

Appendix L United States Fish and
Wildlife Formal Section 7
Consultation

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011



In Reply Refer To:
FWS-OR/WRIV-3669.2

JAN 09 2006

Smita Desphande
California Department of Transportation
District 12
3337 Michelson Drive
Irvine, California 92612

Subj: Species List for State Route 91 Widening between State Route 241 and Serfas Club Drive in Orange and Riverside Counties, California

Dear Ms. Desphande:

This letter is in response to your written request, received on January 3, 2006, for information on federally endangered, threatened, and proposed species that may occur in the vicinity State Route 91 (SR91) between SR241 and Serfas Club Drive in Orange and Riverside counties, California. To assist you in evaluating the potential occurrence of federally listed endangered, threatened, proposed, and candidate species that may occur in the vicinity of the area identified, we are providing the enclosed list.

A portion of the proposed project is located in the plan area of the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP). The MSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and the incidental take of covered species associated with covered activities. Caltrans is signatory to the MSHCP, and, therefore, should conduct this project consistent with the provisions of the MSHCP and its associated implementation agreement and permit.

Section 7 of the Endangered Species Act of 1973 (Act), as amended, requires Federal agencies to consult with us, the U.S. Fish and Wildlife Service, should it be determined that their actions may affect federally listed threatened or endangered species. Section 9 of the Act prohibits the "take" (e.g., harm, harassment, pursuit, injury, kill) of federally listed wildlife. "Harm" is further defined to include habitat modification or degradation where it kills or injures wildlife by impairing essential behavioral patterns including breeding, feeding, or sheltering. Take incidental to otherwise lawful activities can be authorized under sections 7 (Federal consultations) and 10 (habitat conservation plans) of the Act.

If a proposed project is authorized, funded, or carried out by a Federal agency and may affect a listed species, then the Federal agency must consult with us on behalf of the applicant, pursuant to section 7 of the Act. In other words, any activity on private land that requires Federal involvement (such as

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the issuance of a section 404 permit under the Clean Water Act by the U.S. Army Corps of Engineers) and may affect listed species must be reviewed by us to ensure that the continued existence of the species would not be jeopardized. During the section 7 process, measures to avoid and minimize project effects to listed species and their habitat will be identified and incorporated into a biological opinion that includes an incidental take statement that authorizes incidental take by the Federal agency and applicant.

If a proposed project does not involve a Federal agency, but is likely to result in the take of a listed animal species, then the landowner or project proponent should apply for an incidental take permit, pursuant to section 10 of the Act. When an application is made for an incidental take permit, measures to avoid, minimize, or mitigate for effects to listed species and their habitat will be identified and incorporated into a habitat conservation plan. If the habitat conservation plan and the application for the permit meet the issuance criteria, a permit authorizing incidental take is issued.

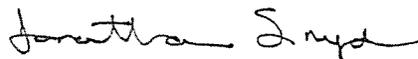
We do not have site-specific information for this area. Therefore, we recommend that project proponents seek assistance from a biologist familiar with the habitat conditions and associated species in and around their project site to assess the actual potential for direct, indirect and cumulative impacts likely to result from the proposed activity.

We are also concerned for the following habitat community types that could potentially occur in the area and are becoming more rare. These include coastal sage scrub, riparian habitat, native grasslands, wetlands, and vernal pools. In addition, we are concerned about the effects of further widening SR91 on habitat connectivity and wildlife movement in the region.

Please contact the California Department of Fish and Game for State-listed and other sensitive species that may occur in the area of the project. State-listed species are protected under the provisions of the California Endangered Species Act. Rare plant species that may occur in the project area are included in the California Native Plant Society's (CNPS) inventory of rare and endangered vascular plants in California. State-listed and CNPS species require full consideration under the California Environmental Quality Act.

Should you have any questions regarding the species list provided, or your responsibilities under the Act, please contact Fish and Wildlife Biologist Jonathan Snyder of my staff at (760) 431-9440 x307.

Sincerely,



for Karen A. Goebel
Assistant Field Supervisor

Enclosure

**Federally Endangered, Threatened, Proposed, and Candidate Species that May Occur in the
Vicinity of State Route 91 between State Route 241 and Serfas Club Drive in Orange and
Riverside Counties, California**

January 9, 2006

Common Name	Scientific Name	Federal Status
<u>Mammals</u>		
San Bernardino kangaroo rat	<i>Dipodomys merriami parvus</i>	endangered
<u>Birds</u>		
southwestern willow flycatcher	<i>Empidonax traillii extimus</i>	endangered
bald eagle	<i>Haliaeetus leucocephalus</i>	threatened
coastal California gnatcatcher	<i>Polioptila californica californica</i>	threatened, critical habitat
least Bell's vireo	<i>Vireo bellii pusillus</i>	endangered
<u>Fish</u>		
Santa Ana sucker	<i>Catostomus santaanae</i>	threatened
<u>Invertebrates</u>		
Riverside fairy shrimp	<i>Streptocephalus woottoni</i>	endangered
<u>Plants</u>		
San Diego ambrosia	<i>Ambrosia pumila</i>	endangered
Braunton's milk-vetch	<i>Astragalus brauntonii</i>	endangered
thread-leaved brodiaea	<i>Brodiaea filifolia</i>	threatened
San Fernando Valley spineflower	<i>Chornizantha parryi var. fernandina</i>	candidate
Santa Ana River woolly-star	<i>Eriastrum densifolium ssp. sanctorum</i>	endangered
Brand's phacelia	<i>Phacelia stellaris</i>	candidate

DEPARTMENT OF TRANSPORTATION

DISTRICT 8

ENVIRONMENTAL PLANNING (MS 1222)

464 WEST 4TH STREET, 6TH FLOOR

SAN BERNARDINO, CA 92401-1400

PHONE (909) 388-7725

FAX (909) 383-7445

TTY (909) 383-6300

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July 10, 2007

D-08/12-Riv-91-0E8000/0G0400

Mr. Jonathan Snyder
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011

Dear Mr. Snyder:

The California Department of Transportation (Caltrans) requests Formal Section 7 Consultation with the United States Fish and Wildlife Service (FWS, Carlsbad Office) for the State Route 91 (SR-91) Eastbound Lane Addition between SR-241 and SR-71 Project (FWS-OR/WRIV-3669.2). The project spans Orange and Riverside Counties on SR 91 within Caltrans Districts 12 and 8. Pursuant to Section 6005 of the SAFETEA-LU, as described in the NEPA Delegation Pilot Program MOU between FHWA and Caltrans, effective July 1, 2007, Caltrans has been designated the authority to conduct formal Section 7 consultation of the Endangered Species Act.

A copy of the Biological Assessment (BA) was previously sent to your office for review from Caltrans with a memo dated June 19, 2007. Caltrans requests FWS to use this BA as the basis for the consultation. On the Riverside County side of the project, the consultation shall address listed species effects through compliance with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), while those species on the Orange County side shall be addressed through the normal consultation process. Based on a preliminary review of the BA you provided us, Caltrans will be submitting a supplemental or revised BA to your office to address items that were missing or required additional information. The following is a summary of the effect determinations presented in the BA.

The proposed project may affect and is likely to adversely affect the federally threatened coastal California gnatcatcher (*Polioptila californica californica*) and the federally endangered least Bell's vireo (*Vireo bellii pusillus*). Protocol surveys for each species determined their presence. Based on an analysis of the project impacts, it was determined that take of each species habitat would occur. Conservation measures and

Mr. Jonathan Snyder
July 10, 2007
Page 2

compensatory mitigation to offset impacts are addressed in the enclosed BA. Further, within Riverside County, take is covered through compliance with the MSHCP.

The proposed project is not likely to adversely affect the federally threatened Santa Ana sucker (*Catostomus santaanae*) and the federally endangered Braunton's milk vetch (*Astragalus brauntonii*). Suitable habitat is not present for either species, but there is a potential for construction effects to impact these species. Conservation measures have been proposed to avoid and minimize potential effects.

The proposed project is not likely to adversely affect the federally endangered southwestern willow flycatcher (*Empidonax traillii extimus*). This species was observed during 2007 as a migrant passing through because it was observed only once during the surveys. The BA lists the determination for this species as may affect. However, based on the species migrating though the project limits versus nesting/breeding, this determination shall be revised to not likely to adversely affect. Effects are covered through compliance with the MSHCP.

A no effect determination has been made by Caltrans for all other federally listed species potentially occurring within the project footprint, as described in the BA.

If you have any questions or concerns, please contact Scott Quinnell, Caltrans Associate Environmental Planner, at (909) 383-6935.

Sincerely,



SCOTT QUINNELL
Associate Environmental Planner, Natural Sciences
Caltrans D-8, Biological Studies and Permits Branch

cc: Magdalena Rodriguez, CDFG
Karen Drewe, Caltrans D-12



State of California - The Resources Agency

Arnold Schwarzenegger, Governor

Ruth Coleman, Director

DEPARTMENT OF PARKS AND RECREATION

Inland Empire District
17801 Lake Perris Drive
Perris, CA 92571
(951) 443-2423
<http://www.parks.ca.gov>

November 19, 2007

Jonathan D. Snyder
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92009

Subject: Restoration of Coastal Sage Scrub within Chino Hills State Park

The Inland Empire District of the Department of Parks and Recreation (State Parks) appreciates the opportunity to participate in restoration efforts in the vicinity of Chino Hills State Park (Chino Hills SP). It is my understanding that the California Department of Transportation (Caltrans) is currently in Section 7 consultation with the U.S. Fish and Wildlife Service for impacts to coastal California gnatcatchers. The proposed project would directly affect Critical Habitat of coastal California gnatcatcher and other areas of coastal sage scrub that are not Critical Habitat. The temporary impacts would be approximately 0.5 acres, and the permanent impacts would be 0.15 acres. The proposed mitigation ratio is 2:1 for temporary impacts and 3:1 for permanent impacts. Consequently, the restoration involves approximately 1.45 acres of coastal sage scrub.

