of sensitive receptors. The DEIR/S states, however, that only 237 sensitive receptor locations were selected to represent land uses in the project vicinity. DEIR/S at 3.15-5. Unfortunately, the DEIR/S does not provide any information as to how these specific sensitive receptor locations were selected, or whether these locations are in fact representative of all potentially affected sensitive receptors. While the document does identify residences, two schools (Val Verde Elementary and Val Verde High) and two parks (Paragon and El Cerrito) as sensitive noise locations, it makes no mention of whether there are any motels and hotels, libraries, religious institutions, hospitals, nursing homes, active sport areas, picnic areas, recreation areas, playgrounds, active sport areas or other parks in the vicinity of the

proposed freeway. Nor does the document identify the distance between the sensitive receptors it does identify and the proposed MCP alignment. If the DEIR/S under-represented the number and type of potentially affected receptor locations, it also necessarily underestimated the Project's noise impacts on these receptors.

The revised DEIR/S must provide detailed documentation, including maps, supporting the selection of "representative" sensitive receptors. In addition to identifying residences, the revised document must identify each motel and hotel, library, religious institution, hospital, nursing home, active sport area, picnic area, recreation area, playground, active sport area and park that would be potentially affected by this new freeway.

b. The DEIR/S' Reliance on Noise Attenuation Features Undermines the Entire Noise Impact Analysis.

The DEIR/S concludes that traffic noise levels at several receptor locations would be lower with the proposed Project than under the existing and future no-build conditions. DEIR/S at 3.15-51. The document asserts that this would be the case because the Project would add "objects like retaining walls and highway ramps that block the line of sight to the noise source." *Id.* Although the DEIR/S never discloses whether these noise attenuation features are actually part of the Project or are assumed to be mitigation for Project impacts, the DEIR/S noise analysis simply assumes they will be implemented.[6]

Unfortunately, the DEIR/S skips a critical step in the analysis of noise impacts: it acknowledges that sensitive receptors would be exposed to noise levels exceeding the noise abatement criteria (defined as an increase of 12 dBA or more), but only specifically identifies those receptor locations where sound walls were not found to be reasonable and feasible. DEIR/S at 4-35. This approach might be acceptable if the implementation of sound walls were certain. But the Noise Study Report makes quite clear that the sound walls may never be constructed. As the Noise Study Report states, "[i]f during final design, conditions have substantially changed, the sound wall may not be provided. The final decision on sound walls depends upon completion of project design and public involvement processes." Noise Study Report at H-12. The document goes on to state, "[i]f pertinent parameters change substantially during the project design,

[6] While the Noise Study Report asserts that Table H depicts the "with" and "without project" scenarios, Table H actually appears to assume the implementation of these sound walls. Noise Study Report at G-21.

the preliminary noise abatement decision may be changed or eliminated from the final project design." *Id.*

The MCP DEIR/S thus fails to fulfill the fundamental purpose of CEQA and NEPA. An EIR is meant to be an informational document, a means of "inform[ing] the public and its responsible officials of the environmental consequences of their decisions before they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. Likewise, NEPA's fundamental purpose is to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." 40 C.F.R. § 1500.1(b). As the DEIR/S is currently written, it is impossible to determine which receptor locations along the MCP alignment would be exposed to a significant increase in noise levels. By omitting the identification of sensitive receptor locations that would be significantly impacted if not for the eventual construction of sound walls, the thousands of sensitive receptors that border the freeway's alignment are left in the dark as to whether they will be forced to live with unbearably high levels of traffic noise.

In short, CEQA and NEPA require that the public and decision-makers be made aware of the changes that a Project will cause. The revised DEIR/S must identify *each* receptor location that has the potential to be significantly impacted by the Project, evaluate whether the increase in noise would significantly impact this receptor and then identify and evaluate feasible noise attenuation measures. The revised DEIR/S must fill this critical gap in order to allow the public and decision-makers to understand the actual and specific consequences of the Project.

c. The DEIR/S Substantially Understates the Severity and Extent of the Project's Noise Impacts Because the Document Relies on an Unrealistically High Threshold for Evaluating Impacts.

The DEIR/S asserts that traffic noise impacts are considered to occur at receptor locations where predicted design-year noise levels are at least 12 dB higher than existing noise levels. Noise Report at E-2 and DEIR/S at 3.15-5. This is an inappropriately high threshold. Acoustical experts have determined that a 5 dBA increase is considered a noticeable increase in noise levels, whereas a 10 dB increase is considered a doubling in noise exposure. *See* City of Los Angeles, EIR excerpts for Autry's National Center's Griffith Park Campus Improvements, attached as Exhibit O. By using 12 dBA, the DEIR/S authors take the untenable position that even a doubling of noise levels would not impact nearby sensitive receptors.

The CEQA Guidelines state that a project would have a significant noise impact if it would result in substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project. *See* CEQA Guidelines Appendix G. The question, then, is what constitutes a substantial increase? Typically, if noise generated by a project causes the L_{dn} at a noise sensitive land use to increase by 5 dBA or greater above existing ambient noise levels, the increase would be considered a substantial temporary or permanent increase and the impact would be considered significant. *See* Exhibit O (City of Los Angeles Autry's National Center's Griffith Park campus Improvements).

Here, the MCP DEIR/S identifies several locations – including a high school – that would experience a doubling in noise exposure, yet it finds these impacts to be less than significant. *See* DEIR/S Table 3.15.D at 3.15-47 (showing that the Project would increase noise levels at the Val Verde High School monitoring locations by 7 dBA (sites M-120 and M-121) and 10 dBA at site M-122). Thus, noise levels at the school would range from 75 dBA to 78 dBA, which is similar to the sound a garbage disposal makes from a distance of one meter or a vacuum cleaner from a distance of three meters. *See* DEIR/S Noise Study Report Table A. Clearly, exposing students to this magnitude of noise would constitute a significant impact. Indeed, even Riverside County recognizes that land uses exposed to noise levels greater than 65 CNEL require noise attenuation features. *See* Riverside County General Plan Noise Element Table N-2 (Stationary Source Land Use Noise Standards), attached as Exhibit P.

It is also important to note that where existing ambient noise is already elevated, tolerance is very low for *any* increase in noise. Existing ambient noise at the Val Verde High School is already elevated. Three of the four monitoring locations at the school have existing noise levels greater than 65 CNEL (68 dBA: site M-120; 70 dBA: site M-121; 68 dBA: site M-122 68 dBA). DEIR/S at Table 3.15.D at 3.15-47. Here, the proper question is not the relative amount of noise resulting from the Project, but "whether *any* additional amount of [] noise should be considered significant . . ." in light of existing conditions. *Los Angeles Unified School District v. City of Los Angeles*, 58 Cal.App.4th 1019, 1025-26 (1997) (emphasis added).

Had the DEIR/S relied on an appropriate threshold of significance, the noise analysis would likely have shown that far more than 65 receptor locations would approach or exceed the DEIR/S significance threshold. *See* DEIR/S at 3.15-51 and Noise Study Report at G-21. Yet, the document provides no justification for its approach of automatically deeming all such increases of less than 12 dBA to be less than significant.

The DEIR/S should be revised to evaluate noise impacts against a more reasonable threshold of significance.

d. The DEIR/S Fails to Evaluate Single Noise Events and Nighttime Noise.

Another particularly egregious oversight is the DEIR/S' failure to evaluate single noise events or nighttime noise. According to the Riverside County General Plan, motor vehicle noise is characterized by a high number of individual events, which often create a higher sustained noise level in proximity to areas sensitive to noise exposure. *See* Exhibit P. Moreover, heavy trucks and tractor-trailers generate significantly more single noise events than other vehicle types.

One of the main purposes of the proposed Project is to accommodate truck traffic traveling within and through Riverside County. DEIR/S at S-2. To this end, the freeway will include truck climbing lanes for trucks and other slow moving vehicles. *Id.* at 2-71. The DEIR/S' noise analysis should have evaluated how single noise events from trucks traveling along the freeway would impact sensitive receptors, some of which would be no more than 50 feet from the freeway. Yet the document focuses only on average noise, not such single noise events as trucks' engines revving up climbing lanes and trucks' braking as they head downhill through Gavilan Hills.

Analyzing only average noise impacts has been rejected by California courts because impacted residents do not hear noise averages, but single events. *See Berkeley Keep Jets Over the Bay Committee v. Port of Oakland*, 91 Cal.App.4th 1344, 1382 (2001). Single event noise levels have been shown to be likely to result in sleep disruption and speech interference, and heightened levels of stress and annoyance. Noting that "sound exposure level [SEL] has been found to be the most appropriate and useful descriptor for most types of single event sounds," the court in *Berkeley Keep Jets* held that the Port must prepare a supplementary noise analysis calculating the impacts of single-event sounds. *Id.* at 1382. Accordingly, the revised DEIR/S for the MCP must analyze the impacts of single event noise on sleep, speech, stress and annoyance levels, and analyze adequate measures to mitigate those impacts.

Nor does the MCP DEIR/S differentiate between daytime and nighttime noise. Noise can be far more intrusive during the evening and nighttime hours when ambient noise levels are at their lowest and when sensitive receptors are sleeping. Since the surrounding area is quieter at these times, the masking effect of other noise does not screen the freeway noise. The DEIR/S should have taken into account this higher

sensitivity to noise and evaluated how the increase in noise from the MCP would affect receptors during these sensitive time periods.

e. The DEIR/S' Analysis of Construction Noise Impacts is Legally Inadequate.

