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Re: Highway 1 Corridor Investment Program, Tier I/Tier II Draft Environmental Impact Report/Environmental Assessment

Dear Mr. Fowler:

The Center for Biological Diversity (Center) submits these comments in response to the Highway 1 Corridor Investment Program (Program) Draft Environmental Impact Report/Environmental Assessment (DEIR/EA).

The DEIR/DEA has inadequately discusses and addresses impacts to species protected under the Endangered Species Act (ESA) that will be directly and indirectly harmed by the Project. The California Department of Transportation (Caltrans) and the Federal Highway Administration (FHWA) (collectively, "the Agencies") must conduct proper ESA Section 7 consultation and mitigation to guarantee their actions do not jeopardize listed species present within the Project site. Furthermore, FHWA has failed to sufficiently analyze Project alternatives and climate change under the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA). In addition, FHWA has inappropriately determined that an environmental assessment (EA) is the appropriate level of review for the Project. To fully comply with NEPA, FHWA must prepare an EIS for both Tier I and Tier II of the Project. To ensure the adequacy of NEPA and CEQA, Caltrans and FHWA must also do more to sufficiently describe the Project's impacts on the environment.

I. Factual Background

The Project seeks to improve circulation on Highway 1 in Santa Cruz County over an 8.9-mile stretch of the highway.[1] The DEIR/EA is divided into two tiers. Tier I is described as a "program" or "master" DEIR/EA, while Tier II is drafted as a DEIR/EA for a discrete project that is "ultimately programmed for design and construction."[2] The Tier II analysis of the DEIR/EA discusses impacts that would occur over 1.4 miles of highway within the Tier I project footprint, between Soquel Avenue and 41st Avenue.[3]

Tier I may convert nearly 11.6 acres of coastal habitat into freeway.[4] Tier I build-out may cause over 150 acres of additional impacts to nearby habitat, including riverine/freshwater marsh (1.08 acres), riparian forest (8.88 acres), coast live oak woodland (9.45 acres), mixed conifer woodland (6.08 acres), eucalyptus woodland (1.02 acres), annual grassland (4.53 acres), and ruderal/disturbed land (13.31 acres). It also stands to impact nearly ten acres of federal jurisdictional wetlands.[5] Sensitive species that Tier I may impact include foothill yellow-legged frog, California red-legged frog, Santa Cruz long-toed salamander, California tiger salamander, western pond turtle, tidewater goby, central California coast steelhead, monarch butterfly, California linderiella, Cooper's hawk, tricolored blackbird, great blue heron, short-eared owl, burrowing owl, white-tailed kite, least Bell's vireo, pallid bad, hoary bat, roosting bat, American badger, and over a dozen birds protected under the Migratory Bird Treaty Act.[6] In addition, the United States Fish and Wildlife Service's (USFWS) Information for Planning and Conservation (IPaC) tool lists several additional species that the DEIR/EA does not consider, including the Monterey gilia (*Gilia teuiflora ssp. arenaria*), Scotts Valley polygonum (*Polygonum hickmanii*), Scotts Valley spineflower (*Chorizanthe robusta var. hartwegii*), Ohlone tiger beetle (*Cicindela ohlone*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), San Joaquin kit fox (*Vulpes macrotis mutica*), southern sea otter (*Enhydra lutris nereis*), and the San Francisco garter snake (*Thamnophis sirtalis tetraenia*).[7] Tier I intersects steelhead salmon critical habitat in three locations, displayed in figure 1, below.[8]

Tier II has parallel impacts to those of Tier I. Under Tier II, 0.33 acres of land would be permanently converted to transportation uses.[9] It would add 4.89 acres of impervious surfaces, and would impact approximately 5.9 acres of riverine/freshwater marsh (0.02 acres), riparian forest (0.13 acres), coast live oak woodland (0.001 acres), ruderal/disturbed land (5.55 acres).[10]

