

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: August 10-11, 2011

Reference No.: 2.2c.(4)
Action

From: BIMLA G. RHINEHART
Executive Director

Subject: **APPROVAL OF PROJECT FOR FUTURE CONSIDERATION OF FUNDING
FINAL ENVIRONMENTAL IMPACT REPORT FOR THE ATWATER – MERCED
EXPRESSWAY PROJECT (RESOLUTION E-11-59)**

ISSUE:

Should the Commission, as a Responsible Agency, accept the Final Environmental Impact Report (FEIR), Findings of Fact and Statement of Overriding Considerations for the Atwater-Merced Expressway Project (Project) in Merced County for future consideration of funding?

RECOMMENDATION:

Staff recommends that the Commission accept the FEIR, Findings of Fact and Statement of Overriding Considerations and approve the project for future consideration of funding.

BACKGROUND:

The Merced County Association of Governments (MCAG) is the CEQA lead agency for the Atwater-Merced Project. The project will widen a seven mile long north-south corridor to a six-lane freeway. The project will connect State Route (SR) 59 with SR 140. The project will cross SR 99 and include a new interchange.

The project as proposed will result in significant unavoidable impacts to noise; land use and agriculture; wetlands; and biological resources. Mitigation measures and/or alternatives to the proposed project that would substantially reduce or avoid these significant unavoidable impacts are infeasible. Specifically, the project would increase ambient noise levels in the project vicinity; expose persons to noise levels in excess of standards established in the City of Atwater and Merced County General Plans; and implementation of project plans could result in significant cumulative impacts to land use and agriculture; population and housing; visual resources; noise; hydrology and drainage; biological resources and wetlands; and Greenhouse Gas Emissions.

On March 19, 2009, MCAG adopted the FEIR, Findings of Fact and a Statement of Overriding Considerations for the project. MCAG found that there were several benefits that outweigh the

unavoidable adverse environmental effects of the project. These benefits include, but are not limited

to, providing additional north/south roadway capacity to accommodate existing, approved, and planned development within the Cities of Atwater and Merced Spheres of Influence, unincorporated portions of Merced County, and new UC Merced campus; improve access to the Castle Airport Development Center and the United States Penitentiary-Atwater; create alternative route for existing SR 59 to accommodate regional travel demand; reduce deficiencies and improve SR 99 by closing the Buhach Road interchange; and provide alternative emergency response routes, which would relieve congestion on existing roadways. MCAG established a Mitigation Monitoring Program to ensure that the mitigation measures specified for the project are implemented.

On July 7, 2011 MCAG provided written confirmation that the preferred alternative set forth in the final environmental document is consistent with the project programmed by the Commission in the STIP program. MCAG also provided written confirmation of its commitment to all of the mitigation measures stipulated in the FEIR and Mitigation Monitoring Program.

The project is estimated to cost \$212 million. The project is funded through Right of Way and is funded with STIP (\$11.9 million) and Local (\$4.45 million) funds. Funds totaling \$196,055,000 are not yet secured/programmed for the project.

Attachment

- Resolution E-11-59
- Findings of Fact & Statement of Overriding Considerations
- Project Location

CALIFORNIA TRANSPORTATION COMMISSION

Resolution for Future Consideration of Funding 10 – Merced County Resolution E-11-59

- 1.1 **WHEREAS**, the Merced County Association of Governments (MCAG) has completed a Final Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines for the following project:
 - Atwater – Merced Expressway Project
- 1.2 **WHEREAS**, MCAG has certified that the Final Environmental Impact Report has been completed pursuant to CEQA and the State CEQA Guidelines for its implementation; and
- 1.3 **WHEREAS**, the project will widen a seven mile north-south corridor to a six-lane freeway connecting State Route 59 with State Route 140 and construct an interchange at State Route 99 in Merced County; and
- 1.4 **WHEREAS**, the California Transportation Commission, as a Responsible Agency, has considered the information contained in the Final Environmental Impact Report; and
- 1.5 **WHEREAS**, Findings of Fact made pursuant to CEQA guidelines indicate that specific unavoidable significant impacts related noise, and potential significant cumulative impacts to land use; agricultural resources; population and housing; visual resources; hydrology and drainage; biological resources and wetlands; and Greenhouse Gas Emissions, make it infeasible to avoid or fully mitigate to a less than significant level the effects associated with the project; and
- 1.6 **WHEREAS**, MCAG adopted a Statement of Overriding Considerations for the project; and
- 1.7 **WHEREAS**, MCAG adopted a Mitigation Monitoring Program for the project; and
- 1.8 **WHEREAS**, the above significant effects are acceptable when balanced against the facts as set forth in the Statement of Overriding Considerations.
- 2.1 **NOW, THEREFORE, BE IT RESOLVED** that the California Transportation Commission does hereby accept the Final Environmental Impact Report, Findings of Fact and Statement of Overriding Considerations and approve the above referenced project to allow for future consideration of funding.