The DEIR/S fails to evaluate the actual and specific consequences of construction-related noise on nearby sensitive receptors. Given the very high decibel level of construction-equipment and the proximity of sensitive receptors (in many instances, less than 50 feet from the proposed freeway alignment), the DEIR/S should have provided a comprehensive analysis of these impacts. This type of evaluation is necessarily complex, requiring a thorough understanding and description of the amplitude and duration of noise exposure at receptor locations along the entire freeway alignment. Absent a thorough evaluation of the construction noise environment, it is impossible to make a finding regarding a substantial temporary or periodic increase in ambient noise levels. Yet here, the DEIR/S provides almost no analysis and cavalierly concludes that impacts would be less than significant. DEIR/S at 3.15-126.

For example, the DEIR/S fails to support with substantial evidence its conclusion that noise impacts from construction-related trucks would be less than significant. The document admits that noise levels from these trucks could be as high at 87 dBA at 50 feet. Noise Study Report at I-1. According to the DEIR/S, a noise level of 87 dBA approaches the sound a food blender makes at a distance of one meter. DEIR/S at 3.15-3. Absent evidence or analysis, the DEIR/S concludes that this increase in noise levels "would not be perceptible." Noise Study Report at I-1. To conclude as the DEIR/S does, that an impact is less than significant, the analysis must be supported with substantial evidence. Substantial evidence consists of "facts, a reasonable presumption predicated on fact, or expert opinion supported by fact," not "argument, speculation, unsubstantiated opinion or narrative." *Pub. Res. Code § 21080(e)(1)-(2)*. Similarly, under NEPA, agencies may not rest on "bald conclusions," but must take a "hard look" at the environmental impacts of a project. *Maryland-Nat'l Capital Park & Planning Comm'n v. U.S. Postal Serv.*, 487 F.2d 1029, 1040 (D.C. Cir 1973). Because the DEIR/S' conclusion of insignificance is premised on unsupported assumptions and bald conclusions, it falls far short of this threshold.

Other sources of construction noise include pile driving, which the DEIR/S suggests would generate noise levels as high as 95 dBA at the closest sensitive receptor locations. Noise Study Report at I-2. Rather than evaluate how many receptors would experience this ear-splitting noise or describe the duration of the exposure, the DEIR/S

simply asserts that because construction noise would be regulated by Caltrans' Standard Specifications, any noise impacts would be reduced to a less than significant level. DEIR/S at 4-26. California courts reject this approach to mitigation. Merely requiring compliance with agency regulations does not conclusively indicate that a proposed project would not have a significant and adverse impact. In *Kings County Farm Bureau v. City of Hanford*, 221 Cal.App.3d 692, 716 (1990), for example, the court found that the fact that the EPA and the local air pollution control district had issued the necessary air emission permits for the construction of a coal fired cogeneration plant did not nullify the CEQA requirement that the lead agency analyze the significant air quality impacts of the entire project.

An adequate analysis of construction noise impacts would include the locations of sensitive receptors in the Project area, a description of existing ambient noise levels at these receptor locations, predicted noise levels during each phase of construction at each sensitive receiver location, a comparison of noise levels during construction to the existing ambient noise levels, the establishment of appropriate significance thresholds to assess if the increase would be substantial, and a finding as to whether noise levels would substantially increase. Only upon completion of this analysis will the DEIR/S' preparers be in a position to evaluate whether measures exist to mitigate this impact.

In addition, the DEIR/S ignores altogether construction-related vibration impacts. In addition to contributing to high levels of annoyance, construction-related vibration also can cause substantial property damage. Pile driving is the most significant source of construction vibration and pile-driving would occur within 50 feet of sensitive receptors. The revised DEIR/S must undertake a comprehensive construction vibration assessment.

4. The DEIR/S Fails to Adequately Analyze Visual/Aesthetic Impacts.

Under CEQA, it is the state's policy to "[t]ake all action necessary to provide the people of this state with . . . enjoyment of aesthetic, natural, scenic, and historic environmental qualities." Pub. Res. Code § 21001(b). Thus, courts have recognized that aesthetic issues "are properly studied in an EIR to assess the impacts of a project." *The Pocket Protectors*, 124 Cal.App.4th at 937 (overturning a mitigated negative declaration and requiring an EIR where proposed project potentially affected street-level aesthetics).

The accepted approach to analyzing visual and aesthetic impacts is as follows:

- Describe the criteria for significance thresholds.
- Characterize the existing conditions of the project site and the surrounding area by photograph and description, and select key viewpoints within the area, including scenic corridors and landscapes.
- Use photomontages or visual simulations, to illustrate the change in character of the project site before and after project implementation.
- Identify feasible mitigation measures and alternatives to reduce or eliminate significant impacts.
- Where mitigation measures are proposed, use the simulations to illustrate the change in character before and after project mitigation measures are imposed (*e.g.*, landscaping at various stages of construction, aesthetic additions to retaining and sound walls).

Although the DEIR/S correctly notes that there will be significant and unavoidable impacts to visual and aesthetic resources, the document does not provide the comprehensive analysis necessary to accurately characterize the severity and extent of this impact. The analysis is crippled in large part because of the document's failure to accurately depict and fully describe the existing visual setting. This leads to a wholly inadequate range of visual simulations and a failure to require all reasonable mitigation measures.

a. The DEIR/S Fails to Adequately Describe the Existing Environmental Setting.

As outlined above, one of the first steps in the process of determining visual impacts is to describe the environmental setting. 14 Cal. Code Regs § 15125. A description of the setting is very important in order to determine the baseline, which is itself critical to a meaningful assessment of the impacts of a project. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors*, 87 Cal. 4th 99, 119 (2001). The description of physical environmental conditions must include a local and regional perspective. 14 Cal. Code Regs § 15125. The description should also place special emphasis on environmental resources that are rare or unique to the region and that would be affected by a project. 14 Cal. Code Regs § 15125(a).

Although the DEIR/S has a cursory outline of the various "landscape units" that predominate in the area, it fails to describe or catalogue some of the most important

and scenic areas. For instance, it fails to describe, and barely even mentions, the Lake Perris State Recreation Area, which would be immediately adjacent to the proposed freeway. *See* DEIR/S at 3.7-3 (mentioning the Bernasconi Hills, but not the State Recreation Area in which they lie); Appendix B at 4-6. The DEIR/S also fails to give a substantive description of numerous other scenic park and open space areas, including El Cerrito Sports Park, Paragon Park, the El Sobrante Landfill MSHCP, Harford Springs Wildlife Area, the San Jacinto Wildlife Area and significant portions of the Lake Mathews/Estelle Mountain Reserve. *See* DEIR/S at 3.7-2, 3.7-3 (mentioning, but not describing, some of these areas). Because the DEIR/S fails to place any emphasis, much less special emphasis, on these unique environmental resources as required by 14 Cal. Code Regs § 15125(a), it fails to evaluate the effect that a six to eight-lane freeway would have on these scenic resources.

The DEIR/S also fails to describe the environmental setting from a regional perspective for the purposes of visual impacts. The DEIR/S only focuses on the narrow MCP study area, thereby excluding much of western Riverside County. Because the whole western part of the County is growing quickly, with development and roads being built rapidly, this Project must be analyzed in reference to the greater region. For example, the DEIR/S must consider the views from the top of the Bernasconi Hills, which are at the edge of the MCP study area. *See* DEIR/S at 3.7-3, appendix B at 4-6, 5-2. These views encompass areas inside as well as outside of the study area that will be impacted by planned roadway and development projects. Without a description of the surrounding areas and the planned development there, it is impossible to know what impact the MCP project, especially in conjunction with other development and highway projects, will have on the view from the top of these hills.

b. The DEIR/S Fails to Adequately Analyze the Significant Visual and Aesthetic Impacts of the Project and Ignores Certain Viewer Groups.

The DEIR/S never explains why only 29 visual assessment points were selected, and whether these points show the most significant visual impacts caused by the Project. Adequate environmental review must include such an explanation, and must support the selection of a limited number of assessment points with substantial evidence.

The DEIR/S' selection of viewpoints is inadequate because it almost entirely fails to analyze the significant visual and aesthetic effects of the freeway on recreational users of park and open space lands. Instead, the visual impacts analysis focuses almost entirely on views from roadways and residential areas. Out of the 29 "key

views" analyzed in the DEIR/S, only three are taken from park or open space lands, which are some of the most sensitive lands that would have the greatest visual impacts from this Project. DEIR/S at 3.7-7. The rest are taken from roadways, including some that are taken from the proposed MCP roadway itself. *See* DEIR/S at 3.7-73 (mentioning views of a landfill that motorists on the MCP would see).

The DEIR/S includes "Key view" number 9, taken from a habitat reserve at Mockingbird Canyon; view 14, taken from the Harford Springs Wildlife Reserve; and view 18 taken partly from Paragon Park. The DEIR/S fails to disclose, however, why these views were chosen and why there are apparently no simulations of views from the many other parks and reserves, such as El Cerrito Sports Park, the El Sobrante Landfill MSHCP area, Lake Perris State Recreation Area or the massive Lake Mathews/Estelle Mountain Reserve. Of particular note, the Bernasconi Hills area in Lake Perris State Recreation Area is very popular for hiking, with sweeping views of the surrounding lake, valleys and distant mountains from the top of the hills. *See* Local Hikes: Bernasconi Hills, website (last accessed Dec. 19, 2008), attached as Exhibit Q. Yet the DEIR/S mentions the Bernasconi Hills only in passing.

Further, the DEIR/S mentions the effects of the Project only from the perspective of residents and motorists in the valley looking up at the hills, as opposed to from the perspective of trail users looking down on the proposed freeway. *See* DEIR/S at 3.7-3, appendix B at 4-6. Thus, the DEIR/S appears to entirely ignore hikers and equestrians as viewer groups, even though there are numerous parks and areas where such users would be impacted by the proposed new parkway. *See* DEIR/S at 3.7-1 (mentioning "pedestrians" as a viewer group, but going on to analyze views from roads and developments, not from trails); 3.6-17 (showing the dozens of trails in the area). This approach is untenable. In order to have a full analysis of the effects that the Project will have on views from these areas, the DEIR/S must analyze whether there are trails in these areas, what type of trail users are in the parks, and what effects the Project will have on the views of park users.

