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July 20, 2011

DRAFT

Aaron Burton
California Department of Transportation
District 8
464 West Fourth Street
San Bernardino, California 92401

State Route 91 Corridor Improvement Project Draft Environmental Impact Report/Environmental Impact Statement

Dear Mr. Burton:

The Wildlife Corridor Conservation Authority (WCCA) has reviewed the State Route 91 Corridor Improvement Project Draft Environmental Impact Report/Environmental Impact Statement (DEIR/S). We request that you consider and address these comments.

WCCA was created for the proper planning, conservation, environmental protection and maintenance of the habitat and wildlife corridor between the Whittier-Puente-Chino Hills and the Cleveland National Forest in the Santa Ana Mountains. As the last major natural open space resource connecting Los Angeles, Orange, San Bernardino, and Riverside Counties, the wildlife corridor provides essential relief from the urban environment. It exists as a single ecosystem in which changes that affect one part will invariably affect all other parts.

In summary, WCCA is gravely concerned with the inadequacy of the DEIR/S in its portrayal of direct and indirect impacts on Chino Hills State Park (CHSP), biological resources, and recreational resources. The impacts are grossly understated, and the mitigation is clearly deficient. There would be project-specific and cumulative impacts from a multitude of freeway and other projects along State Route (SR)-91, some of which are interrelated with the subject project. WCCA maintains that the DEIR/S is deficient, and that the Final Environmental Impact Report/Environmental Impact Statement (FEIR/S) must provide additional serious consideration of less damaging alternatives and substantial additional mitigation.

The DEIR/S Does Not Adequately Identify and Analyze Significant Impacts to Chino Hills State Park, Wildlife Movement, Other Biological Resources, and Recreational Resources

The DEIR/S does not provide an accurate representation of the actual significant project-specific and cumulative impacts to CHSP, wildlife

movement, other biological resources, and recreational resources that would result from the proposed project, interrelated projects, and non-related nearby projects. The DEIR/S downplays those impacts.

The DEIR/S continually emphasizes that 0.06 acre of impact to CHSP is “minor” (DEIR/S, p. 3.1-70) and California Department of Transportation (Caltrans) concluded a *de minimus* finding impact per Section 4(f) legislation¹ (DEIR/S, p. 3.1-75). In fact, the impacts on park resources, biological resources, and recreational resources are grossly understated.

All of the impacts together total more than 0.06 acre, in direct and indirect impacts, and the DEIR/S fails to acknowledge the significance of the impacts with respect to the location. Footings for three columns supporting the bridge structure would be located on a total of approximately 0.06 ac of land within the boundary of CHSP (DEIR/S, p. 3.1-60). The 0.06 ac would be at ground level below the 0.73 aerial easement for the elevated structure or bridge. Both alternatives (1 and 2) would result in one permanent subsurface easement in CHSP to accommodate subsurface tiebacks on the south side of SR-91 (i.e., a 1.65 ac subsurface easement under Alternative 1 and a 1.88 ac subsurface easement under Alternative 2). Table 3.1.6 of the DEIR/S (p. 3.1-63) identifies 2.0 ac within CHSP for temporary construction easements. Clearly, this totals to more than 0.06 ac. Also, regarding the subsurface easement, the DEIR/S does not appear to address any future maintenance or potential emergency work, and thus future disturbance, for any subsurface work. If in fact no maintenance would be needed or anticipated, then why would an easement be needed? Regarding the “temporary” impacts, the DEIR/S does not adequately address the period of impact. A year of construction work would have much greater impact (e.g., disturbance to wildlife) than for example, one week of construction work.

The DEIR/S also fails to address the importance of the location of the impacts on the park. The project impacts would occur within a narrow stretch of CHSP (see Figure 2-16 of DEIR/S), which is relevant for both human users and wildlife movement. This area is a key park entrance location (for people park users)² and a key part of the wildlife linkage. The impact in this area is important because of the key location, and because it is already constrained.

Furthermore, there will be clearly a permanent significant impact to human park users.

¹Section 4(f) legislation is found at 23 United States Code (USC) 138 and 29 USC 303. Federal Highway Administration’s final rule on Section 4(f) *de minimus* findings is codified in 23 Code of Federal Regulations (CFR) 774.3 and 23 CFR 774.17 (DEIR/S, p. 3.1-52).

²See State Parks’ letter dated October 23, 2009. This is only existing public access point for hikers and vehicles in this southern portion of Chino Hills State Park.

