3.16-3.21 and NES. NATURAL COMMUNITIES, WETLANDS AND OTHER WATERS, PLANT SPECIES, ANIMAL SPECIES, THEATENED AND ENDANGERED SPECIES, INVASIVE SPECIES IMPACT ANALYSIS

1. The Draft EIR/EIS does not use current sources for the identification of special status species.

The information-gathering methods for special status species used to prepare the Draft EIR/EIS are given in the Natural Environment Study (NES). Section 2.2.1. of the NES states that the following resource was used in a Literature and Database Search for Records of Biological Resources:

> "CDFW, Natural Diversity Database. April 2013. Special Vascular Plants, Bryophytes, and Lichens List. Quarterly publication. 73 pp."

This is a quarterly publication, and the NES was completed in November of 2014. The most current version of this publication available at the time of report preparation must be used to ensure that it is in compliance with the California Endangered Species Act, California Fish and Game Code Sections 3503 and 3503.5, and the California Environmental Quality Act requirements related to Species of Special Concern.

The information-gathering methods for special status species used to prepare the Draft EIR/EIS are given in the Natural Environment Study (NES). Section 2.2.1.of the NES states that the following resources were used in a Literature and Database Search for Records of Biological Resources:

a. CNDDB information (RareFind 4, RareFind 5), administered by CDFW."
b. Calflora. Information on wild California plants for conservation, education, and appreciation. http://www.calflora.org/
c. Consortium of California Herbaria. A gateway to information from California vascular plant specimens that are housed in participant herbaria. http://ucjeps.berkeley.edu/consortium/
d. The American Ornithologists' Union. Checklist of North American Birds. http://www.aou.org/checklist/north/
e. Pasadena Audubon Society. Pasadena Audubon Society Yahoo Group. A listserv where members can post recent bird sightings. http://groups.yahoo.com/neo/groups/PasadenaAudubon/info?yguid=10339344
f. eBird. A real-time online birdwatching checklist for reporting and accessing information about birds. http://ebird.org
g. USFWS National Wetlands Inventory (NWI) database. http://www.fws.gov/wetlands
h. Los Angeles Department of Public Works, Los Angeles County Storm Drain System. http://dpw.lacounty.gov/fcd/stormdrain/index.cfm

However, dates of access are not provided for these databases, so Caltrans cannot ensure that it has the most current information from these sources. Therefore, it cannot ensure that it is in

compliance with the most recent update of the California Endangered Species Act, California Fish and Game Code Sections 3503 and 3503.5, and the California Environmental Quality Act requirements related to Species of Special Concern.

Additional information needs to be acquired from the California Department of Fish and Wildlife (CDFW) regarding special status species. The information-gathering methods for special status species used to prepare the Draft EIR/EIS are given in the Natural Environment Study (NES). Section 2.2.1. of the NES states,

> "A letter was submitted to CDFW on September 16, 2013, requesting a list of special status species potentially occurring in the vicinity of the Proposed Project. No response has been received as of June 5, 2014."

Caltrans cannot ensure that it is in compliance with the California Endangered Species Act, California Fish and Game Code Sections 3503 and 3503.5, and the California Environmental Quality Act requirements related to Species of Special Concern without this information.

2. The Draft EIR/EIS uses results from field surveys that have not been conducted at the appropriate time of year to determine the presence and status of applicable species.

Botanical surveys were not conducted at the appropriate time of year for all species. Additional surveys are required to ensure that transportation improvements proposed by CalTrans are in compliance with federal and state laws. The survey methods for special status plants used to prepare the Draft EIR/EIS are given in the Natural Environment Study (NES). Section 2.2.2.2. of the NES states,

> "botanical surveys generally followed the CNPS and CDFW guidelines (CNPS 1983/2001; CDFW 2009). The surveys diverged from the guidelines in that availability of the designs for the proposed alternatives precluded surveys in the spring and early summer; therefore, multiple visits throughout the growing season were not conducted."

Botanical surveys conducted in the late summer months would miss the flowering season for many species of rare and special status plants. Many of these plant taxa flower in the spring and early summer, when surveys did not occur. In addition, some taxa do not flower every year. The presence of flowers is diagnostically necessary for accurate identification of many species of vascular plants. Without conducting botanical surveys during the appropriate times of year (and in the appropriate years for species that flower less frequently than once a year), special status plant species may be present, but may go un-observed and un-recorded. This would prevent Caltrans from ensuring that it is in compliance with the California Endangered Species Act, California Fish and Game Code Sections 3503 and 3503.5, the California Environmental Quality Act requirements related to Species of Special Concern, and the Native Plant Protection Act.

