



August 2, 2004

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Dear Ms. Cleary-Milan:

Thank you for the opportunity to comment on the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP) Draft Environmental Impact Statement/Subsequent Environmental Impact Report (EIS/SEIR). We have reviewed the document and have found it to be insufficient for public disclosure and proper decision-making per compliance with the California Environmental Quality Act. It is inadequate in delineating the significance of the impacts, and does not propose satisfactory avoidance and mitigations measures that will reduce impact levels to less than significant. We strongly believe that the EIS/SEIR requires major revisions and subsequent recirculation for public review.

California State Parks is a state agency as defined by the California Environmental Quality Act (CEQA) PRC § 21082.1, a Responsible Agency (PRC § 21069) and a Trustee Agency as used for the resources affected by this project within units of the State Park System (CEQA Guidelines and as defined by CCR § 15386). Our mission is to provide for the health, inspiration, and education of the people of California by helping preserve the state's extraordinary biodiversity, protecting its most valued natural and cultural resources, and creating opportunities for high quality outdoor recreation. A team of reviewers including experienced professionals in the fields of anthropology, biology, public recreation and a variety of other relevant disciplines were assembled to review and provide comments on those project activities within our Department's area of expertise for potential environmental impacts of the project on resources and operation of the State Park System (CCR § 15096). We have focused the following comments on environmental information germane to our agency's statutory responsibility.

[Note: Build alternatives A7C-FEC-M, FEC-W AND FEC-M share a common alignment through San Onofre State Beach. In the interest of space, when this letter refers to the FEC alignments, we are referring to all three build alternatives. Specific pages referenced to the EIS/SEIR document may only address one of the three alternatives, but proposed revisions should occur for all three alternatives.]

San Onofre State Beach is a rare large southern California scenic coastal-canyon park with high environmental values, recreation use and potential for expanded recreational opportunities. The subject EIS/SEIR has been prepared to analyze proposed transportation improvements in southern Orange County and northern San Diego County. The document provides environmental analysis of a number of alternative improvements, of which the above three have a significant effect on the environmental conditions at San Onofre State Beach.

Alternatives

We understand that by agreement with the Department of the Navy (DON), the Transportation Corridor Agencies (TCA) did not include an environmentally preferred alternative in the draft document, but would select an environmentally preferred alternative as part of their preparation of the Final EIS/SEIR. Our department strongly believes that the environmental effects of build alternatives A7C-FEC-M, FEC-W, and FEC-M cannot be sufficiently mitigated and should not be considered as the preferred alternative. The alignment for each of these routes runs through one of the most intact watersheds in southern California, within which are numerous sensitive natural, recreational and archaeological resources. Many of these significant resources lie within the boundaries of land under the stewardship of our department: San Onofre State Beach (SOSB). These resources include federal and state listed species, significant coastal sage scrub, riparian and wetland habitats, a popular 161 unit campground, a 100 seat outdoor education center, nature trails, and a National Register Archeological District. Because each one of these features will suffer significant adverse impacts if alignment A7C-FEC-M, FEC- W or FEC-M is chosen, the California Department of Parks and Recreation opposes these alternatives.

Specifically, the campground and nature trails will become unusable for State Beach purposes with the FEC alignments. State Park staff has investigated the potential for re-creating these recreation opportunities elsewhere and our knowledge of the region leads us to conclude that losses to the existing unit cannot be adequately mitigated.

The Department of Parks and Recreation does not oppose traffic relief, but we do believe that other, less environmentally damaging options should be considered over the loss of irreplaceable parklands: alternative alignments, alternate implementation measures improvements to existing highways, and the use of mass transit are all preferable. In fact, our department should have been involved in the discussions to determine which alignments should have been included in the EIS/SEIR. A 1991 Statement of Intent, signed by TCA, clearly includes the California Department of Parks and Recreation as part of a coordinated effort, yet the EIS/SEIR document describes “an interagency coordination and integration group” as including only “USFWS, USEPA, ACE and the DON”. The TCA has ignored their previous commitment to include our department, resulting in the inclusion of alternative alignments that are simply not environmentally feasible.

The Authority of the California Department of Parks and Recreation

Page 4.2-23 seems to imply that our department’s rights are minimized: “Because SOSB is a lease on MCB Camp Pendleton, the ultimate land use control for this area lies with the Department of the Navy (DON)”. Again, page 4.18-44 states, “Parks lease from DON is subordinate to the DON reserved right to convey rights-of-way for roads through the leaseholder” upon consultation with State Parks. We would like to add that the lease assures mitigation for “property destroyed or property rendered unusable on account of Grantee’s exercise of its right there under.” However,

most important is the fact that the circumstances of the lease between the DON and California State Parks are immaterial to the purposes of this EIS/SEIR. Through our long-term lease with the DON, our Department has management responsibility for the use of this land and any implication that we have a lesser role to play in future plans or the stewardship of its resources is inaccurate. Please remove all references that imply such.

