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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

**CENTER FOR BIOLOGICAL
DIVERSITY; SIERRA CLUB;
FRIENDS OF THE NORTHERN
SAN JACINTO VALLEY; and
SAN BERNARDINO VALLEY
AUDUBON SOCIETY,**

Plaintiffs,

v.

**FEDERAL HIGHWAY
ADMINISTRATION;
GREGORY G. NADEAU,
Administrator; and
VINCENT MAMMANO,
Division Administrator,**

Defendants.

) **Case No. 5:16-CV-00133**

)
) **CIVIL COMPLAINT FOR**
) **DECLARATORY AND**
) **INJUNCTIVE RELIEF**

I. INTRODUCTION

1. Plaintiffs CENTER FOR BIOLOGICAL DIVERSITY, SIERRA CLUB, FRIENDS OF THE NORTHERN SAN JACINTO VALLEY, and SAN BERNARDINO AUDUBON SOCIETY (collectively “Plaintiffs”) bring this case to challenge final agency action taken by Defendants FEDERAL HIGHWAY ADMINISTRATION, GREGORY G. NADEAU, and VINCENT MAMMANO (collectively “Defendants” or “FHWA”) to approve, in an August 17, 2015 Record of Decision, the Mid County Parkway (“Project”). The Mid County Parkway is a 1.7 billion dollar, six-lane, sixteen mile freeway in western Riverside County, California between Interstate 215 in Perris and State Route 79 in San Jacinto. This Court has jurisdiction pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. sections 701-706, 28 U.S.C. section 1346 (United States as defendant), and U.S.C. section 1331 (federal question jurisdiction), with claims arising under the APA, the National Environmental Policy Act (“NEPA”), 42 U.S.C. section 4321, et seq., and Section 4(f) of the Department of Transportation Act (“Section 4(f)”), 49 U.S.C. section 303.

2. The Mid County Parkway will have a significant and adverse affect on the people and environment of Riverside County. It will cut through and divide the low-income and minority communities of Perris and San Jacinto, displacing approximately 396 residents and 171 employees. It will worsen air quality in the

1 Parkway. The Project will serve only to encourage growth in a mainly rural area,
2 leading to development far from transit, jobs and businesses, and social services.
3 Worse, the Mid County Parkway will not even accomplish its goals—traffic
4 conditions will be the same or slightly worse after the construction of the Project
5 compared with No Build conditions.

6 5. Defendants could have evaluated less harmful and less expensive
7 alternatives such as improvements to existing roadways or different routes that
8 avoid sensitive communities, parks, schools, or wildlife areas. Instead, they
9 presented an improperly narrow project purpose, leading to a narrow range of
10 Build Alternatives that included only four-to-eight-lane limited access freeway
11 options. Even after the length of the Project changed from thirty-two miles to
12 sixteen, Defendants insisted upon building the Mid County Parkway and selecting
13 from a previously designed route.

14 6. Defendants also failed to adequately disclose the adverse impacts of
15 the Project, misleading the public about the Project’s significance. It will worsen
16 the already poor air quality for nearby residents and increase the risk of health
17 problems. Significantly and disproportionately, these impacts will affect minority
18 and low-income residents. The communities nearest to the Project, including Perris
19 and San Jacinto, have majority Hispanic populations and high poverty rates.

20 7. Additionally, the Mid County Parkway will increase greenhouse gas

1 emissions, destroy agricultural lands, increase noise, adversely affect public lands,
2 and worsen water quality, among other impacts. FHWA failed to fully disclose and
3 evaluate these impacts, and in doing so, misled the public and decisionmakers
4 about the Project's true impacts.

5 8. The National Environmental Policy Act demands that agencies take a
6 hard look at the environmental impacts of proposed actions. Defendants failed to
7 follow the legal mandate of NEPA in evaluating and approving the Mid County
8 Parkway. The harmful effects of the Mid County Parkway have not been properly
9 disclosed, evaluated, or mitigated, resulting in uninformed and unwise
10 decisionmaking that may have a significant impact on the people, species, and
11 habitats of Riverside County.

12 9. Additionally, Defendants violated Section 4(f) by not selecting a
13 prudent and feasible alternative that would avoid Section 4(f) resources, including
14 parks and schools.

15 10. Defendants' Record of Decision and approval of the Project was
16 arbitrary, capricious, not in accordance NEPA and Section 4(f), and without
17 observance of procedures required by these statutes and their implementing
18 regulations, in violation of the Administrative Procedure Act. 5 U.S.C. § 706(2).

19 11. Plaintiffs request that this Court: a) enter a declaratory judgment that
20 Defendants are in violation of NEPA, Section 4(f), and the APA; and b) issue

1 injunctive relief enjoining the Defendants from proceeding with any activity on the
2 Mid County Parkway unless and until they fully comply with the legal
3 requirements of NEPA and Section 4(f).

4 **II. JURISDICTION AND VENUE**

5 12. This Court has jurisdiction over this action pursuant to the
6 Administrative Procedure Act, 5 U.S.C. sections 701-706, 28 U.S.C. section 1346
7 (United States as defendant), and 28 U.S.C. section 1331 (federal question
8 jurisdiction), with claims arising under the APA, NEPA, and Section 4(f).

9 13. An actual controversy exists between the parties within the meaning
10 of 28 U.S.C. section 2201(a). This Court may grant declaratory relief and
11 additional relief pursuant to 28 U.S.C. sections 2201-2202 and 5 U.S.C. sections
12 701-706.

