



**ALESHIRE
WYNDER, LLP**
ATTORNEYS AT LAW
www.awattorneys.com

Orange County Office:
18881 Von Karman Avenue
Suite 400
Irvine, California 92612
Phone 949.223.1170
Fax 949.223.1180

Los Angeles Office:
South Bay Centre
1515 West 190th Street
South Tower, Suite 565
Gardena, California 90248
Phone 310.527.6660
Fax 310.532.7395

Email: ssoltani@awattorneys.com

January 6, 2009

VIA OVERNIGHT EXPRESS

Cathy Bechtel
Director of Transportation Planning and Policy
Development
Riverside County Transportation Commission
4800 Lemon Street, 3rd floor
PO Box 12008
Riverside, CA 92502-2208

Tay Dam
Senior Project Development Engineer
Federal Highway Administration
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814-4708

RECEIVED
JAN 07 2009

RIVERSIDE COUNTY
TRANSPORTATION COMMISSION

Re: Mid-County Parkway Project: Draft EIR Comments

Dear Ms. Bechtel and Mr. Dam:

Aleshire & Wynder LLP represents the City of Perris (the "City") as its City Attorney. The Riverside County Transportation Commission ("RCTC"), in conjunction with the California Department of Transportation ("Caltrans"), and the Federal Highway Administration ("FHWA"), proposes to improve west-east transportation in western Riverside County between Interstate 15 and State Route 79 by constructing a new parkway, known as the Mid County Parkway ("MCP" or the "Project"). The MCP will provide a direct and continuous traffic route that will run through and divide the City. RCTC is currently analyzing five different alternative routes for the MCP (Alternatives 4, 5, 6, 7, and 9).

Because the MCP is a major project that will have serious environmental effects in Riverside County, RCTC prepared a Draft Environmental Impact Report/Environmental Impact Statement (the "EIR/EIS"), which is mandatory under the California Environmental Quality Act ("CEQA") (Pub. Res. Code § 21000 *et seq.*) and the National Environmental Policy Act ("NEPA") (42 U.S.C. 4321 *et seq.*), respectively. The EIR/EIS examines the potential environmental impacts of the alternatives being considered for the proposed MCP and the plans for the cities of Corona, Perris, and San Jacinto.

As California's broadest-reaching environmental law, CEQA was enacted to ensure that governmental decision-makers and the public are informed about the potential significant environmental effects of proposed activities, and to disclose to the public the reasons why a governmental agency approved a project in the manner the agency chose if significant environmental effects are involved. (CEQA Guidelines § 15002(a)(1), (4).) In order to further these goals, CEQA requires that an EIR analyze all future impacts of a proposed project and develop mitigation measures which will mitigate identified impacts found to be significant. (CEQA Guidelines §§ 15362, 15126.2(a), 15126.4(a)(1).) Approval of a project is prejudicial



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 2

these goals, CEQA requires that an EIR analyze all future impacts of a proposed project and develop mitigation measures which will mitigate identified impacts found to be significant. (CEQA Guidelines §§ 15362, 15126.2(a), 15126.4(a)(1).) Approval of a project is prejudicial error “if the failure to include relevant information [in the EIR] precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.)

Similar to CEQA's application to projects controlled by state and local agencies, NEPA applies to federal agencies. NEPA requires federal agencies to prepare an EIS for federal actions that significantly affect the quality of the human environment. In 2007, FHWA, which normally controls federally-funded surface transportation projects within the State, delegated implementation responsibilities to Caltrans in a 5-year pilot program. (23 U.S.C. 327.) Both CEQA and NEPA require that a report or statement disclose a project's environmental impacts and alternatives.

This letter is written to inform RCTC of numerous deficiencies in the EIR/EIS. For instance, CEQA requires that “[d]irect and indirect significant effects of the project on the environment shall be clearly identified and described [in the EIR], giving due consideration to both the short-term and long-term effects.” (CEQA Guidelines § 15126.2(a).) However, the EIR/EIS fails to consider the effects of the MCP on community severance in the City. The MCP is likely to divide the community aspect of the City, especially since cohesive residential developments will be bisected and access to businesses will be divided to those north and south of the MCP. Furthermore, the MCP could directly affect a high school, a school district office building, a fire station, and a community park. The EIR/EIS fails to adequately address the demolition and proposed relocations of these community spaces.

