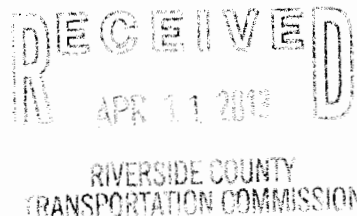


**FRIENDS OF THE NORTHERN SAN JACINTO VALLEY  
POST OFFICE BOX 4036  
IDYLLWILD, CALIFORNIA 92549**

April 8, 2013

Via: U. S. Mail  
Email: [www.midcountyparkway.org](http://www.midcountyparkway.org)

Ms. Cathy Bechtel  
Riverside County Transportation Commission (RCTC)  
P.O. Box 12008  
Riverside, California 92502



**Re: Mid County Parkway – Recirculated Draft Environmental Impact Report / Supplemental Draft Environmental Impact Statement – (SCH 2004111103)**

Dear Ms. Bechtel:

The subject NEPA/CEQA document recounts that in 2008 the Draft EIR/EIS (2008 DEIR/DEIS) for the Mid-County Parkway (MCP) was circulated for public review. In 2008 the MCP was proposed as a 32-mile transportation facility between State Highway 79 (SR-79) and Interstate 15 (I-15). Over 3,100 comments were received from 50 public agencies and organizations, 10 large property owners, 240 individuals and a form letter from over 1,100 individuals nationwide. To address the concerns/issues raised in the public review of the 2008 DEIR/DEIS, the RCTC in 2009, as the Lead Agency under CEQA, in cooperation with Caltrans, developed the current approach for completing the EIR/EIS process for the Project undergoing review.

RCTC modified the MCP project limits from 32 miles (SR-79 to I-15)) to 16 miles (SR-79 to I-215) in order to focus transportation funding where the need is the greatest on the existing Ramona Expressway roadway (I-79 to I-215). This latest approach to the environmental review of the project now brings forward the subject 2013 RDEIR/SDEIS for public review.

Without explanation, the current CEQA/NEPA environmental document advises that public and agency comments submitted for the 2008 DEIR/DEIS will only be included in the MCP administrative record, but no formal responses will be prepared;

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only comments received during the public review period of the 2013 RDEIR/SDEIS will be formally responded to in the Final REIR/SEIS.

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### I. IMPROPER SEGMENTATION

The RCTC eleventh hour segmentation of the Mid County Parkway project into two separate parts is contrary to Guidelines section 15165's requirement for a single program EIR. These errors are prejudicial because the RCTC decision-makers and the public were thereby deprived of the essential information and environmental analysis that CEQA mandates (*Nelson v. County of Kern* (2010) 190 Cal. App. 4<sup>th</sup> 252, 272). The RCTC further abused its discretion when it failed to address the cumulative effects of the building only half of the MCP on various multiple species habitat conservation plans, climate change and cumulative air quality degradation. (CEQA Guidelines section 15165)

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### II. FAILURE TO INCLUDE A SUMMARY OF THE REVISIONS MADE TO THE 2008 DEIR/DEIS

The lead agencies failed to comply with CEQA Guidelines section 15088.5 (g) which states. "*When recirculating a revised EIR, either in whole or in part, the lead agency shall, in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.*" The failure of the 2013 RDEIR/SDEIS to summarize the revisions made to the 2008 DEIR/DEIS is a fatal flaw and makes the decision to make a blanket refusal to respond to any of the 2008 comments even more egregious. All of those 2008 comments remain "pertinent" if those commenters cannot know if the 2013 REIR/SEIS has made significant change to address those comments and whether those significant changes require further comments or not, without going line by line through the document or being provided with a "track changes" copy of the original document.

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The RCTC and FHWA failure to provide responses to pertinent comments previously submitted on the 2008 DEIR/DEIS is also improperly segmenting the public participation process, which is an essential component of the CEQA and NEPA environmental review for this project. The RCTC did not cite and apparently

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misconstrued CEQA Guidelines section 15088.5 (f) regarding recirculation of an EIR. Guidelines 15088.5(f) provides: “In no case shall the lead agency fail to respond to **pertinent** comments on **significant** environmental issues.” (Emphasis added)

Friends assume the 2013 RDEIR/SDEIS does comply with the definition of a “Recirculation of an EIR Prior to Certification” (Guidelines 15088.5 (a) and that the lead agencies are recirculating the 2008 DEIR/DEIS because significant new information was added to the EIR after public notice was given of the availability of the draft EIR for public review but before certification. As used in section 15088.5, “information” can include changes in the project or environmental setting as well as additional data or other information. New “information” added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation would include, for example, a disclosure that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Guidelines 15088.5(a) (1-4).