will reduce the project's impacts on the safety of school children traveling to and from school by ensuring safe bicycle and pedestrian routes. Pursuant to CEQA Guidelines Section 15091(a)(1), MCAG finds that Mitigation Measure PS-4 will be incorporated into the project via conditions of approval or via the Mitigation Monitoring and Reporting Program and the resolution approving the project, and will reduce the identified impacts, to a less-than-significant level.

SECTION 4: SIGNIFICANT EFFECTS THAT MAY NOT BE MITIGATED TO A LESS-THAN-SIGNIFICANT LEVEL

The Recirculated Draft EIR and Response to Comments document identify one impact that cannot be mitigated to a less-than-significant level even though MCAG finds that all feasible mitigation measures have been identified and adopted as part of the project. The significant unavoidable impacts are discussed below.

4.1 Noise

Impact N-2: Implementation of AME project would cause a substantial permanent increase in ambient noise levels in the project vicinity and expose persons to noise levels in excess of standards established in the City of Atwater or Merced County General Plans.

Facts: The AME project would construct a new roadway and therefore create a new source of noise within the AME project area. Noise levels generated by traffic on Alternatives 1A and 1B were compared to both noise levels under existing conditions and under 2030 No Build conditions to determine the potential for a substantial permanent noise level increase at noise receivers in the AME project area. Utilizing noise impact criteria established in the Merced County General Plan, significance thresholds would be exceeded at 25 of the 80 noise receiver locations modeled for Alternative 1A and 23 of the 80 noise receiver locations modeled for Alternative 1B. There would be no exceedance of City of Atwater significance thresholds for the 15 modeled receivers located within the jurisdiction of the City of Atwater. Analysis of noise impacts and mitigation measures are addressed in four major sections:

- Section 1 extends from the beginning of the project alignment at Bellevue Road and SR 59 and extends to the intersection of Bellevue Road and Franklin Road. Within this section, the alignment is the same for both Alternatives 1A and 1B.
- Section 2 begins at the intersection of Bellevue Road and Franklin Road and extends to Santa Fe Drive. Within this section Alternatives 1A and 1B diverge.
- Section 3 begins at Santa Fe Drive and extends to State Route 99. Both Alternatives 1A and 1B occupy separate alignments within this section.
- Section 4 extends from State Route 99 to the end of the project at the intersection of Gurr Road and McSwain Road. Within this section both Alternatives 1A and 1B follow the same alignment.

Mitigation Measure N-2: The project sponsor shall use all available techniques, including the construction of sound walls or earthen berms, and/or the use of quiet paving materials, to reduce exterior noise levels at impacted noise receivers to meet Merced County noise standards.

Because of the rural nature of the project study area, it was recommended by Caltrans that a feasibility and reasonable cost allowance study be conducted to evaluate the costs associated with construction of soundwalls compared to the benefit they would provide. This analysis is provided in the noise study (Appendix D). The reasonableness allowance considers the absolute future noise level, the noise level increase caused by the project, the achievable reduction provided by a sound wall, and the age of the dwelling unit. A base reasonable cost allowance of \$52,000 per benefited residence (or residential equivalent) was applied. The majority of the sound walls are considered feasible to construct, however, none of the sound walls evaluated would be considered reasonable under FHWA/Caltrans guidelines.