Likewise, there is inadequate discussion of the temporary and permanent traffic and air quality impacts of the MCP on surrounding homes and businesses. Specifically, the EIR/EIS fails to describe how the MCP will address the severance of major roadways in the City. Traffic diversion due to the street closures is absent from the EIR/EIS analysis. Furthermore, the EIR/EIS fails to adequately address how the MCP will affect the Placentia Avenue Interchange, a major interchange construction project in the City's General Plan. The EIR/EIS further fails to discuss how demolition and grading would occur within 10 feet of existing homes in the City, resulting in significant localized air quality and noise impacts even after the implementation of the mitigation measures, and does not discuss how permanent traffic on the MCP will impact the homes in the City located near the MCP.



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 3

As a result of the MCP, over 150 residential homes, a high school, a community park, and a fire station, among others, could be displaced within the City's limits. Moreover, the relocation of these displacements will undoubtedly result in a major change in the City's General Plan. Moreover, the MCP could result in the City losing up to \$3.7 million in sales tax revenue and up to \$424,000 in property tax revenue, as well as in displacing up to 106 employees, depending on which alternative route is ultimately chosen. Thus, the MCP affects the physical environment of the City, the health and safety of the City's inhabitants, and the vitality of the City's community. It is therefore imperative that the City ensure that the MCP is approved in a manner that protects the City's surrounding environment and welfare of its community. As a result, the EIR/EIS needs to be revised further to address the following areas of concern:

EXISTING AND FUTURE LAND USE

1. The EIR/EIS fails to address the effects of the MCP on community severance within the City. (§ 3.25.5.3)

All alternatives of the MCP may sever the City and divide the community. All alternatives have the potential to divide the community within the City because of their proposed locations separating the northern part of the City, where more industrial and commercial uses are located, from the southern parts of the City, where more residential and commercial retail uses exist. The City's General Plan has designated portions north of the proposed alternatives as residential and commercial uses. All alternatives of the MCP have the potential to divert future builders and retailers to locations south of the MCP since most of the residential and commercial retailers are already located there. The severance effect may have a significant impact on the City's General Plan and existing and future land uses. Also, the severance may lead to blight in certain areas surrounding or north of the MCP where land may be less desirable and less preferred by retailers and homeowners than that nearer to existing commercial centers. Alternative 9 elevated grade design variation (PP-E DV) would visually sever the community more than Alternative 9, which is designed at grade.

An EIR should analyze the economic and social effects of a project to determine the significance of physical changes caused by the project. (CEQA Guidelines § 15131(b).) As an example, the CEQA Guidelines state, "If the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant." (*Id.*) In *Bakersfield Citizens for Local Control v. City of Bakersfield*, (2004) 124 Cal.App.4th 1184, the court held that an EIR failed to analyze adverse effects of two proposed large retail shopping centers on other retailers within the community and service area. (*Bakersfield Citizens for Local*



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 4

Control, 124 Cal.App.4th at 1215; see also *El Dorado Union High Sch. Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123, 131-32 [court held that EIR should have analyzed the effect of a residential development on overcrowding at a school, which would have necessitated construction of a new school].)

The EIR/EIS does contain a section on community impacts, in which it indicates that a high degree of community cohesion exists throughout the MCP study area and particularly the City. (EIR/EIS, § 3.4.1.2 at p. 3.4-18.) The EIR/EIS acknowledges that Alternative 9 would severely impact the City community by removing long-term residents living in a residential tract built in the 1970s and a public park, while Alternatives 4 and 6 would remove over 150,000 square feet of classrooms and a school administrative building. (EIR/EIS, § 3.4.1.3 at pp. 3.4-22-25.)

However, absent from the EIR/EIS is RCTC's analysis of possible blighting effects in the City as the result of diverted retailers and homebuilders to locations south of the MCP's proposed alternatives. The blighting effects may be exacerbated with Alternatives 4 and 6, which sever a small, northeastern portion of the City from the rest of the City. Also absent from the EIR/EIS is an analysis of the blighting effects near the proposed alternatives caused by increased noise and air pollutants in residential areas, especially since the EIR/EIS determined sound walls were not reasonable and feasible at those locations.

