



DEPARTMENT OF FISH AND GAME

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May 28, 2008

Mr. Ron Kosinski, Deputy District Director
California Department of Transportation, District 7
Division of Environmental Planning
100 South Main Street-Mail Stop 26A
Los Angeles, CA 90012

Dear Mr. Kosinski:

**Notice of Completion of an Initial Study/Environmental Assessment for I-405 to the
Westbound US-101 Connector Project, City of Los Angeles,
Los Angeles County, SCH# 2008041100**

Dear Mr. Kosinski:

The Department of Fish and Game (Department), has reviewed the Notice of Completion for the Initial Study/Environmental Assessment (IS/EA) for a new elevated two-lane connector from the southbound (SB) Interstate-405 freeway, at the Burbank Boulevard over-crossing, to the northbound (NB) Ventura Freeway (Route 101), in the San Fernando Valley, City of Los Angeles. The Proposed connector would be a structure crossing over the spillway of the Sepulveda Dam. There are five alternatives under consideration. The purpose of the project is to upgrade the SB I-405 connector to the NB US-101 freeway to current design standards to improve safety and correct operational problems incurred as a result of the traffic queues formed by slow moving vehicles and a curve with an operational speed of 20 miles-per-hour.

Caltrans identified three "Build" Alternatives (1, 2 and 3) in this IS/EA document, but did not identify a preferred alternative to base environmental impacts upon. Each of the three alternatives share the following common features:

- Replacing the existing 20 mph single-lane connector from the SB I-405 to the NB U.S.-101 with a new 50 mph two-lane connector bridge that encroaches upon and spans over the spillway of the Sepulveda Dam,
- Eliminating the existing erratic and conflicting traffic weaving patterns between the Burbank Blvd on-ramp and the SB I-405 mainline as well as the traffic weaving patterns with SB I-405 mainline traffic attempting to access the US-101 connectors,
- Realignment and reconstruction of the Burbank Boulevard on-ramp to the SB I-405 and/or the US-101,
- Realignment and reconstruction of the current U.S. Army Corps of Engineers service road (northwest side of the interchange) for the operation and maintenance of the Sepulveda Dam,
- Each poses an adverse impact to the historic Sepulveda Dam, which is a Section 4(f) resource, and
- All alternatives will impact the Sepulveda Wildlife Area via the two-lane connector from the SB I-405 to the NB U.S.-101 with a new 50 mph two-lane connector bridge that encroaches upon and spans over the spillway of the Sepulveda Dam. The Los Angeles River transverses this portion of the project.

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The project proposes two alternatives (Alternatives 2 and 3) that would require the partial acquisition of the Sepulveda Wildlife Refuge in addition to the impacts that will occur to wildlife habitat below the Sepulveda Dam Spillway area. The Department has concerns with any project alternatives which would result in the reduction of wildlife habitat or buffer areas within or adjacent to the refuge, especially since this habitat supports several sensitive species including the Federally and State Listed least Bell's vireo (*Vireo bellii pusillus*), Canada goose (*Branta Canadensis*), arroyo chub (*Gila orcutti*) a Fish Species of Special Concern, burrowing owl (*Athene cunicularia*) a Bird Species of Special Concern, pond turtle (*Actinemys (Clemmys) marmorata pallida*) a California Species of Special Concern, and several sensitive species which may occur but were not surveyed for including Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), and numerous bat species.

1. Assessment -The IS/EA provided to the department did not contain sufficient detail as to the level and nature of potential impacts to the Sepulveda Basin Wildlife Area, both above and below the dam, for the Department to concur with Caltrans findings of no significance. A preferred alternative should be identified and the appropriate document (Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report) should be prepared and circulated to the Department for comment. The document provided to the Department was only an Initial Study, is very preliminary in nature, does not identify a preferred alternative, and does not include any technical reports for Department review.