CEQA requires that significant impacts be mitigated to the extent possible and in most locations the use of a final coat of open graded asphalt concrete (OGAC) over the Portland Cement Concrete (PCC) roadway surface would reduce impacts to a less-than-significant level. The FHWA noise model indicates that there is a difference in noise generation of about 3-dBA between OGAC and PCC pavement types. Given a substantial traffic volume, recent research indicates differences of up to 10 dBA immediately adjacent to roadways. The use of OGAC is far more economical than the construction of sound walls. Therefore, where feasible and where its use would reduce noise levels below county standards, OGAC shall be used as the top layer of paving surface on the AME.

Some jurisdictions, including the FHWA, do not recognize the placement of OGAC alone as sufficient mitigation to reduce noise levels. Therefore, under existing guidelines, the paving on state (Caltrans) facilities with OGAC would not be considered adequate mitigation. In these cases, soundwalls shall be constructed to reduce noise levels at receiver locations below County standards.

Findings for Impact N-2:

The proposed project would cause a substantial permanent increase in ambient noise levels in the project vicinity. It would also expose persons to noise levels in excess of standards established in the City of Atwater and Merced County General Plans. However, Mitigation Measure N-2, which requires the use of all available techniques, including the construction of sound walls or earthen berms and/or the use of quiet paving materials to reduce exterior noise levels, will be implemented in the effort to meet Merced County noise standards. Such measures will be implemented to the extent they are affordable using the base reasonable allowance of \$52,000 per benefited residence (or residential equivalent). These measures will decrease the noise levels below County standards in some areas and will fail to reduce the noise levels below County standards in other areas. However, when paving on state (Caltrans) facilities, the project sponsor shall use soundwalls as needed to reduce noise levels at receiver locations below County standards, even if such measures above the base reasonable allowance. These mitigation measures are feasible and effective measures that will reduce the project's noise impacts.

However, pursuant to Section 21091(a)(3) of the Public Resources Code, as described in the Statement of Overriding Considerations, MCAG has determined that this impact, wherein it is not mitigated to a less-than-significant level, is acceptable based on specific overriding considerations found herein in the section outlining MCAG's Statement of Overriding Considerations.

SECTION 5: EFFECTS DETERMINED TO BE LESS-THAN-SIGNIFICANT OR NOT SIGNIFICANT

MCAG finds that, based upon substantial evidence in the record, as discussed below, the following impacts associated with the project are not significant or less-than-significant.

5.1 Land Use and Agriculture

Facts:

The EIR discusses the effect of the Atwater-Merced Expressway ("AME") on land use and agriculture land at pages 4.2-12 through 4.2-16 of the draft EIR.

The project would result in farmland within the project right-of-way ("ROW") being permanently converted to non-agricultural uses. As shown in Table 4.2-3 of the EIR, Alternative 1A would convert 139 acres of Prime Farmland and 169 of Important Farmland to non-agricultural uses and Modified Alternative 1B would result in the direct conversion of 133 acres of Prime Farmland and 171 acres of Important Farmland to non-agricultural uses. This would not be considered a significant conversion of farmland, as the approximately 300 acres of lost acreage represents roughly 0.05% of the 589,324 Prime and Important Farmland acres in Merced County.

Mitigation Measures: Although the conversion of farmland is considered a less-than-significant impact, MCAG shall mitigate for the loss of agricultural lands in conformance with any countywide program adopted by Merced County. Since approximately 2001, the County has approved several community plans for development areas where farmland impacts were mitigated with the requirement for conservation easements at a 1:1 ratio. The requirements have generally applied to impacts to Important or Prime Farmlands affected by the adoption of the plans, within the boundaries of the planned development areas. In the event that a countywide program is not adopted prior to the grading for the AME project, equivalent protection of farmlands at comparable value will be considered at a ratio of 1:1 for productive farmland converted for project implementation. Equivalent protection is defined as acquisition of conservation easements by the County that would protect 1 acre of productive farmland for each acre converted through fee title, easement, or other measure.

Findings:

As noted in the EIR, Important Farmland and Prime Farmland will be converted to non-agricultural uses. Although the conversion of such farmland is considered by MCAG as a less-

than-significant impact, MCAG agrees to mitigate for the loss of agricultural lands in conformance with the countywide program adopted by Merced County.

5.2 Biological Resources and Wetlands

Impact BIO-1: Impacts to Habitat of Sensitive Species Including Listed and Candidate Species.