Page 4.2-23 claims consistency with the San Onofre State Beach General Plan because the General Plan mentions the potential of the toll road project without specifically opposing it. However, this claim is in error. The General Plan specifically states that the potential Foothill Transportation Corridor “would have a major impact on Subunit 1 of San Onofre State Beach”. In addition, as noted in the EIS/SEIR, the General Plan does clearly oppose the kind of environmental effects created by the project (refer to pages 18 to 27 of the General Plan). It is incompatible for a multiple lane highway to run through pristine open space and adjacent to a campground that provides an outstanding outdoor wilderness experience in such close proximity to this urban area.

Scope of “Significant Effect”

Pages 4.25-17 and 4.25-29 (and throughout the document) limit the project’s impacts to only “temporary construction and the permanent taking of land” through acquisition. Many sections of the EIS/SEIR need to be revised to acknowledge that indirect impacts on adjacent uses can also have significant long-term impacts.

Though most of the document focuses on only temporary construction and acquisition, a few brief statements hidden throughout the document do indeed acknowledge “substantial adverse effects” on adjacent lands: for example Table 4.25-12 (page 4.25-63) states (regarding indirect impacts on SOSB Cristianitos Subunit 1): “Visual: This alternative will result in changes to views from this resource. Those changes are considered substantially adverse because this Alternative will bring new elements into the viewshed that reduce the quality of existing views.”

The document is inconsistent. Table 4.25-11, titled Amenities Affected by the Temporary Occupancy and Permanent Acquisition of Property at Recreation Resources, states that only open space at San Mateo Campground is affected by the project while elsewhere in the document (page 4.18-40); it is acknowledged that the visual resources of the campground facility are subject to “significant adverse impact.”

Compliance with the Land and Water Conservation Fund Act, Section 6(f)

In making utility improvements to San Onofre State Beach, our Department utilized a grant made available through the federal Land and Water Conservation Fund Act (L&WCF). As agreed to in that grant a result, San Onofre SB is a protected property under that Act. This protection applies to both fee simple and leased lands.

When lands are acquired or improved through the use of Land and Water Conservation Fund Act grants (16 U.S.C. §§ 460-4 through 460-11, September 3, 1964, as amended 1965, 1968, 1970, 1972-1974, 1976-1981, 1983, 1986, 1987, 1990, 1991, 1993-1996).), section 6(f) of the act prohibits the conversion to a nonrecreational purpose of property acquired or developed with these grants without the approval of the Department of the Interior (delegated to the National Park Service). Section 6(f) directs the DOI to ensure that replacement lands of equal (monetary) value, location, and usefulness are provided as conditions to such conversions. Consequently, where such conversions of Section 6(f) lands are proposed for transportation projects, replacement lands must be provided. Said replacement applies to both direct impacts occurring through the direct taking of land and indirect impacts where an entire recreational unit is made unusable because of its proximity to the nonrecreational development.

If the decision is made to proceed with a project following adoption of a final EIS/SEIR with a preferred alternative which directly impacts 6(f) properties, it is the proponent's responsibility to so inform the Office of Grants and Local Services of the California Department of Parks and Recreation in writing of their decision and their proposed compliance actions with a showing that they meet the prerequisites of CFR § 59(b). This notification will require us to inform the Pacific West Regional Director of the National Park Service for their consideration of the conversion request.

The EIS/SEIR does not address how the proposed project will comply with Section 6(f) of the Land and Water Conservation Act. The document is required to do so by CFR § Part 59.3) and is, therefore, deficient as written. The conversion should be addressed as a part of the "project" under CEQA.

Compliance with the Public Park Preservation Act of 1971

The EIS/SEIR is also deficient as written by failing to address the proponent's need to comply with California Public Resources Code Section 5400:

"No city, city and county, county, public district, or agency of the State, including any division, department or agency of the State government, or public utility, shall acquire (by purchase, exchange, condemnation, or otherwise) any real property, which property is in use as a public park at the time of such acquisition, for the purpose of utilizing such property for any nonpark purpose, unless the acquiring entity pays or transfers to the legislative body of the entity operating the park sufficient compensation or land, or both, as required by the provisions of this chapter to enable the operating entity to replace the park land and the facilities thereon."

The code goes on to clarify that “such substitute park land and facilities shall be of comparable characteristics and of substantially equal size located in an area which would allow for use of the substitute park land and facilities by generally the same persons who used the acquired park land and facilities.”