Users of the trail in CHSP would have very close view of a large retaining wall on the north side of SR-91 under Alternatives 1 and 2 (DEIR/S, p. 3.1-60). This permanent impact has not been adequately mitigated.

As the DEIR/S (p. 3.17-13) states, Coal Canyon is the most important remaining wildlife connection between the Santa Ana Mountains and the Puente-Chino Hills. The project would widen the Coal Canyon undercrossing (DEIR/S, p. 3.17-18). There would also be increased noise, lighting, and potential for fire starts. The DEIR/S's conclusion (p. 3.25-31) that alternatives 1 and 2 would beneficially affect wildlife movements in the area defies logic. Clearly there are significant direct and indirect impacts to much greater than 0.06 ac.

According to the DEIR/S (p. 3.1-74) a *de minimus* finding requires that the proposed action not adversely affect the activities, features, and attributes of the 4(f) resource. How can 4(f) de minimus finding be made, when in fact the proposed action clearly does adversely and significantly affect the park's recreational and biological resources?

The project will have substantial impacts on coastal sage scrub (permanent impacts to 27.24 acres, DEIR/S, p. 3.17-15), and habitat potentially used by coastal California gnatcatchers (a bird species designated as threatened by the United States Fish and Wildlife Service). The DEIR/S is deficient for not defining impacts to gnatcatchers and their habitat in CHSP.

The DEIR/S is also deficient for not fully addressing the consistency or inconsistency of the proposed project with any restrictions on CHSP land, which was partially funded in part by the Land and Water Conservation Fund. State Parks provided the following additional text to be included in the Section 4(f) analysis, in their October 23, 2009 letter on the Section 4(f) consultation:

...the use of the two Coal Canyon parcels on the north and south side of SR-91 is limited by restrictive covenants and similar instruments. The Lead Agency will investigate restrictions on the proposed use of CHSP.

As stated in the DEIR/S (p. 3.25-34), past and present SR-91 transportation improvements and other development in the RSA [resource study area] have contributed incrementally to the reduction of opportunities for wildlife to move north and south between the Santa Ana Mountains and Chino Hills. Some of these freeway projects are interrelated³ and should be considered together in one California Environmental Quality Act (CEQA) document. Other projects that may not be interrelated would still contribute to significant cumulative

³“...several approved or planned projects in the project study area may affect or require design coordination with the proposed project.” (DEIR, p. S-2).

impacts to biological and recreational resources in the area. Some of those projects are:

- SR-91/71 Interchange Improvement Project;
- new lane on SR-91 between SR-55 and SR-241⁴;
- SR-91 Eastbound Lane Addition Between SR-241 and SR-71 (2007 Mitigated Negative Declaration);
- Santa Ana River Flood Control Project Reach 9, Phase 2A Embankment;
- Green River Mobile Home Embankment Project Reach 9 Phase II Portion of the Santa Ana River Mainstream Project; and
- Prado Basin and Vicinity Reach 9 and Stabilization of the Bluff Toe at Norco Bluffs, and Addendums.

Some of those impacts associated with these and other projects include, but are not limited to: widening of bridges, extension of culverts, direct loss of habitat, and “temporary” disturbance during construction (although construction time periods can in fact be quite long).

The DEIR/S also does not adequately address growth-inducing impacts of creating additional freeway capacity in a congested area.

Need for Serious Consideration of Alternatives

Because of these significant environmental impacts, the FEIR/S must include serious consideration of project alternatives, such as reversible lanes and an elevated structure within the SR-91 right-of-way. Alternatives must be thoroughly analyzed that do not result in direct impacts to CHSP and that avoid and minimize impacts to Coal Canyon and other sensitive biological resources.

The DEIR/S Does Not Include Adequate Mitigation for Significant Impacts to Chino Hills State Park, Wildlife Movement, Other Biological Resources, and Recreational Resources

The DEIR/S does not provide adequate mitigation to offset those significant impacts to CHSP, wildlife movement, other biological resources, and recreational resources. In fact, in too many cases, the DEIR/S defers the specifics of the mitigation, relying on future consultation with other agencies, which could result in development of, and modifications

⁴http://www.octa.net/weeklyupdate/weekly_update_071111.html

to, mitigation measures.⁵ Clearly consultation with State Parks is desired and of course mandatory, as State Parks will be involved in the Section 4(f) consultation, Section 6(f) Land and Water Conservation Fund consultation, and the issuance of a right-of-entry permit. However, that consultation should be well underway, and complete if possible, and the mitigation measures fleshed out prior to the FEIR/S. Clearly defined mitigation measures, notably those related to impacts to State Parks' land, must be included in the FEIR/S, affording the public and decision-makers the opportunity to evaluate the adequacy of the mitigation measures in relation to the impacts. Otherwise, the FEIR/S will be deficient.