The EIR/EIS indicates that Alternatives 4 and 6, which are proposed to run alongside the Perris Valley Storm Drain for a certain length, would result in up to a 1-foot rise in the river's water surface elevation during a 100-year flood. (EIR/EIS, § 2.6.1 at p. 2-102.) The EIR/EIS then states that the minimal increase in flood heights and flood limits would not result in any substantial change in flood risks or damage to life or property. (EIR/EIS, § 3.9.3 at p. 3.9-33.) This may be an inaccurate conclusion, considering homes and businesses that were not within the 100-year floodplain would now be significantly impacted, due to the 1-foot increase in water levels during a 100-year flood. Moreover, Alternatives 4 and 6 would further sever the community visually, as the proposed elevated section near the Perris Valley Storm Drain extends for more than 2 miles.

The failure to analyze the blighting and community-severing effects of the MCP prevents RCTC from adopting "appropriate and effective mitigation measures, skews perspective concerning benefits of the particular projects under consideration and precludes it from gaining a true perspective on the consequences of approving the project." (*Bakersfield Citizens for Local Control*, 124 Cal.App.4th at 1216, citing *San Franciscans for Reasonable Growth v. City &*



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 5

County of San Francisco (1984) 151 Cal.App.3d 61, 80.) RCTC should revise the EIR/EIS to consider the above-stated community impacts on the City.

2. The EIR/EIS inadequately addresses how all alternatives of the proposed MCP are inconsistent with the designated roadways and land uses in the City's General Plan.

An EIR must discuss any inconsistencies between the proposed Project and applicable general plans. (CEQA Guidelines § 15125(d); *Orinda Ass'n v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1169 [required analysis of identifying inconsistencies so that the lead agency may be able to modify a project to avoid any inconsistencies].) A clear conflict with a mandatory provision of the applicable general plan may preclude project approval under applicable planning laws. (*Families Unafraid v. County of El Dorado* (1998) 62 Cal.App.4th 1332; *San Bernardino Valley Audubon Society v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 753.)

The EIR/EIS summarily mentions inconsistencies between the proposed MCP and the City's General Plan, but fails to specifically identify and address such inconsistencies with the City's land use, housing, and noise elements. For example, the EIR/EIS states that all alternatives are incompatible where the MCP is routed through areas where no roadways exist or are planned or where the roads are only 2- to 6-lane roads (EIR/EIS § 3.1.1.2, at p. 3.1-18). That may be true for the City's Circulation Element, but the EIR/EIS does not specify how the MCP is inconsistent with the Noise Element of the City's General Plan. The City's Noise Element indicates that any new construction or development must be accompanied by a detailed analysis of noise reduction requirements and noise insulation features with the design. (City's Noise Element, August 30, 2005, at p. 7)

Also, Alternatives 5 and 7 have significant adverse impacts to the North Perris Specific Plan ("Specific Plan") and the associated North Perris Road and Bridge Benefit District ("District"). The number of properties which would be removed from the District area seriously jeopardizes the District's ability to spread costs to the remaining properties and still maintain viability as a funding mechanism for needed infrastructure in the area. The EIR/EIS is completely silent regarding the MCP's impacts on the Specific Plan and the associated District. These inconsistencies and significant impacts should be addressed more specifically in the EIR/EIS.

Moreover, the EIR/EIS provides no consistency determination under the amendment to the Riverside County Multiple Species Habitat Conservation Plan ("MSHCP"). The EIR/EIS states that although land use was not analyzed, long-term implementation of the MSHCP would



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 6

result in changes to land use and increased development pressure and intensification outside critical areas. Additionally, the analysis only considers Alternative 9 but omits discussions regarding the other alternatives (EIR/EIS § 3.1.1.2, at p. 3.1-18 – 3.1-19.) These conclusions result in significant impacts to the environment that the EIR/EIS admits remains unstudied and inadequately addressed, contrary to CEQA Guidelines.

3. The EIR/EIS inadequately addresses displacement of 150 homes, a community park, and effects to a high school and the administration building.

