

APPENDIX G
Draft EA Public Comments and Responses



**Notice of Availability
and Public Open
House
Announcement**

**Draft
Environmental
Assessment (EA)
for the Proposed
Construction,
Operation, and
Maintenance of
Tactical
Infrastructure
U.S. Border Patrol
(USBP) San Diego
Sector, California**

The U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) announces the availability of, and invites public comment on, the Draft EA. Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA), CBP has prepared the Draft EA to identify and assess the potential impacts associated with the proposed construction, operation, and maintenance of tactical infrastructure, to include primary pedestrian fence, construction roads, access roads, patrol roads, and minor improvements to existing roads, along approximately 30 miles of the U.S./Mexico international border within USBP San Diego Sector, California (the Proposed Action). The Proposed Action would be implemented in 14 distinct sections. Individual sections would range from approximately 0.1 to 4 miles in length. The purpose of the Proposed Action is to assist USBP agents in gaining effective control of the U.S. border between Ports of Entry in the USBP San Diego Sector.

The Draft EA complies with NEPA, the Council on Environmental Quality (CEQ) regulations in 40 CFR Parts 1500-1508, and DHS Management Directive 5100.1 (Environmental Planning Program). Copies of the Draft EA can be downloaded from the project Web site at:

www.BorderFenceNEPA.com

or

<https://ecso.swf.usace.army.mil/Pages/PublicReview.cfm>

or can be requested by emailing: information@BorderFenceNEPA.com

To request a hard copy of the Draft EA, you may call toll-free (888) 275-9740. Hard copies of the Draft EA can be reviewed at the San Diego County Library, Rancho San Diego Branch, 11555 Via Rancho San Diego, El Cajon, California 92019; (619) 660-5370; and the Potrero Public Library, 24883 Potrero Valley Road, Potrero, California, 91963; (619) 478-5978.

CBP invites public comment on the Draft EA. A public open house will be held on January 16, 2008, from 4:30 p.m. to 8:00 p.m. at the Alpine Community Center, 1830 Alpine Boulevard, Alpine, California 91901; (619) 445-7330.

<http://www.alpinecommunitycenter.com>

Pursuant to the CEQ's regulations, CBP invites public participation in the NEPA process. In order for comments to be considered for inclusion in the Final EA, comments on the Draft EA must be received by February 5, 2008. Please provide comments using only one of the following methods:

(a) Attend and submit comments at the public open house to be held from 4:30 p.m. to 8:00 p.m. on January 16, 2008 at the Alpine Community Center, 1830 Alpine Boulevard, Alpine, California 91901

(b) Electronically through the Web site at: www.BorderFenceNEPA.com

(c) By email to: SDEAcomments@BorderFenceNEPA.com

(d) By mail to: San Diego Sector Tactical Infrastructure EA, c/o Gulf South Research Corporation, Baton Rouge, Louisiana, 70820

(e) By Fax to: (225) 761-8077.

When submitting comments, please include your name and address, and identify your comments as for the San Diego Sector Draft EA. Requests for information may be submitted to: Charles McGregor, U.S. Army Corps of Engineers, Engineering and Construction Support Office, 819 Taylor Street, Room 3B10, Fort Worth, Texas 76102; and by Fax to: (225) 761-8077.



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Palm Springs-South Coast Field Office
690 West Garnet Avenue
P.O. Box 581260
North Palm Springs, CA 92258-1260
(760) 251-4800 Fax (760) 251-4899



January 25, 2008

IN REPLY REFER TO:
2800 (CA660.02)P

Mr. Kirk Evans
United States Customs & Border Protection
1300 Pennsylvania Avenue NW
Washington, DC 20229-0001

Dear Mr. Evans:

The Bureau of Land Management Palm Springs-South Coast Field Office (BLM) has prepared comments for the Draft Environmental Assessment for the Proposed Construction, Operation and Maintenance of Tactical Infrastructure in San Diego County (ER 08/23).

Our comments on the Draft Environmental Assessment are enclosed. If you have any questions regarding our comments, please contact Janaye Byergo at 858-451-1767.

In order for the BLM to make an informative decision and issue authorization of the project on public lands outside the 60' Roosevelt Corridor, the final environmental assessment report must address or indicate the following:

- * Clearly identify the portion of the project that is proposed to take place on BLM administered lands outside the 60' Roosevelt Corridor. Identify and quantify the impacts that would occur on these public lands.
- * Demonstrate that cultural and biological surveys have been completed within the project area for the following actions: Upgrade of existing access roads, construction of new roads, construction of staging areas, fence construction. Address the findings of those surveys.
- * Identify mitigation actions for cultural and biological resources.
- * List Best Management Practices (BMP's) formulated for the project by the U.S. Fish and Wildlife Service for special status species.

- * In addition, BLM requires documentation which establishes the completion of Section 106 and formal tribal and SHPO consultation. The responsibility of this coordination lies with U.S. Customs and Border Protection-Border Patrol and U.S. Army Corps of Engineers as the lead agencies for the project. As part of the documentation, BLM must be provided the full cultural survey report for the project.

Thank you for the opportunity to comment. We look forward to continued coordination on this project.

Sincerely,

A handwritten signature in blue ink, appearing to read "John R. Kalish", with a long horizontal flourish extending to the right.

John R. Kalish
Field Manager

Enclosure

Subject: Comment Letter; Border Fence Project (San Diego Sector EA and EIS)

Sent to:

SDcomments@BorderFenceNEPA.com

San Diego Sector Tactical Infrastructure EIS, c/o e²M, 2751
Prosperity Avenue, Suite 200
Fairfax, Virginia 22031

By fax to: (757) 257-7643.

Mr. Charles McGregor, Environmental Manager,
U.S. Army Corps of Engineers (USACE),
Fort Worth District, Engineering and Construction Support Office, 814

We respectfully submit the following comments as follows.

This document has several fatal flaws:

1. This single and complete linear project cannot be analyzed in pieces. The cumulative environmental impacts must be analyzed as a whole. Currently the project is illegally piecemealed into several NEPA documents. In addition, cumulative effects to wildlife must be properly assessed, and mitigated.
2. Gloria, Horseshoe, Copper and Buttewig Canyons, among others, may all be within the Corps Clean Water Act (CWA) jurisdiction. However, there is no reference to this within the NEPA documents. The Corps' jurisdictional areas needed to be made clear within the NEPA document. Due to the 404 jurisdiction, the Corps has a regulatory role to play and has been included as a "cooperating agency", yet there is no 404b1 alternatives analysis within the document.

The Corps regulatory program should do everything it can to retain its autonomy and integrity in implement the Clean Water Act. USACE-regulatory should be responsible for creating their own EIS/404b1 alternatives analysis consistent with their regulations and the CWA. Regulatory should not be conscribed into a being a cooperating agency due to internal political pressures.

The Corps clearly has a conflict of interest overall due to the fact that the Corps at large is managing the project for DHS.

In accordance with the Clean Water Act and Federal Guidelines in 40CFR230, we are providing the following comments:

The Guidelines state dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that there is no less environmentally damaging practicable alternative that achieves an applicant's project purpose. In addition, no discharge can be permitted if it will cause or contribute to significant degradation of the waters of the US. The applicant is proposing to fill Major Canyons which may contain special aquatic sites. Given the extent of the impacts associated with the proposed activities and the likely impacts to special aquatic sites, the applicant bears the burden of proof for clearly demonstrating that the preferred alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the overall project purpose while not causing or contributing to significant degradation of the aquatic ecosystem.

Project Purpose and project alternatives:

The first step in completing an alternatives analysis is the project purpose statement. Allowing DHS to determine whether practicable alternatives exist for this project is emphatically not an acceptable approach for conducting the alternatives analysis review under the 404(b)(1) guidelines. The Corps is responsible for controlling every aspect of the 404(b)(1) analysis. While the Corps should consider the views of DHS regarding the project's purpose and the existence (or lack of) practicable alternatives, the Corps must determine and evaluate these matters itself, with no control or direction from DHS, and without undue deference to DHS's wishes (Paragraph 7 of Plantations Landing Guidance April 21, 1989).

"The Corps should consider the applicant's views and information regarding the project purpose and existence of practicable alternatives; this must be undertaken without undue deference to the applicant's wishes...the project purpose can not be so narrowly defined as to preclude the existence of practicable alternatives on the other hand, the Corps has some discretion in defining the "basic project purpose" for each Section 404 permit application in a manner which seems reasonable and equitable for that particular case...but can not give to much deference to the applicant's narrowly defined project purpose. ...the Corps determines the minimum feasibility size, circumstances, etc., which characterized a viable project. "(Hartz Mountains Development Corporation Permit Elevation Case Guidance dated August 17, 1989.)

Furthermore the project purpose (homeland security) is not a water dependent activity. The definition of water dependent as stated in the Guidelines is limited to “activities requiring access or proximity to or sitting within a special aquatic site to fulfill the basic project purposes.” There are many ways to meet the overall and basic project purpose that do not involve the discharge of fill material to special aquatic sites or to any waters of the U.S.

A reasonable range of alternatives that meet the stated project purpose while avoiding and minimizing damage to waters of the U.S. should be evaluated in the alternatives analysis. Careful consideration of non-structural alternatives to filling in waters of the US is essential in completing an alternatives analysis and is sound planning for any floodplain area. Additionally, recognizing the function and economic value to society of active floodplains, Executive Order 11988 states that agencies proposing to allow an action to be located in a floodplain will consider alternatives that avoid adverse effects of incompatible development in the floodplain.

Clearly the level of environmental impacts to our aquatic environment and wildlife from filling in 100 to 900 foot-wide canyons is significant. Thus in these canyons, creeks, wildlife corridor areas, the alternative of having no boarder fence but instead increased man units, cameras or other technology must be seriously considered. As to date in the current NEPA document, the agency has failed to take a hard look at these non-structural alternatives. For example, in the current NEPA document DHS fails to seriously consider and analysis alternatives and instead disregards and inadequately excuses significantly high level impacts proposed to Gloria Canyon because filling it in and building a road across it would “Cut the drive time by ten minutes,” We find this to simply be unacceptable and a vagrant disregard for environmental laws designed to protect our natural resources; it clearly is not the LEDPA. We recommend taking a hard look at alternatives to the proposed physical barrier (such as increase patrol units; cameras and other forms of technology) in waters of the US.

LEPDA:

Identification of the LEDPA is achieved by performing an alternatives analysis that estimates the direct, secondary, and cumulative impacts to jurisdictional waters resulting from each alternative considered. Project alternatives that are not practicable and do not meet the project purpose are eliminated. The LEDPA is the remaining alternative with the fewest impacts to aquatic resources, so long as it does not have other significant adverse environmental consequences.

In fact just one example of this project being out of compliance with the CWA 404b1 guidelines within the Corps jurisdiction is Copper Canyon. The proposed location of the boarder fence within Copper Canyon would bisect two types of

special aquatic sites (riffle pool complexes and wetlands); if the fence was moved 100 meters downstream of the proposed location, it would avoid these special aquatic sites. Also, please note that nowhere in the document are any of these facts addressed. This was knowledge that was given to us by others who have personally visited the site. Instead, the reader is left completely uninformed of what the proposed project's environmental impacts would be in these Canyons. Certainly, at the very least, it would be practicable to move the fence over 100 meters downstream to avoid sensitive habitat and special aquatic sites. The proposed location within Copper Canyon is clearly not the Least Environmentally Damaging Practicable Alternative and is thus not in compliance with the 404b1 guidelines. It, therefore, cannot be permitted to move forward as is.

Impact Assessment:

Secondary effects to be considered include: 1) changes in the hydrology and sediment regime with respect to water velocity, and channel dimensions; 2) increases in erosion potential of the channel banks, particularly at the transition points between native bank material and armored areas; 3) increases in impervious surfaces and the corresponding increases in the volume and velocity of polluted storm water; 4) decreases in water quality from the impairment of floodplain and ecosystem services including water filtration, groundwater recharge, and flood attenuation; 5) decreases in biodiversity and ecosystem stability; 6) decrease in wildlife migration and impacts to listed species; 7) introduction of invasive plants in disturbed areas. The negative impacts of channel modification have been illustrated often in Southern California. We are particularly concerned about the potential for significant impacts to wildlife movement, changes in water velocity, sediment transport, and erosion because they can lead to bank instability, property loss, and increased downstream flooding.

Significant Degradation:

The CWA guidelines prohibit granting of a CWA Section 404 permit if project activities will cause or contribute to the significant degradation of the Nation's waters including degradation to: 1) human health and welfare; 2) aquatic life and other wildlife; 3) aquatic ecosystem diversity, productivity, and stability; and 4) recreation, aesthetic, and economic values. This standard applies to the LEDPA, meaning that if the LEDPA caused or contributes to the significant degradation, the Corps is prohibited from granting a permit under CWA Section 404. We believe the proposed impacts to waters of the US and wildlife linkages represent a significant degradation.

Avoiding impacts and the mitigation sequence

From the Hartz Mountain Elevation Case guidance “The Army Corps of Engineers is serious about protecting waters of the United States, including wetlands, from unnecessary and avoidable loss...Corps should inform developers that special aquatic sites are not preferred sites for development and that non-water dependant activities will generally be discouraged in accordance with the guidelines.”

The Corps regulations require all applicants (including DHS) to demonstrate that they have avoided impacts to waters of the U.S., what can't be avoided must next be minimized and thirdly what impacts are remaining after the process must be mitigated for by replacing lost functions and values provided by the aquatic resource through compensatory mitigation. This mitigation sequence does not allow applicants to skip to the third step in the process regardless of the quality of the compensatory mitigation being offered without first demonstrating avoidance and minimization (33CFR320.4(r); 1990 DA-EPA Mitigation MOA).

It is premature to discuss in-depth compensatory mitigation plan for the proposed project because much work remains to be done toward formulating a LEDPA for the proposed project. DHS has not demonstrated avoidance and minimization of impacts to the aquatic ecosystem to the maximum extent practicable, and the DHS has not proposed a compensatory mitigation plan for unavoidable project impacts. In addition it has been brought to our attention that over one hundred acres of mitigation from other sections of this project have not been fulfilled to date.

In earlier sections of these comments, we have established that there are other alternatives to impacting waters of the US that do meet the overall and basic project purpose. However if the Corps identifies a LEDPA that includes unavoidable impacts to waters, we recommend that the Corps require DHS to develop a compensatory mitigation plan consistent with the requirements of the Regulatory Guidance Letter (RGL 02-2) issued jointly by the Corps and EPA on December 24, 2002. While a functional assessment for the potential impacts has apparently not been done by the applicant, the above sections of these detailed comments entitled Impact Assessment and Significant Degradation set forth our view on the types of functions that would be need to be addressed by any compensatory mitigation package.

3. The environmental impacts associated with the proposed project are not described. There is no information presented within the document to give the public the ability to assess what impacts would result from DHS' preferred project design which includes filling highly functioning Canyons and install culverts. In some cases the Canyons that proposed to be filled in are 900 feet wide yet this impact is not described. This impact must be identified and

alternatives to such a massive environmental impact must be seriously explored. The document also fails to identify biological impacts associated with the project; the extent of special aquatic sites and habitat types that would be impacted; Corps' CWA jurisdiction; and there is no hydrologic analysis to determine the size of the culverts. Wildlife corridors and species that are known to utilize the specific corridors proposed for impact are not identified. Instead the agency attempts to broadly identify species that can occur in all of Southern California leaving no possibility for meaningful public comment or analysis as to which species would be impacted by the project and how these impacts could possibly be mitigated for via innovative BMPs. The biological section is inadequate. The document must properly identify, for each canyon, the species and habitat that would be impacted by the proposed project. These canyons are wildlife corridors and need to retain this function to allow the movement of wildlife. The failure of DHS and the cooperating agencies to properly identify the environmental impact is illegal; the impacts must be properly assessed by appropriate biological surveys conducted by qualified biologists, documented/disclosed and then re-circulated for public comment. In addition color photos of the sensitive areas proposed to be impacted by the project should be included within the NEPA document.

4. The Endangered Species Act (ESA) states that all Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this act.

Sec 7(a)(1) (ESA, 1973) Section 2(b) Purposes: The purpose of the Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and connections set forth in subsection a of this section. (c) policy –(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act. (2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

Federal agencies must fulfill their responsibilities under the ESA. Thus, Federal agencies should use their resources in an effort to further the biologically related beneficial uses designated to support, protect and enhance these canyons. Regulatory agencies responsible for implementing provision under the Federal

Clean Water Act have an increased obligation in implementing their program to recover these waters from impairments to the beneficial uses of these water bodies that support federally listed species, and designated critical habitat.

The fact that a species becomes listed as endangered or threatened officially recognizes that their population declined has already reached the level of cumulative significant impacts. A future population decline would therefore be considered significant, and if large enough, could threaten the continued existence of this listed species. In the Arid Southwest the recovery of many endangered and threatened species hinges on the overall health of the riparian, wetland and estuarine ecosystems in which their life cycle needs are met; foraging, spawning, nesting and or breeding.

Therefore DHS and the Corps have an obligation to avoid impacting federally listed species and their critical habitat. This further supports a basis for following our previous recommendation for a proper alternatives analysis that avoids filling and/or any construction in sensitive wildlife areas.

We look forward to your reply. If you have any questions or would like additional information, please contact us at 805-302-2509.

Sincerely,

Heather Wylie

Eric Morrissette



State of California - The Resources Agency

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME

<http://www.dfg.ca.gov>

South Coast Region
4949 Viewridge Avenue
San Diego, CA 92123
(858) 467-4201



February 1, 2008

Loren W. Flossman, Program Manager
San Diego Sector Tactical Infrastructure EA
c/o Gulf South Research Corporation
8081 GSRI Avenue
Baton Rouge, LA 70820

Re: Notice of Availability and Public Open House Announcement for the Draft Environmental Assessment for Construction, Operation, and Maintenance of the Proposed Tactical Infrastructure, U.S. Border Patrol San Diego Sector, California, U.S. Department of Homeland Security, U.S. Customs and Border Protection, U.S. Border Patrol

Dear Mr. Flossman:

The California Department of Fish and Game (Department) has reviewed the above-referenced draft Environmental Assessment (EA) dated January 2008. The Department offers the comments and recommendations below to assist the U.S. Border Patrol (USBP) in avoiding or minimizing potential impacts to biological resources. The Department is a Trustee Agency and a Responsible Agency pursuant to the California Environmental Quality Act (CEQA; Sections 15386 and 15381, respectively) and is responsible for ensuring appropriate conservation of the state's biological resources, including rare, threatened, and endangered plant and animal species, pursuant to the California Endangered Species Act (CESA) and other sections of the Fish and Game Code.

The proposed action involves the construction, operation and maintenance of tactical infrastructure at various locations along a 30 mile corridor of the U.S./Mexico international border, USBP San Diego Sector, San Diego County, California. The proposed infrastructure would include approximately 7 miles of new roads, 10 miles of primary pedestrian fence, and 10 miles of road widening, primarily situated within the 60-foot wide Roosevelt Reservation. The tactical infrastructure would begin at the Tecate Port-of-Entry and terminate at the eastern edge of O'Neill Valley (nearing the San Diego County line). The tactical infrastructure would consist of 14 discrete sections of pedestrian fence installed approximately 3 feet north of the U.S./Mexico international border (built 15 to 18 feet in height and extending below grade and ranging from 0.1 to 4 miles in length). Three types of roads (access, construction or patrol) would be constructed within these same locations, varying in distance from 0.09 to 2 miles. Some of the newly constructed roads would encroach into privately owned parcels and public lands managed by the Bureau of Land Management. Along with the construction component of this action the following routine maintenance and repair items would be required: repairing damage to the primary pedestrian fence; grading and leveling of road surfaces; re-application of road resurfacing material; and application of soil stabilizers to road surface to ensure longevity. In association with the infrastructure construction component, 10 staging areas (temporary impact areas) would be established to accommodate construction equipment and materials. All of the areas are proposed to be revegetated upon completing the construction activities. Implementation of this action would also require utilizing existing roads within proximity to the

Conserving California's Wildlife Since 1870

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construction corridor, with all roads returned to pre-construction conditions upon the completion of work.

The draft EA identifies three project design alternatives which include: (1) No Action Alternative (2) Proposed Action Alternative, and (3) Secure Fence Act Alternative. Under the No Action Alternative no road improvements or fence and road construction activities would occur. The Proposed Action involving the construction, maintenance, and operation of tactical infrastructure would result in a permanent project impact corridor of 60 feet at various locations along a 30-mile corridor (totaling 123 acres; 78 acres permanently impacted, and 45 acres temporarily affected). Under the proposed action Quino checkerspot butterfly and coastal California gnatcatcher (Federally listed endangered species), may be adversely impacted. Alternative 3 would involve the construction, maintenance, and operation of two layers of fence, access roads, patrol roads and lights. The alignment of the fence would be identical to that of the proposed action, with the secondary layer of fencing placed 130 feet apart from the primary layer. This action would have the most significant environmental impact compared to the proposed action alternative, resulting in a 130-foot-wide permanent impact corridor for approximately 10 miles (14 segments of construction, totaling 157 acres of impacted lands).

To enable Department staff to adequately review and comment on the proposed action we recommend the following information, where applicable, be included in any subsequent environmental documents.

1. The Department would reiterate the requirement for a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts as identified by cooperating agencies. Due to multiple phases of the regional border infrastructure that are slated or currently under construction, a more reasonable analysis of the cumulative impacts should be provided in the final EA. The current cumulative analysis reiterates direct impacts, however the totality of similar project-related impacts (e.g., reduction of multiple wildlife corridors, alteration of reproductive or behavioral patterns to wildlife, likelihood for increased wildlife mortality) associated with the long-term project goals of the San Diego/EI Centro USBP tactical infrastructure has not been discussed. The assertion that the loss of 78 acres of local/regional common plant communities would result in an insignificant cumulative impact has not been adequately supported when compared to the overall impact acreage that would occur with similar types border infrastructure actions. Further discussion should be provided as to the basis for concluding that the incremental effects (as are currently being referenced) is not cumulatively considerable.
2. Under section 3.2.2.2 Proposed Action Alternative, approximately 27 acres of privately-owned land would be impacted as a result of this action. In regards to lands that have been identified to extend outside of the Memorandum of Understanding between the Department of Homeland Security and the Department of Interior, please identify all relevant mitigation measures that would apply outside the jurisdiction of the lead agency or the cooperating agencies (Sections 1502.16(h), 1505.2 (c)).
3. The Department's Biogeographic Data Branch in Sacramento should be contacted at (916) 322-2493 to obtain current information on any previously reported sensitive species and habitats, including Significant Natural Area identified under Chapter 12 of the Fish and Game Code. Also, any Significant Ecological Areas (SEAs) or Environmentally Sensitive Habitats (ESHs) or any areas that are considered sensitive by the local jurisdiction that are located in or adjacent to the project area should be addressed.

