Comment Letter W

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May 27, 2007

Ms Katie Barrows
Coachella Valley Association of Governments
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Dear Katie

Re-circulated Draft Coachella Valley Multiple Species Habitat Conservation Plan – 2/07

The following comments will demonstrate that the Re-circulated Draft Coachella Valley Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan dated February 2007 are deeply flawed and should be rewritten. In this document the plan shall be referred to as the Re-circulated Draft Habitat Conservation Plan (RDHCP). The reasons for making this determination follow: **W-1**

1) RDHCP lacks solid data to establish parameters for Population Viability Analysis. Species selection should be based on rigorous science not pretense.
2) The Mission Creek and Morongo Wash function as intended, as sand transport systems when 300 feet in width. To be designated and constructed at any greater width (300') lessens their ability to function as their intended purpose, fluvial sand transport to depositional areas. **W-2**
3) Habitat can be fragmented by roads. Desert Hot Springs will require many roads of 100 feet or greater in width to meet the needs of the Coachella Valley Circulation system and to provide safe, efficient highways. Anything less puts human life at grave risk. These roads become effective barriers to all target animal species thus making the RDHCP ineffective on its face. **W-3**
4) As defined, Edge effects state that abrupt changes in habitat cause negative edges. Included in the greater Desert Hot Springs area are windmills, roads, railroads and sundry other urban development(s). The concerns are roadway mortality, windmill mortality, child predation, pet predation, pesticide overspray, herbicide overspray, fertilizer use and spread of invasive seeds. Edge effects may impact 100 to 170 feet of land adjacent to RDHCP areas. The negative impact on land use decisions, caused by the Edge effect, is not clearly delineated in the RDHCP. No provisions are made to compensate landowners for their inability to utilize these lands. The management of Edge effects is not addressed which means that item by necessity will be a moving target for managers and land owners. Unanticipated restrictions will cause wide spread dislike and distrust of the DRHCP. **W-4**
5) The RDHCP is based on uncertainty and risk when applied to the amount of land preserved. This causes too much land to be preserved, predicting failure for political, legal and economic reasons. **W-5**

6) The RDHCP and the original CVMSHCP both fail to meet the sufficiency-necessity standard. The standard can be reached only with rigorous scientific investigation. The reason for the failure can be seen via the lack of data, time or funding. Data is an issue, many, many field surveys were conducted, but CVAG failed to allow those to be submitted as evidence of the presence or absence of species. Time should not have been an issue because the plan has been aborning since 1995. This needs explicit attention. W-6

7) The plan fails to address long term climatic changes. We appear to be in a period of warming throughout our solar system. Historically, all periods of warming are followed by periods of cooling. "The RDHCP gives scant attention to such long-term issues." W-7

8) Data to make a defensible choice for selecting a preferred alternative within the RDHCP is simply not available. W-8

9) The RDHCP fails to document how socioeconomic and/or political criteria influenced habitat selection. W-9

10) Socioeconomic considerations seem to have been applied inconsistently (implying areas of preferred status) throughout the entire area of the DRHCP. Decisions of this magnitude require extensive documentation. W-10

11) Inclusion of lands adjacent to Mission and Morongo Creeks dramatically diminishes the effectiveness of these systems. Channelization improves their hydraulic ability to transport material from the source (surrounding mountains) to the depositional areas west of Willow Hole. W-11

12) The controversy over the Big Dune, south of I-10, during which political and economic values were debated seemed to conclude that it was too expensive economically and politically to include as lands to be preserved. The debate failed to consider the biological values of the site. The nature of the extended debate on these lands clearly indicates there was a socioeconomic bias in the land designation process. W-12

13) The concentration of conservation areas in the western portion of the planning area may be appealing, however the reasoning is flawed. The loss of species population redundancies will prove to be counterproductive. W-13

14) Habitats in the eastern valley requiring sand transport from the western end of the valley have been completely shut off from a once 'robust' sand delivery system by recent land use decisions. Many of those decisions were made while work was being performed on the original CVMSHCP. W-14

15) Conservation planning was based on modeled habitat criteria. No amount of 'ground truthing' was tolerated. Modern quantitative tools were not used. The result was the selection process was subjective and the reasons for parcel selection were not readily, nor easily, understood. Had a more technically rigorous method been used the plan would have been more defensible and less susceptible to viable observations of political and socioeconomic bias. W-15

16) The RDHCP is loose in the use of terms such as "Known Locations," "Potential Distribution" and "Core Habitat." This clearly weakens the document and species preservation planning is placed in jeopardy. W-16

17) Buffer zones were not considered uniformly throughout the plan. This omission leaves the plan subject to further refinement during its long W-17

management period. Too quickly institutional memories will be lost leading to serious misunderstandings by future bodies of what the plan intended. W-17 Cont.

18) Bifurcation of the development of an adaptive management plan from the development of the RDHCP will lead to disputations and litigation. Areas of potential conflict were avoided by the crafters of the RDHCP to facilitate its adoption. This was found to be true with the CVFTLHCP adopted in 1985 and subsequently was being negatively cast within mere ten years. Imagine the impact of a plan designed to last 75 years. The plan is overreaching. W-18

19) Insufficient investigation has not resolved the conflict of population survival. Failure to determine if populations are genetically indistinguishable and the determination that gene flow is possible has caused the RDHCP to suffer from a lack of credibility. Two species readily emerge in this debate the Coachella Valley fringed toed lizard and the Palm Springs pocket mouse. W-19

20) Funding for the implementation of the plan has been underestimated all through the process. In an area urbanizing at the rate of the Coachella Valley land values will always be underestimated. As land value disputes drag on values tend to increase. W-20

21) Evidence of real-life experiences in the Coachella Valley have been given during public testimony that the 'sole buyer' principle tends to drive down land values. The presence of the RDHCP causes the number of viable buyers to decline making the concept of fair market value meaningless. W-21

22) Land owners have been frightened by the lack of demonstrable funding sources. Land subject to mitigation fees in some cities is rapidly being converted to urban uses and no longer subject to those fees. W-22

23) Cities with longer development time lines will be subject to significantly higher fees which discourage and even prohibit development. This has a significant socioeconomic impact. This impact will tend to fall on those seeking more modestly priced housing. W-23

24) Funding via the now moribund Eagle Mountain project severely limits the ability of the PDHCP to have adequate funds readily available for the purchase land. The lack of identifiable funding fatally flaws the plan. W-24

25) "Rough Step Proportionality" causes severe socioeconomic stress. Development and land acquisition must move on a proportional basis. Unfortunately, life does not proceed based on "Rough Step Proportionality." Life goes on and the necessity of having development and acquisition performing in some balanced relationship will cause dramatic personal dislocations. In an open market even during dips in the real estate market buyers and sellers can find a transactional price. The RDHCP destroys the ability of a small land owner to find that free and open transactional price. This RDHCP failure will be enormously disruptive on a socioeconomic basis. W-25

Sincerely,

Hank Hohenstein

Comment Letter X

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A LAW CORPORATION

Comments on the
Coachella Valley Multiple Species Habitat Conservation Plan/
Natural Community Conservation Plan and
Final Environmental Impact Report/Environmental Impact Statement

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I. INTRODUCTION.

These comments on the Coachella Valley Multiple Species Habitat Conservation Plan/ Natural Community Conservation Plan ("MSHCP") and the proposed Final Environmental Impact Report/Environmental Impact Statement ("EIR") are submitted on behalf of Century Vintage Homes ("Century").

Century owns 240 acres of land within the City of Palm Springs ("Palm Springs") and 30 acres in unincorporated Riverside County ("County"). The MSHCP proposes to include 211 acres of Century's property within the Santa Rosa & San Jacinto Mountains Conservation Area and the Whitewater Floodplain Conservation Area.

Century is generally supportive of the concept of coordinating housing and other economic needs with species and habitat protection requirements. However, for the reasons discussed below, Century does not support the region-wide MSHCP as presently drafted. Prior to consideration of the MSHCP, Century requests an opportunity to meet with the City of Palm Springs, County of Riverside, Coachella Valley Conservation Commission ("CVCC"), Coachella Valley Association of Governments ("CVAG"), and the resource agencies to discuss and remedy the problems with the MSHCP and its impacts on Century's planning efforts and land use.

The MSHCP in its present form would violate a number of state and federal laws and constitutional rights, and subject Century and other landowners to unreasonably onerous new restrictions, substantial delays in processing project approvals, vague standards, and a regulatory expansion of jurisdiction not currently authorized by federal and state law.

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Likewise, the Draft EIR/EIS is legally deficient. For example, the discussion of habitat acreages throughout the Conservation Area is based on information that is over 10 years old and is not easily accessible to the affected public. Additionally, after the revised Draft MSHCP and EIR/EIS were released for public review and comment, representatives of the CVCC and U.S. Fish and Wildlife Service testified before the Riverside County Local Agency Formation Commission that the present version of the MSHCP must be reevaluated and may result in the requirement for more land dedications by project participants as a result of the recent annexation of the Palmwood project to the City of Desert Hot Springs. Teresa O'Rourke of the U.S. Fish and Wildlife Service testified that the participating cities are "compromised" by the annexation. Likewise, Richard Kite, CVCC Chairman, testified that the MSHCP's loss of 1,500 acres from the Palmwood project requires reconsideration of the MSHCP as drafted, and may require other plan participants to "make up" conservation resulting from the loss.

It makes more sense to evaluate development projects under the current law on a project-by-project review basis, where there is direct interaction between the project applicant and the Wildlife Agencies, and data to back up the location and acreage of conserved areas. The MSHCP sets up an inefficient system where there are several intermediate steps which must be taken before the Wildlife Agencies are obligated to act. This does not streamline or make the regulatory process more efficient under the MSHCP. The current law also has the advantage of requiring site specific evaluation and data collection prior to establishing areas to be set aside for conservation.

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Because the MSHCP requires the County and participating cities to incorporate its provisions into their general plans and zoning ordinances, development projects will be required to comply with the MSHCP and will no longer have the choice to proceed under existing laws.

Accordingly, the MSHCP and related Draft EIR/EIS must be redrafted and recirculated to collect, disclose and consider current data and other information on existing habitat locations and estimated acreages, including the ramifications of the Palmwood project's annexation to Desert Hot Springs. Redrafting and re-circulating the MSHCP and related documents is necessary to evaluate the appropriateness of the areas targeted for conservation, the potential impacts of the MSHCP, and the feasibility of achieving the MSHCP's stated goals, and to remedy their procedural deficiencies to comply with the laws intended to inform and protect decisionmakers and the affected public.

II. EXECUTIVE SUMMARY.

The MSHCP calls for conserving otherwise developable private property for the MSHCP Reserve System by applying "Conservation Objectives" to lands within the larger Conservation Area. In addition to conserving land within the Conservation Area for the MSHCP Reserve System, the MSHCP calls for projects outside of the reserve to avoid certain biological features. The MSHCP disproportionately shifts the burden for conservation and mitigation from development projects outside of the Conservation Area that may actually impact listed species and habitat, to Century and other landowners within the Conservation Area with no nexus, and no compensation for the increased costs, prolonged project review process, and decreased land use potential resulting to Century.

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The MSHCP would result in substantial and unreasonable restrictions on Century's use of its property and an unlawful taking of private property. The MSHCP also trumps the City's normal project planning process by requiring conservation of an unknown portion of the Property either as a condition of development or by outright acquisition, and, additionally, avoidance of an unknown portion of the Property.

Moreover, the Draft EIR/EIS for the MSHCP is supposed to give both the decision-makers and the public a meaningful opportunity to analyze and comment on the potential environmental impacts of the MSHCP, and to compare them to the other less intrusive alternatives. The MSHCP's Draft EIR/EIS fails to live up to this mandate. Indeed, it violates even the most minimal standards of adequacy under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines, and the National Environmental Policy Act ("NEPA").[1]

[1] All references to the "CEQA" are to Cal Pub. Res. Code §§ 21000 *et. seq.* All references to the "CEQA Guidelines" are to 14 Cal. Code Regs. §§ 15000 *et seq.*, which implement the provisions of CEQA. "[C]ourts should afford great weight to the [CEQA] Guidelines except when a provision is clearly unauthorized or erroneous under CEQA" (*Laurel Heights Improvement Association v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 391, fn.2 ("*Laurel Heights I*")).

The primary requirement for the preparation of a joint CEQA/NEPA document is that the document must fulfill the requirements of both CEQA and NEPA, including both procedural

The habitat information that forms the basis for establishing the Conservation Area, and the developable areas outside the Conservation Area, is outdated (*see, e.g.*, MSHCP Tables 4-107, 4-108, 4-109, 4-33, 4-34, 4-35, 4-37a, 4-37b, and 4-37c [habitat information substantiating the Santa Rosa and San Jacinto Mountains Conservation Area and Whitewater Floodplain Conservation Area is 11 years old]). It is doubtful that the acreages and locations of habitat are the same today as they were over a decade ago. Yet, based on this outdated and unsubstantiated information, the MSHCP proposes to include Century's property in the Conservation Area. There is simply no substantial evidence to support the stated purpose of the MSHCP to conserve the habitats upon which listed species rely (Draft EIR/EIS p. 1-3) because there is no data on those habitats, the single exception being fringe toed lizard habitat. (*See, e.g.*, MSHCP Adaptive Management Plan, MSHCP Independent Science Advisors' Review, MSHCP Appendix I, p. A1-47, A1-50.)

The Draft EIR/EIS fails to provide the agencies and the public with the information necessary for them to compare this proposal to other alternatives for mitigating the impacts of growth in the region. It fails to accurately or completely disclose the environmental impacts associated with the MSHCP, particularly biological resources, aesthetics, air quality, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, public services, utilities, and environmental justice impacts and cumulative impacts of the project. Further, because much of the MSHCP is based on outdated information, it fails to provide a complete and intelligible description of the MSHCP itself. As a result of these deficiencies, the Draft EIR/EIS falls far below minimum standards of adequacy in many other respects as well, which are described more fully below.

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Further, our technical review of the MSHCP indicates that its provisions fall far short of achieving its stated species protection goals (*see* attached **Exhibit A**, Technical Comments on the MSHCP). The MSHCP's blatant technical deficiencies indicate that its stated environmental and scientific purposes are a subterfuge for the plan's primary effect of curtailing development in the most rapidly growing area in the United States and shifting ownership of private property to public conservation without just compensation.

The MSHCP and Draft EIR/EIS need to be overhauled to remedy the many deficiencies discussed below, and re-circulated for public review and comment. Only that way can the decisionmakers and the affected public be adequately informed of the scope and manner of the potential repercussions of the MSHCP.

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requirements and rules governing the level analysis (CEQA Guidelines §§ 15221-22; 40 CFR § 1506.2). Thus, as evident here, when CEQA imposes a more stringent requirement than NEPA, the joint document must satisfy the stricter CEQA requirement (*see* CEQA Guidelines §§ 15221, 15222). Accordingly, although for discussion purposes most legal citations will be to CEQA, CEQA Guidelines, or CEQA case law, Century's comments apply with equal force to NEPA related-issues.

A. Inadequacies of the Draft EIR/EIS.

Century's review of the Draft EIR/EIS reveals that it suffers from the following deficiencies:

- Inadequate Project Description: The description of the MSHCP is incomplete and fails to take into account the loss of conservation acreage resulting from the recent annexation of the Palmwood project to Desert Hot Springs. It is impossible to identify and evaluate many of the MSHCP's environmental impacts and its feasibility because the project description lacks or obfuscates details about the MSHCP that are critical to an adequate analysis of project-related and cumulative impacts. Such details include, but are not limited to: (1) lack of understandable standards for the Conservation Area, Biological Corridors and Linkages; (2) failure to utilize updated and accurate science to create the MSHCP; (3) failure to meet the project objectives, which makes the MSHCP costly, onerous, and inefficient; and (4) failure to comply with state and federal laws, as well as constitutional rights of affected landowners whose property is targeted for conservation.

- Inadequate Project Setting: The Draft EIR/EIS fails to adequately and completely describe key elements of the project setting, including the biological resources environmental setting and the land use environmental setting.

- Inadequate Cumulative and Growth-Inducing Impacts Analyses: The Draft EIR/EIS' cumulative and growth-inducing impacts sections are inadequate. The Draft EIR/EIS contains virtually no analysis of cumulative impacts. The Draft EIR/EIS also does not adequately consider feasible mitigation for the project's growth-inducing impacts and its incremental contribution to cumulative impacts associated with the intensification of development outside the Conservation Area.

- Failure to Identify Feasible Mitigation Measures: Feasible mitigation measures are not identified, including measures capable of reducing project-specific impacts to vegetation communities, non-covered species, and cumulative impacts to mineral resources. Although mitigation may not reduce a significant unavoidable impact to a less than significant level, all feasible measures must be considered.

  Further, because many of the impacts not reviewed in detailed in the Draft EIR/EIS are actually significant, the Draft EIR/EIS will need to identify and discuss mitigation measure for these impacts.

- Inappropriate Deferral of Mitigation Measures and Environmental Analyses: The Draft EIR/EIS improperly defers development and implementation of feasible mitigation measures and studies to deal with many potentially significant project-related impacts. Without providing details of these measures, the Draft EIR/EIS simply cannot conclude that they will mitigate the impacts to less than significant levels.

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- Failure to Analyze a Reasonable Range of Alternatives: The Draft EIR/EIS fails to adequately analyze a reasonable range of alternatives, including a truly viable alternative with less significant private land use impacts. The Draft EIR/EIS does not analyze a conservation alternative that would apply regional planning to publicly-owned lands, and existing state and federal laws to private property. The "No Project Alternative" is incorrectly dismissed on grounds of being incapable of conserving indirect impacts to listed species from development projects adjacent to occupied habitat, and impacts to unlisted species that do not occur on habitat of listed species. In this regard, the Draft EIR/EIS ignores CEQA and existing local regulations protecting natural resources. As a result, the conclusion of the Draft EIR/EIS that the Proposed MSHCP (e.g., the project) is the environmentally superior alternative is not substantiated.

- Improper and Illegal "Rubber-Stamping" of the MSHCP. In her testimony on the annexation proceeding, Katie Barrows of CVCC staff described the tremendous timing pressures on CVCC to approve the MSHCP. Such "bureaucratic momentum" taints the decisionmakers' evaluation of the impacts for the other alternatives considered in the Draft EIR/EIS and in essence commits the County and participating cities to approve the MSHCP without due regard of its potential impacts and despite available alternatives.

These are just a few of the notable examples of errors and omissions that plague the Draft EIR/EIS. Century's comments detailing the inadequacies of the Draft EIR/EIS are discussed in greater depth below.

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B. Inadequacies of the MSHCP.

The MSHCP is inconsistent with the County's and participating cities' land use planning and zoning laws, violates Century's due process rights, and results in an illegal taking of Century's property without just compensation, all while failing to meet its stated environmental and scientific objectives:

- The MSHCP includes Century's property within the Conservation Area based on outdated data over 10 years old. This is of particular concern because, under the MSHCP, the Conservation Area designation and the related habitat assumptions will take precedence in defining areas of "biological sensitivity" over the actual biological conditions present when processing development projects, contrary to the requirements of federal and state law. Development approvals on land within the designated Conservation Area are subject to a much longer, complicated and costly review process compared with similarly-situated public and private development projects on land outside the Conservation Area.

- The MSHCP uses the County's and cities' land use authority to compel private landowners to set aside private property for species that do not occur on their land, species that are not listed and do not require "take" permits, and physical features that not otherwise regulated under state or federal law. There is simply no "nexus"

between the potential impact's of Century's land use and the obligations and restrictions that the MSHCP proposes to place on Century.

- The MSHCP's land use restrictions and convoluted project processing places a cloud over thousands of acres of privately-owned property within the MSHCP's Conservation Area, impairing their fair market value.

- The HANS process misuses the County's and cities' land use authority to coerce landowners to dedicate a disproportionate amount of private property to public conservation uses without just compensation as a condition of project approvals. For property owners within the Conservation Area whose land is targeted for purchase, the HANS process could last four years or longer, and at the conclusion of this time, the property owners still may not receive compensation or be allowed to develop. Absent the coercive effect of the MSHCP's provisions, no landowner would voluntarily agree to such a process, considering it is our experience that typically a project can get all approvals, even from federal and state agencies, in half that time.

- The MSHCP prioritizes acquisition of conservation land focused on property with the "greatest risk of Development" (MSHCP, § 4.2.2.2.2). By its terms, the MSHCP is inconsistent with land use and development. The MSHCP calls for conservation of a minimum of 129,690 acres of Additional Land within the designated Conservation Areas, the vast majority of which is currently in private ownership (MSHCP, §§ 4.2.2.1 and 4.2.2.2.) For example, the MSHCP targets conservation of 93% of all current non-conserved acreage in the Santa Rosa and San Jacinto Mountains Conservation Area targets. Almost all of the non-conserved land (96%) is privately owned (Table 4-109).

- It is estimated that approximately 225,000 acres of privately-owned land is included within the Conservation Area, subjecting numerous landowners to the coercive, time-consuming and unacceptable HANS process. Further evidence of the MSHCP's disparate treatment of private landowners within the Conservation Area are the revisions to the MSHCP deleting the previous section extending take authorization for existing, legal activities on private property within the Conservation Area, while maintaining similar provisions for public agency projects. (MSHCP, p. 7-16.)

- The MSHCP proposes to establish a development impact/mitigation fee of $5,730 per acre of Development within the plan's 1.1 million acre boundary. This an obvious underestimation of the likely amount of funding needed based on a low-ball average property value. Additionally, the proposed $5,730/acre exaction fee significantly increases the cost of housing. The impact to the participating jurisdictions' ability to meet their fair-share housing needs must be evaluated.

- The MSHCP effectively gives the federal and state governments veto authority over the local development entitlement process by allowing them to revoke incidental take authorization if the County or cities fail to comply with the MSHCP, even in the absence of any illegal taking of listed species. The USFWS and CDFG have the final say in every development application and can revoke the MSHCP Take Authorization

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at any time if they disagree with the County's or the cities' interpretation of how the MSHCP Conservation Objectives should be applied.

- The MSHCP imposes significant restrictions on existing infrastructure and dictates avoidance and mitigation obligations for siting, constructing, operating, and maintaining of planned infrastructure (*e.g.*, interchanges and associated arterials, roads, flood control facilities, and wastewater and water facilities) without consideration of the land uses those facilities are to serve.

The MSHCP will create enormous out-of-pocket costs to the County and the participating cities, in addition to lost tax revenue:

- The estimated price tag to the County and the participating cities to implement the MSHCP will be over $2 billion. These costs include over $583 million for land acquisition (*see* Appendix I, Table A5-1) and $5.5 million for activities required to make the acquired land useable for its intended conservation purpose (*see* Appendix I, Section 5.2). However, the property acquisition costs are underestimated due to a low-ball property valuations used. For example, the plan estimates that 50% of the 31,390 acres that may need to be acquired in the Santa Rosa & San Jacinto Mountains Conservation Area encompassing Century's property Palm Springs area property has a value of $350/acre, and 48% of that property has a value of $4,000/acre. Additionally, many of the development incentives set forth in MSHCP Section 6.6.1.2 proposed in lieu of monetary compensation will not be available. This means more private property will have to be bought than currently estimated, and at higher prices than projected.

- The County and participating cities will be subjected to a new complicated administrative process, overseen by the Coachella Valley Conservation Commission ("CVCC"), and involving the County or participating city, the CVCC, the Service, and the CDFG. This new bureaucracy will usurp local land use authority and control. In addition, private property owners may have less input on decisions affecting their property because today, issues dealing with biological resources are typically handled by the various federal and state agencies, and private property owners have direct interaction with them.

- Due to the cost and complexity of administering the MSHCP, the County and participating cities will be hard-pressed to satisfy statutory time frames for approving projects, and will be hard-pressed to justify the MSHCP restrictions due to constitutional and statutory protections.

- In her April 26, 2007, testimony before LAFCO on the Palmwood project's annexation, Katie Barrows of CVCC staff described the tremendous timing pressures on CVCC to approve the MSHCP. This pressure places a substantial burden on CVAG to short-circuit its evaluation of the MSHCP as necessary to satisfy the time constraints, as well as a substantial burden on the County and participating cities to "rubber stamp" the MSHCP and the Draft EIR/EIS despite their major shortcomings.

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The MSHCP requires additional further study because:

- Due to the relocation of development outside the Conservation Area, the intensification of development in already developed areas may render infeasible the use of certain incentives to compensate for mitigation imposed on a development project that is above and beyond that project's impacts (*e.g.*, density bonuses, clustering, density transfers etc.). Therefore, the current estimate of funding necessary to purchase privately-owned property should be much higher.

- Out of the 27 covered species in the MSHCP, 2/3 are not subject to take restrictions under the state or federal ESA.

- There is inadequate science supporting the rationale for inclusion of so many acres of land and so many species. A majority of the habitat data used to create the MSHCP are over 11 years old.

- The MSHCP itself concedes that "adaptive management," the basis of the MSHCP, is experimental. Because the MSHCP Conservation Areas are not supported by adequate data, the MSHCP relies heavily on the unproven adaptive management concept to fill in data gaps after-the-fact.

- The MSHCP financing provisions do not adequately demonstrate that the County and the participating cities will have sufficient funding to acquire the total amount of privately-owned land needed for the Conservation Area. The land value assumptions used to estimate the local costs of acquiring the minimum 88,900 acres, which will be higher due to the lack of incentives, result in an underestimation of the actual private land values in Coachella Valley.

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CVAG and the USFWS should slow the MSHCP processing until these deficiencies are addressed. Otherwise, the MSCHP and the Draft EIR/EIS will violate federal and state laws, as well as constitutional rights.

In the event the County and the Service choose to ignore Century's comments, despite the fact the MSHCP as drafted violates CEQA, NEPA, the Federal Endangered Species Act ("FESA"), and the California Endangered Species Act ("CESA"), and move forward with approving the MSHCP, the following changes, at a minimum, must be incorporated into the MSHCP:

- Remove logically-developable portions of Century's property from the MSHCP Conservation Area – Century's property has little or no suitable habitat for the covered species.

- Streamline and simplify the Joint Review/Application Review and the HANS processes for reviewing discretionary permits under the MSHCP so that it complies with the Permit Streamlining Act, Subdivision Map Act, and CEQA.

- Exempt ministerial permits and grading permits from MSHCP review.

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- Alleviate the restrictions of private property outside of the Reserve System by revising the Adjacency Guidelines and incorporating buffers within the Conservation Area and not on adjacent private land.
- Restore the incidental take coverage for existing land uses outside of the Reserve System.
- Develop incentives, not penalties, available to landowners within the Conservation Area which encourage landowners to voluntarily participate in the MSHCP.

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III. CENTURY'S PROPERTY AFFECTED BY THE MSCHP.

To provide a context for Century's comments, the following is a brief description of Century's property.

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IV. THE DRAFT EIR/EIS FOR THE MSHCP IS INADEQUATE.

The MSHCP would serve as an HCP pursuant to FESA Section 10(a)(1)(B), as well as a Natural Communities Conservation Plan ("NCCP") pursuant to the NCCP Act of 2001, as amended. The approval of the proposed MSHCP and execution of the Implementation Agreement would allow the USFWS and the CDFG (collectively the "Wildlife Agencies"), to issue take authorizations for the covered plant and wildlife species within the Plan Area.

With the proposed MSHCP, the Wildlife Agencies will grant take authorization for otherwise lawful actions, such as public and private development that may incidentally take or harm the covered species or their habitats within the Plan Area, in exchange for the assembly and management of a coordinated MSHCP Conservation Area. (*Id.*)

The MSHCP would require the acquisition of private property for inclusion in the MSHCP Reserve System. The federal and state governments are required to acquire 21,390 acres of privately owned lands in the Conservation Area, and the local permittees are required to conserve an additional 88,900 acres, ***for a total of 110,290 acres of private property to be acquired for the Reserve System. This acquisition obligation alone amounts to 50% of all of the private property included in the Conservation Area.***

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The purpose of an EIR is to "'alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.'" (*Laurel Heights I*, 47 Cal.3d at 392; *see also Woodward Park Homeowners Association, Inc. v. City of Fresno* ("*Woodward Park*") (2007) 149 Cal.App.4th 892, 2007 WL 1096885, at *13 [an EIR is an informational document whose purpose is to inform the public and decision makers of the environmental consequence of agency decisions before they are made; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 822.) Thus, an EIR must "provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; list ways which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (CEQA § 20161; CEQA Guidelines §15002; *Laurel Heights I*, 47 Cal.3d at 391; *Woodward Park*, 2007 WL 1096885, at *22, *citing Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 804 ["an EIR

vindicates the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of a proposed project"].)

Under NEPA an EIS should "provide decisionmakers with sufficiently detailed information to aid in determining whether to proceed with the action in light of its environmental consequences and to provide the public with information and an opportunity to participate in the information gathering process." (*Northwest Resource Info. Ctr. v. National Marine Fisheries Serv.* (9th Cir. 1995) 56 F.3d 1060, 1064; *see also Salmon River Concerned Citizens v. Robertson* (9th Cir. 1994) 32 F.3d 1346, 1356 ["The policy behind NEPA is to ensure that an agency has at its disposal all relevant information about environmental impacts of a project before the agency embarks on the project"].)

CEQA also prohibits approving a project unless all feasible mitigation has been required. (CEQA § 21002; *Laurel Heights I*, 47 Cal.3d at 400-401.) CEQA mandates that environmental impacts be identified and analyzed in the EIR, not at a later date. (*See Sundstom v. County of Mendocino* (1988) 202 Cal.App.3d 296 [holding that a negative declaration was invalid when county approved a project while postponing the resolution of uncertainties regarding environmental impacts to a later date].)

Moreover, an EIR must provide a degree of analysis and detail about the project's environmental impacts that will enable decision-makers to make intelligent judgments in light of the environmental consequences of their decisions. (CEQA Guidelines § 15151; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692 ("*Kings County*").) To this end, the lead agency must make a good faith effort at full disclosure of environmental impacts. In order to accomplish this requirement, it is essential that the project is adequately described and that the information about the existing environmental setting is complete. (*See County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 199.) The environmental setting, or baseline, must reflect the existing setting, not a hypothetical environment. (*See Woodward Park*, 2007 WL 1096885, at *15 [EIR was defective because it analyzed a hypothetical office park instead of an actual vacant lot as the environmental baseline].) NEPA similarly requires that an EIS succinctly describe the environment and the area to be affected. (40 C.F.R. § 1502.15.)

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Both the affected public and decision-makers need to fully understand the implications of the choices that are presented related to the project, mitigation measures, and alternatives. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of California* (1993) 6 Cal.4th 1112, 1123 ("*Laurel Heights II*").) Accordingly, an EIR's "purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" (*Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"), *citing Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.) Similarly, NEPA is intended to provide a full and fair discussion of significant environmental impacts to inform decision-makers and the public. (40 C.F.R. § 1502.1.)

In this case, the Draft EIR/EIS fails to provide sufficient information to enable informed decision-making by the County and the public for all of the reasons set forth below.