The survey methods for special status plants used to prepare the Draft EIR/EIS are given in the Natural Environment Study (NES). Section 2.2.2.2.of the NES states,

> "In order to adequately search for special-status plants, survey methods included investigating all accessible areas within the BSA [Biological Study Area] on foot. If foot access was not possible, biologists surveyed the areas with the aid of binoculars from an accessible vantage point."

Conducting rare plant surveys using binoculars could easily result in false negatives (assumption that a plant is absent when it is actually present), as some species are small and can be covered by overlying vegetation. An assumption of absence cannot be made without a thorough survey of each site. Caltrans cannot ensure that it is in compliance with the California Endangered Species Act, California Fish and Game Code Sections 3503 and 3503.5, and the California Environmental Quality Act requirements related to Species of Special Concern without knowing for sure that it has adequately surveyed the BSA for special status species.

More information is needed about the survey times and locations, and blooming period for taxa that were considered potentially present in the survey. The survey methods for special status plants used to prepare the Draft EIR/EIS are given in the Natural Environment Study (NES). Section 2.2.2.2.of the NES states,

> "the survey was conducted during the blooming period for the majority of the sensitive plants considered potentially present."

Caltrans cannot ensure that it is in compliance with the California Endangered Species Act, California Fish and Game Code Sections 3503 and 3503.5, and the California Environmental Quality Act requirements related to Species of Special Concern without knowing for sure that it has adequately surveyed the BSA for special status species, and this includes knowing and using the blooming period for each species to decide the appropriate times for field surveys to be conducted.

3. The Draft EIR/EIS incorrectly reports the results of animal species surveys.

Section 3.19.2 of the Draft EIR/EIS *Affected Environment* states,

> "the dominant bird species present within the BSA were house finch (*Haemorhous mexicanus*), house sparrow, northern mockingbird (*Mimus polyglottos*), mourning dove (*Zenaida macroura*), rock pigeon, and American crow (*Corvus brachyrhynchos*).

This section of the Draft EIR/EIS is derived from the Natural Environment Study (NES) section 3.1.3.2, entitled "Common Wildlife". In order to establish that the species observed were indeed "common", the numbers of individuals of each species observed must be reported. This standardized methodology was used in field surveys, and in NES *Appendix F: Avian Surveys*, the numbers of individuals of each species are quantitatively reported. If there is a need within the Draft EIR/EIS to summarize survey findings by presenting a list of only the most dominant species, then the methodology for determining which species were "dominant" should correspond with the abundance data as reported in the Appendices. Species should not be selected in a random or biased manner and reported as being "dominant", when they are not the

most abundant species observed. NES *Appendix F: Avian Surveys*, states, that for point count locations,

> "Of the 992 individuals that could be identified to species, 1 species, the house finch, accounted for 25 percent of the observations; house finch is a native, year-round resident that breeds throughout the BSA. The next 4 avian species, in order of abundance, were white-throated swift (7.2 percent of total avian observations recorded), rock pigeon (5.6 percent), common raven (5.1 percent), and European starling (5.0 percent). White-throated swifts and common raven are native, year-round residents of the Los Angeles Basin, while rock pigeon and European starling are both introduced species native to Europe that are extremely common in urban environments".

As for transect counts, Appendix F: Avian Surveys, states,

> "As a result of spring transect surveys, a total of 310 individuals of 29 species were recorded during 4 days of sampling within the BSA between April 9 and May 15, 2013. House finch was again the dominant species observed; of the 310 individuals that could be identified to species, house finch accounted for 32 percent of the observations. The next 4 avian species in order of abundance were lesser goldfinch (9.7 percent of total avian observations recorded), bushtit (6.1 percent), yellow-rumped warbler (4.8 percent), and California towhee (3.9 percent). All five of the most frequently observed species during transects are year-round residents of the Los Angeles Basin and are considered common birds of the more botanically diverse habitats chosen as transect locations."

Therefore, in order to accurately reflect the survey findings, the Draft EIR/EIS must report that the most common species observed at point count locations were: House Finch, White-throated Swift, Rock Pigeon, Common Raven, and European Starling, and that the most common species observed on transect counts were: House Finch, Lesser Goldfinch, Bushtit, Yellow-rumped Warbler, and California Towhee. Any other selective reporting of "dominant" avian species is misleading as to the dominance of native bird species in the study area, and is factually incorrect.