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4. The surveys performed in October 2007 will not detect species that are found during other times of the year. Surveys should be undertaken at the appropriate times of year to actually detect species and not be done opportunistically. This survey period is inappropriate to detect spring plants or plants that die to the ground during summer, and are seasonally used by animals. Along with performing the necessary surveys for those areas previously identified as not being surveyed due to the lack of authorized rights-of-entry, updated sensitive plant survey (including host plants associated with Quino checkerspot butterfly) should be performed in accordance with standards identified by the cooperating agencies.
5. Temporary impacts to 45 acres of wildlife habitat (associated with proposed staging areas) was identified as not being a significant impact, however the draft EA indicates that those areas have yet to be surveyed. A completed biological assessment is required prior to making a determination on the significance of the specific resources being impacted (including the presence/absence of threatened and endangered species). Furthermore, the accompanying detailed project maps depict the placement of some staging areas within undisturbed habitat, with disturbed areas in close proximity (due to vehicle turnarounds or pullouts). The Department would reiterate that efforts should be directed at the placement of staging areas in the least environmentally intrusive area to further minimize the impact footprint.
6. Seasonal variations in use by fauna in the project area should be addressed. Recent, focused, species-specific surveys, conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable should be included in the impact analysis. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service.
7. The proposed action should also be analyzed relative to its effects on the off-site habitats and associated wildlife. Specifically, this should include nearby public lands, open space, adjacent natural habitats, and riparian ecosystems. Impacts to and maintenance of wildlife corridor/movement areas, including access to undisturbed habitat in adjacent areas are of concern to the Department, particularly within any proposed fence alignments extending across canyons. The analysis should also include a discussion of the potential for impacts resulting from increased vehicle traffic associated with patrols (frequency/duration), artificial lighting, noise, and vibration. For example, the draft EA identifies a potential indirect beneficial effect of the fence in reducing illegal traffic, whereas the proposed action could result in increased traffic in the area from local users on the U.S. border side, resulting in an attractive nuisance and contributing to additional environmental impacts.
8. Section 3.12.2.2, Proposed Action Alternative, states that all construction and transportation activities would occur during daylight hours. Whereas section 2.3.5 Lighting, identifies work would possibly occur on a 24-hour basis. The EA should clearly define the proposed work schedule to ensure that potentially significant impacts are correctly assessed.
9. No reference sound levels for blasting activities have been included in the noise impact assessment section of the draft EA. Furthermore, no reference sound level for the proposed portable lights was provided. The EA identifies that it anticipates that no more than 10 lights would be operated at one time in one location to facilitate project construction. If this is correct, at a minimum the DNL dBA should be provided and discussion provided as to whether these levels constitute a significant impact to sensitive biological resources.

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10. Impacts to migratory wildlife affected by this action should be fully evaluated, including proposals to remove/disturb native vegetation and other nesting habitat for native birds. All migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.3). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of birds and their active nests, including raptors and other migratory nongame birds as listed under the MBTA.
11. The proposed action (including disturbances to vegetation) should take place outside of the general avian breeding season [January 15 to August 15], as defined by the Department, to avoid impacts to nesting birds (including disturbance which would cause abandonment of active nests containing eggs and/or young). To avoid any direct and indirect impacts to raptors and/or any migratory birds, grubbing and clearing of vegetation that may support active nests and construction activities adjacent to nesting habitat, should occur outside of the breeding season. If removal of habitat and/or construction activities is necessary adjacent to nesting habitat during the breeding season, the USBP shall retain an approved biologist to conduct a pre-construction survey to determine the presence or absence of non-listed nesting migratory birds on or within 100-feet of the construction area, Federally- or State-listed birds (e.g., southern willow flycatcher, least Bell's vireo, coastal California gnatcatcher) on or within 300-feet of the construction area and nesting raptors within 500-feet of the construction area. The pre-construction survey must be conducted within 10 calendar days prior to the start of construction, the results of which must be submitted to the wildlife agencies for review and approval prior to initiating any construction activities. If nesting birds are detected by the approved biologist, the following buffers should be established: 1) no work within 100 feet of a non-listed nesting migratory bird nest, 2) no work within 300 feet of a listed bird nest, and 3) no work within 500 feet of a raptor nest. However, the wildlife agencies may reduce these buffer widths depending on site-specific conditions (e.g. the width and type of screening vegetation between the nest and proposed activity) or the existing ambient level of activity (e.g., existing level of human activity within the buffer distance). If construction must take place within the recommended buffer widths above, the project applicant should contact the wildlife agencies to determine the appropriate buffer.


A bio-monitor shall be present on-site during all initial grubbing and clearing of vegetation to ensure that perimeter construction fencing is being maintained and to minimize the likelihood that nests containing eggs or chicks are abandoned or fail due to construction activity. A bio-monitor shall also perform periodic inspections of the construction site during all major grading to ensure that impacts to sensitive plants and wildlife are minimized. These inspections should take place once or twice a week, as defined by the wildlife agencies, depending on the sensitivity of the resources. The bio-monitor shall send weekly monitoring reports to the Department and notify the Department immediately if clearing is done outside of the permitted project footprint.

12. In regards to the vegetation rehabilitation proposal, plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site relative to the components of the tactical infrastructure; (b) the plant species to be used, container sizes and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria.

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We appreciate the opportunity to comment on the draft EA for this action and to assist the USBP in further minimizing and mitigating the proposed actions impacts to biological resources. If you have questions or comments regarding this letter, please contact Paul Schlitt of the Department at (858) 637-5510.

Sincerely,


for Edmund J. Pert
Regional Manager
South Coast Region

cc: Cara McGary, U.S. Fish and Wildlife Service

EP:ps



County of San Diego

ERIC GIBSON
INTERIM DIRECTOR

DEPARTMENT OF PLANNING AND LAND USE

5201 RUFFIN ROAD, SUITE B, SAN DIEGO, CALIFORNIA 92123-1666
INFORMATION (858) 694-2960
TOLL FREE (800) 411-0017

February 5, 2008

Loren W. Flossman
Program Manager
San Diego Sector Tactical Infrastructure EA
c/o Gulf South Research Corporation
8081 GSRI Avenue
Baton Rouge, Louisiana 70820

COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT PROPOSED CONSTRUCTION, OPERATION, AND MAINTENANCE OF TACTICAL INFRASTRUCTURE, U.S. BORDER PATROL SAN DIEGO SECTOR, CALIFORNIA, U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. CUSTOMS AND BORDER PROTECTION, U.S. BORDER PATROL

The County of San Diego has received and reviewed the Draft Environmental Assessment (EA) for the Proposed Construction, Operation, and Maintenance of Tactical Infrastructure dated January 2008 and appreciates this opportunity to comment. The EA was reviewed by the County Department of Planning and Land Use (DPLU) and Department of Public Works (DPW) staff. Though most of the project is on public lands (Roosevelt Reservation) managed by the U.S. Bureau of Land Management (BLM), parts of the project are located within the unincorporated area of San Diego County.

To facilitate coordination, the County respectfully asks that the following items be addressed:

GENERAL COMMENTS

1. The technical information to support conclusions of significance or less than significance in the EA should be provided to the public, either in the text of the

EA or in appendices. It is difficult to review the EA because the information necessary for evaluating impacts has not been included.

2. Technical reports for determining the significance of impacts should be included in the EA for:
 - Aesthetics and Visual Resources
 - Air Quality
 - Biological Resources
 - Cultural Resources
 - Geology and Soils
 - Hydrology (the Hydrology Report, Appendix D to the EA, currently only addresses groundwater wells)
 - Noise
 - Socioeconomics
 - Traffic
3. The County would like to see the "Technology in Lieu of Tactical Infrastructure" be more fully explored in the EA as one of the alternatives for the project.

CUTS AND FILLS

4. The EA should provide details regarding the cut and fill activities that will be required in drainages that will be crossed by the roads and the pedestrian fence so that impacts can be adequately analyzed. Details should include the dimensions for each fill (as has been included for Horseshoe Canyon and La Gloria Canyon), amount of fill to be required for each canyon, from where the proposed fill will be excavated, and how far it will need to be transported.
5. The cuts and fills should be evaluated for their impacts to aesthetics, hydrology, surface water quality, and biological resources.

EROSION

6. The potential for erosion should be evaluated in the EA, and a conceptual revegetation plan designed to control erosion on steep cuts and fills resulting from construction of the project, particularly the fills in the canyons, should be included as an attachment to the EA.

BIOLOGICAL RESOURCES

7. Section 3.8.2 Environmental Consequences identifies the Thresholds of Significance for established wildlife resources. The Thresholds of Significance include "...conflicts with the provisions of an adopted...Natural Community Conservation Plan...." (p.3-28). The County of San Diego is working

with the United States Fish and Wildlife Service (USFWS) on this federally-funded Natural Community Conservation Plan for the eastern portion of the County. The area covered by this plan includes a significant portion of the land on the northern side of the Proposed Action. As noted in the EA, a range of species anticipated to be covered by the East County MSCP will be directly affected by the proposed action. The draft list of covered species is located at: http://www.sdcounty.ca.gov/mscp/ec_biology.html. The EA should identify mitigation to address associated impacts to sensitive biological resources to the extent feasible.

8. The Primary Pedestrian Fence would impact species mobility and reduce habitat connectivity. It is anticipated that the Proposed Action will have significant impacts to reptiles, amphibians and a range of other species including large mammals that are dependent upon water and other resources located directly to the north and south of areas affected by the Proposed Action. The EA should identify mitigation to address associated impacts.

AESTHETICS

9. Impacts to views from SR 94 in the areas where the fence can be seen from the highway should be evaluated and appropriate mitigation should be developed.
10. The EA should evaluate the impacts to aesthetics from the large fills in the various canyons. Mitigation for these impacts should include vegetating the huge slopes with San Diego County native plants.

ROADWAYS AND TRAFFIC

11. Page 3-1. The EA states that traffic will not be impacted from construction equipment traveling to and from the various work sites, however, the EA does not provide the analysis and results to substantiate this conclusion. The EA should provide the following data regarding the construction activity from the Proposed Action Alternative:
 - a. Hours and dates of operation for construction activity
 - b. Construction/truck routes along or connecting to public roads
 - c. Types of heavy vehicles to be used for construction
 - d. Estimated number of heavy vehicular trips needed for construction
12. The EA should identify and assess any project-related traffic that may be added to County maintained public roads (e.g. Thing Road, Humphries Road, Shockey Truck Trail, and Old Highway 80) upon completion of the Proposed Action Alternative. For example, Maps 2-5 appear to indicate that Humphries Road will be used as a project access road.

13. The EA should clearly identify locations where proposed project (construction / access / patrol) roads and/or the border fence would traverse and/or connect to County maintained public roads. For example, Figure 3-2 indicates that a project access road would connect to Thing Road, which is a County maintained public road.
14. The EA should clearly identify where proposed project roads would require a new driveway along County maintained public roads. For example, Map 19 appears to show a new project/construction road (Willow Access) that would connect from the border fence to Old Highway 80.
15. The EA should provide an operational assessment (e.g. sight distance) for any new driveways/access points created by the project along County maintained public roads.
16. The EA should note that the County will require construction and encroachment permits for any work performed within the County's right-of-way, such as driveways or temporary road access points onto County maintained roads.
17. The EA should identify if the proposed project will require improvements to County maintained public roads.
18. The EA should specify whether all new and improved project roads will be used for government purposes only, gated for restricted access, and maintained by the federal government.

The County of San Diego appreciates the opportunity to continue to participate in the environmental review process for the tactical infrastructure along the international border. We look forward to receiving any future environmental documents related to this project, or providing additional assistance at your request. If you have any questions regarding these comments, please contact Bobbie Stephenson at (858) 694-3680.

Sincerely,



ERIC GIBSON, Interim Director
Department of Planning and Land Use

Interim
Deputy
Director

For

cc: Adam Wilson, Policy Advisor, Board of Supervisors, District 2, MS A500
Vince Nicoletti, CAO Staff Officer, DCAO, M.S. A-6
Megan Jones, CAO Staff Officer, DCAO, M.S. A-6
Francisco "Nick" Ortiz, Department of Public Works, Transportation Division, MS
0334
Campo/Lake Morena Community Planning Group
Jacumba Community Planning Group
Boulevard Community Planning Group
Bobbie Stephenson, Land Use/Environmental Planner, Department of Planning
and Land Use, MS 0650
Priscilla Jaszowski, Administrative Secretary, Department of Planning and
Land Use, MS 0650

Reference County Project IJN 08-020



United States Department of the Interior

OFFICE OF THE SECRETARY
Office of Environmental Policy and Compliance
Pacific Southwest Region
1111 Jackson Street, Suite 520
Oakland, California 94607

IN REPLY REFER TO:
ER# 08/23

Electronically Filed

31 March 2008

San Diego Sector Tactical Infrastructure EA
c/o Gulf South Research Corporation
Baton Rouge, Louisiana, 70820
SDEAcomments@BorderFenceNEPA.com

Subject: Review of the Draft **Environmental Assessment (EA)** for Construction, Operation, and Maintenance of Tactical Infrastructure, U.S. Border Patrol, San Diego Sector, San Diego County, California

Dear Sir/Madam:

The Department of the Interior has received and reviewed draft Environmental Assessment (EA) for the above-referenced project, dated January 4, 2008. We recognize the importance of this project, and are committed to providing assistance as quickly and efficiently as possible.

In this initial review, we have identified potential effects of this project on trust resources and provide comments based on information provided in the EA, the Department's knowledge of sensitive and declining species and their habitats, and participation in regional conservation planning efforts.

Based on our review of the EA, we have concerns regarding the (1) adequacy of the project description, (2) adequacy of the analysis of direct, indirect, and cumulative effects on sensitive resources, (3) sufficiency of proposed mitigation measures, and (4) determination that environmental effects of proposed project are not significant.

The proposed project is to construct, maintain and operate approximately 30 miles of tactical infrastructure including five sections of fence, patrol roads, and access roads along the U.S.-Mexico border in San Diego County, California. The project would impact privately owned land and public lands managed by Bureau of Land Management.

The proposed project would be installed mostly within the Roosevelt Reservation with an approximate 60-foot wide impact corridor, with the exception of some roads occurring outside the reservation on Federal and private land. Per the EA, a total of 123 acres would be impacted, including 19 acres of chamise chaparral, 25 acres of mixed chaparral, 2 acres of mixed

chaparral/coast oak woodlands, 6 acres of coastal sage scrub, 13 acres of disturbed vegetation, and 45 acres of unspecified habitat for the construction of staging areas.

The project has potential to impact the following federally listed species: least Bell's vireo (*Vireo bellii pusillus*), coastal California gnatcatcher (*Polioptila californica californica*), southwestern willow flycatcher (*Empidonax traillii extimus*), Quino checkerspot butterfly (*Euphydryas editha quino*), arroyo toad (*Bufo californicus*), Otay tarplant [*Deinandra* (= *Hemizonia*) *conjugens*], willowy monardella (*Monardella linoides viminea*), Encinitas baccharis (*Baccharis vanessae*), and San Diego thornmint (*Acanthomintha ilicifolia*).

Due to incomplete project description, the EA is lacking necessary information to assess effects of the proposal on species mentioned above. The infrastructural appears to be undetermined for many segments. Since fence design is critical to determining effects on wildlife and plants, and focused surveys for the above species were either not conducted or were conducted at an inappropriate time of the year, the document's conclusions regarding environmental effects of the proposal are not substantiated.

Without complete information on final fence design, lay-down areas, and access roads, or relevant biological information, the EA does not adequately assess adverse effects of the proposal or mitigation measures needed to reduce impacts to a level of insignificance. Furthermore, the document references avoidance measures that do not appear feasible due to timing constraints of this project. Analyses of indirect and cumulative effects are not provided for most resources that would be impacted by this project.

We recognize the important nature of this project and offer to work expeditiously so that environmental review can be completed in a timely manner. We recommend that Department of Homeland Security (DHS) work with US Fish and Wildlife Service and Bureau of Land Management staff in an attempt to design the project in a way that avoids and minimizes adverse effects, and may potentially avoid the need to initiate formal consultation under section 7 of the Endangered Species Act. Without further information on project design and mitigation measures, it appears that initiation of formal consultation will be needed.

General Comments

1. The EA states numerous times that environmental effects of the proposed project are below a level of significance. However, direct, indirect, and cumulative impacts to listed/sensitive species were not fully analyzed within the EA (see additional comments below) and a clear, comprehensive mitigation proposal was not provided. Without additional information and analyses the determination that project impacts are less than significant cannot be substantiated. The FWS encourages DHS to continue more comprehensive discussions with our Ecological Services and Refuges divisions to minimize and compensate for effects of the construction and operation of the proposed fence to federally-listed species.
2. Throughout the document, the discussion and assessment of indirect impacts due to proposed construction of the fence should be expanded and clarified. Indirect impacts that should be assessed include, but may not be limited to: redirection of illegal traffic to unsecured areas of the border that may impact wildlife habitat, construction of access roads and use of staging areas that are not included in the proposed 60-foot wide right of

way (ROW), and downstream effects on habitats within the Tijuana River watershed. Indirect impacts should be accounted for in any compensation for impacts to threatened and endangered species and mitigation for any unavoidable impacts to jurisdictional wetlands or waters of the United States.

3. The project description does not provide sufficient information regarding impacts to listed species and sensitive habitats. No maps or spatial representation of plant communities and listed/sensitive species distribution within and surrounding the project area were provided in the EA. Project area aerial photographs with habitat/vegetation communities clearly identified should be included to assist in the effects analysis. In addition, the EA should clearly describe project related impacts (temporary and permanent) to each vegetation community and species habitat for all aspects of the project, including road widening, staging/lay down areas, new fence construction, and new road construction.
4. The EA contains an insufficient alternatives analysis. Project alternatives including options besides fencing should be analyzed. Technology may be available in lieu of or in addition to fencing that would result in reduced direct impacts to the natural resources. Such project alternatives should be clearly stated and analyzed in the EA.
5. The EA repeatedly stated that design criteria would be used to minimize adverse impacts on threatened or endangered species and their critical habitat. Please clarify where this has or will occur. If avoidance measures cannot be included in the design criteria, mitigation measures should be included to mitigate impacts to levels that are less than significant.
6. To accurately assess the impacts of the proposed project, the FWS recommends that wetland delineation for the project be verified by the U.S. Army Corps of Engineers and that natural resource agencies be provided with a mitigation plan for any unavoidable impacts to wetlands and waters of the U.S. for review and comment prior to a final decision. The mitigation plan should include a complete restoration plan for temporary impacts as well as mitigation for all permanent and indirect impacts to jurisdictional areas.
7. Statements used throughout the document that the fence will have beneficial effects to wetland/riparian areas, vegetation, wildlife, and federally listed species (by reducing human activity and trash) are not supported with data. To the contrary, impacts from operational vehicular activity and road maintenance would be likely to increase. We recommend that the decision documents include a thorough analysis of all direct, indirect, and cumulative impacts that is based on the best available scientific information, not unsupported assumptions.
8. The EA should provide the reader with current information on the existing barrier fence segments along the International Border in San Diego County so that assessment of cumulative effects is possible, including effects to unlisted species.
9. Clearly identify the portion of the project that is proposed to take place on BLM administered lands outside the 60' Roosevelt Corridor. Identify and quantify the impacts that would occur on these public lands.

10. Demonstrate that cultural and biological surveys have been completed within the project area for the following actions: Upgrade of existing access roads, construction of new roads, construction of staging areas, fence construction. Address the findings of those surveys.
11. Identify mitigation actions for cultural and biological resources.
12. List Best Management Practices (BMP's) formulated for the project by the U.S. Fish and Wildlife Service for special status species.
13. In addition, BLM requires documentation which establishes the completion of Section 106 and formal tribal and SHPO consultation. The responsibility of this coordination lies with U.S. Customs and Border Protection-Border Patrol and U.S. Army Corps of Engineers as the lead agencies for the project. As part of the documentation, BLM must be provided the full cultural survey report for the project.

Specific Comments

2.0 Proposed Action and Alternatives, pg. 2-1:

- “This section provides detailed information on USBP’s proposal to construct, maintain, and operate TI...” While the description of the proposed action includes construction, maintenance, and operation of the fence and associated roads, the DEA does not include an analysis of potential environmental impacts associated with maintenance and operation activities.

2.5 Other Alternatives Evaluated but Eliminated From Consideration, pg. 2-12:

- While the DEA considers several alternatives in addition to the proposed action (i.e., Secure Fence Act Alignment; additional agents in lieu of tactical infrastructure (TI); vehicle barriers in lieu of fence; fence only; technology in lieu of TI), an alternative incorporating the use of a combination of methods is not discussed. For example, potential use of TI in combination with additional agents and the use of technology should be considered. Such an alternative could include construction of new fence along existing roads. In areas where the existing road is somewhat north of the international border, the use of technology or additional agents should be analyzed. The use of multiple methods of detection in combination with each other may significantly reduce the environmental impacts of the proposed action, particularly in sensitive areas that will be significantly impacted, such as La Gloria and Horseshoe canyons.

Staging Areas:

- While the DEA maps depict the location of the staging areas, there is no site-specific discussion of the vegetation of each of these staging areas and subsequently no discussion of potential impacts. Also, it appears that several of these staging areas are being proposed in undisturbed habitat (e.g., staging area northwest of Cetus Hill and staging area northwest of Ag Loop). The relocation of staging areas to previously disturbed habitat would reduce impacts to sensitive species (i.e., habitat loss, fragmentation, and/or establishment of invasive species).
- The discussion in section 5.0 Mitigation Measures of how staging areas will be rehabilitated needs clarification. It is not clear if all staging areas will be rehabilitated (e.g., in previously disturbed and undisturbed habitat). Also, section 5.0 includes only

minimal discussion of how staging areas will be rehabilitated and states that rehabilitation methods would be developed in coordination with and approved by BLM.

- Without a detailed discussion of where each staging area will be located, the species and/or potential habitat that may occur in these areas, and how each staging area will be rehabilitated, potential impacts to sensitive species resulting from the construction, use, and rehabilitation of staging areas cannot be fully analyzed.

3.7 Vegetative Habitat, pg. 3-22:

- While the DEA discusses the presence of six potential jurisdictional ephemeral waters of the U.S. (pg. 3-15), including Campo Creek, Boundary Creek, and several small unnamed creeks, the presence of riparian habitat is not discussed in this section or in Table 3-3. Therefore, the calculations of altered vegetation are likely incomplete.
- The DEA does not include a specific discussion of the vegetative communities that would be impacted by filling LaGloria and Horseshoe canyons.
- Since coastal sage scrub and riparian habitats are considered sensitive or rare plant communities under local and State regulations, the finding that impacts to these plant communities are “not expected to be significant” is incorrect.

3.8 Wildlife and Aquatic Resources, pg. 3-29:

- Potential impacts to wildlife and aquatic resources should be discussed in terms of the life history and/or habitat requirements of the species that occur in and adjacent to the project corridor. For example, there’s no discussion of the potential impacts to wildlife of erecting movement barriers between habitats on either side of the international border. Beside the direct impacts of removing habitat, these gaps/barriers could prohibit movement thereby reducing gene flow. Also, the absence of vegetation in these large gaps could result in increased predation.
- The DEA should include a detailed discussion of the potential impacts of filling La Gloria and Horseshoe canyons to wildlife and aquatic resources. Filling these canyons could have substantial impacts, including but not limited to reducing species movement between habitats on either side of the international border and reducing seasonal water flows to the Tijuana River.
- Wildlife connectivity: Proposed filling of at least 2 canyons (Horseshoe and La Gloria) poses significant effects. The filling of canyons and the closing of existing gaps in the border fence would preclude general wildlife movement in one of three important dispersal zones recognized in *Las Californias Binational Conservation Initiative, A Vision for Habitat Conservation in the Border Region of California and Baja California* (2004), a report prepared by The Nature Conservancy, Conservation Biology Institute, and ProNatura, and supported by the California Biodiversity Council, a State and Federal interagency committee. The San Diego County border region is an internationally recognized biodiversity hotspot (IUCN 2000).
- The DEA should include a specific discussion of the mitigation measures that would be implemented to ensure consistency with the Migratory Bird Treaty Act.

3.9 Threatened and Endangered Species, pg. 3-32:

- To fully analyze project impacts to protected species, the EA should include maps of each project site that depicts the plant community type within and adjacent to the project area and occurrence data and potential habitat for protected species.

