attachment 1
Larry Ulved
discussed

M E M O R A N D U M

DATE: December 11, 2006

TO: Larry Ulvestad

FROM: Rick Fitch

HUNSAKER & ASSOCIATES IRVINE, INC.

RE: **120 Acres Site in the Dripping Springs Area AP 917-240-011 Not Being Included in the MSHCP and Proposed Subdivision of the Site .**

Background

The property in question is 120 acres of natural area with a tributary of the Arroyo Seco Creek running along the easterly boundary. This site is within the boundary of the Cleveland Natural Forest and surrounded on three sides by the Aqua Tibia Wilderness. Currently, this area is proposed on TPM 32738 to be divided into 2-40 acre parcels and a 30+ acre residual parcel.

Issue

Why was this pristine property inside the Cleveland National Forest being not included in the MSHCP and why is the County considering subdivision of this property? This area has an amazing diversity of Flora and Fauna and includes a Tributary Creek to the Arroyo Seco Creek system. This area provides a wildlife movement Corridor thru National Forest Lands and is a link to the Vail Lake Policy Area.

Discussion

- This site is currently shown on the County General Plan as an Open Space Conservation Habitat (OSCH) in which the General Plan states that such land should be conserved and managed in accordance with the adopted Multi Species Habitat and other Conservation Plans.
- The older version of the Southwest Area Community Plan (General Plan) doesn't show the 120 acre site as a private in-holding and it appears as if it is part of the Cleveland National Forest. The date of this exhibit says it was Adopted in November of 1989 and Amended October 4th, 1994.
- I also reviewed the County RCIP website in where the Final Draft of the Southwest Area Land Us Plan, dated October 7th, 2003, shows this 120 acre site to be an Open Space Conservation Habitat within the Cleveland National Forest (see attached policies).

Conclusion

It could be reasonably concluded that this site was assumed to be within the Cleveland National Forest's Aqua Tibia Wilderness during the initial inventory to determine which properties should be considered as part of the MSHCP. This site should be included in the MSHCP and should have portions in conservation. To sum up, this site is inside the Cleveland National Forest surrounded on three sides by the Aqua Tibia Wilderness, is an important wildlife movement corridor and contains a huge diversity of plants and animals. This site should be considered for acquisition and put into the National Forest.

(f\c\wo\2526\1 M01-arf.doc)

Director's Report: Pam Nelson

1) Toured Cahuilla Indian Res., Dec. 20, 2006. Maurice and Mary were very informative and interested in projects to help their reservation. Future ideas are energy production and development on the west side of the reservation. There are plans for a hotel, possible new Casino--.they invited us to their Earth Day on April 13th for local school children.
2) Santa Ana Watershed Association, Dec.21, 2006. This is a very active and interesting group. There are lots of invasive weed and restoration projects going on. All the participants were very interested in the EMARCD saying they would like us to join and that our portion of Lake Elsinore needs attention. They can provide biologists to help inventory and find project and restoration sites.
   They described the usual mitigation project: funds, sites and contractors.
3) After the meeting above, we had a mitigation discussion with Jeff Brandt (Fish & Game) and other RCDs. I asked many of the questions we have about conservation easements, funding and policies. Inland Empire RCD (Redlands) was very helpful and has passed on sample documents. San Jacinto RCD is jumping into the mitigation process and accepting projects. Jeff would like us to mark our district map with our areas of interest so that when something comes up he can send it to us right away.
4) Vicki and I met Kris Deandero at her property in La Cresta. We looked at the creek area to consider for a conservation easement. She and her husband are very interested in preserving this oak riparian portion of their property. They like the idea that it will always be protected.

Additions to Pam's Directors report:

5) Follow up to Ida Martin/Denise Hill presentation:
Met Mariah Mills (Regional Water Qual Cont..Board) and Shea O'Keefe (NRCS, biologist) at the Canyonlands site. Del Ross and Ida Martin accompanied us. The Batch Plant was reviewed too. Mariah and Shea think that these sites should be reviewed for violations and an agency meeting would be appropriate.

6) Made contact with the new Code Enforcement Director, Jay Orr.

7) Contacted Opal H. of the Supervisor's office about the proposed office space (Bob Buster old office). EDC will be using it so it is not available to us. She will continue to look.

Dear LAFCO Commissioners and staff,

Thank you for your interest in adjusting the Resource Conservation District boundaries to watershed lines. As you know from our testimonies and letters, we agree with this concept because of the focus that RCDs are taking now to preserve local habitats. Treating whole watershed systems, as opposed to looking at small regional portions of each district, is a better way to preserve the health and integrity of the inclusive fragile habitats. Besides the ecological value of the concept, the methodology is made simpler due to the makeup of partnering agencies that also work in the watershed format.

Unfortunately, San Jacinto Resource Conservation District is not in agreement. Their board has voted against this change. We worked diligently with the Riverside Flood Control District and Regional Water Quality Boards 8 and 9 to provide an accurate map describing the watershed. The proposed adjustment was not acceptable to them. Recent discussions with the staff of adjacent RCDs, San Jacinto and Riverside-Corona, have not furthered the proposed adjustment on the watershed lines. Moreover, presently we have mitigation projects proposed for the Elsinore area and are carrying on discussions with Jeff Brandt of Fish and Game and with the Santa Ana Watershed Association (SAWA).

We therefore wish to leave our boundaries as they currently stand and let Riverside-Corona and San Jacinto Resource Conservation Districts adjust their boundaries elsewhere as they wish.

Please put this on the LAFCO agenda for January or February.

Sincerely,
Pam Nelson
EMARCD, President
(951) 767-2324

DIRECTOR'S REPORT
for Thursday, January 11, 2007
Charolette Fox

Contents:

1. **Activities**
2. **Legislation**
3. **Sign-on letter for 2007 Farm bill Nutrition Title** (optional)

1. Activities

November 6—WateReuse (conference call)
November 8—Workshop on Delta Vision Plan at MWD in Los Angeles
November 15—AQMD public workshop in Riverside
November 15—WateReuse (conference call)
November 16—UCR Seminar on green communities
November 17—AQMD Air Quality Insititute – 1st meeting of policymakers
November 21—EMWD Advisory Water Board Committee Meeting
November 28—Workshop on Nuclear Waste in La Jolla
November 29—WateReuse (conference call)
November 30—Mitigation Workshop at RCRCD
December 2 – Harbors, Beaches and Parks UPDATE in Irvine
December 4—Environmental Legislative Summit in Sacramento
December 11—Last push for passage of environmental bills (conference call)
December 20—Water Tour of Cahuilla Reservation
December 21—SAWA at RCRCD
December 22—Public Workshop on AB32 (webcast)
December 27—WateReuse (conference call)
January 3—EMWD Board meeting

2. Legislation – 2007 Omnibus Bill

(Items 3 & 4 were taken off the list on January 4.)

Senate Local Government Committee
The Local Government Omnibus Act of 2007

Summary. The "Local Government Omnibus Act of 2007" proposes 13 relatively minor, noncontroversial changes to the laws affecting local agencies' powers and duties. The proposed bill will take effect on January 1, 2008.

Problem. Each year local officials discover problems with the state statutes that affect counties, cities, special districts, and redevelopment agencies, as well as the laws on land use planning and

development. These minor problems do not warrant separate (and expensive) bills. According to the Legislative Analyst, in 2001-02 the cost of producing a bill was $17,890.

The Senate Local Government Committee responds by combining several of these minor topics into an annual "omnibus bill." For example, the Committee's 2006 omnibus bill was SB 1196 which contained 27 noncontroversial statutory changes, avoiding over $465,000 in legislative costs (Chapter 643, Statutes of 2006). Although this practice may violate a strict interpretation of the single-subject and germaneness rules expressed in *Harbor v. Deukmejian* (1987) 43 Cal. 3d 1078, it is an expeditious and relatively inexpensive way to respond to multiple requests.

Specifics. The Senate Local Government Committee will author the "Local Government Omnibus Act of 2007," which proposes 13 changes to the state laws affecting local agencies' powers and duties:

1. **Municipal library trustees' meetings.** A city can set up a public library managed by a five-member board of trustees that holds monthly meetings (Education Code §18914). Three trustees can call a special meeting if all of the trustees get written notices three hours before the meeting (Education Code §18915). The Ralph M. Brown Act requires that all local governments' meetings must be "open and public" (Government Code §54950, et seq.). A city attorney notes that the municipal library statute on special meetings is inconsistent with the Brown Act's requirements for 24-hour notice before any special meeting (Government Code §54956). To avoid confusion, she wants the Legislature to clarify that city library boards of trustees must follow the Brown Act (Heather C. McLaughlin, Benicia City Attorney, 707/746-4216; P. Anthony Thomas, League of California Cities, 916/658-8279). The **proposed bill** requires city library boards of trustees to follow the Brown Act. [See §2 of the bill.]

2. **Special district directors.** Most special districts have elected governing boards whose members serve staggered, four-year terms. When a vacancy occurs because of resignation or death, a district's remaining board members can fill the vacancy either by appointing a replacement or by calling an election. The person elected to fill the vacancy fills the balance of the unexpired term. For persons appointed to fill vacancies, different rules apply. If the vacancy occurs in the first half of the four-year term, the appointee serves until the next general district election, and then the voters elect a replacement for the remainder of the term. If the vacancy occurs in the second half of the four-year term, the appointee serves until the next general district election, and then the voters elect someone to a full four-year term (Government Code §1780). An appeals court recently confirmed this interpretation, but acknowledged that the statutory language is ambiguous (*Robson v. Upper San Gabriel Valley Municipal Water District* (2006) 142 Cal.App.4th 877). The Senate Local Government Committee's staff wants to codify the *Robson* decision and remove any statutory ambiguities (Peter Detwiler, Senate Local Government Committee, 916/651-4115). The **proposed bill** clarifies the ambiguities in the statute that explains how long appointees fill vacancies on special districts' governing boards. The **proposed law** also declares the Legislature's intent to codify the *Robson* decision. [§3 & §15]

3. **County bonds for military bases.** **This Item has been removed from the bill.** Ninety years ago, as the United States mobilized for World War I, the Legislature authorized counties to issue general obligation bonds to help the Secretary of War acquire private property for military bases (SB 1152, Luce, 1917). After World War II, the Legislature moved this uncodified statute into the Government Code (Government Code §25420, et seq., added by SB 1117, Cunningham & Busch, 1947). In the 21st Century, it is unlikely that county supervisors will seek 2/3-voter

approval to buy more land for military bases. On the contrary, the Pentagon and Congress have been closing military bases, including three dozen military installations in California. The Senate Local Government Committee's staff believes that this statute is obsolete and should be repealed (Peter Detwiler, Senate Local Government Committee, 916/651-4115). The **proposed bill** repeals the authorization for counties to issue bonds to buy private property for military bases. [§4]

4. <u>Williamson Act clarification</u>. This item has been removed from the bill. The Williamson Act allows landowners to sign contracts with counties and cities to enforceably restrict land uses to agriculture and open space (Government Code §51200, et seq.). In return, the landowners received preferential property tax assessments and the local governments receive state subventions. The Subdivision Map Act controls how counties and cities review and approve the creation of lots from large parcels (Government Code §66410, et seq.). The Map Act doesn't apply to lot line adjustments under certain circumstances (Government Code §66412 [d]). The Williamson Act contains a special procedure that allows a county (or a city) and the landowner to facilitate lot line adjustments by mutually agreeing to rescind existing Williamson Act contracts and enter new contracts, if the local officials make seven findings. This statute sunsets on January 1, 2009 (Government Code §51257, added by AB 1240, Costa, 1997; amended by SB 1835, Johnston, 1998; SB 985, Johnston, 1999; SB 1864, Costa, 2002; AB 1492, Laird, 2003). However, some counties require these statutory findings only when they involve contiguous landowners. The Farm Bureau wants legislators to clarify the statute so that county supervisors and city council must make the findings for all lot line adjustments that affect Williamson Act contracted land (John Gamper, California Farm Bureau Federation, 916/446-4647). The **proposed bill** clarifies that local officials must make the statutorily required findings whenever they approve lot line adjustments that affect Williamson Act contracted land. [§5]

5. <u>CSD Law clean-up</u>. The Community Services District Law governs CSDs' powers (Government Code §61000, et seq., added by SB 135, Kehoe, 2005). When a CSD disposes of surplus land, it must follow the same procedures that other local agencies follow (Government Code §61062 [b]). An attorney who advises local officials notes that the cross-reference to the surplus land statute is wrong and he wants legislators to correct the error (Scott Porter, Burke Williams & Sorensen, 213/236-2719). The **proposed bill** corrects the erroneous cross-reference to the standard surplus land disposition statute in the Community Services District Law. [§6]

6. <u>General plan amendment clean-up</u>. Counties and cities can't amend their general plans more than four times a year, with exceptions. One exception is a general plan amendment that is needed to accommodate a large scale urban development (Government Code §65358 [d][3]). The Legislature passed the Large Scale Urban Development Act in 1982 (SB 1425, Ayala, 1982), but repealed it in 2000 when legislators learned that no one had ever used the statute (SB 1350, Senate Local Government Committee, 2000). A planner wants the Legislature to repeal this obsolete reference (Terry Roberts, Governor's Office of Planning and Research, 916/324-6666). The **proposed bill** deletes the obsolete reference to the former Large Scale Urban Development Act in the statute that limits amendments to local general plans. [§7]

7. <u>Subdivisions and surveyors</u>. The Subdivision Map Act controls how counties and cities review and approve the creation of lots from large parcels (Government Code §66410, et seq.). Final subdivision maps require the county surveyor (or the city engineer or city surveyor if the subdivision is within a city) to sign a certificate or statement regarding the maps' validity (Government Code §66442). Some counties and cities require their surveyors to issue "certificates" for final maps instead of issuing statements. A surveyors' group worries that

requiring public surveyors or engineers to "certify" final maps creates liability problems. They want the Legislature to delete the references to "certificates" and "certify" (Katey O'Malley, Consulting Engineers and Land Surveyors of California, 916/441-7991). The **proposed bill** deletes the requirement for local public surveyors and engineers to issue certificates for final subdivision maps; instead they would issue statements regarding final maps. [§8]

8. <u>Subdivision dedications</u>. The Subdivision Map Act controls how counties and cities review and approve the creation of lots from large parcels (Government Code §66410, et seq.). As a condition of approving subdivisions, counties and cities often require subdividers to dedicate property for drainage, public utilities, bicycle paths, transit facilities, solar energy easements, parks, roads, alleys, coastal and water access, schools, and other public purposes (Government Code §66475-§66478). Some dedications are in fee, others are easements. A surveyors' group wants the Legislature to standardize the language that appears on subdivision maps so that it will be clear whether the dedication is in fee or whether the dedication is an easement (Katey O'Malley, Consulting Engineers and Land Surveyors of California, 916/441-7991). The **proposed amendment** adds a new section to the Subdivision Map Act, specifying the language on parcel maps and final maps regarding the dedication of property in fee or as easements. [§9]

9. <u>Subdivision modifications</u>. The Subdivision Map Act controls how counties and cities review and approve the creation of lots from large parcels (Government Code §66410, et seq.). Counties and cities can modify recorded final subdivision maps if local officials make specified findings at a noticed public hearing. The legislative body must limit the hearing to the proposed modification (Government Code §66472.1). In reality, local planning commissions conduct most subdivision hearings, although their decisions can be appealed to the county boards of supervisors or city councils. A land use attorney wants the Legislature to substitute the broader term "local agency" (Bill Abbott, Abbott & Kindermann, 916/456-9595). The **proposed bill** substitutes "local agency" for "legislative body" in the Map Act's provisions for modifying recorded subdivision maps. [§10]

10. <u>Redevelopment clean-up</u>. The Community Redevelopment Law provides the authority for local officials to eradicate blight, using property tax increment revenues and other extraordinary powers (Health & Safety Code §33000, et seq.). State law describes the physical and economic conditions that cause blight (Health & Safety Code §33031, as amended by SB 1206, Kehoe, 2006). The 2006 amendments created a typographical error which a redevelopment attorney wants legislators to correct (Brent Hawkins, McDonough Holland & Allen LLP, 916/444-3900). The **proposed bill** corrects a typographical error in the statutory "blight" definition. [§11]

11. <u>Sacramento Metropolitan Air Quality Management District's board of directors</u>. At a minimum, the Sacramento County Board of Supervisors governs the Sacramento Metropolitan Air Quality Management District (AQMD). However, Sacramento County and its cities can determine the composition of the AQMD's board, based on a local agreement. (Health & Safety Code §40980, as amended by SB 1196, Senate Local Government Committee, 2006). Currently, the AQMD has a 14-member board that consists of:

- Five Sacramento County supervisors.
- Four Sacramento City councilmembers.
- Four members selected by each of the city councils of Citrus Heights, Elk Grove, Folsom, and Rancho Cordova.
- One member selected by the city selection committee to represent the cities of Galt and Isleton.

AQMD officials say that their board sometimes has trouble achieving a quorum and they want the Legislature to allow the cities to appoint alternate members (Chris Morfas, Sacramento Metropolitan AQMD, 916/874-2876). The **proposed bill** allows the city councils and the city selection committee to appoint alternates to their members of the Sacramento Metropolitan AQMD's board of directors. [§12]

12. <u>Property tax allocation clean-up</u>. State law spells out the procedures that county officials must follow when allocating property tax revenues (Revenue & Taxation Code §95, et seq.). Because county officials must adjust these allocations when city and special districts' boundaries change, the statute defines "jurisdictional change" by listing the types of boundary changes (Revenue & Taxation Code §95 [e]). The statutory cross-references are obsolete, often referring to code sections that the Legislature repealed in 1985 and 2000. The Senate Local Government Committee's staff wants legislators to correct these cross-references (Peter Detwiler, Senate Local Government Committee, 916/651-4115). The **proposed bill** corrects the statutory cross-references in the definition of "jurisdictional change." [§13]

13. <u>Assessment and tax notice clean-up</u>. State law spells out the procedures that local officials must follow for giving notices of special assessments, special taxes, and foreclosures (Streets & Highways Code §3100, et seq.). When filing maps of Community Facilities Districts that can pay for cleaning-up hazardous substances under the Mello-Roos Act, local officials must include a specific declaration (Streets & Highways Code §3110). An attorney who advises builders notes that this statute contains the wrong cross-reference to the Mello-Roos Act and he wants the Legislature to correct that error (Bryan Wenter, Morgan Miller Blair, 925/979-3315). The **proposed bill** corrects the statutory cross-reference to the Mello-Roos Act in the requirements for giving notice of community facilities districts. The **proposed bill** also revised the notice dates from the 20th Century to the 21st Century. [§14]

14. <u>Legislative intent</u>. The **proposed bill** expresses the Legislature's intent to cut costs by combining several noncontroversial items relating to local government into a single bill. [§1]

<u>3. Sign-On Letter for 2007 Farm bill Nutrition Title</u> (We may not want to sign on as EMARCD, but we could forward this information to others who may be interested in signing on.)

January 4, 2007

TO: Anti-Hunger Allies

FR: Food Research and Action Center (FRAC)

RE: Organizational Sign On Letter in Support of Strong Nutrition Title of 2007 Farm Bill

Please join other national, regional, state and local organizations in signing on to <u>a letter</u> in support of the strongest possible nutrition title of the 2007 Farm Bill, <u>http://frac.kintera.org/FSP.FarmBillLetter</u> .

This statement is based directly on a joint statement issued recently by the 13 organizations that comprise the National Anti-Hunger Organizations. See http://www.frac.org/pdf/NAHO.pdf

The stakes for hungry people are high. The Food Stamp Program, which is the nation's first line of defense against hunger, is due for reauthorization this year. It is vital not only that lawmakers renew the program, but also that they address shortfalls in benefit adequacy and improve access for vulnerable people.

The competition for resources in the Farm Bill will be stiff. In a context in which there may be few or no new dollars to expand Farm Bill programs, other stakeholders are seeking added investments in the commodities, conservation, energy, research and other titles of the Farm Bill. Accordingly, speaking up strongly on behalf of the nutrition title is essential to make food stamp investments a priority.

Action on the 2007 Farm Bill is expected to heat up early in the new Congress. The FY 2008 Budget, which will affect prospects for improvements in the Food Stamp Program and emergency feeding aid, will be the subject of Administration proposals and House and Senate Budget Committee hearings in February and March. The House and Senate Agriculture Committees are expected to hold hearings on key Farm Bill proposals in coming months, with floor action on the Farm Bill possible by mid-year. The deadline for Farm Bill reauthorization is October 1, 2007.

In order to build momentum for Food Stamp and emergency feeding aid initiatives, we will issue a preliminary version of the joint letter in January, before the President's FY 2008 Budget is released. We will continue to accept additional sign ons thereafter and will continue to build the list of supporters for each critical juncture in the legislative process, but it is essential to have as many signatures as possible in the next three weeks.

We hope you will help get us off to a good start. Please: 1) Sign your organization on (first sign-on deadline is January 25th); and **2) Circulate the letter widely to your member organizations and allied organizations and ask them to sign on.**

Do not hesitate to contact us with feedback or for technical assistance (evollinger@frac.org or eteller@frac.org).

Lottiefox

From: "pamela05n" <pamela05n@peoplepc.com>
To: <gwatts@parks.ca.gov>; <lottiefox@verizon.net>; <danishelen@earthlink.net>; <robertdwheeler@verizon.net>; <delross@verizon.net>; <vickiglong@aol.com>; <delross@juno.com>; <bikemanterry@verizon.net>
Sent: Friday, January 05, 2007 7:41 PM
Attach: Dear LAFCO Commissioners and staff.doc; Dear Code Enforcement Director Jay Orr.doc; Conservation Fund Policy.doc
Subject: letters and policy

Attached are 3 items for your review. One is a letter to LAFCO another a letter to the new Code Enforcement Dir. (a followup to the presentaion about the Temecula Cr area) and the third an attempt at a policy for our Conservation Fund that Jeff Brandt said could be flexible spending.
Feel free to comment and make suggestions.
Pam

Dear LAFCO Commissioners and staff,

Thank you for your interest in adjusting the Resource Conservation District boundaries to watershed lines. As you know from our testimonies and letters, we agree with this concept because of the focus that RCDs are taking now to preserve local habitats. Treating whole watershed systems, as opposed to looking at small regional portions of each district, is a better way to preserve the health and integrity of the inclusive fragile habitats. Besides the ecological value of the concept, the methodology is made simpler due to the makeup of partnering agencies that also work in the watershed format.