The MCP may affect existing schools in the City. (EIR/EIS, § 3.4.1.2 at p. 3.4-17.) Moreover, the MCP will displace up to 150 homes in the City. Specifically, alternatives 4, 5, 6, and 7 would directly affect almost 150,000 square feet of Val Verde High School and the School District Administration and Facilities Operation Building. (EIR/EIS § 3.4.1.2, at p. 3.4-22.) Alternative 9 would displace a necessary fire station and community park.. The EIR/EIS fails to discuss the necessary changes in land use resulting from the relocation of the community park, high school and administration building.

The EIR/EIS summarily discusses changes in land use designation for the above-stated relocations but does not analyze the feasibility or compatibility of the changes in the land use designations to the City's current General Plan. For instance, Alternatives 4, 5, 6, and 7 of the MCP would impact 150,000 square feet of Val Verde High School and the School District Administration and Facilities Operation Building, but the EIR/EIS does not analyze where the school and administration building will be relocated or if the relocations will be feasible with the City's General Plan. The loss of 150,000 square feet of classroom and school administrative space is a very significant impact for the City. RCTC's failure to address the mitigation standards regarding the space in the EIR/EIS violates CEQA. Also the relocation of the 15-acre Paragon Park would sever the park into three open spaces separated by the proposed MCP and a major road. The division of Paragon Park from one large open space into three substantially smaller open spaces is inadequate to provide the recreational services designed for a larger open space.

Thus, relocation and change in land use of a community park, up to 150 homes, and over 150,000 square feet of school use is a significant impact for the City's General Plan that should be more thoroughly discussed in the EIR/EIS.



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 7

TRAFFIC IMPACTS

4. The EIR/EIS fails to address how the Project will address the severance of major roadways in the City.

“An EIR shall identify and focus on the significant environmental effects of the proposed project... Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.” (CEQA Guidelines § 15126.2(a).) “An EIR shall describe feasible measures which could minimize significant adverse impacts...” (CEQA Guidelines § 15126.4(a)(1).)

Webster Avenue, Indian Avenue, Rider Street, Murrieta Road, Wilson Avenue, and the East Frontage Road along the I-215, among other roads, may be severed due to the construction of the MCP, resulting in closed roadways and diversion of traffic through other already congested roadways within the City. The above streets serve important functions for traffic flow and access to surrounding properties.

Although the EIR/EIS acknowledges that said roadways will be closed off as cul-de-sacs, the EIR/EIS does not address the resulting permanent effects on traffic conditions of any of the street closures and traffic mitigation techniques. The EIR/EIS fails to analyze the increased traffic impacts of the street closures on surrounding properties and alternate streets and compare the traffic impacts to baseline traffic conditions. In addition, the EIR/EIS fails to address any proposed traffic diversion routes and/or their adequacy to handle the increased traffic due to the proposed street closures, an analysis which should be done prior to making a determination that less than significant impacts will result.

5. The EIR/EIS inadequately addresses the Placentia Avenue Interchange.

Currently, the City plans to improve Placentia Avenue at the I-215 by constructing an interchange and widening the road from 2 to 6 lanes. The Placentia interchange is a significant part of the City's General Plan, specifically its Circulation Element, that would be impacted significantly as a result of traffic diversion to and from Alternatives 5,7, and 9 of the MCP.

Although the EIR/EIS acknowledges that the Placentia Avenue interchange will be in existence in 2035, the EIR/EIS does not analyze how the MCP will affect circulation and traffic conditions at this interchange temporarily during the MCP construction phase or permanently afterward



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 8

AIR QUALITY IMPACTS

6. The EIR/EIS fails to discuss how demolition and grading would occur within 10 feet of existing homes in the City, resulting in significant localized air quality impacts, even after the implementation of the mitigation measures.

The figures throughout Section 3.15 of the EIR/EIS illustrate several existing homes in residential neighborhoods throughout the MCP study area, including the City, are located within the proposed right-of-way of all alternatives. These homes would be demolished, the home sites would be graded, and construction activities would occur within the right-of-way. Therefore, demolition and grading activities would occur within 10 feet of the existing homes that remain in this neighborhood. Demolition, grading, and construction will also be occurring within 10 feet of several existing businesses and industrial centers. These homes and the residents therein undoubtedly will be affected by local exhaust emissions of construction equipment and fugitive dust at the construction sites. Furthermore, sensitive receptors such as children and the elderly would be directly affected.

