3.0 COMMENTS RECEIVED

AGUA CALIENTE BAND OF CAHUILLA INDIANS

Tribal Planning & Development

May 29, 2007

John Wohlmuth, Executive Director
CVAG
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

RE: Coachella Valley Multiple Species Habitat Conservation Plan

Dear Mr. Wohlmuth:

Tribal Staff has reviewed the re-circulated CVMSHCP and EIS and submit the following comments:

1. There are numerous statements throughout the documents such as: "...and within this area is owned by the Agua Caliente Band of Cahuilla Indians..." It is important to note that not all land on the Reservation is owned directly by the Tribal Government. Typically land within the Reservation is "owned" in 4 ways: as private fee land, as allotted trust land, as Tribal trust land or as Tribal fee land. The latter two categories, Tribal trust and Tribal fee, are the only properties owned by the Tribal Government. Regardless of status, all properties on the Reservation will be subject to the Tribal Habitat Conservation Plan (THCP) currently under review by the U.S. Fish & Wildlife Service.

2. The Tribal Government owns certain properties that are outside the boundaries of the Reservation. These properties will be covered by the THCP currently under review by the U.S. Fish & Wildlife Service. These same properties are shown on Fig. 4-28a and other exhibits incorrectly as being included in the MSHCP Plan Area.

3. Several references throughout the document incorrectly state the size of the Reservation as 23,000 acres. The Reservation should be correctly identified as 31,400 acres.

4. Page 4-158: the Palm Hills development area includes Section 32 which is on the Reservation and thus Section 32 will be covered by the Tribal HCP.

Very truly yours,

Margaret Park, AICP
Director of Planning
AGUA CALIENTE BAND
OF CAHUILLA INDIANS

C: Tom Davis, Chief Planning & Development Officer
NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
(916) 653-4082
Fax (916) 653-5390
Web Site www.nahc.ca.gov

April 20, 2007

Ms. Katie Barrows
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

Re: SCH#20000061079: NEPA/CEQA Notice of Completion; Joint Document CEQA/NEPA Draft EIR/Draft Finding of No Significant Impact (FONSI) Coachella Valley Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan; Riverside County, California

Dear Ms. Barrows:

Thank you for the opportunity to comment on the above-referenced document. The California Environmental Quality Act (CEQA) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR per CEQA guidelines § 15064.5(b)(c). In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the area of project effect (APE), and if so, to mitigate that effect. To adequately assess the project-related impacts on historical resources, the Commission recommends the following action:

V: Contact the appropriate California Historic Resources Information Center (CHRIS). The record search will determine:

- If a part or the entire APE) has been previously surveyed for cultural resources,
- If any known cultural resources have already been recorded in or adjacent to the APE,
- If the probability is low, moderate, or high that cultural resources are located in the APE,
- If a survey is required to determine whether previously unrecorded cultural resources are present.

V: If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.

- The final report containing site forms, site significance, and mitigation measures must be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum, and not be made available for public disclosure.
- The final written report should be submitted within 3 months after work has been completed to the appropriate regional archaeological Information Center.

V: Contact the Native American Heritage Commission (NAHC) for:

- A Sacred Lands File (SLF) search of the project area and information on tribal contacts in the project vicinity who may have additional cultural resource information. Please provide this office with the following citation format to assist with the Sacred Lands File search request: USGS 7.5 minute quadrangle citation with name, township, range and section...

- The NAHC advises the use of Native American Monitors to ensure proper identification and care given cultural resources that may be discovered. The NAHC recommends that contact be made with Native American Contacts on the attached list to get their input on potential project impact, particularly the contacts of the on the list.

V: Lack of surface evidence of archeological resources does not preclude their subsurface existence.

- Lead agencies should include in their mitigation plan provisions for the identification and evaluation of accidentally discovered archeological resources, per California Environmental Quality Act (CEQA) §15064.5 (f).
- In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American, with knowledge in cultural resources, should monitor all ground-disturbing activities.
- Lead agencies should include in their mitigation plan provisions for the disposition of recovered artifacts, in consultation with culturally affiliated Native Americans.

V: Lead agencies should include provisions for discovery of Native American human remains or unmarked cemeteries in their mitigation plans.

- CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human
remains within the APE. CEDA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave items.

- Health and Safety Code §7050.5, Public Resources Code §5087.98 and Sec. §16004.5 (d) of the CEDA Guidelines mandate procedures to be followed in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery.

- Local agencies should consider avoidance, as defined in § 15370 of the CEDA Guidelines, when significant cultural resources are discovered during the course of project planning.

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,

Dave Singleton
Program Analyst

Cc: State Clearinghouse
Attachment: List of Native American Contacts
Comment Letter B included an attachment that has been reviewed and considered in the response to this comment letter. The attachment has been scanned and is on the CD that accompanies this document.
Cabazon Band of Mission Indians  
John A. James, Chairperson  
84-245 Indio Springs Parkway  
Indio, CA 92203-3499  
(760) 342-2593  
(760) 347-7880 Fax

Twenty-Nine Palms Band of Mission Indians  
Mike Darrell, Chairperson  
46-200 Harrison Place  
Chemehuevi, CA 92236  
tribal-epa@worldnet.att.net  
(760) 775-5566  
(760) 775-4639 Fax

Cahuilla Band of Indians  
Anthony Madrigal, Jr., Interim-Chairperson  
P.O. Box 391760  
Cahuilla, CA 92539  
tribalcouncil@cahuilla.net  
(951) 763-2631

Colorado River Reservation  
Micheal Tsosie, Cultural Contact  
Route 1, Box 23-B  
Parker, AZ 85344  
symi@rraz.net  
(928) 669-9211  
(928) 669-5675 Fax

Ramona Band of Mission Indians  
Joseph Hamilton, vice chairman  
P.O. Box 391670  
Cahuilla, CA 92539  
admin@ramonatribecom  
(951) 763-4105  
(951) 763-4325 Fax

Santa Rosa Band of Mission Indians  
John Marcus, Chairman  
P.O. Box 609  
Cahuilla, CA 92546  
srrtribaloffice@aol.com  
(951) 658-5311  
(951) 658-6733 Fax

Torres-Martinez Desert Cahuilla Indians  
Raymond Torres, Chairperson  
PO Box 1160  
Cahuilla, CA 92274  
rторress@torresmartinez.com  
(760) 397-0300  
(760) 397-8146 Fax

Augustine Band of Cahuilla Mission Indians  
Mary Ann Green, Chairperson  
P.O. Box 846  
Cahuilla, CA 92236  
(760) 369-7171  
760-369-7161

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7950.5 of the Health and Safety Code, Section 9097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.

This list is only applicable for contacting local Native American with regard to cultural resources for the proposed SCH#2000061079; CEQA Re-Circulated Multiple Species Habitat Conservation Plan; Riverside County, California.
Native American Contacts
Riverside County
April 20, 2007

Morongo Band of Mission Indians
Britt W. Wilson, Cultural Resources-Project Manager
49750 Seminole Drive Cahuilla
Cabazon, CA 92230 Serrano
britt_wilson@morongo.org
(951) 755-5206
(951) 755-5200/323-0822-cell
(951) 922-8146 Fax

Agua Caliente Band of Cahuilla Indians THPO
Richard Begay, Tribal Historic Preservation Officer
650 Tahquitz Canyon Way Cahuilla
Palm Springs, CA 92262
rbegay@aguacaliene.net
(760) 883-1368
(760) 883-1940- Fax

Torres-Martinez Desert Cahuilla Indians
William J. Contreras, Cultural Resources Coordinator
P.O. Box 1160 Cahuilla
Thermal, CA 92274
760) 397-0300
(760) 275-2686-CELL
(760) 397-8146 Fax

Cahuilla Band of Indians
Maurice Chacon, Cultural Resources
P.O. Box 391760 Cahuilla
Anza, CA 92539
cbandodian@aol.com
(951) 763-2631
(951) 763-2632 Fax

Cabazon Band of Mission Indians
Judy Stapp, Director of Cultural Affairs
84-245 Indio Springs Parkway Cahuilla
Indio, CA 92203-3499
lweaver@cabazonindians.org
(760) 342-2593
(760) 347-7880 Fax

Ramona Band of Cahuilla Indians
Manuel Hamilton, Chairperson
P.O. Box 391670 Cahuilla
Anza, CA 92539
admin@ramonatribe.com
(951) 763-4105
(951) 763-4325 Fax

This list is current only as of the date of this document.
Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.
This list is only applicable for contacting local Native American with regard to cultural resources for the proposed SCH#2000061079; CEQA Re-Circulated Multiple Species Habitat Conservation Plan; Riverside County, California.
May 10, 2007

Katie Barrows
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Springs, CA 92260

Subject: Recirculated Draft Coachella Valley Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan
SCH#: 2000061079

Dear Katie Barrows:

The State Clearinghouse submitted the above named Supplemental EIR to selected state agencies for review. The review period closed on May 9, 2007, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

[Terry Roberts]

Terry Roberts
Director, State Clearinghouse
Comment Letter C included an attachment that has been reviewed and considered in the response to this comment letter. The attachment has been scanned and is on the CD that accompanies this document.
**Lead Agency Contact**

<table>
<thead>
<tr>
<th>Name</th>
<th>Katie Barrows</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency</td>
<td>Coachella Valley Association of Governments</td>
</tr>
<tr>
<td>Phone</td>
<td>(760) 346-1127</td>
</tr>
<tr>
<td>Email</td>
<td></td>
</tr>
<tr>
<td>Address</td>
<td>73-710 Fred Waring Drive, Suite 200</td>
</tr>
<tr>
<td>City</td>
<td>Palm Springs</td>
</tr>
<tr>
<td>State</td>
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</tr>
<tr>
<td>Zip</td>
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**Project Location**

<table>
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<tr>
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<th>Section</th>
<th>Base</th>
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</thead>
</table>

**Proximity to:**

- Highways
- Airports
- Railways
- Waterways
- Schools
- Land Use

**Project Issues**
- Aesthetic/Visual
- Agricultural Land
- Air Quality
- Archaeologic-Historic
- Economics/Jobs
- Fiscal Impacts
- Flood Plain/Flooding
- Geologic/Seismic
- Minerals
- Noise
- Population/Housing Balance
- Public Services
- Recreation/Parks
- Toxic/Hazardous
- Traffic/Circulation
- Vegetation
- Landuse
- Cumulative Effects
- Wildlife
- Wetland/Riparian
- Water Supply
- Growth Inducing
- Water Quality

**Reviewing Agencies**
- Resources Agency
- Colorado River Board
- Department of Conservation
- Department of Fish and Game, Region 6
- Office of Historic Preservation
- Department of Parks and Recreation
- Department of Water Resources
- Caltrans, District 8
- Regional Water Quality Control Board, Region 7
- Department of Toxic Substances Control
- Native American Heritage Commission

**Date Received** 03/26/2007  **Start of Review** 03/26/2007  **End of Review** 05/09/2007

Note: Blanks in data fields result from insufficient information provided by lead agency.
May 29, 2007

Coachella Valley Association of Governments
Attn: Katie Barrows
73710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

Dear Mrs. Barrows,

I am writing to formally submit my opposition and reasons thereof to the proposed Multiple Species Habitat Conservation Plan (MSHCP). As you know, this has been an issue I have followed closely throughout its development, and because of the significant impact this Plan will have on the Coachella Valley as a whole, it is an issue that I have many concerns about.

Under this plan, much of the conservation land needed to meet requirements has yet been acquired. Affected property owners have already watched their land values plummet. Land values are being affected regardless of whether they are being considered for acquisition or not. And those properties that are not being considered for acquisition but have seen the value bottom out will be true victims.

How is it possible to determine ‘fair market value’ on land that has been declared off limits to development? This issue has never adequately been addressed. As a result, fair market value in this case is most likely going to be very fair to the government, but of very little value to the property owner. Additionally, even if it appears on the surface that the land will be approved for development, the process is so odious that it is already inaccessible and not navigable to citizen property owners – many of whom are elderly, or were depending on these investments for retirement.

I have personally assisted several constituents who have already dealt with similar situations where a government agency placed their land into protected status because it was designated as protected habitat. In all three instances, the fair market value offered by the government was significantly lower than what the actual market would have dictated if the land were open to development. It was an issue of being off by many millions of dollars.
I must also address grave concerns I have with the way different levels of government have utilized threats and bullying tactics with local government officials. I have spoken with several officials that were at first shocked, and then rightly outraged that this type of behavior is thought to be acceptable. This tactic of “advocacy” has been so blatant and misused that it prompted me to introduce legislation (SB 1308) on the state level that applies state bribery and extortion laws to local government officials. The legislation was indeed passed and signed into law.

Just some of the specific examples of these tactics are the following:

- Most recently, efforts to influence the recent LAFCO decision that was made with regards to the City of Desert Hot Springs. As Desert Hot Springs has chosen not to be a part of the plan, LAFCO commissioners are now facing threats and tremendous pressure intended to coerce them into retracting a decision that was lawfully and appropriately made according to the statutes they operate under.

- Letters last year from the US Department of the Interior as well as the Department of Fish and Game threatening bureaucratic death to any future projects if this plan is not passed. This was an attempt to force acceptance. By the timing of the letters, it appeared MSHCP proponents requested this coercive input.

- Many of the land owners and affected parties that were sent notices by CVAG for the February 2006 Public Hearing received their notices a week or more after the meeting took place. Those individuals would have been at the meeting if they had known about it, but were denied their rights. I know this because I received multiple telephone calls from outraged constituents, some who submitted printed evidence. It appears that CVAG may have sent the notices at the last possible legal moment.

- The notices that were sent for this year’s Public Forum schedule and written comment period for US Fish and Wildlife, and separately for CVAG were unclear on what the differences were and how the two interacted which prompted confusion and questions to my office by constituents.

- Cities and the public have been led to believe through statements by a County Supervisor that without the MSHCP the Interstate 10 overpass improvements would not take place. In a letter dated March 21, 2006, I received written confirmation from Caltrans that this was not true, and have continued to receive confirmations from Caltrans that this is not true. Caltrans has a distinct and separate conservation plan of its own that allows for five interchanges, including Palm Drive to be constructed without an approved MSHCP.

Each of these examples alone could perhaps be excused as a mistake or a misunderstanding, but collectively they convey a very clear message that is simply unacceptable. In addition to these examples, cities in western Riverside County faced outright intimidation with threats to withhold Measure A funds if they refused to adopt...
the Western Riverside MSHCP. That kind of arm-twisting is an anathema to our system of governance and should never be tolerated by the electorate. Open, honest, thoughtful debate should always be our preferred method of interaction. The fact that proponents have been unsuccessful in selling this plan on its merits and have had to resort to this type of steamrolling strategy is indicative of their desperation to pass this plan with platitudes, threats and coercion.

The last area of trepidation I believe must be considered is the false security that environmental groups will abide by this agreement. While the Sierra Club and other groups may willingly sign on and agree to give up litigious action, they do so with the knowledge that other groups, or groups not yet formed, will have the ability to pursue a lawsuit on anything they don’t agree with. My many years of dealing with these groups in Sacramento has shown me that these activist groups do not negotiate or compromise. If they do not get exactly what they want, they will use every resource to access our court system. To believe that the MSHCP will actually put a stop to this is uninformed. In a letter dated April 24, 2006, CVAG admitted in writing that the Plan will NOT prevent legal challenges on environmental grounds.

There are many other topics I could cover here – including the lack of reliable biological opinion surveys and the pseudo science that has created “theoretical habitats” that fail to prove that certain species actually live on the specified lands. Or the fact that the MSHCP does not prohibit the inclusion of additional species that are outside of the plan that would have to still be individually mitigated for.

It is clear that this plan is more than slightly flawed and should not be passed due to sheer pressure. I appreciate the opportunity to submit these concerns to you and hope they will be taken into consideration.

Sincerely,

JIM BATTIN
Senator,
37th District
Ms. Katie Barrows  
Director of Environmental Resources  
Coachella Valley Association of Governments  
73-710 Fred Waring Drive, Suite 200  
Palm Desert, CA 92260  

Dear Ms. Barrows:  

Re: Public Review - Recirculated Draft of the Coachella Valley Multiple Species Habitat Conservation Plan  

The District has reviewed the Recirculated Draft Coachella Valley Multiple Species Habitat Conservation Plan (Plan) and has the following concerns that should be clarified:

Volume 1 - The Plan

1. The first and second sentences on Page 4-59 state "As a result of a decision by the City of Desert Hot Springs not to participate in the Plan, private lands within the city limits of Desert Hot Springs are not included in the Conservation Area, with exception of those lands necessary to provide for flood control and associated habitat conservation along Morongo Wash. Within the Conservation Area, a Special Provisions Area has been delineated to address a potential Morongo Wash flood control facility and associated habitat corridor conservation in the area."

It is our understanding that the Special Provisions Area was delineated to provide a target area for acquisition of lands needed not only for the proposed Morongo Wash flood control facility and its associated mitigation but also conservation for a wildlife corridor and additional habitat necessary to accomplish the goals of the Plan. For clarification purposes, the referenced sentences should be revised to state "As a result of a decision by the City of Desert Hot Springs not to participate in the Plan, private lands within the city limits of Desert Hot Springs are not included in the Conservation Area, with exception of those lands necessary to provide for flood control as well as conservation along Morongo Wash. Within the Conservation Area, a Special Provisions Area has been delineated to address a potential Morongo Wash flood control facility and its associated mitigation as well as conservation for a wildlife corridor and additional habitat necessary to accomplish the goals of the Plan."
SECTION 3.0
COMMENTS RECEIVED

Ms. Katie Barrows
Coachella Valley Association of Governments
Re: Public Review - Recirculated Draft of the Coachella Valley Multiple Species Habitat Conservation Plan

April 16, 2007

113534

2. Under Palm Springs Pocket Mouse on Page 4-176, the first sentence states "To avoid impacts to the Palm Springs pocket mouse and its habitat in the Upper Mission Creek/Big Morongo Canyon and Willow Hole Conservation Areas, Flood Control-related construction activities will comply with the following avoidance and minimization measures. Under the sub-section entitled Revegetation on Page 4-177, it further states "Clearing of vegetation (e.g., creosote, rabbitbrush, burrowbush, cheesebush) should include revegetation resulting in habitat types of equal or superior biological value for Palm Springs pocket mouse."

Depending on various factors that include site specific conditions and types of facilities involved, compliance with this measure as written may not be feasible. Therefore, this measure should be revised to state "Clearing of vegetation (e.g., creosote, rabbitbrush, burrowbush, cheesebush) within occupied habitat for Palm Springs pocket mouse should be allowed to reestablished naturally with native vegetation, where feasible."

3. Bullet Item Nos. 4 and 4a. on Page 7-37 state "A Special Provisions Area is located within the Upper Mission Creek/Big Morongo Canyon Conservation Area (depicted on Figure 4-12f), and the proposed Covered Facility shall be subject to the following requirements: a. Conserve acreages as described in Section 4.3.7 and identified in Tables 4-42d and 4-42e for the proposed Covered Facility."

Section 4.3.7 shows the number of acres of additional conservation lands that will need to be conserved for the entire Upper Mission Creek/Big Morongo Canyon Conservation Area and Tables 4-42d and 4-42e show the total acreages of Core/Potential/Other Cons habitat for the Covered Species and natural communities within the Special Provisions Area. Neither Section 4.3.7 nor the referenced Tables identify conservation acreages associated with the proposed Covered Facility. Furthermore, Bullet Item No. 4b. stipulates the following requirements: "The Special Provisions Area will include a minimum 1,200-foot suitable habitat corridor, plus 390 acres of refugia outside the suitable habitat corridor, configured to be equivalent to about 25 acres of refugia every 0.25 mile. No individual refugium shall be less than 15 acres nor shall any refugia be more than 0.5 mile apart." Therefore, Bullet Item No. 4a. should be deleted.

4. Bullet Item No. 4c. on Page 7-37 states "A suitable habitat corridor is defined as an area that meets the habitat requirements of Palm Springs pocket mouse (see Section 9.8.3), and the suitable habitat corridor shall maintain a natural flowing wash without habitat impediments." Furthermore, Bullet Item No. 4d. states "The proposed Covered Facility may be located within or adjacent to the 1,200-foot habitat corridor, depending on design and maintenance requirements which shall be subject to review as part of the Minor Amendment with Wildlife Agencies' concurrence."
Final Recirculated Coachella Valley MSHCP
Responses to Comments 3-12 September 2007

SECTION 3.0
COMMENTS RECEIVED

Ms. Katie Barrows
Coachella Valley Association of Governments
Re: Public Review - Recirculated Draft of the
Coachella Valley Multiple Species
Habitat Conservation Plan

113534

April 16, 2007

Bullet Item No. 4c., as written, effectively eliminates the option for the proposed
Covered Facility to be located within the habitat corridor. Therefore, Bullet Item
No. 4c. should be revised to state "A suitable habitat corridor is defined as an area
that meets the habitat requirements of Palm Springs pocket mouse (see Section
9.8.3), and the suitable habitat corridor may include the proposed Covered Facility
consisting of an ephemeral desert wash without habitat impediments to the
maximum extent feasible."

We appreciate the opportunity to review this document. Should you have any questions regarding the
above comments, please feel free to contact me at 951.955.1233.

Very truly yours,

TERESA TUNG
Senior Civil Engineer

c: Supervisor Roy Wilson
   Supervisor Jeff Stone - District Vice Chairman
   Supervisor Marion Ashley - District Chairman
TLMA
   Attn: Carolyn Syms-Luna
   Greg Neal
   County Counsel
   Attn: Karin Watts-Bazan

TT:bjp
Katie Barrows, Director of Environmental Resources
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

RE: Recirculated Draft of Coachella Valley MSHCP

Dear Ms. Barrows:

The Riverside County Waste Management Department (Department) has reviewed those sections of the Recirculated Draft of the Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP) related to the Conservation Trust Fund and to the Department’s properties, projects, and activities in the Coachella Valley. The only comment that is offered for your consideration is as follows:

The Conservation Trust Fund, which is based on receiving $1/ton for in-County waste deposited in County landfills, assumes that the tonnage received annually will increase at a rate of 4%. The Department would only caution that this rate may be optimistic for several reasons: 1) AB 939 solid waste diversion may one day be calculated based on holding disposal tonnage to a fixed number; and, 2) landfill disposal tonnage can fluctuate based on economic factors; there has been a drop in disposal recently, which is being attributed to a slow down in construction.

Thank you for the opportunity to review the Recirculated Draft MSHCP. The Department would appreciate being kept apprised of all matters and proceedings related to this document. Please do not hesitate to contact me directly at (951) 486-3280 if you should have any questions or comments.

Sincerely,

Lesley B. Likins
Solid Waste Planning Manager

LBU/lbl
May 29, 2007

VIA FAX SIMILE AND OVERNIGHT MAIL
(760) 340-5949

Katie Barrows
Director of Environmental Resources
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260

Re: Comments on the Recirculated Coachella Valley Multiple Species Habitat Conservation Plan

Dear Ms. Barrows:

The City of Desert Hot Springs respectfully submits the following comments on the Recirculated Coachella Valley Multiple Species Habitat Conservation Plan ("MSHCP" or "the Plan"). This letter serves to identify some of the more significant deficiencies in the document. Please note that we have provided some examples pertaining to a few species to highlight these deficiencies, but the deficiencies permeate the discussions for all of the species.