It also does not appear that viewpoints were selected to ensure an impartial comparison among alternatives. Because the viewpoints are not equitably distributed among the various alternatives, the level of impact from these alternatives cannot be effectively compared. Significantly, there are virtually no viewpoints selected for any of the three route alternatives from just east of I-15 to the place where Alternative 9 and Alternatives 4 and 5 split off (due south of Lake Matthews). For four or more miles, over the three different route alternatives, there is only one view that is analyzed - "key view" 5. Without analysis of the views at the same longitude on the other alternatives, there is

no way for the public and decision-makers to compare the different aesthetic and visual impacts between the alternatives.

The DEIR/S also fails to provide simulations of views from some roadways that qualify for scenic designations. Although the DEIR/S mentions that "key views" were chosen partly on the basis of whether areas qualified for designation as scenic roads, the document fails to disclose whether any of the "key views" actually show the Project impacts on such roadways. DEIR/S at 3.7-6 (listing road segments eligible for designation and stating that this was taken into account when choosing the "key views"). It appears that some of the roads that qualify for scenic designation may be included in the 29 "key views," (such as the section of I-15, included in "key view" numbers 1 and 3), but the analysis fails to explicitly state whether this is true for any of the road sections; thus, the reader is left to wonder whether the DEIR/S actually analyzed the impacts to these important views.

Further, the DEIR/S fails to contain any visual simulations of the Project's retaining walls. The Project is expected to require the construction of somewhere between 11,000 and 15,400 meters (11 to 15 kilometers) of retaining walls, some up to 19 meters high, depending on which alternative is selected. DEIR/S at 2-79, Table 2.5.B. The DEIR/S also fails to contain any visual simulations or descriptions of the aesthetic impacts of the Project's sound walls. This is despite the fact that the Project is expected to require the construction of between 8,760 and 15,181 meters (8.7 to 15.2 kilometers) of sound walls. Sound walls can present significant aesthetic and visual impacts, potentially cutting off views that some residents, pedestrians and motorists previously enjoyed and cutting off the connectivity of previously intact views. Likewise, retaining walls that are up to 19 meters high can significantly degrade views. The complete lack of simulations or descriptions of these walls renders the DEIR/S incomplete. Further, the failure of the simulations to include these features is inconsistent with the manner in which the "key views" were supposedly chosen in the DEIR/S. The DEIR/S states that the key views were selected by choosing areas that would have the most substantial changes due to the Project, such as areas where "sound walls or retaining walls" would be constructed. DEIR/S at 3.7-6. This internal inconsistency prevents the public and decision-makers from comparing the alternatives and the Project's impacts in a straightforward manner.

The DEIR/S further fails to provide any discussion, analysis or simulations of billboards, despite the fact that the DEIR/S acknowledges that the Project may be attractive to the billboard industry. DEIR/S at 3.7-69. Billboards have long been recognized as blight on the landscape. Jursidictions routinely attempt to reduce visual

pollution by banning or placing severe restrictions on the use and placement of billboards. Notwithstanding these facts, the DEIR/S fails to provide *any* analysis of whether this potential impact would be significant, especially when viewed in tandem with the other visual impacts of the Project. The DEIR/S further states that any billboards would be regulated by County ordinance and that this regulation would avoid, minimize and mitigate any adverse visual impacts due to billboards. DEIR/S at 3.7-69. However, compliance with existing county law does not qualify as mitigation. *Oro Fino Gold Mining Corporation v. County of El Dorado*, 225 Cal.App.3d 872, 885 (1990). The DEIR/S must analyze the visual impacts of billboards, provide simulations that include billboards and propose adequate mitigation measures to minimize these impacts.

c. The DEIR/S Fails to Use Simulations to Illustrate Mitigation Measures.

Where the DEIR/S does proposed mitigation, the document fails to use simulations to illustrate the change in character before and after mitigation measures are imposed (*e.g.*, landscaping at various stages of construction, aesthetic additions to retaining and sound walls). Without these simulations, the public and decision-makers have no way of determining the aesthetic impacts of the Project, let alone comparing the alternatives.

d. The DEIR/S Fails to Adequately Mitigate for Light Pollution.

Because the area is within the Palomar Nighttime Lighting Policy Area, it is particularly important that the DEIR/S adequately analyze light pollution and propose all feasible mitigation measures. Although the DEIR/S correctly finds that the MCP will cause significant new light and glare, it fails to propose all feasible mitigation measures. For instance, the DEIR/S should require off-site mitigation for light and glare. This could take the form of placing shields on existing light fixtures on highways or other public areas. Mitigation could also take the form of banning lighting on billboards erected next to the parkway.

e. The DEIR/S' Mitigation Measures For Visual/Aesthetic Impacts are Inadequate.

The DEIR/S fails to ensure that there are adequate performance standards for mitigation measures. For instance, mitigation measure VIS-8 states that the MCP Corridor Master Plan will include a design template for aesthetic features. It goes on to

state that the purpose is to create consistency in aesthetic design through the corridor. However, it gives no standards defining what the features should be. Having a consistently bad design feature hardly mitigates for visual impacts. Similarly, measure VIS-4 has no performance standards. It simply states that, prior to completion of the final design, the RCTC will require the Project Engineer to incorporate attractive walls, medians, and other visually pleasing hardscape into the design. Deferring the freeway's design template is unacceptable. The DEIR/S must describe the aesthetic design of the freeway in order to allow decision-makers and the affected public to understand how this freeway would look on the landscape. As such, the design template for aesthetic features must be identified and described now; it cannot be deferred until after project approval.

f. The DEIR/S Fails to Adequately Analyze the Cumulative Visual/Aesthetic Impacts.

The DEIR/S' analysis of cumulative visual/aesthetic impacts is flawed because it fails to list all past, present and foreseeable future projects that will impact the visual landscape. In this section, the DEIR/S devotes a paragraph to the four relevant general plans, three brief paragraphs to historical development of the area, and a few paragraphs to planned specific projects. However, with the exception of the March Air Force Base redevelopment, nowhere does it actually list any of the recent, current or foreseeable individual development projects or specific plans. DEIR/S at 3.25-6 - 3.25-11 (mentioning that there are over two dozen active development projects in the pipeline but giving no details). The document discusses only in the most general of terms about how cumulative development and transportation projects will "contribut[e] to a change from a county characterized by large undeveloped areas . . . to a more developed, urbanized landscape." DEIR/S at 3.25-31. This cursory discussion violates NEPA and CEQA. *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"). The revised DEIR/S must include an analysis of the Project's cumulative impacts upon visual and aesthetic resources.

5. The DEIR/S Fails to Adequately Analyze and Mitigate the Project's Impacts on Agricultural Resources.

a. The DEIR/S Improperly Concludes That There Are No Significant Impacts to Agricultural Lands and Then Fails to Mitigate for Such Impacts.

The DEIR/S' conclusion that there will be no significant project-specific or cumulative impacts to agricultural lands is astounding and is not supported by substantial evidence. It is not disputed that the Project will lead directly to the permanent destruction of 823 to 1064 acres of farmland, including 307 - 391 acres of prime or unique farmland. DEIR/S at 3.3-19. By any measure, the loss of many hundreds of acres of farmland is significant. This is especially true given the importance of farms and farm income to Riverside County:

"Agriculture is one of Riverside County's most important land uses. . . . It is also the largest industry in the county in terms of dollar values . . . . Nevertheless, agriculture faces continuing conversion pressures near and within agricultural regions. For example, between the years 2000 and 2002, 18,688 ha (46,719 [acres]) of agricultural land in Riverside County were converted to nonagricultural uses." DEIR/S at 3.3-1.

The DEIR/S attempts to minimize the tremendous impact of this Project on farmlands by using a federal "farmland conversion impact rating" tool to rate the impacts. *See* U.S. Department of Agriculture, *Farmland Conversion Impact Rating for Corridor Type Projects,* Form NRCS-CPA-106, attached as Exhibit R. While this tool may be required for compliance with the Farmland Protection Policy Act, it is not determinative of whether the impacts are significant under CEQA. In fact, the CEQA Guidelines suggest using a different rating tool to determine the significance of a project's effects on agricultural land. CEQA Guidelines Appendix G. This tool, called the "California Agricultural Land Evaluation and Site Assessment Model" ("California Model"), is optional, and lead agencies may choose to use other means of determining significance. *See* California Department of Conservation, *California Agricultural Land Evaluation and Site Assessment Model Instruction Manual,* 1997, attached as Exhibit S. However, because the California Model is specifically mentioned in CEQA Guidelines, an agency should ensure that if it chooses to use a different model, the model should contain the same basic criteria for determining significance.

In this case, the federal model used in the DEIR/S fails to analyze many of the factors that are a part of the California Model. Specifically, the California Model bases its determination of significance on: (1) the determination of soil characterizations, (2) the availability of water resources, (3) the amount of surrounding land that is protected through easements, Williamson Act reserves and public land holdings, (4) the size of the project, and (5) the level of agricultural use of surrounding lands. In contrast, the federal model used in the DEIR/S fails to consider three of these factors: specific soil characterizations and ratings, availability of water resources, and amount of surrounding land that is protected. The federal model does consider the size of the Project and the

amount of surrounding land that is in agricultural use; however, without the other factors, the analysis is incomplete for CEQA purposes.