4. The Draft EIR/EIS makes erroneous statements of fact about wildlife corridors.

Section 3.25.4.19 of the Draft EIR/EIS *Animal Species- Heath and Historical Context* states,

> "There are no known migration corridors or wildlife linkages within the BSA".

This statement is false. The BSA falls within the well-recognized Pacific Flyway, which is one of four major north-south flyways for migratory birds in America that stretches from Alaska to Patagonia. This section of the Draft EIR/EIS goes on to discuss the importance of the BSA to migratory birds, so this introductory sentence should be modified to acknowledge that the Pacific Flyway is a known wildlife migratory corridor, and that the BSA occurs within this known wildlife migratory corridor.

5. The Draft EIR/EIS makes invalid assumptions about rare plant persistence in disturbed environments.

The survey methods for special status plants used to prepare the Draft EIR/EIS are given in the Natural Environment Study (NES). In reference rare plants in Non-native grassland, Section 3.1.3.1 of the NES states,

> "Rare plants can be present in this cover type; however, within the BSA the landscape is highly modified, such as along the banks of freeways, and the native soil and associated seed bank required for the presence of rare plants are likely absent."

Similar statements occur in reference to Non-native Riparian Woodland, Wetland Complex, and Giant Reed Semi-Natural Stands. Not all plants are eliminated by habitats where there is high disturbance or human modification. Historically, rare plants have been found and rediscovered in a number of highly modified locations, including disturbed lands, private lands, and locations where fill soil containing seeds has been brought in and spread on a site. Notable examples include, but are not limited to:

a. Ventura marsh milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*), a species thought to have gone extinct after 1967, was rediscovered on fill material at a closed oil-waste dump site in Oxnard, CA that was proposed for development.
b. Claspingleaf doll's daisy (*Boltonia decurrens*), a lake shoreline species thought to have extirpated from Missouri, was rediscovered and today is most common in lowland areas where human-caused disturbance provides adequate habitat.
c. Small-anthered bitter-cress (*Cardamine micranthera*), thought to be extinct for three decades, was rediscovered on private lands, where all populations now reside.
d. Douglas' mountainbalm (*Monardella douglasii* ssp. *venosa*), thought to be extinct after 1935, was rediscovered in May of 1992. Following a fire and repeated rainstorms at the rediscovery site in September 1992, abundant seedlings of the species were observed.

Disturbed and human-modified areas are not typically targeted for rare plant surveys, so it is also possible that rare plants could exist on the site undetected for long periods of time. In addition, seeds can be spread through natural processes (i.e. carried by wildlife from nearby areas where rare plants are found), re-initiating a population that may have been disturbed or even previously eliminated by human disturbance. Caltrans cannot ensure that it is in compliance with the California Endangered Species Act, California Fish and Game Code Sections 3503 and 3503.5, and the California Environmental Quality Act requirements related to Species of Special Concern without knowing for sure that it has adequately surveyed the BSA for special status species, and this includes not assuming that rare plant species are absent simply because a site endures some level of human disturbance.

6. The Draft EIR/EIS makes assertions about the habitat value of wetlands that are inconsistent and that conflict with NES survey data.

The organisms that are found in the wetland features other than the streams, and the potential habitat value that they provide, should be reported in summary statements found in the Draft

EIR/EIS Section 3.25.4.17 *Wetlands and Other Waters--Health and Historical Context*. Based on the photographs and text related to plant community types included in the Appendices of the Natural Environment Study (NES), plants are found in many of wetland features other than the streams. However, section 3.25.4.17 of the Draft EIR/EIS states,

> "The streams provide the only potential habitat value in the BSA for fish and other riparian aquatic species."

This sentence suggests that "riparian aquatic species" are to be found only in streams, whereas many of the species found in riparian habitats are found near other, non-stream aquatic environments as well. A wide variety of organisms, including plants, invertebrates, and other species typically occur and provide habitat value in areas with any standing water. This is acknowledged in the NES Appendices, and should be included in the Draft EIR/EIS.

Regarding the Arroyo Seco, section 3.25.4.17 of the Draft EIR/EIS makes overly tentative summary statements that are inconsistent with the biological findings reported in the Natural Environment Study (NES) Appendices. Section 3.25.4.17 of the Draft EIR/EIS states,

> "Riparian plant communities occur along the Arroyo Seco within the BSA (Feature 6), providing potential habitat for riparian-associated plants and animals."

