

Comment Letter R

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ENVIRONMENTAL IMPACT STATEMENT

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Our File No.: 0000325813

May 29, 2007

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**Re: Recirculated Draft Coachella Valley Multiple Species Habitat
Conservation Plan; Recirculated Draft Environmental Impact
Report; Supplemental Final Environmental Impact Statement**

Dear Ms. Barrows and Mr. Bartel:

The following comments on the Recirculated Draft Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (MSHCP or "Plan"), Recirculated Draft EIR and Supplemental Final EIS are submitted on behalf of Landmark Properties, U.S., Inc., the owner of 1,766 acres of land known as the Palmwood site.

I. The MSHCP's Mapped Habitat Areas Are Inaccurate.

More than ten years ago, the MSHCP's preparers identified 21 Conservation Areas within the MSHCP Plan Area. But, citing financial constraints, the preparers relied largely on habitat distribution "models" to reach assumptions regarding the location and extent of animals and plants to be protected, rather than verifying those assumptions through field surveys.

The Plan's inadequacy has in turn rendered its EIR/EIS defective because the EIR/EIS relies exclusively on the Plan to describe the project's baseline environmental setting regarding biological resources. The EIR/EIS actually concedes that the Plan's species and habitat modelling determinations are unverified and suspect. CVAG's solution, however, is to approve the MSHCP first, and then conduct "baseline" surveys during the first years of its implementation in order to verify its

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"conceptual ecological models." The EIR/EIS explains: "To better address uncertainty, the MSHCP further recognizes the need to gather additional information on species distribution, habitat affiliations, and population size early in the implementation process."

The EIR/EIS's deferred assessment of the Plan's environmental setting and impacts to biological resources violates CEQA's core principles. The EIR is an informational document with the stated purpose of providing public agencies and the public with "detailed information about the effect which a proposed project might be minimized; and to indicate alternatives to such a project." Deferring environmental analysis until after the project is approved renders an EIR useless as an informational and planning document, and defeats CEQA's purpose of alerting decision makers and the public to environmental impacts when mitigation measures can still be imposed and alternatives considered.

Additionally, because the environmental setting constitutes the baseline by which the severity of a project's environmental impacts are measured, the EIR/EIS's failure to adequately assess the project's environmental setting necessarily tainted and rendered the EIR/EIS's analysis of each of the project's potential environmental impacts, as well as its discussion of alternatives, legally inadequate.

Beyond these fatal flaws, the EIR/EIS failed to disclose and summarize the substantial disagreement among experts regarding the controversial methodologies CVAG and the Plan's preparers utilized in determining the location of biological resources in the Plan Area. Reciting the mantra that "the Plan incorporates the best available science" is inadequate.

The Plan's preparers relied almost exclusively on modelling formulas to identify the Conservation Areas under the Plan. In 2001, The Nature Conservancy facilitated an Independent Science Advisors' ("ISA") peer review of the draft Plan. The ISA's substantive criticisms of the draft Plan included the following:

A. A lack of quantitative scientific and statistical tools or suitable models used to develop the species habitat distribution plans and establish the conservation areas. Specifically, the ISA concluded:

- (1) CVAG's use of geographic information system ("GIS") mapping and habitat distribution overlays to evaluate the Plan was "fraught with high levels of uncertainty," affected

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by political concerns, and likely to contain substantial error.

- (2) Due to the lack of data, "uncertainties remain concerning the minimum habitat areas for particular species, the importance of specific areas as habitat for these species, and the value of potential corridors for flow of individuals and genes and/or maintenance of critical geophysical processes, such as sand and water sources and fluvial and Aeolian sand transport."
- (3) Conservation areas and core habitat areas were premised on "estimates" of species abundance in each location, while "virtually nothing is known about the demographic or genetic patterns and processes in most of these species."

B. The Plan's identification of conservation areas was subjective and not transparent. The ISA stated:

Of fundamental concern in any conservation plan is whether the process of identifying sites and designing conservation areas was systematic and rigorous. 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....A more technically rigorous and sophisticated site evaluation process could have been applied and would result in a more defensible Plan....

C. "Uncertainties remain" because of a lack of "rigorous science." The ISA stated:

The best way to minimize the chances of error, and hence meet the sufficiency-necessity standard, is through rigorous science.... Uncertainties remain concerning the minimum habitat areas for particular species, the importance of specific areas as habitat for these species, and the value of potential corridors for flow of individuals and genes and/or maintenance of critical geophysical processes, such as sand and water source and fluvial and Aeolian sand transport....

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D. The Plan's "core habitat" determinations are inaccurate. The ISA stated that in many cases, the number of Known Locations was "much higher" outside of the Core Habitat than inside. The ISA stated further that "[i]n general, no documentation of core-habitat delineation for species in general is presented either in the [Draft Plan] or the Technical Appendix ...the documentation for certain species models with core-habitat areas is inadequate as presented in map form, which is the only way it is shown in the documentation we were given."

E. The MSHCP has been influenced by politics. The ISA explained:

The site-identification process involved both scientific analyses, yet the Plan includes virtually no documentation of the non-scientific analyses, which involve issues such as monetary value of property as an inhibition to purchase, and prior land-use history.... One of the major concerns of our team regarding the planning process and the general content of the biological alternatives in the Draft Plan 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 ... precisely how socioeconomic and political criteria influenced their decisions is not documented in the Draft Plan.

CVAG and FWS have not cured the many deficiencies the ISA identified in the MSHCP. In fact, the Plan reveals that during the entire 10-year period between 1995 and 2005, the Plan's preparers performed only 32 field surveys to verify the actual conditions on the ground. All but five of these surveys occurred prior to 2000, only a small fraction of the plant and animal habitat encompassed by the Plan was surveyed, and the Plan gives no indication of the total amount of acres actually surveyed.

Further, Palmwood has previously provided you with the results of the biological studies that were produced for the Palmwood development, yet these studies have been entirely ignored. This is particularly disturbing in light of the fact that those studies, based on actual on the ground field surveys, demonstrate the serious deficiencies in the modelling approach used for the Plan.

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Conceding the inadequacy of the biological data supporting the Plan's baseline findings, the Plan calls for implementation of a Monitoring Program and a Management Program to gather additional information on species distribution, habitat affiliations, and population size, following adoption of the Plan, and early in the implementation process. In fact, the Monitoring Program begins with a baseline survey on Covered Species and conserved natural communities. These objectives include estimates of distribution, population size, survivorship, age structure, and other variables as well as further evaluation of the conceptual ecological models to identify and assess threats for Covered Species. This deferred analysis approach is plainly unlawful.

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Further, not only should these species have been studied *before* the Plan was put forward, but these monitoring and research efforts cannot be treated as mitigation. Moreover, because the list of covered species extends so far beyond threatened or endangered species, and because of the financial constraints that have already undermined development of the Plan and will continue if the Plan is approved (see below), it is unlikely that effective monitoring will even be feasible over the long term. The Plan should present a realistic list of covered species and should study those species now, not later.

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In addition, the EIR/EIS includes a vague and unsubstantiated discussion of "edge effects." There is no coherent discussion or analysis of the causes of purported edge effects, nor is there any specific analysis of the scope of the area that is treated as an "edge." The EIR/EIS should be revised to provide an intelligible evaluation of this issue, supported by adequate scientific evidence and analysis.

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II. The EIR/EIS's Inadequate Assessment Of The Existing Baseline Precludes Accurate Impact Analysis.

As discussed above, the Plan's and the EIR/EIS's reliance on modeling, perceived political realities and other inappropriate factors has prevented them from adequately assessing the existing environmental setting of the species the Plan is supposed to address. Therefore, the EIR/EIS does not enable decision makers to assess the extent to which the Plan would conserve appropriate property or misses its target altogether. The EIR/EIS assumes that impacts to biological resources will be beneficial because the purpose of the Plan is to set land aside to protect the covered species. But because the

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Plan Conservation Areas were mapped using admittedly inaccurate habitat "modeling" rather than site-specific surveys, the Plan's Conservation Areas include land shown not to contain or support certain species that were "modeled" to be there. At the same time, because they are misdrawn, the Conservation Areas may not protect populations of covered species, allowing them to be unwittingly destroyed. The EIR/EIS must be revised to correct these deficiencies.

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III. The Plan And The EIR/EIS Are Inaccurate In Their Treatment Of The Palmwood Site.

The Plan's—and therefore the EIS/EIR's—treatment of the Palmwood site presents a stark example of the pitfalls of the approach the Plan's preparers have taken to identifying Conservation Areas and Core Habitats. Most strikingly, the Plan designates 600 acres of the Palmwood site as "Core Habitat" for the Little San Bernardino Mountains linanthus.

The Little San Bernardino Mountains linanthus is a plant that has no federal or state listing status and is not proposed for such status. It is improperly included in the Plan on the theory it is identified as "rare" by the California Native Plant Society and might become listed at some point during the 75-year term of the MSHCP.

But linanthus is not likely to be listed, as is demonstrated by the Plan itself:

The size and ephemeral habit of Little San Bernardino Mountains Linanthus have made it difficult to find, and hence, it is little collected and studied....Little is known of the life history of this species. Its pollinators, germination requirements, seed longevity, and population parameters have not been described. The flower form and color are indicative of insect pollination but no information on pollination ecology is available...No comprehensive population estimates have been made.... (Proposed MSHCP-February 2007, pages 9:53-54).

Linanthus is flourishing outside the proposed HCP areas as confirmed by the proposed MSHCP. The Plan admits that "extensive populations occur outside the Plan Area...." (Proposed MSHCP-February 2007, 9:50). The Plan also states:

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The most extensive populations of this species are outside the Plan boundary, along washes at the northern edge of Joshua Tree National Park, in the vicinity of Joshua Tree, Yucca Valley, and Twentynine Palms. It seems likely that additional populations of this species may occur in the area of approximately 22 miles between Rattlesnake Canyon and Yucca Valley. There is one very recently described location in Rattlesnake Canyon on the north side of the San Bernardino Mountains. (*Id.* 9:50-51).

We request that the EIR/EIS provide current data on all discoveries of this plant species, which are occurring on a regular basis, and that the discussion and analysis in the EIR be revised in light of this information.

Further, the broad "Core Habitat" designation for the linanthus is based on the Plan preparers' modeling exercise rather than on actual surveys of the Palmwood site. The surveys have consistently shown that the linanthus appear *only* in California Department of Fish and Game jurisdictional streambeds—streambeds that the Palmwood project will preserve. Thus far, however, the Plan's preparers have rejected the results of these real-world surveys and sightings, because they are at odds with the "model"—which incorrectly shows upland areas far beyond the streambeds as "Core Habitat," and therefore as undevelopable under the MSHCP.

A copy of the Biological Resources section of the December 2006 Palmwood Specific Plan EIR, including Figure 4.3-4, "Linanthus Sighting Locations on the Project Site," is submitted with this letter. Landmark submitted the May 15, 2005 Biological Assessment and Impact Analysis of James W. Cornett Ecological Consultants—who did conduct on-site surveys—with Landmark's February 6, 2006 comment letter on the previous iteration of the MSHCP. Both the 2006 letter and the Biological Assessment and Impact Analysis are part of CVAG's and USFWS's record on the MSHCP.

In sum, the designation of core habitat for linanthus on the Palmwood Site is unjustified and the MSHCP and the EIR/EIS must be revised to correct this error.

The Plan's and EIR/EIS's treatment of the Palm Springs pocket mouse on the Palmwood site is also faulty. The Plan sets aside much of the Palmwood site as Core Habitat for the "Palm Springs pocket mouse."

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But the evidence shows not only that this mouse appears in many locations, but that it breeds with other mice and is not a separate subspecies. (See May 15, 2005 Biological Assessment and Impact Analysis.) Despite repeated comments on this issue, neither the Plan nor the EIR/EIS has ever provided any evidence that the Palm Springs pocket mouse is a separate subspecies or addressed the contrary evidence provided by biologists. The EIR/EIS must be revised to address this issue and provide accurate evaluation.

The Palm Springs Pocket mouse is an unlisted, non-candidate animal. A recent study completed in 2003 demonstrates that there is no such thing as a subspecies of the Little Pocket Mouse known as the Palm Springs Pocket Mouse. The study indicates that the populations of the Little Pocket Mouse living in the Coachella Valley are not a distinct subspecies and not unique in any way. They are the same Little Pocket Mice found from Mexico to Idaho. Swei, A., et al. (2003) Hierarchical Genetic Structure in Fragmented Populations of the Little Pocket Mouse (*Perognathus longimembris*) in Southern California. *Conservation Genetics* 4:501-514. Because it has not addressed these issues, the EIR/EIS is inadequate.

Further, a request for emergency listing of the Palm Springs pocket mouse has been submitted but that request has not resulted in the requested listing. The EIR/EIS should explain all findings made and evidence considered in connection with the decision not to grant this emergency listing petition.

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The Plan indicates that the Palmwood site provides core habitat for the desert tortoise. As explained in the Palmwood EIR, however, there are no desert tortoises on the site. Two years of exhaustive surveys on the Palmwood site, conducted in accordance with USFWS protocols, found no evidence of tortoise occupation of the site. There is no evidence based on field surveys or other on the ground data to the contrary. The Plan and the EIR/EIS should be revised to address this evidence, and the incorrect statements regarding tortoise habitat on the Palmwood site corrected.

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The Plan and the EIR/EIS also ignore the fact that after two years of spring surveys on the Palmwood site, no triple-ribbed milkvetch were found within the project boundaries or within 100 yards of the project borders. The Plan and the EIR/EIS should be revised and corrected in light of this evidence.

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The Palmwood development will not eliminate important wildlife corridors. There is no evidence that such corridors exist and the extensive studies done on the site by a Riverside County-approved biologist found no evidence of such a corridor. In addition, in identifying a purported biological corridor connecting the west and east sides of Highway 62, the Plan identifies an area that goes far beyond what might even arguably be appropriate even if it is assumed that there is a biological corridor in the area described by the Plan. This is the result of the fact that the Plan designates areas for conservation, including areas identified as potential biological corridors, by parcel rather than by using specific mapping. As a result, the Plan is highly overly inclusive and identifies far more land on the Palmwood site as a biological corridor than would be reasonably necessary, even if it is assumed that the area provides some benefit as a biological corridor.

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Finally, the Palmwood development will not interfere with sand transport from the project site; expert analysis (Tetra Tech 2006) demonstrates that sand transport will be maintained. The EIR/EIS and Plan must be revised in light of this scientific information.

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IV. The EIR/EIS Does Not Evaluate A Reasonable Range Of Alternatives.

The EIR/EIS considers an extremely limited range of alternatives. Obvious alternatives that are missing from the document include: (1) An alternative that would focus on conservation of land known to be occupied by covered species and where actual habitat for these species actually exists. Because of its reliance on modeling rather than field surveys, the proposed plan identifies areas for conservation that are not habitat for listed species, while at the same time allowing development in areas that do constitute prime habitat for listed species. The EIR/EIS should consider an alternative that identifies conservation areas based on actual field surveys that identifies actual habitat; (2) An alternative that would exclude land designated in current general plans for housing, commercial, industrial and other developed uses. The conservation areas identified in the MSHCP conflict with the general plans of many of the affected jurisdictions by designating land designated for developed uses within the conservation area. The EIR/EIS should include an alternative that would be limited primarily to public lands together with lands designated open space in the local general plans. Such an alternative is necessary in order to assess the pros and cons of approving a proposed plan that is inconsistent with the general plans of the affected jurisdictions; (3) An alternative that would only cover listed species. The proposed plan extends not only to

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listed species, but also to other species that have not been listed as endangered or threatened species. An obvious alternative that would have less severe land use, economic and environmental justice impacts would limit the Plan to listed species only.

The EIR/EIS should be revised to include each of the alternatives described above, as well as an alternative that combines alternative 1 with alternative 3 listed above.

As others have noted, the anticipated costs of the Plan have skyrocketed since the Plan was first proposed. But even with increased development fees (or possibly because of those increased development fees), the combination of development fees and uncertain public contributions is unlikely to be sufficient to fund the Plan. There is no workable funding plan in place, and no evidence that even a fraction of the funding that is assumed will ever come about. The consequences of this glaring problem must be addressed in the EIR/EIS.

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In addition, the EIR/EIS should consider a realistic alternative that takes account of funding that is actually realistic and foreseeable, and that prioritizes acquisitions based on an assessment of the actual biological value of the conservation areas identified for acquisition, and prioritizes acquisition based upon the value of the land in implementing the objectives of the MSHCP.

V. The EIR/EIS Does Not Contain An Adequate Analysis Of Consistency With General And Regional Plans.

The land use compatibility section of the EIR/EIS includes no analysis of the effects of the proposed MSHCP on land uses designated in the County's general plan and the general plans of the cities in the Coachella Valley.

The EIR/EIS should include in this analysis the current Desert Hot Springs General Plan and analyze the MSHCP's consistency with this Plan.

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Table 4-1 indicates that 12,612 acres of "conservation" land in the MSHCP is designated in (unidentified) general plans for residential use. However, the EIR/EIS provides no data or analysis of the effect of treating this land as conservation land under the MSHCP. No information is provided on the location of this land, the jurisdictions affected, or the number of housing units authorized by the relevant

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general plans. We request that the Final EIR/EIS provide specific data showing how much land within each jurisdiction will be affected, the location of each area of land that will be affected, and the number of planned housing units that will be effected.

As a result of the lack of specific data or analysis, the EIR/EIS conceals critical impacts of the MSHCP's treatment of the areas designated for housing in the County and city general plans that are classified as conservation land in the MSHCP, including, but not limited to the effect on each jurisdiction's ability to address regional housing needs, the MSHCP's consistency with the housing element of each jurisdiction's general plan, the effect on the availability of affordable housing, social and economic effects, including the effects of precluding housing in these areas, and the environmental impacts of displacing housing planned for these designated sites to other areas. Each of these issues must be addressed in the Final EIR/EIS in detail.

Finally the significance standards in the EIR/EIS for conflicts with land use plans are far too narrow. They fail to recognize the critically important role that the land use and housing elements of general plans play under the Planning and Zoning law in ensuring that sufficient housing is planned for and that the locations of sites planned for housing accommodate environmental, social and economic concerns. Without any analysis of the effect the MSHCP will have on current housing elements it is impossible for the public or decision-makers to assess the degree to which the Plan will upset that balance. Nor is it possible to assess the extent to which, by upsetting that balance, the MSHCP will cause serious environmental impacts by shifting the location of housing to other, more environmentally damaging locations.

The EIR/EIS's treatment of land now designated as commercial, industrial and business park is also patently inadequate. Table 4-1 indicates that more than 1,000 acres of land identified in the MSHCP as conservation land is designated in general plans for these uses. No specific information is provided regarding the jurisdictions affected, the amount of acreage affected in each jurisdiction, or the number of jobs that would be lost. It is thus not possible to assess whether the MSHCP conflicts with the general plan in the affected jurisdiction. The absence of any data or analysis makes it impossible to assess land use impacts, and to determine the extent to which the MSHCP may undermine planned land uses, and implementing goals and objectives, in any particular jurisdiction. The final EIR/EIS should provide the missing information and provide an analysis of general plan consistency for each affected jurisdiction.

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CEQA also requires an EIR to discuss any inconsistencies of a proposed project with applicable habitat conservation plans and applicable regional plans. The EIR/EIS does not do this. The Plan is, for example, inconsistent with the Santa Rosa and San Jacinto Mountains National Monument Act, which specifies that it is not intended to impact existing or future growth in the Coachella Valley and specifically precludes buffer zones. The Plan, on the other hand, both impacts existing and future growth in the Coachella Valley and creates buffer zones through its "Land Use Adjacency Guidelines."

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VI. The EIR/EIS Does Not Contain An Adequate Analysis Of The Economic Effects Of The MSHCP.

The discussion of the plan's effects on city budgets is insufficient. The analysis does not account for development impact fees, dedications, public improvements made or funded by development projects, and other funding for infrastructure and services that typically accompany new development. The effect of contributions from these sources must be accounted for in order to accurately assess the effect new development has on costs of services and infrastructure and therefore on city budgets.

With respect to cash flow calculations, the analysis does not include any assessment of the indirect economic benefits of additional development to each of the affected communities, such as income multiplier effects, and also does not include an assessment of the extent to which growth in housing and economic activity in the less affluent cities will decrease the average cost of providing city services. Absent an analysis of these issues, the EIR/EIS paints a false picture of the Plan's impact on those communities.

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In addition, the EIR/EIS uses an impermissible ratio approach to characterizing employment losses due to the MSHCP. The conclusionary statement in the EIR/EIS that the majority of the lands in the Plan area will remain available for development and job generation does not provide any information or analysis that can provide the basis for rational decision-making because it fails to disclose what effect the Plan will actually have on employment.

The EIR/EIS does not explain whether land within each city's sphere of influence and/or land proposed for annexation is included in the tables in section 4-8 that list developable lands that are affected. If not included, the relevant data on land outside each city's existing boundaries should be included, and an analysis of the impacts to that

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land provided, in order to get a complete picture of the plan's effect on each city.

The fiscal impact report accompanying the EIR/EIS is deficient due to its reliance on stale data. For example, the fiscal impact analysis relies on 2001 data relating to the value of new homes that is obsolete. Since the estimate of lost property taxes is based on this out-of-date information, the entire evaluation of lost general fund revenue sources is fatally flawed. Current data on new home values is readily available. The fiscal impact report must be revised and corrected to reflect accurate current data. The values stated for commercial and industrial land are also out of date, and the report should be updated to incorporate accurate current values for commercial and industrial land as well.

The fiscal impact analysis concludes that, with a few exceptions, growth and development will result in a financial loss to most cities within the plan area, with the costs attributable to new development exceeding revenues. The EIR/EIS accordingly concludes that the MSHCP is superior to the no project alternative in economic terms because, according to the EIR/EIS, the MSHCP will result in less growth and development. This forecast is inconsistent with historical data which demonstrate that growth and development has not had adverse fiscal impacts on the cities within the plan area. This indicates that the methodology employed to forecast revenues and costs is defective. The EIR/EIS should correct this error and the discussion revised to incorporate an accurate methodology for forecasting the municipal revenues and costs associated with growth and development.

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VII. The MSHCP And EIR/EIS Fail To Address The Economic, Urban Decay And Environmental Justice Impacts Of The Plan's Conservation Area Designations.

Just as the Plan's use of a modeling exercise to designate "Core Habitat" reflects no concern for biological reality, the Plan's imposition of undevelopable "Conservation Areas" disregards the economic reality of the City of Desert Hot Springs and its residents. The Plan would permit development on actual Critical Habitat for listed species in other parts of the Coachella Valley. At the same time, the Plan would bar development on almost all of the Palmwood site, which is not Critical Habitat for anything—but is expected to be annexed to Desert Hot Springs, the least affluent city in the Coachella Valley. (LAFCO

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approved the annexation of Palmwood on April 26, but CVCC has filed a request for reconsideration of that determination.)

The City of Desert Hot Springs described its economic plight, its demographics and the importance of economic development at the Palmwood site in the EIR for the Palmwood Specific Plan. The City of Desert Hot Springs has the lowest median family income of all cities in the Coachella Valley. It has the lowest retail sales per capita, the lowest median home price and the highest crime rate. The City emerged from bankruptcy in 2004 and is still suffering from the effects of the bankruptcy. The City stated in the EIR:

To improve its fiscal situation, and to meet the retail needs of its residents, the Desert Hot Springs City Council has embarked on a campaign to increase the amount of sale tax-generating retail sales in the City. However, increasing retail space in the City faces challenges related to location. Successful Coachella Valley retail centers historically have been located on main transportation routes because they can serve both local and regional customers. However, the main retail area of downtown Desert Hot Springs is located far away from Coachella Valley through-traffic routes. All of the other cities in the Coachella Valley are located along such main transportation routes as I-10, SR-111 and SR-86. Although located away from the City's downtown, SR-62 is the only major highway currently within or adjacent to the city limits of Desert Hot Springs, but SR-62 has no retail uses along the highway. Accordingly, the City Council has identified the development of major retail centers along SR-62 as a high priority for the City, critical to its financial future. (Palmwood EIR, p. 3-9.)

Retail and adjacent development at the Palmwood site would, as the City found, advance this high priority.

The Plan and the EIS/EIR, in all their iterations, have consistently disregarded the economically disadvantaged status of Desert Hot Springs and other less affluent cities and have funneled permitted development toward more economically fortunate communities regardless of true habitat values. The Plan and the EIS/EIR fail to comply with the requirements of CEQA and NEPA to address urban decay and environmental justice effects, including economic effects on

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minority and low-income populations, and of the Natural Community Conservation Planning Act to allow appropriate development and growth.

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VIII. The EIR/EIS Does Not Contain An Adequate Analysis Of Traffic Impacts.