13 14. Venue is proper in this judicial district and Court pursuant to 28
14 U.S.C. section 1391(e)(1)(B) because a substantial part of the events or omissions
15 giving rise to the claim occurred in this district and a substantial part of the
16 property that is the subject of this action is situated in this district. The Project is
17 located in Riverside County between the cities of Perris and San Jacinto.

18 **III. PARTIES**

19 15. Plaintiff CENTER FOR BIOLOGICAL DIVERSITY (“Center”) is a
20 national nonprofit conservation organization with 47,955 members dedicated to the

1 protection of biodiversity and ecosystems throughout the world. The Center works
2 through science, law, and creative media to secure a future for all species hovering
3 on the brink of extinction and to protect the lands, waters, and climates these
4 species need to survive. The Center has offices in California and 6,462 members
5 across the state. Members reside, own property, and work in Riverside County and
6 use publicly accessible portions of the Project area and surrounding areas for
7 recreational, wildlife, scientific, professional, and educational purposes.

8 16. Plaintiff SIERRA CLUB is a national nonprofit conservation
9 organization with over one million members dedicated to exploring, enjoying, and
10 protecting earth's wild places, practicing and promoting the responsible use of
11 earth's ecosystems and resources, educating and enlisting humanity to protest and
12 restore the quality of the natural and human environment, and using all lawful
13 means to carry out these objectives. The Sierra Club has an interest in urban sprawl
14 and its impacts when such development threatens our environment, health, and
15 quality of life. Over 150,000 Sierra Club members live in California and over
16 2,600 of those members live in Riverside County. Members use and enjoy publicly
17 accessible lands in and adjacent to the Project area for environmental, recreational,
18 and aesthetic purposes. The Sierra Club and its members would derive
19 environmental, recreational, health, and aesthetic benefits from alternative uses of
20 the Project area.

1 17. Plaintiff FRIENDS OF THE NORTHERN SAN JACINTO VALLEY
2 is a California nonprofit conservation group dedicated to preserving and protecting
3 the northern San Jacinto Valley, the San Jacinto Valley Wildlife Area, and the
4 surrounding environmental resources. Members reside and recreate in the San
5 Jacinto Valley area of Riverside County. The group sponsors regular nature walks
6 and environmental restoration activities in the San Jacinto Wildlife Area and works
7 to influence a wide variety of land use and transportation issues that affect the San
8 Jacinto Wildlife Area and the northern San Jacinto Valley.

9 18. Plaintiff SAN BERNARDINO VALLEY AUDUBON SOCIETY is a
10 California non-profit public benefit corporation with approximately 2,000
11 members who are residents and property owners within the Inland Empire of
12 Southern California, including over 1,100 members within the County of
13 Riverside. The purpose of Audubon is to educate the public about the environment
14 and planning and infrastructure issues, and to take action to protect the region's
15 natural heritage areas when necessary. Many Audubon members receive personal,
16 scientific, professional, and spiritual benefit from rare, sensitive, threatened, and
17 endangered species that will be affected by the Project. Audubon members reside
18 and own property in Riverside County and use publicly accessible portions of the
19 Project site and surrounding areas for recreational, wildlife viewing, scientific, and
20 educational purposes. Audubon members will be directly affected by the Project as

described herein.

19. Plaintiffs bring this case on their own behalf and on behalf of their members, who live, work, recreate in, and otherwise use and enjoy areas that will be affected by the Mid County Parkway. Plaintiffs' members, staffs, and boards regularly use and enjoy areas that will be adversely affected for farming and agriculture, photography, bird watching and observing nature, camping, working, attending school, and for other cultural, educational, recreational, and conservation activities. Members intend to continue to use and enjoy these areas, which include the San Jacinto Wildlife Area and Lake Perris State Recreation Area, frequently and on an ongoing basis in the future. Additionally, members include people with interests in the species and habitats of Riverside County. Plaintiffs have a longstanding involvement in the conservation of such species and their habitats.

20. The recreational, aesthetic, conservation, educational, and scientific interests of Plaintiffs and their members in the people, wildlife, and ecosystems of Riverside County will be directly and adversely affected by FHWA's approval of the Mid County Parkway. If Defendants had carried out an adequate environmental review and fully complied with NEPA and Section 4(f) before approving the Project, they would likely have either denied the Project or selected an alternative that would better protect communities and the environment from the Project's adverse impacts. Proper environmental review would have made it more likely

1 that Plaintiffs and their members would not be displaced from their homes and
2 businesses, would not experience as much air pollution and the resulting health
3 effects, and would have better opportunities to observe and enjoy the species and
4 habitats of Riverside County.

5 21. Plaintiffs and their members also suffer procedural and informational
6 injuries flowing from FHWA's failure to comply with NEPA, Section 4(f), and the
7 APA. FHWA's failure to properly disclose and evaluate the environmental impacts
8 of the Mid County Parkway violated NEPA and deprived Plaintiffs of essential
9 information to which they are statutorily entitled and of a meaningful opportunity
10 to participate in decisionmaking. Thus, the harmful effects of the Mid County
11 Parkway have not been properly disclosed, analyzed, or mitigated, resulting in
12 uninformed and unwise decisionmaking that can have a significant impact on the
13 people, species, and habitats of Riverside County.

14 22. Plaintiffs' and Plaintiffs' members' injuries would be redressed by the
15 relief sought.

16 23. Defendant FEDERAL HIGHWAY ADMINISTRATION is a federal
17 agency of the Department of Transportation responsible for supporting state and
18 local governments in the design, construction, and maintenance of the U.S.
19 highway system. In carrying out its responsibilities, FHWA must comply with the
20 applicable requirements of NEPA, Section 4(f), and the APA.

