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July 6, 2020

By U.S. Mail and Email: sgee@rmc.ca.gov

Ms. Sally Gee
Los Cerritos Wetlands Authority
100 N. Old San Gabriel Canyon Road
Azusa, CA 91702

Re: Draft Programmatic Environmental Impact Report and Selection of Alternatives for the Los Cerritos Wetlands Restoration Plan

Dear Ms. Gee,

These comments are submitted on behalf of Los Cerritos Wetland Land Trust ("LCWLT") in connection with the draft programmatic environmental impact report (DPEIR) prepared for the Los Cerritos Wetlands Restoration Plan ("Project"). LCWLT has spent more than a decade educating and advocating for the protection and restoration of Los Cerritos Wetlands. The Los Cerritos Wetlands Authority (LCWA's) Los Cerritos Wetlands Restoration Plan presents a once-in-a-lifetime opportunity for comprehensive planning of the restoration of Los Cerritos Wetlands as well as to attract funding for important restoration pilots, activities and projects. The restoration of the Los Cerritos Wetlands is one of LCWLT's primary goals, and LCWLT appreciates the opportunity to comment on the Project and its environmental review at an early stage of development.

These comments are organized to address high level Project-related comments in the body of the letter. Specific comments concerning the inadequacies of the DPEIR are largely relegated in the Appendix. LCWLT aims to continue working with the Authority and its experts to maximize the value of the DPEIR to inform restoration options while at the same time clarifying the limitations of the DPEIR under CEQA. LCWLT welcomes the opportunity to discuss these comments with the Authority and to explore a path forward for the Final EIR and ultimately, approval of the Los Cerritos Wetlands Optimized Restoration Plan.[1]

[1] The Project Description section zeroes in on the focus of this DPEIR – specifically to provide information for an Optimized Restoration Plan, and environmental support for its adoption following additional work and public input. See Section 2.8 Required Approvals.

LCWLT has concluded that the DPEIR contains valuable information about a wide range of opportunities for restoring Los Cerritos Wetlands. For certain portions of the wetlands and certain planned activities, the DPEIR has limited value for purposes of environmental review pursuant to the California Environmental Quality Act (CEQA). Specifically, the DPEIR contains many deficiencies that render it inadequate under CEQA for all but the most environmentally benign projects. These deficiencies are enumerated in the attached appendix. If the EIR was not being presented for certification, LCWLT would have no objections to the document. Unfortunately, CEQA permits the Authority to rely on a certified EIR as the basis for future project, pilot and other entitlements. As the document is not specific as to the activities covered, LCWLT is concerned about the PEIR's use for activities whose environmental impacts have not been adequately disclosed, analyzed, or mitigated. In this instance, the DPEIR lacks clarity about the covered activity (the Optimized Restoration Plan) and instead suggests that any and all pilots, projects and activities listed in the DPEIR could be covered by the DPEIR, subject to project by project review.[2] There is no guarantee of future environmental analysis for projects not adequately analyzed in the DPEIR. As a practical matter, the lack of specificity regarding what the DPEIR "covers" is likely to result in confusion as to what activities are covered, and may lead to uncertainty, wasted time, wasted resources, and CEQA abuses. Given the absence of specific Project descriptions and site information in the DPEIR, the lack of a wetlands delineation, and deficiencies in the biological resources analysis, the document fails to provide a sufficient program or project-level analysis under CEQA for all but the most benign projects.[3]

LCWLT appreciates the DPEIR's exploration of an alternative that would restore tidal flow to the Central Area of the Project from areas located above 2nd Street. The DPEIR's discussion of this alternative should be expanded and recirculated, or in the alternative, be revised to acknowledge the merits of this alternative and to commit to further exploration as part of the range of alternatives separate from this DPEIR. The DPEIR recognizes that this alternative would satisfy Project objectives by maximizing the area available for wetland restoration – the Project's overarching purpose. The alternative would minimize the area needed for berms and seawalls. Important for CEQA compliance, many of the Project's significant and adverse environmental impacts would be "substantially lessened" under such an alternative. Shorter berms would reduce significant environmental impacts, as smaller berms would require less ground disturbance, grading, movement of materials, truck traffic and disruption of habitat. Shorter berms would also limit the adverse aesthetic impacts presented by walls that would otherwise reach up to 18 feet in height. Thus, an alternative restoring tidal flow to

[2] See e.g., both Introduction and Executive Summary of the DPEIR.

[3] Projects that may proceed without additional environmental review are likely those that either have only beneficial impacts, are already adequately covered by a separate EIR and/or are already allowed by-right. The DPEIR may be sufficient to support revision and adoption of the Optimized Restoration Plan with additional information and analysis described herein.

the Central Area through conduits run below 2nd Street would have beneficial impacts on biological resources, air quality, traffic, and aesthetics, at the very least.

I. The DPEIR is Unclear About the Covered Actions.

The DPEIR is clear that the purpose of the Los Cerritos Wetlands Restoration Plan is the long term restoration of wetlands, habitat, and tidal flow, while increasing public access and appreciation. However, that is where the clarity ends. The Introduction, Executive Summary and Project Description sections of the DPEIR inconsistently describe the "project" covered by the DPEIR. Only the Project Description zeroes in on the Los Cerritos Wetlands Optimized Restoration Plan as the focus of the DPEIR. The Project, as described throughout the DPEIR, would involve a variety of activities and large amounts of earth moving over 503 acres of land held by ten landowners. Activities would include "remediation or containment of contaminated soil and groundwater, grading, revegetation, construction of new public access opportunities (including trails, visitor center, parking lots, and viewpoints), construction of flood management facilities (including earthen levees and berms, and walls), modification of existing infrastructure and utilities, and integrating experimental actions and research into the proposed program." (DPEIR p. 2-27.) The DPEIR is vague on details, however, in order to "accommodate existing and future potential changes in land ownership and usage…funding." (DPEIR p. 2-30.) The DPEIR notes, "the timing of construction at each site is dependent on multiple variables, including property transfers, removal of oil infrastructure, and related facilities, availability of funding, and permit approvals." (*Ibid*.)

As to actual activities and what will happen on which part of the wetlands, when, little information is included. An EIR's purpose is to eliminate this confusion:

> The CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish. This examination is intended to provide the fullest information reasonably available upon which the decision makers and the public they serve can rely in determining whether or not to start the project at all, not merely to decide whether to finish it. The EIR is intended to furnish both the road map and the environmental price tag for a project, so that the decision maker and the public both know, before the journey begins, just where the journey will lead, and how much they-and the environment-will have to give up in order to take that journey.

(*NRDC v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 271.)