Section 4(f)

The following footnote on page H-12 of the "Section 4(f) Evaluation" Appendix H indicates that Section 4(f) no longer applies.

"Section 4(f) does not apply to parkland within Camp Pendleton that is leased by the State of California, pursuant to legislation enacted by Congress (Public Law 106-398 [H.R. 4205], Section 2881). A complete section 4(f) analysis has been prepared in accordance with the Federal Highway Administration (FHWA), NEPA regulations, 23 C.F.R. Section 771.135. This analysis addresses San Onofre State Beach even though that property is exempt from Section 4(f) by act of Congress as noted above."

We believe that the purpose of existing law has been circumvented by this special legislation with the specific intent of allowing significant environmental effects to the natural, cultural and recreational resources of San Onofre State Beach. The special legislation was written and enacted after and because of the results of the initial section 4(f) analysis.

We acknowledge that the proponents have prepared a 4(f) analysis as Appendix H, but we recommend they demonstrate a commitment to the policy and spirit of the California Environmental Quality Act and an attitude of cooperation with other public agencies in developing a public project. Immediately following the selection of a preferred alternative, a complete 4(f) process should be followed that presents a detailed analysis as to why the selected alternative is the only prudent and feasible alternative. This document should be available for full public review, and approved by FHWA.

Mitigation for the San Onofre Nuclear Generator

Construction of the San Mateo Campground was required by the California Coastal Commission as mitigation for construction at the San Onofre Nuclear Generator. The EIS/SEIR fails to address impacts of this regional loss of coastal recreation that was mandated by a state regulatory agency.

Relocation and Mitigation

Page 4.25-29 states that, with regard to recreation resource impacts, the proponent “will comply with the Uniform Relocation Assistance Act as addressed in Section 4.4 (Affected Environment related to Socioeconomics and Environmental Justice).” Yet, there is no discussion

of displaced recreation resources in 4.4. The loss of or significant impact to recreation should be considered a socioeconomic effect. In addition, the proponent must also comply with Section 6(f) of the Land and Water Conservation Act and Public Park Preservation Act of 1971.

Relocation must address immediately adjacent recreation (not merely temporary construction and land acquisition) that is permanently affected (noise, air, visual, traffic) such that the public's use is forever compromised.

The section that lists socioeconomic effects should also analyze and propose mitigation for the secondary effect that the loss of recreation will have on the local economy.

Please confirm that mitigation measure R5 is a commitment to restore the trail that connects the campground to the beach.

Table 4.25-34 says that coordination with DPR is already incorporated in mitigation measure R-5. It is not.

Noise

“All receptors subject to the CNEL criteria (i.e. residences and parks) along the project alternatives are projected to experience a noise level increase of less than 3 dB CNEL or experience noise levels lower than the 65 CNEL criteria. All of the alternatives would have all impacts mitigated to a level of insignificance with the implementation of the sound walls required to meet the FHWA Criteria.” (Page ES-2 Technical Study on Noise.)

The Technical Study that supports the EIS/SEIR claims that, relative to parks, there are “0 impacts with noise abatement” for any of the FEC alignments. Page E-4 establishes the following definition: “*Impacted* means exposed to noise levels approaching or exceeding the FHWA/Caltrans Noise Abatement Criteria (NAC) or experiencing a substantial noise increase per Caltrans Definition of 12 dBA Leq (H).”

However, the evaluation of potential noise impacts is seriously flawed on two counts: 1. the criterion selected to identify appropriate noise thresholds and 2. the method for establishing existing levels (and thereby, quantifies the noise increase).

Page 4.25-4 references the FHWA/Cal Trans noise abatement criteria as it applies to parks: noise levels are not a concern until they exceed 66 dBA. However, Table 4.6-2 denotes a Noise Abatement Criteria of 57 dBA for “Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.” The San Mateo Campground and all related trails fall within this category. The document analysis and mitigations

should be amended accordingly. For example, Table 4.25-9 should be updated to show the distance contour for 57 dBA. In addition, the mitigation discussions in sections 4.6 and 8.6 should assure that the proposed sound walls will bring noise levels to within the dBA criteria.

Further, the Caltrans criterion does not do justice to the outdoor amphitheater associated with the campground. According to National Academy of Sciences guidelines, the intruding noise from the toll way should be 5 dBA less than the existing sound levels in order to avoid speech interference. It is likely that the unmitigated toll way noise will exceed this guideline by over 20 dBA.