1 24. Defendant GREGORY G. NADEAU, Administrator of the Federal
2 Highway Administration, is the highest ranking official within FHWA. In that
3 capacity, Mr. Nadeau has ultimate responsibility for the Record of Decision and
4 approval of the Mid County Parkway that is the subject of this Complaint and for
5 compliance with all federal laws applicable to FHWA, including NEPA, Section
6 4(f), and the APA. He is sued in his official capacity.

7 25. Defendant VINCENT MAMMANO, Division Administrator of the
8 Federal Highway Administration-California Division, is the highest ranking
9 official within the California Division of the FHWA. Mr. Mammano signed the
10 August 17, 2015 Record of Decision Approval and approved, on April 15, 2015,
11 the Final Environmental Impact Report/Environmental Impact Statement and Final
12 Section 4(f) Evaluation for the Project. In carrying out his responsibilities, Mr.
13 Mammano must comply with the applicable requirements of NEPA, Section 4(f),
14 and the APA. He is sued in his official capacity.

15 **IV. STATUTORY BACKGROUND**

16 **A. National Environmental Policy Act**

17 26. The National Environmental Policy Act is the United States' "basic
18 national charter for protection of the environment." 40 C.F.R. § 1500.1. Congress
19 enacted NEPA "[t]o declare a national policy which will encourage productive and
20 enjoyable harmony between man and his environment; to promote efforts which

1 will prevent or eliminate damage to the environment and biosphere and stimulate
2 the health and welfare of man; [and] to enrich the understanding of the ecological
3 systems and natural resources important to the Nation.” 42 U.S.C. § 4321. NEPA
4 demands, “to the fullest extent possible . . . the policies, regulations, and public
5 laws of the United States . . . be interpreted and administered in accordance with”
6 its principles. *Id.* § 4332(1).

7 27. NEPA established the Council on Environmental Quality, which is
8 responsible for promulgating NEPA’s implementing regulations. *Id.* § 4342; *see* 40
9 C.F.R. § 1500.1, *et seq.*

10 28. NEPA requires agencies to take a hard look at the environmental
11 impacts of proposed actions and fully disclose these impacts to the public before
12 proceeding. “NEPA procedures must insure that environmental information is
13 available to public officials and citizens before decisions are made and before
14 actions are taken.” 40 C.F.R. § 1500.1(b). NEPA “serve[s] as the means of
15 assessing the environmental impact of proposed agency actions, rather than
16 justifying decisions already made.” *Id.* § 1502.2(g); *see also id.* § 1502.5.

17 29. The NEPA process is also “intended to help public officials make
18 decisions that are based on understanding of environmental consequences, and take
19 actions that protect, restore, and enhance the environment.” *Id.* § 1500.1(c).
20 “Accurate scientific analysis, expert agency comments, and public scrutiny are

essential to implementing NEPA.” *Id.* § 1500.1(b).

30. To accomplish these goals, NEPA requires federal agencies, including FHWA, to prepare an environmental impact statement (“EIS”) for all “major federal actions significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)(C). “The primary purpose of an [EIS] is to serve as an action-forcing device to insure that the policies and goals defined in [NEPA] are infused into the ongoing programs and actions of the Federal Government.” 40 C.F.R. § 1502.1.

31. Major federal actions “include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies” and “new or revised agency rules, regulations, plans, policies, or procedures.” *Id.* § 1508.18(a).

32. To determine whether an action will have a significant impact on the environment, an agency may first prepare an environmental assessment (“EA”). *Id.* § 1501.4. Agencies can only avoid preparing an EIS for a major federal action if the action will have “no significant impact” on the environment. *See id.* § 1501.4(e).

33. Determining whether an action will have significant impacts requires a consideration of several factors, including:

“(1) Impacts that may be both beneficial and adverse. A significant

1 effect may exist even if the Federal agency believes that on balance the
2 effect will be beneficial.

3 (2) The degree to which the proposed action affects public health or
4 safety.

5 (3) Unique characteristics of the geographic area such as ...
6 ecologically critical areas.

7 (4) The degree to which the effects on the quality of the human
8 environmental are likely to be highly controversial.

9 (5) The degree to which the possible effects on the human environment
10 are highly uncertain or involve unique or unknown risks.

11 (6) The degree to which the action may establish a precedent for future
12 actions with significant effects or represents a decision in principle
13 about a future consideration.

14 (7) Whether the action is related to other actions with individually
15 insignificant but cumulatively significant impacts. Significance exists
16 if it is reasonable to anticipate a cumulative impact on the environment
17 ...

18 (8) The degree to which the action may adversely affect districts, sites,
19 highways, structures, or objects listed in or eligible for listing in the
20 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 [and]

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.”

Id. § 1508.27(b).

34. An EIS must be a “detailed statement” that evaluates “the environmental impact of the proposed action,” “any adverse environmental effects which cannot be avoided,” “alternatives to the proposed action,” “the relationship between local short-term uses of man’s environment and the maintenance and enhancement of long-term productivity,” and “any irreversible and irretrievable commitments of resources which would be involved in the proposed action.” 42 U.S.C. § 4332(2)(C). In doing so, an EIS must be “concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses.” 40 C.F.R. § 1502.1.

35. An EIS must “specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.”

Id. § 1502.13.

36. The alternatives section is “the heart of the environmental impact

statement.” *Id.* § 1502.14. This section must:

“(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail . . . so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency’s preferred alternative . . . [and]

(f) Include appropriate mitigation measures.”

