Transportation Corridor Agencies

Written Statement of

Thomas Margro

Chief Executive Officer

Transportation Corridor Agencies

before the

House Committee on Transportation and Infrastructure

Subcommittee on Highways and Transit

United States Congress

"Accelerating the Project Delivery Process: Eliminating Bureaucratic Red Tape and Making Every Dollar Count"

February 15, 2011

Transportation Corridor Agencies

125 Pacifica, Suite 100

Irvine, CA 92618

(949) 754-3492

Mister Chairman, Members of the Committee. My name is Tom Margro and I am the Chief Executive Officer of the Transportation Corridor Agencies, two joint powers authorities formed by the California legislature to plan, finance, construct, and operate toll roads in Orange County, California. Thank you for the opportunity to speak before the House Committee on Transportation and Infrastructure's Subcommittee on Highways and Transit to discuss our agency's ongoing challenges over more than 15 years to secure the federal approvals needed to build the 241 toll road. Not only is this project critical to alleviating congestion in Orange County, but it is a project that will: (1) create over 34,000 jobs and (2) that requires no government funding. Based on our experiences with the 241 project, we have recommendations for improving the environmental review process so that we can expedite project delivery and reduce costs on projects around the United States.

Introduction

The 241 toll road in Orange County has been in the planning process since 1981. It is designed to provide an alternative north-south route to Interstate 5 in southern Orange County and northern San Diego County – one of the most congested Interstate highways in the nation. While the TCA completed the first 51 miles of the toll road system in 12 years, the last 16 miles has been mired in the federal environmental review and permitting process for 15 years. The project was intended to be a model for improving the complex federal environmental process by integrating reviews under the National Environmental Policy Act (NEPA), the Clean Water Act (CWA), the Endangered Species Act (ESA) and other federal environmental laws. The state and federal agencies formed what is known as the "Collaborative" under a Memorandum of Understanding (MOU) among the Federal Highway Administration (FHWA), the Environmental Protection Agency (EPA), the Corps of Engineers (Corps) and the U.S. Fish and Wildlife Service (F&W).

Rather than serving as a model for how to make the federal environmental process more efficient, the experience with the Collaborative demonstrates that the federal environmental process is broken and needs fundamental reform. Despite over a decade of effort by these agencies, and the expenditure of over $20 million by the project sponsor, the process failed.

Project Conception and Planning

Orange County completed initial studies of the need for an alternative to Interstate-5 in the 1970s and 1980's. After approving a conceptual corridor in the early 1980s, local government realized that traditional state and federal funding sources would not be adequate to fund the construction of new regional transportation facilities. In 1986, local governments in Orange County established the Transportation Corridor Agencies, public joint-powers agencies, with the task of financing, constructing and operating the 241 and other toll roads.

TCA financed the construction of 51 miles of new regional toll highways -- The San Joaquin Hills (73), Foothill (241), and Eastern (241/261/133) by issuing non-recourse bonds – backed solely by toll revenues and development impact fees collected from new development in the area of the projects. No federal highways dollars were used to construct the projects. Since the bonds are not backed by the government, taxpayers are not responsible for repaying the debt if future toll revenues fall short. Instead, toll and development impact fee revenue go towards retiring the construction debt. **TCA was able to construct 51 miles of toll roads in 12 years.**

The NEPA/404 Collaborative Process

TCA conducted further studies and environmental evaluation of the 241 between 1989 and 1991 and the TCA completed an Environmental Impact Report (EIR) under the California Environmental Quality Act – the state version of NEPA – and, in 1991, adopted a locally-preferred alternative. TCA then embarked on the federal environmental process, including the preparation of a federal Environmental Impact Statement (EIS) and other studies required to comply with the federal Endangered Species Act, the Clean Water Act, the National Historic Preservation Act, the Coastal Zone Management Act and several other federal laws. FHWA acted as the lead federal agency.

The TCA and FHWA initiated the Collaborative process to implement a 1993 agreement (the NEPA/404 Memorandum of Understanding, or NEPA/404 MOU) among the FHWA, the Corps, F&WS and the EPA. The stated purpose of the MOU is to improve interagency coordination and integrate environmental permitting and analysis procedures. It attempts to do this by giving all of the federal environmental agencies a seat at the table, and decision-making authority, throughout the federal environmental process. A key aspect of the MOU is the commitment by all agencies to reach consensus on key decision points throughout the environmental process, including agreement on purpose and need, alternatives to be evaluated in the draft EIS, selection of the preferred alternative that would comply with NEPA, the Clean Water Act and the ESA, and, finally, agreement on mitigation measures. **These key decision points document the collective agreements that the information was adequate for that stage and the project may proceed to the next stage without modification. The MOU includes language preventing agencies from re-visiting their concurrence except in limited circumstances relating to significant new information or other significant changes.**

For the SR 241 Completion, the NEPA/404 MOU included 2 stages. In the first stage, a facilitator was hired to assist the Collaborative in their deliberations, and the Collaborative developed the Purpose and Need statement and the Alternatives for initial evaluation. This stage took 28 months. In the second stage, the technical studies were prepared, alternatives were developed and evaluated; and decisions were made about which alternatives to carry forward for full analysis in the EIS. The last steps of Stage 2 included the identification of an environmentally preferred alternative and agreement on mitigation measures.

The Collaborative agencies and the TCA worked together for an additional six years (over 10 years in total) on the second stage. After release of the draft EIS, the Collaborative evaluated and screened 9 alternatives to identify a practicable alternative that would comply with the requirements of section 404 of the Clean Water Act (the "Least Environmentally Damaging Practicable Alternative" or "LEDPA"). In November 2005, the Collaborative agencies confirmed in writing their earlier agreement on a preliminary LEDPA, referred to as the "Green Alternative." The Collaborative found that other alternatives, including widening I-5 and only making arterial improvements, were not practicable or would have greater environmental impacts than the Green Alternative. Subsequently the National Marine Fisheries Service concurred with FHWA that the project would not likely adversely affect endangered or threatened fish species (the steelhead trout).

The NEPA/404 MOU contemplated that, concurrently with the identification of the LEDPA, F&WS would complete a biological opinion under the ESA and determine whether the LEDPA is not likely to jeopardize the continued existence of federally listed species or adversely modify critical habitat. Since F&WS had been at the table throughout the Collaborative process, the NEPA/404 MOU contemplated that the Service would be able to prepare a biological opinion within the 135-day deadline established by the ESA. While

F&WS eventually did produce a biological opinion, it did so nearly THREE YEARS AFTER the Collaborative agencies had identified the environmentally preferred alternative.

The next step in the process was for TCA to obtain a consistency certification for the preferred alternative under the Coastal Zone Management Act. While none of the preferred alternatives is within the federal coastal zone, a small portion of the project comes within about a half-mile of the coastal zone.

When TCA applied for the consistency certification, certain project opponents, including environmental groups, objected to the project despite the fact that they offered no credible evidence that the project would impact the coastal zone. At the first hint of controversy, federal agency members of the Collaborative (with the exception of FHWA), abandoned the unanimous selection of the Green Alternative as the preferred alternative, asserted the need for additional environmental studies and reopened the debate concerning other alternatives.

The U.S. Army Corps of Engineers, the U.S. EPA, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service all submitted comments in the Coastal Zone Management Act process that criticized the preferred alternative previously identified by these very same agencies.