State Parks agrees in principle with Caltrans proposal for restoration of coastal sage scrub within Chino Hills SP. I understand the details, such as location for the restoration, will be arranged at a later date.

Again, thank you for the opportunity to participate. If you have any questions, please contact me at (951) 443-2423 or Ken Kietzer at (951) 443-2407.

Sincerely,

A handwritten signature in cursive script that reads "Gary Watts".

Gary Watts
District Superintendent

cc: John Rowe, State Parks
Ken Kietzer, State Parks
Joan Stephens, State Parks
Central Records, State Parks
Sylvia Vega, Caltrans D-12

DEPARTMENT OF TRANSPORTATION

DISTRICT 8

ENVIRONMENTAL PLANNING (MS 1222)

464 WEST 4TH STREET, 6TH FLOOR

SAN BERNARDINO, CA 92401-1400

PHONE (909) 388-7725

FAX (909) 383-7445

TTY (909) 383-6300

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October 11, 2007

D-08/12-Riv-91-0E8000/OG0400

Mr. Jonathan Snyder
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011

Dear Mr. Snyder:

The California Department of Transportation (Caltrans) is submitting additional information to you, per your e-mail request to Caltrans on June 27, 2007, regarding the Formal Section 7 Consultation with for the State Route 91 (SR-91) Eastbound Lane Addition between SR-241 and SR-71 Project (FWS-OR/WRIV-3669.2). This supplemental information to the Biological Assessment (BA) addresses items that you felt were missing or required additional information. The information is summarized in memo form and includes text, tables, revised figures, revised wildlife corridor data, and photos.

If you have any additional questions or need further clarification on the information presented, please contact Scott Quinnell, Caltrans Associate Environmental Planner, at (909) 383-6935.

Sincerely,

SCOTT QUINNELL
Associate Environmental Planner, Natural Sciences
Caltrans D-8, Biological Studies and Permits Branch

cc: Magdalena Rodriguez, CDFG



October 5, 2007

Scott Quinnell
 Caltrans District 8
 464 West Fourth Street, 6th Floor, MS 822
 San Bernardino, CA 92401-1400

Subject: USFWS Comments on the Biological Assessment for the SR-91 Eastbound Lane Addition Project

Dear Mr. Quinnell:

This letter is to address comments made by Jonathan Snyder of the United States Fish and Wildlife Service (USFWS) in an email dated June 27, 2007. Please forward to Jonathan Snyder at the Carlsbad office of the USFWS.

- I would like to see a table that includes the total permanent and temporary impacts by habitat type. The impacts should include all access roads, staging areas, increases in fuel modification zones, etc.**

The following table provides the breakdown of anticipated temporary and permanent impacts to natural communities of special concern.

Habitat Type	Temporary Impacts			Permanent Impacts			Total Impacts
	OC	Riverside	Total Temporary Impacts	OC	Riverside	Total Permanent Impacts	
Potential Occupied LBV Habitat	0.00	0.17	0.17	0.00	0.10	0.10	0.27
Other Potential LBV Habitat	0.00	0.66	0.66	0.00	0.14	0.14	0.8
Total Potential LBV Habitat	0.00	0.83	0.83	0.00	0.24	0.24	1.07
CAGN Critical Habitat	0.40	1.07	1.47	0.10	2.83	2.93	4.40
Other CSS (non Critical Habitat)	0.10	0.64	0.74	0.05	2.71	2.76	3.50
Total CSS	0.50	1.71	2.21	0.15	5.54	5.69	7.90

- 2) **There should be an attempt to quantify the increase in the “road effect zone” associated with the freeway widening. The “road effect zone” would include areas negatively affected by noise, dust, pollutants, etc. Essentially, the widening would push the road effect zone an additional 20–30 feet (however much the road is being widened) into the surrounding environment.**

Because much of the permanent and temporary impacts will be within previously disturbed areas, direct effects to natural communities and occupied habitats have been minimized to the greatest extent possible. However, there will be some indirect impacts due to widening (by as much as 125 feet in some areas) of State Route 91 (SR-91) adjacent to natural communities and occupied habitats. The area that these indirect impacts extend out from a road can be defined as the road-effect zone.

Ecologically, indirect impacts may include, but are not limited to, alteration to the physical and chemical environment, dispersal of exotic species, noise and pollutants, and increased mortality and the alteration of wildlife behavior. Each indirect impact has a different effect zone, but due to the indirect nature of the effects, they are difficult to quantify. Indirect impacts that already occur due to the existing SR-91 will extend farther than they do already.

Conversely, habitats that will be directly impacted by the proposed project are likely within the current road-effect zone. Therefore, it can be assumed that habitats within this direct impact zone will be of lesser quality than Natural Communities of Special Concern and occupied habitats outside of the road-effect zone.

As noted above, it is difficult to determine quantitatively how much indirect impacts will increase. However, when the direct effects on habitat within the road-effect zone are considered together with the extension of the road-effect zone, it is reasonable to assume that these impacts will increase in proportion to the direct impacts created by this project, provided the assumption is made that similar habitat types and proportions also extend beyond the project boundaries. In other words, the quantification of direct impacts for a roadway widening project is also a good indication of the amount of extension of the road-effect zone.

- 3) **Appendix A should be revised to include the gnatcatcher locations, the flycatcher location, and the 2007 vireo locations.**

Appendix A has been revised to show coastal California gnatcatcher, least Bell's vireo, and southwestern willow flycatcher locations within the study area (see attached).

- 4) **The depictions of the culvert openings on Appendix A are a little confusing. On some of the locations, the openings on either side of the culvert are depicted, and on others only one opening is depicted. Maybe these culverts don't have openings on either side of the road that animals can use; I'm not sure. What I would recommend is that a table be created that evaluates all of the culverts/wildlife crossings for wildlife movement.**

Culvert entrances were marked on the map if they were known. Because the project is entirely on the eastbound side of SR-91, all of the surveys focus on that area. Therefore, not all of the culvert

openings on the westbound side are known. Kimley-Horn looked at as-built drawings provided by the California Department of Transportation (Caltrans) to try and determine the locations of these culverts. Some were identified, but others were outside of the limits of the as-builds (i.e., outside of the right-of-way [ROW]). Lines were added to the figures to help in identifying the approximate locations of the culverts.

In general, the existing culvert structures that would be extended or modified by the proposed project would be designed so that they would be at least as compatible with wildlife usage as the existing culvert. For example, culvert entrances would have textured concrete drawdown pads.

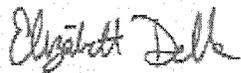
There are other culvert inlet/outlet structures within the project area not depicted on the attached figures. However, all of them are not able to function as wildlife corridors (e.g., convey storm water runoff from the middle of the freeway).

The attached table, photographs, and figures show the locations, known conditions, and potential project improvements of all potential wildlife crossings within the project area to the best of our knowledge.

If you have any questions please feel free to contact me.

Sincerely,

LSA ASSOCIATES, INC.



Elizabeth Delk
Biologist

Attachments

cc: Karen Drewe, Caltrans District 12

List of Potential Wildlife Corridors within the BSA

New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
1	1 (Gypsum Canyon)		Concrete Box (3 side-by-side)	38 x 10	High	Fencing along existing ROW excluding wildlife from entering freeway.	Moderate vegetation cover.	This culvert is outside the area of direct impacts.	No change	Bobcat and raccoon tracks observed.
2		1	Corrugated Metal Pipe Round	5	Low	Culvert is outside of current highway fencing.	Heavily vegetated; between on-ramp and adjacent quarry.	This culvert is outside the area of direct impacts.	No change	
3	2		Concrete Round	5	Moderate	Culvert is outside of current highway fencing.	Heavy vegetation cover around culvert.	This culvert is outside the area of direct impacts.	No change	No wildlife sign observed.
4			Concrete/ Corrugated Metal Pipe Round	5	Low to none	Metal grate over culvert	Unknown	This culvert is outside the area of direct impacts.	Caltrans will continue to work with NPDES to determine if any potential improvements are feasible.	

New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
5	3	3	Concrete Box	5	Moderate	Culvert is inside of current highway fencing, thus allowing wildlife connectivity.	Heavy vegetation cover around culvert.	This culvert is outside the area of direct impacts.	No change	Canyon from the south feeds into the culvert. Coyote scat observed in the vicinity of the culvert.
6	4	4	Concrete Box	5 x 5	Low	Culvert is outside/excluded from the highway fencing.	Fencing prohibits wildlife use. Little to no vegetation cover around culvert.	This culvert is outside the area of direct impacts.	Discussed potentially moving the fence to allow for wildlife connectivity.	No wildlife sign observed.
7		4	Concrete Box	3	Not evaluated	Culvert is outside/excluded from the highway fencing.	Fencing prohibits wildlife use.	This culvert is outside the area of direct impacts.	No change; wildlife can use Culvert 9 if modifications to fence are made.	
8	5 (Coal Canyon)		Concrete Box (2 side by side)	20 x 8	High	Fencing along existing ROW allowing wildlife access.	Moderate vegetation cover around culvert. Coal Canyon Wash flows through culvert.	This culvert is outside the area of direct impacts.	No change	No wildlife sign observed, but wildlife has been documented using this culvert previously (Beier 1995).

