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S-7

April 10, 2013

Ms. Cathy Bechtel
 Riverside County Transportation Commission
 4080 Lemon Street, 3rd Floor
 Riverside, CA 92051

Subject: Draft Environmental Impact Report/ Environmental Impact
 Statement for the Mid County Parkway Project
 State Clearinghouse No. 2004111103

Dear Ms. Bechtel:

The California Department of Fish and Wildlife (Department) appreciates the opportunity to comment on the Draft Environmental Impact Report/ Environmental Impact Statement (DEIR) for the Mid County Parkway Project (Project) [State Clearinghouse No. 2004111103]. The Department is responding to the DEIR as a Trustee Agency for fish and wildlife resources (Fish and Game Code Sections 711.7 and 1802, and the California Environmental Quality Act [CEQA] Guidelines Section 15386), and as a Responsible Agency regarding any discretionary actions (CEQA Guidelines Section 15381), such as the issuance of a Lake or Streambed Alteration Agreement (California Fish and Game Code Sections 1600 *et seq.*) and/or a California Endangered Species Act (CESA) Permit for Incidental Take of Endangered, Threatened, and/or Candidate species (California Fish and Game Code Sections 2080 and 2080.1).

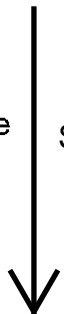
Project Description

The Riverside County Transportation Commission (RCTC) in cooperation with the Federal Highway Administration and the California Department of Transportation proposes to construct a six-lane access control freeway connecting the Interstate 15 to the future State Route 79. This new freeway will generally follow the existing Ramona Expressway alignment. As described in the DEIR project description section, there are three build alternatives (Alternatives 4 Modified, 5 Modified, and 9 Modified) and the two design variations (San Jacinto River Bridge and San Jacinto North).

Biological Resources and Impacts

The CEQA document should contain sufficient, specific, and current biological information on the existing habitat and species at the Project site; measures to minimize and avoid sensitive biological resources; and mitigation measures to offset the loss of native flora and fauna and State waters. The CEQA document should not defer impact

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analysis and mitigation measures to future regulatory discretionary actions, such as a Lake or Streambed Alteration Agreement.

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If sensitive species have the potential to occur on the Project site, species specific surveys should be conducted using methods approved by the Department or assume the presence of the species throughout the project site. Surveys should be conducted within one year from the submission of the CEQA document.

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The DEIR does not separate permanent impacts from temporary impacts to habitats present within the Project footprint. The Department believes that the DEIR should clearly identify permanent and temporary impacts of each alternative separately to better assess the difference in the alternatives. In the absence of clearly defined permanent and temporary impacts the Department is unable to evaluate how the preferred alternative will be selected and cannot recommend an alternative. The Final Environmental Impact Report (FEIR) should disclose permanent and temporary impacts and the method used to select the preferred alternative.

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The DEIR states that the construction of the project may result in increased road kill of small mammals. The Department recommends the installation of appropriate small mammal fencing along the right of way fencing in those areas where the Project is adjacent to habitat for sensitive small mammals such as Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and Stephen's kangaroo rat (*Dipodomys stephensi*).

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The DEIR discusses typical bird nesting season and states that the active breeding season extends from March 1 to September 15. Several species start breeding prior to March. Therefore, the Department recommends that preconstruction surveys for nesting birds take place prior to any vegetation removal that occurs from February 15 to September 15. This season may need to be extended for certain species of raptors.

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The DEIR states that the construction of the Project will result in an increase of fire frequency and the introduction of invasive species. The FEIR should analyze what new invasive species may be introduced to areas adjacent to the Project and propose adequate avoidance, minimization, and/or mitigation measures. Specific fire protection measures should be disclosed in the FEIR. These analyses and the implementation of appropriate protective measures are especially important in areas adjacent to conserved habitat such as along the proposed right of way through the San Jacinto Wildlife Area. The FEIR should clarify if there will be sufficient funding to maintain the fire protection areas.