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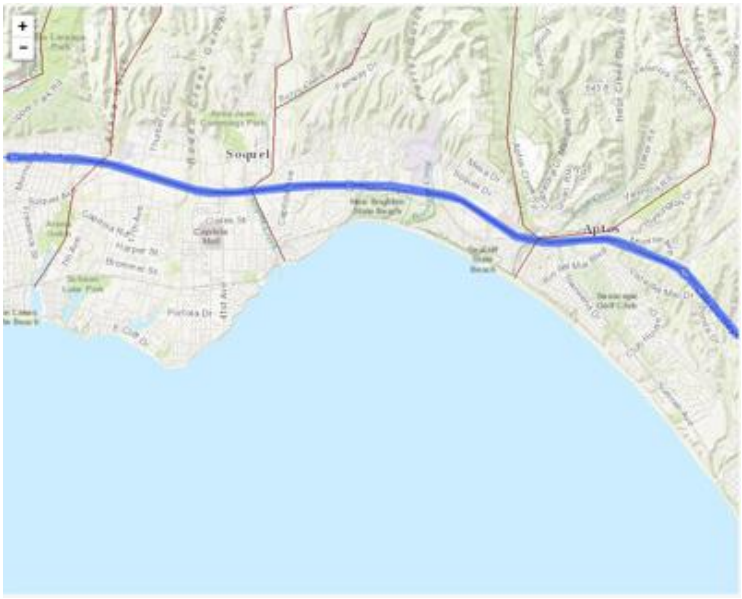
[1] Santa Cruz Route 1—Tier I and Tier II Draft Environmental Impact Report/Environmental Assessment S-I (2015) [hereinafter DEIR/EA].
[2] *Id*.
[3] *Id*., at S-i, vi.
[4] *Id*., at S-xi.
[5] *Id*., at 2.3-16.
[6] *Id*., at S-xviii.
[7] *See Highway 1 Corridor Investment Program: Tier 1*, U.S. FISH & WILDLIFE SERV. (2015), *available at* http://ecos.fws.gov/ipac/project/AIR6CTGSWNCEJENAAHPZZZY6E4/resources.
[8] *Id*.
[9] DEIR/EA, at S-xxvi.
[10] *Id*., at S-xxviii,

Tier II will impact 0.13 acres of jurisdictional wetlands.[11] The DEIR/EA also states Tier II may kill, harass California red-legged frog and tidewater goby or destroy their habitat.[12] Species that may be present within the Tier II footprint but that the DEIR/EA does not identify as specifically occurring within this footprint include the California tiger salamander (*Ambystoma californiense*), Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), California least tern (*Sterna antillarum browni*), least Bell's vireo (*Vireo bellii pusillus*), marbled Murrelet (*Brachyramphus marmoratus*), southwestern willow flycatcher (*Empidonax traillii extimus*), western snowy plover (*Charadrius alexandrinus nivosus*), mash sandwort (*Arenaria paludicola*), Santa Cruz tarplant (*Holocarpha macradenia*), Scotts Valley polygonum (*Polygonum hickmanii*), Scotts Valley spineflower (*Chorizanthe robusta var. hartwegii*), Ohlone tiger beetle (*Cicindela ohlone*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), southern sea otter (*Enhydra lutris nereis*), and the San Francisco garter snake (*Thamnophis sirtalis tetraenia*).

Figure 1 – Steelhead Critical Habitat Impacted Under Tier I



(critical habitat in red)

II. Legal Background

A. The Endangered Species Act

The Endangered Species Act prohibits the unauthorized taking of species listed under the ESA as threatened or endangered.[13] "Take" is defined as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."[14] An ESA-

[11] *Id.*, at 2.3-16.
[12] *Id.*, at S-xxix.
[13] 16 U.S.C. § 1538(a).
[14] *Id.* § 1532(19).

listed species is taken when "significant habitat modification or degradation [] actually kills or injures wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering."[15] "Take" also occurs where "an intentional or negligent act or omission [] creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns."[16]

In order to fulfill the purpose of the ESA, Section 7(a)(2) of the statute requires each federal agency to consult with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species."[17] Thus, Section 7(a)(2) imposes two obligations upon federal agencies. The first is procedural and requires that agencies consult with USFWS and NMFS to determine the effects of their actions on endangered or threatened species and their critical habitat.[18] The second is substantive and requires agencies to ensure that their actions do not jeopardize the continued existence of listed species.[19] If the agency proposing the project determines that the project "may affect" a listed species, the agency must engage in formal consultation with USFWS and NMFS.[20] Formal consultation culminates in a report called a biological opinion.[21] In the biological opinion, USFWS and NMFS must determine "whether the action is likely to jeopardize the continued existence of a listed species," and it must suggest mitigation measures to ensure such jeopardy does not occur.[22]

B. The National Environmental Policy Act

The National Environmental Policy Act (NEPA) directs agencies to review the environmental impacts of their actions.[23] The purpose of NEPA is to guarantee that agencies (1) take a hard look at the environmental consequences of their actions before these actions occur; and (2) make relevant information available to the public so that the public may also play a role in both the decision-making process and the implementation of these decisions.[24]

NEPA requires federal agencies to prepare an EIS for all "major federal actions significantly affecting the quality of the human environment."[25] An EIS is required if "substantial questions are raised as to whether a project . . . may cause significant degradation of some human environmental