Unfortunately, San Jacinto Resource Conservation District is not in agreement. Their board has voted against this change. We worked diligently with the Riverside Flood Control District and Regional Water Quality Boards 8 and 9 to provide an accurate map describing the watershed. The proposed adjustment was not favorable to them. Recent discussions with the staff of adjacent RCDs, San Jacinto and Riverside-Corona, have indicated that they would like to adjust only the boundaries affecting them and leave our boundary untouched.

We will agree with this proposal, to leave our boundaries as they currently stand and let Riverside-Corona and San Jacinto Resource Conservation Districts adjust their boundaries as they wish.

Dear Code Enforcement Director Jay Orr,

I would like to introduce our special district, the Elsinore-Murrieta-Anza Resource Conservation District (EMA RCD), to you. Being the current President, I have found this State agency to be an effective tool for the county in respect to solving land use problems. As a previously traditionally-run RCD where agricultural practices were the main concern, we are now having to "shift gears" and work in the changing atmosphere of our district, housing development and increased population. I'm sure you can relate to this type of transitioning since your department has been created for some of the same reasons.

We are now following the pattern of adjacent RCDs where the focus is to keep the same mission, preserving and restoring local habitats as well as conserving natural resources, but with new methods. As development and human impacts spread, mitigation opportunities arise. We have found we can partner with various agencies, cities and counties by using funds to protect and restore local habitats.

This is the reason I would like to speak with you. Community groups have approached us about areas in our district that have had ongoing violations and questionable permitting practices. We have explained to them that we would like to protect and restore these habitats, but need correct information to see how we can help resolve these problem areas. We are now acquiring funds to do this and would like to target areas in our watershed (Santa Margarita River) that are in need.

It seems that we could work with you, as we have been doing with Fish and Game and the Regional Water Quality Board, to help landowners understand the valuable habitat they may have and how to protect it. If violations have occurred, we could help them resolve the problems by offering conservation easements (with endowments) and then proceed restoring and maintaining these fragile areas for them.

I hope we can talk soon. I will talk to Emma and try to make an appointment.

Sincerely,
Pam Nelson
EMARCD, President
(951) 767-2324

Conservation Fund Policy

Policy:

This is a policy of the Elsinore-Murrieta-Anza Resource Conservation District to describe the purpose and use of its Conservation Fund. The establishment of this fund is for the purpose of achieving our District's mission "to promote conservation practices of natural resources" and Goal 2.1 of the Strategic Plan "to promote ecologically sustainable communities".

Scope:

This Conservation Fund policy applies to all financial assets deposited into this Fund. These funds are accounted for in the RCD's financial reporting system.

Use of funds

1) Habitat restoration, creation, enhancement, management, conservation or the like will be the primary use of the funds.
2) Conservation of habitats can occur through acquisition of easements or properties. Surveys, legal review of documentation and Phase 1 Reviews can be funded. Biological expertise for evaluation of habitats for appropriate habitat value and restoration needs, size of buffers needed and reporting are included in the use of funds.
3) Maintenance of acquired habitats can be funded for activities such as restoration, removal of invasive plants or whatever is needed to enhance or sustain the natural condition.
4) Monitoring expenses can be funded. This includes staff and transportation costs to sites.
5) Expenses associated with acquired habitats such as signage, fencing, trash removal, repair of terrain and education of adjacent communities will be funded.
6) RCD overhead expenses of 25% will be charged to the fund as each dollar is used in the above categories.

Internal Controls:

The Treasurer shall establish a process of independent review by an external auditor. This review shall provide internal control by assuring compliance with policies and procedures.

Conservation Fund Policy Adoption:

The Elsinore-Murrieta-Anza Resource Conservation District's Conservation Fund policy shall be adopted by resolution of the Board of Directors of the Elsinore-Murrieta-Anza Resource Conservation District. The policy will be reviewed on an annual basis and any modifications made thereto approved by a simple majority vote of the Board of Directors.

Lottiefox

From: "pamela05n" <pamela05n@peoplepc.com>
To: <gwatts@parks.ca.gov>; <lottiefox@verizon.net>; <danishelen@earthlink.net>; <robertdwheeler@verizon.net>; <delross@verizon.net>; <vickiglong@aol.com>; <delross@juno.com>; <bikemanterry@verizon.net>
Sent: Thursday, January 04, 2007 9:08 PM
Attach: annual plan 2007.doc
Subject: annual work plan

I attempted to put some ideas down following our Strategic Plan(see attached). Anyone want to add on? We need this and the annual report. Don't forget to send your accomplishments to Charolette.

Goal 1: Assess, monitor, and assist in the implementation of resource conservation management plans within the district.

1) ***mitigation: pursue in lieu funding through local agencies used for restoration***
2) ***partner with NRCS, Bur. of Reclamation, Fish & Game, Riverside County ,Reg. Water Quality and U.S. Army Corps to inventory, restore and conserve the Sta. Margarita River Watershed habitats.***
3) ***Work with SAWA to improve the Lake Elsinore area***
4) ***Work with local cities and Riverside Co. to find restoration projects***
5) ***Attend RCA meetings to keep updated on MSHCP progress***

Goal 2: Promote appropriate land use management and policies to improve quality of life for the district's existing and future population.

1.

1) ***Use mitigation in lieu funds to restore damaged habitats***
2) ***Inventory effluents into the SMRW***
3) ***Work with SAWA and NRCS biologists to identify areas in need of invasive weed removal.***
4) ***Partner with the Bureau of Reclamation to identify methods of improving water quality in the SMRW.***

Goal 3: Provide opportunities and programs to educate the community and raise awareness of sound conservation principles within the district

1) ***Have an Earth Day event and participate in other similar local events.***
2) ***Continue the Newsletter on a quarterly or semi-annual frequency and distribute it electronically to the Supervisor, adjacent RCDs,, local media, and partner groups.***

Goal 4: Establish a strong organizational structure to insure effective and efficient stewardship of the district, using

1) ***Set up standing committees with directors as chairmen. The committees should meet at least one time per month apart from the general meeting with the chair reporting electronically.***
2) ***Establish a simple bookkeeping system that the treasurer can use to create a monthly report and pass on electronically to the board, monthly.***
3) ***Complete all missing audits and get all books up to date.***
4) ***Creation of policies for each committee and review of the District's need for policy update.***
5) ***Continue the search for office and meeting room facilities.***
6) ***Attempt to hire a part-time staff person***

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2) ***Continue the Newsletter on a quarterly or semi-annual frequency and distribute it electronically to the Supervisor, adjacent RCDs,, local media, and partner groups.***

Goal 4: Establish a strong organizational structure to insure effective and efficient stewardship of the district, using

1) ***Set up standing committees with directors as chairmen. The committees should meet at least one time per month apart from the general meeting with the chair reporting electronically.***
2) ***Establish a simple bookkeeping system that the treasurer can use to create a monthly report and pass on electronically to the board, monthly.***
3) ***Complete all missing audits and get all books up to date.***
4) ***Creation of policies for each committee and review of the District's need for policy update.***
5) ***Continue the search for office and meeting room facilities.***
6) ***Attempt to hire a part-time staff person***

Conservation Fund Policy

Policy:

This is a policy of the Elsinore-Murrieta-Anza Resource Conservation District to describe the purpose and use of its Conservation Fund. The establishment of this fund is for the purpose of achieving our District's mission "to promote conservation practices of natural resources" and Goal 2.1 of the Strategic Plan "to promote ecologically sustainable communities".

Scope:

This Conservation Fund policy applies to all financial assets deposited into this Fund. These funds are accounted for in the RCD's financial reporting system.

Use of funds

1) Habitat restoration, creation, enhancement, management, conservation or the like will be the primary use of the funds.
2) Conservation of habitats can occur through acquisition of easements or properties. Surveys, legal review of documentation and Phase 1 Reviews can be funded. Biological expertise for evaluation of habitats for appropriate habitat value and restoration needs, size of buffers needed and reporting are included in the use of funds.
3) Maintenance of acquired habitats can be funded for activities such as restoration, removal of invasive plants or whatever is needed to enhance or sustain the natural condition.
4) Monitoring expenses can be funded. This includes staff and transportation costs to sites.
5) Expenses associated with acquired habitats such as signage, fencing, trash removal, repair of terrain and education of adjacent communities will be funded.
6) RCD overhead expenses of 25% will be charged to the fund as each dollar is used in the above categories.

Internal Controls:

The Treasurer shall establish a process of independent review by an external auditor. This review shall provide internal control by assuring compliance with policies and procedures.

Conservation Fund Policy Adoption:

The Elsinore-Murrieta-Anza Resource Conservation District's Conservation Fund policy shall be adopted by resolution of the Board of Directors of the Elsinore-Murrieta-Anza Resource Conservation District. The policy will be reviewed on an annual basis and any modifications made thereto approved by a simple majority vote of the Board of Directors.

Lottiefox

From: "Uhley, Jason" <JUHLEY@co.riverside.ca.us>
To: <delross@verizon.net>; <bikemanterry@verizon.net>; <danishelen@earthlink.net>; <gwatts@parks.ca.gov>; <lottiefox@verizon.net>; <robertdwheeler@verizon.net>; <stantoned11@mchsi.com>; <VickiGLong@AOL.com>
Cc: <Fnaceem@murrieta.org>; <licitra@cityoftemecula.org>; <Robert.Hewitt@ca.usda.gov>; <scottt@stetsonengineers.com>; <wsteele@lc.usbr.gov>
Sent: Monday, January 08, 2007 10:17 AM
Subject: RE: San Diego Regional Water Quality Control Board Meeting January 24

Del,

Just an FYI. Item 11 covers the adoption of the San Diego County NPDES MS4 Permit. The tentative order is specific to San Diego County and does not address the Orange County or Riverside County regions within the Board's jurisdiction (they are addressed by separate permits). However, the permit does have ramifications for us, in that the Regional Board does tend to use their most recent permit as a template for future permits. Our existing MS4 permit expires in 2009.

Regards,

Jason

-----Original Message-----
From: "DEL ROSS" <delross@verizon.net> [mailto:delross@verizon.net]
Sent: Saturday, January 06, 2007 1:25 PM
To: bikemanterry@verizon.net; danishelen@earthlink.net; gwatts@parks.ca.gov; lottiefox@verizon.net; robertdwheeler@verizon.net; stantoned11@mchsi.com; VickiGLong@AOL.com
Cc: Fnaceem@murrieta.org; licitra@cityoftemecula.org; Robert.Hewitt@ca.usda.gov; scottt@stetsonengineers.com; wsteele@lc.usbr.gov; Uhley, Jason
Subject: San Diego Regional Water Quality Control Board Meeting January 24

I will be out of town on the 24th, but I hope someone from EMARCD can attend.
Items of interest to the Santa Margarita Watershed include those listed below.

Item 7 raises the issue of animal operations and waste discharge permits for a dairy. I have asked Bob Hewett to comment. The site in the Dominigoni Valley further raises the issue of Watershed and EMARCD / SJRCD District boundaries and jurisdiction.

Item 8 notes a settlement offer of $15,000 between the Board and Palmilla LLC and Glenwood Development Co. Construction site at Jackson Avenue and Nutmeg Street, Murrieta. Question: how is the money to be used? I will be meeting with Farida Naceem (NPDES City of Murrieta Engineering Dept) on Monday to review projects under consideration by Murrieta.

Item 9 is about rescission of Waste Discharge Requirements for Camp Pendleton.
(Scott- any comment?)

Item 11 is really important and will likely draw a big crowd. It is a follow-up stakeholder's meeting and covers the pending NPDES MS4 City and County stormwater waste permits throughout the Regional Board's jurisdiction (Including cities of Murrieta and Temecula). I went to the last stakeholder's
meeting- cities are resisting the new order as they perceive it as "unfunded mandate" for new services and maintenance and capital expenses.

Del Ross, P.E. Associate Director and
Chair- Watershed Committee EMARCD
DelTel: (951) 652-9052

Lottiefox

From: "DEL ROSS" <delross@verizon.net>
To: "pamela05n" <pamela05n@peoplepc.com>; <gwatts@parks.ca.gov>; <lottiefox@verizon.net>; <danishelen@earthlink.net>; <robertdwheeler@verizon.net>; <vickiglong@aol.com>; <delross@juno.com>; <bikemanterry@verizon.net>
Sent: Monday, January 08, 2007 8:58 AM
Subject: Re: agenda items

Pam- as part of the policies consideration for mitigation properties, I am offering my services as a professional engineer for Phase I assessments. Jeff Brandt listed the Phase I assessment as part of the due diligence process for conservation easements. The Phase I addresses potential environmental contamination on the underlying property that may require remediation. The Phase I excludes all habitat and endangered species considerations that Rick Hopkins will be addressing; except for potential polution harm to these items

The Phase I normally costs between $1500 and $3000. I will propose a modified Phase I that I will get sanctioned by Fish & Game and the Regional WQC Board that will cost as little as $500 and no more than $1000 in consultant's fees.

My normal rate of $85 / hr will be reduced by 20% which will be attributed to in-kind fees.

I will include a brief description and proposal in my associate director's report.

Del Ross

----- Original Message -----
From: "pamela05n" <pamela05n@peoplepc.com>
To: <gwatts@parks.ca.gov>; <lottiefox@verizon.net>; <danishelen@earthlink.net>; <robertdwheeler@verizon.net>; <delross@verizon.net>; <vickiglong@aol.com>; <delross@juno.com>; <bikemanterry@verizon.net>
Sent: Sunday, January 07, 2007 7:09 PM
Subject: agenda items

> I have thesse so far:
> mitigation projects and policies--committee presents, will email notes out before Thurs.
> agua tibia parcel that L. Ulvestad presented, what do we do to get this to RCA?
> Who is in charge of Earth Day? Should we do it? 2 other earth day opportunities for booths.
> Who will start planning the CARCD Baja region conference? Ideas for sites, tour?
> annual plan---contributions in yet? Send them to me.
> annual report 2006-contributions in to Charolette? Format? Deadline?
> San Diego Regional Water Qual. Bd. meeting on 1/24---who will attend?
>

> Please send me any others by tomorrow
> Pam
>
> _____
> PeoplePC Online
> A better way to Internet
> http://www.peoplepc.com

MORRISON | FOERSTER

United States: The Dirt - Land Use, Environmental, Natural Resources and Consumer Products Law and Regulation, Fall 2006

19 December 2006

Editor's Letter

While Morrison & Foerster LLP has long been at the forefront of cutting-edge environmental issues, it is the firm's ability to identify and analyze problems and possibilities for its clients and friends that sets it apart. Rather than merely provide dry legal analysis without real world context and application, we strive to give a practical assessment of how a new law or case or rule will affect your day-to-day operations.

An example is a recent seminar on AB 32, the California Global Warming Solutions Act of 2006, held by the Land Use and Environmental Law Group. Presented by the firm's own Michèle Corash, with Andrea Russell of Rio Tinto Minerals and Joel Levin of the California Climate Action Registry, the seminar provided three different and complementary perspectives on the opportunities and obstacles for the regulated community in responding to the emergence of the new legal regime. If you are interested in receiving a copy of the seminar materials or being on the mailing list for future events, please contact Judy Burgin at JBurgin@mofo.com.

This issue of *The Dirt* continues the dialogue on this rapidly evolving area with an article on how (and if) a European-style emissions market could be applied in California. We also provide articles on two important recent victories for our clients, one decision upholding the habitat conservation plan in California's Natamos Basin and another decision dismissing an "anti-SLAPP" motion by a private environmental enforcer. Another article addresses the ongoing debate over whether citizen-sponsored referendum and initiative petitions need to comply with the Voting Rights Act. Next, we offer an analysis of a new case that may affect the relationship between development moratoria and vested subdivision maps. We also provide a discussion of the recent dismissal of an Unfair Competition Law action against several windpower operators based on the public's "ownership" of birds. Finally, the California Department of Fish and Game provides a response to our article in the last issue on consistency determinations under the California Endangered Species Act—to which we respond as well.

Thank you for the many compliments on the inaugural issue of *The Dirt*. We hope this issue continues to meet your high expectations for up-to-date and practical information you can use. Please feel free to contact us with any comments or suggestions for future issues or articles.

New Climate Change Law – Kyoto in California?

By Bill Sloan

The signing ceremony for California's new climate change law—the Global Warming Solutions Act of 2006 (AB 32)—included a satellite feed of British Prime Minister Tony Blair heralding the achievement. The European interest in California's new law, however, runs deeper than just a shared environmental vision. For approximately two years now, Europe has been experimenting with carbon emission trading. This market-based mechanism at the core of the Kyoto Protocol is intended to help countries achieve their respective greenhouse gas emission targets. With passage of AB 32, California, the world's fifth-largest economy, is now contemplating whether to develop its own carbon trading market in the state. If that happens, the primary question on almost everyone's mind will be whether California should link its market with the existing European program. While the enthusiasm for such a link is strong, a number of problems should be addressed before California and Europe consummate such an arrangement.

The inclusion of a market-based compliance mechanism in AB 32 was negotiated up to the end. A large portion of the regulated community wants a trading program, while a significant environmental faction is opposed. This debate has pitted the Governor's office against the leaders of the California Legislature in a remarkably open tug-of-war that is now moving to the administrative rulemaking arena before the California Air Resources Board. The new law only provides that the Board "may adopt" such a program. All eyes are on the Board and on whether it will, or will not, include emission trading as part of the implementation of this new law. Already the Board is soliciting information and advice,

trying to gain a better understanding of the benefits and pitfalls involved with emission trading.

Large-scale carbon-emitting industries have commonly stated a preference for one global integrated emission trading market, as opposed to a patchwork of different regulatory markets that operate on different standards and principles. In seeking to normalize one approach to fit all regulatory efforts, one could expect that Europe's up-and-running market would be a likely model. However, some of the nuances in how that market is set up, and the international legal principles underlying that market, are unique and do not easily translate into a model for California.

Two primary problems exist with the European trading market: (1) it is designed to be one market but is premised on different individual nations that have committed to meet their own different individual targets—presenting different challenges and pressures that may or may not be feasible under any circumstances; and (2) it depends upon a uniform data approach that is not easily assured across the participating countries. As for the first problem of individual national targets, the Kyoto Protocol (like California's law) uses 1990 emissions as a benchmark—countries under the Kyoto Protocol have committed to achieving 5% below their 1990 greenhouse gas emission levels by 2012. While this appears to be a uniform standard, it does not represent an entirely level playing field. Since 1990, some European countries have seen their actual national emission levels increase significantly while others have barely increased at all. Moreover, within Europe, there have been adjustments made in favor of more-developing economies—adjustments that in effect act as a subsidy to reallocate the burden of meeting reduction targets. As a result, some countries participating in the European market will be more capable of reaching their targets and thus generating credits quicker. Integrating California into this program—one where a form of economic subsidization has been built in—may or may not be in the interest of California's economy.

As for the second problem, the data that underpins each country's National Allocation Plan for the Kyoto Protocol has built into it a level of uncertainty. Indeed, the guidelines expressly recognize that emission measurements—particularly historic measurements—can be imprecise and, at least in the early stages of implementation, have not been collected uniformly country by country. This data uncertainty played out in dramatic fashion this April when the price of carbon on the European exchange dropped by nearly two-thirds due to the unexpected discovery that many countries were going to handily meet their targets. That plummet in price represented a $36 billion drop in the value of the overall market. Unless and until uncertainties related to poor data understanding and collection have been minimized, the European market will remain a relatively risky carbon emission trading partner for California.

Any approach to a carbon emission trading market under AB 32 would do well to consider carefully these problems with the European model. For now, California should focus on creating its own market within the state before aspiring to go international. Until the Kyoto kinks have been worked out, the vision of a global emission trading market should probably be shelved.

Citations

California Global Warming Solutions Act of 2006, 2006 Cal. Stat. 488
(AB 32)

Courts Uphold The Natomas Basin Habitat Conservation Program, Providing Important Guidance for Future Planning In California

By Andrew Sabey and Chad Hales

More than a decade's worth of habitat conservation planning in the Natomas Basin (Sacramento) was recently put under the judicial microscope in both state and federal courts in California. At issue in the two cases (*Environmental Council of Sacramento v. City of Sacramento* and *National Wildlife Federation v. Norton*) was whether the Natomas Basin Habitat Conservation Plan ("NBHCP")—a multi-species, long-term, regional conservation program developed by the City of Sacramento and Sutter County, in consultation with the California Department of Fish & Game and the United States Fish & Wildlife Service ("FWS")—complied with the Federal Endangered Species Act ("ESA"), the California ESA ("CESA"), and the California Environmental Quality Act ("CEQA").

But much more than just the NBHCP was at stake. The petitioners' challenges exploited practical limitations faced by all public agencies and project proponents striving to balance development with regional conservation planning. The courts' rulings thus promised to affect, for better or worse, regional conservation planning throughout the state. Fortunately, in significant victories that affirmed core strategies underlying regional habitat conservation planning, both the state and federal courts concluded that the NBHCP fully complied with state and federal environmental laws. The courts' opinions provide important guidance and clarification for public agencies and project proponents throughout California.

Cumulative Impacts: Clarification on "Reasonably Certain" and "Probable Future"Projects

Regional conservation planning often is a lengthy process involving multiple jurisdictions. One of the challenges caused by the time and breadth of such an undertaking is that the surrounding landscape can be in a state of flux with different land use proposals surfacing and actions being considered by various local agencies, some of which may not be parties to the regional conservation planning process. The problem is that the environmental analysis for the regional plan cannot be amended to include a new cumulative impact analysis each time a local agency is asked to consider some future project, no matter how speculative. If this were required, the plan might never be finalized.

The petitioners challenged the NBHCP on those grounds, focusing on a memorandum of understanding ("MOU") between the City of Sacramento and the County of Sacramento. The MOU concerned certain revenue-sharing and division-of-responsibility aspects of *possible* future development in the Natomas Basin, beyond that development contemplated by the NBHCP. The petitioners theorized that development under the MOU was "reasonably certain to occur" and that the MOU was a "probable future project" that required the lead agencies to conduct a comprehensive cumulative impact analysis. Both the state and the federal courts rejected this argument. The federal court noted that the MOU was "by no means a concrete plan for development" and that its "tentative, general nature" and the "considerable number of . . . approvals" that remained before any development could occur supported FWS's determination that the MOU need not be included in the cumulative impact analysis. In similar fashion, the state court concluded that the MOU was not a "project" within the meaning of CEQA and CESA and that given the "amorphous nature of possible development" under the MOU, it was not "amenable to meaningful environmental review." These opinions provide helpful clarification of what courts will consider "reasonably certain" or "probable future" projects, which is particularly valuable to proponents of regional habitat conservation plans.