- A complete, recent assessment of botanical resources within and adjacent to the project area, with particular emphasis upon identifying endangered, threatened, and locally unique species and sensitive habitats (see Attachment 1 and Attachment 2) needs to be conducted. This should include a complete floral and faunal species compendium of the entire project site, undertaken at the appropriate time of year.
- The biological section of the IS/EA indicates that potential impacts to species were only analyzed "within project limits". This document should address both direct and indirect impacts, including indirect impacts from new lighting (both from cars using a new on-ramp within the wildlife area at night and from ambient street lighting), noise, trash, potential spills, increase fire risk from introducing vehicles into an area where currently they do not have access, etc.). Additionally, the document did not indicate whether impacts were analyzed for the project footprint only, or if the entire disturbance footprint for construction and ongoing maintenance were included in this document.
- The Sepulveda Basin Wildlife Area has documented occurrences of several sensitive status wildlife species occurring on-site, including pond turtle (*Actinemys (Clemmys) marmorata pallida*), but that focused surveys were not completed. Additionally, it is unclear if trapping for pond turtle (*Actinemys (Clemmys) marmorata pallida*) occurred, or if the biologists just did not observe this elusive species during general biological assessment site visits. Trapping for pond turtle is recommended as the site provides high quality habitat for this species and there is a high likelihood for its occurrence. Pond Turtles not only utilize ponds and deeper pools within streams, they also utilize adjacent upland habitat to complete portions of their lifecycle. Please analyze potential impacts, both direct and indirect, from construction related as well as permanent project related impacts to this species. Of major concern is the increased level of noise and human disturbance to this species during construction and potential water quality issues, increased predation from nuisance wildlife such as crows that may

result from new sources of trash into the wildlife area, and habitat degradation and loss.

- The IS/EA described in one paragraph a noise study that was completed for the area, but did not go into any detail other than to declare there would be no negative effect to sensitive wildlife in the area. It is not clear whether noise measurements for this study were obtained at various height levels from the ground into the tree canopies to accurately reflect the true noise exposure to birds in the area. The tree canopy is closer to the level of the proposed fly-way overcross below the dam. If noise measurements were only calculated using methods to assess noise impacts to humans the true impacts to birds using higher portions of the tree canopy to nest may have been underestimated. Please address potential impacts from both long term project noise levels, as well as acute, short-term construction noise (both noise levels and the effect of repetitive noise on wildlife) which may adversely affect wildlife in the area. Additionally, several construction techniques, including pile driving, can have extremely high mortality levels on wildlife from both noise levels and vibration. Pile driving has been documented to cause severe trauma to aquatic life via compression waves that injure swim bladders of fish. In addition, pile driving that occurs next to a waterbody in saturated soils may have the potential to transmit sound and/or pressure waves to this lake and injure aquatic wildlife. The wildlife lake is located within 500 feet of the construction zone and the Los Angeles River is within the construction zone. This document did not indicate whether or not this issue was assessed for both the Los Angeles River and the Wildlife Lake areas.
- The IS/EA did not indicate if or when any focused botanical surveys were conducted on-site, yet concludes that the site has no potential to support any rare, endangered, or threatened (RTE) plant species. This statement is not backed by any supporting documentation in the IS/EA. There is the potential for several sensitive plants to occur on this site and surveys are needed during the appropriate blooming period per Department Guidelines (Attachment 1). It is not known whether the habitat assessment was during the appropriate season to detect most sensitive plant species and the IS/EA did not include a botanical species compendium. Please clearly list field methodology for all site visits in all biological assessments.
- Furthermore, several plant species that have the potential to occur on-site, including *Erodium macrophyllum* (round-leaved filaree) and San Fernando Valley spine (*Chorizanthe parryi* var. *fernandina*) can occur in areas dominated by non-native plants and grasses such as *Bromus* sp. and *Brassica* sp. Presence or domination by non-native plant species is not a reason to discount the potential presence of most RTE plant species. The IS/EA also discounts the presence of many sensitive plant species due to the lack of appropriate habitat on-site, but provides no information about the condition of the project site such as a botanical compendium, soils, etc. Any species associated with coastal sage scrub, riparian, oak woodland, or other habitat types that occur on-site, either currently or historically, need to be surveyed for following Department protocol (Attachment 1).
- Page 140 of the EA states that because Nevin's barberry (*Berberis nevinii*) and San Fernando Valley spine (*Chorizanthe parryi* var. *fernandina*) are anticipated to be absent from the project site, even through suitable habitat occurs, no impacts are anticipated.

“Project Impacts (*Nevin’s Barberry*). Although coastal scrub habitat is present, the proposed project is not expected to affect this plant, due to its anticipated absence from the project area.

Cumulative Effects (*Nevin’s Barberry*). Cumulative effects resulting from the proposed project area not anticipated for this species because the proposed project will not affect this species.