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[15] 50 C.F.R. § 222.102.
[16] 15 C.F.R. § 17.3.
[17] *Id.* § 1536(a)(2).
[18] *Id.* § 1536(b).
[19] *Id.* § 1536(a)(2).
[20] *Id.* §1536(b); 50 C.F.R. § 420.4.
[21] *Id.* § 1536(b)(3)-(4).
[22] *Id.*
[23] *See* 42 U.S.C. §§ 4321 *et seq.*
[24] *See, e.g.*, 40 C.F.R. §§ 1500.1, 1500.2(d) ("To assure transparency and thoroughness, agencies also must "to the fullest extent possible . . . [e]ncourage and facilitate public involvement" in decision-making.").
[25] 42 U.S.C. § 4332(2)(C); *see also* 40 C.F.R. § 1501.4.

factor."[26] To aid in this analysis, the Council on Environmental Quality (CEQ) has compiled a list of ten significance factors to determine whether a project will have a significant impact on the environment and thus require the agency to prepare an EIS.[27] The presence of even one of CEQ's ten significance factors may require an agency to prepare an EIS.[28]

CEQ's ten significance criteria are[29]:

1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.
2) The degree to which the proposed action affects public health or safety.
3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.
5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.
9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

A project's significance cannot be determined in isolation. A project's impacts may be found to be significant when the indirect outcomes of the project have a significant impact on the environment, or when the individual impacts of the project may be insignificant but are significant when viewed in connection with other nearby past, present, and future agency actions.[30]

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[26] *Idaho Sporting Congress v. Thomas*, 137 F.3d 1146, 1149-50 (9th Cir. 1998).
[27] 40 C.F.R. § 1508.27(b).
[28] *Ocean Advocates v. United States Army Corps of Eng'rs*, 402 F.3d 846, 865 (9th Cir. 2005).
[29] 40 C.F.R. § 1508.27(b).
[30] 40 C.F.R. § 1508.8(b).

C. Cumulative Impacts Under CEQA and NEPA

The DEIR/EA does not adequately discuss the cumulative impacts to biological resources as required by the California Environmental Quality Act (CEQA) and NEPA. Therefore, it fails as an informational document and must be revised to adequately assess these cumulative impacts and how they may affect biological resources.

CEQA Guidelines define a cumulative impact as "two or more individual effects which, when considered together, are considerable, or which compound or increase other environmental impacts."[31] The "individual effects" may arise from "a single project or a number of separate projects."[32] A "cumulative impact" occurs when there is a "change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable future projects."[33]

For the purposes of NEPA, a cumulative impact "is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions."[34] CEQ reminds agencies that "cumulative actions can result from individually minor but collectively significant actions taking place over a period of time."[35]

The primary function of the DEIR/EA is to serve as an informational document. Under the California Environmental Quality Act (CEQA), an EIR must inform "public agencies in systematically identifying . . . the significant effects of proposed projects."[36] CEQA guidelines state, "[a]n EIR is an informational document which will inform public agency decisionmakers and the public generally of the significant environmental effect of a project."[37]

Similarly, NEPA is intended to "foster both informed decision-making and informed public participation."[38] The EIS is a "disclosure document" that must provide a "full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of [] reasonable alternatives."[39] "Where the information in the . . . EIS [is] so incomplete or misleading that the decision-maker and the public [can]not make an informed comparison of the alternatives, revision of an EIS may be necessary to provide a reasonable, good faith, and objective presentation of the subjects required by NEPA."[40]

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[31] CEQA Guidelines § 15355.
[32] CEQA Guidelines § 15355(a).
[33] CEQA Guidelines § 15355(b).
[34] 40 C.F.R. § 1508.7.
[35] 40 C.F.R. § 1508.7.
[36] Cal. Pub. Res. Code §§ 21002; 21003(a)
[37] 40 C.C.R. § 15121.
[38] *California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982); 42 U.S.C. § 4332; 40 C.F.R. § 1502.1.
[39] 40 C.F.R. § 1502.1.
[40] *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (internal quotation omitted).

III. The Agencies Must Consult with NMFS and USFWS to Ensure Their Actions Do Not Jeopardize Any Listed Species that May Be Affected by the Project

FHWA and Cal Tans have already concluded that they must consult with NMFS and USFWS to make sure their actions do not jeopardize the continued existence of some ESA-listed species. The Agencies, NMFS, and USFWS must take information regarding the specific life history of ESA-listed reptiles and amphibians that may be present within the Project area in order for the jeopardy determination to be valid. In addition, the Agencies must not only consult regarding species that have a documented presence on site; they must also consider impacts to species that are likely to occur on site.

A. The Agencies Must Conduct a More In-Depth Analysis and Explanation Regarding Impacts to Sensitive Species

The proposed project area is home to numerous rare and sensitive species, including a several species protected under the federal Endangered Species Act. Consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service will be necessary prior to implementation of this project. In order to ensure that impacts to these protected species are properly analyzed in the EIR/EA the Center requests completion of consultation prior to finalization of the EIR/EA and certification of the EIR. The impacts and ability of mitigation to offset those impacts cannot be properly assessed without full involvement and input from the expert federal agencies.