Id. § 1502.14. An EIS must evaluate a no action alternative and other “reasonable courses of actions.” *Id.* § 1508.25(b).

37. An EIS must also examine the environmental consequences of the proposed action and alternatives. *Id.* § 1502.16. This section should include direct and indirect effects of the action and their significance, possible conflicts between the action and the objectives of federal, regional, state, and local land use plans and policies, environmental effects of proposed alternatives, energy and natural resources requirements of the Project and mitigation measures, the urban quality of the project area and historic and cultural resources, and mitigation measures. *Id.*

1 § 1502.16.

2 38. Additionally, an EIS must evaluate three types of impacts: direct,
3 indirect, and cumulative. *Id.* § 1508.25(c). Direct effects are those caused by the
4 action and occur at the same time and place. *Id.* § 1508.8(a). Indirect effects are
5 those that are caused by the action but are later in time or farther removed in
6 distance. *Id.* § 1508.8(b). They include “growth inducing effects and other effects
7 related to induced changes in the pattern of land use, population density or growth
8 rate, and related effects on air and water and other natural systems.” *Id.*
9 Cumulative impacts are “the impact[s] on the environment which result[] from the
10 incremental impact of the action when added to other past, present, and reasonably
11 foreseeable future actions regardless of what agency (Federal or non-Federal) or
12 person undertakes such other actions.” *Id.* § 1508.7. Other effects to consider
13 include “ecological . . . aesthetic, historic, cultural, economic, social, or health,
14 whether direct, indirect, or cumulative.” *Id.* § 1508.8.

15 39. Throughout the EIS process, agencies are required to “insure the
16 professional integrity, including scientific integrity, of the discussions and
17 analyses.” *Id.* § 1502.24.

18 40. Agencies must request comments from the public after preparing a
19 draft or final EIS. *Id.* § 1503.1. An agency has a duty to respond to comments
20 received and may modify alternatives; develop and evaluate alternatives not

1 previously considered; supplement, improve, or change its analyses; or make
2 corrections to the EIS in response. *Id.* § 1503.4(a).

3 41. An agency’s NEPA obligations do not end with the initial analysis.
4 NEPA imposes a mandatory and continuing duty to supplement previous
5 environmental documents. If substantial changes are made, or there are new
6 circumstances or information relevant to environmental concerns and bearing on
7 the proposed action or its impacts, the agency must prepare a supplement to the
8 draft or final EIS. *Id.* § 1502.9(c).

9 **B. Section 4(f) of the Department of Transportation Act**

10 42. The Department of Transportation Act of 1966 includes a provision—
11 Section 4(f)—requiring the FHWA to make “special effort . . . to preserve the
12 natural beauty of the countryside and public park and recreation lands, wildlife and
13 waterfowl refuges, and historic sites.” 49 U.S.C. § 303(a); *see also* 23 U.S.C.
14 § 138(a). Section 4(f) allows approval of transportation programs or projects
15 “requiring the use of publicly owned land of a public park, recreation
16 area, or wildlife and waterfowl refuge of national, State, or local
17 significance, or land of an historic site of national, State, or local
18 significance . . . only if-- (1) there is no prudent and feasible
19 alternative to using that land; and (2) the program or project includes
20 all possible planning to minimize harm . . . resulting from the use.”

1 49 U.S.C. § 303(c).

2 43. Section 4(f) is satisfied if a project “will have a de minimis impact on
3 the area.” *Id.* § 303(d). For historic sites, a de minimis impact occurs when a
4 project “(i) . . . will have no adverse effect on the historic site; or (ii) there will be
5 no historic properties affected.” *Id.* § 303(d)(2). For parks, recreation areas, and
6 wildlife refuges, the Secretary must determine that, “after public notice and
7 opportunity for public review and comment, that the transportation program or
8 project will not adversely affect the activities, features, and attributes of the” area.
9 *Id.* § 303(d)(3).

10 **C. Administrative Procedure Act**

11 44. The Administrative Procedure Act entitles those adversely affected by
12 final agency actions to a right of judicial review. 5 U.S.C. §§ 702, 704.

13 45. The APA directs reviewing courts to “compel agency action
14 unlawfully withheld or unreasonably delayed” and to “hold unlawful and set aside
15 agency action, findings, and conclusions found to be”

16 “(A) arbitrary, capricious, an abuse of discretion, or otherwise not in
17 accordance with law;

18 (B) contrary to a constitutional right, power, privilege, or immunity;

19 (C) in excess of statutory jurisdiction, authority, or limitations, or
20 short of statutory right; [or]

1 (D) without observance of procedure required by law,”
2 among other directives. *Id.* § 706.

3 46. The issuance of the Record of Decision and the approval of the Mid
4 County Parkway is a final agency action subject to judicial review under 5 U.S.C.
5 section 704. Plaintiffs have exhausted all administrative remedies by submitting
6 written comments to the FHWA throughout the environmental review process and
7 appearing at public hearings on the Project. All issues raised in this complaint were
8 raised before by Plaintiffs, other public commenters, or government agencies prior
9 to the Project’s approval.

10 **V. FACTUAL AND PROCEDURAL BACKGROUND**

11 **A. Procedural Background**

12 47. The Mid County Parkway is a 1.7 billion dollar, sixteen-mile, six-
13 lane, limited access freeway in western Riverside County between Interstate 215 in
14 the west and State Route 79 in the east. The Project will cut through Perris, which
15 has approximately 73,756 residents, and San Jacinto, with a population of 46,490.
16 The MCP is a joint project proposed by the FHWA, the Riverside County
17 Transportation Commission (“RCTC”), and the California Department of
18 Transportation.