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Section 3.20 of the DEIR lists 27 species for which suitable habitat occurs within the project footprint, but were not detected during general surveys. The FEIR should clarify if recent (no older than a year) species specific surveys were conducted to verify if any of the 27 species are present. If not, an impact analysis, and appropriate avoidance, minimization and/or mitigation measures should be included in the FEIR. This is

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especially important for species not covered by the Western Riverside County Multiple Species Conservation Plan (MSHCP) and fully protected species. Additional measures, such as preconstruction surveys and biological monitoring, should be implemented to ensure that the project will not impact fully protected species such as golden eagle (*Aquila chysaetos*) and white-tailed kite (*Elanus leucurus*).

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Wildlife Crossing

The Department believes that the construction of the Project has the potential to significantly fragment habitat. Although the Ramona Expressway is currently fragmenting the habitat, the construction of a 6 lane freeway would significantly increase existing barriers. Especially in those areas where the existing Ramona Expressway will remain as a frontage road, the future facility will deter most wildlife from crossing. The DEIR does not address what specific species will be impacted by the habitat fragmentation and what design features needs to be considered to design potential wildlife crossings for those species. The DEIR also mentions the construction of several culverts and pipes, but it does not disclose their sizes and what potential species, if any, would be able to use them as wildlife crossings. Crossing number 10 is a 10 feet high by 20 feet wide culvert that is constructed for wildlife crossing. The DEIR does not address the length of the culvert, what species are targeted for its use, and what design features will be included to ensure that the crossing will be used by any wildlife. Additionally measures, such as revegetation, directional fencing, size increase and other design features may need to be incorporated in the design of the wildlife crossing to ensure its effectiveness.

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Natural Community Conservation Program (NCCP)

The Department is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to the CESA, and administers the Natural Community Conservation Plan Program (NCCP Program). Within the Inland Deserts Region, the Department issued Natural Community Conservation Plan Approval and Take Authorization for the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) per Section 2800, *et seq.*, of the California Fish and Game Code on June 22, 2004. The MSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species in association with activities covered under the permit.

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements.

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The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP. In order to be considered a covered activity, Permittees must demonstrate that proposed actions are consistent with the MSHCP and its associated Implementing Agreement.

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RCTC is the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. The Project study area runs through several MSHCP criteria areas and constrained linkage areas. The DEIR does not list all criteria cells within the study area or their MSHCP requirements. The DEIR should disclose the Projects impacts to the MSHCP and list all criteria cells within the study area. The DEIR should acknowledge how the Project interfaces with the reserve area.

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Based on the information provided in the DEIR, impacts would occur to riverine and riparian areas defined by the MSHCP Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policy (MSHCP section 6.1.2). In accordance with this policy, a Determination of Biologically Equivalent or Superior Preservation (DBESP) is required to address unavoidable impacts to riparian and/or riverine areas. The proposed Project site is located within the MSHCP Burrowing Owl Survey, (MSHCP section 6.3.2), Narrow Endemic Plant Species Survey Area (NEPSSA) Area, Criteria Area Plant Species Survey Area (CAPSSA), and mammal survey area (MSHCP section 6.3.2).

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The DEIR only analyzes direct impacts to burrowing owl based on the area surrounding an occupied burrow. The FEIR should also include an impact analysis for suitable habitat for burrowing owl within the Project area.

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The DEIR document should not defer mitigation measures to future regulatory discretionary actions, such as the DBESP and should propose avoidance, minimization and/or mitigation measures for the Project.

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Lake and Streambed Alteration Program

Although the proposed Project is within the MSHCP, a Notification of Lake or Streambed Alteration is still required by the Department, should the site contain jurisdictional waters. Additionally, the Department's criteria for determining the presence of jurisdictional waters are more comprehensive than the MSHCP criteria in Section 6.1.2 (Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools). The Department is responsible for assessing and evaluating impacts to jurisdictional waters; typically accomplished through reviewing jurisdictional delineation (JD) reports, supporting information, and conducting site visits. Following review of a JD, the Department may request changes to the JD. The Department may also recommend that additional project avoidance and/or minimization measures be incorporated, or request additional mitigation for project-related impacts to jurisdictional areas.