While the DPEIR includes a litany of possible actions and activities at each given site, it does not clarify which specific actions would be authorized by the Authority's approval of the Project and certification of this EIR. On the contrary, the Introduction, Executive Summary, and Project Description are inconsistent about the environmental review that may occur in the future before steps are taken toward Project implementation. These inconsistencies will cause confusion regarding both the activities covered by the EIR and the need for future environmental review. Even if CEQA abuses are avoided, confusion over the specific purpose of this EIR will waste time and resources better spent restoring the wetlands. It makes sense that future actions may have less definition, given the uncertainty about future land uses and ownership. However, the DPEIR does not list which actions and activities, if any, can happen without additional environmental review.

For example, some Project activities are part of the Beach Oil Minerals Project and have already been approved with project-level environmental review. The DPEIR does not make this clear. Instead, the Executive Summary provides, "This Draft PEIR would support permit applications, construction contracts, and other actions required to implement the proposed program and to adopt mitigation measures that are intended to reduce or eliminate significant environmental impacts." (DPEIR, section 1.1.) A reader could interpret this to mean that the Program EIR will authorize all Project activities without further review. In the next sentence, the DPEIR contemplates CEQA review, but does not commit to it:

> This PEIR serves as a first-tier environmental document that focuses on the overall effects of implementing the activities that make up the proposed program. As a first-tier environmental document, this PEIR will serve as the foundation for subsequent CEQA analysis (e.g., Project level EIRs, addendums) which *may* be conducted for project-specific restoration designs.

(*Ibid,* emphasis added.) The DPEIR's Project Description takes a similar tack, noting:

> Subsequent to the preparation of this DPEIR, LCWA may develop more detailed designs that would serve to implement the proposed program activities…As individual restoration projects are fully developed, LCWA would conduct CEQA analysis for individual projects as appropriate *or may determine that no additional CEQA analysis is requ*ired.

(DPEIR p. 2-83, emphasis added.) The Project Description repeats this at page 2-1: "As a first-tier environmental document, this PEIR will serve as the foundation for subsequent CEQA analysis (e.g., project-level EIRs, addendums) which *may* be conducted for project-specific restoration designs." (DPEIR p. 2-1, emphasis added.) The Introduction,

by contrast, is clear that some Project activities could go forward without additional review:

> If the environmental effects resulting from an action are fully covered by the analysis in this PEIR and no new mitigation measures are required, then the action is within the scope of this PEIR, and no additional environmental documentation is necessary (CEQA Guidelines Section 15168(c)(2)). I

(DPEIR, section 1.3.4.)

Another section of the Project Description indicates that this DPEIR is meant to inform the finalization of the Los Cerritos Wetlands Optimized Restoration Plan, not to authorize any immediate construction. Page 2-1 reads, "After the PEIR, the Los Cerritos Wetlands Optimized Restoration Plan will be developed. The restoration design presented in the Los Cerritos Wetlands Optimized Restoration Plan will be informed by this PEIR and public input."

LCWLT supports a scenario wherein the DPEIR will only inform the development of the Los Cerritos Wetlands Optimized Restoration Plan. However, LCWLT is concerned that project activities may go forward without additional, detailed, project descriptions and future, adequate CEQA review. The DPEIR must be revised to make any tiering clear and to clarify which Project activities, if any, can proceed without additional CEQA review. The Authority cannot wait until a future Project-related activity is proposed or funded, and then decide if additional CEQA review is required. Based on LCWLT's review of the DPEIR and its lack of specificity, it appears that the only DPEIR-described activities that can move forward without additional CEQA review are likely those that been the subject of a separate certified environmental document and/or are exempt from CEQA altogether. LCWLT is not reassured by the DPEIR's statements that proposed projects would be individually reviewed to determine whether additional environmental review is needed in the future.

The Authority's use of a program EIR, as opposed to a project-specific EIR, does not excuse the obligation to provide clear and detailed information to the public. "The ultimate inquiry . . . is whether the EIR includes enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.' " (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.) As circulated, the DPEIR does not include the requisite detail.

The Court of Appeal provided recent guidance about the distinctions between program and project EIRs:

> Designating an EIR as a program EIR . . . does not by itself decrease the level of analysis otherwise required in the EIR. [I]n considering a challenge to a program EIR, 'it is unconstructive to ask whether the EIR provided 'project-level' as opposed to 'program-level' detail and analysis. Instead, we focus on whether the EIR provided 'decisionmakers with sufficient analysis to intelligently consider the environmental consequences of [the] project.'

(*Cleveland National Forest Foundation v. SANDAG* (2017) 17 Cal.App.5th 413, 426.). Even if more precise information may be available during project-specific review, the Authority "must still provide reasonably obtainable information, or explain (supported by substantial evidence) why it cannot do so. '[I]f known impacts are not analyzed and addressed in a program EIR, they may potentially escape analysis in a later-tier EIR.' (Forest Foundation, supra, 17 Cal.App.5th at p. 440.)" (*Golden Door v. County of San Diego* (2020) Slip. Opinion, pp. 101-102.)

LCWLT supports efforts to restore the wetlands, but CEQA requires that the activities involved in these efforts be clearly delineated for public understanding. Due to the absence of clear information about the future activities covered by this Program EIR, LCWLT felt it incumbent to exhaust its administrative remedies as required by CEQA. (See Attachment 2.)

II. The Authority Should Consider and Expand the DPEIR's Discussion of the Alternative of a Tidal Connection Below 2nd Street to the Central Area for Inclusion in the Optimized Restoration Plan.

"One of [an EIR's] major functions . . . is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official." (*Laurel Heights Improvement Ass'n. v. Regents of the University of California* (1988) 47 Cal. 3d 376, 400.) LCWLT urges the Authority to consider an alternative that avoids immediate action on the Long Beach City property portion of the Central Area and ultimately restores tidal flow to the area via conduits running below 2nd Street. An example of this alternative is provided in Figure 5-3 of the DPEIR (CRP Alternative 3 – Maximum Alteration, See Attachment 1).

Under this alternative, the Authority would make the interim berm between the Long Beach City Property and the LCWA Central property permanent. Restoration work planned for the LCWA and Bryant sites could proceed. However, the Authority would wait to restore tidal flow to the Long Beach City property. Once tidal flow has been restored to the Synergy property via the lower channel, tidal flow could be brought under 2nd Street to the Long Beach City Property. Steamshovel Slough and the restoration work

already planned for that portion of the Project would not be affected. Again, the wetlands restoration planned for the LCWA property and Bryant portion of the Central Area, where berms and floodwalls would have reduced aesthetic impacts, could continue.

This alternative presents several advantages:

- First, the alternative would not disrupt near term restoration plans for the Isthmus, South, and North areas, or those planned for the LCWA and the Bryant portions of the Central area.

- Second, it eliminates the need to breach the San Gabriel River levee to restore tidal flow to the Long Beach City property, preventing the project's greatest risk for increased flooding on adjacent roads and private property.