It is critical that the FEIR/S provide appropriate avoidance and mitigation measures to address impacts to Coal Canyon, rather than "write-off" the health of the Coal Canyon linkage, while relying on mitigation identified in another plan in another county, Riverside County (for example, see potential mitigation proposed for cumulative impacts, DEIR/S, pp. 3.25-32 through 3.25-35). The western Riverside County plan⁶ does not even address Orange County, in which Coal Canyon is located.

If the project as proposed does move forward, the FEIR/S should include a comprehensive mitigation package for the cumulative impacts to Coal Canyon, CHSP, Santa Ana River, rare wildlife and plant species, sensitive plant communities, and recreational resources. Mitigation should be substantial and on the order of hundreds of acres of actual land acquisition and permanent preservation to offset the impacts from this project and the other cumulative projects and growth-inducing projects.

The DEIR/S (p. 3.25-34) states that it is not reasonable for any one project such as the proposed project or a private development project to mitigate for these cumulative impacts. The difficulty of coordinating mitigation for cumulative impacts from several project does not relieve the lead agency from the responsibility to comply with the requirements and spirit of CEQA to identify significant environmental impacts and to avoid and mitigate those impacts, even if they are cumulative impacts. An attempt must be made.

⁵ "...the Department will continue to consult with State Parks on appropriate compensation for the use of land in CHSP protected under the requirements of Sections 4(f) and 6(f)...subject to refinement/modification..." (DEIR/S, p. 3.1-77); "Compensatory mitigation based on the Section 7 consultation for CAGN [coastal California gnatcatcher] and LBV [least Bell's vireo]... (DEIR/S, p. S-28); Individual or Nationwide Corp permit, CDFG [California Department of Fish and Game] Streambed Alteration Agreement, Section 401 Water Quality Certification from the RWQCB [Regional Water Quality Control Board] (DEIR/S, p. S-27).

⁶Western Riverside County Multiple Species Habitat Conservation Plan

However, if Caltrans chooses not to acknowledge and address such cumulative impacts as required by CEQA, at the bare minimum, Caltrans must include well-defined mitigation in the FEIR/S to fully mitigate the direct and indirect impacts to CHSP, including Coal Canyon. Based on its prime location as a recreational and biological resource, that land to be impacted by the proposed project is irreplaceable. If the proposed project moves forward, then the highest level of offsite mitigation must be included in the FEIR/S. This must be at a bare minimum mitigation ratio of 20:1 (20 acres of mitigation land for every one acre of permanent impact), including mitigation for the acreage of the aerial easement. For any additional temporary impacts, the mitigation proposed should be 2:1 (two acres of land acquired or restored for every one acre impacted) to help offset the long-term temporal loss. The FEIR/S will be deficient unless there is well-defined mitigation, for example, specific parcels of land identified for acquisition and/or specific amount of funding to be designated for mitigation for direct and indirect impacts to CHSP. Said funding must be in place with the resource agency prior to construction.

In addition to this substantial mitigation package, the following mitigation measures must be included to address the unique situation at CHSP:

- sound walls around Coal Canyon, and for a substantial additional distance as recommended by the State Parks ecologist, to mitigate noise, lighting, and increased potential for fire starts;
- native habitat restoration around Coal Canyon; and
- prohibition on construction in and around the CHSP during nighttime.

As outlined in this letter, WCCA is concerned with numerous deficiencies in the DEIR/S regarding identification of significant impacts to CHSP, Coal Canyon wildlife linkage, biological resources, and recreational resources, and the corresponding inadequate mitigation. WCCA recommends that the FEIR/S include additional analysis of impacts, serious consideration of project alternatives, and substantial mitigation to offset those impacts. The project proponents and decision-makers must seriously consider whether they want to sacrifice their parks of State-wide significance, and regionally significant biological and recreational resources, in order to promote a continually expanding major arterial in already congested areas.

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If you have any questions, please contact Judi Tamasi of our staff by phone at (310) 589-3230, ext. 121, or by email at judi.tamasi@mrca.ca.gov. Thank you for your consideration of these comments.

Sincerely,

Glenn Parker
Chairperson