The EIR/EIS acknowledges that the Plan, by constricting development in Conservation Areas while encouraging development elsewhere, would cause traffic to shift to the favored areas. EIR/EIS p. 4.3-9. But the EIR/EIS provides no traffic analysis whatsoever of this shift. In fact, the EIR/EIS neither attaches nor refers to any expert traffic report. Instead, the EIR/EIS hypothesizes that little traffic would be shifted from Conservation Areas to the favored areas because of the Conservation Areas' existing land use designations. As has been noted elsewhere, land use designations can and do change--as they have for the Palmwood site--so this hypothesis is inadequate. The EIR/EIS then concludes that to the extent traffic would shift from the Conservation Areas to the favored areas, "any resulting intensification of land use may have the indirect benefit of encouraging the use of mass transit, and is consistent with 'Smart Growth' policies endorsed by many urban planners. *No levels of service on any designated major roadway would be affected.*" EIR/EIS p. 4.3-9. Without performing any technical analysis of the question, an EIR/EIS simply cannot draw the conclusion that a shift in traffic from one area to another would cause no effect on levels of service. This conclusion is particularly untenable where, as here, the EIR/EIS suggests that the traffic shift would be so significant that it would cause an increase in mass transit use; public adoption of mass transit is notoriously difficult and is unlikely to occur unless it is preceded by significant effects on levels of service. The EIR/EIS must be revised to include a complete traffic analysis that includes an analysis of traffic impacts with and without the Plan, and that addresses each of these issues.

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IX. The EIR/EIS Does Not Analyze The Environmental Impacts Of The Development The MSHCP Is Designed To Allow.

The MSHCP is expressly intended to allow development of both limited "Covered Activities" in Conservation Areas and unlimited development projects in the non-Conservation Areas of the 1.2 million acres that are included in the Plan. Indeed, USFWS and the California Department of Fish and Game have not been reticent in threatening to shut down development in the Coachella Valley if the MSHCP is not approved

R-19

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May 29, 2007
Page 16

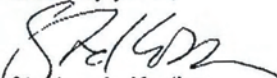
immediately. The EIR/EIS acknowledges at various points that the MSCHP would allow this development to proceed. It acknowledges that the MSHCP would shift development away from Conservation Areas and toward non-Conservation Areas. The Plan acknowledges that in many instances the non-Conservation Areas that will be developed actually host endangered and threatened species (unlike, for example, the Palmwood site).

R-19
Cont.

But the EIR/EIS utterly fails to study the environmental impacts of the development the MSHCP will induce. Even the "Growth-Inducing Impacts" section of the EIR/EIS *assumes* that growth in the Coachella Valley will continue at its historic rate with or without the MSHCP, then concludes that the MSHCP will cause no growth-inducing impact because it will not alter that assumed rate of growth. This assumption is completely at odds with the stated motivation -- and the project objectives -- for the MSHCP. The EIR/EIS already includes extensive information regarding the level of development that will occur with the MSHCP and where that development is assumed to occur under the Plan. Now the EIR/EIS must analyze the environmental impacts of that development.

R-20

Sincerely yours,



Stephen L. Kostka

Enclosure

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Comment Letter R 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.

ATTACHMENT TO PALMWOOD COMMENTS

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DECEMBER 1106

FINAL ENVIRONMENTAL IMPACT REPORT
PALMWOOD SP AND OUTPARCELS
4.0 ENVIRONMENTAL EVALUATION

4.3 BIOLOGICAL RESOURCES

The analysis of the potential impacts of the proposed Palmwood SP project related to biological resources is based in part on the following:

1. *Comprehensive General Plan for the City of Desert Hot Springs* (2000)
2. *EIR for the City of Desert Hot Springs Comprehensive General Plan* (2000)
3. *State CEQA Guidelines* (Revised 2005)
4. *Biological Assessment and Impact Analysis of the Proposed Palmwood Project* (James W. Cornett Ecological Consultants, January 2006)
5. *Draft Final Coachella Valley Multiple Species Habitat Conservation Plan, Coachella Valley Mountain Conservancy* (November 2005 (available at <http://www.cvmshcp.org>.)
6. *(Draft) Jurisdictional Delineation Map, Vandermost Consulting Services, Inc.* (Revised August 24, 2005)
7. *Palmwood Specific Plan* (December 2006)

Copies of references 1, 2, 3, 5 and 7 are on file and available for review at the City of Desert Hot Springs. A copy of reference 4 is provided in Appendix E. Reference 6 is reproduced in this Chapter.

Note: The Outparcels project is discussed in parallel in this section, to the degree information is available. The Outparcels project will require separate biological review at the project level when individual projects area proposed.

4.3.1 Existing Setting

4.3.1.1 Overview of the Project Site

The project area is in a geographical region known as the Colorado Desert, a subdivision of the Sonoran Desert. Annual rainfall in this subdivision averages approximately five inches. Most precipitation falls during winter and spring with occasional summer thundershowers that account for approximately one-fourth of the annual total rainfall. Winter days are mild, averaging 70 degrees F. Winter nights occasionally drop to near freezing. The month of July brings the hottest temperatures, with daytime highs averaging 107 degrees F.

The project site encompasses hillsides, canyons, washes, and a bajada (a wide apron of rock and debris that forms where many alluvial fans coalesce) emanating from the Little San Bernardino Mountains to the north. Hillsides and ravines provide topographic relief on the Palmwood SP project site. The majority of the project site is relatively flat and gently sloping from the northwest to the southeast. Soils on the project site are characterized as stony on the hillsides and sandy and compacted on the bajada and flatlands.

The highest point on the project site is 2,640 feet above sea level (asl), in the northern part of Section 9. The project site slopes to the southeast dropping to a low point of approximately 1,400 feet asl. Figure 4.3-1 shows the topography of Palmwood SP and Outparcels project site.

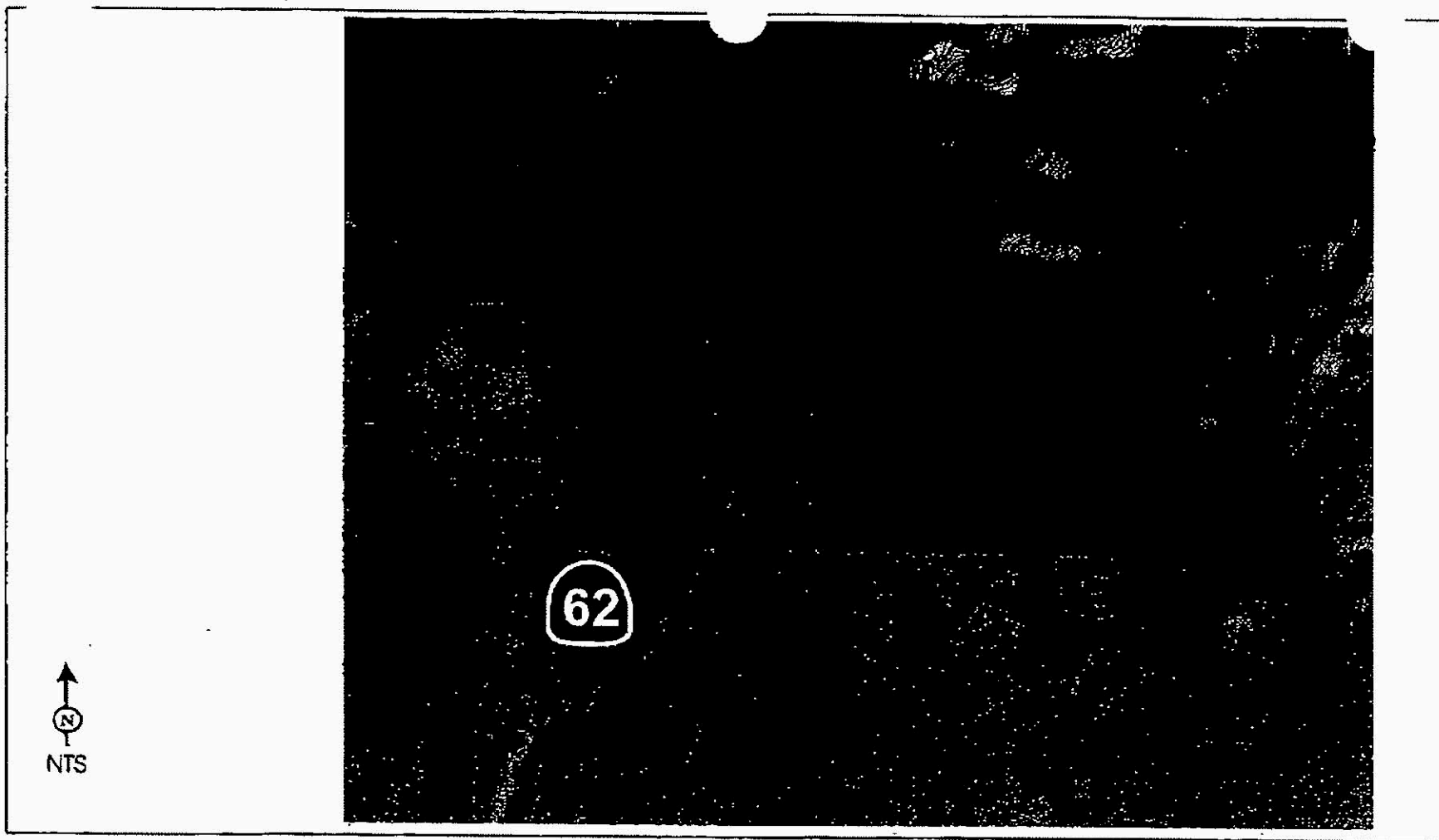


FIGURE 4.3-1

Palmwood SP and Outparcels EIR
Project Topography

Source: USGS Topo

P:\PALMWOOD\GRAPHICS\Cont Draw\FIGURE 4.3-1 PROJECT TOPOGRAPHY(9.621' 10.1TC)

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Relatively undisturbed desert mountain and canyon habitat constitute the northern, eastern and parts of the western boundaries of the Palmwood SP project site. Outside the project site, scattered residential-uses sites are adjacent to the southern part of the western boundary. Moderately disturbed desert flatlands occur along the southern boundary of the project site.

Three paved roads pass through the Palmwood SP project site. SR-62, a divided State expressway, traverses the western third of the site. Indian Avenue, an often-busy local road, passes through the southern third of the site. Worsley Road, a less-traveled roadway (the original Twentynine Palms Highway) joins Indian Avenue in the southwest third of the site. These roads are shown on Figure 4.3-1.

The Colorado River Aqueduct (CRA) runs underground through the southern third of the project site. An underground natural gas pipeline runs through the center of the project site. According to the Biological Resources Assessment, off-road vehicle use has damaged approximately 4% of the site. The damage is most severe in Big Morongo Canyon and Wash. Recently, portions of the property have been fenced to reduce such damage.

Three primary unpaved roads traverse the Palmwood SP project site. The first parallels the CRA and traverses most of the southern third of Section 15. The second leads into Big Morongo Canyon from Indian Avenue north beyond the site boundary. The third runs from SR- 62 west toward Mission Creek Canyon. There are several other unpaved roads on the project site that connect to the paved or these primary unpaved roads. (Refer to the aerial photograph provided earlier in Figure 3.2-1 and to the project topography in Figure 4.3-1).

Illegal dumping has impacted approximately 2% of the project site surface area. Most of the dumping is concentrated in Big Morongo Canyon Wash and includes discarded major appliances.

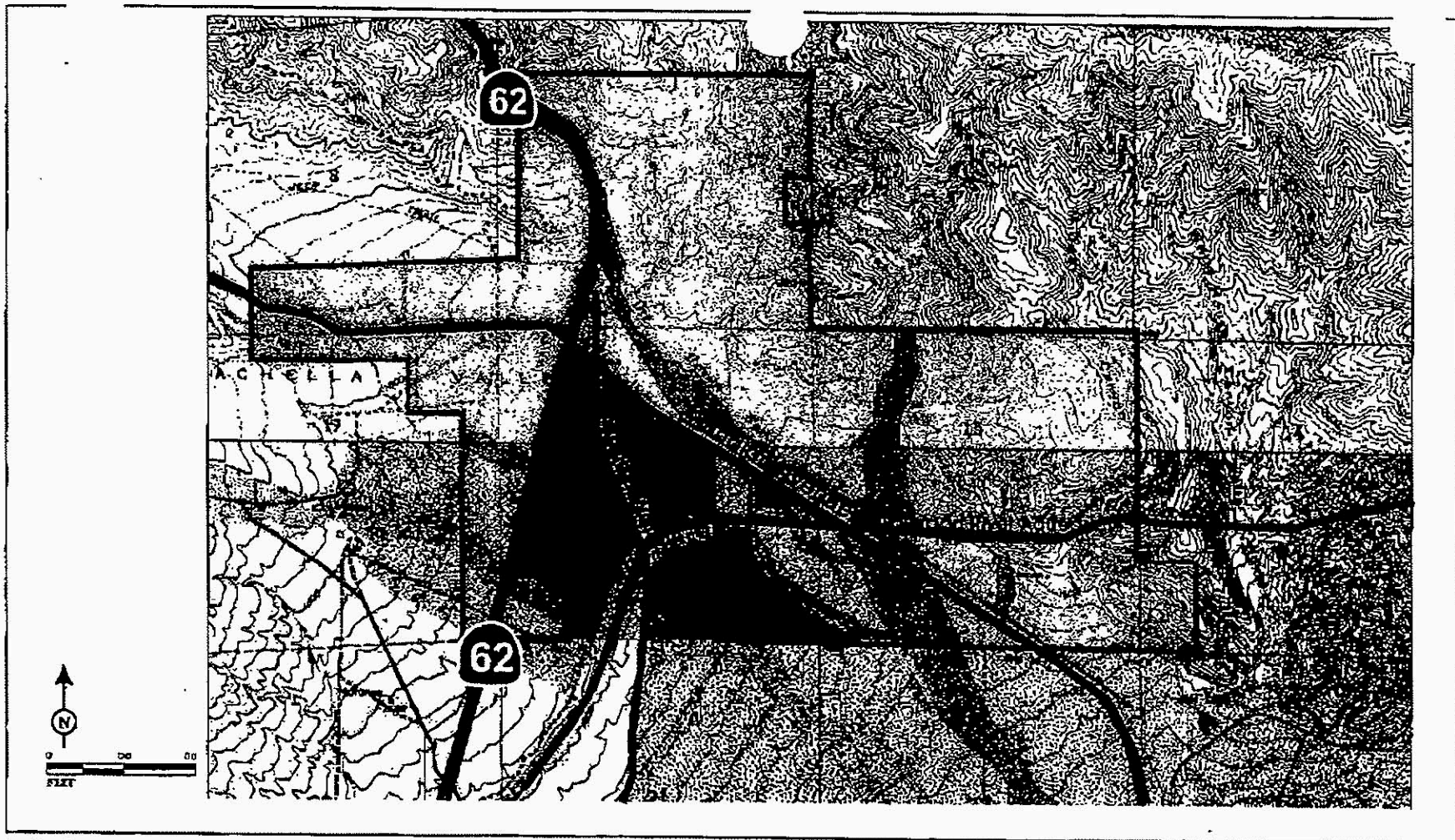
Hunting and target practice have occurred on most of the flatland and in Big Morongo and Midway Canyons on the project site. Shell casings are common over much of the project site.

As discussed in detail in the technical study in Appendix E, the Palmwood SP project site was surveyed for the presence of sensitive plants and animals during the appropriate seasons, as well as other species that the biologists determined had a potential to be in the area. The findings of that survey and other research regarding the potential for sensitive species to occur on the project site are provided in the following sections. Table 4.3-A summarizes the results of the surveys for sensitive species.

In addition, information from the Draft Final CVMSHCP is incorporated where appropriate.

4.3.1.2 Vegetation

According to the Biological Resources Report in Appendix E, two plant associations or communities are found on project site: Sonoran Creosote Bush Scrub and Mojave Desert Wash Scrub. The CVMSHCP identifies three different Natural Communities: Mojave Mixed Woody Scrub in the hillside areas, Sonoran Mixed Woody and Succulent Scrub in the flatter areas and Desert Dry Wash Woodland. The differences in nomenclature and delineation reflect the differences in biological opinion. Mr. Cornett's nomenclature is used in this discussion. The project vegetation map is shown in Figure 4.3-2.



LSA

FIGURE 4.3-2



SOURCE: CORNETT, 2006, LSA 2006

Palmwood Specific Plan EIR
Vegetation Map

P:\NFS430\GRAPHICS\COREL DRAW\FIGURE 4.3-2 VEGETATION MAP (9/24/06).lrc

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Sonoran Creosote Bush Scrub is represented on the project site by the creosote bush (*Larrea tridentata*), burrobrush (*Ambrosia dumosa*), encelia (*Encelia farinosa*), and California daiea (*Psoralea arborescens*). The hillsides and flatlands on the project site are dominated by these species.

Mojave Desert Wash Scrub is represented on the project site by desert willow (*Chilopsis linearis*), cat's claw acacia (*Acacia greggii*) and desert tea (*Ephedra californica*). This community is present in Dry Morongo and Big Morongo washes and is thinly developed in Midway and other canyons and washes on the project site.

4.3.1.3 Sensitive Plant Species

The Inventory of Rare and Endangered Vascular Plants of California (California Native Plant Society (CNPS) 2001), the *California Natural Diversity Data Base (CNDDB) Special Plant List* (2004) and the *Endangered, Threatened, and Rare Plants of California* (2004) list thirteen sensitive plant species that conceivably could occur on the project site. Only one of these, the triple-ribbed milk-vetch, is officially listed and has appropriate habitat on the Palmwood SP and Outparcels project site. However, as shown on Table 4.3-A, no individuals of the species were found during two years of surveys. The Little San Bernardino Mountains linanthus has been classified as rare by the California Native Plant Society (CNPS). This plant was found in two locations on the project site, as listed in Table 4.3-A and shown in Figure 4.3-3. According to the reports in Appendix E, on-site surveys were conducted during the appropriate season for all plant species.

Table 4.3-A: Sensitive Plant Species on the Palmwood SP Project Site

Species	Status	Survey Results
Triple-ribbed milkvetch	Federally endangered; target species of CVMSHCP	Not found
Conchella Valley milkvetch	Federally endangered; target species of CVMSHCP	Not found; no suitable habitat
Flat-seeded spurge	Considered rare by the California Native Plant Society (CNPS)	Not found; no suitable habitat
Little San Bernardino linanthus	Considered rare by the CNPS; target species of CVMSHCP	Found in two locations
Ribbed cryptantha	Considered rare by the CNPS	Not found; no suitable habitat
Winged cryptantha	Considered rare by the CNPS	Not found
California ditaxis	Considered rare by the CNPS	Not found
Foxtail cactus	Considered rare by the CNPS	Not found
Spearleaf	Considered rare by the CNPS	Not found
Slender-lobed four o'clock	Considered rare by the CNPS	Not found
Thurber's beardtongue	Considered rare by the CNPS	Not found
Thurber's pilostyles	Considered rare by the CNPS	Not found
Cove's cassia	Considered rare by the CNPS	Not found

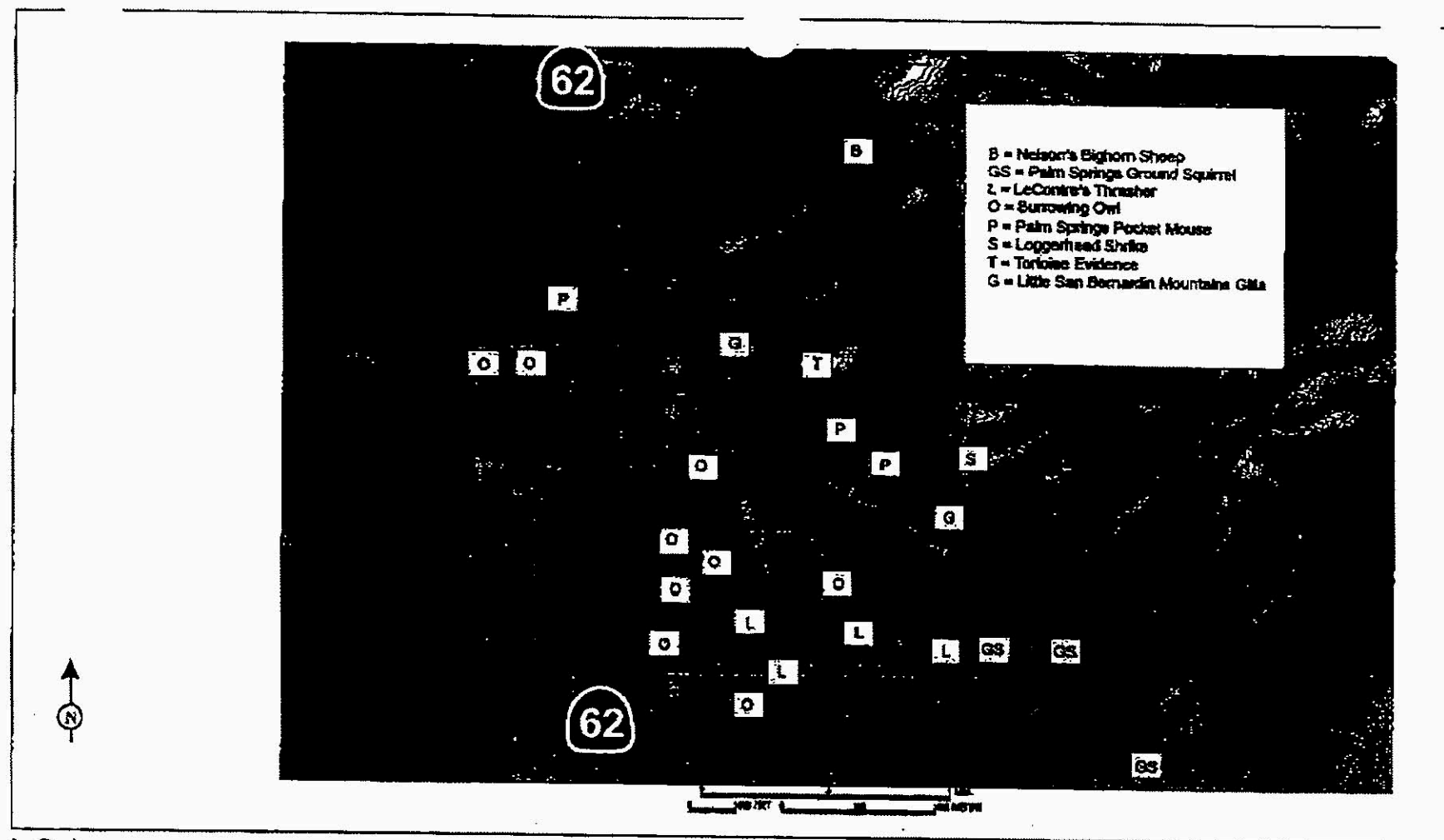


FIGURE 4.3-3

Palmerwood Specific Plan EIR
Species Locations

SOURCE: CORNETT, 2006

P:\NFS430\GRAPHICS\COREL DRAW\FIGURE 4.3-3 SPECIES LOCATIONS (0721/06:luc)

LEA ASSOCIATES, INC.
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PALMWOOD AP AND OUTFALLS
4.3 ENVIRONMENTAL EVALUATION*Triple Ribbed Milkvetch (Not Found)*

The triple-ribbed milkvetch is the only listed (endangered) species with appropriate habitat on the project site, but on-site surveys, conducted during the spring, did not locate the species. The CVMSHCP also identifies the project site as habitat for the triple-ribbed milkvetch, along the stream bed corridors. Given the failure to find the species during the site surveys, this species will be assumed not present.

Coachella Valley Milkvetch (Not Found/No Suitable Habitat)

The Coachella Valley Milkvetch (endangered) was not found during the focused plant studies or general biology surveys. According to the Biological Assessment, the project site is not suitable habitat.

Little San Bernardino Mountains Linanthus

The only special status plant species found on the site during site surveys was the Little San Bernardino linanthus (linanthus), which is considered rare by the CNPS and was a target species of the CVMSHCP. The linanthus is also known as the Little San Bernardino Mountains gilia. The linanthus is a target species because, according to USFWS personnel in a meeting with the EIR authors (April 2006), linanthus may become a listed species during the 75-year life of the proposed CVMSHCP. There is no current proposal to change the status of linanthus.

According to the CVMSHCP, linanthus is a tiny endemic plant species that is found in a restricted range. Inside the CVMSHCP Plan boundary, the plant has been sighted at these locations:

- The Little San Bernardino Mountains near Desert Hot Springs
- Mission Creek Canyon across SR-62 to Dry Morongo Wash and Big Morongo Canyon
- Near the mouth of Dry Morongo Canyon in the northwestern portion of the Coachella Valley,
- Whitewater River Canyon in the eastern San Bernardino Mountains
- Rattlesnake Canyon on the north side of the San Bernardino Mountains.

Outside the CVMSHCP Plan boundary, the plant has been sighted in these locations:

- Along washes at the northern edge of Joshua Tree National Park (the most extensive identified locations)
- Near the cities of Joshua Tree, Yucca Valley and Twentynine Palms.

According to the CVMSHCP, it seems likely that additional populations of this species may occur in the area of approximately 22 miles between Rattlesnake Canyon and Yucca Valley.

The size and ephemeral habits of the linanthus have made it difficult to find, so it is little collected and studied. This tiny desert annual was first described by Parish in 1892 from a collection at "Agua Caliente" (Palm Springs) in 1889; the location of this collection was described as just west of the hot springs in Palm Springs. The next collection was at Joshua Tree in 1924. Linanthus was little known until Patterson (1989) described its preferred habitat more exactly. More records have been reported in the last five to ten years.