The "Mitigation Ratio": How Much Is Enough?

The courts' opinions also provide insight into habitat mitigation ratios. Every habitat conservation plan has a mitigation ratio—the number of acres that must be set aside and protected from development for every acre of development. Neither statutory nor case law prescribes a specific ratio, which leaves public agencies and project proponents with the task of identifying the proper ratio—one that adequately compensates for the impacts of "take" of protected species but that does not require so much land as to effectuate a taking requiring just compensation. As just one component of its comprehensive plan, the NBHCP established a 0.5– to–1 ratio (0.5 acre set aside for each acre of development). The petitioners challenged this ratio as inadequate, arguing that the NBHCP should have employed at least a 1:1 mitigation ratio. The courts disagreed with the petitioners and upheld the NBHCP's mitigation ratio. In so doing, they established at least two noteworthy principles of general application.

First, the courts agreed that mitigation ratios are not properly evaluated in a vacuum. The petitioners' attack on the NBHCP's 0.5–to–1 mitigation ratio improperly attempted to focus on the mitigation ratio in isolation from the numerous other components of the NBHCP's conservation plan (*e.g.*, preconstruction surveys, monitoring, and specific management of the reserves in perpetuity, among others). Both courts found that the *entire* conservation plan, of which the mitigation ratio was just a part, supported the NBHCP's use of a 0.5–to–1 mitigation ratio. These decisions strengthen public agencies' and project proponents' ability to "fully mitigate" impacts (CESA) and/or mitigate impacts to the "maximum extent practicable" (federal ESA) by combining an array of conservation features that, considered together, may support the use of a particular mitigation ratio.

Second, for the first time, the state court's opinion extended CEQA's "substantial evidence" standard to mitigation ratios. It thus confirmed to lead agencies and project proponents that, like other determinations under CEQA, their determination of the mitigation ratio will be evaluated under well-developed "substantial evidence" principles.

Habitat Loss Does Not Result in "Take" Under CESA

Finally, the state court opinion provided important guidance concerning CESA, which prior to the state court's decision, had received little judicial construction. The lack of judicial gloss on CESA created ambiguities for public agencies and project proponents attempting to fashion conservation measures that would meet CESA's requirement that the impacts of "take" be "minimized and fully mitigated."

In dicta analyzing whether the NBHCP's mitigation ratio complied with CESA, the state court held that the definition of "take," as codified at Fish and Game Code section 2081(b)(2), does *not* include "the taking of habitat alone or the impacts of the taking." Rather, the court stated, "proscribed taking involves mortality." This provides important guidance for public agencies and project proponents in evaluating the potential impacts where the project is expected to

adversely impact species' habitat, but is not anticipated to take any protected species.

Conclusion

Both the state and the federal court opinions represent an important affirmation of the regional habitat conservation planning concept, and provide much-needed guidance and clarification that should help lead agencies and project proponents fashion their habitat conservation plans to withstand attacks under state and federal environmental laws.

Note: Morrison & Foerster LLP represented the City of Sacramento and Sutter County in both court cases.

Citations:

Envtl. Council of Sacramento v. City of Sacramento, 142 Cal. App. 4th 1018 (2006)

Nat'l Wildlife Fed'n v. Norton, 2005 WL 2175874 (E.D. Cal. Sept. 7, 2005)

Cal. Fish & Game Code § 2081(b)(2)

Trade Group's Declaratory Relief Action Against Private Enforcer Found Not to be a "Slapp" Suit
By Bill Tarantino

California's anti-Strategic Lawsuit Against Public Participation ("SLAPP") law was designed to protect citizens from being harassed for exercising their rights to petition the government. Under the law, if a cause of action against him or her "arises out of" constitutionally protected conduct, that suit will be considered a SLAPP and subject to a special motion to strike, unless the party bringing the lawsuit can show a probability of prevailing. The classic SLAPP suit is brought "not to vindicate a legal right, but rather to interfere with the defendant's ability to pursue his or her interests."

While the anti-SLAPP law serves an important purpose by discouraging lawsuits brought to "chill" constitutional rights, the law has had the unintended effect of deterring valid lawsuits aimed at "gray area" conduct. Legitimate plaintiffs have been fearful to sue for conduct that is not clearly protected speech. This issue was recently put to the test by the Fourth Appellate District's decision in *American Meat Institute v. Leeman*, in which the court upheld a trial court's ruling that a trade association's declaratory relief action against a potential Proposition 65 private enforcer was not a SLAPP.

Background: Environmental SLAPP Suits

In the land use and environmental areas, the SLAPP is often found in one of two scenarios: (1) a project proponent/land developer either sues a project opponent for objecting to the project publicly or brings an action against a permitting authority for appealing a decision favorable to the developer, or (2) a regulated company brings an action against a "private attorney general" or other citizen who attempts to draw attention to violation of the law.

A classic example of a SLAPP is *Ramona Unified School District v. Tsiknas*. Ramona Unified ("RUSD") sought to construct a school and issued a mitigated negative declaration pursuant to the California Environmental Quality Act. When plaintiff RUSD proposed an alteration to the project, defendant Neighborhood Alliance for Safe Ramona Schools ("NASRS") filed a writ petition alleging that the proposal violated CEQA. RUSD prevailed at trial, and the court dismissed the action. Not satisfied with mere victory, RUSD sued NASRS and its attorneys, including Tsiknas, for abuse of process and barratry. Finding that RUSD's suit was lacking merit, the trial court refused to impose liability on NASRS for exercising its right to challenge government action and granted NASRS's anti-SLAPP motion to strike.

A contrary suit in the land use context was *Visher v. Malibu*, in which the City of Malibu refused to process the plaintiffs' application for a coastal development permit ("CDP") to build a home on their vacant lot. Malibu was engaged in litigation over whether it was obligated to issue such a permit. Because Malibu was appealing the trial court's order that it was compelled to issue a CDP, Malibu refused the plaintiffs' request. The plaintiffs filed a petition for writ of mandate to compel Malibu to act, which Malibu sought to dismiss as a SLAPP, claiming that the petition arose from Malibu's decision to exercise its right to appeal its trial court loss. The court of appeal found this unpersuasive, concluding that while appealing an order is a protected activity, the plaintiffs' lawsuit did not "arise from" that activity, but from the plaintiffs' "desire to get a CDP to build their home."

***American Meat Institute*: The "Gray Area" Gets Clearer**

Both cases above illustrate the long-standing difficulty under the anti-SLAPP statute in discerning between protected activity and legitimate bases for filing suit. The decision in *American Meat Institute v. Leeman* provides some clarity on the issue.

In *American Meat Institute*, the meat industry sought a declaratory judgment finding that Proposition 65 was preempted by the Federal Meat Inspection Act ("FMIA"), and that the California warning requirement could not be applied to meat products that comply with the FMIA. The trade groups sued after private attorney general Whitney R. Leeman had issued 60-day intent-to-sue notices and threatened the industry with legal action. The trial court found that, while Dr. Leeman certainly had engaged in protected conduct, the trade association's action was based on the conflict between state and federal law, not Dr. Leeman's freedom of speech.

On appeal, Dr. Leeman (joined by the California Attorney General as amicus) argued that the trial court's ruling would allow private citizens to be sued at random by trade associations if the citizens questioned the industry's legal compliance. Rejecting this broad reading of the trial court's opinion, the court of appeal affirmed the ruling and emphasized that the *nature* of the declaratory relief action controlled the analysis. The court concluded that the trade association's claim did not "arise from" Dr. Leeman's conduct, but instead from a legitimate desire to clarify an issue of conflicting state and federal laws.

Conclusion

This case highlights the importance of a careful reading of the anti-SLAPP statute and related case law. It is not enough for the allegedly SLAPP-ed defendant to show that she engaged in protected conduct. The defendant must establish that the claim *arises from* that conduct — the fact that the conduct merely "triggers" legal action is not enough. In other words, the defendant must show that the plaintiff is seeking to impose liability for the conduct or that the conduct is an essential element of the plaintiff's cause of action. In cases involving declaratory relief, plaintiffs do not seek to impose any liability, as they are only seeking clarity from the courts regarding their respective rights and obligations.

Note: Morrison & Foerster LLP represented the American Meat Institute and the National Meat Association in the case.

Citations:

Cal. Civ. Proc. Code §§ 425.16-425.18

Am. Meat Institute v. Leeman, Case No. D047115 (Ct. App. 4th Dist. Aug. 31, 2006)

Ramona Unified Sch. Dist. v. Tsiknas, 135 Cal. App. 4th 510 (2005)

Visher v. Malibu, 126 Cal. App. 4th 363 (2005)

Applicability of Voting Rights Act to Initiatives and Referenda Remains Uncertain Following Ninth Circuit Decision
By John Doorlay

A eagerly anticipated recent decision by the Ninth Circuit Court of Appeals failed to clear up uncertainty over whether the minority language requirements of the federal Voting Rights Act apply to citizen-sponsored initiatives and referenda in California. The court's en banc decision in *Padilla v. Lever* held that the Act's minority language provisions do not apply to recall petitions, but did not address initiative and referendum petitions. It remains uncertain, therefore, whether the Act requires initiative and referendum proponents in jurisdictions subject to it to translate their petitions into minority languages.

Voting Rights Act

In jurisdictions with substantial voting-age populations not proficient in English, the Voting Rights Act requires certain election materials to be provided in minority languages as well as English. Specifically, section 203 of the Act states that whenever a state or political subdivision with a specified voting-age population not proficient in English "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language." 42 U.S.C. § 1973aa-1a(c).

The list of jurisdictions designated by the Director of the Census as subject to the Voting Rights Act and, therefore, requiring election material to be provided in a language or languages other than English, is available in the Federal Register. In California, statewide election materials must be provided in English and Spanish, and 25 counties must provide election materials in one or more languages other than English. Whenever a particular county is subject to section 203, all cities within that county are similarly subject to section 203.

There is no question the Voting Rights Act requires covered jurisdictions such as a county holding an election to provide ballots in English as well as minority languages. However, it is less clear whether this provision applies to citizen-sponsored petitions to qualify a measure for the ballot. For example, in order for a referendum, citizen-sponsored initiative, or public official recall to qualify for an election, the proponents must prepare a petition and gather signatures from the requisite number of registered voters. The Act does not explicitly address whether such petitions must be prepared and circulated in both English and minority languages.

Padilla v. Lever

In *Padilla v. Lever*, a group of citizens initiated a recall of a member of the Santa Ana Unified School District Board by drafting a recall petition. The Orange County Elections Department reviewed the petition and concluded that it complied with the requirements of the California Elections Code. The recall proponents then circulated the recall petition and gathered the required number of signatures to hold a recall election. Although Orange County is required by section 203 to provide election materials in multiple languages, the recall petition was circulated only in English.

A group of plaintiffs challenged the validity of the recall petition since it was not made available in Spanish. Reversing an earlier decision of a three-judge panel, the full 11-judge panel of the Ninth Circuit rejected the challenge and held that the Voting Rights Act did not apply to recall petitions since the petitions were prepared and circulated by private citizens and, therefore, were not "provided by" a state or political subdivision. This holding affirmed the original ruling of the federal district court.

The plaintiffs in *Padilla* argued that as a result of California's extensive regulation of the form of recall petitions and because the Orange County Elections Department had reviewed and approved the form of petition, the "provided by" requirement was satisfied. In rejecting this argument, the Ninth Circuit concluded that although the California Elections Code provides the format for a recall petition, that does not mean the State itself provides the petition. The court noted that the California Elections Code does not specify the actual wording to be used in a recall petition and that the role of the County Elections Department was simply to ensure that the petition complied with the form required by law. As a result, it could not be said that the County "provided" the recall petition to the public. The court also expressed concern about the "chilling effect" of translating petitions into multiple languages, as the costs of translation and reprinting are borne by the recall proponents. The expense and trouble of complying with the translation requirements, reasoned the court, may deter proponents from launching petitions in the first place.

Conclusion

While the *Padilla* ruling clearly holds that recall petitions are not subject to the Voting Rights Act's requirement to provide election materials in English as well as minority languages, it remains uncertain whether referendum and citizen-sponsored initiative petitions are similarly exempt from the Voting Rights Act. The *Padilla* court chose not to address either of these situations. There are procedural and substantive differences between recall petitions, on the one hand, and initiative and referendum petitions, on the other hand, that may make the court's analysis in *Padilla* inapplicable to other petitions. Until courts resolve this issue, participants and stakeholders in land use and other electoral issues throughout California must be aware of the potential consequences of failing to follow the Voting Rights Act when they propose a referendum or initiative, as well as the possibility of challenging a referendum or initiative based on failure to comply with the Act.

Citations:

Padilla v. Lever, 463 F.3d 1046 (9th Cir. 2006) (en banc)

Voting Rights Act, 42 U.S.C. § 1973aa-1a(c)

When Does a Moratorium Become a Mortuary? The Death of a Vesting Tentative Map Under *Ailanto Properties, Inc. v. City of Half Moon Bay*
By Rob Hodil

California's First District Court of Appeal recently provided clarification regarding the life of tentative subdivision maps under California's Subdivision Map Act.

The case, *Ailanto Properties, Inc. v. City of Half Moon Bay*, involved a vesting tentative map for a residential project in the City of Half Moon Bay that was subjected to significant delays as a result of the City's water and sewer moratoria. The court refused to extend the life of the vesting tentative map to account for the total actual time of the moratoria. In reaching its decision, the court addressed two issues: (1) how long the life of a tentative map may be extended when a city or county has a development moratorium in effect; and (2) when filing a final map prevents a tentative map from expiring.

Effect of Moratorium

The first issue hinged upon the interpretation of a provision of the Map Act, California Government Code section 66452.6(b)(1), which tolls the expiration of a tentative map while a development moratorium is in effect, but provides that "the length of the moratorium shall not exceed five years." The project site at issue was subject to a water service moratorium at the time the vesting tentative map was approved. The site subsequently became subject to a separate sewer moratorium that the City of Half Moon Bay extended several times so that it remained in effect for some eight years.

The developer, who had obtained approval of the vesting tentative map in 1990, argued that the five-year limit applied to the length of the development moratorium itself, rather than the length of the extension of the life of the map. Under the developer's theory, a tentative map would continue to be extended as long as the development moratorium remained in place. The court rejected this theory, holding that section 66452.6(b)(1) was intended to limit to five years the total length of time that a tentative map could be extended by a development moratorium, rather than limiting the length of a development moratorium itself.

The developer also argued that even if the five-year limit applies to the length of time the life of the map can be extended, a separate five-year limit applies to each development moratorium (and its extension) that delays approval of the final map, so that the expiration of the map had been tolled for multiple five-year periods and the map was still alive. The court also rejected this argument, holding that the five-year limit applied to the total of *all* development moratoria that could be applied to a project to extend a map.

Satisfaction of Conditions for Filing Final Map

The second issue in *Ailanto* was whether "filing" of a final map was sufficient to extend the life of the tentative map, regardless of the development moratorium. Government Code section 66452.6(a)(1) provides that if a subdivider has expended $178,000 or more on off-site improvements, the filing of a final map will extend the life of a tentative map by 36 months. One of the conditions of approval attached by the City to the vesting tentative map required the developer to obtain a coastal development permit, and the developer filed a final map with the city engineer before obtaining it.

The developer argued that the expiration of the tentative map nevertheless was tolled by this submittal, because Government Code section 66452.6(d) provides that delivery of a final map to the city engineer is deemed a timely filing, and does not specify that the delivered final map must meet all conditions of tentative map approval at that time. The court rejected this argument, holding that the filing of a final map that did not conform to the vesting tentative map did not extend the life of the tentative map. The court explained that in this case, there was a "significant deficiency" in the final map, since a coastal development permit was required both by the California Coastal Act of 1976 and by the conditions attached to the vesting tentative map.

The court also rejected the developer's theory that equitable estoppel prevented the City from claiming that the vesting tentative map had expired. The developer had expended millions of dollars in a good-faith attempt to fulfill the conditions attached to the vesting tentative map, and alleged that the City had a "practice" of tolling the expiration of a vesting tentative map while a coastal development permit application was pending. Given that practice, the developer argued that its expenditures estopped the City from asserting any five-year limit on the extension of the life of the tentative map due to development moratoria. The court explained that the City did not have the power to indefinitely waive the limitations imposed by state law on the life of vesting tentative maps. Although the court's rejection of the equitable estoppel argument is dictum (the court found that the developer waived its estoppel claims, but nonetheless discussed the merits of the argument), it could be an obstacle for other defendants attempting estoppel arguments under the Map Act.

Conclusion

This case should serve as a cautionary note to property owners and developers who have obtained approval of either tentative maps or vesting tentative maps (the statutory provisions at issue in the case apply to both types of maps). The *Ailanto* decision makes it clear that there is a five-year limit on the extension of tentative maps due to development moratoria even if the moratoria extend longer than five years. Potential purchasers of entitled property should also be aware of this rule when conducting due diligence. It is important to note, however, that the *Ailanto* opinion suggests that there may be an exception to this rule if a city and a property owner agree to waive the time limits on the life of the tentative map.

Additionally, the *Ailanto* decision clarifies that "filing" a final map that does not conform to the tentative map due to a "significant deficiency" in meeting conditions of approval will not extend the life of the tentative map. On the other hand, the decision leaves some room to argue that a final map that may not strictly satisfy all of the conditions attached to a tentative map nevertheless could extend the life of a final map, if the unfulfilled conditions are not as significant or as clearly unfulfilled as the requirement for a coastal development permit was in this particular case. Subsequent court decisions may provide additional clarity as to what else might constitute a "significant deficiency" in a final map that would similarly result in failure to extend the life of the map.

Citations:

Ailanto Prop., Inc. v. City of Half Moon Bay, 142 Cal. App. 4th 572 (2006)

Cal. Gov't Code § 66452.6

Court Dismisses "Altamont" Case, Rejecting Claims Based on Public's "Ownership" of Birds
By Anne Mudge and Shaye Diveley

A closely watched and controversial lawsuit involving several wind operators in California's Altamont Pass ended with dismissal of the case last month.

The plaintiffs in *Center for Biological Diversity v. FPL Group, Inc.* sued a group of wind operators in 2004 under two novel theories – that the wind companies are illegally profiting from killing birds in violation of California's Unfair Competition Law ("UCL"), and that, in killing them, the companies are also violating an alleged "public trust interest" in birds. These legal claims were troubling for the wind industry. To date, wind companies have had only limited legal exposure under wildlife protection laws such as the Migratory Bird Treaty Act ("MBTA") and the Bald and Golden Eagle Protection Act ("BGEPA") because they do not authorize citizen suits—meaning they can only be enforced by the federal government. For the most part, the Justice Department has declined to prosecute wind companies under the Acts.

The plaintiffs in *Center for Biological Diversity* tried going around this obstacle by using the UCL, which until recently had provided private citizens a right to enforce violations of the MBTA and BGEPA by calling such violations "unfair business practices" under California law. However, shortly after the suit was filed in November 2004, California voters enacted Proposition ("Prop") 64, which amended the UCL to prohibit private suits brought on behalf of the public and not based on loss of money or property suffered by the plaintiff. The wind company defendants quickly brought a motion to dismiss the suit based on the new law, but it was rejected by the court last year, which concluded, among other things, that the plaintiffs sufficiently alleged an injury to property – i.e., birds held in trust by the public.

In the meantime, California courts issued new decisions in 2006 interpreting Prop 64. Armed with this new case law, the defendants moved to dismiss the suit, again based on two arguments—that the plaintiffs lacked standing to sue under the UCL, as amended, and that there is no private right of action for destruction of public trust resources. This time, the court agreed on both counts and dismissed the suit.

First, the court concluded that the loss of "money or property" required for standing under Prop 64 did not include injury to birds. The court looked at the text of the new law, which referred to a loss of money or property in two places. The law limited the standing, or the right to sue, under the UCL to those who "lost money or property as a result of such unfair competition." The law also limited monetary recovery to restitution "necessary to restore any person in interest any money or property" taken as a result of unfair or unlawful business practices. The 2005 decision had concluded that the "money or property" required for standing was broader than that for monetary relief, so that the plaintiffs could maintain their suit based on the alleged injury to birds even if they could not receive monetary relief. In its new decision, the court rejected this argument based on the California Supreme Court's decision in *California for Disability Rights v. Mervyn's*, which held Prop 64 prohibited lawsuits based on "abstract interests." The trial court concluded that

because the plaintiffs' interest in birds was, at most, an abstract interest held in common by the public, the plaintiffs could not show standing or a right to restitution. In other words, if the plaintiffs could not get money for the loss of birds, they could not sue based on harm to the birds either.

Second, the court rejected a cause of action based on the alleged destruction of wild animals held in the public trust. The court found no statutory or common law basis for such a private cause of action, holding that cases have limited such suits to those involving navigable and tidal waters. The court rejected the argument that provisions of the California Fish and Game Code describing wildlife as the "property of the People" create a private right to sue, as the Code also states that any claims for the destruction of such wildlife must be brought by the State, not private individuals.

It is unclear at press time whether the plaintiffs will appeal the court's ruling, although it is likely because the door has been slammed on private environmental suits based on state law. Even if the defendants are ultimately successful in defeating the suit, the high-profile litigation has propelled bird mortality into the spotlight and has made permitting of new wind projects more difficult and more costly. This may continue to be the case regardless of the ultimate outcome of this particular suit.

Citations:

Ctr. for Biological Diversity v. FPL Group, Inc. (Alameda Superior Court No. RG04-183113)

Cal. for Disability Rights v. Mervyn's,
39 Cal. 4th 223 (2006)

Pfizer v. Superior Court, 141 Cal. App. 4th 290 (2006)

Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200-17210

Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712

Bald & Golden Eagle Protection Act, 16 U.S.C. §§ 668-668d

Cal. Fish & Game Code § 1600

Letters to *The Dirt*

DFG Responds Regarding Consistency Determinations

The Dirt received a letter dated August 7, 2006, from Ann Malcolm, General Counsel of the California Department of Fish and Game ("DFG"), responding to our article in the Summer 2006 issue about consistency determinations under the California Endangered Species Act. We reproduce below, for the benefit of *The Dirt* readers, Ms. Malcolm's letter. Our response follows.