Since completion of the Natural Environment Study for this project, the U.S. Fish and Wildlife Service made positive 90-day findings for the western pond turtle and the foothill yellow-legged frog, in response to an ESA listing petition filed by the Center. These positive findings indicate that the species may qualify for listing under the ESA, as the USFWS determined that the petition presents sufficient information to warrant further consideration and USFWS is now conducting a full status review of both species. This new information should be incorporated into the EIR/EA, and additional analyses should be made to look at the potential implications of these additional protections on the Hwy 1 Corridor Investment Program and the alternatives presented in the DEIR.

One species that is likely to be affected by this project and that is of particular concern to the Center is the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), an species that has been listed as endangered since 1967 and protected under the Endangered Species Act since its adoption. The Santa Crus long-toed salamander (SCLTS) is restricted to southern Santa Cruz and northern Monterey counties and is still considered to be a highly imperiled species, despite more than 40 years of federal protection. Valencia Lagoon, the wetland adjacent to Hwy 1 and within the project area, is one of only 21 breeding sites for this species, and only 1 of 4 breeding wetlands in the Valencia-Seascape metapopulation. Valencia

Lagoon was nearly eliminated in 1969 when Highway 1 was converted into a freeway. This site already has limited upland habitat available since it is bordered by Highway 1 to the north, and residential development to the west, south, and east.

The USFWS has reported marked declines in estimates of the long-toed salamander population at Valencia Lagoon from 1977-1978 to 2007-2008. The marked declines in the SCLTS population at Valencia Lagoon must be taken into consideration when considering the added impacts that this project will have on this imperiled species. In addition to direct impacts the project may have on the lagoon itself, such as dewatering, impacts on the uplands are equally important, especially given the already limited supply of upland habitat around Valencia Lagoon. In addition, SCLTS may suffer indirect effects from the proposed project, such as from sediment and pollutant runoff.

B. The Agencies Must Consult NMFS and USFWS Regarding Other Endangered and Threatened Species that May Occur Within the Project Area

There are several species the Agencies have excluded from further review because limited seasonal surveys have not found these species to be present.[41] However, the DEIR/EA has yet to consider or conduct surveys for several species USFWS' IPaC website states may be present on site. In addition, the Agencies should consult USFWS regarding other species that may not have been visible during limited surveying but that have suitable habitat on site.

There are several species the DEIR/EA does not discuss at all, but that USFWS states are likely to occur on site. Without additional scientific review or on-site surveys to determine whether these species or suitable habitat may be impacted by the Projects, the Agencies should presume these species are present on site and request formal consultation to ensure their actions do not jeopardize the continued existence of these species. These species include: Monterey gilia (*Gilia teuiflora ssp. arenaria*), Scotts Valley polygonum (*Polygonum hickmanii*), Scotts Valley spineflower (*Chorizanthe robusta var. hartwegii*), Ohlone tiger beetle (*Cicindela ohlone*), Zayante band-winged grasshopper (*Trimerotropis infantilis*), San Joaquin kit fox (*Vulpes macrotis mutica*), southern sea otter (*Enhydra lutris nereis*), and the San Francisco garter snake (*Thamnophis sirtalis tetraenia*).[42] It is important to consider impacts to these species outside of the limited footprint of the Project because the Project stands to harm, harass, or destroy these species' habitats well outside of the Project's footprint.

There are also several species the DEIR/EA discusses but suggests will not be considered for Section 7 consultation.[43] These include the Santa Cruz tarplant (*Holocarpha macradenia*), robust spineflower (*Chorizanthe robusta var. robusta*), Monterey spineflower (*Chorizanthe*

[41] *See* DEIR/EA, at 2.3-28, 51-55.
[42] *See Highway 1 Corridor Investment Program: Tier 1*, U.S. FISH & WILDLIFE SERV. (2015), *available at* http://ecos.fws.gov/ipac/project/AIR6CTGSWNCEJENAAHPZZZY6E4/resources.
[43] *See, e.g.*, DEIR/EA, at S-xix; 2.3-47-50.

pungens var. pungens), and the marsh sandwort (*Arenaria paludicola*). Many of these species would have been impossible to spot during site surveys. Many of these species are primarily identifiable by their blossoms, which only occur seasonally, and only limited species surveys were conducted. In addition, California's drought may have prevented perennial plants from being visibly present, as only desiccated plants may have been on site. The Agencies should conduct additional surveys in 2016 during seasons when these species are more visible.