The preferred habitat of the linanthus is in loose, soft, sandy soils on low benches along washes, generally where the substrate shows some evidence of water flow. It seems to occur in areas where few or no competing species are found, with little shrub or tree cover in the immediate vicinity, in sand that is loose and well-aerated, soft and unconsolidated (Sanders 1999). *The known locations*

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within the CVMSHCP area are on the margins of washes on shallow sandy benches, not on areas where a hard surface layer occurs, and not on loose blowsand, away from washes (emphasis added). It is associated with creosote bush scrub, but avoids growing in the shadow of other plants. The elevation range of the species is from 500 to 4000 feet.

Little is known of the life history of this species. Its pollinators, germination requirements, seed longevity, and population parameters have not been described. The flower form and color are indicative of insect pollination but no information on pollination ecology is available. The plants are very small, generally reaching a height of only 0.8 to 1.2 inches. They have a slender, little-branched taproot that may extend over 3 inches into the sand, probably allowing the plants to tap subsurface supplies of moisture and thus avoid atmospheric drying. Nevertheless, *linanthus* is very ephemeral.

No comprehensive population estimates have been made, but records for the species give an idea of the size of the known populations. In Dry Morongo Canyon Helmkamp (in Sanders 1999) reported a few hundred plants in 1995 but only six in 1996. Another large population was reported at the mouth of Big Morongo Creek in 1996. Populations in the Whitewater River area have been reported in the range of 200 individuals. In Mission Creek wash east of Worsley Road, Helmkamp reported a single population of more than 2,000 plants in 1992. Populations appear to vary with environmental conditions in a given year. Surveys conducted for this project by Cornett in 2004 and 2005 found a more limited population, as shown in Table 4.3-A. These reported *linanthus* population locations are shown in Figure 4.3-4.

The *linanthus* populations identified in the Cornett surveys and other references are located within or immediately adjacent to the streambeds that traverse the project site. This conflicts to some degree with the CVMSHCP which shows *Linanthus* habitat over a wide range of the site. There is no regularly identified mitigation for impacts to *linanthus*.

In summary, the only sensitive plant found on the site during the surveys was the *Linanthus*, a species that is considered rare by CNPS and is a target species of the CVMSHCP, has no special status with State and federal regulators, but may become listed during the next 75 years. However, CEQA gives special consideration to species considered to be rare.

Please refer to the mitigation section below for a discussion of proposed mitigation measures.

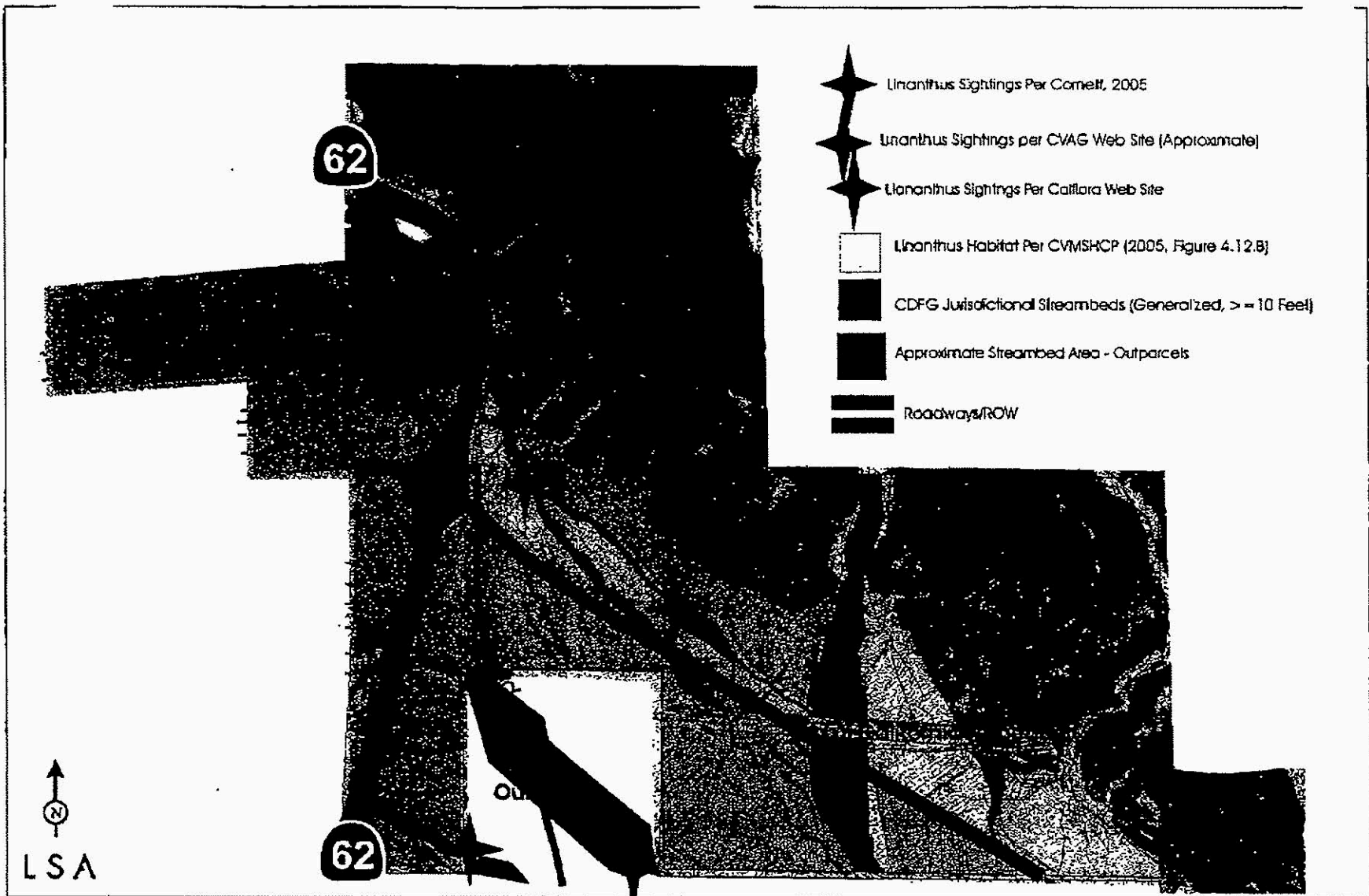


FIGURE 4.3-4

Palmwood Specific Plan EIR

Linanthus Sighting Locations on the Project Site

Sources: James W. Cornett, CVAG (Approximate), Calflora (Approximate)

P:\TFS436\GRAPHICS\Coral Draw\Figure 4.3-4 Linanthus Sightings on the Project Site(9/21/06.LTC)

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PALMWOOD SP AND OUTPARCELS
4.3 ENVIRONMENTAL EVALUATION**4.3.1.4 Sensitive Animals**

Twelve species of sensitive animal species that conceivably could occur on the Palmwood SP project site were identified. Of these, the Coachella Valley fringe-toed lizard and desert tortoise (*Gopherus agassizii*) are officially listed as threatened or endangered by both State and federal agencies.

Table 4.3-B: Sensitive Animals Potentially on the Palmwood Site

Species	Status	Findings
Coachella Valley giant sand treader cricket	CDFG Special Animals List	Not found; no suitable habitat
Coachella Valley Jerusalem cricket	CDFG Special Animals List	Not found; no suitable habitat
Casey's June beetle	USFWS Species of Concern (SSC)	Not found; no suitable habitat
Desert tortoise	Federally and State threatened; target species of CVMSHCP	Not found; two shell fragments in a woodrat nest
Coachella Valley fringe-toed lizard	Federally and State Threatened	Not found; no suitable habitat
Flat-tailed horned lizard	State and Federal SSC	Not found; no suitable habitat
Burrowing owl	State SSC; target species of CVMSHCP	Found on the project site
Loggerhead shrike	State SSC; target species of CVMSHCP	Found on the project site
LeConte's thrasher	State SSC; target species of CVMSHCP	Found on the project site
Coachella Valley ground squirrel	Federal Candidate for listing ; target species of CVMSHCP	Found on the project site
Palm Springs pocket mouse	USFWS SSC; target species of CVMSHCP	Found on the project site
Nelson's Big Horn sheep	State fully protected animal	Found on the project site

Source: Biological Assessment and Impact Analysis of the Proposed Palmwood Residential Project (Ecological Consultants, May 15, 2005).

The Palmwood SP project site is outside the required mitigation fee area for the threatened Coachella Valley fringe-toed lizard. The special status animal species potentially present on the project site include (species actually found during the surveys are marked with an [*]):

- Desert tortoise
- Burrowing owl (*)
- Loggerhead shrike (*)
- Le Conte's thrasher (*)
- Coachella Valley ground squirrel (*)
- Palm Springs pocket mouse (*)
- Nelson's Big Horn sheep (*)

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According to Mr. Cornett, a concerted effort was made to locate signs of the listed desert tortoise during field surveys of the Palmwood SP project as well as the Outparcels site. However, the only evidence of the desert tortoise on the project site consisted of two shell fragments in a woodrat nest. According to Mr. Cornett's surveys, no active burrows were encountered and no tortoises were observed. Populations of this species are known to occur west and east of the project site, so the desert tortoise once may have occupied the project site but has been extirpated; the apparent absence of the tortoise today may reflect concentrated human impact to the site resulting from off-road vehicle use, hunting, target practice, illegal dumping and the construction of pipeline corridors. Additionally, paved and dirt roads, and the proximity of existing residential uses immediately east of the Palmwood SP project site, have impacted the site for several decades. Road kills and illegal collecting may have contributed to the apparent elimination of the tortoise from the project site. For purposes of this EIR, the desert tortoise will be considered extirpated from the site.

Coachella Valley Ground Squirrel: Federal Candidate Species

The Coachella Valley Ground Squirrel (CVGS, sometimes known as the Coachella Valley Round-tailed Ground Squirrel or the Palm Springs Ground Squirrel) is a federal candidate for listing as an endangered or threatened species.¹ The species was found on site during the Cornett Surveys.

According to the CVMSHCP, the CVGS is a subspecies of the round-tailed ground squirrel that occurs in the Coachella Valley associated with sandy substrates. Within the CVMSHCP area, the current and historical distribution for the CVGS is from San Geronio Pass to the Salton Sea (Grinnell and Dixon 1918).

According to the most recent USFWS renewal of the CVGS Candidate Status, this small ground squirrel typically is associated with sand fields and dune formations (Bradley and Deacon 1971), although it does not require active blow sand areas. It seems to prefer areas where hummocks of sand accumulate at the base of large shrubs that provide burrow sites and adequate cover (Grinnell and Dixon 1918, C. Barrows pers. comm.). Various authors have referred to the use of mesquite habitat by round-tailed ground squirrels (Allen 1895, Elliot 1904, Grinnell and Dixon 1918, Vorhies 1945, Drabek 1973, Dunford 1975). Although numerical data were not presented, McDonald (1999) reported relatively high densities of CVGS in a mesquite hummock and active sand field habitat at the east end of the Indio Hills. In surveys for the CVMSHCP, Dodero (1995) reported observing this squirrel at Willow Hole in the central portion of the dune as well as at the southern periphery, at the edges of mesquite clumps. He also reported that these squirrels are most abundant at Willow Hole in the dune area where the transition from desert dune to Sonoran creosote scrub takes place. Barrows (2001) suggests that they are most abundant in more mesic sand dune habitats, often associate with mesquite hummocks. They may also be found in areas where sandy substrates occur in creosote bush scrub and desert saltbush or desert sink scrub that supports herbaceous growth. In addition to wind blown sand habitats, they may occur in areas of more coarse sands associated with washes. According to Mark Fisher of the University of California Deep Canyon Desert Research Center, the squirrels used to occur on this reserve in sandy patches associated with washes and was reported from 1979 to 1984 (see known locations data for this species). He indicated that they have not been observed in the Deep Canyon area since the 1980s, when the sandy substrates were removed by a large flood event and have not been restored.

¹ http://ecos.fws.gov/docs/candforms_pdf/r8/A001_V01.pdf

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According to the CVMSHCP, the CVGS occurs in relatively high density in these areas:

- Snow Creek (large population)
- Near Cabazon
- The Whitewater river channel north and west of Palm Springs, including the Whitewater River Floodplain Preserve
- Along the [lower] Mission Creek wash and likely occurs in suitable habitat in the southern parts of Desert Hot Springs
- The Edom Hill-Willow Hole Preserve/ACEC, described as high quality for this species (Dodero 1995); many individuals observed there during surveys for the CVMSHCP.
- On the dunes of the Coachella Valley Preserve, in good numbers; also common on the sand dunes at the east end of the Indio Hills

Projects that the EIR authors have worked on where the CVGS was identified include:

- StoneRidge Specific Plan (now Skyborne) approximately 2.0 miles south of the project site.
- Indian Avenue/I-10 interchange

This species has been observed crossing two and four-lane roads; in high traffic areas, however, roads within suitable habitat could increase mortality significantly.

The Cornett Surveys found the species on the site in the locations shown in Fig. 4.3-3. The CVMSHCP does not identify this species on the site.

According to the *Federal Register*, dated May 11, 2005, the USFWS may reconsider the actual taxonomy of this species:

A recent taxonomic study that examined the morphology of this subspecies [CVGS] as well as those of adjacent populations of another subspecies (*S. t. tereticaudus*) revealed that the original classification of this subspecies may be in question. Pelage (hair) color was found to be different among the two subspecies. In addition, this study also discovered that putative *S. t. tereticaudus* populations in Death Valley, the western central region of the Mojave Desert, and Borrego Valley were more similar in pelage color to *S. t. chlorus* in the Coachella Valley than other *S. t. tereticaudus* populations from the Colorado River region of eastern Imperial and Riverside Counties. We [USFWS] are awaiting peer review of this report before we take action to reconsider whether this subspecies is valid. In the meantime, we are seeking funding to pursue a genetic study that will determine this species' taxonomy based on DNA.²

Mr. James Cornett, the project biologist, has also disputed whether CVGS is actually a valid subspecies (pers. Communication, James Cornett, 2006). Notwithstanding the above, for purposes of this EIR, impacts to the CVGS will be considered adverse. There is no established standard mitigation for CVGS other than participation in the funding of preserve sites.

² <http://www.fws.gov/endangered/candidates/2005/CNOR%2011May05%20FR.pdf>

The California Department of Transportation recently funded the acquisition by CVAG of approximately 1,300 acres of habitat in Sky Valley designated for preservation of the Coachella Valley fringe-toed lizard, the PSPM, and the CVGS. The CVMSHCP was not approved; therefore the lands are expected to fall under the control of CDFG.

Please refer to the mitigation section below for a discussion of mitigation measures.

Palm Springs Pocket Mouse: California Species of Special Concern

The Palm Springs pocket mouse (PSPM) is a California Species of Special Concern (SSC) and a target species of the CVMSHCP. The PSPM has no federal status.

According to the CVMSHCP, the Palm Springs pocket mouse is one of seven subspecies of *Perognathus longimembris*, the "silky pocket mice" that occur in southern California. The species is the smallest of the heteromyidae family, which also includes kangaroo rats, kangaroo mice, and spiny pocket mice. The PSPM was originally described by Mcarns (1898) with the type locality in Palm Springs. This subspecies occurs in the lower Sonoran life zone from the San Geronio Pass area east to the Little San Bernardino Mountains and south along the eastern edge of the Peninsular Range to Borrego Valley and the east side of San Felipe Narrows (Hall 1981). There is no evidence that this subspecies' range is different than what has been described in the past (Dodd 1996), although its habitat has been greatly reduced by urbanization and agriculture in the Coachella Valley.

The PSPM is known to hybridize with the Los Angeles pocket mouse (*P. l. brevinasus*) along its western boundary. Hybridization also occurs, although the extent is not known, with other subspecies, the Jacumba pocket mouse (*P. l. internattonalis*) to the south, and little pocket mouse (*P. l. longimembris*) to the north. Mr. James Cornett, the project biologist, has expressed skepticism that the PSPM actually qualifies as separate subspecies.

Generally, PSPM habitat is described as having level to gently sloping topography, sparse to moderate vegetative cover, and loosely packed or sandy soils. The species was found broadly distributed in the Plan area on slopes ranging from 0% to approximately 15%. The CVMSHCP area contains the major portion of the range of this species, including the western, northern, and eastern limits of the species' range. The southern boundary of the range extends out of the CVMSHCP area into Imperial, and San Diego counties. The species occurs on four existing preserves: the Coachella Valley Preserve, the Whitewater River Floodplain Preserve, the Caltrans I-10 Interchange Improvements Mitigation Bank, and the Willow Hole-Edom Hill Preserve/ACEC.

According to the survey results of Shana Dodd in 1995 and 1999 (Dodd 1996, 1999) the highest densities of this pocket mouse occur at the western end of the CVMSHCP area, with lower densities occurring further east. Her live trapping data, indicate that this species is most abundant throughout the Snow Creek to Windy Point area. She describes the Palm Springs pocket mouse as *moderately abundant in the Highway 62/Mission Creek area* (emphasis added), where the species is not currently protected. Considerable unprotected habitat also occurs adjacent to the Willow Hole Preserve; Dodd (1996) describes the density of this species at Willow Hole as moderate.

The PSPM was observed on-site during the Cornett Surveys in the locations shown in Table 4.3-F. On May 19, 2006, the Sierra Club and the Center for Biological Diversity requested the Secretary of Interior to list the Palm Springs pocket mouse as an endangered species. Such a request does not automatically grant such status to the PSPM; the actual listing process is shown on the USFWS web site.

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The California Department of Transportation recently funded the acquisition by CVAG of approximately 1,300 acres of habitat in Sky Valley designated for preservation of the Coachella Valley fringe-toed lizard, the PSPM, and the CVGS. The CVMSHCP was not approved; therefore the lands are expected to fall under the control of CDFG.

Burrowing Owl, Loggerhead Shrike and LeConte's Thrasher: California Species of Special Concern

CDFG and USFWS have expressed concern regarding the status of three bird species observed on the Palmwood SP project site: the burrowing owl, loggerhead shrike, and LeConte's thrasher. The birds were observed flying over the site, but no nests were detected during the surveys.

Standard mitigation applied to other projects in the area include pre-construction surveys for nesting birds and avoidance or passive relocation of such birds after nesting. The applicant shall acquire 6.5 acres for every pair (or solitary) owl found on the project site. The applicant shall acquire one acre for every pair (or solitary) Le Conte's thrasher or loggerhead shrike found on the project site.

Nelson's Big Horn Sheep: California Fully Protected Species

Droppings and one observation of Nelson's Bighorn Sheep (NBS) were recorded during the field surveys, in the mountainous northeast corner of the project site. The State classifies NBS as fully protected.

For purposes of this EIR, impacts to NBS will be considered adverse. Standard mitigation measures will include avoidance of NBS habitat.

The following table summarizes the special status species that may be affected by the project:

Table 4.3-C: Special Status Animal Species Possibly Affected by the Project

Species	Status	CVMSHCP Status
Coachella Valley ground squirrel	Federal candidate	Target Species
Palm Springs pocket mouse	CA SSC	Target Species
Burrowing owl	CA SSC	Target Species
Loggerhead shrike	CA SSC	Target Species
LeConte's thrasher	CA SSC	Target Species
Nelson's Big Horn sheep	CA fully protected species	Not Addressed

Source: LSA Associates, Inc, 2006, Cornett 2005, and CVMSHCP, 2006

4.3.1.5 Riparian Resources

The watercourses on the Palmwood SP project site are shown on Figure 4.3-5. There are no identified riparian habitats on the project site. The drainage courses that cross the project site do not qualify as wetlands. The City of Desert Hot Springs General Plan does not identify the Palmwood SP project site as containing any locally designated natural plant communities. There are no protected wetlands, vernal pools, marshes, or coastal bodies of water in the City of Desert Hot Springs or on the project site.

4.3.1.6 Waters of the United States and Waters of the State of California

There are no naturally-occurring springs or permanent aquatic habitats on or near the Palmwood SP and Outparcels project site. United States Geological Survey (USGS) maps show five blue-line streams within the boundary of the project site (Figure 4.3-5). The most biologically significant

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washes, however, are Dry Morongo Wash and Big Morongo Wash though only the former wash is shown as a blue-line watercourse. These two washes support well-developed wash vegetation.

The Draft Jurisdictional Delineation Map for the Palmwood SP project site indicates the following on the project site:

- United States Army Corps of Engineers jurisdictional area: 4.36 acres
- California Department of Fish and Game jurisdictional area: 67.97 acres
- Regional Water Quality Control Board jurisdictional area: 4.85 acres

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4.3.1.7 Coachella Valley Multiple Species Habitat Conservation Plan

Incorporated cities in the Coachella Valley, along with Riverside County, are members of the Coachella Valley Association of Governments (CVAG). Since 1994, CVAG has been coordinating the development of a Multiple Species Habitat Conservation Plan for the entire Coachella Valley and surrounding mountains to address current and potential future State and federal Endangered Species Acts (ESAs) issues in the Plan area. The Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) is anticipated to meet the intent of the Natural Community Conservation Planning (NCCP) Act as well as the California Endangered Species Act (CESA) and the Federal Endangered Species Act (FESA). The status of the plan was discussed above, in Section 4.2, Land Use and Planning.

The proposed final CVMSHCP was approved by the CVAG Board of Directors in February 2006. Final approval of the Plan required the unanimous support of the cities in the Valley, along with the other sponsoring agencies. However, the City of Desert Hot Springs City Council voted 3-2 to reject the Plan, based in part on the Plan's inconsistency with Palmwood and other proposed developments, as well as the fact that the plan created two undevelopable corridors through the center of the City. As such, the plan was not approved by the June 1, 2006 date.

The CVAG Board has announced plans to recirculate a revised version of the plan that excludes areas within the City of Desert Hot Springs. If the City has annexed the Palmwood Area by the time the plan is approved, it is assumed that the Palmwood Area would be excluded from the revised plan. At present, the Plan seeks to protect the 27 species listed in Table 4.3-D, which include six species found on the Palmwood SP project site. The species found on the Palmwood SP project site are noted by an asterisk (*).

Table 4.3-D: Species Proposed to be Protected by the CVMSHCP

Species	Status
Plants	
Coachella Valley milkvetch	Federal endangered
Triple-ribbed milkvetch	Federal endangered
Little San Bernardino Mountains linanthus(*)	Species of concern
Mecca aster	No official status
Orocopia sage	Species of special concern
Insects	
Coachella Valley giant sand treader cricket	Species of concern
Coachella Valley Jerusalem cricket	No official status
Fish	
Desert pupfish	State and federal endangered
Amphibians	
Arroyo toad	Federal endangered/Species of special concern
Reptiles	
Desert tortoise	State and federal threatened
Coachella Valley fringe-toed lizard	State endangered and federal threatened
Flat-tailed horned lizard	Species of special concern

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Species	Status
Burrowing owl (*)	Species of special concern
California black rail	State threatened/State fully protected
Crissal thrasher (*)	Species of special concern
Le Conte's thrasher (*)	Species of special concern
Gray vireo	Species of special concern
Yuma clapper rail	Federal endangered/State threatened/State fully protected
Least Bell's vireo	State and federal endangered
Southwestern willow flycatcher	State and federal endangered
Summer tanager	Species of special concern
Yellow warbler	Species of special concern
Yellow-breasted chat	Species of special concern
Special Concern	
Peninsular bighorn sheep	Federally endangered/State threatened/State fully protected
Palm Springs pocket mouse (*)	Species of special concern
Coachella Valley round-tailed ground squirrel (*)	Species of special concern
Southern yellow bat	Species of special concern

(*) species found on the Palmwood SP project site.
Source: Final Draft CVMSHCP, Section 9 (2005).

4.3.2 Thresholds of Significance

According to Appendix G of the *CEQA Guidelines*, a project may have a significant adverse effect on biological resources if it will:

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFG or the USFWS
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations or by the CDFG or the USFWS
- Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance
- Conflict with the provisions of an adopted HCP, NCCP, or other approved local, regional, or state HCP

Project actions are also evaluated in terms of impacts to species that do not fall into one of the above categories, but that are protected by State or federal regulations. Most often, such cases involve nests of birds such as the burrowing owl that are not rare but are protected under the Federal Migratory Bird Treaty Act and the California Fish and Game Code nevertheless.

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4.3.3 Project Impacts

Areas proposed for grading on the Palmwood SP are shown in Figure 4.3-6. For the Outparcels, it is assumed that all areas will be graded except areas shown as floodway and areas within the Colorado River Aqueduct. The following table summarizes the impacts of project grading and development:

Table 4.3-E: Impacts of Grading and Development on Project Area

Habitat Type	Areas Graded	Species Potentially Affected
Sonoran Creosote Bush Scrub	Approximately 900 acres	PSPM, CVGS.
Mojave Desert Wash Scrub	Approximately 50 acres	PSPM, CVGS, Linanthus
Waters of the US	< 5 acres	Linthus
Waters of the State	< 68 acres	Linthus

Source: LSA Associates, Inc., 2006

4.3.3.1 Vegetation and Plant Communities.

The proposed project will result in the removal of approximately 900 acres of the Sonoran creosote scrub habitat on the site, including the native plant and animal species that currently use this habitat. According to the project biologist, Mr. James Cornett, Sonoran creosote scrub habitat is widespread in the desert regions of California. Therefore, the loss of this habitat on the project site does not constitute a significant adverse impact to the continued existence of this plant community.