19 48. In 2004, environmental studies for the Project began. The initial
20 proposed Project was a thirty-two-mile facility between Interstate 15 in the west

1 and State Route 79. A Notice of Preparation of an Environmental Impact Report
2 (“EIR”)/EIS was issued to the public and included seven Build Alternatives and
3 one No Project Alternative.

4 49. In August 2007, a supplemental Notice of Preparation was issued that
5 included five Build Alternatives and two No Project Alternatives. In September
6 2007, RCTC selected the Locally Preferred Alternative, Alternative 9.

7 50. In October 2008, the Draft EIR/EIS was circulated for public review
8 and comment. Comments revealed two main issues with the Project. First, public
9 commenters were concerned about the cost and the availability of funds. Second,
10 comments suggested that improvements to existing facilities would be a better use
11 of public funding and limited resources and would reduce impacts to communities
12 and wildlife. Improving existing facilities like Cajalco Road in the west would
13 minimize the impacts to the communities of Gavilan Hills and Lake Mathews
14 Estates and to wildlife areas including Lake Mathews, Estelle Mountain, Steele
15 Peak, and Motte Rimrock. In the east, improvements to existing facilities such as
16 Ramona Expressway and State Route 74 would minimize impacts to the
17 communities in the San Jacinto Valley and Nuevo and to the wildlife of Lake
18 Perris and the San Jacinto Wildlife Area. Core habitat reserves of the Western
19 Riverside County Multiple Species Habitat Conservation Plan would be less
20 affected along the entire Project area by improving existing facilities instead of

1 building the Mid County Parkway.

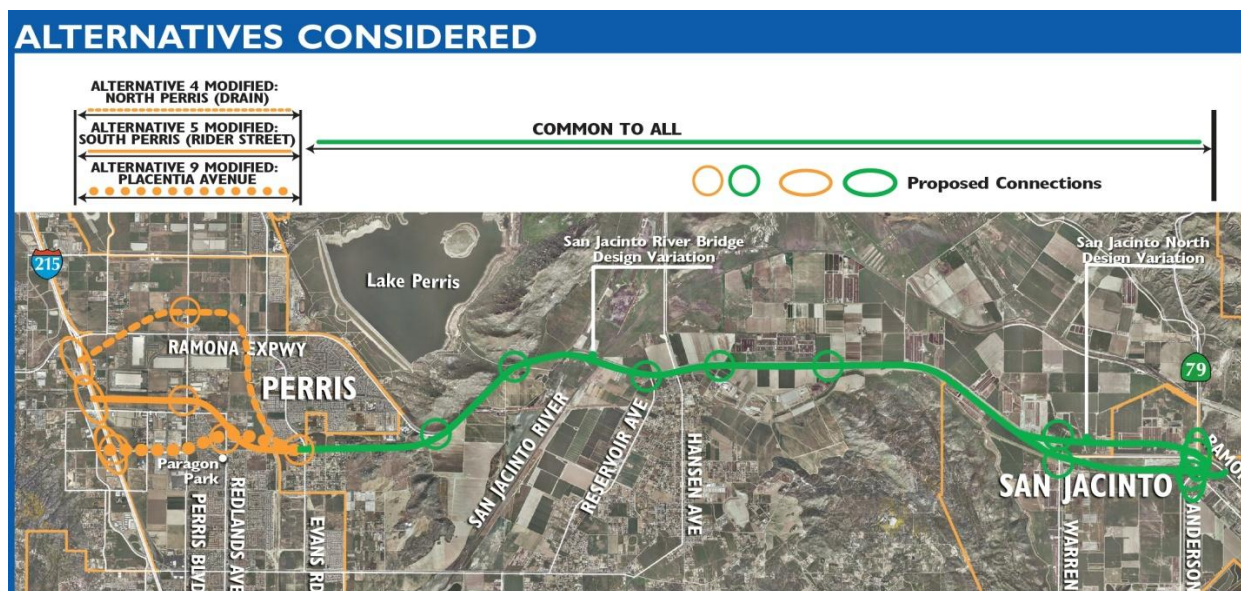
2 51. The Draft EIR/EIS evaluated two No Project/No Action alternatives
3 and five Build alternatives. Alternative 1A was the No Action alternative with
4 existing ground conditions and Alternative 1B was the No Action alternative with
5 General Plan Circulation Element conditions. The Build alternatives included
6 Alternative 4, a six-to-eight-lane controlled access parkway with a northern
7 alignment through Perris; Alternative 5, a six-to-eight-lane controlled access
8 parkway with a southern alignment through Perris; Alternative 6, a six-to-eight-
9 lane controlled access parkway that was the same as Alternative 4 with General
10 Plan Circulation Element improvements; Alternative 7, a six-to-eight-lane
11 controlled access park that was the same as Alternative 5 with General Plan
12 Circulation Element improvements; and Alternative 9, a four-to-six-lane controlled
13 access parkway with a southern alignment through Perris.

14 52. In 2009, the Mid County Parkway was modified from thirty-two miles
15 to sixteen miles, changing the western boundary of the Project from Interstate 15 to
16 Interstate 215. This change eliminated the western freeway connection closest to
17 population and job centers in the area. The lead agencies determined that widening
18 and improving the existing Cajalco Road would remove the need for the western
19 portion of the initial Mid County Parkway route.

20 53. As a result of the shortened Project, a Recirculated Draft

EIR/Supplemental EIS was issued in 2013. The purpose and objectives of the new sixteen-mile route remained nearly the same as the initial thirty-two-mile Project.