The DEIR/S' failure to adequately consider whether the Project will conflict with existing Williamson Act contracts is particularly egregious. Although the DEIR/S does quantify the Project's impact on Williamson Act contracts, finding that it would impact between 41 and 110 acres of land under contract, DEIR/S at 3.3-20, the DEIR/S contains absolutely no analysis of whether or not this is significant. Given that CEQA Guidelines Appendix G specifically states that a project's impacts on Williamson Act contracts is one of three important factors to be considered in determining whether impacts are significant, the failure of the DEIR/S to analyze this issue renders the impacts analysis incomplete. The DEIR/S' determination that there are no significant impacts is based on an analysis using the federal impact rating tool; however, this tool fails to consider impacts on Williamson Act contracts. Thus, the DEIR/S' significance determination fails to analyze crucial information and therefore is lawfully inadequate and not based on substantial evidence.

As described above, the DEIR/S' project description was drafted narrowly so as to exclude other, related components of the MCP. Further, the Project was improperly segmented from other, related projects that are integral parts of this Project. Thus, a new agricultural impacts assessment must be conducted that takes into account the *full scope* of this Project.

Lastly, the DEIR/S' finding of no significant impact is inconsistent with findings from the same lead agencies just six years ago in connection with environmental review of the Hemet to Corona/Lake Elsinore ("HCLE") corridor study. This study was the precursor to the MCP study and it built the foundation for the decision to build the MCP in the currently proposed corridor. In the HCLE environmental review, the agencies found that "[e]very alternative within the HCLE Corridor would include hundreds of hectares of potentially affected designated farmland," and that, even after implementation of mitigation measures, "impacts to designated farmland will remain significant." *See* 2002 Environmental Impact Report/Study for Hemet to Corona/Lake Elsinore Corridor, Farmland Impacts Section 6.2, attached as Exhibit T. Clearly, the MCP DEIR/S' conclusion that impacts relating to loss of agricultural lands would be less than significant cannot be sustained.

b. The DEIR/S Does Not Adequately Compare the Impacts of the Alternatives.

In its analysis of farmland impacts from the different Project alternatives, the DEIR/S fails to compare the "no project" alternatives with the "project" alternatives in a meaningful way. For all of the "project" alternatives, the DEIR/S simply lists the acreage of farmland that will be converted by the construction of the MCP. DEIR/S at 3.3-19. However, for the "no project" alternatives, the DEIR/S states that no impacts to farmlands would occur due to the Project *itself*, but that conversion of farmlands could result from *other* transportation improvement projects. Thus, it appears that the DEIR/S is comparing apples and oranges here: it does not include impacts to farmland from other transportation projects in its "project" alternatives, but does include such impacts in its "no project" alternatives. This is confusing and arbitrary given that there are numerous other transportation projects that are contemplated whether or not the MCP is constructed. *See* DEIR/S at 1-29 to 1-36.

The DEIR/S should be revised to correct this serious deficiency. If disapproval of the MCP would result in predictable actions by others (i.e., the construction of other roadway projects), this should be discussed. However, if RCTC assumes that other projects would be initiated, these other projects must be based on current plans and consistent with available infrastructure and community service. *See* CEQA Guidelines section 15126.6 (e) (2). Moreover, this analysis should be in addition to, and not replace, the analysis of the "no project" alternative, which discusses the existing conditions at the time the notice of preparation was published. *Id.*

c. The Project Would Result in Significant Cumulative Impacts on Agricultural Resources.

Even more remarkable than the DEIR/S' failure to find significant Project-specific impacts on agricultural resources is the document's failure to find any cumulatively significant impacts. This conclusion is simply not supported by substantial evidence and is arbitrary and capricious. As discussed above, the analysis of cumulative impacts is a "vital provision" of CEQA and NEPA, helping to ensure that significant impacts are not ignored simply because no single project has an individually large impact. *Bozung v. LAFCO,* 13 Cal 3d 263, 283 (1975). An EIR must discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is cumulatively considerable. 14 Cal Code Regs § 15130(a). As noted in the DEIR/S, Riverside County has experienced the conversion of tens of thousands of acres of farmland over the past decade. DEIR/S at 3.3-1. The County is expected to continue

to lose more farmland due to other highway and development projects. *Id.* at 3.3-11. Thus, the DEIR/S must analyze the impacts to farmland from these past projects, other current projects and probable future projects. 14 Cal Code Regs § 15065(a)(3).

There are dozens of past, current and probable future transportation-related, residential, commercial and industrial development projects that will impact agricultural land in western Riverside County. The DEIR/S lists some of the related transportation projects. DEIR/S at 1-30 to 1-36. In fact, it acknowledges that "conversion of other farmlands to nonagricultural uses could result from other transportation improvement projects included in the No Build alternatives." *Id.* at 3.3-20. However, the document fails to quantify, analyze, or even mention, how many acres of farmland will be lost due to these projects. Equally troubling, it fails to even list non-transportation related projects that are expected to be built in the Project area. While the DEIR/S admits that new developments are cropping up in many places within the Project area, it simply neglects to quantify or analyze the cumulative impacts of these projects on loss of farmland. *See* DEIR/S at 3.7-7 to 3.7-33 (listing "key views" and noting that at least 12 of the 17 views analyzed in the DEIR/S will soon be changed due to impending construction of residential or commercial development).

Rather than list the known and foreseeable past, current and future projects that affect farmland, the DEIR/S' cumulative impacts section devotes a paragraph to the four relevant general plans, three brief paragraphs to historical development of the area, and a few paragraphs to planned specific projects. *See DEIR*/S at 3.25-6 - 3.25-11 (mentioning that there are over two dozen active development projects in the pipeline but giving no details). This cursory treatment violates both NEPA and CEQA. *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").

As noted above, the DEIR/S acknowledges that between 2000 and 2002, 46,719 acres of agricultural land in Riverside County were converted to non-agricultural uses. When the approximately 800 - 1000 acres of farmland that would be impacted by this Project are added to the 46,719 acres previously impacted, it is untenable to assert that there are no significant cumulative impacts on these resources. Although the DEIR/S is not explicit, the RCTC appears to base its determination of no significant impacts partly on the fact that farmland conversion is already anticipated in the general plans. *See* DEIR/S at 3.3-12 (mentioning that loss of farmland is contemplated in some of the general plans that are relevant in the Project area). Even if this is true, the DEIR/S' analysis violates CEQA, which require that the significance of impacts be measured

against a baseline of existing conditions, not future conditions. 14 Cal Code Regs § 15125 (a); *see also, Woodward Park Homeowners Ass'n v. City of Fresno*, 150 Cal App 4th 683, 707 (2007) (EIR must "compare what will happen if the project is built with what will happen if the site is left alone."). The fact that regional planning documents acknowledge that farmland conversion may occur in the future is irrelevant to the analysis of whether the MCP and other past, current and probable development projects will have a cumulatively significant impact on farmland. The DEIR/S must explicitly acknowledge the baseline for its "no significant impacts" determination and cannot use future expectations as the baseline. Further, even if the DEIR/S did (incorrectly) base its significance determination on existing general plans, it should find a significant impact because Alternative 9 is inconsistent with the Riverside County General Plan, which encourages conservation of farmland. DEIR/S at 3.1-31.

d. The DEIR/S Fails to Require Mitigation Measures.

Because it finds no significant impacts on agricultural resources, the DEIR/S does not require any mitigation measures. Given that its finding of no significant impacts is not supported by substantial evidence, the DEIR/S must be redrafted and must incorporate all feasible mitigation measures. Such measures could include, but are certainly not limited to, purchasing agricultural easements on nearby land to protect it from future development or avoiding sensitive or special agricultural lands.

6. The DEIR/S Fails to Fully Analyze the Project's Growth-Inducing Impacts.

Both NEPA and CEQA require analysis of the growth-inducing impacts of a proposed project. 40 C.F.R. § 1508.8(b); Cal. Pub. Res. Code § 21100(b)(5). 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). 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. The court held, moreover, that the

uncertainty of whether new development would occur did not make the growth-inducing effects of the interchange "too speculative for evaluation," but, rather, suggested the need for exploring in the EIS the range of possibilities for potential development. *Id.*

CEQA likewise requires that an EIR include a "detailed statement" setting forth the growth-inducing impacts of the proposed project. Cal. 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 other activities that could significantly affect the environment, either individually or cumulatively" or "remove obstacles to population growth." *Id.*

a. The DEIR/S' Analysis of the Project's Growth-Inducing Impacts is Based on Flawed Assumptions.

Like the interchange at issue in *City of Davis*, the proposed MCP Project is an "indispensable prerequisite" and "essential catalyst" for future development. *See City of Davis*, 521 F.2d at 674. The construction of a six to eight lane freeway would eliminate some of the current difficulties of east-west travel in western Riverside County and would facilitate access between many communities in the region. Moreover, the Project, coupled with related roadway improvements on I-215, would substantially increase capacity and improve access for the proposed redevelopment of the March Air Force Base. The Air Base is expected to lead to the development of 4,400 acres and the creation of 38,000 jobs. Despite the potential for this huge project to be constructed immediately next to the MCP study area, the DEIR/S entirely fails to describe whether and to what extent the MCP will encourage or facilitate the development of the Air Base.