- Third, it eliminates the need for 120-foot-wide, 15-foot-tall berms or 18-foot-tall flood walls for flood protection. Restoring tidal flow to the Long Beach City property in the Central area via the Los Cerritos Channel requires flood protection, but the distance and the large amount of available land for water flow between the channel and the property permits the use of shorter and smaller berms.

- Fourth, it would improve wetland connectivity by joining a larger area of wetland between the Colorado Lagoon, Alamitos Bay, the Los Cerritos Channel, and both sides of 2nd Street.

- Fifth, shorter berms would reduce the aesthetic impact. The City of Long Beach's Southeast Area Specific Plan includes graphics depicting beautiful views of the wetlands. If the Central area is developed as proposed in the DPEIR, residents and visitors to Long Beach will never see these views. Instead, the beloved Los Cerritos Wetlands will be walled off with vegetated berms or sea walls that rise as tall as buildings along Pacific Coast Highway, 2nd Street, and Shopkeeper Road.

- Sixth, this alternative makes sense from an environmental impact standpoint. Along with the reductions in aesthetic impacts, the use of smaller berms or sea walls would reduce impacts related to construction, air quality, and ground disturbance. The Proposed Project would require 191,000-263,000 cubic yards of cut and fill in the Central area, alone, most of that for construction of the perimeter levee. (DPEIR p. 2-70.) Smaller berms would need less earth movement.

- Seventh, and most important, the reduction in berm heights (and therefore, necessary widths) would maximize the amount of land available in the Central Area for wetland restoration.

- Eighth, flow restoration from the Los Cerritos Channel and North Area, which already have wetlands species, may enhance seeding and the spread of native species to the Central area. Flow from the North Area, as opposed to that from the San Gabriel River, would also eliminate the likelihood that the river's contamination and trash could diminish water quality and habitat in the Central Area.

Not inconsequentially, this alternative would provide more flexibility in the placement of the Beach Oil Minerals pipeline installation, flexibility that will be necessary to meet the Coastal Commission's special conditions.

The DPEIR endorses the view that this alternative satisfies the Project objectives and could reduce environmental impacts, the very purpose of a CEQA alternative. (Pub. Resources Code s. 21002.1) The DPEIR agrees that the restoration of a tidal connection from Steamshovel Slough to the Central Area "meets the program objectives because it would restore tidal wetland processes and functions and maximize contiguous habitat areas and buffers." (DPEIR p. 5-21.) While LCWLT would prefer a connection that avoids Steamshovel Slough, the same conclusions would apply to tidal restoration via the lower Los Cerritos Channel breach in at the Synergy property. As to levees, the DPEIR notes, "The footprint of the levee for this alternative would take up less space than the footprint of the levee in the proposed program, because the existing flood protection along the Los Cerritos Channel is not as high as the flood protection along the San Gabriel River. The smaller footprint would provide additional space for wetland restoration compared to the proposed program." (DPEIR p. 5-21.) Thus, this alternative would meet the Project objectives *to a greater degree than the proposed Project*.

The DPEIR further agrees that this alternative would likely reduce the Project's significant air quality impacts "because a substantially lower amount of fill may be moved on-site" and would cause fewer impacts to existing biological resources. (DPEIR p. 5-21.)

Despite these clear benefits, the DPEIR rejects this alternative due to the claim that it is infeasible. (DPEIR p. 5-21.) The alternative could not occur until the Los Cerritos Wetlands Oil Consolidation and Restoration Project has removed wells from the North Area and the Long Beach City Property, which is not expected to be complete for 20 years. However, the DPEIR is explicit that, "If the timing of that project were to change, this alternative could be considered feasible." (*Ibid*.) The DPEIR forgets that the Los Cerritos Wetlands Restoration Project is a long-range plan. Large portions of the Project, including the restoration planned for the North Area, will not be occurring within the next 20 years, anyway. This is true for portions of the Central Area, which are listed

as "Long Term (20 + years)." (DPEIR p. 2-69.) The DPEIR admits it was designed for maximum flexibility to "accommodate existing and future changes in land ownership and usage" and funding. (DPEIR p. 2-30.) Thus, the Authority's rejection of this alternative because it cannot occur *immediately* lacks substantial evidence.

Notably, the City of Long Beach has not yet completed its Climate Action and Adaptation Plan. A report will be given at the June 25, 2020 City Council meeting, but no documents have been made public. The Authority is already aware that large portions of the site and surrounding areas will experience sea level rise during the implementation of the Project. Thus, before the Authority commits to a program that will breach the existing San Gabriel River levee, it is incumbent that the City of Long Beach review the implications in its Climate Action and Adaptation Plan. If the Authority delays breaching the San Gabriel River levee, the plans can be harmonized such that the Restoration will not jeopardize Long Beach's sea level rise adaptation strategy. Given that sea level rise will inundate larger portions of the Project site in the future, without the breach, the City of Long Beach and the Authority may decide that breaching the River levee is neither practical nor desirable. The Long Beach City property may be needed for sea level rise protection. The interplay between Long Beach's Climate Action and Adaptation Plan and this Restoration Plan must be explored.

The DPEIR also rejects this alternative because it would require creating a tidal connection under 2nd Street, "either through a set of culverts or by building a bridge or causeway over an open channel." (DPEIR p. 5-21.) The DPEIR claims, "This would result in extensive construction and transportation impacts." (*Ibid*.) While this may be correct, the DPEIR contains no analysis in support of the idea that 2nd Street construction would have more extensive environmental impacts than the construction of giant berms or sea walls and the elimination of wetland habitat. On the contrary, if sea level is going to rise, it is likely that the level of 2nd Street will need to be raised to avoid inundation. Construction and disturbance will be required, anyway, at some future point. Perhaps when 2nd Street is raised, it can become the berm that would otherwise be constructed. This would avoid the aesthetic, air quality, and biological resources impacts of unnecessary berms and walls. It is also possible that the culverts connecting tidal flow beneath 2nd Street could be constructed at the time 2nd Street is raised to avoid sea level rise.

As it satisfies the requirements of a CEQA alternative, and as the Authority has not provided substantial evidence for its rejection, LCWLT urges the Authority to expand its discussion of an alternative that implements the Central Area restoration but delays implementation on the Long Beach City Property until tidal flow can be restored below 2nd Street. This alternative satisfies the Project objectives to a greater degree than the proposed Project, would reduce significant environmental impacts, and permits alignment

between the Los Cerritos Wetlands Restoration Plan and Long Beach's Climate Action and Adaptation Plan that would otherwise be foreclosed. Once expanded, the DPEIR's discussion should be recirculated. In the alternative the DPEIR should be revised to acknowledge the merits of this alternative and to commit to further exploration of it as part of the range of alternatives separate from this DPEIR, for example, in the Optimized Restoration Plan.