IV. FHWA Must Prepare an EIS Because the Project Triggers Several Significance Factors

FHWA has initially chosen to prepare an EA, rather than an EIS. However, FHWA must ultimately prepare an EIS because the direct, indirect, and cumulative impacts of both tiers of the Project trigger multiple significance criteria.

A. There Will Be Significant Impacts to Biological Resources

The Project will cause significant impacts to "unique characteristics of the geographic area, such as . . . wetlands . . . or ecologically critical areas."[44] The Project will also significantly impact several endangered and threatened species, in addition to steelhead critical habitat.[45] These impacts alone are sufficient to trigger the preparation of an EIS.

First, both tiers of the Project will take members of ESA-listed species or irreversibly damage their habitat. The DEIS/EA admits that:

> Habitat areas could be temporarily disturbed during construction activities for any of the alternatives. Construction noise and movements of workers could disturb bird nesting or bat roosting. Temporary dewatering/diversion of streams could interrupt passage for fish and amphibians. Removal of mature trees could affect monarch butterfly roosting or bird nesting. Disruption of highway structures could disturb bat roosting. Construction activities for the Tier I Corridor Alternatives have the potential to encroach.[46]

In addition, the DEIR/EA states that "[p]ermanent impacts to California red-legged frog could occur due to habitat loss at Rodeo Creek Gulch and the ditch adjacent to the Soquel Drive-In. Potential impacts to tidewater goby would occur due to habitat loss at Rodeo Creek Gulch."[47] The Project is also "likely to adversely affect [the] Santa Cruz long-toed salamander," and may affect the California tiger salamander.[48] To add to this, the Project will likely remove suitable nesting habitat for several birds protected under the Migratory Bird Treaty Act (MBTA),[49] as

[44] 40 C.F.R. § 1508.27(b)(3).
[45] 40 C.F.R. § 1508.27(b)(9).
[46] DEIR/EA, at 3-4.
[47] DEIR/EA, at S-xxix.
[48] DEIR/EA, at S-xix.
[49] DEIR/EA, at S-xix.

well as several other species the DEIR/EA either does not discuss or prematurely excludes from further consideration.[50]

Importantly, the Project may also "result in temporary and/or permanent impacts on central California coast steelhead critical habitat" through erosion, harmful runoff, or by removing vegetation along Arana Gulch, Aptos Creek, Soquel Creek, and their watersheds.[51] The Project may also temporarily impact steelhead habitat by The Project may also permanently impact proposed critical habitat proposed critical habitat for the tidewater goby in Soquel Creek, Rodeo Creek Gulch, and Aptos Creek.[52]

On a related note, the Project proposes to impact dozens of acres of upland habitat.[53] It also can directly impact over fifteen acres of wetlands that are suitable habitat for special status species and indirectly impact dozens more.[54] Species, such as the California tiger salamander, likely use both types of habitat, and any modification of this habitat will directly impact them. However, these direct and indirect impacts are extensive enough that they will likely negatively affect all ESA-listed species that use the Project area. As discussed above, some of this land is essential for the continued survival of some species, such as the Valencia Lagoon—one of the few existent ponds known to be breeding habitat for the Santa Cruz long-toed salamander.[55]

Furthermore, it is telling that FHWA recognizes that it must conduct Section 7 consultation for at least some ESA-listed species.[56] The Agencies have already admitted that the Project "is likely to adversely affect" multiple ESA-listed species, including steelhead, the tidewater goby, the California red-legged frog, and the Santa Cruz long-toed salamander.[57] It would be inconsistent for FHWA to recognize these significant impacts as part of the Section 7 consultation process, but then determine these impacts to be less than significant for purposes of NEPA. To maintain consistency, FHWA must conclude that the Project "may adversely affect [] endangered [and] threatened species" and prepare an EIS, accordingly.

In summary, the Project stands to heavily impact wetlands and other areas that are ecologically critical for a wide variety of federally threatened and endangered species, thus triggering CEQ's third significance criterion.[58] The Project will cause permanent and temporary impacts salamander breeding ponds. Furthermore, the Project triggers the ninth significance criterion because it "may adversely affect [] endangered or threatened species" and their critical habitat.[59] Impacts to federally protected species include both permanent and temporary alteration of steelhead critical habitat, as well as tidewater goby proposed critical habitat and

[50] *See supra*, Part III.B.
[51] DEIR/EA, at 2.3-51.
[52] DEIR/EA, at 2.3-51.
[53] DEIR/EA, at 2.3-8.
[54] DEIR/EA, at 2.3-16, 18.
[55] *See supra*, Part III.A; DEIR/EA, at 2.3-34.
[56] *See, e.g.*, DEIR/EA, at S-xix.
[57] DEIR/EA, at S-xix.
[58] 40 C.F.R. § 1508.27(b)(3).
[59] 40 C.F.R. § 1508.27(b)(9).

direct and indirect impacts to dozens of other species protected under the ESA and the MBTA. Therefore, biological impacts alone trigger the need to prepare an EIS.