A. Portions of the Draft EIR/EIS Are Not Formatted Properly and Omits Critical Information.

An EIR should be organized and written in a manner that will allow them to be "meaningful and useful to decision-makers and to the public." (CEQA § 21033(b).) To that end, "[a]n EIR shall contain a brief summary of the proposed actions and its consequences." (CEQA Guidelines § 15123(a).) Such a summary shall identify "[e]ach significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect." (CEQA Guidelines § 15123(b)(1).)

In the context of an EIR where a mitigation and monitoring plan is required, as here, the public agency should note the agency responsible for implementing and monitoring the identified mitigation measures. (*See generally* CEQA Guidelines § 15097(a)(1).) For alternatives, the EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project. (CEQA Guidelines § 15126.6(d).) A matrix displaying the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison. (*Id.*)

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The Draft EIR/EIS' Executive Summary fails to meet these requirements. First, the Executive Summary fails to discuss the acreages of private property included in the Conservation Area and targeted for acquisition. It is not evident from the summary that almost all of the private land included in the Conservation Area is to be acquired for public conservation purposes. As a result, the affected public and decisionmakers are deprived a meaningful opportunity to comment on the MSHCP land use inconsistencies and constitutional infirmities.

A claim that an EIR is obscure and difficult to understand may form the basis for a challenge to the EIR's adequacy, because it documents that are "hypertechnical and confusing in their presentation may be incomprehensible to the very people they are meant to inform." (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1987) 193 Cal.App.3d 1544, 1548.)

B. The Draft EIR/EIS Contains An Inadequate Project Description.

CEQA mandates an accurate project description. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730.) A complete project description is necessary to assure that the project's environmental impacts are considered. (*City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450.) A project description must include all relevant parts of a project, including reasonably foreseeable future expansion or other activities that are part of the project. (*Laurel Heights I*, 47 Cal.3d at 396; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 829.)

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The lack of one, concrete project description violates CEQA in that it precludes the public from intelligent participation in the analysis of the project. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 197.) A deficient project description is grounds to set aside the certification of an EIR. (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 2007 WL 1052800, at *5 [County Board of Supervisors' certification of EIR was set aside because project description in the EIR was was unstable and misleading].) NEPA

similarly requires that the EIS succinctly describe the environment of the area to be affected. (40 C.F.R. § 1502.15).

Further, "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." (*Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.) "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (*County of Inyo*, 71 Cal.App.3d 185 at 198; *Mira Monte Homeowners Association v. County of Ventura* (1985) 165 Cal.App.3d 357, 365.)

"The defined project and not some different project must be the EIR's bona fide subject." (*County of Inyo*, 71 Cal.App.3d at 199). An accurate and complete project description is indispensable because "[a] curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*Id.* at 192-93 [emphasis added].)

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The MSHCP's structure is an apparent attempt to avoid liability for the blatant inverse condemnation and pre-condemnation liability resulting from including vast private acreage within the Conservation Area. The MSHCP's narrative Conservation Objectives would apply to private property within the Conservation Area without any nexus between the requirement and the actual land use impacts on that property, and without the consent of the affected private property owners. The MSHCP also imposes conservation restrictions and obligations on an undefined number of additional acres outside of the Reserve System and outside of the Conservation Area. This makes it difficult for the reader to ascertain the location and extent of the landholdings that will ultimately be impacted by the MSHCP. It is only after the fact when a public or private property owner decides to develop their property, and the CVCC, the County or city begins to apply the MSHCP Conservation Objectives, would the actual nature and extent of the land use impacts be known. This framework makes it difficult or impossible for the affected public and decisionmakers to understand the potential extent of the MSHCP's environmental impacts.

a. Inadequate Description of Edge Effects Boundaries.

Another amorphous, undefined, and uncertain concept associated with the MSHCP is "edge effects." According to the Draft EIR/EIS, "edge effects could occur to species and habitats within the MSHCP Conservation Area as a result of land uses and activities on land that shares a common boundary with any parcel in a Conservation Area. According to the MSHCP, edge effects include noise, lighting, drainage, intrusion of people, and the introduction of non-native plants and non-native predators such as dogs and cats (MSHCP § 4.5, p. 4-177.) As written, such activities on private property within and adjacent to the Conservation Area would violate the MSHCP.

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However, as with Conservation Area, the Draft EIR/EIS fails to provide any description of the extent of the acreage subject to the Land Use Adjacency Guidelines. This is in direct

contradiction to the Service's HCP Handbook, which provides that HCP boundaries "be as exact as possible." (HCP Handbook at p. 3-11.)

Because of the lack of "hard-line" boundaries, private property owners cannot adequately determine the full extent of the MSHCP's edge effects applicable to their property. In other words, private property owners have no idea how close their property must be before they are required to comply with the MSHCP's Adjacency Guidelines edge effects.

The problem is exacerbated by the revised MSHCP's deletion of take authorization for existing land uses (MSHCP, p. 7-16.) The MSHCP essentially proposes to establish an endangered species breeding program adjacent to existing land uses, increasing the likelihood of take from existing land uses. Private landowners would be exposed to increased risk of civil and criminal liability for taking listed species without coverage under the MSHCP. The deleted language must be restored prior to approving the MSHCP.

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2. By Using Outdated and Inaccurate Science the Draft EIR/EIS Inadequately Describes the Boundaries of the Conservation Area.

CEQA requires that there be a good faith effort at full disclosure. (CEQA Guidelines § 15151.) In the *Berkeley Jets* case, *supra*, the court determined that the use of scientifically outdated information from the California Air Resources Board's 1991 speciation profile for estimating toxic emissions from aircraft was not a reasoned and good faith effort to inform the decision makers and public about the increase in toxic emissions as a result of the proposed airport expansion. (*Berkeley Jets*, 91 Cal.App.4th at 1366-67.)

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

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The FESA has as a guiding principle of using of the "best scientific and commercial data available" in all of the technical efforts within the HCP and in its decision-making. The U.S. Supreme Court has explained that:

> "[t]he obvious purpose of the requirement that each agency 'use the best scientific and commercial data available' is to ensure that the ESA not be implemented haphazardly, on the basis of speculation or surmise. While this no doubt serves to advance the ESA's overall goal of species preservation, we think it readily apparent that another objective (if not indeed the primary one) is to avoid needless economic dislocation produced by agency officials zealously but unintelligently pursuing their environmental objectives."

(*Bennett v. Spear* (1997) 520 U.S. 154, 176-177; *see also National Wildlife Federation v. National Marine Fisheries Service* (2007) 481 F.3d 1224, 1242 [ESA mandates that agencies use the best scientific and commercial data available in their decision-making].)

Instructive is the Service's HCP Handbook. The HCP Handbook's states that HCP boundaries should be as exact as possible:

> "a. Delineation of HCP Boundaries. HCP boundaries should encompass all areas within the applicant's project, land use area, or jurisdiction within which any permit or planned activities likely to result in incidental take are expected to occur. HCP boundaries should also be as *exact* as possible to avoid later uncertainty about where the permit applies or where permittees have responsibilities under the HCP.

(HCP Handbook at p. 3-11 [emphasis added].)

In addition to the NEPA, FESA, and HCP Handbook Guidance regarding the sufficiency of data, the Service and the National Marine Fisheries Service, on July 1, 1994, published in the Federal Register (59 FR 34271), A Notice of Policy Statement entitled: Endangered and Threatened Wildlife and Plants: Notice of Interagency Policy on Information Standards Under the Endangered Species Act. Under the Policy statement, the following is stated:

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> "To assure the quality of the biological, ecological, and other information that is used by the Services in their implementation of the Act, it is the policy of the Services: a. To require biologists to evaluate all scientific and other information that will be used to . . . (f) issue scientific and incidental take permits. This review will be conducted to ensure that any information used by the Services to implement the Act is reliable, credible, and represents the best scientific and commercial data available."

Here, there is simply insufficient habitat data available upon which to establish a region-wide Conservation Area. At a certain point, an agency might so liberally manipulate and interpret data as to "fudge" conclusions utterly unsupportable by any reasonable application of the scientific method. Such treatment of the "best data" would rise to the level of "arbitrary and capricious" and would require intervention of the reviewing court. (*See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm* (1983) 463 U.S. 29, 43.)

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

Here, the data upon which the MSHCP is based is too sparse, inaccurate and outdated to constitute a scientific basis for the MSHCP. This is borne out by the sources from which the MSHCP was created.

The decision to use outdated and inaccurate science to formulate the MSHCP not only violates CEQA, NEPA, FESA, and CESA, as shown above, it also renders the project description inaccurate because the coverage of the Conservation Area, the Ecological Process areas, Biological Corridors, Linkages, and Core Habitat could be over- or under-inclusive based on this outdated and inaccurate science. As a result, public and private property owners have no way of knowing the full extent of the MSHCP's impacts to their property, and no way to assess the feasibility of the MSHCP as a conservation plan.

This approach violates CEQA, since as in *Berkeley Jets*, the County's use of outdated information when it could obtain updated information is not a good faith effort to inform the decision makers and public about the impacts on biological resources that will occur as a consequence of the MSHCP. Similarly, this approach violates NEPA, which is intended to provide a full and fair discussion of significant environmental impacts that informs decision-makers and the public. (40 C.F.R. § 1502.1.) The County's intent to update the vegetative and species data after the MSHCP is adopted, instead of before, is simply, as discussed below, an improper deferral of an assessment of the environmental impacts to a later date contrary to CEQA Guidelines Section 15146. The County's use of outdated information does not constitute a good faith effort at full disclosure in describing or evaluating the impacts of the MSHCP.

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(1) *The MSHCP Does Not Coordinate And Maximize The Value Of Expenditures Of Limited Nor Does It Develop A Fee-Based Funding Plan That Will Generate Sufficient Revenue To Contribute To The Reserve's Funding Needs.*

According to the Draft EIR/EIS, local funding is an essential element of the MSHCP. The MSHCP indicates that the local program costs to implement the MSHCP will include the local jurisdiction's costs to acquire 88,900 acres of privately-owned property; the cost of management, Adaptive Management monitoring; and the local costs associated with administering the MSHCP.

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Upon first blush, it appears that the MSHCP has accounted for the staggering costs of the implementation and administration of the MSHCP. However, a closer look reveals that the MSHCP has significantly underestimated the costs of the MSHCP as well as the amount of land that it may have to acquire.

As presently drafted, the MSHCP provides no real incentive for any private landowners to voluntarily participate in the MSHCP. The MSHCP significantly underestimates the costs of the MSHCP and must conduct an appropriate Nexus Study in order to justify any development mitigation fee for the project. In its current state, the MSHCP appears to be unable to compensate all private landowners for the taking of their property, which is in violation of both the U.S. and California constitutions.

(2) *The MSHCP Does Not Satisfy all State and Federal Laws Related to Species and Habitat Protection.*

Contrary to the stated purpose of the MSHCP to satisfy applicable provisions of state and federal law pertaining to species protection (Draft EIR/EIS p. 1-6), the MSHCP does not address any of the existing Clean Water Act regulations. (MSHCP, p. ES-21.) In addition to satisfying the onerous obligations and restrictions of the MSHCP, public and private projects would be required to undergo the USFWS Section 7 Consultation process related to Section 404 permits.

For example, the MSHCP, as currently drafted, will not cover impacts or filling of U.S. waters or wetlands pursuant to the federal Clean Water Act. Such activities will still require the Army Corps of Engineers' ("Corps") issuance of a section 404 permit. The MSHCP will not cover CDFG clearance for a Section 1603 (Streambed Alteration Agreement) permit. The MSHCP will also not cover Clean Water Act section 401 activities of the California Regional Water Quality Control Board ("RWQCB").

Overlapping Corps, RWQCB, CDFG and Service Section 7 conditions placed on private and public projects almost always cover construction-related jurisdictional water alterations in the Coachella Valley. Some of the conditions are duplicative, but often the conditions are different and require more costly mitigation and changes to the private or public projects above and beyond the contemplated MSHCP restrictions. The adoption of the MSHCP offers no relief to this existing regulatory problem, and in fact complicates it by adding yet another development application review process.

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Even where the MSHCP does apply, the Wildlife Agencies will have final say concerning every ministerial and discretionary development application and permit in or near the Conservation Area. During the HANS process, the Joint Project Review process, the Like Exchanges process, the Minor and Major Amendments processes, and the 60-day notification for various activities, the Wildlife Agencies are consulted and if they disagree with the CVCC, County, or city over application of Conservation Objectives, the MSHCP gives them the authority to revoke the Permittees' Section 10(a) Incidental Take Authorization.

Also, the MSHCP offers no coverage for existing, on-going land use activities. The prior provision covering existing land uses was stricken from the recirculated draft MSHCP. This is particularly problematic for land uses within and in proximity to the Conservation Area because the MSHCP essentially calls for creating an endangered species breeding grounds in those areas. Landowners would be exposed to increased risk of illegal taking of endangered species without any coverage under the MSHCP, requiring them to obtain individual incidental take permits in order to avoid civil and criminal liability under the state and federal Endangered Species Acts.

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(3) *The MSHCP Does Not Comply With Applicable Federal And State Laws And Constitutional Requirements*

(a) The MSHCP Exceeds Federal Endangered Species Act ("FESA")Requirements.

The MSHCP fails to meet the requirements of the FESA (16 U.S.C. §§ 1531-1534) and for this reason alone, the Service must deny the County's HCP application, unless significant modifications occur.

The MSHCP is intended to serve as an HCP pursuant to Section 10(a)(1)(B) (16 U.S.C. § 1539(a)(1)(B)) of the FESA of 1973, as well as a NCCP under the NCCP Act of 2001 (Cal. Fish & Game Code §§ 2800 *et. seq.*). Section 9 of FESA makes it unlawful to "take" any fish or wildlife species listed as endangered. FESA defines the term "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or attempt to engage in any such conduct." (16 U.S.C. § 1532(19).) In order to authorize an incidental take of an endangered animal, a landowner is required to obtain a Section 10 Take Permit along with an HCP.

Cases interpreting FESA have held that there needs to be an actual "take" in order to trigger Section 9, even when it is claimed that a project may affect the habitat of endangered species. In *Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*, 515 U.S. 687 (1995) ("*Sweet Home*"), the Supreme Court upheld a regulation of including habitat modification within the definition of "take," but strictly construed it to require substantial habitat modification which results in (1) death or actual injury, (2) to an identifiable member of a listed wildlife species, and (3) that is proximately caused by the action in question. (*Sweet Home*, 515 U.S. at 708-709 (Justice O'Connor concurrence); *see also Defenders of Wildlife v. Bernal* (9th Cir. 2000) 204 F.3d 920.)

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Under the FESA, therefore, a landowner need not obtain a Section 10 Incidental Take Permit if there is no actual "take" of an endangered animal or its habitat. The MSHCP purports to prohibit development of 153,000 acres of private property, within the Conservation Area, and land outside the Conservation Area, even though the vast majority of this property may not actually be occupied or serve as habitat of any endangered animals.

Of the 27 species proposed to be conserved by the MSHCP, only 11 of them are designated as state or federal endangered or threatened. Two of the 11 are plant species, which are not subject to the take restrictions of Section 9 of FESA (16 U.S.C. § 1538(a)(2)). Additionally, the MSHCP regulates 27 "natural communities". ***The MSHCP would enlarge, not reduce, the regulatory burden on landowners within the plan area.***

(b) The MSHCP Is Not Necessary to Comply with the California Endangered Species Act Requirements.

CESA prohibits the "take" of species listed as threatened or endangered without authorization from CDFG. (Cal. Fish & Game Code § 2080.) Additionally, Fish & Game Code Section 2080(b)(2) provides that although "[t]he impacts of the authorized take shall be minimized and fully mitigated," any mitigation measures imposed must be "roughly proportional

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in extent to the impact of the authorized taking on the species." As discussed above and further illustrated below, the proposed MSHCP is based on outdated and inaccurate science. As result, activities occurring within the Conservation Area may not have been accounted for and these disturbed areas may not be suitable for conservation. However, the MSHCP would treat these areas for necessary for conservation.

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(c) The MSHCP Does Not Satisfy the Requirements of the HCP Statutes and Guidelines.

The MSHCP is intended to serve as an HCP pursuant to Section 10(a)(1)(B) (16 U.S.C. § 1539(a)(1)(B)) of the FESA of 1973. As an approved HCP, the MSHCP would be used to allow the participating jurisdictions to authorize "Take" of federal plant and wildlife species identified within the MSHCP Plan Area, which is 1.26 million acres. Currently, the Service has the authority to regulate the Take of federal Threatened, Endangered, and rare Species. Under the guise of the MSHCP, the Service would allegedly grant "Take Authorization" for otherwise lawful actions -- such as public and private development that may incidentally Take or harm individual species or their habitat outside of the MSHCP Conservation Area -- in exchange for the assembly and management of a coordinated MSHCP Conservation Area.

However, before "Take Authorization" is granted by the Service for the MSHCP, the MSHCP must be approved as an HCP. Strict guidelines for the preparation, processing, and implementation of HCPs are found in the Service's November 4, 1996, Habitat Conservation Planning and Incidental Take Permit Processing Handbook (the "HCP Handbook"), and its June 1, 2000, Addendum.

Enacted in 1973, the FESA, (16 U.S.C. § 1531 *et seq.*), requires the Secretary of the Interior to list endangered and threatened species. (16 U.S.C. § 1533(a).) Section 9 of the Act prohibits, *inter alia*, the "take" of any listed species. (16 U.S.C. § 1538(a)(1).) The term "take" includes harassing, harming, pursuing, wounding, and killing. (16 U.S.C. § 1532(19).) The regulations further define "harm" to include acts that actually kill or injure wildlife through "significant habitat modification or degradation" that impairs "essential behavioral patterns, including breeding, feeding, or sheltering." (50 C.F.R. § 17.3.) Thus, the FESA prohibits the destruction of individual members of a listed species or their essential habitat. (*See Sweet Home*, 515 U.S. at 692.)

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In 1982, Congress amended FESA (Section 10) to authorize the Secretary to permit the take of listed species "if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity." (16 U.S.C. § 1539(a)(1).) Congress intended the 1982 amendment to address the concerns of private landowners who wish to pursue lawful activities on their private property without risking criminal and civil penalties under Section 9's prohibition against taking listed species. (*See* H.R. Rep. No. 97-567, at p. 31 (1982), reprinted in 1982 U.S.S.C.A.N. 2807, 2831.) Specifically, Congress directed:

> "To the maximum extent possible, the Secretary should utilize this authority under this provision to encourage creative partnerships between the public and private sectors and among governmental agencies in the interest of species and habitat conservation. * * * This

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provision will measurably reduce conflicts under the Act and will provide the institutional framework to permit cooperation between the public and private sectors in the interest of endangered species and habitat conservation."

(H.R. Conf. Rep. No. 97-835, at 30-31 (1982), reprinted in 1982 U.S.S.C.A.N. 2860, 2871-72.)

The applicant for an Incidental Take Permit under Section 10 must submit a Conservation Plan or HCP describing the impact of the Take, steps the applicant will take to minimize and mitigate those impacts, and alternatives the applicant has considered. (16 U.S.C. § 1539(a)(2)(A), 50 C.F.R. § 17.22(b)(1).) As outlined in the HCP Handbook:

"Upon receiving a permit application and conservation plan completed in accordance with the requirements of section 10(a)(2)(A) of the ESA . . ., [the Service] and NMFS must consider the issuance criteria described at section 10(a)(2)(B) of the ESA in determining whether to issue the permit. *All applicable criteria must be satisfied before a permit may be issued.* If the application fails to meet any of the criteria, the permit must be denied. In addition, the [the Service] must ensure that general permit issuance criteria described at 50 CFR 13.21 and criteria specific to section 10(a)(1)(B) permits described at 50 CFR 17.22(b)(2) and 50 CFR 17.32(b)(2) are satisfied. However, issuance criteria under at 50 CFR Part 17 are essentially identical to those under the ESA."

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(HCP Handbook at 7-1 [emphasis added]).

Accordingly, under Section 10(a)(2)(A) and federal regulation (50 C.F.R. §§ 17.22(b)(1), 17.32(b)(1), and 222.22), an HCP submitted in support of an Incidental Take Permit application must detail the following information:

1) Impacts likely to result from the proposed Taking of the species for which permit coverage is requested;

2) Measures the applicant will undertake to monitor, minimize, and mitigate such impacts;

3) Funding that will be made available to undertake such measures and the procedures to deal with unforeseen circumstances;

4) Alternative actions the applicant considered that would not result in Take, and the reasons why such alternatives are not being utilized; and

(*See also* HCP Handbook, at p. 7-2 – 6).

Accordingly, the Secretary "shall issue" the Incidental Take Permit if she finds that: "(i) the taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (iii) the applicant will insure that adequate funding for

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the conservation plan . . . will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival . . .of the species . . .." (16 U.S.C. § 1539(a)(2)(B), 50 C.F.R. § 17.22(b)(2).) The Secretary must revoke the permit if the permittee does not comply with the permit's terms and conditions. (16 U.S.C. § 1539(a)(2)(C).)

The proposed MSHCP cannot meet these criteria, and therefore, the Service cannot approve it as an HCP and issue the requested Incidental Take Permit. First, the MSHCP is premised on outdated and inaccurate science. CVAG and the USFWS cannot demonstrate that, to the maximum extent practicable, the MSHCP can minimize and mitigate the impact of the taking of the covered species. NEPA and FESA require that the most "accurate" and "best scientific and commercial data available" be used in evaluating the impacts of and determining whether to approve an HCP. This is not an option for the Service to overlook in reviewing the County's MSHCP and its application for an Incidental Take Permit. This is also not an option the County can ignore in preparing the MSHCP.

Because of the use of this inaccurate and outdated science, the Service has cannot legally find that the MSHCP's proposal to set aside property for conservation will actually minimize and mitigate the impact of the taking of the covered species. The use of the inaccurate and outdated science makes it impossible for the Service to know if the identified conservation areas are actually suitable habitat. If "accurate" and "best scientific and commercial data available" were used it would reveal a smaller Conservation Area, especially for privately-owned property, due to the amount of development that has occurred in the last 11 years, which has "legally" eliminated potentially suitable habitat throughout the Coachella Valley.

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Further, the use of inaccurate and outdated science by the County renders the MSHCP's Conservation Area and additional restricted areas overly broad and uncertain. The lack of "hard-line" boundaries for the MSHCP's Conservation Area, Essential Ecological Process areas, Biological Corridors, Linkages, Core Habitat, and areas subject to Adjacency Guidelines and setback requirements in direct contradiction to the HCP Handbook, which states:

> "a. Delineation of HCP Boundaries. HCP boundaries should encompass all areas within the applicant's project, land use area, or jurisdiction within which any permit or planned activities likely to result in incidental take are expected to occur. HCP boundaries should also be as *exact* as possible to avoid later uncertainty about where the permit applies or where permittees have responsibilities under the HCP."

(HCP Handbook at p. 3-11 [emphasis added]).

However, federal law establishes that the Service cannot comply with the strict FESA mandates that an HCP "minimize and mitigate" the effects of the projects to the "maximum extent practicable" simply by relying on speculative future actions by others (*Sierra Club v. Marsh* (9th Cir. 1987) 816 F.2d 1376 [action agency cannot "insure" project will not jeopardize species based on promise of future mitigation measures]; *National Wildlife Federation v. Coleman* (5th Cir. 1976) 529 F.2d 359, *cert. denied*, 429 U.S. 979 [proposed actions by others does not "insure" that agency's actions will not cause jeopardy]; *Southwest Center for Biological*

Diversity v. Babbitt (D.C. 1996) 939 F.Supp. 49 [the Service's reliance on future actions by Forest Service does not comport with the language of statue that the Service base its listing decisions on "existing" regulatory mechanisms]).

Further, the MSHCP's includes an overly-broad list of covered species and habitats that is premised on outdated and inaccurate data. The HCP Handbook admonishes against the use of an overly broad list species list in an HCP:

> "*The more species addressed in the HCP, the more potentially complicated the HCP may become.* For example, in most state systems, primary jurisdiction over candidate species rests with affected State fish and wildlife agency, thereby increasing the advisability of that agency's participation in the process. Thus, selecting the species list can become an exercise in balancing the need to obtain *maximum regulatory certainty, with practical considerations such as manageability, availability of biological information, and cost.* The Services should be prepared to advise the applicant about which listed species should be highest priority in the HCP, which unlisted species are most likely to be listed in the future, and which species, listed or unlisted, can otherwise be advantageously addressed in the HCP."

(HCP Handbook,at pp. 3-7 – 8 [emphasis added]).

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Cont.

If CVCC cannot feasibly develop the scientific data to justify the number of species proposed to be conserved, then CVCC must tailor the species list to the sound, scientific information that exists.

Second, as discussed above, CVCC cannot demonstrate that there is sufficient or adequate funding for the MSHCP. The MSHCP acquisition cost has been significantly underestimated because it is based on unreasonably low land values. When using accurate land values, the acquisition costs of the MSHCP will be higher as well as the mitigation impact fee necessary to offset this costs.

Additionally, the acres of privately-owned property estimated to be set aside through incentives is an overestimation. Because almost all private development within the Conservation Area will be relocated outside this area, there will be an intensification of development in already developed areas rendering incentives such as density bonuses, density transfers, and clustering unavailable.

Because the MSHCP cannot support its implementation and administration costs, and appears to be unable to compensate all private landowners for the taking of their property, it violates both the U.S. and California constitutions (*see Sierra Club v. Babbitt* (S.D. Ala. 1998) 15 F.Supp.2d 1274, 1281 [he Service "failed to support the level or amount of offsite mitigation funding" in the administrative record]). Further, the MSHCP's reliance on other sources to contribute funds to make up for the inadequacy of the development mitigation fee funding is speculative and unsupported (*see National Wildlife Federation v. Babbitt* (E.D. Cal. 2000) 128

F.Supp.2d 1274, 1292-93 [the administrative record lacked examination of alternative amounts of the fee]).

Although economic balance was not originally a fundamental objective in the Section 7 Consultation process when the FESA was first adopted, with the subsequent FESA Section 10 amendments, where private land is considered, the U. S. Congress has required the balancing of public endangered species and private landowner economic interests. According to the HCP Handbook, "[t]he challenge of balancing biology with economics . . . is fundamental to the HCP process" (HCP Handbook, at p. 1-2). The HCP Handbook further states:

> "Congress . . . intended [the HCP] process to reduce conflicts between listed species and economic development activities, and to provide a framework that would encourage "creative partnerships" between public and private sectors, and state, municipal, and Federal agencies in the interests of endangered and threatened species and habitat conservation. This is critically important, for Congress was not instituting merely a permit procedure but a process that, at its best, would integrate non-Federal development of land and land use activities with conservation goals, resolve conflicts between endangered species protection and economic activities on non-Federal lands, and create a climate of partnership and cooperation."

(*Id.*).

To date, CVAG and the Wildlife Agencies have not given credence to Congress' direction by entering into a "creative partnership" with private property owners to resolve the uncertainty, bureaucracy, broadness, and the costs of the MSHCP.

In sum, the proposed MSHCP cannot meet these criteria, and therefore, the Service cannot approve the MSHCP as an HCP and issue the requested Incidental Take Permit.

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(d) The MSHCP Far Exceeds The Requirements of the NCCP Statutes And Guidelines.

As indicated above, the MSHCP is intended to serve as an NCCP under the NCCP Act of 2001 (Cal. Fish & Game Code §§ 2800 *et. seq.*). As an approved NCCP, the MSHCP would be used to allow the participating jurisdictions to authorize "Take" of state plant and wildlife species identified within the MSHCP Plan Area. Under the MSHCP, the CDFG would grant "Take Authorization" for otherwise lawful actions – such as public and private development – that may incidentally Take or harm individual species or their habitat outside of the MSHCP Conservation Area, in exchange for the assembly and management of a coordinated 745,900-acre MSHCP Reserve System.

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California Fish & Game Code Section 2080 prohibits the "Take" of species listed under the Fish & Game Code as candidate, Threatened, or Endangered Species. Fish & Game Code § 1908 prohibits the Take, possession or sale of rare native plants. Fish & Game Code Section 3503 prohibits the Take, possession or needless destruction of the nest or eggs of any bird. Fish & Game Code Section 3503.5 prohibits the Take, possession or destruction of any

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birds-of-prey or their nests or eggs. The NCCP Act, Fish & Game Code Sections 2800 *et seq.*, identifies the process and standards for NCCPs. Fish & Game Code Section 2835 authorizes CDFG to permit the Take of any covered species whose conservation and management are provided for in an NCCP approved by the CDFG.

However, before "Take Authorization" is granted by the CDFG for the MSHCP, the MSHCP must be approved as an NCCP. Strict guidelines for the preparation, processing, and implementation of NCCPs are found in the CDFG's January 22, 1998, NCCP General Process Guidelines ("NCCP Guidelines") (adopted pursuant to Cal. Fish & Game Code § 2825). The NCCP Guidelines Section III(B)(2)(a)-(i) provide for the following key elements to be incorporated into a NCCP:

a. Scope. Describe the natural communities and geographic area of the plan. Also identify the conservation goals for the plan area.

b. Covered Species. Identify those species to be conserved and managed within the plan area and may therefore be authorized for taking pursuant to Section 2835 and summarize how the ecological needs of those species are met by the plan.

c. Anticipated Activities. Describe the activities or categories of activities anticipated to be authorized by plan participants, which will result in the taking of species pursuant to Section 2835 within the plan area. Activities shall be described in sufficient detail to allow the department to evaluate the impact of such activities on the ecosystems, natural communities, and species identified in the plan. The combined effect of these activities must not negate the conservation benefits of the plan for any covered species.

d. Principles of Conservation Biology. Delineate the scientifically sound principles of conservation biology used in formulating those provisions of the plan to protect, restore, or enhance the ecosystems, natural communities and habitat types within the plan area. Demonstrate accepted principles of conservation biology for species covered have been used in formulating the plan.

e. Conservation Strategy

- *Conservation Measures.* Identify those actions to be undertaken to protect, restore or enhance the natural communities within the plan area.
- *Compatible Uses.* Identify appropriate activities, and any restrictions on activities, within the conserved areas.
- *Schedule.* Set forth a schedule for the implementation of conservation measures.
- *Measurable Goals.* Set forth objective, measurable goals to ensure that the conservation measures identified in the plan are carried out in accordance with the schedule and goals set forth in the plan.

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f. Monitoring. The plan must include a monitoring program that provides periodic evaluations of monitoring results and other new information to be used to:

- evaluate compliance with plan implementation mechanisms;
- evaluate biological performance of the plan; and
- determine whether management objectives remain appropriate and whether new or different techniques could be utilized to better achieve management goals.

g. Adaptive Management. Each plan will develop a management plan, which will provide for adaptive management. The plan will provide for the implementation of an adaptive management program, which establishes a flexible, iterative approach to long-term management of natural communities, habitat types, and species within the plan area. Management will be refined and improved over time based upon the results of ongoing monitoring activities and other relevant information. Elements of a management plan subject to adaptive management may include, but are not limited to, habitat management and enhancement, fire management, management of human impacts, and exotic species control.

h. Funding. Set forth an adequate funding source or sources to ensure that the conservation actions identified in the plan are carried out in accordance with the schedule and goals set forth in the plan.

i. Assurances. An NCCP may include, in both the plan and in a separate implementing agreement, assurances that provide for the long-term reconciliation of new land development in the planning area and the conservation and protection of endangered species. Departmental assurances will be determined for individual plans according to the level of conservation each plan affords. If warranted, the Department will provide its assurance that the NCCP provides measures sufficient to conserve the species addressed in the plan and that no further land dedications, land use restrictions, water use commitments, or financial compensation will be required by the Department of plan participants, except in defined extraordinary circumstances.