Finally, as an overnight accommodation, the campground should be protected as an activity category "E", warranting a noise abatement criterion of 52 dBA. (The 15 dBA difference between the criteria would equal the amount of noise reduction (from outside to inside) that would be afforded by a frame house with windows open.

According to the EIS/SEIR Noise Technical Report, existing sound levels (Leq) in the campground are 47 dBA. However, it is inappropriate to rely exclusively on the Leq method because it gives disproportionate weight to high sound levels, thereby discounting long periods of relative quiet. Since the existing environment around the campground is characterized by such long intervals of relative quiet, use of Leq tends to overstate existing sound levels. Therefore, the FEC alignments cause a substantial increase from existing condition and would then cause the campground and related features to be considered "impacted."

Second, it is inappropriate to rely exclusively on Leq because of the importance of sleep interference in this campground setting. A Sound Exposure Level (SEL) would be preferable (when traffic is not continuous) to gauge sleep interference, because it would be capable of indicating what percentage of visitors would be awakened, and how often they would be awakened. There is no doubt that the toll way would lead to much sleep interference.

Table 4.25-12 only addresses temporary noise impacts during construction and fails to address the permanent effects of the toll way traffic.

Page 4.6-22 provides a mitigation commitment of sound walls that must reduce noise by at least 5dB. Instead, a clear commitment must be made to assure that long-term noise levels are reduced to within FHWA/ Caltrans criteria (in this case, 57dBA), not merely reduced by 5dB. We doubt that this criteria can be met by the installation of sound walls, given the proximity between the passive recreational use and the proposed toll road alignments. If meeting this criteria cannot be assured, then the noise impacts to recreational use of San Onofre should be considered unmitigatable.

Visual

This is a subject area of clear-cut, unmitigatable impacts to the entire Cristianitos Subunit of San Onofre State Beach, including trails, campground, outdoor education center, National Register Archaeological District and open space. In addition, there are visual impacts by the flyover to Trestles Unit #2, the San Mateo Creek Wetlands Natural Preserve and surfing areas.

The computer simulations contained in the document are excellent. However, there is only one photo that represents the San Mateo Campground. To gain a full assessment of the visual impacts, there should be at least three more photo surveys completed which would demonstrate the magnitude of the visual impact: one from the outdoor education area and two from the trail to the beach.

Table 4.18-11 sets the scoring criteria for evaluating both existing and post-project visual conditions. State Park staff independently used the scoring system and came to generally the same conclusion as the document: the project would cause significant visual impact to the campground. However, we would contend that it is difficult to justify any score higher than a "1" for post-project intactness.

Natural Resource Impacts

Wildlife and Wildlife Corridors

The EIS/SEIR claims no impact on Pacific Pocket Mouse and only minimal impact on wetlands. Other potential species to discuss include, fairy shrimp, tidewater goby, steelhead, arroyo toad, willow flycatcher, gnatcatcher, least Bell's vireo, peregrine falcon, swainson's hawk and thread-leafed brodiaea. The impact upon these species needs to be analyzed in order to have a legally adequate document. Our department is concerned about the environmental effects of the FEC alignments on land and resources under our stewardship. The EIS/SEIR document fails to adequately assess and propose mitigation for the following issues.

Direct adverse impacts of native habitats will occur by taking away nesting, foraging, and denning opportunities. Impacts to small mammals, reptiles, amphibians and other slow moving creatures should be included in the discussion as well as a long term view of the continued taking of animals due to road operation.

Significant habitat fragmentation will occur with a linear impermeable barrier through SOSB, such as will be created by the FEC routes. There are too few under crossings or bridges to afford passage especially through the many smaller, unmapped canyons and ephemeral drainages that contribute to wildlife connectivity. Planned bridges work for most species, but focus on larger mammals. These crossings have to be of a design, shape and size to be sufficiently attractive to

encourage wildlife use. Over-crossings, if dedicated to wildlife use, should be appropriately vegetated to afford cover and other species requirements. Under-crossing approaches should also be appropriately vegetated to afford cover. In addition, there is some thought that under-crossings benefit from divided roadways that provide air and light to circulate between opposing lanes. Functional corridors should be established to provide connectivity to protected lands or land zone for uses that provide wildlife permeability. For instance, if the upland side only connects to a drainage leading to a dense residential area or area zoned for residential development, its functionality is much reduced, whereas if it connects to parks or open-space it is enhanced. The EIS/SEIR should be rewritten to assess all wildlife corridors using the methodology and checklist developed to determine functionality as suggested by Beire and Loe, *Wildlife Society Bulletin* 20:434-440, 1992.

The document fails to give details about this mitigation proposal. It should provide greater detail to assure functionality. (And, if over-crossings are considered, the resulting negative visual effects will need to be assessed.)