Projects Impacts (*San Fernando Valley Spine Flower*). Although coastal scrub habitat is present, the proposed project is not expected to affect this plant, due to its anticipated absence from the project area.

Cumulative Effects (*San Fernando Valley Spine Flower*). Cumulative effects resulting from the proposed project area not anticipated for this species because the proposed project will not affect this species.”

If the potential for any listed or sensitive plant exists on the project site, focused surveys according to Department Guidelines (Attachment 1) should be conducted. The fact that Caltrans anticipates something as being absent is not sufficient to declare it not present without accompanying surveys to back up this claim. CEQA provides protection not only for state-listed plants, but for any species which can be shown to meet the criteria for state listing (CEQA Section 15380). The Department recognizes that plants listed as 1A, 1B and 2 by the California Native Plant Society, in a majority of cases, would qualify for listing and require a mandatory finding of significance by the Lead Agency. The document provided to the Department did not appear to include a complete analysis of these plants which may occur on the project site.

- In several places within the IS/EA, the statement “A search of the California Natural Diversity Database (CNDDDB) did not reveal any occurrences of this species” is used to justify the absence of a species within the area potential affected by the project. The CNDDDB is a positive sighting database, and lack of data for a species in an area is in no way an indication that the species does not occur. Only a survey conducted using proper protocols during the appropriate season by qualified individuals can be used to determine if a species is absent from a project site. Additionally, the dominance of non-native vegetation can not be used as the sole determination that a species will not be found in an area. Many rare, native plant species have been discovered on sites with 100% non-native cover. An assessment of the historical condition of the property should be used to determine the habitat that used to be on the site, and that information should be factored into whether historically suitable habitat may have existed. Additionally, most areas have not been exhaustively searched for all species, therefore species and habitat types that are not documented in the species records can be found in project areas. For this reason, the Department recommends an eight quadrangle CNDDDB search for the project area as species found in adjacent areas do have the potential to occur in similar habitat types within the project area. Please list the date of your CNDDDB search as they expire, and list the quadrangles included in your search. The Department conducted a search of the CNDDDB on May 27, 2008 resulting in a list indicating more species occurring in the project area than was listed in the IS/EA.
- Department biologists have indicated that burrowing owl (*Athene cunicularia*) a Bird Species of Special Concern, was documented overwintering in the area where the proposed on-ramp loops for Alternatives 2 and 3 are proposed to impact the Sepulveda Wildlife Refuge. Additionally, burrowing owls have been observed historically below the Sepulveda Dam, in the area where the flyway connector for all project alternatives is proposed. Please include an analysis of potential impacts to this species in the CEQA document. If a complete burrowing

owl survey was not conducted on the project site, the Department recommends a complete survey following the Department's 1995 Staff Report on Burrowing Owl Mitigation and the Burrowing Owl Consortium's 1992 Burrowing Owl Protocol and Mitigation Guidelines including the passive relocation guidelines. Results should be included in any CEQA document so impacts from the project are disclosed and appropriate mitigation measures can be included in the document prior to Lead Agency approval.

- Arroyo chub (*Gila orcutti*), a Fish Species of Special Concern have been documented in the tributary streams above Burbank Boulevard, within close proximity to the project. Please assess the range, distribution, and potential impacts that may result to this species from both direct and indirect impacts, temporary construction related, and permanent impacts from this project.
- A detailed discussion on fuel modification requirements and impacts to habitat should be included in the DEIR. It is not clear how habitat that will not be directly effected by grading may be effected by fire clearance activities. Potential thinning and clearing of herbs and shrubs in the riparian understory could greatly impact sensitive resources known to utilize the Sepulveda Wildlife Refuge at this location. Additionally, a buffer analysis should be conducted to ensure adequate, undisturbed, upland habitat is left adjacent to the wildlife refuge lake to ensure reptiles and amphibians have the necessary habitat to complete all of their lifecycle requirements.
- Bats are considered non-game mammals and are afforded protection by state law from take and/or harassment, (Fish and Game Code Section 4150, California Code of Regulations, Section 251.1). Several bat species are also considered California Species of Special Concern (CSSC) and are know to occur in the project area. The Department recommends surveys be conducted to determine the presence of bat species that may be impacted by the project, results should be included in any CEQA document so impacts from the project are disclosed and appropriate mitigation measures can be included in the document prior to Lead Agency approval. The Department recommends avoiding disturbances to all bat roosting and nursery habitat including on-site structures between March 1 and September 15 to avoid the breeding season for bats unless preconstruction surveys are conducted by a qualified biologist and no bat roosts or nurseries are found within the project area.
- The Department's Biogeographic Data Branch in Sacramento should be contacted at (916) 322-2493 to obtain current information on any previously reported sensitive species and habitats, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code. Also, any Significant Ecological Areas (SEAs) or Environmentally Sensitive Habitats (ESHs) or any areas that are considered sensitive by the local jurisdiction that are located in or adjacent to the project area must be addressed.
- A thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts. This discussion should focus on maximizing avoidance, and minimizing impacts.
 1. CEQA Guidelines, Section 15125(a), direct that knowledge of the regional setting is critical to an assessment of environmental impacts and that