(g) When recirculating a revised EIR, either in whole or in part, the lead agency SHALL in the revised EIR, or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR.” (Guidelines 15088.5 (g)).

(f) The lead agency shall evaluate and respond to comments as provided in [Guidelines] Section 15088. Recirculating an EIR can result in the lead agency receiving more than one set of comments from reviewers. The following are two ways in which

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the lead agency may identify the set of comments to which it will respond. This dual approach avoids confusion over whether the lead agency must respond to comments which are duplicates or which are no longer pertinent due to revisions to the EIR. In no case shall the lead agency fail to respond to pertinent comments on significant environmental issues.

(f)(1) When an EIR is substantially revised and the entire document is recirculated, the lead agency may require reviewers to submit new comments and, in such cases, need not respond to those comments received during the earlier circulation period. The lead agency shall advise reviewers.... that although part of the administrative record, the previous comments do not require a written response in the final EIR, and that new comments must be submitted for the revised EIR.

The only reason for the lead agency not to respond to comments on the previous draft EIR, while they must respond to comments on the recirculated draft EIR, is because the lead agency **shall** send a notice of recirculation to every agency, person, or organization that commented on the prior EIR, and such notice shall indicate, at a minimum, whether comments may be submitted only on the recirculated portions of the EIR or on the entire EIR in order to be considered by the agency.” (Guidelines 15088.5 (f) (3).

The only reason the lead agencies can decline to respond to the 2008 comments is because they have notified all the previous commenters exactly how their comments have been “responded” to by the lead agency’s “significant” changes to the draft EIR in the recirculated EIR. Because the 2013 RDEIR/SDEIS did not include a summary of the revisions made to the 2008 DEIR, the 20013 RDEIR/SDEIS must again be recirculated, with notice to all of the 2008 commenters, and to all of the new 2013 commenters, included in the 2013 RDEIR/SDEIR or by an attachment, a summary of the revisions made to the previously circulated 2008 DEIR/DEIS.

At a minimum, RCTC and FHWA must respond to public and agency comments received on the 2008 DEIR/DEIS that are “pertinent” and applicable to the modified project limits in the 2013 RDEIR/SDEIS. To do otherwise will deprive the public, responsible and trustee agencies from evaluating the extent to which the 2013 RDEIR/SDEIS revisions respond to project issues and significant impacts identified in the 2008 public review of the project.

The Friends prior comments on the Mid County Parkway project have apparently fallen into the RCTC environmental review abyss. We are therefore recounting our earlier comments herein with a plea to the RCTC and FHWA to provide a legally sufficient response to these pertinent comments: (CEQA Guidelines 15088.5)

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**Friends August 27, 2007 Response letter to the Notice of Preparation for the 2008 DEIR/DEIS**

- 1) “It is particularly important to show the boundaries of the Multiple Species Habitat Conservation Plan (MSHCP) conservation lands at the San Jacinto Wildlife Area and the Lake Mathews MSHCP lands. The DEIR/EIS must adequately inform the public as to the relative impact of the various project alternatives will have on these MSHCP conservation lands. This analysis also must demonstrate compliance with the requirements of Section 4(f) of the U.S. Department of Transportation Act of 1966, which specifies public-owned parks, recreation areas, wildlife and waterfowl refuges may not be used for projects that us federal funds, unless there is no feasible and prudent alternative to the use of such land.
- 2) We are also disturbed that the Supplemental NOP Table A indicates consultation and coordination with responsible and trustee agencies for the project will be deferred until identification of a “preferred alternative.” Both National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) require consultation/coordination with responsible and trustee agencies to be integrated into the environmental document at the earliest possible time and to the fullest extent possible. The Section 7 consultations for threatened and endangered species with the U.S. Fish and Wildlife Service, as well as the state and federal wildlife agency analysis for the MSHCP consistency determination, must be available for public review in the draft environmental document. To do otherwise will deny both the public and responsible trustee agencies the use and benefit of the information and analysis generated as a result of the NEPA/CEQA process.
- 3) The NEPA/CEQA document also needs to include a thorough analysis of the Project’s impacts on the MSHCP designated conservation lands. We are

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particularly concerned about the significant adverse impacts of Parkway noise and light on these sensitive wildlife habitats. Noise and light pollution generated from the Parkway will in large measure render these lands unsuitable for many species, particularly the nocturnal Stephens' kangaroo rat. This would constitute a "Take" of this federally endangered species. Complete avoidance of noise and light intrusion on the MSHCP conservation lands is the preferred mitigation for these impacts. Should the Parkway intrude into or be situated immediately adjacent to MSHCP lands, we recommend consideration of earthen berms of sufficient stature to prevent unwanted noise and light intrusion into these sensitive wildlife conservation lands.