There should be more intense analysis of this barrier to passage. Wildlife is mobile. Yet, impacts are assessed primarily during the construction phase of the project. The document needs to assess and model long-term losses to wildlife due to habitat fragmentation, wildlife corridor impacts, vehicle strikes, night-lighting, sound walls, and noise.

Threatened and endangered species in the San Onofre alignments include the significantly impacted thread-leafed brodiaea, arroyo toad, California gnatcatcher, tidewater goby, and steelhead trout. There needs to be greater discussion on the effects of road pollutants that will wash down the modified watershed and potentially harm the toad and goby in riparian and estuarine habitats. There should be a discussion of the potential conversion of existing SOSB grasslands into sage scrub habitat to accommodate displaced California gnatcatchers. It is difficult to assume this listed species could easily find the Chiquita Canyon Conservation Area as their new home. Brown-headed cowbird traps should be a permanent annual mitigation for displaced songbird species throughout any potential corridor.

Although no direct impacts occur, indirect impacts, both temporary and permanent, to Riverside fairy shrimp and the Pacific pocket mouse will occur including dust accumulation, increased mortality, physical and visual barriers to habitat or connectivity due to sound walls, noise, light, road mortality, habitat fragmentation and invasive species. In SOSB there is only one population of each of these two species. An enclosing silt fence for the fairy shrimp pool does not provide enough protection to ensure their long-term survival next to a bridge and habitat corridor structure, and it will exclude spade foot toads from utilizing the pool. The incremental, cumulative and long term threats to these endangered species need to be discussed at length in the document to avoid harming these populations.

Arroyo toad mitigation TE-15 should include rainy day exclusion from driving in the construction zone.

There are no mitigation measures for “other potential T&E species in the study area including the peregrine falcon and tidewater goby.” These species need to be included in the proposed Biological Resource Management Plan including construction monitoring and long-term, post construction monitoring programs. It is the project proponent that has the responsibility to ensure there is not incremental take of species.

Arroyo toads utilize upland habitat during part of their lifecycle up to a kilometer away from lowland breeding areas. Although there are provisions to trap and remove toads from within the construction area, there appears a situation where upland toads will be cut off from their breeding grounds during the years of construction. A discussion of this problem and a proposed solution should be included in the document.

The southwestern pond turtle found in the San Mateo lagoon, a state and federal species of special concern, needs to receive further evaluation for impacts, including surveys for population numbers before and after construction, and long term monitoring. If impacts are identified, mitigations should be proposed.

Plants

Within the APE, there are six populations and 94 individual plants of the thread-leafed brodiaea impacted by the SOSB alignments. The proposed mitigation for the impacts to this species includes salvage of plant, soil, and seed for translocation, and germination and propagation in a nursery. However, the highest goal should be to provide maximum preservation of existing populations through alignment selection, design and through the construction process. This goal should be addressed in the analysis. The details of your mitigation approaches (such as success rate) should be reviewed and approved by the State Department of Fish and Game.

The Orange County Fire Authority Fuel Modification Plant List is used for planting selection on the constructed road slopes. This plant list was made with urban interface building protection in mind, and would lessen habitat values and make for a less than diverse native landscape. If fuel modification is necessary along the edges of the toll way, within its right-of-way, native grasses and lower shrubs can be used that are comparable to surrounding native habitats. Cultivars on the Fuel Modification list should not be used in any case, as they may become invasive on adjoining parklands.

Invasive exotic plant species will be introduced and spread due to construction and operation of the project. The EIS/SEIR needs to have a perpetual monitoring and control program written and enforced in the Biological Resources Management Plan.

Water Quality

The EIS/SEIR is inadequate in its treatment of water quality and must add extensive analysis of the full range of potential effects and appropriate mitigation measures. The following serious environmental effects related to the construction and operation of toll road are likely with any FEC alignments.

Millions of cubic yards of cut and fill will occur while building the proposed corridor through SOSB. This earth movement will disturb existing ephemeral and intermittent stream courses. The number of culverts, catch basins, energy dissipaters and flow structures needed is a large impact in itself with high potential for failure over time. We point out the example of the detention basins on the TCA San Joaquin Corridor that were installed per plans and failed from their inception.

The acreage of bare slopes created by cut and fill operations will leave vulnerable areas. It will be several years before stabilization and plant cover provide effective protection. Page 4.9-7 is grossly erroneous when it states, "*Project cut and fill slopes will be revegetated after construction and will not provide additional sources of sediment.*" Even with SWMP and SWPPP in place, episodic high rainfall is likely to coincide with an exposed bare ground condition and cause catastrophic upset to slope surfaces and high amounts of erosion and sediments. There are many clear examples of SWPPP protection features such as fiber rolls, silt fencing, straw bales and gravel inlet filters, failing under moderate conditions. Resultant sediment flows will affect downstream sensitive species and habitat areas in the Trestles Wetland Natural Preserve.