special emphasis should be placed on resources that are rare or unique to the region.

2. Project impacts should also be analyzed relative to their effects on off-site habitats and populations. Specifically, this should include nearby public lands, open space, adjacent natural habitats, and riparian ecosystems. Impacts to and maintenance of wildlife corridor/movement areas, including access to undisturbed habitat in adjacent areas are of concern to the Department and should be fully evaluated and provided. The analysis should also include a discussion of the potential for impacts resulting from such effects as increased vehicle traffic, outdoor artificial lighting, noise and vibration.
 3. A cumulative effects analysis should be developed as described under CEQA Guidelines, Section 15130. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.
 4. Impacts to migratory wildlife affected by the project should be fully evaluated including proposals to removal/disturb native and ornamental landscaping and other nesting habitat for native birds. Impact evaluation may also include such elements as migratory butterfly roost sites and neo-tropical bird and waterfowl stop-over and staging sites. All migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of birds and their active nests, including raptors and other migratory nongame birds as listed under the MBTA.
2. California Endangered Species Act (CESA) – A CESA Permit must be obtained, if the project has the potential to result in “take” of species of plants or animals listed under CESA, either during construction or over the life of the project. CESA Permits are issued to conserve, protect, enhance, and restore State-listed threatened or endangered species and their habitats. Early consultation is encouraged, as significant modification to the proposed project and mitigation measures may be required in order to obtain a CESA Permit. Revisions to the Fish and Game Code, effective January 1998, require that the Department issue a separate CEQA document for the issuance of a CESA permit unless the project CEQA document addresses all project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of a CESA permit. For these reasons, the following information is requested:
- Biological mitigation monitoring and reporting proposals should be of sufficient detail and resolution to satisfy the requirements for a CESA Permit.
 - A Department-approved Mitigation Agreement and Mitigation Plan is required for plants listed as rare under the Native Plant Protection Act.
3. Regulated Waters - The IS/EA did not quantify the impacts or acres of Department regulated waters that would be impacted from this project. Please address this issue as this project appears to encroach into several regulated waters including the Los Angeles River. Impacts associated from fire roads, bridges, storm drains, fire clearance, etc. appear to encroach into regulated jurisdiction. The Department opposes the elimination

of watercourses (including concrete channels) and/or the canalization of natural and manmade drainages or conversion to subsurface drains. All wetlands and watercourses, whether intermittent, ephemeral, or perennial, must be retained and provided with substantial setbacks which preserve the riparian and aquatic habitat values and maintain their value to on-site and off-site wildlife populations. The Department recommends a minimum natural buffer of 500 feet from the outside edge of the riparian zone on each side of a drainage.