1. The MSHCP does not identify the amount or extent of take of the species covered by the Plan.

Section 10(a)(2)(A)(i) of the Endangered Species Act mandates that no incidental take permit may be issued by the Secretary of Interior (or the Secretary of Commerce) unless the applicant submits a habitat conservation plan that specifies "the impact that will likely result from the taking." 16 U.S.C. § 1539(a)(2)(A)(i). The MSHCP fails to satisfy this standard because it is utterly devoid of any discussion of specific impacts that are likely to result from implementation of the Plan.

The MSHCP does not identify the level of anticipated take in any measurable way. First, the narrative in MSHCP Section 4.6 explains that anticipated take is measured in terms of habitat acres affected by the covered activities outside and inside the conservation areas. It then explains that it is assumed for purposes of the analysis that all non-federal lands outside of the conservation areas may be subject to take. Tables 4-114 and 4-115 then present the number of acres of habitat which are "subject to take" for each species based on this model. However, this number only has relevance if the impact on acres of habitat is tied to actual impacts to the species. See Arizona Cattle Growers' Ass'n v. U.S. Fish and Wildlife, et al., 273 F.3d 1229, 1250 (C.A.9 (Arizona), 2001); see also Gifford Pinchot Task Force v. U.S. Fish and Wildlife, et al., 378 F.3d 1059, 1066 (C.A.9 (Wash.), 2004).
The Ninth Circuit has specifically held that "the use of ecological conditions as a surrogate for defining the amount or extent of incidental take is reasonable so long as these conditions are linked to the take of the protected species." Id. The take analysis in the MSHCP is fatally flawed because there is no correlation between acres of habitat "subject to take" and actual, physical impacts to or take of members of the protected species. While an HCP can use habitat impacts/destruction to express a level of take for a species, the document must first establish a correlation between the habitat and the species. See Habitat Conservation Planning and Incidental Take Permit Processing Handbook ("HCP Handbook"), 1996, Chapter 3.

The only discussions of take in the MSHCP are in Table 4-116 in Chapters 4 and 9. The "take summaries" set forth in Table 4-116 are meaningless. For example, the "take summary" for the federally endangered Coachella Valley milkvetch states "42% would be subject to take in areas where habitat quality is compromised by fragmentation, loss of Essential Ecological Processes or other impacts." 42% of what? Of the species in the Plan Area or the species' habitat in the Plan Area or the species' overall habitat? This "take summary" provides no information of how much take will actually occur or how this take will impact this endangered species. The take summaries for all other species covered under the MSHCP suffer from the same infirmity. See Table 4-116.

The discussions and analyses of take in Chapter 9 are equally inadequate. The discussions focus on acres of modeled habitat within the Plan Area being conserved with no correlation to impacts on members of the protected species. For example, the discussion of the Desert Tortoise, which is listed as threatened under the ESA and the California ESA ("CESA"), indicates that take will be authorized on nearly 100,000 acres of modeled habitat within the Plan Area. The only mention of the number of tortoises in the Plan Area states that "the density of desert tortoises in much of the Coachella Valley is very low." MSHCP § 9.6.1.4, p. 9-97. There is no discussion as to which sections of the Coachella Valley have higher densities of desert tortoises or what the expected density levels are for the 100,000 acres where take will be authorized. Finally, at the end of the section, there is a completely unfounded and unsupported conclusion that the issuance of the take permits will not likely jeopardize the continued existence of the species. Id. at p. 9-98.

Further, it is nearly impossible to follow the shell game of acreage assessments which purportedly describe the levels of take and conservation found throughout the document. The discussions of species impacts found in Chapters 4 and 9 use terms such as core habitat, "other conserved habitat," modeled habitat, breeding habitat, migratory habitat, occupied or potential habitat, and marginal habitat, many of which have overlapping meanings. Often, the acreage values presented inexplicably add up to different totals. Take, for example, the Coachella Valley milkvetch. Table 4-116 indicates there are 38,398 acres of habitat for this species in the Plan Area, with 15,290 acres total authorized for impacts/take, 19,353 acres to be conserved in the MSHCP Reserve System and 5,798 acres of modeled habitat on federal land outside the conservation areas. Yet simple addition will show that the total acreage identified for take and conservation is only 35,192 acres, not 36,398 acres.

This problem also permeates the impacts analysis discussions in Chapter 9. Again looking at the discussion of direct effects of the MSHCP on the Coachella Valley milkvetch, the second paragraph in this section states as follows:
There are 36,398 acres of modeled Coachella Valley milkvetch Habitat in the Plan Area. The Plan would ensure Conservation of 14,886 acres (94%) of the total 15,814 acres of Core Habitat and 4,477 acres (76%) of Other Conserved Habitat, or 89% of the significant Habitat for the Coachella Valley milkvetch. Each of the four Core Habitat areas conserved would be greater than 2,000 acres. Approximately 7,707 acres (21%) of the modeled habitat are within Existing Conservation Lands and would be managed as part of the Reserve System. Overall, an additional 11,609 acres (32%) of the modeled Habitat for Coachella Valley milkvetch in the Plan Area would be conserved.

The second sentence suggests that 19,383 acres of core habitat and ‘other conserved habitat’ of the 36,398 acres of modeled habitat within the Plan Area are being conserved. The third and fourth sentences seem to state that 7,707 of the 19,383 acres are already part of the Reserve System of conservation areas and 11,609 additional acres will be conserved in the future, but these two acreage values only add up to 19,316 acres, not 19,383 acres.

The failure of the MSHCP to identify the amount or extent of take of the listed species identified in the Plan Area is a critical omission that must be corrected before an incidental take permit can be issued by the U.S. Fish and Wildlife Service under Section 10(a)(1)(B) of the ESA.

2. The MSHCP grossly underestimates the impact of the taking of the protected species.

Section 9 of the ESA prohibits the taking of a threatened or endangered fish or wildlife species. 16 U.S.C. § 1538 (this section also provides protections, albeit less stringent protections, for threatened or endangered plants). Absent incidental take authority, development and other activities that would result in take of listed species in the Coachella Valley would be in violation of federal law. Despite this fact, the impacts analyses in the MSHCP start from the presumption that the listed species that occupy the 36,398 acres in the Plan Area will be taken absent the creation of a conservation area reserve system. Therefore, based upon this presumption, conservation of any percentage of this acreage will result in no benefit to the species, even if take is authorized for a large percentage of the Plan Area. See Section 9 of the MSHCP. This logic is fundamentally flawed.

Absent this MSHCP and the incidental take permit that is likely to be issued by the U.S. Fish and Wildlife Service, take of listed species cannot lawfully occur in the Plan Area. If the MSHCP analysis begins with the premise that the ESA is currently being violated and will continue to be violated, resulting in take of listed species throughout the Plan Area absent this MSHCP, it must specifically say so. Otherwise, if take of the listed species covered by the MSHCP is not currently occurring, the impacts analysis is grossly overestimating the value of the conservation areas (the value would only be in habitat enhancement and restoration) and glossing over the significant impacts that will result when take is authorized for thousands of acres where it currently cannot legally occur.
For example, the Coachella Valley milkvetch is listed as endangered under the ESA. This means that the species is "in danger of extinction throughout all or a significant portion of its range." See 16 U.S.C. § 1532(6). Yet, despite the precarious status of the Coachella Valley milkvetch, the MSHCP proposes to allow take of all plants on 15,230 acres out of the 35,398 acres of habitat in the Plan Area. The MSHCP contains absolutely no discussion of how allowing take of all the plants on nearly half of the MSHCP's habitat area will impact the species or meet the issuance criteria of Section 10(a)(1)(B) of the ESA. 16 U.S.C. § 1539.

3. The MSHCP does not ensure adequate funding for the plan.

Section 10(a)(2)(B)(ii) mandates that no incidental take permit may be issued by the Secretary of Interior (or the Secretary of Commerce) unless the applicant "will ensure that adequate funding for the plan will be provided." 16 U.S.C. § 1539(a)(2)(B)(ii). The MSHCP fails to ensure funding because each of its projected sources of revenue is speculative and uncertain. Where "adequacy of funding depends on whether third parties decide to participate in the Plan, the statute [ESA] requires the applicant's guarantee." National Wildlife Federation v. Babbitt ("NWF I"), 128 F. Supp. 2d 1274, 1295 (2000). Nor does the MSHCP provide any "fail-safe" provisions, which is one way an HCP can adequately establish it has "ensured funding." National Wildlife Federation v. Norton ("NWF II") 2005 WL 2175374, *19 (E.D.Cal.). The MSHCP relies on assumptions that various events will occur in order to secure funding, such as adoption of ordinances to impose mitigation fees and resolution of current litigation regarding the Eagle Mountain Landfill. The uncertainty inherent in each of these funding sources, coupled with the absence of any guarantees from the applicants or "fail-safe" provisions, results in a failure to ensure adequate funding for the Plan as required by the ESA, 18 U.S.C. § 1539(a)(2)(B)(ii).

The MSHCP's primary funding source, an estimated $518,802,000 from a Local Development Mitigation Fee, is based on assumptions and uncertainty. This Local Development Mitigation Fee is a per acre "estimate" based on the expected cost of land in the Plan Area. These revenues are anticipated "pending adoption of the fee by the Cities and the County." Funding which is contingent upon a future vote is not sufficiently certain to meet the requirements of Section 10(a)(2)(B)(ii). Southwest Center for Biological Diversity v. Bartel, 470 F. Supp. 2d 1118, 1156 (2005) (holding that a funding plan failed to ensure funding where "the applicant has simply relied on speculative future actions by unnamed parties, namely, the voters, for the majority of money needed to implement the conservation plan.")

Furthermore, the MSHCP cannot ensure that the fees, even if adopted, will be adequate to cover the cost of the proposed mitigation as they are simply based on "estimates" of land costs. Even in the best case scenario, if all of the ordinances are adopted, and all of the fees are generated as planned, this revenue may not be sufficient if the cost of purchasing mitigation lands increases significantly between the time the fees are collected and the time the lands are purchased. If the identified sources of funding fail short, the MSHCP does not set forth specific additional sources of funding, nor provide any guarantees by any

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1 The City understands that the Coachella Valley milkvetch is a plant, not fish or wildlife, and therefore is subject to lesser protections under the ESA. As the City mentioned in the first paragraph of this letter, this species is only being used as an example of how the MSHCP fails to address the impacts to listed species.
particular party. MSHCP § 5.2.1.1. Instead of a "fail-safe" guarantee, the Plan provides only for the fee to be reevaluated and revised should it be found "insufficient to cover mitigation of new Development."

Nor are the MSHCP’s other funding sources any more certain. For example, the Eagle Mountain Landfill Environmental Mitigation Trust Fund is entirely speculative. The Los Angeles County Sanitation District ("LACSD") has acquired rights to the Eagle Mountain Landfill and "intends to begin operation of the landfill within the next few years, after resolution of litigation." (emphasis added). The Development Agreement between the LACSD and the County of Riverside requires a payment of $1 per ton for habitat conservation if the landfill is developed. MSHCP § 5.2.1.5. The MSHCP assumes that the litigation will resolve, that the landfill will be developed, and that 90% of the total portion of the fees earmarked for habitat conservation will go directly to the Eagle Mountain Landfill Environmental Mitigation Trust Fund to fund mitigation under the MSHCP. Id. The MSHCP also assumes that the current waste stream of 4,000 tons/day will remain constant for the first 15 years, then will begin to incrementally increase to a maximum of 16,000 tons/day. Id. The existence and amount of this potential revenue source is highly speculative and cannot begin to satisfy the funding requirements of Section 10(a)(2)(B)(iii).

In the event of a shortfall, the MSCHP makes only vague reference to potential sources for additional funding. The MSHCP suggests that the Permittee “could consider” revenue from the establishment of a variety of districts – a Habitat Maintenance District, a benefit assessment district, a Community Facilities District, or a Community Services District. MSHCP § 5.2.2.4. The Implementation Agreement states that "the Parties shall seek additional funding from private, local, state and federal sources including grants." Implementation Agreement, p. 28, § 12.2.5. A commitment to try to find additional funding sources is not a guarantee that the funds will be available. See Metromix, Inc. v. City of Chicago, 68 F.3d 1000 (7th Cir. 1995). Each of these potential sources of revenue is too vague to "ensure funding" within the meaning of Section 10(a)(2)(B)(iii).

4. The Monitoring Program Fails to Evaluate the Overall Impacts on Covered Species

The Monitoring Program set forth in Chapter 8.0 of the MSHCP suffers from two fundamental shortcomings. First, the first five years will be dedicated to development of baseline data for each of the populations and natural communities in each of the conservation areas. MSHCP §§ 8.1, 8.3, 8.4. Baseline data for all species and communities covered by the MSHCP should be developed and assessed prior to issuance of an incidental take permit, not after the permit has been issued, in order to determine the amount and extent of take. See ESA Sections 10(a)(2)(B) and Section 7.

Second, the Monitoring Program does not evaluate the overall impact of the MSHCP on covered species, only the impact within the conservation areas. See, e.g., MSHCP §§ 8.3.4.1 (pp. 8-38 to 8-40), 8.4.1.3.3 (pp. 8-55 to 8-56), 8.4.3.3.3 (pp. 8-68 to 8-69), 8.4.6.3.3 (p. 8-82). In other words, the Monitoring Program will only determine whether the number of a particular species within a conservation area increased or decreased. Any impacts outside the conservation areas will not be monitored or recorded, so there will be no accounting regarding exactly how much take was actually allowed and how that impacted the covered species overall. The Monitoring Program of the MSHCP will not provide an accurate
picture of the impacts of the MSHCP, which is one of the requirements of a monitoring program. See HCP Handbook, pp. 3-25 to 3-27.

Thank you for the opportunity to provide comments on the MSHCP. If you have any questions, please feel free to contact me directly.

Very truly yours,

[Signature]
Ruben Duran, City Attorney
City of Desert Hot Springs

RD:lh
C: Mayor Bias and Members of the City Council
Ann Marie Gallant, City Manager
Steven Mendoza, Assistant City Manager
May 30, 2007

VIA FACSIMILE AND OVERNIGHT MAIL
(780) 340-5949

Katie Barrows
Director of Environmental Resources
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260

Re: SUPPLEMENTAL Comments on the Recirculated Coachella Valley Multiple Species Habitat Conservation Plan

Dear Ms. Barrows:

I write to supplement the comments in my letter dated May 29, 2007 on behalf of the City of Desert Hot Springs.

The City objects generally to the inclusion of the Special Provisions Area of the Upper Mission Creek/Big Morongo Canyon Conservation Area as discussed in Section 4.3.7 of the Recirculated Coachella Valley Multiple Species Habitat Conservation Plan ("MSHCP" or "the Plan"). The Special Provisions Area has been designated in a way that is wider than necessary under applicable geologic and hydrological standards without sufficient scientific support to show that it will have any biological benefit. It is improper to delineate such an area without the showing of a real connection and meaningful correlation between the amount of land being designated and the purported benefit to protected species.

Again, I thank you for your consideration and the opportunity to provide these comments on behalf of the City of Desert Hot Springs.

Very truly yours,

Ruben Duran, City Attorney
City of Desert Hot Springs

RDth

c: Mayor Blas and Members of the City Council
Ann Marie Gallant, City Manager
Steven Mendoza, Assistant City Manager

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THE HERPETOLOGISTS LEAGUE
Established in 1936
Publishers of Herpetologica and Herpetological Monographs

May 29, 2007

Mr. Jim Bartel, Field Supervisor
US Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, CA 92011

Re: Re-circulated Coachella Valley MSHCP

Dear Mr. Bartel:

The Herpetologists League hereby submits the following general comments about the Coachella Valley MSHCP ("the Plan") documents, as well as specific comments about potential impacts on the Coachella Valley fringe-toed lizard (*Uma inornata*). Long-term viability of this unique, endemic lizard hinges on the persistence of wind-blown sand habitats. In our opinion, the most important aspect of Plan implementation relative to this species is to keep intact, in perpetuity, the habitats and physical processes that distribute these sands. In turn, this will help to ensure the continued survival of a number of other covered species in the Plan that require this habitat - a concept which lies at the very heart of any viable Multiple Species Habitat Conservation Plan.

One of the cornerstones of the Plan is the notion that the 27 covered species in the 75-year take authorization request will not be sufficiently protected from development impacts without the Plan as a result of incidental take requests being submitted (and authorized) on a piecemeal basis. While we feel that a significant amount of habitat, and by extension, a significant number of individuals, will be taken as a result of Plan implementation as well, the number of takings is likely to be far less than would occur without the Plan. Thus, we see the Plan merely as a lesser of two evils, but also realize our comments come too late to contribute much to the development of the Plan itself, which is the result of more than a decade of very hard work by many qualified professionals. Thus, our comments focus mainly on future implementation of the Plan, the approval of which we see largely as a done-deal. Specifically, we express our concerns about:

1) availability of sufficient resources for monitoring of fringe-toed lizard populations,
2) implementation of adaptive management relative to aquatic sand-dependent species, and
3) ramifications of the retraction of the City of Desert Hot Springs (DHS) from the Coachella Valley Association of Governments (CVAG) and by extension, the Plan itself.

Member of the American Institute of Biological Sciences
1) Regarding long-term monitoring of fringe-toed lizard populations, an impressive body of peer-reviewed literature has been generated by a number of highly qualified local scientists that have studied this species for over 20 years. We believe the methods used for this lizard in the past should be sufficient for long-term monitoring, but the details are not presented in the Plan documents. However, we are encouraged that specific monitoring protocols must be submitted for approval during the initial stages of Plan implementation, and would hope that such plans would be available for public review and comment.

In reviewing monitoring plans submitted by the applicants, we suggest the USFWS consider the notion that monitoring protocols used for single-species HCPs may not be sufficient to ascertain population trends in Multiple Species HCPs (Barrows et al. 2005. J. Wildl. Mgmt. 69:1333-1345). Furthermore, although the availability of resources for long-term monitoring is implied in the approval of any MSHCP, we would like to reiterate that any long-term monitoring program is entirely dependent on sufficient funding, access to study sites, availability of land use and abiotic data, and other necessary resources, all of which should be made available for the entire duration of the Plan. This said, the first decade of this 75-year authorization will be the most critical time for assessing population impacts resulting from Plan activities, and will provide the most important feedback for adaptive management. In developing monitoring plan protocols, the first decade should receive the greatest scrutiny.

2) Regarding Adaptive Management issues, given the iterative nature of long-term monitoring and complexities of multi-species ecological modeling, it will take time to determine whether or not the Plan will protect the fringe-toed lizard in perpetuity. However, as stated above, the initial decade of Plan implementation will be critical for assessing the effects of development on aeolian sand resources, and in turn, impacts to this and other aeolian sand-dependent species. The aeolian sand issue is not limited to one lizard species; long-term assurance of natural sand transport processes will be required to ensure the long-term viability of many other covered species in the Plan. In addition, introduced plant species management will be required, in perpetuity. Introduced species, especially plants, are second only to habitat alteration in their effects on native species and even whole ecosystems. Certain introduced plants may have to be managed intensively to ensure the viability of aeolian sand-dependent native species.

We recommend that monitoring data be submitted and heavily scrutinized on at least a yearly basis during the first decade. If population monitoring data indicate fringe-toed lizards and/or other species appear to be on the decline, and if there is reason to believe that the actions authorized under the Plan are responsible for such declines, we recommend that the Plan be re-assessed, and corrective actions implemented – the very essence of adaptive management, and the cornerstone of the Plan. We realize this is required by the Plan itself, but are concerned that USFWS and other regulatory entities administering the Plan might not have the authority or political will to force stakeholders to alter their plans mid-stream. If this is not the case, all the positive aspects of the Plan could be rendered moot if the myriad predictions of no significant impacts in the Plan are not borne out in reality. We strongly urge the USFWS to consider all the options available under the law to ensure that the Plan preserves the 27 species, in perpetuity.

Member of the American Institute of Biological Sciences
3) The retraction of the City of Desert Hot Springs (DHIS) from the Coachella Valley Association of Governments (CVAG) and thus, from the Plan itself, is certainly unfortunate, as DHS lies in the center of the Plan area, and in an important corridor between the Valley and Joshua Tree National Monument. By existing outside the purview of the Plan, DHS will be developed in a "piecemeal" fashion, requiring individual take permits and HCPs for each proposed activity that would impact a listed species. The avoidance of a piecemeal approach is a cornerstone of the Plan. Beyond this issue, we are also aware that DHS recently petitioned, and were allowed to annex an additional ca. 2000 acres, ca. 1400 of which would have represented conservation lands under the Plan, thus taking this acreage out of the Plan as well. If this annexation stands, the impact acreage of the overall Plan would change, and another public review and comment period would be warranted. This would be unfortunate for the members of CVAG who have worked so hard to generate a comprehensive management plan that has already been reviewed twice.

Although we realize that there is nothing the USFWS can do to require or even steer DHS towards re-joining the CVAG, we strongly urge the USFWS to take a very hard look, and strong stance, on future incidental take permit applications in the DHS area. While we realize the loss of DHS probably does not represent the Plan's lynchpin, unimpeded development in DHS could alter ecological processes outside the Plan area, thereby limiting the ability of the Plan to preserve a number of covered species populations within the Plan area in perpetuity.

In summary, the HL anticipates that the proper implementation of this MSHCP may be beneficial for managing the 27 covered species, relative to the impacts that would likely occur from piecemeal authorization of incidental take permits for individual species impacted by individual projects. We only request that the USFWS 1) carefully consider how the Plan will be implemented, especially during the first decade, 2) sequester enough funding for rigorous long-term population monitoring, 3) actually use population data to guide adaptive management programs that will ensure the survival of the fringed-toed lizard and other Coachella Valley endemics in perpetuity, and 4) consider the Plan when reviewing individual take applications by DHS for activities outside the Plan area that might affect species and ecological processes within the Plan area. Doing otherwise could render this Plan yet another example of how the economic interests of development so often trump the intent of the ESA, rather than a novel example of how MSHCPs can be powerful tools for ensuring the long-term viability of our natural heritage.

Thank you for considering our comments. If you have any questions or require additional information to assess these comments, please contact Dr. Todd Campbell at tcampbell@ut.edu.

Sincerely,

Todd Campbell, Ph.D., Chair
Herpetologists League Conservation Committee

Member of the American Institute of Biological Sciences
VIA FACSIMILE TO: THERESE O’ROURKE 760-431-9624

To: Executive Committee and Governing Board of Directors of CVAG
From: C. D. Scobee on behalf of Mary Justice, Ramon Rd. landowner
Date: May 29, 2007
Re: Recirculated Draft Coachella Valley MSHCP – February 2007

Please consider the comments we submitted to you in the following letter dated February 6, 2006, when reviewing the adequacy of the Recirculated Draft Coachella Valley MSHCP.