B. The Project Will Impact Cultural and Historical Resources

Next, the Project will significantly impact cultural and historical resources present on site.

The DEIR/EA discusses multiple potential historic sites[60]:

> The Tier I Corridor Alternatives may adversely affect portions of the three unevaluated archaeological sites and their potential buried archaeological deposits within the archaeological Area of Potential Effects . . . . In addition, potential impacts to unidentified, buried archaeological resources within the Route 1 corridor could occur during project construction . . . .

In addition, there is a "high potential" for the Project to impact "scientifically important" fossils on site.[61]

As discussed in the DEIR/EA, the Project "may cause loss or destruction of significant scientific, cultural, or historical resources."[62] Because the scientific, cultural, and historical value of the archaeological and paleontological sites has yet to be determined, it should be presumed that the Project will stand to significantly and negatively impact valuable resources. Some of these characteristics—such as the presence of the Pliocene Purisima formation, Plio-Pleistocene Aromas sand, and Pleistocene terrace deposits—represent "unique [historica and cultural] characteristics of the geographic area" that the Project will significantly impact.[63]

C. The Project Will Significantly Impact the Air Quality Surrounding Highway 1

The Project will also have significant impacts to the air quality in the vicinity of Highway 1. It is highly likely that the Project will negatively impact air quality near the highway and add to further congestion, especially leading up to Route 17 and at either end of the Project. However, even if Agencies erroneously conclude that the Project will significantly benefit local and regional air quality, they must still analyze these impacts so long as FHWA "believes and on balance the effect will be beneficial."[64]

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[60] DEIR/EA, at 3-5.
[61] DEIR/EA, at 3-5.
[62] 40 C.F.R. § 1508.27(3), (8).
[63] 40 C.F.R. § 1508.27(3).
[64] 40 C.F.R. § 1508.27(1).

V. The DEIR/EA Fails to Adequately Describe Cumulative Impacts to Special Status Species

The DEIR/EA does not adequately discuss cumulative impacts to biological resources that may be present within and surrounding the Project area. The failure of the DEIR/EA to more fully discuss environmental impacts does not adequately serve CEQA's and NEPA's information-sharing directives.

The DEIR does not consider all impacts to sensitive species. For some reason, the Biological Resources section lists several projects occurring or that will occur in the future, but quizzically does not discuss how these projects may cumulatively impact species present within the Project area in its cumulative impacts analysis.[65]

In some instances, the Agencies fail to discuss well-known impacts that are currently affecting sensitive species, and that the Project will exacerbate. For example, the assessment of cumulative impacts to the federally endangered Santa Cruz long-toed salamander fails to consider the high level of road mortality that salamanders from Valencia Lagoon are experiencing when crossing Bonita Drive, a road that is adjacent to the project area.[66] The USFWS has reported declines in the long-toed salamander population at Valencia Lagoon,[67] thus the DEIR/EA must consider the effects of this road mortality and other potential causes of this decline in its cumulative effects analysis. USFWS attributed this decline to Valencia Lagoon's "isolation from other breeding ponds, mortality of migrating individuals on nearby roadways, and the loss of adjacent uplands to residential development," yet these factors are not mentioned in the cumulative impacts discussions for this project. [68]

The Cumulative Impacts section of the DEIR/EA fails to provide an adequate discussion of cumulative impacts to biological resources. It simply states:

> In the case of the proposed Tier I and Tier II build alternatives, although they would result in impacts to various habitats and special-status animal species, any contribution to cumulative impacts is anticipated to be minimal because impacts to these resources will be addressed by the mitigation, minimization, and avoidance measures identified in Section 2.3, Biological Environment.[69]

Furthermore, the Natural Environment Study (Study) in the appendix also fails to adequately discuss cumulative impacts. For instance, regarding cumulative impacts to wetlands, the Study concludes "any cumulative effects to jurisdictional wetlands or other waters within the

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[65] *See* DEIR/EA, at 2.5-3-5, 9.
[66] Hobbs, M. T. (2013). *Amphibian Mortality on Roads: A Case Study in Santa Cruz Long-toed Salamander Habitat* (Doctoral dissertation, San José State University). *Available at* http://scholarworks.sjsu.edu/etd_theses/4389/ (Last Accessed Jan. 19, 2016).
[67] U.S. Fish and Wildlife Service. 2009. *5-Year Review of Santa Cruz Long-Toed Salamander*. *Available at* http://ecos.fws.gov/docs/five_year_review/doc2630.pdf (Last Accessed Jan. 19, 2016).
[68] *Id.* at 8.
[69] DEIR/EA, at 3.5-9.