- The Department requires a Streambed Alteration Agreement (SAA), pursuant to Section 1600 et seq. of the Fish and Game Code, with the applicant prior to any direct or indirect impact to a lake or stream bed, bank or channel or associated riparian resources. The Department's issuance of a SAA may be a project that is subject to CEQA. To facilitate our issuance of the Agreement when CEQA applies, the Department as a responsible agency under CEQA may consider the local jurisdiction's (Lead Agency) document for the project. To minimize additional requirements by the Department under CEQA the document should fully identify the potential impacts to the lake, stream or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the Agreement. Early consultation is recommended, since modification of the proposed project may be required to avoid or reduce impacts to fish and wildlife resources.
4. Native Bird Avoidance - The project site supports nesting habitat for native birds. Additionally, Department biologists have observed swallows and swifts nesting in the culvert where the Los Angeles River crosses under several connector roads and the I-405, below the Sepulveda Dam.
- Nesting bird surveys should continue on a weekly basis with the last survey being conducted no more than three days prior to the initiation of clearance/construction work. If a protected native bird is found, the project proponent should delay all clearance/construction disturbance activities in suitable nesting habitat or within 200 feet of nesting habitat (within 500 feet for raptor nesting habitat) until August 31 or continue the surveys in order to locate any nests. If an active nest is located, clearing and construction within 200 feet of the nest (within 500 feet for raptor nests) shall be postponed until the nest is vacated and juveniles have fledged and when there is no evidence of a second attempt at nesting. Limits of construction to avoid a nest should be established in the field with flagging and stakes or construction fencing. Construction personnel should be instructed on the sensitivity of the area. The project proponent should record the results of the recommended protective measures described above to document compliance with applicable State and federal laws pertaining to the protection of native birds.
5. Mitigation - The Monies acquired from the Wildlife Conservation Board (WCB) were used to perform improvements to the refuge. A 25 year sub lease and operating agreement was entered into between the Wildlife WCB/Department and the City of Los Angeles in September of 1985. The sub lease and operating agreement specifies that changes to the use of the refuge would be considered a breach if these changes impact refuge improvements that were paid for by the WCB. The Department recommends a project alternative which does not necessitate impacting the refuge, its buffers or any other areas considered as significant wildlife habitat. If the impacts to the refuge cannot be

avoided, one possible remedy could be a prorated reimbursement to the WCB of the original refuge improvement cost.

- Impacts to state and/or federal listed species are considered significant under CEQA unless fully mitigated and would require additional consultation with the Department and U.S. Fish and Wildlife Service under the state and federal Endangered Species Acts. Impacts to CSSC and/or 1B listed plant species should be considered significant under CEQA unless mitigated below a level of significance. The IS/EA does not describe in enough detail how impacts to special status species will be mitigated sufficiently to justify a Notice of Completion for the environmental review period. Simply stating that the applicant will consult with the Department of Fish and Game to determine impacts to species, does not constitute appropriate disclosure or satisfy mitigation measures under CEQA. At the time the lead agency notices a draft environmental document for a project, the presence of any rare, threatened, endangered, or other sensitive resources should have already been determined along with any proposed avoidance and mitigation measures. Without knowing if in fact special status species occur on a project site, it would be difficult to plan for avoidance and appropriate mitigation measures once grading is about to commence and the project has been designed.
- The Department recommends avoidance of special status species as detected during focused surveys as warranted by habitat types found on the site using a BA. If avoidance is not feasible, on-site protection in perpetuity and/or off-site acquisition or habitat of similar or superior quality and protection in perpetuity under a conservation easement is recommended. The Department does not recommend translocation of special status plant species as these efforts often fail and do not mitigate below a level of significance under CEQA. Given the unique resource the Sepulveda Basin Wildlife Area represents spatially, avoidance to all resources within the Wildlife Area is recommended by the Department. The incremental loss of this important wildlife area is resulting in significant cumulative impacts to species that depend on this island of habitat in a heavily developed urban landscape. Potential mitigation should include looking at ways to obtain land within the Sepulveda Basin, such as agricultural fields, grass, etc. and convert this area to habitat to provide a no net loss of habitat in the basin.

The Department recommends that the above concerns be addressed prior to Lead Agency approval of the proposed project. Based on the sensitive nature of this important regional wildlife refuge, and potential impacts from all alternatives to wildlife resources, the Department recommends an Environmental Impact Report be prepared for any alternative selected, since one was not identified in the IS/EA provided. The Department does not concur with the Notice of Completion filed with the State Clearinghouse based on an Initial Study that did not identify a preferred alternative, nor biological impacts in sufficient detail.

Thank you for this opportunity to provide comment. Questions regarding this letter and further coordination on these issues should be directed to Ms. Kelly Schmoker, Staff Environmental Scientist, at (626) 335-4369.

Sincerely,



Edmund J. Pert
Regional Manager
South Coast Region

Enclosures: Attachments 1 and 2

cc: Ms. Helen Birss, Los Alamitos
Ms. Terri Dickerson, Laguna Niguel
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EP:ks