The EIR/EIS indicates that the Caltrans Standard Specifications for Construction “would be adhered to in order to reduce emissions as a result of construction equipment” but does not elaborate on the specific details or mitigation techniques planned to be used to achieve the reduction in emissions near construction sites. (EIR/EIS, § 3.14.4.1 at p. 3.14-29.) The EIR/EIS summarily states that the construction contractor will identify sensitive receptors in the Project area and “specify the means by which impacts to these populations will be minimized” but offers no description of the proposed mitigation plan. (EIR/EIS, § 3.14.4.2 at p. 3.14-33.) Obviously, RCTC’s failure to analyze the demolition, grading and construction effects on surrounding homes and businesses prevents any detailed and meaningful discussion of effectiveness of the mitigation measures proposed.

The EIR/EIS fails to describe the impacts of the combustion emissions on the surrounding homes and businesses within the City. The evaluation of temporary air quality impacts states use of construction equipment would result in localized exhaust emissions but the EIR/EIS does not quantify the estimated emissions generated by the equipment. (EIR/EIS, § 3.14.3.2 at p. 3.14-27.) Moreover, the evaluation of fugitive dust impacts states it would not result in adverse air quality impacts with the implementation of the standard construction measures such as frequent watering. This conclusion is most likely an inaccurate one. An EIR that is deficient in describing the environmental setting is inadequate and results in inadequate impact analysis and mitigation findings. (*Galante Vineyards v. Monterey Peninsula Water Mgm’t Dist.* (1997) 60 Cal.App.4th 1109, 1122.)



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 9

The South Coast Air Quality Management District (SCAQMD) has established localized significance thresholds for carbon monoxide (CO), nitrogen dioxide (NO₂), fine particulate matter (PM₁₀), and respirable particulate matter (PM_{2.5}). The thresholds for CO and NO₂ were established to determine whether temporary construction activities would cause the State Ambient Air Quality Standards for these two pollutants to be exceeded at sensitive receptor locations in close proximity to construction sites. Since the South Coast Air Basin is currently a nonattainment area for both PM₁₀ and PM_{2.5}, the thresholds for these two pollutants are based on the SCAQMD's determination of a substantial contribution to an existing air quality violation. Implementation of standard specifications for construction equipment or fugitive dust generation does not ensure that localized concentrations of CO, NO₂, PM₁₀, and PM_{2.5} would not exceed established ambient air quality standards or thresholds of significance.

The localized emissions should be quantified for these and other existing homes in the City that are located in very close proximity to the proposed rights-of-way and compared with the SCAQMD's thresholds to determine whether ambient air quality standards would be exceeded or a substantial increase in PM₁₀ and PM_{2.5} would occur. The current analysis has not adequately evaluated this potential impact and it does not provide factual evidence to support the conclusion that the temporary activities would not result in any adverse air quality impacts.

7. The EIR/EIS fails to discuss how permanent traffic on the MCP will impact the homes in the City located near the MCP.

The EIR/EIS lists the ambient air quality standards to assess the overall air quality of the Project but fails to address the significance of the Project on homes directly surrounding the MCP. Specifically, the EIR/EIS concludes that the Project "is not expected to generate any additional traffic. Regional traffic trips would remain similar. Therefore, no new long-term regional emissions would result from implementation of the MCP. The MCP would improve traffic movement in the MCP study area, thereby lowering the total pollutants emitted by motor vehicles." (EIR/EIS, § 3.14.3.1 at p. 3.14-14.)

The EIR/EIS also indicates that particulate matter emission levels would not violate federal air quality standards since, *inter alia*, future truck traffic volumes along the MCP would not exceed 10,000 average daily traffic, the particulate matter concentrations have not exceeded the 24-hour or annual federal standard within the past six years, and that surrounding intersection levels of service would be improved at peak traffic hours. (EIR/EIS, § 3.14.3.1 at p. 3.14-15.) However, the EIR/EIS does not take into consideration that the traffic from SR 91 and other local roads, located well beyond the homes and businesses surrounding the vicinity of the MCP, would be routed to the Project area where homes and businesses are currently located. The



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 10

residents and employees, including sensitive receptors, would be exposed to the increased vehicle emissions of a major parkway. For instance, receptors who are currently exposed to traffic volumes less than 1,000 ADT would be exposed to a 10-fold increase in traffic volume emissions. Absent from the EIR/EIS is the effect of the changes in air quality surrounding the local homes. Courts have found an EIR deficient when it fails to correlate adverse air pollution effects with indirect health effects. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219.)