Pollution prevention during construction is a crucial operation during a critical period. In the short term, BMPs and the SWPPP will attempt to hold back mountains of bare soil. We have seen these BMPs fail in several cases. We suggest a full time water quality inspection team during the declared wet season to enforce and maintain components of the storm water plan. As they patrol and inspect, especially during rain episodes, they can make minor adjustments and repairs that can prevent large problems downstream.

The FEC alignments will impact several hundred acres. During construction and plant establishment phases of this massive project, we feel episodic events could easily send tons of sediment downstream and cause significant impacts to sensitive species. The Trestles Wetland Natural Preserve could receive serious impacts as well as the tidewater goby, arroyo toad, southern steelhead trout, least Bell's vireo, southwestern willow flycatcher, and southwestern pond turtle found there. "The temporary residual increase sediment loads from construction areas" could be enough to drastically affect the breeding of wetland species. During the construction period, zero sediment should be delivered to the mouth of this watershed system. Adequately sized, well-maintained flood control basins need to be an effective part of all alignments. Relatively small increments of fine sediments could significantly impact the coarse and clean sand grains that are needed for breeding success of the goby and toad.

Page 4.8-49 summarizes that project design features to control peak flow volume. In addition to extended detention basins, it states that, “*project design features such as riprap will be implemented as necessary to minimize adverse effects due to localized scour.*” The use of riprap in a natural environment causes serious impacts to natural systems. The EIS/SEIR should fully analyze the effects of this proposed design feature and provide mitigation alternatives for adoption if impacts cannot be avoided.

Project design features include detention basins that could function as temporary habitat for related rare amphibian species attracted to the water and wet soils. Mitigations to avoid amphibians need to be included to the periodic sediment removal of these settlement/detention basins. Biological monitors need to inspect the area and the manipulation of these detention basin soils.

Waterways

Impacts to surface waterways and the wetlands of the San Mateo Creek Wetlands Natural Preserve become a concern to this Department due to construction impacts and shadowing affects. The Natural Preserve classification [PRC § 5019.71] encompasses distinct areas of outstanding natural or scientific significance established within the boundaries of other State Park System units. Their purpose is to preserve such features as rare or endangered plant and animal species and their supporting ecosystems, representative examples of plant or animal communities existing in California prior to the impact of Euro-American modifications, geological features illustrative of geological processes, significant fossil occurrences or geological features of cultural or economic interest, or topographic features illustrative of representative or unique biogeographical patterns. Natural Preserves are managed to allow natural dynamics of ecological interaction to continue without interference, where possible. Habitat manipulation is permitted only in those areas found by scientific analysis to require manipulation to preserve the species or associations that constitute the basis for the establishment of the Natural Preserve. Motor vehicle use is prohibited in Natural Preserves.

Outside Mitigations

The process of corridor selection is faulted by the fact of improper sequencing. This document should follow the modified Ranch Plan for Rancho Mission Viejo, which should follow the finalized Southern Subsection of the NCCP/HCP, which plans for natural resource sensitivities and their protection. Since the NCCP is not finalized, mitigation banking opportunities are not clearly defined.

Chiquita Canyon Conservation Area was set up as a mitigation area for the TCA-N, and is the planned location for mitigating direct impacts to habitat and sensitive species taken by the southern corridor. This location is too far away to be a meaningful mitigation site for many involved species. The mitigation site should be as close as possible to the area impacted so that specific

conditions of microclimate and microhabitat can be more closely matched and analyzed in this document.

Air Quality

Table 4.25-12 only addresses temporary air quality impacts during construction. Effected air quality from use of the toll way must be analyzed as well.

Trails

Page 4.5-4 acknowledges the trail between the campground and the beach but the proposals contained in pages 4.5-13 to 59 will either obliterate this important connection or create a long, very unpleasant trail experience under a concrete structure. The document needs to include an evaluation on the effects on this recreational use and provide mitigation alternatives for adoption if impacts cannot be avoided.

Traffic

Page 4.25-9 sets the threshold for determining a delay is “substantial” at 60 minutes for a State Beach. This threshold should be lowered to match the 20-minute delay for neighborhood parks. There is fundamentally no difference between a State Beach and a neighborhood park in terms of access.