New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
9	6 (Coal Canyon)	6	Highway Overpass	70 x 25	High	Fencing along existing ROW. Area partly fenced off to human interference, but connected to Coal Canyon.	No vegetation cover present under overpass. Existing fencing funnels large wildlife towards the corridor.	The highway overpass will be widened on the eastbound side.	No change	Coyote tracks observed through the underpass.
10	7		Concrete Round	3	Low	Presently within highway fencing excluding wildlife use.	Little to no vegetation present. Small culvert size limits usage by large mammals.	This culvert is outside the area of direct impacts.	Move fence to allow wildlife use.	No wildlife sign observed.
11	8		Concrete Round	3	Low	Presently within highway fencing, allowing wildlife connectivity.	Little to no vegetation present. Small culvert size limits usage by large mammals.	This culvert is within the area of direct impacts, fencing would be moved when culvert is extended	No change	No wildlife sign observed.

New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
12	9		CMP Round [layouts say RCP]	3 [The layouts say 5]	Low	Presently outside of highway fencing.	Heavy vegetation present around culvert. Small culvert size limits usage by large mammals. Steep slope prevents wildlife use.	This culvert is within the area of direct impacts.	No change, but culvert will likely be improved when extended for highway widening.	No wildlife sign observed.
13	10		CMP Round	3 (the layouts say 2.5)	Low	None	Small culvert size limits usage by large mammals. Filled in with sediment preventing wildlife use.	This culvert is within the area of direct impacts.	No change	No wildlife sign observed.
14			Concrete Round	4.5	Not evaluated	None	Steep slope	Within the area of direct impacts, but appears so.	Add wildlife fencing if feasible.	Culvert is on boundary of two sheets of as builds. Difficult to determine opening. Appears likely this is within the area of direct impacts.

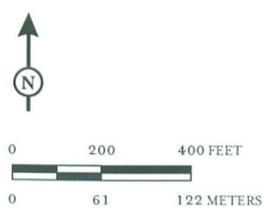
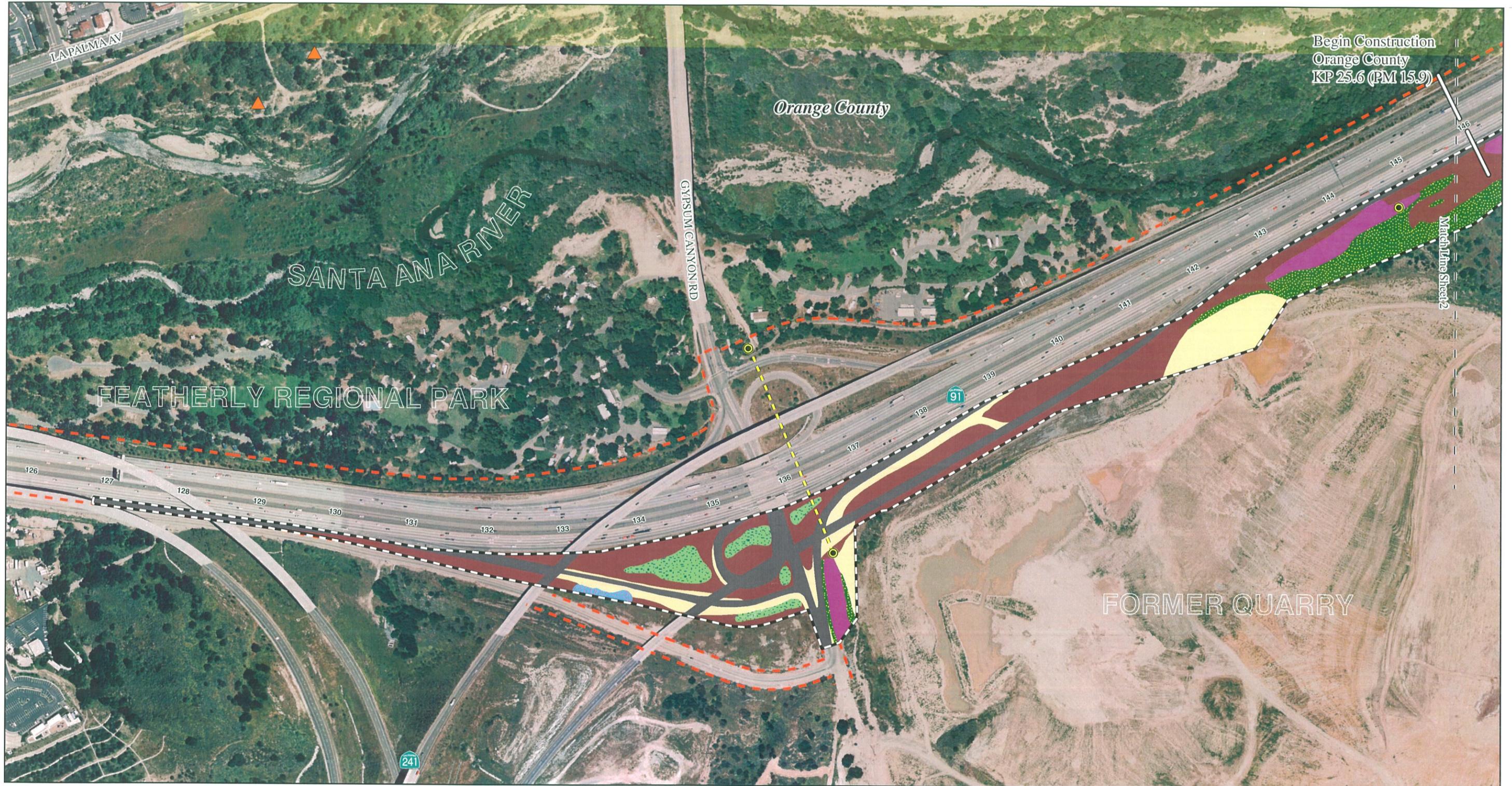
New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
15	11	11	Concrete Box	14 x 14	Moderate	Presently inside of current highway fencing. Locked gate on WB side, preventing wildlife to pass through from WB side. Wildlife could enter freeway from the EB side of the freeway.	Some vegetation present, but culvert mainly used for private road traffic.	The concrete box will be widened on the eastbound side.	Possible gate modifications to allow wildlife passage.	County Line Culvert: No wildlife sign observed.
16	12	12	CMP Round	4	Moderate	Presently inside of highway fencing, allowing wildlife use/connectivity.	Moderate vegetation present. Highway fencing allows wildlife usage.	Culvert will be extended, due to need to move frontage road.	Ensure placement of new fencing also keeps wildlife off of highway and within the culvert, thus ensuring continued connectivity.	No wildlife sign observed. Culvert opening on eastbound side is on border of permanent and temporary impacts.

New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
17	13	13	Concrete Box	13 x 15	Moderate	Presently inside of highway fencing, allowing wildlife use/connectivity.	Moderate vegetation present.	This culvert is within the area of direct impacts.	Ensure placement of new fencing that also keeps wildlife off of highway and within the culvert, thus ensuring continued connectivity.	Canyon from the south feeds into the culvert. No wildlife sign observed.
18	14	14	CMP Round	3	Low	Presently outside of highway fencing.	Little to no vegetation present. Small culvert size limits usage by large mammals.	This culvert is within the area of direct impacts.	When culvert is extended, it is recommended that the new highway fencing be placed so that the culvert is within the fencing, thus allowing wildlife use/connectivity.	Small CMP that runs parallel to SR-91. Does not cross highway. No wildlife sign observed.
19	15		CMP Round	3 (the layouts say 3.5)	Low	Presently outside of highway fencing.	Little to no vegetation present (recent fire). Small culvert size limits usage by large mammals.	This culvert is within the area of direct impacts.	Place wildlife fencing between highway and culvert to keep wildlife off highway.	Coyote scat observed in the vicinity of the culvert.

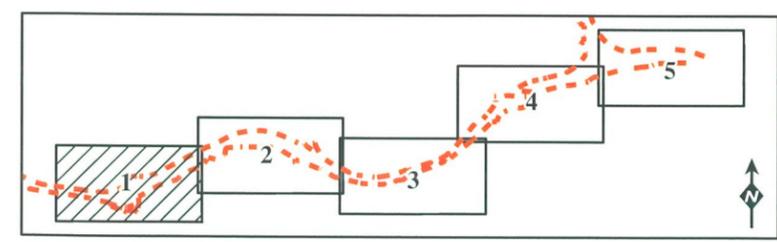
New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
20	16		CMP Round	3	Low	Presently outside of highway fencing.	Heavy vegetation present at southern outlet. Small culvert size limits usage by large mammals. Northern outlet is inside existing mobile home park.	This culvert is within the area of direct impacts.	Move fence on southern side to exclude wildlife from using.	Coyote scat observed in the vicinity of the culvert. This is a storm drain that runs beneath SR-91.
21	17 West Prado Road	17	Highway Underpass	200 x 40	Low	Existing fencing with gaps at commercial development.	Paved road (Prado Road) and the BNSF and Metrolink railroads both pass through the underpass. Little vegetation present.	The highway overpass will be widened on the eastbound side.	Fence along entire length of EB side of freeway.	No wildlife sign observed.
22			CMP	4.5	Low	Presently inside of highway fencing, allowing wildlife movement.	Dense vegetation	May be impacted with Prado Overhead widening	Modifications to fencing will be made to allow for wildlife use.	

New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
23	18	18	CMP Round	6	Moderate	Presently inside of highway fencing. Existing fencing has gaps at commercial development.	Heavy vegetation present.	This culvert is within the area of direct (but temporary) impacts.	Fence along entire length of EB side of freeway to allow wildlife use, with fence separation between culverts 23 and 24	Coyote scat observed in the vicinity of the culvert.
24	19	19	CMP Round	6	Moderate	Presently inside of highway fencing. Existing fencing has gaps at commercial development.	Heavy vegetation present.	This culvert is within the area of direct (but temporary) impacts.	Will place fence along entire length of EB side of freeway to allow for wildlife use.	No wildlife sign observed.
25	20 Fresno Canyon (aka West Connector Undercrossing)	20	Concrete Box (two side by side)	29 x 8	High	Existing fencing with gaps at commercial development.	Moderate vegetation present around the culvert. Heavy human activity also observed through the culvert.	The culvert will be widened on the eastbound side.	Fence along entire length of EB side of freeway to allow wildlife use/keep wildlife off highway.	Some coyote and raccoon tracks observed.