- While the EA acknowledges that indirect adverse impacts to potentially suitable habitat for protected species could result from illegal immigrants shifting their activities to the end of newly constructed fence segments to avoid apprehension, it does not include a thorough analysis of additional potential impacts to protected species and their habitats in these areas.
- The EA should include a detailed discussion of the potential impacts of filling La Gloria and Horseshoe canyons to threatened and endangered species. Filling these canyons could have substantial impacts, including but not limited to reducing species movement between habitats on either side of the international border and increasing predation.
- The EA should include a detailed discussion of the potential impacts of constructing low water crossings or similar drainage structures to riparian habitat and the protected species that may occur within these areas (e.g., least Bell's vireo, southwestern willow flycatcher, and arroyo toad). Given that the footprint of these structures is expected to extend approximately 25 to 40 feet on either side of the crossing to allow placement of rip rap (see page 2-4), the installation and use of these structures could have significant impacts to riparian habitat and associated species.
- Potential impacts to threatened and endangered species should be discussed in terms of the life history and/or habitat requirements of the species that occur in and adjacent to the project corridor. For example, there is no discussion of the potential impacts of increasing the gap between habitats on either side of the international border. Besides the direct impacts of removing habitat, these gaps could prohibit movement thereby reducing gene flow or increasing predation.
- *Least Bell's vireo, Southwestern willow flycatcher, and Arroyo toad:* While the DEA states that potential habitat for least Bell's vireo and southwestern willow flycatcher occurs adjacent to the 7 Gate/Railroad project site and that arroyo toad is known to historically and perhaps currently occur in Boundary Creek, upstream of the Willows project site, there is no detailed discussion of project impacts to these species and their habitats. Also, there is no discussion of potential habitat for any of these species along the other ephemeral waters of the U.S. (pg. 3-15), including Campo Creek and several small unnamed creeks that occur along the project corridor. Without a thorough analysis, the finding on page 3-38 that the proposed action may affect but is not likely to adversely affect the vireo or flycatcher is unsupported. Also, without a thorough discussion of arroyo toad occurrence data and habitat requirements, the finding that the project sites lack suitable habitat, and therefore would not affect this species, is unsupported.
- *Coastal California gnatcatcher:* The EA only analyzes impacts to coastal sage scrub (CSS) habitat. While the coastal California gnatcatcher is primarily associated with CSS during the breeding season, the species also occurs in non-CSS habitat (e.g., chaparral), which it uses for foraging and dispersing. The analysis of impacts to this species should include impacts to non-CSS habitat. Also, since wildfire is a natural component of the CSS/chaparral ecosystems, impacts associated with fire are considered temporary. Therefore, the acreage of the burned areas within the project sites should be included in the estimate of gnatcatcher habitat that would be permanently impacted by the project.
- *Quino checkerspot butterfly and critical habitat:* The EA acknowledges that the October 2007 biological surveys were conducted outside of the proper season to determine presence of listed species but later states that the primary host plant for Quino, *Plantago erecta*, was not observed at any of the surveyed areas. The EA should acknowledge that this host plant species is known to occur in the area but likely not found in the fall because it is an ephemeral annual plant. The EA should also discuss the other host plants known to be used by Quino and potentially present in the project corridor. Also, being a

low-flying species, the DEA also should include a discussion of the potential impacts to Quino movement between habitat patches on either side of the international border associated with the construction of new fence. Effects to Quino critical habitat were not adequately analyzed in the EA. The EA should recognize that disturbed habitat may still be functionally useful to the butterfly and should be analyzed as such.

- *Otay tarplant, willowy monardella, Encinitas baccharis, and San Diego thornmint*: The EA acknowledges that the October 2007 biological surveys were conducted outside of the proper season to determine presence of protected species, but later states that these plant species were not observed within the surveyed areas, implying that these species do not occur in the project corridor. Without a thorough discussion of species occurrence data and habitat requirements, the finding that the project sites lack suitable habitat and therefore would not affect these listed species is unsupported.
- *Peninsular bighorn sheep*: The endangered Peninsular bighorn sheep is likely to be affected by significant indirect impacts from the funneling of illegal immigrant traffic into the Jacumba Mountains, portions of which are designated as critical habitat. Alteration of the fence design with gaps or vehicle barriers only within one mile of sheep habitat would likely reduce the significance of the impacts and provide opportunity for connectivity with bighorn sheep in Mexico.
- *Tecate cypress and Thorne's hairstreak butterfly*: The EA states that up to eight Tecate cypress trees would be impacted by construction but it's not clear how these individuals will be impacted (e.g., destroyed during construction, indirectly impacted due to dust, adjacent soil disturbance, etc.). There is also no discussion of how impacts to this species would be minimized or mitigated other than avoidance. Also, while the EA acknowledges that the Thorne's hairstreak butterfly uses Tecate cypress as a host plant, there is no discussion of potential occurrence of this butterfly species or its suitable habitat (in addition to Tecate cypress) on the project site.

If you have any questions regarding these comments, please contact Janaye Byergo, Bureau of Land Management Palm Springs-South Coast Field Office (BLM), at 858-451-1767 or Kurt Roblek or Pete Sorensen, Fish and Wildlife, at (760) 431-9440.

Thank you for the opportunity to review this project.

Sincerely,

A handwritten signature in black ink that reads "Patricia Sanderson Port". The signature is written in a cursive, flowing style.

Patricia Sanderson Port
Regional Environmental Officer

cc:
Director, OEPC
FWS, CNO



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

February 11, 2008

Robert F. Janson
Acting Executive Director
Asset Management
U.S. Customs and Border Protection
1300 Pennsylvania Avenue, NW
Room 3.4D
Washington, DC 20229

Subject: Draft Environmental Assessment and Draft Finding of No Significant Impacts for Construction, Operation, and Maintenance of the Proposed Tactical Infrastructure, U.S. Border Patrol San Diego Sector, California, U.S. Department of Homeland Security, U.S. Customs and Border Protection, U.S. Border Patrol

Dear Mr. Janson:

The U.S. Environmental Protection Agency (EPA) has reviewed the subject Draft Environmental Assessment (DEA) and draft Finding of No Significant Impact (FONSI) pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Thank you for agreeing to accept our comments late, per our telephone conversation with Dave Guzewich on February 5, 2008.

EPA feels strongly that the DEA does not provide sufficient information to support a FONSI determination. Specifically, the DEA does not analyze all reasonable alternatives, does not fully disclose impacts to soils and hydrology, or impacts to biological resources, including threatened and endangered species, and does not discuss how these impacts will be mitigated to a less than significant level. The DEA also does not include a detailed project description for each segment nor identify the type of primary pedestrian fence design that will be used, which will largely influence impacts. Finally, the DEA does not include a sufficient cumulative impacts assessment.

We understand from your office that the tight project schedule has resulted in incomplete NEPA documents being released to the public. While it is the intension of U.S. Customs and Border Protection (CBP) to have needed environmental analyses added to the Final EA, this approach does not provide the public with a meaningful opportunity to participate in the environmental review process. Incomplete project descriptions and impact analyses do not offer the level of information needed for decision-makers, agencies, or the public to effectively assess the proposed project and provide comments. Even if these deficits are resolved in the Final EA,

the pre-set schedule for completion of construction does not allow agencies the opportunity to review the more complete document and comment on the severity of the impacts or potential opportunities to avoid and minimize them.

Additionally, this approach of releasing incomplete NEPA documents is not consistent with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (CEQ Regulations), which state that agencies may prepare an environmental assessment and then make its determination whether to prepare an EIS or a FONSI (40 CFR 1501.4 (c) and (e) and 40 CFR 1508.9). The incomplete information in the DEA does not facilitate or enable public comment concerning the agency's determination that the project does not significantly affect the environment, and therefore does not provide sufficient evidence for making the FONSI determination at this time.

EPA is concerned that potentially significant environmental impacts are not analyzed in the DEA. EPA recommends that specifics regarding the project description, hydrology and wildlife impacts, alternatives to avoid or minimize these impacts, and a revised cumulative impacts assessment be included in a subsequent NEPA document, such as a revised EA or EIS. A firm commitment to mitigation and ongoing maintenance and monitoring is needed if a FONSI determination will be made.

EPA believes a comprehensive mitigation strategy should be developed for cumulative impacts resulting from the many border fence and infrastructure projects that are occurring along the border. We understand that preliminary discussions with U.S. Fish and Wildlife Service (USFWS) have occurred at a senior staff level regarding a comprehensive programmatic mitigation agreement to address wildlife impacts. We encourage such an approach and are available to assist in identifying comprehensive mitigation for impacts to watersheds and waters of the U.S.

We understand that the Secretary of the Department of Homeland Security has authority to waive environmental laws for these border fence projects in its mission to secure the homeland and protect it against conventional and unconventional attacks. We urge the Department to avoid the use of waivers and make every effort to comply with environmental laws, consistent with our national environmental policy (42 U.S.C. 4321).

We appreciate the opportunity to review this DEA. If you have any questions, please contact me at (415) 972-3846 or Karen Vitulano, the lead reviewer for this project. Ms. Vitulano can be reached at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,



Nova Blazej, Manager
Environmental Review Office

Enclosure: EPA's Detailed Comments

cc: Charles McGregor, U.S. Army Corps of Engineers, Fort Worth District
Patricia Sanderson Port, U.S. Department of the Interior
Kurt Roblek, U.S. Fish and Wildlife Service
Robert Smith, U.S. Army Corps of Engineers, Los Angeles District
Gulf South Research Corporation

DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL ASSESSMENT (DEA) AND DRAFT FINDING OF NO SIGNIFICANT IMPACTS (FONSI) FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF THE PROPOSED TACTICAL INFRASTRUCTURE, U.S. BORDER PATROL SAN DIEGO SECTOR, CALIFORNIA, FEBRUARY 11, 2008

Justification for Finding of No Significant Impacts

The DEA does not provide sufficient analyses or identify specific mitigation measures to support conclusions in the draft FONSI. An environmental assessment, in part, serves to: 1) briefly provide sufficient evidence and analysis for determining whether to prepare an Environmental Impact Statement (EIS) or a Finding of No Significant Impact (FONSI), and 2) aid an agency's compliance with the National Environmental Policy Act (NEPA) when an EIS is not necessary (See 40 CFR 1508.9).

EPA is concerned that potentially significant environmental impacts are not analyzed in the DEA. We recommend that Customs and Border Patrol (CBP) address our comments below in a subsequent NEPA document, such as a revised EA or Environmental Impact Statement. A firm commitment to mitigation and ongoing maintenance and monitoring is needed if a FONSI determination will be made.

Alternatives Analysis

The subject DEA does not evaluate all reasonable alternatives. The DEA states that it considered but dismissed alternatives that evaluate additional agents in lieu of tactical infrastructure and various forms of technology in lieu of tactical infrastructure (p. 2-12) and determined additional agents or technology alone would not meet the purpose and need of achieving effective border control. The DEA did not evaluate the use of these alternative methods in conjunction with fencing and tactical infrastructure, such as their use in certain environmentally sensitive areas to avoid impacts. In fact, the DEA quotes a Congressional Research Service Report stating that a "rigid enforcement system that could integrate infrastructure, manpower, and new technologies to further control the border region" was needed (p. 2-14); yet such an integrated alternative was not included for analysis.

Recommendation: EPA recommends an additional alternative be evaluated in the subsequent NEPA document for this project that integrates infrastructure, manpower, and new technologies, consistent with the Congressional Research Service Report.

Impacts to Soils, Hydrology, and Waters of the U.S.

EPA has concerns regarding potentially significant impacts to soils and the watershed through erosion from the specific actions proposed. The DEA does not include detailed descriptions of the actions, but based on the limited information, it appears that a substantial amount of earth movement will occur. The project will level an entire hill, involve extensive cut and fill activities in minor drainages, and construct and widen roads on steep slopes (some greater than 18% grade) of highly erodible soils. The DEA did not provide sufficient information regarding soils (or other resources) in these project areas, instead incorporating information by reference

from a previous 2003 EA, which was not immediately available¹. The DEA did indicate that all the soils within the project corridor have a severe erodibility rating (p. 3-6).

The project will also create and operate new drag roads, which involve vehicles dragging tires or brushes behind to smooth the surface of an unpaved road so evidence of crossing is apparent. The DEA does not describe any impacts to the watershed from the expansion and operation of these roads. The hydrology section of the DEA only discusses impacts to groundwater yet concludes that the proposed action would not result in severe erosion or sedimentation nor substantially alter existing drainage patterns. The DEA states that areas of highly erodible soils will be given special consideration when designing the proposed project to incorporate erosion control measures such as straw bales, silt fencing etc., however the effectiveness of these standard construction site measures in these environments is not assured and would require diligent maintenance and monitoring, which are not clearly identified or committed to in the proposed action.

Impacts to potential waters of the U.S. are estimated for road crossings only. The DEA does not quantify acre impacts from fence crossings but only states that fence designs would be constructed in washes so that floodwaters would be conveyed without back-ups on either side of the border (p. 3-16). Without identifying and committing to ongoing maintenance and monitoring, including identifying maintenance that may be required on the Mexico side of the border, we do not expect these impacts to be less than significant.

Finally, the summary table of impacts (Table 2-4, p. 2-17) does not identify any adverse impacts to the watershed or surface waters and states only that the proposed action would result in beneficial impacts by reducing illegal traffic.

Recommendation: We recommend CBP prepare a revised NEPA document with complete project descriptions, which include specific activities for each project segment, all relevant resource information that is incorporated by reference, and full impact analyses based on this information. Include descriptions of areas used for soil storage or disposal and the impacts from soil storage on resources, including the soil removed from the leveling of Krutzch's Hill and other significant earth movement activities. Include impacts from fence construction in washes and identify maintenance and monitoring that will occur for these areas, including funding sources and responsible parties. Modify Table 2-4 to identify all impacts to hydrology and watersheds. We understand that the U.S. Army Corps of Engineers is working on wetlands delineations for some of the project areas. This information should be consulted when revising impact assessments and included in the revised NEPA document. This document should be made available for public and agency review.

We understand that the Secure Fence Act allows CBP to use means other than pedestrian fences to secure areas with elevation grades exceeding 10%. We strongly recommend

¹ We note that there is no provision in the CEQ Regulations allowing incorporation by reference into an environmental assessment, and courts do not generally allow incorporation (See *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202 (E.D. Cal 1999) and *Natural Res. Def. Council, Inc. v. Duvall*, 777 F. Supp. 1533 (E.D. Cal. 1991))

alternatives to fence and road construction for these high grade areas, including Rattlesnake Ridge and all high grade areas exhibiting highly erodible soils.

Cumulative Impacts

The DEA does not include a sufficient cumulative impact assessment. The assessment does identify other CBP projects and one Bureau of Land Management project, but does not attempt to include other projects occurring in the project areas that may affect similar resources, nor is there any discussion of past actions that have affected these resources and contributed to their current health. The resource-specific discussions largely repeat project impacts and do not provide an assessment of cumulative impacts to these resources that would reveal the ability of these resources to withstand additional stressors. A sufficient cumulative impact assessment is important for this project, especially considering the piecemeal nature of the impact assessments for this and other border fence projects.

Recommendation: EPA recommends substantial improvements be made to the cumulative impacts assessment and that this assessment be included in a revised NEPA document and made available for public and agency review. EPA recommends the *Guidance for Preparers of Cumulative Impact Analysis* (June 2005), (Available: http://www.dot.ca.gov/ser/cumulative_guidance/purpose.htm), as a useful methodology².

Impacts to Biological Resources

We have concerns regarding impacts to biological resources since it appears that the proposed project has the potential to impact several federally listed species. The DEA includes only a superficial impact assessment to these resources and cumulative impacts have not been assessed at all. We understand that CBP is coordinating with the U.S. Fish and Wildlife Service regarding project impacts to threatened and endangered species. The DEA relies on implementation of conservation and avoidance measures as mitigation for significant impacts and as a basis for a FONSI determination. We understand from USFWS however, that CBP's adherence to a preset schedule could eliminate the possibility of avoidance and mitigation, such as when a sensitive life stage interferes with construction timeline goals. The final decision document should clearly identify which mitigation and conservation measures CBP is committing to and using as a basis for a FONSI determination.

The DEA states that even with the completion of these segments, there would still be large remote areas along the border, within the San Diego Sector, that do not contain barriers; consequently, there will still be ample opportunities for transboundary migration of wildlife and exchange of genetic material (p. 4-5). CBP has not demonstrated that this is indeed the case, and there is no map in the DEA showing existing and proposed fence.

Recommendation: EPA recommends CBP comply with all avoidance and conservations measures identified by USFWS. If conservation measures will not be followed, it is important that they be identified so that the FONSI determination can be assessed based

² This guidance, developed jointly by Caltrans, FHWA, and EPA, focuses on transportation projects in California; however, it is useful for non-highway projects and will assist in identifying cumulative impacts and preparing an analysis that is sound, well documented, and compliant with requirements of Section 404 of the Clean Water Act.

on mitigation that CBP has committed to provide. Greater commitments to road abandonment and rehabilitation should occur for this project. We also urge continued talks regarding a programmatic mitigation agreement with USFWS, and that progress on any agreements is included in the final decision documents.

The CBP should ensure that corridors are available for transboundary migration. Include the map of all existing fence segments in the cumulative impacts section and clearly identify where these migration corridors lay. EPA strongly recommends the use of wildlife-friendly vehicle barriers in conjunction with virtual fencing components such as laser barriers, motion sensors, etc. at critical intervals to ensure transboundary wildlife migration.

Text Corrections

- Table 1-1 (p. 1-10) states that EPA would issue Clean Water Act National Pollutant Discharge Elimination System permits. The State of California issues construction stormwater permits.
- Page 2-4 refers to Table 1-1 as a table that lists specific actions for the project, but this table lists major permits and approvals

Hello,

The San Diego Public Library needs a copy of this EA for its collections. We already have the EIS.

Please send one copy to:

Science, Industry, and Govt. Publications Section
San Diego Public Library
820 E Street
San Diego CA 92101

Thank you.

Gary Klockenga
Government Publications Librarian

Dear ladies and gentlemen -

below I send you the comments from the San Diego Regional Board on the Border Fence NEPA EA.

Lilian Busse
Environmental Scientist
Southern Watershed Unit
San Diego Regional Water Quality Control Board
9174 Sky Park Court
San Diego, CA 92123
lbusse@waterboards.ca.gov

Page 5, line 23/24:
Impacts to waters of the U.S. and waters of the State need to be mitigated. The Regional Board usually asks for a 3:1 mitigation * 1:1 creation and 2:1 enhancement/restoration independent of the size of the impact.

Page 3-12, line 8-18:
The Regional Board will take jurisdiction over ephemeral streams in the project area. These ephemeral streams are waters of the State, and the applicant needs to enroll in the general WDR for isolated waters from the State Water Resources Control Board.

Page 3-15, line 8-23:
The impact of 0.142 acres needs to be mitigated (3:1, see comment above).

Page 3-17, line 6-12:
This project will increase the impervious surface in the watershed by building 7 miles of roads. Please make sure that the additional stormwater does not contain pollutants that affect the beneficial uses of the streams. Post-construction BMPs might be necessary.

Please let me know if you have any questions.
Thanks, Lilian Busse

Lilian B. Busse, Ph.D.
Environmental Scientist
Southern Watershed Unit

San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

phone: 858-467-2971
fax: 858-571-6972
lbusse@waterboards.ca.gov



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Quality

1001 I Street • Sacramento, California 95814 • (916) 341-5455
Mailing Address: P.O. Box 100 • Sacramento, California • 95812-0100
Fax (916) 341-5584 • <http://www.waterboards.ca.gov>



Arnold Schwarzenegger
Governor

February 5, 2008

San Diego Sector Tactical Infrastructure EA
C/o Gulf South Research Corporation
Baton Rouge, Louisiana, 70820

Dear Comment Reviewers:

SAN DIEGO SECTOR ENVIRONMENTAL ASSESSMENT (EA)

California Water Resources Control Board (California Water Board) staff has reviewed the San Diego Sector Proposed Tactical Infrastructure EA and has the following comments regarding this document.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) COMPLIANCE:
Section 5 states that this document is intended to provide compliance, in part, with both the National Environmental Policy Act (NEPA) and CEQA. Section 1.7 of this EA correctly states the following:

"For this project, CEQA is applicable because under Section 401 of the CWA (33 United States Code [U.S.C.] 1341), states and tribes are delegated authority to approve, condition, or deny all Federal permits or licenses that might result in a discharge to state or tribal waters, including wetlands. Projects that have a potential for resulting in physical change to the environment, and or that might be subject to several discretionary approvals by governmental agencies including construction activities, clearing or grading of land, improvements to existing structures, and activities or equipment involving the issuance of a permit, are required to go through the CEQA process. The California Code of Regulations (CCR), Title 14, Section 15063, allow the use of a NEPA document to meet the requirements for an Initial Study under CEQA."

However, the EA does not fully describe what additional steps would be taken to comply with CEQA beyond completing this Initial Study. Conducting the NEPA process does not automatically and simultaneously satisfy the CEQA process when a California permit is required. It is our understanding that project applicants must identify a lead agency for CEQA compliance. This lead agency, which must be a California agency, is then responsible for conducting a review, which includes

California Environmental Protection Agency



an opportunity for public comment. Until these steps are followed, we do not consider that the requirement for public involvement in the CEQA process discussed in Section 1.5 has been met.

2. **WATER QUALITY CERTIFICATION:** As noted in Section 1.4 (Framework for Analysis) and Table 1.1, a Clean Water Act (CWA) Section 401 State Water Quality Certification is required for the project. However, Table 1.1 requires correction since it lists the Regional Water Quality Control Board (Regional Water Board) as the permitting agency. The proposed project will occur within the boundaries of two Regional Water Boards. In cases where more than one Regional Water Board is involved, regulations require that the entity that issues the water quality certification is the State Water Resources Control Board.

We have not, to date, received an application for water quality certification (certification) for this project. The certification process routinely includes a review of the applicant's Stormwater Pollution Prevention Plan (SWPPP) and the operation and maintenance plan that details how the installed project will be maintained to prevent future discharge of pollutants from the project area. We will also review compliance with Section 404 of the CWA pertaining to wetland protection.

We strongly recommend that all the sections of road and fence be treated as a single project and be permitted as such under Sections 404 and 401 of the CWA. Thus, the sum quantity of lands and waters affected by the entire project should be considered as a whole.

3. **CUMULATIVE EFFECTS:** Section 4.0 concedes that cumulative impacts will occur if the preferred alternative is implemented, but makes no attempt at quantification of those effects. Quantification of cumulative effects is necessary for the development of appropriate mitigation measures.
4. **MITIGATION MEASURES:** Section 5.0 states that:

"It should be emphasized that these are general mitigation measures; development of specific mitigation measures would be required for certain activities implemented under the action alternatives. The proposed mitigation measures would be coordinated through the appropriate agencies and land managers or administrators, as required."

Section 5.0 also states that:

"It is CBP's policy to reduce impacts through the sequence of avoidance, minimization, mitigation, and finally, compensation."

Section 5.0 thus begins to address many of our concerns, but additional explanatory detail needs to be provided.

All potential adverse effects to water quality should be identified in the CEQA documentation to a level of detail that is adequate for the development of appropriate mitigation measures.

These potential water quality effects - whether from project construction, operation, or maintenance - should be avoided to the greatest extent feasible as a first step. When avoidance is not feasible, impacts should be minimized if possible. Otherwise, mitigation should be described such as on-site restoration or reclamation of the affected sites that includes a maintenance plan for the life of the installation. When avoidance and restoration/reclamation is not feasible and permanent effects are to occur, appropriate off-site mitigation should be considered. All of these mitigation steps should be detailed in a mitigation plan that is approved before project implementation begins. This mitigation plan should include a construction, operation, and maintenance plan that details how these mitigations will be followed during and after construction.

5. **MAPS AND FIGURES:** The maps and figures provided in Appendix A of this document do not provide adequate detail to allow California Water Board staff to certify the proposed project. The maps provided adequate detail for assessing general location and general project activities, but additional annotation of the physical features of the landscape will be required. Development of these details can be a part of the SWPPP preparation process, but the California Water Board staff should be consulted as this process occurs.

The construction details of elements of the proposed Tactical Infrastructure (i.e., the fence itself) are not presented as final drawings but only as examples. We cannot evaluate the effects of a design until it is presented. We will be concerned with the effects on surface and sub-surface drainage that may occur with all of the presented design examples.

The pages of example drawings are not enumerated in a way that allows for easy reference. These detail drawings should be clearly enumerated, and a list of figures should be provided.

California Water Board staff thanks the U.S. Department of Homeland Security – Customs and Border Patrol for this opportunity to comment on this EA.