III. Additional Concerns of the LCWLT.

LCWLT has been unable to locate a wetlands delineation for the restoration area. Thus, it appears that the DPEIR was prepared without reference to a wetlands delineation. A wetlands delineation is critical to resolving both biological and jurisdictional issues of this Project. The circulation of a DPEIR prior to the completion of a wetlands delineation puts the cart before the horse.

The DPEIR hydrology analysis recognizes the diminished water quality of water flowing through the San Gabriel River. The potential impacts of this water must be explored in much greater detail moving forward.

LCWLT is further concerned about the treatment of oil wells in the restoration area. For example, wells operated by Signal Hill Oil will remain in the Central Area, even after full restoration, but wells from other companies have been removed. The full removal and proper abandonment of wells is critical to restoration of a maximum amount of the Project site. There are also wells on the Hellman Ranch property that have been idle since 1928 but have not been officially abandoned. (See, https://www.latimes.com/projects/california-oil-well-drilling-idle-cleanup/map/.). LCWLT requests information the Authority has about the number of wells located on the property, number sealed off in the last ten years, and the number that are idle.

The LCWLT also seeks the Authority's rationale for excluding the Hitchcock property from the Project. As the Restoration Project includes private property such as the Hellman Retained site and the Bryant site, the private nature of the Hitchcock site does not appear to be the barrier. The California Coastal Commission has recognized the importance of the site's upland habitat; its inclusion in the Plan should be considered. (See, Attachment 3.)

Conclusion

The DPEIR contains valuable information about some of the options available for restoration in the wetlands, it is not adequate as an information document under CEQA. The document must be revised to clarify which activities the Authority believes are

covered by this EIR and which activities will require further environmental review. LCWLT encourages the Authority to limit the use of the DPEIR to support refinement of the Los Cerritos Wetland Optimized Restoration Plan, assuming additional analysis of alternatives recommended herein, inclusion of those alternatives, and robust public engagement in the process. The DPEIR must also be revised to thoroughly explore an alternative that brings tidal flow to the Central Area below 2nd Street while avoiding the aesthetic, construction, and air quality impacts of the tallest berms. If not done in the DPEIR, the Authority should commit to further exploring this alternative when it finalizes the Los Cerritos Wetlands Optimized Restoration Plan. Finally, the Authority and its team must perform the studies and analysis needed to adequately disclose, analyze, and mitigate the Project's likely impacts on wildlife and sensitive species. This information must be included in a revised DPEIR and recirculated for public comment.

LCWLT supports a path forward consisting of the following steps:

1. Authority responds to comments and revises the text of the DPEIR. The revised document will clarify:

    a) The PEIR is intended to inform the Los Cerritos Wetlands Optimized Restoration Plan and not to provide environmental review for activities (projects, pilots and other activities) listed in detail in the DPEIR;

    b) The PEIR will reclassify the alternative for the Central Area discussed above as an alternative for incorporation into the Los Cerritos Wetlands Optimized Restoration Plan; and

    c) The only restoration projects or activities listed in the PEIR that may proceed are those that have been fully addressed by a certified EIR and/or any activities that are otherwise exempt from CEQA. Any other projects, pilots or activities cannot rely on the PEIR for other than general background information for cumulative impacts. The document cannot be relied upon for full analysis of the impacts of these projects.

2. If the Authority certifies the PEIR, it will be for the purpose of informing the drafting of the Los Cerritos Wetlands Optimized Restoration Plan.

3. Once finalized and certified, the PEIR and additional information as needed (e.g., on the LCWLT alternative for the central area) should be used to inform an Optimized Restoration Plan, including, as warranted, a description of alternatives that are extended to a longer term phase and need further study.

4. The Optimized Restoration Plan draft will be the subject of public review. To the extent additional environmental review is needed to adopt the Optimized Restoration Plan, this review should be occur.

5. The PEIR and the Optimized Restoration Plan, once completed, will have value to guide and inform projects, pilots, activities. However, any of those projects, pilots and activities not fully addressed in another certified environmental document or that otherwise would be exempt from CEQA will require additional environmental review unless large-scale revisions are first made to this DPEIR.

LCWLT looks forward to continued cooperation with the Authority as the Los Cerritos Wetlands Restoration Project moves forward and as the Authority finalizes the Los Cerritos Wetlands Optimized Restoration Plan. Thank you for the opportunity to comment.

Sincerely,

Michelle Black, on behalf of
Los Cerritos Wetlands Land Trust

Attachments:
1. DPEIR Figure 5-3, CRP Alternative 3 – Maximum Alteration
2. Appendix of Deficiencies Identified in Draft Environmental Report
3. California Coastal Commission Staff Report, available at https://documents.coastal.ca.gov/reports/2012/3/Th13a-3-2012.pdf

ATTACHMENT 2

Appendix: Deficiencies Identified in Draft Environmental Impact Report

If approved, the Project would authorize a variety of construction projects related to habitat restoration, the restoration of tidal flow, stormwater management, earthwork, grading, parking lot construction, levee, berm, and flood wall construction, soil import, soil export, revegetation, levee breaching, and soil remediation. Of greatest concern, the DPEIR fails to provide sufficient baseline information about the Project site and the specific Project activities and entitlements that would be authorized or approved by the certification of the Program EIR. Additionally, the DPEIR fails to fully disclose, analyze, and mitigate the Project's impacts on the biological resources of Los Cerritos Wetlands as required by the California Environmental Quality Act.

I. General CEQA Requirements.

The California Environmental Quality Act (CEQA) serves two basic, interrelated functions: ensuring environmental protection and encouraging governmental transparency. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) CEQA requires full disclosure of a project's significant environmental effects so that decision-makers and the public are informed of these consequences before the project is approved, to ensure that government officials are held accountable for these consequences. (*Laurel Heights Improvement Ass'n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) The environmental impact report (EIR) process is the "heart of CEQA" and is the chief mechanism to effectuate its statutory purposes. (*In Re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal. 4th 1143, 1162.) LCWLT is concerned that the DPEIR fails to adequately disclose, analyze, and mitigate many of the Project's significant adverse environmental impacts.

Although an EIR need not be perfect, the Authority "must use its best efforts to find out and disclose all that it reasonably can." (CEQA Guidelines § 15144.) If important information cannot be obtained, the EIR must explain why. (*Sierra Club v. County of Fresno* (2017) 6 Cal.5th 502, 519-522.) The Authority must also "ensure that CEQA [GHG] analysis stays in step with evolving scientific knowledge and state regulatory schemes." (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 519.)