Conclusion

TCA committed 10 years and $20 million to the Collaborative process. Despite extraordinary efforts to reach agreement with the federal environmental agencies, the process failed. The "streamlined" process envisioned in the NEPA/404 MOU worked initially as intended. The Collaborative agencies developed and evaluated alternatives and eventually agreed on a preliminary LEDPA. But, the federal environmental agencies failed

to carry through on the requirements of the MOU or on the decisions reached through the Collaborative process. In the face of controversy over the project, the federal environmental agencies refused to defend the process that they themselves developed and touted as the solution to the lengthy environmental approval and permitting process. Not only did they refuse to defend the process, but they backtracked from their prior agreements regarding the identification of a preferred alternative. And, rather than resolving differences through the Collaborative process, some of the federal agencies publicly questioned the project during the Coastal Zone Management Act process.

Recommendations for Improving the Environmental Review and Project Approval Process

TCA has the following proposals for improving the environmental review process in light of its experiences with the 241 completion project:

1. Allow projects in states with stringent environmental review laws, including "mini-NEPA's" as they are sometimes called, such as California, to meet federal environmental review requirements through compliance with state laws; in those instances, allow the state law process to provide the compliance with NEPA and other federal laws such as the Clean Water Act, Endangered Species Act and National Historic Preservation Act.

2. Where the project sponsor, lead agency and other federal agencies are part of a coordinated plan for environmental review or Collaborative process, a federal agency cannot change its concurrence or approval of a particular action (including selection of a preliminary LEDPA) absent new developments or the discovery of new facts, that they did not know or could have known at the time of the approval.

3. Require FHWA to develop an MOU with EPA Regarding the Reasonable Range of Alternatives for Highway Projects. Many highway projects are delayed by lengthy disputes with EPA over the range of alternatives that need to be evaluated in the EIS. EPA commonly argues that highway NEPA documents are required to consider transit and other alternatives to highway projects even where a transit alternative is inconsistent with the regional transportation plan. EPA uses its leverage under the NEPA/404 MOU to require FHWA and state transportation departments to evaluate alternatives that were rejected in studies leading to regional transportation plans. FHWA should seek agreement with the EPA and the other resource agencies that highway environmental documents are not required to evaluate mode alternatives that are inconsistent with the mode choices reflected in the regional transportation plan.
4. Establish NEPA Safe-Harbor Rules. NEPA and the CEQ regulations authorize FHWA to adopt NEPA implementing regulations. Congress should direct FHWA to implement "safe harbor" rules that provide a safe harbor for environmental documents that incorporate FHWA-approved approaches to environmental review (e.g., growth-inducement, cumulative effects, alternatives, project purpose and need). Alternatives analysis could be deemed adequate if it includes two alternatives that minimize significant effects of the project. Project growth-inducement analyses could be deemed adequate if they utilize the growth projections approved by the metropolitan planning organization.
5. Adopt Tiering Regulations. Tiering of NEPA documents provides an opportunity to expedite environmental review by avoiding duplication of the analyses of regional and programmatic issues (e.g., mode alternatives, growth-inducement) during preparation of subsequent tiers. Tiering often does not expedite environmental review (and may result in delays) because the NEPA regulations do not provide assurances to project sponsors that FHWA and the resource agencies will not revisit tier 1 issues during subsequent environmental review tiers. Congress should direct

the CEQ and FHWA to revise their NEPA regulations to provide that subsequent tiered NEPA documents shall not reconsider issues addressed in prior NEPA documents concerning the project or action.

6. Impose Limitations on Scope of Resource Agency Review. Many delays occur as a result of disputes between FHWA and the resource agencies. Often, these disputes involve issues that are outside of the jurisdiction of the resource agencies (e.g., scope of traffic analysis; construction cost estimates; engineering feasibility). Legislation could limit resource agency comments to issues within the jurisdiction and expertise of the resource agency and could require resource agencies to accept the evaluation of the FHWA on traffic, engineering and cost issues.

TCA also recommends the following change to the Coastal Zone Management Act, recognizing that it is outside the jurisdiction of the House Transportation and Infrastructure Committee:

1. Restrict the applicability of the Coastal Zone Management Act to projects that have a direct impact on resources within the coastal zone. The law and implementing regulations require a CZMA consistency determination for projects that affect land or water uses of a coastal zone even if the project is not in the coastal zone if the project has any foreseeable effect on the coastal zone or coastal resources, including direct, indirect, or cumulative. This standard allows the coastal agency to deny a consistency permit based on unsubstantiated and amorphous claims.

2. Require that the state coastal agency, in certifying consistency with the Coastal Zone Management Act, consider as a reasonable alternative only those alternatives which: (a) meet the project purpose and need, (b) the project sponsor is authorized to carry out, and (c) there are funds available for the project, or, there is a reasonable

expectation that funds can be obtained (such as through public-private partnerships or bonds).

3. In evaluating consistency certifications, the Department of Commerce should be required to defer to the determinations of reasonableness of alternatives made by departments of transportation or by federal transportation agencies. The regulations state that Commerce "should" defer to those agencies' determinations, but such deferral should be mandated.

We have appended to the testimony a chronology of events associated with this project and certain relevant letters and documents. We thank you for the opportunity to provide testimony and look forward to answering your questions.

CHRONOLOGY

The Toll Roads
Stop sitting. Get moving.

Collaborative Participants

- The Collaborative members included: the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, Federal Highway Administration and California Department of Transportation; the U.S. Marine Corps also participated actively on issues relevant to the U.S. Marine Corps Base at Camp Pendleton.
- The TCA participated as the lead agency for the SR 241 Completion project under the California Environmental Quality Act.
- The chronology below does not list all 80+ Collaborative meetings or all the other meetings held with various Collaborative participants, such as meetings with the U.S. Fish and Wildlife Service on the Endangered Species Act consultation.

1993-1996
Began NEPA process

1996-2000
Began process pursuant to NEPA 404 MOU

Collaborative agreed on Purpose and Need, evaluation criteria, types of alternatives and the draft project alternatives to be evaluated in the technical studies for the EIS

24 alternatives, consisting of 19 toll road alternatives, 3 non-toll road alternatives and 2 no action alternatives).

2001-2002
Collaborative agreed on content and methodology for technical studies, criteria for elimination of alternatives. Informal consultation with U.S. Fish and Wildlife Service.

2002-2003
Collaborative studied alternatives and their impacts. Removed two alternatives that went further east into Marine Corps Base Camp Pendleton from further consideration.

June-August 2003
Eliminated eight alternatives from additional detailed consideration in Draft EIS, based on several evaluation parameters.

2003-2004
Conducted practicability analysis and determined that three toll road alternatives were practicable. Refinements to alternatives to reduce impacts and Collaborative input on refinements and mitigation measures to reduce impacts.

May-August 2004
Public review of Draft Environmental Impact Statement.

February 2005
FHWA requested formal Endangered Species Act Section 7 consultation with the U.S. Fish and Wildlife Service.

September 2005
U.S. Fish and Wildlife Service issued preliminary conclusion that the project is not likely to jeopardize the continued existence of any endangered or threatened species or to adversely modify any critical habitat.

February 2006
TCA Board of Directors certified Environmental Impact Report under California Environmental Quality Act.

November 2006
Last formal Collaborative meeting (by teleconference) pending coastal consistency certification

May 2007
National Marine Fisheries Service issues concurrence with Federal Highway Administration determination that project would not likely adversely affect the Southern California DPS of steelhead or its critical habitat.

February 2008
California Coastal Commission objects to TCA's coastal consistency certification.

March 2008
TCA appeals Coastal Commission objection to Secretary of Commerce.

April 2008
U.S. Fish and Wildlife Service issued Biological and Conference opinion finding that the project is not likely to jeopardize the continued existence of federally listed species or adversely modify proposed or designated critical habitat.

December 2008 – Secretary of Commerce sustains Coastal Commission objection to TCA's consistency certification.