If you have questions on the above, please contact me at (916) 341-5573 (vconnor@waterboards.ca.gov) or Cliff Harvey, the staff person most knowledgeable on this subject, at (916) 322-2514 (charvey@waterboards.ca.gov).

Sincerely,


Valerie Connor
Manager, Regulatory Section
Division of Water Quality

cc: Colonel Thomas H. Magness, IV.
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Blvd., Suite 980
Los Angeles, CA 90017

Mr. Dave Smith, Chief
Wetlands Regulatory Office
U.S. Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Mr. Robert Perdue, Executive Officer
Colorado River Basin Regional Water Quality Control Board
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

Mr. John Robertus, Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego, CA 92123-4340

February 5, 2008

San Diego Sector Tactical Infrastructure EA
c/o Gulf South Research Corporation
Baton Rouge, Louisiana, 70820
Via: SDEAcomments@BorderFenceNEPA.com

RE: Comments Draft Environmental Assessment for the Proposed Construction, Operation, and Maintenance of Tactical Infrastructure, U.S. Border Patrol San Diego Sector, California.

The Nature Conservancy (Conservancy) appreciates this opportunity to provide comments on the draft Environmental Assessment (EA) developed by the U.S. Department of Homeland Security (DHS), U.S. Customs and Border Protection (CBP) and U.S. Border Patrol (Border Patrol) to construct new tactical infrastructure within the San Diego sector. The mission of The Conservancy is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. To achieve success in our mission, the San Diego project of the Conservancy has worked extensively over the last twenty years with public resource agencies and communities to protect many of the region's most ecologically significant natural areas.

The Conservancy has grown increasingly concerned about the threats posed by infrastructure development where it negatively and significantly impacts biological resources and compromises investments in public lands. It is in this context that The Conservancy is writing to express our concerns about the Proposed Action Alternative to construct, operate, and maintain additional roads and pedestrian fence in a 30-mile stretch of the border region that has been identified as a critical opportunity area for conservation (CBI, 2004).

The area where San Diego County and Baja California meet is an internationally recognized biodiversity hotspot that harbors an extraordinary number of plants and animals that occur nowhere else on Earth (Dobson et al. 1997, Mittermier et al. 1999). Signature species include the federally-listed California gnatcatcher, Quino checkerspot butterfly, least Bell's vireo, arroyo toad and the Peninsular bighorn sheep. The Nature Conservancy, Conservation Biology Institute, and Pronatura, a Mexican non-governmental organization, have joined to conserve biodiversity in the borderlands as part of the *Las Californias Binational Conservation Initiative*. Our goals are to conserve large, intact wildlands and to maintain linkages between wildlands in order to safeguard genetic diversity and ensure the long-term health of the ecosystem.

Two priority cross-border linkages (CBI 2004) will be affected by the Proposed Action Alternative (map enclosed).

La Posta linkage

Location: Campo Valley, San Diego County, and El Hongo Valley, Baja California

The La Posta linkage is an ecological transition area between the coastal habitats to the west, the higher elevations of the Peninsular Range/Sierra Juárez to the north and southeast, and the Sonoran Desert to the east. This linkage forms the intersection of high elevation habitats in the Laguna Mountains with mid-elevation habitats of the upper Campo Valley and upper Sonoran mixed chaparral covering rugged canyons, inland valley grasslands, and low-to-intermediate-gradient drainages lined with live oaks and Englemann oaks. This area is rich in biodiversity, even though it does not appear to support as many endangered species as along the coast. In addition, large area dependent species like mountain lions and spotted owls occur in this area (see enclosed map). The federally endangered arroyo toad is known to occur in at least some of the streams (CBI 2003).

The long-term viability of these sensitive species and rare ecological communities depends, in part, on the maintenance of the link between the Laguna Mountains and Central Baja California. The BLM land on the border, including La Gloria and Smith canyons, are important components of that linkage and serve as dispersal areas for species moving north and south.

Park-to-Parque linkage

Location: Anza-Borrego Desert State Park, San Diego and Imperial counties, and Parque Constitución de 1857 in Baja California

The Park to Parque linkage is a continental-scale linkage along the transboundary region of the Peninsular Ranges, thus ensuring cross-border connectivity through the Eastern edge of the South Coast Ecoregion and the Sonoran Desert. Protecting this linkage ultimately will allow re-establishment of historic connectivity between endangered Peninsular bighorn sheep in the U.S. and bighorn sheep populations in the Sierra Juárez in northern Baja California and encourage binational collaboration in managing bighorn sheep populations on both sides of the border.

Efforts to maintain the link between the Jacumba and In-Ko-Pah Mountains and the Sierra Juárez involves protecting land along Interstate-8 and private lands that make up the Carrizo Gorge watershed and conserving additional lands stretching from Parque Constitución to the border.

Comments on Draft Environmental Assessment

1. Surface Waters and Waters of the U.S. for the Proposed Action Alternative fails to address how the construction of additional pedestrian fence in canyons and waters of the U.S. will deal with additional stream channel sedimentation, stream bank erosion and possible release of pollutants into stream channels.

The EA does not identify the type of fence that is being proposed at this time. Therefore, there is little information about how the proposed fence will be constructed to allow water to pass during rainfall events and especially during floods. There is insufficient information to address how DHS and CBP propose to minimize long-term erosion and stream channel sedimentation with the exception of proposing rip-rap or rock, which will be detrimental to the federally-listed arroyo toad.

2. Wildlife and Aquatic Resources for Proposed Action Alternative should read that possible short-term and long-term significant adverse impacts may occur to wildlife and aquatic species.

The impact of “filling the gaps” cannot be measured by miles of fencing alone, but rather “filling the gaps,” particularly in canyons and other likely wildlife corridors, will have a true “cumulative impact” and that warrants a full Environmental Impact Study.

The additional border fencing and new roads to “fill the gaps” will further fragment habitat beyond current conditions. Loss and fragmentation of habitats is considered the single greatest threat to biodiversity at global and regional scales (Myers 1997, Noss and Csuti 1997, Brooks et al 2002). The border region is a good example of the effects of habitat fragmentation (CBI 2004). Road construction and conversion of land to urban uses have fragmented and isolated natural habitats. The remaining habitat fragments experience edge effects, altered physical conditions and fire regimes, increased invasion by exotic species, changes in vegetation, loss of top predators, and altered species population dynamics. Roads can have an even broader impact by altering hydrologic patterns, disrupting migration patterns, and causing direct mortality via road kill.

Enormous investments in habitat conservation through the Natural Community Conservation Planning/Multiple Species Conservation Program have been made to prevent further fragmentation and maintain the ecological integrity of the remaining intact areas in the borderlands. These investments in conserved lands rely upon the protection of the same habitat types in Northern Baja California, much of which is still intact but highly threatened by future infrastructure development. The

Conservancy and our partners are working under the *Las Californias Binational Conservation Initiative* to protect our investments in San Diego County by maintaining cross-border linkages and protecting lands in Mexico. By constructing a new pedestrian fence in the areas identified, some of the last remaining corridors that provide connectivity between habitats north and south will be severed.

Section 3.8.2.2 Proposed Action Alternative to wildlife and aquatic resources should read that impacts to transboundary migration patterns of animals will be significant. Conservation Biology Institute (2003) identified a list of 17 focal species used for planning linkages that are likely to be present in the project area (see attached). In addition to these species, other area dependent species that use the Laguna Mountains and lower elevations as well, such as the mountain lion and spotted owl, should be considered along with the federally endangered arroyo toad which is known to occur in some of the streams. The canyons proposed for fencing could serve as dispersal areas for these species. The proposed fence will isolate populations and reduce genetic viability of the remaining species. While many of these species were not recorded during the field visits that were conducted in October 2007 that does not mean they are not present. Negative surveys for species could have been the result of drought conditions and lack of presence at that time of the year.

An alternative to additional pedestrian fence could be to maintain or install vehicle barriers and use other virtual fence technology, such as cameras and sensors to track illegal foot traffic. This combined with additional patrols may be a less expensive alternative to installing a pedestrian fence. In addition, these areas could serve as pilot projects to evaluate operational control of the border using virtual technologies while maintaining investments in biodiversity conservation. The Conservancy would be willing to work with DHS and CBP to establish a monitoring protocol to evaluate the impacts of new pedestrian fence with a pilot project to provide open areas to maintain wildlife corridors and connectivity.

In addition, the Conservancy proposes that DHS and the San Diego Sector consider a pilot project to protect the remaining open space along the border from urban encroachment. It is our belief that preserving open space and important natural areas along the border will also benefit CBP. We understand that in urbanized areas, CBP has no other option but to construct pedestrian fences to secure the border. However, by protecting open space, CBP benefits because it is afforded more options in order to secure the border. The EA identifies Bell Valley as a property that requires a pedestrian fence. We propose to enter into a pilot project with DHS and CBP to conserve this property and prevent future urban encroachment on the border.

The EA recognizes that "Indirect adverse impacts to wildlife habitat adjacent to the project corridor could occur as illegal aliens attempt to circumvent the proposed

infrastructure.” This is a concern to The Conservancy and our partners. History has proven that as areas are secured, illegal foot traffic moves to attempt illegal entry to areas that remain open even if those areas are rugged and harder to traverse. The cumulative impacts on Peninsular bighorn sheep and their habitat from the proposed action need to be evaluated in a full Environmental Impact Study.

The Conservancy believes the current proposed fencing could have significant impacts on the Peninsular bighorn sheep. There are two main possible impacts on Bighorn Sheep from fencing elsewhere:

- More foot traffic in rugged sheep habitat by persons redirected from other areas of the border
- Increased enforcement-related vehicular access and activity in sheep habitat

Increased foot traffic: In addition to increased disturbance, we are also concerned about the use of springs by persons attempting to illegally cross the border, especially in the summer. During summer months, bighorn sheep often rely on small and scarce water sources. These same water sources may also be used by people traveling through the deserts, and use by people can (1) deplete the small amount of water at these springs, (2) keep bighorn sheep from coming to the spring (if people are frequently at the spring), and (3) contaminate the water if the spring is used for washing and personal hygiene.

Increased enforcement activity: The EA notes securing the 30-mile stretch of the border in the proposed action will act as a force multiplier and allow CBP to deploy agents to areas without pedestrian barriers. Increased Border Patrol activity in bighorn sheep habitat will have a significant negative impact on the sheep. Bighorn sheep have recently started using historical areas that have been vacant in recent years (e.g., within the island in I-8, as well as just south of I-8; Rubin, personal communication). We are optimistic that they will eventually use other areas between I-8 and the international border once again. Increased human activity in that area would reduce this possibility.

It is important to recognize and attempt to minimize and mitigate the impact of both redirected illegal crossings and enhanced border security activities on this iconic and highly sensitive species. We believe it is possible to do so without compromising the mission of the CBP.

The Conservancy recognizes the legitimate public concern about border security – especially contraband smuggling. However, the cumulative impact of the proposed action will result in significant negative impacts on wildlife and undermine the investments to date in biodiversity and habitat conservation. For this reason, The

Conservancy believes that the additional fencing should not be built as currently proposed and believes instead that there ought to be opportunities in certain high priority wildlife corridors, especially in some of the canyons, to use virtual technology, such as vehicle barriers and rapidly deployable personnel to secure the border.

The Conservancy requests that an Environmental Impact Study be conducted to consider more broadly the direct and indirect impacts that will occur from closing off the last remaining wildlife corridors in this region of the border and to consider more broadly a balance of alternatives that will maintain linkages across the border and allow for wildlife migration and dispersal to occur. It is possible to simultaneously achieve both national security and conservation goals. Doing so will require careful planning that involves consultation with wildlife agencies and experts; consideration of a full range of tools; and a thorough evaluation of impacts of various alternatives.

Thank you for your consideration of our comments and please contact us if you have any questions. We look forward to providing further comments and information as you move forward.

Sincerely yours,



KATHRYN VIATELLA
Senior Project Director

Brooks, T.M, R.A., Mittermeier, C.g. Mittermeier, G.A.B. da Fonesca, A.B. Rylands, W.R. Konstant, P.Flick, J. Pilgrim, S. Oldfield, G. Magin, and C. Hilton-Taylor. 2002. Habitat loss and extinction in the hotspots of biodiversity. *Conservation Biology* 16:909-923.

Conservation Biology Institute(CBI). 2004. *Las Californias Binational Conservation Initiative: A Vision for Habitat Conservation in the Border Region of California and Baja California.*

Conservation Biology Institute (CBI). 2003. *La Posta linkage portfolio, San Diego County, California.* Prepared for the San Diego Foundation Blasker-Rose-Miah Fund Grant #C-2002-00340. July.

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Noss, R.F. and B. Csuti. 1997. Habitat fragmentation. Chapter 9 in Meffe, G.K. and C.R. Carroll (eds.) Principles of conservation biology. 2nd ed. Sinauer Associatin, Inc. Sunderland, MA.

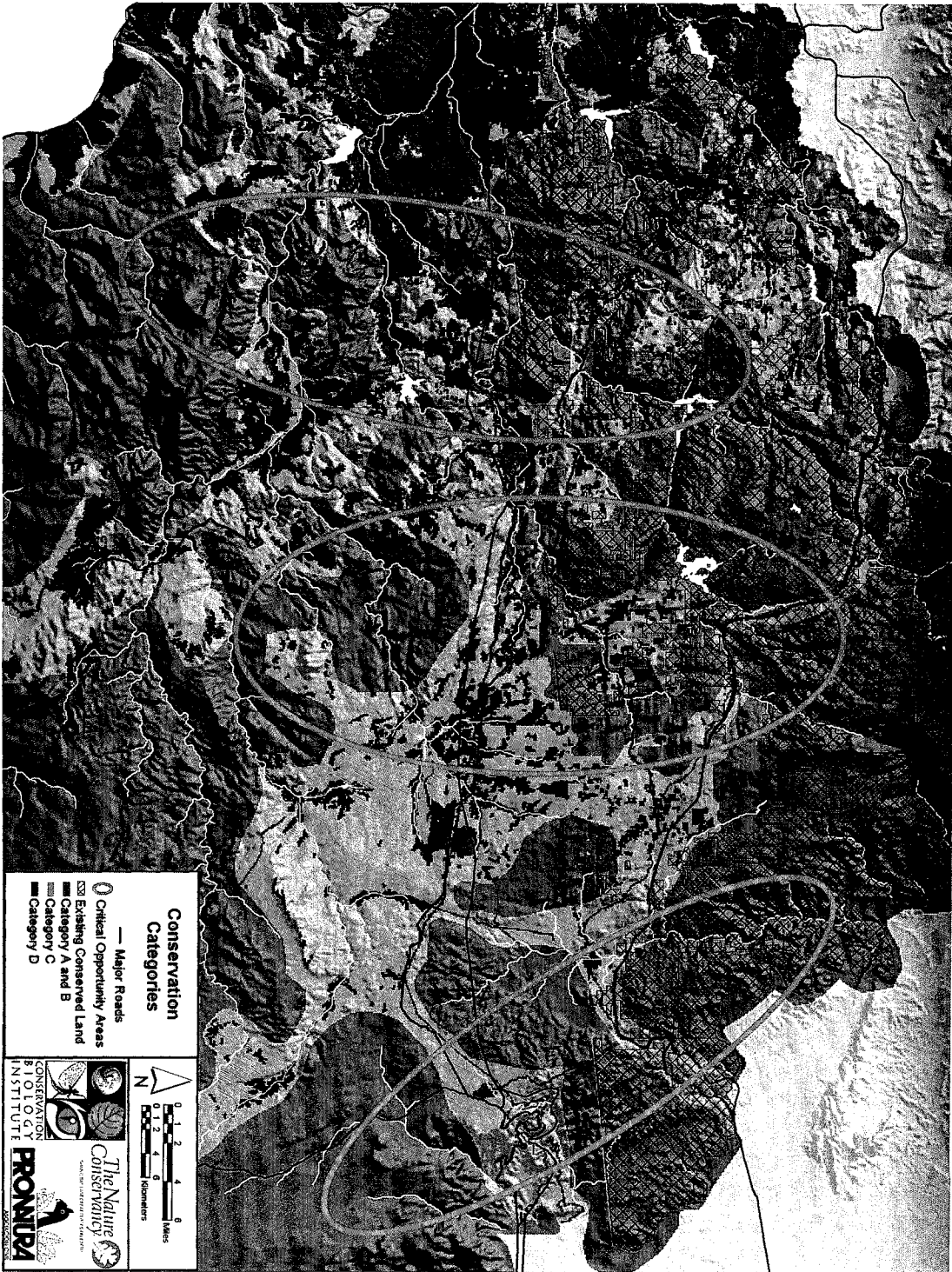


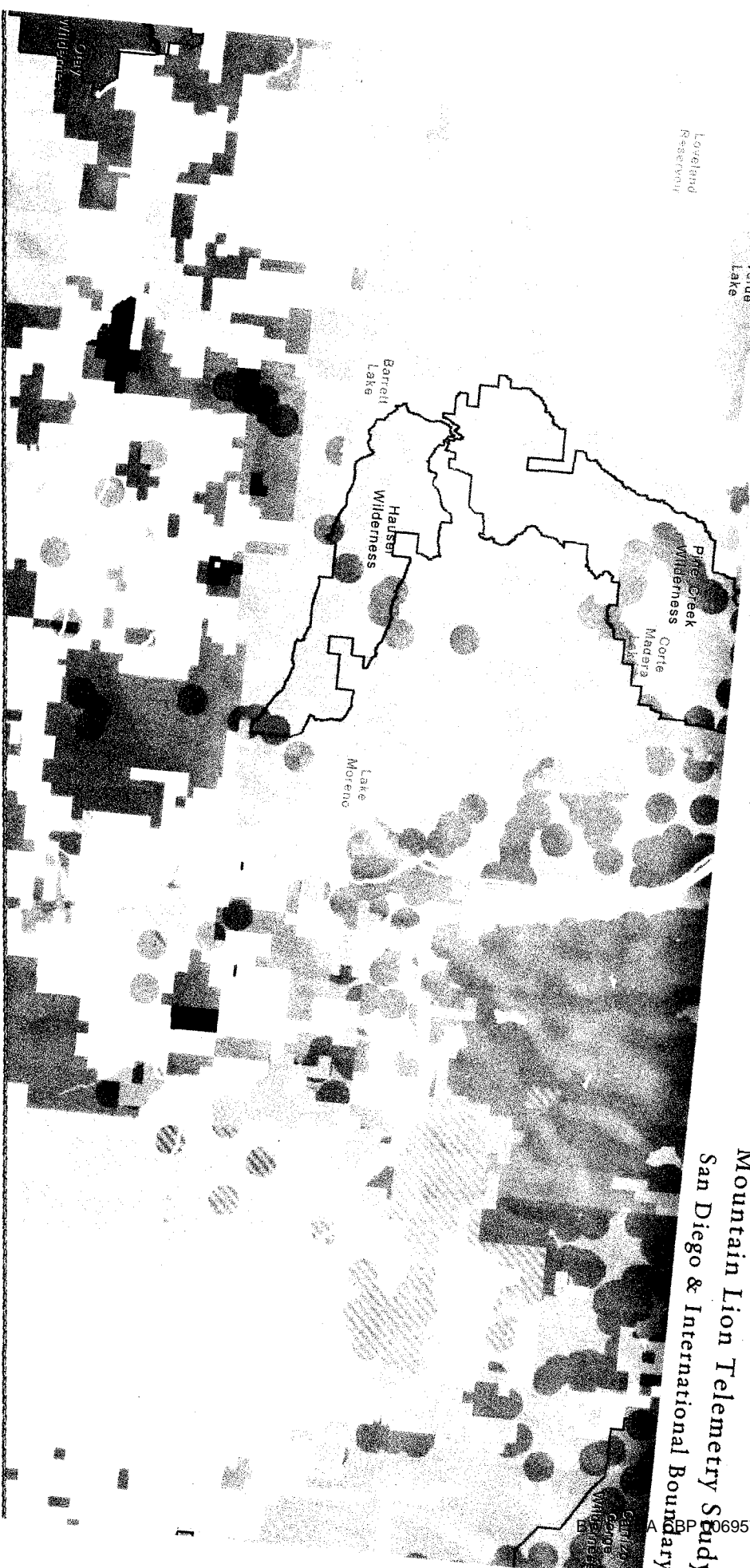
Figure 10. Critical opportunity areas along the U.S.-Mexico border.

Alpine
Palo Verde Lake
Loreland Reserve

Pine Creek
Wilderness
Corte Madera
Lake

Barrett Lake
Halter
Wilderness

Lake
Moreno



MEXICO

Land Ownership by Agency

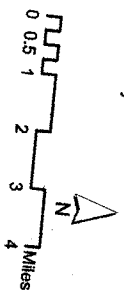
- Bureau of Land Management
- State of California
- US Forest Service
- Water District
- Department of Defense

Min Lion

- Approximate Area Used
- Urban / Developed

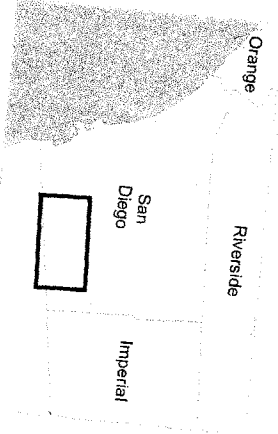
Roads

- Highway
- Administrative Boundaries
- County



LION DATA FROM
WALTER BOYCE ET. AL.,
UC DAVIS
WILDLIFE HEALTH CENTER

Mountain Lion Telemetry Study
San Diego & International Boundary





Mountains and the lower elevations as well, such as the mountain lion and spotted owl. The federally endangered arroyo toad is known to occur in at least some of the streams.

Table 1. Focal species identified at the Zoo Workshop for the La Posta Linkage

Species	Habitat Preference
Velvet ant (<i>Dasymutillia</i> spp.)	Sparse upland vegetation in friable soils
Sonoran blue butterfly (<i>Philoides sonorensis</i>)	Crassulaceae species are larval hosts; chaparral in rocky canyons
Quino checkerspot butterfly (<i>Euphydryas editha quino</i>)	<i>Plantago/Castilleja</i> are larval hosts; open upland habitats with larval host plants and nectar sources for adults
Threespine stickleback (<i>Gasterosteus aculeatus</i>)	Aquatic habitats with low-gradient, cool perennial flow
Western pond turtle (<i>Clemmys marmorata</i>)	Aquatic habitats with low-gradient perennial flow
Coast horned lizard (<i>Phrynosoma coronatum</i>)	Open chamise chaparral and coastal sage scrub
Granite night lizard (<i>Xantusia henshawi</i>)	Exfoliating rock outcrops
Baja leopard lizard (<i>Gambelia copei</i>)	Open chamise chaparral
Lesser nighthawk (<i>Chordeiles acutipennis</i>)	Open, undisturbed shrublands and dry washes
Tricolored blackbird (<i>Agelaius tricolor</i>)	Large marshes for nesting and large grasslands/pastures for foraging
Golden eagle (<i>Aquila chrysaetos</i>)	Cliffs for nesting and grasslands and open chaparral for foraging
Sage sparrow (<i>Amphispiza belli</i>)	Sage scrub and young chaparral stands on gentle slopes
Mule deer (<i>Odocoileus hemionus</i>)	Hardwood-conifer, oak woodland, riparian forest, and sage scrub
Black-tailed jackrabbit (<i>Lepus californicus</i>)	Grasslands and open sage scrub
Badger (<i>Taxidea taxus</i>)	Open, level uplands
Red shank (<i>Adenostoma sparsifolia</i>)	Granitic soils in areas where summer moisture (rain, fog, soil moisture) is available
California juniper (<i>Juniperus californica</i>)	Desert-chaparral transition zone with granitic soils
Tecate cypress (<i>Cupressus forbesii</i>)	Gabbro and metavolcanic soils
White alder (<i>Alnus rhombifolia</i>)	Higher elevation streams with permanent flow
Spring beauty (<i>Linanthus bellus</i>)	Coarse sandy soils in transborder region

As requested following are the USIBWC comments for the subject EA:

General comments:

1. The draft EA indicates the proposed primary pedestrian fence will be constructed within the 60-foot wide Roosevelt Reservation along the U.S./Mexico international border. There is no mention of the IBWC monuments and how the fence will be built around them, nor the access gates for IBWC maintenance of those monuments.
2. There is no mention of changes to historic surface runoff characteristics and drainage patterns at the international borders.