The proposed Palmwood SP project has the potential to remove some Mojave Desert Wash Scrub habitat on the project site, including Big Morongo Canyon Wash and Mission Creek. However, the site plan for the SP and the zoning for Outparcels indicates that most of the Mojave Desert Wash habitat will be undisturbed. Although Mojave Desert Wash habitat is widespread in the California deserts, the State and federal governments may require a Section 404 permit (federal) and a Section 1603 Streambed Alteration Agreement (1603) if the Palmwood SP project and/or the Outparcels projects result in modification of watercourses on the project site. Therefore, because the proposed project could result direct affects on watercourses on the site and may require a SAA, the proposed project could result in an adverse impact on one or more of the watercourses and associated habitats on the project site.

Project construction-related clearance of vegetation in high fire hazard areas will create fire breaks through the elimination of potential fire fuel. This mitigates off-site fire impacts.

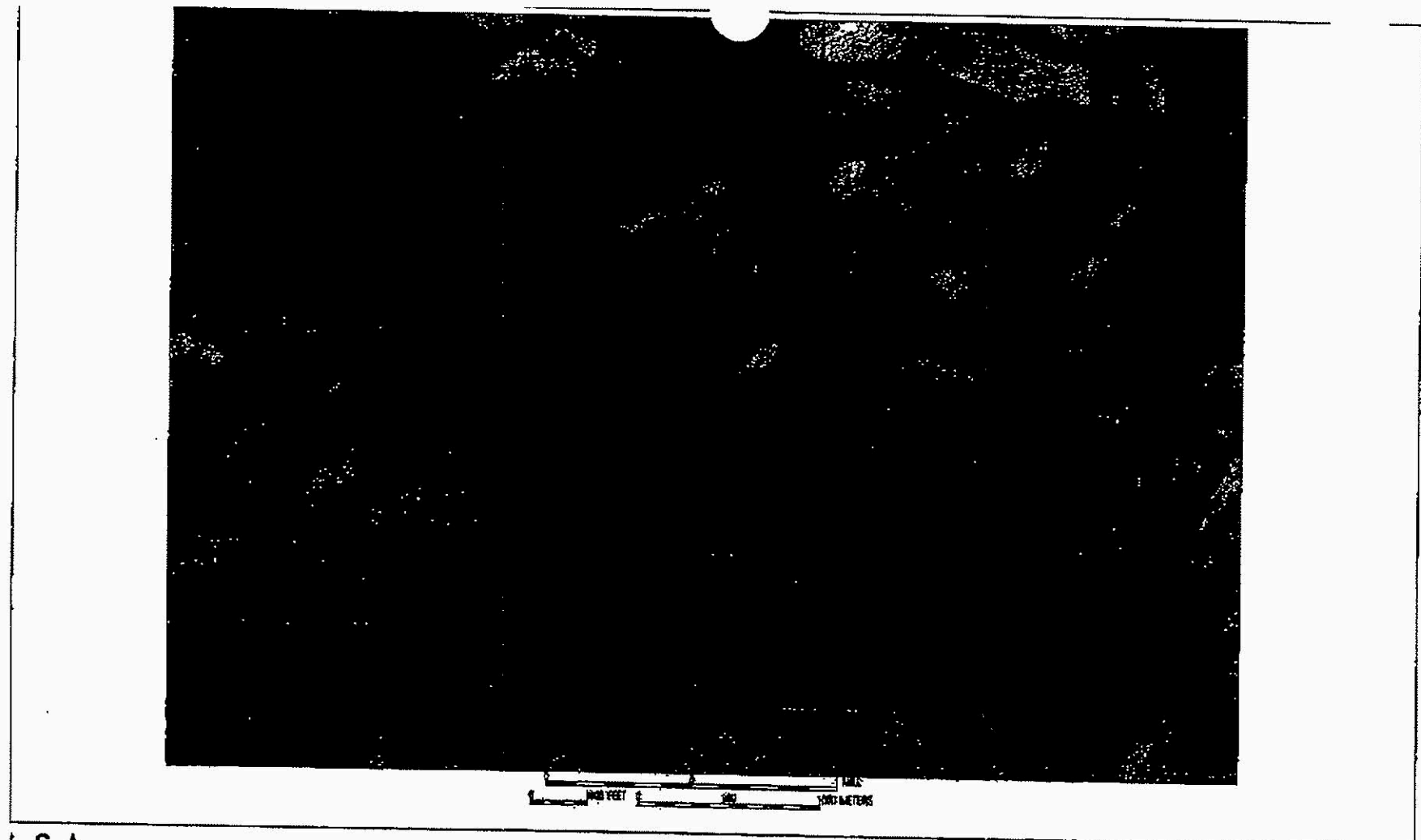


FIGURE 4.3-6

Palmwood Specific Plan EIR
Proposed Graded Area

SOURCE: Tetra-Tech and LSA

P:\PALMWOOD\Graphics\Figure 4.3.5 Proposed Graded Area.pdf

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4.3.3.2 Threatened and Endangered Plant Species

According to the biological surveys, no endangered or threatened plant species were found on the site. One endangered plant species, the triple-ribbed milkvetch, was identified in the CVMSHCP on the site, but not found in site surveys.

The federally endangered triple-ribbed milk vetch has been found in similar habitats in the past and the CVMSHCP lists it as potentially occurring on the site. However, two years of surveys by the project biologist have not identified individuals of this species on the site; therefore it is concluded that the plant does not presently occur. This species is afforded some protection in the proposed site plan for the Palmwood SP project, which indicates that Mission Creek and Big Morongo Wash will be largely undisturbed by the proposed project.

4.3.3.3 Special Interest Plant Species

The Little San Bernardino Mountains linanthus, a State species of special concern and listed by the CNPS as threatened, occurs on and in the immediate vicinity of the project site. In past years, this plant has been found at the mouth of Dry Morongo Wash and in Big Morongo Canyon; the current site surveys found the plant in two locations in Big Morongo Wash.

Note that the plant is not considered threatened or endangered by the federal and State resource agencies with jurisdiction over the site. However, CEQA allows for impacts to "rare" species to be considered adverse, and impacts will be considered in that light.

Scientists are not sure of the exact extent of linanthus habitat on the site. The site surveys and previous documented findings show the plant as existing along the edge of the washes, and the plant's biology indicates that the washes are its preferred habitat. However, the Draft CVMSHCP identifies virtually the entire Palmwood SP site outside of the foothills as linanthus habitat; the plan also indicates that information regarding the plant is scarce. It may be possible that the plant could grow outside the Mission Creek, Dry Morongo Wash and Big Morongo Wash; however, such evidence has not been presented to the EIR preparers. For purposes of this analysis, the linanthus habitat will be considered limited to the CDFG jurisdiction along the three washes. It is acknowledged that the CVMSHCP considers a broader part of the project to be linanthus habitat. Under the EIR assumption of the habitat extent, the project will affect approximately 416 acres of CDFG habitat, and therefore linanthus habitat. The number of acres impacted is overstated as it includes sections of the wash outside the project area; the Palmwood SP project will be avoiding some of the wash areas so the acreage number may be less.

4.3.3.4 Threatened and Endangered Animal Species

No threatened or endangered animal species other than Nelson's Big Horn Sheep were found on the site; the CVMSHCP identifies the site as potential Desert Tortoise habitat, but no animals were found on the site (see discussion above). However, because Tortoises are mobile and could enter the site, a Tortoise clearing survey will ensure that there are no impacts to Desert Tortoises during grading.

The project site does not contain suitable habitat for the CVFTL. The project site is outside the required mitigation fee area for the threatened Coachella Valley fringe-toed lizard. Therefore, no payment of mandatory fees to the County of Riverside is required as mitigation for this species.

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4.3 ENVIRONMENTAL EVALUATION**4.3.3.5 Sensitive Animal Species**

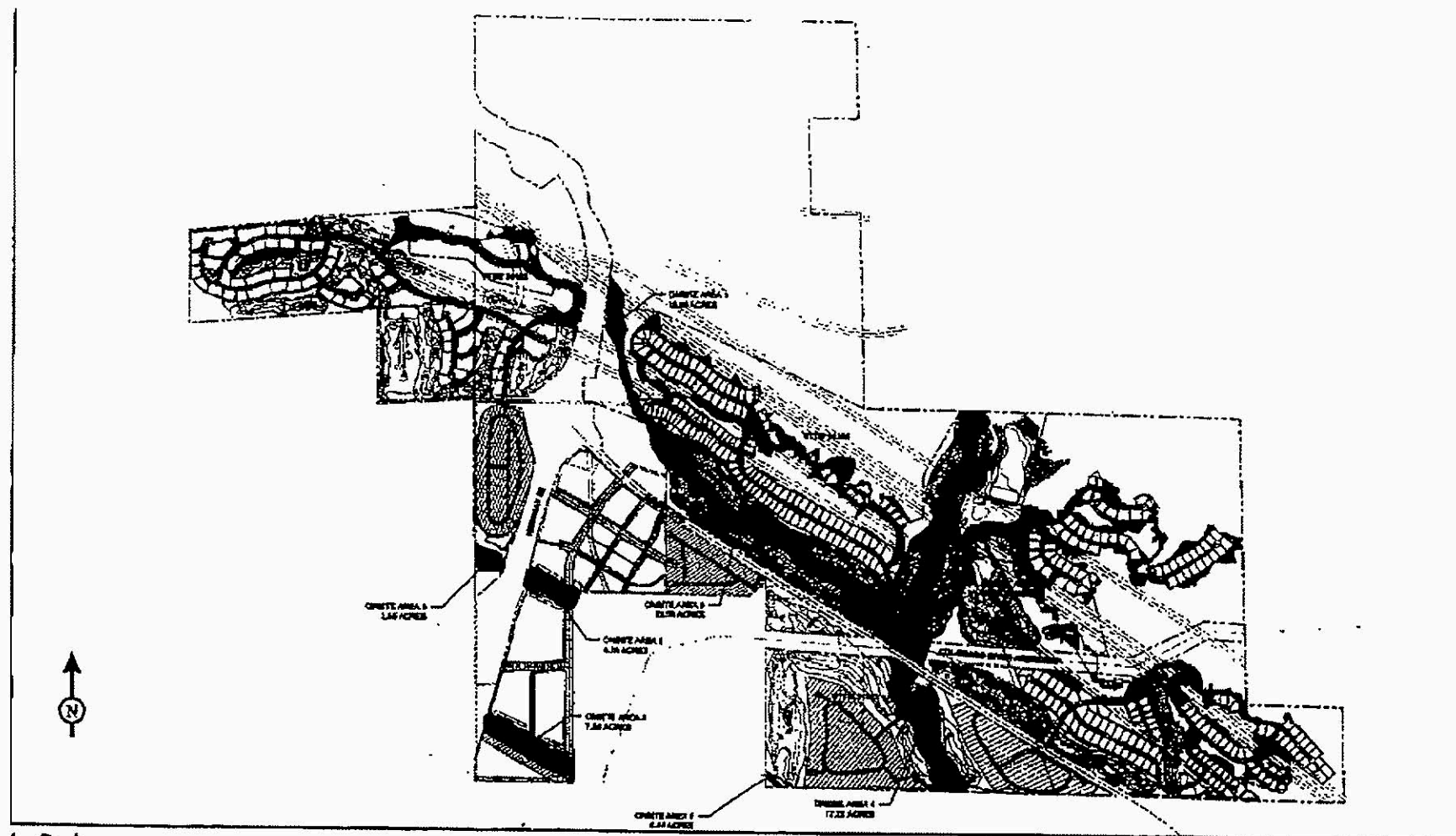
The following special status animal species were identified on the site:

Table 4.3-F: Special-Status Animals Identified on Project Site

Species	Status	CVMSHCP Status	Impacts
Coachella Valley ground squirrel	Federal candidate	Target species	Loss of individuals, loss of habitat.)
Palm Springs pocket mouse	CA SSC	Target species	Loss of individuals, loss of habitat (Golf Course may provide habitat)
Burrowing owl	CA SSC	Target species	Impacts on breeding
Loggerhead shrike	CA SSC	Target species	Impacts on breeding
LeConte's thrasher	CA SSC	Target species	Impacts on breeding
Nelson's Big Horn sheep	CA fully protected species	Not addressed	

4.3.3.6 Waters of the United States and the State

The streambeds (dry washes) on the project site may be altered during the construction of the road crossings and other project features such as recreational facilities, and Section 1603 permits are anticipated to be required from the State. While most of the jurisdictional areas are in the Dry Morongo Wash and the Big Morongo Wash, additional permits may be necessary related to grading activities and minor roadway crossings outside these major washes. As there are no designated wetlands on the project site, the proposed Palmwood SP project will not result in adverse impacts on wetlands. Figure 4.3-7 shows the preserved drainages.



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FIGURE 4.3-7

- DRAINAGE CHANNELS PRESERVED IN PLACE
- DRAINAGE CHANNELS FOLLOWING EXISTING CHANNEL TRACES, STABILIZED WITHIN NEW BANKS

Palmswood SP and Outparcels
Drainage Channels

SOURCE: TETRA-TECH

PAIFS430A1R. GRAPHICS/FIGURE 4.3-6 DRAINAGE CHANNELS

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4.3.3.7 Coachella Valley Multiple Species Habitat Conservation Plan

At the time the EIR was prepared, the CVMSHCP was not adopted and the approval of any revised plan is speculative. Parts of the Palmwood SP project site lie inside areas that were proposed for conservation as described in the draft CVMSHCP. The following table compares the CVMSHCP Conservation Objectives for the Upper Mission Creek/Big Morongo Canyon Conservation Area:

Table 4.3-G: CVMSHCP Conservation Objectives—Upper Mission Creek/Big Morongo Canyon Conservation Area

Conserve at least 987 acres of core habitat for the Little San Bernardino Mountains linanthus in the Desert Hot Springs portion of the area and at least 966 acres in the Riverside County portion, including the hydrologic processes upon which the plant depends.	The project biologist doubts that most of this area is actual linanthus habitat. If the linanthus habitat is limited to the delineated CDFG streambed areas within the project, estimated impacts are limited to approximately 68 acres, including streambed area in the Outparcels and wash area south of the project site.
Conserve at least 426 acres of core habitat for the triple-ribbed milkvetch in the Riverside County portion of the area and at least 7,744 acres in the Riverside County portion. Protect individual tortoises within the area when allowed development does occur.	No triple-ribbed milkvetch was found in the project surveys. However, the milkvetch is associated with the edges of the streambeds, which are federally protected under the Section 404 program.
Conserve at least 2,278 acres of core habitat for desert tortoise in the Desert Hot Springs portion of the area and at least 7,744 acres in the Riverside County portion. Protect individual tortoises within the area when allowed development does occur.	No evidence of live desert tortoise was found. Two shell fragments were found.
Conserve at least 1,100 acres in the Riverside County portion of 1,201 acres of core habitat for the Palm Springs pocket mouse	Except for the streambed areas, the identified habitat for the PSPM will be taken, approximately 600-700 acres of core habitat.
Maintain potential habitat connectivity between core habitat in the Upper Mission Creek/Big Morongo Canyon Conservation Area and the Willow Hole Conservation Area. Minimize fragmentation and human disturbance of, and edge effects to, the habitat connectivity area along Morongo Wash from any development allowed within the conservation area.	The project preserves some level of habitat connectivity along the Mission Creek and Big Morongo Washes. However, human habitation along the wash edges will reduce connectivity; the bridging of Indian Avenue over Big Morongo Wash will improve connectivity, where species must today cross the roadway at grade.
Conserve at least 6,488 acres in the Riverside County portion subject to natural erosion processes.	More than 500 acres of hillside area sand source area is preserved.
Conserve at least 1,435 acres in the Riverside County portion to maintain the current capacity for fluvial sand transport in Mission Creek and Morongo Wash.	According to Tetra-Tech, the project engineer, the current capacity for sand-flow will be maintained.

The proposed Palmwood SP project includes Land Use Adjacency Guidelines to avoid or minimize indirect effects from development adjacent to or within the anticipated conservation areas as currently shown in the draft CVMSHCP.

4.5.3.8 Indirect Impacts

The proposed Palmwood SP project may result in indirect adverse impacts on the surrounding native biota. For example, the development of the project site will result in some interruption of the movement of native plant and animal species to and from adjacent lands. Residential and commercial development patterns as proposed will affect species movements that would otherwise travel through or across wash areas undeterred. The project is also anticipated to result in increased vehicular traffic

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and noise levels, light pollution, and the introduction and dispersal of exotic and invasive plant species into the region. All these have the potential to affect and potentially modify the diversity and density of native plants and animals in the areas immediately surrounding the project site.

The occupation of the project will likely include the addition of domestic animals, including dogs and cats, which can kill or unduly stress wildlife by barking and giving chase. Domestic cats can decimate small animal populations on which larger wild animals prey.

4.3.4 Summary of Impacts

The proposed Palmwood SP project may result in the following potentially adverse effects on biological resources. The associated mitigation measures are included in the same table. Additional impacts and mitigation measures follow the table.

IMPACTS	MITIGATION MEASURES
<p>IMPACT BIO-1</p> <p>The proposed Palmwood SP project may cause adverse effects on habitats during construction. Such impacts could adversely impact candidate species, sensitive species or their habitats.</p>	<p>MM BIO-1a: Biologist to review final plans to ensure consistency with biological assessment assumptions and requirements prior to City review of final project plans.</p> <p>MM BIO-1b: All areas outside of the project footprint will be delineated as Environmentally Sensitive Areas (ESAs). All parties involved in the proposed project will strictly avoid these areas. No construction activities, materials, or equipment will be permitted in the ESAs. These areas must be placed on the design plans and included in the construction contract.</p> <p>ESAs will be designated by erecting protective fencing delineating the project impact boundary and sensitive habits. This barrier fencing will be constructed in such a way as to restrict the movement of reptiles into impacted areas.</p> <p>The project proponent will designate a qualified biologist to be responsible for overseeing compliance with protective measures for the listed species. The biologist will have the authority to halt all associated project activities that may be in violation of this biological assessment. In such an event, the biologist will contact the U.S. Fish & Wildlife Service (USFWS) within 24 hours. The biologist will monitor construction to ensure that vegetation removal, Best Management Practices (BMPs), ESA fencing, and all avoidance and minimization measures are properly constructed and followed.</p> <p>Construction work areas will be delineated and marked clearly in the field prior to habitat removal, and the marked boundaries maintained and clearly visible to personnel on foot and by heavy equipment operators. Employees will strictly limit their activities and vehicles to the proposed project areas, staging areas, and routes of travel. The project proponent and/or the biological monitor will contact the USFWS to verify that the limits of construction have been properly staked and are readily identifiable.</p>

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IMPACTS	MITIGATION MEASURES
	<p>All equipment maintenance, staging, and dispensing of fuel, oil, and/or any other like activities, will occur in designated upland areas. The designated upland areas will be located in such a manner as to prevent any runoff from entering waters of the United States, including wetlands.</p> <p>No off-road vehicle activity by construction personnel or other persons affiliated with the project will occur outside of the project footprint.</p> <p>No pets or firearms will be permitted inside the project</p> <p>Vehicle speeds on unpaved access roads will be restricted to maximum 25 MPH.</p> <p>MM BIO 1c: Open Space shall be deed-restricted as non-buildable permanent open space and/or dedicated to an appropriate public or conservation agency.</p> <p>MM BIO-1d: The project proponent will designate a qualified biologist who will be responsible for overseeing compliance with protective measures for the listed species. The biologist will have the authority to halt all associated project activities that may be in violation of this biological assessment. In such an event, the biologist will contact the U.S. Fish & Wildlife Service (USFWS) within 24 hours. The biologist will monitor construction to ensure that vegetation removal, Best Management Practices (BMPs), ESA fencing, and all avoidance and minimization measures are properly constructed and followed.</p> <p>MM BIO-1e: Construction work areas will be delineated and marked clearly in the field prior to habitat removal, and the marked boundaries maintained and clearly visible to personnel on foot and by heavy equipment operators. Employees will strictly limit their activities and vehicles to the proposed project areas, staging areas, and routes of travel. The project proponent and/or the biological monitor will contact the USFWS to verify that the limits of construction have been properly staked and are readily identifiable.</p> <p>MM BIO-1f: All equipment maintenance, staging, and dispensing of fuel, oil, and/or any other like activities, will occur in designated upland areas. The designated upland areas will be located in such a manner as to prevent any runoff from entering waters of the United States, including wetlands.</p> <p>MM BIO-1g: No off-road vehicle activity by construction personnel or other persons affiliated with the project will occur outside of the project footprint.</p> <p>MM BIO-1h: No pets or firearms will be permitted inside the project during construction.</p> <p>MM BIO-1i: Vehicle speeds on unpaved access roads will be restricted to maximum 25 MPH.</p>
IMPACT BIO-2	MM BIO-2: Prior to issuance of grading permits, the

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IMPACTS	MITIGATION MEASURES
<p>The proposed Palmwood SP project may result in adverse impacts to the habitat of the following listed species:</p> <p>Desert Tortoise</p> <p>(Although no individuals were found on the project site, the mobile species may relocate to the site prior to construction.)</p>	<p>applicant shall submit proof of having conducted a Desert Tortoise clearing survey and construct a tortoise-proof fence around the project site during grading. A qualified tortoise monitor shall be onsite during grading.</p> <p>Mitigation Measures BIO-1b also reduces potential impacts to this species.</p>
<p>IMPACT BIO-3</p> <p>The proposed project may adversely affect the following candidate species:</p> <p>Coachella Valley ground squirrel (CVGS)</p> <p>Domestic dogs and cats are a particular threat to this species.</p>	<p>MM BIO-3a: Prior to approval of a grading permit for each tentative map, the occupied habitat for the CVGS shall be mapped to an accuracy of one acre. The applicant shall pay a mitigation fee of \$600 for each occupied acre to the Center for Natural Lands Management. The basis for the \$600/acre fee is that the Coachella Valley Fringe-Toed Lizard Habitat Conservation Plan Steering Committee (chaired by the Nature Conservancy) established \$600/acre as the mitigation fee for the Coachella Valley Fringe-Toed Lizard in 1985. While no such fee has been established for impacts to the CVGS, the same fee is proposed for the CVGS because both species are vertebrates.</p> <p>MM BIO-3b: Prior to the issuance of any Certificates of Use and Occupancy (including models) the Director of Community Development of the City of Desert Hot Springs will ensure that proposed Conditions, Covenants and Restrictions (CC&Rs) for the Palmwood SP project residents and tenants include the following statement or its functional equivalent:</p> <p>Unrestrained dogs, cats and other domestic pets can kill or unduly stress wildlife by barking, giving chase or competing for food sources. Domestic animals should be kept indoors or on leashes at all times. Dogs may be allowed outdoors only within secured fenced yards or on a leash. Domestic cats shall be kept indoors at all times as they can escape over most fences. The City of Desert Hot Springs and the Board of Directors of the Homeowners Association shall be empowered to enforce this regulation.</p>
<p>IMPACT BIO-4a</p> <p>The proposed project may adversely affect the following sensitive, or special status species:</p> <p>Little San Bernardino linanthus</p>	<p>MM BIO-4a: The applicant shall preserve at least 90% of the existing mainline streambeds of Mission Creek and Big Morongo Wash, or a minimum of 61.2 acres, as delineated in both the Corps delineation and the CDFG delineation in their natural condition.</p>

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1.5 ENVIRONMENTAL EVALUATION

IMPACTS	MITIGATION MEASURES
<p>IMPACT BIO-4b</p> <p>The proposed project may adversely affect the following species:</p> <p>Palm Springs pocket mouse</p> <p>Domestic dogs and cats are a particular threat to this species.</p>	<p>MM BIO-4b: Prior to approval of a grading permit for each tentative map, the occupied habitat for the PSPM shall be mapped to an accuracy of one acre. The applicant shall pay a mitigation fee of \$600 for each occupied acre to the Center for Natural Lands Management. The basis for the \$600/acre fee is that the Coachella Valley Fringe-Toed Lizard Habitat Conservation Plan Steering Committee (chaired by the Nature Conservancy) established \$600/acre as the mitigation fee for the Coachella Valley Fringe-Toed Lizard in 1985. While no such fee has been established for impacts to the PSPM, the same fee is proposed for the CVGS because both species are vertebrates. Note: Habitat occupied by both the CVGS and the PSPM shall not require duplicate fees.</p> <p>Mitigation Measures 1b and 3b also reduce the extent of impacts to this species.</p>
<p>IMPACT BIO-4c</p> <p>The proposed project may adversely affect the following bird species:</p> <p>Le Conte's thrasher Burrowing owl Loggerhead shrike</p>	<p>MM BIO-4c: Immediately prior to the issuance of any grading permit, the applicant shall complete, to the satisfaction of the City of Desert Hot Springs Planning Director, a survey for nesting sites of these three bird species. Any nests found will be avoided or relocated after the nesting period and according to CDFG applicable protocol.</p> <p>Mitigation Measures 1b, 3a, 3b, 4a, 4b and 4c also reduce impacts to these bird species.</p>
<p>BIO-4d (Potential Impact)</p> <p>Nelson's Big Horn sheep</p>	<p>MM BIO-4d: Potential impacts to the Nelson's Big Horn sheep are mitigated by design through the avoidance of any development within the area nearest the single sheep sighting.</p>
<p>IMPACT BIO-5</p> <p>Development of the project site may potentially allow for invasive non-native species to invade preserved areas</p>	<p>MM BIO-5a</p> <p>Prior to approval of Certificates of Use and Occupancy (including models), the project applicant will prepare, and the Director of Community Development of the City of Desert Hot Springs will review and approve, an educational brochure that describes the sensitive nature of indigenous plants, animals and ecosystems on and adjacent to the Palmwood SP project site. This brochure will be provided to all employees, residents, and visitors on the Palmwood SP project site.</p> <p><u>In addition, a list of non-native invasive species shall be prepared and identified as a "do not plant" list. This list will be included with the list of native species and will also be included in the brochure.</u></p> <p>MM BIO-5b</p> <p>Wherever possible, the applicant shall utilize plant species native to the Coachella Valley in landscaped</p>