New Culvert Number	Culvert Number in BA	Caltrans Culvert Number	Type	Size (feet)	Wildlife Corridor Potential	Presence of Fencing to Prevent Roadkill/Funnel Wildlife (How many feet on either side)	Existing Wildlife Constraints (e.g., sediment buildup, on-/off-ramp crossing)	Effects of Current Project	Potential Improvement Measures	Comments
26	21 Fresno Canyon	21	Highway Underpass	52 x 25	High	None; underpass is depressed, so wildlife are funneled into the underpass.	Moderate vegetation present around the entrance to the underpass. Heavy human activity also observed through the underpass.	The culvert will be widened on the eastbound side.	Fence along entire length of EB side of freeway to allow wildlife use/keep wildlife off highway.	Coyote and raccoon tracks observed.
27	22 SR-71 to SR-91 On-Ramp		Highway Underpass	90 x 25	Low	Unknown	Little to no vegetation present. Heavy vehicle traffic present during most times of the day.	The highway overpass will be widened on the EB side.	Fence along entire length of EB side of freeway to allow wildlife use.	Wardlow Wash located just south of underpass.
28	23 Wardlow Wash		Concrete Box (two side by side)	20 x 10	Low	None	Little vegetation present. Heavy vehicle traffic just to the north of the culvert (direct sight line of the SR-91/ SR-71 interchange).	This culvert is outside the area of direct impacts.	Fence along entire length of EB side of freeway connector to allow wildlife use and keep wildlife off highway.	Some wildlife signs observed, but unable to identify because of sediment.

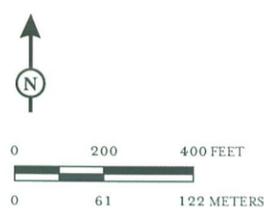
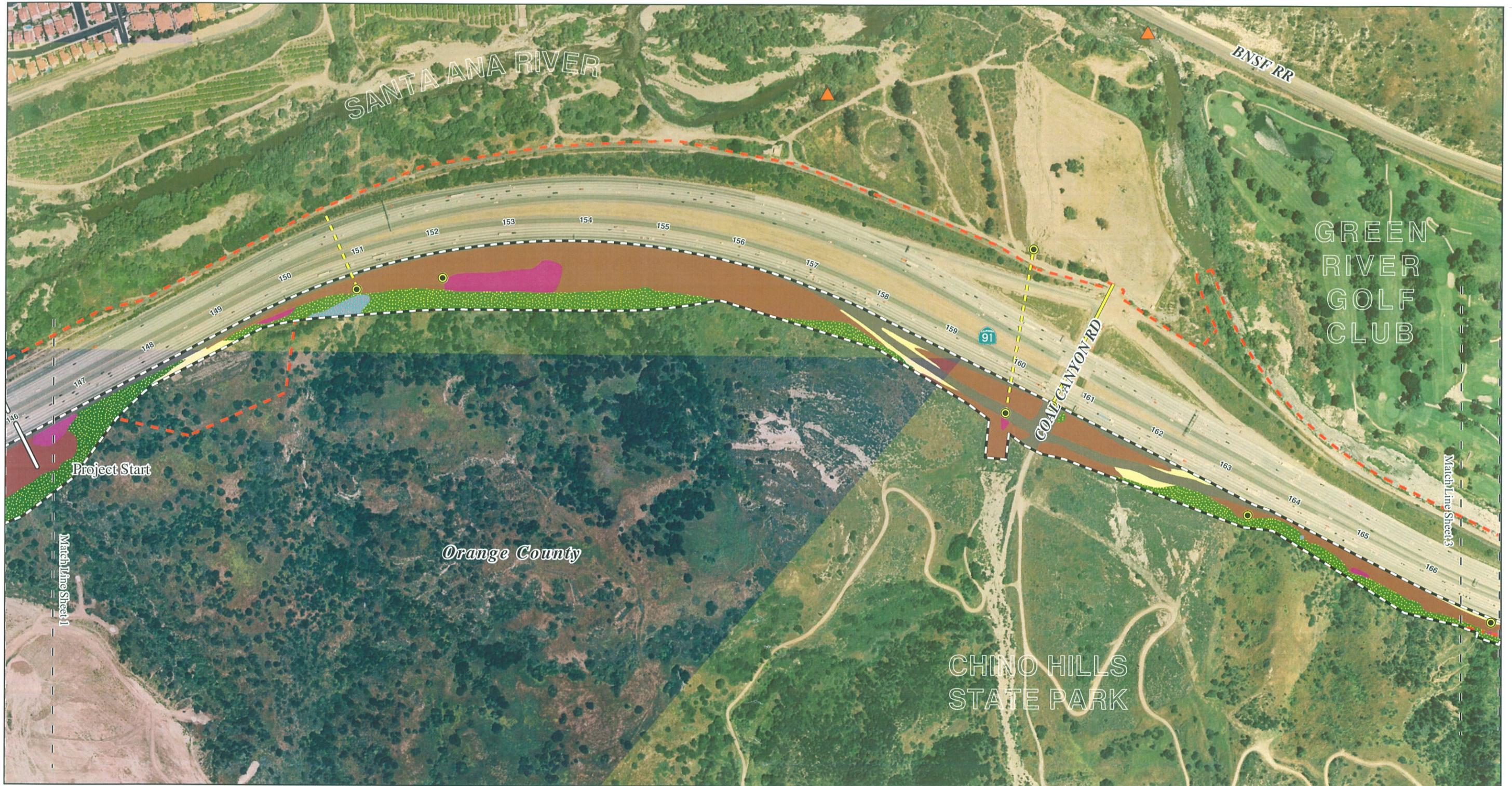


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|-------------------------------|-------------------------------------|----------------------------|
| Biological Study Area | California Gnatcatcher Habitat | Disturbed/Ruderal |
| Existing Right-of-Way | Vegetation | Eucalyptus Grove |
| Culverts | Alluvium Deposits | Mexican Elderberry Scrub |
| Box Culvert | Bare Ground | Mule Fat Scrub |
| Highway Underpass Crossing | Coast Live Oak Woodland | Non-Native Grassland |
| SSWF Location (Caltrans 2007) | Coastal Sage Scrub | Pepper Tree Woodland |
| LBVi Locations (SAWA 2003) | Cottonwood-Willow Riparian Woodland | Sycamore Riparian Woodland |
| Occupied LBVi Habitat (2005) | Developed | Tree of Heaven Woodland |

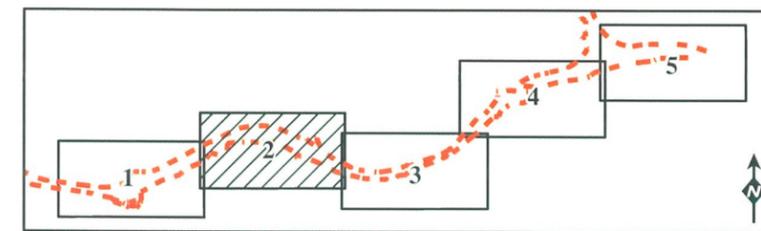


APPENDIX A
 Sheet 1 of 5
 SR-91 Eastbound Lane Addition
 Between SR-241 and SR-71
 Biological Resources
 12-ORA-91 K.P. 25.6/32.0
 08-RIV-91 K.P. 0.0/4.7
 EA# 060400 (District 12)
 EA# 06E8000 (District 8)