2000 | 2002 | 2004 | 2006 | 2008

2004-2005
The Collaborative unanimously agreed that the "Green Alternative" was the preliminary Least Environmentally Damaging Practicable Alternative (LEDPA).

2008
EPA, Army Corps and USFWS publicly question their prior agreement on LEDPA and submit comments to Secretary of Commerce that contradict prior Collaborative agreements and seek to distance themselves from the Collaborative process.

May 25, 1961
President John F. Kennedy threw the gauntlet down to Congress – let the first man to walk on the moon be an American, and not a Russian.

July 20, 1969
Neil Armstrong became the first man on the moon.

1961 | 1962 | 1969

September 12, 1962
President Kennedy proclaimed America's goal of putting a man on the moon in that decade.

011_11_timeline

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

MAY 28 2008

REPLY TO
ATTENTION OF:
Civil Works Directorate - Operations

Joel La Bissonniere
Assistant General Counsel
for Ocean Services
National Oceanic and Atmospheric Administration
Washington D.C. 20230

Dear Mr. La Bissonniere:

I am responding to your May 1, 2008 letter to LTG Robert Van Antwerp, Commander of the U.S. Army Corps of Engineers (Corps) in which you requested comments from the Corps concerning the Foothill/Eastern Transportation Corridor Agency (TCA) appeal of the California Coastal Commission's objection to the construction of TCA's proposed extension of California State Route 241 in Orange County, California. This letter represents my agency's official response to your Federal Register notice of March 17, 2008.

TCA's proposed project would entail the discharge of dredged or fill material into waters of the United States. Pursuant to Section 404 of the Clean Water Act (CWA), Department of the Army authorization (through a Corps Section 404 permit) is required for such discharges. Our Los Angeles District office has been engaged for many years with the Federal Highway Administration (FHWA), Environmental Protection Agency (EPA), Fish and Wildlife Service (FWS) and others in an effort to develop an environmental impact statement (EIS) to evaluate various alternatives for this project. Pursuant to the National Environmental Policy Act (NEPA), FHWA is the lead federal agency responsible for preparing this EIS.

The draft EIS was circulated for public review in 2004. It evaluated eight "build" alternatives, all of which meet the overall project purpose to "provide improvements to the transportation infrastructure system that would help alleviate future traffic congestion and accommodate the need for mobility, access, goods movement, and future traffic demands on the I-5 freeway and arterial network in the study area." Based on the best information available at the time, the Los Angeles District determined in 2005 that six of the eight build alternatives (as toll roads) were available to TCA and thus "practicable," for our CWA Section 404 evaluation purposes.

Also in 2005 (and pursuant to the 1994 State of California Memorandum of Understanding between FHWA, California Department of Transportation, EPA, FWS, National Marine Fisheries Service, and the Corps on integrating the NEPA and 404 processes for transportation projects), the Los Angeles District preliminarily identified alternative A7C-FEC-M ("green" alignment) as the least environmentally damaging practicable alternative (LEDPA). As of the date of this letter, this preliminary determination has not changed. Federal regulations governing

our regulatory program prohibit granting of Section 404 authorizations unless the Corps determines that the proposed action constitutes the LEDPA and that the proposed alternative is not contrary to the public interest. A finalized EIS that satisfies the Corps' statutory requirements is necessary before our agency can complete these determinations and render a permit decision. The Los Angeles District Commander will ultimately be the Corps decision maker for TCA's permit application.

Two of the eight build alternatives were found not to be available to TCA because they were not toll road alternatives. Because they were not available to the applicant (TCA), they were not considered to be practicable under the definition of that term in our CWA Section 404(b) (1) regulations. These non-toll road alternatives could meet the overall project purpose, and to ensure NEPA compliance, these alternatives were carried through for analysis in the draft EIS.

The interagency effort to develop the environmental review documents for this proposed project is known as the "Collaborative". The Collaborative is the forum that has been used for many years to implement the procedural provisions of the 1994 NEPA/404 Integration MOU which has so far lead to the publication of the draft EIS and preliminary identification by the Corps and EPA of the LEDPA. The Collaborative is now actively working with FHWA to move the federal environmental review process forward; however substantial work remains with respect to both the NEPA and the Section 404 permit application processes, including an evaluation of information received subsequent to the release of the draft EIS. Release of the Corps' standard Public Notice (PN) soliciting public and agency comment on the proposal is expected to take place concurrent with the publication of FHWA's Federal Register Notice of Availability of the final EIS. Any substantive comments received on the PN and final EIS would be given full consideration in helping us to determine compliance with the CWA regulations and in understanding the scope of potentially significant public interest factors – both evaluated in our Record of Decision (ROD). Once the ROD is complete, the Corps can issue a permit decision.

In our regulatory role in reviewing applications for permits to discharge dredged and fill material into waters of the United States, my agency is neither a project proponent nor opponent. We are committed to fair and balanced permit decisions which acknowledge the legitimate needs of permit applicants as well as the public's interest in protecting the aquatic ecosystems and other environmental resources. I appreciate the opportunity to provide these official U.S. Army Corps of Engineers agency comments to your March 17, 2008 Federal Register notice. If you have any questions please call Jennifer Moyer, Acting Chief of our Regulatory Program at (202) 761-4599.

Sincerely,

Steven L. Stockton, P.E.
Director of Civil Works

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-OR-1041.22

SEP 30 2005

Mr. Gene K. Fong, Division Administrator
U.S. Department of Transportation
Federal Highway Administration, California Division
650 Capitol Mall, Suite 4-100
Sacramento, California 95814

Attention: Mary Gray and Stephanie Stoermer

Subject: Preliminary Conclusions for the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP), A7C-FEC-M Initial Alignment, Orange and San Diego Counties, California

Dear Mr. Fong:

In our letter dated August 17, 2005 (FWS-OR-1041.20), regarding our formal consultation and conference in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), on the referenced project, we indicated we would provide you with preliminary conclusions for listed species and identify any outstanding issues by September 30, 2005. You had specifically requested that we provide a "preliminary" jeopardy/non-jeopardy determination on the endangered Pacific pocket mouse (*Perognathus longimembris pacificus*, "PPM") to further the National Environmental Policy Act process for the project.

Based on our draft analyses, we have determined in our preliminary conclusions that the construction and maintenance of the SOCTIIP A7C-FEC-M Initial Alignment (the "proposed action") will not jeopardize the continued existence of the Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), tidewater goby (*Eucyclogobius newberryi*), southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), or thread-leaved brodiaea (*Brodiaea filifolia*). Our preliminary conclusions also support a no adverse modification determination for designated critical habitat for the San Diego fairy shrimp and tidewater goby and proposed critical habitat for the thread-leaved brodiaea.

Our draft analyses for the arroyo toad (*Bufo californicus*, "toad"), coastal California gnatcatcher (*Polioptila californica californica*, "gnatcatcher") and its designated and proposed critical habitats, and PPM identify significant project-related impacts to individuals, populations and habitat for these species. Regarding the toad and gnatcatcher, conservation measures identified by the Transportation Corridor Agencies ("TCA") in the April 2004 draft Environmental Impact

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Statement/Subsequent Environmental Impact Report ("DEIS") to avoid and minimize impacts to these species will provide the basis for no jeopardy/no adverse modification determinations. However, because of impacts that are not fully offset, we believe that our overall analyses and final no jeopardy/no adverse modification determinations would be further supported by implementation of additional conservation measures. We will discuss our recommendations for additional conservation and other measures in an upcoming consultation meeting.