We understand that one of the justifications for the Foothill Transportation Corridor is to relieve Interstate 5 congestion. However, we feel that the “fly-over” proposed at the junction between Interstate 5 and the FEC alignments will exacerbate, rather than relieve congestion. The southbound traffic compresses from 6 lanes to 4 lanes within the mere ½ mile between Christianitos and Basilone. This will have a significant negative effect on current and future SOSB patrons. The document is remiss in not highlighting, analyzing and determining the degree to which this effect is mitigatable.

Archaeological Resources

The following remarks are specific to material in Volume 3 (April 2004), Section 4.16.

The discussion of archaeological sites currently on the National Register of Historic Places found on page 4.16-14 and on the Tables is misleading. The environmental impact report misrepresents the number of National Register properties within the Area of Potential Effects (APE) as one archaeological site. In fact, the San Mateo Archaeological National Register District, which has seven known archaeological sites, is located within the Area of Potential Effects (APE). That district measures ca. 480,000 square meters in size. The National Register District lies within San Onofre State Beach. Section 4.16 of the Draft Environmental Impact Report never mentions this.

The absence of discussion of this National Register District is a critical oversight, which by itself requires recirculation of the documents. National Register District qualifies for the Register under both Criterion A and Criterion D. These facts are important to identify clearly in order to appropriately evaluate the impacts of the proposed project.

The discussion of archaeological resources also fails to mention that the ethnographic Juaneño village of *Panhe* is located within the San Mateo Archaeological National Register District. The presence of *Panhe* lends extraordinary cultural significance to the San Mateo Archaeological District, and qualifies it to the National Register under criterion A. Present-day Juaneño people have strong feelings for *Panhe*, as being important to their cultural traditions and cultural heritage. The project proponents must seek out input from all Juaneño communities about this issue. The area encompassed by the San Mateo Archaeological National Register District and surroundings areas (e.g., nearby archaeological sites and the fenced compound used for ceremonies and reburials) likely qualify by Federal standards as a "Traditional Cultural Property." The EIS/SEIR fails to note that *Panhe* is listed on the Sacred Lands file at the Native American Heritage Commission. The subject EIS/SEIR should address the issue of Juaneño affiliations and ties to the project area, and should have solicited their opinions about protection and disposition for the lands in the APE, prior to recirculation.

On page 4.16-23, the EIS/SEIR states that an "agreement document" is currently being prepared for the project. California State Parks staff requests that it be given an opportunity to comment upon the contents of the "Agreement Document," and potentially add items to it. This agreement document will outline procedures for how the Treatment Plan will be written, fieldwork and analysis methods, procedures for consultation with Native American communities and other stakeholder groups, means by which to resolve disputes over important issues, and other critical tasks.

The archaeological fieldwork alluded to in the document appears to be inadequate to properly identify and evaluate archaeological sites, potential sacred sites, and locations important to Native American communities and other stakeholders. For example, all previously recorded archaeological sites located within the APE should have been reevaluated and discussed in this document. The present Draft EIR has poor descriptions of known archaeological sites. The survey coverage in the field is inadequate, as transect intervals were "10-15 m...apart" (too large for good coverage of the ground). During the archaeological survey, the field workers apparently merely confirmed that cultural materials were present at the site, but, performed no additional evaluations. More work at each site must be completed.

A more complete consultation with Native American individuals may have yielded data on ethnographic locations. There is no evidence that the project proponents requested information on Sacred Sites within the APE from the California Native American Heritage Commission. That is standard procedure in order to obtain a complete inventory of cultural properties. The EIS/SEIR

should also list the Native American tribal offices and individuals that were contacted during the Phase I Inventory. There is no evidence in the EIS/SEIR that important sources of ethno historic data (including, data on Indian village locations, locations of gathering areas, etc.) were identified and studied. A curious omission from the ethnography overview, for example, is a reference to the 2001 report by Dr. John Johnson on lineal descendents for Camp Pendleton. The EIS/SEIR gives no evidence that local archaeologists with knowledge of the project area were contacted for information, e.g., the Camp Pendleton Base Archaeologist, local consultants who have worked in the area, archaeologists from California State Parks, and others. The considerable archaeological work that has been performed on Camp Pendleton, including, areas within and next to the APE, is not referenced in the EIS/SEIR. Those data are critical for evaluating archaeological remains in the APE and understanding their cultural context.

The section on “Proposed Status of Mitigation Measures...” (Table 4.16-11) is prematurely constructed, as no such measures can be determined with the current state of knowledge of archaeological remains. A considerable amount of ethnographic consultation, historic research, and archaeological field studies, as well as, consultation with Native Americans, residents of the local communities, local historic preservation advocates, and other stakeholders, must be completed before the project proponents attempt to evaluate archaeological sites, historic properties, and the impacts of the proposed project. The EIS/SEIR must present a project alternative that completely avoids all the highly significant cultural properties within San Onofre State Beach.