Impact BIO-1A: Giant Garter Snake.

Facts: While impacts to giant garter snakes are regarded as less-than-significant, avoidance measures shall be implemented by the project sponsor to ensure that this snake would not be impacted by the proposed project. The giant garter snake is a federal and state listed threatened species. There are no contemporary records of giant garter snakes reported in the region of the project area. The closest known record for giant garter snakes was collected in 1908 almost 100 years ago. Accordingly, it is thought that giant garter snakes do not exist within the project area.

Mitigation Measure BIO-1A: Although there are no modern records for giant garter snakes in Black Rascal Creek or Canal Creek, these creeks provide suitable habitat conditions for this snake. Thus, to ensure that there would be no impacts to this snake during any dewatering activities related to creek realignment and/or construction of road crossings, avoidance measures shall be implemented when construction would be within 200 feet of Black Rascal Creek or Canal Creek. The avoidance and minimization measures are detailed in the Guidelines for Procedures and Timing of Activities Related to the Modification or Relocation of Giant Garter Snake Canal or Stream Habitat and the USFWS Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat (USFWS 1999). In addition, if a giant garter snake is found in the work area, the USFWS shall be notified and the snake will be relocated within the same waterbody, outside of the area of effect.

Finding for Impact BIO-1A:

As noted in the EIR, wildlife surveys were conducted in March, April, May, July, September and October of 2006 and in April and May of 2007 to document existing conditions, observe wildlife, and map wildlife habitats. Although the existence of the giant garter snake was not found, MCAG agrees to utilize the avoidance and minimization measures that are detailed in the Guidelines for Procedures and Timing of Activities Related to the Modification or Relocation of Giant Garter Snake Canal or Stream habitat and the USFWS Standard Avoidance and Minimization Measures During Construction Activities in Giant Garter Snake Habitat (USFWS 1999) in an effort to ensure the safety of the giant garter snake in the unlikely event such a snake is discovered in the project area.

SECTION 6: SIGNIFICANT CUMULATIVE EFFECTS

The cumulative analysis in the Recirculated Draft EIR utilizes development that is likely to occur under the buildout of the MCAG member-agency General Plan in addition to specific development projects listed in Table 5-1 of the Recirculated Draft EIR.

6.1 Land Use and Agriculture

The area between the Cities of Atwater and Merced, in which the project is located, is gradually undergoing a conversion from agricultural to more urban uses. The project, in conjunction with other projects in the area, will continue this regional trend, which would be considered a cumulative impact to which the project would make a considerable contribution.

6.2 Population, Housing and Employment

The County area is expected to continue to grow and MCAG estimates that during the 20-year period between 2010 and 2030, the population of Merced County is anticipated to grow by 58 percent, adding an additional 175,700 people. The AME project and other roadway projects considered as part of this cumulative analysis are intended to provide for this growth, but do not themselves propose development of housing. Therefore, for the purposes of this analysis, the AME project would not directly result in cumulative population or housing impacts. Because the AME project and these other roadway projects are being planned as part of a regional response to this anticipated growth, particularly residential growth, there is an indirect cumulative impact to population and housing growth in the project areas to which the AME project would contribute.

6.3 Visual Resources

The AME project is part of a county-wide planning effort that will improve regional access, but is also designed to serve growth anticipated in the area, particularly residential growth. This residential growth, particularly around the agricultural areas that surround the AME, would change the visual character of the area from largely rural to suburban. While this impact would not be a direct result of the AME project, it would be an indirect cumulative impact to which the AME project would contribute.

6.4 Noise

Under 2030 with Project conditions, excluding one noise sensitive receiver, cumulative noise levels are anticipated to be less-than-significant with implementation of mitigation measures including the construction of sound walls and/or the use of open grade asphalt concrete (OGAC) as pavement material on the AME roadway surface. Noise receiver R-44 would continue to experience cumulative noise levels in excess of Merced County noise standards. Therefore the AME project would considerably contribute to an identified cumulative noise impact.