54. The Recirculated Draft EIR/Supplemental EIS evaluated the two No Action alternatives; a Section 404 No Action Alternative for compliance with the Clean Water Act; Alternative 4 Modified, a six-lane controlled access freeway with a northern alignment through Perris; Alternative 5 Modified, a six-lane controlled access freeway with a central alignment through Perris; Alternative 9 Modified, a six-lane controlled access freeway with a southern alignment through Perris; and two Design Variations, the San Jacinto River Bridge Design Variation and the San Jacinto North Design Variation.



55. In January 2014, FHWA issued revised sections of Chapter 4 of the Recirculated EIR/Supplemental EIS, which provided additional analysis of the Mid

County Parkway's greenhouse gas emissions and air quality impacts.

56. On March 27, 2015, FHWA released the Final EIR/EIS, which identified Alternative 9 as the selected route. The Final EIR/EIS recognized the Mid County Parkway's significant, adverse, and unavoidable impacts to the environment.

57. The Final EIR/EIS evaluated Alternative 4 Modified, Alternative 5 Modified, Alternative 9 Modified, the two Design Variations, the two No Action alternatives, and the Section 404 No Action Alternative.

58. FHWA approved the Project and on August 17, 2015 issued the Record of Decision.

59. Plaintiffs exhausted all administrative remedies by submitting written comments to the RCTC and FHWA throughout the environmental review process for the Project and appearing at public hearings on the Project. All issues raised in this complaint were raised before by Plaintiffs, other public commenters, or government agencies prior to the Project's approval.

B. Factual Background

60. The Mid County Parkway will threaten the communities, wildlife, and environment of Riverside County. The sixteen-mile, six-lane limited access freeway will cut through the predominately minority and low-income communities of Perris and San Jacinto and run adjacent to wildlife areas, parks, and schools. By

1 adding more car and truck traffic, the Project will increase air pollution and
2 greenhouse gas emissions in Riverside County, threatening nearby communities
3 with health problems and worsening climate change.

4 61. The Mid County Parkway will increase growth and urbanization of
5 the largely agricultural San Jacinto Valley by adding massive freeway
6 infrastructure that will encourage more traffic and sprawl. The current agricultural
7 nature in the San Jacinto valley serves as an important buffer zone protecting
8 valuable wildlife areas from the direct and indirect effects of adjacent urbanization
9 that would be caused by the Mid County Parkway.



17 **Existing Conditions:** Davis Road, at a proposed residential development site, looking southwest toward Ramona Expressway

18 62. The new highway and resulting development will negatively impact
19 the San Jacinto Valley and several adjacent wildlife reserves and open space areas,
20 including the San Jacinto Wildlife Area, Lake Perris Recreation Area, and core

1 habitat reserves of the Western Riverside County Multiple Species Habitat
2 Conservation Plan. The San Jacinto Valley itself has been designated as an
3 Important Bird Area of Global Concern by the National Audubon Society.

4 63. The area bisected by the Mid County Parkway is home to a staggering
5 array of wildlife species, including migratory birds and species protected under the
6 federal and state Endangered Species Acts, such as the Swainson's hawk,
7 tricolored blackbird, willow flycatcher, yellow billed cuckoo, San Jacinto
8 crowscale, and spreading navarretia. Over 319 different bird species have been
9 documented at the San Jacinto Wildlife Area, including over 65 of the 146 species
10 of plants and animals protected by the Western Riverside County Multiple Species
11 Habitat Conservation Plan. The San Jacinto Wildlife Area and Lake Perris
12 Recreation Area also serve as core reserves for the endangered Stephens' kangaroo
13 rat.

14 64. Defendants' inadequate environmental review documents failed to
15 fully disclose the gravity of the significant environmental impacts of the Project, in
16 violation of NEPA's informed decisionmaking and public participation mandates.

17 65. The stated purpose of the Mid County Parkway is so narrow that only
18 a six-lane limited access freeway could satisfy FHWA's goals. Defendants
19 explained in the Final EIR/EIS that the purpose of the Project was to "provide a
20 transportation facility that would effectively and efficiently accommodate regional

1 west-east movement of people, goods, and services between and through Perris and
2 San Jacinto,” and specifically:

- 3 • “Provide increased capacity to support the forecast travel
4 demand for the 2040 design year;
- 5 • Provide a limited access facility;
- 6 • Provide roadway geometrics to meet state highway design
7 standards;
- 8 • Accommodate Surface Transportation Assistance Act National
9 Network trucks; and
- 10 • Provide a facility that is compatible with a future multimodal
11 transportation system.”

12 66. The Project was originally proposed to be a thirty-two mile freeway.
13 When the RCTC cut the project in half, it chose to make improvements to an
14 existing roadway in the western portion of the original project, a less
15 environmentally damaging alternative to constructing a new freeway.

16 67. But Defendants decided to pursue the original goals of the Project and
17 moved forward with evaluating only freeway alternatives. Defendants failed to
18 make substantial changes to the purpose or need statement for the Project, save for
19 changing the Project’s description from a “transportation parkway” to a
20

1 “transportation facility.” This superficial change did not have an effect on the
2 range of alternatives FHWA considered for the Project.

3 68. Instead, FHWA considered only four-to-eight-lane limited access
4 freeway alternatives throughout the review process. Even after the Project was
5 shortened, FHWA failed to evaluate alternatives specific to the new sixteen-mile
6 length or meaningfully evaluate obvious and reasonable alternatives such as
7 improvements to existing roads. Instead, FHWA insisted on approving a six-lane
8 freeway.