Regarding PPM, the San Mateo North population is necessary for the survival and recovery of the PPM because it is one of only four populations known for the species. The PPM recovery plan calls for stabilizing and protecting all existing populations and establishing 10 populations within its historic range. Based on our analysis, we have determined that the proposed action as described in the Biological Assessment likely would increase mortality factors at the San Mateo North site during construction and in association with the direct and indirect effects of toll road operation. The proposed action would also reduce the area of suitable habitat available to PPM at San Mateo North. This loss of suitable habitat likely would reduce the ability of the site to support large population fluctuations that are characteristic of this species. Absent the adoption of the measures described below, this loss would effectively "cap" the size of the San Mateo North population during population expansions. Population expansions during favorable conditions likely are essential for sustaining this isolated population through periods of environmental adversity when individuals may forego reproduction and population persistence relies on adult survivorship. Coupled with increased mortality factors likely associated with animals entering the roadway, roadway lighting, predator concentrating effects, and increased fire frequency, the proposed action further increases the vulnerability of the San Mateo North population.

This increased vulnerability can be addressed by the adoption of an adaptive management program for the San Mateo North population and the incorporation of the following minimization and conservation measures into the project:

A. With the approval of and coordination with Marine Corps Base Camp Pendleton (MCBCP), establish an endowment and hire an entity to adaptively manage the PPM population at San Mateo North. The amount of the endowment must be supported through a property analysis record ("PAR") or another similar cost calculation method that is indexed for inflation and incorporates funding for; 1) invasive species control, 2) habitat management and enhancement, 3) predator control, 4) control of public access, 5) PPM population monitoring and augmentation, and 6) contingencies.
B. Construction of a barrier to small mammal movement along the entire western edge of the roadway alignment in the San Mateo North area to prevent PPM from entering the roadway and getting killed.
C. Minimization and shielding of all roadway lighting, including light cast by vehicle head and taillights, from adjoining habitat areas. This measure may require the construction of a block wall or other solid shielding to prevent light from entering adjoining habitat. All

walls constructed adjoining PPM habitat shall be constructed to minimize perching opportunities of owls and other avian predators.

D. Minimizing the potential for fire ignitions associated with toll road construction and usage to travel into adjoining habitat. This measure should minimize the width of any fire break by means of engineering (e.g., block or crib walls adjoining habitat).

E. Development of a fire response plan in coordination with the local fire agencies to minimize the detrimental effects of fire suppression activities in the habitat should a fire occur.

We understand that TCA is willing to implement these additional conservation measures and to work with MCBCP and our agency to assure the long-term conservation of the San Mateo North population of the PPM. Based on this commitment, we have made a preliminary determination that the proposed action will not jeopardize the continued existence of the PPM.

We anticipate further discussions with your agency, TCA and the California Department of Transportation (Caltrans) regarding the issues in this letter prior to providing our final conclusions and a draft biological opinion for your review and comment. If you have any questions regarding this letter, please contact Jill Terp of my staff at (760) 431-9440, extension 221.

Sincerely,

Karen A. Goebel

Karen A. Goebel
Assistant Field Supervisor

cc:
Macie Cleary-Milan, TCA
Sylvia Vega, Caltrans

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
P.O BOX 532711
LOS ANGELES, CALIFORNIA 90053-2325

November 1, 2005

REPLY TO
ATTENTION OF:
Office of the Chief
Regulatory Branch

Mr. Gene Fong
Division Administrator
U.S. Department of Transportation
Federal Highway Administration
650 Capitol Mall, Suite 4-100
Sacramento, California 95814

Dear Mr. Fong:

We have reviewed your letter dated October 13, 2005 and received October 17, 2005 requesting our agreement on the South Orange County Transportation Infrastructure Improvement Project ("SOCTIIP"; "Project") alternative most likely to represent the least environmentally damaging practicable alternative ("LEDPA").

The Project's jointly prepared Environmental Impact Statement ("EIS") and Subsequent Environmental Impact Report ("SEIR") evaluated eight build alternatives and two no action alternatives. In our earlier review, the Corps found the Interstate 5 Widening and Arterial Improvement Only alternatives to be impracticable because neither is available to the applicant, (i.e., Transportation Corridor Agencies; "TCA"), for acquisition and implementation. Of the six remaining build alternatives, the A7C-FEC-M alternative appears to be the 'preliminary' LEDPA based on information contained in the draft EIS/SEIR and its appendices/technical studies; Table 1.1 of the draft EIS/SEIR entitled *Evaluation Matrix Summary of Adverse Impacts Before Mitigation*; public comments received on the draft EIS/SEIR (dated 2004) and the Corps' preliminary Public Notice (dated 2004); the Corps' final jurisdictional determination for the SOCTIIP (letter dated September 27, 2005); and the U.S. Fish and Wildlife Service's preliminary conclusions for the A7C-FEC-M alternative (letter dated September 30, 2005).

In accordance with the 1994 California National Environmental Policy Act ("NEPA")/Section 404 of the Clean Water Act ("404") Integrated Process Memorandum of Understanding ("MOU"), we offer our agreement that the A7C-FEC-M is the 'preliminary' LEDPA. Please be advised this determination does not constitute our final Department of Army permit decision. As part of our final regulatory decision-making process a final Corps Public Notice must be published to solicit agency and public comments on the TCA's proposed action as well as to consider all relevant public interest review factors outlined in 33 C.F.R. § 320.4(a)(2) to evaluate whether the A7C-FEC-M is contrary to the public interest.

I am forwarding a copy of this letter to Mr. Steven John, Environmental Protection Agency, 600 Wilshire Blvd., Suite 600, Los Angeles California 900017; Ms. Jill Terp, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92011; California Department of Transportation, Ms. Smita Deshpande, 3337 Michelson Drive, Suite 380, Irvine, California 92612; and Ms. Macie Cleary-Milan, Transportation Corridor Agency, 125 Pacifica, Irvine, California 92618.

If you have any questions, please contact Ms. Susan A. Meyer of my staff at (213) 452-3412. Please refer to this letter and 200000392-SAM in your reply.

Sincerely,

for David J. Castanon
Chief, Regulatory Branch

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

November 8, 2005

Gene K. Fong, Division Administrator
Federal Highway Administration, California Division
650 Capitol Mall, Suite 4-100
Sacramento, CA 95814

Subject: Concurrence on the Preliminary Least Environmentally Damaging Practicable Alternative for the South Orange County Infrastructure Improvement Project, Orange County, California

Dear Mr. Fong:

The Environmental Protection Agency (EPA) has reviewed Federal Highway Administration's (FHWA) October 17, 2005 letter requesting concurrence, under the National Environmental Policy Act/Clean Water Act (CWA) Section 404 Integration Process Memorandum of Understanding (NEPA/404 MOU), on the preliminary least environmentally damaging practicable alternative (LEDPA) for the South Orange County Infrastructure Improvement Project (SOCTIIP), Orange County, California. We appreciate the interagency coordination efforts by FHWA, California Department of Transportation, and Transportation Corridor Agency to identify the LEDPA.

EPA concurs that the A7C-FEC-M Initial Alignment is the preliminary LEDPA. Our concurrence is based on: 1) the information contained in the Draft Environmental Impact Statement (EIS) and its technical studies, 2) the preliminary determination by Fish and Wildlife Service, dated September 30, 2005, that the A7C-FEC-M Initial Alignment will not jeopardize the continued existence of listed species, including the Pacific pocket mouse, and 3) the concurrence by the Corps of Engineers, dated November 1, 2005, that alternative A7C-FEC-M is the preliminary LEDPA.