Thank you,

C. D. Scobee

C. D. Scobee
To: Executive Committee and Governing Board of Directors of CVAG
From: C. D. Scober on behalf of Mary Justice, Ramon Rd. landowner
Date: February 6, 2006
Re: Adequacy of Draft Final EIR/EIS for the Coachella Valley MSHCP

Dear members,

I'm a biologist (B.S. Biological Sciences, Minor in Urban Studies - CSU Hayward; Ph.C. Plant Biology, Ecology-Systematics-Evolution specialization - UC Davis) asked by landowner Mary Justice to answer basic questions of biological sufficiency of the CVMSHCP. For members of the public wishing to participate in the planning process, it can be very difficult to have access to and gain an understanding of the ecological complexity involved in a project of this magnitude. Following this cover letter are my abbreviated responses to these questions:

1. What is meant by 'habitat' in the EIR, and how is it measured?
2. Were minimum standards for content of an EIR met?
3. Is Uma inornata a separate species?
4. How much habitat remains for Uma inornata?
5. Are wildlife undercrossings for Uma inornata a reasonable mitigation?

The MSHCP represents a huge opportunity – both for costly mistakes, as well as far-sighted conservation planning. Here's a quote from the Independent Science Advisors' Review (2001) included in the EIR/EIS page AI-67:

"The Adaptive Management and Monitoring Program document we reviewed is confusing and statistically difficult to defend. Moreover, it is probably not an optimal use of the limited funds likely available for management."

That sums up my opinion of much of this entire document. The public's comments were not taken seriously by CVAG's responses. Infeasible mitigations are proposed that would be a costly mistake to try to implement. The Draft FEIR/EIS document as it stands now is inadequate and incomplete, and my recommendation is that a supplemental EIR be prepared, so that decisionmakers can have current and complete information upon which to plan for the next 75 years in the Coachella Valley.
Were standards for content of a Final EIR met?

CVAG's responses to public comments on the DEIR are required to make a good faith effort at disclosure. Without this, the FEIR cannot be considered adequate and complete. In multiple responses, the EIR authors do not appear to be making a good faith effort at disclosure.

See DFEIR response B10-04. We stated:

"The Fish & Game status report for the CVFTL (Administrative Report 77-1) is telling as to how scientists would respond [to the question of species status level for the CVFTL]... In fact, the authors (England and Nelson) did not even support the lesser listing of threatened (Federal) or rare (State)"

This report was the basis for listing. At the last minute, some of the conclusions were changed (and some weren't). The EIR authors need to acknowledge this, and acknowledge that the report contains conflicting information as to species status findings. We provided detailed quotes from the report to support our comments, and expected a good faith effort in response.

Given the report name, report date (77-1 designates the report was issued in 1977), and report authors, the EIR authors responded:

"The comment cites a CDFG administrative report but provides no date for the report. It is apparent that the report was prepared prior to ... June 27, 1980..."

The EIR authors act as if they've never heard of, much less seen, this report. It is listed in their own references (see page 10-14 of DEIR/EIS following). They also appear ignorant of the report numbering system used by CDFG. The public expects the CVAG planners preparing the EIR responses have a certain level of familiarity with the project and agencies involved. Based upon their DFEIR response B10-04, we must assume the EIR authors are unfamiliar with the literature they cite in their own document, as well as basic CDFG administrative procedures.

According to the EIR authors, "all literature cited in the document was considered in the preparation of Plan and Draft EIR/EIS" (see DFEIR response B10-07, paragraph two). Decision-makers should be clear that this obviously wasn't the case when considering public questions and comments.

In terms of disclosure, decision-makers should acknowledge the level of error in this document that CVAG finds acceptable. We pointed out that a 2-sentence paragraph from the DEIR contained two typos, a non-cited reference, and an unexplained capitalization of a noun (see DFEIR response B10-08).

The EIR authors acknowledged the errors but respond, "CVAG does not believe the errors discourage or prevent public review and public participation". This level of error in fact does discourage public review and participation. It also demonstrates an incredibly low standard for quality control. Was the document proofread before it was issued? Consider the size of the errata section in the Draft FEIR.
How much habitat remains for the CVFTL?

DEIR 9-119: “today, less [than] 5% of the original Habitat for this species remains”
DIEIR B10-01: “Historically, the CVFTL inhabited about 270 square miles...” “Today
the fringe-toed lizard habitat has been reduced to about 50 square miles”

5% of 270 square miles is 13.5 square miles. The document is inconsistent with respect to
habitat remaining. How much of this “remaining habitat” is on lands addressed in the Plan? No
one knows! The EIR authors provide no statistics with respect to what percentage of
habitat for this species is located within areas subject to the Plan, relative to what
percentage of habitat is outside the scope of the Plan (see their comment in the DIEIR B10-06).
The best they could come up with was a figure of “most” based on a “cursory review” of
the Natural Communities Map.

Decision-makers are being asked to approve a plan for the long-term survival of a threatened
species without consistent data regarding habitat size, and without any actual figures for what
percentage of remaining habitat is within “not-a-part” lands. It is flatly impossible to devise a
reasonable habitat conservation plan without knowing what percentage of the habitat is
located within lands covered by the plan, relative to lands not covered by the plan. “Most”
could mean 51%, or it could mean 99%. There’s a world of difference between developing a
habitat conservation plan that covers just over half of the remaining habitat, compared to one that
covers all but 1% of the habitat.
Is *Uma inornata* a separate species?

(See DFEIR comments B10-03 and response) The EIR authors simply refuse to acknowledge scientific references that were given, and also mis-interpret the conclusions of the references they choose to use.

We commented as follows:

"Data exist in many types of studies which support a less-than-species-level distinction for the CVFTL: Molecular evidence (Trepanier 2001); Biochemical evidence (Ades 1977 and deQueiroz 1992); behavioral evidence (Carpenter 1967); morphological evidence (Norris 1958 and Zalusky 1980) as well as direct observation of copulation between *U. inornata* and *U. notata* (Cornett 1982)."

To which the EIR authors replied:

"The commenter does not provide reference to the "...scientific data".

All of the papers we cited are either listed in the EIR's reference section, and/or discussed in papers listed in the EIR's reference section. How much reference do the EIR authors need?

According to the EIR authors:

"In a recent paper [listed above as Trepanier 2001] ... Tanya L. Trepanier and Robert W. Murphy conclude that based on genetic analysis, the CVFTL is warranted as a full species".

In fact, this study was not designed to determine if CVFTL is warranted as a full species. The EIR authors appear ignorant of the limits of the methodology used in the study they cite. Furthermore, Trepanier & Murphy state in the paper (second column, page 332): "Either a two-species classification or a five-species classification is required [to explain the study results]. In the two-species classification, *U. inornata* would not be recognized as a species." Additionally, the study authors note (first column, page 332) that: "Recognition of *U. inornata* has been contentious."

The Trepanier & Murphy paper was simply a reconstruction of the maternal lineage of a presumed family tree for nine individuals of *U. inornata*.

*Robert Murphy, the study author, clarifies* (personal communication dated January 17, 2006):  
"In retrospect, I would not call the tree [the graphical representation of study results] a phylogeny. It is a matriarchal genealogy only."

The DFEIR is inadequate and incomplete if it does not recognize that there is disagreement among experts as to full species status of the CVFTL. The fact that the EIR authors incorrectly interpret this study’s breadth and conclusions casts great doubt on their ability to design a habitat conservation plan for the CVFTL.
Are wildlife undercrossings for the CVFTL a reasonable mitigation?

**DEIR/DEIS 4-103:** "... the County will install wildlife under-crossings for the Coachella Valley Fringe-Toed lizard."

**DFEIR B-10-13:** "The types of under-crossings discussed in the Plan, while not optimal habitat for the lizard, provides [sic] a safe route of movement and will reduce the numbers of lizards lost to road-kills."

**DFEIR B-10-15:** "The Reserve System, including the TPCA, was designed to include all components of the CVFTL habitat, including food sources and adequate corridors."

Independent Science Advisors Review page AI-69: Experience ... has demonstrated that wildlife crossings ... can be effective in reducing roadkill. Responses are highly species-specific, however, so mitigation measures must be carefully tailored to the species in question..."

One of the most extensive studies done on the CVFTL is by K.S. Norris, 1958. "The field investigations reported here have involved in excess of 14,000 miles of travel in three years, including visits to all but two of the localities at which Uma is known to occur. Twenty-five new localities for the genus have been discovered, and the ranges of all forms have been redefined and extended." He measured 21 character traits using 64 Uma notata inornata (he is one of the many scientists who consider the CVFTL a sub-species). The Norris paper appears on page 10-20 of the DEIR/DEIS as a document that was ‘consulted’ in the development of the MSHCP. Unfortunately, the DEIR/DEIS incorrectly reported that the paper started on page 151 (rather than page 253) of the referenced journal, hindering the public's ability to participate in the planning process (see photocopy following). Still, we were able to track down the correct reference. Here are some of the things Norris said about CVFTL behavior:

"Migration of present-day forms of Uma seems entirely limited by movement of occupied sand accumulations."

"Surface activity of Uma is often restricted to a small portion of the available daylight hours because of a narrow range of temperature tolerance."

"[Two records of Uma captured 50 yards from the nearest dune] represent the farthest a Uma has been [found] from its habitat as far as I know"

"Uma tended to select the areas of finest sand for burrowing... Uma nearly always selects the sand-grain diameter of 3mm"

"As the grain size becomes larger ... burrowing [is] noticeably retarded in sand of 2-mm average grain size (Stebbins 1944)."

"A reluctance to emerge before a cloacal temperature of 26 C (78.8 F) was reached has been noted by Cowles and Bogert (1944) for individuals of ... Uma mexicana."

"Predators include badgers, various snakes... hawks, skunks, road-runners, and coyotes (Stebbins, 1944)."

**DFEIR B10-13:** "The referenced study does not provide information to suggest that CVFTL would not use properly designed wildlife undercrossings."
The CVFTL stays buried until it reaches a body temperature of nearly 80 F. It doesn’t stray more than 50 yards from a dune. It only emerges in daylight. It is physically unable to burrow in sand of a diameter greater than 2mm, and prefers sand of .3mm.

So, a “properly designed” and/or “carefully tailored” wildlife under-crossing for the CVFTL should be lighted, heated, and equipped with the proper size of sand grain for lizard movement. It should shelter the lizards from predators, and be within 50 yards of the dunes.

www.wildlifecrossings.info is a searchable database for case histories of mitigation measures, initiated by the USFS (in conjunction with the FHA and Western Transportation Institute, among others). The CVFTL would be considered an “upland reptile” for purposes of using this site. A search of this database reveals no under-crossings which come close to being adequate for the specific needs of the CVFTL.

A mitigation measure is considered feasible if it is capable of being accomplished in a successful manner within a reasonable period of time, taking into consideration economic, environmental, legal, social, and technological factors (CEQA Guidelines Section 15364).

Wildlife under-crossings are not a feasible mitigation for the CVFTL. If the under-crossings are to reduce “road-kill”, where are the statistics to back up this problem? Where are the records of CVFTLs lost to road-kill? How will decision-makers be able to recognize the economic absurdity of this mitigation measure without any species-specific road-kill data? How will the heated, lighted, sand-filled under-crossings be kept dry? Undercrossings are ostensibly feasible mitigations in some cases, but not in this one. Any design that comes remotely close to meeting the physiological needs of the CVFTL will be unjustifiably expensive to build and maintain, and CVAG should have recognized that.
May 29, 2007

Mr. Jim Bartel, Field Supervisor
US Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, CA 92011

Re: Re-circulated Coachella Valley MSHCP

Dear Mr. Bartel:

The American Society of Ichthyologists and Herpetologists (ASIH), an international society of about 2,000 professional scientists who specialize in the biology and conservation of fishes, amphibians, and reptiles, hereby submits the following general comments about the Coachella Valley MSHCP ("the Plan") documents, as well as specific comments about potential impacts on the Coachella Valley Fringe-toed Lizard (Uma inornata). Long-term viability of this unique, endemic lizard hinges on the persistence of wind-blown sand habitats. In our opinion, the most important aspect of Plan implementation relative to this species is to keep intact, in perpetuity, the habitats and physical processes that distribute these sands. In turn, this will help to ensure the continued survival of a number of other covered terrestrial species in the Plan that require this habitat - a concept which lies at the very heart of any viable Multiple Species Habitat Conservation Plan. We also provide comments about the impacts on the Desert Pupfish (Cyprinodon macularius), a federally endangered species.

One of the cornerstones of the Plan is the notion that the 27 covered species in the 75-year take authorization request will not be sufficiently protected from development impacts without the Plan as a result of incidental take requests being submitted (and authorized) on a piecemeal basis. While we feel that a significant amount of habitat, and by extension, a significant number of individuals, will be taken as a result of Plan implementation as well, the number of takings is likely to be far less than would occur without the Plan. Thus, we see the Plan as the lesser of two evils, but also realize our comments come too late to contribute much to the development of the Plan itself, which is the result of more than a decade of very hard work by many qualified professionals. Thus, our comments focus mainly on future implementation of the Plan, the approval of which we see largely as a done-deal.
Specifically, we express four concerns:
1) Availability of sufficient resources for monitoring of Fringe-toed Lizard populations.
2) Implementation of adaptive management relative to aeolian sand-dependent species.
3) Ramifications of the retraction of the City of Desert Hot Springs (DHS) from the Coachella Valley Association of Governments (CVAG) and by extension, the Plan itself.
4) Impacts and conservation of the endangered desert pupfish (Cyprinodon macularius).

1) Regarding long-term monitoring of Coachella Valley Fringe-toed Lizard populations, an impressive body of peer-reviewed literature has been generated by a number of highly qualified local scientists that have studied this species for over 20 years. We believe the methods used for this lizard in the past should be sufficient for long-term monitoring, but the devil is in the details, and the details are not presented in the Plan documents. However, we are encouraged that specific monitoring protocols must be submitted for approval during the initial stages of Plan implementation, and would hope that such plans would be available for public review and comment.

In reviewing monitoring plans submitted by the applicants, we suggest the USFWS consider the notion that monitoring protocols used for single-species HCPs may not be sufficient to ascertain population trends in Multiple Species HCPs (Barrows et al. 2005. J. Wildl. Mgmt. 69:1333-1345). Furthermore, although the availability of resources for long-term monitoring is implied in the approval of any MSHCP, we would like to reiterate that any long-term monitoring program is entirely dependent on sufficient funding, access to study sites, availability of land use and abiotic data, and other necessary resources, all of which should be made available for the entire duration of the Plan. This said, the first decade of this 75-year authorization will be the most critical time for assessing population impacts resulting from Plan activities, and will provide the most important feedback for adaptive management. In developing monitoring plan protocols, the first decade should receive the greatest scrutiny.

2) Regarding Adaptive Management issues, given the iterative nature of long-term monitoring and complexities of multi-species ecological modeling, it will take time to determine whether or not the Plan will protect the fringe-toed lizard in perpetuity. However, as stated above, the initial decade of Plan implementation will be critical for assessing the effects of development on aeolian sand resources, and in turn, impacts to this and other aeolian sand-dependent species. The aeolian sand issue is not limited to one lizard species; long-term assurance of natural sand transport processes will be required to ensure the long-term viability of many other covered species in the Plan. In addition, introduced plant species management will be required, in perpetuity. Introduced species, especially plants, are second only to habitat alteration in their effects on native species and even whole ecosystems. Certain introduced plants may have to be managed intensively to ensure the viability of aeolian sand-dependent native species.
We recommend that monitoring data be submitted and heavily scrutinized on at least a yearly basis during the first decade. If population monitoring data indicate fringe-toed lizards and/or other species appear to be on the decline, and if there is reason to believe that the actions authorized under the Plan are responsible for such declines, we recommend that the Plan be re-assessed, and corrective actions implemented - the very essence of adaptive management, and the cornerstone of the Plan. We realize this is required by the Plan itself, but are concerned that USFWS and other regulatory entities administering the Plan might not have the authority or political will to force stakeholders to alter their plans mid-stream. If this is not the case, all the positive aspects of the Plan could be rendered moot if the myriad predictions of no significant impacts in the Plan are not borne out in reality. We strongly urge the USFWS to consider all the options available under the law to ensure that the Plan preserves the 27 species, in perpetuity.

3) The retraction of the City of Desert Hot Springs (DHS) from the Coachella Valley Association of Governments (CVAG) and thus, from the Plan itself, is certainly unfortunate, as DHS lies in the center of the Plan area, and is an important corridor between the Valley and Joshua Tree National Monument. By existing outside the purview of the Plan, DHS will be developed in a "piecemeal" fashion, requiring individual take permits and HCPs for each proposed activity that would impact a listed species. The avoidance of a piecemeal approach is a cornerstone of the Plan. Beyond this issue, we are also aware that DHS recently petitioned, and were allowed to annex an additional ca. 2000 acres, ca. 1400 of which would have represented conservation lands under the Plan, thus taking this acreage out of the Plan as well. If this annexation stands, the impact acreage of the overall Plan would change, and another public review and comment period would be warranted. This would be unfortunate for the members of CVAG who have worked so hard to generate a comprehensive management plan that has already been reviewed twice.

Although we realize that there is nothing the USFWS can do to require or even steer DHS towards re-joining the CVAG, we strongly urge the USFWS to take a very hard look, and strong stance, on future incidental take permit applications in the DHS area. While we realize the loss of DHS probably does not represent the Plan's lynchpin, unimpeded development in DHS could alter ecological processes outside the Plan area, thereby limiting the ability of the Plan to preserve a number of covered species populations within the Plan area in perpetuity.

4) With regard to issues relating to the Desert Pupfish (Cyprinodon macularius), a federally endangered species, we find that the Plan and EIR/EIS fall short of providing adequate protections. Take is allowed both inside and outside of the conservation areas. While recognizing that specimens must under certain circumstances be captured and moved or protected, there is no stipulation that take be non-lethal or that any take resulting in death be mitigated appropriately. Protection measures (MSHCP p.138) do not include provisions for ameliorating impacts to habitat and species downstream from disturbance (e.g. construction), such as sedimentation and possible removal of water.
Considerations of bridge construction throughout the document address corridor issues, but not aquatic impacts, which could affect all aquatic species, not just pupfish.

In addition, there are natural populations in a “few shoreline pools and irrigation drains of the Salton Sea” (4.7-21), yet these populations would not be protected under the Proposed Action/Preferred Alternative, and the Desert Pupfish would be subject to take due to ongoing maintenance activities by CVWD (4.7-20). Natural populations should be protected as the first priority if recovery is to be achieved. Finally, the lack of provisions for recovery of this species are even more disturbing.

In summary, the ASIH anticipates that the proper implementation of this MSHCP may be beneficial for managing the 27 covered species, relative to the impacts that would likely occur from piecemeal authorization of incidental take permits for individual species impacted by individual projects. We only request that the USFWS 1) carefully consider how the Plan will be implemented, especially during the first decade, 2) sequester enough funding for rigorous long-term population monitoring, 3) actually use population data to guide adaptive management programs that will ensure the survival of the Fringe-toed Lizard, Desert Pupfish, and other covered species in perpetuity, and 4) consider the Plan when reviewing individual take applications by DHS for activities outside the Plan area that might affect species and ecological processes within the Plan area. Doing otherwise could render this Plan yet another example of how the economic interests of development so often trump the intent of the ESA, rather than a novel example of how MSHCPs can be powerful tools for ensuring the long-term viability of our natural heritage.

Thank you for considering our comments. If you have any questions or require additional information to assess these comments, please contact Dr. Todd Campbell at tcampbell@ut.edu.

Sincerely,

American Society of Ichthyologists and Herpetologists
Conservation Committee
Final Recirculated Coachella Valley MSHCP
Responses to Comments 3-35 September 2007

SECTION 3.0
COMMENTS RECEIVED

Comment Letter L

MAY 29, 2007 4:02PM WORDEN WILLIAMS APC

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FACSIMILE TRANSMISSION

Date: May 29, 2007
Total Sheets: 4
(Including Cover Sheet)

TO: Katie Barrows, Director of Environmental Resources
    Coachella Valley Association of Governments

Fax No.: (760) 340-5949
Phone No.: (760) 346-1127

FROM: D. Wayne Brechtel

Re: Recirculated Draft Coachella Valley MSHCP

Item: Comment letter dated May 29, 2007

Comments:

Original Mailed: Yes X No _____

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CLIENT CODE: SIECLW-007 CLIENT NAME: MATTER NAME:

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May 29, 2007

Via Facsimile and U.S. Mail

Katie Barrows, Director of Environmental Resources
Coachella Valley Association of Governments
73710 Fred Waring Drive, Suite 200
Palm Desert, California 92260

Re: Comments on Recirculated Draft Coachella Valley MSHCP,
DEIS/DEIR and Implementing Agreement (“IA”)

Dear Ms. Barrows:

Thank you for the opportunity to comment on the Coachella Valley Multiple Species Habitat Conservation Plan (“CVMSHCP”) and Draft Environmental Impact Report and Impact Statement (“DEIR/DEIS”), and Implementing Agreement (“collectively HCP”). These comments are submitted on behalf of the Sierra Club. Given that this HCP proposes to cover lands adjacent to, or in some cases surrounded by, lands subject to the proposed Agua Caliente Band of Cahuilla Indians Habitat Conservation Plan, we believe that the two Plans should be developed so as to compliment each other. Developed in isolation, the decisions related to one Plan might undermine the goals of the other. As such, we request that all comments provided on the Draft CVMSHCP be incorporated also as comments on the Agua Caliente HCP and vice versa.

In general, we believe an HCP covering all of the private lands in the Coachella Valley and adjacent areas may be the best vehicle for long-term conservation and management of these lands. More so than any large-scale HCP that we are aware of in southern California, this HCP seems to have a rationally designed reserve system for conserving the species covered under the HCP. This letter focuses our remaining concerns regarding this important project.

Unfortunately, we believe that the proposed HCP fails to meet the various statutory requirements of the ESA and other federal and state statutes for the recovery of endangered Peninsular bighorn sheep in particular, but also for other species such as those dependent on mesquite dune habitat. As it stands, the HCP does not demonstrate that it prevents jeopardy of Peninsular bighorn and adverse
Modification of its critical habitat. In fact, evidence in the record indicates the opposite. The current HCP would jeopardize the survival and long-term recovery of the bighorn. We remain hopeful that this HCP will be appropriately modified to conserve this species and to further reduce impacts to other species, as detailed below.

DEVELOPMENT PROVISIONS IN SAN JACINTO AND SANTA ROSA MOUNTAINS CONSERVATION AREA

The HCP properly identifies the need for "permanent protection of the movement corridor" for bighorn sheep across Chino Canyon. However, the special provisions for the Shadowrock Project are inadequate to accomplish this, and the DEIR/DEIS fails to analyze the impacts of the Shadowrock Project, as well as the feasibility or the adverse impacts of the proposed new movement corridor through Chino Canyon. For example:

- Provision (1) b., on Reservation land, fails to require preservation of the proposed movement corridor in perpetuity. A conservation easement that is only effective for 99 years is not in perpetuity. Additionally, the revised draft HCP removes the descriptor "legally binding" from the type of instrument required to conserve this portion of the proposed corridor.

- Provision (2) does not ensure the construction of an overpass; it simply requires an easement be procured. It is therefore ineffective.