Specific comments:

1. Page 1-12, Line 28: EA states “It will also ensure that design and placement of the proposed tactical infrastructure does not impact flood control process and does not violate treaty obligations between the U.S. and Mexico.” Recommend the sentence be changed to read “The USIBWC will also review design and placement of the proposed tactical infrastructure. U.S. Customs and Border Protection must ensure that the design and placement of the proposed tactical infrastructure does not significantly change the historic surface runoff characteristics at the international border. The USIBWC has indicated that an increase of up to 6 inches in water surface elevations at rural areas, and 3 inches in water surface elevations at urban areas is acceptable.”
2. Page 4-6, Section 4.7 “Surface Waters and Waters of the U.S.: Section does not address surface waters impacts at the international boundary.
3. Appendix D, Hydrology Report: Hydrology report focuses on groundwater impact and surface waters are not addressed. Hydrology and/or drainage report demonstrating the requirement under Comment 2 must be presented to UISBWC to allow USIBWC to adequately evaluate the impact due to the proposed work on overland drainage flows into either country.
4. The USIBWC must be ensured that the fence and any drainage structures constructed will be properly maintained such that the overland drainage flows will not be impeded.

If you have any questions, regarding these comments please contact Mr. Richard Peace at (915) 842-4158.

Ofelia Bolaños, Civil Engineer
Operations and Maintenance Division

USIBWC
4171 N. Mesa C-100
El Paso, Texas 79902-1441
Phone: 915-832-4144

To Whom it may concern,

I strongly oppose the construction of a border fence. I believe that the cost and construction will create an ecological disaster. I live on Marron Valley Rd in Dulzura, California and would be affected by trucks supplying materials during construction. I am familiar with the flow of illegal immigrants and I know the terrain and many BP agents, but a fence sounds like a viable solution to those in Washington DC, but a fence will not solve anything. The Berlin Wall that Reagan challenged Gorbechov(sic) to bring down was understood to represent oppression and isolation. These same negative symbols should not be representative of our great country. Please rise above fear and entertain other options. The Border Fence is not a good idea.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
USEPA	1	<p>Justification of FONSI – Concerned that potentially significant environmental impacts are not analyzed in the DEA and would like to see the following comments reflected in a revised EA or an EIS.</p> <p>Additionally, wants to see a firm commitment made to mitigation and ongoing maintenance and monitoring if a FONSI determination is made.</p>	<p>D. CBP feels that a FONSI determination for this project is warranted and appropriate.</p> <p>C. CBP will include mitigation and monitoring measures of natural resources in the Final EA.</p>
USEPA	2	<p>Alternatives Analysis – the DEA does not evaluate all reasonable alternatives; specifically, would like to have an additional alternative evaluated which integrates infrastructure, manpower and new technologies, as referenced in the Congressional Research Service Report, especially in environmentally sensitive areas.</p>	<p>D. This document is focused on tactical infrastructure and only tactical infrastructure satisfies the Purpose and Need. Manpower is not tactical infrastructure but is based on operational need and as such is not evaluated in this EA; however CBP recognizes that new technologies can play an important role in border enforcement strategies. Currently, these new technologies are still in the testing phase, once these technologies are viable, CBP will evaluate these technologies in additional NEPA documents as required by CEQ regulations. In addition, Section 2.5 of the Draft EA discussed several alternatives, including use of technology, that were considered but eliminated from further analyses.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
USEPA	3	<p>Soils, Hydrology, and WUS – Concerned with impacts to soils and watersheds from erosion</p> <ul style="list-style-type: none">Feels information provided was limited (CEQ regulations to not allow incorporation by reference, see note on Sierra Club v. Babbitt, 1999 and NRDC v. Duvall 1991). RECOMMENDATION – prepare a revised NEPA document with complete project descriptions, which include specific activities for each project segment, include incorporated resource information, and full impact analyses. Also include description of areas for soil storage or disposal and impacts from this activity to natural resources, ensure all significant soil earth movement is included, especially Krutzch's Hill. Would like the document to go out for public and agency review again.	<p>D.CBP believes that these court cases focus on a lack of adequate information, and do not prohibit incorporation by reference. Although, CBP did incorporate by reference, the EA included a summary statement from the referenced document. However, the Final EA has been revised to include identification of the location of the referenced documents to facilitate public review.</p> <p>D. CBP does not believe that a revised Draft EA is warranted.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
USEPA	4	<ul style="list-style-type: none">• The DEA indicates that a substantial amount of earth movement will occur, in steep slopes with highly erodible soils and feels that the impacts of this were not well analyzed. RECOMMENDATION - In areas of high grade they recommend the use of alternatives to fence and road construction as provided by the Secure Fence Act.• The DEA does not describe impacts to the watershed from expansion and operation of new drag roads. RECOMMENDATION – include impacts to washes from fence construction and identify maintenance and monitoring that will occur for these areas, include funding sources and responsible parties.	<p>D. CBP feels that a fence even in steep grades and highly erodible soils is the appropriate alternative. These issues will be addressed by appropriate design and construction methods. The roads are also needed to ensure that enforcement occurs as close to the border as possible. See also response to comment number 2.</p> <p>A. In the Final EA, drag roads will be omitted from the project description and will not be part of the Proposed Action. CBP will monitor and maintain the patrol roads and be responsible for implementing pre- and post-construction BMPs.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
USEPA	5	<p>Soils, Hydrology, and WUS – Concerned with impacts to soils and watersheds from erosion</p> <p>Feels information provided was limited (CEQ regulations to not allow incorporation by reference, see note on Sierra Club v. Babbitt, 1999 and NRDC v. Duvall 1991). RECOMMENDATION – prepare a revised NEPA document with complete project descriptions, which include specific activities for each project segment, include incorporated resource information, and full impact analyses. Also include description of areas for soil storage or disposal and impacts from this activity to natural resources, ensure all significant soil earth movement is included, especially Krutzch's Hill. Would like the document to go out for public and agency review again.</p>	<p>D. See response to comment 3.</p> <p>D. See response to comment 3.</p>
USEPA	6	<ul style="list-style-type: none">Although the DEA states that the use of standard construction measures will be employed to minimize severe erosion and sedimentation, these measures are not assured unless diligent maintenance and monitoring is required.	<p>A. See response to comment number 4.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
USEPA	7	<ul style="list-style-type: none">Impacts to WUS are only evaluated for road crossings and not for fence, feel that without identification and commitment to ongoing maintenance and monitoring there they feel that these impacts would not be less than significant. RECOMMENDATION – USACE is working on wetland delineations for some of the project areas, this information should be consulted when revising impact assessments and be included in the NEPA document.	E. Areas with impacts on WUS were covered by the Waiver issued by the Secretary of DHS, and no WUS are present in project areas included in this Final EA.
USEPA	8	<ul style="list-style-type: none">Table 2-4, p. 2-17 does not identify any adverse impacts to the watershed or surface waters. RECOMMENDATION – Modify the table to include all impacts to hydrology and watersheds.	A. Table 2-4 will be modified to include watershed impacts.
USEPA	9	Cumulative Impacts – Does not include sufficient cumulative impact assessment. Only included 1 other BLM and CBP project and did not look at other projects in the project area and did not consider past projects. Largely repeats project impacts but does not assess the ability of these resources to withstand additional stressors. RECOMMENDATION – substantial improvements to the section and the revised document be made available for public and agency review (see Guidance for Preparers of Cumulative Impacts Analysis, 2005)	A. The Final EA has been revised to expand on the cumulative impacts section.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
USEPA	10	Impacts to Biological Resources – Concerned as several federally listed species have the potential to be impacted. The DEA only provided superficial impact assessments to these resources and the cumulative impacts were not assessed at all. CBP states that there is ample opportunities for transboundary migration but does not demonstrate that this is indeed the case and does not include maps of the existing and proposed fence. RECOMMENDATION – CBP comply with all avoidance measures identified by USFWS and if conservation measures are not followed then they need to be identified so that the FONSI determination can be assessed based on CBP mitigation. Also, greater commitments to road abandonment and rehabilitation should occur. Also, urge a continuation of talks for a programmatic agreement with USFWS. CBP should ensure there are transboundary migration corridors and include maps illustrating. EPA recommends the use of wildlife friendly vehicle barriers in conjunction with virtual fencing options.	D. CBP respectfully disagrees with the assertion that impacts were not fully addressed. Appendix A (detailed project maps) of the Draft EA provided aerial photography of proposed project locations; as can be easily seen in these photographs, there will still be numerous gaps along the border where no man-made barriers would exist. However, the cumulative impact section, as noted above, has been expanded. As part of these revisions, maps of where these gaps will persist have been incorporated. A. CBP is currently working with USFWS to complete a programmatic mitigation agreement. Further CBP will work with USFWS to include road rehabilitation into this document as necessary.
USEPA	11	Table 1-2, p. 1-10 states that EPA would issue CWA NPDES permits but in actuality the State of California issues construction stormwater permits	A. The document has been revised as recommended.
USEPA	12	Page 2-4 refers to table 1-1 as a table that lists specific actions for the project, but this table lists major permits and approvals.	A. The document has been revised as recommended.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
Defenders of Wildlife (DW)	13	Because the DEA utterly fails to adequately consider the proposed project's indirect or cumulative effects, or the effects to wildlife and conservation lands, we request that DHS withdraw the DEA and instead prepare an Environmental Impact Statement ("EIS") that includes a lawful analysis of alternatives that do not simply foreordain border fencing, but instead examine all available approaches to ensuring border security in the most environmentally and economically benign way possible.	D. See response to comments 1, 3 and 10.
DW	14	The DEA's cumulative effects analysis provides only the vaguest of generalities regarding existing actions that already impact the human and natural environment within the southern San Diego County area. No attempt is made to provide detail on what these actions actually are, or the cumulative effect such activities have on specific natural resources such as imperiled plant and wildlife species.	E. See response to comment number 9.
DW	15	The border fence construction program not only has significant direct and cumulative effects, but pronounced and well-documented cumulative indirect effects on the California border region.	D. See response to comment numbers 1 and 9.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DW	16	Rather than presenting a purpose and need statement that reflects the larger goal of improving border security, and then evaluating different means to achieve that goal, DHS in this case has instead defined border wall construction itself as the goal. See DEA at ES-1 (The "purpose of the Proposed Action is to assist CBP/USBP agents and officers in gaining effective control of a section of the international border within the USBP San Diego Sector."). By so radically narrowing the scope of the project's purpose, DHS has impermissibly constricted the range of alternatives considered. See Carmel-by-the-Sea, 123 F.3d at 1155. Indeed, it would appear that DHS is meeting is already meeting is security requirements without building a wall. Border wide, the Border Patrol reported a 20% reduction in apprehensions in fiscal 2007. The greatest reductions in crossings were in areas such as Del Rio, Texas, where there was a 46% reduction in apprehensions. Del Rio has never had a border wall.	D. See response to comment number 2. CBP also respectfully disagrees that a reduction in apprehensions, albeit 46% in some areas, does not constitute effective control of the border.

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DW	17	Indeed, the DEA considers only two action alternatives, both of which are border wall proposals: the proposed action ("Alternative 2") and the "Secure Fence Act alignment" alternative ("Alternative 3"). Other methods to effectively achieve border security include: employing "virtual fence" technology-based approaches; other alternative technological solutions, such as ground-based radar that discourage illegal activities with minimal impact to sensitive wildlife populations and habitat; installation of vehicle barriers that stop vehicular traffic but permit animal passage; thorn-scrub and wetland restoration that create inhospitable conditions for undocumented migrants and drug smugglers; increases in Border Patrol agents and other enforcement personnel; and "mixed" wall alternatives that would concentrate necessary infrastructure in highly urban areas and avoid protected recreation and wildlife areas such as critical habitat, are given no consideration in the DEA. Because the purpose has been defined as requiring border wall construction, DHS has ensured that no alternative courses of action would be considered, regardless of whether such alternatives would also meet border security goals with much less significant environmental impacts.	D. See response to comment number 2.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DW	18	Despite the importance of this area to wildlife and plants such as the California gnatcatcher and Quino Checkerspot butterfly, the DEA's analysis of potential impacts to them by construction of the proposed tactical infrastructure is cursory and insufficient. The road and wall segments proposed in the DEA could very quickly doom ongoing efforts to conserve these species. Barriers of the sort and scale proposed in the DEA would likely contribute to further reducing the numbers of these species in the U.S.	D. CBP disagrees that this project is likely to contribute to the doom of the recovery efforts of these species. CBP has agreed with USFWS that the project may adversely affect the Quino and Gnatcatcher; therefore, CBP has entered into consultation with USFWS to develop mitigation measures to be implemented that would ensure a level of less than significance.
DW	19	The proposed project would fragment habitat within two of the six recovery units (Southwest and Southeast Recovery Units).	D. CBP respectfully disagrees with your assertion of fragmentation of Recovery Units as the proposed project is a linear project and parallels the border. The Recovery Units do not extend beyond the border and, as can be seen in the aerial photographs, much of area on the south side of the border where these proposed fence segments are located, have been cleared supposedly for international firebreak purposes. Further, the much of the segments where fences and other TI are proposed are also located in or adjacent to previously disturbed areas.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DW	20	The contention on page ES-4 that the proposed action and mitigation measures result in a less than significant impact on these imperiled species and their habitat is, quite simply, wrong. Construction of the proposed infrastructure will undeniably degrade and fragment more than 123 acres of habitat, including 7 miles of new road, 10 miles of primary pedestrian fence and 10 miles of road widening. Destruction or alteration of this habitat will introduce additional and possibly overwhelming pressure upon already stressed wildlife populations. A sampling of major impacts to wildlife from the construction of border walls includes, but is not limited to: increased road mortality along access and patrol roads, isolation of vegetation stands resulting in loss of habitat cover and connectivity, altered wildlife behavior and range due to high-intensity permanent lighting and construction and operational noise, and the interruption of genetic exchange necessary to sustain wildlife populations over time.	D. CBP respectfully disagrees with your assertions of significant impact on protected species. Additionally, the impacts mentioned in your comment are discussed in Section 3.8.2.2 with the exception of "permanent high-intensity lighting" as none are to be implemented per the Proposed Action. A discussion of impacts as a result of the temporary construction lights is included though. See also responses to comments 1, 9 and 10.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DW	21	Moreover, the DEA dismisses the value of any of the habitat areas burned in recent fires as habitat not worthy of evaluation, avoidance or mitigation. For example, the DEA dismisses the value of coastal sage habitat burned in recent fires for California gnatcatcher. DEA at 3-33. However, the USFWS in its recent critical habitat rule for the California gnatcatcher, stated that "California gnatcatchers will likely recolonize these burned areas over time." 72 Federal Register 72010, 72033 (December 19, 2007). Therefore, there is no rational basis for DHS to dismiss the value of these areas out of hand. All of these areas should be surveyed, fully analyzed, and mitigated.	E. The DEA does not dismiss the areas in question solely based on the fires but rather a combination of the destroyed habitat with the presence of commercial and residential areas immediately south of the proposed project. Additionally, as stated in the Draft EA, these areas were surveyed and analyzed.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DW	22	<p>Further, <i>any</i> declaration of the expected impact to wildlife, especially threatened and endangered species that are intrinsically rare and often secretive, is unsupportable with available information, given that the biological surveys were not conducted during the proper season or according to accepted protocol or, even worse, were not conducted at all. Indeed, the DEA acknowledges that the survey period in October 2007 <u>"were not conducted during the proper season or in accordance with USFWS protocol."</u> DEA at 3-32 (emphasis added). In addition, the DEA acknowledges that it did not conduct any surveys on the 45 acres that are expected to be temporarily impacted due to a lack of ROEs. DEA at 3-25. The fact that DHS would be able to draw any meaningful conclusions from surveys that "were not conducted during the proper season or in accordance with USFWS protocol" or were flatly not conducted <i>at all</i>, clearly illuminates the predetermined conclusion of the DEA, in stark violation of NEPA, to construct border walls at any and all cost to the integrity of sensitive biological resources</p>	<p>D. Although some sensitive species may not have been observed due to a season in which the surveys were conducted, the analysis of impacts is based on the assumption that sensitive species occupy all areas of suitable habitat. It is this conservative assumption that is also being used during the Section 7 consultation.</p> <p>The locations of the staging areas were depicted on the detailed project maps provided in Appendix A of the Draft EA. As can be seen, they are all adjacent to the project corridor and thus, the habitat within the staging area was similar to the respective segment of the project corridor. Due to the waiver of NEPA requirements for the majority of the original DEA area, the use of the staging area for this EA would result in an additional 2.1 acres of temporary impacts, and these effects are included in the overall impact analysis. Furthermore, CBP has committed to conducting additional surveys of these areas, once rights of entry are obtained and prior to construction. If any unforeseen potential impacts are identified during these surveys (i.e., new cultural resources site, different Federally listed species), measures would be implemented to avoid the resource or mitigate for the impact</p>

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DW	23	In this instance, DHS has had more than ten years of experience with the "squeezing balloon" effect of border security efforts, in which increased enforcement efforts within one area predictably lead to increased illegal immigration and subsequent increased enforcement efforts within adjoining areas. These indirect effects, which will certainly occur if the wall segments are constructed in southern San Diego County, are nonetheless not analyzed in the DEA.	D. CBP respectfully disagrees and feels that potential indirect impacts are adequately addressed in the Draft EA.
DW	24	The harmful effects of invasive, non-native species are widely recognized. It is also known that disturbance to previously intact soils promotes the colonization and spread of harmful non-native vegetation. It is especially concerning that the DEA proposes no method to control or monitor the predictable and foreseeable introduction of noxious plants following construction of the proposed walls. The DEA neither evaluated the likelihood of non-native colonization, nor proposed measures to control or mitigate for the environmental damage that such colonization and subsequent spread would produce.	D. See Sections 3.7.2.2 and 5.3 of the Draft EA.

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DW	25	<p>More specifically, an EA must analyze the <i>nature and severity</i> of the environmental impacts. DHS has not done this, but instead has listed activities that may affect or have the potential for adverse impacts, but does not analyze the type or extent of the adverse impact, for itself or for the reader. For example, the DEA does not identify the nature of the impacts to fish and wildlife or to threatened and endangered species. Without such, neither DHS nor the reader can compare alternatives. See 40 C.F.R. § 1502.16. Furthermore, without any sense of the location, type, or nature of the impacts, it cannot be possible to come to the conclusion that there are no impacts to endangered species under the No Action alternative. In the Fish and Wildlife section, on the other hand, the DEA states that there may be impacts under the No Action alternative, but does not determine the significance of the impacts. Having omitted discussion of the location, frequency, or timing of its activities, DHS is unable to even begin to quantify or predict impacts on breeding, feeding, resting, or shelter for wildlife species.</p>	<p>D. See response to comment numbers 10 and 20. Further, throughout Section 3.7.2.2 of the Draft EA it states the specific impacts and locations of these impacts to protected species that could potentially occur (i.e., loss of habitat). Aerial photographs of each project segment were provided in Appendix A.</p> <p>D. No direct impacts would occur under the No Action Alternative, since no construction activities occur. However, the Draft EA does acknowledge that indirect impacts could occur if IAs shift their operations to other areas. The magnitude and location of impact from these potential indirect impacts can not be determined as the direction, density, and volume of such occurrences is totally at the discretion of the IAs, if they attempt to illegally enter the U.S. at all.</p> <p>D. CBP respectfully disagrees, see Section 2.3, 3.1 and Appendix A (detailed project maps).</p>

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Kathryn Viatella The Nature Conservancy (TNC)	26	Surface Waters and Waters of the U.S. for the Proposed Action Alternative fails to address how the construction of additional pedestrian fence in canyons and waters of the U.S. will deal with additional stream channel sedimentation, stream bank erosion and possible release of pollutants into stream channels. The EA does not identify the type of fence that is being proposed at this time. Therefore, there is little information about how the proposed fence will be constructed to allow water to pass during rainfall events and especially during floods.	D. The Draft EA states that a Storm Water Pollution Prevention Plan (SWPPP) will be implemented prior to construction activities. There are no surface waters or WUS in the project area for this revised EA.
TNC	27	There is insufficient information to address how DHS and CBP propose to minimize long-term erosion and stream channel sedimentation with the exception of proposing rip-rap or rock, which will be detrimental to the federally-listed arroyo toad.	D. See response to comment number 26.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
TNC	28	Wildlife and Aquatic Resources for Proposed Action Alternative should read that possible short-term and long-term significant adverse impacts may occur to wildlife and aquatic species. The impact of "filling the gaps" cannot be measured by miles of fencing alone, but rather "filling the gaps," particularly in canyons and other likely wildlife corridors, will have a true "cumulative impact" and that warrants a full Environmental Impact Study. The additional border fencing and new roads to "fill the gaps" will further fragment habitat beyond current conditions. Loss and fragmentation of habitats is considered the single greatest threat to biodiversity at global and regional scales (Myers 1997, Noss and Csuti 1997, Brooks et al 2002). The border region is a good example of the effects of habitat fragmentation (CBI 2004). Road construction and conversion of land to urban uses have fragmented and isolated natural habitats. The remaining habitat fragments experience edge effects, altered physical conditions and fire regimes, increased invasion by exotic species, changes in vegetation, loss of top predators, and altered species population dynamics. Roads can have an even broader impact by altering hydrologic patterns, disrupting migration patterns, and causing direct mortality via road kill.	D. CBP respectfully disagrees with your assertion of significant impacts to wildlife or aquatic species. See also responses to comment numbers 9 and 10.

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TNC	29	The proposed fence will isolate populations and reduce genetic viability of the remaining species. While many of these species were not recorded during the field visits that were conducted in October 2007 that does not mean they are not present. Negative surveys for species could have been the result of drought conditions and lack of presence at that time of the year.	D. See response to comment number 9.
TNC	30	An alternative to additional pedestrian fence could be to maintain or install vehicle barriers and use other virtual fence technology, such as cameras and sensors to track illegal foot traffic. This combined with additional patrols may be a less expensive alternative to installing a pedestrian fence. In addition, these areas could serve as pilot projects to evaluate operational control of the border using virtual technologies while maintaining investments in biodiversity conservation. The Conservancy would be willing to work with DHS and CBP to establish a monitoring protocol to evaluate the impacts of new pedestrian fence with a pilot project to provide open areas to maintain wildlife corridors and connectivity.	D. See response to comment number 2.