EPA looks forward to working with the SOCTIIP Collaborative on the development of the conceptual mitigation plan for impacts to aquatic resources, to be completed in advance of the Final EIS. This is the next step in the NEPA/404 integration process. EPA will also provide comments on the Final EIS pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act, as well as the Corps of Engineers Final Public Notice for the Clean Water Act Section 404 permit when they are

published for public review. If you have questions, please contact me or Matthew Lakin, the lead reviewer for this project, at (415) 972-3851 or Lakin.Matthew@epa.gov.

Sincerely,

Per Duane James, Manager
Environmental Review Office

Cc: Susan Meyer, Army Corps of Engineers, Los Angeles District Office
Jill Terp, Fish and Wildlife Service
Smita Deshpande, California Department of Transportation
Macie Cleary-Milan, Transportation Corridor Agency
Larry Rannals, Marine Corps Base Camp Pendleton

file

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
CALIFORNIA DIVISION
650 Capitol Mall, Suite 4-100
Sacramento, CA. 95814

REC'D OCT 2 4 2005

October 17, 2005

IN REPLY REFER TO
HDA-CA
File # 11-ORA-00 SOCTIP
Document # P53352

Steven John
U.S. Environmental Protection Agency
Southern California Field Office
600 Wilshire Blvd., Suite 1460
Los Angeles, CA 90017

SUBJECT: Request for Concurrence on the Preliminary Least Environmentally Damaging Practicable Alternative (LEDPA) for the South Orange County Infrastructure Improvement Project (SOCTIIP).

Dear Mr. John:

Over the past five years, the Federal Highway Administration (FHWA) has, as part of the collaborative process under the National Environmental Policy Act and Clean Water Act Section 404 Memorandum of Understanding (NEPA/404 MOU), coordinated with the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, U.S. Army Corps Of Engineers, Caltrans, Transportation Corridor Agencies, the Marine Corps, and Camp Pendleton. Based on project analysis and past coordination efforts, the FHWA is formally requesting a preliminary LEDPA determination for the SOCTIIP project. FHWA believes that the A7C-FEC-M Initial (see enclosed map) is the LEDPA. We also enclosed the letter from U.S. Fish and Wildlife Service dated September 30, 2005 regarding their preliminary conclusions on the endangered species for the project to help in this decision process. We would appreciate receipt of your concurrence on the preliminary LEDPA determination on or before 45 days, as stated in the NEPA/404 MOU.

Please contact Tay Dam, Senior Project Development Engineer (213) 321-6360, or Macie Cleary-Milan at (949) 754-3483 if you have any questions.

Sincerely,

/s/ Lisa Cathcart-Randall

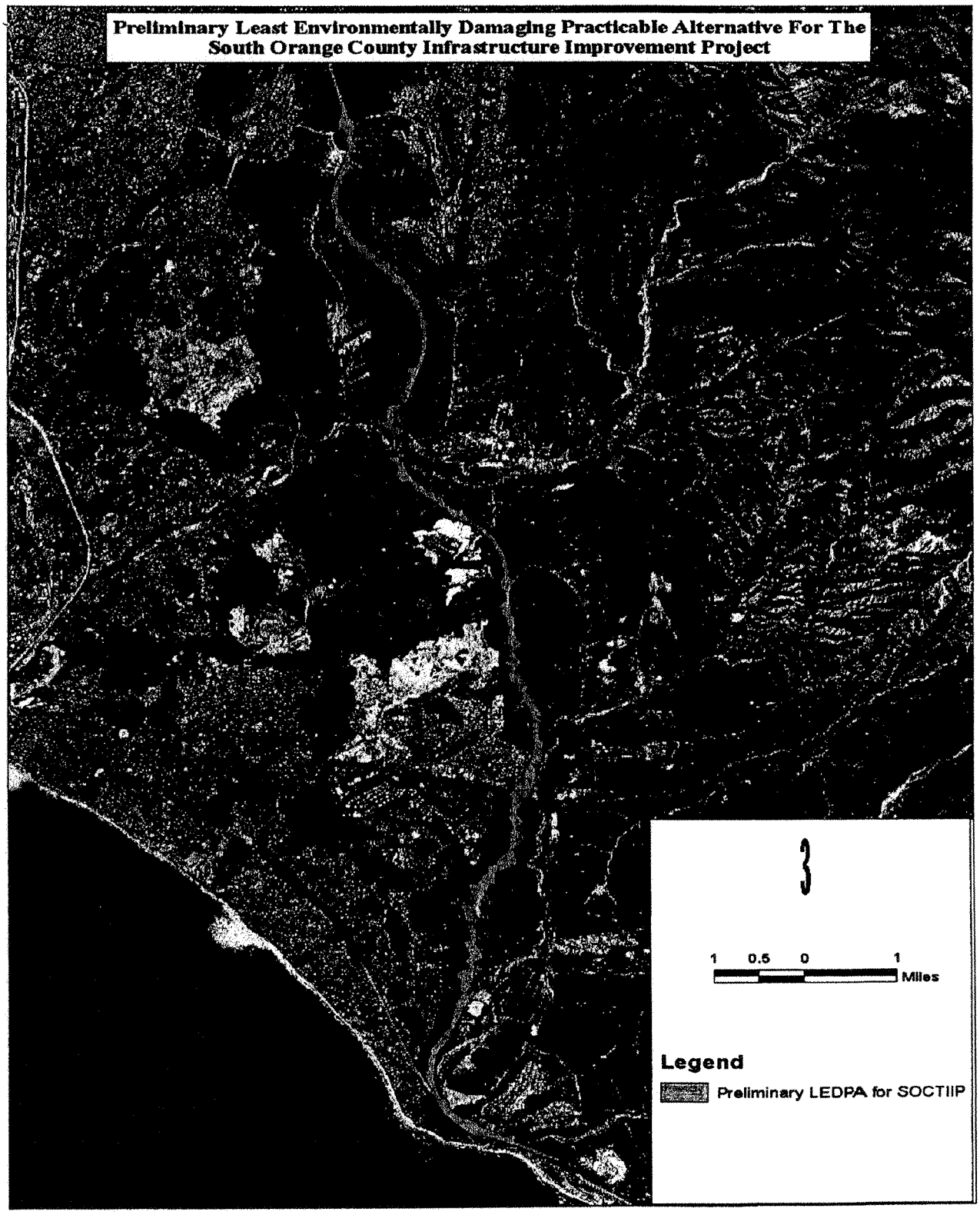
For
Gene K. Fong
Division Administrator

Enclosures

cc: (hard copy w/ enclosures)
Macie Cleary-Milan, TCA
PO Box 53770
Irvine, CA 92619-3770

cc: (email w/ enclosures)
Jay Norvell, Caltrans
Sylvia Vega, Caltrans
Susanne Glasgow, Caltrans
Mary Gray, FHWA
Tay Dam, FHWA
Lisa Cathcart-Randall, FHWA
Larry Vinzant, FHWA

LCathcart-Randall/lmg


Preliminary Least Environmentally Damaging Practicable Alternative For The South Orange County Infrastructure Improvement Project
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Miles
Legend
Preliminary LEDPA for SOCTIIP

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

OCT 1 2008

South Pacific Division
- Regional Integration Team

Joel La Bissonniere
Assistant General Counsel
for Ocean Services
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

Dear Mr. La Bissonniere:

I am responding to your letter of September 16, 2008, requesting additional comments regarding the Foothill/Eastern Transportation Corridor Agency (TCA) appeal of the California Coastal Commission's objection to the construction of TCA's proposed extension of California State Route 241 in Orange County, California. You requested any additional information or analysis that has been developed since my letter of May 28, 2008, that would, on substantive grounds and with respect to the criteria described in your letter, affect your examination of the alternative that the State of California asserts is consistent with the coastal zone management program.