- Provision (4) would cause the loss of existing permanent riparian habitat and potentially part of the fan palm oasis along Chino Creek, and would create potentially significant hydrological changes, visual impacts, and impacts to other endangered species such as least Bell's vireo, all which have not been addressed.

- Provision 10 asserts that "Funding will be obtained from a fund consisting of 1% of the gross proceeds of the sale of all retail goods within the Hotel stores at Shadowrock. This fund will be set aside for PBS management, which may include PBS augmentation." However, HCP fails to address that fact that the Shadowrock approval does not require the construction of a hotel, so these funds are not assured and the provision ineffective. (Please see the Resolution approving the Shadowrock Development Agreement, attached as Exhibit A.)

With regard to the Shadowrock Project, the HCP correctly proposes that "Development shall not preclude [Peninsular bighorn] habitat connectivity or movement." However, this proposal assumes the enhancement of a proposed "corridor" which includes a no development area, a funneling fence, and the removal of riparian vegetation at Chino Creek. No substantiation
whatever has been provided that the proposed corridor across Chino Canyon will be utilized by bighorn. In fact, both the developer’s biologist and FWS have admitted that the proposed corridor may not be utilized, despite the improvements, and that loss of this connectivity to the northern portion of the range may thereby cause the demise of the PBS ewe group in the San Jacinto Mountains, which could adversely affect the survival probability of the northern Santa Rosa Mountain ewe group, because of the elimination of dispersal and population interchange between the two mountain ranges. “Given the current easternly distribution of habitat use by bighorn sheep immediately south of Chino Canyon, this Project is still likely to impede natural movement across the Canyon.” (Wehausen, PBS Supplemental Assessment, April 2006, p. 5.) The HCP must address this issue.

The Shadowrock Project creates a potential of severing the San Jacinto ewe group from 45% of its historic habitat, including approximately 12,000 acres of critical habitat north of Chino Canyon. This potential impact is unacceptable and must be acknowledged as a significant impact in the EIR/EIS. Further, the HCP’s deferral of the corridor issue is an improper deferral of environmental analysis and mitigation. The HCP provides that the determination of whether habitat connectivity or movement is precluded by a project shall be made by the lead agency for the development, based on factual data provided by the FMOE, RMUC, wildlife agencies or other sources. Not only is this an improper deferral of environmental analysis, it is premised on the belief that lead agencies will take into consideration and concur with the opinions of trustees and wildlife agencies. Past experiences dictate otherwise. History has left no doubt that lead agencies do not accept and follow the opinion of wildlife agencies with respect to impacts to Paninellar bighorn sheep and instead, either make a contrary finding of significance or override a significant impact in favor of economic development.

For example, because of Project impacts to PBS lambing areas, wildlife agencies vigorously opposed the approval of the Shadowrock and Mountain Falls Projects in Palm Springs and the original Rita Carson and the Blower project in Rancho Mirage. However, all of these projects were approved by the local lead agency over clear wildlife agency objections. As it stands, the process is under the control of the local jurisdictions which have no expertise or incentive to preserve developable land. If the HCP is to be effective, a process must be used that guarantees preservation of habitat essential to the recovery of PBS. The determination of whether or not habitat corridors are precluded must rest with expert biologists in the wildlife agencies, not the lead agency for the project.

Similarly, in covering the Palm Hills project, the HCP fails to analyze the direct, indirect and cumulative impacts of this development. Even the Palm Hills EIR found that the project would move the urban boundary a mile and a half deeper into the Santa Rosa Mountains than currently exists. (Please see the excerpt from the Palm Hills DEIR, attached as Exhibit B.) These impacts are not addressed.
According to the 2000 Recovery Plan, the PBS range in and around the Coachella Valley has already sustained large losses of alluvial fan and valley floor habitat, and it is especially important to prevent further loss of this type of habitat if PBS are to recover. Unfortunately, for the most part it is just this type of habitat that is being slated for development in the HCP. As currently drafted, the HCP will facilitate the development and destruction of alluvial habitats because these will be the areas selected for the percentage of allowable take. The EIR/EIS fails to analyze this loss of habitat. The HCP must be amended to incorporate measures to ensure conservation of the small amount of alluvial habitat remaining for PBS in the plan area.

The HCP fails to adequately identify or perform an analysis of the critical components of PBS habitat, including corridors between awe groups, lambing areas, water source areas, and alluvial fan and valley floor habitat that must be protected for the long term survival and recovery of PBS. Adequate analysis of expansion habitat needed for PBS recovery has not been provided. After performing the above identification and analysis, the HCP must propose a mechanism for acquiring those critical components.

By our calculations based on tables 4-11a through 4-11g, the HCP permits the development of nearly 20% of the private lands within the San Jacinto and Santa Rosa Mountains Conservation Area. This take is significant and inadequately analyzed, particularly in view of the fact that the majority of the take will be in the very alluvial fan and valley floor areas in and around the Coachella Valley that are already in short supply for PBS, and that the crucial habitat components for PBS outlined above have not been addressed.

In addition, the tortoise corridor across Chino Canyon proposed in the HCP is patently inadequate; expecting tortoise to safely traverse a deeply incised permanent riparian area with flowing water is absurd. In addition, the proposed new movement corridor for PBS may also actually cause take of endangered Least Bell's vireo in violation of ESA, by removing of hundreds of feet of riparian habitat.

REQUIRED MEASURES FOR WATER SOURCE

Under Required Measures, the HCP allows development to take place as close as 1/4 mile to an important water source for bighorn. But it fails to substantiate whether this is an adequate distance to ensure continued use of the water source by bighorn. Now the revised Draft HCP exacerbates this problem because it allows development to move closer than 1/4 mile if there is visual screening by topographic features (natural or manmade features?). This would allow development immediately adjacent to water source, and impermissibly would not minimize impacts to the fullest extent practicable.
In addition, the HCP fails to identify all water sources for PBS in the Conservation Area. In particular, it does not identify the water source in Eagle Canyon, which was determined by the preparer of the Palm Hills DEIR to have more than adequate water for bighorn sheep, and found by FWS to be seasonally important to bighorn sheep.

TRAILS MANAGEMENT PLAN FOR SAN JACINTO
AND SANTA ROSA MOUNTAINS CONSERVATION AREA

The HCP Trails Plan has serious problems. It requires and depends upon acts and funding by non-parties such as BLM. The funding provided for research regarding the effects of trails users on bighorn is inadequate. If the research is to adequately assess population level effects on PBS, then it must be planned and funded to continue beyond the five year window, well into the future. We agree that a comprehensive and rational trails plan is necessary. It is unclear from the documents however, that the proposed plan meets these requirements. It should clearly articulate the reasons for given management actions and provide clear and binding commitment of the different parties’ responsibilities under the plan.

Including the proposed Palm Desert to La Quinta connector trail ("new connector trail") alternative behind the Bighorn Institute as a covered activity under the HCP is neither legally sound nor scientifically justifiable. This trail is not a peripheral trail; it would be a new, intrusive trail into PBS habitat. This connector trail was originally being considered by FWS only as mitigation for the then-proposed permanent or nine month closure of the Art Smith Trail. Since that time, the HCP’s Trail Plan was revised, and now it only proposes to close the Art Smith Trail in the summer, when it gets least recreational use. In fact, now virtually all trails in PBS habitat are proposed to remain open pending the results of research into trails use. Therefore, clearly there is now no need for the Palm Desert to La Quinta trail as mitigation; this proposed trail simply creates new intrusion into PBS habitat.

Most egregiously, the "preferred" alignment for the new connector trail would cause new human intrusion above and within sight of the Bighorn Institute breeding pens for their captive herd. The literature on bighorn sheep is conclusive that the flight response, (especially to activity occurring above bighorn) is the prime survival mechanism of bighorn. Recreational use on a new connector trail above the Institute would likely cause, at worst, stress and injury or death of bighorn and, at best, habituation of the Bighorn Institute's captive herd above which the new trail would traverse. Habituation of this herd could cause a jeopardy to the survival and recovery of PBS. The captive breeding program at the Bighorn Institute is designed to prevent habituation of sheep so that they will better acclimate into a wild environment. This is a key element of the historically successful implementation of the Institute’s captive breeding program.
As stated in the 2/1/06 FWS letter to the City of Palm Desert regarding human activity adjacent to the Bighorn Institute: "The Recovery Plan for Bighorn Sheep in the Peninsular Ranges (USFWS 2000) recognizes the importance of captive breeding and augmentation to the recovery of Peninsular bighorn sheep. Reintroduction and augmentation are prospective tools to establish ewe groups and restore connectivity among demes. Augmentation increases population size and reduces the risk of extinctions due to environmental or demographic stochasticity, and provides a mechanism to increase genetic diversity and reduce the risk of inbreeding depression (Foote et al. 1995)." The letter goes on to stress the need to "ensure that activities on adjacent lands do not compromise the integrity of the [Bighorn Institute] captive breeding facility. Much private funding, multiple government and non-governmental partnerships, and many years of hard work were required to establish and refine this captive breeding program for bighorn sheep." Further USFWS states "the San Jacinto deme remains at critically low numbers.... Captive breeding has been an important tool for recovering the bighorn deme in the San Jacinto Mountains near Palm Springs, and the small subgroup in Dead Indian Canyon of Palm Desert has persisted in part from the long-standing release program in the northern Santa Rosa Mountains. Of the ten female sheep currently remaining in the San Jacinto Mountains, six are captive-reared ewes." (Therese O'Rourke to Phil Drell February 1, 2006).

Thus the HCP is in direct contravention with the Recovery Plan, ESA, CDFG code, NEPA and CEQA with regard to the proposed new connector trail. The Bighorn Institute captive breeding program works. Its animals survive in the wild. USFWS relies on this program to augment wild demes at critically low numbers. The proposed research on a captive herd of endangered animals is per se a violation of ESA. And the results of a five-year study cannot begin to ensure that habitation would not occur. Since habitation would likely be fatal to the survival of a bighorn released in the wild, the proposed new connector trail could have far reaching effects impeding the survival and recovery of PBS. This trail and the proposal for research on captive PBS should be struck from the HCP.

LOWERING OF GROUNDWATER AND IMPACTS TO FAULT DUNE ECOSYSTEM

At the very heart of the HCP lies the San Andreas fault and the dune system sustained by waters trapped along the fault line. The Willow Hole Conservation Area is one such area dependent on groundwater. This fault dune ecosystem provides Core Habitat for the Coachella Valley milkvetch, Coachella Valley fringe-toed lizard, Coachella Valley round-tailed ground squirrel, and Palm Springs pocket mouse, as well as other conserved habitat for a number of sensitive and endangered species. The HCP recognizes that the groundwater level north of the fault dunes plays an important role in maintaining the mesquite hummocks natural community in this Conservation Area, but the plan fails to assure that this level remains high.
enough to support the mesquite or that there is funded mitigation in place, to remedy a shortfall of groundwater.

It is clear that the mesquite hummocks (which block blow sand and therefore create the dune system) rely for their existence on groundwater upwelling along the northern edge of the San Andreas fault. Due to the approval of 12,000 new housing units in the Desert Hot Springs area north of the fault, groundwater pumping will no doubt increase many fold in the relatively small and increasingly down-drafted Mission Creek groundwater basin, which is the aquifer north of the San Andreas fault. This is an aquifer that has already been in overdraft for years. Between 1955 and 1978, the water level dropped 16 feet, or 0.7 feet per year. (See attached excerpt from Mission Springs Water District 900 Zone Project DEIR attached as Exhibit C; See also, Avery, Jon 2004, Relationships Between Groundwater and Mesquite Biotic Communities in the Mission Creek Groundwater Subbasin, Riverside County, California, herein incorporated by reference.) The HCP fails to recognize that existing information documents that the mesquite dunes are already at a critical point. The Mission Springs Water District 900 Zone Well EIR documented the need for mitigation or the mesquite will completely die-off within five years of the well becoming operational. Since that time, additional wells have been approved, which will likely speed up this process.

The HCP purports to protect Essential Ecological Processes, including hydrological regimes, necessary to maintain this natural community. But the only mitigation suggested is to monitor the situation and if necessary to “Develop Feasible measures to ameliorate the effects of substantial lowering of the water table on mesquite hummocks and associated Covered Species.” What might these measures be, and how much would they cost? This mitigation will likely be essential to conserve many endangered species which rely on the fault dune ecosystem. It merits more specificity and certain funding. The HCP has failed to identify and fund feasible mitigation measures that will ensure the survival of the mesquite dunes habitat, and associated covered species that are dependent on it for survival.

OTHER

The HCP needs to address the recent approval of the Palmwood project and the annexation of this site into the City of Desert Hot Springs. This ill-advised project at the mouth of Big Morongo Canyon would cause significant impacts to the Upper Mission Creek/Big Morongo Conservation Area as well as the downstream and downwind Willow Hole Conservation Area with its fault dune preserve system. This project would cause direct take of Palm Springs pocket mouse, desert tortoise, and other sensitive and endangered species as well as impacts wildlife corridors and to preserves for Coachella Valley fringe-toed lizard and other species. (Please see the FWS letter commenting on the Palmwood DEIR, attached as Exhibit D.)
The HCP is unclear and apparently contradictory about how it treats approved specific plans in conservation areas. For example, we understand that the Adams Ranch Specific Plan allows development in a Conservation Area/Linkage. We assume therefore that this development will not be allowed to go forward as it undermines the viability of the linkages/conservation area of the HCP. Yet nowhere in the HCP can we find a mechanism whereby the permittees will act to protect this and other areas integral to the functioning of the HCP. Similarly, if Shadowrock is already a vested project, it presumably is not covered by the HCP. Since FWS previously determined the Shadowrock project to jeopardize Peninsular bighorn sheep, we do not see how the HCP can be approved with this jeopardizing action assumed as part of the environmental baseline.

The HCP is vague and contradictory for the standards within the Conservation Areas (e.g. compare chapters 4 and 9). Assuming such contractions will not all be removed from the final plan, the plan needs to specify that in the face of contradiction or uncertainty, the more environmentally protective provision will apply.

The HCP is inconsistent in the type of legal assurance required to ensure conservation of non-CVCC-owned lands. For instance, with regard to non-profits the HCP states, “CVCC will use its best efforts to enter into an MOU regarding cooperative management with non-profit conservation organizations within three years of Permit issuance to ensure the permanent Conservation by the execution of a Legal Instrument and management of the lands they own pursuant to the Plan, including providing access to the property for biological monitoring and management purposes.” However, in other cases the HCP requires a higher standard, a “recorded legal instrument acceptable to the wildlife agencies.” Why is this higher standard not applied to all non-CVCC-owned lands, and why is the recording of the legal instrument not required simultaneously or within a short time certain from issuance of the permit for the HCP?

In the section entitled Conservation of Additional Conservation Lands by Permittees through Acquisition or Other Means there appears to be a word missing.
May 29, 2007

Katie Barrows
Director of Environmental Resources
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

Dear Ms. Barrows:

On behalf of the Institute, I would like to submit the following comments regarding the Recirculated Draft Coachella Multiple Species Habitat Conservation Plan (MSHCP or the Plan) and the Recirculated Draft Coachella Valley MSHCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for your review and serious consideration.

As an initial matter, we are re-submitting our comment letter from March 7, 2005, on the original draft MSHCP. The issues we laid out in our previous letter were not addressed in the recirculated draft MSHCP and remain serious concerns. In fact, we are more concerned with the lack of regard for protecting wild Peninsular bighorn sheep with the revised proposed Trails Plan.

With respect to the Plan’s overall treatment of Peninsular bighorn sheep, the Institute has several concerns. The Institute’s primary concern with the Plan is the first segment of the Preferred Alternative for the Palm Desert to La Quinta Connector Trail (Connector Trail) adjacent to the Institute’s property and the impacts it could have on the captive herd of endangered Peninsular bighorn sheep. Bighorn Institute has serious concerns with the proposed Preferred Alternative of the first segment of the Connector Trail in relation to the captive herd, which are outlined below:

1. It is inexcusable that the Connector Trail is still in the Plan if the Plan is trying to be consistent with the Peninsular Ranges Bighorn Sheep Recovery Plan (Recovery Plan) in protecting sheep. This trail was proposed years ago as an alternative to the possibility of closing the Art Smith Trail during sensitive times of the year for wild sheep; however, the Art Smith Trail has since been rerouted and this is no longer an issue. Important recreation groups have gone on record against the Connector Trail as this trail appears to have little to no support in this Valley, other than by those that proposed it.
2. There are serious issues with the Connector Trail relative to the captive herd of Peninsular bighorn sheep at the Institute with regard to: the distance of the trail to the pens, visibility of the trail to the sheep, height of the trail above the pens, inability of ewes in the captive herd to isolate from human disturbance, stress on the captive herd from human disturbance, potential for helicopter rescues and the subsequent potential for stress-induced disease in the captive herd, and the potential for "bail outs" onto Institute land due to the difficulty of the trail. The Institute's March 7, 2005, comment letter explains our concerns with these issues in detail and since the recirculated Plan failed to address these concerns with the Connector Trail, our previous letter still applies.

3. The Plan states that there will be an in-depth research program to determine the effects of trail use on wild bighorn sheep and that there will be a separate research program on captive sheep to apply the results to the proposed Connector Trail (Plan 7-55). It states that both research programs will be initiated within the first year after the Plan has been implemented (Plan 7-59). It is illogical to suggest doing both studies at the same time because first the effects of trail use on wild bighorn sheep should be determined. If research results find there are adverse effects on sheep from trail use there would be no need to pursue research on captive sheep because no new trails would be constructed. A research project on captive bighorn should not be initiated until the results and analysis are available for wild sheep.

4. The Plan does not clearly describe the captive bighorn research program as far as timelines, study hypotheses and methods, potential researchers, cost, etc. It does not even suggest what captive bighorn would be studied. Just as research on trail use will not be conducted elsewhere and applied to Peninsular bighorn, research cannot be conducted on just any group of captive bighorn and applied to the captive sheep at the Institute. The Institute's captive herd of bighorn are used to augment the wild herd and thus are kept in as wild and natural conditions as feasibly possible to facilitate their success in the wild. The research would have to be conducted on the captive herd at the Institute, which would either result in "take" of an animal through death, or would result in habituating the sheep to the point that the recovery program is destroyed because the sheep may no longer be fit to survive in the wild. Many facilities can successfully breed bighorn
sheep in captivity, but it is unique to successfully release them into the wild from captivity. The Institute has released 118 captive-reared or rehabilitated Peninsular bighorn sheep into the wild since 1985. The northern Santa Rosa Mountains herd of bighorn would have been exterminated without augmentation from bighorn institute sheep. The San Jacinto herd may too have been saved from a similar situation with augmentation since the San Jacinto herd got down to 4 ewes in 2002, but there are now 12 ewes in the San Jacinto Mountains due to Institute sheep being successfully released there. It is ridiculous to think that a new trail (adding to over 100 currently in the Valley) is worth compromising the future recovery of an endangered species.

5. The EIR/EIS improperly changes the standard for determination of a significant impact to the Institute's captive breeding program. Existing evidence in the record, and common sense, support finding that the proposed Connector Trail has the potential to significantly disrupt the Institute's captive breeding program. Thus, current evidence in the record requires a finding of significance. The proposed standard for future studies, however, allows for construction of the Connector Trail unless the studies show the trail "would" adversely impact the captive breeding program. This is improper shifting of the significance standard. The onus must be on the researcher to prove that there are no adverse affects on bighorn sheep from trail use rather than proving there are adverse affects (Plan 7-66). Too many times things are allowed because we are unable to prove the adverse affects taking place.

6. It is disturbing that the Plan repeatedly states that after the results and analysis of the research has been completed that the ultimate determination of trails management will be up to the "best available science, (and) professional judgment..." (Plan 7-66) when the Plan clearly has not used the best available science and poor professional judgment is already evident by the Connector Trail being left in the Plan. With the Trails Plan revised so that there are only 3 trails closed during the hot season, it is evident that the best available science did not play a part in the design of the Plan.

7. The EIR/EIS's conclusion that impacts associated with the Connector Trail are "determined to be less than significant" (5-15) is erroneous. The EIR/EIS does not include the analysis or facts needed to support this conclusion. The existing facts support a finding of a potentially
significant impact. That is why additional studies are required. The EIR/EIS’s conclusion that the trail could be constructed without significant impacts is based on a future study and undefined mitigation measures. This is not substantial evidence to support a finding of no significant impact. Because, the current Plan allows for construction of the Connector Trail without including the analysis and mitigation measure would be used to mitigate impacts, the only legal finding that can be made at this time is that the trail option has the potential to cause significant impacts.

8. The EIR/EIS’s improper defers analysis and identification of mitigation measures for the Connector Trail. The Plan allows for construction of the Connector Trail after future, undefined studies are conducted and undefined mitigation measures are implemented. This is a classic deferral of environmental analysis prohibited by CEQA. The analysis necessary fully understand and mitigate impacts of the Connector Trail must be done now. Further, the EIR/EIS does not include any criteria of standards for future studies and mitigation measures. Thus, there is no assurance that legally adequate studies or mitigation measures will be implemented.

The Institute has several concerns with the proposed trails management, they are listed below:

1. The original reason for developing a Trails Plan was to protect sensitive lambing areas for Peninsular bighorn sheep; however, the recirculated Plan has apparently abandoned this notion since they decided to take an “adaptive management” approach rather than the previous “precautionary approach.” It is not explained why this was decided, especially since the Plan recognizes there are areas that are already vulnerable due to the low number of ewes. The Plan specifically states that the northern Santa Rosa and San Jacinto Mountain ewe groups have the smallest adult sheep populations and are especially vulnerable (Plan 9-264) yet the Plan adds no protection to these groups of sheep. The Plan failed to add recent population data from 2005 and 2006 that shows the San Jacinto population of bighorn has declined and the northern Santa Rosa population has remained stable, contrary to the Plan stating that all of the groups have increased (Plan 9-265). Table 7-12 (Plan 7-69) lists the recovery regions and the associated trails. Region 1 represents the San Jacinto Mountains ewe
group, regions 2a and 2b are the northern Santa Rosa Mountains ewe group and there are 20 trails listed for these areas. Regions 3 and 4, the central and southern Santa Rosa Mountains ewe groups, respectively, have 6 trails listed in these areas. There are less than 100 adult bighorn in regions 1 and 2 yet these sheep must deal with 20 trails while regions 3 and 4 have almost 350 adult bighorn and only have to deal with 6 trails. It seems logical that a preventative approach should have been used for the northern Santa Rosa and San Jacinto Mountain ewe groups (regions 1 and 2) since there are so few sheep in these areas. It is a misnomer to look at the overall population of Peninsular sheep and state that they are on the rise. There are two ewe groups that have decreased or remained stable over the past 3 years (regions 1 and 2) and these groups must be treated differently if we expect them to remain in the local mountains, especially when these are the areas with the most recreation.