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TNC	31	<p>In addition, the Conservancy proposes that DHS and the San Diego Sector consider a pilot project to protect the remaining open space along the border from urban encroachment. It is our belief that preserving open space and important natural areas along the border will also benefit CBP. We understand that in urbanized areas, CBP has no other option but to construct pedestrian fences to secure the border. However, by protecting open space, CBP benefits because it is afforded more options in order to secure the border. The EA identifies Bell Valley as a property that requires a pedestrian fence. We propose to enter into a pilot project with DHS and CBP to conserve this property and prevent future urban encroachment on the border.</p>	<p>E. A project as proposed by TNC is beyond the scope of analysis for this EA.</p>
TNC	32	<p>History has proven that as areas are secured, illegal foot traffic moves to attempt illegal entry to areas that remain open even if those areas are rugged and harder to traverse. The cumulative impacts on Peninsular bighorn sheep and their habitat from the proposed action need to be evaluated in a full Environmental Impact Study (EIS). The Conservancy believes the current proposed fencing could have significant impacts on the Peninsular bighorn sheep. There are two main possible impacts on Bighorn Sheep from fencing elsewhere:</p> <ul style="list-style-type: none">• More foot traffic in rugged sheep habitat by persons redirected from other areas of the border	<p>D. See response to comment numbers 1, 10, and 25.</p> <p>E. This particular comment no longer applies to this revise EA due to the reduced scope of the project.</p>

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	32, continued	<ul style="list-style-type: none"> • Increased enforcement-related vehicular access and activity in sheep habitat <p>Increased foot traffic: In addition to increased disturbance, we are also concerned about the use of springs by persons attempting to illegally cross the border, especially in the summer.</p> <p>Increased enforcement activity: The EA notes securing the 30-mile stretch of the border in the proposed action will act as a force multiplier and allow CBP to deploy agents to areas without pedestrian barriers. Increased Border Patrol activity in bighorn sheep habitat will have a significant negative impact on the sheep. Bighorn sheep have recently started using historical areas that have been vacant in recent years (e.g., within the island in 1-8, as well as just south of 1-8; Rubin, personal communication). We are optimistic that they will eventually use other areas between 1-8 and the international border once again. Increased human activity in that area would reduce this possibility.</p>	<p>A. Potential indirect impacts of illegal activities are out of CBP's control; however, CBP feels that any indirect impact would be mitigated by an increased availability of agents. USBP agents currently patrol and conduct apprehension activities along existing roads east of the project corridor. With an increased availability of patrol agents, the certainty of apprehension and resulting deterrence would increase; thus, indirect effects within potential Peninsular bighorn sheep habitat would be negligible. In fact, by having more presence in the areas near the border, beneficial indirect impacts are expected through a reduction of IAs within Bighorn Sheep habitat.</p>
TNC	33	<p>Conservancy believes that the additional fencing should not be built as currently proposed and believes instead that there ought to be opportunities in certain high priority wildlife corridors, especially in some of the canyons, to use virtual technology, such as vehicle barriers and rapidly deployable personnel to secure the</p>	<p>D. See response to comment number 2.</p>

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		border.	
TNC	34	The Conservancy requests that an Environmental Impact Study be conducted to consider more broadly the direct and indirect impacts that will occur from closing off the last remaining wildlife corridors in this region of the border and to consider more broadly a balance of alternatives that will maintain linkages across the border and allow for wildlife migration and dispersal to occur.	D. See response to comment numbers 1, 3, and 10.
Edmund J. Pert, California Department of Fish and Game (CDFG)	35	The Department would reiterate the requirement for a thorough discussion of direct, indirect, and cumulative impacts expected to adversely affect biological resources, with specific measures to offset such impacts as identified by cooperating agencies. Due to multiple phases of the regional border infrastructure that are slated or currently under construction, a more reasonable analysis of the cumulative impacts should be provided in the final EA. The current cumulative analyses reiterates direct impacts, however the totality of similar project-related impacts (e.g., reduction of multiple wildlife corridors, alteration of reproductive or behavioral patterns to wildlife, likelihood for increased wildlife mortality) associated with the long-term project goals of the San Diego/EI Centro USBP tactical infrastructure has not been discussed. The assertion that the loss of 78 acres of local/regional common plant communities would result in an insignificant cumulative impact has not been adequately supported when compared to the overall impact acreage that would occur with similar types border	D. CBP respectfully disagrees with your assertion of lack of thorough discussion of indirect and direct impacts as a result of the proposed project. Additionally, see response to comment number 9.

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		infrastructure actions. Further discussion should be provided as to the basis for concluding that the incremental effects (as are currently being referenced) is not cumulatively considerable	
CDFG	36	Under section 3.2.2.2 Proposed Action Alternative, approximately 27 acres of privately owned land would be impacted as a result of this action. In regards to lands that have been identified to extend outside of the Memorandum of Understanding between the Department of Homeland Security and the Department of Interior, please identify all relevant mitigation measures that would apply outside the jurisdiction of the lead agency or the cooperating agencies (Sections 1502.16(h), 1 505.2 (c)).	E. Section 5.0 of the Final EA has been revised to indicate that all mitigation measures to be applied on Federal lands would be extended to privately owned lands, as appropriate.
CDFG	37	The Department's Biogeographic Data Branch in Sacramento should be contacted at (916) 322-2493 to obtain current information on any previously reported sensitive species and habitats, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code. Also, any Significant Ecological Areas (SEAs) or Environmentally Sensitive Habitats (ESHs) or any areas that are considered sensitive by the local jurisdiction that are located in or adjacent to the project area should be addressed.	E. CBP has contacted the CDFG Biogeographic Data Branch but to no avail. However, in the Draft EA the California Natural Diversity Data base was used to determine locations of Federally and state protected species in juxtaposition to the project corridor (See Figures 3-2 and 3-3 of the Final EA). CBP will continue to try to obtain any possible information from the Data Branch and include in the Final EA as appropriate.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CDFG	38	<p>The surveys performed in October 2007 will not detect species that are found during other times of the year. Surveys should be undertaken at the appropriate times of year to actually detect species and not be done opportunistically. This survey period is inappropriate to detect spring plants or plants that die to the ground during summer, and are seasonally used by animals. Along with performing the necessary survey for those areas previously identified as not being surveyed due to the lack of authorized rights-of entry, updated sensitive plant survey (including host plants associated with Quino checkerspot butterfly) should be performed in accordance with standards identified by the cooperating agencies.</p> <p>Seasonal variations in use by fauna in the project area should be addressed. Recent, focused, species-specific surveys, conducted at the appropriate time of year and time day when the sensitive species are active or otherwise identifiable should be included in the impact analysis. Acceptable species-specific survey procedures should be developed in consultation with the Department and the U.S. Fish and Wildlife Service.</p>	D. See response comment number 22.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CDFG	39	Temporary impacts to 45 acres of wildlife habitat (associated with proposed staging areas) was identified as not being a significant pact, however the draft EA indicates that those areas have yet to be surveyed. A completed biological assessment is required prior to making a determination on the significance of the specific resources being impacted (including the presence/absence of threatened and endangered species).	D. See response comment number 22.
CDFG	40	Furthermore, the accompanying detailed project maps depict the placement of some staging areas within undisturbed habitat, with disturbed areas in close proximity (due to vehicle turnarounds or pullouts). The Department would reiterate that efforts should be directed at the placement of staging areas in the least environmentally intrusive area to further minimize the impact footprint.	E. The locations of staging areas were revised to incorporate disturbed areas to the maximum extent practicable during revisions to the Final EA.
CDFG	41	The proposed action should also be reanalyzed relative to the affects on the off-site habitats and associated wildlife. Specifically, this should include nearby public lands, open space, adjacent natural habitats, and riparian ecosystems. Impacts to and maintenance of wildlife corridor movement areas, including access to undisturbed habitat in adjacent areas are of concern to the Department, particularly within any proposed fence alignments extending across canyons.	E. Potential impacts to migratory corridors was adequately discussed in Section 3.8.2.2 of the Draft EA.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CDFG	42	The analysis should also include a discussion of the potential for impacts resulting from increased vehicle traffic associated with patrols (frequency/duration), artificial lighting, noise, and vibration. For example, the draft EA identifies a potential indirect beneficial effect of the fence in reducing illegal traffic, whereas the proposed action could result in increased traffic in the area from local users on the U.S. border side, resulting in an attractive nuisance and contributing to additional environmental impacts.	A. See Section 3.8.2.2 of the Draft EA. D. CBP can not predict the potential amount of local user traffic, if any. However, any roads acquired as part of this project would be restricted to law enforcement and emergency personnel only.
CDFG	43	Section 3.12.2.2, Proposed Action Alternative, states that all construction and transportation activities would occur during daylight hours. Whereas section 2.3.5 Lighting, identifies work would possibly occur on a 24-hour basis. The EA should clearly define the proposed work schedule to ensure that potentially significant impacts are correctly assessed.	A. Section 3.12.2.2 has been revised to indicate that construction could occur on a 24-hour basis, as needed to satisfy schedules mandated by Congress.
CDFG	44	No reference sound levels for blasting activities have been included in the noise impact assessment section of the draft EA. Furthermore, no reference sound level for the proposed portable lights was provided. The EA identifies that it anticipates that no more than 10 lights would be operated at one time in one location to facilitate project construction. If this is correct, at a minimum the DNL dBA should be provided and discussion provided as to whether these levels constitute a significant impact to sensitive biological resources.	A. Noise levels from the potential of blasting have been included in the Final EA. A. Section 3.8.2.2 has been revised to include an assessment of noise impacts resulting from the use of up to 10 portable lights at one location.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CDFG	45	<p>Impacts to migratory wildlife affected by this action should be fully evaluated, including proposals to remove/disturb native vegetation and other nesting habitat for native birds. All migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 C.F.R. Section 10.3). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of birds and their active nests, including raptors and other migratory nongame birds as listed under the MBTA.</p> <p>The proposed action (including disturbances to vegetation) should take place outside of the general avian breeding season [January 15 to August 15], as defined by the Department, to avoid impacts to nesting birds (including disturbance which would cause abandonment of active nests containing eggs and/or young). To avoid any direct and indirect impacts to raptors and/or any migratory birds, grubbing and clearing of vegetation that may support active nests and construction activities adjacent to nesting habitat, should occur outside of the breeding season. If removal of habitat and/or construction activities is necessary adjacent to nesting habitat during the breeding season, the USBP shall retain an approved biologist to conduct a pre-construction survey to determine the presence or absence of non-listed nesting migratory birds on or within 100-feet of the construction area, Federally or</p>	D. Impacts to migratory birds were adequately assessed in Section 3.8.2.2 and mitigation measures were discussed in Section 5.4 of the Draft EA.

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	45, continued	State-listed birds (e.g., southern willow flycatcher, least Bell's vireo, coastal California gnatcatcher) on or within 300-feet of the construction area and nesting raptors within 500-feet of the construction area. The pre-construction survey must be conducted within 10 calendar days prior to the start of construction, the results of which must be submitted to the wildlife agencies for review and approval prior to initiating any construction activities. If nesting birds are detected by the approved biologist, the following buffers should be established: 1) no work within 100 feet of a non-listed nesting migratory bird nest, 2) no work within 300 feet of a listed bird nest, and 3) no working within 500 feet of a raptor nest. However, the wildlife agencies may reduce these buffer widths depending on site specific conditions (e.g. the width and type of screening vegetation between the nest and proposed activity) or the existing ambient level of activity (e.g., existing level of human activity within the buffer distance). If construction must take place within the recommended buffer widths above, the project applicant should contact the wildlife agencies to determine the appropriate buffer.	

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CDFG	46	A biomonitor shall be present on-site during all initial grubbing and clearing of vegetation to ensure that perimeter construction fencing is being maintained and to minimize the likelihood that nests containing eggs or chicks are abandoned or fail due to construction activity. A bio-monitor shall also perform periodic inspections of the construction site during all major grading to ensure that impacts to sensitive plants and wildlife are minimized. These inspections should take place once or twice a week, as defined by the wildlife agencies, depending on the sensitivity of the resources. The bio-monitor shall send weekly monitoring reports to the Department and notify the Department immediately if clearing is done outside of the permitted project footprint.	E. Biological monitors will be used, as appropriate. Negotiations with the USFWS are on-going and one of these items being discussed is the use of such monitors.

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CDFG	47	In regards to the vegetation rehabilitation proposal, plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant revegetation techniques. Each plan should include, at a minimum: (a) the location of the mitigation site relative to the components of the tactical infrastructure; (b) the plant species to be used, container sizes and seeding rates; (c) a schematic depicting the mitigation area; (d) planting schedule; (e) a description of irrigation methodology; (f) measures to control exotic vegetation onsite; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria.	A. The discussion of a restoration and revegetation plan found in Section 5.0 has been revised to incorporate, as appropriate, the suggested elements. It is beyond the scope of this EA to develop a site-specific mitigation plan. Such plans would be developed in concert with the USFWS, BLM, CDFG and other affected land and resource agencies.

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Wanda Raschkow (WRR)	48	<p>CULTURAL RESOURCES SECTION:</p> <p>As the lead for NEPA compliance of this project, the U.S. Customs and Border Protection – Border Patrol (BP) and U.S. Army Corps of Engineers (Corps) are responsible for completing Section 106 and formal consultation with SHPO and the local tribes. At this time it appears that only preliminary notice of the proposed action was given to SHPO and the tribes. The Corps must conduct government to government formal consultation with the tribes. In addition, BLM must be consulted on any determination of sites located on public lands.</p> <p>BLM must be provided the full cultural survey report for the project. This report is a critical component of the documentation BLM must review in order to authorize the project. At this time, the cultural survey report for the project has not been submitted to BLM. In addition, we require documentation of all SHPO and tribal consultation conducted by the Corp.</p>	A. Since the release of the Draft EA, BLM and SHPO have received copies of the Cultural Resources Report. All correspondence with SHPO and tribes was included with the Draft EA and any additional correspondence will be included in the Final EA.
WRR	49	FONSI Page 1, line 43: It is unclear whether or not the staging areas have been surveyed for cultural resources.	E. No cultural resources surveys have been completed at the proposed staging areas.

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WRR	50	FONSI P2, lines 6-7: Surface disturbance (grading or usage) of the existing roads is a direct impact of the project and as such the effects to cultural resources needs to be assessed. The argument that they are already in use and may have been maintained by other agencies does not negate the fact that they are being impacted by this undertaking.	D. The access roads to be used would not be improved and would only be brought back to pre-project condition. CBP does not feel that surveys should be conducted along these roads as they are previously disturbed and the likelihood of intact resources is highly limited.
WRR	51	FONSI P5, lines 5-8: the draft was supposed to have been revised to indicate that the prehistoric site would also be fenced and effects to it would be avoided. It appears instead that all mention of the prehistoric site has been removed from the FONSI. The BLM has not yet determined whether the site is eligible for the NRHP (due to a lack of information). Effects to the site should be avoided.	E. The USACE determined that the site was not eligible and would not be impacted, and due to the waiver, the site is no longer within the project area for this EA.
WRR	52	Page 2-6: the DEA states that the Ag Loop access roads will be extended south to the border. Map 5 does not show these extensions. In addition, there are no access roads indicated to connect to the proposed fence/road construction areas. The red polygons on Map 5 connect to roads- but according to the map key these are not access or project roads.	E. due to the waiver, the Ag Loop was addressed in an ESP, and is no longer part of the project covered by this EA.
WRR	53	Table 2-4: Were Native American concerns analyzed? The topic is not listed in the table.	D. The table is a summary table. However, as seen in Section 3.10.2.2 of the Draft EA all Federally recognized tribes affiliated with the project corridor have been consulted regarding the proposed project. To date, no concerns have been voiced by any of the tribes.

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WRR	54	Page 3-25, line 21: "vegetation surveys were not conducted in staging areas due to lack of ROEs". Were cultural resources surveys conducted in the staging areas?	A. See response to comment number 49.
WRR	55	Section 3.10: This is a very superficial treatment of the affected environment.	D. CBP respectfully disagrees. The EA contains an appropriate amount of detail for this resource. More detailed information is presented in the cultural resources survey report, which was prepared for this project and submitted to BLM and SHPO.

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WRR	56	3.10.1.1: Based on the review of literature, what are the important research questions for the area? Based upon these research questions and the historic context of the area, what types of site would have the potential to be eligible for the NRHP?	Important questions to be answered by future research in the area: <ul style="list-style-type: none">• What resources were exploited by past people in the area?• What function or activities were performed at sites found in the area?• Where sites integrated into a regional sphere or interaction or exploitation?• How do sites compare to other found in the area or fit into existing models of cultural behavior for the area? For cultural resources to be eligible for the NRHP they must first possess integrity of location, design, setting, materials workmanship and association as defined by 36 CFR 60.4. Cultural resources must further meet at least one of 36 CFR 60.4 criteria a through d; having a) association with events that have made a significant contribution to the broad patterns of our history; or b) association with the lives of persons significant in or past; or that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or that have yielded, or may be likely to yield, information important in history or prehistory. The lack of potential for subsurface deposits and the lack of any associated artifacts make this site unlikely to yield information important in history or prehistory. These types of discussions are more appropriate for the cultural resources report, which has been prepared and submitted to BLM and SHPO.

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WRR	57	Page 3-41, line 28: were the two previously recorded sites located? Are they within the APE or not?	E. The two previously located sites do not fall within the APE for this revised EA.
WRR	58	Page 3-42, line 7: Are these two <i>new</i> prehistoric sites, or are they the two that were previously recorded?	E. The two sites are new. They do not fall within the APE for this revised EA.
WRR	59	Page 3-42, lines 11-12: How was the absence of subsurface materials confirmed? Subsurface potential generally cannot be determined from surface examination only	E. See response to comment 58.
WRR	60	Page 3-42, line 13: Re/the statement that the site is "not considered eligible". The cultural resources contractor may make <i>recommendations</i> as to eligibility, but the BLM makes the determination of eligibility for resources on BLM managed lands.	E. See response to comment 58.
WRR	61	3-42, line 19: change "considered" to "recommended".	E. See response to comment 58.
WRR	62	Section 3.10.2: Use of federal terminology and regulations would be more appropriate.	E. See response to comment 58.
WRR	63	Section 3.10.2.2- Use federal terminology-change "significant cultural resources" to "historic properties".	E. See response to comment 58.
WRR	64	Page 3-43, line 21: Change "avoid adverse impacts" to "avoid effects". There should be no impact/effect to the Border Monuments if they are adequately fenced/flagged and construction is monitored.	E. The Border Monuments are not located within the APE for this EA.

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WRR	65	Page 3-43, lines 29-31: Rewrite to more accurately reflect federal terminology and process. Clarify what is meant by "Section 106 process"?	A. The document was revised to stipulate, "Section 106 consultation process."
WRR	66	Page 4-8, lines 18-21: Would be better phrased as "no effect to historic properties provided avoidance measures are implemented as described." "Historic" properties, not "historical".	E. No historic properties are present within the APE for the revised EA.
WRR	67	Pages 3-43 and 4-8: BLM has not made a determination that the project will have no effect to historic properties. This determination cannot be made until a cultural survey report has been submitted and reviewed, and the questions about the eligibility of the prehistoric milling site have been resolved.	A. See response to comment numbers 48 and 60
WRR	68	Section 4.18: This is a federal undertaking, should CEQA be referenced.	E. Yes, since CBP will need to obtain a Section 401 Water Quality Certification.
WRR	69	Section 5.6: Provide clarification of what "Section 106 will be completed" means. Address avoidance of effects to the prehistoric milling site.	E. The document was revised to stipulate that, "the Section 106 consultation process will be completed." The milling site no longer falls within the APE for the project.
Joyce Schlachter (JAS)	70	FONSI, Page 3, Line 4: Best Management Practices...add "developed in coordination or consultation with the U.S. Fish and Wildlife Service"	D. The U.S. Fish and Wildlife Service (USFWS) would not be responsible for determining Best Management Practices (BMP) regarding hazardous materials.
JAS	71	FONSI, Page 3, Line 39: Should read...reduce erosion while allowing the area to naturally <u>re</u> vegetate.	A. The document was revised as suggested.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
JAS	72	FONSI, Page 4, Line 6: same comment as comment #2...use revegetate, instead of vegetate.	A. The document was revised as suggested.
JAS	73	FONSI, Page 5, Line 21: regarding "aggregate materials"...any gravel, cobble, or rock that is acquired from outside the project area, to be used within the project area, must also be weed and seed free . There is a major infestation of Italian thistle at this time on Otay Mountain, due to the importation of contaminated gravel by the BP for use on road surfaces.	E. Materials would be used from existing sources. USBP would implement other measures as an avenue to mitigate for invasive species.
JAS	74	SECTION 1.0 INTRODUCTION, Page 1-3, Lines 7-12: This paragraph talks about why the proposed action is needed. Considering the recent wildfires, specifically the Harris Fire which was started by an undocumented immigrant campfire, the proposed action may also help to reduce the number of wildfires in the Border Mountain area.	E. Beneficial effects of the reduction in IA traffic are discussed in several sections of the EA, but reduction of wildfires is speculative, and does not warrant individual discussion.
JAS	75	SECTION 2.3.1 ROAD IMPROVEMENTS, Page 2-3, Line 20: "Aggregate"...all aggregate must be free of weeds and seeds to prevent the infestation of non-native invasive species and weed species-as stated in comment # 4.	E. See response to comment number 73.
JAS	76	SECTION 2.3.1 ROAD IMPROVEMENTS, Page 2-4, Line 2: Please describe (where appropriate in the document) what the "soil stabilizing agent" is composed of and how it may/may not affect water quality if there is runoff, or affect wildlife if the substance is applied in a manner such that puddles or pools occur.	E. An example of the soil binding agent is found in Section 3.11.2.2 of the Draft EA. However, the Final EA has been revised to include a discussion of the potential soil binding agent in Section 3.8.2.2 and copies of Material Data Safety Sheets indicating it is an environmentally safe product.

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JAS	77	SECTION 3.4 HYDROLOGY AND GROUND WATER, Page 3-9, Line 11: "...were previously planned for and analyzed..."	A. The document was revised as suggested.
JAS	78	SECTION 3.7 VEGETATIVE HABITAT, Page 3-23, Line 1: just a note...agencies are transitioning to the use of Sawyer/Keeler-Wolf, instead of Holland, for the descriptions of plant communities in CA.	A. Thank you for your comment.
JAS	79	Page 3-34, Line 12: "...those designated by each (change to ->)BLM State Director as Sensitive".	D. Can not find comment.
JAS	80	SECTION 3.9.2.2 PROPOSED ACTION ALTERNATIVE, Page 3-38, Line 17: Were the eight specimens of Tecate Cypress determined to be mature? (i.e. are they bearing cones with seeds?) If so, has there been any discussion regarding the collection of seed from those trees that would be impacted (destroyed?). Line 19: Depending on the age of the Tecate Cypress, there could be a long term significant impact. The larvae of the Thorne's hairstreak butterfly depends on the "mature" cypress for its existence. The definition of "mature" is being researched, but it is thought that the larvae may be able to utilize the trees as soon as 8-10 years of age. Due to increased fire intervals, there are few remaining "mature" cypress. Have these trees been surveyed for Thorne's?	E. The Tecate cypress observed near the Willows Access Road were not mature plants. The Willows area in no longer within the APE for this EA.

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JAS	81	SECTION 5.3 VEGETATION, Page 5-3, Line 16: "Native seeds or plants, (please add->) chosen in coordination with and approved by the BLM, which are compatible with...."	A. The document was revised as suggested.

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JAS	82	<p>APPENDIX E, BLM SENSITIVE SPECIES TABLE</p> <p>Below are some minor changes to plant names in the table, based on the recent 4th Edition of the <u>CHECKLIST OF THE VASCULAR PLANTS OF SAN DIEGO COUNTY</u> by Simpson and Rebman. The changes are BOLDED:</p> <p><i>Ceanothus cyaneus</i> = Lakeside-lilac</p> <p><i>Chamaesyce platysperma</i> = Flat-seeded spurge</p> <p><i>Hazardia orcuttii</i> = Orcutt's goldenbush</p> <p><i>Lupinus excubitus</i> = Mountain Springs bush lupine</p> <p><i>Bloomeria clevelandii</i> = San Diego goldenstar</p> <p><i>Cylindropuntia munzii</i> = Munz cholla</p> <p><i>Ribes canthariforme</i> = Moreno current</p> <p>The use of coast instead of California horned lizard was confirmed by Robert Fisher, USGS:</p> <p><i>Phrynosoma coronatum frontale</i> = Coast horned lizard</p>	A. The list was revised as suggested.