The DPEIR admits the Project would have significant adverse impacts with regard to air quality. Additionally, the Project would likely have significant adverse impacts on

biological resources, including sensitive species, although these impacts are neither disclosed nor mitigated in the DPEIR. Instead, large portions of the Project site and many sensitive species are not assessed at all. Furthermore, the DPEIR's analysis is infected by a lack of specificity in the project description and missing, but necessary, baseline information.

Many of the Project's significant and adverse environmental impacts would be "substantially lessened" under an alternative that restores the tidal connection to the Central Area using the lower channel constructed at the North Area. As recognized in the DPEIR, such an alternative would satisfy Project objectives by maximizing the area available for restoration and minimizing the area needed for berms and seawalls. The smaller berms would also lessen significant environmental impacts, as smaller berms would require less ground disturbance, grading, movement of materials, truck traffic and disruption of habitat. Smaller berms would also limit adverse aesthetic impacts created by up to 18-foot-high sea walls that would block water views from 2nd Street, Pacific Coast Highway, and Shopkeeper Road. Thus, an alternative restoring tidal flow to the Central Area via the North Area would have beneficial impacts on biological resources, air quality, traffic, and aesthetics, at the very least.

II. The Biological Resources Analysis is Inadequate.

The DPEIR's biological resources analysis fails to meet basic requirement of a biological resources analysis – to survey the Project site and disclose what lives there. This basic failure has led to an inadequate baseline for analysis. The consultants failed to survey the entire site, to survey all sensitive species likely to inhabit the site, to conduct surveys at appropriate times of year for the species being surveyed, or to conduct repeat rare plant surveys in appropriate locations. The obvious result is that the analysis likely understates the number of and population sizes of sensitive species that could be affected by the Project's construction and reconfiguration of hydrological and tidal connections. Consequently, the DPEIR fails to disclose, analyze, or mitigate the Project's impacts to biological resources. The existing analysis must be substantially expanded, updated, and recirculated before the Project moves forward.

Deficiencies in the DPEIR include, but are not limited to:

We have reviewed the Supplemental Biological Surveys and Mapping for the Los Cerritos Wetlands, conducted by Coastal Restoration Consultants in 2019. (Appendix C). The Supplemental Biological Surveys and Mapping have limitations that affect the adequacy of the biological resources analysis but were not disclosed.

- Certain areas of the Los Cerritos Wetlands complex were not mapped or surveyed, but this was not disclosed in the DPEIR, and no reasons were provided for this omission. The Hellman Retained site, Los Alamitos Retarding Basin site, South LCWA site, and Northern and Southern Synergy Oil sites must be surveyed. Without these surveys, the biological resources analysis lacks an adequate baseline for analysis and any substantial evidence for claims regarding the presence or absence of species.

- The blooming periods for the three species targeted during the effort are: *Camissoniopsis lewisii* (March - May), *Lasthenia glabrata ssp. coulteri* (Feb - June), and *Centromadia parryi ssp. australis* (May - Nov). Therefore, surveys should have been conducted for all areas between February and June when these plant populations appear to be blooming, with an additional survey again in the late summer for *Centromadia parryi ssp. australis*. This doesn't account for additional rare plant species blooming periods with the potential to occur on site. Based on what appears to be GPS tracking of the surveyors, full coverage for rare plants did not occur and areas avoided were not discussed or disclosed in the report. Furthermore, the areas surveyed were not covered multiple times for the blooming periods of all rare plants with the potential to be found on site. For example, the Zedler Marsh site was only covered on May 1, 2018; the majority of the Central Bryant Site and the Central LCWA Site was only covered on April 30, with smaller areas resurveyed on May 9, May 10, and Oct 22, 2018. Full coverage of these areas was not conducted during any of the surveys based on the tracking lines provided. For the South LCWA site, full coverage was not shown, and not all areas surveyed were revisited to account for the different blooming periods. Although full coverage may not have been possible during the wetter months, no disclosure was provided as to why full coverage was not provided during the surveys. Locating these rare plants is important because mitigation for these plants must achieve a ratio of 1:1. With accurate location of these rare populations, Project implementation can be designed to avoid these areas or provide insight as to where mitigation (seed collection, soil salvage) should occur.

- Rare plant surveys must be repeated during normal rain years. Plant surveys were conducted during the 2016-2017 rainfall season, during which only 3.65 inches of rainfall was recorded. As average rainfall at the nearest weather station is 11.32 inches, these plant surveys were conducted during drought conditions. The consultants claimed to identify the remains of target plant species that germinated during a previous, above-average rainfall. However, the California Department of Fish and Wildlife and U.S. Fish and Wildlife Service do not generally accept the

results of rare plant surveys taken during droughts. Forensic surveys are unreliable and understate the full potential of rare plants that may be present onsite. Reliable surveys require a good rain year.

- Mitigation Measure Bio-1 requires rare plant surveys, but it does not require that the surveys occur during the appropriate blooming period. The measure should be revised to require surveys for areas not covered during the last two years, during the appropriate blooming periods of the season prior to any planned construction.

- The consultants failed to survey rare plant species or disclose a list of rare plant species that have been documented in the area between Palos Verdes and Bolsa Chica: *Aphanisma blitoides* (coastal bluffs), *Orcuttia californica* (vernal pools), *Abronia villosa var. aurita* (coastal scrub), *Euphorbia misera* (coastal scrub), *Nemacaulis denudata var. denudat*a (coastal dunes), *Atriplex serenana var. davidsonii* (wetland/riparian), *Isocoma menziesii var. decumbens* (coastal scrub), *Suaeda esteroa* (marshes, swamps), *Nasturtium gambelii* (marshes, swamps), *Astragalus hornii var. hornii* (meadows and seeps), *Helianthus nuttallii ssp. parishii* (marshes, swamps), *Calystegia felix* (meadows and seeps), *Dudleya multicaulis* (coastal scrub), *Nama stenocarpa* (marshes, swamps), *Atriplex parishii* (playas, vernal pools), *Navarretia prostrata* (meadows and seeps), *Chloropyron maritimum ssp. maritimum* (marshes, swamps), *Sidalcea neomexicana* (playas), *Symphyotrichum defoliatum* (meadows and seeps), *Eryngium aristulatum var. parishii* (grasslands, vernal pools), *Centromadia pungens ssp. laevis* (meadows and seeps), *Atriplex pacifica* (coastal scrub, playas), *Astragalus pycnostachyus var. lanosissimus* (marshes, swamps). A full suite of surveys during the appropriate blooming periods should be conducted during a year with adequate rainfall. This is important to understand the distribution of rare plants and assist with restoration planning, especially when there could be a conversion of vegetation/land types within the site, and seed collection and soil salvage is important for areas known to host rare plant species.