2. The Plan acknowledges the Dead Indian/Carrizo ewe group has less than 5 ewes, which is the level at which immediate action will be taken to close trails (Plan 7-69); however, they have arbitrarily decided not to follow their own protocol and are not closing the newly rerouted Art Smith Trail. This is a perfect demonstration of how the best available science and professional judgment are not being used. Where is the scientifically validated explanation of why this new trail is not being closed? If the argument is that it is because this ewe group has been low for years, that will not hold up because this group has always had the Art Smith Trail bisecting their lambing area all year and this reroute still bisects the same basic area. This ewe group has never been given a completely undisturbed area in which to try to recover. It is arbitrary management decisions such as this that makes us aware that in the end the implementers of the Plan will favor the trail users rather than the future survival of the sheep.

3. There is insufficient enforcement planned for trail management if only 2 rangers are in the budget (Plan 8-96). The Bureau of Land Management currently has 2 rangers and they never have enough time to monitor trail use or similar issues because they have too large of an area to cover. Enforcement is the key to success of the Trails Plan. The Institute has concerns with the proposed monitoring of Peninsular bighorn sheep as part of the Plan implementation and our overall participation, they are listed below:
1. Bighorn Institute has been left out of the MSHCP process, which is incomprehensible since we have been doing the bighorn sheep monitoring in recovery regions 1, 2, and 3 of the Plan. There are many organizations and individual biologists consulted as part of the Plan (EIR/EIS 10-4), yet for some reason, the Institute was not asked to participate. Management starts with gathering all of the data from important collaborators and this is an inexcusable oversight of exclusion.

2. The Institute would like to be included in the Trails Management Subcommittee (Plan 6-11) since we do sheep research either independent of the Plan or hopefully cooperatively as part of the Plan implementation. We have 25 years of local bighorn sheep expertise that should not be ignored.

3. In Table 8-7 (Plan 7-62) there is a footnote that the Institute will continue to monitor Peninsular bighorn sheep independent of the Plan; however, in our previous comment letter of March 7, 2005, we stated that we very much would like to help monitor the sheep as part of the implementation phase of the Plan. The Institute has monitored the sheep in the northern Santa Rosa Mountains for 25 years and the sheep in the San Jacintos for 15 years. We know the herds and the issues surrounding them and we have permits with Fish & Game, the U.S. Fish & Wildlife Service and Bureau of Land Management. We can conduct our research at a low cost to the Plan and hope that our local bighorn expertise would be a welcome asset in implementing the Plan.

The Institute has a couple of concerns with the conservation measures listed in the Plan, they are listed below:

1. The Plan states that “…human use of an area can create Habitat fragmentation…” and “Habitat fragmentation is recognized as a major threat to Peninsular bighorn sheep…” (Plan 9-259); however, their acknowledgement of such is not reflected in the Trails Plan. If they know this is the case, why was an adaptive management strategy used rather than sticking with the precautionary approach?

2. The Plan toutst that the implementation of the MSHCP is consistent with the Recovery Plan (Plan 9-261), but it is clearly not, especially regarding protecting lambing areas. If the Plan followed the
recommendations of the Recovery Plan, the Connector Trail would not be proposed due to the impacts it would have on the captive herd with habituation and with lambing. There would also be several trails closed during lambing season if the Plan were consistent with the Recovery Plan. Lambing season trail closures (January 1 – June 30) were a priority listed in the Recovery Plan (pg. 87) and it goes as far to list 17 trails “currently known to result in disturbance to lambing and rearing habitat”; however, the Plan did not close any of them. The recirculated EIR/EIS points out that one of the main focuses in the Recovery Plan is to minimize human disturbance to Peninsular bighorn sheep (EIR/EIS 4.2-2), yet the MSHCP contradicts this by leaving all but 3 trails open year-round. The Plan claims that a Trails Plan was developed to minimize potential disturbance to bighorn sheep from trail use (Plan 9-263), but it is unclear how leaving all trails open and proposing new, harmful trails can be interpreted as minimizing disturbance. The Trails Plan could not cause more disturbance than what has been proposed.

There are some inaccuracies in the Plan, which are listed below:

1. Table 8-7 (Plan 8-34) is incorrect in describing the current monitoring of Peninsular bighorn sheep. The only monitoring Fish & Game currently does on Peninsular sheep within the MSHCP area is to monitor water sources and help the Institute survey for sheep. Bighorn Institute does all ground monitoring of the local bighorn in the San Jacintos and northern and central Santa Rosa Mountains. Fish & Game currently does not conduct telemetry flights or do ground relocation of sheep in recovery regions 1, 2, or 3. There is currently not a bighorn biologist working with Fish & Game in the Valley. It is also inaccurate that 70% of all northern Santa Rosa sheep are collared, only 30% of the herd is collared, which is the recommendation of the Recovery Plan. Including the Institute in the process would have eliminated unnecessary inaccuracies such as this.

2. The Plan incorrectly states that the number of adult sheep in the 4 recovery regions of the Plan have shown positive population trends (Plan 9-265). Had they used current information (2005 and 2006) it would be clear that the San Jacinto ewe group has declined and the northern Santa Rosa ewe group has remained stable over the past 3 years. With all of the revisions that were done, it is inexcusable that
current sheep population information was not included in the recirculated Plan.

3. Our previous comment letter of March 7, 2005, details out other inaccuracies, which were not corrected and are thus still a concern.

We included a list of actions in our previous letter that we hoped would be included in the Plan revisions, but most of them were not. We are re-submitting the letter of March 7, 2005, and ask that these actions be looked at again.

Thank you for the opportunity to submit these comments into the public record for the recirculated MSHCP and for giving them your most serious consideration. If you have any questions or need additional information, please don’t hesitate to contact us.

Sincerely,

James R. DeForge
Executive Director
Research Biologists

Encl.

cc: Jim Bartel (USFWS)
    Congresswoman Mary Bono
    Senator Barbara Boxer
    Ryan Broderick (CDFG)
    Senator Dianne Feinstein
    Mike Pool (BLM)
    BLM Board of Directors
    Steve Thompson (USFWS)
Comment Letter M included an attachment that has been reviewed and considered in the response to this comment letter. The attachment has been scanned and is on the CD that accompanies this document.
March 7, 2005

Mr. Jim Sullivan
Coachella Valley Association of Governments
73710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

VIA FACSIMILE: (760) 340-5949

Dear Mr. Sullivan:

On behalf of Bighorn Institute, I would like to submit the following comments regarding the Coachella Multiple Species Habitat Conservation Plan (MSHCP or the Plan) and the Draft Coachella Valley MSHCP Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for your review and serious consideration. For your reference, I am a Palm Desert resident and voter, and Executive Director and lead Research Biologist for Bighorn Institute, which is adjacent to the City of Palm Desert, California.

Created in 1982, Bighorn Institute (Institute) is a non-profit organization dedicated to the conservation of the world’s wild sheep, through research and education with particular emphasis on the endangered Peninsular bighorn. For the last 23 years, the Institute has assisted in bighorn research and recovery. The Institute is the only private facility in the world that focuses on bighorn in the Peninsular ranges. Its programs include research, captive breeding, and wild population augmentation to support declining bighorn populations. Institute work is conducted with the cooperation and oversight of the California Department of Fish and Game (CDFG), U.S. Fish and Wildlife Service (USFWS), and the Bureau of Land Management (BLM). The Institute operates on a $500,000 annual budget funded with nearly all private dollars. In effect, the work and efforts of the Institute are a gift to the people of the Coachella Valley and the rest of the nation for the conservation of Peninsular bighorn.

Peninsular bighorn have experienced dramatic population declines from 1200 down to 280 and now number around 700 animals in the United States and less than 2,500 in Baja, Mexico. Since 1985, Bighorn Institute has released 102 captive bred or rehabilitated Peninsular bighorn into the wild through its Captive Breeding and Wild Population Augmentation Program, which
provides genetic and demographic support to declining Peninsular bighorn populations. Institute land, located on nearly 300 acres purchased from BLM, is a successful Peninsular bighorn breeding area. Animals born at the Institute are released into the northern Santa Rosa or San Jacinto Mountains near Rancho Mirage or Palm Springs, California.

As an initial matter, the Institute wishes to reaffirm its commitment to ongoing assistance with recovery of the Peninsular bighorn sheep. The Plan states that a Monitoring Program will be initiated to provide information for adaptive management to ensure the conservation of species in the Reserve System (p. ES-30). Bighorn Institute would like to be a part of the Monitoring Program for Peninsular bighorn sheep in the Santa Rosa and San Jacinto Mountains. As stated previously, the Institute has been conducting research on bighorn sheep in these ranges since the early 1980s at little or no cost to the public. The Institute desires to continue assisting the wildlife agencies with monitoring Peninsular bighorn in the Coachella Valley and would like to offer its services to the Coachella Valley Association of Governments. The Institute is familiar with the local bighorn herds and the issues that surround them. Section 8.6 of the Plan discusses data management and states that protocols will be established for sharing data, but sensitivity will be used for certain types of data. The Institute would like to help establish protocols for data sharing. If a data sharing policy is adopted in the Plan that is consistent with the Institute’s mission and interests, future data collected by Bighorn Institute could be included in a master database.

With respect to the Plan’s overall treatment of Peninsular bighorn sheep, the Institute has several concerns. The Institute’s primary concern with the Plan is the first segment of the Proposed Action and Preferred Alternative (Alternative B) for the Palm Desert to La Quinta Connector Trail (Connector Trail) adjacent to the Institute’s property and the impacts it could have on the captive herd of endangered Peninsular bighorn sheep. Bighorn Institute has serious concerns with the proposed Preferred Alternative of the first segment of the Connector Trail in relation to the captive herd, which are outlined below:

1. The Preferred alignment for the proposed Connector Trail would be visible to the Institute’s 30-acre ewe and lamb pen. The Plan states that the trail would be 200 feet higher than the existing pen, apparently attempting to minimize the adverse effect of the public trail (EIR/EIS p. 5-35); however, the Plan also cited scientific literature that shows
bighorn sheep respond stronger and more adversely to humans above them versus below (EIR/EIS p. 5-34).

2. Bighorn have incredible vision, and the Preferred Connector Trail alignment is only 0.6 miles away from the ewe pen. Bighorn sheep in the wild have been documented responding to human disturbance from as far away as 1 mile (Monson and Sumner 1980, p. 114). This inadequate distance from the pen combined with the orientation of the trail on the terrain above the ewe pen would certainly lead to stressing the captive herd. This fact is acknowledged by the Plan, but is dismissed because the Plan suggests the captive herd may become habituated to the disturbance (EIR/EIS p. 5-37). Habituation to trail use would, in and of itself, be an adverse impact. Habituation is defined as suppressing an innate response (Alcock 1979, p. 64). A key element of a successful captive breeding program for augmentation is preventing habituation to man-made circumstances so that animals will have a better chance of survival when introduced into a wilderness area. Habituating to disturbance of trail use could make the captive herd adaptively unfit for survival in the wild.

On other captive breeding recovery programs extensive efforts have been made to decrease or eliminate human exposure. For instance, the California Condor recovery program at the Los Angeles Zoo goes as far as blacking out the side of the condor enclosure that would otherwise be visible to humans. As a result, the birds have minimal to no contact with people prior to being released into the wild (pers. comm. Michael Dee, General Curator LA Zoo).

3. Stress on bighorn at the Institute from trail users would be greater than what is experienced in the wild. Peninsular bighorn in the captive herd must endure perceived stress, as they are unable to flee their enclosures or move to areas without disturbance. This is of utmost concern with ewes that are trying to isolate and give birth. The natural behavior of bighorn ewes is to seek seclusion during lambing season, even from other sheep. Bighorn in the wild have the ability to flee from human disturbance and ewes that are trying to isolate can move to alternate lambing areas to avoid disturbance. The Preferred alignment of the Connector Trail is in view of the “lambing” side of the ewe pen at the Institute and would prevent captive ewes from finding an adequate area to isolate. Captive ewes could abort or forsake lamb rearing altogether if human disturbance levels are too
high from the Connector Trail. Lambs that survive could become habituated to human disturbance such that they are not suitable to survive in the wild. If the released sheep cannot survive in the wild because they are unable to act and respond like wild bighorn, the augmentation program and the goals of recovery would be significantly affected.

The Trails Plan suggests limiting trail use in sensitive lambing areas, but is proposing year-round trail use next to the Institute, a known, successful recovery center and lambing area. As stated previously, there have been over 100 lambs born at the Institute and 102 bighorn have been released into the wild since 1985.

4. The Plan inaccurately depicts that only 20% of the ewe enclosure is visible from the Preferred Connector Trail alignment (EIR/EIS p. 5-36 Exhibit 5-6 top picture, p. 5-37). When Institute biologists walked this trail alignment on June 17, 2003, with BLM, CDFG and USFWS biologists, the portion of the ewe pen visible from the trail more closely resembled the picture in the Plan that is north of the trail alignment (EIR/EIS p. 5-36 Exhibit 5-6 bottom picture). The Institute photographed the ewe pen from the proposed trail and is including the photo with this letter for your reference.

5. The Plan inaccurately depicts that only 20% of the Institute’s proposed “ram” pen is visible from the Preferred Connector Trail alignment (EIR/EIS p. 5-37). The Plan refers to this pen as a ram pen, but it will be a relief pen for ewes and lambs. This pen will be located around a hill east of the current ewe pen and a significant portion of this proposed pen would be in full view of this trail alignment at less than 400 yards (evident in BI’s photo referenced in point 4 above). Due to the close proximity of this new pen to the proposed trail the Institute may not be able to build the pen. Impacts to the captive herd would likely be compounded at this closer proximity to the trail. Furthermore, on January 2, 2004, Bighorn Institute sent CVAG a letter with the accurate depiction of the proposed pen; this information should have been included in the Plan.

6. The Existing Loop Trail that begins at the National Monument Visitor Center is not accurately depicted (Exhibit 5-7, EIR/EIS p. 5-38). There is also an additional “upper loop” that was constructed last year (2004) by the City of Palm Desert that includes a portion of the “Old
Shirley Road." This upper portion was not approved in the USFWS biological opinion issued February 13, 2003.

If approved, the captive herd of bighorn would not only see trail users, but users will be above the sheep in elevation and the captive herd is likely to reduce or abandon use of the northeast portion of the pen, which is where the ewes isolate to give birth. The ewes have always sought the solitude of the north side since Hwy 74 and Bighorn Country Club are on the other sides of the enclosure. The north side encompasses approximately 1/3 of the ewe pen and is the area that will be in direct sight of the Preferred alignment of the Connector Trail. The authors of the Plan are familiar with the scientific literature that suggests bighorn could abandon lambing areas from human disturbance as they cite studies regarding wildlife and noise noting that "a noisy environment can also force relocation of species into potentially marginal or less suitable habitat, having lasting effects on survivability and reproduction" (Brattstrom & Bondello 1983; EIR/EIS p. 3-101).

None of the bighorn in the Institute's captive herd should become habituated to human disturbance such that they are less fit to survive in the wild, should they be released. The Institute is not a zoo facility; it is a recovery facility. There is a significant difference in evaluating impacts to the Institute facilities and the Plan fails to appropriately assess the impacts from the proposed trail on the captive herd.

7. Helicopter rescues for trail users on the Connector Trail are a significant concern for the captive herd as they would stress the sheep resulting in possible stress-induced pneumonia. Wild and captive bighorn lambs and adults can be prone to stress-induced pneumonia (DeForge 1976). Bighorn have reduced immunity function when enduring stress due to heightened cortisol levels. In 1999, helicopters were launching and landing from Bighorn Country Club and flew over and adjacent to the ewe pen during lambing season. That year the Institute lost 5 of 7 lambs to apparent stress-induced pneumonia with most lambs dying within a few days of showing signs of illness (Bighorn Institute 1999).

The Plan inaccurately concludes that helicopter use would not have a "significant cumulative effect" on Peninsular bighorn because it does not address the effects of helicopter use on the captive herd (EIR/EIS
p. 9-37). The Federal Aviation Administration has designated the air
space over the Institute as a “sensitive wildlife area” and is marked as
such on their aeronautical charts. This helicopter use around the
Institute’s pens could be devastating, resulting in “take” or loss of
animals.

8. The Plan recognizes that this Preferred alignment is difficult since they
suggest it may not be appropriate for the casual user. The Plan further
suggests an alternate entry point in the Trail Corridor north of The
Living Desert (EIR/EIS p. 5-15). In fact, some of the planners were
unable to complete the first segment of trail when they were hiking the
Preferred alignment and were forced to “bail out” on private property.
There are only two options—either Institute or Bighorn Country Club
land. This confirms two of the Institute’s concerns: 1) helicopter
rescues will be likely on this trail either for people unable to complete
the trail or have become injured, or even people that tried to “bail out”
unsuccessfully and 2) people that are unable to complete the trail are
likely to “bail out” on Institute property through the wash coming in
full view at a close distance to the recovery pens. Hikers leaving the
trail would pose a serious stress to the sheep.

9. Disease has historically been a limiting factor for Peninsular bighorn
in the Santa Rosa Mountains. Although it is not a current issue, the
potential is there for the captive herd if exposed to a multi-use year-
round trail. The Plan cites scientific literature that suggests that
disease “can be precipitated by chronic levels of disturbance (EIR/EIS
p. 9-33). Certainly, with no restrictions on the Connector Trail and
year-round use permitted, the captive herd could experience chronic
levels of disturbance and thus be prone to disease and not fit for
release.

10. The Institute’s captive herd could quickly become the most popular
place to see bighorn sheep from the Connector Trail. Trail users who
prolong their presence and potentially harass the sheep by leaving the
trail to approach the pens could cause serious and added disturbance to
the captive herd. Human curiosity should not be underestimated.

11. Approval of the Connector Trail would jeopardize the validity of the
Plan, which is premised on the ability to obtain an incidental take
permit pursuant to Section 10 of the Endangered Species Act. Section
9 prohibits the “taking” of an endangered species of fish or wildlife.
(16 USC 1538(a)(1)(B)). The only exception is issuance of a legally valid incidental take permit. (16 U.S.C 1539(a)(1)(B)).

The “take” that would result from the proposed Connector Trail segment would go beyond what could be authorized by a Section 10 permit. “Take” is defined broadly and includes harm or harassment that would “significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding or sheltering. (See 50 C.F.R. 17.3.) The Connector Trail would directly impact a captive breeding facility for the endangered Peninsular bighorn sheep. As discussed herein, the types of stress that could result from introduction of public viewing above a lambing area could result in significant harm to the species, including the loss of lambs prior to and after birth. Given the likelihood of harm, the findings necessary for issuance of an incidental take permit could not be made. Prior to issuance of an incidental take permit, the Secretary must find, among other things, that:

“the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking” and

“the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild”

(16 U.S.C 1539(a)(1)(B)) The overall Plan, particularly the trail element, has aspects that will result in harm and harassment of bighorn sheep. Allowing these impacts to be compounded by placing a new, public trail above a captive breeding facility for bighorn sheep does not minimize and mitigate adverse impacts “to the maximum extent practicable.” To the contrary, it would unnecessarily create a serious and adverse impact to bighorn recovery efforts. Further, approval of the Connector Trail would “appreciably reduce the likelihood of the survival and recovery of the species in the wild.” The continued survival and ultimate expansion of the Peninsular bighorn sheep population to a sustainable level is dependent on many factors, including ongoing success of the Institute’s captive breeding program. The Connector Trail would jeopardize the captive breeding program. Only two years ago the San Jacinto Mountain bighorn population got down to only four adult ewes and now with the augmentation efforts of the Institute’s captive herd there are 12 ewes. This small subgroup could have been extirpated without the Institute’s augmentation
efforts. Until the causes of various limiting factors and population decreases are sufficiently dealt with in the San Jacinto Mountains, Peninsular bighorn recovery is dependent on captive breeding. Thus, the Plan with the Connector Trail cannot satisfy the appropriate standards for issuance of an incidental take permit.

There are numerous other instances in which the Plan fails to properly address the proposed Connector Trail; they are outlined below.

1. The Connector Trail fails to meet the two goals of the Trails Plan (EIR/EIS p.2-21 & 5-1). The first goal is to “minimize the risk of potential adverse impacts to bighorn sheep from recreational activities.” The second goal is to “provide recreational opportunities throughout the Santa Rosa and San Jacinto Mountains that are consistent with recovery of bighorn sheep.”

The Preferred Alternative for the Connector Trail not only fails to minimize adverse impacts to Peninsular bighorn, but creates new impacts to the captive herd at the Institute. Proposing a new, unnecessary trail conflicts with the importance of Bighorn Institute’s captive breeding and wild population augmentation program. The wildlife agencies recognize that without the augmentation efforts by the Institute the northern Santa Rosa ewe group would have been extirpated.

2. The Executive Summary (p. ES-25) explains that Take of a fully protected species is not permitted by CDFG. There are only three fully protected species covered under the MSHCP: Yuma Clapper Rail, California Black Rail, and Peninsular bighorn sheep. However, the Plan later states that Take would be allowed with the proposed perimeter trails and Connector Trail (p. ES-28). We question that CDFG would allow Take for this new trail when the purpose of the Plan is to minimize impacts to species, not allow Take of a state threatened and fully protected species.

3. The Trails Plan is contradictory in suggesting people stay out of sensitive lambing areas and creating a permit system allowing a low number of trail permits, yet proposes a year-round multi-use Connector Trail adjacent to the only recovery facility for Peninsular bighorn sheep (EIR/EIS p. 2-59) with a known successful lambing area (Ostermann et al. 2001).
The Plan suggests that more trail users will use the new proposed perimeter trails and Connector Trail since they will be open year-round and available to all non-motorized use, without restriction. This is a concern to the Institute because the Connector Trail will likely receive the overflow of trail users in the Santa Rosa and San Jacinto Mountains. Large groups of trail users (hikers, bikers or equestrians) that are unable to obtain a group permit on other trails can use the Connector Trail any day. This could have serious impacts on the captive herd at the Institute, especially during lambing season (described previously).

4. The Trails Plan proposes a Connector Trail that not only traverses a significant section of the backcountry directly through critical habitat for Peninsular bighorn but fails to suggest that seasonal restrictions are necessary. The lack of mitigation measures (EIR/EIS p. 5-98) demonstrates the Connector Trail did not receive adequate scientific review.

There are a number of inaccuracies and failures of the plan, which are outlined below:

1. The Plan inaccurately summarizes the relative impacts of the Preferred Alternative of the Connector Trail as “low” or “none or low” on the captive herd and lambing rearing habitat, respectively (EIR/EIS p. 5-45). Considering previous points in this letter regarding the Preferred Alternative, the Institute suggests that these impacts be re-evaluated relative to the captive herd. Of the alternatives analyzed, the Preferred Alternative is the least appropriate alignment for both wild and captive bighorn due to orientation on the terrain.

2. The Plan presents only one legally feasible alternative for the first segment of the Connector Trail, the Preferred Alternative (EIR/EIS p. 5-33). The Urban Fringe alternative goes through the 400-yard conservation buffer surrounding the Institute in which no persons or activities are to take place with the exception of Institute biologists (Canyons at Bighorn EIR 1992). The Deep Canyon alignment would be out of view of the captive herd and allow wild sheep to be above most parts of the trail, decreasing disturbance or perceived stress, but is not an option because the Plan states, “public access to these lands is not allowed to provide an undisturbed setting for scientific research”
(EIR/EIS p. 5-16). Deep Canyon Research Center made an exception for the Preferred Alignment to go onto their property to avoid going through a corner marker with Bighorn Institute land. Planners need to re-evaluate the Connector Trail using legally feasible alternatives. On November 6, 2003, BLM wrote a letter to CVAG stating they had “serious concerns” with the proposed trail alignment behind Bighorn Institute and further stated it was BLM’s position that “a complete analysis of a full range of alternatives under consideration be done in the Draft EIR/EIS.”