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For many of the same reasons identified above for the HCP process, the proposed MSHCP cannot meet these criteria, and therefore, the CDFG can not approve it as an NCCP and issue the requested Incidental Take Permit. For example, the MSHCP cannot meet elements a., b., c., d., and e., because the MSHCP is based on outdated and inaccurate science. The MSHCP cannot meet element g., because the amount of adaptive management needed to overcome the inaccurate and outdated science would be tantamount to improperly deferred environmental analysis under CEQA. The MSHCP cannot meet element h., because the costs and the amount of private property to be bought for conservation is significantly underestimated. The MSHCP can not meet element i., because the MSHCP's onerous burcaucracy treats projects within and outside of the Conservation Area disparately regardless of actual conditions, and offers no

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assurances that at the end of the lengthy process, privately-owned property will be acquired for conservation, allowed to be developed, or not be subject to additional mitigation and restrictions.

C. The Draft EIR/EIS Contains Inadequate Baseline/Setting Information.

An EIR must describe the environmental setting of a project in terms of existing physical conditions of a project site and its surrounding. (CEQA § 21151(b); CEQA Guidelines § 15125(a); *Cadiz Land Company v. Rail Cycle* (2000) 83 Cal.App.4th 74, 86; *San Joaquin Raptor Wildlife Reserve Center v. County of Stanislaus* (1994) 27 Cal.App.4th 714, 722; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712.) The environmental setting serves as the baseline against which project impacts are determined. (CEQA Guidelines § 15125.) "[W]ithout such a description, analysis of impacts, mitigation measures, and project alternatives becomes impossible" (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953).

To determine the significance of the impacts associated with a proposed project, CEQA requires that a project's impacts be evaluated against the backdrop of the environment as it exists at the time the NOP is published. The CEQA Guidelines defines "environment" as "the physical conditions that exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance" (CEQA Guidelines § 15360, see also CEQA § 21060.5.) An EIR must also include a description of the physical environment in the vicinity of the project as it exists at the time the Notice of Preparation ("NOP") is published, from both a local and regional perspective. (CEQA Guidelines §15125.) Therefore, the "environment" or "existing setting" against which a project's impacts are compared consists of the immediate, contemporaneous physical conditions at and around the project site at the time of the NOP. (Remy et al., Guide to the Cal. Environmental Quality Act (10th ed. 1999), at pp. 162-171). Accordingly, an " 'EIR must focus on impacts to the existing environment, not hypothetical situations.'" (*Save Our Peninsula Committee v. Monterey County* (2001) 87 Cal.App.4th 99, 122, *citing County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955; *see also Woodward Park*, 2007 WL 1096885, at *22 [EIR was defective because it analyzed a hypothetical office park instead of an actual vacant lot as the environmental baseline].)

X-14

The Draft EIR/EIS fails to provide an adequate description of the setting for the MSHCP. Such a failure is fatal under CEQA. CEQA and the CEQA Guidelines mandate that an EIR include a description of "the physical environmental conditions in the vicinity of the project . . . from both a local and a regional perspective . . . . Knowledge of the regional setting is critical to the assessment of environmental impacts" (CEQA Guidelines §§ 15125(a) and (c)). This requirement derives from the principle that without an adequate description of the project's local and regional context, the EIR, and thus the decision-makers and the public who rely on the EIR, cannot accurately assess the potentially significant impacts of the proposed project. Similarly, NEAP requires that an EIS contain a full and fair discussion of significant environmental impacts that informs decision-makers and the public (40 C.F.R. 1502.1). Without an adequate and accurate environmental setting, such a "full and fair discussion" is not possible.

1. The Draft EIR Fails To Accurately Describe The Biological Resources Environmental Setting.

The Draft EIR/EIS fails to describe accurately and completely the biological resources environmental setting of the MSHCP at the time the NOP. The biological resources environmental setting is fundamentally flawed because it admittedly relies on outdated and inaccurate data. The Adaptive Management Program admits that there is insufficient data on any of the species covered by the MSHCP except the fringe toad lizard, specifically, there is a lack of "distributional data that spans multiple years of naturally fluctuating resource levels." (Adaptive Management Plan, p. 6.) Additionally, the habitat data upon which the Conservation Area has been proposed are 11 years old. (*See, e.g.*, MSHCP Tables 4-107, 4-108, 4-109, 4-33, 4-34, 4-35, 4-37a, 4-37b, and 4-37c [habitat information substantiating the Santa Rosa and San Jacinto Mountains Conservation Area and Whitewater Floodplain Conservation Area]). As acknowledged by the Adaptive Management Plan, the natural resources fluctuate over time. It is very unlikely that the habitat resources documented 11 years ago remain presently. Yet, these outdated and inaccurate data sources are the key scientific data used to create the proposed MSHCP and the baseline information in the EIS/EIR, in violation of CEQA and NEPA. X-15

The stated initial phase of the Adaptive Management Program is to identify baseline conditions. (MSHCP, pp. 8-1, 8-37; Adaptive Management Program, p. 10.) Thus, the baseline conditions would be identified *after* the EIR/EIS is certified and *after* the MSHCP is approved and implemented, in direct opposition to CEQA's and NEPA's requirements.

In sum, the use of outdated and inaccurate data in the MSHCP, among other things, renders its environmental setting for determining impacts inadequate. Using such outdated and inaccurate data, is contrary to NEPA, which requires that "[a]gencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statement" (40 C.F.R. § 1502.24) and contrary to the CEQA requirement for "substantial evidence," as it is clear that the use of such data in an EIR/EIS would amount to "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate." (CEQA Guidelines § 15384 (a).) Further, this "technical data" is not "sufficient to permit full assessment of the significant environmental impacts by reviewing agencies and members of the public." (CEQA Guidelines § 15147.)

a. *The MSHCP's List of Covered Species Is Overly Broad And Not Based On The Current Environmental Setting.*

The MSHCP also attempts to conserve 27 species of which only 1/3 are subject to take restrictions under the federal or state ESA. This overly broad list appears not to be based on sound science, as the underlying vegetation data is outdated and inaccurate. Accordingly, as drafted, the MSHCP's Reserve (undevelopable, permanent open space areas) will be mainly comprised from currently-private property not occupied by any listed species or critical habitat. X-16

2. The Draft EIR/EIS Fails To Accurately Describe The Land Use Environmental Setting.

The County and participating cities are required to acquire and conserve 88,900 acres of privately held land in the Conservation Area for the MSHCP Reserve. (MSHCP, p. 4-14.) Additionally, 21,390 acres of privately owned lands in the Conservation Area are to be acquired by the federal and State governments. (MSHCP, p. 4-13, Draft EIR/EIS Table 2-4.) These acquisition obligations alone amount to half of all of the private property within the Conservation Area.

Because the vast majority of private land within the Conservation Area is targeted for conservation, the Draft EIR/EIS must analyze the existing and future use of the properties within the Conservation Area in the absence of the MSHCP in evaluating the plan's land use impacts. Instead, the Draft EIR/EIS discusses the land ownership and land uses of the entire 1,136,400 MSHCP Plan area without discussing the information specific to the most affected land within the Conservation Area. The Draft EIR/EIS should be revised to include maps and statistics for the land uses and ownership within the Conservation Area in order for the targeted landowners, including Century, to evaluate and comment on the MSHCP's potential land use impacts.

The MSHCP imposes restrictions on public and private land uses throughout the Conservation Area and adjacent to the Conservation Area related to drainage, use of chemicals (such as herbicides and fertilizers), lighting, noise, the type of vegetation that can be planted, the type of household pets that can be maintained, mandatory fencing, and setback of manufactured slopes. (MSHCP, pp. 4-177 – 4-182.) The Draft EIR/EIS must analyze the existing and future land uses within and adjacent to the Conservation Areas, and how the MSHCP's proposed new restrictions and obligations affect public and private land uses.

Century believes that there are numerous private properties within the Conservation Area that are currently developed or subject to subdivision maps, including vesting tentative maps and/or development agreements. Accordingly, the EIR/EIS must disclose the existence of such land use entitlements in the Conservation Area in order to accurately reflect the current environmental and regulatory setting, and so that the decisionmakers and owners of undeveloped land have the information necessary to assess whether and how much of the unconserved, undeveloped private land within the Conservation Area may be able to be developed. Only with this information can the decisionmakers and affected landowners evaluate the full extent of the MSHCP's impacts to existing and future land uses within the Conservation Area.

X-17

D. **The Draft EIR/EIS Fails to Identify or Analyze the Full Extent of Significant Environmental Impact.**

An EIR must address a proposed project's "significant effect on the environment" (CEQA § 21100(b); *see also* CEQA Guidelines § 15126(a) [the EIR "shall identify and focus on the significant environmental effects of the proposed project"]). A significant effect on the environment is defined as a substantial or potentially substantial adverse change in the environment. (CEQA §§ 211068, 21100(d)). Direct and indirect significant effects of the project must be identified and described in the EIR, with consideration given to both short-term and long-term effects (CEQA Guidelines § 15126.2(a)). Identification of a project's significant

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environmental effects is on of the primary purposes of an EIR and is necessary to implement the stated public policy that agencies should not approve projects if there are feasible mitigation measures or project alternatives available to reduce or avoid the environmental impacts (CEQA §§ 21002, 21002.1(a)).

Under NEPA, a significance determination requires the use of both context and intensity and includes the evaluation of factors such as, unique characteristics of prime farmlands, the degree to which the action may establish a precedent for future actions (by the cities in this case), and the degree to which the effects are likely to be highly controversial (40 C.F.R. § 1508.27).

X-18 Cont.

1. The Draft EIR/EIS Fails to Identify or Analyze the Full Extent of Significant Environmental Impacts For The Potentially Significant Project-Specific Impacts Analyzed.

The Draft EIR/EIS identifies potentially project-specific significant impacts (land use compatibility; circulation, traffic and transportation; mineral, energy, and timber resources, agricultural resources; hydrology and water quality; biological resources; and population, housing and employment. The Draft EIR/EIS concludes that all of the potential environmental impacts will be reduced to a less-than-significant level with mitigation, except for land use compatibility, biological resources, traffic and circulation, flooding and hydrology, and socio-economic resources.

a. The Land Use Compatibility Analysis Is Inadequate.

The Draft EIR/EIS acknowledges that land use impacts would be significant if they conflict with local land use regulations. Nevertheless, the land use compatibility analysis cursorily states that "ongoing consultation and coordination have assured that the proposed Plan is consistent and compatible" with the local land use (Draft EIR/EIS, pp. 4.2-6, 4.2-7). However, the Draft EIR/EIS incorrectly equates the County and cities' "Open Space" zoning with the MSHCP's Conservation Objectives, without any analysis of the land use standards that would apply under the Conservation Objectives and without any acknowledgment that the vast majority of the private property within the Conservation Area is targeted for acquisition as part of the MSHCP Reserve System (Draft EIR/EIS, pp. 4.2-5, 4.2-6). Without a methodic analysis of the land uses allowable on private properties within the Conservation Area under current and projected zoning, compared with the Conservation Objectives for those same properties, the finding that the MSHCP will not result in significant land use compatibility impacts is not supported by substantial evidence.

X-19

Incredibly, the Draft EIR/EIS also concludes that the No Project Alternative would actually have a greater impact on land use compatibility than the preferred alternative. Again, the reasoning used to justify this finding is anecdotal and defies logic. The No Project Alternative, which would result in more limited and isolated habitat conservation areas, is determined to have more of an impact on dividing established communities than the more expansive preferred alternative, which incorporates cores and linkages connecting habitat areas (Draft EIR/EIS, p. 4.2-14). It is also determined to make future development approvals more complicated, though there is no analysis of the existing development approval process compared

with the super-bureaucracy to be imposed by the MSHCP. There is no evidence to support the finding of insignificance.

As a result of the faulty analysis of land use compatibility impacts, no mitigation measures are proposed to alleviate the MSHCP's potential impacts to land use compatibility. (Draft EIR/EIS, p. 4.2-14). Then, to the contrary, the EIR/EIS identifies Land Use Compatibility as having "unavoidable significant impacts" (Draft EIR/EIS, p. 6-2). These analyses must be completely re-evaluated in light of readily available land use information, and consistently discussed.

X-19 Cont.

b. The Biological Resources Impacts Analysis Is Inadequate.

The Draft EIR/EIR's biological resources analysis is fundamentally flawed because it relies on outdated and inaccurate data. (*See, e.g.*, MSHCP Tables 4-107, 4-108, 4-109, 4-33, 4-34, 4-35, 4-37a, 4-37b, and 4-37c [habitat information substantiating the Santa Rosa and San Jacinto Mountains Conservation Area and Whitewater Floodplain Conservation Area is 11 years old].) These data sources are the key scientific data used to create the proposed MSHCP. Further, as demonstrated above, the County based on this outdated and inaccurate data has dramatically mischaracterized the current vegetation status of privately-owned property in the Coachella Valley that will be subject to the MSHCP.

Because of the use of this inaccurate and outdated science, it is not possible to analyze the full extent of the MSHCP's biological resource impacts. It is likely that if "accurate" data were used, the Conservation Area and edge effects areas would be smaller. As a result, the MSHCP's conservation scheme would have to dramatically change.

Based on the use of outdated and inaccurate, it is not possible to understand the full extent of the MSHCP's biological resources impacts. Under the MSHCP, the only way a property owner will really know the MSHCP's impacts to their property is after the fact when they initiate the development project review process, and then the burden will be on the applicant to provide the updated and accurate science. However, proving that private land is not properly within the Conservation Area as result of the County's bad science essentially requires the property owner to prove that the there is the same or greater conservation value and acreage to the MSHCP Conservation Area, or they will not be excluded from the Conservation Area. This may be an impossible task.

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The County's approach of using outdated and inaccurate science and deferring the environmental analysis of biological resources impacts, as discussed more fully below, violates CEQA. As, explained by the court in *Berkeley Jet, supra,* the County's use of outdated information when it could obtain updated information is not a good faith effort to inform the decision makers and public about the impacts on biological resources that will occur as a consequence of the MSHCP. The County's intent to update the vegetation and species data after the MSHCP is adopted, instead of before, is simply, as discussed below, an improper deferral of an assessment of the environmental impacts to a later date contrary to CEQA Guidelines Section 15146. The County's use of outdated information does not constitute a good faith effort at full disclosure in describing or evaluating the impacts of the MSHCP.

The use of outdated and inaccurate data in the MSHCP, among other things, renders its biological resources analysis inadequate. Using such outdated and inaccurate data, is contrary to NEPA, which requires that "[a]gencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in the environmental impact statement" (40 C.F.R. § 1502.24) and the CEQA requirement for "substantial evidence," as it is clear that the use of such data in an EIR/EIS would amount to "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate" (CEQA Guidelines § 15384 (a)). Further, this "technical data" is not "sufficient to permit full assessment of the significant environmental impacts by reviewing agencies and members of the public" (CEQA Guidelines § 15147).

Additionally, in discussing the biological impacts of the "No Project Alternative", the Draft EIR/EIS incorrectly states that under this alternative, no conservation measures would be implemented for non-listed species and significant adverse impacts would be expected to occur for CEQA analysis purposes. (Draft EIR/EIS, p. 4.7-4.) This discussion misstates the status of conservation under existing laws and ignores that CEQA does not allow approval of projects with significant, unmitigated impacts unless supported by a rigorous statement of overriding considerations.

X-20 Cont.

Like its discussion of the Land Use Compatibility impacts, the EIR/EIS states that no the plan's biological impacts are below significant, and proposes no mitigation measures (EIR/EIS, p. 4.7-125); then includes biological resources impacts among the unavoidable significant impacts (p. 6-3).

c. *The Socio-Economic Resources: Population, Housing, and Employment Impacts Analysis Is Inadequate.*

The socio-economic resources analysis includes the acreages of land outside of the Conservation Area (land that is not targeted for conservation), but no estimate or other discussion of the total developable lands within the Conservation Area (Draft EIR/EIS, p. 4.8-4). It is the land within the Conservation Area that would be impacted by the MSHCP. Information about private, developable land is necessary especially because more non-conserved private property is included within the Conservation Area than outside, and more developable land overall is included within the Conservation Area than outside (*see* Draft EIR/EIS, p. 4.8-7). Without this data, it is impossible to intelligently comment on the MSHCP's potential impacts to population, housing and employment, and mitigation measures to alleviate such impacts.

In evaluating the potential impacts within Palm Springs, the Draft EIR/EIS anecdotally concludes that environmental constraints would preclude development of land zoned open space whether or not the MSHCP is approved (Draft EIR/EIS, p. 4.8-15). No attempt is made to substantiate the statement with any evaluation of development that has, in fact, occurred on land previously zoned open space in Palm Springs. Without such an analysis, the conclusion that the MSHCP will not have a significant adverse population, housing and employment impact is not substantiated.

X-21

The EIR/EIS concludes that the MSHCP's socio-economic impacts to population, housing and employment are less than significant, and no mitigation measures are proposed

(EIS/EIR, p. 4.8-30), yet the EIR/EIS identifies such impacts as having unavoidable significant impacts (p. 6-5).

d. The Transporiation and Circulation Impacts Analysis Is Inadequate.

The Draft EIR/EIS admits that the MSHCP conflicts with certain roads in the County that could be precluded as the result of Reserve Assembly, but concludes that the conflict is not significant because the MSHCP can be amended to allow incidental take for the roads (Draft EIR/EIS, p. 4.3-7). As a result, no mitigation measures are proposed to alleviate the conflict. (Draft EIR/EIS, p. 4.3-14). Were this the standard, there would be no environmental impacts identified for any legislative action. This is not the standard. Additionally, the MSHCP amendment process is so complicated and uncertain that it cannot appropriately be relied upon to alleviate the admitted conflict. The analysis needs to be re-evaluated in light of the conflict that would exist, and meaningful mitigation measures must be proposed to alleviate the impact. Without the imposition of mitigation measures, the MSHCP cannot be approved.

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Again, the EIR/EIS concludes that no mitigation measures are necessary because the impacts to transportation and circulation are less than significant (EIR/EIS p. 4.3-14), but to the contrary includes traffic and circulation impacts among the project's unavoidable significant impacts (p. 6-4).

2. <u>The Draft EIR/EIS Fails to Identify or Analyze the Full Extent of Significant Environmental Impacts For Impacts Found Insignificant During the Initial Study Analysis.</u>

One of the worse sections in the Draft EIR/EIS is its discussion on the Impacts Found Insignificant during the Initial Study Initial Study ("IS") analysis. According to the Draft EIR/EIS, the MSHCP's potential soils and geology, cultural resources and Native American concerns, parks, trails and recreation, air quality, noise, visual/scenic resources, utilities/public services and facilities, environmental justice and children, and hazards and hazardous materials impacts were were determined insignificant, and did not warrant further detailed study in the Draft EIR/EIS (EIR/EIS pp. 4.9-1-28).

X-23

CEQA requires that the direct and indirect significant effects of the project must be identified and described in the EIR, with consideration given to both short-term and long-term effects. (CEQA Guidelines § 15126.2(a); *see also* CEQA Guidelines § 15131 ["[a]n EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes"].) Similarly, NEPA's requires that the direct and indirect effects and their significance be evaluated in and EIS. (40 C.F.R. §§ 1502.16, 1508.8).)

The Draft EIR/EIR does not analyze the impacts associated with the relocation and intensification of development outside the Conservation Area. It also does not consider the public utilities, environmental justice and children impacts resulting from the land acquisition obligations and onerous development restrictions placed on otherwise developable land within the Conservation Area.

This type of "short-shrift" analysis improper under CEQA and NEPA. CEQA requires that the County's findings on this issue be supported by substantial evidence in the record. (CEQA Guidelines § 15091(b); *see, e.g., Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261.) "Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (CEQA Guidelines § 15384(a); *Laurel Heights I*, 47 Cal.3d at 393.) Such substantial evidence may include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts, but not argument, speculation, unsubstantiated opinion, or clearly erroneous evidence. (CEQA §§ 21080(e), 21082.2(c); CEQA Guidelines §§ 15064(g)(5)-(6), 15384.)

If evidence is submitted that supports a fair argument that a significant impact could occur, and the agency fails to consider the impact then certification of the EIR may be overturned (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004)124 Cal.App.4th 1184). Indeed, an EIR that does not explain the basis for its conclusion may be deemed not to comply with CEQA. (*See Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099.)

NEPA similarly requires a robust scientific basis for the determinations in an EIS (40 C.F.R. § 1502.24). The conclusions that these impacts are insignificant are not based on facts, but rather unsubstantiated opinion. The conclusory nature of the impacts analyses does not constitute a fair argument supporting the CVCC's and Service's conclusions in the Draft EIR/EIS.

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The MSHCP has not presented substantial evidence that these impacts areas are not potentially significant, warranting further study, especially, when the Draft EIR concludes that the relocation and intensification of development outside the Conservation Area will be significant for other impacts.

Additionally, CVCC cannot simply defer the analyses of these potential MSHCP impacts until the future. Deferral of such assessment of the environmental impacts to a later date is contrary to CEQA (CEQA Guidelines § 15146).

With a Plan of such regional significance and scope, affecting the use and ownership of tens of thousands of acres of privately-owned property, proper analyses of aesthetics, air quality, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, public services, utilities, and environmental justice impacts analyses associated with the MSHCP's relocation and intensification of development outside the Conservation Area must be conducted and supported by substantial evidence. In particular, Century believes that at a minimum the Draft EIR/EIS must analyze and disclose the MSHCP's full impacts on aesthetics, air quality, geology and soils, hydrology and water quality, land use, and noise associated with the intensification of development outside the Conservation Area.

Until such analyses are conducted, the Draft EIR/EIS' conclusions that the MSHCP's impacts are insignificant are unsupported by facts and analysis.

The MSHCP has also failed to analyze the impacts of, and properly reveal in the Project Description that, hundreds of thousands of permits will be subjected to the MSHCP. CEQA requires that the direct and indirect significant effects of the project must be identified and described in the EIR, with consideration given to both short-term and long-term effects. (CEQA Guidelines § 15126.2(a).) An EIR must provide a degree of analysis and detail about the project's environment impacts that enable decision-makers to make intelligent judgments in light of the environmental consequences of their decisions (CEQA Guidelines § 15151; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692). Otherwise, the EIR cannot inform the public and its responsible officials of the environmental consequences of their decisions before they are made (*Berkeley Jets*, 91 Cal.App.4th at 1354). In this case, the EIR/EIS is wholly inadequate with respect to analyzing the impacts that will occur from subjecting ministerial permits to the MSHCP. Such impacts could include increased costs for processing permits that detracts County funding of public services and infrastructure, and increased housing costs from permit delays and the application of the MSHCP requirements including the Conservation Objectives.

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E. The Draft EIR/EIS Contains Inadequate Cumulative and Growth-Inducing Impacts Analyses.

1. The Cumulative Impacts Analysis Is Inadequate.

CEQA requires a finding that a project may have a significant effect on the environment if the "possible effects of a project are individually limited but cumulatively considerable" where "'cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, . . . current projects, and . . . probable future projects" (CEQA § 21083(b); CEQA Guidelines 15130(b)(1); *see also Communities For A Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98 [lead agency must analyze all categories listed in CEQA Guidelines § 15130 in analyzing cumulative impacts]). Projects currently under environmental review unequivocally qualify as reasonably probable future projects to be considered in a cumulative impacts analysis (*see San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 74, fn.13). In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable (*see Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 284).

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The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum." (*Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408.) The requirement of a cumulative impacts analysis of a project's regional impacts is considered a "vital provision" of CEQA. (*Bozung*, 13 Cal.3d at 283.) Moreover, an EIR must examine not only the anticipated cumulative impacts, but also reasonable options for mitigating or avoiding the project's contribution to significant cumulative impacts. (CEQA Guidelines § 15130(b)(3).) The Draft EIR/EIS does not come close to meeting these requirements.

NEPA requires an EIS' environmental analysis to included connected actions (40 CFR § 1508.25(a); *Blue Ocean Preservation Society v. Watkins* (D. HI. 1991) 754 F.Supp. 1450) and

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cumulative impacts (40 CFR § 1508.7, 1508.8, 1508.23, 1508.25(a)(2) and (c); *Fritiofson v. Alexander* (5th Cir. 1985) 772 F.2d 1225[2]).

The level of analysis in the Draft EIR/EIS' cumulative impacts analysis is far too cursory. An EIR must include objective measurements of a cumulative impact when such data are available or can be produced by further study and are necessary to ensure disclosure of the impact. (*See Kings County*, 221 Cal.App.3d at 729.) Despite this mandate, the Draft EIR/EIS fails to analyze adequately a number of cumulative impacts for both the MSHCP, including, but not limited to, indirect impacts to aesthetics, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use, noise, public services, transportation and circulation, utilities, and environmental justice.

For example, because of the use of outdated and inaccurate date, the cumulative impacts analysis of biological resource impacts analysis is flawed. The County and the Service can not analyze the full extent of the MSHCP's biological resource impacts as neither agency can at this point determine the boundaries of the Conservation Area, cores and linkages, and edge effects. The setting of "hard-line" boundaries for these areas is of critical importance as it allows the decision-makers to determine whether or not the MSHCP will actually be able to set aside the 88,900 acres of privately-owned property for conservation in order to minimize and mitigate the impacts of the taking of the covered species, elsewhere in the MSHCP Plan Area.

The cumulative impacts analysis fails to quantify the cumulative MSHCP contribution due the shifting of development from within the MSHCP Conservation Area to areas outside, and preventing development within the Conservation Area. The relocation domino effect will cumulatively cause a change in the distribution, density, or pattern of growth in the MSHCP Plan Area and other parts of the County. The resulting intensification of residential and commercial uses in these areas would potentially create an increase in environmental impacts in these areas.

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

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[2] "Although *Fritiofson* has been overruled on the standard of judicial review it employed, *see Sabine River*, 951 F.2d at 677-78, its substantive findings, including jurisdictional issues and the Corps' duty with regard to cumulative effects, are not affected by the decision in *Sabine River*." (*Stewart v. Potts* (S.D.Tex. 1998) 996 F.Supp. 668, n.16.)

2. The Growth-Inducing Impacts Analysis Is Inadequate.

The Draft EIR/EIS must consider the growth-inducing potential of the MSHCP in areas outside the Conservation Areas. CEQA requires that an EIR include a "detailed statement" setting forth the growth-inducing impacts of the proposed project. (*See* Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal.App.3d 1325, 1337.) The statement must "[d]iscuss the ways in which the proposed project could foster economic growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." (CEQA Guidelines § 15126.2(d).) It must also discuss how a project may "encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively" or "remove obstacles to population growth." (*Id.*)

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The Draft EIR/EIS fails to discuss how the shifting of development from within the MSHCP Conservation Areas to areas outside will create a need for additional and upsized facilities beyond those originally contemplated and constructed (*e.g.*, roads, sewer and water lines, and wastewater and water treatment facilities, etc.) and whether these facilities in turn would also induce growth. As result, the Draft EIR/EIS' growth-inducing conclusions are unsupported by facts and analysis.

F. The Draft EIR/EIS Fails to Identify Feasible Mitigation Measures.

An EIR must propose and describe mitigation measures to minimize the significant environmental effects identified in the EIR. (CEQA §§ 21002.1(a), 21100(b)(3); CEQA Guidelines § 15126.4.) A mitigation measure must be designed to minimize, reduce, or avoid an identified environmental impact or to rectify or compensate for that impact. (CEQA Guidelines § 15370.) Further, a lead agency cannot base its environmental analysis on the presumed success of mitigation measures that have not been formulated at the time of project approval. (*See generally Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.) The mitigation measure should be described specifically in the EIR and not left for future formulation. (*See Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777.) Likewise, NEPA requires an EIS to discuss the means to mitigate the environmental consequences of the project. (40 C.F.R. § 1502.16(h); *see also* 40 C.F.R. § 1508.20.)

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Throughout the Draft EIR/EIS, the few identified mitigation measures are vague and do not actually "minimize, reduce, or avoid . . . identified environmental impact[s]." (CEQA Guidelines § 15370; *see also* 40 C.F.R. § 1508.20 [mitigation under NEPA must reduce the effects of the project].) Moreover, most, if not all, of the mitigation measures are deferred until the actual implementation of the MSHCP or when CEQA is triggered on a project level basis.

The Draft EIR/EIS' treatment of mitigation measures in its biological resources section is illustrative of the deficiencies found throughout the document. Rather than listing specific mitigation measures to address the MSHCP's biological resources impacts, the Draft EIR/EIS relies on reference to MSHCP policies of unknown efficacy to reduce potentially significant impacts to less than significant.

Further, the MSCHP's strategy of conserving privately-owned property as mitigation for taking 27 covered species and 27 "natural communities" elsewhere in the Plan Area violates

CEQA's requirement that "mitigation measures must be consistent with all applicable constitutional requirements, including the following:

> (A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. (*Nollan v. California Coastal Commission* (1987) 483 U.S. 825); and
>
> (B) The mitigation measure must be 'roughly proportional' to the impacts of the project. (*Dolan v. City of Tigard* (1994) 512 U.S. 374.) Where the mitigation measure is an ad hoc exaction, it must be 'roughly proportional' to the impacts of the project. (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.")

(CEQA Guidelines § 15126.4 (a)(1)(D)(4).)

As noted above, the MSHCP requires that for every application (*e.g.*, ministerial or discretionary) to the City or County for a development project within the Plan Area, an applicant is required to demonstrate consistency with the MSHCP. The inclusion of ministerial actions in the model Resolution opens the door to a whole array of other routine City/County actions (plan checks, building permits, geotechnical studies, etc.) that would not normally be subject to environmental review.

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Applying the MSHCP for these insignificant actions, particularly when there is no evidence that these actions will result in an actual incidental take, is not constitutional. The United States and California constitutions, and provisions of the California Government Code and CEQA require a "rational nexus" between the impacts generated by the development and the exactions that can be imposed (*Nollan v. California Coastal Commission* (1987) 43 U.S. 825). There must also be a "rough proportionality" between the amount or type of exaction and the development's generation of demand for the public facilities that will be paid for by the mitigation payments. (*Dolan v. City of Tigard* (1994) 512 U.S. 374; Govt. Code §§ 66000 *et seq*; CEQA Guidelines § 15126.4 (a)(1)(D)(4).) These mitigation obligations may be subject to higher scrutiny if they are imposed on an ad hoc basis, pursuant to negotiations between the government and the land developer (*Ehrilich v. City of Culver City* (1996) 12 Cal.App.4th 854), as the MSHCP contemplates.