Concerns specific to the DPEIR's biological resources analysis include:

- The DPEIR states that biologists from GLA conducted detailed biological assessments and surveys on the program area (i.e., North and Central Areas) between 2010 and 2017. These surveys included the following: focused surveys for special-status plants and animals; vegetation mapping; delineation and assessment of wetlands and other aquatic resources; and general and focused biological surveys to obtain floral and faunal inventories, including wintering and breeding season surveys for the

burrowing owl (*Athene cunicularia*) and focused surveys for special-status plants. (DPEIR p. 3.3-2.) The DPEIR is not clear as to whether full coverage surveys were completed in 2017 and whether all rare plant species with the potential to occur onsite were surveyed. The DPEIR must base its analysis on the most current data.

- Existing conditions, health of the system, and vegetation communities can change over time, but are not reflected in the DPEIR. The habitat assessments and vegetation mapping are not current. For example, 9 years has passed since the last survey. (DPEIR p. 3.3-2.) We recommend that habitat be reassessed for areas that have not been updated over the past 4-5 years. This is important to understand the health of a system as it currently exists (the baseline for analysis) and the potential conversion of land types. New surveys will also provide a path to the success of the restoration plan. Current data on species diversity, cover, and distribution as well as non-native plant percentage cover will all contribute to the design and success criteria for this project.

- The DPEIR notes that CRC conducted Supplemental Surveys in 2018 that included updated vegetation mapping, a jurisdictional wetlands and waters assessment, mapping of Environmentally Sensitive Habitat Areas (ESHA), focused surveys for three special-status plants, and opportunistic avian observations on the four areas of the proposed program. (DPEIR p. 3.3-2.) The CDFW and USFWS generally do not accept the results of rare plant surveys taken during drought conditions. Forensic surveys are not reliable, and do not capture the full potential of rare plants to be found on site. A full suite of surveys should be conducted during the appropriate blooming periods for all rare plant species with the potential to occur on site, during a year with adequate rainfall. This is important to understand the distribution of rare plants and assist with restoration planning, especially when there could be a conversion of vegetation/land types within the site. In addition, opportunistic avian surveys do not account for species distribution, numbers, and migration patterns though and within the site. Avian point counts should be conducted to fully understand how avian species are utilizing the site, and how the restoration plan design can be prepared to benefit avian species. This will also be helpful to analyze the biological value and functionality of the project area once restoration implementation has been completed.

- In 2019, CRC conducted a review of the California Native Plant Society (CNPS) On-line Inventory and the California Natural Diversity Database (CNDDB) (CRC 2019) to identify special-status plants and wildlife species that have been previously

documented in the region. The areas that were queried included the United States Geological Survey (USGS) 7.5' minute quadrangle map for Anaheim, La Habra, Long Beach, Los Alamitos, Newport Beach, Seal Beach, South Gate and Whittier. The results of these database searches revealed special-status plant species that may have the potential to occur within the proposed program area. A complete list of plant species observed within the program area during CRC's 2019 assessment is provided in the floral compendium included in the Supplemental Biological Technical Report (Appendix C1). (DPEIR p. 3.3-2.) However, a species list was not provided in the Supplemental Biological Technical Report. Furthermore, only three species were targeted during the survey effort. The CNDDB listed 29 species in the area between Palos Verdes and Bolsa Chica, an area much less than the 8 quadrangles supposedly searched. Approximately 40 plants were evaluated in the EIR of which 30 have a high potential or are present on site and were not mentioned in this report. Ten species were determined to have a moderate potential or to be present on the entire project site. A full list of rare plants from not only CNDDB but also the IPAC and USFWS Sensitive species database should be thoroughly reviewed to determine the targeted species and a full suite of surveys should be conducted during a non-drought year during the appropriate blooming periods for all targeted species. Additionally, a full list of plant species observed during the surveys was not included in the report. The report is also devoid of surveys conducted in the following areas in the spring and fall of 2018: Southern areas: Hellman Retained site, Los Alamitos Retarding Basin site, South LCWA Site; and Northern areas: Northern and Southern Synergy Oil sites. These areas comprise approximately 50 percent of the site. Finally, the surveys did not occur in 2019; they occurred on March 5, April 17, April 30, May 1, May 9, May 10, and Oct 22, 2018.

- Focused botanical surveys were conducted at the Central Area (Pumpkin Patch site) in 2011, 2013, and 2016. Focused botanical surveys for the North Area (Synergy Oil Field site) were conducted in 2015 and 2016. During the 2015 survey, there was a significant focus on southern tarplant on the North Area (Synergy Oil Field site) because of the substantial numbers observed germinating early in the season that year. (DPEIR p. 3.3-3.) Focused surveys for rare plants are generally valid for up to two years, unless the surveys were performed in good conditions (above average rainfall). Here, four to five years has passed since the last time this area was surveyed. Incorporating rainfall data for 2014/2015 may be needed to support valid survey results. In addition, it is not clear if all rare plants with the potential to occur were targeted during the survey effort. This must be clarified.

- The DPEIR claims focused botanical surveys were conducted in all four areas in 2018 by CRC but the surveys focused only on three species: southern tarplant (*Centromadia parryi ssp. australis*), Coulter's goldfields (*Lasthenia glabrata ssp. coulteri*), and Lewis' evening primrose (*Camissoniopsis lewisii*). (DPEIR p. 3.3-3.). However, it is clear that these surveys did not cover all areas. Omitted sites include the Hellman Retained site, Los Alamitos Retarding Basin site, South LCWA Site, and Northern and Southern Synergy Oil sites.

- The DPEIR also explains that botanical surveys and jurisdictional delineations were performed on the City Property site by AECOM, Tidal Influence, and Vandermost Consulting Services, Inc. (VCS) as set forth in the 2016 Biological Resources Assessment and Wetland Delineation: Southeast Area Development and Improvement Plan (Placeworks and VCS Environmental 2016). (DPEIR p. 3.3-3.) Four years have passed since the surveys were conducted; they are outdated. It is not clear whether focused plant surveys included all species with a potential to occur within the survey area. If species were omitted, this must be corrected.

- The burrowing owl surveys are also insufficient. Although burrowing owls are known to have high site fidelity, the absence of burrowing owls during the surveys should not be considered valid since the surveys did not cover the entire area. Further, breeding surveys were only conducted in 2015, 5 years ago. Portions of these areas were visited during the non-breeding season. However, according to the CDFW Staff Report on Burrowing Owl Mitigation (CDFW 2012): Non-breeding season (1 September to 31 January) surveys may provide information on burrowing owl occupancy, but do not substitute for breeding season surveys because results are typically inconclusive. Burrowing owls are more difficult to detect during the non-breeding season and their seasonal residency status is difficult to ascertain. Burrowing owls surveys must be repeated during the breeding season.