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4) We also question the function and the utility of three Parkway interchanges (Reservoir, Town Center Boulevard, and Park Center Boulevard) in the northern San Jacinto Valley. These interchanges are depicted as providing both north and south ingress/egress to the proposed parkway. We are particularly concerned regarding impacts to lands north of the present Ramona Expressway as these lands are either MSHCP Conservation lands or prime agricultural lands. Parkway interchanges at these locations will conflict with current uses in the northern San Jacinto Valley and can only hasten their conversion to urban and commercial uses. The conflict of the proposed interchanges with the San Jacinto Wildlife Area conservation lands and the eventual loss of prime agricultural lands due to the proposed construction of these interchanges is a significant project impact which must be thoroughly analyzed and avoided/mitigated in the NEPA/CEQA document.

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5) The Draft EIR/EIS needs to adequately analyze the Parkway crossing at the San Jacinto River. The utility of building a new bridge or alternative reliance on the elevation of the existing Ramona Parkway to accommodate the Parkway across the San Jacinto River floodplain (1975, Riverside County Flood Control Plan) requires specific scrutiny and analysis. In our view, it would be poor public policy to construct a costly bridge structure and then subsequently be required to construct an elevated causeway for flood control purposes, which could also accommodate the future Parkway. The desirability and environmental impacts of

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either or both alternative means of crossing the river needs to be clearly disclosed in the Draft EIR/EIS.

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- 6) Our final concern is that the Draft EIR/EIS give required consideration to Global Warming. Climate change and its adverse environmental impacts are accelerating rapidly. In what ways will this Project directly and cumulatively contribute to this adverse environmental impact? How will this Project mitigate for this adverse environmental impact? Clearly, alternative transportation means also need to be considered to address this problem.”

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**Friends January 7, 2009 Comments on the 2008 DEIR/DEIS for the Mid County Parkway Project—SCH 2004111103.**

- 7) “The Friends of the Northern San Jacinto Valley (Friends) August 27, 2007 response comments on the July 2007 Supplemental Notice of Preparation (NOP) for this project noted several deficiencies in the National Environmental Policy Act/California Environmental Quality Act (NEPA/CEQA) public scoping document. We asked that these deficiencies be corrected in the forthcoming Draft EIR/EIS to comply with the requirements of NEPA/CEQA.

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- 8) We indicated it was particularly important to delineate the boundaries of the MSHCP lands of the SJWA and Lake Mathews MSHCP lands. We requested the Draft EIR/EIS adequately inform the public as to the relative impact that project alternatives would have on these important wildlife conservation lands. These largely public lands have been designated for wildlife conservation pursuant to the federal Endangered Species Act (ESA) and the Natural Community Conservation Planning Act (NCCP). In addition, we requested that the subject environmental documents demonstrate compliance with the requirements of Section 4(f) of the U.S. Department of Transportation Act of 1966 which specifies that public owned parks, recreation areas, wildlife or waterfowl refuges may not be used for project which use federal funds, unless there are no feasible alternatives to the use of such land. In addition, the Section 4(f) requirements stipulate that the project includes all possible planning to minimize harm to federal, state or regional wildlife conservation lands resulting from the proposed transportation use.

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9) The Section 4(f) mandate also requires that the subject transportation project include all possible planning to minimize harm to federal, state, and regional wildlife conservation lands. The subject Draft EIR/EIS attempts to quantify the direct impacts of the presented MCP Build Alternatives on endangered species habitat but provides poor consideration of the indirect impact that the MCP will bring about on hundreds of acres of endangered species habitat. The Draft EIR/EIS acknowledges that all the MCP Build Alternatives considered will result in increases traffic noise adjacent to the MCP project alignment. The Friends are particularly concerned that the introduction of new or increased noise and light that the MCP will bring to the designated conservation lands for the Stephens' kangaroo rat (SKR) species. The adverse impacts of noise and light on habitat suitability for Heteromyid species such as the SKR are well documented in the scientific literature. (Brown et al, 1988; Price et al, 1991; Webster, 1962; Webster and Webster, 1971; Webster and Strother, 1972; Webster and Webster, 1975). The failure of the subject environmental document to consider the adverse impacts of noise and light on SKR designated habitats at the SJWA and the Lake Mathews-Estelle Mountain conservation lands must be corrected prior to further consideration of the Draft EIR/EIS.