The basis of our comments is our statutory authority under Section 404 of the Clean Water Act, and the National Environmental Policy Act (NEPA) requirements that flow from our action. I want to reiterate from our previous letter that substantial work remains with respect to both the NEPA and the Section 404 permit application processes. Since our last letter, the evaluation of information received subsequent to the release of the Federal Highway Administration's (FHWA) Draft Environmental Impact Statement (DEIS) continues. Further, since my letter of May 28, 2008, we have received additional information from both TCA and other organizations regarding the project. However, we have not yet received FHWA's reevaluation of their DEIS. A reevaluation is required in order to fully evaluate and take into consideration information received by FHWA since the publication of its DEIS four years ago. Therefore, at this time it is not possible to draw any conclusions from our review over the scope of the alternatives that will be considered (i.e., "available" to TCA), or which alternative may be selected as the final Least Environmentally Damaging Practicable Alternative.

In our regulatory role in reviewing applications for permits to discharge dredged and fill material into waters of the United States, my agency is neither a project proponent nor opponent. We are committed to fair and balanced permit decisions which acknowledge the legitimate needs of permit applicants, as well as the public's interest in protecting the aquatic ecosystems and other environmental resources. The Los Angeles District Commander and his team have been in regular dialogue with the project applicant (TCA), local stakeholders and environmental groups

and federal partners that make up the collaborative. These discussions have been mutually beneficial and have moved the process forward.

I appreciate the opportunity to provide these comments. If you have any questions please call Linda Morrison, Acting Chief of our Regulatory Program at (202) 761-8560.

Sincerely,

Steven L. Stockton, P.E.
Director of Civil Works

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

October 7, 2008

Mr. Thomas Street
Attorney-Advisor
Office of General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
1305 East-West Highway, Suite 6111
Silver Spring, Maryland 20910

Subject: Additional Comments on the Federal Consistency Appeal by Foothill/Eastern Transportation Corridor Agencies for the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP), Southern Orange County and Northern San Diego County, California

Dear Mr. Street:

This letter responds to the September 16, 2008 letter from your office requesting additional comments on the Federal Consistency Appeal, under the Coastal Zone Management Act (CZMA), by Foothill/Eastern Transportation Corridor Agencies (TCA) regarding the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP). In particular, you requested additional comments regarding the new information we referenced in our May 28, 2008 comment letter.

The U.S. Environmental Protection Agency's (EPA) involvement in the project is pursuant to our authorities under the National Environmental Policy Act (NEPA), Section 309 of the Clean Air Act, and Section 404 of the Clean Water Act (CWA). The development of the environmental impact statement (EIS) for this project has followed the NEPA and CWA Section 404 Integration Process for Federal Aid Surface Transportation Projects in California Memorandum of Understanding (NEPA/404 MOU).

To prevent further misunderstanding concerning EPA's position on SOCTIIP, please note that we have not made any final determinations on the SOCTIIP. Our review of the proposed project continues, pending receipt of additional information from the Federal Highway Administration (FHWA). We continue to evaluate the project alternatives in light of changing circumstances and new information that is brought to our attention.

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Through the NEPA/404 process and as a member of the SOCTIIP Collaborative, EPA participated in defining the project purpose and need, determining the alternatives for analysis, and reviewing technical reports required under NEPA and the CWA. In November 2005, we gave our preliminary concurrence on the A7C-FEC-M alternative as the Least Environmentally Damaging Practicable Alternative (LEDPA). That preliminary concurrence was based on information available at that time and does not constitute an endorsement or final determination on a preferred project alternative.

Since the Draft EIS was circulated more than four years ago, new information and programmatic authorities have become available that may affect the practicability under both CWA and NEPA of project alternatives that were previously determined to be impracticable. Based on our review of the new information and authorities, EPA believes that additional analysis of alternatives that improve existing infrastructure is warranted. In particular, the following issues should be carefully examined by the TCA, FHWA, and reviewing agencies:

- New federal and state tolling authorities and initiatives may influence the availability of alternatives for SOCTIIP that improve existing infrastructure.
- Context sensitive design and Value Engineering Analysis approaches may enable reductions in the number of takings and other impacts associated with alternatives in urban areas.
- The feasibility and traffic congestion benefits of building High Occupancy Toll (HOT) lanes or converting High Occupancy Vehicle (HOV) to HOT lanes should be evaluated on I-5 in Southern Orange County.
- Given the overlap between the SOCTIIP alternatives and improvements identified in the South Orange County Major Investment Study (SOCMIS), the alternatives analysis should be revised to consider the relevant projects and their impacts.

We expand on these issues in our detailed comments (Attached).

In close coordination with the U.S. Army Corps of Engineers (Corps) and the U.S. Fish and Wildlife Service (FWS), we raised new information and circumstances to FHWA to consider in its reevaluation of the project's Draft EIS, as required under 23 CFR 771.129. In April 2008, FHWA's Office of Project Development and Environmental Review in Washington, DC offered to help answer our questions and provide a second opinion on the findings of Smart Mobility Inc., which report significantly fewer residential impacts are associated with an alternative that improves existing infrastructure. To date, we have not received a response to our questions from FHWA's Washington office, nor have we received FHWA's NEPA reevaluation. EPA believes there remain a number of unresolved questions regarding the feasibility of several alternatives that improve existing infrastructure.

Thank you for considering the above comments during the appeal process. If you have any questions regarding these comments, please call David Smith at 415-972-3464 or Kathy Goforth at 415-972-3521, or refer your staff to Eric Raffini, at 415-972-3544 or Susan Sturges at 415-947-4188.

Sincerely,

Alexis Strauss, Director
Water Division

Enrique Manzanilla, Director
Communities and Ecosystems Division

Attachment

CC: Gene Fong, Federal Highway Administration
Nancy Bobb, Federal Highway Administration
Christine Johnson, Federal Highway Administration
Will Kempton, California Department of Transportation
Sylvia Vega, California Department of Transportation
Thomas Margro, Transportation Corridor Agencies
Colonel Thomas Magness, U.S. Army Corps of Engineers
David Castanon, U.S. Army Corps of Engineers
Jim Bartel, U.S. Fish and Wildlife Service
Colonel James B. Seaton III, Marine Corps Base Camp Pendleton
Larry Rannals, Marine Corps Base Camp Pendleton
Edmund Pert, California Department of Fish and Game, South Coast Region
John Robertus, California Regional Water Quality Control Board, San Diego Region
Mark Delaplaine, California Coastal Commission

Detailed EPA Comments
Federal Consistency Appeal by Foothill/Eastern Transportation Corridor Agencies for the South Orange County Transportation Infrastructure Improvement Project (SOCTIIP)

I. Smart Mobility Inc. Reports

Since our preliminary concurrence on the proposed least environmentally damaging practicable alternative (LEDPA) in 2005, outside organizations have submitted several technical reports and studies regarding alternatives to the proposed project. Specifically, on behalf of Endangered Habitats League et al., the transportation consulting firm Smart Mobility Inc. (SMI) issued several reports on the feasibility of the alternatives that improve existing infrastructure, including refinements to the I-5 Widening Alternative and the Arterial Improvements Plus High Occupancy Vehicle (HOV) and Spot Mixed-Flow Lanes on I-5 Alternative (referred to as the AIP Alternative). These include technical reports dated July 2005, January 2008 and May 2008. In the reports, SMI claims that by using context-sensitive design techniques in tightly constrained urban areas, the number of residential and commercial takings associated with alternatives that improve existing infrastructure could be significantly reduced.