- The DPEIR states the 2018 jurisdictional assessment was conducted to identify and map potential federal waters that are likely to be considered jurisdictional by the USACE and potential state waters that are likely to be considered jurisdictional by the RWQCB, CDFW and CCC jurisdiction within the program area. (DPEIR p. 3.3-3.) However, the water assessment was not conducted within the entire Program Area as suggested by the DPEIR. The assessment did not include Southern areas including the Hellman Retained site, Los Alamitos Retarding Basin site, and South LCWA Site.

- DPEIR Table 3.3-5, Special-Status Wildlife with Potential to Occur, claims to provide a summary of all wildlife species determined to have potential to occur with the program area based on (1) species identified by the 2019 CNDDB as occurring (either currently or historically) in the USGS Anaheim, La Habra, Long Beach, Los Alamitos, Newport Beach, Seal Beach, South Gate and Whittier Quadrangles and (2) records of special-status species that are known to occur within the vicinity of the proposed program, or for which potentially suitable habitat occurs on site. (DPEIR p. 3.3-37.). Reference to the underlying report, however, demonstrates mention of only CNDDB. There is no evidence that of IPac or USFWS Sensitive species databases were consulted for full analysis. The CNDDB is a positive sighting database and should not be used solely to evaluate which species have the potential to occur on site.

- Table 3.3-6, Special-Status Wildlife with Potential to Occur within the Program Area, claims to provide a summary of all special-status wildlife species determined to be present or to have potential to occur within each of the four program areas. (DPEIR p. 3.3-55.) Yet, the potential for occurrence does not match the determinations in the Table 3-3.5. For example, one species, the state and federally endangered Ridgeways rail is listed as "present" in Table 3-3.5 but is not on Table 3.3-6. At page 3.3-104, the species is listed as "not present." This should be clarified and verified with adequate surveys.The PFO table states this species was observed on site. Suitable foraging and breeding habitat is present within North Area (Steamshovel Slough) and tidal marsh areas in the South and Isthmus Areas and non-tidal marsh in the Central Area. Since focused protocol level surveys have not been conducted for many of the state and federally listed species, it is important for this document maintain consistency when analyzing and determining potential for occurrence since it is an effective tool to identify parameters in efforts to increase biological value for the restoration design. In addition, the proposed program has the potential to impact areas that could potentially meet the definition for ESHA as defined under the CCA. Without focused surveys to determine presence of these species, the PFO analysis is used to help determine whether the habitat supports or is likely to support state- or federally listed threatened or endangered animal species, California Fully Protected species, or other special-status animal species. Based on this definition of an ESHA, it is probable that the boundaries of the ESHA could change and more ESHA areas could be impacted. These tables must be updated for accuracy and consistency.

- The DPEIR notes that certain habitats have been documented in the proposed program area and have the potential to be considered ESHA because of their

potential to support one of more of the following special-status species: western snowy plover, American peregrine falcon, white-tailed kite, Belding's savannah sparrow, least Bell's vireo, California least tern, Pacific green sea turtle, Coulter's goldfields, estuary seablite and southern tarplant. (DPEIR p. 3.3-61.) The DPEIR and report omit the following California state sensitive species and one State and federally listed species: red diamond rattlesnake (SSC), burrowing owl (SSC), loggerhead shrike (SSC), Ridgeway Rail (SE/FE), short-eared owl (SSC), yellow-breasted chat (SSC). Potential ESHAs should consider native vegetation that supports or is likely to support state- or federally listed threatened or endangered animal species, California Fully Protected species, or other special-status animal species (e.g., listed by CDFW as Species of Special Concern or have a CNDDB state rank of S1, S2, or S3). The report and DPEIR should be updated with evaluations considering these species for potential ESHA habitat designations.

- Northern anchovy (*Engraulis mordax*), Pacific sardine (*Sardinops saga*x), Pacific mackerel (*Scomber japonicas*), and jack mackerel (*Trachurus symmetricus*), species managed under the Coastal Pelagic Fishery Management Plan, are all common in nearshore ocean waters and could swim into the channels in the Project. Three species managed under the Pacific Groundfish Fishery Managed Plan potentially could swim into the channel. These plans and the species managed under these plans should be discussed in this document to show how important this area is as EFH. (DPEIR p. 3.3-62.)

- The DPEIR considers the loss of suitable invertebrate habitat during grading to be temporary and less than significant, since the purpose of the proposed program is to enhance and restore habitat that is suitable for wildlife, including special-status invertebrate species. (DPEIR p. 3.3-96.) Wetlands are among the world's most valuable and most threatened habitats, and invertebrates are an extremely important component in these ecosystems. These invertebrates are one of the primary trophic links between lower plants and higher vertebrates (i.e., amphibians, birds and fish). This document doesn't analyze and discuss the invertebrate species and their role in this ecosystem. Grading will kill aquatic invertebrates. Soils within mudflat areas should be salvaged (where feasible) for areas that are proposed for activities such as grading. This will increase invertebrate survival and dispersal into newly land converted areas.

- Mitigation Measure Bio-1 (p. 3.3-108) does not adequately protect rare plants, as written. While the measure states that rare plant surveys should be conducted in

suitable habitat areas, it does not state that surveys must occur during the appropriate blooming periods. This measure protects the rare plants if construction occurs in mid- to late summer. However, if construction occurs in early spring, the surveys are not adequate since they would be performed outside the blooming period of herbaceous plants. There are areas that have not been surveyed and have no recent historical data that can be used to determine seed salvage areas. The measure should also be clarified regarding transplantation. Although transplanting rare herbaceous plant species is rarely successful, seed collection and propagation is can be successful. If ground disturbing work is proposed for areas where historical rare plant species and/or populations have been identified, the soils should be salvaged and replaced on site.

- Mitigation Measure Bio-2 can also be improved (p. 3.3-109.) The measure provides that initial grading and vegetation removal activities shall be supervised by a qualified monitoring biologist. The biologist shall ensure that impacts to special-status plants and wildlife, including wetland vegetation, are minimized to the greatest extent feasible during implementation of program activities on the South, Isthmus, Central and North Areas. However, the methods in which the biologist will ensure impacts are minimized are not specified. For example, work areas and avoidance areas should be clearly delineated (staking, flagging, silt fencing where feasible). Also, this measure doesn't specifically state how often the biologist is present. The biologist should be present daily and conduct sweeps prior to activities, especially during the nesting bird season. As written, the measure is impermissibly vague and deferred.