LAA ASSOCIATES, INC.
DECEMBER 2006

FINAL ENVIRONMENTAL IMPACT REPORT
PALMWOOD SP AND OUTPARCELS
J.S. ENVIRONMENTAL EVALUATION

IMPACTS	MITIGATION MEASURES
	<p>areas. The use of native plant species helps maintain a food and cover base for indigenous animal species, particularly birds, that cannot utilize exotic plants for cover or food.</p> <p>Prior to the approval of a Master Landscape Plan, the Director of Community Development of the City of Desert Hot Springs will review the Plan to ensure that landscaped community and common areas use native plant species. Prior to submitting the Master Landscape Plan, the Project Biologist shall review the plan.</p>
<p>IMPACT BIO-6</p> <p>The night lighting of streets, yards, and recreation areas can be expected to penetrate beyond the project site boundaries and into surrounding natural areas. Unnatural lighting can interfere with the nocturnal activity of animals in these areas.</p>	<p>MM BIO-6a</p> <p>Prior to the approval of any building permits, the Director of Community Development of the City of Desert Hot Springs will review building plans to ensure that outdoor project lighting is minimized consistent with public safety needs and directed at the ground and away from adjacent native, undeveloped areas. By directing lighting toward the ground and away from native areas, nighttime glare and light sources and potential adverse impacts to nocturnal species will be minimized.</p> <p>MM BIO 6b</p> <p>Development within the project shall comply with the City's adopted outdoor lighting standards as specified in Section 159.20.030 of the Desert Hot Springs Municipal Zoning Code. Lighting plans (architectural, landscape, parking lot, roadway or security) indicating proposed lighting levels and methods to minimize impact on adjacent properties shall be reviewed and approved by the City prior to installation. Modification, alteration, or addition to any approved lighting shall not be undertaken without the City's approval.</p> <p>MM BIO-6c</p> <p>Exterior lighting shall be energy-efficient and shielded or recessed so that direct glare and reflections are contained within the boundaries of the parcels, and it shall be directed downward and away from adjoining properties and public right-of-way. No light spillage onto adjoining properties or right of way areas shall be permitted. A photometric study, demonstrating on-site containment of all proposed lighting, shall be provided.</p>
<p>IMPACT BIO-7</p> <p>The project may affect up to 5 acres of delineated waters of the United States and 68 acres of delineated waters of the State of California.</p>	<p>Please refer to mitigation measure 4a which requires the preservation of 90% of the existing delineated streambeds.</p> <p>MM BIO-7a</p> <p>For each acre of streambed affected by the project, the applicant shall expand the preserved streambed at a 1:1</p>

LEA ASSOCIATES, INC.,
DECEMBER 1995

FINAL ENVIRONMENTAL IMPACT REPORT
PALMWOOD SP AND OUTPARCELS
4.3 ENVIRONMENTAL EVALUATION

IMPACTS	MITIGATION MEASURES
	<p>ratio beyond the existing delineation.</p> <p>MM BIO 7b</p> <p>Prior to the issuance of grading permit that encroaches within 50 feet of the centerline of the water courses on the project site, the project applicant will submit evidence to the Director of Community Development of the City of Desert Hot Springs that a Section 404 permit has been obtained from the Corps, if required, and a 1602 Agreement has been obtained from CDFG, if required, and that any mitigation required under the Permit and Agreement will be properly implemented prior to and during project construction, and during project operations, as required by these agencies' project permits.</p> <p>MM BIO-7c</p> <p>All culverts, bridges, and associated water-passage structures will be maintained so that water and sediment may pass between upstream and downstream locations without blocking the passage of wildlife.</p> <p>MM BIO-7d</p> <p>BMPs in the vicinity of streams will be employed in accordance with the conditions in the 401 Water Quality Certification requirements of the Regional Water Quality Control Board and the requirement to prepare a SWPPP.</p> <p>The SWPPP will also address ways on-site stormwater retention basins will be used to the greatest extent practical to enhance opportunities for groundwater recharge, provide additional open space and wildlife habitat value, and reduce the necessity for and costs associated with off-site stormwater conveyance facilities.</p> <p>MM BIO-7e</p> <p>Prior to tentative tract map approval, the project biologist shall review maps to ensure that impacts in wash areas comply with his/her project understanding.</p>

4.3.5 Outparcel Impacts

The precise impacts of the Outparcels cannot be determined at this time because no formal site plan has been submitted. However, impacts are likely to be proportionally similar to the Palmwood project, with the loss of approximately 100 acres of Sonoran Desert Brush habitat, and preservation of most of the Mojave Wash habitat. Impacts to sensitive species will be similar, and likely to be potentially significant.

4.3.6 CEQA Level of Significance after Mitigation

Even with the implementation of the proposed mitigation measures, any loss of sensitive species habitat is considered significant and should be carefully considered by the City of Desert Hot Springs. MM BIO-1 reduces this impact to the extent feasible under the nexus requirement. Impacts remain significant and unavoidable.

LSA ASSOCIATES, INC.
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PALMWOOD SP AND OUTPARCELS
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As required in Mitigation Measure BIO-2, educating employees, residents, and visitors about the local ecology can reduce the potential for human activities to destroy sensitive vegetation or harm wildlife species.

The use of native plant species can provide habitat to local fauna and reduce the escape of exotic plant species into surrounding native areas. Mitigation Measure BIO-3 reduces the likelihood that exotic species will escape from the developed parts of the Palmwood SP project site and invade otherwise native areas, on and off the project site.

Mitigation Measure BIO-4 will limit light and glare impacts of the proposed Palmwood SP project on nocturnal species that depend on darkness for foraging and other activities.

Mitigation Measure BIO-5 will reduce the potential for adverse project impacts by limiting predation of native species by domestic pets. By including the statement in Mitigation Measure BIO-5 in the project CC&Rs, the Board of Directors has the basis to control domestic animals within the development and to minimize potential impacts after the construction of the project is completed and the residential areas are occupied.

Mitigation measure BIO-7 will ensure that potential impacts of the proposed Palmwood SP project on water courses on the project site are mitigated to the satisfaction of the responsible resource agencies. Any needed permit/agreement may include additional mitigation for listed and candidate species which are dependent on the water courses.

Implementation of the mitigation measures described above will reduce the potential direct adverse impacts of the proposed Palmwood SP project on biological resources but such impacts will remain significant. However, the indirect effects of the proposed Palmwood SP project on these resources will remain significant after mitigation because these measures do not fully avoid or eliminate the potential for effects resulting from human intrusion on native habitats, lighting impacts, increased traffic impacts on local species, and impacts from domestic pets. These remaining impacts are intrinsic to the proposed project and cannot be reduced further without relocating the project outside the Coachella Valley or placing infeasible limitations on future residents such as limitations on the number of resident trips to nature areas, limitations on the number of vehicular trips by residents, and precluding the residents from owning domestic pets.

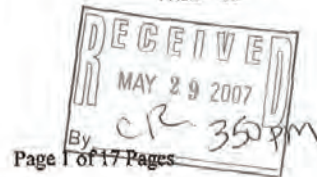
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May 28, 2007



PLEASE INCLUDE THESE COMMENTS in the FINAL RDEIR/SEIS:

We reserve the right to use any and all comments submitted to CVAG and the USFWS in this process. We wish others to be able to use all the comments and documents we have submitted.

Submitted for the Record

Comments on the
Recirculated Draft Environmental Impact Report/
Supplemental Final Environmental Impact Statement
Recirculated Draft Coachella Valley
Multiple Species Habitat Conservation Plan
Natural Community Conservation Plan
Santa Rosa and San Jacinto Mountains Trails Plan

Submitted To:

Mrs. Katie Barrows
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
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Submitted by:

Suzanne Sloane, Mary Justice et al
APN: 651-030-004
3998 Avenida Verano
Thousand Oaks, California 91360
(877) 692-8214

May 28, 2007

Because LAFCO approved annexation of the Palmwood Project, approximately 1,500 acres of conservation land were removed out of the Plan. This throws off all the percentages and the

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economic analysis in the Plan and the EIR. The rehearing of Palmwood's annexation to Desert Hot Springs does not take place until June 28, 2007. There should be an extension of the deadline by which public comments must be filed.

S-1
Cont.

Public Hearings should be held because the Recirculated Plan contains a lot of new information compared to the earlier Plan and a lot of information was removed that was in the earlier Plan. This is a very different Plan in spite of the fact that at CVAG meetings it was announced that the Plan was the same Plan except revisions were made in the appendices. There are changes throughout.

Public forums were inadequate because only

- 6 public attendees showed up in Palm Springs (4-12-06)
- 4 public attendees showed up in Palm Desert (4-14-07)
- 3 public attendees showed up in Coachella (4-17-07)

S-2

The notice to 4,400 landowners did not mention the forums and gave the impression that this was just more of the same old conservation issue. "You may have received..." The comments people submitted to the original Plan will not be in this Recirculated Plan and some comments have become irrelevant because the Plan has changed so much.

Information is sometimes generalized to the point that it is hard to address. For example, one cannot locate the flood control project in Thousand Palms using word search. It is in Table 7-6: Covered Activities-CVWD Facilities in Conservation Areas (page 7-31). Below the table, in the text the proposed project in Thousand Palms is reduced to the sentence "Within one year of Permit issuance, CVWD shall develop a maintenance plan, approved by the Wildlife Agencies, for its facilities in Conservation areas that will minimize impacts to Covered Species and Natural Communities. In other words, the Plan gets it's Permit without revealing the proposed flood control project. This flood control project has been in the works for more than seven years and a flyer was sent to local residents earlier this year saying since 1994. The Army Corps of Engineers (ACOE) says they have \$315,000 more to spend on it's design yet Representative Mary Bono was given a helicopter ride by the ACOE earlier this year and was told they are not going to build it. The EIR is incomplete and inadequate without this information.

S-3

The best way to protect the existing habitat is not to build the Thousand Palms Flood Control Project at all. It seems probable that the project was just a scam to prevent landowners from building on their property or selling it so the environmentalists could buy it cheaply.

The preparation for this proposed project cost at least hundreds of thousands of dollars in documentation, hearings and lost savings accounts of landowners the potential buyers of whose properties were told by several CVWD personnel that their land was going to be under water so

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there could be no building on it. Now \$315,000 in additional funds is being spent on a project that's not going to happen. It appears this Recirculated Plan is an attempt to sweep under the rug a major fraud by minimizing the existence of the Whitewater River Basin AKA the Thousand Palms Flood Control Project. The Army Corps of Engineers was taken to task for just this kind of thing in a San Francisco Chronicle article dated December 7, 2000 page A3.

reused for River Study/Pentagon finds bias, doctored analysis http://www.sfgate.com/cgi-bin/article.cgi?http://www.sfgate.com/cgi-bin/article.cgi?archive/2000/12/07/MN146237.D

Army Corps Rebuked for River Study Pentagon finds bias, doctored analysis

Michael O'Connell, Washington Post

Washington — A Pentagon investigation concluded in a report yesterday that three top Army Corps of Engineers officials manipulated a study in an effort to justify a billion-dollar construction barge on the Mississippi and Illinois rivers. The probe also found that the agency has a systemic bias in favor of huge projects that keep its employees busy and accommodate powerful industries.

The 168-page report on the investigation represents an extraordinary rebuke to the Corps, whose leaders had predicted at congressional hearings that it would fully vindicate their public works agency. Instead, investigators for the Army inspector general substantiated several allegations of misconduct lodged by Corps whistle-blower Donald Sweeney, who was removed as head of the controversial economics study after he determined that the costs of massive lock expansions to taxpayers would far outweigh the benefits.

"I'm happy that the Army didn't shy away from a very complex investigation in a politically charged atmosphere," Sweeney said.

The investigators found that Corps deputy chief Gen. Russell Fuhrman, division commander Gen. Phillip Anderson and district commander Col. James Mudd all helped taint the most extensive and expensive study of navigation improvements in Corps history. Fuhrman and Mudd retired before the investigation was completed; Anderson now commands the agency's South Atlantic division. The Army report also found insufficient evidence to show that Sweeney was demoted because of his no-construction findings.

Thursday, December 7, 2000
San Francisco Chronicle
CHRONICLE SECTION 3

Printer-friendly version
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But the report went well beyond the seven-year, \$57 million study of the Upper Mississippi system, challenging the overall ability of the Corps to conduct honest analyses of projects it hopes to build.

The investigators noted a "widespread perception of bias among the Corps employees interviewed," including almost every Corps economist interviewed. The investigators concluded that the agency's aggressive efforts to expand its budget and missions, as well as its eagerness to please its corporate customers and congressional patrons, have helped "create an atmosphere where objectivity in its analyses was placed in jeopardy."

"The testimony and evidence presented strong indications that institutional bias might extend throughout the Corps," the investigators wrote. They noted that even the agency's retired chief economist told them that Corps studies were often "corrupt," and that several Corps employees cited "immense pressure" to green-light questionable projects.

Defense Secretary William Cohen has forwarded the report to Army Secretary Louis Caldera for possible disciplinary action. Fuhrman, Anderson and Mudd all denied the allegations when confronted by investigators.

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I incorporate by reference the documents submitted at the Public Hearing on the certification of the preceding Plan's EIR:

1. US Army Corps of Engineers Los Angeles District, Whitewater River Basin Feasibility Report and Final Impact Statement/Environmental Impact Report, September 2000, Los Angeles District, Corps of Engineers, Planning Division, Plan Formulation Branch, PO Box 532711, Los Angeles, California 90053-2325
2. US Army Corps of Engineers Los Angeles District, Whitewater River Basin Feasibility Report, Technical Appendices, September 2000, Los Angeles District, Corps of Engineers Planning Division, Plan Formulation Branch P.O. Box 532711, Los Angeles, California 90053-2325
3. U.S. Army Corps of Engineers Los Angeles District, Sand Migration Impact Evaluation for Thousand Palms Flood Control Project Volume I: Data Collection and Review, December, 1996
Prepared by Simons, Li & Associates, Inc. A Subsidiary of Tetra Tech, Inc.
4. U.S. Army Corps of Engineers Los Angeles District, Sand Migration Impact Evaluation Report, Thousand Palms Area, Coachella Valley, Riverside County, California, Volume II: Baseline and Future Without-Project Conditions, August 1997 Prepared by Simons, Li & Associates, Inc.

Please note that items 3 and 4 seem similar to those referenced in a footnote in item 1 above on page 4.5-1. This footnote mentions four studies as follows:

Report 1, July 1996: "Plan of Study: Sand Migration Study for Flood Control Project in Thousand Palms Area, Coachella Valley, California."

Report 2, August 1997: Sand Migration Impacts Evaluation for Thousand Palms Flood Control Project, Volume I: Data Collection and Review.

Report 3, August 1997: Volume II: Baseline and Future Without-Project Conditions.

Report 4, February 1999: Volume III: With Project Condition, Existing and Future Development

All reports were prepared by Simons, Li & Associates, Inc, which was bought out by Tetra Tech. What is Tetra Tech's relationship to Terra Nova? Terra Nova Planning and Research, Inc. prepared the initial DMSHCP and the RDMSHCP. Did Terra Nova buy Tetra Tech? Does Brian Whelan work at Terra Nova?

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We have tried for ten months to get these documents through a lawsuit against the permittees of the Plan. Our requests were ignored or frivolous substitutes were supplied to us until we requested them through Senator Battin. On the last business day before these comments were due we received a letter from the would-be permittees attorneys that they did not have them. Brian Whelan had them when I visited his office. These documents are crucial to understanding processes involved to protect "sand-adapted" species from the relatively objective viewpoint of Dr. Li. Instead of from economically and job-security biased "accepted biologists" (see definitions in the Plan) who wrote the papers that support the Plan. The Plan is incomplete and inadequate without these documents.

S-4
Cont.

Vague information on flooding is scattered throughout Pages 3-54 through 3-59. "Those major drainages in the north western and central portions of the Plan Area are essential to the production and transport of sand to the limited habitat that remains for sand-adapted species such as the Coachella Valley fringe-toed lizard and Coachella Valley milk-vetch." (See page 3-56). The sand deposited on the Thousand Palms Preserve is mostly transported there by wind (see reports below) that also causes PM 10 and PM 2.5 particles to be blown 200-400 feet high in the air to ultimately reach and poison the lungs of residents who live down wind. The Thousand Palms Preserve is hemmed in on the two sides from which sand naturally blows past the Preserve. Mother Nature does not come to a halt at Sun City and the I-10. Instead of requiring a certain size of sand particle as was previously postulated, the three species above are now called "sand-adapted." The fugitive sand (but not the dust) are brought back to the Preserve and experiments in building dunes have been successful. The point is, The so-called "blow-sand" is not needed to preserve the Preserve.

S-5

Page 3-57 lists the areas that benefit from generation of sediment including the lands between the Indio Hills and I-10. These lands are included in the Plan because the notion of "blow-sand" allows environmentalists to control massive amounts of land. The CVF-TLizard has been shown to be a fraud so now the environmentalists try to substitute the Coachella Valley milk vetch and the CV Giant sand-treader cricket in order to claim they need the "blow-sand" north of the I-10. The reports above and Public Hearing and other comments associated with them (also incorporated herein by reference) especially Dr. Li's testimony show that 90% of the "blow-sand" is south of the I-10. There is a note on a map included in the reports above that states if there were a greater than 100 year flood event the dike planned to protect the I-10 would not hold. Ironically, the historic deposits of sand needed on the Thousand Palms Preserve only get disturbed or loosened in greater than 100-year events.

S-6

The Thousand Palms Preserve is planned to become a tourist attraction/park with convenient access via Cook Street. The road is discussed in a previous comment. There is also going to be a Portola bridge over the I-10 (Plans from Public Works, Palm Desert). The Plan allows itself to build directly across the street from my land on Ramon Road (see the figure on the next page and Fig. 4-16f in the RDMSHCP). Yet the proponents of the Plan won't allow me to build, sell my land or trade it for the same quality of land elsewhere. The dunes at the Thousand Palms

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Preserve are inferior to those at the two other Preserves and to the big dune south of the I-10. Their main advantage is they give an excuse to claim as habitat hundreds of thousands of acres to supposedly replenish sand (and PM 10 dust) to what is going to be a park near a major interchange whose off ramp has set idle low these many years. First they need to keep the dunes from moving off the park. I suspect the eco-maniacs presume they can create dunes north of Ramon Road where there was only one CVP-TL reported over thirty (30) years ago. That way they may be better able to keep the dunes in the park for the tourists to see. Perhaps this is what

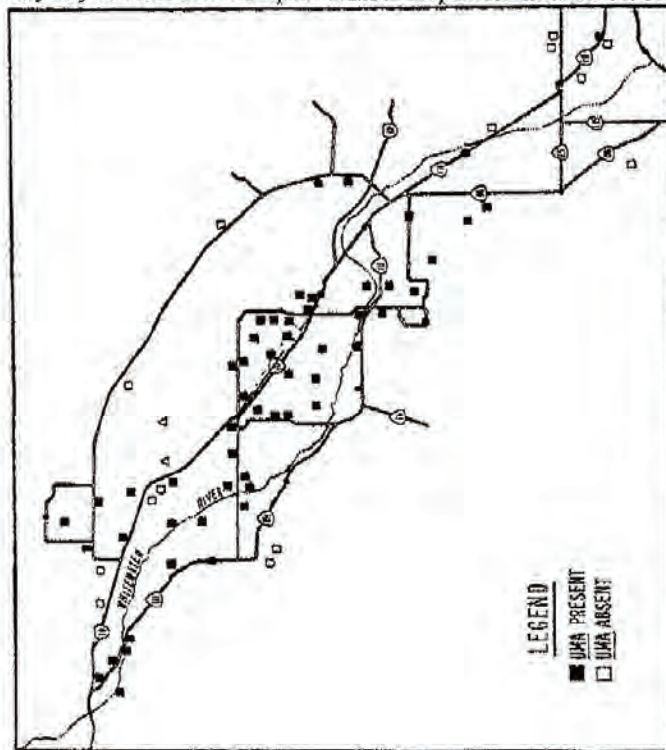


FIGURE 10. Distribution of the inornata based on observations during July, 1975. Open squares represent locations checked but no U. inornata or tracks observed.

S-7
Cont.

England, Sydney A. and Steven G. Nelson. 1976 Status of the Coachella Valley Fringe-Toed lizard (Uma inornata). Inland Fisheries Administrative Report No. 77-1, The Resources Agency, California Department of Fish and Game. Figure 10. Page 17.

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Mrs. Barrows meant at the forum 4-12-07 when she said the Plan protects species where they "could be." In other words, not where they are now.

The adverse health effects of dust in humans can be severe and fatal. Page 3-115 of the Plan states "The smallest and least compacted sediments are deposited in major active drainages that cross the valley floor, including...(next page) numerous drainages emerging from the Indio Hills. ...They "extend in a generally southerly direction across the central axis of the valley floor, providing large cross-sections of deposition area exposed to the strongest regional winds." Page 3-116 continues:"If disturbed, the alluvial (stream-deposited) and aeolian (wind-deposited) sediments comprising much of the valley floor can be easily picked up and transported by prevailing winds. Flooding events are important precursors to the generation of fresh blowing sand [and dust], which must be brought to the surface and exposed to the wind. Sand [and dust] transport generally requires wind speeds in excess of 14 miles per hour, while finer, silty [dust] components of flooding-exposed alluvial soils are easily lifted into the air by moderate breezes, as well as by the strong winds common to the region."

Page 3-118 says: "Most PM 10 in the Coachella Valley is generated locally by direct particle erosion and fragmentation."

Page 3-118 cont. "Unhealthful levels of PM 10 are primarily associated the human disturbance of soils rich in sand and silt deposited many years ago and exposed to wind erosion by human disturbance."

The Plan does not address PM 2.5 in which the Coachella Valley is out of compliance.

The Plan does not measure PM 10 and PM 2.5 coming from massive natural depositions NW of the CVF-TL Preserve and north of my land on Ramon Road. On my land silt [the stuff of PM 10] was measured by Earth Systems Southwest on February 6, 2006 and found to be as high as 67%. One of the ACOE reports referenced above (a Simons, Li study) measured the silt and clay combination south of Ramon Road and found it to be 38.4%.

In another part of the Plan it is assumed that the silt and clay are crusted or solidified so they wont be caught up in the wind and that as mentioned above the silts and clays are mostly disturbed by water. This is not true. Sand, silt and clay [PM 10 & PM 2.5] transport are primarily by the wind.

This can be seen in an article from The New York Times Science Times section, Tuesday April 1, 2003, page D1. An illustration from this article is included here. The sand and larger particles abrade the silt and clay loosening it so the wind carries it high in the air where sand fences cannot impede its flow.

Perhaps the blow-sand is critical for two other preserves but not for the Thousand Palms CVF-

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TL preserve. Cameron Barrows has been working with dune building since before 2000. Sand is regularly hauled in there from Sun City and the railroad tracks. The Thousand Palms Preserve is more like a botanical garden where species are specially nurtured to survive for the benefit of the public.

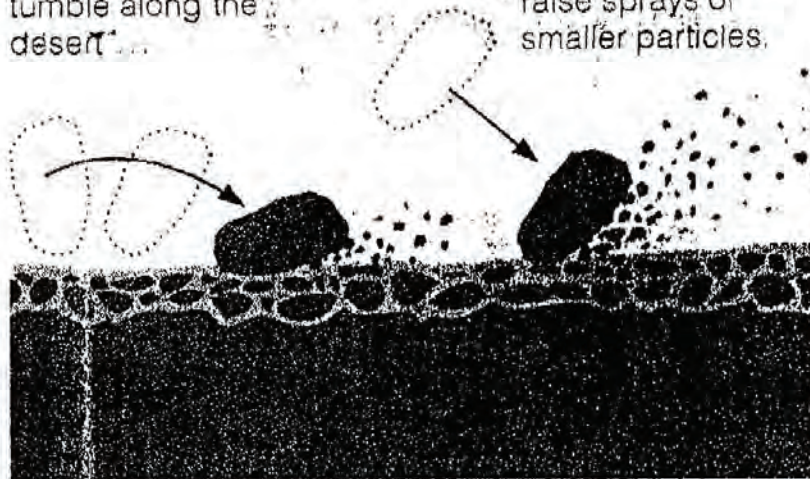
S-8
Cont.

There is a proposal to reduce traffic on Thousand Palms Canyon Road in order to prevent too many humans from trampling the present oasis where the palm cabin is. These people will be directed to the interpretive center, which will probably be across the street from my land. There is a very tiny, barely visible little box in the 4-16b map of the Thousand Palms Preserve in the initial DEIR/MSHCP. This little box is almost directly across from my land. I can't tell for sure if it's in the RDMSHCP map 4-16b or not. The new map is much smaller and more obfuscated with hash marks. What is that outlined area going to be?