Dear *The Dirt*:

I am writing in regard to your July 2006 legal update entitled "Consistency Determinations Under the California Endangered Species Act Streamline Permitting Process," available at *http://www.mofo.com/news/updates/files/update02225.html"* . The article states that a person submitting a notice pursuant to section 2080.1 of the Fish and Game Code "is allowed to commence activities immediately after submitting these documents" to the Department of Fish and Game (DFG). This view is repeated a second time towards the end of the article. After the article was brought to our attention, we found the same legal interpretation in an earlier article, "Court Decides 'Consistency Determinations' Under the California Endangered Species Act Are Not Subject to CEQA Review," dated November 2005 and available at *http://www.mofo.com/news/updates/files/update02091.html*.

These statements conflict with other provisions in CESA and could, I fear, encourage activities that would amount to a criminal violation of the California Endangered Species Act (CESA). The interpretation would appear to be based on the language in subdivision (a) of section 2080.1 that says no further authorization or approval for take of listed species is required under CESA if a person notifies DFG that a federal authorization has been obtained and provides a copy of the federal document to DFG. But subdivision (a) cannot be read in isolation. Subdivision (c) clearly modifies the language in

subdivision (a) by requiring that the taking of a listed species "may only be authorized pursuant to this chapter" – i.e. through one of CESA's permitting mechanisms – if DFG determines that the federal permit or federal incidental take statement is not consistent with CESA. In other words, more is required under section 2080.1 to take listed species than merely submitting a notice and copy of the federal authorization: the law also requires a determination from DFG's director that the federal authorization is consistent with CESA before take can lawfully occur.

It is true that a bill analysis prepared for the Assembly Appropriations Committee took a view similar to your own, stating that Assembly Bill 21 (1997), which added section 2080.1, would allow a person to incidentally take species listed under both the state and federal endangered species acts immediately after providing the specified notice to DFG. To the degree legislative history might be relevant to this issue, the Assembly Appropriations Committee analysis is not persuasive, especially since none of the other four legislative analyses prepared for AB 21, including the analyses prepared for the full Assembly and Senate, describe the statute as allowing take prior to a finding of consistency by DFG. Indeed, the other bill analyses, among them those prepared by the policy committees most familiar with CESA, contain language to the opposite effect. Bill reports prepared in advance of Assembly and Senate floor votes both describe the bill as allowing "the director to apply CESA regulations if it is determined that the federal take permit is not consistent with the California law." This, of course, is only possible if the incidental take has not already occurred under sanction of the statute. The Assembly report also states that "an individual need only obtain a federal take permit so long as the director of the Department of Fish and Game (DFG) determines that the federal permit is consistent with California law," and the Senate Rules Committee's one-sentence digest about the bill said it would authorize "the Director of the Department of Fish and Game under specified circumstances to waive requirements for state incidental take permits for plant and animal species that have been jointly-listed by the state and federal government. . .". These all indicate that the exemption from CESA's permitting requirement is dependent on DFG determining that the project qualifies for the exemption, and not merely on a person submitting information to DFG.

Finally, I would point out that to interpret the statute in a way that gives all persons holding a federal take permit or biological opinion the right to take species for several weeks while DFG considers the federal document's consistency with CESA would create a gaping hole in CESA's protections without any clear evidence that the Legislature intended such a result. Many properties on which development projects are planned could be stripped of all habitat and wildlife within a few weeks, obviating the need for a consistency determination *or* a state incidental take permit and frustrating the Legislature's clear intent that projects proceeding under the exemption in section 2080.1 still meet CESA's permitting standard of take minimization and full mitigation.

The longer the article goes uncorrected, the more likely a client of your firm or another member of the public might prematurely launch activities that could expose the person to a CESA enforcement action. I therefore request you promptly revise the two on-line articles and take appropriate action to inform any readers who received the articles by mail or email about DFG's interpretation of this section.

I appreciate your attention to this important matter. If you have questions, please contact Deputy General Counsel Stephen Adams at (916) 654-5295 or sadams@dfg.ca.gov.

Sincerely,
Ann S. Malcolm
General Counsel, California Department of Fish and Game

The Dirt:

Because the Department of Fish and Game administers the California Endangered Species Act and is responsible for consistency determinations, we bring Ms. Malcolm's letter to the attention of the readers of *The Dirt*.

In "Consistency Determinations Under the California Endangered Species Act Streamline Permitting Process" (*The Dirt*, Summer 2006), we explained that "[u]nder California Fish and Game Code section 2080.1, the applicant is allowed to commence activities immediately after submitting" certain documents required by the statute. Section 2080.1(a) provides:

> Notwithstanding any other provision of this chapter, or Chapter 10 (commencing with Section 1900) or Chapter 11 (commencing with Section 1925) of Division 2, but subject to subdivision (c), if any person obtains from the Secretary of the Interior or the Secretary of Commerce an incidental take statement pursuant to Section 1536 of Title 16 of the United States

Code or an incidental take permit pursuant to Section 1539 of Title 16 of the United States Code that authorizes the taking of an endangered species or a threatened species that is listed pursuant to Section 1533 of Title 16 of the United States Code and that is an endangered species, threatened species, or a candidate species pursuant to this chapter, no further authorization or approval is necessary under this chapter for that person to take that endangered species, threatened species, or candidate species identified in, and in accordance with, the incidental take statement or incidental take permit, if that person does both of the following:

(1) Notifies the director in writing that the person has received an incidental take statement or an incidental take permit issued pursuant to the federal Endangered Species Act of 1973 (16 U.S.C.A. Sec. 1531 et seq.).

(2) Includes in the notice to the director a copy of the incidental take statement or incidental take permit.

Cal. Fish & Game Code § 2080.1(a).

As explained by an analysis prepared by the Assembly Committee on Appropriations, the statute provides that "[i]mmediately after providing this information to the director, the individual is allowed to start incidentally taking the species." Cal. Assembly Comm. on Appropriations, Analysis of A.B. 21 at 1 (May 13, 1997). The analysis recognized that this could mean a permittee may start operations that the agency may later find inconsistent with the California Endangered Species Act:

> Since the "incidental take" can begin immediately upon providing the director with the required information, takes can occur before the director has a chance to review the information and determine whether or not it is consistent with CESA policy. If, in a particular case, the director eventually decides the federal permit is not consistent with CESA policy, a "stop order" could be issued after members of the species have already been taken. *Id.* at 2. The analysis recommended that the bill be amended so that no take can "take place until the director has made a determination that the information provided is consistent with CESA policy." *Id.* However, no such amendment was made before the bill was chaptered and became section 2080.1.

This interpretation is also consistent with the non-discretionary nature of consistency determinations. As explained by the Sacramento County Superior Court in *Center for Biological Diversity v. California Department of Fish & Game* (Sacramento Superior Court Case No. 05CS01166), "the issuance of a consistency determination is not a discretionary project" for the purposes of CEQA, but instead a ministerial act. As a result, so long as the informational requirements of section 2080.1 are satisfied, a consistency determination must issue. This strongly supports the interpretation that operations may commence once these conditions are fulfilled.

All this being said, Ms. Malcolm's interpretation of the statute should be given appropriate consideration. As it appears to reflect DFG's considered opinion regarding the requirements of section 2080.1, it presumably would inform DFG's evaluation of whether a party is in compliance with those requirements. We believe those instances will be rare in which it will be important to an applicant to commence activities prior to the expiration of the 30-day period section 2080.1(c) provides DFG to make a consistency determination. Moreover, we are confident, in light of the issues raised by our exchange with Ms. Malcolm, that in such instances DFG will be especially cognizant of the timing needs of applicants and work diligently to accommodate them. We are pleased to note that Ms. Malcolm does not take issue with the primary focus and conclusion of our article—that consistency determinations are a valuable regulatory tool for streamlining the

permitting process.

We welcome further commentary on this issue, as well as on any other topic discussed (or topics that you believe should be discussed) in *The Dirt*.

Thank you,
Chris Carr and Shaye Diveley

The Dirt on Upcoming Events

Sacramento
January 4, 2007
404 Permitting Issues – Identifying the LEDPA, CLE 13th Annual Conference on California Wetlands – Rapanos, Carabell and Beyond
Clark Morrison, Presenter

Los Angeles
January 19, 2007
CEQA Update, UCLA Extensions Annual Land Use & Policy Conference
Michael Zischke, Presenter

San Francisco
March 29-30, 2007
Third Annual NEPA Conference
Alicia Guerra, Presenter

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.

Specific Questions relating to this article should be addressed directly to the author.

Do you have a question for the author?

View Related Articles:

Court Opinion in Appeal of FERC Rules Regarding Standards of Conduct for Transmission Providers (Sutherland Asbill & Brennan)
District of Columbia Court of Appeals Invalidates FERC's Order 2004 That Extended The Reach Of Its Natural Gas Pipeline Standards Of Conduct To Include Non-Marketing Affiliates (Morrison & Foerster LLP)
Open Grid Still Elusive: Could An Investment Vehicle From The '60s Hold The Key? (Bracewell & Giuliani LLP)
What Are The Benefits Under California's Groundbreaking Greenhouse Gas Law For Those Who Take Early Action To Report And Reduce Their Emissions? (Farella Braun & Martel)
Supreme Court Hears Oral Arguments Today In Important Case On Regulation Of Greenhouse Gases And Global Climate Change (Farella Braun & Martel)

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Lottiefox

From: "ROBERT WHEELER" <robertdwheeler@verizon.net>
To: "Vicki Long" <VickiGLong@AOL.com>; "Robert D. Wheeler" <robertdwheeler@verizon.net>; "Pam Nelson" <pamela05n@peoplepc.com>; "Gary Watts" <gwatts@parks.ca.gov>; "Ed Stanton" <estanton@cnlm.org>; "Del Ross" <delross@verizon.net>; "Dan Matrisciano" <danishelen@earthlink.net>; "Charolette Fox" <lottiefox@verizon.net>; "Bob Hewitt" <Robert.Hewitt@ca.usda.gov>
Sent: Wednesday, November 29, 2006 12:20 PM
Attach: EHL Core 2 letter.pdf
Subject: Fw: Core 2 Refinement

Please think about enclosed letter to RCA. I'm highly suspicious of allowing nibbling around the edges of Core 2. Some of the ag lands mentioned serve as buffers for open space/habitat lands. I'm dubious about cracking the barn door open even a little because there be vampires and goblins out there! Anyway, I'd like to hear your response.
Bob Wheeler

-------Original Message-------

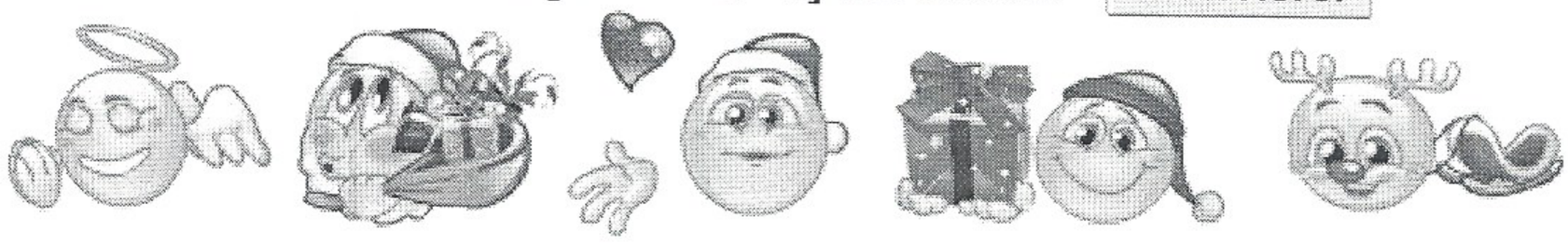
From: Dan Silver
Date: 11/29/2006 11:50:34 AM
To: Jane Block; Greg Ballmer; Ken Osborne; Gordon Pratt; Larry LaPre; Jonathan Evans; Monica Bond; John Buse; Ileene Anderson; Bob Wheeler; Michael Fitts
Subject: Core 2 Refinement

TO: Interested parties
FROM: Dan Silver, EHL

For your reference, please find a letter to the RCA on the Core 2 Criteria Refinement.

Dan Silver
Executive Director
Endangered Habitats League
8424-A Santa Monica Blvd., #592
Los Angeles, CA 90069-4267

Tel 213-804-2750
Fax 323-654-1931
dsilverla@earthlink.net
www.ehleague.org



November 27, 2006

Western Riverside County
Regional Conservation Authority
ATTN: Tom Mullen, Executive Director
4080 Lemon St., 12th Floor
Riverside, CA 92501

RE: Core 2 Criteria Refinement (Hearing Date: Dec. 4, 2006) –
Support for Staff Recommendation

Dear Chair and Members of the Board:

In 2003, prior to MSHCP adoption, Endangered Habitats League (EHL) and other groups submitted a scientific report calling for modest refinements to Core 2, due to intervening loss of its anticipated habitat values, and for compensatory enhancement of neighboring core areas. We felt that a diminution in the size of Core 2 would also lead to more cost-effective and therefore successful reserve assembly. Furthermore, based upon the apparent isolation of the Quino checkspot butterfly (QCB) population in Core 2, we strongly supported the RCA's exploration of a comprehensive refinement that might have fundamentally changed the conservation strategy for this species.

After careful review of the report from the Center for Conservation Biology, and after additional conversations with scientists who contributed to the report, EHL *concurs* with the staff recommendation to discontinue a major, comprehensive Criteria Refinement but to consider minor, project-level refinements. While we have trepidation over the financial implications, there is now a clear scientific consensus that maintaining a population of QBC at Core 2 is vital for the species. This is due to the biological uniqueness of the population and reasonable prospects for long-term viability and connectivity. Also, we agree with the report's assessment of the high conservation value of the more centrally located coastal sage scrub and California gnatcatcher resources within Core 2.

For ongoing reserve planning, it is important to note two other conclusions that can be drawn from the UC Riverside study. First, an immediate game plan is needed for retaining and restoring connectivity between Core 2 and lands to the east and west. Secondly, according to the report, " . . . not all lands within Core 2 are essential, particularly some of the disturbed and agricultural lands." This finding supports the staff recommendation to consider modest refinements along the edges that may produce an overall stronger reserve design. *We urge the RCA to be proactive in pursuing this approach, rather than solely deferring to the County and the cities.*

In conclusion, we commend the RCA for ensuring that sound science guides decision-making. We also commend the Center for Conservation Biology for bringing its expertise into practical application. EHL pledges to do all it can to work with you on meeting the financial challenges we are likely to face, and we thank you for your continued commitment to the MSHCP.

Sincerely,

Dan Silver, MD
Executive Director

Lottiefox

From: "ROBERT WHEELER" <robertdwheeler@verizon.net>
To: "Alan Long" <awlong00@yahoo.com>; "Allison Shilling" <abshilling@mindspring.com>; "Ann McKibben" <amckibben@mindspring.com>; "Barbara Spencer" <baspencerlawyer@earthlink.net>; "Charolette Fox" <lottiefox@verizon.net>; "Del Ross" <delross@verizon.net>; "Don Sccott" <heathcliff3321@msn.com>; "Ed Stanton" <estanton@cnlm.org>; "Erin Caroll" <caramel3@earthlink.net>; "Gary Watts" <gwatts@parks.ca.gov>; "Gene Frick" <gfrick@cosmoaccess.com>; "Gordon Pratt" <Euphilotes@aol.com>; "Greg Ballmer" <ballmer@ucrac1.ucr.edu>; "John Stickler" <jstick@ix.netcom.com>; "Kathleen Hamilton" <Kathleen92590@aol.com>; "Marc Miller" <marcmiller@direcway.com>; "Pete Kiriakos" <p.kiriakos@verizon.net>; "Ray Johnson" <EsqAICP@hughes.net>; "Robin Crist" <robzclan@aol.com>; "Sheryl L. Ade" <vdx120@hotmail.com>; "Vicki Long" <VickiGLong@AOL.com>; "Wendy Hammarstrom" <Wendy726@verizon.net>
Sent: Monday, November 06, 2006 6:38 PM
Subject: CORE 2 Criteria Requirement

Thought you'd all be interested in what happened today. The RCA Board received an email from Alan Long and had to stare out in the
(sparse) audience to see our beady eyes watching them - - myself, Vicki, Kathleen Hamilton, the attorney from Center for Biological Diversity, and three reporters. Sayarto called the meeting into executive session. When the public came back, the Board hastened to postpone the Core 2 item to their next regular meeting in December. I had filled out a card to speak, but was never called.

Ed Sauls, Alhadeff, and the rest of their ilk were undoubtedly disappointed, because they were all there hot to trot.

Though I couldn't prove it to the satisfaction of a court, I am personally convinced it was a setup - - and we spiked it. Good for now.

Bob

Lottiefox

From: "ROBERT WHEELER" <robertdwheeler@verizon.net>
To: "Alan Long" <awlong00@yahoo.com>; "Allison Shilling" <abshilling@mindspring.com>; "Ann McKibben" <amckibben@mindspring.com>; "Barbara Spencer" <baspencerlawyer@earthlink.net>; "Charolette Fox" <lottiefox@verizon.net>; "Del Ross" <delross@verizon.net>; "Don Sccott" <heathcliff3321@msn.com>; "Ed Stanton" <estanton@cnlm.org>; "Erin Caroll" <caramel3@earthlink.net>; "Gary Watts" <gwatts@parks.ca.gov>; "Gene Frick" <gfrick@cosmoaccess.com>; "Gordon Pratt" <Euphilotes@aol.com>; "Greg Ballmer" <ballmer@ucrac1.ucr.edu>; "John Stickler" <jstick@ix.netcom.com>; "Kathleen Hamilton" <Kathleen92590@aol.com>; "Marc Miller" <marcmiller@direcway.com>; "Pete Kiriakos" <p.kiriakos@verizon.net>; "Ray Johnson" <EsqAICP@hughes.net>; "Robin Crist" <robzclan@aol.com>; "Sheryl L. Ade" <vdx120@hotmail.com>; "Vicki Long" <VickiGLong@AOL.com>; "Wendy Hammarstrom" <Wendy726@verizon.net>
Sent: Sunday, November 05, 2006 8:01 PM
Subject: CORE 2 - - RCA MEETING MONDAY AT 1 P.M. - - URGENT

The article below appeared in today's Californian. Not much notice for a meeting which will b tomorrow at the County Bldg at 1 p.m! All of us who are interested in **Core 2** should probably to keep the rascals honest.
The article makes it appear that the recommendation is to not alter Core 2, but reading furthe see the waffling around the edges.
Right now, Core 2 seems viable. But keep snapping pieces out of it, and the developers' pho that it is not viable will become a self-fulfilling prophecy.
Bob Wheeler

Sunday, Novemb
Last modified Saturday, November 4, 2006 11:2

Scientists recommend conservation area stay intact

By: JOSE CARVAJAL - Staff Writer

FRENCH VALLEY ---- A group of scientists has concluded that a key area in the county's sweeping conservation plan is a vital habitat for certain species of butterfly and bird and shouldn't be swapped out in the plan for more

land elsewhere in the county.

That recommendation is going on to the Western Riverside County Conservation Authority's board of directors, which is scheduled to consider Monday whether it wants to alter the plan for "Core 2" ---- an area that is generally in an unincorporated part of the county with a portion that runs along Warm Springs Creek on the east side of the Hogbacks, a range of hills in eastern Murrieta.

The board meets at 1 p.m. Monday at the County Administrative Center, 4080 Lemon St.

The authority agreed earlier this year to study Core 2, one of seven key habitat areas in the c billion-dollar Multiple Species Habitat Conservation Plan, to determine whether development encroached on the area too much to make it a valuable habitat area.

The study was sparked by a developer's contention that Core 2 had been compromised and t plan should be reworked. The Palos Verdes Estates-based developer, Winchester 700, is pla build more than 1,000 homes along Warm Springs Creek and suggested that Core 2 be redu offered to make up its obligation to the conservation plan by providing land in Anza.

But in a report released last week, the scientists convened by the conservation authority conc that the area is too important to populations of the Quino checkerspot butterfly and the Califor gnatcatcher to let go.

While the edges of the area might be disturbed by development, the report said, Core 2, for th part, is still a vital wildlife habitat location.

"Of particular value are the large patches of undisturbed coastal sage scrub, chaparral and rip habitats in the center of Core 2," the report said, adding that even the disturbed areas are imp because they provide a link to other core areas.

Based on that conclusion, authority Deputy Executive Director Joe Richards said last week, administrators are recommending that the authority board leave the plan for Core 2 intact.

Representatives for Winchester 700, which must still provide a share of its land for Core 2, co be reached for comment Friday. But Richards said that administrators are recommending tha authority allow for changes to be made in the plan for the area on a smaller scale.

Ultimately, the authority set out to go about studying Core 2 the right way, he said.

"One of the things we said up front was that the science would guide what we would do there

But Monica Bond, a biologist with the Center for Biological Diversity, said that there was alrea consensus within the local scientific community that Core 2 is a vital aspect of the county's conservation plan.

While she said she was pleased to see that the scientists convened by the authority continue uphold that, Bond also said that she was frustrated that the authority was considering altering to begin with.

"The issue was addressed long ago when they were crafting the (Multiple Species Habitat Conservation Plan," she said. "Fewer than two years into the plan, they are already talking at getting rid of that. It makes me nervous for the future of the plan."

Contact staff writer Jose Carvajal at (951) 676-4315, Ext. 2624, or jcarvajal@californian.com.

Lottiefox

From: "ROBERT WHEELER" <robertdwheeler@verizon.net>
To: "Alan Long" <awlong00@yahoo.com>; "Vicki Long" <VickiGLong@AOL.com>; "Ed Stanton" <estanton@cnlm.org>; "Del Ross" <delross@verizon.net>; "Charolette Fox" <lottiefox@verizon.net>; "Gary Watts" <gwatts@parks.ca.gov>
Sent: Monday, November 06, 2006 10:24 AM
Attach: Core 2 - 8.1 Policy Calendar - 11-06-06.doc; Core 2 Refinement Workshop Report - 10-27-06.pdf
Subject: CORE 2 - - RCA MEETING SCHEDULED FOR 11-06 - - TODAY AT 1 P.M. AT COUNTY BLDG.

Report of Science Committee, 31 PP. enclosed.

11-06-06 RCA Agenda, Policy Calendar, Item 8.1 ESPECIALLY SEE THIS, 2d part. The door's wide open.

Bob

8.1 CORE 2 CRITERIA REFINEMENT

Overview - Staff Report

This item is for the RCA Board of Directors:

1) Direct staff to terminate the Criteria Refinement in Core 2 on the basis that the report prepared by the Center for Conservation Biology does not support a comprehensive change to the Core; and

2) Find that project-level refinements by the County and City of Murrieta may be appropriate on the periphery of the Core; as such refinements would not impair reserve assembly or linkages.