This "potential" habitat is verified as actual habitat through the work conducted by biologists and reported in the NES Appendices. The fact that this is known occupied habitat, rather than "potential" habitat, should be stated clearly in the report. The Arroyo Seco includes a special Habitat Assessment area, delineated in Figure 3.16-2 as Habitat Assessment Site 2. This area is identified as containing Arroyo Willow Thicket, Black Cottonwood Forest, and White Alder Grove Communities.

Regarding the Del Mar Pump Station wetland, Section 3.25.4.17 of the Draft EIR/EIS makes summary statements that are inconsistent, and excludes important information about the use of wetlands as foraging habitat for bats. Section 3.25.4.17 of the Draft EIR/EIS states that the wetland at the Del Mar Pump Station does not provide certain habitat values that streams do provide:

> "Approximately Two [sic] wetlands, two areas of non-wetland riparian habitat, and several ditch features were identified. In all, approximately 27 features were identified in the BSA. The streams provide the only potential habitat value in the BSA for fish and other riparian aquatic species."

Section 3.25.4.17 of the Draft EIR/EIS also states that habitat is present, but limited:

> "A second approximately 1.09 ac wetland, which is associated with the Del Mar Pump Station, was also identified. This apparently isolated wetland is man-made due to the pumping of storm water into the area, and the vegetation lacks a shrub or canopy layer. Habitat for plants and wildlife is present but limited due to the artificial and maintained (mowed) nature of the habitat."

Table 3.17.2 *Drainages, Wetlands, and Riparian Features in the BSA and CDFW/ RWQCB Jurisdictional Areas* within the Draft EIR/EIS describes the wetland at the Del Mar Pump Station, as providing both fish and wildlife habitat:

> "At Del Mar Pump Station; up to 90 ft wide; earthen bottom; riparian vegetation present immediately around the pump station; isolated; provides fish and wildlife habitat."

Section 3.17.2.4 of the Draft EIR/EIS, states,

> "The wetland at the Del Mar Pump Station (Feature 8) is excavated exclusively in uplands and depends on water actively pumped onto the site. The wetland contains suitable habitat for fish and wildlife is dominated by broadleaf cattain [sic] (*Typha latifolia*) and saltgrass (*Distichlis spicata*)."

The survey information for wetlands used to prepare the Draft EIR/EIS are given in the Natural Environment Study (NES). Appendix C *Botanical Survey* of the NES states on page 7 that in regard to plant community types,

> "Alliances found at the Del Mar Pump Station included cattail marshes, perennial rye grass fields, salt grass flats, arroyo willow thickets, and barnyard grass marshes."

Appendix G *Bat Survey* of the NES, states on page 1,

> "Numerous bats were also actively and visually detected foraging at the Del Mar Pump Station".

Appendix G goes on to report specifically, on page 12,

> "Three western pipistrelles [a bat species] were visually observed foraging and were acoustically recorded for approximately 20 minutes beginning at 7:42 p.m. This area provides suitable bat foraging habitat including a pool of standing water, and thriving vegetation, which in turn attracts insects, which then attract bats."

Appendix G reports on page 13,

> "The Del Mar Pump Station provides a dependable water source year round, and it is likely that resident bats in the area rely on this source for nighttime foraging"

Questions:

1. Section 3.16.2.2 of the Draft EIR/EIS states, "The vegetation appeared to have been planted as part of the Arroyo Seco habitat restoration area and is relatively young." What was it about the appearance of this vegetation that led to the assumption that it had been planted? How young was the vegetation?

2. Section 2.2.2.2.of the NES states, "In order to adequately search for special-status plants, survey methods included investigating all accessible areas within the BSA on foot. If foot access was not possible, biologists surveyed the areas with the aid of binoculars from an accessible vantage point." Why couldn't the biologists conducting the survey access all areas within the BSA? How were locations of plants recorded during binocular surveys? What measures will be taken to ensure that all areas are adequately surveyed for botanical resources using onsite surveys?

3. Section 2.2.2.2. of the NES states, "Those sensitive plants that may not have had aboveground identifiable parts, and which were not observed, were considered potentially present if suitable habitat was identified." What criteria were used to define suitable habitat for each species? How many species were considered to be potentially present, and in what locations? Once a species was considered potentially present, what does this mean from a regulatory standpoint?

4. Section 3.1.1. of the NES states, "disposal sites were not included in the BSA". How can the full impacts of the tunnel boring be accounted for? This material will need to be disposed of, and this could have significant impacts on a number of species, depending on where and in what matter this material is ultimate disposed.