SEEDS OF A DUST STORM

Large wind-toppled sand grains can liberate powdery dust as they tumble along the desert...

... and when the big grains bounce on the ground they raise sprays of smaller particles.



Source: Geological Society of America

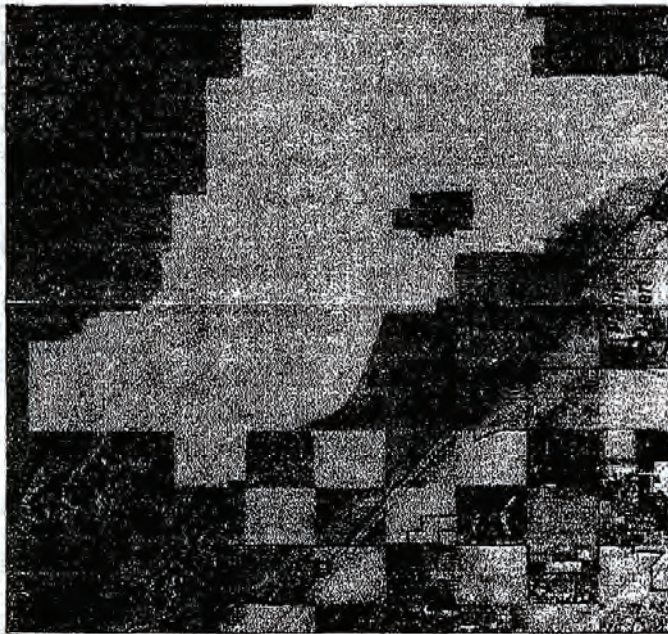
The New York Times

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2023 4-10-23
Draft Coachella Valley Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan



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addition we incorporate herein by reference all statements made by Mary Justice at all Public Hearings and all Public Comment periods held by the CVAG Executive Committee, the Coachella Valley Conservation Commission, the Coachella Valley Energy and Environment Committee, the Coachella Valley Technical Advisory Committee and the City Council meetings of the permittees to this Plan. Comments made by Mary Justice at the Coachella Valley Mountains Conservancy are incorporated herein by reference.

S-11
Cont.

The forums were principally for disclosure of information that the REIR/SEIS fails to present clearly. The actual amount of land presently conserved in the Coachella Valley was shown as a slide in a power point presentation. It appeared only briefly so it was hard to tell for sure but it looked like 67 to 75% of the Coachella Valley is already environmentally controlled. The next slide showed what the map would look like when the additional CVMSHCP/NCCP was added on. It looked to me like 80 to 85% of the Coachella Valley would be environmentally protected/controlled.

S-12

I cannot add up all the current and prospective acreage controlled for environmental purposes using the Plan. Figure 4-4 leaves out Indian land devoted to habitat as well as parts of Joshua Tree which I know are habitat but not by local permittees. The same with other maps, parts are left out so the only overall map showing total environmentally controlled land was the one at the forums to which practically no one went. The portion of the Salton Sea included in this Plan is close to two townships (70,000 acres) on BLM maps yet it is reported as 19,000 acres in the chart in the Executive Summary and it is not counted as environmentally controlled.

S-13

Even though the Salton Sea was created by an accident in, I believe, 1905 the Plan is committed to keeping it alive for birds and recreation etc. At the same time the Plan allows the blow-sand to fill in the Salton Sea. Saving the Salton Sea will cost some 8 BILLION dollars according to the newspapers. We shouldn't be filling it up unless we want more jobs for environmentalists. The numbers of acres reported in 8-10 of the RDEIR are mixed so that one cannot add up the total acres controlled for the environment. For example, on page 8-10, my area, it says the preserve is 17,651 acres yet other places the preserve has 20,000 acres. It says, "A small amount of private land is slated for acquisition pursuant to the HCP." I know of at least 200 acres that is slated for acquisition in my immediate area. Some of it the Plan proponents plan to develop. In the same paragraph it mentions exactly 41 acres of private land in the Willow Hole-Edom Hill Preserve.

S-14

I asked for a copy of the power point presentation at the CVAG Executive meeting on April 30, 2007 when I spoke under the public comment section. No response, no materials. I asked a couple more times. On May 14, 2007 I got an appointment with Senator Battin's office and they finally submitted a request that arrived late May 24, 2007. Senator Battin and his aide were in Sacramento. Today is May 28, 2007 and I still have not received a copy of the power point so I could not study the slides. John Wholmuth told Sen. Battin's aide there was no tape recording of the forum on April 12, 2007. I doubt that this is true because CVAG and the County personnel

S-15

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805-531-9529

MARY JUSTICE

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May 28, 2007

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(Kay Hanson) were adamant about not allowing me to ask that a sentence be repeated slowly before the six of us were "invited" to join them for individual private conversations. CVAG would need a recording of the verbal part of the presentation in order to be able to say they had disclosed the maps etc.

S-15
Cont.

Katie Barrows made the oral presentation at the forum on April 12, 2007 and it sped by so fast I couldn't take notes much less study the slides of the maps. The comment period needs to be extended so the public can see the pertinent information.

Similarly, I asked for a copy of the "like exchanges" slide shown at the February 26, 2007 CVAG Executive meeting. I asked under public comments at the CVCC meeting and I asked Katie personally. Again the information did not arrive until I went through Senator Battin's office. This time I did get the information via email on Saturday May 26, 2007. The slide of the land before and after the Plan still has not arrived.

S-16

I requested information about where CVF-TL fees are collected and where the money from the fees was spent. I asked on the record at CVAG meetings. I asked Joanna at CVAG on the telephone and when Joanna told me to write a letter to Mr. Wholmuth to make my request I did that and I still have not gotten the information. These fees pay for land acquisition for the Plan. If they are not legal the Plan will not have the money to pay its way.

S-17

The notice to landowners from CVAG gave the date by which comments must be received as May 30, 2007 and did not mention the SEIS at all, much less that the final date for comment on the SEIS portion of the Plan was May 29, 2007. A landowner has little chance of success in pursuing his rights unless he files comments on both the RDEIR and SEIS. The notice was intentionally misleading. The choice of date, May 29 was intentionally problematic because one would have had to put one's comment in the mail the Friday, May 25, 2007 or Saturday May 26, 2007 for it to be delivered on the first day after the Memorial Day holiday.

S-18

At the 4-12-07 forum Kay Hanson (sp?) gave the due date as May 29 while Katie Barrows gave the due date rather sheepishly as May 30, 2007. It sounded like Katie was correcting Kay's mistake. Who is Kay Hanson? Besides being the enforcer who made me not ask that a sentence be repeated.

S-19

On May 14, 2007 I also submitted a copy of a letter to Senator Battin's office and to Mary Bono's office from my attorney Christopher Sutton dated May 14, 2007 to the Plan's attorneys requesting documents withheld as far back as August and September, 2000. We need to get this information before we can determine whether or not the Plan is adequate and complete.

S-20

Stebbins, a reference in the Plan, put pictures in his thesis showing the actual sand dunes he was talking about. The small hummocks on my property cannot and do not support CVF-Tlizards in spite of the map shown in the RSMHCP figure 4-16b. The real dunes are kept away from people

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at Edom Hill and Garnet. That's where the "blow-sand" is. Not Ramon Road in Thousand Palms. The 1000 Palms CVFTL Preserve is being "saved" because it is next to I-10 and the Cook Street off-ramp which will direct the public to the preserve as a tourist attraction and keep the public away from where the lizards are really being preserved. Same for CV milk vetch and the flat tailed horned lizard.

S-21
Cont.

CV milk vetch CVMV) doesn't require "blow-sand" Nor does the flat-tailed horned lizard (FTHL) or the CV giant sand-treader cricket (CVGSC). Remember, blow sand is the particular size of sand that the CVFTL can dive into. See Simons, Li reports above for an objective opinion. The FTHL, CVGSC and the CVMV are not so restrictive. Remember also, replenishment from historic deposits of and the particular size sand needed by the CVF-TL is associated with greater than 100-year events like earthquakes and major floods.

S-22

The Economist a British newspaper commented on our country's inflation of the number of species. Environmentalists strive to protect sub species as well as species. Now, with the CVMV they are protecting a variety of a sub species which differs from others of its species by merely a slightly different shaped seedpod. This wanton inflation ultimately hurts the protection of truly endangered species as many recent articles have disclosed.

S-23

We incorporate herein by reference the paper "Species Coverage in Multispecies Habitat Conservation Plans: Where's the Science?" (Bioscience, Vol 56 No 7, July 2006) referred to in the news article in the San Diego Union Tribune, July 15, 2006, "Helping species that may not be there: Popular urban conservation plans flawed, study finds" and UC Davis News Service, July 14, 2006. "Study Finds Many Multispecies Conservation Plans Lack Sound Science." The article says "A recent study of 22 multi-species habitat conservation plans in California and five other states by researchers from San Diego State University and University of California Davis found that, on average, 41% of plants and animals covered in such plans haven't been proven to exist in the designated areas. In addition, imperiled species covered under multi-species plans were generally less likely to be protected than species covered by their own specific plans."

S-24

The judge in the federal case in San Diego has set a precedent that the environmentalists must protect the species where they are. My attorney Christopher Sutton and Ron Zumbun are supplying their own comments on this topic.

S-25

The five-year actual assessment of the condition of endangered and threatened species required by the law does not occur. A developer's organization gave a grant to the Pacific Legal Foundation to get Fish & Wildlife off the dime on this and then "settled" to have a paper "review" by the very eco-manical biologists that got the species listed in the first place. There is no objectivity in these reviews. One has to sue to get the F & W to do what they are legally supposed to do. Environmentalists have free attorneys. Small landowners can't afford to protect

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themselves. Therefore, the Plan goes after the land owned by 4,400 small landowners and "settles" with big landowners.

S-26
Cont.

There is no objectivity among "acceptable biologists" whom one can consult to see if a landowner's land has species on it or not. Among these "acceptable biologists" the possibility that a species "could be on your land" at some future date (if proponents of the Plan want it so) infects his opinion lest he or she be shunned by the save-the-land club.

S-27

I tried to get a list of "acceptable biologists" from Jim Sullivan when he was Director of Environmental Resources and he said he could not give me the list until the Plan was adopted. These very same "acceptable biologists" are probably the ones who write the papers and benefit from the make-work Biology Empire that results from the CVMSHCP.

The connectors in the Discovery article show biologists are using habitat corridors to ultimately try to restore the animal migration patterns that originated with the land bridge across the Bering Sea.

S-28

CVAG capriciously changed the colors on maps so it would be difficult to compare, for example, Figure 2-1 of the RDMSHCP with the same map in the initial DMSHCP.

S-29

The Plan still does not say what percentage of a species is preserved under this Plan as opposed to how much is preserved without this Plan Nor does it say how much of each species is being wiped out by the building allowed by this Plan.

S-30

The NOD for the DEIR of the CVMSHCP was filed by the CVWD on May 12, 2006. It said "This is to certify that the documents which comprise the record of proceedings for the Project, including the administrative record, with comments received, are available to the general public at the CVWD's Headquarters, 85-995 Avenue 52, Coachella, CA 92236. Date May 8, 2006 I went to the above address and spoke to Mr. Lucas Stowe who said I could not see the docs. I could NAME a particular doc I wanted and they would copy it for me and bring it out.

S-31

I have requested (on May 14, 2007) a copy of a study by Bechtel via Mary Bono's office re: sediment deposition at Sun City. I have yet to receive this document as well.

S-32

The BLM is selling land to buy bio sensitive land "between CV preserves and Joshua Tree National Park. Where is this land? Mr. Havert said (at the March 2007 CVMC meeting) that most of the bio sensitive land was in the CV floor and would have to be purchased by CVCC.

S-33

When it was presumed that the original CVMSHCP was adopted there was a notice posted on The Nature Conservancy's web site saying they were taking over the CVFTL Preserve in

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Thousand Palms. There must be something wrong with this because the notice disappeared a couple of days later. Why was this notice removed?

John A. Corella said to me that CVWD held a meeting to discuss how to prevent building in my area on the north side of Ramon Road in Thousand Palms.

My testimony at the CVAG Executive meeting, where the Plan was voted on, was redacted and the attachments and my bibliography to my comments which made clear my comment were separated from my comment and I was never able to locate them. The public needed to see what I was talking about in the words of experts.

The map showing that there was only one CVFTL found on the north side of Ramon Road in Thousand Palms thirty years ago makes the forum disclosure that the Plan takes land where there "could" be species an alarming wake-up call that this Plan is an excuse to grab land under the flimsiest of circumstances. This map was submitted at the Public Hearing where the Plan was voted on and is incorporated herein by reference.

According to newspaper articles, levee dikes recently built by the ACOE in California need serious repairs. The ACOE should not design the 18' high dike system planned in Thousand Palms.

The response in the initial DEIR/MSHCP to my comment about the value of land in my area was that I didn't provide proof of local sales. Included in this comment letter is the escrow closing statement for a 4.57 acre parcel at the corner of Shadow Mountain and Ramon Road east of my property but outside the boundary of the Preserve. The APN number is 651-071-040-4. It sold September 1, 2006 for \$585,000. That is approximately \$128,000 per acre. It had sold previously on August 4, 2004 for \$389,000. That is approximately \$89,000 per acre. This property had a put through. A local builder is constructing homes in the area just outside the conservation area

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Cont.

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building permit which allowed the owner to avoid some of the runaround process landowners are
CHICAGO TITLE COMPANY



SELLER'S SETTLEMENT STATEMENT

PAGE: 01

ESCROW NUMBER: 05710-607051727-001 ORDER NUMBER: 05710-607051727
CLOSING DATE: 09/01/06 CLOSER: YVETTE GARZA-MUELA
BUYER: JOSE MACIAS
SELLER: MARIO G. JACOB and GLENDA JACOB
PROPERTY: 4.57 ACRES, APN# 551-071-040-4, THOUSAND PALMS, CALIFORNIA 92276

	CHARGE SELLER	CREDIT SELLER
Sales Price	\$	\$ 585,000.00
Loan Payoff to THOMAS M. WARD, TRUSTEE	10,000.00	
TOM WARD, TRUSTEE OF THE WARD FAMILY	271,765.00	
JACOB SELLER CARRY BACK	248,235.00	
Prorations And Adjustments		
County Taxes from 07/01/06 to 09/01/06	714.05	
Total amount \$ 2,142.16 for 180 days		
Total commission \$ 23,400.00		
ALL VALLEY REALTY 23,400.00		
Commission paid at Settlement	23,400.00	
Settlement or Closing Fee To CTC-ESCROW	1,198.75	
Document Preparation To CTC-ESCROW	50.00	
Title Insurance To CHICAGO TITLE COMPANY	1,464.00	
DEMAND TO CTC-ESCROW	50.00	
Recording Fees	21.00	
City/County Tax/Stamps	643.50	
TAXES DELINQUENT	3,899.43	
EXPEDITE DELIVERY CHARGE	20.00	
3.33% State Withholding to Franchise Tax Board	19,480.50	
Withholding Fee	45.00	
DISCLOSURE REPORT TO DISCLOSURE SOURCE	79.95	
Funds Due To Seller At Closing	3,933.82	
TOTALS	\$ 585,000.00	\$ 585,000.00

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Cont.

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File 80113834KW

Stewart Title of California, Inc. (Inland Empire) (951) 276-2700

Seller's Final Closing Statement

Seller(s) THOMAS M. WARD, TRUSTEE, 73-073 RAMON ROAD, THOUSAND PALMS, CA 92278

Buyer(s) MARIO G. JACOB, 20256 DESERT MOON ROAD, THOUSAND PALMS, CA 92278
OLENDA JACOB, 29255 DESERT MOON ROAD, THOUSAND PALMS, CA 92278 APN: 651-070-040

Lender

Property SEE EXHIBIT 1 ATTACHED HERETO AND MADE A PART HEREOF 4.57 Acres
31-753 SHADOW MOUNTAIN LANE, THOUSAND PALMS, CA

Closing date 8/4/2004 Proration date 8/4/2004

Bank LUMB - Union Bank

Escrow Unit 80 - Stewart Title of CA, Inc. (La Quinta)

Escrow Officer Kathy Wenger

	Debit	Credit
Contract Sales Price		389,000.00
Provisions:		
County taxes to From 7/1/2004 to 8/4/2004 @ \$2.4955/dwy.	82.50	
Other Adjustments:		
Seller Carryback to	269,000.00	
Payoffs:		
Payoff of first mortgage loan to PACIFIC MORTGAGE EXCHANGE	60,821.41	
Principal Balance Good Thru 8/4/2004	\$60,000.00	
Accrued Interest Good Thru	\$890.41	
Misc.	\$131.00	
Commissions:		
Listing broker Commission	7,780.00	
Selling broker commission	11,870.00	
Title Charges:		
Settlement or closing fee to Stewart Title of California, Inc. (Inland Empire)	723.72	
Title Insurance to Stewart Title of California - Title # 11,171.20		
Owner's coverage to Stewart Title of California - Title #		
Liability amount \$389,000.00	1,171.20	
Wire transfer/processing fee to Stewart Title of California, Inc.	20.00	
Recording Fees/Transfer Charges:		
Recording fees to Stewart Title of California - Title #		
Deed \$40.00; Mortgage \$31.00; Release \$20.00	20.00	
City/county taxstamps to Stewart Title of California - Title #	427.80	
Franchise Tax Board to Franchise Tax Board	12,953.70	
Additional Charges:		
Hazard disclosure to LGS REPORTS	66.98	
Seller's Final Closing Statement		
File 80113834KW	8/7/04 1:13 PM	
Title HOLD for Payoff to FME to THOMAS M. WARD, TRUSTEE	300.00	
Subtotal:	385,030.38	389,000.00
Balance due to Seller:	3,859.62	
Totals:	389,000.00	389,000.00

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Cont.

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and their price will be around \$1.5 million on 1 ¼ acre lots. Lots on Via Las Palmas have sold for \$109,000 per acre. My land is divided into five-acre parcels.

S-34
Cont.

My settlement offer with Plan proponents was to keep 93% of my land preserved for habitat and outright donate 67% of it to the conservationists. Apparently 93% isn't good enough. My 67% was "accepted" with an agreement that mocked my offer. I only wanted to build two houses in an area where, ostensibly, I should be able to build six houses if I lived long enough and was rich enough to go through the building process. A few years ago I was able to build up to 180 dwelling units on my 30 acres. I first joined the Sierra Club in 1959. I am ashamed of the bald-faced manipulations of the law, the constitution and science that are taking place in the name of environmentalism. No wonder landowners want to see the Plan fail even if it means having their land tied up for a long time. At least it will give the big developers who agreed to this unholy alliance some the same problems small landowners have had to endure.

S-35

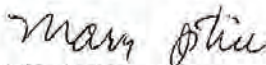
Plan proponents have been illegally enforcing the Plan before it is adopted. They have been doing so for over seven years. Our land was unilaterally removed from the original Habitat Conservation Plan for the CVF-TL. The scam that allowed the Fish and Wildlife Service to say they could shorten the lizard take permit from 30 years to 20 years because Fish and Game did not sign the agreement when Fish and Game was not in a position to sign the agreement is outrageous.

S-36

A. Sidney England and Steven G. Nelson were somehow coerced into reversing their original opinion "... We recommend that *U. inornata* not be considered threatened under the meaning of the federal act or rare under the State act unless its range is reduced to approximately 50% of its original extent (i.e., 420 square km. Or 162 square miles), and that it not be considered endangered under the Federal or State acts unless its range is reduced to approximately 30% of what it was originally (i.e., 250 square km. Or 100 square mi.)." This reversal came in the form of an errata sheet dated July 1976 in which they failed to remove some of the contrary information, perhaps because they were angry at data manipulation. This is in Administrative Report No. 77-1, July 1976, Department of Fish and Game, State of California. Page 27.

S-37

Yours truly,



Mary Justicey
3998 Avenida Verano
Thousand Oaks, CA 91360

Tel: (877) 692-8214
Fax: (805) 531-9529

APN: 651-030-004

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Comment Letter T

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May. 29 2007 07:00PM P1

LAW OFFICE OF
CHRISTOPHER SUTTON
35 EAST UNION STREET, SUITE C
PASADENA, CALIFORNIA 91103-3945
TELEPHONE (626) 683-2500 • FACSIMILE (626) 405-9843



May 29, 2007

BY FAX TO U.S. FISH & WILDLIFE SERVICE AT (760) 340-5949

Coachella Valley Association of Governments

DRAFT E.I.S. / E.I.R. COMMENTS

Attn: Katie Barrows, Dir. of Environmental Resources

Proposed 2007 Coachella Valley

73-710 Fre3d Waring Drive, Suite 200

Multiple Species Habitat Conservation Plan

Palm Desert, California 92260

("CV-MSHCP")

Re: Opposition to CV-MSHCP and Draft E.I.R./E.I.S. by Mary Justice, property owner of:

APN 651-030-004

30.75 acres - Thousand Palms

APN 654-200-038, 040, & 042

3.75 acres - Sky Valley

APN 659-040-010, 011, & 666-050-020

10.25 acres - North Palm Springs

Dear Coachella Valley Association of Governments:

This office has been retained by Mary Justice and her co-owners of the above parcels of real property located in the Coachella Valley in Riverside County, California.

In 2006 CVAG, its members entities, and the U.S. Fish & Wildlife Service proposed a Coachella Valley Multiple Species Habitat Conservation Plan ("CV-MSHCP") and an accompanying Environmental Impact Report / Environmental Impact Statement ("EIR/EIS") purporting to analyze the impacts of the CV-MSHCP. In July 2006 the City of Desert Hot Springs refused to approve or participate in these documents. Now in 2007 a slightly different version of both documents are being proposed (minus Desert Hot Springs' territory).

T-1

1. SUMMARY OF OBJECTIONS

The CV-MSHCP, the EIR/EIS, and the "Implementation Agreement" ("IA") for these documents all violate state and federal law. These documents do not protect species within large portions of the Coachella Valley. They allow for a "take permit" and the wholesale destruction of threatened and endangered species in the "take" areas. The EIR/EIS fails to analyze the severe impact on species in the proposed "take" areas designated by the CV-MSHCP. These "take" areas are within the eight cities of Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, La Quinta, Indian Wells, Indio, and Coachella, and in unincorporated Riverside County areas - - largely south of the 10 Freeway.

T-2

The funding mechanism of the CV-MSHCP would not generate adequate funds. It would impose development restrictions and onerous "fees" on lands where no species exists. The proposed "fees" would violate state law and constitutional standards because the money collected will not be expended in a manner which bears any rational nexus to the land where the fees will be imposed. Fees will be collected improperly to remedy pre-existing public works deficiencies, to buy land, and to fund programs which have no relationship to the projects where the fees are collected. The estimates of land acquisition costs are fraudulently low and the projected land acquisitions will not be possible. Thus, the CV-MSHCP, the EIR/EIS, and the projected fees are all a cruel hoax.

T-3

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 625 405 9843

May. 29 2007 07:01PM P2

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

May 29, 2007
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The EIR/EIS fails to analyze the impacts of an under-funded process that restricts development for 75 years, while allowing the genocide of hundreds of thousands of threatened and endangered species located within a "take" area based on political needs and not science or species location.

T-4

The EIR/EIS fails to analyze the impact on affordable housing development of the restrictions included in the CV-MSHCP. Substantively, the CV-MSHCP violates state and federal fair housing and civil rights laws. The CV-MSHCP would prevent the County and cities from providing their fair share of regional housing needs as required by state and federal law. The adverse social impacts of the CV-MSHCP will fall mostly on lower income people who are largely of racial and ethnic minority groups. None of these adverse human impacts are analyzed in the EIR/EIS.

T-5

The EIR/EIS fails to analyze any alternative plan which imposes habitat restrictions in all areas and in all cities south of the Interstate 10 Freeway, and places the "take" area north of the Freeway.

T-6

2. MANY OF THE ENDANGERED AND THREATENED SPECIES ARE LOCATED SOUTH OF THE INTERSTATE 10 FREEWAY WITHIN THE CITY LIMITS OF PALM SPRINGS, CATHEDRAL CITY, RANCHO MIRAGE, LA QUINTA, INDIAN WELLS, INDIO, AND COACHELLA, AND ALSO WITHIN COUNTY AREAS SOUTH OF THE 10 FREEWAY

The focus and analysis of the CV-MSHCP and the EIR/EIS are fundamentally wrong. These documents are not based on science, but are the result of a cynical political compromise of convenience. The CV-MSHCP allows development to proceed unabated without habitat protections south of the Interstate 10 Freeway and at other sites --- allowing 75 years of genocide against millions of otherwise protected species. In exchange for this license to kill, the developers will pay large fees to fund environmental groups and their pet programs occurring largely north of the Interstate 10 Freeway. Most restrictions on development will occur north of the 10 Freeway where few of the species exist. Via the CV-MSHCP environmentalists and government officials are selling out protected species for millions of dollars in fees to fund their personal salaries and pet projects.