The Plan fails to treat research efforts by Bighorn Institute and Deep Canyon Research Center equally (EIR/EIS p. 2-31, 5-16). On multiple occasions the Plan references the importance of research performed at Deep Canyon, but fails to accurately depict the important research and recovery work the Institute does in cooperation with the wildlife agencies for the endangered Peninsular bighorn sheep.

3. The Plan fails to detail the management strategy for enforcing the Proposed Action/Preferred Alternative of the Trails Plan. The following details necessary for the success of the Trails Plan are absent: funding requirements, staffing requirements, penalties for not adhering to the permit system, coordinated responsibilities among state and federal agencies and local permittees, and other management details. There is currently no enforcement in place for the trails, such as dog closures, other than signs. The current lack of management is not working and the Trails Plan is destined for failure if it does not include proper enforcement.

The Institute has several concerns with the biology in the Plan relative to Peninsular bighorn sheep, they are listed below:

1. The best available science was not used in the MSHCP (EIR/EIS p. ES-3). Bighorn Institute was not asked for data on Peninsular bighorn sheep and yet the Institute is the lead local research organization on this species with the most recent and largest data set. At the request of BLM, Institute biologists attended one CVAG meeting (March 27, 2003) to provide minimum convex polygons for lambing areas, as an example of the types of information and tools the Institute could assist in preparation of the Plan. However, the information was rejected by CVAG & CDFG because the raw data was not made available. The Institute is concerned with the wholesale release of sensitive
Peninsular bighorn information. However, that does not mean an appropriate working relationship cannot be developed. The Institute has been providing needed information to resource agencies for years. The Institute remains available to lend CVAG its expertise.

From a biological standpoint, the Institute should be consulted on Peninsular bighorn and included as an "organization or interested party" in the Plan (EIR/EIS p. 10-2,4). CVAG has used the Institute’s budget and use of private dollars to justify federal matching funds for years; however, the Institute and its conservation efforts and research were completely left out of the Plan.

2. The Plan used old data for Peninsular bighorn sheep. There is relatively little recent bighorn data in the Plan (after 2002). In fact, bighorn population data was used from 1998 (MSHCP p. 9-286). Contrary to the implications in the Plan, predation by mountain lion, is not currently a limiting factor for bighorn in the central and northern Santa Rosa Mountains or the San Jacinto Mountains. In fact, the Institute found urbanization to be the leading cause of decline in the mid 1990s for bighorn populations in the northern Santa Rosa Mountains (DeForge and Ostermann 1998).

The Institute suggests that because out-of-date data for Peninsular bighorn sheep was used in the Plan, that dog use areas be re-evaluated, specifically for the area east of Andreas Hills. There were multiple sightings of bighorn sheep and sheep sign along the Garstin Trail in 2004, primarily during the rut, or breeding season. Rams and sheep sign were observed on or near the Garstin Trail and if dog use is promoted and allowed in this area it could close off a bighorn sheep movement corridor between the San Jacinto and Santa Rosa Mountains. The Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (USFWS 2000, pp. 77, 103) suggests genetic variability is an important aspect of recovery for this species as well as connectivity throughout the range.

3. The Trails Plan includes a trail (Lower Dunn Road to Dry Wash, EIR/EIS pp. 2-25, 5-35) that traverses private property, yet fails to mention that permission was not obtained to cross the property, a necessity for enabling the inclusion of the trail in the Plan. In fact, this trail is proposed to be part of the permit system, which implies the permitting parties have the authority to issue trespass permission to the
public on this private property. This is a concern since the Institute has easement authority on a parcel of property on the lower Dunn Road (west half of Section 5, Township 5 south, Range 5 East), between the second gate and the Dry Wash as was indicated to the BLM in a letter dated January 23, 2002. To be legally permissible, CVAG, CVCC, BLM, and members of the public must obtain written permission from Bighorn Institute prior to crossing this private property on the lower Dunn Road. This property has been posted as “No Trespassing” for three years and the Plan should divulge this fact. The Institute takes exception to the Plan implying trespass is acceptable. For the record, the Institute has denied public access through this parcel.

In summary, Bighorn Institute suggests the following actions, including but not limited to, be given serious consideration for revision of the Plan:

1. **Eliminate the first segment of the Connector Trail**
2. Re-evaluate the impacts of the Connector Trail relative to the captive herd by using accurate depictions of the proposed alignments
3. Use the best available science and incorporate recent data for Peninsular bighorn sheep into the Plan
4. Obtain a level of consistency in the Plan based on the standard of best available scientific information
5. Follow the recommendations of the Recovery Plan for Peninsular bighorn sheep and be more protective of wild sheep habitat from development or recreation
6. Consult with and include Bighorn Institute in the planning and implementation process
7. Re-evaluate dog use areas, specifically east of Andreas Hills
8. Clarify the inaccurate depiction of permissible public access to the lower Dunn Road parcel that the Institute regulates
9. Incorporate a detailed Trails Management Plan that details how the program would be administered and enforced among all the responsible parties
Thank you for the opportunity to submit these comments into the public record for the MSHCP and for giving them your most serious consideration. If you have any questions or need additional information, please don’t hesitate to contact us.

Sincerely,

[Signature]

James R. DeForge
Executive Director
Research Biologist

Encl.

cc:
Jim Bartel (USFWS)
Congresswoman Mary Bono
Senator Barbara Boxer
Ryan Brodderick (CDFG)
Senator Dianne Feinstein
President Gerald R. Ford
Matt Hogan (USFWS)
James Peterson (Senator Feinstein)
Congressman Richard Pombo
Mike Pool (BLM)
Alexandra Sheldon (President of BI) & Board of Directors
Steve Thompson (USFWS)
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Via Facsimile and Overnight Delivery

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Re: Comments on the Coachella Valley Multiple Species Habitat Conservation Plan and the Recirculated Draft Environmental Impact Report/Environmental Impact Statement (EIS No. 20070112)

Dear Mr. Bartel and Ms. Barrows,

Thank you for the opportunity to comment on the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Communities Conservation Plan ("MSHCP" or "Plan") and the Recirculated Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/S"). We represent Flying J, which owns the trucking support commercial property on Varner Road adjacent to the existing Ramon Road interchange ("Truck Plaza"), and we submit these comments on behalf of Flying J.

1. THE PLAN IS INADEQUATE BECAUSE IT IS BASED ON FAULTY SCIENCE

The Federal Endangered Species Act ("FESA") has as a guiding principle of using the "best scientific and commercial data available" in all of the technical efforts within the ICP. The U.S. Supreme Court has explained that

[[the obvious purpose of the requirement that each agency "use the best scientific and commercial data available" is to ensure that the ESA not be implemented haphazardly, on the basis of speculation or surmise. While this no doubt serves to advance the ESA's overall goal of species preservation, we think it readily.

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apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives.

(Bennett v. Spear (1997) 520 U.S. 154, 176-177.)

Further, the U.S. Fish and Wildlife Service's ("Service") decision on an HCP must not "disregard superior data." (Building Industry Ass'n of Southern California v. Norton (D.C. Cir. 2001) 247 F.3d 1241, 1246-47.)

On the state level, the California Department of Fish and Game ("CDFG") is required in considering a Natural Communities Conservation Plan ("NCCP") to show that its determination is "based on localized conditions and shall consider ... [t]he use of the best available science to make assessments about the impacts of take, the reliability of mitigation strategies, and the appropriateness of monitoring techniques." (Cal. Fish & Game Code § 2820(f)(1)(C) (emphasis added).)

The MSHCP asserts that "[t]he planning team [used] the best available scientific data in developing the Plan. The data used in Plan development was a combination of existing biological data and new data collected during Plan development." (MSHCP at 3-2.) However, the MSHCP fails to use the most accurate and best scientific data since the data is inaccurate and outdated. This is borne out by the sources from which the MSHCP was created.

The MSHCP fails to consistently identify which field surveys of Covered Species were conducted and relied upon. According to section 3.3 of the MSHCP, "[f]ield data collected during surveys for the Plan in 1995, 1997, 1998, 1999, 2002, and 2003 through 2006. These surveys were conducted by participating agency biologists and biologists working under contract to conduct focused surveys for some of the Covered Species." (MSHCP at p. 3-10.) However, the Technical Appendix to the MSHCP only identifies field surveys conducted between 1995 and 2003 (MSHCP at A1-89 to A1-90), and biological data collected from surveys conducted between 1995 and 1999 (MSHCP at A1-136). Thus, it is unclear from the MSHCP which field studies were relied on to select Conservation Areas to be included in the MSHCP Reserve System.

Furthermore, the MSHCP does not state (even in summary fashion) where field data were collected for some or all of the Covered Species. For example, the surveys for Coachella Valley round-tailed ground squirrel (April - August 1999), Casey's June beetle (Summer 2000), Little San Bernardino Mountains linanthus and Coachella Valley milkvetch (May 2001), soil conditions in habitat for Little San Bernardino Mountains linanthus and triple-ribbed milkvetch (November 2001), and Coachella Valley round-tailed ground squirrel (April - July 2002) listed in
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Table A3-5 (MSHCP at A1-90) do not state where the surveys were conducted within the Plan Area.

Additionally, it appears from Table 8-8 of the MSHCP that the field surveys conducted in 2003 only included a fraction of the 27 Covered Species, that is, six Covered Species and "riparian birds." (MSHCP at 8-35.) The "Individual Species Sampling (2002-2005)" only included six of the 27 Covered Species, and the specific dates set forth in the table only date through 2003, not 2005 as indicated by the heading. (MSHCP at 8-35 to 8-36.) The field survey data for the majority of the Covered Species therefore dates from 1995 to 1999, and is therefore eight to twelve years out of date.

As demonstrated, the biological data is outdated, incomplete, and frequently non-specific in important ways. Thus, the MSHCP risks the very "haphazard" implementation that leads to "needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives." (Bennett v. Spear, supra, 520 U.S. at 176-177.)

Furthermore, the Coachella Valley Association of Governments ("CVAG") and the Service (collectively, the "Lead Agencies") did not give due consideration to certain findings and recommendations set forth by the Independent Science Advisors ("ISA"). For instance, the ISA criticized the Administrative Review Draft of the Plan ("ARD") for failing to use a more scientifically defensible model to select sites to include in the MSHCP.

We are concerned, however, that modern, quantitative tools were not employed to accomplish the required tasks. Hence, the process of site selection was more subjective and less transparent than it would have been if more rigorous methods had been applied. For example, there was no use of sophisticated habitat suitability models, [population viability analyses ("PVAs")], or site selection algorithms (e.g., SITES, a program developed by The Nature Conservancy for ecoregional conservation planning; S. Andelman et al., 1999. SITES V 1.0: an analytical toolbox for designing ecoregional conservation portfolios, The Nature Conservancy). Rather, selection of sites was based on GIS overlays and expert opinion. The failure to apply rigorous models reflects, in large part, the paucity of data on the species and communities concerned. Nevertheless, we feel that a more technically rigorous and sophisticated site evaluation process could have been applied and would result in a more defensible Plan.

(MSHCP at A1-47 (emphasis added).)

The Lead Agencies purport to have employed the "Best Available Science Standard" in developing the Plan. (MSHCP at 3-1 to 3-3.) But the Lead Agencies did not adequately re-assess the data in light of the ISA's critique. The Lead Agencies failed to address concerns raised respecting the methods that inform the MSHCP as well as the data relied upon.

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According to the Lead Agencies, they did respond to the ISA critique, however, the MSHCP fails to say how they addressed the particular criticisms in anything more than the most general terms:

In response to the ISA report and additional information provided by the USGS study, the Scientific Advisory Committee ("SAC") analyzed additional areas for potential inclusion in the Conservation Areas. This analysis included review of the additional information provided, field visits, and meetings with other biologists. Based on this analysis, the SAC recommended addition of some areas to Conservation Alternative 2 and a new conservation alternative was developed for further discussion. This alternative was discussed in a series of meetings among CDFG, USFWS, CVAG, and local jurisdictions to obtain additional information, including biological and land use information. Through this process, the SAC's revised conservation alternative was further revised. In no case were the resulting Conservation Area boundaries less than those recommended by the SAC. The result was the preferred conservation alternative presented in Section 4 of the Plan document.

(MSHCP at A1-124.)

In brief, the SAC increased the size of the Conservation Areas in the initial Conservation Alternative 2 to create the Conservation Areas included in the Preferred Alternative. But the MSHCP fails to address key questions, such as which "additional information provided" the SAC considered, and why (or how) its analysis of the unspecified "additional information" lead the SAC to only increase the Conservation Area boundaries instead of redrawning them to conform with those that resulted from application of the STTIES program.

Additionally, the MSHCP acknowledges that the natural communities included in the MSHCP are based on a natural communities classification system that has since been abandoned by state resource managers:

The names of the natural community types are based on the natural communities classification system of Holland (1986), the classification system that has been widely used by the California Natural Diversity Data Base (CNDDDB), and other regional, state and federal resource managers. Recently, the CNDDDB has adopted the natural communities classification system developed by Sawyer and Keeler-Wolf (1995) for the California Native Plant Society; it is intended that a crosswalk of the Holland classes with the CNPS system will be developed for the natural communities map.

(MSHCP at A1-91.) Yet neither the MSHCP nor the DEIR/S explains why the Sawyer and Keeler-Wolf classification system has not been used (or at least why no "cross-walk" of the two
classification systems has been performed to date), let alone what impact this might have on the design of the MSHCP itself.

Additional concerns regarding outdated and inaccurate data are set forth in section V. C., infra. In light of the above examples of incomplete, inaccurate, and outdated data as well as the SAC’s failure to use the most defensible scientific methods to analyze what data it did consider, the MSHCP violates the best available science mandate.

II. THE DEIR/S IS INADEQUATE


The purpose of an EIR is to “alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (Laurel Heights Improvement Ass’n v. Regents of the Univ. of Cal. (1988) 47 Cal. 3d 376, 392 (“Laurel Heights II”).) Thus, an EIR must “provide public agencies and the public with detailed information about the effect which a proposed project is likely to have on the environment; ... list ways which the significant effects of the project might be minimized; and ... indicate alternatives to such a project.” (CEQA § 20161; CEQA Guidelines, 14 Cal. Code Regs. § 15002; Laurel Heights I, 47 Cal. 3d at 392.)

An EIR must provide a degree of analysis and detail about the project’s environmental impacts that will enable decision-makers to make intelligent judgments in light of the environmental consequences of their decisions. (CEQA Guidelines § 15151.) It is essential that the project is adequately described and that existing setting information is complete. (See County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185, 199.) Both the public and decision-makers need to fully understand the implications of the choices that are presented related to the project, the mitigation measures, and the alternatives. (Laurel Heights Improvement Ass’n v. Regents of the Univ. of Cal. (1988) 6 Cal.4th 1112, 1123 (1988) (“Laurel Heights II”).

Similarly, NEPA is intended to provide a full and fair discussion of significant environmental impacts that informs decision-makers and the public. (40 C.F.R. § 1502.1.) Under NEPA an EIS should “provide decision-makers with sufficiently detailed information to aid in determining whether to proceed with the action in light of its environmental consequences and to provide the public with information and an opportunity to participate in the information gathering process.” (Northwest Resource Info. Ctr. v. Nat’l Marine Fisheries Serv. (9th Cir. 1995) 86 F.3d 1060, 1064 (citation omitted).) NEPA also requires that an EIS succinctly describe the environment and the area to be affected. (40 C.F.R. § 1502.15.)
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The DEIR/S itself states that "[t]his joint EIR/EIS is an informational document intended to provide public decision makers, responsible or other interested agencies, and the general public with an assessment of the potential environmental impacts associated with implementation of the proposed MSHCP." (DEIR/S at 1-6.) It further restricts its scope to an analysis of "the impacts of providing Take Authorization for the Covered Activities in the Plan." (Id. at 2-13.) That analysis must include assessment of direct, indirect, cumulative, and growth inducing impacts. (CEQA Guidelines §§ 15126(d) & 15126.2(d) (regarding growth inducing impacts), 15126.2(n) (regarding direct and indirect impacts), 15130 (regarding cumulative impacts).)

However, in this case, the DEIR/S fails to provide sufficient information to enable informed decision-making by the Lead Agencies and the public for all of the reasons set forth below.

III. THE PROJECT DESCRIPTION LACKS REQUIRED SPECIFICITY

"An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (County of Inyo v. City of Los Angeles (1977) 71 Cal. App. 3d 185, 193.) Absent an accurate, stable, and finite project description, the public cannot provide any meaningful input, and the decision-makers cannot balance the proposed project’s benefits against its environmental costs. (Id.) "An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." (Burbank-Glendale-Pasadena Airport Authority v. Hensler (1991) 233 Cal. App. 3d 577, 592 (internal quotations omitted, citation omitted).) "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (County of Inyo, 71 Cal. App. 3d 185 at 193.)

Therefore, if the project description lacks the specificity required to balance the proposed project’s benefits against its environmental costs, the EIR itself is inadequate. For the reasons explained below, among others, the project description is inadequate.

A. The Project Description Fails To Discuss Key Elements Of The Plan With Adequate Specificity

The project description in the DEIR/S fails adequately to discuss core components of the Plan, including, but not limited to, the Conservation Areas, Core Habitat Areas, Other Conserved Habitat, Essential Ecological Processes, Biological Corridors and Linkages, Land Use Adjacency Guidelines, and Adaptive Management activities. Each of these components must be discussed with the utmost specificity because each has potentially significant environmental impacts.
B. The Project Description is Inadequate Because The Description Of The Reserve System Is Based On Outdated And Faulty Science

The Reserve System lies at the heart of the MSHCP. (DEIR/S at 2-9.) The MSHCP Reserve System will be assembled from 21 Conservation Areas. (id.) Thus, if the description of the Conservation Areas and the Reserve System is inadequate, the DEIR/S is fatally flawed.

CEQA requires that there be a good faith effort at full disclosure. (CEQA Guidelines § 15151). In Berkeley Jets, the court determined that the use of scientifically outdated information from the California Air Resources Board’s 1991 speciation profile for estimating toxic emissions from aircraft instead of the more recent draft specification was not a reasoned and good faith effort to inform the decision-makers and public about the increase in toxic emissions as a result of a proposed airport expansion. ((Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners (2001) 91 Cal. App. 4th 1344, 1366-67 (“Berkeley Jets”)).

In the context of NEPA, the Council on Environmental Quality (“CEQ”) Regulations admonish that “NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” (40 C.F.R. § 1500.1(b) (emphasis added).) Further, NEPA requires that “[a]gencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statement.” (40 C.F.R. § 1502.24.)

The DEIR/S asserts that “[a] comprehensive database of the best available scientific research and information was used over the course of the Plan’s development.” (DEIR/S at 2-3.) However, when evaluating this “comprehensive database,” it is clear that the MSIICP fails to use the most accurate and best scientific data since the data is inaccurate and outdated.

As discussed in detail in section I, supra, the data upon which the MSHCP is based fails to satisfy the requirements of CEQA and NEPA in several ways. The following examples illustrate some of the shortcomings:

- The MSHCP fails to consistently identify which field surveys of Covered Species were conducted and relied upon;
- The MSHCP does not state (even in summary fashion) where field data were collected for some or all of the Covered Species;
- The field surveys conducted in 2003 only included a fraction of the 27 Covered Species, that is, six Covered Species and “riparian birds.” (MSHCP at 8-35);
The “Individual Species Sampling (2002-2005)” only included six of the 27 Covered Species, and the specific dates set forth in the table only date through 2003, not 2005 as indicated by the heading. (MSHCP at § 35 to § 36); 

- The field survey data for the majority of the Covered Species therefore dates from 1995 to 1999, and is therefore eight to twelve years out of date;

- The MSHCP fails to specify how or why the SAC responded to the ISA recommendations (or ignored them);

- The MSHCP acknowledges that the natural communities included in the MSHCP are based on a natural communities classification system that has since been abandoned by state resource managers;

- As discussed in section V. C., infra, the MSHCP continues to base conservation of the peninsular bighorn sheep on the essential habitat boundary set forth in the Recovery Plan for the species (MSHCP at § 257 to § 259) which is outdated and has been called into question by subsequent empirical research.

The use of outdated and inaccurate science to formulate the MSHCP renders the project description inaccurate because the coverage of the Reserve System could be over- or under-inclusive based on this outdated and inaccurate science. As in Berkeley Jits, CVAG’s use of outdated information when it could obtain updated information is not a good faith effort to inform the decision-makers and public about the impacts on biological resources that will occur as a consequence of the MSHCP. Similarly, this approach violates NEPA, which is intended to provide a full and fair discussion of significant environmental impacts that informs decision-makers and the public. (40 C.F.R. § 1502.1.)

The Lead Agencies’ intent to update the vegetative and species data after the MSHCP is adopted, instead of before, is an improper deferral of an assessment of the environmental impacts to a later date contrary to CEQA Guidelines § 15146. The Lead Agencies’ use of outdated information does not constitute a good faith effort at full disclosure in describing or evaluating the impacts of the MSHCP.

As demonstrated, the biological data is outdated, incomplete, and frequently non-specific in important ways. Thus, the MSHCP description lacks the specificity required by CEQA and NEPA for the public and decision-makers to evaluate the accuracy and adequacy of the biological data upon which the Plan is based.
C. The Project Description Is Inadequate Because The Project Objectives Cannot Be Met

As established in section 1, supra, the MSHCP has been built upon faulty science: both the data and the scientific methods employed to arrive at the MSHCP are outdated and inaccurate.

As a result, private property owners have no way of knowing the full extent of the MSHCP’s impacts to their property. Property owners will not discover the MSHCP’s impacts to their property until they try to develop their property. Then the burden will be on the property owners to provide updated and accurate science.

For example, under the MSHCP, landowners within the Santa Rosa and San Jacinto Mountains Conservation Area will not know until after the Plan is adopted whether their property will be included in the Reserve System. The MSHCP proposes to implement the so-called HANS process to identify lands within the Conservation Area to be conserved and others on which activity may occur. (MSHP at 6-21.)

Requiring private landowners to prove that their land should not be within the Reserve System is unreasonable. Landowners should not be burdened with the costs of disproving the Local Agencies’ faulty science. Essentially, a landowner will have to prove that there is the same or greater conservation value and acreage elsewhere in the Santa Rosa and San Jacinto Mountains Conservation Area. Thus, one of the key objectives of the MSHCP — “to improve future economic development in the Plan Area by providing an efficient, streamlined regulatory process” (DEIR/S at 1-6) — is frustrated by the lack of up-to-date and “best available” scientific support.

Another example illustrates the uncertainty and traps that may befall a private landowner whose land is located anywhere inside any of the Conservation Areas. Without the MSHCP, a project applicant within the Plan Area would have to undertake environmental review (pursuant to CEQA and possibly NEPA), and the applicant may be required to obtain take authorization from the Service and/or Department of Fish and Game if the applicant affects federally or state listed species or the critical habitat of federally listed species.