9 69. As such, FHWA’s alternatives analyses under both NEPA and Section
10 4(f) were deficient. FHWA’s failure to examine reasonable alternatives under
11 NEPA precluded informed decisionmaking and meaningful public participation.
12 FHWA’s failure to select an alternative that would avoid Section 4(f) resources,
13 despite prudent and feasible alternatives, violated Section 4(f).

14 70. Further, the traffic projections FHWA used to justify a six-lane
15 freeway are based on growth projections that assume the existence of the Mid
16 County Parkway. Such circular reasoning cannot satisfy NEPA’s requirements to
17 not define a project’s objectives in unreasonably narrow terms and to rigorously
18 explore all reasonable alternatives.

19 71. In fact, many of FHWA’s no build baselines use growth projections
20 that assume the Mid County Parkway’s ultimate construction. Thus, the baselines

1 FHWA used to compare the impacts of the Project with the No Build conditions
2 were inflated, masking the true impacts of the Project and misleading
3 decisionmakers and the public.

4 72. In addition to FHWA's baseline problems, Defendants also failed to
5 adequately disclose and evaluate the Project's impacts to a number of resources.

6 73. For instance, FHWA failed to adequately disclose and analyze the
7 Project's air quality impacts, including, but not limited to, the major health risks
8 associated with air pollution in close proximity to freeways, including asthma; and
9 the air pollution resulting from likely sources such as total truck trips, large
10 Surface Transportation Assistance Act trucks, and residential and business
11 displacements. Additionally, FHWA improperly relied on compliance with Clean
12 Air Act standards to downplay the air quality impacts of Project.

13 74. FHWA failed to adequately disclose and analyze the Project's traffic
14 impacts, including, but not limited to, the impacts of the truck trips required for
15 construction and the impacts resulting from residential and business displacements.
16 FHWA also failed to fully disclose the Project's traffic impacts by deferring
17 selection of the final design.

18 75. FHWA failed to adequately disclose and analyze the Project's climate
19 change impacts, including, but not limited to, the greenhouse gas emissions from
20 all sources, included building materials like concrete and cement, truck hauls, and

1 water trucks.

2 76. FHWA failed to adequately disclose and analyze the Project's impacts
3 to communities, including, but not limited to, the full impacts of displacements and
4 community divisions and the health impacts of air pollution resulting from
5 proximity to the Project. FHWA also failed to fully disclose the Project's impacts
6 to communities by deferring selection of the final design.

7 77. The Project will worsen the already poor air quality for nearby
8 residents and increase the risk of health problems including asthma and non-cancer
9 mortality. FHWA failed to fully disclose such health risks or inform the public that
10 such risks are foreseeable and significant.

11 78. These nondisclosures violated NEPA and President Clinton's
12 Executive Order 12898 (Feb. 11, 1994), requiring agencies to "identify[] and
13 address[], as appropriate, disproportionately high and adverse human health or
14 environmental effects of its programs, policies, and activities on minority
15 populations and low-income populations." Perris is majority non-white and
16 Hispanic, with 25.9% of the population living below poverty level. San Jacinto has
17 a majority Hispanic population, as well, with a 17.4% poverty rate.

18 79. Serious health risks will only add to the problems the Mid County
19 Parkway will bring to nearby communities; the Project will also displace up to 396
20 residents from their homes and 171 employees from their businesses. Significantly

1 and disproportionately, these impacts will affect minority and low-income
2 residents.

3 80. FHWA also failed to adequately disclose and analyze the Project's
4 noise impacts, including, but not limited to, the impacts from single noise events.

5 81. Furthermore, by deferring selection of the final Project design, FHWA
6 failed to fully and adequately disclose the Project's impacts on land use, water
7 quality, geology and soil, paleontology, hazardous waste and materials, natural
8 communities, wetlands, animal species, farmland, utilities and emergency services,
9 visuals and aesthetics, and hydrology and floodplains.

10 82. FHWA failed to fully disclose and evaluate many of these significant
11 and probable impacts. As a result, the public has not been fully informed about the
12 Project's impacts, in violation of NEPA.

13 **VI. CLAIMS FOR RELIEF**

14 **FIRST CLAIM FOR RELIEF**

15 **Violations of NEPA, 42 U.S.C. section 4321, *et seq.*, and the APA, 5 U.S.C.**

16 **section 706**

17 83. Plaintiffs incorporate by reference and re-allege all allegations set
18 forth above.

19 84. In their Record of Decision and approval of the Mid County Parkway,
20 Defendants violated NEPA and its implementing regulations. These violations

1 include:

2 a. Defendants too narrowly defined the Project's purpose and
3 need, in violation of, *inter alia*, 42 U.S.C. section 4332(2)(C)(iii) and 40 C.F.R.
4 section 1502.13. These purposes are so unreasonably narrow that only six-lane,
5 limited access freeway alternatives would accomplish FHWA's goals, making the
6 NEPA process a foreordained formality.

7 b. Defendants' narrow statement of purpose and need resulted in
8 an improperly narrow range of alternatives and mitigation measures, in violation
9 of, *inter alia*, 42 U.S.C. section 4332(2)(C)(iii) and 40 C.F.R. section 1502.14.
10 FHWA's failure to examine reasonable alternatives precluded a reasoned choice,
11 informed decisionmaking, and meaningful public participation.