6.5 Hydrology, Drainage and Floodplains

The project would convert approximately 90 acres of pervious surface area to impervious surface area which would prevent stormwater from percolating into the groundwater basin. While most of this stormwater would run off the road into drainage areas and percolate into groundwater, a portion of this run off water would enter the channelized drainage channels in the area and would not recharge local aquifers but would instead drain to the San Francisco Bay. However, the percentage of this run off is considered minor when taken as a portion of the entire Merced Basin

drainage area. The other cumulative projects identified in Section 5.9 of the Recirculated Draft EIR are generally roadway capacity and operations improvements project and would not result in large scale changes to land that would result in a decrease in groundwater recharge in the area. It is not anticipated that there will be a direct cumulative impact from the AME and with relation to groundwater recharge. However, as with the discussion of cumulative visual impacts (Section 6.3), the AME project and these other roadway projects are being planned to accommodate future residential growth. This growth could result in an indirect cumulative impact to groundwater recharge as open land is converted to impervious buildings and paving surfaces.

6.6 Biological Resources and Wetlands

Implementation of the proposed project would contribute to a cumulative regional loss of ruderal and grassland habitats, wetland habitats, and sections of irrigation canals and creeks that bisect portions of the project area. Other cumulative impacts would include some loss of orchard areas, eucalyptus groves, irrigated pastures, horse pastures, rotational crops, and permanent crops, as well as common plant and animal species. Since portions of the project area are known to support vernal pool fairy shrimp, and provide potential California tiger salamander aestivation/over-summering habitat and potential San Joaquin kit fox habitat, every effort will be made to prevent impacts to these species to minimize the cumulative loss of this special-status species in the region.

6.7 GHG Emissions Impact

For the purpose of this impact analysis, the AME project was evaluated in the context of current and future local roadway congestion and anticipated vehicle miles traveled in the region. With construction of the AME project, regional VMT and CO₂ emissions would decrease slightly when compared to the 2030 No-Build scenario. Emissions would be reduced by 16,060 – 25,185 tons per year, or approximately 0.5 to 0.8 percent. This reduction and improvements in traffic congestion would make only minor contribution to the region meeting goals mandated under AB 32. Therefore, while the project would not contribute to a cumulative GHG impact, it would not noticeably reduce GHG emissions.

SECTION 7: FEASIBILITY OF PROJECT ALTERNATIVES

7.1 Project Alternatives

The Recirculated Draft EIR included three alternatives: the No Project/No Build Alternative, the Alternative Alignment 1A, and the Modified Alternative Alignment 1B. Each of these alternatives discusses the development of the AME project.

MCAG hereby concludes that the Recirculated Draft EIR sets forth the three alternatives so as to foster informed public participation and informed decision making. MCAG finds that the Alternative Alignment 1A and the Modified Alternative Alignment 1B are feasible; however, the No Project/No Build Alternative is infeasible for the specific economic, social and other considerations set forth below pursuant to CEQA section 21081(c).

7.1.1 No Project/No Build Alternative. The No Project/No Build Alternative assumes that the project area would generally remain in its existing condition and would not be subject to development. Under this alternative, the cumulative impacts to agriculture, noise impacts, and visual resources would not occur, and all existing homes in the project area would remain.

Finding:

The No Project/No Build alternative would not achieve any of the objectives for the AME project. Although this alternative would not result in the significant unavoidable environmental impact related to the implementation of the project, it would also allow 13 of the 29 study area intersections to operate at a Level of Service (“LOS”) E or worse. Four two-lane highway segments would operate at LOS E or worse. Freeway mainline operations for practically the entire length of SR 99 within the study area would exceed peak hour capacity, resulting in heavily congested traffic conditions in both directions during both the AM and PM peak hours, though the LOS for all multi-lane highway segments would still be anticipated to operate at an acceptable LOS. MCAG finds that under this alternative, there would be significant traffic impacts to 13 intersections and 4 two-lane highway segments. Therefore, MCAG rejects the No Project/No Build Alternative.

7.2 Environmentally Superior Alternative

CEQA requires the identification of the environmentally superior alternative in an EIR. Of the three alternatives analyzed in the Recirculated Draft EIR, the No Project/No Build Alternative is the alternative with the fewest overall impacts, but the most potentially-significant unavoidable impacts.