The I-5 Widening Alternative was one of the eight alternatives studied and carried forward in the Draft Environmental Impact Statement (Draft EIS) because, according to traffic modeling results, it provided the greatest traffic relief and resulted in minimal environmental impacts. However, the large number of takings and displacements estimated by the Transportation Corridor Agencies (TCA) to be associated with that alternative resulted in costs that were several times those of the other alternatives. EPA did not consider this alternative as the preliminary LEDPA under Section 404 based in part on these large estimated impacts on residential communities.

Because the SMI reports brought forward several pieces of new, pertinent information, and TCA and SMI estimates of takings associated with the I-5 Widening alternative were far apart, EPA asked California Division Federal Highway Administration (FHWA) to take the technical lead in evaluating this issue. In close coordination with the U.S. Army Corps of Engineers (Corps) and the U.S. Fish and Wildlife Service (FWS), we submitted a list of outstanding questions and issues to FHWA to consider in its reevaluation of the project's Draft EIS, as required under 23 CFR 771.129.

In response to our requests, we received additional information from the California Department of Transportation (Caltrans), TCA, and California Division FHWA that countered several SMI findings. Transportation experts from SMI later provided rebuttals to these transportation agency responses. Given the conflicting analysis from transportation experts, EPA concluded it may be appropriate for an independent third party to review the SMI recommendations. In April 2008, FHWA's Office of Project Development and Environmental Review in Washington, DC offered to help answer our questions and provide a second opinion on the refined-AIP alternative identified in the SMI Report. To date, we have not received a response to our questions from FHWA's Washington office, nor have we received FHWA's

NEPA reevaluation. EPA believes there remain a number of unresolved questions regarding the feasibility of several alternatives that improve existing infrastructure.

II. Tolling Initiatives and the Evaluation of Alternatives

As stated in the Draft EIS, the purpose of the project is to *provide improvements to the transportation infrastructure system that would help alleviate future traffic congestion and accommodate the need for mobility, access, goods movement and future traffic demand on I-5.* The Draft EIS further summarized the various needs of the project. Together, the project's purpose and need provides the primary basis for selecting reasonable and practicable alternatives for consideration, analyzing those alternatives in depth, and selecting the preferred alternative.

Both NEPA and Section 404 require analysis of a range of alternatives that satisfy both the purpose and need. However, the analysis requirements of NEPA and Section 404 are slightly different. A Section 404 permit can only be issued for the LEDPA, as defined by EPA's 404(b)(1) Guidelines (Guidelines) (40 CFR 230), and, therefore, requires a more detailed analysis of the aquatic impacts of each alternative than typically is required under NEPA.

The Guidelines define a "practicable alternative" as one which is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. The presence or absence of funding for a particular alternative does not determine its practicability.

In August 2004, the SOCTIIP Collaborative discussed the eight alternatives carried forward in the Draft EIS in terms of their "practicability" under Section 404 and NEPA. Based on the information available at that time, EPA and the Corps determined that the I-5 Widening and the Arterial Improvements Only (AIO) alternatives were impracticable under Section 404 because the applicant did not have the legislative authority to obtain (buy), utilize (e.g. rent), expand or manage non-toll public roads.

Over the last four years, several new provisions have been enacted into federal law that may affect the practicability of the alternatives involving I-5. In particular, new and innovative federal programs promote tolling by both public and private entities on both new and existing interstate highways for the purposes of reducing congestion. The Safe, Accounting, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) Section 1604(b), enacted in 2005, offers States and public authorities, or public or private entities designated by States, broader authority to use tolling on a pilot or demonstration basis. SAFETEA-LU authorized three new federal tolling programs including the Value Pricing Pilot Program, the Interstate System Construction Toll Pilot Program and the Express Lanes Demonstration Program (ELD). The ELD program permits tolling on selected facilities to manage high levels of congestion, reduce emissions in a non-attainment (e.g. South Coast) or maintenance area pursuant to the Clean Air Act Amendments, or finance added interstate lanes for the purpose of reducing congestion.

The Secretary of Transportation is authorized to carry out 15 ELD projects through 2009 to allow States, public authorities, or public or private entities designated by States to collect a toll from motor vehicles at an eligible toll facility for any highway, bridge, or tunnel, including on the interstate. According to FHWA staff who manage the ELD program, opportunities currently exist to conduct an ELD project in California. Therefore, SAFETEA-LU now appears to provide TCA the ability, either acting on its own or in partnership with the Orange County Transportation Authority (OCTA) and/or Caltrans, to implement one of the tolling alternatives involving I-5 that were previously deemed impracticable.

Over the past several years, there has been increased recognition of the benefit of managed highway toll lanes, also know as High Occupancy Toll or "HOT" lanes. With their announcement of the ELD program in February 2008, and by giving states additional flexibility to utilize electronic tolling, the U.S. Department of Transportation has made the use of congestion pricing and HOT lanes a national priority.

Managed HOT or Express Toll lanes are already being used to reduce traffic congestion at several locations throughout Southern California, including on State Route 91 in Los Angeles County and along Interstate 15 in San Diego County. On State Route 91, HOT lanes can maintain free flowing travel speeds (60 to 65 mph) during peak travel hours while carrying up to twice the volume of congested general-purpose lanes.[1] A large-scale congestion-reduction pricing demonstration project has been approved for the San Bernardino Freeway in Los Angeles County. Additionally, both Orange County and San Diego County are considering utilizing HOT lanes on I-5 as part of their long-term transportation planning efforts. Finally, a recent report by the nonprofit research organization Rand Inc., identified congestion pricing as one of the most effective ways to reduce traffic congestion in the Los Angeles area.[2]

Tolling of existing and new transportation infrastructure is also gaining support at the state level. The California Legislature has approved the creation of a new state-level agency - the California Transportation Financing Authority (CTFA) - to issue toll road bonds and authorize local authorities to convert existing HOV lanes into toll projects without further legislative approval. If the CTFA is established, a wide variety of local and regional agencies, as well as the State transportation department, would be eligible to sponsor projects that would expand the use of tolls in California, create a method to finance projects, and ease traffic congestion.

III. Southern Orange County Major Investment Study (SOCMIS)

Another piece of information that has come forward since our preliminary concurrence on the LEDPA is the Southern Orange County Major Investment Study (SOCMIS). The SOCMIS is an effort by the OCTA to examine the transportation needs of south Orange County over the next 25 years. The SOCMIS identifies alternatives for addressing transportation

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[1] Obenberger, Jon, "Managed Lanes," Public Roads, Vol. 68, No. 3, November– December 2004, pp. 48–55. Available online at http://www.tfhrc.gov/pubrds/04nov/08.htm

[2] Moving Los Angeles : Short-Term Policy Options For Improving Transportation/ Paul Sorensen ... [et al.]. 2008. Rand Corporation. Available online at http://www.rand.org/pubs/monographs/2008/RAND_MG748.pdf

demands and other problems in southern Orange County. Earlier this year, OCTA published a draft locally preferred strategy (LPS) which highlights a number of transportation improvements for the region. The draft LPS identifies numerous projects that overlap with alternatives studied under SOCTIIP. For example, the draft LPS proposes to increase capacity of I-5 by: 1) adding one General Purpose lane in each direction on I-5 in the following locations: Avenida Pico to Ortega Highway, Avery Parkway to Alicia Parkway, and in the vicinity of SR-133 to the SR-55 ramps; and 2) adding one HOV carpool lane in each direction on I-5 from the San Diego County Line to Pacific Coast Highway. The draft LPS proposes intersection improvements at many of the same intersections identified in the SOCTIIP I-5 Widening and AIO Alternatives. In effect, if these improvements identified in the draft LPS were implemented, the combined result would look very similar to SOCTIIP's I-5 and AIO alternatives. Therefore we believe it is important that the interagency process further examine the feasibility of these alternatives in light of SOCMIS.