Policy calendar for 11-06-06.

Core 2 Refinement Workshop Report

Prepared by:

Center for Conservation Biology

for

Western Riverside County's Regional Conservation Authority

Center for Conservation Biology

University of California, Riverside

Center for Conservation Biology – Core 2 Refinement Workshop Participants

Report Prepared by:
Michael Allen and Kristine Preston

Co-Chairs:

Edith B. Allen, Cooperative Extension Natural Resources Specialist, Professor of Plant Ecology, UC Riverside

Thomas Scott, Adjunct Assistant. Professor/Natural Resource Specialist and Associate Director of the Center for Conservation Biology, UC Riverside

Participants:

Michael Allen, Director of the Center for Conservation Biology, Professor of Biology and Plant Pathology, Chair of Plant Pathology, UC Riverside

Jonathan Atwood, Director of the Conservation Biology Program, Antioch New England Graduate School

Cameron Barrows, Research Associate, Center for Conservation Biology, UC Riverside

Ken Halama, Manager Motte-Rimrock and Emerson Oaks Reserves, UC Natural Reserve System

Kristine Preston, Assistant Researcher, Center for Conservation Biology, UC Riverside

Richard Redak, Professor and Vice Chair of Entomology, UC Riverside

John Rotenberry, Professor of Biology and Associate Director of the Center for Conservation Biology, UC Riverside

Stuart Weiss, Consulting Ecologist, Creekside Center for Earth Observations

October 27, 2006

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Executive Summary

The County of Riverside and the City of Murrieta requested that the Regional Conservation Authority (RCA) consider a Criteria Refinement for Core 2 in Western Riverside County's Multiple Species Habitat Conservation Plan (WRC MSHCP). The purpose of this action is to determine if Core 2 can be sustained as a reserve and if WRC MSHCP funds could be more efficiently used in other core areas. The RCA requested a review of the biological research from the Center for Conservation Biology (CCB) that could be brought into their decision-making process. The CCB convened a distinguished group of scientists to review the implications of a Core 2 Criteria Refinement to biological resources. The group evaluated three general topics at a two-day workshop in order to provide this assessment.

Core 2 has been disturbed, particularly around the edges, since its designation as part of the WRC MSHCP in 2004. But, the central watersheds within Core 2 still support relatively undisturbed coastal sage scrub. Other core areas to the northwest and southeast, while unique and valuable, have different ecological features than Core 2. Therefore, it was unanimously agreed by the Core 2 Workshop participants that certain portions of Core 2 have elements not found elsewhere in the WRC MSHCP. Of particular value are the large patches of undisturbed coastal sage scrub, chaparral, and riparian habitats in the center of Core 2 and the undisturbed as well as disturbed but potentially restorable lands providing connectivity between Core 2 and other core areas to the east and west. This assessment was based upon several factors. These include:

- Core 2 contains locations important in the distribution and population structure of the Quino checkerspot butterfly,
- Core 2 may provide linkage between eastern and western populations of California Gnatcatchers,
- There appears to be a lower potential for type conversion of coastal sage scrub to non-native grassland within the central portion of Core 2,
- Core 2 provides a crucial linkage within the WRC MSHCP network.

There are datasets that are needed to make conclusive assessments that are beyond the time and resource scope of this evaluation. Additional ecological studies of the species involved as well as population and community responses in a networking context, would be very helpful in predicting exactly what portions of Core 2, and linkage elements connecting Core 2 to the surrounding cores, are needed to finalize the reserve structure.

Introduction

The Western Riverside County Multiple Species Habitat Conservation Plan (WRC MSHCP, hereafter "the Plan") is a multi-jurisdictional plan that was adopted to conserve 146 sensitive plant and animal species and their natural habitats in the 1.26 million acre plan area (County of Riverside 2003). Covered Species are the 118 sensitive species considered to be adequately protected over the long term through implementation of the Plan. The remaining 28 species will be considered protected after certain specific conservation measures are undertaken. The Plan is to conserve over 500,000 acres, of which 347,000 are currently under Public/Quasi-Public ownership and the remaining 153,000 acres are to be purchased or otherwise conserved.

The Plan was developed through a consensus of biologists, stakeholders, state and federal agencies, and local governments. It is based on a system of 20 core areas, 10 noncontiguous Habitat Blocks, and 28 Linkages, all but one of which are considered constrained (Figure 1). According to the WRC MSHCP (County of Riverside 2003, p. 3-24), a Core Area is defined as "a block of habitat of appropriate size, configuration, and vegetation characteristics to generally support the life history requirements of one or more Covered Species." A Noncontiguous Habitat Block is a "block of habitat not connected to other habitat blocks". A Linkage is defined as a "connection between Core Areas with adequate size, configuration and vegetation characteristics to generally provide for "Live-In" Habitat and/or provide for genetic flow for identified Planning Species". In contrast, a Constrained

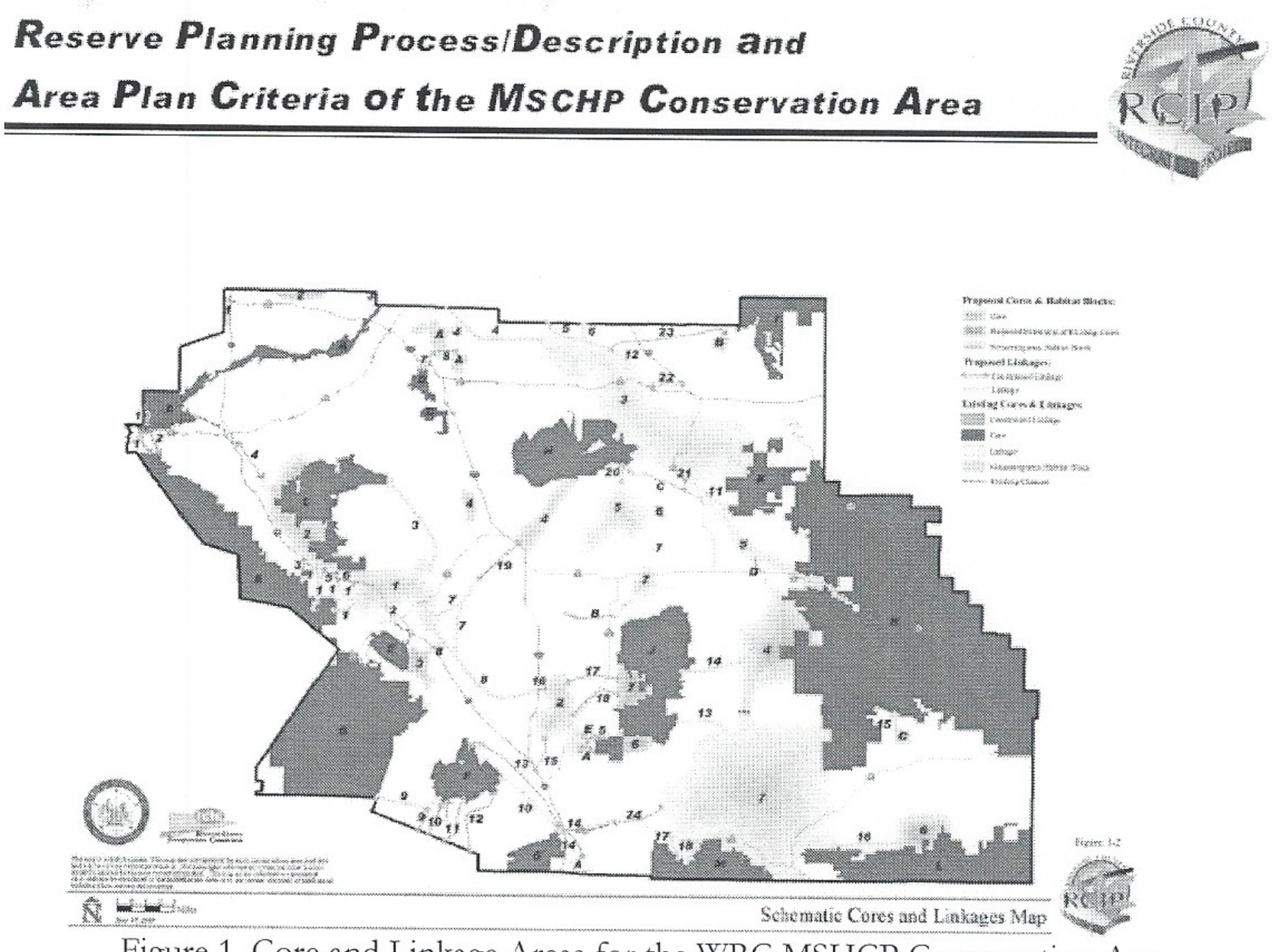


Figure 1. Core and Linkage Areas for the WRC MSHCP Conservation Area (County of Riverside 2003).

Linkage is a "constricted connection expected to provide for movement of identified Planning Species between Core Areas, but where options for assembly of the connection are limited due to existing patterns of use."

The following criteria were evaluated in developing the Plan:

- The distribution of remaining wildlands and existing reserves in western Riverside County in 2001.
- A classification system that divided the wildlands of western Riverside County into four categories: (a) proposed Core Areas and Habitat Blocks, (b) proposed Linkages, (c) existing Core and Linkage areas, and (d) lands where development could occur with the least damage to covered species.
- Management requirements for the persistence of species covered under the plan, including the federally-endangered Quino checkerspot butterfly (*Euphydrydas editha quino*) and federally-threatened California Gnatcatcher (*Polioptila californica*).

The proposed Reserve is composed of a Criteria Area from which the 153,000 acres of land to be conserved will be selected and purchased (County of Riverside 2003). While the exact configuration of parcels to be purchased for conservation is not designated in the WRC MSHCP, a percentage of lands falling within Criteria Areas are required to assemble the Reserve. Lands outside the Criteria Areas are free to be developed. An important component of the Plan is that local jurisdictions are given more oversight and control of the development approval process and the ability to issue permits resulting in "take" of endangered or threatened species. The intention of the Plan is to adequately conserve sensitive species and habitats while facilitating economic growth and development.

Issues and Request

The County of Riverside and the City of Murrieta requested that the Regional Conservation Authority (RCA) consider a Criteria Refinement for Core 2 to determine if Core 2 can be sustained as a reserve and if MSHCP funds could be more efficiently used in other core areas. Core 2 and the surrounding region has been one of the fastest growing suburban areas within the WRC MSHCP since the late 1990's. Land values have appreciated in Core 2, such that the cost of habitat (land) acquisition is much higher than in most other core areas. Prompted by these issues, some stakeholders suggested that the biological resources in Core 2 could be found in other, more manageable, areas at a far lower cost. The RCA was asked to undertake a "criteria refinement" to review the status of Core 2 and the land acquisitions required to complete the Reserve. The criteria refinement process allows for changes to the Plan as long as there is no net reduction in Criteria Area, the replacement lands proposed with the refinement must be biologically equivalent or superior, must clearly benefit Covered Species and be consistent with conservation goals, and be consistent with the reserve assembly accounting process (County of Riverside 2003; Regional Conservation Authority 2006). As part of the process, a biological equivalency analysis is undertaken to evaluate the impacts of refinements to Core 2 on Covered Species.

The RCA requested that the Center for Conservation Biology (CCB) at the University of California Riverside review the biological issues that could be considered in the decision-making process. The CCB convened a group of highly qualified scientists to review how a Core 2 refinement might affect biological resources. The group evaluated three

general topics at a two-day workshop in order to provide an assessment of the biological implications of a Core 2 refinement. These are the questions that framed the discussion:

1. Are the biological resources for which Core 2 was designated for protection found in other areas of the WRC MSHCP and are these areas equivalent in biological value? More specifically:
   a) Is Core 2 an irreplaceable element of the WRC MSHCP or can the Plan's objectives be met in other areas of the MSHCP without inclusion of Core 2?
   b) What information is available to make these comparisons and what information may be lacking?
   c) Does Core 2 provide important source habitat for the Quino Checkerspot Butterfly (QCB) and California Gnatcatcher that can't be obtained elsewhere within the WRC MSHCP?

2. Does Core 2 still provide the resources originally identified in the plan? More specifically:
   a) Does Core 2 retain adequate structural integrity and connectivity to allow it to serve as a sustainable reserve, or has the landscape changed to the point where Core 2 can no longer serve as a reserve core unit?
   b) Are there any new data, models or trend analyses that could clarify the sustainability of this unit?
   c) Is Core 2 critical to the long-term sustainability of the Quino checkerspot butterfly within the WRC MSHCP in light of potentially complex metapopulation dynamics?
   d) Does Core 2 provide habitat for the California Gnatcatcher that is unique within the WRC MSHCP?

3. What information is necessary to integrate assessments of irreplaceability (question #1) and long-term sustainability (question #2)? More specifically:
   a) Are there existing models or case histories where irreplaceability and sustainability have been balanced in a similar planning exercise?
   b) Are there updated scientific assessments of environmental change that would cause a re-evaluation of the biological value of Core 2?

These questions served as the framework for the CCB Workshop evaluation of biological resources in Core 2.

Background

Core 2 Description

The Plan includes the Core 2 area in the foothills between Murrieta and the Perris Plain. The WRC MSHCP (County of Riverside 2003, p. 3-62) describes Core 2 as:

> *Proposed Core 2*
>
> *Proposed Core 2 (Antelope Valley) is located approximately in the southwest region of the Plan Area. This Core Area consists largely of private lands but also contains small pieces of Public/Quasi-Public Lands. Connections from the Core are made through Proposed Constrained Linkages 15 (Lower Warm Springs Creek), 16, 17 (Paloma Valley), and 18. The Core is constrained in all directions by existing agricultural uses and urban Development. Though the Core has one of the highest P/A ratios of all MSHCP proposed or existing Cores, it is highly connected to other MSHCP conserved lands and is located only 1.1 miles from the nearest connected Core, Existing Core J (Lake Skinner/Diamond Valley Lake). This Core provides important Habitat for the Quino checkerspot, which has key populations in this area. This butterfly is restricted by the distribution and availability of its host plants, which in many areas have been replaced by non-native exotic weed species and habitat type conversion. Because of the large number of Covered Activities planned in this area and the constrained condition of the Core, management of edge conditions will be necessary in this area to maintain high quality habitat for the Quino checkerspot and other species using this Core.*

Planning Species

Planning Species are defined as "subsets of Covered Species that are identified to provide guidance for Reserve Assembly in Cores and Linkages and/or Area Plans" (County of Riverside 2003). Of the 146 sensitive species in the WRC MSHCP, there are 26 species that are considered Core 2 Planning Species (Table 1). Conservation of natural habitats and linkages in Core 2 was considered important for meeting WRC MSHCP's conservation goals for these species. Core 2 was identified in the Core 2 Criteria Refinement Work plan (Regional Conservation Authority 2006) as especially important for the QCB and California Gnatcatcher. These species will be addressed first, followed by the remaining Planning Species.

In addition to the Core 2 Planning Species identified in the Plan, two additional WRC MSHCP Covered Species may be relevant to a discussion of Core 2. Stephen's kangaroo rat (*Dipodomys stephensi*) and Engelmann oak (*Quercus engelmannii*) have been recorded in Core 2. The kangaroo rat is federally-endangered and the Engelmann oak population in Core 2 provides a potential connection between populations in the Santa Ana Mountains (e.g., Santa Rosa Plateau) and eastern populations in areas such as the Diamond Valley Core Reserve.

Geographic Structure of Core 2

Prior to the completion of the WRC MSHCP in 2004, Core 2 was becoming increasingly constrained by residential development along its margins. The Plan states that "the core is constrained in all directions by existing agricultural uses and urban development" (County of Riverside 2003, p. 3-62). As of 2005, there were 2,013 acres of

Table 1. WRC MSHCP Planning Species in Core 2.

Taxonomic Group	Common Name	Scientific Name
Plants	California Orcutt grass	*Orcuttia californica*
	Coulter's goldfields	*Lasthenia glabrata coulteri*
	Davidson's saltscale	*Atriplex sernana davidsonii*
	Little mousetail	*Myosurus minimus*
	Long-spined spineflower	*Chorizanthe polygonoides longispina*
	Munz's onion	*Allium munzii*
	Palmer's grapplinghook	*Harpagonella palmeri*
	Parish's brittlescale	*Atriplex parishii*
	Round-leaved filaree	*Erodium macrophyllum*
	San Diego ambrosia	*Ambrosia pumila*
	Smooth tarplant	*Centromadia pungens laevis*
	Spreading Navarretia	*Navarretia fossalis*
	Thread-leaved brodiaea	*Brodiaea filifolia*
	Wright's trichocoronis	*Trichocoronis wrightii*
Invertebrates	Quino checkerspot	*Euphydryas editha quino*
Reptiles	Western pond turtle	*Clemmys marmorata pallida*
Birds	Bell's Sage Sparrow	*Amphispiza belli belli*
	California Horned Lark	*Eremophila alpestris actia*
	California Gnatcatcher	*Polioptila californica*
	Ferruginous Hawk	*Buteo regalis*
	Grasshopper Sparrow	*Ammodramus savannarum*
	Swainson's Hawk	*Buteo swainsoni*
	Southern California Rufous-crowned Sparrow	*Aimophila ruficeps canescens*
Mammals	Bobcat	*Lynx rufus*
	Los Angeles pocket mouse	*Perognathus longimembris brevinasus*

residential and commercial development located within Core 2. Approximately 22% (468 acres) of this development occurred between 1994 and 2002 and 15% (310 acres) after 2002 (Figure 2). This trend of rapid development of natural lands does not appear to be slowing down as evidenced by the Core 2 Workshop field visit on June 19, 2006 that found a substantial amount of new development since late 2005, particularly at the northwestern and eastern edges of Core 2. Of the 8,807 acres of Criteria Area originally present in Core 2, 2,382 acres (27%) are used for agriculture and 4,413 acres (50%) remain in a natural state.

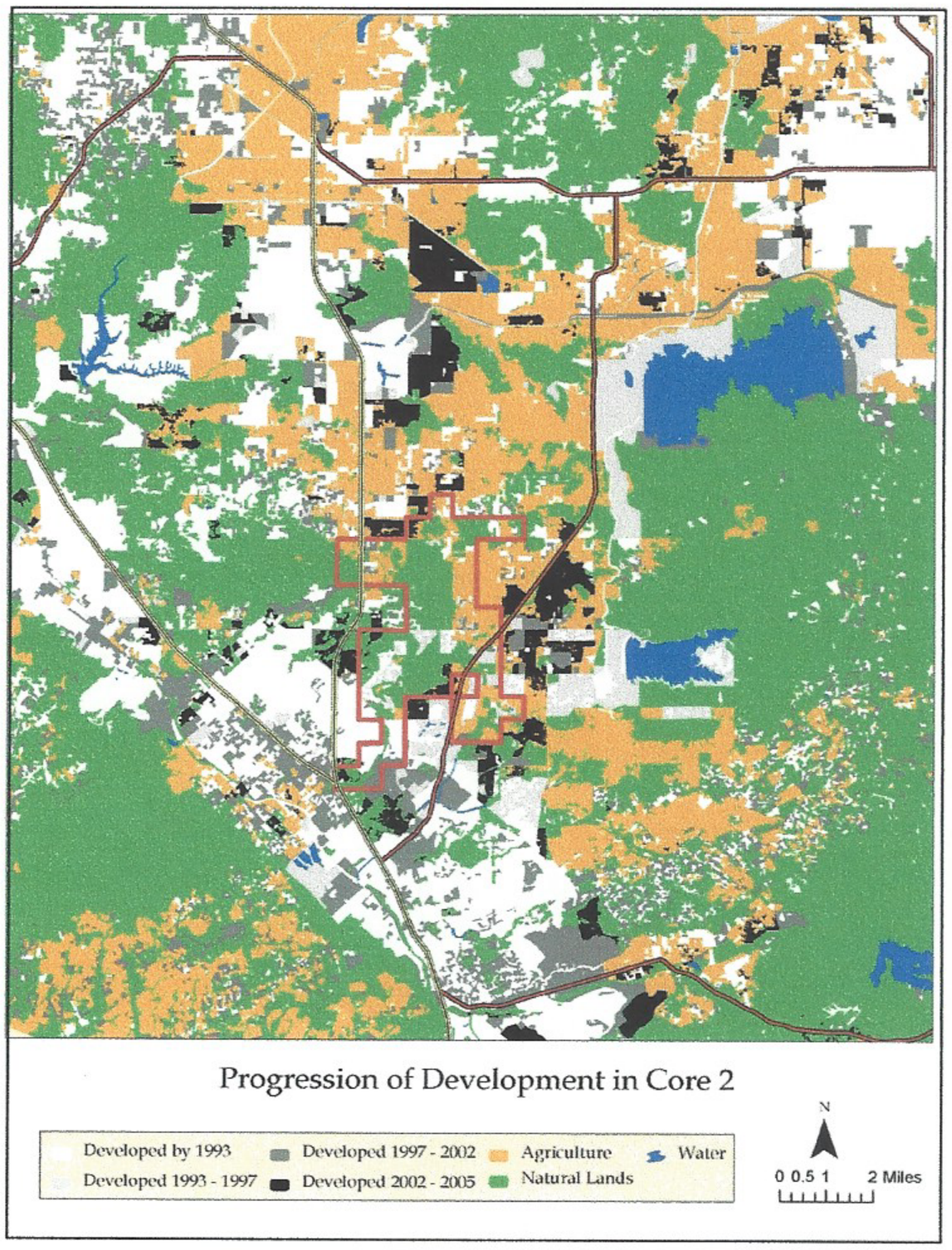


Figure 2. Progression of development in Core 2 from 1994 to 2005 (CCB unpublished).

Reserve Network Structure

Part of the rationale for the organization and structure of the WRC MSHCP is that the core areas, individually, are not large enough to protect all of the species of concern in the area (Chen et al. 2006). Instead, a core/linkage structure might create a single, networked reserve providing for populations that can sustain genetic diversity and, in the case of species that exhibit metapopulation dynamics, provide a means whereby local extinction can be equaled by colonization. The structure of the Criteria Areas, at least in theory, provides a relatively high degree of connectedness across the plan.

Core 2 is a potential critical link in this network approach because of its central location between core areas in the western and eastern portions of the Plan. Core 2 links existing Core J (Lake Skinner/Diamond Valley Lake) and other core areas to the east with Core Areas 1 and E to the west. While there are constraints in the linkages between Core 2 and the other core areas, these are shorter and contain more natural vegetation than for the other constrained linkages (e.g., 7/19 and 14/ 24; see Figure 1) connecting western and eastern core areas.