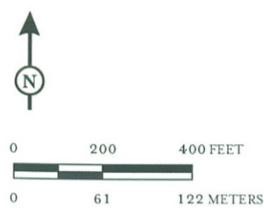
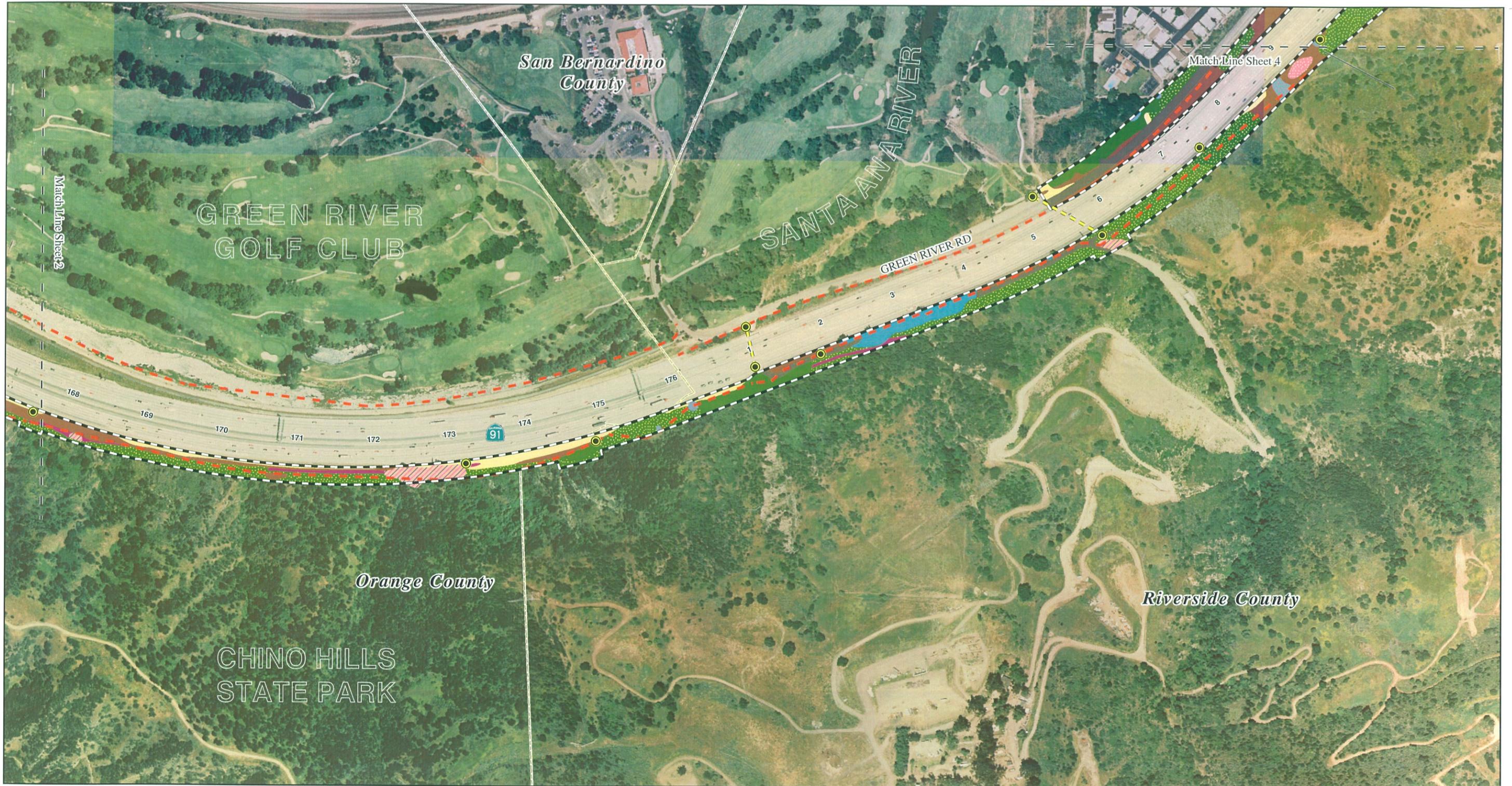
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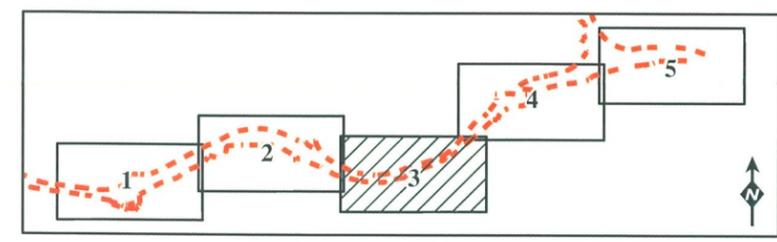
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|-------------------------------|-------------------------------------|----------------------------|
| Biological Study Area | California Gnatcatcher Habitat | Disturbed/Ruderal |
| Existing Right-of-Way | Vegetation | Eucalyptus Grove |
| Culverts | Alluvium Deposits | Mexican Elderberry Scrub |
| Box Culvert | Bare Ground | Mule Fat Scrub |
| Highway Underpass Crossing | Coast Live Oak Woodland | Non-Native Grassland |
| SSWF Location (Caltrans 2007) | Coastal Sage Scrub | Pepper Tree Woodland |
| LBVi Locations (SAWA 2003) | Cottonwood-Willow Riparian Woodland | Sycamore Riparian Woodland |
| Occupied LBVi Habitat (2005) | Developed | Tree of Heaven Woodland |



APPENDIX A
 Sheet 2 of 5
 SR-91 Eastbound Lane Addition
 Between SR-241 and SR-71
 Biological Resources
 12-ORA-91 K.P. 25.6/32.0
 08-RIV-91 K.P. 0.0/4.7
 EA# 0G0400 (District 12)
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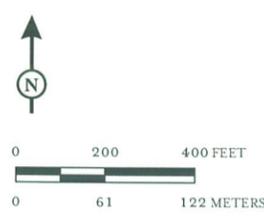


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|-------------------------------|-------------------------------------|----------------------------|
| Biological Study Area | California Gnatcatcher Habitat | Disturbed/Ruderal |
| Existing Right-of-Way | Vegetation | Eucalyptus Grove |
| Culverts | Alluvium Deposits | Mexican Elderberry Scrub |
| Box Culvert | Bare Ground | Mule Fat Scrub |
| Highway Underpass Crossing | Coast Live Oak Woodland | Non-Native Grassland |
| SSWF Location (Caltrans 2007) | Coastal Sage Scrub | Pepper Tree Woodland |
| LBVi Locations (SAWA 2003) | Cottonwood-Willow Riparian Woodland | Sycamore Riparian Woodland |
| Occupied LBVi Habitat (2005) | Developed | Tree of Heaven Woodland |

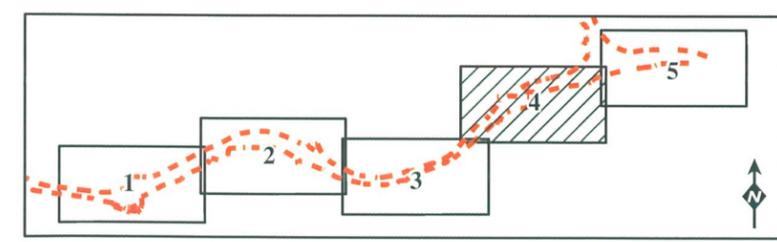


APPENDIX A
 Sheet 3 of 5
 SR-91 Eastbound Lane Addition
 Between SR-241 and SR-71
 Biological Resources
 12-ORA-91 K.P. 25.6/32.0
 08-RIV-91 K.P. 0.0/4.7
 EA# 0G0400 (District 12)
 EA# 0E8000 (District 8)

SOURCE: Eagle Aerial, 2006, Chambers Group, 2005.

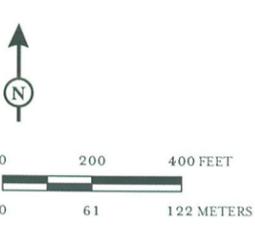


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|-------------------------------|-------------------------------------|----------------------------|
| Biological Study Area | California Gnatcatcher Habitat | Disturbed/Ruderal |
| Existing Right-of-Way | Vegetation | Eucalyptus Grove |
| Culverts | Alluvium Deposits | Mexican Elderberry Scrub |
| Box Culvert | Bare Ground | Mule Fat Scrub |
| Highway Underpass Crossing | Coast Live Oak Woodland | Non-Native Grassland |
| SSWF Location (Caltrans 2007) | Coastal Sage Scrub | Pepper Tree Woodland |
| LBVi Locations (SAWA 2003) | Cottonwood-Willow Riparian Woodland | Sycamore Riparian Woodland |
| Occupied LBVi Habitat (2005) | Developed | Tree of Heaven Woodland |

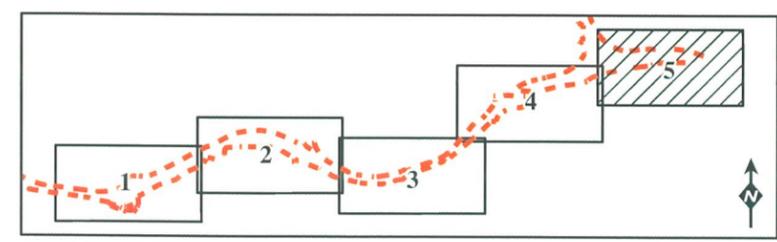


APPENDIX A
 Sheet 4 of 5
 SR-91 Eastbound Lane Addition
 Between SR-241 and SR-71
 Biological Resources
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 08-RIV-91 K.P. 0.0/4.7
 EA# 0G0400 (District 12)
 EA# 0E8000 (District 8)

SOURCE: Eagle Aerial, 2006, Chambers Group, 2005.



- | | | |
|-------------------------------|-------------------------------------|----------------------------|
| Biological Study Area | California Gnatcatcher Habitat | Disturbed/Ruderal |
| Existing Right-of-Way | Vegetation | Eucalyptus Grove |
| Culverts | Alluvium Deposits | Mexican Elderberry Scrub |
| Box Culvert | Bare Ground | Mule Fat Scrub |
| Highway Underpass Crossing | Coast Live Oak Woodland | Non-Native Grassland |
| SSWF Location (Caltrans 2007) | Coastal Sage Scrub | Pepper Tree Woodland |
| LBVi Locations (SAWA 2003) | Cottonwood-Willow Riparian Woodland | Sycamore Riparian Woodland |
| Occupied LBVi Habitat (2005) | Developed | Tree of Heaven Woodland |

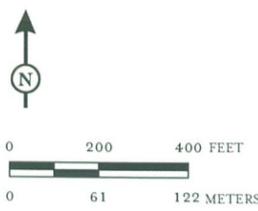


APPENDIX A
 Sheet 5 of 5
 SR-91 Eastbound Lane Addition
 Between SR-241 and SR-71
 Biological Resources
 12-ORA-91 K.P. 25.6/32.0
 08-RIV-91 K.P. 0.0/4.7
 EA# 0G0400 (District 12)
 EA# 0E8000 (District 8)

SOURCE: Eagle Aerial, 2006, Chambers Group, 2005.