Further, as in the *City of Davis* case, significant portions of the area across which the MCP would traverse are undeveloped, rural lands. *See City of Carmel-by-the-Sea v. U.S. Dept. of Transp.*, 123 F.3d 1142, 1162 (finding that growth-inducing impacts were properly analyzed and distinguishing *City of Davis* in part because the area around Carmel was already largely developed) (citing *City of Davis*, 521 F.2d 661). Some of this land -- particularly the land in Alternative 9 between the Lake Mathews South Segment and Placentia/Rider Streets -- is not currently planned for growth or development. DEIR/S at 3.2-13 ("Alternative 9 follows an alignment that was not considered in the Riverside General Plan," and construction of two interchanges in this area "could hasten the build out of these areas or result in the introduction of more intense uses than were

considered in the adopted Riverside County General Plan."). Thus, the DEIR/S cannot rely on current general plans to find that development patterns in the area are already set and that the MCP would not lead to further, unplanned development. *See City of Carmel-by-the-Sea*, 123 F.3d at 1162 (finding that because "development is [] planned for in the Carmel Valley Master Plan[,] it has been accounted for and properly analyzed[, so n]o further analysis is warranted."). Instead, the DEIR/S must analyze the range of possibilities for induced development in the rural areas that are not currently planned for development. The cursory paragraph on page 3.2-13 regarding the rural lands that might be affected under Alternative 9 fails to adequately analyze a range of possibilities for development.

Similarly, the DEIR/S cannot rely on unsupported assumptions about future growth or on current general plan designations to assume that growth will not occur as a result of the MCP; instead, it must explore the range of possibilities for such growth. *City of Davis*, 521 F.2d at 674. For example, the DEIR/S states that "it is expected that the low-density nature of the area [south of the proposed El Sobrante Road interchange] would not be altered." DEIR/S at 3.2-10. But this statement fails to answer the question whether the MCP would *induce* growth in these areas. The mere fact that the area is currently low-density has nothing to do with possible future conditions, just as current designation in the general plan has no connection with possible redesignation due to development pressure brought on by the MCP. The DEIR/S must analyze whether the MCP will create new pressures for re-designation or changed growth patterns, instead of merely reciting current conditions and designations.

In sum, the DEIR/S relies on unsupported assumptions to dismiss the idea that a large new parkway could induce growth at all. This reasoning flies in the face of current research, which shows that new roadways do induce development. *See discussion above and* Reid Ewing & Allan Lichtenstein, *Induced Traffic and Induced Development*, October 2002, attached as Exhibit U. If the RCTC 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 no induced growth will occur.

b. The Scope of the Study Area is Too Narrow to Adequately Study the Growth-Related Impacts.

As an initial matter, the DEIR/S is unclear regarding the scope of the study area for growth-related impacts. On page 3.2-5, a map shows the "normal" MCP study area, along with proposed and approved development within and external to the study area. *See also* DEIR/S, Community Impacts Assessment at 1-2 (showing map of MCP Study Area). However, on page 3.4-7 of the Community Impacts Assessment, the study area is shown as being broader, encompassing land farther to the north and south of the proposed MCP, as well as some land to the east of San Jacinto. This lack of clarity regarding the geographical size of the study area for purposes of the growth impacts assessment makes it impossible for the public to understand the baseline area for which the DEIR/S analyzes the Project's growth-inducing impact.

Although the document does not explicitly define the relevant study area, the DEIR/S appears to analyze the potential for growth only on land adjacent to or in the immediate vicinity of the proposed MCP and its interchanges. *See* DEIR/S at 3.2-9 to 3.2-13 ("Land immediately adjacent to some of the proposed interchanges is public or quasi-public land where development is not allowed;" "[t]he area south of the proposed El Sobrante Road interchange is private land;" "proposed land development projects currently under consideration in the vicinities of these interchanges are being developed in a manner that accommodates the proposed MCP"). If this is true, the study area is clearly too narrow to adequately capture all the growth-related impacts of the Project.

Even if the study area is as shown on page 3.4-7 of the Community Impacts Assessment, it is still too narrow. Highways can affect land uses and development patterns on land that is quite distant from the roads themselves. In fact, the main purpose of the MCP project is to help efficiently move people and goods "between *and through* Corona, Perris, and San Jacinto." DEIR/S at 1-10 (emphasis added). Yet the DEIR/S' study area is bounded by the city of San Jacinto in the east and Corona in the west, thereby ignoring any impacts caused by MCP traffic that goes through San Jacinto to the east, north or south, or Corona to the west, north or south (though the mountains provide a natural barrier to the west of Corona). This narrow scope of analysis ignores the self-evident fact that construction of a new freeway will make travel easier, will draw drivers from an area farther away than just off the entrance and exit ramps, and will thereby encourage development of areas not adjacent to the proposed freeway. If the MCP enables residents east of San Jacinto to quickly drive to Corona and points between, it would clearly lead to development pressure in these areas. Similarly, the Project will

have growth-inducing impacts to the north and south of the narrow MCP study area corridor.

The MCP corridor is only between one and five miles in width. DEIR/S, Community Impacts Assessment, at 1-1. It is unclear whether the DEIR/S limited its growth-inducing impacts analysis to this area, but if it did, the area is too narrow. The revised DEIR/S must broaden the scope of its study area to include *all* areas that will be subject to growth-inducing effects of the Project.

7. The DEIS/R Fails to Adequately Analyze Environmental Justice Issues.

The DEIS/R contains a legally inadequate analysis of environmental justice issues, and its conclusion that the Project will not have disproportionate impacts on environmental justice communities is not supported by the evidence. Specifically, the DEIS/R fails to adequately gather and present all relevant data on the communities that it will affect because its use of census tract-level data fails to capture the relevant information. DEIS/R at 3.4-47. Although the DEIS/R notes that the city of Perris contains a high percentage of minorities, its failure to analyze this information on a finer special scale means that the document ignores differences in income and race within city boundaries. Because there are three potential road alignments through the city of Perris alone, it is likely that one alignment will have greater impacts on environmental justice communities. Yet the document avoids addressing this issue by failing to focus on a fine enough scale. *See,* US EPA, *Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses,* at 2.1.1 (April 1998) (cautioning against using census-tract data because it could hide localized environmental justice communities). The DEIS/R also fails to analyze cumulative impacts to environmental justice communities.

C. The DEIR/S' Analysis of Alternatives is Inadequate.

The evaluation of alternatives is the "heart" of an EIS. 40 C.F.R. § 1502.14 (2004). It "guarantee[s] that agency decisionmakers have before them and take into proper account *all possible approaches to a particular project . . . which would alter the environmental impact and the cost-benefit balance . . .*" *Bob Marshall Alliance v. Hodel,* 852 F.2d 1223, 1228 (9th Cir. 1988) (emphasis added, internal citations, quotations and alterations omitted). NEPA's regulations and Ninth Circuit case law also require an agency to "[r]igorously explore and objectively evaluate all reasonable alternatives." § 1502.14(a) (emphasis added); *Citizens for a Better Henderson v. Hodel,* 768 F.2d 1051, 1057 (9th Cir. 1985) (EIS must consider "every" reasonable alternative).

The courts, in the Ninth Circuit as elsewhere, have consistently held that a federal agency's failure to consider a reasonable alternative is fatal to a NEPA analysis. *See, e.g., Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519-20 (9th Cir. 1992) ("The existence of a viable, but unexamined alternative renders an environmental impact statement inadequate."); Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 48 Fed. Reg. 18,026 (March 16, 1981) ("In determining the scope of alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out the particular alternative. Reasonable alternatives include those that are practical or feasible from a technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."). "In order to be adequate, an environmental impact statement must consider not every possible alternative, but every reasonable alternative. *Friends of Endangered Species v. Jantzen,* 760 F.2d 976, 988 (9th Cir.1985); *California v. Block,* 690 F.2d 753, 766-67 (9th Cir.1982); *Save Lake Washington,* 641 F.2d at 1334 (9th Cir.1981).

Similarly, under CEQA, a proper analysis of alternatives is essential to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta,* 198 Cal.App.3d 433, 443-45 (1988). As stated in *Laurel Heights Improvement Association v. Regents of University of California*, "[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process . . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials." 47 Cal.3d 376, 404 (1998). The discussion of alternatives must focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. CEQA Guidelines § 15126.6(b).

1. The DEIR/S Fails to Consider Non-Freeway Alternatives.

Like the rest of the DEIR/S, the RCTC's and FHWA's alternatives analysis is colored by the agencies' interest in proceeding with a freeway alternative, rather than a concern for improving regional transportation generally. The DEIR/S considers five action alternatives and two "no action" alternatives, but the analysis fails to include the rigorous exploration of all viable alternatives required by NEPA and CEQA. This is true even though the stated project objectives clearly allow for, and would seem to encourage,

the analysis of non-freeway alternatives. The objectives of the Project are to "improve west-east transportation in western Riverside County between Interstate 15 (I-15) in the west and State Route 79 (SR-79) in the east." DEIR/S at 1-1. *See also,* DEIR/S at 3.14-14 (the "purpose of the MCP project is to provide a facility that would efficiently and effectively move people and goods between and through the cities of Corona, Perris, and San Jacinto."). This statement of objectives is supposed to guide the selection of alternatives. 14 Cal Code Regs § 15124(b). However, the alternatives selected for analysis in this document are narrowly focused on freeway alternatives, ignoring a whole range of alternatives that could fulfill the project objectives.

Illustrating the bias towards large freeway alternatives that pervades the document, the DEIR/S contains multiple locations for the proposed 4 to 8 lane freeway, but includes no alternatives besides the "no action" ones for a freeway with fewer lanes. It also does not include other transportation options such as increased public transit, improvements to existing roadways, or constraints on development patterns to control traffic growth. While consideration of five different routes for a large freeway increases the total number of "alternatives" considered, these alternatives offer few clear distinctions from one another in terms of environmental impacts. Yet, presenting clear distinctions-- and vigorously exploring all feasible alternatives--are particularly important when addressing complex or difficult issues, such as the appropriate manner to address traffic congestion problems in western Riverside County. *See Greenpeace v. National Marine Fisheries Service*, 55 F. Supp. 2d 1248 (W.D. Wash. 1999) (alternatives analysis did not sharply define the issue and present a clear basis for choice). Merely presenting slightly different variations of freeway construction does not constitute an adequate alternatives analysis. *See Sierra Club v. United States DOT*, 962 F. Supp. 1037 (N.D. Ill. 1997).