- Mitigation Measure Bio-4 provides: If construction or maintenance activities will occur during the avian nesting season (January 1 through August 31), a qualified biologist shall conduct pre-construction nesting avian surveys within no more than 5 days prior to the initiation of construction activities to identify any active nests. If a lapse in work of 5 days or longer occurs, another survey shall be conducted to verify if any new nests have been constructed prior to work being reinitiated. (DPEIR p. 3.3-109.) This will not adequately protect birds. Some bird species can build nests in 2 or 3 days. To protect our bird species, especially with sensitive bird species known on site, we suggest no more than a 72-hour window prior to work activities. In addition, it is unclear as to how a "lapse" and the "work area" is defined. We presume that the entire site will not have restoration implementation activities at once, and that work will be phased in areas. A survey of the entire site would not be adequate to identify new nests in areas that are more than 500 feet from existing

activities. Please consider revising to: "If no work has occurred for 72 hours, or if an area is located more than 500 feet from an active work area and 72 hours has passed within this area, a nesting bird survey should be conducted prior to work in that area to ensure that no active nests will be impacted." As project permit requirements change from project to project and contractors are required to adhere to different mitigation and avoidance measures, we suggest the preparation of an agency approved Nesting Bird Management Plan This Nesting Bird Management Plan (NBMP) that describes the measures that will be taken by the contractors to assure that avian protection measures are implemented to avoid and minimize impacts to nesting birds during construction. The NBMP should provide a description of protocols and methods that will be implemented to avoid and minimize impacts to nesting birds associated with construction of the Project. The NBMP should provide guidance for complying with federal and state regulations, including: nest surveying and monitoring methods, guidelines for establishing nest buffers, instructions for monitoring and reporting avian nesting activities, recommended nesting deterrents, and nest removal strategies.

- Mitigation Impact Bio-9 states: There are several aboveground pipelines and racks sited throughout the program boundary, many of which occur over wetland areas and will need to be removed. Based on the method of pipeline, rack, and tank removal, and the already disturbed areas that would be used to facilitate the removals, no impacts to CDFW Sensitive Natural Communities or riparian habitats are expected to occur. (DPEIR p. 3.3-112.) Substantial evidence has not been provided that impacts will not occur. The methods for removal should be reviewed by the agencies prior to demolition and removal. For example, it should be clear that the pipes will be disassembled and lifted off the ground and not dragged through wetland areas.

These concerns must be addressed in an expanded and updated biological resources analysis which must then be recirculated for public comment before the Project may proceed.

III. **The Noise Analysis Fails to Consider the Impacts of Noise on the Wetlands.**

Although the Project is aimed at restoring and enhancing wetlands, the DPEIR's noise analysis is entirely human-centric. Estimated noise limits and descriptions of noise impacts are provided for nearby homes, but the DPEIR fails entirely to describe the likely impacts that loud Project activities – and heavy construction equipment – will have on the species that currently inhabit the wetlands. Studies show that even minimal noise

and vibration disturbances can displace sensitive species, sometimes permanently. The Project anticipates loud, earthmoving and grading activities over a 20-plus year timeframe. Increased duration of noise and vibration increases the likelihood of significant impacts on biological resources, including burrowing animals. This does not appear to have been assessed in the DPEIR. The DPEIR must perform analysis of the Project's potential noise-related impacts on wildlife and habitat and recirculate that analysis.

For example, protected species typically have a prescribed noise limit, often 60 dBA. State endangered Belding's savannah sparrow (*Passerculus sandwichensis ssp. beldingi*) was found on the wetland area. A thorough environmental review of impacts to this species, such as that prepared for a CDFW Streambed Alteration Agreement, Incidental take permit, or USFWS Biological Opinion, would include information about the species noise tolerance. One project included the following analysis:

> SANDAG and RECON (1988) estimated that noise levels above 60 dBA Leq from March 15 to September 15 may impact vireo reproductive success. While vireos often continue to occupy areas subject to noise levels above 60 dBA, one study documented significantly reduced reproductive success due to noise impacts (Service 1995). Studies also observed movement away from construction activities and delayed pairing and initial nest establishment suggesting that excessive noise from construction activities may have resulted in the avoidance of suitable habitat and may have interfered with mating behavior (BonTerra 2000a, b, c, and d).[4]

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[4] BonTerra Consulting.
2000a. Breeding season 2000 weekly monitoring report of least Bell's vireo and coastal California gnatcatcher for the Crown Valley Parkway Bridge project, Orange County, California. 2 pp. (week of April 24 to April 28, 2000). Unpublished report prepared for the U.S. Fish and Wildlife Service.

BonTerra Consulting.
2000b. Breeding season 2000 weekly monitoring report of least Bell's vireo and coastal California gnatcatcher for the Crown Valley Parkway Bridge project, Orange County, California. 3 pp. (week of May 1 to May 5, 2000). Unpublished report prepared for the U.S. Fish and Wildlife Service.

BonTerra Consulting.
2000c. Breeding season 2000 weekly monitoring report of least Bell's vireo and coastal California gnatcatcher for the Crown Valley Parkway Bridge project,

The DPEIR does not disclose any noise limits for specific species or provide any information about whether the Project may exceed those noise limits. This must be corrected, and the DPEIR must be recirculated. This analysis must consider the impacts of impulsive, or short-term noise. Day-night averages such as CNEL may obscure the impacts of shorter-term, but much louder, noise.

The DPEIR also fails to include baseline information for ambient noise in the wetlands. The current iteration of the DPEIR only provides this information along roads, which obscures the Project's potential impacts to wildlife residing in the interior of the Project site.

Even if the Authority ultimately determines that the Project's noise-related impacts to biological resources are reasonable, all reasonably foreseeable impacts to sensitive species and existing habitat must be disclosed and analyzed in the DPEIR.

IV. Recirculation of the DPEIR Will Be Required.

CEQA requires recirculation of a draft EIR whenever "significant new information is added to the EIR after public notice is given of the availability of the draft EIR." (CEQA Guidelines s. 15088.5.) "Significant new information" requiring recirculation includes a disclosure showing that:

Orange County, California. 2pp. (week of May 29 to June 2, 2000). Unpublished report prepared for the U.S. Fish and Wildlife Service.

BonTerra Consulting.
2000d. Breeding season 2000 weekly monitoring report of least Bell's vireo and coastal California gnatcatcher for the Crown Valley Parkway Bridge project, Orange County, California. 2pp. (week of August 7 to August 11, 2000). Unpublished report prepared for the U.S. Fish and Wildlife Service.

United States Fish and Wildlife Service (Service).
1995. Biological Opinion (1-6-95-F-02). Programmatic activities and conservation plans in riparian and estuarine/beach ecosystems on Marine Corps Base, Camp Pendleton. Carlsbad Fish and Wildlife Office, Carlsbad, California. 61 pp.

San Diego Association of Governments (SANDAG) and Regional Environmental Consultants (RECON). 1990. Draft comprehensive species management plan for the least Bell's vireo. 37 pp

(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.

(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish & Game Com*.(1989) 214 Cal.App.3d 1043).

Given the inadequacies in the biological resources analysis, once these deficiencies are corrected, and defined mitigation is developed, the DPEIR must be recirculated for all four reasons provided in CEQA.