T-7

The following articles and references are attached to Chapter 11 of the CV-MSHCP, and these particular references establish that the threatened and endangered species are heavily concentrated within the areas targeted for the "take" (i.e. their destruction) south of the Interstate 10 Freeway and within the cities of Palm Springs, Cathedral City, Rancho Mirage, La Quinta, Indian Wells, Indio, and Coachella, and in unincorporated Riverside County Areas, and in need of protection:

1. Allen M, W. Hodges, T. Scott, S. Snyder, T. Tennant, and W. Wehtje. 2002. *Report to CVAG on Supplemental Activities: July 10, 2002 (Task 1: Documentation of Preserve Design Selection Criteria; Task 2: Evaluation of the Sites Model for Preserve Design; Task 3: Natural Community Map Evaluation, Natural Community and Mapping Unit Accuracy)*. Unpublished report to Coachella Valley Association of Governments (CVAG) prepared by listed associates of the Center for Conservation Biology, University of California Riverside.

(References continue on next page) ▼

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May. 29 2007 07:02PM P3

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

May 29, 2007
page 3 of 32

References locating endangered and threatened species south of Interstate 10 (continued):

19. Allca MF. 2003. *Report to the Coachella Valley Association of Governments*. Unpublished report on a monitoring approach for the Coachella Valley Multiple Species Habitat Conservation Plan. March 2003. 23 pp.
40. Andrews FG, A.R. Hardy, and D. Giuliani. 1979. *The Coleopterous Fauna of Selected California Sand Dunes*. Sacramento, California: Bureau of Land Management, report # CA-960-1285-1225-DEOO.
41. Armstrong WP. 1998 Jan. "The Life & Love of Sand Dunes: Part 1, Phenomena of the Wind!" [Web Page]. Located at: http://www.desertusa.com/magjan98/dunes/jan_dune1.html. Accessed 2002 Aug 10.
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56. Ballmer G. 1993. Letter to David Weissman, California Academy of Sciences, regarding surveys for the Coachella Valley Jerusalem Cricket, from G. Ballmer, Department of Entomology, University of California Riverside, Riverside, California, dated January 22, 1993. 1 p.
57. Ballmer G. 1993. *Stenopelmatus cahullaensis* Trap Survey, Including Pit-fall Trap Data. Unpublished report. November 5, 1993. 4 pp.
58. Ballmer G. (Department of Entomology, University of California Riverside, Riverside, California). Personal Communications.
59. Barbour M, B. Pavlik, F. Drysdale, and S. Lindstrom. 1993. *California's Changing Landscapes: Diversity and Conservation of California Vegetation*. Sacramento, California: California Native Plant Society.
65. Barneby RC. 1944. "Pugillus Astragalorum III." *Leaflets of Western Botany* 4(4):49-64.
66. Barneby RC. 1945. "Pugillus Astragalorum IV: The Section Diplocystium." *Leaflets of Western Botany* IV(5):116.
67. Barneby RC. 1956. "Pugillus Astragalorum XVII: Four New Species and One Variety." *Leaflets of Western Botany* VIII(1):22.
68. Barneby RC. 1958. "Notes Preliminary to an Account of *Astragalus* in California." *Aliso* 4(1):131-7.
69. Barneby RC. 1964. "Atlas of North American *Astragalus*, Part II." *Memoirs of the New York Botanical Garden* Volume 13. New York: New York Botanical Garden. p. 911-53.
70. Barneby RC. 1977. "Dragma Hippomaniacum III: Novitate. Californicae." *Brittonia* 29:376-81.

T-7
Cont.

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(References continue on next page)

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May, 29 2007 07:02PM P4

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

May 29, 2007
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References locating endangered and threatened species south of Interstate 10 (continued):

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May. 29 2007 07:03PM P5

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On behalf of property owner Mary Justice

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On behalf of property owner Mary Justice

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May. 29 2007 07:08PM P3

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On behalf of property owner Mary Justice

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On behalf of property owner Mary Justice

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May, 29 2007 07:12PM P3

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May, 29 2007 07:12PM P4

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

May 29, 2007
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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 485 9843

May, 29 2007 07:13PM P5

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 625 405 9843

May, 29 2007 07:14PM PG.

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On behalf of property owner Mary Justice

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

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Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May, 29 2007 07:15PM PB

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 485 9843

May, 29 2007 07:15PM P9

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9643

May. 29 2007 07:16PM P18

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May, 29 2007 07:16PM P11

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
On behalf of property owner Mary Justice

May 29, 2007
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In addition, the U.S. Fish & Wildlife Service has located the same endangered and threatened species purportedly addressed in the CV-MSHCP and the EIR/EIS south of the Interstate 10 Freeway within the Cities of Palm Springs, Cathedral City, Rancho Mirage, La Quinta, Indian Wells, Indio, and Coachella, and also within County areas south of the 10 Freeway. In Federal Register, Volume 43, Number 189, of Thursday, September 28, 1978, the U.S. Fish and Wildlife service published a map and listing of over one hundred township sections which encompassed the cities of Palm Springs, Cathedral City, Rancho Mirage, La Quinta, Indian Wells, Indio, and Coachella, and also within County areas south of the 10 Freeway.

T-8

In July 1975, Sydney A. England and Steven G. Nelson conducted field tests for the Coachella Valley Fringe-Toed Lizard for the California Department of Fish and Game in Status of the Coachella Valley Fringe-Toed Lizard (Uma inornata), Inland Fisheries Administrative Report No. 77-1, Resources Agency, California Department of Fish and Game. At page 17 they published a map specifically locating each of their sightings of this lizard. Most were located south of the Interstate 10 Freeway. Of those located north of the 10 Freeway, most were located south of Ramon Road. These sites are within the "take permit" (kill zone) proposed by the CV-MSHCP.

T-9

The England-Nelson field observations and the Fish & Wildlife Service's own determination show that the CV-MSHCP will utterly fail to protect this Coachella Valley Fringe-Toes Lizard where it is most prevalent: south of the Interstate 10 Freeway and between the Freeway and Ramon Road.

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May. 29 2007 07:17PM P12

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3. THE EIR/EIS FAILS TO ANALYZE THE IMPACTS ON LISTED SPECIES WITHIN THE PERMIT "TAKE" AREAS SOUTH OF THE 10 FREEWAY

The EIR/EIS ignores the harmful impacts on listed species that would occur under the CV-MSHCP south of the Interstate 10 Freeway and within the Cities of Palm Springs, Cathedral City, Rancho Mirage, La Quinta, Indian Wells, Indio, and Coachella, and also within County areas south of the 10 Freeway. This failure to perform any analysis of the damage to the listed species within the proposed "take" area (kill zone) is a fundamental failure to comply with CEQA and NEPA. This EIR/EIS must be rejected unless and until such an analysis is performed.

T-10

4. C.V.A.G. AND COUNTY EMPLOYEES EDITED COMMENTS AND DELETED ATTACHMENTS DURING THE 2006 EIR/EIS PROCESS

Last year, Mary Justice and others submitted lengthy comments and objections to the CV-MSHCP and the EIR/EIS. Staff and consultants of CVAG and the County arbitrarily edited the comments and deleted attachments to the comments before preparing responses under CEQA and NEPA. This practice is unethical, dishonest, and violates CEQA and NEPA by artificially shortening and changing the content of the comments and objections.

T-11

5. THE 2006 "FAIRY SHRIMP" CASE FROM THE U.S. DISTRICT COURT IN SAN DIEGO MEANS THAT THE CV-MSHCP IS INVALID IF IT FAILS TO PROTECT LISTED SPECIES SOUTH OF THE INTERSTATE TO FREEWAY

In October 2006 the United States District Court in San Diego invalidated a Multiple Species Habitat Conservation Plan that purported to protect the "fairy shrimp" habitats in San Diego County. The Court held that the plan failed to protect this species in wide tracts of land that were included in the permitted "take" areas (kill zones). Likewise, the CV-MSHCP fails to protect many listed species in the areas south of the Interstate 10 Freeway within the Cities of Palm Springs, Cathedral City, Rancho Mirage, La Quinta, Indian Wells, Indio, and Coachella, and also within County areas south of the 10 Freeway. See, Southwest Center for Biological Diversity v. Bartel, USDC Case 98-CV-2234-B (Southern District of California). This case is binding on the Fish & Wildlife Service.

T-12

6. THE CV-MSHCP INCLUDES AN ILLEGAL AND INADEQUATE FUNDING MECHANISM THAT CANNOT SUPPORT THE PROGRAMS AND LAND ACQUISITIONS PROPOSED

The CV-MSHCP includes a blanket funding mechanism that will assess new development over \$5000 per acre without regard to the location of any specific species. No variable in the fees are allowed for projects that disturb more species, less species, or no species at all. This proposed increased "Mitigation Fee" is ostensibly pursuant to the California Mitigation Fee Act, Government Code sections 66000 to 66025. This law requires a "reasonable relationship" (a.k.a. "nexus") between the proposed fee and the expected benefits. No such rational or logical relationship exists. The parcels intended to pay the fee are miles away from the land to be acquired with the fee. Most of the parcels intended to pay the fee are shown in the recent habitat analysis to have none of the species present are nearby. The Coachella Valley Multiple Species Habitat Conservation Plan and

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

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the accompanying Environmental Impact Report specify the exact extent of the habitat of each species. **Yet no effort was made to adjust the fee based on specific circumstances.**

In **Ehrlich v. City of Culver City** (1996) 12 Cal.4th 854, at 860, the California Supreme Court reviewed the California Mitigation Fee Act and held (emphasis supplied):

We thus interpret the act's "reasonable relationship" standard, as applied to the development fee at issue in this case, as embodying the standard of review formulated by the high court in its *Nollan* and *Dolan* opinions — proof by the local permitting authority of **both an "essential nexus" or relationship between the permit condition and the public impact of the proposed development, and of a "rough proportionality" between the magnitude of the fiscal exaction and the effects of the proposed development.**

The parcels designated to pay the increased "Mitigation Fee" bear no physical or rational relationship to any habitat, or the land to be acquired. The land to be acquired bears no physical or rational relationship to the actual health or population stability of species present at the site where the fee will be assessed. There is no "rough proportionality" between the fee being imposed and relative impacts of any of the thousands of parcels to be subjected to the increased fee. The entire statutory and constitutional grounds for this increased fee do not exist. There is no evidence in the record that these grounds are even a possibility. Without a valid funding mechanism the goals within the CV-MSHCP cannot be achieved. The EIR/EIS fails to analyze the impacts of an alternative wherein the mitigation fees are reduced or limited by geography or species where they can be spent.

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7. VIOLATION OF CASE LAW ON
FINANCING EXISTING PUBLIC FACILITY DEFICIENCIES

In **Shapell Industries v. Governing Board** (1991) 1 Cal.App.4th 218, the Court partially invalidated the imposition of school facilities "development fees" because the amount lacked a "reasonable relationship" to the actual proportionate need for school facilities created by the particular development project. This reasoning is based on the "Nollan-Dolan" test enunciated in **Nollan v. California Coastal Commission** (1987) 483 U.S. 825 and **Dolan v. City of Tigard** (1994) 512 U.S. 374

The reasoning in **Shapell Industries** has been applied and follows in numerous cases. See, **Warmington v. Tustin School Dist.** (2002) 101 Cal.App.4th 840 ; **N.T. Hill v. City of Fresno**, (1999) 72 Cal.App.4th 977; **Western/California v. Dry Creek Joint Elementary Sch. Dist.** (1996) 50 Cal.App.4th 1461; **Bright Development v. City of Tracy** (1993) 20 Cal.App.4th 783; and others. In addition, the holding in **Shapell** has been codified by the legislature at Government Code section 66001, including the 2006 amendment by AB2751, re-stating **existing** case law. The "Nexus Study" admits that these owners are being asked to pay for pre-existing habitat needs without regard to the actual impact of their specific projects or the species that actually exist on or near their own land.

This lack of a rational constitutionally-mandated nexus renders the funding mechanism invalid. The EIS/EIR fails to analyze the alternative circumstances where the fee is reduced or limited by geography or species where it can be expended.

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8. THE ARIZONA CATTLE GROWERS CASE
RENDERS THE "SAND TRANSPORT" ANALYSIS ILLEGAL

CVAG and the Fish & Wildlife Service should reject or at least postpone this proposed habitat plan. A major rationale for this proposal has been invalidated by the Federal 9th Circuit Court of Appeals ruling in **Arizona Cattle Growers Association v. U.S. Fish and Wildlife**, (9th Circuit, December 17, 2001, docket 99-16102) 273 Fed.3d 1229, in which it held (emphasis supplied):

"We hold, based on the legislative history, case law, prior agency representations, and the plain language of the Endangered Species Act, that an Incidental Take Statement must be predicated on a finding for an incidental take. Further, the **Fish and Wildlife Service acted in an arbitrary and capricious manner** by issuing Incidental Take Statements imposing terms and conditions on land use permits, **where there was no evidence that the endangered species existed on the land or no evidence that a take would occur if the permit were issued**. We also find that it was arbitrary and capricious for the Fish and Wildlife Service to issue terms and conditions so vague as to preclude compliance therewith."

T-15

This means that the Federal Government can no longer threatened Riverside County with a freeze on all building permit activity. The Endangered Species Act only covers land where an endangered **species actually lives**. Building permits cannot be stopped or conditioned on payment of a "habitat fee" unless there is an actual threat to the an endangered species. In 1999 through 2001 Riverside County agreed to cooperate with U.S. Fish and Wildlife only after the federal government threatened to halt all building permits without regard to the location of any endangered species.

The **Arizona Cattle Growers** case establishes that these federal threats were illegal. The County was wrongfully coerced. When the County signed the two Memorandum of Understanding documents in 2000 and 2001 it believed it had no choice. **Now it has a choice.**

9. 1996 AND 1997 ARMY CORPS OF ENGINEERS STUDIES
PROVE THAT THE CV-MSHCP IS IRRATIONALLY BASED
ON A THOERY OF LINEAR SAND TRANSPORT IN THOUSAND PALMS

There is no basis to claim that this CV-MSHCP habitat plan will assist in the life or preservation of any "endangered" or "threatened" species north of Ramon Road in Thousand Palms. As found by the Corp of Engineers studies commissioned by Simons, Li & Associates in 1996, 1997, and 1999 there is no existing threat to any such species and there is no risk of any flood damage in the Thousand Palms area. See Corp of Engineers studies in 12/1996 and 1997, entitled: **Sand Migration Impact Evaluation for Thousand Palms Flood Control Project - VOLUME I - DATA COLLECTION AND REVIEW** (December 1996), and **Sand Migration Impact Evaluation Report, Thousand Palms Area, Coachella Valley, Riverside County, California - VOLUME II: BASELINE AND FUTURE WITHOUT PROJECT CONDITIONS** (August 1997).

T-16

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May, 29 2007 07:20PM P15

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On behalf of property owner Mary Justice

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We referred to the the February, 1999, Corps of Engineer study in Mary Justice's comments to the 2006 CVC-MSHCP and 2006 EIR/EIS. Yet CVAG and the First & Wildlife service have failed to consult those studies as part of their 2007 CV-MSHCP and 20076 EIR/EIS.

That 1999 study is entitled **Sand Migration Impact Evaluation Report, Thousand Palms Area, Coachella Valley, Riverside County, California - VOLUME III: WITH PROJECT CONDITION, EXISTING AND FUTURE DEVELOPMENT** (February 1999) by Simons, Li & Associates Inc. / Terta Tech Inc. Based on these studies the Corps of Engineers concluded that new flood control projects in Thousand Palms were not needed, and that the future movement and evolution of the sand dunes in the Thousand Palms areas is **unrelated to levels of future development!** The patterns of sand transport are not linear from east to west. In the document entitled **Whitewater Basin Feasibility Report and Final Environmental Impact Statement** (September 2000, Simons, Li & Associates) the Corps of Engineers concludes as follows at page 4.5-8 (Emphasis supplied):

T-16
Cont.

Analyzing the historic rate of sand dune reduction from aerial photographs (1939- 1992), and assuming this rate were to continue, SLA estimated that the existing sand dunes would migrate out of the Preserve within 60 years, and the sandy plains on the alluvial fan will diminish within 130 years. **This estimate is irrespective of future development. However, there is no direct evidence that this trend will necessarily continue. It is probable that if similar data were available over a longer time span, continuing cycles of dune depletion and expansion would be evidence.**

The lack or presence of development in Thousand Palms will have no impact on the sand dunes in the Preserve. The proposed CV-MSHCP habitat plan is irrational. Over 11,600 tons of habitat quality sand reaches the Preserve each year from Thousand Palms Canyon (id. at page 4.5-11). Only 200 tons of such sand are derived from or pass through the Thousand Palms area each year. At page 4.5-12 of the 9/2000 EIS the Corps of Engineers concludes:

The estimated 200 tons/year that deposits in the wind corridor represents approximately 2% of blow sand that normally erodes from the Indio Hills, **and 0.1% of the sand carried onto the Preserve each year.**

T-17

The habitat plan's restrictions in Thousand Palms will not benefit the Preserve in any significant way since 99.9% of the blow sand derives from other locations, and 11,600 tons blows onto the Preserve from Thousand Palms Canyon to the east, and this source of blow sand is already within the Preserve's boundaries.

10. THE CV-MSHCP CONFLICTS WITH THE HOUSING ELEMENT LAW

In December 2001 the Riverside County Board of Supervisors approved a new Housing Element as part of the Riverside County General Plan. Each City likewise approved an updated Housing Element. The CV-MSHCP eliminates thousands of sites and hundreds of thousands of potential affordable housing units. The CV-MSHCP will make all housing more expensive by creating an artificial shortage of land available for housing development. Throughout the Coachella Valley

T-18

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May. 29 2007 07:20PM P16

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residential land would be re-designated as rural or open space. The CV-MSHCP means the end of all development of affordable housing in all areas where the CV-MSHCP habitat plan occurs.

California Government Code sections 65580 through 65589.7 provide that the Housing Element must identify sites for affordable housing development and encourage an expansion of the supply of affordable housing. The CV-MSHCP conflicts with this requirement of law by making it impossible to development affordable housing in Thousand Palms. The 2001 Housing Element states repeatedly that densities at 2, 5, or 10 acres per dwelling unit renders the housing (if developed at all) way to expensive for most persons, and only the wealthiest of income categories can build or acquire such homes. The 2001 Riverside County Housing Element labels densities at 2, 5, or 10 acres per dwelling unit as inconsistent with the state's goals for affordable housing creation. The 2001 Riverside County Housing Element also states that the County has consistently failed to meet the goals set in past years for the creation of affordable housing.

T-18
Cont.

11. CALIFORNIA DISAPPROVED THE 2001 RIVERSIDE COUNTY HOUSING ELEMENT AS VIOLATING STATE LAW. THE CV-MSHCP MAY NOT BE CONSIDERED UNTIL THE HOUSING ELEMENT IS BROUGHT INTO COMPLIANCE WITH LAW

The State of California Department of Housing and Community Development has reviewed the 2001 Riverside County Housing Element. On March 15, 2002, HCD determined that the 2001 Housing Element violates Government Code sections 65580 through 65589.7. It is legally deficient. It does not identify adequate sites for the development of affordable housing. It does not analyze the policies proposed in the CV-MSHCP to effectively prohibit the development of affordable housing. The County cannot consider or approve the CV-MSHCP until the 2001 Housing Element is brought into full compliance with state law. The CV-MSHCP must be consistent with the Housing Element before it can be considered for adoption. Yet a defective Housing Element cannot be the basis for determining this internal consistency. The CV-MSHCP process and public hearings must be suspended and put on hold until the 2001 Riverside County Housing Element is brought into compliance with Government Code sections 65580 through 65589.7. The CV-MSHCP violates Government Code section 65008 because the denial of affordable housing opportunities that it represents will fall more harshly on persons and families of lower incomes and those who are in racial and ethnic categories other than the majority. The CV-MSHCP will have a disproportionate and adverse impacts on persons of racial and ethnic minorities. Also see, Title 42, United States Code sections 3601 to 3631, the Federal Fair Housing Act. In addition, the CV-MSHCP's drastic habitat plan violates Government Code section 12955(L) because it imposes unjustified burdens on the development of affordable housing and these burdens discriminate disproportionately and invidiously against persons based on their race and ethnicity.

T-19

12. THE CV-MSHCP VIOLATES THE FEDERAL FAIR HOUSING ACT

The drastic habitat plan in the CV-MSHCP violates the Federal Fair Housing Act, Title 42 United States Code sections 3601 to 3631. The CV-MSHCP is an attack on affordable housing and an attack on persons of racial and ethnic minorities. The CV-MSHCP is an attempt to exclude racial and ethnic minorities from the Riverside County housing market. The failure to have a legally adequate Housing Element is evidence of the County's discriminatory intent. The CV-MSHCP

T-20

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

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attempts to segregate all affordable housing into discrete and insular ghettos or barrios. The CV-MSHCP does not provide for any housing opportunities that are "integrated" throughout the County. The CV-MSHCP would change the housing market by eliminating all diversity of different ranges of housing affordability and create enclaves of housing segregated between the rich and poor. This violates the fair housing laws.

T-20
Cont.

13. THE CV-MSHCP IS A FRAUDULENT AND UNETHICAL TOOL FOR
SPECIAL INTEREST DEVELOPMENT PROJECTS BY POWERFUL INSIDERS
NOTE: DUNLAP / SOLOMON / REGENCY / COUNTY / C.N.L.M. TRANSACTIONS

On February 15, 2002, escrow closed on a major land deal in Thousand Palms. Under the threat of the looming CV-MSHCP a developer was forced to cede 34 acres of land to the Center for Natural Lands Management, a non-profit entity. In return, the remaining land was deemed "unneeded" for the nearby Thousand Palms Wildlife Preserve and a "fast track" status was granted by the Board of Supervisors on January 29, 2002, for a new housing development and it was approved by the County just prior to the close of escrow and prior to the public hearings on the CV-MSHCP.

T-21

In 2001, the D.D. Dunlap Company and the Dorothy Dunlap Trust wanted to sell its development acreage in Thousand Palms to Peter Solomon for development by Regency Homes. The Thousand Palms Wildlife Preserve also wanted the same land. In theory, ALL the Dunlap land was needed as a "blow sand source" for the Preserve. However, in exchange for a steeply discounted price and agreed sale of 34 acres to the Center for Natural Lands Management (an agent for the Thousand Palms Preserve), the remaining acreage was deemed "no longer needed" as a "blow sand source."

In effect, Solomon was forced to give up land to CNLM and to pay a higher price for the land he acquired. The pseudo-scientific concept of "blow sand source" was used to expand the Preserve. Solomon avoided a habitat plan on his land in the CV-MSHCP by sacrificing land to the CNLM for the Preserve. This was a "shake down" for his land. This occurred as part of an otherwise private land sale transaction, and not as a part of any tract map approval. The "scientific" concept of "blow sand source" was amazingly flexible. The County of Riverside was intimately involved in this quid-pro-quo. The threat of new land use policies (the impending CV-MSHCP) and a flip-flop of "expert scientific principles" were used to extort a transfer of private land for a public purpose.

T-22

The Dunlap / Solomon / Regency / County / C.N.L.M. transactions proved three important points:

- (1) "Expert scientific principles" regarding the "blow sand source" can be compromised as bargaining tools to cheaply acquire private land for public (political) purposes.
- (2) The CV-MSHCP is a political mechanism to force the sale of private land for public purposes without paying the "just compensation" mandated by the California and United States Constitutions.
- (3) Habitat policies are discriminatory — certain land owners sneak through with "fast track status" while other owners are restricted to zero development and likely bankruptcy.

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FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May. 29 2007 07:22PM P18

Objections to 2007 Coachella Valley MSHCP and EIR/EIS
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14. THE CV-MSHCP "IMPLEMENTATION AGREEMENT" AND THE
"LOCAL DEVELOPMENT MITIGATION FEE"
VIOLATE PROPOSITION 218,
ARTICLES XIII-C AND XIII-D OF THE CALIFORNIA CONSTITUTION.

The proposed "Implementation Agreement" contemplated in the CV-MSHCP and EUR/EIS would seek to establish a property-based assessment or fee or tax for the purpose of altering conditions on land or for acquisition of private property. This so-called "Local Development Mitigation Fee" is a prohibited "Special Tax" for a "Special District" as defined by Article XIII-C section One of the California Constitution. Voter approval of any "Local Development Mitigation Fee" is required by the voters in any city where it is proposed pursuant to California Constitution Article XIII-C, section Two, subsection (d), which reads in pertinent part as follows:

(d) No local government may impose, extend, or increase any special tax unless and until that tax is submitted to the electorate and approved by a two-thirds vote.

T-26

In the alternative, the proposed "Local Development Mitigation Fee" is an "assessment" as described in Article XIII-D of the California Constitution. Sections Three and Four of Article XIII-D prohibit the imposition of any such assessment unless it is affirmatively approved by a majority vote of the property owners who will be subjected to the assessment. The "Implementation Agreement" and the "Local Development Mitigation Fee" fail to comply with the mandatory public hearing and property owner voting and protest procedures mandated by Article XIII-D section Four of the California Constitution.

In the alternative, the proposed "Local Development Mitigation Fee" is an "property-related fee or charge" as described in Article XIII-D of the California Constitution. Sections Three and Six of Article XIII-D prohibit the imposition of any such "property-related fee or charge" unless it is affirmatively approved by a majority vote of the property owners who will be subjected to the assessment or by a two-thirds vote of the electorate within the city where it is proposed. The "Implementation Agreement" and the "Local Development Mitigation Fee" fail to comply with the mandatory public hearing and property owner voting and protest and local election procedures mandated by Article XIII-D section Six of the California Constitution.