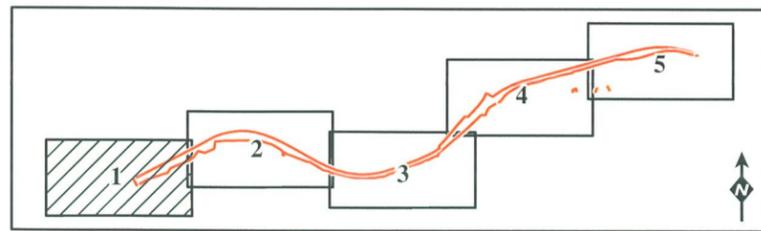
Begin Construction
Orange County
KP 25.6 (PM 15.9)



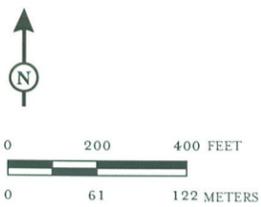
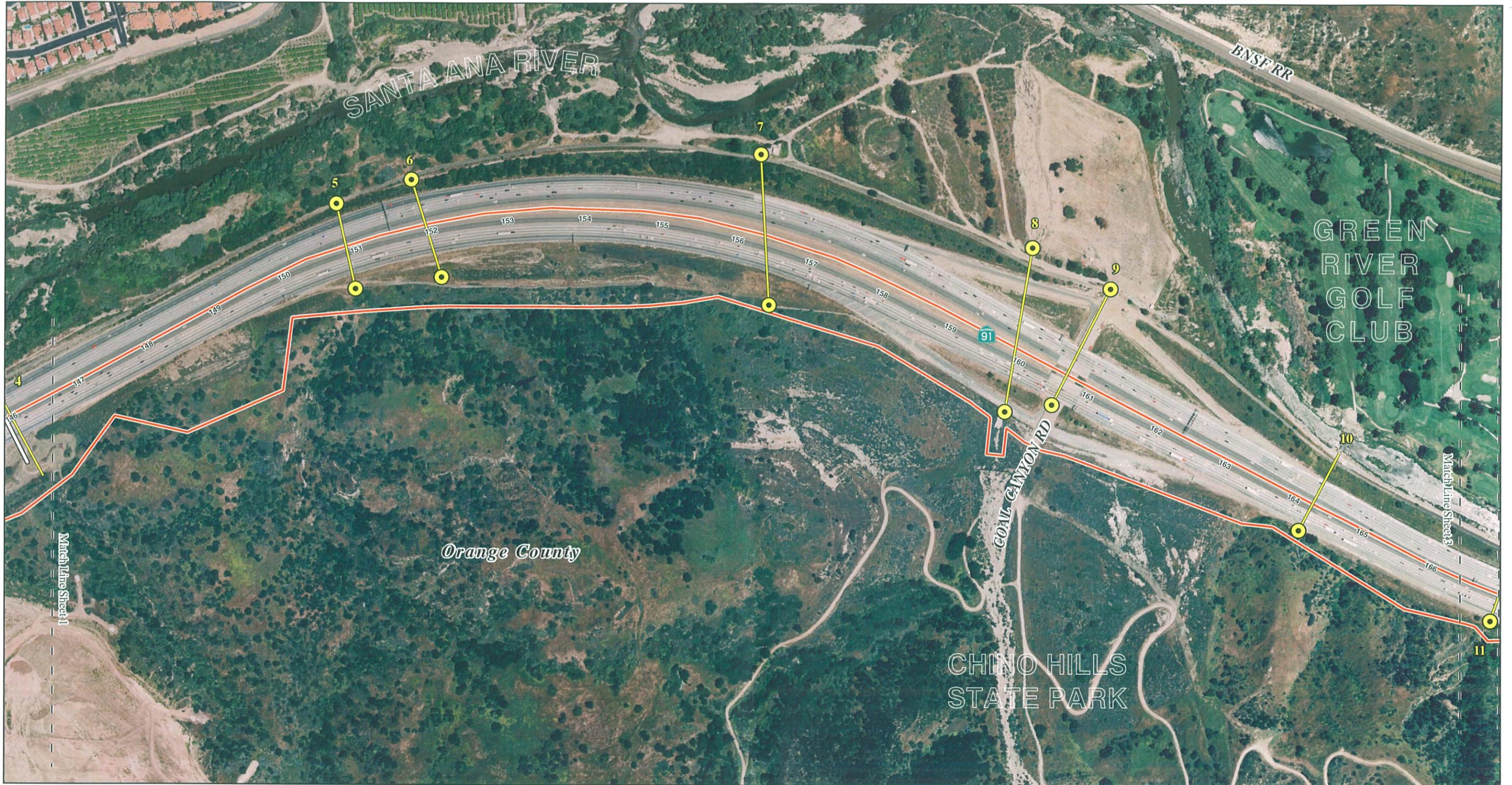
- Known Access Points
- Potential Wildlife Crossings
- APE

SOURCE: Eagle Aerial, 2006, Chambers Group, 2005.

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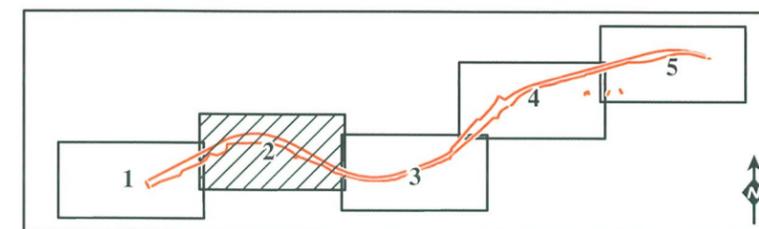
Sheet 1 of 5
SR-91 Eastbound Lane Addition
Between SR-241 and SR-71
Potential Wildlife Crossings
12-ORA-91 K.P. 25.6/32.0
08-RIV-91 K.P. 0.0/4.7
EA# 0Co400 (District 12)
EA# 0E8000 (District 8)



-  Known Access Points
-  Potential Wildlife Crossings
-  APE

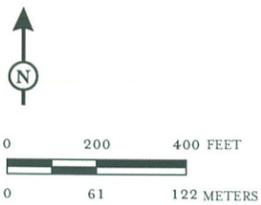
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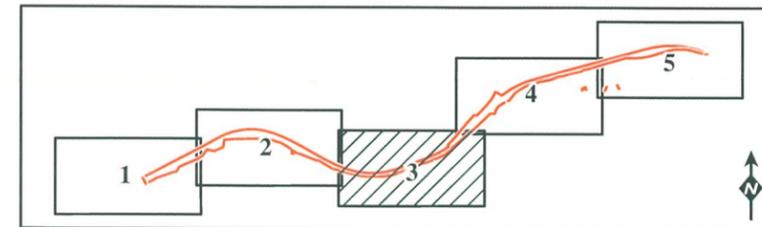


Sheet 2 of 5
 SR-91 Eastbound Lane Addition
 Between SR-241 and SR-71
 Potential Wildlife Crossings

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 EA# 00400 (District 12)
 EA# 0E8000 (District 8)



-  Known Access Points
-  Potential Wildlife Crossings
-  APE

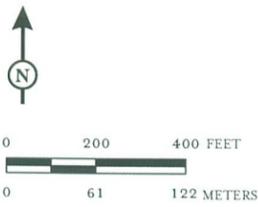


Sheet 3 of 5
 SR-91 Eastbound Lane Addition
 Between SR-241 and SR-71
 Potential Wildlife Crossings

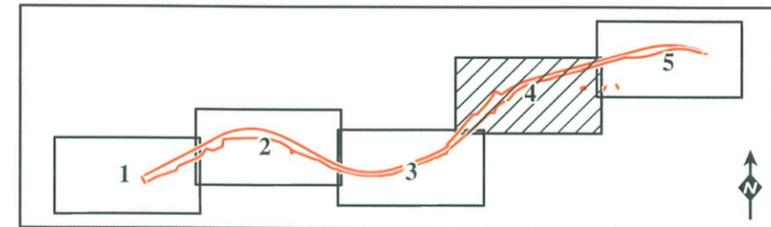
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 08-RIV-91 K.P. 0.0/4.7
 EA# 0G0400 (District 12)
 EA# 0E8000 (District 8)

SOURCE: Eagle Aerial, 2006, Chambers Group, 2005.

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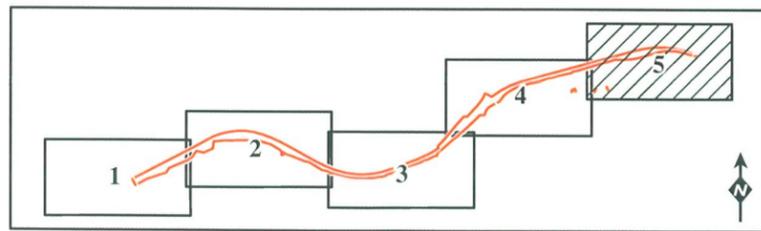
-  Known Access Points
-  Potential Wildlife Crossings
-  APE



Sheet 4 of 5
 SR-91 Eastbound Lane Addition
 Between SR-241 and SR-71
 Potential Wildlife Crossings
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- Known Access Points
- Potential Wildlife Crossings
- APE



Sheet 5 of 5
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United States Department of the Interior



FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-OR/WRIV-08B0054/08F0081

NOV 29 2007

Scott Quinnell
Department of Transportation
District 8
Environmental Planning (MS 1222)
464 West 4th Street, 6th Floor
San Bernardino, California 92401-1400

Subj: Formal Section 7 Consultation and Conference for the Eastbound SR-91 Lane Addition from SR-241 to SR-71, Orange and Riverside Counties, California

Dear Mr. Quinnell:

This document transmits our biological and conference opinions based on our review of the proposed eastbound SR-91 lane addition from SR-241 to SR-71, and its potential effects on the federally endangered least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii extimus*) and the federally threatened coastal California gnatcatcher (*Poliophtila californica californica*) and its designated and proposed critical habitats, in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). We initiated formal consultation on July 12, 2007, the date we received your request. The proposed project will be conducted by the California Department of Transportation (Caltrans), which has the authority to conduct formal section 7 consultation as described in section 6005 of SAFTEA-LU and in the National Environmental Policy Act Delegation Pilot Program Memorandum of Understanding between the Federal Highway Administration and Caltrans, which became effective on July 1, 2007.