BSA as a result of implementing the proposed project are likely to be minimal, as impacts to these resources will be mitigated with the previously mentioned mitigation measures."[70] The Study provides nearly identical conclusions for each other cumulative impact within its discussion.[71]

This analysis misses the point of the cumulative impacts analysis. By the Agencies' reasoning, all approved projects would categorically never cause cumulative impacts, no matter how much the intensity of number of local activities increase. So long as the Agencies make *any* significance determination that legally complies with CEQA and NEPA requirements, then no project in the county can be susceptible, or contribute, to local cumulative impacts. This is pure fiction, and it nullifies the purpose of the cumulative effects analysis. According to the reasoning in the DEIR/EA, a project can only have cumulative impacts to wildlife if the county or the project violates CEQA. This cannot be the purpose of the cumulative impacts reporting duties outlined in CEQA and NEPA, which requires the Agencies to consider "individually minor but collectively significant projects taking place over a period of time."[72] Worse, the DEIR/EA's unsupported cumulative impacts conclusion fails to provide the public and decision-makers of the meaningful cumulative impacts analysis that CEQA and NEPA mandate.[73]

Contrary to the DEIR/EA's flawed reasoning, most "less than significant" impacts, when combined with other "less than significant" impacts have the ability to cumulatively harm plant and animal species. "Less than significant" does not equate to "no impact," so each individual "less than significant" impact has an additive quality that the Agencies should have discussed. What the Agencies fail to recognize is that its "less than significant" determination is a legal fiction. The construction and use of State Route 1, as well as other human activities in the vicinity, will still have a cumulative impact on wildlife species despite the Agencies' mitigation proposals. These species will lose habitat, there will be increased human presence and increased traffic, there will be added noise, species will be excluded from suitable habitat, suitable upland and riparian habitat will be destroyed, and runoff will alter stream quality. The Agencies should have fully accounted for all combined impacts

The purpose of analyzing cumulative environmental impacts is to assess adverse environmental change "as a whole greater than the sum of its parts."[74] Absent meaningful cumulative analysis there would be no control of development and "piecemeal development would inevitably cause havoc in virtually every aspect of the environment."[75] Because the DEIR/EA only provides a cursory and conclusory cumulative impacts analysis for biological

[70] DEIR/EA, Natural Environment Study, at 127.
[71] *See* DEIR/EA, Natural Environment Study, at 130, 134, 138-39, 141, etc., etc., etc.
[72] CEQA Guidelines § 15355(b); 40 C.F.R. § 1508.7.
[73] Cal. Pub. Res. Code §§ 21001(g); 21002.1(a) & (e); 21003(b); *California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982); 42 U.S.C. § 4332; 40 C.F.R. § 1502.1; 40 C.F.R. § 1502.1; *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (internal quotation omitted).
[74] *Environmental Protection Information Center v. Johnson* (1985) 170 Cal.App.3d 604, 625.
[75] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721.

resources, it fails to provide the public with an accurate and informative cumulative impacts analysis.[76]

VI. There Has Been No Cognizable Greenhouse Gas Emission Analysis, Conclusions, or Proposed Mitigation as Required by CEQA

Lead agencies must analyze the greenhouse gas emissions of proposed projects, and must reach a conclusion regarding the significance of those emissions.[77] When a project's greenhouse gas emissions may be significant, lead agencies must consider a range of potential mitigation measures to reduce those emissions.[78] CEQA mandates analysis of a proposed project's potential energy use (including transportation-related energy), sources of energy supply, and ways to reduce energy demand, including through the use of efficient transportation alternatives.[79]

Here, CalTRANS has failed to conduct valid analysis of greenhouse gas emissions, reached no conclusions regarding the significance of those emissions, and did not consider any potential mitigation measures to reduce those emissions. In other words, CalTRANS has entirely failed to address greenhouse gas emissions in any cognizable, much less meaningful and legally sufficient, manner.

The bare bones effort to consider greenhouse gas emission does not account for construction related impacts, do not include any cumulative analysis on emission, and does not offer a valid analysis of how the project will ultimately impact the number of vehicles on the road and energy use.