G. <u>The Draft EIR/EIS Improperly and Illegally Defers Mitigation Measures and Environmental Analyses</u>.

CEQA requires that mitigation measures be identified and analyzed. "The purpose of an environmental impact report is . . . to list ways in which the significant effects of such a project might be minimized . . . ." (CEQA § 21061.) The California Supreme Court has described the mitigation and alternative sections of the EIR as the "core" of the document. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553.) An EIR is inadequate if it fails to suggest mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness (*see San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79). Indeed, the mitigation measure should be

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described specifically in the EIR and not left for future formulation (*see Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777).

Moreover, an EIR may not use the inadequacy of its impacts review to avoid mitigation: "The agency should not be allowed to hide behind its own failure to gather relevant data" (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 361). Nor may the agency use vague mitigation measures to avoid disclosing impacts (*see Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195 ("*Stanislaus*")). Lastly, the formulation of mitigation measures may not properly be deferred until after Project approval; rather, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments" (CEQA Guidelines 15126.4(a)).

CEQA also specifically prohibits reliance on future studies to determine required mitigation at some unspecified time in the future (*see generally Stanislaus*, 48 Cal.App.4th at 196 [rejecting an EIR that avoided identifying the water source for a 25-year phased project by calling for later site-specific review are each phase of development because CEQA requires assurance that "environmental consequences of government decision on whether to approve a project will be considered before, not after, that decision is made"]; *Sundstrom*, 202 Cal.App.3d at 306-307 [rejecting an environmental document which identified potentially significant water impacts resulting from a proposed project and purported to "mitigate" those impacts by requiring the applicant to later submit further hydrological studies, finding such deferral "analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA"]; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1396-97 [condition of approval requiring applicant to comply with recommendations in a yet-to-be-completed report constitutes improper deferral of mitigation]; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-885 [rejecting mitigation measures that required post-approval formulation of mitigation plans]).

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Under CEQA, an EIR may conclude that impacts are insignificant only if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated (*see Sundstrom*, 202 Cal.App.3d at 306-07). Thus, if an agency fails to investigate a potential impact, its finding of insignificance simply will not stand (*Id.*). An EIR that does not explain the basis for its conclusion may be deemed not to comply with CEQA (*see Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099).

In the present case, the Draft EIR/EIS does not come close to satisfying these basic CEQA requirements regarding impact mitigation. The Draft EIR/EIS impermissibly concludes, for example, that the MSHCP's biological resources impacts, in most cases, will be mitigated below a level of significance. However, the data upon which the Draft EIR/EIS relies is 11 years old and will not be updated until a private property owner within the Conservation Area comes forward with the biological information as part of its development application review process. In the mean time, the MSHCP allows for development of property outside of the Conservation Area without the same rigorous biological assessment.

The Draft EIR/EIS' deferral of the data collection necessary to analyze and adequately mitigate potentially significant effects renders the document inadequate and vulnerable to legal challenge. With the Draft EIR/EIS in its current form, decision-makers and the public cannot

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evaluate the advisability of the MSHCP approval. Too much is entirely unknown about the MSHCP's biological resources impacts, especially considering the analysis is premised on outdated and inaccurate data, deferral of mitigation, and deferral of environmental analyses.

Deferring mitigation measures to a future time violates the rule that members of the public and other agencies must be given an opportunity to review mitigation measures before an environmental document is approved (*see generally Gentry*, 36 Cal.App.4th at 1393). The deferral of environmental assessment until after project approval violates CEQA's policy that impacts must be identified before project momentum reduces or eliminates the agency's flexibility to subsequently change its course of action (*Sundstrom*, 202 Cal.App.3d at 306-308).

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Accordingly, CVAG has failed its statutory duty to require feasible, enforceable mitigation (CEQA § 21002; *Laurel Heights I*, 47 Cal.3d at 400-401; *Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261).

H. The Draft EIR/EIS Fails to Analyze a Reasonable Range of Project Alternatives.

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

Further, NEPA requires that a federal agency "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources" (42 U.S.C. § 4332(2)(E); *see also* C.F.R. § 1508.9(b).) "[A]n agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action" (*Idaho Conservation League v. Mumma* (9th Cir. 1992) 956 F.2d 1508, 1520 [internal quotation and citation omitted]). A robust alternatives discussion is required in an EIS (40 C.F.R. §§ 1502.2(d), 1502.14, 1502.16).

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The Draft EIR/EIS analyzes and rejects four alternatives to the Proposed Action, including:

- Public Lands Alternative;
- Core Habitat with Ecological Processes Alternative;
- Enhanced Conservation Alternative; and,
- No Action/No Project Alternative.

(*see* Draft EIR/EIS, p. 2-64).

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However, all of the alternatives analyses are flawed because they incorrectly analyze the conservation anticipated under existing laws. For example, the "No Project Alternative" is dismissed as providing no protection from impacts to habitat of listed species from adjacent land uses and no conservation of unlisted species. (Draft EIR/EIS, p. 2-64.) This does not accurately reflect the current legal structure. The analysis ignores that significant property has been, and would continue to be conserved under the provisions of CEQA, local regulations protecting natural resources, public and private conservation activities (which are not limited to listed species and habitat), the California ESA, and the federal ESA (which protects impacts to habitat, regardless of the cause). Compliance with these laws has resulted in conservation of substantial habitat acreage either as a result of arm's length property purchases, conditions of project approval, mitigation of development impacts, or conditions of incidental take permits. The No Project Alternative should be reevaluated to accurately disclose and consider anticipated conservation under existing laws – not simply dismissed anecdotally. Once this is done, the information will necessarily change all of the other alternatives analyses.

Further, it is misleading for the alternatives analysis to use connectivity to existing HCPs and NCCPs as a means to determine feasibility of the alternatives. None of the existing HCPs and NCCPs currently include as much privately owned property as contemplated by the MSHCP nor do they cover as many species as proposed by the MSHCP. Second, the use of edge effects as a feasibility criterion is improper. All conserved land is subject to edge effects by adjacent land uses.

Additionally, no analysis is provided for rejecting the "Preferred Alternative Without the City of Palm Springs", included at Section 3.5.2 of the February 2006 version of the MSHCP, but deleted from the present version.

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Properly analyzed, the No Project Alternative or one of the other dismissed alternatives may indeed be a less intrusive and feasible alternative. All of the alternatives must be re-analyzed in light of accurate information on the present and anticipated conservation under existing laws. As presented, the conclusions in the alternatives analysis are flawed by CVAG's and USFWS's failure to have their findings be supported by substantial evidence in the record (CEQA Guidelines § 15091(b)) and a rigorously explored and objective analysis evaluating all reasonable alternatives (40 C.F.R. § 1502.14)). Substantial evidence includes "facts, reasonable assumptions, predicated upon facts, and expert opinion supported by facts" (CEQA § 21082.2).

Also, there must be "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached" (CEQA Guidelines § 15384(a)). The material in the EIR must be responsive to the opposition and respond to the most significant questions presented (*see Assoc. of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383). If evidence is submitted that supports a fair argument that a significant impact could occur, and the agency fails to consider the impact then certification of the EIR may be overturned (*Bakersfield Citizens for Local Control v City of Bakersfield* (2004)124 Cal.App.4th 1184). NEPA requires sound scientific data (40 C.F.R. § 1502.24).

The alternatives analysis in the biological resources section is not based on facts or sound science, but rather unsubstantiated opinion and outdated data. This lack of meaningful analysis

violates CEQA's requirement that the evaluation of the alternatives include "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project" (CEQA Guidelines § 15126.6; *see also* 40 C.F.R. § 1502.14)). Further, the conclusory nature of the alternatives discussion does not constitute a fair argument supporting the MSHCP's conclusion that the less intrusive alternatives are infeasible.

Without a proper alternatives analysis, the true impact of the MSHCP cannot be understood. Without revision, the alternatives analysis section of the Draft EIR/EIS remains inadequate under CEQA and NEPA.

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V. **THE MSHCP DOES NOT MEET ITS STATED OBJECTIVES AND SHOULD BE REJECTED AS INFEASIBLE.**

A project description must state the objectives sought by the proposed project. The statement of objectives should include the underlying purpose, and should be clearly written to guide the selection of alternatives to be evaluated in the EIR (CEQA Guidelines § 15124(b).)

The Draft EIR/EIS sets forth the Project Objectives for the local permittees, including the following:

- Obtain permits from the Wildlife Agencies to Authorize take for the Covered Activities.
- Protect Core and Other Conserved Habitat for 27 proposed Covered Species and 27 natural communities, maintain the Ecological Processes to keep the Core Habitat viable and link core habitat to maximize the conservation value of the land within the Coachella Valley.
- Improve the future economic development in the Plan Area by providing an efficient, streamlined regulatory process through which development can proceed in an efficient way. The proposed Plan is intended to provide a means to standardize mitigation/compensation measures for the Covered Species so that, with respect to public and private development actions, mitigation/compensation measures established by the Plan will concurrently satisfy applicable provisions of Federal and State laws pertaining to species protection.
- Provide for permanent open space, community edges, and recreational opportunities, which contribute to maintaining the community character of the Coachella Valley.

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These objectives are laudable. However, the MSHCP fails to meet these project objectives rendering the project infeasible.

a. The MSHCP Does Not Streamline Development Authorizations or Standardize Mitigation Under The Federal And State Endangered Species Acts.

Use of the narrative Conservation Objectives system will greatly increase the administrative burden of the CVCC, County, and participating cities, because the appropriate agency will have to review the MSHCP and apply its objectives, restrictions and obligations on a case-by-case basis to areas yet to be surveyed. This review and application of MSHCP Conservation Objectives will not be conducive to the conservation of species, standardized mitigation, and flexible assembling of the Reserve Area because of the following fundamental flaws with the MSHCP itself:

- As discussed below, the bureaucracy that implements and administers the MSHCP is complex, onerous, and inefficient. It establishes a completely different project review and mitigation regime for projects within the Conservation Area boundary and those outside, regardless of the actual biological conditions on the respective project sites. Further, this onerous bureaucracy offers no assurances that at the end of the lengthy process, the privately-owned property will be acquired for conservation, allowed to be developed, or not be subject to additional mitigation and restrictions.

- The MSHCP requires that for every development application to the County or participating city, the applicant is required to demonstrate consistency with the MSHCP. This requirement opens the door to a whole array of routine city/County actions (plan checks, building permits, geotechnical studies, conditional use permits, etc.) that would not normally be subject to environmental review.

- The MSHCP requires that the CVCC, along with the County or city, jointly review development applications that are within the Conservation Area and are submitted to the County and the cities for consideration. This means that all of the numerous discretionary and ministerial activities within the Conservation Area will be subject to joint review with the resource agencies that does not currently exist, and will not exist for projects outside of the Conservation Area boundary.

- The MSHCP attempts to conserve 27 species, 2/3 of which are not even subject to take restrictions under state and federal ESA regulations. ***This overly-broad list appears not to be based on science, but upon an the desire to justify acquiring vast acreages of private property for public open space and conservation purposes well beyond any mitigation requirements otherwise applicable.*** To the extent it was based on the habitat data, this data is admittedly outdated and too sparse. Accordingly, as drafted, the MSHCP's Conservation Area will subject privately-owned property not occupied by any listed species to an onerous and bureaucratic project review procedure and conservation guidelines that increase development costs and processing times without compensating the affected landowners.

Accordingly, because of the onerous bureaucracy with no assurances, the overly broad and disparate application of conservation requirements, and the use of inaccurate and outdated

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science, makes it impossible for the MSHCP to implement Conservation Objectives that are conducive to conserving species, while allowing for efficient economic growth of the region.

The success of the MSHCP relies upon the creation of a self-sustaining reserve system to the extent feasible, with a focus on conserving habitats and species. However, the adaptive management necessary to develop the underlying data remains an experimental approach. In other words, it is questionable whether the approach will work. Given the complexity, costs, and impacts of the MSHCP on all residents in the Coachella Valley, further study must be done prior to establishing regional Conservation Areas. In this context, the existing law providing for scientific review and conservation considerations on a case-by-case basis is preferable to committing to a conservation plan without sufficient supporting data. The existing law provides for evaluation of scientific data and conservation strategies before the fact – not afterwards as proposed by the MSHCP.

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(1) *The MSHCP Creates A Super-Bureaucracy That Will Not Streamline The Development Application Review Process.*

According to the Draft EIR/EIS, one of the overarching goals of the MSHCP is improve the future economic development in the Coachella Valley by providing an efficient, streamlined regulatory process through which development can proceed in an efficient way. However, the MSHCP imposes an extraordinary new complicated regulatory framework. Many of the MSHCP restrictions do not currently exist because they are not authorized by federal or state law, and if such regulations exist, they are primarily administered by the Wildlife Agencies under much more limited circumstances than proposed by the MSHCP.

A prime example of the new bureaucracy associated with the MSHCP is the creation of the joint regional authority formed by the local permittees known as the CVCC. According to the MSHCP and Draft EIR/EIS, some of the more important duties of the CVCC would include maintaining maps of modeled habitat and an natural communities map, maintaining a list of acceptable biologists including procedures for individual biologists to be included on the list, consulting with the wildlife agencies to develop survey protocols, and monitoring and reporting program administration.

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The CVCC is supported by a number of sub-bureaucracies, including the Reserve Management Oversight Committee, Reserve Management Unit Committees, Land Manager, Monitoring Program Administer, Trails Management Subcommittee.

The reach and involvement of this super-bureaucracy in local land use decision-making is made clear by reviewing the Joint Project Review process, which is set forth in the MSHCP at Section 6.6.1.1. Although the MSHCP asserts that the super-bureaucracy is not intended to limit the County's and participating cities' local land use authority or prevent them from approving a project, the Joint Project Review effectively usurps local use decision-making. For example, the Joint Project Review process requires that the CVCC and the appropriate County or city staff to jointly review development applications that are within the Conservation Area and are submitted to the County and the cities for consideration. Comments by the USFWS and CDFG are also

solicited. The development application "shall not be deemed complete" until the Joint Project Review is *completed*.

It is clear that this is a recipe for bureaucratic quagmire due to the sheer number of development applications and permits that must be forwarded to the CVCC for review, including Wildlife Agencies' input. Moreover, due to the threat of revocation of Section 10(a) Incidental Take Authorization if CVCC and the resource agencies determine that the development project is inconsistent with the Conservation Objectives, the County and the participating cities will be held hostage to the Joint Project Review process and must wait it out until the development applications or permit is deemed consistent with the MSHCP Conservation Objectives. ***CDFG's recent decision to withdraw incidental take authorization following the recent annexation of the Palmwood project to Desert Hot Springs demonstrates that the wildlife agencies are willing and able to usurp local land use control when they disagree with a local land use decision.*** The track record with regard to the Western Riverside MSHCP and CDFG's response to the Palmwood annexation evidence that the MSHCP will not streamline the development process, but make it more costly, time-consuming, and inefficient, while diminishing the land use authority of local elected officials. These issues must be resolved before the MSHCP can be implemented.

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(2) *The Habitat Acquisition and Negotiation Strategy ("HANS") Process Will Not Streamline the Development Application Review Process.*

As currently drafted, the MSHCP creates a cloud on land ownership within the Conservation Area by targeting it for eventual acquisition, and by imposing increased regulatory restrictions and requirements and burdensome administrative processes with no assurance of just compensation. This is evidenced by the onerous restrictions and the substantial delays in processing development entitlements that will be created by the MSHCP's HANS process.

The HANS process (MSHCP Section 6.6.1.2) will be applied in portions of the Santa Rosa and San Jacinto Mountains Conservation Area, including Century's land. The MSHCP states that the HANS process is not intended to impose land use restrictions on development that is in conformity with the Conservation Objectives and the MSHCP's other required measures (an already severe restriction on local land use authority).

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The HANS process will apply to property which may be needed for inclusion in the MSHCP Reserve System. Unfortunately, the HANS process as currently proposed completely undermines an incentive-based MSHCP program.

The time frames associated with the HANS process are unworkable and illegal. A private property owner within the Conservation Area that is subject to an application for <u>any</u> discretionary land use approval could be in limbo more than <u>six years</u>, depending on the value of the property, with no assurance of ever receiving compensation for the land or the ability to economically use the land.

The HANS process begins with a 45 day period to undertake an initial application review to determine how the proposed development is affected by the MSHCP. However, certain

information must first be submitted, including a biological report quantifying impacts to biological resources identified for the project.

After the "initial application review", when it is determined that all or part of the private property is needed for inclusion in the MSHCP Reserve System or subjected to MSHCP Conservation Objectives, the property owner and presumably the CVCC, County, or City enter into negotiations concerning the inclusion and the conservation of the property into the MSHCP. The negotiation period can be up to 120 days or longer.

If the property owner, the CVCC, County, or city are unable to reach agreement during the negotiation period, then the conflict resolution process may be commenced. The property owner is required to enter into a 30-day consultation with the resource agencies if the project involves the application of Conservation Objectives.

Mediation follows to resolve differences between the property owner and the CVCC, County, or city over the proposed development options for the property as well as differences regarding the application of MSHCP Conservation Objectives. The mediation period could be 90 days or longer.

However, if the Conflict Resolution Process is initiated as a result of the valuation of property, a second appraisal must be conducted, at the expense of the property owner. If the CVCC, County, or city disagrees with the second appraisal, this appraisal and the appraisal previously prepared by the County or the participating city must be reviewed by a third appraiser, which may take up to 90 days. Upon completion of this review, the appraiser shall make recommendations as to which appraisal should be approved. If such a recommendation cannot be made, the third appraiser must within 90 days conduct a third appraisal.

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Additionally, if the property owner and CVCC, County, or city are unable to resolve through mediation differences concerning the application of MSHCP Conservation Objectives, arbitration may be initiated. The arbitration period could take up to 180 days or longer.

Accordingly, under the HANS process, assuming that the property is in the Conservation Area, it can take more than two and half years to identify a purchase price for the property, what incentives are available, and how the Conservation Objectives will be applied to the property. Following conclusion of the Conflict Resolution Process, the MSHCP indicates that the property shall be promptly purchased ***provided sufficient MSHCP funds are available***. Depending on the value of the property, it could take another year to four years for the property to be purchased if funds are available.

Even if there is sufficient funding and all or part of private property can be acquired, land owners that are subject to the acquisition component of the HANS process are essentially in a deep freeze during the proceedings, as the property owner is only allowed to submit a development application for that portion of their property determined not to be needed for the MSHCP Reserve System. This necessarily requires that the HANS process be completed.

In the event that funding is not available, the landowner is further burdened with having to prove to the resource agencies that the MSHCP should be amended to accommodate the land use after the land was determined to be needed for the MSHCP Reserve System. Any

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development application subsequently approved by the County or cities that precludes compliance with the MSHCP Conservation Objectives will result in suspension or revocation of the Permits terminating take authorization under the MSHCP. Such suspension or revocation may occur entirely or only as to specified Area Plans, Covered Species, Covered Lands, or Covered Activities. Given the recent example of the Palmwood project, it is likely that the County and participating cities will yield to the resource agencies if faced with the threat of suspension of take authorization.

The HANS process is constitutionally and statutorily suspect. It is well settled that a governmental entity is liable for a taking, even if the taking is only "temporary". *First English Evangelical Lutheran Church v. County of Los Angeles* (1987) 482 U.S. 304.) Certainly, after including private property within the Conservation Area boundary, targeting it for acquisition for public conservation purposes, tying it up in a 2 ½ year process to reach identify the purchase price, and another four years for possible payment, is far too long for the property owner to await potential acquisition, especially because at the end of that period, the County or city is under no legal obligation to actually buy the property if it does not have the money to buy it. The HANS process' prohibition of development of the land, or even submitting a development application on the land determined to be necessary for the Reserve System during the six or more year period would constitute a development moratorium on the landowner. The California Government Code authorizes the imposition of moratoria, but they must be adopted by four-fifths vote of the legislative body, and, at a maximum, may only have a duration of two years (Cal. Govt. Code § 65858), not up to the four years as set out in the HANS process.

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The HANS process is coercive, illegal, and provides little or no real incentive for a landowner to voluntarily agree to its provisions. The HANS process and the Joint Project Review will not streamline the development process, but make it more costly, time consuming, and inefficient. Like the Joint Project Review process, the HANS process wrests local land use control from the County and the participating cities because they will be held hostage to the CVCC and the Wildlife Agencies for fear of revocation of their Section 10(a) Incidental Take Authorization for approving developments that these entities deem inconsistent with the MSHCP Conservation Objectives.

(3) *Other Bureaucratic Hurdles Incorporated Into The MSHCP Will Not Streamline The Development Application Review Process, But Make It More Onerous.*

In addition to the onerous Joint Project Review and the HANS processes, the MSHCP also includes several other inefficient and time-consuming bureaucratic hurdles that will complicate the development process. The MSHCP provides for ongoing changes to its provisions as a result of the adaptive management process (MSHCP Sections 6.12.1 and 8) and rough step and rough proportionality analyses (Section 6.5). The MSHCP also provides for three types of amendments, each with a separate procedure: Like Exchanges (MSHCP Section 6.12.2), Minor Amendments (MSHCP Section 6.12.3) and Major Amendments (MSHCP Section 6.12.4).

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(a) Adaptive Management Changes.

In an apparent attempt to circumvent its obligation to substantiate its formulation of the MSHCP, the MSHCP provides for changes to the MSHCP as a result of the Adaptive Management Program. (MSHCP §§ 6.12.1 and 8.) This after-the-fact updating process undermines the MSHCP's purpose to provide a level of certainty in terms of location for development, and required mitigation measures.

(b) Rough Step/Rough Proportionality Analyses.

MSHCP Section 6.5 requires the County and cities to periodically report to the Wildlife Agencies the amount of land being conserved compared with the amount of land being developed. Detailed formulas are provided for the analyses. If at any time the rough step rule is not met, the permittees must conserve appropriate lands in order to bring the Plan back into the parameters of the rule before allowing any additional loss of the conservation land for which the rule was not achieved. The rough step/rough proportionality requirement does not take into account the funding available to the County and cities to acquire the necessary conservation land. In practice, this provision will prevent the County and cities from issuing development approvals unless and until they acquire the required conservation land. If the permittees fail to comply with this requirement, the Wildlife Agencies have authority to revoke the incidental take permits.

The rough step/rough proportionality requirements are at odds with the MSHCP's purpose to provide a level of certainty for economic development throughout Coachella Valley.

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(c) Major/Minor Amendments To The MSHCP.

Minor Amendments are amendments to the MSHCP of a minor or technical nature where the effect on covered species, level of Take and Permittees' ability to implement the MSHCP are not significantly different than those described in the MSHCP as originally adopted. Certain Mindor Amendments do not require the Wildlife Agencies' concurrence, including the following:

- Minor corrections to land ownership;
- Minor revisions to survey, monitoring, reporting and/or management protocols that clearly do not affect Covered Species or overall MSHCP Conservation Area functions and values;
- Application of Take Authorization to development within cities incorporated within the MSHCP boundaries after the Effective Date of the Implementation Agreement, within specified parameters;
- Annexation or deannexation of property;
- Updates/corrections to habitat maps and species occurrence data; and,
- Changes to Regional Management Unit boundaries.

Certain Minor Amendments do require the Wildlife Agencies' concurrence, including the following:

- Like Exchanges determined not to be biologically equivalent or superior to the existing Conservation Objectives; and,
- Transfer of Conservation Objectives between Conservation Areas or Recovery Zones in the Santa Rosa and San Jacinto Mountains Conservation Area, subject to certain criteria.

Any party may propose Minor Amendments to the MSHCP or the IA by providing written notice to all other plan participants, including the reasons for the proposal and its potential environmental impacts, and other substantiating information. The Wildlife Agencies are required to submit any comments on the proposed Minor Amendments in writing within sixty days of receipt of such notice. If the Wildlife Agencies do not concur with the analysis supporting the Minor Amendment, the change will be subject to a Major Amendment process.

Major Amendments would require amendments to the Implementation Agreement and the incidental take permits, and are subject to applicable public notice and hearing requirements, CEQA and NEPA review, and Section 7 consultation. Major Amendments would be subject to review and approval by the CVCC and other Permittees as appropriate, at a noticed public hearing. The Wildlife Agencies would be required to use reasonable efforts to process proposed Major Amendments within one hundred twenty (120) days after publication.

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Major amendments include the following:

- All amendments not contemplated in the Implementation Agreement as Modifications or Minor Amendments to the MSHCP;
- Changes to the boundary of the MSHCP Plan Area;
- Addition of species to the Covered Species list; and,
- Changes in anticipated Reserve Assembly or funding strategies and schedules that would have substantial adverse effects on the Covered Species.

The Major and Minor Amendment processes add further bureaucratic hurdles because of the onerous requirements of these processes, the time involved, uncertainty on how these processes fit into the Joint Project Review and the HANS processes, and the fact that the Wildlife Agencies have the final say. Because it is so difficult to adjust the MSHCP, even though it is admittedly based on outdated and sparse science, private property owners within Conservation Areas are facing an uphill battle to update the MSHCP. What is left is a coercive system where private property owners must agree to comply with Conservation Objectives, or lose all ability to develop any of their property.

(d) Because of the Bureaucracy Created, The MSHCP Will Be At Odds With the Statutory Deadlines Under the Permit Streamlining Act and CEQA.

Existing law includes several provisions intended to streamline development permit processing. In addition to the tremendous fiscal burden that will be created through attempting to administer the MSHCP, further pressure will be placed on the CVCC, County, and participating cities to comply with the time frames established under state law to process development applications. For example, under CEQA, the lead agency is required to complete and approve a negative declaration within 180 days and an EIR within one year after the application is accepted as complete (CEQA Guidelines § 15107, 15108; CEQA §§ 21100.2, 21151.5).[3] These deadlines have been held to be mandatory, exposing a local government to liability if they are not met (*Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215).

The Permit Streamlining Act (Cal. Govt. Code §§ 65920 *et seq.*) and the Subdivision Map Act (Cal. Govt. Code §§ 66410 *et seq.*), also require development applications to be approved or denied within certain periods of time. If a local agency does not comply, and if the development permit is subject to the Act, the project may be deemed approved, as long as proper notice was provided to the public (Cal. Govt. Code § 656956(b)). For example, the Subdivision Map Act states "[i]f the advisory agency is authorized by local ordinance to approve, conditionally approve, or disapprove the tentative map, it shall take that action within 50 days after the filing thereof with its clerk and report its action to the subdivider" (Cal. Govt. Code § 66452.1(b)).

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The time limits applicable under the Permit Streamlining Act (Cal. Govt. Code §§65920-65963.1) depend on the type of CEQA document required for the project:

- If an EIR is required, the local agency must approve or disapprove an application for a development permit within 180 days after the date on which the lead agency certifies the EIR (Cal. Govt. Code § 65950(a)(1)-(2)).

- If a negative declaration is prepared or the project is exempt from CEQA, the local agency's approve time is reduced to 60 days after the negative declaration is adopted or the agency determines the project is exempt from CEQA (Cal. Govt. Code § 65950(a)(3)).

- When a project requires a permit from a public agency other than the lead agency , that agency must approve or deny the permit within 180 days after the acceptance of the application to that agency as complete or within 180 days aft the lead agency's approval, whichever is later (Cal. Govt. Code § 65952).

[3] A Lead Agency shall determine whether an application for a permit or other entitlement for use is complete within thirty days from the receipt of the application (CEQA Guidelines § 15101). If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the thirtieth day (*Id.*).

An development application is "deemed complete" if a public agency fails to rule on its completeness within 30 days after submission, but only if the application include a statement that it is an application for a development permit (Cal. Govt. Code § 65943(a)). The Permit Streamlining Act also specifies that agencies cannot require the applicant to submit the informational equivalent of an EIR or otherwise require proof of CEQA compliance before determining that an application is complete (Cal. Govt. Code § 65941(b)).

The MSHCP effectively undermines these provisions by prohibiting the County and cities from deeming a development application complete until after the Joint Project Review process is completed. Under the MSHCP, a project could languish 6 months or more before it is decided which land can be developed, before the CEQA process could even be started. The MSHCP initial project review process would almost exhaust the time frame allotted for preparation and approval of an EIR and exceed the time frames allotted for a negative declaration. In addition, because of the time needed for conducting biological surveys prior to initiating the Joint Project Review and HANS processes, ***the application review process is effectively doubled by the MSHCP***.

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VI. THE MSHCP RESULTS IN AN UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY WITHOUT JUST COMPENSATION.

A. Mandatory Conservation of Private Property within Conservation Area.

The centerpiece of the MSHCP is its goal of conserving (*i.e.*, prohibiting any development of) the 725,000-acre Reserve System, of which 88,900 acres will be land that is currently privately-owned property. Also, due to MSHCP restrictions, land throughout the larger Conservation Area and land outside the Conservation Areas and within the Plan Area also will have development restrictions. However, when an owner of property is called upon to sacrifice all economically beneficial uses in the name of the common good, *i.e.*, to leave property economically idle, there is a taking, requiring just compensation (*Lucas v. South Carolina Coastal Council* (1992) 505 U.S. 1003). For the MSHCP to survive constitutionally, therefore, it must provide property owners with just compensation in order to insure that the property owner is not deprived of all economically beneficial uses. As discussed above, it is questionable due to the scope of the MSHCP and the large amount of land that is to be restricted, whether such compensation will be available.

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Further, the Joint Project Review and HANS processes are also constitutionally and statutorily suspect. The MSHCP provides that a discretionary permit may be processed concurrently during the same time periods for negotiation of the terms and incentives, and conflict resolution if necessary. However, the application can be submitted only after the land is determined not to be necessary for the MSHCP Reserve System, a process that could take 2 ½ years or longer to complete.

Prohibitions of this type are constitutionally and statutorily suspect. It is well settled that a governmental entity is liable for a taking, even if the taking is only "temporary" (*First English Evangelical Lutheran Church v. County of Los Angeles* (1987) 482 U.S. 304). Requiring a landowner to wait 2 ½ years to decide upon the land needed for the Reserve System, and another four years for the County to *potentially* acquire the land if it has the funds (MSHCP, at pp. 6-16

to 6-17) violates the principles of *First English*. Prohibiting development during this hiatus would constitute a development moratorium on the landowner. State law authorizes the imposition of moratoria, but it must be adopted by four-fifths vote of the legislative body, and, at a maximum, may only have a duration of two years (Govt. Code § 65858), not up to the four or more years as set out in the HANS process.

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B. Including Private Property in the Conservation Area May Lead to Unconstitutional Pre-Condemnation Blight.

The MSHCP calls for the vast majority of private property in Conservation Area to be acquired for the Reserve System. For example, the Santa Rosa and San Jacinto Mountains Conservation Area contains a total of 211,070 acres. The MSHCP states that a total of 55,890 acres of land are to be conserved. This amounts to 93% of all of the acreage in that Conservation Area that is not already conserved (59,860 acres is not conserved). Of the acreage that is not already conserved, 96% is private property (57,190 acres of the non-conserved 59,860 acres) (Table 4-109).

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The MSHCP would effect an unconstitutional taking by including private property within a Conservation Area boundary where well over 90% of the private land within that boundary is targeted for acquisition as part of the Reserve System, and just compensation would have to be paid. It is unconstitutional for the government to undertake activities such as including land within the MSHCP Conservation Area, thereby depressing the value of property before acquiring it. (*Klopping v. City of Whittier* (1972) 8 Cal.3d 39).