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JAS	83	General comment: Was translocation of cactus species, that may be impacted due to the project, discussed? Please consider this as mitigation.	E. The translocation of cactus was not considered during project development.
Janaye Byergo (JB)	84	INTRODUCTION 1.6, Page 1-13, Line 6: Should read BLM's Resource Management Plan.	A. The document was revised as suggested.
JB	85	<p>PROPOSED ACTION 2: Under the Proposed Action and Secured Fence Act Alternative, the upgrading of the existing access roads should be described in detail. Are they going to be widened? If so how much. Are culverts going to be replaced? If so how many? Are additional culverts going to be constructed?</p> <p>It is not clear in the document as to how much of the new road construction would occur within and outside of the 60' Roosevelt Corridor. This needs to be quantified.</p>	<p>Existing roads will only be improved as needed to provide utility, and will be restored to pre-project condition.</p> <p>A. The Final EA has been revised to identify roads that would be constructed outside of the Roosevelt Reservation on BLM lands.</p>

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JB	86	<p>LAND USE 3.2.2.2, Page 3-5, Line 9: It states "Privately owned land and land owned by BLM is currently open, undeveloped areas. These sites would be permanently converted to areas set aside for law enforcement purposes".</p> <p>What is meant by this statement? Does it mean the public can not have access to the area? Does the area set aside for law enforcement purposes include the entire project area or just the 60' Roosevelt Corridor?</p>	<p>E. The document was revised to read, "The land use in these areas would change from open and undeveloped to USBP infrastructure."</p> <p>E. It does not mean the public can not access these areas. The area that would be used for law enforcement purposes encompasses any areas where road or fences are planned.</p>
JB	87	SURFACE WATERS 3.5.1, Page 3-12, Line 18: Figure 3-1 should be labeled 3-2.	D. CBP respectfully disagrees.
JB	88	VEGETATIVE HABITAT 3.7.1, Page 3-22, Lines 16-18: The 2007 wildfire (Harris Fire) did not affect the entire project area. The fire incorporated the western half of the project area.	A. The document was revised to read, ".....much of the vegetation in the areas in and surrounding the western most proposed project sites has been destroyed by these fires."
JB	89	AESTHETIC AND VISUAL RESOURCES 3.13.2.2 – 3.13.2.3, Page 3-54: The document needs to address the visual impacts of the proposed staging areas. These are not mentioned in this section.	<p>A. The document was revised to read, "The presence of construction equipment, use of staging areas, and use of portable lighting would have a short-term, minimal impact on appearance during construction. Additionally, as a mitigation measure, all staging areas would be rehabilitated upon completion of construction activities; thus, further minimizing impacts."</p> <p>D. There is no need to discuss staging areas for the Secure Fence Alternative as all construction would be completed within the 130-foot enforcement zone.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
Wick Alexander (public)	90	To Whom it May Concern: I strongly oppose the construction of a border fence.I believe that the cost and construction will create an ecological disaster. I live on Marron Valley Rd in Dulzura, California and would be affected by trucks supplying materials during construction. I am familiar with the flow of illegal immigrants and I know the terrain and many BP agents, but a fence sounds like a viable solution to those in Washington DC,but a fence will not solve anything. The Berlin Wall that Reagan challenged Gorbechov(sic) to bring down was understood to represent oppression and isolation. These same negative symbols should not be representative of our great country. Please rise above fear and entertain other options. The Border Fence is not a good idea.	D. CBP respectfully disagrees. In addition, Marron Valley Road would not be used for construction activities under this proposed action.
Lillian Busse (San Diego Regional Water Quality Control Board)	91	Page 5, line 23/24: Impacts to waters of the U.S. and waters of the State need to be mitigated. The Regional Board usually asks for a 3:1 mitigation * 1:1 creation and 2:1 enhancement/restoration independent of the size of the impact.	E. No WUS are located within the project area for the revised EA.
San Diego Regional Water Quality Control Board	92	Page 3-12, line 8-18: The Regional Board will take jurisdiction over ephemeral streams in the project area. These ephemeral streams are waters of the State, and the applicant needs to enroll in the general WDR for isolated waters from the State Water Resources Control Board.	E. See response to comment 91.

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San Diego Regional Water Quality Control Board	93	Page 3-15, line 8-23: The impact of 0.142 acres needs to be mitigated (3:1, see comment above).	A. See response to comment 91.
San Diego Regional Water Quality Control Board	94	Page 3-17, line 6-12: This project will increase the impervious surface in the watershed by building 7 miles of roads. Please make sure that the additional stormwater does not contain pollutants that affect the beneficial uses of the streams. Post-construction BMPs might be necessary.	A. As indicated in the Draft EA, CBP intends to implement standard Best Management Practices as well as develop a Storm Water Pollution Prevention Plan and apply for all applicable permits.
Heather Wylie (HW)	95	This single and complete linear project cannot be analyzed in pieces. The cumulative environmental impacts must be analyzed as a whole. Currently the project is illegally piecemealed into several NEPA documents. In addition, cumulative effects to wildlife must be properly assessed, and mitigated.	D. CBP respectfully disagrees and does not feel that this EA is piecemealing projects. These segments are very distinct gaps where no barrier currently exists and there will continue to be gaps even after this project is completed. See also response to comment number 9 regarding expanding the cumulative impacts in the Final EA. Furthermore, this EA was tiered from the 2001 Supplemental Programmatic EIS, which identified road and fence projects as potential future actions within California.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
HW	96	Gloria, Horseshoe, Copper and Buttewig Canyons, among others, may all be within the Corps Clean Water Act (CWA) jurisdiction. However, there is no reference to this within the NEPA documents. The Corps' jurisdictional areas needed to be made clear within the NEPA document. Due to the 404 jurisdiction, the Corps has a regulatory role to play and has been included as a "cooperating agency", yet there is no 404b1 alternatives analysis within the document.	E. See response to comment 91.
HW	97	The Corps regulatory program should do everything it can to retain its autonomy and integrity in implement the Clean Water Act. USACE-regulatory should be responsible for creating their own EIS/404b1 alternatives analysis consistent with their regulations and the CWA. Regulatory should not be conscribed into a being a cooperating agency due to internal political pressures. The Corps clearly has a conflict of interest overall due to the fact that the Corps at large is managing the project for DHS.	D. CBP is the responsible party for obtaining permits; although it is true that USACE is assisting in the planning and implementation, USACE's regulatory requirements are managed in full compliance with the Federal Water Pollution Control Act. See response to comment number 91.

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HW	98	<p>In accordance with the Clean Water Act and Federal Guidelines in 40CFR230, we are providing the following comments:</p> <p>The Guidelines state dredged or fill material should not be discharged into the aquatic ecosystem, unless it can be demonstrated that there is no less environmentally damaging practicable alternative that achieves an applicant's project purpose. In addition, no discharge can be permitted if it will cause or contribute to significant degradation of the waters of the US. The applicant is proposing to fill Major Canyons which may contain special aquatic sites. Given the extent of the impacts associated with the proposed activities and the likely impacts to special aquatic sites, the applicant bears the burden of proof for clearly demonstrating that the preferred alternative is the Least Environmentally Damaging Practicable Alternative (LEDPA) that achieves the overall project purpose while not causing or contributing to significant degradation of the aquatic ecosystem.</p>	E. See response to comment 91.

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HW	99	Project Purpose and project alternatives: The first step in completing an alternatives analysis is the project purpose statement. Allowing DHS to determine whether practicable alternatives exist for this project is emphatically not an acceptable approach for conducting the alternatives analysis review under the 404(b)(1) guidelines. The Corps is responsible for controlling every aspect of the 404(b)(1) analysis. While the Corps should consider the views of DHS regarding the project's purpose and the existence (or lack of) practicable alternatives, the Corps must determine and evaluate these matters itself, with no control or direction from DHS, and without undue deference to DHS's wishes (Paragraph 7 of Plantations Landing Guidance April 21, 1989).	E. See response to comment 91.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
HW	100	<p>The Corps should consider the applicant's views and information regarding the project purpose and existence of practicable alternatives; this must be undertaken without undue deference to the applicant's wishes...the project purpose can not be so narrowly defined as to preclude the existence of practicable alternatives on the other hand, the Corps has some discretion in defining the "basic project purpose" for each Section 404 permit application in a manner which seems reasonable and equitable for that particular case....but can not give to much deference to the applicant's narrowly defined project purpose. ...the Corps determines the minimum feasibility size, circumstances, etc., which characterized a viable project. "(Hartz Mountains Development Corporation Permit Elevation Case Guidance dated August 17, 1989.)</p> <p>Furthermore the project purpose (homeland security) is not a water dependant activity. The definition of water dependent as stated in the Guidelines is limited to "activities requiring access or proximity to or sitting within a special aquatic site to fulfill the basic project purposes." There are many ways to meet the overall and basic project purpose that do not involve the discharge of fill material to special aquatic sites or to any waters of the U.S.</p>	E. See response to comment 91.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
HW	101	A reasonable range of alternatives that meet the stated project purpose while avoiding and minimizing damage to waters of the U.S. should be evaluated in the alternatives analysis. Careful consideration of non-structural alternatives to filling in waters of the US is essential in completing an alternatives analysis and is sound planning for any floodplain area. Additionally, recognizing the function and economic value to society of active floodplains, Executive Order 11988 states that agencies proposing to allow an action to be located in a floodplain will consider alternatives that avoid adverse effects of incompatible development in the floodplain.	E. See response to comment 91.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
HW	102	Clearly the level of environmental impacts to our aquatic environment and wildlife from filling in 100 to 900 foot-wide canyons is significant. Thus in these canyons, creeks, wildlife corridor areas, the alterative of having no boarder fence but instead increased man units, cameras or other technology must be seriously considered. As to date in the current NEPA document, the agency has failed to take a hard look at these non-structural alternatives. For example, in the current NEPA document DHS fails to seriously consider and analysis alternatives and instead disregards and inadequately excuses significantly high level impacts proposed to Gloria Canyon because filling it in and building a road across it would "Cut the drive time by ten minutes," We find this to simply be unacceptable and a vagrant disregard for environmental laws designed to protect our natural resources; it clearly is not the LEDPA. We recommend taking a hard look at alternatives to the proposed physical barrier (such as increase patrol units; cameras and other forms of technology) in waters of the US.	E. See response to comment 91.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
HW	103	The CWA guidelines prohibit granting of a CWA Section 404 permit if project activities will cause or contribute to the significant degradation of the Nation's waters including degradation to: 1) human health and welfare; 2) aquatic life and other wildlife; 3) aquatic ecosystem diversity, productivity, and stability; and 4) recreation, aesthetic, and economic values. This standard applies to the LEDPA, meaning that if the LEDPA caused or contributes to the significant degradation, the Corps is prohibited from granting a permit under CWA Section 404. We believe the proposed impacts to waters of the US and wildlife linkages represent a significant degradation.	E. See response to comment 91.
HW	104	The Corps regulations require all applicants (including DHS) to demonstrate that they have avoided impacts to waters of the U.S., what can't be avoided must next be minimized and thirdly what impacts are remaining after the process must be mitigated for by replacing lost functions and values provided by the aquatic resource through compensatory mitigation. This mitigation sequence does not allow applicants to skip to the third step in the process regardless of the quality of the compensatory mitigation being offered without first demonstrating avoidance and minimization (33CFR320.4(r); 1990 DA-EPA Mitigation MOA).	E. See response to comment 91.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
HW	105	The environmental impacts associated with the proposed project are not described. There is no information presented within the document to give the public the ability to assess what impacts would result from DHS' preferred project design which includes filling highly functioning Canyons and install culverts. The document also fails to identify biological impacts associate with the project; the extent of special aquatic sites and habitat types that would be impacted; Corps' CWA jurisdiction; and there is no hydrologic analysis to determine the size of the culverts. Wildlife corridors and species that are known to utilize the specific corridors proposed for impact are not identified. Instead the agency attempts to broadly identify species that can occur in all of Southern California leaving no possibility for meaningful public comment or analysis as to which species would be impacted by the project and how these impacts could possibly be mitigated for via innovative BMPs.	E. See response to comment 91.

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HW	105, continued	The biological section is inadequate. The document must properly identify, for each canyon, the species and habitat that would be impacted by the proposed project. These canyons are wildlife corridors and need to retain this function to allow the movement of wildlife. The failure of DHS and the cooperating agencies to properly identify the environmental impact is illegal; the impacts must be properly assessed by appropriate biological surveys conducted by qualified biologists, documented/disclosed and then re-circulated for public comment. In addition color photos of the sensitive areas proposed to be impacted by the project should be included within the NEPA document.	
Ofelia Bolaños, U.S. International Boundary and Water Commission (USIBWC)	106	The draft EA indicates the proposed primary pedestrian fence will be constructed within the 60-foot wide Roosevelt Reservation along the U.S./Mexico international border. There is no mention of the IBWC monuments and how the fence will be built around them, nor the access gates for IBWC maintenance of those monuments.	E. See response to comment 64.
USIBWC	107	There is no mention of changes to historic surface runoff characteristics and drainage patterns at the international borders.	D. CBP respectfully disagrees. See Section 3.3.5.2 of the Draft EA.

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USIBWC	108	Page 1-12, Line 28: EA states "It will also ensure that design and placement of the proposed tactical infrastructure does not impact flood control process and does not violate treaty obligations between the U.S. and Mexico." Recommend the sentence be changed to read "The USIBWC will also review design and placement of the proposed tactical infrastructure. U.S. Customs and Border Protection must ensure that the design and placement of the proposed tactical infrastructure does not significantly change the historic surface runoff characteristics at the international border. The USIBWC has indicated that an increase of up to 6 inches in water surface elevations at rural areas, and 3 inches in water surface elevations at urban areas is acceptable."	The Final EA has been revised accordingly.
USIBWC	109	Page 4-6, Section 4.7 "Surface Waters and Waters of the U.S.: Section does not address surface waters impacts at the international boundary.	E. See response to comment 91.
USIBWC	110	Appendix D, Hydrology Report: Hydrology report focuses on groundwater impact and surface waters are not addressed. Hydrology and/or drainage report demonstrating the requirement under Comment 2 must be presented to UISBWC to allow USIBWC to adequately evaluate the impact due to the proposed work on overland drainage flows into either country.	A. Once fence designs are complete the USIBWC would be allowed to view the designs to ensure that no significant impediments to surface water flow at the international border would occur.

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USIBWC	111	The USIBWC must be ensured that the fence and any drainage structures constructed will be properly maintained such that the overland drainage flows will not be impeded.	A. USBP will be responsible for maintaining all roads and fences as well as associated drainage structures to ensure transboundary flows are not compromised.
Gary Klockenga (San Diego Public Library)	112	The San Diego Public Library needs a copy of this EA for its collections. We already have the EIS. Please send one copy to: Science, Industry, and Govt. Publications Section San Diego Public Library 820 E Street San Diego CA 92101	A. The document was submitted as requested.
Margaret Carlson (public)	113	Dear Sirs, What an outrage! Exploiting and plundering our backcountry is a crime. Why the secrecy? Who gave you the right to steal and ruin our American lands. Shame on you and shame on the SDUT if they knew about and did nothing to investigate. Shame on the politicians who turn a blind eye to these shenanigans. This January 16th meeting was not publicized or there would have been all kinds of protesters. A full investigation should be made to see who is profiting from this "rip-off". As a taxpayer and long time resident of San Diego County I resent intrusion and confiscation of our land.	D. Thank you for your comment; however, CBP respectfully disagrees. A Notice of Availability was published on January 7, 2008 and January 13, 2008 in the San Diego Tribune.

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Patricia Port, U.S. Department of Interior, Office of the Secretary (DOI)	114	Due to incomplete project description, the EA is lacking necessary information to assess effects of the proposal on species mentioned above. The infrastructural appears to be undetermined for many segments. Since fence design is critical to determining effects on wildlife and plants, and focused surveys for the above species were either not conducted or were conducted at an inappropriate time of the year, the document's conclusions regarding environmental effects of the proposal are not substantiated.	D. The EA addresses potential impacts on a worse case scenario, regardless of fence design. The conceptual design footprint was developed by the design engineers and they believe this will be the maximum footprint needed to accomplish the proposed project. CBP respectfully disagrees with your assertion that the impacts presented as a result of the proposed project are not substantiated.
DOI	115	Without complete information on final fence design, lay-down areas, and access roads, or relevant biological information, the EA does not adequately assess adverse effects of the proposal or mitigation measures needed to reduce impacts to a level of insignificance. Furthermore, the document references avoidance measures that do not appear feasible due to timing constraints of this project.	D. See response to comment number 114. D. CBP is committed to mitigation measures described in the Draft EA and any further measures outlined through consultation with the USFWS.