The proposed project would add one general-purpose lane and widen all lanes and shoulders to standard widths on eastbound SR-91 to the south between SR-241 and SR-71. The eastbound SR-91 to northbound SR-71 connector would also be widened to provide one standard width lane with standard shoulders. As part of the proposed project, the following five bridges would be widened: Coal Canyon Undercrossing, County Line Culvert, West Prado Overhead (over the Burlington Northern Santa Fe (BNSF) railroad), Route 91/71 Separation, and West Connector Undercrossing. The proposed project also includes the modification of six major drainage facilities, the construction of a series of retaining walls and four sound walls, and relocation of an access road.

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The project would add one general-purpose lane and widen all lanes and shoulders to standard widths on eastbound SR-91 to the south between SR-241 and SR-71. Standard freeway widths consist of 3.658 m (12.0 ft) lanes, a 3.048 m (10.0 ft) inside shoulder, and a 3.658 m (12.0 ft) outside shoulder. The eastbound SR-91 to northbound SR-71 connector would also be widened to provide one standard width lane with standard shoulders. Standard connector widths consist of a 3.658 m (12.0 ft) lane, 1.524 m (5.0 ft) inside shoulder, and 3.048 m (10.0 ft) outside shoulder. Infrastructure and project components are shown in Figure 3 of the Biological Assessment.

Bridges

As part of the proposed project, the following five bridges would also be widened: Coal Canyon Undercrossing, County Line Culvert, West Prado Overhead (over the BNSF railroad), Route 91/71 Separation, and West Connector Undercrossing.

Retaining Walls

A series of slope retaining walls with multiple footings would be constructed on the south side of SR-91. Most of the retaining walls are located adjacent to the freeway. However, one proposed retaining wall is west of the SR-91/SR-71 interchange near Fresno Canyon/Wardlow Wash, and another wall is adjacent to an existing private access road. Permanent easements would be acquired in order to access the retaining walls for maintenance.

Sound Walls

The proposed project includes construction of four sound walls to reduce traffic noise associated with the proposed project. A sound wall with a maximum height of 4.28 m (14.0 ft) is proposed adjacent to the westbound lanes on the north side of SR-91, west of the Green River Drive interchange, and would extend for a distance of approximately 0.8 km (0.5 mi) to the west of Green River Drive. Three other sound walls may be constructed on the top of the slopes south of SR-91, outside the State right-of-way, and adjacent to the Green River Kindercare facility. Additional input from affected property owners would be obtained during final design to confirm whether the walls outside of the State right-of-way would be constructed.

Major Drainage Facilities

A total of eight existing reinforced concrete pipe or reinforced concrete box culverts carry storm water beneath SR-91 within the project limits. Six of these culverts would be extended or modified to accommodate the proposed project. The volumes of the existing collection basins would be retained by regrading these areas at the inlets to the culverts. Existing hillside drainage would be intercepted in new concrete ditches that would run behind the proposed retaining walls and convey drainage to the existing culverts. Wherever feasible, construction of permanent water quality treatment Best Management Practices would be included during design. These

Landscaping and Irrigation Systems

Planting plans would be included in the final design for the proposed project. The planting plan would consist of replacement planting for existing trees, shrubs, and ground cover and/or hydroseed that would be appropriate to the area and enhance the existing indigenous species and plant communities. Irrigation work would consist of new irrigation systems as required for establishment of the replacement planting. New irrigation systems would be designed to use reclaimed water (if available). Irrigation crossovers would be provided for all ramps and overcrossing abutments.

Right-of-Way Acquisition

The proposed project would require acquisition of limited property outside the existing State right-of-way. Specifically, a 3 to 9 m (9.8 to 29.5 ft) wide strip of additional right-of-way (from Station 1 to Station 6) would be acquired for relocation of the private access road in Riverside County (from near the Riverside/Orange County line to approximately 3 km (1.8 mi) west of Green River Village).

Railroad

A Railroad Agreement would be negotiated between Caltrans and the BNSF for widening of the West Prado Overhead, including an aerial easement over the BNSF railroad right-of-way. Falsework posts would need to be located within the BNSF right-of-way line. The structure type has been configured to minimize the effect on the railroad.

Construction Activities

Construction vehicle access and staging of construction materials would occur within disturbed or developed areas inside the existing Caltrans right-of-way or the proposed additional right-of-way. Vehicle access and materials staging during construction of the sound walls outside of Caltrans right-of-way would occur in approved designated areas. Equipment maintenance and staging would be in designated areas away from wildlife corridor entrances. All construction vehicle access, materials staging and storage, and other construction activities would occur within the defined disturbance limits for the proposed project. The proposed project would require nighttime construction activities in some parts of the project area. If work is done at night, lighting would be directed away from wildlife corridors and land uses outside the freeway right-of-way. The hours of construction would be limited to daylight hours at Coal Canyon, Fresno Canyon, and Wardlow Wash to avoid adverse lighting impacts to existing wildlife corridors in these areas. There would be no permanent changes to lighting.

disturbance, project activities would be able to proceed; however, if an active nest were detected during the survey, an exclusion area would be established around the nest to prevent harassment.

5. Best Management Practices will be implemented to minimize potential water pollution during construction and future operation of the project. Proposed post-construction Best Management Practices include biofiltration swales, biofiltration strips, detention basins, and possibly infiltration basins.
6. Prior to project implementation, Caltrans will develop a SWPPP in accordance with the Caltrans National Pollution Discharge Elimination System to eliminate potential sedimentation impacts to off-site aquatic resources.
7. Caltrans will restore 2.66 ac (1.08 ha) of riparian habitat, including 1.30 ac (0.53 ha) of riparian habitat to offset impacts in the MSHCP Plan Area, through the Santa Ana Watershed Association (SAWA) in-lieu fee program. Specifically, to mitigate for impact to riparian/riverine habitat, and other waters of the U.S. and State, Caltrans will contribute funds to the Inland Empire Resource Conservation District (IERCD) to create and restore riparian/riverine habitats and waters. In order to accomplish this, IERCD would remove eucalyptus trees from Prado Basin, and replace the habitat with native riparian vegetation such as willows and mulefat. The exact location of the mitigation site will be determined through coordination among Caltrans, the resource agencies, and IERCD. A cooperative agreement, which describes the responsibilities of IERCD and Caltrans will be prepared. Temporary impact areas within Fresno Canyon/Wardlow Wash will also be replanted with a mixture of native riparian vegetation. This restoration will be conducted consistent with a restoration plan reviewed and approved by the Service prior to initiating project-related construction activities or removing vegetation.

Minimization Measures Specific to Coal Canyon

1. Hours of construction must be limited to daylight hours to ensure utilization of wildlife corridors. No construction would occur between the hours of 1600 and 0700 within 305 m (1,000 ft) of Coal Canyon.
2. An openness ratio ($[\text{height} \times \text{width}] / \text{length}$) of 0.6 m (2.0 ft) and appropriate height needs to be maintained at the highway undercrossing for use by larger mammals such as mule deer and mountain lion.
3. The majority of bridge staging would occur on the eastbound on-ramp. Vehicles staged would not be equipped with security lights.

vireo, and southwestern willow flycatcher are all covered species under the MSHCP. In order for the applicant to receive incidental take through the MSHCP, the proposed action must be consistent with the MSHCP and its associated implementation agreement and permit. For the portion of the proposed project within the plan area boundary of the MSHCP, we are relying on the Status of the Species and Environmental Baseline descriptions for the gnatcatcher, least Bell's vireo, and southwestern willow flycatcher from the Intra-Service Formal Section 7 Consultation/Conference for the MSHCP dated June 22, 2004 (FWS-WRIV-870.19) (USFWS 2004).

SR91 runs through the Criteria Area cells that include Proposed Constrained Linkages (PCL) One and Two. PCL One and Two connect Core A to the north of SR91 with Core B to the south. The widening of SR91 will result in an incremental decrease in the quality of the wildlife undercrossings at each of the linkages by widening the bridges under which wildlife could cross (i.e., the bridge over the BNSF railroad tracks at PCL One and the bridge over Fresno Canyon at PCL Two). However, Caltrans will implement measures to minimize vehicular mortality and maintain wildlife connectivity along with the other avoidance and minimization measures described in the plan.

According to the MSHCP, roadway design features will consider wildlife movement requirements. The MSHCP discusses both general considerations and specific design guidelines for the construction of wildlife crossings in conjunction with roadway construction activities (MSHCP Section 7, pp. 7-81 to 7-87). Consistent with the MSHCP, Caltrans will improve crossings for wildlife to the extent feasible as described in the October 5, 2007, letter to the CFWO, including the placement of fencing to keep wildlife off the highway, removal of fencing to enhance movement through existing culverts, and replanting with native vegetation to provide cover and refuge for wildlife.

In accordance with the Protection of Narrow Endemic Plant Species and Additional Survey Needs and Procedures policies of the MSHCP, habitat assessments and surveys were conducted on the site for Narrow Endemic Plant Species Survey Area 7 species with negative results. In accordance with the Additional Survey Needs and Procedures policy of the MSHCP, focused surveys were conducted on the site for the burrowing owl (*Athene cunicularia hypugaea*) with negative results.

We have received a Determination of Biologically Equivalent or Superior Preservation addressing the proposed impact to riparian/riverine habitat, as is required by the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policy of the MSHCP. The project would destroy about 0.47 ac (0.19 ha) of riparian/riverine resources and result in temporary impacts to 0.34 ac (0.14 ha) of riparian/riverine resources in Riverside County. Compensatory mitigation would consist of participation in the established SAWA in-lieu fee program. Specifically, to mitigate for impact to riparian/riverine habitat, and other waters of the U.S. and State, Caltrans will contribute funds to the IERCDC to create and restore riparian/riverine habitats and waters. In order to accomplish this, IERCDC would remove eucalyptus trees from

The status of the gnatcatcher and its federally designated critical habitat in the MSHCP Plan Area were also addressed in our biological opinion dated June 22, 2004. In the biological opinion for the MSHCP, we concluded that implementation of the MSHCP was not likely to result in jeopardy to the gnatcatcher or adverse modification of its critical habitat. Given that the proposed action is consistent with the MSHCP, we do not anticipate any adverse effects to the gnatcatcher or its critical habitat that were not previously evaluated in the biological opinion for the MSHCP. Therefore, it is our conclusion that implementation of the portion of the project in the MSHCP Plan Area will not result in jeopardy to the gnatcatcher or adverse modification of its critical habitat.