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10) Both NEPA and CEQA require that consultant/coordination with responsible and trustee agencies be integrated into the EIR/EIS document at the earliest possible time and to the fullest extent possible. Neither federal Endangered Species Act, the ESA, Section 7 consultation with the Federal Highway Administration nor the joint state (CA Dept. of Fish and Wildlife)/federal (US Fish and Wildlife Service-USFWS) analysis for the MSHCP/NCCP consistency determination are included in the subject NEPA/CEQA document. Consequently, neither of these pertinent environmental determinations is available for public review.

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11) The Friends believe the approval of any of the presently proposed MCP Build Alternatives by the USFWS and the CDFG will cumulatively jeopardize the continued existence of the SKR. We believe the additional direct and indirect incidental take of SKR that the approval of a MCP Build Alternative will sanction must be subject to a cumulative impact analysis. The necessary cumulative evaluation will need to examine past and foreseeable future actions which could

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jeopardize SKR conservation. These include: 1) the overlaying of the recently approved MSHCP habitat conservation lands on the same lands previously designated for SKR conservation; 2) the failure of the Riverside County Habitat Conservation Agency (RCHCA) to adequately fund the SKR Habitat Conservation Plan; 3) the RCHCA failure to implement habitat management programs on the designated SKR reserves; 4) the dissolution of the March AFB SKR reserve; and 5) the pending dissolution of the RCHCA; the Joint Powers Agency created to implement the SKR Habitat Conservation Plan.

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12) We also believe the Draft EIR/EIS fails to adequately consider the adverse impacts the Mid County Parkway will engender in the area of climate change and cumulative air quality degradation. The Draft EIR/EIS does not properly consider the public health risks of additional air quality degradation. The Draft EIR/EIS does not properly consider the public health risks of additional air quality degradation on present and future residents living within 1,500 feet of the Mid County Parkway.”

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### **III. The Mid County Parkway 2013 RDEIR/SDEIS Does Not Adequately Address Section 4(f)**

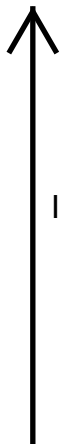
The 2013 RDEIR/SDEIS does not provide the necessary consideration of project impacts to 4(f) resources such as the San Jacinto Wildlife Area (SJWA). As currently designed the Mid County Parkway (MCP) will preclude public access to the 10,000 acre SJWA Davis Road Unit. Davis Road is the only means for the public to access the state-managed wildlife conservation area. The multiple-lane Mid County Parkway will bisect the north/south Davis-Hansen roadway, effectively blocking and precluding public access to the SJWA. The MCP will introduce additional noise and light pollution into the SJWA lands designated for the conservation of the endangered Stephens' kangaroo rat and numerous other MSHCP covered species. Although these issues have been raised before, the 2013 RDEIR/SDEIS fails to properly address these “constructive use” impacts to the 4(f) lands comprising the SJWA.

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In *Brooks v. Volpe*, 460 F. 2<sup>nd</sup>, 1194(9<sup>th</sup> 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

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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 F2d. 423, 239 (5<sup>th</sup> 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).



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Thank you for your attention to these comments. Should you have any questions, feel free to contact Tom Paulek or Susan Nash at the contact information listed below. The Friends of the Northern San Jacinto Valley wish to be placed on the mailing list for this project. Please mail all notices to the Friends address (P.O. Box 4266, Idyllwild CA 92549; via email Tom Paulek at [atpaul44@earthlink.net](mailto:atpaul44@earthlink.net) and Susan Nash at [snash22@earthlink.net](mailto:snash22@earthlink.net))



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Sincerely,

A handwritten signature in cursive script that reads "Tom Paulek".

Tom Paulek  
Conservation Chair  
Friends of the Northern San Jacinto Valley  
951-368-4525

A handwritten signature in cursive script that reads "Susan Nash".

Susan Nash  
President  
Friends of the Northern San Jacinto Valley  
909-228-6710