But with the MSHCP in place, the same project applicant must initiate the 5-step Joint Project Review Process. (MSHP at 6-19.) Pursuant to this process, the project applicant first submits detailed project plans to a Local Permittee (that is, the local land use authority), which then has 30 days to submit it to the Coachella Valley Conservation Commission (“CVCC”). (MSHP at 6-20.) Alternatively, the project applicant must submit the plans to the CVCC directly, and CVCC then notifies the Local Permittee. (Id.) CVCC staff then must analyze the plan and, ultimately, issue comments on the project’s consistency (or lack thereof) with the MSHCP. The CVCC then has 14 days to send notice of its determination to the project applicant, the Local Permittee and solicit comments from both CDFG and USFWS. (Id.) The
CDEG and USFWS then have 30 days in which to comment, after which CVCC considers its comments and those of the wildlife agencies to determine if the project is consistent with the MSHCP or not. If the CVCC determines that the project is not consistent with the MSHCP, then the project applicant, Local Permittee, and CVCC are required to meet and confer to attempt to resolve inconsistencies with the Plan. If the inconsistencies cannot be resolved, the CVCC sends notice to the Local Permittee and the Wildlife Agencies within 14 days of its final determination. (Id. at 6-20 to 6-21.)

As is evident from this outline of the Joint Project Review Process, it will not meet the MSHCP objective of “improving future economic development in the Plan Area by providing an efficient, streamlined regulatory process.” (DEIRS at 1-6). This multi-agency review must occur whether or not there are any listed species or critical habitat on the project applicant's land. Each project applicant's plans undergo review by CVCC, the Local Permittee, and both CDEG and USFWS in addition to any CEQA/NEPA review otherwise required. Furthermore, there is no statutory or regulatory recourse for a project applicant to compel the various agencies to comply with the stated time limits. Thus, a project applicant has no way to assure that the 5-step procedure is completed in a timely way.

Given the multi-agency, multi-layered review and notice requirements, the Joint Project Review Process will undoubtedly be lengthy and fraught with uncertainty, not “streamlined” in such a way to “improve economic development.”

The objectives set forth in the project description cannot be met. Thus, the project description is inadequate for purposes of CEQA and NEPA.

IV. THE ENVIRONMENTAL SETTING IN THE DEIR/S IS INADEQUATE

CEQA mandates that “[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project … from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines § 15125(a) (emphasis added).) As the Discussion to CEQA Guidelines § 15125 explains,

[b]ecause the concept of a significant effect on the environment focuses on changes in the environment, this section requires an EIR to describe the environmental setting of the project so that the changes can be seen in context. The description of the pre-existing environment also helps reviewers to check the Lead Agency’s identification of significant effects.

In brief, the baseline environmental setting in an EIR must be specific and accurate because “[k]nowledge of the regional setting is critical to the assessment of environmental impacts.” (CEQA Guidelines § 15125(b).)
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Similarly, under NEPA the Service must "describe the environment of the areas to be affected or created by the alternatives under consideration. (40 C.F.R. § 1502.15; Half Moon Bay Fisherman’s Marketing Ass’n v. Carlucci, 857 F.2d 505, 510 (9th Cir. 1988) (“without establishing ... baseline conditions ... there is simply no way to determine what effect [a proposed action] will have on the environment, and consequently, no way to comply with NEPA.”)

The DEIR/S fails to comply with CEQA’s or NEPA’s requirements for a “baseline” environmental setting because it is so general that it provides decision-makers and the general public no way to assess the changes in the environment that may constitute significant effects of the Plan. The inadequacies in the environmental setting include, but are not limited to, the following:

A. The Environmental Setting Fails To Adequately Describe Biological Resources In The Plan Area

Section 3.8 of the DEIR/S purports to set forth the biological resources within the Coachella Valley. (DEIR/S at 3-78 to 3-86.) However, it offers no more than a summary of the desert biome, climate, topographic effects on local habitats, the natural communities, and sensitive, rare and endangered species within the Plan Area in the span of eight pages.

One example of the extreme level of generality here is the lack of quantification of what amount of Plan Area is covered by which of the habitats and natural communities against which to measure the potential loss of such areas under the MSHCP.

Moreover, as explained in the present comments on both the Project Description, above, and the Project Impacts, below, the science underlying the MSHCP and the DEIR/S is incomplete and outdated. To the extent that the Biological Resources description relies on that faulty science, it also fails to set forth an adequate baseline against which the impacts of the Plan can be assessed.

B. The Environmental Setting Fails To Adequately Describe Transportation, Traffic, And Circulation In The Plan Area

Section 3.3 of the DEIR/S purports to describe transportation, traffic, and circulation in the Plan Area. However, it fails in key respects to adequately quantify the traffic and circulation in the Plan Area against which to measure and assess impacts of the MSHCP.

For example, it omits any quantification of traffic in the Plan Area such as vehicle miles traveled ("VMTs"), and instead simply notes that highways and certain roads within the Plan Area frequently become congested and cause increased travel times. (See, e.g., DEIR/S at 3-16 to 3-21.) Yet the Plan contemplates, indeed, facilitates, a considerable expansion of infrastructure in the Plan Area. (See section V. B., infra.) The subsections on public
transportation and rail service suffer the same inadequacy. Neither attempts to quantify their use within the Plan Area. (DEIR/S at 3-21 to 3-22, 3-23 to 3-24.)

This omission of detail is serious. As the DEIR/S itself notes, “the most significant air pollutant in the MSHCP Plan Area (i.e., [PM10]), is primarily a local condition with local sources.” (DEIR/S at 3-113.) The region is designated as a “serious” non-attainment area for PM10 (id. at 3-119), and motor vehicles in the Plan Area further pulverize and re-suspend particles of dust, sand, metallic and mineral substances, and road surfacing materials in the air (id. at 3-117).

Without a baseline of VMTs or other quantitative measures of existing transportation and traffic in the Plan Area, decision-makers and the public have no basis to assess the potentially substantial environmental impacts of the MSHCP.

C. The Environmental Setting Fails To Adequately Describe Air Quality In The Plan Area

Section 3.11 of the DEIR/S fails to adequately describe the baseline air quality in the Plan Area. It focuses almost exclusively on PM10 and ozone. (DEIR/S § 3.11 at pp. 3-113 – 3-121.) But as explained below, it fails to quantify local sources of these air pollutants. Thus the Environmental Setting of the DEIR/S provides no baseline against which to assess the air quality impacts of Covered Activities such as the extensive construction and expansion of roads and highways contemplated by the Plan.

Not only does this section provide inadequate quantification of certain aspects of air quality in the region included for consideration in the DEIR/S, it lacks any discussion of any other criteria pollutants (such as fine particulate matter, oxides of nitrogen or sulfur, volatile organic compounds (“VOCs”), lead, and carbon monoxide), or toxic air pollutants, also known as hazardous air pollutants.

One illustration of an omitted criteria pollutant is fine particulate matter (i.e., suspended particulate matter of 2.5 microns in size and smaller, or “PM2.5”). The Environmental Setting fails to discuss PM2.5 at all, despite EPA’s recent promulgation of more stringent regulations with respect to this highly toxic form of air pollution.\(^1\) Indeed, PM2.5 is not even mentioned in

\(^{1}\) After evaluating numerous health studies and conducting an extensive peer review process, EPA promulgated a PM2.5 standard of 15 micrograms per cubic meter, and a 24-hour standard for PM2.5 is 65 micrograms per cubic meter on July 18, 1997. (62 Fed. Reg. 38,652 (July 18, 1997).) However, in light of further scientific evidence of the negative health effects of PM2.5, last year EPA promulgated a far more stringent 24-hour standard of 35 micrograms per cubic meter. (71 Fed. Reg. 61,144 (Oct. 17, 2006).) In light of the growing concern about the negative health effects of PM2.5, the Environmental Setting
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the Environmental Setting. 2 Without an adequate baseline for air quality, decision-makers and the public cannot assess the potentially significant impacts of the Plan on ambient air quality in the Plan Area.

The DEIR/S states that “air quality is one of the most critical environmental issues affecting the Coachella Valley and can have profound impacts on the public’s health, the regional economy, and ecological resources.” (DEIR/S § 3.11 at p. 3-113.) The DEIR/S further notes that “the most significant air pollutant in the MSHCP Plan Area (i.e., suspended particulate matter of 10 microns in size and smaller (PM10), is primarily a local condition with local sources.” (DEIR/S § 3.11 at p. 3-113.) The region is designated as a “serious” non-attainment area for PM10 (id. at p. 3-119), and motor vehicles in the Plan Area further pulverize and re-suspend particles of dust, sand, metallic and mineral substances, and road surfacing materials in the air (id. at p. 3-117).

As detailed in section V. B., infra, the Plan contemplates significant new construction of roadways within the Plan Area. It identifies no fewer than 99 separate transportation projects including interchange and arterial projects, Caltrans projects, and regional road projects. Indeed, the Plan is designed to facilitate these projects. (DEIR/S at 4.3-7.)

Facilitating these transportation projects will cause a substantial increase in the overall volume of traffic in the Plan Area. This, in turn, will result in a significant increase locally generated air pollution associated with the concomitant increase in the overall volume of traffic in the Plan Area.

Despite noting the critical importance of local sources of ambient PM10 such as grading and motor vehicle travel within the Plan Area, the Environmental Setting section of the DEIR/S fails to quantify the amount of PM10 that originates within the Plan Area. Instead, it settles for the vague assertion that a “significant portion” of PM10 in the ambient air in the Plan Area is generated by local activities. (Id. at 3.119.)

should include at least some discussion of the baseline conditions for this important air pollutant.

2 The absence of any mention of PM2.5 highlights the Environmental Setting’s inadequate description of air quality. The negative health effects of PM2.5 include “(a) Excess deaths from short-term exposures and exacerbation of symptoms in sensitive patients with respiratory disease; (b) Excess seasonal declines in pulmonary function, especially in children; (c) Increased risk of premature death from heart or lung diseases in elderly.” (SCAQMD, Final 2003 Air Quality Management Plan, Table 2-1 at p. 2-2 (Aug. 1, 2003) [available at http://www.aqmd.gov/aqmp/AQMD03AQMP.htm].) As with PM10, vehicle emissions are a main local source of PM2.5. (USEPA – Region 4, Science and Ecosystem Support Division (SESD), Laboratory and Field Operations Website (available at http://www.epa.gov/region4/ sesd/ pm25/p2.htm).)
Thus, decision-makers and the public have no way to assess the air quality effects of the anticipated increase in construction, grading and vehicular travel within the Plan Area.

In addition to PM10, the DEIR/S notes that the Plan Area is also designated as a "serious" non-attainment area for ozone. (DEIR/S § 3.11 at p. 3-117.) Ozone is formed primarily by a photochemical reaction of sunlight on motor vehicle emissions. (Id.) As with PM10, the Environmental Setting section of the DEIR/S fails to quantify the amount of ozone formed locally. Once again, it simply notes that "some ozone is produced within the Coachella Valley, [but] studies conducted by SCAQMD indicate that most ozone is transported to the region by coastal winds from Los Angeles and the Riverside/San Bernardino metropolitan air basins." (Id.) Without a baseline for local sources of ozone, decision-makers and the public cannot assess the air quality effects of likely increases in local sources of ozone in the Plan Area.

Absent any quantitative discussion of the comprehensive air quality in the Plan Area, the Environmental Setting fails to comply with the requirements of CEQA Guidelines § 15125.

V. THE DEIR/S FAILS TO PROPERLY ANALYZE THE SIGNIFICANT EFFECTS ON THE ENVIRONMENT THAT WILL RESULT FROM THE MSHCP

An EIR must address a proposed project's "significant effects on the environment." (CEQA § 21100(b)(1); see also CEQA Guidelines § 15126(a) (the EIR "shall identify and focus on the significant environmental effects of the proposed project.").) A significant effect on the environment is defined as "a substantial, or potentially substantial, adverse change in the environment." (CEQA § 21068; see also CEQA § 21100(d).) The EIR must identify both direct and indirect significant effects. (CEQA Guidelines § 15126.2(a).) And the EIR should encompass both short-term and long-term effects. (Id.) Identification of a project's significant environmental effects is one of the primary purposes of an EIR and is necessary to implement the stated public policy that agencies should not approve projects if there are feasible mitigation measures or project alternatives available to reduce or avoid the environmental impacts. (CEQA §§ 21002, 21002.1(a).)

Under NEPA, an EIS must assess "[t]he environmental impact of the proposed action." (42 U.S.C. § 4332(2)(C)(i).) CEQ Regulations provide that the EIS should include analysis of environmental consequences including the direct and indirect effects of the proposed action. (40 C.F.R. § 1502.16(a) & (b); see also City of Carmel-by-the-Sea v. United States Dept. of Transp., 123 F.3d 1142, 1162 (9th Cir. 1997).)

The DEIR/S analyzes potentially significant effects in the following areas: (1) land use compatibility, (2) transportation, traffic, and circulation, (2) mineral, energy, and timber resources, (4) agricultural resources, (5) biological resources, and (6) socioeconomic resources including population, housing, and employment. (DEIR/S at 4.2-1 to 4.3-1.) The DEIR/S includes cursory analysis of effects found not to be significant including air quality. (Id. at 4.9-12 to 4.9-16.) For the purposes of CEQA, the DEIR/S concludes that for each area analyzed the
MSHCP will result in less than significant effects. This conclusion is incorrect with respect to a number of the areas analyzed as explained below.

A. Land Use

The DEIR/S concludes that “no significant adverse impacts to land use would occur” as a result of implementation of the MSHCP. (DEIR/S at 4.2-17.) But the DEIR/S fails to disclose and analyze potentially significant effects. Furthermore, the DEIR/S contains inaccurate and potentially misleading statements. Using the thresholds for significance set forth in the DEIR/S, it is plain as explained below that the MSHCP would result in significant adverse impacts to land use.

The DEIR/S provides that the MSHCP “would have a significant effect on land use and planning” if, among other things, it “conflict[s] with the objectives of ... local [ ] land use plans, policies, or controls” or “[p]hysically divide[s] an established community.” (DEIR/S at 4.2-6.) The DEIR/S then concludes that “[n]o conflicts with local ... land use plans, policies or controls have been identified” and that the MSHCP would not “physically divide an established community.” (Id. at 4.2-17.) Both findings are false, as the following examples demonstrate.

First, the MSHCP conflicts with the City of Desert Hot Springs General Plan. Land identified in the City’s General Plan Land Use Element as medium density and high density residential is included in the Upper Mission Creek/Big Morongo Canyon Conservation Area. (Compare City of Desert Hot Springs General Plan Land Use Element at II-10 with MSHCP at 4-58 to 4-71.) In fact, the DEIR/S discloses that more than 46 percent of the lands available for medium density residential development within the City would be placed in conservation under the MSHCP. (DEIR/S at 4.8-10.)

This conflict between the MSHCP and the City’s General Plan is significant and exceeds the significance threshold established by the DEIR/S.

Second, the MSHCP physically divides the City of Desert Hot Springs. The DEIR/S discloses this fact: “the Upper Mission Creek/Big Morongo Canyon Conservation Area[ ] does adjoin the existing urbanized portion of Desert Hot Springs and would create a separation between it and future planned development.” (DEIR/S at 4.2-7.) But the DEIR/S dismissed this significant effect because the Conservation Area “follows the Morongo Wash floodplain area” and allows for a trail system that “would serve as an amenity to help unite the two areas of the city.” (Id.) Desert Hot Springs is an incorporated City that would be physically divided roughly into two even-sized areas by the MSHCP. (MSHCP at Fig. 4-12a.) Thus, the MSHCP would plainly divide areas of the City from one another.

This division of an established community also exceeds the DEIR/S’s significance threshold. Thus, the DEIR/S fails to acknowledge significant impacts of the MSHCP on land use that should have been assessed and mitigated.
B. Transportation

The DEIR/S concludes that “[n]o significant adverse impacts on transportation, traffic or circulation would result from [the MSHCP] for CEQA analysis purposes.” (DEIR/S at 4.3-15.) For this reason, the DEIR/S indicates that “[n]o mitigation measures are required.” (Id. at 4.3-14.) But the DEIR/S includes a fundamentally flawed analysis of transportation impacts that ignores indirect effects. Both CEQA and NEPA mandate consideration of the indirect effects of a proposed action. (CEQA Guidelines § 15126.2(a); 40 C.F.R. § 1502.16(a) & (b).)

The DEIR/S states that “[t]ransportation impacts would generally occur where the use or improvement of existing roadways or construction of planned roadways would be constrained by the Plan, resulting in reduced levels of service, increased congestion, or reduced access.” (DEIR/S at 4.3-1.) The sole focus of analysis is the extent to which the Plan does or does not impede future infrastructure construction and maintenance. But the DEIR/S ignores the extent to which the MSHCP facilitates infrastructure construction and maintenance thereby resulting in significant indirect effects on the environment. (See DEIR/S at 9-14 (indicating that the MSHCP “would facilitate the improvement of” Covered Roadways).) Thus, the DEIR/S fails to recognize, analyze, and mitigate any of these significant indirect effects.

Section 7.2 of the MSHCP provides that transportation projects identified therein are Covered Activities. (MSHCP at 7-2 to 7-15.) The MSHCP defines Covered Activities as “[c]ertain activities … that will receive take authorization under the Section 10(a) Permit and the NCCP Permit, provided these activities are otherwise lawful.” (Id. at xxxii (emphasis added).) The Executive Summary of the MSHCP reinforces that fact that “[t]he Permits will provide Take Authorization” for transportation projects identified as Covered Activities in section 7.2 of the MSHCP. (Id. at ES-25 (emphasis added).)

Sections 7.2.1 – 7.2.3 of the MSHCP identify 99 separate transportation projects including interchange and arterial projects, Caltrans projects, and regional road projects. (Id. at 7-2 to 7-15.) Collectively, these transportation projects will add substantially to the existing system of roads in the Plan Area. Furthermore, the DEIR/S discloses, “[t]he proposed Plan would facilitate the improvement of [Covered Roadways], both in and out of the Conservation Areas, by providing Take authorization for construction of planned roads that are Covered Activities and maintenance of existing and future roads.” (DEIR/S at 4.3-7 (emphasis added).)

By facilitating the construction of a multitude of transportation projects — including major interstate and state highway projects — the MSHCP will result in significant indirect effects that the DEIR/S fails to recognize, analyze, and mitigate. For example, by facilitating the construction of the transportation projects, the MSHCP will result in a significant increase in the overall volume of traffic in the Plan Area. Moreover, the Plan will constrain improvement or construction of other roadways, which will further exacerbate congestion. (DEIR/S at 4.3-1.)
Similarly, by facilitating the construction of the transportation projects, the MSHCP will result in a significant increase in air pollution associated with the concomitant increase in the overall volume of traffic and congestion in the Plan Area. The DEIR/S fails to evaluate these and other indirect effects resulting from the implementation of the MSHCP.

C. Biological Resources

The DEIR/S concludes that the effects of the MSHCP on biological resources "would be less than significant for CEQA analysis purposes..." (DEIR/S at 4.7-126.) In fact, the DEIR/S goes further to state that the MSHCP "would result in a net beneficial impact to the Covered Species and natural communities as the Plan would reduce, fragmentation, shielding of blow and habitat, and blocked ecological processes." (Id. at 4.7-2.)

The analysis of potentially significant effects on biological resources is fundamentally flawed. First, information about sources of biological data is inconsistent. For example, whereas section 3.3 of the MSHCP indicates field data were collected between 1995 and 2006, section 3.10 of Appendix I to the MSHCP indicates that field data were collected between 1995 and 1999. (Compare MSHCP at 3-10 with MSHCP at A1-136.) These inconsistencies must be reconciled and the DEIR/S must be re-circulated in order to properly inform decision-makers and the public consistent with CEQA and NEPA.

Second, the biological data relied upon are outdated and inaccurate. For example, section 3.10 of Appendix I to the MSHCP indicates that records from the California Natural Diversity Data Base during 1992 to 1997 were relied upon so that any more recent records were evidently ignored. (MSHC at A1-136.) In other words, the authors of the MSHCP failed to consider a decade of information available to them.

Third, it is impossible to discern the extent of data consulted. For example, as detailed in section 1, supra, it is unclear whether field data were collected for some or all of the Covered Species, and the geographic scope of survey efforts is not disclosed. Because the biological data relied upon are not disclosed (even in summary format), it is not possible for decision-makers and the public to assess the reliability of such data.

Another example of outdated and inaccurate data is specific to the peninsular bighorn sheep. The principal basis for conservation of the peninsular bighorn sheep is the essential habitat boundary set forth in the Recovery Plan for the species. (MSHC at 9-257 to 9-259.) Peer-reviewed empirical research published subsequent to the Recovery Plan but years before the release of the DEIR/S indicates that the extent of habitat identified in the Recovery Plan for the peninsular bighorn sheep could be substantially overstated. See, e.g., J. Turner et al., Determination of Critical Habitat for the Endangered Nelson's Bighorn Sheep in Southern California, 32 Wildlife Society Bulletin 427 (2004).
Additionally, a number of parties challenged the final rule designating critical habitat for the bighorn sheep that resulted in a consent decree entered by the United States District Court for the Central District of California. *Aquila califortina v. Kemphorne*, Case No. 05-187 (C.D. Cal. Aug. 11, 2006.) The consent decree requires the U.S. Fish and Wildlife Service to revise the existing rule. Furthermore, it is evidence that the critical habitat boundary (which mirrors the essential habitat boundary) is flawed. Because that boundary is the principal basis for conservation of the peninsular bighorn sheep in the MSHCP, it calls into question both the MSHCP and that portion of the DEIR/S that analyzes potentially significant effects of the MSHCP on biological resources.

The ISA's Review of the MSHCP identifies numerous concerns regarding the scientific basis of the MSHCP that are not adequately addressed. For example, the Review indicates that the MSHCP conflates scientific information and politics. "One of the major concerns of our team ... is that scientific information was often mixed with pragmatism and perceived political reality, without any documentation of how these two classes of knowledge were combined." (MSHCP at A1-35.) This concern and those identified above could result in over- or under-valuing areas for both conservation and development. This, in turn, could result in significant biological effects that were not properly analyzed in the DEIR/S.

A second example of a concern raised through the ISA's Review relates to activity permitted in the Conservation Areas. "[T]he notion of 10% build-out on each parcel inside the conservation areas is one of the most troubling aspects of the [MSHCP]." (MSHCP at A1-57.) The DEIR/S does not address the expected biological impacts, including fragmentation, that will result from the structure of the Conservation Areas and allowance of some activity in those areas.

In short, inconsistent, outdated, and inaccurate data and analysis renders the biological resources portion of the DEIR/S's effects section inadequate. Using outdated and inaccurate data is contrary to CEQ regulations, which state that "[a]gencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statement." (40 C.F.R. § 1502.24.) Using such data is also contrary to the CEQA requirement for "substantial evidence" as it is clear that the use of such data in an EIR would amount to "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate." (CEQA Guidelines § 15384(a).) Finally, this "technical data" is not "sufficient to permit full assessment of the significant environmental impacts by reviewing agencies and members of the public." (CEQA Guidelines § 15147.)