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DOI	116	The EA states numerous times that environmental effects of the proposed project are below a level of significance. However, direct, indirect, and cumulative impacts to listed/sensitive species were not fully analyzed within the EA (see additional comments below) and a clear, comprehensive mitigation proposal was not provided. Without additional information and analyses the determination that project impacts are less than significant cannot be substantiated. The FWS encourages DHS to continue more comprehensive discussions with our Ecological Services and Refuges divisions to minimize and compensate for effects of the construction and operation of the proposed fence to federally-listed species	D. The Draft EA adequately addresses the potential direct and indirect impacts associated with the proposed project. Also, see response to comment numbers 9 and 115.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	117	<p>Throughout the document, the discussion and assessment of indirect impacts due to proposed construction of the fence should be expanded and clarified. Indirect impacts that should be assessed include, but may not be limited to: redirection of illegal traffic to unsecured areas of the border that may impact wildlife habitat, construction of access roads and use of staging areas that are not included in the proposed 60-foot wide right of way (ROW), and downstream effects on habitats within the Tijuana River watershed.</p> <p>Indirect impacts should be accounted for in any compensation for impacts to threatened and endangered species and mitigation for any unavoidable impacts to jurisdictional wetlands or waters of the United States.</p>	<p>D. See response to comment numbers 9, 115 and 116.</p> <p>D. Compensation for unknown impacts is impossible to accomplish. However, as mentioned previously, CBP is working with USFWS to develop proper mitigation measures regarding protected species and impacts as a result of the proposed project.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	118	(1)The project description does not provide sufficient information regarding impacts to listed species and sensitive habitats. (2) No maps or spatial representation of plant communities and listed/sensitive species distribution within and surrounding the project area were provided in the EA. Project area aerial photographs with habitat/vegetation communities clearly identified should be included to assist in the effects analysis. (3) In addition, the EA should clearly describe project related impacts (temporary and permanent) to each vegetation community and species habitat for all aspects of the project, including road widening, staging/lay down areas, new fence construction, and new road construction.	(1) A. The project description is not intended to describe impacts to protected species. (2) D. Aerial photography of the entire project corridor was included as Appendix A of the Draft EA. Further, as illustrated in Table 3-3 the various plant communities and their respective location is identified in the Draft EA. (3) D. The Draft EA states in Section 3.7.2.2, "The Proposed Action Alternative would permanently alter approximately 78 acres of vegetation." In the revised EA, road widening would impact a total of 42.2 acres, including 6.7 acres of chamise chaparral, 14.9 acres of mixed chaparral, and 7.5 acres of disturbed vegetation. The new road construction would permanently impact 0.07acre of mixed chaparral, 0.28 acre of chamise chaparral, and 10.9 acres of disturbed vegetation. In addition, staging area is expected to temporarily affect approximately 2.1 acres.
DOI	119	The EA contains an insufficient alternatives analysis. Project alternatives including options besides fencing should be analyzed. Technology may be available in lieu of or in addition to fencing that would result in reduced direct impacts to the natural resources. Such project alternatives should be clearly stated and analyzed in the EA.	D. See response to comment number 2.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	120	The EA repeatedly stated that design criteria would be used to minimize adverse impacts on threatened or endangered species and their critical habitat. Please clarify where this has or will occur. If avoidance measures cannot be included in the design criteria, mitigation measures should be included to mitigate impacts to levels that are less than significant.	D. Nowhere in the document has the design criteria been linked to no impacts regarding protected species. Regardless, see Section 3.9.2.2 of the Draft EA, which illustrates that CBP has already begun formal consultation efforts with the USFWS to mitigate for potential impacts to protected species. See also response to comment number 4.
	121	To accurately assess the impacts of the proposed project, the FWS recommends that wetland delineation for the project be verified by the U.S. Army Corps of Engineers and that natural resource agencies be provided with a mitigation plan for any unavoidable impacts to wetlands and waters of the U.S. for review and comment prior to a final decision. The mitigation plan should include a complete restoration plan for temporary impacts as well as mitigation for all permanent and indirect impacts to jurisdictional areas.	A. The USACE, Los Angeles District, as mentioned in the Draft EA is a cooperating agency and has been included on many field visits to determine jurisdiction of potential waters of the U.S. These WUS are outlined, discussed, mapped; and no wetlands are located in the project area for the revised EA.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	122	Statements used throughout the document that the fence will have beneficial effects to wetland/riparian areas, vegetation, wildlife, and federally listed species (by reducing human activity and trash) are not supported with data. To the contrary, impacts from operational vehicular activity and road maintenance would be likely to increase. We recommend that the decision documents include a thorough analysis of all direct, indirect, and cumulative impacts that is based on the best available scientific information, not unsupported assumptions.	E. CBP feels that all analyses are complete and based on best available science. Further, it has been proven repeatedly that border infrastructure does protect habitat north of the infrastructure. In fact, some protected species recovery plans call for more border infrastructure (e.g. Flat Tailed-Horned Lizard). Additionally, see the "INS, U.S. Border Patrol, U.S. Department of Interior, U.S. Forest Service, U.S. Environmental Protection Agency. 2002. Report to the House of Representatives Committee on Appropriations on Impact Caused by Undocumented Aliens Crossing Federal Lands in Southeast Arizona." for information regarding beneficial impacts to habitats north of the U.S.-Mexico border as a result of border infrastructure.
DOI	123	The EA should provide the reader with current information on the existing barrier fence segments along the International Border in San Diego County so that assessment of cumulative effects is possible, including effects to unlisted species.	A. The most current information regarding projects in the East San Diego County area were included in Section 4.0 of the Draft EA. See also response to comment number 9.
DOI	124	Clearly identify the portion of the project that is proposed to take place on BLM administered lands outside the 60' Roosevelt Corridor. Identify and quantify the impacts that would occur on these public lands.	A. See Appendix A (detailed project maps), Section 2.2, and Section 3.0 of the Draft EA. See also response to comment number 85.
DOI	125	Demonstrate that cultural and biological surveys have been completed within the project area for the following actions: Upgrade of existing access roads, construction of new roads, construction of staging areas, fence construction. Address the findings of those surveys.	A. See Sections 3.7, 3.8, 3.9, and 3.10 of the Draft EA. Throughout these sections the text states that biological surveys were completed October 2007, and November 2007 for cultural resources. There are no upgrades or improvements currently proposed for existing access roads, except as needed to maintain useability.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	126	Identify mitigation actions for cultural and biological resources.	A. See Section 5.0 of the Draft EA.
DOI	127	List Best Management Practices (BMP's) formulated for the project by the U.S. Fish and Wildlife Service for special status species.	A. See response to comment number 115.
DOI	128	In addition, BLM requires documentation which establishes the completion of Section 106 and formal tribal and SHPO consultation. The responsibility of this coordination lies with U.S. Customs and Border Protection-Border Patrol and U.S. Army Corps of Engineers as the lead agencies for the project. As part of the documentation, BLM must be provided the full cultural survey report for the project.	A. See response to comment number 48.
DOI	129	<u>2.0 Proposed Action and Alternatives, pg. 2-1:</u> "This section provides detailed information on USBP's proposal to construct, maintain, and operate TI..." While the description of the proposed action includes construction, maintenance, and operation of the fence and associated roads, the DEA does not include an analysis of potential environmental impacts associated with maintenance and operation activities.	D. Throughout the Draft EA the maintenance of the proposed roads and fence is discussed in the impact analysis section.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	130	<p><u>2.5 pg. 2-12:</u> While the DEA considers several alternatives in addition to the proposed action (i.e., Secure Fence Act Alignment; additional agents in lieu of tactical infrastructure (TI); vehicle barriers in lieu of fence; fence only; technology in lieu of TI), an alternative incorporating the use of a combination of methods is not discussed. For example, potential use of TI in combination with additional agents and the use of technology should be considered. Such an alternative could include construction of new fence along existing roads. In areas where the existing road is somewhat north of the international border, the use of technology or additional agents should be analyzed. The use of multiple methods of detection in combination with each other may significantly reduce the environmental impacts of the proposed action, particularly in sensitive areas that will be significantly impacted, such as La Gloria and Horseshoe canyons.</p>	D. See response to comment number 2.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	131	<u>Staging Areas:</u> While the DEA maps depict the location of the staging areas, there is no site-specific discussion of the vegetation of each of these staging areas and subsequently no discussion of potential impacts. Also, it appears that several of these staging areas are being proposed in undisturbed habitat (e.g., staging area northwest of Cetus Hill and staging area northwest of Ag Loop). The relocation of staging areas to previously disturbed habitat would reduce impacts to sensitive species (i.e., habitat loss, fragmentation, and/or establishment of invasive species).	E. See response to comment number 22.
DOI	132	The discussion in section 5.0 Mitigation Measures of how staging areas will be rehabilitated needs clarification. It is not clear if all staging areas will be rehabilitated (e.g., in previously disturbed and undisturbed habitat). Also, section 5.0 includes only minimal discussion of how staging areas will be rehabilitated and states that rehabilitation methods would be developed in coordination with and approved by BLM.	E. The single staging area to be used for the revised project in this EA was addressed in an ESP for areas waived from NEPA compliance, but will be rehabilitated as part of the waived action.
DOI	133	Without a detailed discussion of where each staging area will be located, the species and/or potential habitat that may occur in these areas, and how each staging area will be rehabilitated, potential impacts to sensitive species resulting from the construction, use, and rehabilitation of staging areas cannot be fully analyzed.	D. See response to comment number 22.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	134	<p><u>3.7 Vegetative Habitat, pg. 3-22:</u> While the DEA discusses the presence of six potential jurisdictional ephemeral waters of the U.S. (pg. 3-15), including Campo Creek, Boundary Creek, and several small unnamed creeks, the presence of riparian habitat is not discussed in this section or in Table 3-3. Therefore, the calculations of altered vegetation are likely incomplete.</p> <p>The DEA does not include a specific discussion of the vegetative communities that would be impacted by filling LaGloria and Horseshoe canyons.</p> <p>Since coastal sage scrub and riparian habitats are considered sensitive or rare plant communities under local and State regulations, the finding that impacts to these plant communities are "not expected to be significant" is incorrect.</p>	<p>E. There are no WUS located in the project area for the Revised EA.</p> <p>E. These areas are no longer with the project area for this EA.</p> <p>D. CBP respectfully disagrees with your assertion that significant impacts would occur. The minimal impacts to coastal sage habitats are not considered serious degradation of these habitats locally or regionally.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	135	<p><u>3.8 Wildlife and Aquatic Resources, pg. 3-29:</u> Potential impacts to wildlife and aquatic resources should be discussed in terms of the life history and/or habitat requirements of the species that occur in and adjacent to the project corridor. For example, there's no discussion of the potential impacts to wildlife of erecting movement barriers between habitats on either side of the international border. Beside the direct impacts of removing habitat, these gaps/barriers could prohibit movement thereby reducing gene flow. Also, the absence of vegetation in these large gaps could result in increased predation.</p> <p>The DEA should include a detailed discussion of the potential impacts of filling La Gloria and Horseshoe canyons to wildlife and aquatic resources. Filling these canyons could have substantial impacts, including but not limited to reducing species movement between habitats on either side of the international border and reducing seasonal water flows to the Tijuana River.</p>	<p>D. See Section 3.8.2.2 of the Draft EA, and response to comment number 9.</p> <p>E. La Gloria Canyon and Horseshoe canyons are no longer with the project footprint for the revised EA.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	136	<p>Wildlife connectivity: Proposed filling of at least 2 canyons (Horseshoe and La Gloria) poses significant effects. The filling of canyons and the closing of existing gaps in the border fence would preclude general wildlife movement in one of three important dispersal zones recognized in <i>Las Californias Binational Conservation Initiative, A Vision for Habitat Conservation in the Border Region of California and Baja California</i> (2004), a report prepared by The Nature Conservancy, Conservation Biology Institute, and ProNatura, and supported by the California Biodiversity Council, a State and Federal interagency committee. The San Diego County border region is an internationally recognized biodiversity hotspot (IUCN 2000).</p> <p>The DEA should include a specific discussion of the mitigation measures that would be implemented to ensure consistency with the Migratory Bird Treaty Act.</p>	<p>D. See response to comment numbers 135.</p> <p>E. See Section 5.4 of the Draft EA.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	137	<p><u>3.9 Threatened and Endangered Species, pg. 3-32:</u> To fully analyze project impacts to protected species, the EA should include maps of each project site that depicts the plant community type within and adjacent to the project area and occurrence data and potential habitat for protected species.</p> <p>While the EA acknowledges that indirect adverse impacts to potentially suitable habitat for protected species could result from illegal immigrants shifting their activities to the end of newly constructed fence segments to avoid apprehension, it does not include a thorough analysis of additional potential impacts to protected species and their habitats in these areas.</p> <p>The EA should include a detailed discussion of the potential impacts of filling La Gloria and Horseshoe canyons to threatened and endangered species. Filling these canyons could have substantial impacts, including but not limited to reducing species movement between habitats on either side of the international border and increasing predation.</p>	<p>A. See Appendix A, Section 3.7 and 3.9, and Figures 3-3 and 3-4 of the Draft EA.</p> <p>D. The potential impacts are not known as illegal activities are at the discretion of IAs and outside of CBP's control. See also response to comment number 35.</p> <p>E. See response to comment numbers 9, 135 and 136.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	138	The EA should include a detailed discussion of the potential impacts of constructing low water crossings or similar drainage structures to riparian habitat and the protected species that may occur within these areas (e.g., least Bell's vireo, southwestern willow flycatcher, and arroyo toad). Given that the footprint of these structures is expected to extend approximately 25 to 40 feet on either side of the crossing to allow placement of rip rap (see page 2-4), the installation and use of these structures could have significant impacts to riparian habitat and associated species.	E. See response to comment 134.
DOI	139	Potential impacts to threatened and endangered species should be discussed in terms of the life history and/or habitat requirements of the species that occur in and adjacent to the project corridor. For example, there is no discussion of the potential impacts of increasing the gap between habitats on either side of the international border. Besides the direct impacts of removing habitat, these gaps could prohibit movement thereby reducing gene flow or increasing predation.	E. See response to comment numbers 9 and 138.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	140	<i>Least Bell's vireo, Southwestern willow flycatcher, and Arroyo toad:</i> While the DEA states that potential habitat for least Bell's vireo and southwestern willow flycatcher occurs adjacent to the 7 Gate/Railroad project site and that arroyo toad is known to historically and perhaps currently occur in Boundary Creek, upstream of the Willows project site, there is no detailed discussion of project impacts to these species and their habitats. Also, there is no discussion of potential habitat for any of these species along the other ephemeral waters of the U.S. (pg. 3-15), including Campo Creek and several small unnamed creeks that occur along the project corridor. Without a thorough analysis, the finding on page 3-38 that the proposed action may affect but is not likely to adversely affect the vireo or flycatcher is unsupported. Also, without a thorough discussion of arroyo toad occurrence data and habitat requirements, the finding that the project sites lack suitable habitat, and therefore would not affect this species, is unsupported.	E. There are no adverse impacts to the least Bell's vireo, flycatcher or arroyo toad, since no suitable habitat would be impacted by the revised project.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	141	<i>Coastal California gnatcatcher.</i> The EA only analyzes impacts to coastal sage scrub (CSS) habitat. While the coastal California gnatcatcher is primarily associated with CSS during the breeding season, the species also occurs in non-CSS habitat (e.g., chaparral), which it uses for foraging and dispersing. The analysis of impacts to this species should include impacts to non-CSS habitat. Also, since wildfire is a natural component of the CSS/chaparral ecosystems, impacts associated with fire are considered temporary. Therefore, the acreage of the burned areas within the project sites should be included in the estimate of gnatcatcher habitat that would be permanently impacted by the project.	D. CBP respectfully disagrees and feels that any potential impacts to the gnatcatcher have been adequately addressed. The statement regarding recent fires was made to denote the current condition, but these areas were not excluded from the suitable habitat analyses. Although no gnatcatchers were observed during the field surveys, and no gnatcatchers have been reported in the project corridor in recent years, CBP still has assumed occupancy of these habitats.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	142	<p><i>Quino checkerspot butterfly and critical habitat.</i> The EA acknowledges that the October 2007 biological surveys were conducted outside of the proper season to determine presence of listed species but later states that the primary host plant for Quino, <i>Plantago erecta</i>, was not observed at any of the surveyed areas. The EA should acknowledge that this host plant species is known to occur in the area but likely not found in the fall because it is an ephemeral annual plant. The EA should also discuss the other host plants known to be used by Quino and potentially present in the project corridor. Also, being a low-flying species, the DEA also should include a discussion of the potential impacts to Quino movement between habitat patches on either side of the international border associated with the construction of new fence. Effects to Quino critical habitat were not adequately analyzed in the EA. The EA should recognize that disturbed habitat may still be functionally useful to the butterfly and should be analyzed as such.</p>	<p>A. The following was added to the Final EA, "This host plant species is known to occur in the area but likely not found during surveys because it is an annual plant. "</p> <p>D. CBP disagrees with the assertion that other host plants should be described as well. CBP has assumed occupancy of all potentially suitable habitat and acknowledged that adverse impacts would occur to the Quino checkerspot butterfly. Consequently, mitigation measures area being developed in coordination with USFWS to offset adverse impacts.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	143	<i>Otay tarplant, willowy monardella, Encinitas baccharis, and San Diego thornmint.</i> The EA acknowledges that the October 2007 biological surveys were conducted outside of the proper season to determine presence of protected species, but later states that these plant species were not observed within the surveyed areas, implying that these species do not occur in the project corridor. Without a thorough discussion of species occurrence data and habitat requirements, the finding that the project sites lack suitable habitat and therefore would not affect these listed species is unsupported.	D. Surveys completed in October likely would not have precluded observation of Otay tarplant, willowy monardella, Encinitas baccharis, or the San Diego thornmint. Species occurrence is discussed in the Draft EA, see Section 3.9.2.2. According to the California Natural Diversity Database no known locations of any Federal protected species is located within a mile of any of the project sites.
DOI	144	<i>Peninsular bighorn sheep:</i> The endangered Peninsular bighorn sheep is likely to be affected by significant indirect impacts from the funneling of illegal immigrant traffic into the Jacumba Mountains, portions of which are designated as critical habitat. Alteration of the fence design with gaps or vehicle barriers only within one mile of sheep habitat would likely reduce the significance of the impacts and provide opportunity for connectivity with bighorn sheep in Mexico.	E. See response to comment number 32.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
DOI	145	<i>Tecate cypress and Thorne's hairstreak butterfly.</i> The EA states that up to eight Tecate cypress trees would be impacted by construction but it's not clear how these individuals will be impacted (e.g., destroyed during construction, indirectly impacted due to dust, adjacent soil disturbance, etc.). There is also no discussion of how impacts to this species would be minimized or mitigated other than avoidance. Also, while the EA acknowledges that the Thorne's hairstreak butterfly uses Tecate cypress as a host plant, there is no discussion of potential occurrence of this butterfly species or its suitable habitat (in addition to Tecate cypress) on the project site.	E. No Tecate cypress is located within the revised project area for this EA.
John Kalish (BLM)	146	Clearly identify the portion of the project that is proposed to take place on BLM administered lands outside of the 60' Roosevelt corridor. Identify and quantify the impacts that would occur on these public lands.	E. Please see Appendix A (detailed project maps) as the maps depict where BLM administered lands are in conjunction with the proposed project locations. Additionally, all impacts are quantified in Section 2 and 3 of the Draft EA. See also response to comment number 35.
BLM	147	Demonstrate that cultural and biological surveys have been completed within the project area for the following actions: Upgrade of existing access roads, construction of new roads, construction of staging area, fence construction. Address the findings of those surveys.	E. See response to comment numbers 22 and 125.
BLM	148	Identify mitigation actions for cultural and biological resources.	E. See response to comment number 115.

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BLM	149	List Best Management Practices (BMP's) formulated for the project by the U.S. Fish and Wildlife Service for special status species.	The Final EA has been revised to include the BMPs developed between USFWS and CBP
Valerie Connor, SWRCB	150	<p>The California Code of Regulations (CCR), 14, Section 15063, allow the use of a NEPA document to meet the requirements for an Initial Study under CEQA."</p> <p>However, the EA does not fully describe what additional steps would be taken to comply with CEQA beyond completing this Initial Study. Conducting the NEPA process does not automatically and simultaneously satisfy the CEQA process when a California permit is required. It is our understanding that project applicants must identify a lead agency for CEQA compliance. This lead agency, which must be a California agency, is then responsible for conducting a review, which includes an opportunity for public comment. Until these steps are followed, we do not consider that the requirement for public involvement in the CEQA process discussed in Section 1.5 has been met.</p>	E. It is anticipated that the State Water Resources Control Board (SWRCB) would be the lead agency for the CEQA compliance, which is required for the issuance of 401 Water Quality Certification. CBP has included CEQA issues and discussions in this EA to satisfy the requirements under this state law. CBP has used this approach in the past to the satisfaction of the RWQCB.

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Valerie Connor, SWRCB	151	<p>2.A WATER QUALITY CERTIFICATION: As noted in Section 1.4 (Framework for Analysis) and Table 1. 1, a Clean Water Act (CWA) Section 401 State Water Quality Certification is required for the project. However, Table 1.1 requires correction since it lists the Regional Water Quality Control Board (Regional Water Board) as the permitting agency. The proposed project will occur within the boundaries of two Regional Water Boards. In cases where more than one Regional Water Board is involved, regulations require that the entity that issues the water quality certification is the State Water Resources Control Board.</p> <p>2.B We have not, to date, received an application for water quality certification (certification) for this project. The certification process routinely includes a review of the applicant's Stormwater Pollution Prevention Plan (SWPPP) and the operation and maintenance plan that details how the installed project will be maintained to prevent future discharge of pollutants from the project area. We will also review compliance with Section 404 of the CWA pertaining to wetland protection.</p> <p>2.C We strongly recommend that all the sections of road and fence be treated as a single project and be permitted as such under Sections 404 and 401 of the CWA. Thus, the sum quantity of lands and waters affected by the entire project should be considered as a whole.</p>	<p>2.A A. The text has been revised to read "State Water Resources Control Board"</p> <p>2.B. E. The 401 Water Quality Certification and SWPPP will be presented to RWQCB and other state and federal agencies once completed.</p> <p>2.C E. No WUS or wetlands are located in the revised project for this EA.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
Valerie Connor, SWRCB	152	Section 4.0 concedes that cumulative impacts will occur if the preferred alternative is implemented, but makes no attempt at quantification of those effects. Quantification of cumulative effects is necessary for the development of appropriate mitigation measures.	A. See response to comment number 9.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
Valerie Connor, SWRCB	153	<p>Section 5.0 thus begins to address many of our concerns, but additional explanatory detail needs to be provided.</p> <p>All potential adverse effects to water quality should be identified in the CEQA documentation to a level of detail that is adequate for the development of appropriate mitigation measures.</p> <p>These potential water quality effects - whether from project construction, operation, or maintenance - should be avoided to the greatest extent feasible as a first step. When avoidance is not feasible, impacts should be minimized if possible. Otherwise, mitigation should be described such as on-site restoration or reclamation of the affected sites that includes a maintenance plan for the life of the installation. When avoidance and restoration/reclamation is not feasible and permanent effects are to occur, appropriate off-site mitigation should be considered. All of these mitigation steps should be detailed in a mitigation plan that is approved before project implementation begins. This mitigation plan should include a construction, operation, and maintenance plan that details how these mitigations will be followed during and after construction.</p>	A. CBP has agreed to complete a SWPPP as well as rehabilitation plan for temporarily disturbed areas. These plans would be in place prior to construction activities begin. See also response to comment 9.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
Valerie Connor, SWRCB	154	<p>5A. The maps and figures provided in Appendix A of this document do not provide adequate detail to allow California Water Board staff to certify the proposed project. The maps provided adequate detail for assessing general location and general project activities, but additional annotation of the physical features of the landscape will be required. Development of these details can be a part of the SWPPP preparation process, but the California Water Board staff should be consulted as this process occurs.</p> <p>5.B The construction details of elements of the proposed Tactical Infrastructure (i.e., the fence itself) are not presented as final drawings but only as examples. We cannot evaluate the effects of a design until it is presented. We will be concerned with the effects on surface and sub-surface drainage that may occur with all of the presented design examples.</p> <p>5.C The pages of example drawings are not enumerated in a way that allows for easy reference. These detail drawings should be clearly enumerated, and a list of figures should be provided.</p>	<p>5A. A. Physical features and topography of the project area will be included in the SWPPP. More information will be provided to CWB staff for certification of the proposed project. The CWB will be consulted when developing the project SWPPP and the Section 401 Water Quality Certification application.</p> <p>5.B E. The final design of the project elements has not yet been finalized. However, the impacts analyzed in the Draft EA are based on worse case scenario; therefore, covering any of the designs presented in Appendix A.</p> <p>5.C E. The index map in Appendix A clearly indicates the location of each detailed map, and each map is numbered for ease of reference.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
County of San Diego (CSD)	155	The technical information to support conclusions of significance or less than significance in the EA should be provided to the public, either in the text of the EA or in appendices. It is difficult to review the EA because the information necessary for evaluating impacts has not been included.	D. CBP respectfully disagrees with your assertion of no meaningful impact analysis.
CSD	156	Technical reports for determining the significance of impacts should be included in the EA for: Aesthetics and Visual Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Hydrology (the Hydrology Report, Appendix D to the EA, currently only address groundwater wells), Noise, Socioeconomics, and Traffic.	D. CBP respectfully disagrees with your assertion and feels that all information necessary to form educated opinions are presented via the Draft EA.
CSD	157	The County would like to see the "Technology in Lieu of Tactical Infrastructure" be more fully explored in the EA as one of the alternatives for the project.	D. See response to comment number 2.
CSD	158	The EA should provide details regarding the cut and fill activities that will be required in drainages that will be crossed by the roads and the pedestrian fence so that impacts can be adequately analyzed. Details should include the dimensions for each fill (as has been included for Horseshoe Canyon and La Gloria Canyon), amount of fill to be required for each canyon, from where the proposed fill will be excavated, and how far it will need to be transported.	E. At this time the final design of the fence and roads is not known. However, CBP addressed impacts based on a worse case scenario and feels that impacts discussed are adequate. Concept designs of the cut and fill activities have been incorporated as an appendix in the Final EA, however.
CSD	159	The cuts and fills should be evaluated for their impacts to aesthetics, hydrology, surface water quality, and biological resources.	E. See response to comment numbers 156 and 158.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CSD	160	The potential for erosion should be evaluated in the EA, and a conceptual revegetation plan designed to control erosion on steep cuts and fills resulting from construction of the project, particularly the fills in the canyons should be included as an attachment to the EA.	D. The potential for erosion was evaluated in the Draft EA. E. As mentioned in the Draft EA a SWPPP will be prepared prior to construction. The SWPPP will include additional measures other than those identified in the Draft EA for erosion and sedimentation control.
CSD	161	Section 3.8.2 Environmental Consequences identifies the Thresholds of Significance for established wildlife resources. The Thresholds of Significance include "...conflicts with the provisions of an adopted...Natural Community Conservation Plan..." (p.3-28). The County of San Diego is working with USFWS on this federally-funded Natural Community Conservation Plan for the eastern portion of the County. The area covered by this plan includes a significant portion of the land on the northern side of the Proposed Action. As noted in the EA, a range of species anticipated to be covered by the East County MSCP will be directly affected by the proposed action. The draft list of covered species is located at http://www.sdcounty.ca.gov/mscp/ec_biology.html . The EA should identify mitigation to address associated impacts to sensitive biological resources to the extent feasible.	E. The Draft EA does address associated impacts to biological resources that are within the project corridor. Since the plan has not been finalized but is rather in the planning stages CBP feels there is no need to address impacts to a plan that does not exist. Furthermore, CBP has not been invited to be signatory party to the MSCP.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CSD	162	The primary pedestrian fence would impact species mobility and reduce habitat connectivity. It is anticipated that the Proposed Action will have significant impacts to reptiles, amphibians and a range of other species located directly to the north and south of the areas affect by the Proposed Action. The EA should identify mitigation to address associated impacts.	A. The proposed project would impact transboundary migration of larger animals at some of the specific fence locations, but not small mammals, amphibians, or reptiles. These impacts would not be considered significant as discussed in Section 3.8.2.2 of the Draft EA. See also response to comment number 9.
CSD	163	Impacts to view from SR 94 in the areas where the fence can be seen from the highway should be evaluated and appropriate mitigation should be developed.	E. To our knowledge, no proposed locations of fence can be seen from SR 94.
CSD	164	The EA should evaluate the impacts to aesthetics from the large fills in the various canyons. Mitigation for these impacts should include vegetating the huge slopes with San Diego County native plants.	E. Potential impacts to aesthetics as a result of the proposed project were evaluated in the Draft EA. The Final EA was modified to reflect that native seeds or plants from San Diego County would be used for revegetation purposes, to the extent practicable.

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CSD	165	<p>Page 3-1. The EA states that traffic will not be impacted from construction equipment traveling to and from the various work sites; however, the EA does not provide the analysis and results to substantiate this conclusion. The EA should provide the following data regarding the construction activity from the Proposed Action Alternative:</p> <ul style="list-style-type: none">A. Hours and dates of operation for construction activityB. Construction/truck routes along or connecting to public roadsC. Types of heavy vehicles to be used for constructionD. Estimated number of heavy vehicular trips needs for construction.	<p>D. Construction traffic will be minor and temporary, and would not measurably affect current traffic patterns on the affected roads used. A detailed traffic analysis is not warranted.</p>
CSD	166	<p>The EA should identify and assess any project-related traffic that may be added to County maintained public roads (e.g. Thing Road, Humphries Road, Shockey Truck Trail, and Old Highway 80) upon completion of the Proposed Action Alternative. For example, Maps 2-5 appear to indicate that Humphries Road will be used as a project access road.</p>	<p>E. Construction traffic for the revised project would not be significantly more that current USBP TI maintenance and patrol traffic.</p>
CSD	167	<p>The EA should clearly identify locations where proposed project (construction/access/patrol) roads and/or the border fence would traverse and/or connect to County maintained public roads. For example, Figure 3-2 indicates that a project access road would connect to Thing Road, which is a County maintained public road.</p>	<p>A. See response to comment number 166.</p>

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REVIEWER	COMMENT NO.	REVIEW COMMENT	RESPONSE BY DESIGNER
CSD	168	The EA should clearly identify where proposed project roads would require a new driveway along County maintained public roads. For example, Map 19 appears to show a new project/construction road (Willow Access) that would connect from the border fence to Old Highway 80.	E. No new driveway connections are proposed as part of the revised project.
CSD	169	The EA should provide an operation assessment (e.g. sight distance) for any new driveways/access points created by the project along County maintained public roads.	E. No new driveway connections are proposed as part of the revised project.
CSD	170	The EA should note that the County will require a construction and encroachment permits for any work performed within the County's right-of-way, such as driveways or temporary road access points onto County maintained roads.	E. No new driveway connections are proposed as part of the revised project.
CSD	171	The EA should identify if the proposed project will require improvements to County maintained public roads.	E. No new driveway connections are proposed as part of the revised project.
CSD	172	The EA should specify whether all new and improved project roads will be used for government purposes only, gate for restricted access, and maintained by the Federal government.	A. See response to comment number 86

POL	petroleum, oil, and lubricants
PVB	primary vehicle barrier
RCP	reinforced concrete pipe
RMP	Resource Management Plan
ROI	region of influence
SBI	Secure Border Initiative
SCIC	South Coastal Information Center
SHPO	State Historic Preservation Office
SPCCP	Spill Prevention, Control, and Countermeasures Plan
SWPPP	Storm Water Pollution Prevention Plan
TI	Tactical Infrastructure
TMDL	Total Maximum Daily Loads
TPI	total personal income
U.S.	United States
U.S.C.	United States Code
USACE	United States Army Corps of Engineers
USBP	United States Border Patrol
USDA	United States Department of Agriculture
USFWS	United States Fish and Wildlife Service
USIBWC	United States Section, International Boundary Water Commission
WPLT	Western Pluvial Lakes Tradition
WUS	Waters of the U.S.