IV. Value Engineering Analysis

Finally, the Final EIS for the I-5 Corridor Improvement Project in Southern Los Angeles and Northern Orange County (August 2007) provides a Value Engineering Analysis that should be considered with regard to whether or not a similar analysis of some of the SOCTIIP alternatives might alter previous estimations of residential takings. In the I-5 Corridor Improvement Project, the project sponsor Caltrans proposes to improve I-5 between State Route 91 and Interstate 605, a length of approximately 9 miles, by widening to provide a minimum of 10 lanes across the entire route. During the development of the project, Caltrans completed Value Engineering Analyses for alternatives of 10 and 12 lanes. According to Caltrans, a Value Engineering Analysis is a function oriented, systematic team approach, used to analyze and refine a product, facility design, system, or service. The Value Engineering Analysis completed for the 10-lane alternative reduced the estimated residential takings needed by 50% - from 208 to 104. For SOCTIIP, Value Engineering Analysis may enable reductions in the number of takings and other impacts associated with alternatives that improve existing infrastructure.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-OR/MCBCP-08B0352-08TA0525

MAY 28 2008

Thomas Street, Attorney-Advisor
Office of the General Counsel for Ocean Services
National Oceanic and Atmospheric Administration
U.S. Department of Commerce
1305 East-West Highway, SSMC4, Suite 6111
Silver Spring, Maryland 20910

JUN 02 2008

Subject: State Route 241 Extension, Foothill Transportation Corridor – South, in Orange and San Diego Counties, California

Dear Mr. Street:

This correspondence is in response to your letter dated May 1, 2008, requesting our comments regarding the Transportation Corridor Agencies' (TCA) appeal of the California Coastal Commission's (CCC) ruling on February 6, 2008, that the proposed extension of State Route 241, the Foothill Transportation Corridor – South (toll road), in Orange and San Diego counties, California, is inconsistent with the Coastal Zone Management Act.

The primary mission of the U.S. Fish and Wildlife Service (Service) is to "work with others to conserve, protect, and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people." Specifically, the Service administers the Endangered Species Act of 1973 (Act), as amended, and provides support to other Federal agencies in accordance with the provisions of the Fish and Wildlife Coordination Act.

We have also worked as a member of the interagency "Collaborative" group comprised of the Federal Highway Administration (FHWA), Environmental Protection Agency (EPA), Caltrans, the Department of the Navy – Marine Corps Base Camp Pendleton, Corps of Engineers (Corps), TCA, and the Service. Members of the collaborative have met since the mid-1990's to evaluate various project alternatives with respect to their ability to meet the purpose and need, environmental impacts, and feasibility. We have appreciated the opportunity to participate in this process, although at times we have not been an active participant due to workload constraints.

Our intent in providing comments is to clarify our role in evaluating the proposed project pursuant to the Act and as a member of the Collaborative. We are neither a supporter nor an opponent of the proposed project. We offer the following comments based on our review of the CCC's Principal Brief dated April 11, 2008, and TCA's Principal Brief dated March 18, 2008, regarding the CCC's ruling.

TAKE PRIDE IN AMERICA

CCC's Principal Brief, dated April 11, 2008, stated that the Service "made only a preliminary determination regarding the toll road; it has yet to issue a final opinion" (p. 5). However, the Service completed formal consultation on the proposed project on April 30, 2008, concluding that the project was not likely to jeopardize the continued existence of federally listed species, including thread-leaved brodiaea (*Brodiaea filifolia*), tidewater goby (*Eucyclogobius newberryi*), arroyo toad (*Bufo californicus*), coastal California gnatcatcher (*Polioptila californica californica*, "gnatcatcher"), least Bell's vireo (*Vireo bellii pusillus*), and Pacific pocket mouse (*Perognathus longimembris pacificus*).

TCA's Principal Brief, dated March 18, 2008, stated that "the project as proposed by TCA reflects the unanimous recommendation of the federal transportation and environmental agencies with jurisdiction over the Project (Federal Highway Administration ("FHWA"), U.S. Environmental Protection Agency ("EPA"), U.S. Army Corps of Engineers ("ACOE"), and the U.S. Fish and Wildlife Service ("USFWS")). These federal agencies evaluated a wide range of project alternatives under the National Environmental Policy Act ("NEPA"), the Clean Water Act ("CWA") and the Endangered Species Act ("ESA"), and concluded that the project proposed by TCA is the Least Environmentally Damaging Practicable Alternative ("LEDPA")" (p. 2). On page 6, TCA's brief stated that "after comparing all other alternatives addressed by the Draft EIS/SEIR, the Collaborative unanimously determined that the Project described in the Consistency Certification is the LEDPA [Least Environmentally Damaging Preferred Alternative]." However, the Service did not determine that the project is the LEDPA as defined under NEPA. The determination of the LEDPA is not a Service responsibility.

Thank you for the opportunity to comment on the proposed project. If you have questions regarding this letter, please contact me at (760) 431-9440, extension 211.

Sincerely,

Jim A. Bartel
Field Supervisor

cc:
Thomas H. Magness, Corps
Gene Fong, FHWA
Peter Douglas, CCC
Ed Pert, CDFG
Valarie McFall, TCA
Wayne Nastri, EPA
Cindy Quon, Caltrans
Lupe Armas, USMC

CINCO CITIES MEETING

April 21, 2005

12:00 – 1:30 p.m. – TCA Committee Conference Room

Minutes

Jim Thor
Jim Dahl
Lance MacLean
Lara Anderson
Doug Chotkevys
Bill Huber
Holly Veale
Bill Woollett
Macie Cleary-Milan
James Brown
Lisa Telles
Maria Levario
Paul Bopp
Dale Todd
Jen Johnson
Jeff Bott
Clare Climaco
Kate Keena
Brian Lochrie
Mike Erickson
Mike Shulz
Steven John

The meeting commenced at 12:08 pm.

Macie welcomed EPA's outgoing Director Mike Schulz, and their incoming Director Steven John. Introductions were made and congratulations and best wishes were given to both.

1. EPA presentation .....Mike Schulz & Steven John

EPA gave a presentation about their experience in working with the SOCTIIP Agencies' Collaborative. EPA believes the SOCTIIP Collaborative process has benefited the project and the environmental process. EPA indicated that the TCA did an outstanding job in reducing environmental impacts, especially for wetlands.

EPA discussed themes for Air Quality improvement in southern California. Some of the themes discussed could pertain to the FTC-S project, however, most were ideas for local agencies to consider. EPA provided sources of information that discuss the themes in more detail.

2. Collaborative Update..... Macie

A meeting with the US Fish and Wildlife Service has been set for Monday, April 25th, to discuss the Section 7 Consultation, which addresses the endangered species impacts to the FTC-S Project. Federal Highways is the lead agency and will track the progress of the discussions.

3. May Board Report on TCA/USFWS Agreement.....Macie

A Staff Report will be going before the May Board for approval for money to provide a staff person to USFWS to facilitate USFWS' review of the Section 7 Consultation.

4. Firefighter Jim's Tip of the Day.....Jim

Did you remember to put new batteries in your smoke detector? Lowes has a lithium battery that lasts for 10 years. Cost is $6.99.

5. Other Items

San Clemente is concerned about gridlock in traffic. It is starting at 3:00 pm not only south-bound, but north-bound. Summers will be difficult. Accident reports are constant.

The meeting adjourned at 1:14 pm.

The next Cinco Cities meeting is scheduled for May 19, 2005.