The MSHCP would expose the County and cities to inverse condemnation liability for private property included within the Conservation Area boundary.

C. Funding of Acquisition of Core Land Through Development Fees Must Be Constitutionally Proper.

The United States and California Constitutions, and provisions of the California Government Code, require a land developer only to pay its fair share of public facilities, as there must be a "rational nexus" between the impacts generated by the development and the exactions that can be imposed (*Nollan v. California Coastal Commission* (1987) 43 U.S. 825). There must also be a "rough proportionality" between the amount or type of exaction and the development's generation of demand for the public facilities that will paid for by the mitigation payments (*Dolan v. City of Tigard* (1994) 512 U.S. 374; Govt. Code §§ 66000 *et seq*.). These mitigation payments may be subject to higher scrutiny if they are imposed on an ad hoc basis, pursuant to negotiations between the government and the land developer (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854).

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The MSHCP also cannot impose the entire cost of constructing or funding public facilities upon one land developer unless that developer is solely responsible for generating the need for the public facility (*Bixel Associates v. City of Los Angeles* (1989) 216 Cal.App.3d 1208). The MSHCP acknowledges that local funding is an essential element of the MSHCP. The MSHCP indicates that local funding will provide mitigation for the local public and private development projects that the MSHCP is intended to facilitate.

Constitutionally and statutorily, the MSHCP may only impose impact fees or exactions on those land developers whose developments affect resources to be conserved. The County or the cities may not be able to satisfy their legal burden of demonstrating that developments outside the Conservation Areas are generating impacts to habitat and other resources. This burden must be met in order for the fee or exaction to be imposed. Attempts to impose such a fee or exaction may be questionable; the amount of a fee also would be constitutionally and statutorily limited. With the amount of land that has to be purchased, development fees will probably not be able to be a major funding source for purchase of Conservation Area privately-owned lands. The whole concept of how financing of the land acquisition component of the MSHCP is to be funded must be studied much more thoroughly, considering that the funding and financing analysis in MSCHP substantially underestimates the acquisition and program costs of the MSHCP.

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VII. THE COUNTY AND PARTICIPATING CITIES ARE ILLEGALLY "RUBBER STAMPING" THE MSHCP AND PREDETERMINING THE SUBSEQUENT LAND USE REGULATION AMENDMENT PROCESSES.

"A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding *whether* to approve a proposed project, not to inform them of the environmental effects of projects that they have already approved. If post approval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support the action already taken" (*Laurel Heights I*, 47 Cal.3d at 394 [emphasis in the original]; *Woodward Park Homeowners Association, Inc. v. City of Fresno* (2007) 149 Cal.App.4th 892, 2007 WL 1096885, at *13 [an EIR is an informational document whose purpose is to inform the public and decision makers of the environmental consequence of agency decisions before they are made]).

In *Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121 ("*Norm's Slauson*"), the court held that it is a gross abuse of discretion for an agency to irrevocably commit itself to a course of action, *before* it considers a discretionary act, in that case the adoption of a resolution of necessity to condemn property. The court found that:

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> "[i]t seems clear that the hearing which led to the adoption of the resolution of necessity was a sham and the Agency's policy making board simply 'rubber stamped' a predetermined result.
>
> By the time the Agency actually conducted a hearing to determine the 'necessity' for taking the property in question, it had, by virtue of its contract with the developer and issuance of revenue bonds, irrevocably committed itself to take the property in question, regardless of any evidence that might be presented at that hearing."

(*Norm's Slauson*, 173 Cal.App.3d. at 1127).

Also instructive in this regard is *Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199 ("*City of Albany*"). In that case, the court found the City of Albany had approved a project when it voted to place a development agreement for gambling activities

on the City's waterfront on the ballot (*City of Albany*, 56 Cal.App.4th at 1219). The court found "[t]he critical consideration . . . is that the city council submitted a fully negotiated development agreement to the voters . . . . The negotiation of the 95-page development agreement . . . unquestionably involved the exercise of judgment and deliberation, culminating in a decision to adopt an agreement with specific negotiated terms" (*Id.*). The court then explained why environmental review must be an integral part of the decision-making process, *beginning with the negotiation of the agreement*:

> *"Any later environmental review might call for a burdensome reconsideration of decisions already made and would risk becoming the sort of 'post hoc rationalization[ ] to support action already taken,' which our high court disapproved in Laurel Heights Improvement [I]."*

(*Id.* at 1221 [emphasis added]).

In the NEPA context, federal courts have also disfavored the "rubber-stamping" of projects. For example, in *Metcalf v. Daley* (9th Cir. 2000) 214 F.3d 1135, the district court and Ninth Circuit found the government's preparation of an Environmental Assessment ("EA"), deciding a whaling proposal of the Malah Indian Tribe would not significantly affect the environment, and the government's issuance of a Finding of No Significant Impact ("FONSI"), violated NEPA, because *NEPA compliance efforts occurred only after the government had already signed agreements binding them to support the tribe's proposal.*[4]

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The Ninth Circuit in *Metcalf* explained the planning analysis defect resulting from doing the EA and FONSI after-the-fact:

> "The Federal Defendants did not engage the NEPA process 'at the earliest possible time.' . . . [T]he Federal Defendants did not even consider the potential environmental effects of the proposed action until long after they had already committed in writing to support the Makah whaling proposal. *The 'point of commitment' in this case came when NOAA* [National Oceanic and Atmospheric Administration] *signed the contract with the Makah in March 1996 and then worked to effectuate the agreement.* It was at this juncture that it made an 'irreversible and irretrievable commitment of resources.' As in *Save the Yaak*, the 'contracts were awarded prior to the preparation of the EAs . . .. *These events demonstrate that the agency did not comply with NEPA's requirements concerning the timing of their environmental analysis, thereby seriously impeding the degree to which their planning and decisions could reflect environmental values.*' Save the Yaak, 840 F.2d at 718-19. Although it could have,

[4] NEPA decisions are germane when addressing CEQA issues because "the statutory scheme and objectives of both laws are similar" (*City of Pasadena v. State of California* (1993) 14 Cal.App.4th 810, 831, *disapproved of on other grounds*).

> NOAA did not make its promise to seek a quota from the IWC ["International Whaling Commission"] and to participate in the harvest conditional upon a NEPA determination that the Makah whaling proposal would not significantly affect the environment."

(*Metcalf*, 214 F.3d at 1143-1144 [emphasis added]).

The Ninth Circuit also explained that environmental review under NEPA "must be taken objectively and in good faith, *not as an exercise in form over substance and not as subterfuge designed to rationalize a decision already made.*" (*Id.* at 1142 [emphasis added].)

This is exactly what is happening here.

First, the MSHCP explains that a Planning Agreement was entered into years ago between the County and city members of CVAG together with the USFWS, CDFG, BLM, U.S. Forest Service, National Park Service, Caltrans, Coachalla Valley Water District, Imperial Irrigation District, Riverside County Flood Control and Water Conservation District, Riverside County Regional Park and Open Space District, Riverside County Waste Resources Management District, California Department of Parks and Recreation and Coachella Valley Mountains Conservancy, committing to initiate and participate in the MSHCP. Additionally, the County and participating cities entered into a Memorandum of Understanding to initiate and participate in the MSHCP planning process. No mention is made of any CEQA/NEPA environmental review having been undertaken before approving the Planning Agreement or Memorandum of Understanding, or before entering into 6-figure contracts with consultants and committing public servant time and public funds on the MSHCP planning process.

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Last month, during the April 26, 2007, LAFCO hearing on the Palmwood project's annexation to Desert Hot Springs, the testimony of plan participants revealed that the MSHCP is, for all intents and purposes, a "done deal". CVCC Chairman Richard Kite testified that the Palmwood annexation would result in a loss of 1,500 acres from the MSHCP area that would require reconsideration of the MSHCP as drafted, and that other plan participants could be required to "make up" conservation resulting from the loss of acreage. Teresa O'Rourke of the USFWS confirmed during her testimony that the participating cities are compromised by the annexation proposal. Katie Barrows of CVCC reiterated that additional analysis of the current MSHCP could be required as a result of the annexation approval, and that the annexation poses potential complications to timely review and approval of the MSHCP. Following this testimony, LAFCO member Robin Lowe (Hemet Council member) observed that there is a "hostage taking going on", and recounted her experience with prior attempts by the resource agencies to improperly dictate to the local agencies during the Stephens' kangaroo rat habitat conservation planning process.

In sum, the bureaucratic momentum, substantial investment of public servant time and public funding into the MSHCP planning process, and the resulting pressures being imposed on the local agency decisionmakers to continue processing the MSHCP are completely undermining the CEQA process by turning the environmental review process into the sort of "post hoc rationalization" that the Supreme Court disapproved of in Laurel Heights I.

Additionally, the MSHCP commits the County and participating cities to enter into an Implementation Agreement. Section 6.12.1 of the MSHCP and Section 13.2 of the Implementation Agreement require the County and cities to amend their General Plans and zoning regulations to incorporate the terms of the MSHCP. These provisions illegally pre-commit them to a course of action prior to the required public hearings on such approvals in violation of CEQA, NEPA, and the affected public's Constitutional due process protections.

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VIII. THE MSHCP MUST BE REJECTED.

The serious inadequacies of the Draft EIR/EIS are symptomatic of fundamental deficiencies in the MSHCP itself. The inadequate supporting data, vast acreage of the Plan Area and Conservation Area, the overly broad species list, the new onerous, costly, and time-consuming bureaucracy, the federalization of the local development entitlement process, and the MSHCP implementation costs seriously call into question the feasibility of the MSHCP. For these reasons, the MSHCP should be denied as inadequate and infeasible.

The County and cities may not approve the MSHCP unless the Draft EIR/EIS is revised and recirculated to identify, disclose and analyze the MSHCP's impacts and a proper range of alternatives. CEQA contains detailed provisions setting forth the circumstances under which environmental impact reports must be supplemented and recirculated. As specified in CEQA Guidelines Section 15088.5, a Draft EIR must be recirculated where it is revised to include "significant new information."

The opportunity for meaningful public review of significant new information is essential "to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom" (*Sutter Sensible Planning, Inc. v. Sutter County Board of Supervisors* (1981) 122 Cal.App.3d 813, 822, *disapproved of on other grounds*; *City of San Jose v. Great Oaks Water Co.* (1987) 192 Cal.App.3d 1005, 1017). An agency cannot simply release a draft report "that hedges on important environmental issues while deferring more detailed analysis to the final [EIR] that is insulated from public review" (*Mountain Lion Coalition v. California Fish & Game Comm'n.* (1989) 214 Cal.App.3d 1043, 1052).

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In order to cure the panoply of Draft EIR/EIS defects identified in this letter, CVAG and USFWS will have to obtain substantial new information to adequately assess the MSHCP's environmental impacts, and to identify effective mitigation measures and alternatives capable of alleviating the MSHCP's significant impacts. CEQA requires that the public have a meaningful opportunity to review and comment upon this significant new information in the form of a recirculated Draft EIR/EIS. Based on, the all of the above outlined reasons, a revised Draft EIR/EIS is required because the Draft EIR/EIS is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment are precluded.

IX. CLOSING COMMENTS.

As set forth above, the MSHCP and Draft EIR/EIS suffers from numerous deficiencies which would independently render them inadequate under relevant laws. Taken as a whole, the deficiencies of the MSHCP and Draft EIR/EIS are so pervasive as to necessitate further extensive revision of the documents – and recirculation for public comment. Century

X-39

respectfully requests that the MSHCP be rejected. The MSHCP should not be reconsidered until it is adequately supported by current biological data and by the private property owners within the Conservation Area boundary, and after a legally adequate EIR/EIS is prepared.

We appreciate the opportunity to submit these comments. Please do not hesitate to contact us if you should have any questions concerning this letter or our comments.

X-39
Cont.

Respectfully submitted,
JACKSON, DeMARCO, TIDUS
PETERSEN & PECKENPAUGH

By: Michele A. Staples
Michele A. Staples, Esq.
Attorneys for CENTURY VINTAGE HOMES

477270.2

Technical Comments Submitted by Century Vintage Homes (May 24, 2007) Regarding the CVMSHCP

The Coachella Valley Multiple Species Habitat Conservation Plan has been designed by biologists and environmentalists who are attempting to force it upon Riverside County and cities in the most rapidly growing area in the United States. Plan supporters claim that it is necessary to protect 27 types of plants and animals that will be pushed to the brink of extinction if the Plan doesn't pass.

In light of this premise, it seems prudent to review the species that are to be protected under the Plan.

Species #1

The animal that is the best known and most spectacular of this group of organisms is what has been referred to in the past as the **Peninsular Bighorn Sheep**. It is often stated by biologists that the sheep are a distinct species but current research reveals that it is genetically indistinguishable from populations of bighorn sheep elsewhere in the desert regions of California and southern Nevada. That is why the U.S. Fish & Wildlife Service no longer refers to it as the Peninsular Bighorn but rather simply says that the bighorn in the Peninsular Ranges are an isolated population of bighorn sheep. Not only are they not a distinct species but they are not even a distinct subspecies. The federal Endangered Species Act does allow populations of animals to become listed but for broad, regional planning purposes it seems important to emphasize that the bighorn sheep in the mountains surrounding the Coachella Valley are not genetically unique.

X-40

Species #2

Coachella Valley residents have long been told that the **Coachella Valley Fringe-toed Lizard** is a unique species found nowhere else in the world. This is not true. Breeding studies and genetic analyses (including, Cornett, J.W. 1982. Interbreeding between *Uma inornata* and *Uma notata*. Southwestern Naturalist 27:223; Zalusky, S.B., A.J. Gaudin and J.R. Swanson. 1980. A comprehensive study of cranial oesteology in the North American sand lizards, genus Uma (Reptilia: Iguanidae). Copeia 1980:296-310) indicate that the Coachella Valley fringe-toed lizard is the same species of fringe-toed lizard found elsewhere in the Sonoran Desert of Arizona, Mexico as well as California in the Colorado Desert of southeastern California they are found in Anza-Borrego Desert State Park, the 100-mile-long Algodones Dune system near El Centro, along the west shore of the Salton Sea and at Bat Caves Butte, to name only a few locations. To say that the Coachella Valley fringe-toed lizard, is a unique species is simply incorrect. At best, it is a subspecies of the Colorado Desert fringe-toed lizard.

Species #3

An alleged subspecies of the Little Pocket Mouse known as the **Palm Springs Pocket Mouse** does not exist. Genetic analysis done in 2003 indicates that the populations of the Little Pocket Mouse living in the Coachella Valley are not unique or distinct. They are the same as Little Pocket Mice found from Mexico to Idaho. That the plan failed to mention the current research on this topic, which was known to the those individuals responsible for developing the Plan,

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strongly suggests that the Plan formulators were motivated for reasons other than protecting unique species threatened with extinction (Swei, A., P.V. Brylski, W.D. Spencer, S.C. Dodd and J.L. Patton. 2003. Hierarchical genetic structure in fragmented populations of the Little Pocket Mouse (*Perognathus longimembris*) in Southern California. Conservation Genetics 4:501-514).

Species #4

The **Coachella Valley Ground Squirrel** falls into the same category as the Palm Springs Pocket Mouse. There are continuous breeding populations of the Round-tailed Ground Squirrel from Palm Springs to Blythe and on south to Yuma, Arizona, yet Plan supporters insist on stating that populations of Round-tailed Ground Squirrel living in the Coachella Valley are unique. They refer to them as the Coachella Valley Ground Squirrel. With continuous breeding populations this cannot be possible—the populations of ground squirrels in the Coachella Valley are the same as populations in Anza-Borrego Desert State Park, Blythe and everywhere else in the Colorado Desert of southeastern California. Because of this reality, there is no justification for calling the Coachella Valley Ground Squirrel anything other than the Round-tailed Ground Squirrel.

Species #5 and #6

The **Coachella Giant Sand Treader Cricket** and **Coachella Valley Jerusalem Cricket** are insects that have been known to science for decades and neither the state nor federal governments have listed them as threatened or endangered nor ever proposed them for listing. Little is known of their biology including all the places they might, or might not, live. To effectively take private property, as the Plan does, to provide legal protection for species that the government refuses to list defies both the spirit and wording of state and federal endangered species laws.

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Cont.

Species #7

The **Desert Tortoise** occurs in the Coachella Valley but in very small numbers (with the exception of one small area managed by the Bureau of Land Management). So few in number are they that early herpetologists working in the Coachella Valley wrote that they did not occur here (R. C. Stebbins, *Western Reptiles and Amphibians*, 2003) Their limited presence has resulted in neither the state nor federal agencies ever requiring mitigation to offset impacts—because there have never been any project that would have had significant impacts. The protected desert tortoise populations occur throughout much of the California deserts, southern Nevada and even into Utah. The species is best protected anywhere other than the Coachella Valley.

Species #8

Both the state and federal governments have elected not to list the **Flat-tailed Horned Lizard** even though they have had opportunities to do so. That these lizards are common outside the Coachella Valley, and rare within it, is the main reason that the agencies have declined to list it. If the state and federal governments refuse to list it, why should the Coachella Valley be forced to mitigate for it and other organisms through prohibiting development of otherwise developable property and payments of $5,000 or more to protect habitat?

Species #9

The **Coachella Valley Milkvetch** is not a distinct species as environmentalists often state. At best, it is a subspecies of the Freckled Milkvetch found throughout much of the California deserts. The public should be made aware of the fact that the Plan refers to all of the 27 organisms as "species" when in fact most of them, at best, are subspecies. Subspecies do not have anywhere near the biological significance as do full species and that is probably why Plan proponents never mention the word subspecies in public.

Species #10

So little is known about the **Little San Bernardino Mountains Cilia** that both state and federal agencies have declined to list it. It is undoubtedly much more widely distributed than is known today. Its incredibly small size and irregular springtime appearance contribute to the paucity of information regarding its distribution. What is known is that it is occurs, and is protected in, several locations in Joshua Tree National Park. (It may also be a subspecies rather than a full species.)

Species #11

The **Mecca Aster** is associated with the San Andreas Fault and receives protection because California law does not allow construction on active faults. Unless the law changes, this species receives protection automatically because of the rugged fault-created landscapes of the lower Coachella Valley.

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Cont.

Species #12

The **Orocopia Sage** is also associated with the rugged, fault-scarred landscape of the extreme southeastern Coachella Valley. In fact, most known populations of this species are found outside the Plan area. Why does the Plan list species that are more widespread outside the Coachella Valley than within it? Should not the plan deal only with species that are truly unique to the area? Adding such species onto the list suggests the goal is to make the list as long as possible, to make the plan seem absolutely necessary because there are so many species in need of protection.

Species #13

The **Triple-ribbed Milkvetch** is listed as an endangered species by the federal government. This is one species in need of protection but in the Coachella Valley it is restricted to a few canyons that are already protected by government agencies. The Plan is redundant for this species.

Species #14

The **Burrowing Owl** occurs across America. Therefore, attempting to protect them in the Coachella Valley, the most rapidly growing area in America, is neither necessary or prudent. Neither the state or federal governments have listed them as threatened or endangered even though they had the opportunity to do so. The Burrowing Owl is regularly observed along the

margins of agricultural fields in the Imperial Valley. This is one species that can coexist with many types of human activity, as evidenced throughout Riverside County.

Species #15 and #16

Because of human activities, namely the constructing and maintenance of irrigation canals, the **Black Rail** and **Yuma Clapper Rail** are able to exist in the lower end of the Coachella Valley. Both birds are already protected within the Dos Palmas Preserve and both are more common outside of the Coachella Valley than within it.

Species #17

The **Crissal Thrasher** is abundant elsewhere in the Southwest which is the primary reason no state or federal government agency has ever proposed to list this species. It reaches its westernmost distribution in the lower Coachella Valley, an environment that is not really suitable for it.

Species #18

The **Gray Vireo** does not even occur in the Coachella Valley. Why is it on the list? Perhaps individuals may occasionally migrate through the Valley and a few may nest and breed in the mountains surrounding the Valley. To suggest that development anywhere on the valley floor will have an impact on this species is not supported by what is known of its habitat preferences.

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Cont.

Species #19, #20, #21, #22 and #23

The **Least Bell's Vireo** is a subspecies of the widespread Bell's Vireo. The Plan offers no additional protection to this subspecies that is not already in place. It is already protected at Big Morongo Wildlife Preserve and Big Morongo Canyon, the Indian Canyons Tribal Park, Mission Creek Preserve and lands managed by the Desert Water Agency (a land-managing organization whose board unanimously voted to not participate in the Plan). Therefore, the Plan offers no additional protection for habitat of this subspecies of the Bell's Vireo. The **Southwestern Willow Flycatcher**, **Summer Tanager**, **Yellow-breasted Chat** and **Yellow Warbler** are four other birds included within the Plan whose habitat preferences are very similar to the vireo's. Therefore, the habitat of all these birds already receives the maximum amount of protection that could ever be available.

Species #24

How does one protect a bird that is found throughout the Mojave and much of the Sonoran Desert regions of California, Arizona, Nevada and Utah? Would one single out the most rapidly growing spot in the entire region and try and protect it there? That is what has happened with regard to the **LeConte's Thrasher.** The Coachella Valley should be the last place where one would want to protect this uncommon species, yet the Coachella Valley is the first place where an attempt is being made to protect it. Even if not one more home was built in the Coachella Valley this species would probably be extirpated from the region because of the development and resulting impacts that have already taken place. The bird likes undisturbed desert lands as in Joshua Tree National Park.

Species #25

The **Southern Yellow Bat** roosts in the native Desert Fan Palm. The numbers of these trees is increasing both in natural oasis environments and around homes and businesses where it is planted as an ornamental. As the bats roost in the palms wherever they are, the habitat for this species is increasing. Additionally, most desert fan palm oases are now protected in preserves including the existing Coachella Valley Preserve as well as the Indian Canyons Tribal Park, Joshua Tree National Park and Anza-Borrego Desert State Park. The Plan does not offer any additional protection for this species.

Species #26, #27 and #28

The habitat of the **Arroyo Southwestern Toad, Desert Slender Salamander** and **Desert Pupfish** is already protected. The Plan does not afford these species any substantive increase in protection.

In conclusion, the CVMSHCP effectively takes thousands of acres from private property owners and charges all project proponent more than $5,000 per project acre and yet does not provide meaningful protection for a single species listed as threatened or endangered by either the state or federal government.

Of the plant and animal species that supposedly will be protected under the Plan:

X-40
Cont.

13 are already maximally protected in the Coachella Valley. The Plan offers nothing to these plants and animals. (Arroyo Southwestern Toad, Desert Slender Salamander, Desert Pupfish, Southwestern Willow Flycatcher, Summer Tanager, Yellow-breasted Chat, Yellow Warbler, Yuma Clapper Rail, Western Yellow Bat, Triple-ribbed Milkvetch).

11 are typically referred to as species but are actually subspecies or have no special taxonomic ranking at all (Peninsular Bighorn Sheep, Coachella Valley Fringe-toed Lizard, Palm Springs Pocket Mouse, Coachella Valley Ground Squirrel, Arroyo Southwestern Toad, Least Bell's Vireo, Southwestern Willow Flycatcher, Summer Tanager, Yellow Warbler, Yuma Clapper Rail, and Coachella Valley Milkvetch).

7 exist in the Coachella Valley which is located at the very edge of their known distribution. The Coachella Valley has always been marginal habitat for these species (Yuma Clapper Rail, Black Rail, Crissal Thrasher, Little San Bernardino Mountains Gilia, Southwestern Willow Flycatcher, Summer Tanager and Yellow Warbler).

4 species are better protected outside the Coachella Valley (LeConte's Thrasher, Flat-tailed Horned Lizard, Desert Tortoise, Orocopia Sage).

3 do not actually exist as unique entities (Peninsular Bighorn Sheep, Palm Springs Pocket Mouse, Coachella Valley Ground Squirrel).

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3 species will be eliminated from the Coachella Valley because habitat degredation has already gone too far with or without the MSHCP. The Plan has arrived too late for these species (Coachella Valley Fringe-toed Lizard, Flat-tailed Horned Lizard and LeConte's Thrasher).

3 have so little information known about them that meaningful protection, if actually necessary, is impossible (Little San Bernardino Mountains Linanthus, Coachella Giant Sand Treader Cricket and Coachella Valley Jerusalem Cricket). The agencies have decided not to list these species.

1 species does not occur in the Coachella Valley. (Grey Vireo)

X-40 Cont.

Comment Letter Y

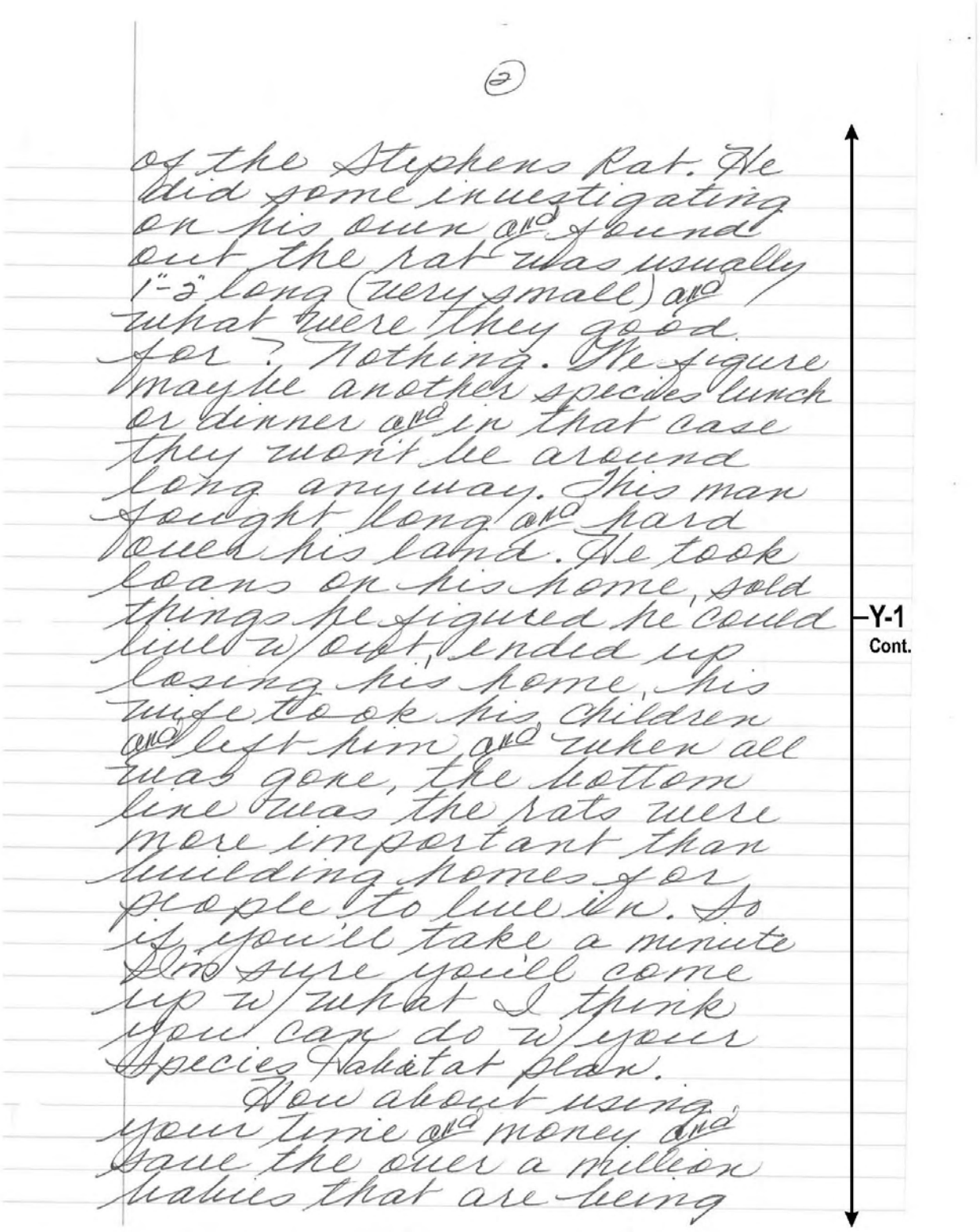
Monday 4-9-07

RECEIVED
APR 11 2007
By

Mr Frohlmuth,

After receiving your letter on saving "Sensitive species", I couldn't help but remember the time my brother took me to Canyon Hills in Riverside county in 1995. I was looking for a place to buy. When I found the house (I could afford) the real estate man took us back to his office to write up a offer. In the papers he handed me was a paper about saving the Stephens Rat. I laughed because it was my brothers last name (my maiden name), then we told the real estate man and he told us about a developer who had just sold his last house in a 350 home tract and bought (approx.) 100 acs. near by to build more homes. He paid one million for the land, but when he went to get the permit he was told he could not build on that property because

Y-1

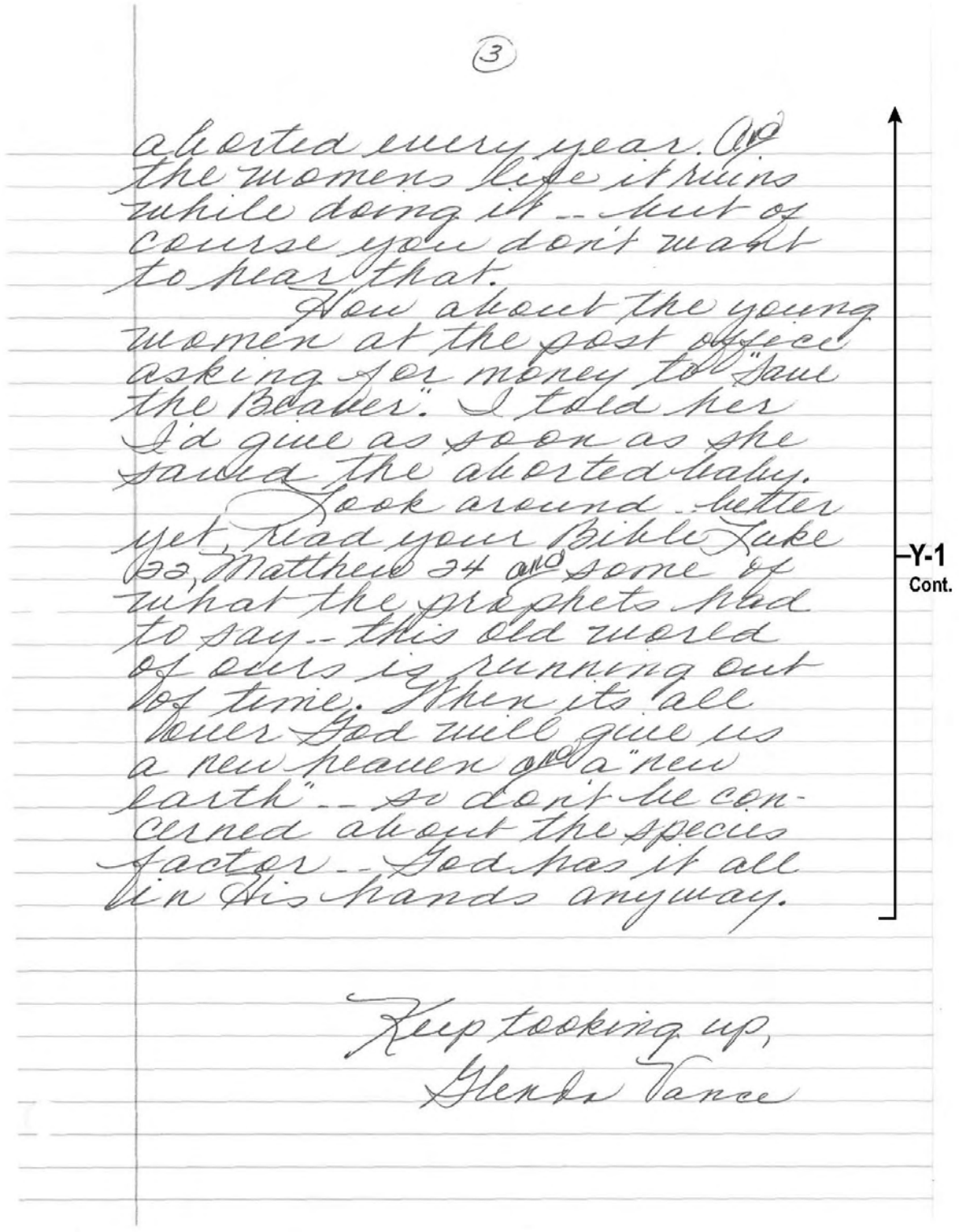


(2)

of the Stephens Rat. He did some investigating on his own and found out the rat was usually 1"-3" long (very small) and what were they good for? Nothing. The figure may be another species lunch or dinner and in that case they won't be around long anyway. This man fought long and hard over his land. He took loans on his home, sold things he figured he could live w/out, ended up losing his home, his wife took his children and left him and when all was gone, the bottom line was the rats were more important than building homes for people to live in. So if you'll take a minute and sure you'll come up w/ what I think your can do w/ your Species Habitat plan.