Thus, the EIR/EIS should identify the homes and businesses surrounding the MCP and provide a detailed analysis of the changes in the air quality impacts and provide mitigated findings, if any are necessary.

NOISE and VIBRATION IMPACTS

8. The EIR/EIS inadequately addresses noise of demolition, grading, and construction activities within 10 feet of homes and high schools, which would result in significant (temporary) noise impacts to sensitive receptors.

The EIR/EIS discusses construction noise impacts resulting from crew commutes, equipment transport, and equipment operation located 50 feet from Project construction areas. (EIR/EIS, § 3.15.3.2 at p. 3.15-53.) Furthermore, the EIR/EIS states that use of earthmovers, bulldozers, and pile drivers would generate noise levels of up to 95 dBA at a distance of 50 feet. (EIR/EIS, § 3.15.3.2 at p. 3.15-55.) The discussion of temporary construction noise impacts states on page 3.15-54 that the closest sensitive receptor locations are located 15 meters (50 feet) from the project construction areas. This is incorrect. As already indicated in section 6 of this letter, several existing homes in residential neighborhoods in the City would be located within the proposed right-of-way. Therefore, demolition and grading activities would occur within 10 feet of the existing homes that remain in this neighborhood. The evaluation of temporary noise impacts should be revised to address the actual worst-case noise impacts that could occur to existing sensitive uses in the City.

Determinations that regulatory compliance will be sufficient to reduce significant adverse impacts must be based on specific analysis of potential impacts and effects of regulatory compliance. (*See generally Californians for Alternatives to Toxics v. Dep't of Food & Agric.* (2005) 136 Cal.App.4th 1.) Thus, the EIR/EIS should ensure that its summary conclusion of regulatory compliance with Caltrans sound control measures to minimize significant noise impacts is based on specific analysis of the effects of the compliance. The EIR/EIS cannot state



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 11

that it will comply with applicable laws but fail to identify potential impacts and specific measures to reduce the impacts.

The EIR/EIS, states that highways typically are not major sources of groundborne noise or vibration and that the Alternatives are not expected to expose persons to or generate excessive groundborne noise levels or vibration. (EIR/EIS, at p. 4-4.) While this is generally true for operational roadway sources except where there may be dips in a roadway, it is not the case for construction-related activities. Groundborne vibration is commonly associated with demolition activities and construction equipment. However, this potential impact is not evaluated in the EIR/EIS.

The EIR/EIS does not identify future noise levels for any of the locations in the City shown in Figure 3.15.1 7 of 9. Therefore, RCTC has not adequately evaluated the permanent noise impacts at sensitive receptor locations in the City.

9. The EIR/EIS fails to address noise impacts in areas which do not have sound walls and ground-borne vibrations within 10 feet of homes surrounding the MCP.

The EIR/EIS does not evaluate the MCP's noise impacts in areas without sound walls, which include some areas in the City. Although the EIR/EIS did discuss the possibility of sound walls in certain areas of sensitive receptors in the City, many of the proposed locations where sound walls were found infeasible or exceeding allotted costs were not analyzed without sound walls. These locations would benefit most from sound walls as they are residential homes. "An EIR shall identify and focus on the significant environmental effects of the proposed project... Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects." (CEQA Guidelines § 15126.2(a).) "An EIR shall describe feasible measures which could minimize significant adverse impacts..." (CEQA Guidelines § 15126.4(a)(1).)

Table 3.15.D identifies existing and predicted future noise levels at locations near proposed sound walls. This table does not, however, identify noise levels at all modeled receptor locations or locations in the City where sound walls are not proposed. For instance, Figure 3.15.1 Page 7 of 9 illustrates that several existing residences in the City would be located in close proximity to the MCP. No sound wall is proposed along this segment (Figure 3.15.2 PP-E Sheet 2) and the EIR/EIS does not identify future noise levels at any of the modeled receptor locations in this neighborhood. Therefore, it is not possible for the EIR/EIS to determine whether noise levels would exceed the NAC or cause a significant impact at these homes.