Finally, any archaeological consultant contracted by the project proponent must obtain an Archaeological Permit (DPR 412 A) from California State Parks prior to conducting any type of archaeological work within San Onofre State Beach. The permit application must be reviewed by State Parks Archaeologists in both the Southern Service Center and the Cultural Resources Division. California State Parks staff needs to review copies of archaeology and history technical reports prepared to date by contractors to the Transportation Corridor Agencies. Presently, State Parks offices do not have copies of these technical reports.

Cumulative Impacts

Section 5 of the EIS/SEIR contains the Cumulative Impact analysis for this draft EIS/SEIR. CEQA Guideline § 15130(a)(1) describes a cumulative impact as consisting of an impact which is created as a result of the combination of the project evaluated in the EIS/SEIR together with other projects causing related impacts. In this the subject draft EIS/SEIR is inadequate in that it does not describe or analyze projects for impacts to San Onofre State Beach.

To analyze a proposed project’s contribution to cumulative impacts, a lead agency must identify reasonably foreseeable projects/actions in the vicinity of the proposed project, summarize their effects, identify the contribution of the proposed project to cumulative impacts in the project

region, and recommend feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects (CEQA Guidelines § 15130[b][3]).

In its listing of potentially contributing projects, the EIS/SEIR has failed to include the high-speed rail line currently being proposed by the High-Speed Rail Authority and the Federal Railroad Administration.

Access to State Park System Lands

In preparation of this Draft EIS/SEIR it appears that certain investigations have been conducted within San Onofre State Beach. If further such work is required, it will be necessary to obtain written permission in advance.

A scientific collection permit is required for most scientific activities pertaining to natural and cultural resources that involve fieldwork, specimen collection, and/or have the potential to disturb resources or visitors. All requests for biological, geological, or soil investigation/collection permits must be submitted on a DPR 65 - "Application and Permit to Conduct Biological, Geological, or Soil Investigations/Collections Form" or for paleontological investigations, a DPR 412 P - "Application and Permit to Conduct Paleontological Investigations/Collections Form" to the Superintendent, Orange Coast District. A permit for investigating archeological resources must be obtained from the Supervisor, Cultural Heritage Section, Cultural Resources Division on a DPR 412 A - "Application and Permit to Conduct Archaeological Investigations/Collections Form." To obtain a right to enter permit for any other purpose including but not limited to survey work please contact the Superintendent, Orange Coast District.

The permits described above may be issued for a maximum period of one year but renewals may be requested by submitting another application and following the same procedures. It is recommended that applications be submitted at least 60 days in advance of the first planned field activity.

The classification of State Beach and Natural Preserve are by design restrictive to uses that have potential to adversely impact the resources for which they were established. An applicant prior to requesting access for non-park related projects should make careful consideration of these limitations. You are encouraged to make contact and involve the Superintendent, Orange Coast District as early as possible prior to your need to access SOSB. Such open discussion will facilitate early resolution of potential issues.

Conclusion

In summary, the EIS/SEIR fails to acknowledge the full extent of recreational, natural and archaeological impacts to SOSB. As a result, the document also fails to adequately discuss appropriate levels of mitigation for those impacts. Should any of the FEC alignments be selected

Macie Cleary-Milan

August 2, 2004

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as the preferred alternative (against the strong recommendation of our department), the proponent will need to incorporate the mitigation measures discussed in *Mitigation Assessment of FTC – South Impacts on San Onofre State Beach, August 1997, California Department of Parks and Recreation*.

As a Responsible Agency for this project, the California Department of Parks and Recreation will depend upon the Draft Program EIS/SEIR as a basis upon which we will review any application for use or entrance to lands of the State Park System. Without the issues addressed, this document will be inadequate for our use. As previously stated, and as evidenced by the numerous examples noted throughout this letter, we strongly believe that the EIS/SEIR requires major revisions and subsequent recirculation for public review.

Again, thank you for the opportunity to provide comments on the Foothill Transportation Corridor EIS/SEIR. If you have any questions on this letter or any other matters please contact Rich Rozzelle at our Orange Coast District office at (949) 366-4895.

Sincerely,

A handwritten signature in black ink that reads "Ruth Coleman". The signature is written in a cursive style and is centered below the word "Sincerely,".

Ruth Coleman
Director

cc: State Clearinghouse
Mike Tope
Ron Brean
Ted Jackson
Rick Rayburn
Clay Phillips
Kathryn Tobias
Karen Miner
Noah Tilghman
Rich Rozzelle
Dave Pryor