How about using your time and money and save the over a million babies that are being

Y-1 Cont.



(3)

aborted every year. Of the women like it runs while doing it -- but of course you don't want to hear that.

How about the young women at the post office asking for money to "Save the Beaver". I told her I'd give as soon as she saved the aborted baby.

Look around - better yet, read your Bible Luke 23, Matthew 24 and some of what the prophets had to say -- this old world of ours is running out of time. Then its all over God will give us a new heaven and a "new earth" -- so don't be concerned about the species factor -- God has it all in His hands anyway.

Y-1 Cont.

Keep looking up,
Glenda Vance

Comment Letter Z

03 April 2007

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

Subject: CVMSHCP

Dear CVAG Leadership:

In response to your property owner notice dated 21 March 2007, I wish to offer the following comments.

As a supporter of the CVMSHCP I and my neighbors living near the intersection of Highway 62 and Indian Ave. have worked to protect the flora and fauna in this sensitive area. Many of us have been in the front of efforts to dissuade Desert Hot Springs from moving forward on the Palmwood project that would destroy the area's special union of habitat and sparse, environmentally aware population.

It is essential that this County area not be annexed by DHS, as this will place the area under the CVMSHCP and, therefore, protect the species and habitat. We, as stewards of a small and peaceful area west of Highway 62, hope that GVAG and Riverside County will prevail and help us keep our wildlife, desert plant-life and night skies.

Z-1

Thank you for your continuing leadership and assistance.

Sincerely,

Steven D. Bayrd
5955 Soza Road,
White Water, CA 92282

Comment Letter AA

FROM : RAMEY&BROWN FAX NO. : 303 258-9535 May. 29 2007 06:38AM P1

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

RECEIVED
MAY 29 2007
By

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

Dear Ms. Barrows and Mr. Bartel, 28 May 2007

In concept, multi-species habitat conservation plans have the potential to provide lasting conservation benefit to endangered species and the habitat they occupy. As a scientist and citizen interested in increasing the effectiveness and defensibility of the Coachella Valley Multi-Species Habitat Conservation Plan (hereafter referred to as the MSHCP) I provided comments to CVAG and the USFWS in January of 2005.

Regrettably, a number of substantive issues that I raised were not addressed in the Recirculated Draft MSHCP, compromising its the scientific and legal defensibility. In this letter, I illustrate how authors of the MSHCP failed to address several of the most important issues raised in my comment letter and how some of my comments have greater significance because of recent court decisions.

1) I commented that:

"The Plan cannot be expected to effectively recover species because it does not make use of the best available science, allocates effort to hypothetical threats, and lacks an objective decision making process in its Adaptive Management Plan."

AA-1

This comment is significant because the MSHCP does not provide any supporting data or quantitative analyses that can be used to evaluate whether it will impair or impinge on the recovery of ESA-listed species. This issue is particularly important in light of the recent 9th Circuit Court decision (*National Wildlife Federation v. National Marine Fisheries Service*, No. 06-35011, 9th Circuit, April 9, 2007). That decision raises the bar on ESA permitees to show that their activities (in this case, the MSHCP and covered activities) will not impair or impinge on the survival or recovery of ESA-listed species. Absent from the MSHCP is any sort of quantitative analysis that could be used to measure its impact on recovery of ESA-listed species. The presumed benefits to ESA-listed species are therefore speculative. As a result, it is doubtful that the MSHCP would meet this new, higher "recovery" standard.

2) I commented that:

"The Plan emphasizes protection of non-endangered populations. Sixteen of the 27 "species" protected in the plan are actually not full species or endangered. They are subspecies and populations that are not federally or state listed, but ones that CVAG speculates, might be listed sometime in some distant future. Such a speculative approach to conservation, without supporting quantitative evaluation, is clearly an inadequate basis for diversion of resources away from the recovery of listed species that are of conservation priority.

The assumption that the majority of organisms covered in the Plan are expected to become endangered in the near future, promotes a public perception that endangerment and federal listing can be expected, but recovery and subsequent delisting cannot. The Plan should prioritize effort to the ten federally listed species and the habitats they occupy, instead of the non-endangered subspecies and populations covered under the Plan."

The MSHCP response to this comment is inadequate because it never addressed the issue directly. Instead, response M09-01 refers to response H11-04, which then refers to Major Issue Responses 5 and 12. None of these address the fact that inclusion of non-threatened species and subspecies relied on cursory surveys, many of which were conducted over a decade ago (see table A3-5 in Appendix 1) as well as much speculation about their distribution, population number, and presumed threats. This speculative approach is clearly illustrated in Major Issue Response 5: *"...best available data often included consultation with species experts for their evaluation of habitat areas that were off limits due to access constraints."* Also, *"funding limitations and available resources did not allow for comprehensive surveys throughout the Plan area."* In other words, most of the surveys represented a limited, single season of survey effort over a fraction of the area covered by the MSHCP. AA-2

This speculative approach compromises the recovery of ESA-listed species because it allocates substantial conservation resources (research, monitoring, management, and land acquisition) to non-threatened taxa, several of which are also of questionable taxonomic validity (e.g. the Coachella Valley round tailed ground squirrel (a subspecies) and the Palm Springs pocket mouse (a subspecies)). As I commented earlier, that represents *"tens to hundreds of millions of dollars in conservation effort that is likely to be allocated to them over the life of the Plan."*

This speculative approach is also in conflict with another recent US Ninth Circuit Court ruling that while *'the USFWS can draw conclusions based on less than conclusive evidence, . . . it cannot base its conclusions on no evidence'* (National Association of Homebuilders vs. Norton, No. CIV-00-0903- PHX, 2001). In other words, ESA decisions cannot be based on speculation or hypothetical scenarios alone; there must be scientifically defensible data and analyses. The MSHCP will result in an ESA regulatory decision that relies on the same standards of scientific evidence as other ESA decisions.

3) I commented that:

"The Adaptive Management Plan is inadequate and not scientific: The most critical component to the Coachella Valley MSHCP, the Adaptive Management Plan, is pseudoscientific because it gives the appearance of science-based management decisions when it lacks specifics as to which management actions will be tested, what the critical tests will be, who will make them, and how these will be used to make management decisions."

This comment and others on the Adaptive Management Plan are still valid. The current version of the Adaptive Management Plan continues to rely on subjective, post-hoc interpretation of data. If the Adaptive Management Plan were scientific, then hypotheses and critical tests would be stated in advance of data collection and these critical tests used to accept or reject alternative hypotheses (rather than simply "interpret" the data). The absence of this basic scientific method in the Adaptive Management Plan is best illustrated in Figure 8-5 (The Conceptual Model used in the Adaptive Management Plan). That figure clearly shows that the decision-making pathway relies on subjective "interpretation" of data.

AA-3

I commented that:

"There is no accountability for the decisions made in the Adaptive Management Plan, because there are no clear lines of authority or an appeal process."
"Overall, the irritatingly repetitive lip service given to scientific principles in the Adaptive Management Plan are not adequate to overcome the lack of details necessary to make such a plan workable, or to allow objective scientific evaluation of the effectiveness of its actions. The Plan is lacking standards that can be applied to measure its performance for either "implementation" or "effectiveness.""

These comments are still valid because the Adaptive Management Plan does not provide details on which species or management questions are to receive the highest priority, nor how the performance of various management actions will be measured. Decision-making in the Adaptive Management Plan is by committee, but without any standards or thresholds established in advance of decision-making.

There are still no provisions for an appeal process. The response to my comment: M09-11, states: *"The affected party is provided with the opportunity to: (1) attend and testify at CVCC board meetings, (2) meet and confer to address their concerns (see IA Section 23.6 and HANS meet and confer process in MSHCP), and (3) attend and testify at committee meetings."* This response shows that there is an appeal process for decisions made under the Adaptive Management Plan.

AA-4

4) I commented that:

"The precautionary principle is taken to an extreme: If protection of wildlife and plants are based upon real, observable threats and not hypothetical threats, we can do a better job at conservation in the long-term. Hypothetical threats to endangered species need to be cast in terms of questions and

AA-5

the questions ranked in order of importance. Each question should then receive a problem analysis and be broken down into component parts that can be treated as testable hypotheses. In this manner, hypothetical threats can be properly prioritized and investigated as testable hypotheses."

This comment is still valid because there is no problem analysis approach used to prioritize the allocation of conservation effort in the MSHCP. Additionally, the use of the precautionary principle as a guide to decision making under the MSHCP is baseless because the precautionary principle does not appear in any U.S. ESA law or policy.

AA-5 Cont.

5) I commented that:

" There is no legally binding requirement for making the data used in MSHCP decisions publicly available and free of charge:
The Plan promises that data will be publicly available but does not provide a mechanism for requiring that data be made public by researchers in a reasonable amount of time (e.g. 1-2 years). This has been a recurrent problem with PBS researchers who have not and despite reasonable requests. The irritatingly common excuse has been that someone might "misuse" the data. In other words, they might refute a favored point of view with quantitative analysis. It is also a broader public access problem because much of the data were gathered with public funding and under federal and state permits. Control of information is power. The situation is made worse by the fact that one PBS researcher who has advocated not releasing raw data to the public is now the bighorn biologist for the USFWS. How can the public be guaranteed its right to fair process under such a system?

Most of the data used in support of PBS essential habitat and Critical Habitat designation are not publicly available and therefore not subject to independent review or verification. Attributes such as sex and age of bighorn, captive reared or wild bighorn, number of bighorn, and methodology used, are not publicly available. Such data must be requested from each contributing individual and not all (notably the Bighorn Institute) are willing to share such data, even decades after it was collected. "

AA-6

This comment is still valid. The response to my comment did not adequately address the issue because there is still no legally binding mechanism in the MSHCP to obtain raw data from private parties, even if data or analyses derived from it are used in the MSHCP decision making process (This includes Recovery Plans relied upon by the MSHCP and other documents.). Data summaries and annual reports referred to in response M09-19 are not the same as the raw data used in analyses. Raw data can be reanalyzed and conclusions drawn from it retested, but data summaries do not provide any opportunity for verification of results.

The following example is provided to illustrate how data used in support of key ESA decisions, as well as the MSHCP, can be hidden from the public. In the peer reviewed publication (Turner et al. 2006), we documented how private parties and the USFWS

refused to provide data used in support of the Peninsular Bighorn Sheep Recovery Plan and Critical Habitat Designation (including the delineation of Essential Habitat referred to in the MSHCP). Excerpts from Turner et al. (2006) are provided here but the entire publication illustrates the full extent of the data access problem:

"No individual observer or specific study names were linked to the observaton data set we were provided. Ostermann et al.(2004) contends we failed to review the pertinent literature acknowledged within our citations and that our review of those data should have included consultation with the various researchers in order to better comprehend the bias and limitations of their data. However,we were provided the observation data without specific study descriptors or researcher identification except by agency (BI, CDFG,or DPR). It was impossible to link the observation data we received with the specific studies reported in the literature from which they were allegedly derived. For example,we have no way of determining whether data reported by Rubin et al. (1998) or Ostermann et al. (2001) were included within the observation data set since Rubin's or Osterman's name did not appear in association with any observation data points. Recently, we were informed that USFWS data were deliberately provided in a format to us, or anyone else, that would not facilitate a detailed analysis by those unfamiliar with the manner in which it was collected (Electronic letter from S. Ostermann to R. Ramey,February 23,2004). This seems contrary to a process in which all the data were alleged to be part of the public record.

Furthermore, the basis population estimates derived from these very same data were used to list Nelson's bighorn sheep in the Peninsular Ranges as an endangered distinct vertebrate population segment under ESA (USFWS 1998), to develop recovery criteria, and delineate critical (essential) habitat (USFWS 2000, 2001). Despite its importance, this complete data set appears nowhere in the public record. Ostermann et al.(2005) critiqued the data set we used as being temporally and spatially skewed; however, their critique failed to identify how the total observations for the remainder of the Peninsular Range (43%) can justify their use of the same data in support of the original listing, recovery plan, and critical-habitat delineation without any quantitative analysis. Ostermann et al.(2005) suggested we failed to review the literature and match individual collections of data with specific authors and their respective published accounts.

It is alleged we further compounded sampling error by failing to compensate for sampling intensity, duration of monitoring effort, particularly as it related to the data collected near the urban interface, and an oversight that combined observation data from the subpopulation northwest of State Route 74 and the subpopulation southeast of State Route 74,both in the northern Santa Rosa Mountains.This critique is accurate to the extent the data allowing for a consideration of these factors were not provided to us and are not publicly available. These data were requested from BI, the USFWS and S. Ostermann, but requests were denied. The observational data we were provided only identified location by year of observation and the reporting agency (BI, CDFG, DPS). No

AA-6
Cont.

data were provided indicating who made the observation, how often individual bighorns were identified, gender, or group size and composition. Further, no data were provided that identified a specific observation to a given animal (telemetered, ear-tagged, or otherwise) or that a particular animal observed was a member of any particular ewe group or deme. We requested ancillary data, but the USFWS denied that any additional data existed or were used. Data have been requested from the BI on several occasions (Letter from J.DeForge, Executive Director, Bighorn Institute to H. Strozier, Esq. December 13, 2002). The Institute's response was similar to that received by one of their sponsors, who asked for some of this same information,

> *"We (Bighorn Institute) categorically do not release this information to anyone including the United States Fish & Wildlife Service and the California Department of Fish and Game. That information is proprietary to the Institute and in some instances is unique to the researcher who has recorded this information. Simply put, there is too much concern that the information you seek could be misinterpreted and misapplied without the benefit of the researcher who actually recorded the data, who best knows how to interpret that data. In the hands of anyone other than the field researcher and other staff members of the Institute, the information has little value because it cannot be interpreted properly...." (Letter from J. DeForge, Executive Director, Bighorn Institute to The Honorable Christine Murphy, Mayor, City of Rancho Mirage, California, August 11,1998).*

A 69% decline in the sheep population between 1984–1994 was reported by DeForge et al.(1995) using these same data, but there was no mention of these data being skewed or biased within the DeForge et al.'s (1995) publication, listing package, Recovery Plan, or critical-habitat delineation (USFWS 2000).

AA-6 Cont.

Based on the well-documented case above, it would appear that the MSHCP has an unresolved issue with regards to delivering on its assurances of data being available to the public. This issue is not isolated to researchers involved with this ESA-listed population, it applies to researchers involved other species, subspecies, and distinct vertebrate population segments covered under the MSHCP as well.

AA-7

I hope that the comments that I have provided will be of value to the agencies involved in strengthening the effectiveness and defensibility the MSHCP.

Sincerely,

Rob Roy Ramey II, Ph.D.
P.O. Box 386
Nederland, CO 80466

Comment Letter AB

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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:

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The appraisal resolution process gives the landowner an erronious impression that he can actually benefir from paying to have his land appraised by an independent appraiser. He can pay all right but the people who buy land for the Plan don't have to buy his land at the price his appraiser says it is worth. They simply go to the next person on the list who will accept the pennies on the dollar habitat appraisal and the guy who paid for an appraisal goes to the back of the line to think about it and set an example for others who think they have any rights. The appraisal resolution is just a mockers whose words lull people into not objecting to the Plan. **AB-1**

The land in Thousand Palms north and west of the CVFTL Preserve was not bio-surveyed for CVFTLs or other species. A paper reporting on the CVFTLs at the two other Preserves was written by Griffiths et al in 2002. It appears that a bio-survey would reveal what we local landowners already know - the CVFTLs are not there. Yet the area between the cluster of houses at Amite and Ramon Road and the power stations are included in habitat for the CVFTL not just in "blow-sand" area. A Fish and Game paper in 1977 showed the CVFTLs were not there. This makes the RDEIR?SEIS for the CVMSHCP inadequate at the very least. **AB-2**

The MSHCP was promoted to homeowners at Scoping Committees as a way to surround themselves with nature's beauty at no cost to them. Landowners were not notified of Scoping Committees. When I found out about one meeting in Thousand Palms, the Community Council leader, Mr. Samson, refused to tell me its location and time. Mr. Samson added that local homeowners did not want landowners around them to use their own land. **AB-3**

The Memorandum of Understanding (MOU) states that the cost of the MSHCP will not come out of CVAG cities' general funds. So, who is going to pay? The obvious answer is that small, private landowners will either be deprived of the value and use of their land (become privately owned habitat) or they will have to accept pennies on the dollar for their land. Developers are going to pay a Coachella Valley Fringe-Toed Lizard (CVF-TL) mitigation fee to help buy some of this cheap land. But, most of the fee money goes to habitat monitoring, management and other bureaucratic budget, power and empire building. **AB-4**

Since there isn't enough money now to buy the land and manage/monitor the Plan the CVFT-L mitigation fee and other fees will have to be raised, again, and new fees established for other covered species. The Plan does not identify the actual fees for species after the Plan is adopted and is therefore incomplete. The CVF-TL mitigation fee is legally indefensible. Developers are only biding their time and not suing now to appease environmentalists who threaten to tie their projects up in lawsuits if developers do not cooperate with the adoption of the Plan and the, so far, only quadrupling of the CVF-TL fee. When the developer lawsuit does come it will result in a shortfall in funds. "There's no limit to the amount of fees they could request for you to mitigate," said Fred Bell, executive director of the Building Industry Association's desert chapter (BIA), quoted in the Press-Enterprise 11-28-06. This shortfall is not addressed in the Plan. **AB-5**

The Plan makes land scarce and the land that remains becomes very valuable. As Fred Bell (BIA) mentioned at a CVAG meeting "while the price of homes may be dropping the cost of land is not going down." SCAG has given the Coachella Valley RHNA numbers which require a certain number of low income homes to be built. Doug Evans representing La Quinta at the March 5, 2007 Technical Planning Subcommittee said there isn't enough non habitat land on which to put these homes and La Quinta doesn't want **AB-6**

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ghettos in its city. He said "All the commercial land is developed. All non-entitled land has been developed....must go back into entitled land...."

AB-6 Cont.

Funds to manage and monitor public lands have dried up to the point that "California has stopped acquiring land for state parks for the foreseeable future because it can't afford to staff and maintain new parkland, according to a newspaper report—see Figure 1."

Pasadena Star News 10-10-04 pA15

Budget limitations put brakes on parkland acquisition plan

Associated Press

SACRAMENTO — California has stopped acquiring land for state parks for the foreseeable future because it can't afford to staff and maintain new parkland, according to a newspaper report.

Facing a budget deficit next year of up to $10 billion, state public works officials quietly decided in March to stop accepting or buying new parkland, the San Jose Mercury News reported.

Following outcries from environmentalists and conservationists, however, the California Public Works Board agreed Friday to add 1,000 acres of redwoods to Castle Rock State Park in the Santa Cruz Mountains.

But in a compromise with park supporters, the board also decided to keep the newly acquired acreage unmarked and closed to public access to save money.

"We're not anti-park or anti-acquisition," said Bob Campbell, general counsel for the governor's Finance Department. "But we are mindful of the budget situation. And we have to take that into account."

Critics of the plan suspending new acquisitions point out that voters have approved more than $10 billion in bond money for new parks and water projects over the past four years. Some argued that no other California governor has halted all land purchases for parks, even during the Depression.

Fred Keeley, a former Santa Cruz assemblyman who helped write several recent parks bond measures, said the policy was against the wishes of the voters.

"They haven't stopped acquiring lands for new prisons or DMV offices. Somehow they have singled out state parks for special punishment," he said.

The Mercury News reported that so far this year, the Public Works Board has approved the acquisition of 4,075 additional acres for state parks, mostly small pieces next to existing parks. By comparison, the board acquired a total of 62,9[illegible] acres in 2002 and 2003.

AB-7

FIGURE 1.
This article came from the Pasadena Star News, article, 10-10-2004, p. A15, Budget Limitations Put Brakes on Parkland Acquisition Plan

The same article goes on to say "...Land will remain unmarked and closed to public access to save money." That is the real reason many trails in the RCVMSHCP are being

AB-8

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closed and rationed. It has little to do with harm to species. Presentations at the Public Hearing January 24, 2005 showed there was no harm to the species. **AB-8 Cont.**

Under the MSHCP, owners of the 90,000 acres of privately owned land will be responsible for taxes, maintenance, insurance and liability for hazardous waste and pollution even though the use and development of their land in many cases is reduced to nothing. This saves the new policing entity the cost of maintenance of the land but it creates the need for a cast of thousands to manage, inspect, enforce and litigate to be sure owners are not "misusing" their land according to as yet unknown and changeable guidelines. The "permissible use" will be interpreted and enforced by a new federal and state layer of policing. This is in addition to the existing zoning and other local ordinances enforced by the county. This saves the new policing power the cost of maintenance of the land but it creates the need for a cast of thousands to manage, inspect, enforce and litigate to be sure owners are not "misusing" their land according to as yet unknown and changeable guidelines. What are these guidelines? Please respond. **AB-9**

It is crucial that they are in this RDEIR. The RDEIR blithely claims there will be no loss of value to land because the proponents of the conservation areas will suggest alternative uses of these lands. According to Cameron Barrows there is no alternative use to my land on Ramon Road. Or, should I say Cameron Barrows' land? This "alternative use" statement is an avoidance of performing an assessment of economic loss. It is an insult to the RDEIR/SEIS process by people paid with our tax dollars to evade CEQA and NEPA provisions instead of informing the public as required. This statement underlies the fact that this RDEIR is inadequate and insufficient. In all, there are 1,136,400 acres in just the Coachella Valley MSHCP. There is also the Western Riverside MSHCP and maybe others. The taxpayers cannot tolerate being blown off in this manner. **AB-10**

Cameron Barrows is supposedly no longer the director of the CVF-TL Preserve but in fact he still works there. This attempt to remove Cameron Barrows from a position of authority in his statements that I will never be able to build on my land is a sham. A neighbor, Mr. Coyle, was also told there would be no building in our area by someone with connections in the planning department. **AB-11**

A map in the Plan allows the eco-tyrants to build directly across Ramon Road from me. Se map 4-16f. The Plan allows for an average of 10% development overall. If small private landowners cannot develop at all that means the arrogant eco-maniacs can develop more than 10%. When one looks at what can be built there is only non-communicative discourse about developing in accordance with conservation goals. **AB-12**

This new army of USFWS employees will need all the health, retirement and survivors benefits that go along with public employee salaries. The Plan lasts for 75 years (and may be renewed). The cost over the lifetimes of these lucky plum job holders will be tremendous. An independent analysis is critical, not the analysis provided by the Center for Natural Lands Management (CNLM) which helped fashion the Plan and would have an interest in downplaying the costs. CNLM will receive funding under this proposal. In the CNLM's "Understanding stewardship-Programs and Funding."(See attachment 2,) CNLM admits "...Management in perpetuity can escalate into a **AB-13**

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tremendous capital requirement." And, "Unfortunately, there is no easy way to determine this, and managers around the country are struggling to develop formulas for calculating these costs." It goes on to say "…To be sustainable ecologically, a conservation project must also be sustainable financially. Without planning in perpetuity, many of our conservation projects may only be **temporary**" (emphasis added). The RCIP and RMSHCP/NCCP have already cost at least a hundred million dollars in our tax money just to set up. Future funding is questionable or non-existent. The RDEIR fails to analyze the risk of inadequate funding.

AB-13
Cont.

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Center For Natural Lands Management

HOME
Preserves
Property Analysis Record
Statement of Qualifications
Membership
Perpetuity
Board of Directors
Job Opportunities
Grants Available
Management Issues

Property Analysis Record (PAR) Seminar: "Understanding Stewardship-Programs and Funding"
Southern California, location to be announced.
January 22, 2003; 9:00 am to 4:00 pm

You'll receive PAR software and the guidebook. Plus we'll have discussions in the morning of the biological and financial foundations of the PAR and a hands-on project in the afternoon.

Please bring a laptop computer if you can.

If you have already bought the software but your organization has not attended a seminar, you can do so for no additional charge.

Hurry! Only a maximum of 30 persons may attend each meeting.

Sign-up Form

The Property Analysis Record: Paying for Perpetuity

Every parcel preserved for the benefit of biological resources requires management involving some level of expense. If not planned in advance, management in perpetuity can escalate into a tremendous capital requirement. The ideal, of course, is to establish a funding source that provides enough income to cover annual stewardship costs and includes a buffer to offset inflation.

How Much Money Is Enough?
The basic yardstick for deciding how much is needed is the average annual cost of management over the very long term. Unfortunately, there is no easy way to determine this, and managers around the country are struggling to develop formulas for calculating these costs. The costs vary widely with the nature of the land, the type of protection (owned or under easement), the purpose of conservation (endangered species, visitor services, education), and further varies year by year.

The Property Analysis Record
The Center for Natural Lands Management has developed a new tool, the Property Analysis Record (PAR). The PAR is a computerized database methodology that is extremely effective in helping land managers calculate the costs of land management for a specific project. The PAR helps analyze the characteristics and needs of the property from which management requirements are derived. It helps pinpoint management tasks and estimates their costs as well as the necessary administrative costs to provide the full cost of managing any property. The PAR generates a concise report which serves as a well-substantiated basis for long-term funding including endowments, special district fees, and other sources.

PAR Seminars
The Center presents the Property Analysis Record (PAR) methodology to land trusts, governmental agencies, environmental consultants, project proponents, and other interested parties throughout the U.S. through the seminar, "Planning Sustainable Conservation Projects." PAR software and a User's Manual are provided to participants, and software is upgraded as new versions are introduced.

The PAR Seminar enables participants to:
- Understand the need for long term stewardship;
- Readily determine and justify the long-term activities and financial requirements of a conservation project;

http://www.cnlm.org/par.html 8/28/2002

AB-13
Cont.

FIGURE 2.
Excerpt from Center for Natural Lands Management, Website Article, "Understanding Stewardship Programs and Funding, January 22, 2003".

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CVAG, BLM, CDFG and USFWS do not and will not have the money to acquire the 90,000 acres of privately owned land. The USFWS does not have the money to manage and monitor the land it already has—see Figure 1. The cost of this new army of public employee overseers is unknown. RDEIR is supposed to provide this information in detail. It does not. This failure violates CEQA and NEPA as pointed out in detail in Bruce Colbert's comment for the Property Owners of Riverside County on this DEIR/EIS dated January 28, 2005. His letter is hereby incorporated into this comment by reference. AB-14

The conservation of CVMSHCP land becomes **temporary** because land is acquired from sellers scared into selling at well below fair market value. They are forced to choose between losing all of the value of their land and selling as coerced "willing sellers". What a hoot. This gives the conservationists the right to sell or lease the conservation land at a huge profit when they claim it is "no longer needed". Such environmental profiteering will become a fact of life in order to pay for the mushrooming administrative costs mentioned above.

Usually there is even some money left over to purchase more land from other scared owners to repeat the cycle. If the private land were condemned the seller would have recourse if the buyer sold it for some other use. If it is sold "willingly" there is no recourse. Since land will be slowly acquired by the CVMSHCP over a proposed 30 years, (this could also be extended) private land owners will feel coerced and "lucky" enough to sell rather than get nothing during their lifetimes. They will sell for very little rather than be passed over, just to get some value out of their land. **This is a coercive scam.** The conservation folks say with great indignation that they wouldn't do that, but that is exactly what did happen in Oceanside with the gnatcatcher. AB-15

Should the owner die, his land would be appraised at today's fair market value and his heirs would have to pay state and federal taxes in cash 90 days from date of death. Since the land is subject to a lengthy and unknown determination as to use, the estate cannot sell it or get a loan and is **forced to donate** it to the conservationists to avoid selling other family assets, e.g., the family home or farm to pay the death tax. If a potential buyer asks the various authorities about the use, he will get nothing in writing. The verbal responses usually cast a pall on any building plans. It's difficult to sue authorities unless their statements are in writing.

Another unaccounted burden is the cost of lawsuits. As of July, 2002 the USFWS spent more than half their time on lawsuits (see Figure 3). There was little money or time for field work on conservation or recovering endangered species. This includes both environmentalists and developers suing USFWS. A new cost is private landowners and developers suing for example, **individual** U S Forest Service employees for racketeering for not giving fair and honest government services (see Figure 4). The government decided to defend the Forest Service staff. **How much will this defense cost?** AB-16

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8A · WEDNESDAY, JULY 24, 2002 · USA TODAY

Washin

Bush approves Nev. nuclear waste site

There was no fanfare or public ceremony Tuesday as President Bush signed into law legislation that would create a $58 billion facility under Nevada's Yucca Mountain to store radioactive waste now piling up at sites in 39 states. It's set to open in 2010, but even backers say it will take longer. The bill apparently ends 20 years of haggling over what to do with the nation's nuclear waste, but Nevada officials and other opponents have vowed to continue the fight in court. Critics of the Yucca project say that the waste can be kept safely at reactor sites and that transporting it across the country is more dangerous. Reporters weren't allowed to witness the bill signing.

Trauma doc confirmed as surgeon general

The Senate unanimously confirmed Tucson trauma surgeon Richard Carmona, 52, as surgeon general. He replaces David Satcher, who left in February. The surgeon general helps shape public health policies but has a small staff and budget. Carmona, a high school dropout, fought in Vietnam and went on to become a part-time sheriff's deputy, registered nurse, physician and professor of surgery at the University of Arizona. A 1992 exploit in which he rapelled from a helicopter to rescue someone stranded on a cliff inspired a TV movie. He was questioned at his confirmation hearing about his background, including his eight-year struggle to win certification in his field.