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 12

The EIR/EIS must be revised to identify the predicted future noise levels at all locations with or without sound walls to determine whether the change in noise levels would exceed 12 dBA L_{eq} and be substantial and significant. The current discussion in this section does not provide the factual information necessary to reach and support the conclusion that a less than significant impact would occur.

MITIGATION

10. Numerous mitigation measures proposed in the EIR/EIS are inadequate.

Mitigation measures consisting only of further studies, or submission of plans for review, or consultation with regulatory agencies that are not tied to a specific action plan are not adequate. (*Sundstrom v. County of Mendocino* (1998) 202 Cal.App.3d 296, 307-308.) By merely requiring future agency approval of studies or plans, without review by the public of those studies or plans by way of inclusion in the EIR, the CEQA environmental review process is circumvented. (*Id.*) For instance, the sections discussing biological resources and summary compliance with various plans without specific details is inadequate.

In addition, determinations that regulatory compliance will be sufficient to reduce significant adverse impacts must be based on specific analysis of potential impacts and effects of regulatory compliance. (*Californians for Alternatives to Toxics v. Dep't of Food & Agric.* (2005) 136 Cal.App.4th 1.) The EIR/EIS states that it will comply with the Uniform Relocation Act in relocating displaced homeowners. (EIR/EIS, § 3.4.2.3 at p. 3.4-35.) However, the EIR/EIS fails to outline when the relocation will start, where relocations will take place, and if it will comply with the City's General Plan. The EIR/EIS indicates that construction of more relocation housing will not be necessary since recent foreclosures increased the number of properties available for residential relocations. (EIR/EIS, § 3.4.2.4 at p. 3.4-46.) However, the assumption that foreclosed properties will be adequate, especially in light of the unknown economic forecast in the coming years, is a faulty premise. Instead, the EIR/EIS should also address the possibility that existing housing may not be adequate in the future when relocation does occur and provide details of mitigation standards to address any housing shortfall.

Furthermore, the EIR/EIS does not adequately address mobile home relocations. The EIR/EIS states that compliance with the Uniform Relocation Assistance Act offsets impacts to communities due to relocations of housing and/or people that would necessitate the construction of replacement housing; therefore no mitigation is required is an improper conclusion, especially in light of the lack of mobile home replacement housing within the area.



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 13

The City's previous comments for the evaluation of temporary noise impacts on 3.15-53 and 3.15-54 of the EIR/EIS are also applicable to the discussion of temporary noise impacts on page 4-26. Demolition and grading activities would actually occur within 10 feet of existing homes in Perris (See Figure 3.15.2 Sheet 2). RCTC has not provided any factual data that supports the conclusion that potential impacts would be reduced to less than significant levels through the recommended mitigation measures. A substantial temporary increase in noise levels at a sensitive receptor in the City would be significant under CEQA. The EIR/EIS should outline mitigation standards for noise impacts of construction noise rather than merely indicate that it will comply with Caltrans Standard Specifications, Section 5-1, "Sound Control Requirements." (EIR/EIS, § 3.15.4.2 at p. 3.15-126.) As indicated in the previous section regarding noise impacts, no mitigation impacts address the areas within the City that will not have sound wall or other sound barrier of some sort. Furthermore, the EIR/EIS should further describe the reasons the permanent noise impacts are significant and unavoidable. (EIR/EIS, § 4.2.4.5 at p. 4-35; CEQA Guidelines § 15126.2(b) [EIR must describe effects that cannot be avoided or mitigated and reasons the project is being proposed when unavoidable impacts cannot be reduced or avoided].)

The public is not adequately informed of the exact mitigation measures that will be taken to mitigate the impact, and therefore cannot make an informed decision on the merits of the mitigation measure. Deferral of environmental assessment until after EIR approval violates CEQA's policy that impacts must be identified before project momentum reduces or eliminates the agency's flexibility to subsequently change its course of action. (*Sundstrom*, 202 Cal.App.3d at 306-07.)