12 c. Defendants failed to fully and adequately disclose and evaluate
13 the environmental impacts of the proposed Mid County Parkway, in violation of,
14 *inter alia*, 42 U.S.C. section 4332(2)(C) and 40 C.F.R. section 1502.16.
15 Defendants failed to adequately disclose and analyze the Mid County Parkway's
16 impacts on the environment, including, but not limited to, the impacts to: air
17 quality, traffic and non-automobile mobility, climate change and greenhouse gas
18 emissions, communities, noise and other disturbances, land use, water quality,
19 geology and soil, paleontology, cultural and historic resources, hazardous waste
20 and materials, pollutants and toxic materials, natural communities, wetlands,

1 plants, animals and other wildlife species, parks and public lands, farmland,
2 utilities and emergency services, infrastructure, visuals and aesthetics, recreational
3 resources, hydrology and floodplains, growth inducement, and cumulative and
4 indirect impacts.

5 d. Defendants used an improper no build baseline, in violation of,
6 *inter alia*, 40 C.F.R. sections 1500.1(b) and 1502.24. Defendants improperly used
7 no build baseline figures that assumed the existence of the Mid County Parkway,
8 which inflated growth projections and misled the public and decisionmakers about
9 the actual impacts of the Project.

10 e. Defendants failed to adequately request and respond to
11 comments during the NEPA process, in violation of, *inter alia*, 40 C.F.R. sections
12 1503.1 and 1503.4. Defendants improperly requested comments from the public
13 before, during, and after preparing the EIS, and subsequently failed to adequately
14 respond to comments received regarding the Project's impacts, mitigation, and
15 alternatives.

16 85. Therefore, the FHWA approval of the Project was arbitrary,
17 capricious, an abuse of discretion, and otherwise not in accordance with law, as
18 required by NEPA, its implementing regulations, and the APA. Defendants'
19 actions are subject to judicial review under the APA. 5 U.S.C. §§ 701-706, 706(2).

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86. Plaintiffs incorporate by reference and re-allege all allegations set forth above.

87. Defendants failed to comply with Section 4(f) of the Department of Transportation Act by failing to select a prudent and feasible alternative that would avoid Section 4(f) resources, in violation of, *inter alia*, 49 U.S.C. section 303, 23 U.S.C. section 138(a), and 23 C.F.R. Part 774. The Project will use and constructively use Section 4(f) resources including schools and parks, but FHWA failed to select a prudent and feasible alternative that would avoid harm to these resources despite their availability.

88. Therefore, the FHWA approval of the Project was arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, as required by Section 4(f) and the APA. Defendants' actions are subject to judicial review under the APA. 5 U.S.C. §§ 701-706, 706(2).

Violations of the Administrative Procedure Act, 5 U.S.C. section 706

Complaint for Declaratory and Injunctive Relief
34

1 90. The APA, 5 U.S.C. sections 701-706, entitles a party to seek judicial
2 review of a final agency action where a legal wrong is alleged and the party
3 alleging the violation is adversely affected or aggrieved by the agency action.
4 Pursuant to 5 U.S.C. section 706(2)(A), a reviewing court shall hold unlawful and
5 set aside an agency action found to be arbitrary, capricious, or otherwise not in
6 accordance with the law. Defendants acted illegally for all the reasons set forth in
7 this Complaint.

8 91. Further description of such violations is summarized above.

9 92. Due to Defendants' knowing and conscious failure to comply with
10 NEPA, and/or Section 4(f) of the Department of Transportation Act, Plaintiffs have
11 suffered legal wrongs because of agency actions and are adversely affected and
12 aggrieved by agency actions within the meaning of the Administrative Procedure
13 Act, 5 U.S.C. section 702.

14 93. Defendants' knowing and conscious failure to comply with NEPA
15 and/or Section 4(f) of the Department of Transportation Act, was arbitrary,
16 capricious, an abuse of discretion, not in accordance with law, in excess of
17 statutory jurisdiction, and without observance of procedure required by law within
18 the meaning of the APA, 5 U.S.C. section 706(2), and should therefore be declared
19 unlawful and set aside by this Court.

VII. PRAYER FOR RELIEF

For the reasons stated above, Plaintiff respectfully requests that the Court grant the following relief:

1. Declare that the Defendants are in violation of NEPA, Section 4(f), and the APA;

2. Declare that Defendants' violations of NEPA and Section 4(f) are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law under the APA;

3. Declare unlawful and set aside Defendants' approval of the Mid County Parkway Project, the Record of Decision, the Final EIR/EIS and Final Section 4(f) Evaluation, the Recirculated Sections of Chapter 4.0, the Recirculated Draft EIR/Supplemental Draft EIS, and the Draft EIR/EIS, and all related findings and approvals, and require Defendants to comply with federal statutes and regulations, including but not limited to NEPA, Section 4(f), the APA, and their implementing regulations, in any future reviews of and decisions regarding the Mid County Parkway;

4. Issue preliminary and permanent injunctions prohibiting Defendants from proceeding with any activity related to the Mid County Parkway unless and until they comply with NEPA, Section 4(f), and the APA;

5. Issue declaratory, interlocutory, and injunctive relief requiring

Defendants to comply with NEPA, Section 4(f), and the APA;

6. Award Plaintiffs their costs of litigation, including reasonable attorneys fees under the Equal Access to Justice Act or other authority; and

7. Grant Plaintiffs such further relief as the Court deems just, proper, and equitable.

Respectfully submitted this 22nd day of January, 2016,

/s/ Amanda Prasuhn

Amanda Prasuhn

Jonathan Evans

Aruna Prabhala

CENTER FOR BIOLOGICAL DIVERSITY

Attorneys for Plaintiffs