~~Of the remaining two alternatives, MCAG finds that Alternative 1A would require the relocation of more homes, but would not result in some of the impacts identified for Modified Alternative 1B, namely the realignment of a second section of Canal Creek and potential flooding and drainage impacts associated with the depressed section of Modified Alternative 1B. Thus, when taken as a whole, Alternative 1A is identified as the Environmentally Superior Alternative, as Modified Alternative 1B would require two realignments of Canal Creek and the flooding, groundwater, and drainage impacts associated with the depressed section between Green Sands Avenue and Canal Creek.~~

MCAG finds, based upon the Final EIR and the evidence in the Record as a whole, that both Alternative 1A and Modified Alternative 1B are feasible alternatives, either which may be adopted as the preferred project.

Findings:

MCAG finds that the No Project/No Build Alternative would have the most potentially-significant unavoidable impacts and thus, it is not the Environmentally Superior Alternative.

MCAG further finds that Modified Alternative 1B is not the Environmentally Superior Alternative because of the potential flooding and drainage impacts associated with the depressed section of Modified Alternative 1B. As a whole, Alternative 1A is the Environmentally Superior Alternative. However, both Alternative 1A and Modified Alternative 1B are feasible alternatives if adopted and implemented pursuant to the mitigation measures in the Final EIR. Therefore, MCAG rejects the No Project/No Build Alternative and further adopts the specific overriding considerations found below.

SECTION 8: STATEMENT OF OVERRIDING CONSIDERATIONS

CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a project against its unavoidable risks when determining whether to approve a project. If the specific economic, legal, social, technological or other benefits of the project outweigh the unavoidable adverse environmental effects, those effects may be considered acceptable.⁴ CEQA requires the agency to support, in writing, the specific reasons for considering a project acceptable when significant impacts are not avoided or substantially lessened. Those reasons must be based on substantial evidence in the EIR or elsewhere in the administrative record.⁵

In accordance with the requirements of CEQA and the *CEQA Guidelines*, MCAG finds that the mitigation measures identified in the Final EIR and the Mitigation Monitoring and Reporting Program, when implemented, avoid or substantially lessen many of the significant effects identified in the Recirculated Draft and Final EIR. To the extent any mitigation measures recommended in the EIR and/or proposed project could not be incorporated, such mitigation measures are infeasible because they would impose restrictions on the project and would prohibit realization of specific economic, social, and other benefits that MCAG finds outweigh the unmitigated impacts. MCAG further finds that ~~except for the proposed project, all other alternatives set forth in the EIR are infeasible because they would prohibit the realization of~~ project objectives and/or of specific economic, social and other benefits MCAG finds outweigh any environmental benefits of the alternatives.

Nonetheless, some significant impacts of the project are unavoidable even after incorporation of all feasible mitigation measures. The significant unavoidable impacts are identified and discussed in Section 4 of these Findings. MCAG further specifically finds that notwithstanding the disclosure of the significant unavoidable impacts, there are specific overriding economic, legal, social, and other reasons for approving this project. Those reasons are as follows:

- a. The project will provide additional north/south roadway capacity to accommodate existing, approved, and planned development within the Cities of Atwater and Merced Spheres of Influence, unincorporated portions of Merced County, and to the New University of California – Merced Campus.

⁴ *CEQA Guidelines*, Section 15093(a)

⁵ *CEQA Guidelines*, Section 15093(b)

- b. The project will improve access to the Castle Airport Development Center and the United States Penitentiary – Atwater located in unincorporated portions of Merced County.
- c. The project will create an alternative route for existing SR 59 to accommodate regional travel demand from north of Bellevue Road to SR 99 and along SR 140 from west of Gurr Road to SR 99.
- d. The project will reduce deficiencies and improve operation characteristics of SR 99 by closing the Buhach Road interchange.
- e. The project would provide better regional access for public service providers which would be beneficial.
- f. The project would provide alternative emergency response routes, which would relieve congestion on existing roadways and potentially create better response times for emergency service providers.

On balance, MCAG finds that there are specific considerations associated with the project that serve to override and outweigh the project's significant unavoidable effects. Evidence in support of this finding exists within the EIR, these findings, and the Record of Proceedings as a whole. Therefore, pursuant to *CEQA Guidelines* Section 15093(b), the identified adverse effects of the project are considered acceptable.