GROWTH-INDUCING IMPACTS

11. The EIR/EIS inadequately addresses growth-inducing impacts.

The EIR/EIS states that rapid development has occurred in the region within the last two decades without the additional transportation system such as the MCP, and therefore, the MCP will unlikely affect the rapid development in the area. The EIR/EIS does not adequately address whether the addition of the MCP will likely increase the already rapid development and increase in population even further. An EIR must discuss how a project could directly or indirectly foster economic or population growth or the construction of new housing in the surrounding environment. (CEQA Guidelines § 15126.2(d).) Growth-inducing effects often result from infrastructure projects such as the MCP. Although detailed analyses of the proposed growth need not be taken, the EIR/EIS must address and identify growth-inducing effects such as population growth.



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 14

CLIMATE CHANGE EFFECTS

12. The EIR/EIS inadequately addresses the Project's global warming and carbon emissions impacts.

The basic purpose of CEQA is to provide adequate information on the impacts of a project on the environment to facilitate informed decision-making. What little information is contained in the EIR/EIS concerning global warming is insufficient to permit informed decision-making under CEQA.

As the California Attorney General has recognized, CEQA imposes an obligation on lead agencies to consider the global warming impacts of a project in its EIR/EIS, and to formulate mitigation measures and examine alternatives to the proposed project that will alleviate such impacts. (*See, e.g.*, Attorney General's May 2 comment letter on a draft EIR/EIS for the 2007 San Joaquin County Regional Transportation Plan ("Attorney General Letter").)

Global warming is causing significant environmental impacts in California and will cause future catastrophic impacts if greenhouse gas emissions levels are not substantially reduced. (Attorney General Letter, at p. 5.) Further, any increase in greenhouse gas emissions will make it more difficult for the State to achieve the greenhouse gas reductions required by California Assembly Bill 32. (Health & Safety Code § 38500 *et seq.*) Many incrementally small projects such as the MCP are cumulatively significant sources of emissions.

The construction and operation of the MCP will directly and cumulatively contribute to emissions of greenhouse gases in the state of California. Increased carbon emissions will occur during construction due to the operation of trucks, vehicle trips, and other construction equipment and grading activities. Increased automobile traffic in the area due to the future operation of the MCP will also result in an increase in carbon emissions. The EIR/EIS does not meet its obligation to "identify and describe" these impacts, in violation of CEQA Guidelines Section 15126.4(a)(1). Such impacts may be quantifiable using resources from California Climate Action Registry Project Protocols,¹ for example.

The EIR/EIS and the Mitigation and Monitoring Program should also discuss measures to mitigate greenhouse gas emissions that result during construction and over the life of the Project. As suggested in the Attorney General Letter, examples of appropriate mitigation measures for the Project include a requirement that off-road diesel-powered vehicles and other equipment used

¹ Available at www.climateregistry.org/tools/protocols/project-protocols.html.



Cathy Bechtel, Director of Transportation
Planning and Policy Development
Tay Dam, Senior Project Development Engineer
January 6, 2009
Page 15

in construction use retrofit emission control devices, such as diesel oxidation catalysts and diesel particulate filters verified by the California Air Resources Board. (Attorney General Letter, at p. 10.) Other possible mitigation measures for the greenhouse gas emissions impacts of the Project may be found on the website of the ICLEI/Local Governments for Sustainability (www.iclei.org), which describes many actions taken by state and local governments to reduce greenhouse gas emissions. (*Id.*, at p. 11.)

CEQA mandates that public agencies refrain from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. (Pub. Res. Code § 21081.) The EIR/EIS is deficient in providing information on cumulative global warming impacts of the MCP and its construction, and approval of the EIR/EIS should therefore be deferred until the Project's greenhouse gas emissions impacts are sufficiently analyzed and mitigated.

CONCLUSION

Based on the foregoing reasons, RCTC should defer approval of the EIR/EIS until the above issues of concern are further addressed in accordance with CEQA and re-circulated for further public comment. As a fellow public agency, we would be more than happy to discuss our concerns or other matters pertaining to the MCP with you in person to hopefully reach an amicable and mutually beneficial resolution. If you would like to set up a meeting, in person or otherwise, please feel free to call me at (949)223-1170.

Very truly yours,

ALESHIRE & WYNDER, LLP

A handwritten signature in black ink, appearing to read 'Sunny K. Soltani', written over the printed name.

Sunny K. Soltani

SS:pk1

cc: Richard Belmudez, City Manager
Habib, Motlagh, City Engineer
Eric Dunn, City Attorney
Pam K. Lee, Deputy City Attorney