The entire analysis offered is a few pages summarized in two tables. Immediately following the below table, CalTRANS states "The incremental increase in 2015 daily greenhouse gas emissions as a result of the Tier I Corridor HOV Lane Alternative would be approximately 0.02 percent and the incremental decrease in 2035 emissions would be approximately 0.24 percent. The incremental decrease in 2015 daily greenhouse gas emissions as a result of the Tier I Corridor TSM Alternative would be approximately 0.06 percent and the incremental increase in 2035 emissions would be approximately 0.35 percent."[80]

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[76] Cal. Pub. Res. Code §§ 21001(g); 21002.1(a) & (e); 21003(b); *California v. Block*, 690 F.3d 753, 761 (9th Cir. 1982); 42 U.S.C. § 4332; 40 C.F.R. § 1502.1; 40 C.F.R. § 1502.1; *Animal Defense Council v. Hodel*, 840 F.2d 1432, 1439 (9th Cir. 1988) (internal quotation omitted).
[77] *See* CEQA Guidelines § 15064.4.
[78] *See* CEQA Guidelines § 15126.4(c)
[79] *See* CEQA Guidelines, Appendix F.
[80] DEIR/EA at p. 3-14.

Table 3-1: Estimated Carbon Dioxide Emissions by Tier I Alternative – AM and PM Hours Emissions

Alternative	2015 (Metric Tons per AM and PM Peak Hours)	2035 (Metric Tons per AM and PM Peak Hours)
Existing	59	59
No Build	68	87
HOV Lane	69	71
TSM	64	94
Source: Based on vehicle miles traveled and speeds obtained from the Traffic Operations Report (2012); Emission factors obtained from EMFAC2011.		

This conclusion is not only not supported by substantial evidence, but is also in direct contravention to the evidence presented and that evidence is based upon an entirely results-oriented methodology that lacks even the faintest glimmer of credibility.

Some of the glaring faults in the methodology include:

- Comparison to Association of Monterey Bay Area Governments data for Monterey, San Benito and Santa Cruz County is inappropriate for a 9 mile stretch of highway entirely within Santa Cruz County. Comparison should be, at the least, at the County level. Santa Cruz County has conducted emission inventories and this is a more appropriate benchmark than an arbitrary 3 county area.
- The table appears to be limited to some unidentified number of hours and so comparison to daily data is deceptive and in error.
- Since no project alternative has been put in place in 2015, the comparison to alternatives for 2015 makes no sense as this is a hypothetical that is not possible.
- The claim that emissions under "existing" conditions will be the same in 2015 as 2035 is clearly in error.
- There is no explanation offered as to why 2035 was selected as future comparison date to the exclusion of any other time period.
- The analysis includes only one source of emissions ignoring all other sources such as construction.

Even if this was a valid model, which it is not, the stated conclusions are in direct contravention to the results. The table shows an increase for all project alternatives from both 2015 and 2035 "existing" conditions yet CalTRANS claims a 2035 decrease for the HOV Lane alternative and 2015 decrease for TSM alternative.

Table 3-2 suffers from all the same problems and likewise shows an increase in emissions for all alternatives.

Based upon the above-described and further errors, CalTRANS concludes "It is likely that annual emissions would follow the same trends as the peak-hour analysis provided above

and that the various alternatives would affect regional greenhouse gas emission by a maximum of .35 percent."

The .35% figure is that cited for 2035 TSM alternative for part of the day compared to data for an entire day in the 3 county area. This is an analysis clearly meant to dilute the impact of the project by making an inappropriate comparison larger in scale and time.

Even this flawed analysis shows that TSM alternative would, in fact, result in a 37% (not .37 but 37) increase in emissions over existing conditions. This is a huge increase out of line with California emissions reductions goals. CalTRANS fails to even identify this as a significant impact and proposes no mitigation to address this significant impact.

CalTRANS needs to entirely dispose of the useless information presented in this DEIR on carbon dioxide emission and present the public an analysis of the greenhouse gas emission impacts of this proposed project as required by CEQA.

VII. The Alternatives Analysis Is Legally Insufficient

The DEIR/EA does not provide a No Project alternative. The No Project alterative that is described is defined as including part of the HOV project alternative. By design, a No Project alternative cannot be a subset of another alternative.

VIII. Conclusion

The Project's proposed improvements to State Route 1 will significantly and irreparably impact several federally protected species. The Agencies must consult with NMFS and USFWS regarding impacts to these species in order to comply with the ESA. In addition, impacts to biological, cultural, and historical resources, as well as air quality, are all significant under CEQ's significance criteria. Therefore, FHWA must prepare an EIS instead of an EA. Next, in order to adequately serve as an informational document under CEQA and NEPA, the Agencies must provide more—and more accurate—information regarding cumulative impacts, air quality, and traffic. Finally, the final EIR/EIS must provide analysis regarding a true "No Project" alternative in order to be legally sufficient.

The Center supports efforts to increase bicycle and pedestrian safety and access but this highway widening project is not necessary to accomplish such improvement. The Center recommends that measures to increase bicycle and pedestrian access and safety be implemented and that an HOV lane be created from the existing lanes.

Thank you for considering our comments. If you have any questions, please feel free to contact us at the information provided below.

Sincerely,

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