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The Department recommends submitting a notification early in the project planning process, since modification of the proposed project may be required to avoid or reduce

impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to <http://www.dfg.ca.gov/habcon/1600/forms.html>.

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Please note that the Department requires that the JDs are not older than one year in order to process notifications. The JD listed in the DEIR is dated February 2008 and conditions may have changed since the JD was completed. The Department recommends that the FEIR analyze a current JD.

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The DEIR establishes that 90 percent of the bridged areas are considered temporary impacts. The Department is concerned that this assumption will underestimate permanent impacts. Impacts should be considered permanent if the construction of the bridge will result in shading that will impede the restoration of the habitat to pre-impact conditions. The Department is also concerned that the habitat value immediately underneath a bridge will be of lower quality due to indirect impacts listed in the DEIR (littering, introduction of invasive species, and the increase of fire frequency).

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The Department opposes the elimination of ephemeral, intermittent, and perennial streams, channels, lakes, and their associated habitats. The Department recommends avoiding the stream and riparian habitat to the greatest extent possible. Any unavoidable impacts need to be compensated with the creation and/or restoration of in-kind habitat either on-site or off-site at a minimum 3:1 replacement-to-impact ratio, depending on the impacts and proposed mitigation. Additional mitigation requirements through the Department's Lake and Streambed Alteration Agreement process may be required, depending on the quality of habitat impacted, proposed mitigation, project design, and other factors.

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The following information will be required for the processing of a Notification and the Department recommends incorporating this information to avoid subsequent CEQA documentation and project delays:

- 1) Delineation of lakes, streams, and associated habitat that will be temporarily and/or permanently impacted by the proposed project (include an estimate of impact to each habitat type);
- 2) Discussion of avoidance and minimization measures to reduce project impacts; and,
- 3) Discussion of potential mitigation measures (as defined in section 15370 of the CEQA guidelines) required to reduce the project impacts to a level of insignificance.

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The mitigation measures, as described in the DEIR, are insufficient to mitigate for the impacts the Project will have to jurisdictional areas. Because the proposed mitigation measures are insufficient the Department believes that it cannot fulfill its obligations as a Trustee and Responsible Agency for fish and wildlife resources. Permit negotiations conducted after and outside of the CEQA process are not CEQA-compliant because they deprive the public and agencies of their right to know what project impacts are and how

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they are being mitigated (CEQA Section 15002). Please note that the Department requires mitigation to be placed within the same watershed. The purchase of mitigation bank credits for the creation of wetlands is also subject to the Department approval.

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Department Concerns

The Department has the following concerns about the Project, and requests that these concerns be addressed:

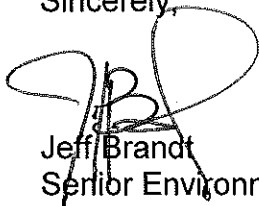
1. Surveys performed for this project are outdated. The FEIR should include revised surveys;
2. The Department recommends that preconstruction surveys for nesting birds take place prior to any vegetation removal that occurs from February 15 to September 15. This season may need to be extended for certain species of raptors;
3. The subsequent CEQA document should include the requested wildlife crossing analysis;
4. The subsequent CEQA document should include the avoidance, minimization, and/or mitigation measures proposed in this letter;
5. The subsequent CEQA document should include an updated JD of State jurisdictional waters, an impact analysis, and should propose specific adequate mitigation measures for impacts to State jurisdictional waters;
6. The analysis in the subsequent CEQA document should satisfy the requirements of the Department's 1600 Lake and Streambed Alteration Program.

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In summary, the Department believes that the DEIR is inadequate in describing and analyzing the full impacts of the project scope, including but not limited to describing and analyzing impacts to sensitive species and habitats that may be impacted by the Project and an updated JD and impact analysis for State Waters. The Department recommends that the CEQA document be revised to address these deficiencies. If you should have any questions pertaining to these comments, please contact Juan Lopez Torres at (909) 484-3979.

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Sincerely,



Jeff Brandt
Senior Environmental Scientist

cc: State Clearinghouse, Sacramento