**D. Housing**

The DEIR/S concludes that the MSHCP would not "significantly constrain development potential within the Plan Area." (DEIR/S at 4.8-29.) The DEIR/S also asserts that "impacts to future development in the Plan Area would be less than significant for CEQA analysis."
purposes. (Id.) But the DEIR/S ignores impacts to residential development both within the Plan Area as a whole and upon certain communities.

For example, the DEIR/S indicates that over 161,000 acres of lands designated for residential development in the Plan Area are located in MSHCP Conservation Areas, which would constrain or foreclose residential development of such lands. (DEIR/S at 4.8-20 (Table 4-20).) In other words, almost 60 percent of all lands planned for residential development in the Plan Area are located in Conservation Areas. (See id.) Apparently due to the magnitude of the impact on lands designated for residential development, the DEIR/S includes the statement that “[i]t is important to note that each jurisdiction has the ability to modify its General Plan as development pressures arise…” (DEIR/S at 4.8-29.) The DEIR/S does not go so far as to acknowledge that the MSHCP is incompatible with the County and City General Plans, but it is plain that the MSHCP, on the one hand, and the General Plans, on the other, are incompatible. This is a significant adverse effect of the MSHCP that must be identified as such and is grounds for recirculation of the DEIR. (DEIR/S at 4.2-6 (indicating that conflict with a land use plan is a significant impact for the purpose of CEQA); CEQA Guidelines § 15068.5(a)(1) (indicating the recirculation is required when a new significant impact is identified.).)

The DEIR/S indicates that the MSHCP would have a significant effect for the purposes of CEQA if, inter alia, the MSHCP would “[c]ause a significant adverse socioeconomic effect on communities located within the project planning Area.” (DEIR/S at 4.8-5.) The DEIR/S states that more than 46 percent of the land available for medium density residential development in the City of Desert Hot Springs “would be placed in conservation under the MSHCP.” (MSHCP at 4.8-10.) Certainly, this is a significant adverse socioeconomic effect.

In addition to the fact that the MSHCP has a significant impact due to the constraint it imposes on residential development in Desert Hot Springs, the MSHCP also forecloses affordable housing development in particular in Desert Hot Springs. The DEIR/S correctly notes that “[a]ffordable housing generally occurs on lands designated for medium to high density residential development.” (DEIR/S at 4.8-22.) Essentially, the MSHCP would cut in half the lands available for development of affordable housing in Desert Hot Springs. Furthermore, it would do so in the City with the lowest median household income in the project planning Area. (DEIR/S at 4.8-3 (indicating that the median income in Desert Hot Springs was the lowest at $29,307 as of 2001).) It also impedes the ability of the City to comply with state law requiring each jurisdiction to include in its General Plan housing elements its share of the regional housing needs and work toward fulfilling the needs identified. Cal. Gov’t Code §§ 65583-84.

E. Air Quality

One of the primary goals of the MSHCP is to provide “an efficient, streamlined regulatory process through which Development can proceed in an efficient way.” (MSHCP at 1-2.) The MSHCP is intended to facilitate a wide variety of development activities in the Plan.
Area including, for example, a host of transportation infrastructure projects. (MSHCP at 7-2 to 7-15 (describing new transportation infrastructure projects that would be Covered Activities under the MSHCP that would receive take authorization).)

There is inadequate analysis of the impacts of the MSHCP on air quality including indirect effects resulting from facilitation of development activities. Instead, the DEIR/S includes conclusory statements such as the statement that “recreation-related trips are likely ... to be in lieu of trips to other destinations that recreationists would make if the Reserve System is not established.” (DEIR/S at 4.9-13.) No effort is made to determine the change in air quality between no project air quality and the preferred alternative. This is true even though the Air Quality Background Report that accompanies the DEIR/S concludes that the Plan Area exceeds state and federal ambient air quality standards for ozone and PM10. (MSHCP App. L at 20.)

VI. THE DEIR/S FAILS TO ADEQUATELY ANALYZE CUMULATIVE AND GROWTH-INDUCING IMPACTS THAT WILL RESULT FROM THE MSHCP

A. The Cumulative Impacts Analysis Is Inadequate

CEQA requires a finding that a project may have a significant effect on the environment if the “possible effects of a project are individually limited but cumulatively considerable” where “cumulatively considerable means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, ... current projects, and ... probable future projects.” (CEQA § 21083(b)(2); CEQA Guidelines 15130(b)(1).) Projects currently under environmental review unexclusively qualify as reasonably probable future projects to be considered in a cumulative impacts analysis. (San Franciscans for Reasonable Growth v. City and County of San Francisco (1984) 151 Cal. App. 3d 61, 74, fn.13.) In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable. (Bogusz v. Local Agency Formation Comm’n (1975) 13 Cal. 3d 263, 284).

The cumulative impacts concept recognizes that “[t]he full environmental impact of a proposed ... action cannot be gauged in a vacuum.” (Whitman v. Board of Supervisors (1997) 88 Cal. App. 3d 397, 408.) The requirement to conduct a cumulative impacts analysis of a project’s regional impacts is considered a “vital provision” of CEQA. (Bogusz, 13 Cal. 3d at 283.) Moreover, an EIR must examine not only the anticipated cumulative impacts, but also reasonable options for mitigating or avoiding the project’s contribution to significant cumulative impacts. (CEQA Guidelines § 15130(b)(3).) The DEIR/S does not meet these requirements.

In addition, CEQA interprets NEPA to require that an EIS include analysis of connected actions (40 C.F.R. § 1508.23(a)) and cumulative impacts (40 C.F.R. § 1508.7, 1508.8, 1508.23, 1508.25(a)(2) and (e)).
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The DEIR/S cumulative impacts analysis is superficial and therefore inadequate. An EIR
must include objective measurements of a cumulative impact when such data are available or can
be produced by further study and are necessary to ensure disclosure of the impact. (See Kings
County, 221 Cal. App. 3d at 729.) Despite this requirement, the DEIR/S fails to analyze
adequately a number of cumulative impacts including, but not limited to, indirect impacts to air
quality, biological resources, land use, and transportation and circulation.

For example, due to the use of inconsistent, outdated, and inaccurate data, the cumulative
impacts analysis of biological resource impacts is flawed. Specific examples of such
inconsistent, outdated, and inaccurate data are set forth in sections I and V C., supra.
Furthermore, while decision-makers and the public are asked for input based on the MSHCP and
DEIR/S, much of the information presented in the MSHCP includes a disclaimer that calls into
question the accuracy, timeliness, and completeness of data presented. (E.g., MSHCP Figures 1-
2, 2-1, 2-2, 2-3, 2-4.)

Likewise, the cumulative impacts analysis of transportation and circulation impacts is
flawed. In analyzing cumulative transportation and circulation impacts, the DEIR/S states that
"the long-term roadway network would essentially be the same with or without implementation
of the proposed MSHCP." (DEIR/S at 9-14.) If this claim were true, it would certainly simplify
the obligation on CVAG to analyze cumulative transportation and circulation impacts. But no
evidence is provided to support the claim.

In addition, the description of analysis of cumulative impacts is so vague that the public
and decision-makers cannot discern whether the analysis is proper. Consider, for example the
following statement.

The EIR/EIS employs an assessment of the long-term land use impacts that the
implementation of the proposed MSHCP would have within the Plan Area. CEQA
Guidelines Section 15130(b)(1)B, which allows the use of a summary of land use
projections set forth in adopted General Plans (and associated EIRs) and the buildout of
these Plans. Rates of growth have been assumed based upon recent trends in land
conversion, as discussed below.

(DEIR/S at 9-3.) The second sentence is a fragment. Furthermore, whereas the second sentence
seems to indicate that land use projections are based on General Plans, the third sentence seems
to indicate that such projections are based on recent trends in land conversion. This ambiguous
language forecloses accurate assessment of the MSHCP and its impacts.

Finally, as discussed more fully in section VII., infra, the DEIR/S fails to explore the full
range of mitigation measures that could potentially reduce cumulative impacts below a level of
significance. An EIR must examine reasonable options for mitigating or avoiding the project’s
contribution to cumulative impacts. (See CEQA Guidelines § 15130(b)(3).) In fact, for the
cumulative impacts actually analyzed, the DEIR/S makes no attempt to identify any mitigation
measures. (See CEQA Guidelines §§ 15126.4(a)(1), 15130(b)(3) (the discussion of cumulative impacts must include a summary of the expected environmental effects to be produced by those projects, a reasonable analysis of the cumulative impacts, and full consideration of all feasible mitigation measures that could reduce or avoid any significant cumulative effects of a proposed project.))

B. The Growth-Inducing Impacts Analysis Is Inadequate

The DEIR/S must consider the growth-inducing potential of the MSHCP in areas outside the Conservation Areas. CEQA requires that an EIR include a “detailed statement” setting forth the growth-inducing impacts of the proposed project. (See CEQA § 21100(b)(5); City of Antioch v. City Council of Pittsburg (1985) 187 Cal. App. 3d 1325, 1337.) The statement must “[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” (CEQA Guidelines § 15126.2(d).) It must also discuss how a project may “encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively” or “remove obstacles to population growth.” (Id.)

The DEIR/S includes less than one single page of analysis of growth-inducing impacts. (DEIR/S at 9-52.) One of the primary purposes of the MSHCP is to streamline the development process. (DEIR/S at 1-6.) As a result, the MSHCP “would streamline the development application review process throughout the Plan Area.” (Id. at 1-2.) By facilitating development activities—including major infrastructure projects such as the transportation projects described in section 7.2 of the MSHCP—the MSHCP removes impediments to growth and otherwise induces growth within and in the vicinity of the Plan Area. The Lead Agencies acknowledge that “the Plan could be construed as facilitating substantial growth.” (DEIR/S at 4.8-25.) Yet, they have failed to provide meaningful analysis of growth-inducing impacts.

Elsewhere, the DEIR/S states that the MSHCP would not induce economic growth but would preserve it. (DEIR/S at 9-52.) It also states that the MSHCP would reduce miles traveled per trip and per capita emissions of air pollutants. (Id.) These conclusions are unsupported by facts and analysis. For this reason, the DEIR/S does not fulfill the requirements of CEQA and NEPA.

VII. THE DEIR/S FAILS TO ANALYZE A REASONABLE RANGE OF ALTERNATIVES

Under CEQA, an EIR must analyze a reasonable range of alternatives to the project, or to the location of the project, that would feasibly attain most of the basic objectives while avoiding or substantially lessening the project’s significant impacts. (See CEQA § 21100(b)(4); CEQA Guidelines § 15126.6(a); Citizens for Quality Growth v. City of Mount Shasta (1988) 198 Cal. App. 3d 433, 443-45.) As stated in Laurel Heights I, “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA...
.process... [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials.” (*Laurel Heights I*, 47 Cal. 3d at 404.)

Further, NEPA requires that a federal agency “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” (42 U.S.C. § 4332(2)(E).) CEQ Regulations interpret NEPA to require agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives.” (40 C.F.R. § 1502.14(a) (emphasis added.) CEQ has further explained that “a reasonable number of examples, covering the full spectrum of alternatives, must be analyzed and compared in the EIS.” (46 Fed. Reg. 18,026 (March 16, 1981.) In the words of the Ninth Circuit, “an agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action.” (*Idaho Conservation League v. Murman* (9th Cir. 1992) 956 F.2d 1508, 1520 (internal quotation and citation omitted.).

The DEIR/S analyzes five alternatives: (1) the Proposed Action/Preferred Alternative, (2) Public Lands Alternative, (3) Core Habitat with Ecological Processes Alternative, (4) Enhanced Conservation Alternative, and (5) No Action/No Project Alternative. (DEIR/S at 2-7 to 2-64.) These five alternatives do not cover the full spectrum of alternatives. Therefore, the DEIR/S does not meet the requirements of CEQA and NEPA.

The only variable that differs among the various alternatives is the quantity of land conserved. All alternatives other than the No Action/No Project Alternative provide Take authorization for the same set of Covered Activities and include the same number of Covered Species. The DEIR/S does not specify the permit duration under each of the alternatives, but it may be inferred that all of the alternatives other than the No Action/No Project Alternative are premised on the same permit duration of 75 years.

This range of alternatives wholly ignores entire categories of alternatives. For example, even when one considers the single alternative that was considered and eliminated from further review of no take (DEIR/S at 2-64), the DEIR/S fails to consider a range of take alternatives. The only alternatives are take at the level of the Proposed Action/Preferred Alternative and no take. While there are many alternative levels of take that the Lead Agencies could have considered, at a minimum they should have considered both reduced take and increased take alternatives. Likewise, the DEIR/S failed to consider a range of Covered Species. The DEIR/S could have considered a greater number of Covered Species similar in scope to the Western Riverside Multiple Species Habitat Conservation Plan and/or a listed species only alternative.

The Lead Agencies understandably chose alternatives that were identical to the Proposed Action/Preferred Alternative in every respect except one in order to simplify the process of comparing alternatives. But this easy out for the Lead Agency undermines the purposes of CEQA and NEPA.
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

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There are further ways in which the Lead Agencies’ alternatives set forth a binary choice for decision-makers thereby violating both CEQA and NEPA. For example, the DEIR/S failed to consider a range of permit terms. Other recently adopted large-scale multiple species habitat conservation plans have much shorter permit terms. (See, e.g., East Contra Costa County Habitat Conservation Plan (which has a 30 year permit term).) The DEIR/S could have considered both longer and shorter permit terms. Likewise, while none of the alternatives considered the possibility of conservation outside the Plan Area to allow the Implementing Entity greater flexibility to attain the MSHCP’s biological goals and objectives, the DEIR/S could have considered one or more alternatives that provide for such conservation to occur.

In light of the inadequate alternatives analysis, the true impact of the MSHCP cannot be understood. Without revision, the alternatives analysis section of the DEIR/S remains inadequate for the purposes of CEQA and NEPA.

Very truly yours,

\[signature\]

Paul S. Weiland
of NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

cc: Marney E. DeVroom, Esq. (via facsimile and email)
May 29, 2007

Ms. Katie Barrows
Director of Environmental Resources
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

SUBJECT: Comments on Recirculated Draft Coachella Valley Multiple Species Habitat Conservation Plan and Recirculated Draft EIR/EIS

Dear Ms. Barrows:

Mission Springs Water District (MSWD) has reviewed the Recirculated Draft CVMSHCP and the Recirculated Draft EIR/EIS and would offer the following comments:

Regarding the Plan:
MSWD agrees with the Scientific Advisory Committee's (SAC) comment in A1-36 that “the best way to minimize the chances of error . . . is through rigorous science.” In that regard, much of the discussion in Section 10.2.7.4 regarding the role of the Mission Creek Subbasin (MCSB) and associated Mesquite Communities ignores updated scientific information and relies on conclusions drawn without supporting data. From a practical standpoint, MSWD understands that the discussion of the MCSB is drawn from literature considered at the time of writing and that much more information has become available. As the CVCC considers options regarding the MCSB and the mesquite hummocks, current data should be assembled so that the CVCC has a more precise understanding of the mechanics of the subbasin than the current discussion allows. MSWD continues its engagement with rigorous science toward its goal of understanding the subbasin and welcomes CVCC to that endeavor.

With the above introduction, MSWD makes the following specific comments regarding Section 10.2.7.4:

1. Page 10-12: The statement beginning “Fault movement deposits clay” is an oversimplified statement about the complex nature of groundwater movement through a particular fault system. This is not a mesquite hummock issue so much as a hydrogeologic issue. It is troubling to read this generic statement in a paragraph designated as “background” and then later read of conclusions about the MCSB based on the statement.
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2. Page 10-42: Paragraph describing MCSB boundaries: While the area encompassed by the MCSB is believed to be defined, the entire aquifer system and its interrelationships with adjacent subbasins are not well-defined, especially as it may relate to the interaction with the mesquite. The existence/viability of mesquite along portions of the Banning Fault may be more related to the compartmentalization of the groundwater system as one approaches the fault zone. Understanding these basin dynamics is critical to evaluating options for implementing the Plan.

3. Page 10-42: Paragraph referring to "non-water-bearing rock of the San Bernardino Mountains". It should be noted the bedrock is highly fractured and that the fractured rock is water-bearing and contributes recharge to the south.

4. Page 10-42: Paragraph referring to CVWD Well No. 3407: It is not rigorous science to compare results of pumping by CVWD to results of pumping by a private entity in order to establish that volume of pumping equates to lowering of groundwater levels. Additional consideration and discussion are needed regarding how the subbasin responds to various external influences, including climate change, drought, pumping, and recharge. Further, it is misleading to imply that data from a single well, or even from the second well, can be representative of water level drop throughout the MCSB.

5. Page 10-43: Regarding water in storage: Considerable more information is available for updating the data provided here.

6. Page 10-43: Regarding recharge: Data should note that in 2006, DWA recharged as much as 22,000 acre feet to the MCSB. There are two kinds of recharge—natural and artificial. Two recent studies have determined ranges for natural recharge which should be a part of this discussion.

7. Page 10-43: Regarding "cone of depression": It is a common mistake to extrapolate pumping levels in the wells to represent the amount of lowering of the groundwater table throughout the entire subbasin. The only circumstances under which such a relationship could exist would be if the distribution of the wells throughout the basin is sufficient to validly represent the basin.

8. Page 10-44: Regarding pumpage trends: The use of the terms, e.g. mining, intrusion, spillage and plumes lacks the technical precision that is needed for decision making. "Mining" refers to withdrawals that exceed the "safe yield" of the basin. The Plan does not develop the "safe yield" and therefore, the use of this term is inappropriate. The terms intrusion, spillage and plumes are used in circumstances in which the events are controllable. The proper term for water movement from the Desert Hot Springs Subbasin into the MCSB is underflow.

9. Page 10-44: Paragraph 4 states: "DWA is assessing Mission Springs Water District customers a replenishment fee . . . " Note that the assessment is made to MSWD, not to MSWD customers.

10. Page 10-45: In Paragraphs 1 and 2 conclusions are drawn between groundwater pumping and the degradation of mesquite hummocks; however, no substantiation of these conclusions is offered and no consideration is made of other conditions that can also contribute to degradation. For example, climate change, wind, blight, and insects, all may contribute to conditions adverse to the hummocks.
11. Page 10-46: References need clarification for the notation (MSWD 2004) and the use of 1935-1936 data. The latter was perhaps taken from DWR Bulletin 118.
12. Page 10-45: Regarding long-term impacts: The characterization of the underflow as a “spill” lacks the technical precision that is available from recent study of the subbasin. The CVCC will want to review more recent data in order to understand the true dynamics of the MCSB.

**Regarding the EIR/EIS:**
13. Page 3-62: The text of Footnote 54 is mislocated; the text should read the same as Footnote 57.
14. Page 3-63: The last line on the page states, “potable water is extracted from only two of the region’s subbasins.” Two should be changed to three.
15. Page 3-64: Paragraph 2 states, “No groundwater is extracted from the Garnet Hill Subbasin . . .” It should be noted that MSWD began extracting water from the Garnet Hill Subbasin in 2006.
16. Page 3-70: Delete the sentence: “A subbasin replenishment agreement has also been entered into by MSWD, DWA and CVWD.” Move Footnote 71 superscript to the end of the next sentence following the word “agreement”.
17. Page 3-70: Correct “Colorado River Aqueduct” to “Colorado River Aqueduct”. In the next sentence, correct “benefits” to “benefit”.
18. Page 3-71: Paragraph 1 states, “CVWD is to assess Mission Springs Water District customers a replenishment fee . . .” Change to “DWA is to assess Mission Springs Water District a replenishment fee . . .” Note that DWA is the agency making the charge, and the charge is paid by MSWD.
19. Page 3-74: Footnote 80 is correct and was inserted after Footnote 79. The insertion causes “ibid” in Footnotes 81 and 82 to be incorrect.

In continuing to learn about the MCSB, we have developed an appreciation for the complexity of the basin. We are willing to share what we have learned with the CVCC so that its decision making reflects the rigorous science called for by the SAC. Please feel free to call if any clarification is needed regarding the comments outlined above.

Sincerely,

Arden Wallum

Cc: MSWD Board of Directors
    Marilyn McKay, MSWD
May 29, 2007

Mr. James Sullivan
Director of Environmental Resources
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

Re: Coachella Valley MSHCP

Dear Mr. Sullivan,

We have reviewed the proposed Coachella Valley MSHCP EIR/EIS and note that a number of the proposed conservation areas are located on lands designated by the State Mining and Geology Board as significant aggregate resources (MRZ-2). The EIR/EIS identifies that the Coachella Valley contains 17,527 acres designated as MRZ-2. Of this total, 10,007 acres (57%) will be placed within conservation areas. The EIR/EIS goes on to state that the conservation plan would not adversely affect the availability of these resources and notes that there are 130 years of permitted resources currently available within the study area.

The California Department of Conservation Geological Survey has recently published a report entitled "Aggregate Availability in California", Map Sheet 52. This report identifies that the 50-year aggregate demand for the Palm Springs area is 295-million tons, while only 176-million tons are currently permitted (60% of projected 50-year demand). This data appears to be in direct conflict with the data presented in the EIR/EIS. This contradiction should be explained.

The EIR/EIS does not recognize statewide and regional market conditions in the consideration of aggregate resources availability. Statewide, aggregate resource utilization is not being replaced by permitting of new reserves. As a result, most consumption areas in the state are recognizing shortfalls in materials availability. In addition to serving local Coachella Valley demand, resources mined within the study area are exported to other consumption areas due to these region-wide material shortfalls. Therefore, the permitted reserves in the Coachella Valley will be exhausted more rapidly than projected.

Although the State Mining and Geology Board's regulations identify that open space is typically a land use that would be compatible with mineral resource management, the regulations do not address the compatibility of open space within a designated habitat preserve. The policies of the proposed CVMSCHP clearly discourage resource extraction within designated preserve areas. While it may be possible to eventually...
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develop small portions of designated preserve areas for resource extraction, the majority of the currently available resources would be lost.

The EIR/EIS conclusion that impacts to mineral resources are "less than significant" is not supported by the facts and must be reconsidered in a revised draft EIR/EIS. The loss of development potential for mineral resources will be significant and unmitigated as currently structured. These impacts can only be mitigated through formal designation of a mineral resource reserve that can be accessed without the encumbrance of limitations placed by habitat preserve designations that preclude or seriously diminish aggregate development potential. Just as impacts to biological resources are mitigated through establishment of habitat preserves, mineral resources must be afforded equal treatment. Without effective policies that allow aggregate resource development, availability of these resources will be eliminated through these contrasting preservation methods.

Sincerely,

[Signature]

Warren R. Coakland  
President
May 25, 2007

CVAG
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

Ms. Katie Barrows;

I am objecting to the seasonal trail restrictions in the latest version of the Multiple Species Habitat Conservation Plan. There appears to be no sound scientific basis for this summertime restriction in the use of the trails. Please explain to me why this restriction is scientifically necessary.

Thank-you,

Nancy Madson
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Thousand Palms, CA 92276
nancymadson@earthlink.net