Recent Scientific Data and Models Relevant to the Evaluation Process

New Vegetation Maps

The WRC MSHCP, adopted in 2004, was developed with a 1994 vegetation map supplemented by a 1997 development and land use layer. In November 2005, the California Department of Fish and Game (CDFG) released a new vegetation map for western Riverside County. This vegetation map was based on aerial photos taken in spring 2002. CCB staff used satellite imagery analysis and field visits to check the classification scheme and to update the map for development that had occurred between 2002 and November 2005. A visual comparison of the 1994 vegetation map with the CCB's modified CDFG 2005 vegetation map shows differences in vegetation classification (Figure 3). In particular, there are differences in the classification of coastal sage scrub and chaparral habitats within Core 2. A preliminary analysis of vegetation sampling points surveyed by CDFG and by the CCB for various projects shows that the 2005 map more accurately classifies vegetation than does the 1994 map (Figures 3 and 4, CCB Unpub. Data). In the 1994 map, much of Core 2 was described as chaparral. In contrast, in the recent 2005 vegetation map, a higher fraction of Core 2 that remains as natural vegetation is identified as coastal sage scrub, with patches of chaparral and riparian woodland.

Within Core 2 Criteria Cells, 50 percent of the land is developed for housing or agriculture (Table 2). Coastal sage scrub is the most abundant vegetation type followed by non-native grassland and chaparral. Warm Springs Creek runs through Core 2 and supports riparian and oak woodland habitats.

Of particular concern to this analysis is the classification of the vegetation present in Core 2, and the vegetation types further to the east in Cores 4 and 7. These areas have been suggested as areas to focus acquisition if undeveloped lands were lost in Core 2 as part of the refinement process. At issue is the protection of coastal sage scrub, one of the most vulnerable vegetation types harboring a number of species of concern. Specifically, in the

Table 2. Vegetation types in WRC MSHCP's Core 2 (from CCB-CDFG 2005 map)

Vegetation Type	**Acreage**	**Percent**
Agriculture	2,382	27.0
Developed	2,013	22.9
Coastal Sage Scrub	1,744	19.8
Chaparral	1,144	13.0
Non-Native Grassland	1,231	13.9
Oak Woodland	69	0.8
Riparian	219	2.5
Open Water	6	0.1
Total	**8,808**	**100.0**

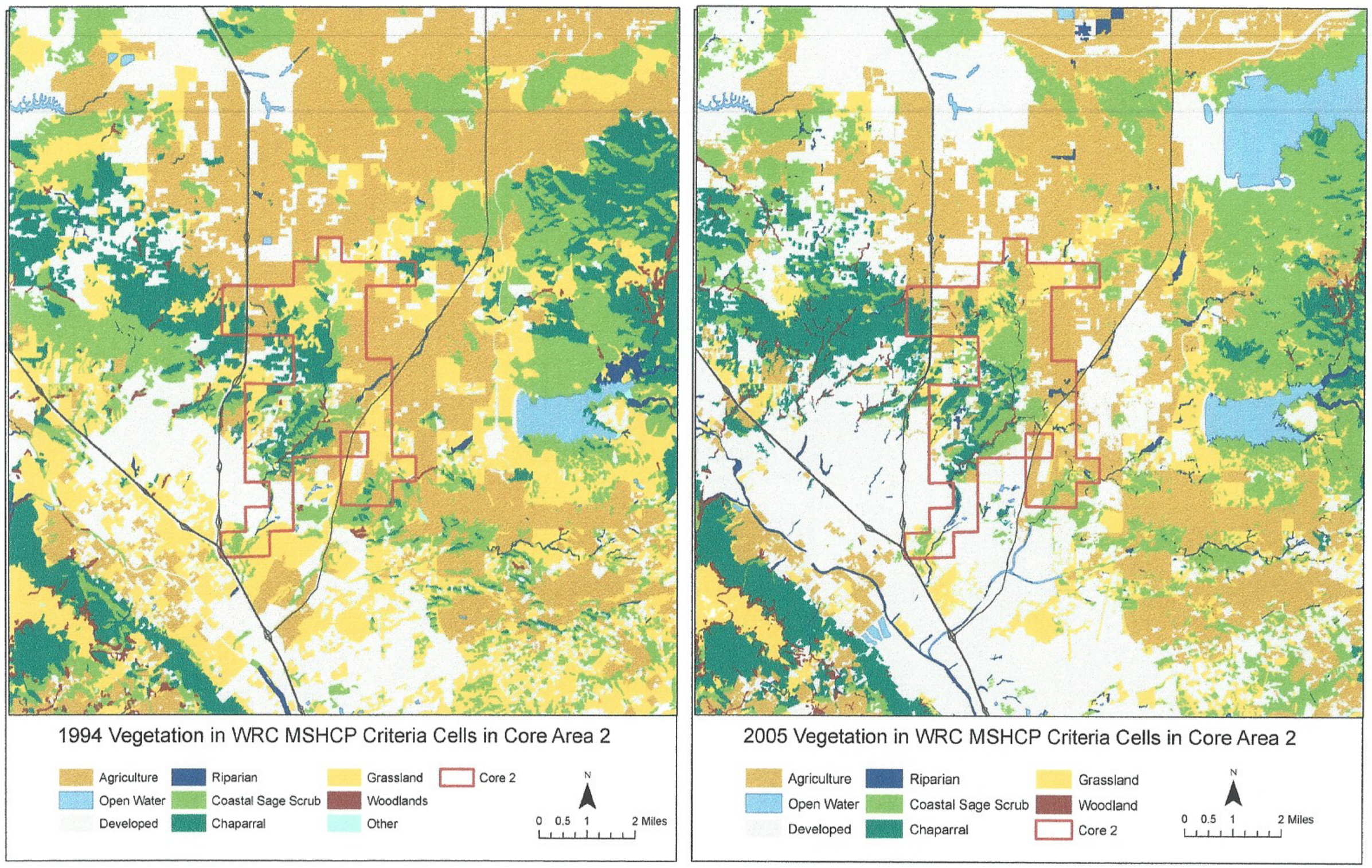


Figure 3. Differences between the 1994 vegetation map and the CCB updated CDFG 2005 vegetation map for Core 2.

1994 map, on which planning was based, a large amount of the vegetation in Core 7 is classified as coastal sage scrub (Figure 4). In the CCB revised 2005 CDFG vegetation map, portions of that coastal sage scrub have been reclassified as chaparral and other desert shrublands, distinct vegetation types hosting different species. Inland coastal sage scrub in Cores 4 and 7 support different plant and animal species compared with more westerly distributed coastal sage scrub within Core 2.

Niche Modeling

Scientists at the CCB recently refined a modeling approach, called a "niche model", for predicting suitable habitat for species of concern (Rotenberry et al. 2002, 2006). In brief, niche models are based on modeling techniques that use presence-only location data for each species to calibrate the models. The models are constructed with environmental variables calculated from Geographic Information Systems (GIS) layers. Environmental variables included in each species model are hypothesized to be important in determining the species distribution and can include climatic, topographic, vegetation, land use, soils, and hydrology variables. For each niche model, a Habitat Similarity Index (HSI) value is calculated for every point in a map grid of ~75,000 points overlaid on the WRC MSHCP study area. The HSI represents the similarity in environmental characteristics of any point in the map grid to the multivariate mean for locations where the species is known to occur. HSI values range from 0 to 1.0 with a 0 indicating that the location is very dissimilar to occupied habitat (unsuitable), whereas a 1.0 indicates that the point is most similar (suitable) to the multivariate mean for occupied habitat.

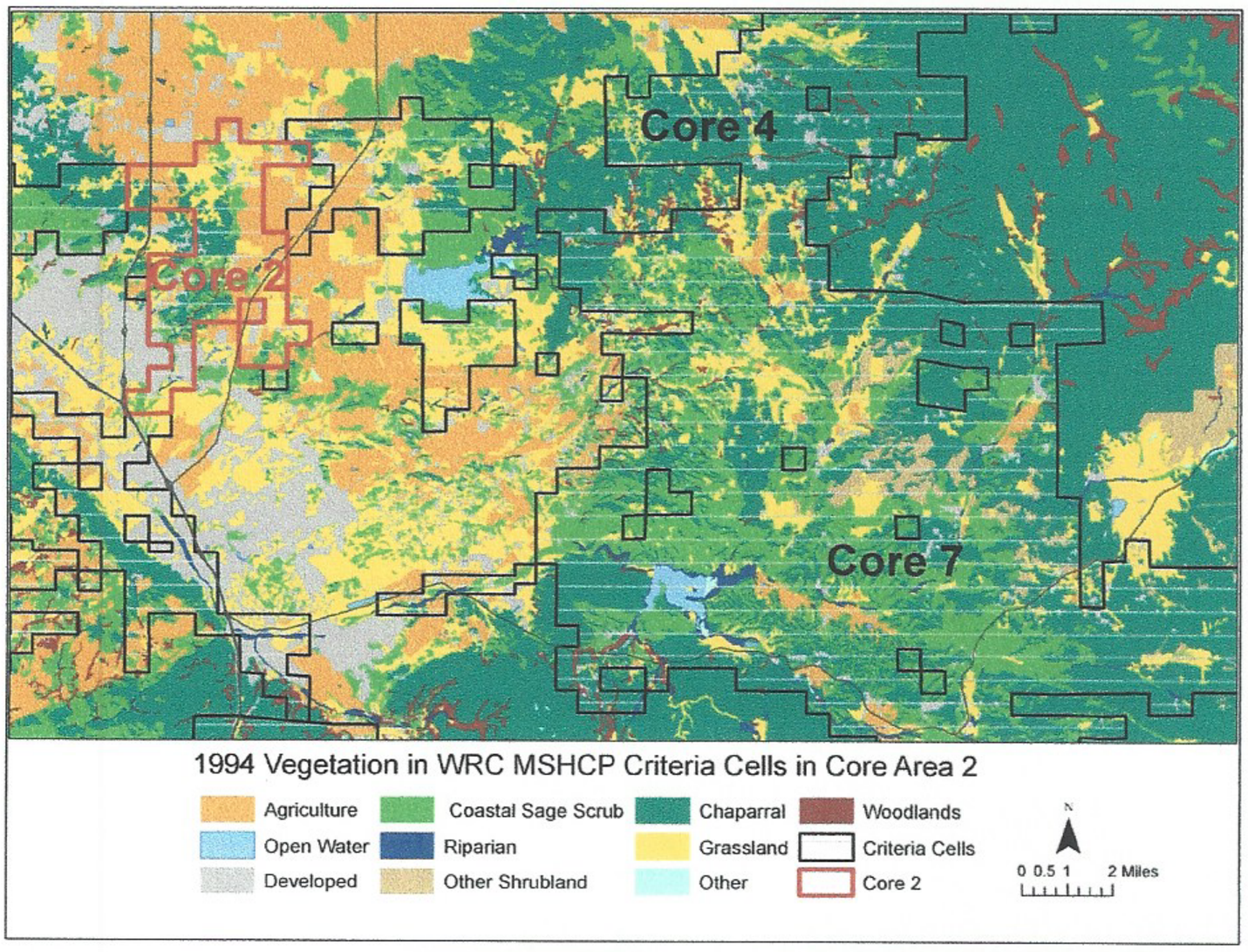
New Species Location Data

Since 2003 CCB staff has collected species location data to augment the initial database compiled by Dr. Scott at the University of California, Riverside for developing the WRC MSHCP. These data were obtained from museums and herbaria, government databases, environmental documents, local experts, the WRC MSHCP monitoring program, and from field surveys conducted by CCB personnel. These species location records are used to develop niche models identifying suitable habitat for species of conservation concern, as well as for more commonly occurring species. Currently the CCB has constructed niche models for 26 WRC MSHCP Covered Species including plant, invertebrate, reptile, bird, and mammal species. From 2002 to 2006, the CCB conducted field surveys and collected independent datasets to evaluate the performance of these models.

Species of Concern in Core 2

Quino Checkerspot Butterfly

Portions of Core 2 may be of particular importance in the conservation of the federally-endangered QCB. It is the northwest most location with consistent, recent detections of populations in the current known range of this subspecies. Data from the recovery plan contain spotty recent records in the Elsinore, Lake Matthews, Harford Springs, and Canyon Lake area, and many of these sites have been subsequently developed. There is no evidence that a viable population currently exists northwest of Core 2 (U.S. Fish and Wildlife Service 2003). QCB were regularly observed in Core 2 between 1998 and 2005, the last year for which survey data are available. The WRC MSHCP includes within the Criteria Area most of the extant, known populations within the Plan area.



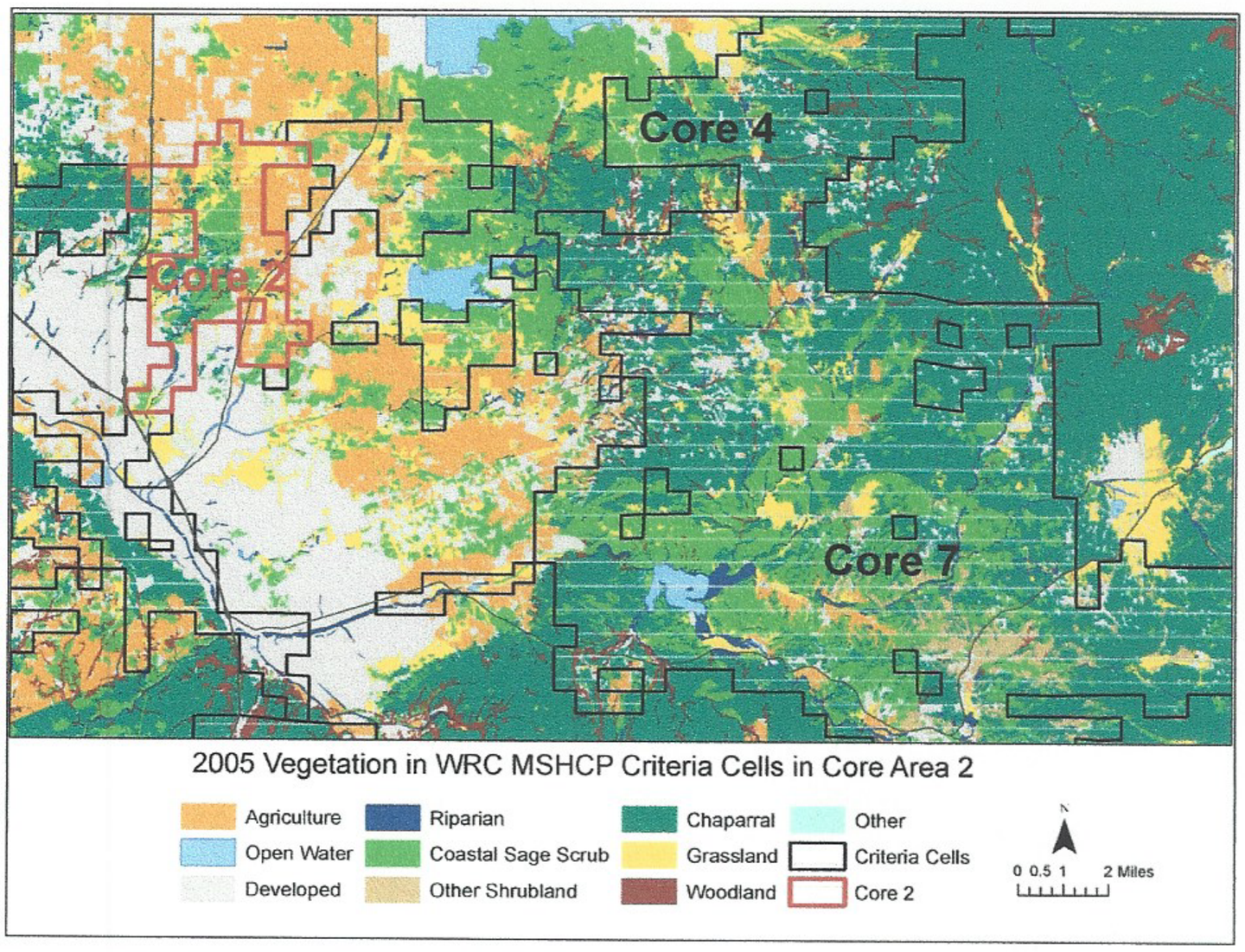


Figure 4. Differences in vegetation between the 1994 vegetation map and the CCB updated CDFG 2005 vegetation map for Core areas 2, 4 and 7.

The most important habitat requirements for QCB are the presence of sufficient populations of *Plantago erecta*, the primary larval host plant, other native annual flowering plants that provide food for pre-diapause larvae (e.g., *Castilleja exserta*), and nectar for flying adults (such as *Lomatium* spp., *Muilla* spp., *Amsinckia* spp., *Lasthenia* spp., U.S. Fish and Wildlife Service 2003). QCB occur in open coastal sage scrub and chaparral habitats with varying topography, including relatively flat lands for larval development and ridgelines with varied slope aspects for adult basking. *Plantago erecta* is found in small isolated patches in open shrublands where invasive annual grasses are sparse (Osborne and Redak 2000). The large-scale invasion of coastal sage scrub habitats by non-native annual grasses in the WRC MSHCP is reducing the distribution of *Plantago erecta* populations, thus limiting habitat available to QCB (Osborne and Redak 2000; U.S. Fish and Wildlife Service 2003). Restoration experiments with *Plantago erecta* demonstrate that competition from exotic grasses is probably the major factor limiting patch size and distribution of this key plant (Marushia and Allen 2005). The restoration treatments, aimed at increasing the abundance of *Plantago erecta*, include grass-specific herbicide, solarization to kill weed seed, and mowing. Although done at a small scale (≤1 acre), the study suggests restoration can be done economically on ≤ acre-sized patches. Restoration would be effective in areas where patches have been disturbed within a matrix of natural vegetation, or in designated corridors. The Core 2 area is especially suitable for restoration because it has somewhat higher precipitation (T. Scott Unpub. Data) than other areas of Riversidean coastal sage scrub, making it easier to establish native vegetation. In addition, Core 2 has relatively low levels of nitrogen deposition (see below), so exotic grasses will be easier to control.

CCB developed a niche model for QCB. In this model, Core 2 is at the northern and western edge of large patches of potentially suitable habitat overlapping with USFWS points showing recent populations, extending to the eastern and southeastern portions of the study area (Figure 5). Internal model validation indicates that the model performs moderately well at predicting known QCB occurrences (median HSI of the validation dataset = 0.7).

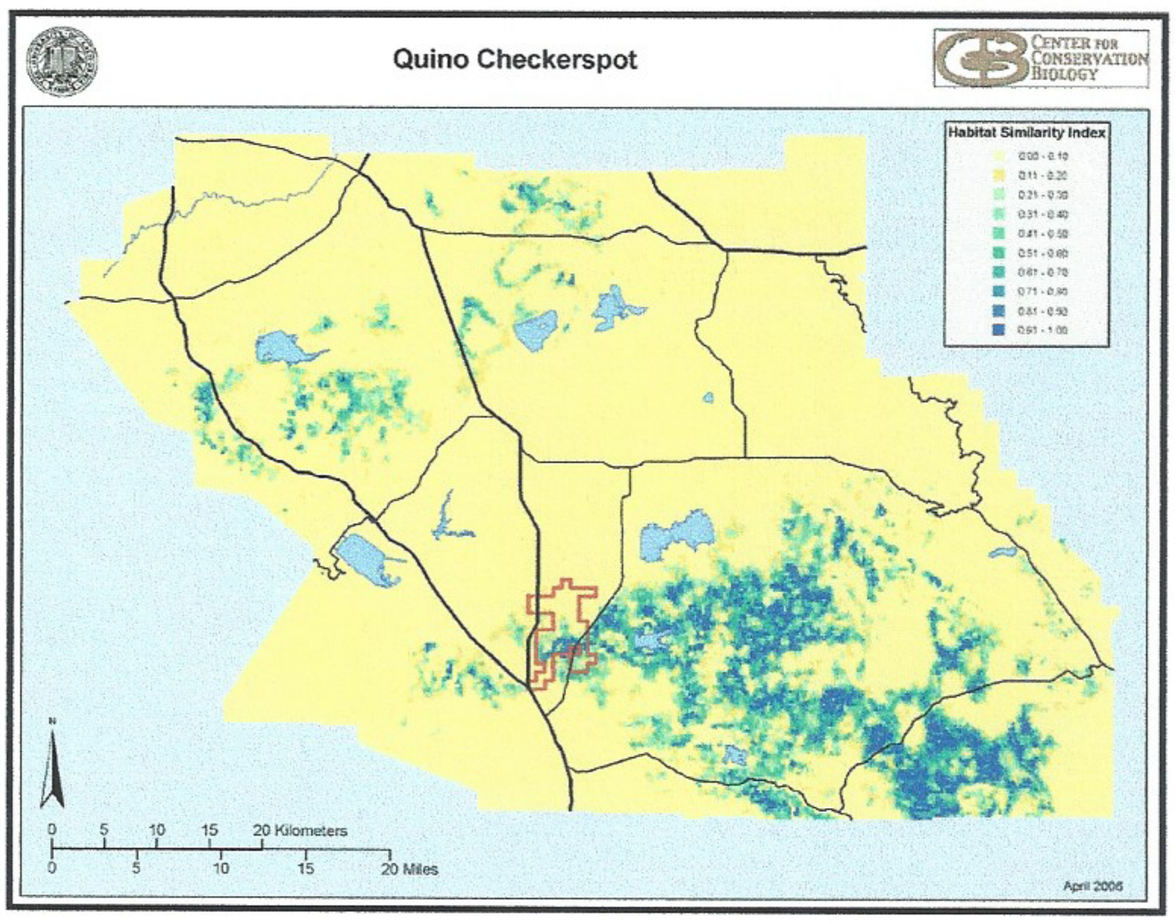


Figure 5. CCB niche model for the Quino checkerspot butterfly showing potential habitat.

California Gnatcatcher

California Gnatcatchers are commonly distributed throughout coastal sage scrub habitats in the valleys and lower foothills of the western half of the WRC MSHCP (Atwood and Bontrager 2001; County of Riverside 2003). Gnatcatchers occur in coastal sage habitats in the Core 2 region. Core 2 is located between large gnatcatcher populations in Sedco Hills (Linkage 8) to the west and the Shipley Skinner Multiple Species Reserve to the east (Core J). In contrast to the northwest and south-central portions of the MSHCP, there are relatively few gnatcatcher records from the eastern foothills despite substantial survey efforts in these areas. Only a few gnatcatchers have been recently reported from the Badlands (Core 3) and Cactus Valley (Core 4) areas. Repeated surveys in the Wilson Valley area (Core 7) have documented both California Gnatcatchers and Black-tailed Gnatcatchers *(Polioptila melanura)* in this transition zone between coastal sage scrub habitats and more arid desert scrub and sagebrush habitats to the east (CCB Unpub. Data); this represents one of the very few areas in southern California where the two species co-occur. In general, California Gnatcatchers are much more sparsely and unevenly distributed in the eastern foothills compared with more westerly locations.