Due to the lack of clear distinctions among alternatives, many of the options considered pose nearly identical environmental risks. For example, although the DEIR/S considers several different variations for the Project alignment, all would cross through and would destroy large portions of lands designated under "habitat conservation plans." DEIR/S at Figure 3.1. Thus, all project alternatives would present grave risks to many threatened and endangered species. Further, all project alternatives would have similarly negative effects on agricultural lands, air quality, noise, traffic and growth. As the primary purpose of alternatives analysis under CEQA and NEPA is to explore options to proposed actions that will adversely affect the environment, analyzing slightly different variations of proposals with essentially identical environmental effects does not constitute an adequate alternatives analysis.

In contrast to the overblown consideration of large freeway alternatives, the DEIR/S fails to devote even brief and perfunctory attention to non-freeway alternatives. For example, the DEIR/S does not analyze possible modifications to the existing Cajalco Road and Ramona Expressway corridor that would allow for more efficient traffic operations (*e.g.*, intersection improvements and or adjustments in signal timing or congestion pricing)[1]; the expansion of mass transit infrastructure and service; the addition of High Occupancy Toll ("HOT") lanes; adjustments to parking pricing and management; the encouragement of infill encouragement; or the imposition of developer fees to encourage more efficient use of land. The DEIR/S states that high occupancy vehicle ("HOV") lanes would not be used with implementation of the MCP for any of the alternatives "since traffic congestion is not expected through the horizon year of 2035." DEIR/S at 2-31. But this statement misses the point entirely; the DEIR/S fails to analyze whether HOV lanes or other traffic control measures could reduce the need for a 4- to 8-lane freeway in the first place, or whether they could be used in conjunction with widening existing roads, thereby reducing the need for the MCP.

It cannot be disputed that a number of these options could help meet the Project objective of improving east-west transportation in the western part of Riverside County. They would not only help ease existing traffic, but also would direct new growth into existing developed areas in order to make public transit more viable, and give new residents alternative ways to commute. The failure to consider public transit and other reduced road-building alternatives renders the DEIR/S inadequate. *See Utahns for Better Transportation v. U.S. Dept. of Transportation,* 305 F.3d 1152, 1170 (10th Cir 2002) (rejecting U.S. DOT's argument that it did not need to consider option of developing transit prior to proceeding with highway project because "[r]egional transit choices that may be made in the future are not reasonable alternatives to off-set [sic] the need for new roadway construction now.").

It is especially important that the DEIS/R explore alternatives such as the use of HOT lanes as a means to reduce congestion. In fact, a study conducted by the FHWA itself (the lead agency for NEPA purposes here) concluded that congestion pricing and HOT lanes can: (1) can reduce congestion; (2) provide much needed revenues for expansion of transportation services; (3) can be politically and publicly acceptable; and (4) can reduce environmental damage. Federal Highway Administration, *Evaluation of Toll Options Using Quick-Response Analysis Tools, A Case Study of the Capital Beltway,* November 16, 2002, attached as Exhibit V. Because the FHWA has determined

[1] Although the no-project alternatives include non-freeway options, these do not include the range of options as discussed herein.

that HOT lanes are a potentially successful mechanism to reduce congestion, the DEIS/R's failure to consider and evaluate this option is a fatal shortcoming under both CEQA and NEPA.

The inadequacy of the alternatives in the DEIR/S is further highlighted by the fact that the RCTC previously considered transit alternatives in a prior planning process. In 2002, the RCTC and County of Riverside, as part of the Community and Environmental Transportation Acceptability Process, released a Draft Tier 1 DEIR/S. DEIR/S at 2-5. The DEIR/S considered 14 proposed corridor alternatives connecting San Jacinto/Hemet on the east to Corona/Lake Elsinore on the west. The alternatives included highway alternatives as well as transit options such as expanded bus and commuter rail service. DEIR/S at 2-5. Further, the 2002 DEIR/S specifically included in the design concepts for the corridors one HOV lane in each direction as well as "[s]ufficient width to accommodate . . . an exclusive transitway, either rail or bus." *See* 2002 Environmental Impact Report/Study for Hemet to Corona/Lake Elsinore Corridor, Alternatives Section 2.3.2., at 2-8, attached as Exhibit W. The fact that the RCTC previously analyzed potential transit-based alternatives shows that such alternatives were reasonable and feasible, and thus that they are reasonable and feasible here as well. The existence of this viable, but unexamined alternative, renders the DEIR/S inadequate.

Throughout the DEIR/S, freeway alternatives are presented in the best possible light by downplaying their environmental effects (such as denying that they would induce growth, create traffic or add to air and noise pollution) while non-freeway alternatives are marginalized or simply ignored. The conclusory and limited analysis of non-freeway alternatives—and particularly the failure to rigorously explore combinations of expanding existing roads with mass transit options-- violate core principles of NEPA and CEQA, which require the identification of feasible alternatives capable of protecting the environment.

2. The DEIR/S Unlawfully Constrains the Choice of Alternatives by Narrowly Limiting the Project Description and Relying on Previous Planning Documents.

At the heart of the DEIR/S' failure to consider a reasonable range of alternatives is the document's failure to abide by CEQA's mandate to consider "a range of reasonable alternatives to the project, or to the location of the project . . ." CEQA Guidelines § 15126.6(a) (emphasis added). Although the DEIR/S analyzes a range (albeit inadequate) of alternatives to the location of the Project, it analyzes no alternatives -- other than the no build alternative -- to the Project itself. As discussed elsewhere in

these comments, this is partly due to the fact that the Project's purpose and need are drafted narrowly so as to exclude viable alternatives.

The DEIR/S describes the Project's purpose and need both as improving east-west transportation and as building a parkway from Corona to San Jacinto. DEIR/S at 3.14-14 ("purpose of the MCP project is to provide a facility that would efficiently and effectively move people and goods between and through the cities of Corona, Perris, and San Jacinto."); DEIR/S at 1-100 (describing purpose as building a "transportation parkway" to move goods and people). This twofold purpose is both confusing and improper. While improving east-west transportation is a legitimate project purpose, constructing a freeway, which is simply one means to achieve that purpose, is not. By defining the project purpose as constructing a freeway, the DEIR/S limits itself to analyzing various routes for the construction of a freeway, and entirely fails to analyze alternatives that could move goods and people from east to west without the freeway.

The DEIR/S also appears to constrain its analysis of non-freeway alternatives because of previous regional planning that identified this corridor as a route for a freeway. *See* DEIR/S at 1-1. However, the RCTC and FHWA cannot narrow the scope of their alternatives analysis by only considering alternatives that are consistent with previous planning documents. The DEIR/S must analyze any inconsistencies with such plans, but cannot categorically discount alternatives that are inconsistent with them.

3. The DEIR/S Fails to Analyze How the Various Alternatives Meet Project Objectives.

One of the Project's purposes is to tie the freeway in with future multimodal transportation. DEIR/S at 1-26, 1-29. However, the DEIR/S fails to describe how the various alternatives would meet this objective. DEIR/S at 2-78 (mentioning connections with multimodal facility and park-and-ride features, but giving no indication which alternatives would allow for this tie-in). At best, the DEIR/S gives a vague, two paragraph description of how the Project would help improve accessibility to future train stations by reducing travel time and traffic congestion. DEIR/S at 1-29.

The DEIR/S also mentions that the routing of the Project through the city of Perris will offer an opportunity to create a linkage between the Project and two planned transit projects. However, there are three different routes through Perris, and the DEIR/S gives no information regarding which of these would be better or worse for tying in to the planned transit projects. Thus, decision-makers and the public have no information regarding which alternatives come closest to the planned train stops and which would

foreclose possible future multimodal connections. Without the ability to analyze whether various alternatives meet the project objectives, "neither the courts nor the public can fulfill their proper roles in the CEQA process . . ." and the DEIR/S fails to meet CEQA's "fundamental goal that the public be fully informed as to the consequences of action by their public officials." *Laurel Heights Improvement Association v. Regents of University of California*, 47 Cal.3d 376, 404 (1998).

4. The DEIS/R Fails to Describe the Cost and Economic Feasibility of Each Alternative.

The DEIR/S's current description of the cost of each alternative is limited to a lump sum total for construction, right-of-way, engineering and environmental mitigation costs. DEIR/S at 2-105. At a minimum, a revised DEIR/S must describe the methodology by which these costs were calculated. *See Utahns for a Better Transportation v. United States DOT*, 305 F.3d 1152, 1165-66 (10th Cir. 2002) (FEIS inadequate to meet NEPA goals of informed decision-making and public comment where no cost methodology included). Perhaps this methodology was described in the report that is mentioned on page 2-105 underneath table 2.7.A; however, it appears that this study is not attached to the DEIR/S, and the DEIR/S does not say where the report can be found. *See* Pub. Res. Code § 21061 (requiring that an EIR state where a document is located in order for it to be incorporated by reference).

In conclusion, the DEIR/S fails to comply with NEPA's and CEQA's alternatives requirements. The document must be revised to include a reasonable range of alternatives, including alternatives that truly reduce the Project's extensive environment impacts.

II. THE DEIS/R VIOLATES SECTION 4(f) OF THE DEPARTMENT OF TRANSPORTATION 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 under the Act: (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 the parkland; and (2) requiring transportation projects which use a public park, recreation area or wildlife refuge to include all possible planning to minimize harm to the parkland. 49

U.S.C. § 303(c). The Transportation Act thus codified the requirement that federal agencies consider alternatives to environmentally damaging proposals several years before this principle was enshrined as a core provision in NEPA. The Act's provisions are even more stringent than NEPA's, however, in that they provide substantive direction that alternatives to proposed highway routes which would destroy public parks must be selected when such alternatives are feasible and prudent.