Bush wants business fraud law this week

President Bush would sign compromise legislation to curb business fraud and accounting abuses, but he wants it passed this week before Congress begins its summer recess, White House spokesman Ari Fleischer said. The House of Representatives and Senate have passed separate bills. Lawmakers are negotiating the final version. Rep. John Boehner, R-Ohio, said he was fairly optimistic that a final agreement could be reached by today. The final bill is expected to contain harsher penalties for corporate crimes and increase oversight of the accounting industry.

The House leaves at the end of this week for a five-week recess. The Senate leaves next week.

By J. Scott Applewhite, AP

Tough guy with big heart

At White House: President Bush and First Lady Laura Bush join actor Bruce Willis to unveil a public service advertising campaign encouraging Americans to adopt children who are in the foster care system.

House vote on Traficant due today

House Republican leaders agreed to vote today on whether to expel Rep. James Traficant, an Ohio Democrat convicted of bribery and kickbacks. House Majority Leader Dick Armey of Texas announced the decision after the leaders considered postponing the vote until they return in September from an August recess. They reviewed their options after a juror said he believes he was mistaken when he voted in April to help convict Traficant. Armey said about six members expressed concern that the House might vote to expel Traficant and then see him win a new trial.

Lawsuits slow work on endangered species

Workers at the U.S. Fish and Wildlife Service spend more than half of their time on lawsuits or attempting to avoid lawsuits relating to their decisions about endangered species, the General Accounting Office said. Congress' investigative arm said that because of all the paperwork, there's little money or time for field work on conservation or recovering endangered species. The agency agreed with the GAO's recommendation that clearer guidelines could reduce lawsuits by making it easier for the agency to defend decisions.

By Paul Leavitt with staff and wire reports

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Cont.

FIGURE 3.
Article from USA Today, 7-24-2004,, P. 8A, "Lawsuits Slow Work on Endangered Species".

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Developer Uses RICO Against Opposition Environmentalists

By Liz Walsenfs
Daily Journal Staff Writer

Each winter, 20 bald eagles set up house in the forest bordering Big Bear Lake in the San Bernardino Mountains northeast of Los Angeles.

When developer Irving Okovita proposed a 130-condominium and 175-boat marina development on the north shore of the lake, the Center for Biological Diversity and the Friends of Fawnskin, a local conservation group, said they feared it would disrupt the bald eagle habitat.

So they went to court, winning a preliminary injunction to stop the project under the federal Endangered Species Act.

But what began as a standard environmental battle has mushroomed into an unusual legal assault on government employees and the first-ever federal Racketeer Influenced and Corrupt Organizations Act complaint against U.S. Forest Service employees.

Forest Service biologist Robin Elisson lives in Fawnskin, the Big Bear community that would be home to Okovita's development, and she and her husband, Scott Elisson, are members of Friends of Fawnskin, which co-filed the environmentalist suit.

Robin Elisson also was one of the experts whose reports persuaded U.S. District Judge Robert Timlin to block Okovita's development.

RICO actions generally are used to go after the Mafia and organized-crime figures. When Okovita filed his RICO suit in November, he charged the Elissons and San Bernardino National Forest Supervisor Gene Zimmerman with colluding with environmental activist Sandy Steers and others to kill his project because they believed it would depreciate their property values.

He also says they wanted to drive down the price of the property so the U.S. Forest Service could buy it. *Morena Point Development Associates v. Elisson*, 041387 (C.D. Cal., filed Nov. 2, 2004).

See Page 5 — DEVELOPER

L.A. Daily Journal
2-16-2005 P. 1

Developer Uses RICO Against

Continued from Page 1

Environmentalists and First Amendment lawyers have rallied to the forest employees' defense, charging that the RICO lawsuit is a Strategic Lawsuit Against Public Participation, aimed at stifling public debate.

"We're talking about a classic environmental lawsuit with a local group and a big national group suing a developer under environmental statutes and the developer turning around and using RICO as a mechanism to SLAPP the plaintiff," said Adam Keats, a lawyer at the Center for Biological Diversity in San Francisco. "We've never before heard of RICO being used against environmental activists."

Marina Point Development Associates' attorney Wayne Rosenbaum said the racketeering action is appropriate because the employees engaged in specific criminal acts by providing consulting services to Friends of Fawnskin and the Center for Biological Diversity at the same time that they reviewed the project in their capacity as public servants, Rosenbaum said.

"We are entitled and expect fair and honest government services," he said. "And we allege that what has happened here does not rise to the level of fair government services, and that is a criminal act."

Rosenbaum also denies that the project would hurt the bald eagle, saying their plans to build a marina would create additional foraging areas where the birds could feed.

Adding another layer of murk to the case, the government wavered for more than a month before deciding to defend the Forest Service staff.

Environmentalists said the government typically jumps in right away, and they suggested that the hesitancy was part of the Bush administration's reduced commitment to environmental protections.

Authorities denied anything out of the ordinary in the delay.

"It actually followed regular civil procedure," Department of Justice spokesman Charles Miller said. "In a matter like this, it has to go through the actual agency before it was referred to DOJ. And consequently, it did that, and the decision was made to represent them."

In December the government persuaded U.S. District Judge George P. Schiavelli in Los Angeles to name the United States as the lead defendant.

On Feb. 4, government lawyers filed a motion to dismiss, arguing that the developer must file a federal tort claim with the Department of the Interior before he can sue.

The case has been transferred to U.S. District Judge Manuel L. Real in Los Angeles. A hearing date has not been set.

Rosenbaum says his client plans to argue that the government cannot intervene on behalf of its employees if they've committed fraud.

Many environmentalists worry that the government's initial reticence in stepping

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Cont.

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FIGURE 4.
Article from Los Angeles Daily Journal, 2-16-2005,, p. 1, "Developer Uses RICO Against Opposition Environmentalists".

In another case a jury awarded $5.5 million against the county Planning and Development Department in Santa Barbara, one of its paid consultants and three current or former employees who intentionally found wetlands on a farmer's land to prevent him from farming the land. Richard Brenneman, attorney for the farmer, said the verdict sets "a new precedent in California and the United States by holding Planning and Development Department personnel and their hired consultants personally responsible for intentionally recording as valid a false wetland delineation...." (see Figure 5). Did taxpayers pay legal costs to defend these public employees for their misdeeds? "The jury said the actions were intentional, despicable and done with 'malice, oppression or fraud'."

LADJ 11-24-04 p. 2

Jury Finds for Grower to Tune of $5.5 Million

From The Associated Press

SANTA MARIA — Jurors decided a wetlands designation imposed by Santa Barbara County violated the rights of an Orcutt vegetable grower so the county must pay about $5.5 million to the farmer.

The Superior Court verdict represents the largest-ever land-use judgment against Santa Barbara County.

After a nearly three-week civil trial before a visiting judge, the jury unanimously agreed that county planners preparing the Orcutt Community Plan recklessly violated the rights of Adams Brothers Farming Inc. when 95 acres along Highway 1 were designated as protected wetlands.

The jury assessed actual damages of $5.47 million collectively against the county Planning and Development Department, one of its paid consultants and three current or former employees who helped write the Orcutt planning blueprint in 1977.

The jury said the actions were intentional, despicable and done with "malice, oppression or fraud."

Defendants included Dan Gira, former deputy director of comprehensive planning, former staff biologist Ellhu Gevirtz, Zoning Administrator Noel Langle and wetlands consultant Katherine Findlaub. They were also assessed $130,000 in punitive damages.

Adam Brothers attorney Richard Brenneman said the verdict sets "a new precedent in California and the United States by holding Planning and Development Department personnel and their hired consultants personally responsible for intentionally recording as valid a false wetland delineation of 95 acres on the Adam Brothers property."

Attorney David Pettit, who defended Santa Barbara County, didn't comment.

Deputy County Counsel Alan Seltzer was surprised, saying "it's difficult to understand how the county could be held liable for (more than) $5 million for not allowing the plaintiffs to farm that land."

When the Orcutt Community Plan took effect seven years ago, county planners notified Adam Brothers Farming in repeated letters that the 262-acre parcel between Black and Soloman roads included 95 acres designated as protected wetlands.

Any farming within 50 feet of the wetlands area required grading and land-use permits from the county and possibly the federal Army Corps of Engineers, the letters warned.

In 1999, the company bulldozed the property without permits and allegedly filled in the wetlands area, planting oats and barley there before a stop-work order was issued by the county.

The parcel was also raided in May 1999 by agents from the criminal investigation division of the federal Environmental Protection Agency, which filed a lawsuit against Adam Brothers Farming.

The federal suit, which seeks fines that could potentially amount to millions of dollars as well as "mitigation fees" to pay for restoring the graded wetlands, is set for trial in Los Angeles in January.

FIGURE 5.
Article from Los Angeles Daily Journal, 11-24-2004, p. 2, "Jury Finds for Grower to Tune of $5.5 Million."

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Intentional malice, oppression and fraud are rampant among public employees promoting this CVMSHCP. The air is filled with "we must do whatever is necessary to surround our homes and cities with (other people's) land." Public employees have gotten away with deceit and manipulation for so long it's difficult for them to see that there is now a backlash against their "ends justify the means" philosophy. The system can no longer tolerate and defend their actions. Saving species started as a good idea but has become a banner waved by eco-tyrants. It is time to stop this behavior in public employees and their consultants before the debt and lawsuit damages become

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insurmountable. People like Supervisor Wilson, Alan Muth and Cameron Barrows want the CVMSHCP to be their "legacy". It will only be a legacy of debt as the poor, non-existent, and modified data come to light in lawsuits. AB-18 Cont.

The only winners will be the environmental bureucrats who will operate the proposed land profit engine selling, developing and leasing ill gotten land at huge profits. The County of Riverside will reap millions in fees from individuals whose building rights were restricted and who must now go through a costly, time-consuming and brain-numbing process to do anything with their land. This alone will slow the building of new homes. Both the environmental and planning agencies of local governments are increasing in size and need ever more money to support their employees. Houses become less and less affordable. Yet, the County has to attract new residents to grow the economy. Businesses leave or stop coming because they can't afford to pay employees enough to meet living expenses. The result is an economic loss, especially jobs. **How much is this loss?** Please respond. The RDEIR fails to analyze the environmental and economic consequences of strangling the private sector via the CVMSHCP. AB-19

In Oregon, for 30 years the most environmentally friendly state in the union, voters recently passed a law to bring to a halt the long-used planning philosophy which clearly describes this CVMSHCP "ring around the city" (see figure 6). Oregon landowners can retroactively sue for loss of value due to land-use restrictions. Florida, Texas, Louisiana and Mississippi also allow some compensation for aggrieved property owners. The CVMSHCP is anti-democratic and elitist. The planners and environmentalists overreached in their exuberance to keep land free of development without buying it at fair market value. When their bad science and other irregular activities used to prepare this CVMSHCP result in huge monetary settlements in the upcoming lawsuit explosion, voters and taxpayers will see these poorly prepared CVMSHCP and RDEIR/SEIS documents as something-for-nothing expensive scams. AB-20

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Kevin P. Casey for The New York Times

Hood River, Ore., a rural spot near the Columbia River, is one of the places that could be most affected by a law allowing landowners to be compensated if they can prove land-use rules have hurt their investments.

N.Y. TIMES 12-26-2004 p.A1

Rule Change in Oregon May Alter the Landscape

By FELICITY BARRINGER

PORTLAND, Ore., Nov. 20 — Over the past three decades, Oregon has earned a reputation for having the most restrictive land-use rules in the nation. Housing was grouped in and near the cities, while vast parcels of farmland and forests were untouched by so much as a suburban cul-de-sac.

Environmentalists and advocates for "smart growth" cheered the ever-growing list of rules as visionary, while some landowners, timber companies and political allies cried foul.

But in a matter of days, the landowners will get a chance to turn the tables. Under a ballot measure approved on Nov. 2, property owners who can prove that environmental or zoning rules have hurt their investments can force the government to compensate them for the losses — or get an exemption from the rules.

Supporters of the measure, which passed 60 percent to [illegible] call it a landmark in [illegible] over property rights.

"I've been getting calls from California, Idaho, Washington, Alaska and Wisconsin," said Ross Day, a Portland lawyer for the conservative group Oregonians in Action who co-wrote the law, Ballot Measure 37. "They all want to find out what our secret recipe was to get it passed."

Whatever the benefits of Oregon's land-use rules, Mr. Day added, "the people paying the cost are property owners."

"If Enron does something like this, people call it theft," he said. "If Oregon does it, they call it land-use planning."

Richard J. Lazarus, a professor at the Georgetown University Law Center who specializes in environmental law, called the measure a blunt instrument that could undermine all zoning and environmental protections and undercut land values. "If you can build a little Houston anywhere, or a gravel pit or a shopping center next to your home, you don't have maximization of property values," Professor Lazarus said.

"If you fail to regulate now, you're reducing property values for future Oregonians," he continued. "A lot of what government is doing in environmental protection is at least trying to balance the needs of present and future generations."

The new law, Professor Lazarus said, "is one of those very simple solutions, but they did [illegible] open a can of worms."

[illegible] country have [illegible] com-

NEWS SUMMARY

Business Day [illegible] C1
Editorial, Op-Ed [illegible]
[illegible]
National [illegible]
[illegible]
Update i news [illegible]

FIGURE 6.
Article from New York Times 11-26-2004, p. A1, A26, "Rule Change in Oregon May Alter the Landscape."

AB-20 Cont.

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A26 YT + THE NEW YORK TIMES **NATIONAL** FRIDAY, NOVEMBER 26, 2004

Newly Adopted Change in Oregon's Land-Use Rules May A

Continued From Page A1

pensation for aggrieved land owners since at least the mid-1990's and the 1994 Republican "Contract With America." Four states have laws dating from that period that provide some compensation for affected property owners.

"In Oregon, they're serious," said Michael M. Berger, a partner in the Los Angeles law firm of Manatt, Phelps & Phillips. "It helps make people sit up and take notice that this is something they have to deal with. This is a big shock to the body politic — it's a very red-state thing to do, and Oregon is very blue, so this shows it cut across everyone."

Both sides expect the measure to survive judicial scrutiny, and the state and local governments are to start fielding claims on Dec. 2. If claims are found to be valid and the government will not or cannot pay, it must instead waive any restrictions that want into force after the owners — or their parents or grandparents — acquired the land.

Some fear that the state will be unable to pay and that hillsides in the Cascades now bristling with fir trees and pear orchards could sprout a crop of McMansions, Wal-Marts or resort condominiums in a few years.

The supporters of the new law successfully depicted the current plight of property owners in a campaign with a decidedly populist edge. One advertisement showed a woman penalized for cutting blackberry bushes — potential wildlife habitat — in her backyard in Portland.

Another woman, Dorothy English, 82, was a fixture on drive-time radio advertisements in the final week of the campaign. Ms. English bought land in the hills west of Portland in 1953 and is still fighting for the right to carve several lucrative building lots out of the 20 acres she has left. "They've made fools of people in this state," she said last Wednesday. "I've always been fighting the government and I'm not going to stop."

The Hood River Valley, 60 miles east of Portland and the source of more than a third of the nation's Bosc pears, is one of the places that could be most affected. Many of the farmers are the third or fourth generations of their families to work the same land. Most land-use regulation came after their families did, so their claims could be extensive and expensive. The valley nestles along the Columbia River Gorge, a strong draw for windsurfers; the development pressure is strong.

Sitting in their living room in the town of Hood River, overlooking fields newly planted in cherries, John Benton and his wife, Julie, both 57, said that their income was eroded and that their 105-acre farm had "barely supported us." The Bentons, whose family ownership dates to 1910, said that orchard farmers like themselves could not make a living without an infusion of cash from selling land for home construction.

By contrast, their neighbor Fritz VonLubken, who is 65 and bought his orchards from a grandfather who came to the area in 1915, said he believed that farmland needed to be preserved. "You zone for industrial districts," Mr. VonLubken said. "Well, farming is an industry. It needs to be protected. We're a high-value business, and this is the best location for us."

Mike McCarthy, whose 250 acres scattered on the northeastern apron of Mount Hood produce a plentiful crop of pears, said, "These are the most productive soils in Oregon," and, as such, were irreplaceable.

The success of the ballot measure has led advocates of planning to do some soul searching. It won a majority in all 35 of the state's counties except the one that encompasses Corvallis and Oregon State University and got a thin majority even in the progressive city of Portland.

Compensation for landowners, with a retroactive twist.

"It definitely calls into question a lot of the mechanisms we have now," said David Brandon, the president of the Metro Council, which sets the growth parameters for 480 square miles in three metropolitan Portland counties. "And it undermines the mechanisms we have."

Mr. Brandon added, "There is a resentment in rural areas of urban policy makers and the urban elite."

The long-used planning philosophy is wryly called "timberland, farmland and ring around the city." Each county has established "urban growth boundaries" around its cities and has tried to keep most development to areas within them.

On farmland, houses can be built only under strict conditions — for instance, the buyer must show that he can generate $80,000 in annual gross income from farming for a period of years before he can build. Nonfarm dwellings are allowed only in areas with poor soil. In return, farmers receive substantial property tax breaks; their land may be assessed at as little as 0.3 percent of land where development is encouraged.

Even if they succeed, farmers who fight to have the urban growth boundary extended to their lands must pay a one-time tax amounting to perhaps 7.5 percent of the land's new value — in addition to federal and state capital gains taxes on the sale of the property. Thanks to such tight policies, suburban sprawl has been largely banished in Oregon.

Gov. Theodore R. Kulongoski, a Democrat who opposed the compensation measure, said last week that he would push to have claims paid rather than tear holes in the state's land-use system.

But, like many other states, Oregon is strapped. To pay the claims, some pro-planning forces suggest setting high taxes on the profits on newly developable land. If, instead, the government grants exemptions to land-use rules, many property owners might want to sell for the ready profit.

Mr. VonLubken, like Professor Lazarus, said he believed that the first wave of farmland sales would be the most lucrative and that those new residents, having paid a premium for bucolic splendor, would support regulation to help keep a second wave of newcomers away.

The state's population grew 20.4 percent in the 1990's, to about 3.4 million people in 2000. The federal government, largely through the Forest Service, is the largest landowner in Oregon; state, tribal and federal lands constitute about 35 percent of the state's total acreage. Of the remaining 27.7 million acres of privately held land, 58 percent is farmland.

Other states that allow for compensation for aggrieved property owners are Florida, Texas, Louisiana and Mississippi. But they set a threshold, for instance a 25 percent reduction in a property's value, and will pay only for losses caused by new land-use rules. The retroactive feature of the Oregon law could affect many more people. Until the claims start, though, no one will hazard a guess at just how much land will be affected, and at what cost.

"It's no coincidence that they passed this Measure 37 in a state that has prided itself on having the most extensive planning and regulatory scheme for rural lands," said J. David Breemer, a staff lawyer with the Pacific Legal Foundation, a conservative advocacy organization. "This type of initiative and legislation will be more common now."

The planners, however, are still flying their flags.

"Quality of life is something that is shared," said Robert Liberty, a former president of 1,000 Friends of Oregon, an ardent pro-planning group, who was just elected to the board of the Portland regional planning agency. "A golf course is not. A four-car garage is not. One of the best things about the planning process is that it makes a better community for everyone, regardless of income."

Erick VonLubken owns and operates an that farming was a "high-value business

John and Julie Benton own a 105-acre s could not make a living without s

AB-20 Cont.

FIGURE 6. (Cont'd)

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Cont.

FIGURE 6. (Cont'd)

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May 29, 2007

My neighbors and I own land in the "blow-sand" area of Thousand Palms. We were given a flyer (see figure 7) about a USFWS open house in July of 2000 that states "Expanding the boundary of the Refuge to include sand source and sand transport corridor lands would provide landowners within the expansion area the opportunity to sell their property to the Service, on a willing seller basis, at fair market value. Landowners are under no obligation to sell their property to the Service, and **private property rights are not affected by being within the refuge boundary**. Landowners would be under no obligation to sell their property to the Service and private property rights would not be affected by..." [emphasis added] This was untrue and caused people not to respond to these notices CVAG sends out and not defend their land.

AB-21

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U.S. Fish and Wildlife Service

Coachella Valley National Wildlife Refuge

Planning Update 3, October 2002

Proposed Refuge Addition to Protect Sand Dune Habitat

The Service is proposing to add land to the Coachella Valley National Wildlife Refuge that provides a sand source and sand transportation corridor to protect the function of the sand dune ecosystem on the Refuge and Coachella Valley Preserve. Protecting the sand source and sand transport corridor is necessary to prevent degradation of the dune habitat upon which the survival of the Coachella Valley fringe-toed lizard and other dune species depend.

What Does the Proposed Refuge Addition Mean to Landowners?

Expanding the boundary of the Refuge to include sand source and sand transport corridor lands would provide landowners within the expansion area the opportunity to sell their property to the Service, on a willing seller basis, at fair market value. Landowners are under no obligation to sell their property to the Service, and private property rights are not

Greetings... This is the third in a series of Planning Updates from the U.S. Fish and Wildlife Service designed to inform and involve you in the planning process for the Coachella Valley National Wildlife Refuge (Refuge), part of the proposed Coachella Valley Preserve System. This Planning Update announces the Draft Environmental Assessment/Habitat Conservation Plan and Draft Management Plan will be available for public review and comment. A cover letter will accompany this document and announce the time and location of public meetings open house

AB-21 Cont.

FIGURE 7.
U.S.. FISH & Wildlife Service, Coachella Valley National Wildlife Refuge, Planning Update 3, October 2002, articles: "Proposed Refuge Addition to Protect Sand Dune Habitat, and What Does the Proposed Refuge Addition Mean to Landowners."

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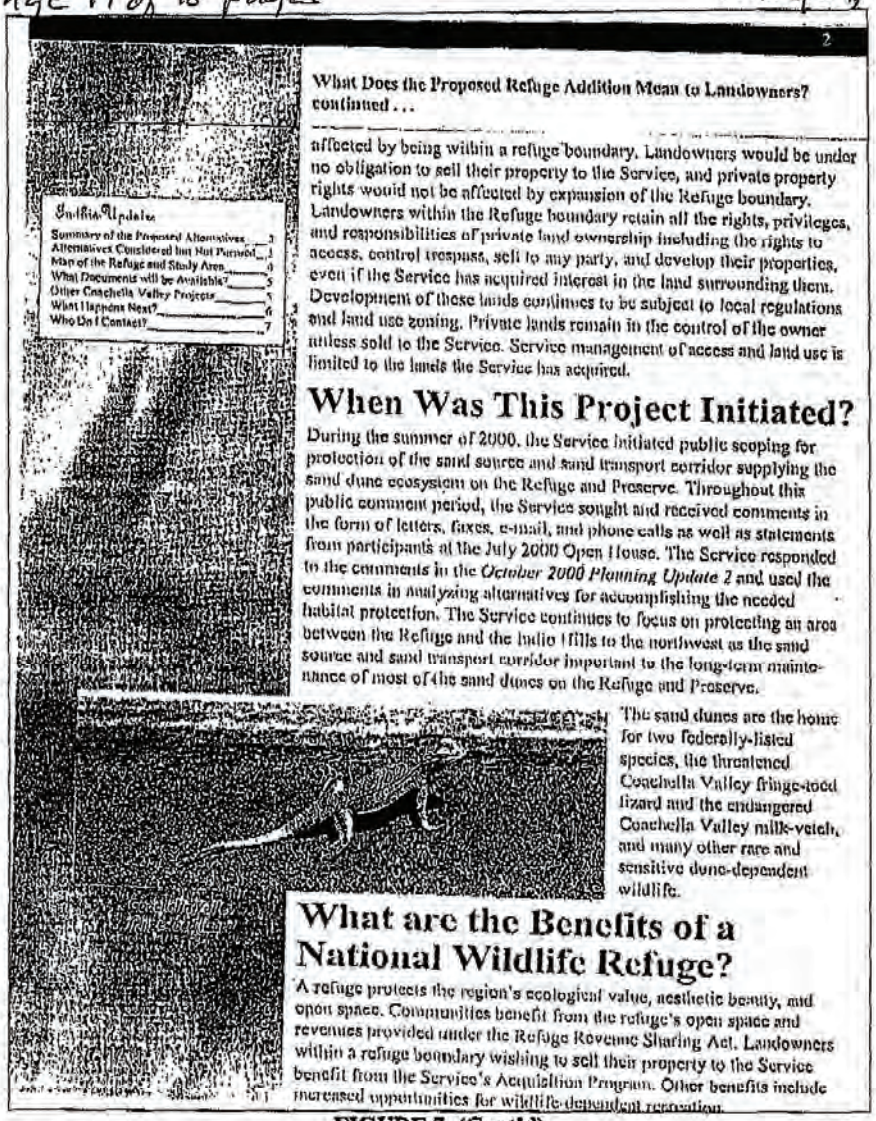

2

What Does the Proposed Refuge Addition Mean to Landowners? continued . . .

affected by being within a refuge boundary. Landowners would be under no obligation to sell their property to the Service, and private property rights would not be affected by expansion of the Refuge boundary. Landowners within the Refuge boundary retain all the rights, privileges, and responsibilities of private land ownership including the rights to access, control trespass, sell to any party, and develop their properties, even if the Service has acquired interest in the land surrounding them. Development of these lands continues to be subject to local regulations and land use zoning. Private lands remain in the control of the owner unless sold to the Service. Service management of access and land use is limited to the lands the Service has acquired.

Outline Update

When Was This Project Initiated?

During the summer of 2000, the Service initiated public scoping for protection of the sand source and sand transport corridor supplying the sand dune ecosystem on the Refuge and Preserve. Throughout this public comment period, the Service sought and received comments in the form of letters, faxes, e-mail, and phone calls as well as statements from participants at the July 2000 Open House. The Service responded to the comments in the *October 2000 Planning Update 2* and used the comments in analyzing alternatives for accomplishing the needed habitat protection. The Service continues to focus on protecting an area between the Refuge and the Indio Hills to the northwest as the sand source and sand transport corridor important to the long-term maintenance of most of the sand dunes on the Refuge and Preserve.

The sand dunes are the home for two federally-listed species, the threatened Coachella Valley fringe-toed lizard and the endangered Coachella Valley milk-vetch, and many other rare and sensitive dune-dependent wildlife.

What are the Benefits of a National Wildlife Refuge?

A refuge protects the region's ecological value, aesthetic beauty, and open space. Communities benefit from the refuge's open space and revenues provided under the Refuge Revenue Sharing Act. Landowners within a refuge boundary wishing to sell their property to the Service benefit from the Service's Acquisition Program. Other benefits include increased opportunities for wildlife-dependent recreation.

FIGURE 7, (Cont'd)

AB-21
Cont.

expansion of the Refuge boundary. Land owners within the Refuge boundary retain all the rights, privileges, and responsibilities of private land ownership including the rights to

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May 29, 2007

Thank you.

Mary Justice

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Comment Letter AC

05/30/2007 10:42 7603980972 JOHNPOWELLJR PAGE 01/04

Via fax 760 340 5949

Additional Signatures to letter that was hand delivered on May 25, 2007 at 11:45 am

RECEIVED
MAY 30 2007
By

May 15, 2007

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

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

Re: Comments on Coachella Valley Multiple Species Habitat Conservation Plan ("CVMSHCP")

Dear Ms. Barrows and Mr. Bartel:

We want to formally state our concern regarding the CVMSHCP. We are multi-generation family farmers in the Coachella Valley. Our families own farmland that now sits in the path of development within and around the cities of Indio, Coachella, and the unincorporated areas of Mecca, Thermal, Vista Santa Rosa, and Oasis. We have farmed continuously in the valley for many decades.

As you know, the funding mechanism proposed to make the CVMSHCP work is derived from fees levied on land converted to development. The theory is that if landowners agree to pay a fee that will then be used to purchase and provide habitat, they will in return be given a take permit that allows them to enjoy a streamlined permitting process on the land they develop. This is ok if the land being developed is habitat and through development that habitat would be destroyed. Those landowners are usually satisfied with an arrangement of this sort that provides them the ability to develop over habitat that would otherwise be entangled by various environmental restrictions.

The problem we have with this particular model is that most of the land that this fee will be collected from is not habitat land to begin with, but rather farmland that has been developed as such for decades and in some cases over a century. So in essence, those of us who are farmers would be paying for something we already enjoy, that is property that is not subject to environmental restriction due to endangered species habitat. We don't see it any other way.

We say we will be paying for it because this mitigation fee will be capitalized into the value of our property, regardless if we are the ones who develop it or not.

A more equitable financing mechanism needs to be devised that places the burden of financing the acquisition of habitat land on development that actually takes habitat and would be subject to restrictions without the CVMSHCP. As the proposed CVMSHCP funding mechanism does not take this into account, we hereby formally state our objection to it.

AC-1

Sincerely,

Farmers in the Coachella Valley (see signatures, attached)

Signatures to May 15, 2007 CVMSHCP letter to Ms. Barrows and Mr. Bartel.

(please print name and company name below each signature)

Name:
Company: Lindsey Ranch

Name:
Company: Walker / Rincon Ranch

Name:
Company:

Name:
Company:

Name:
Company:

Name:
Company:

Signatures to May 15, 2007 CVMSHCP letter to Ms. Barrows and Mr. Bartel.

(please print name and company name below each signature)

Name: DAN DUNLAP
Company: Coachella Valley Citrus and Dunlap Family Ranches

Name: James C Armstrong
Company: Thermiculture Management LLC

Name: DAVID J WILLIAMS
Company: GRANITE SIDING & HEDGING

Name: Sultan Ranches LLC
Company: Nick Bozick

Name: MECCA STAR RANCHES
Company: Michael Bozick

Name: Michael Bozick
Company: Rising Star Ranches

Signatures to May 15, 2007 CVMSHCP letter to Ms. Barrows and Mr. Bartel.

(please print name and company name below each signature)

Name: DAN DUNLAP
Company: Coachella Valley Citrus & Dunlap Family Ranches

Name: James C Armstrong
Company: Thermal culture Marijuana LLC

Name:
Company: GROWERS FARMING & HEDGING.
DAVID T. WILLIAMS

Name: Michael Bozick
Company: MC GRADE VINEYARDS INC

Name: Michael Bozick
Company: MACA FARMS
MACA FARMS Ranches

Name:
Company:

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Comment Letter AD

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

Submitted To:

Mrs. Katie Barrows
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
Tel: (760) 346-1127, Fax: (760) 340-5949 Fax
E-mail: Kbarrows@cvag.org

Ms. Therese O'Rourke
Field Supervisor
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011
Tel: (760) 431-9440, Fax: (760) 431-9624Fax
E-mail:

Submitted by:
Mary Justice
APN: 651-030-004
3998 Avenida Verano
Thousand Oaks, California 91360
(877) 692-8214

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JUSTICE CVMSHCP page 2 of 19 pages May 30, 07

Habitat of CVFTL pu Stebbins

Fig 1 of comment

"Imma AZ dunes resemble these west of the Salton Sea" Fig. 1

AD-1

Garnet Dunes Fig. 2

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Fig 1 of Comment by JUSTICE

Robert C. Stebbins - "Adaptations in the nasal passages for psammophilous life in the Sonoran Genus Uma. 1942 Fig 1

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May 30-07

At a U.S. Fish and Wildlife Service open house for the Coachella Valley National Wildlife Refuge, owners of land in the Thousand Palms area were given a brochure called "Planning Update 3, October 2002 which stated:
"Land owners within the Refuge boundary retain all the rights, privileges, and responsibilities of private land ownership including the rights to access, control trespass, sell to any party, and develop their properties, even if the Service has acquired interest in the land surrounding them. Development of these lands continues to be subject to local regulations and land use zoning. Private lands remain in control of the owner unless sold to the Service. Service management of access and land use is limited to the lands the Service has acquired." AD-1 Cont.