Analysis of Proposed Project in Orange County

The effects of the project activities in Riverside County on the gnatcatcher are addressed in the MSHCP; thus, impacts to the gnatcatcher in Riverside County will not be re-analyzed in this document. The analysis below will address the effects of the project activities on the gnatcatcher in Orange County only. The gnatcatcher is the only federally listed species known to occur in the portion of the proposed project in Orange County.

STATUS OF THE SPECIES

Description. The Service listed the coastal California gnatcatcher as threatened on March 30, 1993 (58 FR 16742). The Service published a final rule designating critical habitat for the gnatcatcher on October 24, 2000 (65 FR 63680). The Service re-proposed critical habitat for the gnatcatcher on April 24, 2003 (68 FR 20228); however, the previously designated critical habitat remains in place until the new designation becomes final.

The coastal California gnatcatcher (gnatcatcher) is a small, long-tailed member of the thrush family (Muscicapidae) that is endemic to cismontane southern California and northwestern Baja California, Mexico (Atwood 1980, 1988, 1990, 1991; AOU 1983, 1989). Its body plumage is dark blue-gray above and grayish-white below, while the tail is mostly black above and below. The male has a distinctive black cap that is absent during the winter, and both sexes have a distinctive white eye-ring. Vocalizations of this species include a call consisting of a rising and falling series of three kitten-like mew notes. The gnatcatcher is distinguished from the black-tailed gnatcatcher (*Polioptila melanura*) by its darker body plumage, less extensive white on tail feathers (rectrices 5 and 6), and longer tail.

Habitat Affinities. The gnatcatcher is an insectivorous species that typically occurs in or near coastal sage scrub, which is composed of relatively low-growing, dry-season deciduous, and succulent plants. Characteristic plants of these communities include California sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), laurel sumac (*Malosma laurina*), lemonadeberry (*Rhus integrifolia*), bush penstemon (*Keckiella antirrhinoides*), *Salvia* species, *Encelia* species, and *Opuntia* species (Atwood 1990, Beyers and Wirtz 1997, Braden *et al.* 1997, Weaver 1998).

Riverside, and San Diego counties (Atwood and Bontrager 2001). Small, isolated populations occurred in portions of its former range in Los Angeles, San Bernardino, and Ventura counties.

In 1993, the Service estimated that approximately 2,562 pairs of gnatcatchers remained in the United States. Of these, 30 pairs (1.2 percent) occurred in Los Angeles County, 757 pairs (29.5 percent) occurred in Orange County, 261 pairs (10.2 percent) occurred in Riverside County, and 1,514 pairs (59.1 percent) occurred in San Diego County. In October 1996, the Service estimated that 2,899 pairs of gnatcatchers occurred in the United States. Because the amount of coastal sage scrub available to the gnatcatcher decreased from 1993 to 1996, this increase in estimated abundance from 1993 to 1996 most likely reflected increased sampling effort and stochastic effects rather than an upward trend in the gnatcatcher population. In a recent assessment of the gnatcatcher population, the Service determined that there was insufficient quantitative data to determine whether the overall population has increased or decreased since 1996 (USFWS 1999).

Designated critical habitat includes 513,650 ac (207,867 ha) in 13 units in Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties (65 FR 63680). Proposed critical habitat includes 495,795 ac (200,641 ha) in 13 units in Los Angeles, Orange, Riverside, San Bernardino, Ventura, and San Diego counties (68 FR 20228).

In October 2003, significant areas of gnatcatcher habitat throughout southern California were burned in wildfires. These fires burned coastal sage scrub habitat in three major geographical areas occupied by this species: 1) the Moorpark area of Ventura County; 2) the northern portion of the San Bernardino Valley, including the Etiwanda Fan and Lytle and Cajon Washes; and 3) eastern San Diego County, including Otay, Lake Jennings, Miramar, Ramona, and Escondido. Together, the fires of October 2003 burned approximately 64,235 ac (25,230 ha) of designated critical habitat. Additional large-scale wildfires occurred in 2007 and burned portions of gnatcatcher designated and proposed critical habitats. The extent of burning of gnatcatcher habitat during the 2007 wildfires is still being assessed. The effects of the 2007 and 2003 fires on gnatcatcher populations is unknown, though individuals and in some cases populations were likely displaced due to habitat loss. The total impact of these fires on the species will not be known for many years until the vegetation recovers and affected areas are assessed as to their habitat quality and gnatcatcher occupation.

Rangewide Trends and Current Threats. Although declines in numbers and distribution of the gnatcatcher have resulted from numerous factors, the loss, fragmentation, and modification of habitat are considered to be the principal reasons for the federally threatened status (58 FR 16742). The amount of coastal sage scrub available to gnatcatchers has continued to decrease during the period after the listing of the species. It is estimated that up to 90 percent of coastal sage scrub vegetation has been lost as a result of development and land conversion (Barbour and Major 1977; Westman 1981a, 1981b), and is considered to be one of the most depleted habitat types in the U.S. (Kirkpatrick and Hutchinson 1977, O'Leary 1990). In addition, agricultural use, such as grazing and field crops, urbanization, air pollution, increases in fire frequency, and the introduction of exotics have all had an adverse impact on sage scrub habitat. A consequence of

will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action, are later in time, and still reasonably certain to occur.

Potential negative effects to gnatcatchers in Orange County due to project activities include the permanent and temporary loss of foraging and breeding habitat and disturbance of birds as a result of construction, monitoring, and restoration activities.

In addition, the Biological Assessment indicates that some potential future projects are interrelated to the proposed action. The effects of these projects to the gnatcatcher will not be addressed in this document; rather, they will be addressed through future section 7 consultations, as appropriate.

Permanent Loss of Habitat

This project will result in the permanent loss of 0.15 ac (0.06 ha) of coastal sage scrub within Orange County, including 0.10 ac (0.04 ha) of designated and proposed critical habitats and 0.05 ac (0.02 ha) of other coastal sage scrub. This habitat will be unavailable for gnatcatcher foraging and breeding activities. However, because the impacts are relatively small in size, affected gnatcatchers may adjust their territories slightly but should not be displaced due to loss of habitat. Further, the applicant will restore 0.45 ac (0.18 ha) of coastal sage scrub within Coal Canyon. Thus, as a result of this project, the amount of habitat available to the gnatcatcher locally will increase.

Temporary Loss of Habitat

The proposed project will temporarily impact about 0.50 ac (0.20 ha) of coastal sage scrub, including 0.40 ac (0.16 ha) of designated and proposed critical habitats and 0.10 ac (0.04 ha) of other coastal sage scrub habitat. This habitat will be unavailable for gnatcatcher foraging and breeding activities until it is successfully restored. However, because the impacts are relatively small in size, affected gnatcatchers may adjust their territories slightly but should not be displaced due to loss of habitat. Further, the proposed restoration of the temporarily impacted areas will help ensure that there is no long-term loss or degradation of the habitat as a result of invasion by non-native plant species.

Disturbance from Construction, Monitoring, and Restoration

The gnatcatchers in the vicinity of the proposed project are likely acclimated to some human activity. However, the proposed project will introduce more noise, activity and dust due to construction activities. The three gnatcatchers adjacent to the project may avoid the area

4. A very small fraction of the designated (513,650 ac (207,867 ha)) and proposed (495,795 ac (200,641 ha)) critical habitats will be affected and restoration will result in a net gain of habitat locally; thus, impacts to coastal California gnatcatcher critical habitats due to the proposed project should not preclude the conservation and recovery of this species.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act prohibits the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Harm is further defined by us to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. We defined harass as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and 7(o)(2) of the Act, taking that is incidental to and not intended as part of the agency action is not considered a prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are non-discretionary, and must be undertaken by Caltrans so that they become binding conditions of any grant or permit issued to the permittee, as appropriate, for the exemption in section 7(o)(2) to apply. Caltrans has a continuing duty to regulate the activity covered by this incidental take statement. If Caltrans (1) fails to assume and implement the terms and conditions or (2) fails to require the permittee to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of the incidental take, Caltrans must report the progress of the action and its impact on the species to the CFWO as specified in the incidental take statement [50 CFR § 402.14(i)(3)].

AMOUNT OR EXTENT OF TAKE

Incidental take of up to three pairs of gnatcatchers and one nest with eggs or nestlings in Orange County is expected in the form of harm due to the effects of the action as described above. Harm to the gnatcatcher pairs would occur due to temporary displacement from breeding and foraging habitat and the loss of reproductive opportunities. No take in the form of direct injury or mortality is anticipated as a result of this activity. Surveys will occur if activities occur during the nesting season to determine if gnatcatchers are nesting near the project and how many. If the take threshold is reached, Caltrans will contact the CFWO in a timely manner to reinstate consultation. Incidental take within Riverside County is addressed through the MSHCP.

REINITIATION NOTICE

This concludes formal consultation and conference on the project for the eastbound SR-91 lane addition from SR-241 to SR-71 as outlined in materials submitted to us. As provided in 50 CFR § 402.16 reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. Any questions or comments should be directed to Jesse Bennett of my staff or me at (760) 431-9440.

Sincerely,

A handwritten signature in cursive script that reads "Jonathan Snyder".

for Karen A. Goebel
Assistant Field Supervisor

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