Authoritative interpretation of federal agencies' duties under this provision was first established and continues to be provided by the 1971 Supreme Court decision in *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, in which the Court overturned the Secretary of Transportation's approval of a six-lane highway through a park in Memphis, Tennessee. In reaching its decision, the Court held that "only the most unusual situations are exempted" from the 4(f) mandate. The Court further elaborated that only "unique problems" such as extreme financial costs or community disruption of "extraordinary magnitudes" would constitute such "unusual situations." *Id.* at 411, 413.

As Justice Marshall explained, the "very existence" of section 4(f) demonstrates "that protection of parkland was to be given paramount importance." *Id.* at 412-413. By holding that only alternatives which included additive costs or community disruption of "extraordinary magnitude" could justify an exemption to section 4(f), the Court made clear that choosing a siting alternative that requires use of a public park or recreation area simply because it is the least expensive or most efficient choice does not meet the rigorous mandate of the provision. *Overton Park* thus sharply limits the discretion of federal agencies in approving proposed transportation projects affecting 4(f) resources.[7]

A. The DEIR/S Fails to Adequately Consider the Project's Constructive Use of 4(f) Resources.

The MCP alternatives will undeniably have serious impacts on numerous 4(f) resources. Each of the MCP alignments would impact hundreds of acres within various parks and habitat reserves through direct impacts caused by the actual siting of the Project. Yet, while the DEIR/S acknowledges many of these direct impacts, it fails to address "constructive use" impacts to 4(f) lands that will be adjacent to, but not directly used by, the Project.

[7]The standards outlined in the *Overton Park* case have been codified by the Department of Transportation's section 4(f) implementing regulations at 23 C.F.R. § 771.135.

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 9th 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 actual 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).

The DEIR/S not only fails to adequately address the MCP's constructive use of a range of parks and reserves, but also contains confusing and inaccurate statements regarding the law and the DEIR/S' own constructive use analysis. To start with, the DEIR/S has contradictory statements regarding whether a constructive use analysis was even done. On the one hand, the DEIR/S lays out the criteria for assessing constructive use and admits that such use is recognized under federal law. DEIR/S at Appendix B, 4-1. It even states that an analysis was completed regarding the Project's anticipated constructive uses . DEIR/S at Appendix B, 4-2. On the other hand, the DEIR/S does not appear to include the referenced analysis regarding constructive use. Equally disturbing, the DEIR/S contradicts itself and misstates the law when it says that

where "there is no use of [a] Reserve, the requirements for protection under Section 4(f) are not triggered." Appendix B, A-6 (This is, confusingly, Appendix B of the 4(f) evaluation, which is itself Appendix B of the DEIR/S). These contradictions lead to the conclusion that either no evaluation of constructive use was undertaken or it was based on flawed assumptions.

The DEIR/S must contain a constructive use analysis for parks such as Motte Rimrock Preserve, Harford Springs, San Jacinto Wildlife Area and other parks and wildlife areas that will be substantially impacted by noise, light, air pollution and other effects of the Project. The DEIR/S even admits that the Project will cause detrimental effects on adjacent 4(f) lands. On page 3.21-17, the DEIR/S states that because "[a]lternative 9 is adjacent to the northwest corner of the Motte Rimrock Reserve . . . [it] may result in edge effects and habitat fragmentation along the Motte Rimrock Reserve." Yet the DEIR/S fails to analyze the severity of these impacts, instead claiming that, because that the Motte Rimrock Reserve is "outside the study area for the MCP . . . [and b]ecause there is no use of this Reserve, the requirements for protection under Section 4(f) are not triggered." DEIR/S at A-6 of Appendix B in the 4(f) evaluation report (itself Appendix B of the DEIR/S). As shown above, this reasoning is legally flawed. The Project's constructive use of this Reserve must be examined, and its substantial impacts due to habitat fragmentation and edge effects analyzed and mitigated.

The DEIR/S also acknowledges that the Project will have effects on other 4(f) lands that contain listed species; these effects result from such factors as increased light, noise, and fires; the introduction of non-native species; and unauthorized recreational use. DEIR/S at 3.21-16. Unfortunately, the DEIR/S fails to analyze whether these impacts are substantial, or whether the Project therefore results in constructive use for purposes of section 4(f).

Lastly, the Project will cause substantial impacts to Harford Springs Park, which is popular with equestrian riders, due to the effects of traffic, noise, odor and aesthetics on trail users in the park. The DEIR/S' failure to analyze these effects under the 4(f) rubric leads to a severe underestimation of the extent of the Project's harm to 4(f) properties This omission, like the others above, violates federal law.

B. The DEIR/S Fails to Adequately Analyze Alternatives that Would Mitigate Impacts to 4(f) Areas.

As discussed elsewhere, the DEIR/S artificially attempts to constrain the scope of its alternatives analysis by entirely failing to present any non-freeway or

reduced-lane alternatives, except for the no-action alternatives. As described above, there are potentially other feasible alternatives that will meet the Project's purpose and need for improving east-west transportation in western Riverside County. The DEIR/S' failure to consider alternatives that include fewer lanes or that incorporate mass transit alternatives not only renders the alternatives analysis faulty under NEPA (and CEQA), but also undermines the 4(f) evaluation. Because some of these alternatives could meet the Project's stated purpose and need, NEPA and section 4(f) require that the DEIR/S more fully explore ways to mitigate and avoid use of park and habitat reserve lands.

Further, the alternatives that are discussed in the 4(f) analysis are irrationally constrained. For instance, there is no analysis of an alternative that would cut across a narrower section of the Lake Mathews/Estelle Mountain Reserve. This reserve is very narrow from east to west at certain points, yet none of the DEIR/S alternatives propose to cross the reserve at its narrow points. On the contrary, Alternative 9 -- the preferred alternative -- crosses the Reserve at one of its widest points, thereby maximizing the impact to the Reserve. At Alternative 9's southernmost point, due south of the eastern end of Lake Mathews, it appears as though the freeway alignment could continue due west, crossing the Reserve at its narrowest point. Instead, the freeway turns north, crossing the Reserve at a wide point. The DEIR/S includes no discussion of whether an alternative that crossed the Reserve at the narrowest point, thereby minimizing impacts to 4(f) resources, is feasible from an engineering perspective or whether it is prudent.

The DEIR/S also rejects the "total avoidance alternative," number 3, due to the fact that it would displace an additional 250 homes. Though displacement of large numbers of homes is a valid concern under a 4(f) analysis, the statute would be rendered meaningless if homes were always avoided and highways routed through park lands. It is always less expensive and more politically acceptable to route highways through open space, but this is exactly the reason that 4(f) was created by Congress. As the Supreme Court held in *Overton Park*, "only the most unusual situations are exempted" from the 4(f) mandate. These situations include "truly unusual factors," demonstrating that alternatives to the proposed action present "unique problems" or require costs or community disruption of "extraordinary magnitudes." 401 U.S. at 411, 413. The 9th Circuit has subsequently interpreted this exception quite narrowly, holding that an alternative that required dislocation of residences and businesses and cost millions of additional dollars did not justify an exception to section 4(f). *Stop H-3 Ass'n v. Dole*, 740 F.3d 1442, 1451-52 (9th Cir. 1984). In the present case, where the Project would cost nearly $3 billion, place a 32-mile freeway across developed and undeveloped land, and already displace between 396 and 692 residential and nonresidential buildings, the cost

and community impacts of displacing some more dwellings are not "truly unusual" or "unique." DEIR/S at 3.4-36 (listing displacements).

Section 4(f) prohibits federal agencies from approving transportation projects that require use of protected resources unless there are *no feasible and prudent alternatives* to using the parkland, and it requires that projects which use a public park, recreation area or wildlife refuge include *all possible planning* to minimize harm to the parkland. 49 U.S.C. § 303(c). The DEIR/S simply fails to show that all possible planning was done. Remarkably, the DEIR/S did not analyze any partial avoidance alternatives that might require displacing only a fraction of these residences while saving dozens or hundreds of acres of protected land. Instead, the transportation agencies merely analyzed a handful of "total avoidance" alternatives and, not surprisingly, found them to be infeasible for various reasons. DEIR/S at Appendix B, 5-2. The DEIR/S then used portions of these routes in its analysis of avoidance for specific reserves, such as the Lake Mathews/Estelle Mountain Reserve. DEIR/S at Appendix B, 5-9. However, the DEIR/S failed to analyze all possible routes, including combinations of the preferred route and the avoidance alternatives. For instance, in Appendix B on page 5-11, the map clearly shows that a northerly route was analyzed in order to avoid the Lake Mathews/Estelle Mountain Reserve. It was discarded due to impacts on the Victoria Grove community. However, as shown on the map, there is no obvious reason why the northerly route could not go to the south of this community and still stay north of the Reserve, thus avoiding them both. This is one example among many of how the DEIR/S chose to analyze a select number of infeasible alternatives instead of including "all possible planning" to avoid 4(f) lands.

Similarly, Alternatives 5 and 7 would route the MCP right along the north edge of the Lake Mathews/Estelle Mountain Reserve for many miles, and Alternatives 4, 5, 6 and 7 would do the same to the south of Lake Mathews. DEIR/S at figure 3.1. As the maps clearly show, the routes run for miles right along the edge of the 4(f) lands, studiously following the contours of the protected lands in order to avoid straying into developed land. This is exactly the type of situation that 4(f) is supposed to prevent: use of park lands for highways in order to avoid more costly alternatives. Although Alternative 9 does not go along the edge of the Reserve, it cuts right through its heart at nearly the widest point. The DEIR/S admits that other alternatives are feasible from an engineering perspective. DEIR/S at 5.2 - 5.5. However, it states that the alternatives either fail to meet the Project's purpose and need or are too disruptive to communities. Based on the strong mandate of section 4(f), the DEIR/S must make a stronger showing that other alternatives were considered that could have partially avoided impacts to communities and parks.