T-27

In addition, Article XIII-D section Six, subsection (a)(4) prohibits this type of "Local Development Mitigation Fee." Section Six reads as follows:

(4) No fee or charge may be imposed for a service unless than service is actually used, or immediately available to, the owner of the property in question. Fees or charges based on a potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, shall be classified as assessments and shall not be imposed without compliance with Section 4.

T-28

The "Local Development Mitigation Fee" may be repealed easily. Any group of citizens within any city or county area who may adopt the "Local Development Mitigation Fee" could repeal it by initiative

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May. 29 2007 07:23PM P19

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petition pursuant to the low signature threshold of California Constitution Article XIII-C section Three, which read as follows in its entirety:

§ 3. Initiative Power for Local Taxes, Assessments, Fees and Charges
Notwithstanding any other provision of this Constitution, including, but not limited to, Sections 8 and 9 or Article II, the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge. The power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments and neither the Legislature nor any local government charter shall impose a signature requirement higher than that applicable to statewide statutory initiatives.

T-28
Cont.

Pursuant to Article XIII-C section Three the signature requirement to repeal the "Local Development Mitigation Fee" would be five (5) percent of the number of voters who cast ballots within that city at the last governor's election. This would be no more than a few hundred signatures in any of the cities within the Coachella Valley.

The draft EIR/EIS fails to evaluate the economic impacts or the environmental impacts of the total ineffectiveness of the "Local Development Mitigation Fee" as proposed in the "Implementation Agreement." The provisions of the California Constitution, at Article XIII-C and Article XIII-D will likely be found to prohibit enactment of this "fee" by any city in the Coachella Valley. In any event, the initiative power will render any such "fee" short lived and unreliable as a meaningful source of funding so-called mitigation plan.

T-29

there is an utter failure to analyze the environmental and economic impacts of the lack of effectiveness of the purported "mitigation plan" in the event the "Local Development Mitigation Fee" is never enacted in any city or if it is quickly repealed by the voters in the few cities that may adopt it. Voters will resent and oppose fees or taxes or charges collected inside their city but expended elsewhere to benefit wealthy Native American enterprises.

15. IT WOULD BE AN ILLEGAL GIFT OF PUBLIC FUNDS
FOR ANY "LOCAL DEVELOPMENT MITIGATION FEES"
TO BE EXPENDED OUTSIDE THE TERRITORY
OF ANY CITY WHERE IT IS COLLECTED

California Constitution Article XVI Section Six bans all gifts of public funds. In the case of City of Ceres v. City of Modesto (1969) 274 Cal.App.2d 545, the California Court of Appeals held that fees or charges collected within a city may not be expended outside that city. The CV-MSHCP proposed "Local Development Mitigation Fee" will be collected within cities south of the Route Ten Freeway and expended largely outside those cities and expended north of the Route Ten Freeway to acquire land for open space and development prevention. This proposed extra-territorial expenditure violates Articles XVI section 6 of the California Constitution because the cities collecting the fees will receive no benefit from the expenditures outside the city limits.

T-30

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May. 29 2007 07:23PM P20

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The draft EIR/EIS fails to evaluate the environmental or economic impacts of the lack or reliability or future ineffectiveness of the "Local Development Mitigation Fee." The provisions of the California Constitution, at Article XVI section Six will prohibit expenditures of this proposed "Local Development Mitigation Fee" by any city in the Coachella Valley outside its boundaries. There is an utter failure to analyze this lack of environmental and economic effectiveness of the purported "mitigation plan" if the "Local Development Mitigation Fee" is never enacted in any city or if it is quickly repealed by the voters in those few cities that do.

T-31

16. BOARD MEMBERS OF COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS
HAVE CONFLICTS OF INTERESTS AND CANNOT PARTICIPATE
IN ANY DECISION REGARDING THE COACHELLA VALLEY
MULTIPLE SPECIES HABITAT CONSERVATION PLAN
OR THE IMPLEMENTATION AGREEMENT OR THE MITIGATION FEE

The Coachella Valley Association of Governments ("CVAG") contains many officials from city and county governing boards on its own governing board. State laws governing conflicts of interests are applied more strictly to officials who are members of governing board other than the one to which they were elected. For city council or board of supervisor decisions campaign contributions generally are not considered as "gifts" or "sources or income" as to the members of such an elected body.

CVAG's Board is not a directly elected body. Its members are appointed. As such, the campaign contributions, free travel, expensive meals and other gratuities received by members of the CVAG Board for their respective local government elections are "gifts" and "sources of income" for evaluating conflicts of interests as to decisions by the CVAG Board and whether certain of its appointed members should participate in such decisions. CVAG Board members have received economic benefits from persons and entities directly affected by this decision.

The proposed Coachella Valley Multiple Species Habitat Conservation Plan (CV-MSHCP) and the related "Implementation Agreement" will benefit one property owner more than any other: The Cahuilla Band of the Agua Caliente Indians. This Native American commercial enterprise operates a large gambling casino in the Thousand Palms community. This enterprise plans to development large tracts of land with six more casinos both north and south of the Route Ten Freeway.

T-32

Due to pre-existing treaty rights the Cahuilla Band of the Agua Caliente Indians will be exempt from the "Local Development Mitigation Fee" and will directly benefit from the purchase of land north of the Freeway for habitat conservation and development prevention. The land of this Native American enterprise is exempt acquisition and cannot be subjected to eminent domain proceedings by any state or local entity. As non-Indian land north of the Ten Freeway is acquired and removed from development potential, the remaining Indian land will become increasingly valuable as the supply of available development sites diminishes. Supply and demand pressure to encourage high density development of Native American land holdings as caused by the "Implementation Agreement" and the proposed expenditure of the "Local Development Mitigation Fee" are not analyzed in the draft EIR/EIS.

FROM : LAW OFFICE CHRISTOPHER SUTTON PHONE NO. : 626 405 9843

May, 29 2007 07:24PM P21

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Many members of the CVAG Board have received generous campaign contributions and other economic benefits from the Cahulla Band of the Agua Caliente Indians, as well as from other affected sources. These are "gifts" and "sources of income" to such CVAG Board members pursuant to the Political Reform Act of 1974 and regulations of the Fair Political Practices Commission. All such CVAG Board members must abstain from participating in any decision to consider the CV-MSHCP because the source of such "gifts" and "income" will directly and disproportionately benefit from the CV-MSHCP and the "Implementation Agreement" on which it depends for funding. These decisions will impose fees and taxes at other locations in the Coachella Valley and enhance the land values and incomes of both Native American enterprises and other specific developers with economic ties to individual CVAG Board members.

T-32
Cont.

The draft EIR/EIS fails evaluate or analyze how the existence of conflicts of interest will adversely impact the locations where the "Local Development Mitigation Fees" may be expended. The draft EIR/EIS fails to evaluate or analyze how the "Implementation Agreement" and the "Local Development Mitigation Fee" will have discriminatory economic impacts: Certain owners north of the Ten Freeway will benefit from enhanced values and development potential, while owners south of the Ten Freeway will be penalized. CVAG officials who have received "gifts" or "income" from either group of developers will be prevented from participating in environmental decisions regarding the "Implementation Agreement" and the "Local Development Mitigation Fee." The draft EIR/EIS fails to analyze how these conflicts of interest will have environmental and economic consequences.

T-33

17. CONCLUSION:
THE CV-MSHCP MUST BE DEFEATED
AND THE DRAFT E.I.R./E.I.S. MUST BE REJECTED
AS LACKING A VALID ENVIRONMENTAL OR ECONOMIC ANALYSIS

For the reasons set forth above and as submitted by other persons the CV-MSHCP and the draft EIR/EIS must be rejected. There must be a fair and complete analysis of the economic and environmental harm these proposals would cause. Such an analysis has not yet been completed. The draft EIR/EIS is wholly defective.

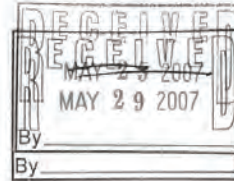
T-34

Sincerely,



Christopher Sutton
Attorney for Mary Justice

Comment Letter U



May 29, 2007

Mr. John Wohlmuth
Coachella Valley Association of Governments
73710 Fred Waring Drive
Palm Desert, CA 92260

RE: Comments on CVMSHCP

Dear Mr. Wohlmuth:

Glorious Land Company ("GLC") is the owner of approximately 6000 acres of land in the Coachella Valley area. This land, known as Paradise Valley project, is impacted by the proposed CVMSHCP ("Plan"). Having reviewed the draft Plan, GLC is now providing the following comments to that document. We request that our comments be incorporated as part of the administrative record to the approval of the Plan, and further ask that our comments be used as the foundation for certain modifications and clarifications of the Plan before its final adoption. Our comments are as follows:

1. ALLOCATION OF ALLOWABLE HABITAT DISTURBANCE:

The Plan limits the amount of each habitat that may be disturbed to 10% of the total number of privately owned acres of each identified habitat type within each Conservation Area. After the 10% limit is reached, in rough step with lands acquired for conservation, the Like Exchange provisions become effective and property owners must, in effect, replace in rough step proportionality the acres disturbed in excess of the allowable take pursuant to the Like Exchange provisions of the Plan. However, the Plan does not include any provision for how the 10% will be allocated among the property owners who own various habitat types.

Some have suggested that the County use a "first come, first served" method for allocating the allowable take, however, such an approach could result in the County allocating the full allowable "take" to only a few of the potential property owners, thereby leaving the County open to claims of a regulatory "taking" having occurred.

To insure equitable opportunities for affected property owners, the Plan should provide a method of allocating the allowable acreage among affected property owners. The most equitable method for doing so is to calculate the percentage that is derived by dividing the acres of the habitat type located on the relevant property by the total number of acres of that habitat type located in the Conservation Area in which the property is located. For example, if there were a total of 1,000 privately owned acres of a particular habitat type located within a Conservation Area and the property in question contained 250 acres of that habitat type, the property owner of the 250 acre parcel (Owner) would own 25% of the habitat type, and therefore should be entitled to 25% of the 10% take allowed without triggering the Like Exchange process. Thus, in this example, the

U-1

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maximum allowable take is 10% of 1000 acres or 100 acres; the property owner in question has 25% of the total, and would therefore be allocated a maximum allowable take of 25 acres. To the extent that this Owner seeks to develop more than 25 acres within the applicable habitat area, that Owner would either have to acquire and dedicate additional lands of the applicable habitat type within the Conservation Area, or the Owner could go outside the Conservation Area and dedicate property on a Like Exchange basis at the rate of one acre for each acre in excess of 25 acres that is developed within the habitat area.

The allocation of allowable take among the relevant property owners should be calculated as each permit is sought, as intervening land purchases by conservation agencies will affect the amount of privately owned lands of each habitat type to be acquired, and consequently will also impact each Owner's percentage of the allowable take.

U-1
Cont.

2. HOW DOES "ROUGH STEP" WORK?

The Rough Step requirement of the Plan demands that acquisition of habitat must keep roughly in step with the amount of disturbance of that habitat type. The Plan does not, however, adequately explain how this rough step proportionality will be calculated. For property owners to fully understand the Plan's impact, the methodology to be used for analyzing rough step proportionality must be clearly set forth.

To explain the methodology for calculating rough step proportionality, it may be best to include an example. In reviewing the goals of the Plan, we believe the methodology for calculating rough step proportionality can be demonstrated as follows:

Assume that a development within a conservation area disturbs 1000 acres of habitat, but concurrently therewith, the property owner would convey, without compensation, another 1000 acre parcel of habitat within the conservation area for perpetual conservation. The total project area within the conservation area ("CA") would then be 2000 acres (1000 acres developed + 1000 acres conserved), 50% of which is being conserved.

U-2

As noted above, the Plan limits "take" within conservation areas to no more than 10%, thereby conserving 90% of the land within the defined CA. Assuming that allowable "take" is equitably apportioned among all property owners within the CA as suggested above, then each property owner would be entitled to a maximum "take" of 10% of the land area within any individual project. Therefore, given a project area of 2000 acres, as in this example, the maximum amount of allowable "take" would be 200 acres. Because the owner in this example intends to "take" 1000 acres for development, to remain in rough step proportionality with the rate of development, that owner must provide at least 800 acres of Like Exchange properties (i.e. 1000 acres developed minus 200 acres of allowable "take".)

3. ON SITE CONSERVATION:

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The Plan is currently silent as to whether Owners will receive credit for on-site conservation. The Plan should specify that Owners who dedicate land within their projects to permanent open space will receive credit against the Plan's development fee if the property dedicated is within a CA and is of the type required to be conserved. The land dedicated will count toward the achievement of the Plan's goal of conserving 90% of the land within the CA at no cost to the County or CVCC. In the absence of the owner's dedication, the Plan's land acquisition funds would have had to be used to acquire the land for permanent conservation. Thus, the dedication of the land reduces the Plan's overall cost for land acquisition, and the Owner should receive credit against the mitigation fee.

U-3

4. TREATMENT OF OPEN SPACE REQUIRED BY ZONING:

The Plan does not indicate it will give credit for Open Space which may be required under applicable zoning ordinances. If the design of any individual project is such that it includes Open Space intended to satisfy the zoning ordinance, and if that Open Space also meets the characteristics for conservation land, the property owner should receive credit for that Open Space as being conserved. By providing such a credit mechanism, the Plan would encourage developers to design their projects in ways that minimize the effect of development and contribute to the Plan's conservation goals at no cost to the Plan's financial resources. A requirement of such a credit could be that the Open Space be the subject of a conservation easement and be managed and maintained in accordance with the appropriate conservation protocols by the associated property owners association. Such a condition would reduce the drain on the Plan's land management funds by placing those costs with the property owners.

U-4

5. ACQUISITION OF ADDITIONAL CONSERVATION LANDS AND LIKE EXCHANGE PROPERTY:

The Plan provides that if an Owner wishes to develop within a CA, to the extent that the number of acres to be developed exceeds that Owner's share of the allowable "take" for the relevant habitat type, the Owner must acquire and dedicate either additional CA lands or "Like Exchange" ("LE") property outside the CA. By placing the obligation to acquire these properties on the individual developers, the Plan will result in multiple developers competing with one another for a limited land inventory, thereby artificially driving land prices higher because of the seeming rise in demand. The artificial increase in prices from such competition will have a dramatic effect on the Plan's ability to acquire the necessary lands for the Conservation Areas as it will cause price increases to outstrip the inflation anticipated by the Plan.

U-5

To avoid this problem, the Owner should be given the option of 1) acquiring the property for dedication, or 2) entering into an agreement with a non-profit conservation organization such as the Desert Mountains Land Trust (Trust) which agreement provides that the funds needed to acquire the additional CA land or the LE property would be paid by the Owner to the Trust, and the Trust would then acquire the relevant property within

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a specified period of time. The agreement would further provide that if the additional CA land or the LE property required for a project ultimately costs more than the amount deposited by the Owner, then the Owner must deposit the excess amount with the Trust in a timely manner to allow completion of the acquisition. By the same token, if the additional CA land or LE property needed for a project ultimately costs less than the amount deposited by the Owner, then upon acquisition by the Trust of the relevant property, the excess deposit would be refunded to the Owner.

We believe that this solution is more appropriate for several reasons: First, the Trust has been established for the sole purpose of and operates to acquire open space and habitat in the desert and mountain areas of Riverside County; second, its board of directors is composed of community leaders representing a balance between environmental interests and the development community; third, use of the Trust diminishes the likelihood that prices will be driven up as a result of competition; fourth, the Trust is not encumbered with the statutory requirements applicable to property acquisition by public agencies and finally, the Trust is familiar with the property market in the area, knowing both what is available and also what market prices in the area are, thus giving assurance that habitat will be acquired for reasonable fair market value.

U-5
Cont.

6. EVALUATION OF LIKE EXCHANGE LANDS.

The Plan contains a laundry list of factors that are to be used to evaluate Like Exchange lands, but overlooks one of the most important factors—fairness. That is, GLC is concerned that properties proposed for Like Exchange will be subject to ground truthing to determine if they meet the habitat qualifications set forth in the Plan, while impacts on developed lands will be evaluated by aerial photography and modeling, not ground truthing.

The same method to determine habitat values within the CA must also be applied to the LE property outside the CA. If Owners are to successfully negotiate for the acquisition of LE properties, Owners can not be subject to after-the-fact determinations by the FWS and CDFG that areas previously designated by them from aerial photos are somehow now not qualified.

We have previously asked FWS, CDFG and CVAG to review the Paradise Valley lands because we believe that we have less Desert Dry Wash Woodland habitat than is shown on their documents. They have responded by saying that they will rely on the aerial photographs and can not afford to “ground truth” the entire plan area. At the same time, however, the Plan requires that LE properties be subject to “ground truthing”—the on-site physical inspection of the land to determine precisely how many acres of habitat exist. Based upon that “ground truthing”, some properties that lie within the area previously designated by CDFG and FWS as appropriate for acquisition could be disqualified.

U-6

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If the habitat values of CA lands are determined solely by aerial photos and modeling, the actual amount of habitat on site is established with a broad brush and is likely to be overstated. At the same time, by ground truthing the LE lands, habitat values are established with precision. This proposed methodology, therefore may result in a disproportionate increase in the number of acres which must be acquired to satisfy the LE requirement. If that were to occur, it would offend Constitutional constraints which require that exactions imposed on a development must be proportionate to that development's impact. If the exactions exceed that "proportionality", they rise to the level of a taking. By using different methodologies to evaluate habitat on Like Exchange lands as opposed to CA lands, such disproportionate exactions are likely to occur.

U-6
Cont.

Therefore, GLC proposes that any non-CA area previously designated by FWS and CDFG as habitat should automatically qualify as Like Exchange property without further actions by the FWS or CDFG. This would then allow Owners to begin purchasing or at least optioning LE lands for LE use. Criteria for other habitat types on currently non-CA lands, should also be established/defined.

7. ADJACENCY OF LE LANDS

The Plan currently requires that LE lands be "adjacent" to existing Conservation Areas. If adjacency is required, that requirement, by itself, adds a artificial value to property adjacent to a Conservation Area that is not shared by neighboring property containing equal to or better habitat but happen to be a few feet away from the boundary of the Conservation Area. The adjacency requirement, once known, will undoubtedly induce owners of property adjacent to the boundary to increase their asking price for the land. In other words, the adjacency requirement will very likely increase the cost of the entire Plan.

The adjacency requirement also prohibits the Plan from taking advantage of potential willing sellers offering their non-adjacent LE lands at reasonable prices. Given the Plan's long term, the acquisition process should also be viewed on a long term basis. Although a particular parcel may not be adjacent today, over the life of the Plan, future acquisitions and dedications from future projects can link that parcel to the CA over the life of the Plan. With the Plan and the County's control of development, intervening parcels cannot be developed without establishing the necessary linkage to already acquired LE parcels. By taking this long term view of the land acquisition process, it allows the Plan to take advantage of additional opportunities for purchases when they become available and thereby decreases Plan costs in the long term.

U-7

Like Exchange land which is not adjacent to a CA, but is nonetheless linked to a CA by intervening publicly conserved lands should be treated as meeting the adjacency requirements. There are several locations which would meet this criteria, and although not themselves adjacent to the CA, they nonetheless effectively create continuous expansion of the conservation efforts through linkage to public lands. The Plan should also allow for acquisition and dedication of Like Exchange lands which may currently be outside the Plan boundary, but nonetheless exhibit the proper habitat values and are

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linked to a CA by intervening publicly owned lands. By accepting such lands as Like Exchange property, the Plan would extend the reach of its conservation efforts to a larger geographic area.

In the end, if a property has been previously designated as habitat, regardless of whether it is adjacent to a CA, the Plan should provide that it may be acquired and qualify as Like Exchange property without further action by FWS, CDFG, CVAG or CVCC.

U-7
Cont.

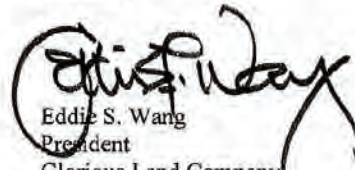
8. FEE CREDITS FOR LE PROPERTIES

The Plan does not, but should, provide a mechanism for fee credits for LE properties. The Plan fee of \$5730 per acre for developed land is intended to provide the resources for the purchase and conservation of equivalent replacement property. When an Owner provides LE property, he is essentially providing replacement property, and therefore should receive a credit against the fee for the amount of LE property provided. The credit would be equal to the number of acres of LE property multiplied times its fair market value per acre. This amount would then be deducted from the Plan fees due and calculated based on the number of acres developed.

U-8

We appreciate the opportunity to review and comment on the CVMSHCP, and hope that our comments will be considered and incorporated into the Plan.

Sincerely,


Eddie S. Wang
President
Glorious Land Company

cc: Jon Avery, U.S. Fish & Wildlife Service
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MARY JUSTICEY

Comment Letter V

PLEASE INCLUDE THESE COMMENTS in the FINAL EIR/EIS:

We reserve the right to use any and all comments submitted to CVAG and the USFWS in this process. We wish others to be able to use all the comments and documents we have submitted.

Submitted for the Record

Comments on the
Recirculated Draft Environmental Impact Report/
Supplemental Final Environmental Impact Statement
Recirculated Draft Coachella Valley
Multiple Species Habitat Conservation Plan
Natural Community Conservation Plan
Santa Rosa and San Jacinto Mountains Trails Plan



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May 29, 2007

**TEN GOOD REASONS FOR STOPPING THE RECIRCULATED DRAFT
COACHELLA VALLEY MULTIPLE SPECIES HABITAT
CONSERVATION PLAN**

Comments by James Johnson

1. The Plan creates redundant bureaucracies. There are already 26 public and private agencies, not including municipalities, that have control over Coachella Valley lands.] **V-1**
2. The promise of a streamlined approval process for development approval is a lie since the same agencies have to give approval within the Plan.] **V-2**
3. It adds nearly half a billion in additional bureaucratic costs for administration and compliance. And it lasts for 75 or more years!] **V-3**
4. The Plan was drawn up by biased and self-serving individuals without any particular skill set. The major effect for them is to create more jobs and tenure for like-minded individuals.] **V-4**
5. The backers of the Plan bear no cost directly or indirectly for Plan implementation—talk about NOT putting your money where your mouth is and sticking it to the other guy! They'll take the benefits, though, by ensuring their jobs and those of their friends plus any ephemeral benefits of species conservation coming from the plan.] **V-5**
6. The Plan is based on junk science created by investigations that are flawed because the investigators were paid for and were part of the Habitat Cabal that hired them. Study conclusions that do not fit the pre-ordained opinions of the hirers would preclude further work for their authors.] **V-6**
7. The Habitat land muggers overreach even when the science disproves the Habitat thesis. When "endangered" species cannot be found in a particular area, they resort to modeling to say the land "could be" conducive to the non-existent "endangered" species. Failing even the modeling theory, they resort to even more far-fetched theories such as air corridor "blow sand". They have no idea what impact new structures would have on sand carried by wind currents, whether the sand is needed by a particular "endangered" species, or whether it would enhance or create better habitat.] **V-7**

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MARY JUSTICEV

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8. The "Mad Habitaters" overreach in claiming a species to be endangered such as the fringe-toed lizard. The Coachella Valley "species" is not really a separate species but one that has been found from Colorado to Mexico and it even interbreeds with other lizard species. This may be the best example of bias and lack of forthrightness and integrity of the Habitat proponents. **V-8**
9. The drawing of boundaries for conservation areas is arbitrary and capricious. A maximum amount of land is drawn into the Plan as a Not-so-subtle way of stealing from landowners to maximize the conservation area—not a rational basis for conserving habitat for actually endangered species. Furthermore, the proponents of the Plan have already shown that they will themselves build in critically conserved areas, sell extorted land at higher prices to private developers with sweetheart development approval, and trade usurped land that is not really habitat land for other lands whether or not restricted. Where is the integrity of these people? **V-9**
10. The most important drawback to the Plan is its blatant and obvious unfairness to the owners of undeveloped private land in the Coachella Valley. The landowners are being burdened with the full cost of the plan including the hugely increased expenses of additional bureaucracy. The Plan sticks it to the landowners by: (1) shafting them directly by the "taking" of land, (2) holding land unpermitted (already more than 7 years and counting) until the landowner capitulates, (3) charging exorbitant fees for development permits that reduce land value by adding costs so that developers are willing to pay less for the land, (4) holding up permits through extensive permit review process with a new and larger fee for each review, (5) changing the rules such as adding more "endangered" species or unfounded theories such as "blow sand", (6) refusing to act on landowners proposals, or (7) charging ever-increasing mitigation fees. All of these actions or lack thereof prevent rational use of privately owned lands and greatly reduce the value of the land. **V-10**
- The conspicuous unfairness of placing the entire burden of the cost of the Plan on landowners shows how despicable the proponents of the Plan are. The owners of undeveloped land by definition have not caused any species to be "endangered" and have not caused the loss of habitat yet the proponents of the Plan expect them to pay for it all. A rational and fair plan would assess all those in the Coachella Valley who caused the problem in the first place and all those who stand to benefit from true endangered species conservation.

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MARY JUSTICEY

PAGE 04

Furthermore, the Plan hasn't been planned at all from a financial point of view. It has been stated that it is hoped that many of the landowners would simply donate their land to the conservation area. Maybe some will donate their land rather than keep living through the hassles created for them by the Plan. Now there's a sound financial plan. Sounds more like an (incomplete) extortion plan.

V-11