CCB developed a niche model describing suitable habitat for California Gnatcatchers (Rotenberry et al. 2006). During 2005 and 2006 the CCB conducted surveys to collect data to test the model. A preliminary validation shows a very high median HSI of 0.93 for known occupied points indicating the model performs well in describing suitable habitat. The niche model (Figure 6) identifies coastal sage scrub in the western and central portions of the WRC MSHCP, including Core 2, as most suitable for California Gnatcatchers; coastal sage scrub habitats further east (especially Core 7, east of Vail Lake and Core 4) are less suitable.

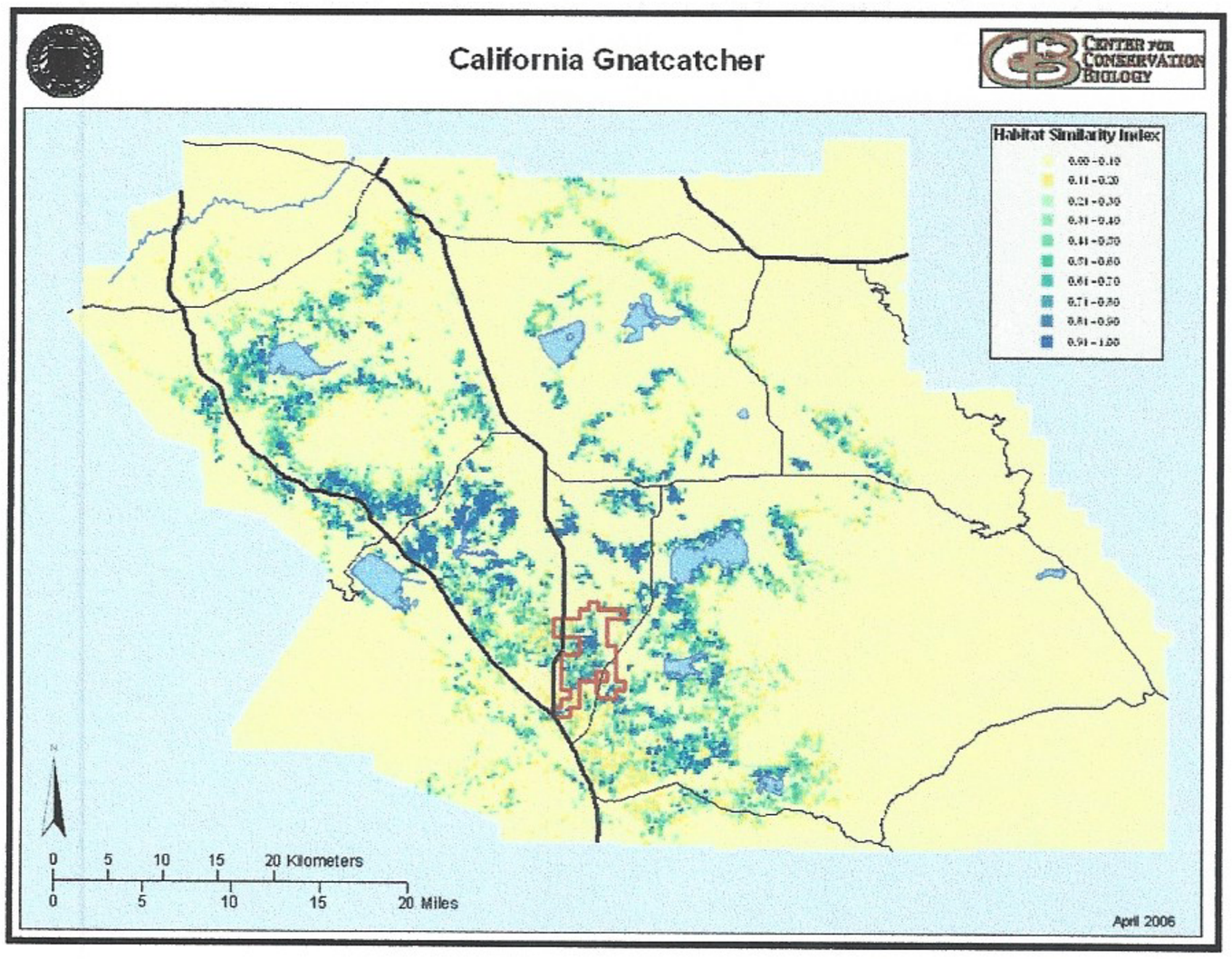


Figure 6. Niche model for the California Gnatcatcher showing potential habitat (reprinted with permission from Rotenberry et al. 2006).

The Core 2 area represents the primary linkage, albeit highly constrained and disrupted by recent development activity, between eastern and western gnatcatcher populations in the Plan area.

Rare Plants

The CCB has compiled a database of rare plant records obtained from museums, herbaria, and environmental reports. This historic database has been augmented by rare plant surveys that CCB conducted on public lands from 2002-2006. There is limited information available for rare plants in Core 2. Five WRC MSHCP plant species considered Core 2 Planning Species have been recorded within Core 2. They are California orcutt grass, long-spined spineflower, Palmer's grapplinghook, Parish's brittlescale, and smooth tarplant. Other Planning Species known from the surrounding area include Coulter's goldfields, little mousetail, Munz's onion, round-leaved filaree, spreading Navarettia, and thread-leaved brodiaea. Niche models for Coulter's goldfields and smooth tarplant are shown in Figure 7. The models show potentially suitable habitat for smooth tarplant but not Coulter's goldfields, in Core 2.

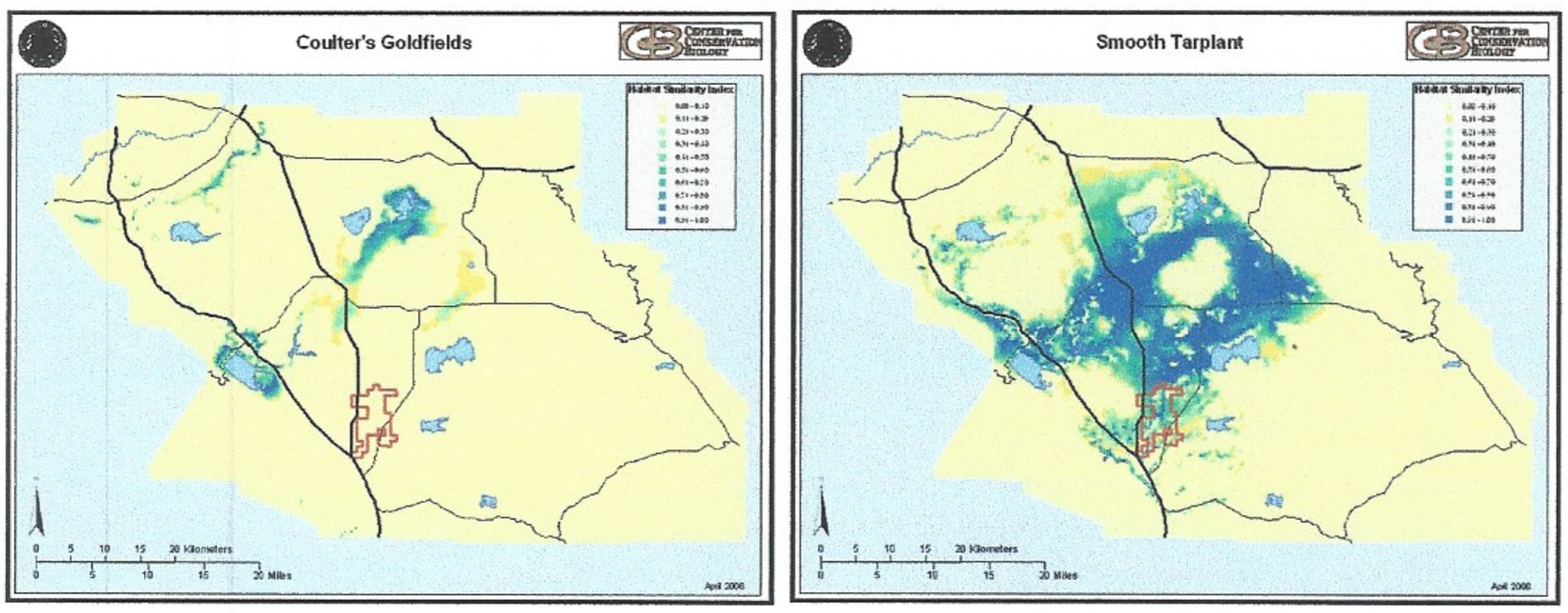


Figure 7. CCB niche models for Coulter's goldfields and smooth tarplant showing potential habitat.

Reptiles

Western pond turtle is the only reptile species considered a Core 2 Planning Species. There is no information available as to whether this species occurs in Core 2. However, it has been recorded nearby to the southeast. There are insufficient data for niche modeling.

Birds

Ferruginous Hawk is the only avian Core 2 Planning Species that has not been recorded in Core 2. Bell's Sage Sparrow, California Horned Lark, Grasshopper Sparrow, Swainson's Hawk, Southern California Rufous-crowned Sparrow, and Western Burrowing Owl have all been recorded in Core 2. CCB has developed niche models for Bell's Sage Sparrow, Southern California Rufous-crowned Sparrow, and Western Burrowing Owl. For all three species, the niche models identify suitable habitat within Core 2 (Figure 8).

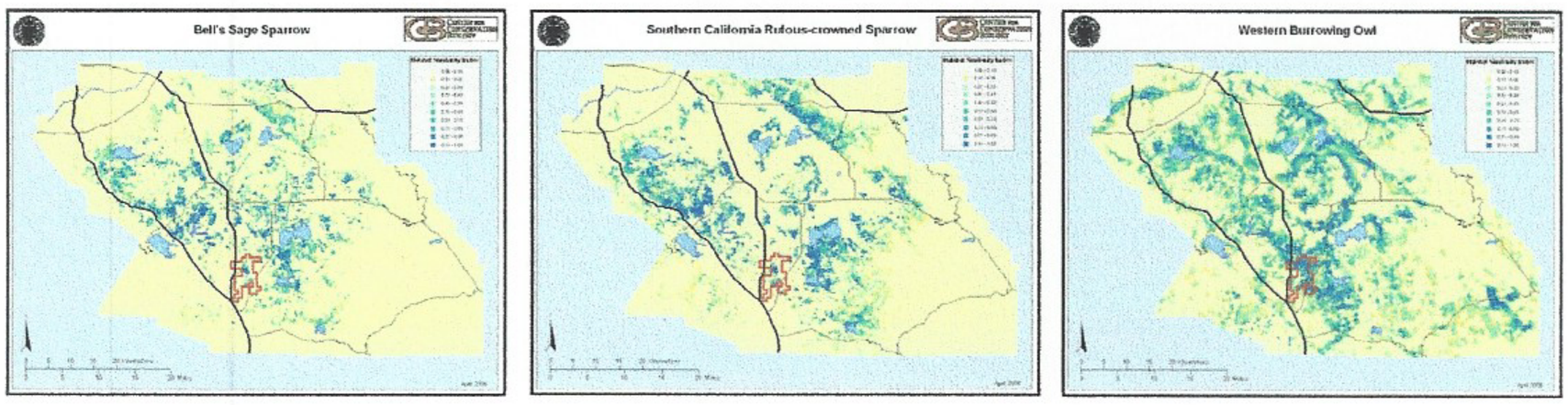


Figure 8. CCB niche models for avian planning species showing potential habitat.

Mammals

There are two mammalian WRC MSHCP Covered Species considered as Planning Species for Core 2. Bobcats are widely distributed throughout natural habitats in the region and likely to occur in the area. The Los Angeles pocket mouse has been recorded from the southeastern corner of Core 2 and is also documented from other areas in the vicinity. The federally-endangered Stephen's kangaroo rat (*Dipodomys stephensi*) is not considered a Planning Species for Core 2, but in 1990 was recorded from three locations in Core 2. It has also been detected at many locations in the region surrounding Core 2.

Reserve Sustainability and Core 2

Core 2 is located in the southwestern portion of the WRC MSHCP. Half of the land has been converted to either agriculture (27%) or residential development (23%; Figure 3, Table 2). Undeveloped lands in Core 2 consist of coastal sage scrub, chaparral, non-native grassland, oak woodland, and riparian habitats. Warm Springs Creek runs through the southern half of Core 2. While Core 2 is surrounded by development and agriculture and is becoming increasingly isolated, the central portions of Core 2 appear to be less degraded than many other low-lying regions in the WRC MSHCP.

Type Conversion Issue

In California, nitrogen deposition from air pollution is associated with the conversion of natural habitats to non-native annual grasslands (Weiss 1999, Fenn et al. 2003). Western Riverside County has a high level of nitrogen deposition, particularly in the northern portion of the study area (Fenn et al. 2003 and unpublished). The production and deposition of nitrous oxides from vehicle emissions, agriculture, and suburban lawns provides a fertilization response that enhances growth and competitive capacity of exotic, invasive grasses in the naturally nitrogen-limited coastal sage scrub systems (Allen et al. 1998; Padgett and Allen 1999). Nitrogen deposition coupled with invasion by annual grasses alters fire and hydrologic regimes and mycorrhizal communities further facilitating this conversion (Minnich and Dezzani 1998; Egerton-Warburton and Allen 2000; Fenn et al. 2003; Wood et al. 2006). Cox (2006) analyzed the spatial patterning of exotic grass cover and nitrogen deposition, and reported a highly significant positive relationship (r^2=0.234, $p<0.001$). In the WRC MSHCP, annual grasses have invaded coastal sage scrub, and to a lesser extent chaparral habitats. The highest level of exotic grass cover in shrublands is found in the central and northern portions of the study area with some highly invaded patches in the southeast (Figure 9). Core 2 has a relatively low cover of invasive annual grasses invading

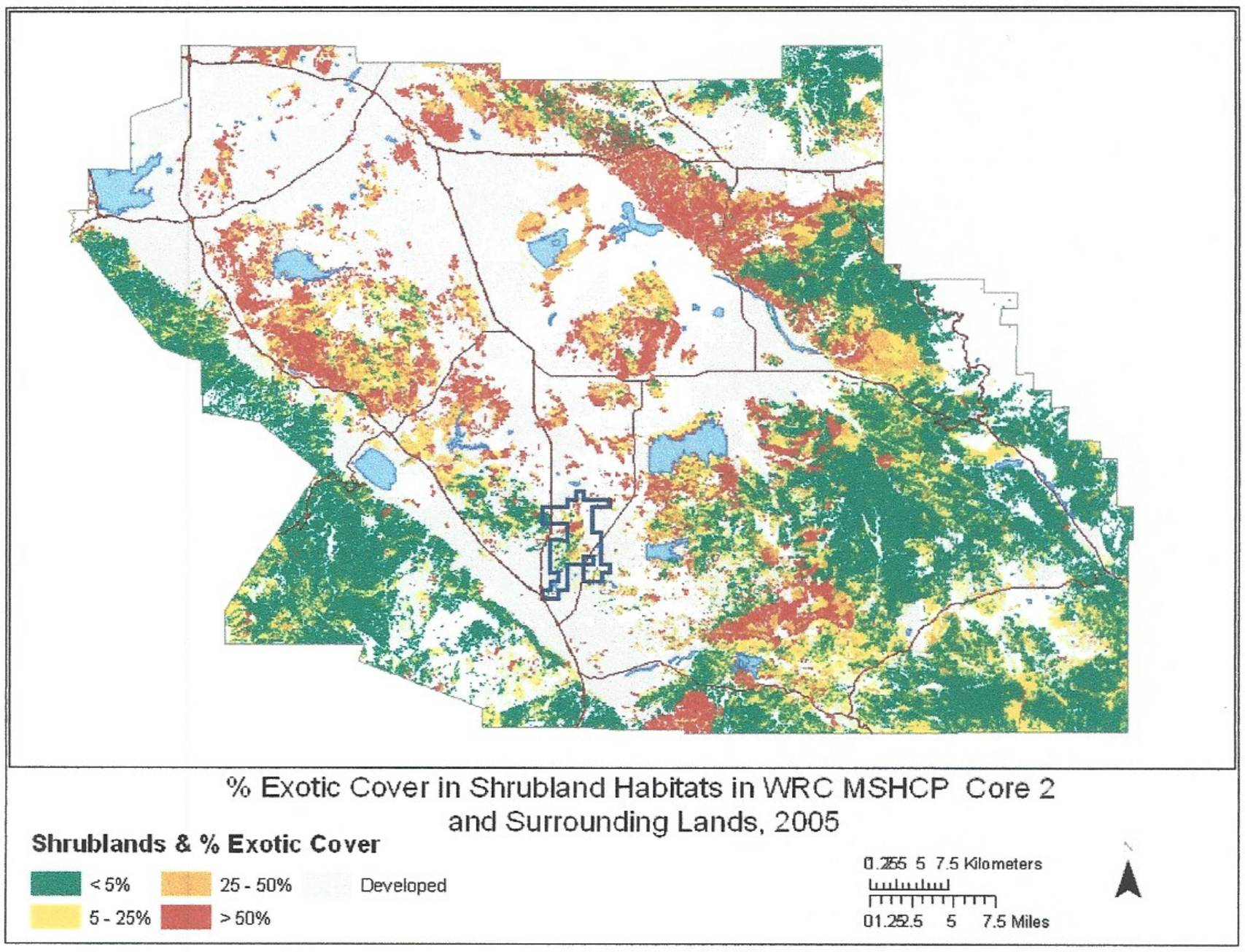


Figure 9. Proportion of exotic plant cover in shrublands across WRC MSHCP planning area.

shrublands. This may be attributable to lower levels of nitrogen deposition and a lack of recent wildfires within Core 2 compared with other areas of the WRC MSHCP.

Isolation and Connectivity

Core 2 provides a potential connection between reserves west of Interstate 215 and reserve lands to the east of Highway 79. There is another east-west Constrained Linkage (7/19) through the center of the WRC MSHCP, which is quite long (>10 miles) and narrow and primarily composed of agricultural lands. In contrast, Core 2 provides an archipelago of natural habitats that is tenuously connected via four constrained linkages to core lands located to the west, east, and southwest. Constrained Linkage 15 is over two miles long and follows the lower portion of Warm Springs Creek between Core 2 and Interstate 15 (Figure 1 and 3). It is a narrow linkage with riparian, coastal sage scrub and non-native grassland habitats. Surrounded by urban development, this linkage has one of the highest perimeter to area ratios of all linkages, indicating the great extent to which it is constricted (County of Riverside 2003). It was identified by the WRC MSHCP as being important for western pond turtle, bobcat and Los Angeles pocket mouse.

Figure 10. Constrained Linkage 16, a meandering riparian strip through agriculture and between suburban tracts. Left is a view from the north (Michael Allen photo, 2006) and right is from the road on the east (Megan Enright photo, 2006).

Constrained Linkage 16 is an unnamed drainage that connects Linkage 8 to the northwest portion of Core 2 at Interstate 215 (Figure 1). Linkage 8 is an approximately seven mile long linkage through the Sedco Hills and Wildomar that proposes to connect Core 2 to Core Areas C (Lake Mathews/Estelle Mountain) and 1 (Alberhills). Constrained Linkage 16 east of Interstate 215, which is surrounded by residential development and agriculture, currently consists of a single narrow strand of riparian trees and herbs meandering across parcels 5366, 5361, and 5256 (Figure 10). Natural habitats remaining in Constrained Linkage 16 include chaparral, riparian, and coastal sage scrub. This proposed linkage was intended to be wider than the current vegetated drainage, although recent development greatly constricts this linkage near I-215. This linkage was designed for movement of QCB, California Gnatcatcher and bobcat (County of Riverside 2003).

Constrained Linkage 17 is approximately 2.5 miles long. It connects the northeast portion of Core 2 to Core J (Lake Skinner/Diamond Valley Lake -Figure 1). This "stepping-stone" linkage consists of non-native grassland and coastal sage scrub habitats embedded within a matrix of agriculture and residential development. Constrained Linkage 17 today exists as a series of granite outcrop "islands" (Figure 11). The Plan describes this Constrained Linkage as having a relatively low perimeter to area ratio and because of the rural nature of planned land uses it was considered to have potentially lower edge effects compared with other Constrained Linkages (County of Riverside 2003). This linkage was designed for QCB, California Gnatcatcher, and bobcat (County of Riverside 2003).

Constrained Linkage 18 is an unnamed drainage running over three miles through agricultural lands from the eastern edge of Core 2 to Core 7 (Figure 1). Located south of Constrained Linkage 17, this connection is largely developed. Planning Species thought to potentially use this linkage include bobcat and Los Angeles pocket mouse (County of Riverside 2003).

Figure 11. Stepping stone islands comprising Constrained Linkage 17 between Core 2 and Core 7 (Michael Allen photo, 2006).

Core 2 Refinement Workshop: Evaluating the Biological Implications of Refining Core 2

After reviewing and discussing the available biological data and conducting a field trip to Core 2, workshop participants addressed a number of questions important in informing the Core 2 criteria refinement process.

Responses to Questions

1. ***Are the biological resources for which Core 2 was designated for protection found in other areas of the WRC MSHCP and are these areas equivalent in biological value? This general question was broken into 3 sub-questions:***

   a) ***Is Core 2 an irreplaceable element of the WRC MSHCP or can the Plan's objectives be met in other areas of the MSHCP without inclusion of Core 2?***

It was unanimously agreed by the Core 2 Workshop participants that portions of Core 2 has elements not found elsewhere in the WRC MSHCP. This assessment was based upon several factors.

The most important consideration was the impact that the loss of all Core 2 coastal sage and chaparral habitats could have on QCB. QCB have been detected in Core 2 on a regular basis since the 1990s. The Core 2 QCB population may also serve as a source of potential colonists for other nearby populations. There is a difference in breeding phenology between populations in the western and eastern portions of the WRC MSHCP. Differences in late winter and early spring climatic conditions, particularly temperature, are thought to drive the difference in timing of adult emergence and breeding. There appears to be little temporal overlap in breeding between the earlier emerging western populations and late emerging, more easterly populations. This indicates that portions of Core 2 are a potential source of colonists particularly for Core J (with extension 6, Johnson Ranch and Shipley-Skinner). There may be a lower chance for colonization of QCB from the east (Proposed Core 7, e.g., Wilson Valley). This is because early emerging adults from westerly populations presumably have time to travel east and to potentially breed with individuals as they begin to emerge and fly in the east. In contrast, butterflies from eastern populations that emerge later than western individuals will be less likely to reach the western populations in time to breed.