Further, as shown elsewhere in these comments, the DEIR/S fails to analyze a reasonable range of alternatives to the freeway, including transit-based alternatives. Because some of these alternatives could avoid or minimize impacts to 4(f) resources, the failure to analyze them renders the 4(f) evaluation arbitrary and capricious.

Lastly, the DEIR/S dismisses the 1(B) alternative without an adequate analysis of whether it could avoid impacts to 4(f) lands. The DEIR/S fails to quantify the potential reductions in impacts, stating merely that the alternative "may not avoid the use of" 4(f) lands. Such conclusory analysis will not pass muster under section 4(f).

C. The DEIR/S Fails to Adequately Describe the Differences Between the Alternatives.

The DEIR/S also fails to adequately assess the true impacts of each alternative on 4(f) resources. The document gives an accounting of the total land area impacted for each alternative and purports to do a qualitative analysis of the impacts, considering factors such as whether the Project would run through the middle of parkland or just at the edge. DEIR/S at 4-51 to 4-55 ("[t]he net harm analysis considered . . . [t]he effect of using [] property at an edge of a Section 4(f) property versus use through the middle of the property"). However, the DEIR/S' cursory analysis fails to actually do what it sets out to accomplish. For instance, when comparing alternatives 4, 5, 6, 7 and 9, the DEIR/S simply states how many acres of the Reserve would be taken and identifies whether the land would be in the section north or south of Lake Mathews. This scant discussion fails to analyze the potentially greater effects that could occur under Alternative 9, which would traverse the middle of the Reserve, effectively cutting it in half. Placing a new freeway in the middle of this habitat could have significantly more detrimental effects on species that will no longer be able to easily traverse the full range of the Reserve. The DEIR/S also fails to determine whether parts of the Reserve contain higher numbers of listed species, have better habitat, or are otherwise more or less important. While the DEIR/S admits that this analysis is important, it fails to actually carry it out. DEIR/S at 4-50 (noting that "not all Section 4(f) properties have the same quality").

The need to rigorously meet the mandate of section 4(f) is especially urgent in this case. Western Riverside County is rapidly developing, and there simply is no way to replace land once it is taken for a freeway. This is particularly true of MSHCP land, where threatened and endangered species such as the kangaroo rat live. As noted in the DEIR/S, there are at least a dozen listed species present on the MCP study area, and quite

possibly more. DEIR/S at 3.21-4. These species are under intense pressure from development in the entire region, and there are simply very few other comparable areas left in southern California for them to live.

D. The DEIR/S' Compensatory Mitigation Analysis for Lost Parklands is Inadequate.

The DEIR/S states that impacts to the Lake Mathews/Estelle Mountain Reserve Land will be mitigated through replacement of impacted lands at a minimum of a 1:1 basis. DEIR/S at 4-51. It also states that replacement lands will contain habitat suitable for the species that are protected. DEIR/S at 4-54. However, the mitigation analysis entirely fails to discuss whether or not such lands even exist. For listed species in southern California, habitat is scarce and becoming more scarce. Without knowing whether or not it is even possible to purchase or protect other suitable land, there is no guarantee that this mitigation measure will work. Further, if the mitigation lands are not adjacent to the current Reserve, it could be difficult for the species to survive due to fragmentation of habitat. Simply setting aside other habitat in other locations every time some of the Reserve is taken will lead to death by a thousand cuts. At a minimum, in order for the mitigation plan to be adequate under 4(f) (and NEPA and CEQA), it must contain an analysis of whether there is other land that can be set aside, where it is, and whether it can provide habitat of equal or greater value. This criticism extends to all section 4(f) lands, including all habitat reserves and public parks, and not just to the Lake Mathews/Estelle Mountain Reserve.

The DEIR/S' proposed mitigation of impacts to 4(f) resources falls short for yet another, more fundamental reason: the DEIR/S cannot design appropriate mitigation because the document has not even identified certain key effects of the Project on protected resources. For example, MCP Alternative 9 would bifurcate Paragon Park and create two or three small sections of park instead of having one large, intact park. There are currently picnic tables and open, grassy fields in the southern portion of the park, and under Alternative 9, the MCP would be adjacent to these areas. DEIR/S Appendix B, 4-43. While proposed mitigation measures will replace the lost land and replace some of the park recreational features, the DEIR/S entirely fails to analyze the impacts on the park and park users related to noise, air pollution and visual degradation. The DEIR/S states that some of these effects will be minimized by creating pedestrian access across the parkway so that all sections of the park can be accessed. DEIR/S at Appendix B, 4-43. However, the DEIR/S fails to mention whether sound walls are planned in order to minimize noise impacts or whether there will be aesthetic enhancements to offset the new view of a highway from the park.

The DEIR/S also fails to undertake "all possible planning" to minimize impacts to recreational facilities. Instead of doing the planning now to ensure that all facilities are replaced, the DEIR/S simply states that "[r]eplacement of the displaced park uses will require consultation with the City of Perris." DEIR/S at Appendix B, 4-43. The FHWA cannot put off this consultation to the future, but must ensure that all possible planning is undertaken immediately to make sure that impacts to 4(f) resources will be adequately minimized. By failing to acknowledge that indirect impacts, in conjunction with the direct taking of property from the park, would essentially impact 100% of Paragon Park under section 4(f), the FHWA has failed to comply with the statute.

III. THE DEIS/R FAILS TO DISCUSS RCTC'S OBLIGATIONS UNDER THE PUBLIC PARK PRESERVATION ACT.

The DEIS/R has an incomplete analysis of the Public Park Preservation Act of 1971, Pub. Res. Code § 5400 *et seq*. 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 used the existing park. Pub. Res. Code § 5405.

The RCTC's obligations under the Park Preservation Act extend at a minimum to Paragon Park and El Cerrito Sports Park. The DEIR/S must discuss the RCTC's obligation to replace any park land it acquires with similar park land elsewhere and how it intends to comply with this requirement for the relevant alternatives. *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). While the DEIR/S discusses replacement land for Paragon Park, it

fails to discuss whether or how it would replace land taken from El Cerrito Sports Park. Although some of the design variations would not take any land from the park, some of them would. However, the DEIR/S only mentions minimizing use of the park by using a retaining wall instead of a slope for the parkway border with the park. DEIR/S at Appendix B, 6-2. This minimization effort does not comply with the Act's requirement for compensatory mitigation.

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 the FHWA 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

Erin Chalmers

Erin Chalmers
Rachel B. Hooper
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List of Exhibits:

Exhibit A: MRO Engineers, November 2008.
Exhibit B: Nathan Miller, December 2008.
Exhibit C: Riverside County Transportation Commission, *Framework for a Journey,* 2008.
Exhibit D: Riverside County - Orange County Major Investment Study, *Final Alternatives Evaluation and Refinement Report*, Introduction.

Exhibit E: Riverside County - Orange County Major Investment Study, *Final Alternatives Evaluation and Refinement Report,* Conclusions and Recommendations.

Exhibit F: Riverside County - Orange County Major Investment Study, *Final Alternatives Evaluation and Refinement Report,* Traffic Evaluation of Strategic Alternatives.

Exhibit G: Orange County Transportation Authority website, Riverside Orange Corridor Authority: *Riverside Freeway Major Investment Study/Locally Preferred Strategy.*

Exhibit H: Alicia Robinson, *Corona-to-Orange County Tunnel Appears Feasible After Early Tests, Officials Say*, The Press Enterprise, Nov. 14, 2008.

Exhibit I: Robert Cervero, *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis.* http://www.uctc.net/papers/520.pdf]

Exhibit J: Surface Transportation Policy Project California, *Build it And They'll Come.*

Exhibit K: The Press Enterprise "*Dirtiest Air in Riverside County*," April 26, 2006.

Exhibit L: California Air Resources Board, . *Air Quality and Land Use Handbook: A Community Health Perspective* (excerpts), April 2005.

Exhibit M: Smart Mobility Memorandum, April 2006.

Exhibit N: Traffic Noise Reduction in Europe (excerpts).

Exhibit O: City of Los Angeles, EIR excerpts for Autry's National Center's Griffith Park Campus Improvements.

Exhibit P: Riverside County General Plan Noise Element.

Exhibit Q: Local Hikes: Bernasconi Hills, website (last accessed Dec. 19, 2008).

Exhibit R: U.S. Department of Agriculture, *Farmland Conversion Impact Rating for Corridor Type Projects,* Form NRCS-CPA-106.

Exhibit S: California Department of Conservation, *California Agricultural Land Evaluation and Site Assessment Model Instruction Manual.* 1997.

Exhibit T: 2002 Environmental Impact Report/Study for Hemet to Corona/Lake Elsinore Corridor, Farmland Impacts Section 6.2.

Exhibit U: Reid Ewing & Allan Lichtenstein, *Induced Traffic and Induced Development*, October 2002.

Exhibit V: Federal Highway Administration, *Evaluation of Toll Options Using Quick-Response Analysis Tools, A Case Study of the Capital Beltway,* November 16, 2002.

Exhibit W: 2002 Environmental Impact Report/Study for Hemet to Corona/Lake Elsinore Corridor, Alternatives Section 2.3.2.

cc: U. S. Environmental Protection Agency, Region IX (w/ Exhibits A and B only)
California Attorney General (w/ Exhibits A and B only)
California Department of Conservation (w/ Exhibits A and B only)
California State Parks (w/ Exhibits A and B only)
South Coast Air Quality Management District (w/ Exhibits A and B only)
Riverside County (w/ Exhibits A and B only)