Portions of Core 2 may also serve as a linkage between sub-populations of California Gnatcatchers. They appear to be abundant and the area could provide an east-west connection between core reserves. Even though linkages included within Core 2 are becoming increasingly constrained, there may still be the potential for connectivity, especially with restoration of natural habitats. The other east-west linkage (7/ 19) is more than 10 miles long, and is almost entirely converted to agriculture. In contrast, Core 2 still provides over 1,700 acres of coastal sage scrub habitat.

While Core 2 is becoming increasingly isolated by previously approved development, it remains unique in western Riverside County. Climatic conditions are relatively mesic in Core 2, leading to substantial differences in vegetation composition compared with areas to the north and southeast. This was particularly evident in comparing Core 2 with Wilson Valley (Core 7), which represents a transition area from coastal sage scrub to desert vegetation communities, and where California and Black-tailed Gnatcatchers both occur

(CCB Unpub. Data). Available location data suggest that California Gnatcatcher populations are relatively dense in the western half of the WRC MSHCP, with populations becoming sparser to the east. This pattern is consistent with distribution patterns observed in other portions of the species' range (Atwood 1993; Preston et al. 1998; Atwood and Bontrager 2001). After reviewing the available information it was agreed that lands east of the Shipley Skinner Multi-Species Reserve (Core J), while valuable, are not biologically equivalent to Core 2 for California Gnatcatchers.

Coastal sage scrub vegetation in the Core 2 area is less invaded by annual grasses than other Core areas (e.g., Core C, proposed Core 1- Lake Mathews/Estelle Mountain, proposed Core 3- the Badlands and Core H- Lake Perris). This is likely a result of more mesic climatic conditions, lower rates of nitrogen deposition and a lack of recent fires in Core 2. Because of these factors, Core 2 may be more resilient to anthropogenic disturbance than other areas to the north that are already highly degraded by invasive grasses, and may respond more successfully to management activities aimed at habitat restoration.

One element that stands out in the WRC MSHCP is the attempt to create a linked network of reserves, not individual, isolated core reserves. The goal is to have a reserve system that can reduce genetic isolation, allow populations of concern to recolonize following the local extinctions that will result from stochastic events (e.g., fire), and migrate in response to directional environmental change (such as extended drought or global environmental change). While connectivity takes time to empirically demonstrate, it has become a testable tenant in conservation biology. The alternative, small isolated reserves, will result in reduced numbers of individuals and increased genetic isolation ("fragment unto death"- Quammen 1996). In fact, MSHCPs, such as the WRC MSHCP represent a crucial test of the linkage concept.

Maintaining a relatively undisturbed central core of Core 2 with linkages across the valley may well be an ultimate test of the linkage hypothesis. Under this hypothesis, connectivity is considered important for conserving biodiversity, enhancing the persistence of sensitive plant and animal populations by allowing for dispersal, and in maintaining ecological functions within a reserve system (Johnson et al. 1992, Pascual-Hortal and Saura 2006). Losing this linkage entirely would effectively sever the western and eastern parts in the central portion of the WRC MSHCP. We recognize that the linkages between proposed Core 1 and Core J are constrained, but the less-disturbed, central portion of Core 2 represents the only potential large stopover between them. Further, it remains large enough to support populations of key organisms, a true live-in corridor element. It appears to contain relatively stable populations of California Gnatcatchers and QCB. Although we do not have population data, it may well host the largest population of California Gnatcatchers per unit area in the central part of the WRC MSHCP. The northern and western-most stable populations of QCB occur in Core 2 suggesting that any migration would need to go through this area to repopulate the areas to the north and west- directions that many species of butterflies are expected to move in response to global change (Parmesan et al. 1999). Core 2 hosts at least five plant species considered Planning Species as well as other WRC MSHCP Covered species including a relatively large population of Engelmann oak. This plant has wind-dispersed pollen probably linking the Santa Ana populations (e.g., Core F-Santa Rosa Plateau) with those in Core J (Lake Skinner/Diamond Valley Lake).

b) What information is available to make these comparisons and what information may be lacking?

These comparisons were made using a species occurrence database with many location records, niche models identifying suitable habitat for seven of the Core 2 Planning Species, an updated vegetation map, maps of exotic annual vegetation cover, nitrogen deposition, and recent fire history. This information was unavailable when the plan was developed and represents an increase in our knowledge and understanding of the biological resources and processes in the WRC MSHCP. Despite all this newly available information, there are still significant knowledge gaps in assessing the impacts of a Core 2 refinement.

There is insufficient knowledge about QCB population dynamics. To effectively manage a species that has a complex life cycle, it is essential to move beyond simple presence/absence characterizations and to understand the ecology of the species. Put simply, key ecological studies by qualified ecologists are essential to generate the information needed to effectively manage this species. To understand the relative importance of the Core 2 QCB population, more information needs to be gathered on the distribution and metapopulation dynamics of this species. ***This requires larval and adult surveys to document reproduction and population levels in different locations and over multiple years with varying environmental conditions***. Surveys need to be expanded into new areas to determine if there are additional, undocumented populations in the WRC MSHCP; this information would improve the quality of QCB niche models. A better understanding of the key host plant, *Plantago erecta* is needed. One of the difficulties in working with QCB is that it represents a metapopulation species dependent upon another metapopulation species, meaning that modeling and managing its persistence and dynamics across a reserve network is doubly complicated. Both species need to be studied, in concert, and individually. As *P. erecta* is not endangered *per se*, it does not receive the same level of study as QCB, however, without understanding *P. erecta* dynamics, QCB cannot be effectively managed. To understand the broader patterns of QCB distribution within the study area, a database should be compiled that documents where and when QCB were surveyed, as well as the results of these survey activities.

To identify the relative importance of Core 2 in comparison to other areas in the reserve system, the distribution, abundance and dynamics of nectar and host plant sources should be assessed across core areas. This will allow a comparison of Core 2 with other areas in terms of potential habitat for QCB colonization and areas undergoing environmental change where such resources may be lost. Dispersal patterns of individual QCB will become increasingly important. Do the "stepping-stone" linkages east of Core 2 really function to sustain a metapopulation species such as the QCB? Understanding the precise behavior of movement in response to the landscape topography and patch structure is crucial to determining if an effective linkage has been created (see for example, Pe'er et al. 2006, Hein et al. 2004). Performance of the niche model will likely be improved by including these variables as well as those describing micro-climatic conditions and the occurrence of the larval host plant, *Plantago erecta.*

Specific information remains lacking on QCB population demography. The species is hypothesized to have a complex metapopulation structure comprised of local populations subject to potential extinction and recolonization events, consistent with dynamics observed in other butterfly species (Mattoni et al. 1997; U.S. Fish and Wildlife Service 2003). The exact nature of the metapopulation structure is unknown. Based upon patchy distributions of the host plant and relatively small numbers of flying adults observed at any one site, it is likely that QCB populations are small and isolated. Different populations of QCB show

variable phenologies. One hypothesis is that these are due to differences in late winter and early spring temperatures in western Riverside County, not to population differentiation. Warmer late winter temperatures in Core 2, Johnson Ranch (Core 6) and the Shipley Skinner Multi-Species Reserve (Core J) facilitate development of larvae so that adults emerge to fly and breed earlier compared with colder locations to the east. The differences in phenology can be considerable, such that there may be an overlap of only one week in adult flight and breeding periods between the western and eastern populations.

The potential differential phenology between western and eastern metapopulations of QCB needs to be carefully described in the context of the population structure. The differences are probably simply a response to the different climate regimes. But, genetic studies of QCB would facilitate an understanding of patterns of gene flow between populations in the WRC MSHCP. Of particular importance is the relationship between Core 2 and nearby populations (e.g., Johnson Ranch, Shipley-Skinner Multi-Species Reserve, Oak Mountain) compared with populations farther east in proposed Core 7.

To better understand the importance of Core 2 for California Gnatcatchers more information is needed on habitat quality and dispersal across the WRC MSHCP. To determine that other areas are biologically equivalent to Core 2 would require research into habitat quality (e.g., fire history, vegetation composition and structure, shrub age structure, etc.) as it relates to annual variation in reproductive success and survivorship under different environmental conditions. To evaluate whether Core 2 provides an east-west connection between gnatcatcher populations would require a study of gnatcatcher dispersal behavior in an urbanizing landscape. As with QCB, we hypothesize that the "stepping-stone" and narrow riparian corridor linkages created in the MSHCP will sustain gene flow between metapopulations, but the data to validate such a hypothesis need to be collected.

There is a lack of information about other plant, bird, and mammal Planning Species in Core 2. There is a need to survey for rare plants considered Core 2 Planning Species, given the occurrence of five of these species within Core 2 and six other species in adjacent lands. Although the Los Angeles pocket mouse has been detected in the southeast corner of Core 2, its distribution within the area is unknown. Stephen's kangaroo rat, a federally-endangered species, has also been documented from three locations in Core 2 and the current status of this species in Core 2 is unknown. Surveys of Core 2 and other potentially equivalent areas would need to be conducted to determine if there was biological equivalence for these species.

c) Does Core 2 provide important source habitat for the QCB and California Gnatcatcher that can't be obtained elsewhere?

Core 2 provides habitat that potentially supports the most northwesterly and most consistently observed population of QCB across the range of this subspecies. As discussed above, differences in breeding phenology between western and eastern populations are likely to make the Core 2 population an important source of colonists for nearby populations to the east. If climate change results in a northward expansion of suitable QCB habitat, then the Core 2 population would provide a source of colonists for northward expansion. If there is an increase in temperature or decrease in rainfall in the future, the relatively mesic climatic conditions at Core 2 would buffer potential adverse affects on QCB and California Gnatcatchers relative to harsher climatic conditions to the east.

2. Does Core 2 still provide the resources identified in the plan? Specifically:

a) Does Core 2 retain adequate structural integrity and connectivity to allow it to serve as a sustainable reserve, or has the landscape changed to the point where Core 2 can no longer serve as a reserve core unit?

Core 2 supports the western and northern edge of the population of QCB and hosts a significant population of California Gnatcatchers. Portions of the area have not been altered and appear to have long-term functional value. In fact coastal sage scrub and chaparral in the central parts of Core 2 (parcels 5260, 5367, 5369, 5475, 5569, part of 5671 and 5784, 5786, and parts of 5781, 5878, 5876, 5875, and 5974) appear, from a distance, less degraded than the same habitats present in some of the larger core areas, particularly where exotics have invaded. Connectivity to the east has a stepping-stone structure and remains tenuous but could be improved with habitat restoration. It is unclear whether connectivity is still retained to the west. There is a thin green line bisected by roads (constrained linkage 16), but with the construction of future underpasses (especially for I-215) designed for animal movement, and restoration of patches, such as in parcels 5256, 5361 and 5366, this might provide a functional linkage. Core 2 and constrained linkage 16 currently provides the only potential for east-west connectivity between the Tenaja Corridor near Temecula and the highly constrained, very long linkage 19/7.

The central portion of Core 2 provides an important patch of habitat for California Gnatcatchers that is relatively intact. Without Core 2 potential connectivity between coastal sage habitats may be eliminated resulting in two reserves with gnatcatchers on either side of the valley. Connectivity in this species can exist along habitat archipelagos and is potentially still retained in the central part of Core 2. This broader connectivity issue is not driven solely by the QCB and California Gnatcatcher, but also includes the other Core 2 Planning Species. In the time since the plan was prepared and signed, there has been substantial development affecting connectivity in Core 2. Habitat restoration and construction of underpasses could improve future connectivity between eastern and western portions of the WRC MSHCP conservation areas.

b) Are there any new data, models or trend analysis that could clarify the sustainability of this unit?

The nitrogen deposition map, fire history map, and exotic annual cover maps all help with evaluating the sustainability of Core 2 relative to other core areas within the WRC MSHCP. These are new sources of information not available when the Plan was developed and all show that the central portion of Core 2 is relatively less impacted than some of the other larger core areas. (This information is addressed in greater detail above). To evaluate trends in sustainability for QCB and California Gnatcatcher populations, it is necessary to have population and dispersal data identified above (Question 1b).

c) Is Core Area 2 critical to the long-term sustainability of the QCB within the WRC MSHCP in light of potentially complex metapopulation dynamics?

The available evidence suggests that it is likely to be an important population by anchoring the northwestern population edge and providing a metapopulation capable of colonizing locally-extirpated patches in Core J.

d) Does Core Area 2 provide habitat for the California Gnatcatcher that is unique within the WRC MSHCP?

No, although it does provide California Gnatcatcher habitat and potential connectivity. Notably, with respect to California Gnatcatchers, habitat in Core 2 is superior to that found further east.

3. What information is necessary to integrate assessments of irreplaceability (Question 1) and long-term sustainability (Question 2)? More specifically:

a) Are there existing models or case histories where irreplaceability and sustainability have been balanced in a similar planning exercise?

Since 2000, there have been over 400 papers published in the primary literature on the selection of nature reserves, but none have addressed the selection decisions that need to be made when irreplaceable biological resources occur in areas where reserves may not succeed because of human influences. There is long term recognition that species persistence is an important criterion in preserve selection (Lockwood et al 1997), but this recognition has not lead to merger of the preserve selection literature with the equally large body of literature on preserve management in human-dominated landscapes.

Most of the preserve design models have been created to select the best preserve system among a series of options (Margules and Pressey 2000), often detached from the subsequent management costs of the selected preserves. Models are designed to create optimal networks of preserves, by ranking the importance of all possible preserves. These optimal models are not designed to define the intrinsic value of a single reserve, and the overall ranking system may not be able to judge the relative value of one reserve against another.

Although there is wide recognition that species and habitat persistence is a critical component of preserve design, very few studies have included this concept in preserve selection models. Lockwood et al. (1997) used the predicted survival of species within individual preserves to choose the best of equally ranked preserves, based on a simple ranking system. McCarthy et al. (2006) created a similar model of persistence of species within preserves, and made this estimate of persistence an integral part of the preserve selection model. Unfortunately, they based their estimates of species persistence on preserve size, which is criteria used in all preserve selection models and makes their results similar to traditional models. Neither Lockwood et al. (1997) nor McMarthy et al. (2006) merged their models with the concept of irreplaceability, so their work cannot be used to judge the significance of critically important preserve that becomes unsustainable.

The preserve management literature offers a diffuse and often idiosyncratic analysis of preserve persistence in human dominated landscapes (see Breuste 2004, Williams et al.

2005). Operational models, such as the Property Analysis Record (PAR; CNLM 2004), provide estimates of management costs but are untested, have no way to estimate error, and have no estimate of efficiency across a range of situations. They can be used to indirectly calculate preserve persistence, because a preserve could be considered unviable when its management costs exceeded available funds. To date no one has attempted to merge these techniques with preserve selection models.

b) Are there updated scientific assessments of environmental change that would cause a re-evaluation of the biological value of Core 2?

Yes, but they actually show areas within Core 2 potentially more valuable than initially projected (see background section). The area comprising Core 2 consists of lands important for conservation of Quino checkerspot and California Gnatcatcher, although not all lands within Core 2 are essential, particularly some of the disturbed and agricultural lands. Our review of the most recent available information shows that the central watershed and associated uplands (coastal sage scrub and chaparral) that provide habitat for the QCB and California Gnatcatcher and that provide connectivity through Core 2 are critical for conservation. Acquisition and restoration of lands that enhance the central core or improve connectivity in the Constrained Linkages is also important. Additional ecological studies of the species involved (see response to question 1b) would be very helpful in predicting the specific portions of Core 2 and the linkage elements connecting Core 2 to the surrounding cores that are needed to finalize the reserve structure. The build-out scenario and climate change predictions ***also*** need to be evaluated to see how this might impact Core 2 relative to the other core areas. Without Core 2, populations to the southeast will have to make a larger jump to move to the northwest. If the region becomes drier in the future, Core 2 could stay mesic longer than areas to the east.

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Lottiefox

From: "ROBERT WHEELER" <robertdwheeler@verizon.net>
To: "Vicki Long" <VickiGLong@AOL.com>; "Robert D. Wheeler" <robertdwheeler@verizon.net>; "Pam Nelson" <pamela05n@peoplepc.com>; "Gary Watts" <gwatts@parks.ca.gov>; "Ed Stanton" <estanton@cnlm.org>; "Del Ross" <delross@verizon.net>; "Dan Matrisciano" <danishelen@earthlink.net>; "Charolette Fox" <lottiefox@verizon.net>; "Bob Hewitt" <Robert.Hewitt@ca.usda.gov>
Sent: Thursday, November 09, 2006 11:53 AM
Attach: TemeculaAutoTestingTrack.pdf
Subject: Fw: We're Under Attack + Some Good News

-------Original Message-------

From: Larry Ulvestad
Date: 11/09/06 11:39:38
To: 'Nelson, Pam'; 'Dr. Robert D. Wheeler'; 'Dan Silver'
Cc: 'Rick Fitch'; 'Peter Collisson'; 'Kenneth M. Kaplan, Esq.'; 'Susan M. Trager'
Subject: We're Under Attack + Some Good News

Pam, Bob and Dan,

As you can see from the attachment, we're literally under attack here at the foot of the Agua Tibia Wilderness Area. This kind of use is EXACTLY the kind of thing that Dominguez, our neighbor will latch onto and support, if he fails in his attempts to build out his 280 acres of prime open space adjoining the Cleveland.

I need your help. Pam, could you ask your planning group that meets with Supervisor Jeff Stone, once a month to consider adding this issue to your agenda, if its not already there.

Now, for the good news. Soon I'll be able to forward you a batch of county documents that show that the Dominguez 120 acre piece that he purchased a year or so ago from the Weiberg family heirs and upon which the grandfather had built, totally without permits, a log cabin back in the 30's and which burned to the ground in the big fire of 1989 and was never rebuilt, is covered by a Riverside County General Plan which zones if for permanent open space and conservation. I'm trying to determine when that General Plan was adopted, but my guess is that it goes back a number of years. This proves what we have been trying to tell the county when they made their classification error of not including the parcel in the MSHCP. As you will recall, this is the parcel which lies ENTIRELY within not only the Cleveland boundary, but also completely within the Agua Tibia. Nobody who was processing Dominguez' application at the county (nor Dominguez apparently) knew that the the General Plan had this status for the parcel. The county planner involved, has now notified Dominquez of the zoning and that any attempt to remove the parcel from the open space designation would necessitate a full EIR (probable cost: $200,000). When I get the full email together on that I need your group and Dan Silver's group to join with me, TNC, etc. in protesting, BY LETTER and IN PERSON any attempt to get the zone change + a renewed request to the county to go back and correct the MSHCP cell map. Bob, who runs TNC in our area now? Dominguez (or an investor-partner) paid about $400,000 cash for this parcel.

Your, Bob's and Dan's a priori thoughts on what else we should be doing NOW with respect to this GP issue?

Thanks,

Larry Ulvestad

CUSHMAN & WAKEFIELD

Cushman & Wakefield of California, Inc.
1920 Main St.
Suite 600
Irvine, CA 92614
(949) 474 4004 Tel
(949) 474 0405 Fax
www.cushwake.com

October 30, 2006

Dripping Springs Ranch Investments LLC
1921 Catalina
Laguna Beach, CA 92651

RE: NOTICE OF SOLICITATION
LAND REQUIREMENT FOR VEHICLE TESTING FACILITY
ASSESSOR'S PARCEL #917-150-007

Dear Owner:

Cushman & Wakefield has been authorized by our client, a major automotive services company, to contact you regarding your 80-acre land parcel (referenced above) located in Riverside County. Our client is seeking a 50 to 100-acre parcel to establish a world-class vehicle research and testing facility consisting of an open-road testing track. Your land parcel has been identified by our selection committee as suitable land for their intended use.

In the event you should be interested in discussing a potential ground lease (long-term) or sale of your parcel, you are invited to contact our office prior to November 30, 2006, with your desired offering terms (pursuant to the attached Notice of Solicitation).

We would like to include your land parcel submittal for our evaluation prior to this deadline. Upon obtaining all of the necessary approvals, we are prepared to close a transaction in a timely manner.

We look forward to your response.

Sincerely,

CUSHMAN & WAKEFIELD OF CALIFORNIA, INC.

Donald W. Yahn
(949) 930-9251
don.yahn@cushwake.com

Brett Swartzbaugh
(949) 930-9217
brett.swartzbaugh@cushwake.com

DWY/ljb

Attachment

CUSHMAN & WAKEFIELD®
Global Real Estate Solutions℠

NOTICE OF SOLICITATION
REPLY DEADLINE: NOVEMBER 30, 2006

Cushman & Wakefield represents a major automotive services company seeking to lease or purchase open land in the vicinity of Riverside County. Our client desires to establish a world-class vehicle research and testing facility consisting of an open-road testing track. Unimproved sites between 50 to 100 acres shall be considered in our evaluation. Our selection committee has determined, based on initial observation, that your parcel known as Assessor's Parcel Number 917-150-007 could be suitable for our client's intended use. As such, we would like to invite you to reply to our Notice of Solicitation with the following information for our consideration:

1. Location of subject parcel.
2. Gross acreage of site and/or willingness to divide.
3. Approximate dimensions of site.
4. Parcel/plat and/or topographical maps.
5. Vesting information and address of principal owner.
6. Zoning and permitted uses/municipal authority
7. Current land use.
8. Prior use of land, if known.
9. Infrastructure/utilities and improvements (if any).
10. Any known encumbrances or easements.
11. Requested sales price and/or lease cost per acre.
12. Acknowledgment of commission agreement with Cushman & Wakefield.

Our deadline for this invitation is **November 30, 2006**, during which time we will evaluate all submittals received and proceed to select our final candidate sites. We will respond to the selected parties by January 15, 2007.

The property finalist will be notified and required to sign a Confidentiality Agreement and a memorandum outlining the Essential Terms and Conditions for the purchase or ground lease of the subject property.

On behalf of our client, we appreciate your consideration of this invitation. Should you require any additional information, please direct any inquiries to:

Donald W. Yahn
(949) 930-9251
don.yahn@cushwake.com

Brett Swartzbaugh
(949) 930-9217
brett.swartzbaugh@cushwake.com

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