This is deceitful and I believe it is intended to allay potential rebellion among landowners. The fact is that the USFWS must issue a letter approving any development we may wish to do on our land before grading or building permits will be even entertained. According to Mr. Sullivan of CVAG the Service has not yet issued any letter approving any kind of development in our Ramon Road "blow-sand area. This includes agriculture for which a grading permit is required. It also includes not being able to put your own RV on your own land. AD-2

Someone offered to buy our land at $30,000 per acre. Property on Ramon Road farther from town but not in the "blow-sand" area sold for $85,000 per acre. The buyer wanted to use the land for training horses. His broker, Jack Geasland, was told by Cameron Barrows that the road connecting the Cook Street Interchange to Ramon Road was no longer going to go through. We will see in the future if this is true or not.. Mr. Geasland was told that his client, Mr. Cintas, would not be able to build anything on the land. Needless to say they withdrew the offer. These are the sorts of things we are documenting in case misinformation is being used to prevent fair market value buyers from purchasing our land. The last "appraised" offer we had from the CNLM was for $13,000 per acre. That's 43% less than fair market value. Let's wait and see how much Barrows' comments will cost him personally or the taxpayers if he is intentionally giving out incorrect information to defraud landowners. We are in a new era where the words environment and species do not justify exaggeration and deceit. AD-3

In the staff report of the Riverside County Transportation Department presented July 12, 2002 at a public hearing the Cook Street Interchange/Chase School Road Extension was necessary for circulation. The traffic through Thousand Palms Canyon Road (TPCR) is slated to be reduced to a collector. It seems probable to me that the park visitor center at the oasis reached by TPCR will likely be moved to a new park south of Ramon Road and accessed by an off-ramp at Cook Street. A newsletter at the visitor's center on TPCR mentioned concern that too many visitors were walking around the oasis. AD-4

A park north of the I-10 at the Cook Street Interchange and south of Ramon Road abutting the west side of the CVP looks probable because land that was acquired by CNLM and it is not the best property for the Coachella Valley Fringe-Toed Lizard. But, it would be a great location for a visitor center. You can see this area on the map 1999 AD-5

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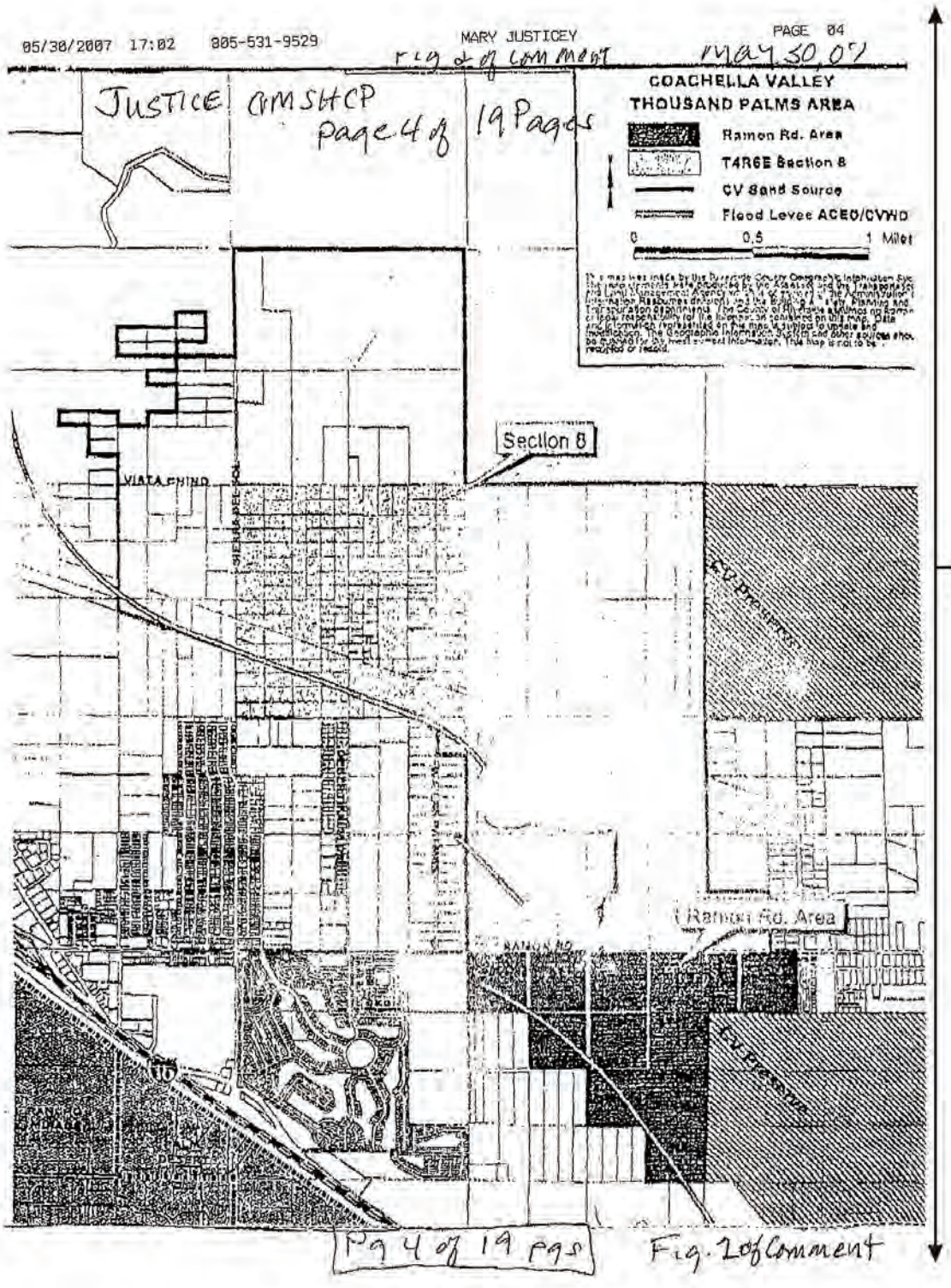
05/30/2007 17:02 805-531-9529 MARY JUSTICEY PAGE 04
Fig 3 of comment May 30, 07
JUSTICE CVMSHCP
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COACHELLA VALLEY
THOUSAND PALMS AREA
Ramon Rd. Area
T4R6E Section 8
CV Sand Source
Flood Levee ACED/CVWD
0 0.5 1 Miles
Section 8
VISTA CHINO
Ramon Rd. Area
RAMON RD
AD-5
Cont.
Pg 4 of 19 pgs
Fig. 2 of Comment

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included with these comments. It is the darkest area in the lower right corner. A report by Simons. Li & Associates, Inc.(SLI) contracted by the U S Army Corps of Engineers for the Whitewater Flood Control Basin, says the winds in the blow-sand corridor do not blow enough "blow-sand" into this dark area to support suitable dunes Therefore it would not be good habitat for the CVFTL but excellent for a park. Later versions of this map do not show the dark areas. Are the environmentalists trying to hide this probable park from the landowners? ADEIR/EIS is supposed to inform the public, not conceal future plans. AD-5 Cont.

In April of 2003 Mr. W. Gallup of the California Department of Fish and Game Wildlife Conservation Board (WCB) sent me a letter showing they were paying an average of $4,027 per acre for the land on Ramon Road next to mine. Four million of the money for the purchase came from USFWS Section 6 funds (Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Bond Act (Prop 12), Section 5096.350 (a)(5)/California Clean Water, Clean Air, Safe Neighborhood Parks and Coastal Protection Act of 2002 (Prop 40), Section 5096.650. How can it be appropriate to use these funds to buy windy, flood plane acreage? AD-6

A park of this kind would be considered a tourist destination or entertainment, not habitat conservation. If landowners scared into selling their land cheap knew it was going to be a park instead of habitat necessary to sustain the milk vetch and CVF-TL they might not sell. I think there must be some trickery going on. What is "conservation area"? Is our 30 acres in conservation area or is it "critical habitat"? Are the environmentalists calling it one thing to avoid the requirement for stringent economic analyses and at the same time already enforcing restrictions that would define it as "critical habitat"? Please respond.

In Section 8 to the north and west of us owners of land are required to cram their new house up against the street and cram it next to their neighbor to reduce the "wind shadow." Both houses are then required to be directly across the street from a similar situation. A couple of prospective private homebuilders sold their land cheap to the environmentalists rather than submit to this ruination of their dream house. I don't think our land can be as severely restricted as Cameron Barrows is telling potential buyers if he and the "lizard club" can put a tourist attraction across the street from our land. AD-7

Also, according to SLI, the dune at the Thousand Palms Preserve would march off the existing preserve in 60 years if left to Mother Nature's devices. It's questionable why the environmentalists would place a preserve where it is hemmed in by Sun City and the freeway if it is not going to be a park. There are two other preserves and the CVFTL is not even a separate species or sub-species and therefore it cannot be endangered or threatened. See the additional information submitted on this subject. Simply put, the CVFTL is "cute," or a "poster child" as Alan Muth put it, to garner sympathy for a preserve in the first place, to expand the preserve and now to have a poster child for a CVFTL park. AD-8

Pg.5 of 19 pgs

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Owners of the 90,000 acres of private land in the MSHCP don't believe this could happen. There were many MSHCP Public Advisory Group (MSHCP PAG) meetings at which none of this was discussed. These meetings are being represented as making the public aware of the ramifications of the CVMSHCP but they were mainly to sell the project and inure the public to MSHCP notices. When notification that the DEIR/EIS was available the words public hearing were not used. The headline boldly said "**Preliminary Public Meeting Schedule:**" This intentionally sounds like the real thing is yet to come. That the public could comment was buried in the middle of a paragraph above the dates describing the meetings as "MSHCP presentation." This is intentional inadequate notification of a Public Hearing after years of time-wasting MSHCP PAG meetings.

When I called the CVAG office to ask if I could speak at the December 9, 2004 "public meeting" the secretary said "no oral comment was being taken." She told me I could mail in or fax comments. This was the only "public meeting" on the notice that dealt with the CVMSHCP. When I and others complained, another "public meeting" was "going to be scheduled sometime." I had to keep checking because of the way CVAG and the county intentionally sneak dates past the public. I bitterly complained to Jim Sullivan that CVAG needed to give more notice for such an important "public meeting" and he said "The Brown Act only required that CVAG give three days notice but they intended to put the notice on their web site a little sooner." The rights of landowning citizens really annoy these government employees. AD-9

When notice of this public meeting was published in the newspaper it was dwarfed by a huge black notice that the MSHCP PAG meeting had been cancelled. Only in the middle of the ensuing small paragraph, in small print was a landowner able to find that public comment would be taken at a public hearing. The meeting was scheduled for between 5 and 6 pm when most people would still be getting home from work. Even the short time allowed gives the impression to the public that the meeting must not be very important. Very few people showed up at the January 24, 2005 meeting.

There was again loud complaining that landowners had not been notified. The comment period was extended but the notification in the mail had the demagogic tone that this Plan was already scientifically proven by experts and necessary because of law so as to give property owners the feeling that their comments would be useless. It also said there would be no more public hearings as though there had been several proper ones already.

Some of the real goals of the MSHCP were revealed in scoping sessions to which only homeowners were invited. I tried to get on the list and was told homeowners don't want any development. Sam then head of the community government of Thousand Palms refused to tell me the date of the next meeting and strongly dissuaded me from inquiring further. AD-10

At the CVMSHCP PAG a representative for me was told our land was useless and not suitable for development because it was in a windy area and subject to flooding. AD-11

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After years of negotiation with TNC, the BLM and the USFWS in the 1980s our remaining land became part of the HCP and the HCP Agreement. Under the Agreement and negotiated zoning changes we had zoning to put 150+ houses on our 30 acres in this area. This land was suitable for development then and it is now. On May 15, 1992 at the Assessment District 91-1 Cook Street Interchange @ I-10 Cook Street extension meeting Dick Folkers told me and others that since our land would stand to be highly profitable from development it was proposed that landowners who had not already paid a development fee would bear the cost of the Cook Street Interchange and Cook Street Extension.

AD-11 Cont.

The HCP Agreement and a letter from then Supervisor Corky Larson confirmed that since the Preserve was established our rights to development on our remaining land would be respected. Recently the HCP and HCP Agreement were amended, unilaterally taking our land out of the HCP/Agreement. The Conservation groups made a profit on the lands they acquired at scare tactic prices when they sold the same lands to other agencies. As a result, they may be the subject of a breach of contract action for not respecting the security of development rights we obtained in exchange for transferring property to them at below fair market value. This would mean more taxpayer money spent on litigation and damages paid out. Is there a figure in the DEIR/EIS for damages as a result of these lawsuits? How much will it cost?

AD-12

In an attachment to the Memorandum Of Understanding (MOU) between the CVAG members, The County of Riverside and USFWS with CDFG concurring our land is described as in danger of immediate development and a number one priority for purchase because of that. Another attachment to the same document calls our land unsuitable for development. In 2000 the conservationists offered us $4,000 per acre for land that was worth $25,000 in the early 1990s. Seven months ago a 4.57 acre parcel to the east of us, part of an island in the "blow-sand" area, sold for more than $85,000 per acre because it is exempt from "blow-sand" restrictions and is not included in the CVMSHCP. Both properties have frontage on Ramon Road. That means if our land was not in the MSHCP it would be worth more than $2.3 million dollars. This is the kind of money that makes lawsuits look good to landowners.

AD-13

The CVAG, County of Riverside and the Department of Fish and Game will never have sufficient funds to either purchase private land or take measures to protect the local economy or human health that would be affected by this program. In January, 2005 Mr. William Gallup of the CDFG Wildlife Conservation Board (WCB) told me in a telephone conversation that there was no money to buy any land including my land either now or in the foreseeable future. The 8,800 acres of "desert Wilderness" south of Joshua Tree National Monument was purchased in September of 2004 for an average of $2,954 per acre.[6] The CVMSHCP calls for acquiring 187,780 +/- acres not already owned or controlled by the various agencies involved in this project. That means the land to be designated by the CVMSHCP as desert wilderness and for acquisition would cost taxpayers or public agency budgets a minimum of 4.2 BILLUON dollars. The last sale for land similar to mine in Thousand Palms with frontage on Ramon Road was for

AD-14

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"unsuitable" land east of me and it closed escrow in August, 2004 for $85,120 per acre. That's twenty-nine times the amount paid for the 8,800 acres of desert wilderness locally known as Joshua Hills. The cost of 187,780 acres of land proposed for acquisition in the CVMSHCP would be closer to $40 BILLION.

It is irrational to believe this would ever occur. However the lack of any meaningful economic analysis in the DEIR/EIS means that there has been a failure to fully analyze the environmental impacts of a no-acquisition alternative scenario.

AD-14 Cont.

We request that you withdraw our land from the proposed Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP)

Our land is unsuitable for habitat because it is on a major road.

AD-15

. Bill Havert of the State of California Coachella Valley Mountains Conservancy (CVMC) gave a presentation on implementation costs and funding to the CVMSHCP Project Advisory Group (CVMSHCP PAG) on May 23, 2002. The minutes of that meeting say "The proposal that is forthcoming through CVAG is that state, federal and local agencies would each do a third of the acreage." The state does not have any money. "The local jurisdictions must demonstrate that they do have the financial ability to acquire land." Please respond as to how much money the local jurisdictions have and exactly when they will use it to buy land. Bill Havert estimated that "as a rough rule of thumb that 5% of the land value will be administrative overhead costs for appraisals, title reports, hazmat inspections, escrow fees, etc. This is used to identify the projected costs associated with implementation of the plan. We have to demonstrate that we have a reasonable funding program to meet those costs" [emphasis added]. In The Desert Sun September 22, 2000 an article by B. Spillman says CVAG was supposed to raise $10,000,000 to purchase 2,000 acres in Thousand Palms for use as a sand-source. That comes to $5,000 per acre. $10,000,000 seems like too little money to cover all the costs mentioned above, not to mention commissions. My 30 acres on Ramon Road is worth somewhere between $900,000 and $2.58 million. Where is the money to "acquire" this land? Please respond.

AD-16

At the September 9, 2002 meeting of the State of California's Mountains Conservancy a list of proposed land purchases was up for vote. All were approved. None were in the areas identified as high priority because they were under threat to be

AD-17

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Figure 3 of Comment letter
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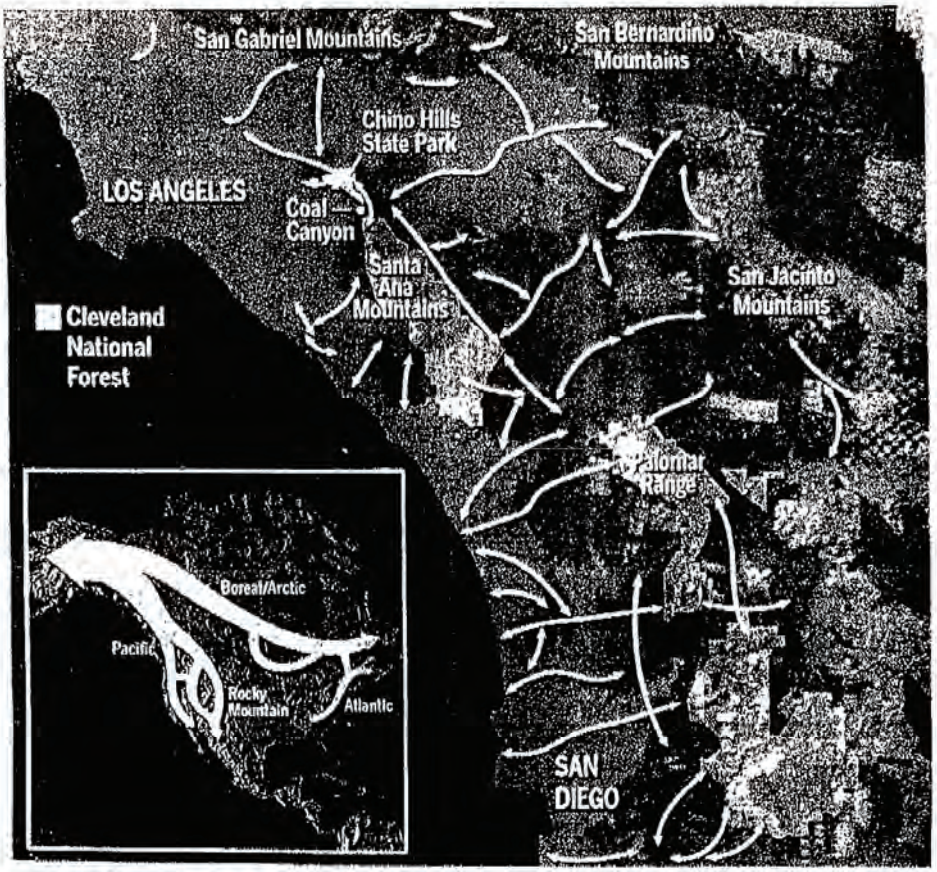

AD-17 Cont.

...conservationists hope to create hundreds of wildlife corridors (indicated by arrows) that they deem critical to the survival of dozens of native California species. The ... above are located in the densely populated area between Los Angeles and San Diego. Inset: A more ambitious plan would create several "megalinkages" connecting North America's fragmented wilderness and thus allow for the free movement of wide-ranging carnivores such as wolves, bears, and mountain cats.

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Fig. 3 of Comment letter

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developed. Instead the money went to large tracts of land in the Indio Hills, Santa Rosa Mountains and San Jacinto Mountains National Monument and the Flap-Top Mountain area. These are purchases that would become part of the great unproven corridor hypothesis. Vast sums of taxpayer money are being spent to buy from scared buyers before they learn that the tide has turned against the over exuberance of the environmentalists and lawsuits are the result. AD-17 Cont.

The DEIR/EIS assumes that corridors are proven and necessary to the survival of species when, in fact, they are not proven. I submit that the corridor theory merely provides a reason to deny an alternative by saying it would result in a condition that will result in a jeopardy opinion. The result is the sanest, logical alternative that respects the local business and private economy is be waved aside. Corridors are also places where predators pick off endangered species and transmit diseases. If one looks at the grand plan for corridors in the United States (see attachment) environmentalists would recreate the land bridge across the Bering Sea so species could cross it. This is nonsense. AD-18

The "corridor" that ends in the CVFTL Preserve in Thousand Palms would obviously not serve large wide-ranging predators such as wolves, bears, and mountain lions. Instead the notion of a "blow-sand" corridor was devised as a way to complete the "ring around the city" restriction on development. The satellite study by Charles M. Schweik, "Using Remote Sensing to Evaluate Environmental Institutional Designs: A Habitat Conservation Planning Example" is full of assumptions. The Schweik study was instrumental in arriving at the conclusion that the sand area for the Thousand Palms Preserve for the CVFTL was not adequate and that the Preserve would not continue to exist unless development on the land to the north and west of the preserve was prevented.

The assumptions made in the Schweik study are assumed to be 100% accurate. even though they do not match actual measurements taken on the ground. There is no attempt to reconcile these discrepancies AD-19

The CVMSHCP is part of a theoretical corridor plan which is not substantiated in fact and will endanger human health and cause substantial economic damage to the Coachella Valley economy. AD-20

This draft EIR/EIS is dishonest because it proposes to allow public entities to violate the S.C.A.Q.M.D. micron 10 rules. It is inconsistent and irreconcilable with these rules intended to protect human health from clay, silt and dust. AD-21

The wind does not discriminate between ten micron particles and those above and below ten microns. According to a study prepared by Simons, Li & Associates, Inc. a subsidiary of Tetra Tech, Inc. "Sand Migration Impact Evaluation for Thousand Palms Flood Control Project, Vol. I: Data Collection and Review for The U S Army Corps of Engineers, Los Angeles District, December, 1996, there is a high concentration of silt and clay which comprise ten micron particles in the "blow-sand" area in and near Thousand Palms and especially across Ramon Road from my property.. This document AD-22

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was submitted into evidence at the January 24, 2005 Public Hearing on the CVMSHCP held in Palm Desert. It is dishonest to call these particles sand which is by definition a larger particle. See attachment. It is also dishonest to say the ten micron particles come from cars driving over the sand particles. The diminishing water table creates a more hazardous situation for human health. The S.C.A.Q.M.D. rules must be considered in the draft EIR/EIS and are not. The dust, silt and clay particles are much smaller and are blown higher in the air and go farthest away from the conservation areas endangering multitudes of people. Fences do no stop the clay and silt particles that actually are the micron ten particles which are much higher in the air. The concept of a "blowsand" area endangers human health in violation of the S.C.A.Q.M.D. micron ten rules. The draft EIR/EIS fails to suggest or analyze any measures by which "blow-sand" could comply with micron ten rules. AD-22 Cont.

The CVMSHCP is part of a theoretical corridor plan which is not substantiated in fact and will endanger human health and cause substantial economic damage to the Coachella Valley economy. AD-23

The Pacific Legal Foundation is suing over the federal government's procedures for identifying "critical habitat" which affects millions of acres and has dramatic repercussions for the economy. Property rights and development potential of land designated as critical habitat suffer devastating economic impacts. AD-24

Neither CVAG, the County of Riverside or the Department of Fish and Game will ever have sufficient funds to either purchase private land or take measures to protect the local economy or human health that would be affected by this project. The 8,800 acres of "desert wilderness" south of the Joshua Tree National Monument was purchased in September of this year for an average of $2,954.54 per acre. The CVMSHCP calls for acquiring 187,780 +/- acres not already owned or controlled by the various agencies involved in this project. That means the land to be designated by the CVMSHCP as desert wilderness and for acquisition would cost taxpayers or public agency budgets a minimum of 4.2 BILLION dollars. The last sale for land similar to mine in Thousand Palms with frontage on Ramon Road was for a windy, sandy area east of my land, and it closed escrow in August, 2004 for $85,120 per acre. That's twenty nine times the amount paid for the 8,800 acres of desert wilderness locally known as Joshua Hills. The cost of 187,780 acres of land proposed for acquisition in the CVMSHCP would be closer to $40 Billion.

It is irrational to believe this would ever occur. However, the lack of any meaningful economic analysis in the draft EIR/EIS means that there has been a failure to fully analyze the environmental impacts of a no-acquisition alternative scenario. AD-25

The CVMSHCP is not suggesting the use of eminent domain because then public entities would have to pay fair market value for the land they take. But the CVMSHCP amounts to inverse condemnation. The CVMSHCP is using scare tactics to force people to sell at minimal prices (below fair market value). Thousand Palms resident and property owner Michelle Loulu was harassed by the Department of Fish and Wildlife AD-26

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for wanting some plants, a driveway and a fence. She was only able to build on a fraction of her land. Two owners of lots on Las Palmas in Thousand Palms were forced by the U.S. Fish and Wildlife Department to jam their houses to the edge of the road and to jam them next to their immediate neighbors. This was not necessary for the protection of the environment, only to persuade the owners to sell instead of build. Two other owners also on Las Palmas in Thousand Palms did sell their lots to the conservationists at drastically reduced prices rather than be subjected to this ruination of their dream home. The CVMSHCP is an attempt to take private property without paying just compensation. In the end, the courts will force the public entities to pay as required by the Fifth Amendment. — AD-26 Cont.

This unjust taking of land could end up costing Riverside County damages similar to the $5.5 million just recently awarded by a jury against Santa Barbara County for similar intentional actions. That was just 95 acres. That comes to more than $52,000 per acre. See attached news article.

By attempting to scare people into selling their land the CVMSHCP is suggesting owners will end up with useless land. But without using eminent domain to acquire the land the CVMSHCP can later be implemented by public entities claiming they don't need the land. Once intimidated by public entities wielding the CVMSHCP owners will be coerced into selling out for a pittance. — AD-27

Without using eminent domain the public entities can later decide they don't need the land. They would then sell it or lease it at a huge profit even though it was purchased from scared sellers. That's one way to pay the cost of this hugely expensive undertaking at a time when there is no money in the public budgets. The conservation folks say with great indignation that they wouldn't do that, but that is exactly what did happen in Oceanside with the gnatcatcher. — AD-28

There will be an increasing need for housing when plans for the proposed massive entertainment and retail development east of Bob Hope and north of Dinah Shore are revealed. — AD-29

The conservationists recognize only biologists on their "approved" list. It is an ordeal to be represented by a biologist not on their list. The "approved" biologists have conflicts of interest since their income depends on the CVMSHCP proponents. — AD-30

The conservationists consider themselves custodians of our land and pride themselves on their solution of selling easements on our land. They would decide which approved people will get easements, and for what, and what to do with the land when the easements expire. They propose a caste system based on insider privileges. — AD-31

There are developers who are able to use the land to satisfy requirements for water runoff retention for an existing project on nearby lots. This enables them to build on the "retention" site at a future date after the "flood" issues have been solved at someone else's expense. We are in a "100 year" flood area. A "100 year" flood area is — AD-32

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not usually considered a flood issue. Building in Thousand Palms was not a problem until the conservationists wanted our land. AD-32 Cont.

In the mid 1980s we and other land owners had an official agreement with the County of Riverside and the US Fish and Wildlife Service not to try to regulate private property outside the Coachella Valley Fringe Toed Lizard Preserve (CVFTLP) if the local property owners went along with the acquisition of land for the preserve. Recently the U.S. Fish and Wildlife Service unilaterally removed our land from this official agreement. We are now known at CVAG as the "agreement land". See Fig AD-33

My land is not suitable for habitat conservation because the vegetation is dying due to the water table dropping. The area south of Ramon Road looks very dead. Not dormant. The "Coachella Valley Fringe Toed Lizard" was never endangered in the first place because it was never a separate species. It is like a different colored horse. It interbreeds with other fringe toed lizards. Establishing the existing Coachella Valley Fringe Toed Lizard Preserve CVFTLP was based on the use of pseudoscience. It was an attempt to create a "poster child" species when no separate species actually existed. It is very likely that the "Coachella Valley Fringe Toed Lizard" will be de-listed in the near future because it is not a species and was never endangered. The "blowsand" area will be exposed as a hoax and scare tactic to harass small property owners. AD-34

There will soon be a connecting road between the Cook Street Interchange and Ramon Road that will connect near my property. It is already approved. Such a road seems odd for habitat conservation. In responses to the US Army Corps of Engineers EIR for The Whitewater River Basin final EIR September, 2000 for a flood control project near my land the County of Riverside Transportation Department complained that the ACE was putting a "sand depository area" where the County planned this road. See the attached. AD-35

A proposed dike project could have flooded the inter-state power and gas lines needed to ensure national security. Many owners suspected the dike violated F.E.M.A. standards. It was a sham. The ACE was conveniently tying up the land until the County's RCIP down-zoning and this CVMSHCP could be pushed through. This is not unusual for the ACE. At that time, December 7, 2000, An article in the San Francisco Chronicle page A3, ran the headline "Army Corps Rebuked for River Study Pentagon finds bias, doctored analysis" In the article "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."" 150 projects were stopped and submitted to review. The Army Corps of Engineers says in the Whitewater River Basin Feasibility Report, Technical Appendices, September, 2000 (see attachment) the it is not going to build the whitewater Flood Control Project. AD-36

The Coachella Valley Water District (CVWD) refuses to show property owners the current plans for this project. Georgia Celahar at the CVWD showed me and Jack Geaslin on separate occasions a map that is two and a half years old. Why is that? They AD-37

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PATRICIA (CORKY) LARSON
FOURTH DISTRICT SUPERVISOR
BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE

DISTRICT OFFICE
46200 OASIS STREET, ROOM 414
INDIO, CALIFORNIA 92201
TELEPHONE (619) 342-8211 · 345-1072

STAFF
ROBYN NAGLE
KAREN BRICKO
PRISCILLA LAGIER
ROSE MARIE DOMINGUEZ

May 29, 1992

Peter Tynberg, M.D.
1599 Via Norte
Palm Springs, CA 92262

Dear Peter:

First and foremost, please accept my apologies for this tardy response to your letter concerning the establishment of the Coachella Valley Preserve. I appreciate your patience in awaiting a response.

I clearly recall meeting with you, Frank Bogert and Erwin Demiany concerning establishment of the Preserve. It was my position at that time that once the Preserve was in place and the critical habitat for the Coachella Valley Fringe Toed Lizard protected that surrounding property would be able to pursue development proposals consistent with their zoning. That was and still is my position.

I hope that this clarifies my position. If there is any other way in which I can be of assistance or any other information you need please do not hesitate to contact me.

Sincerely,

PATRICIA A. LARSON

AD-37
Cont.

PAL:rrd

Fig 4

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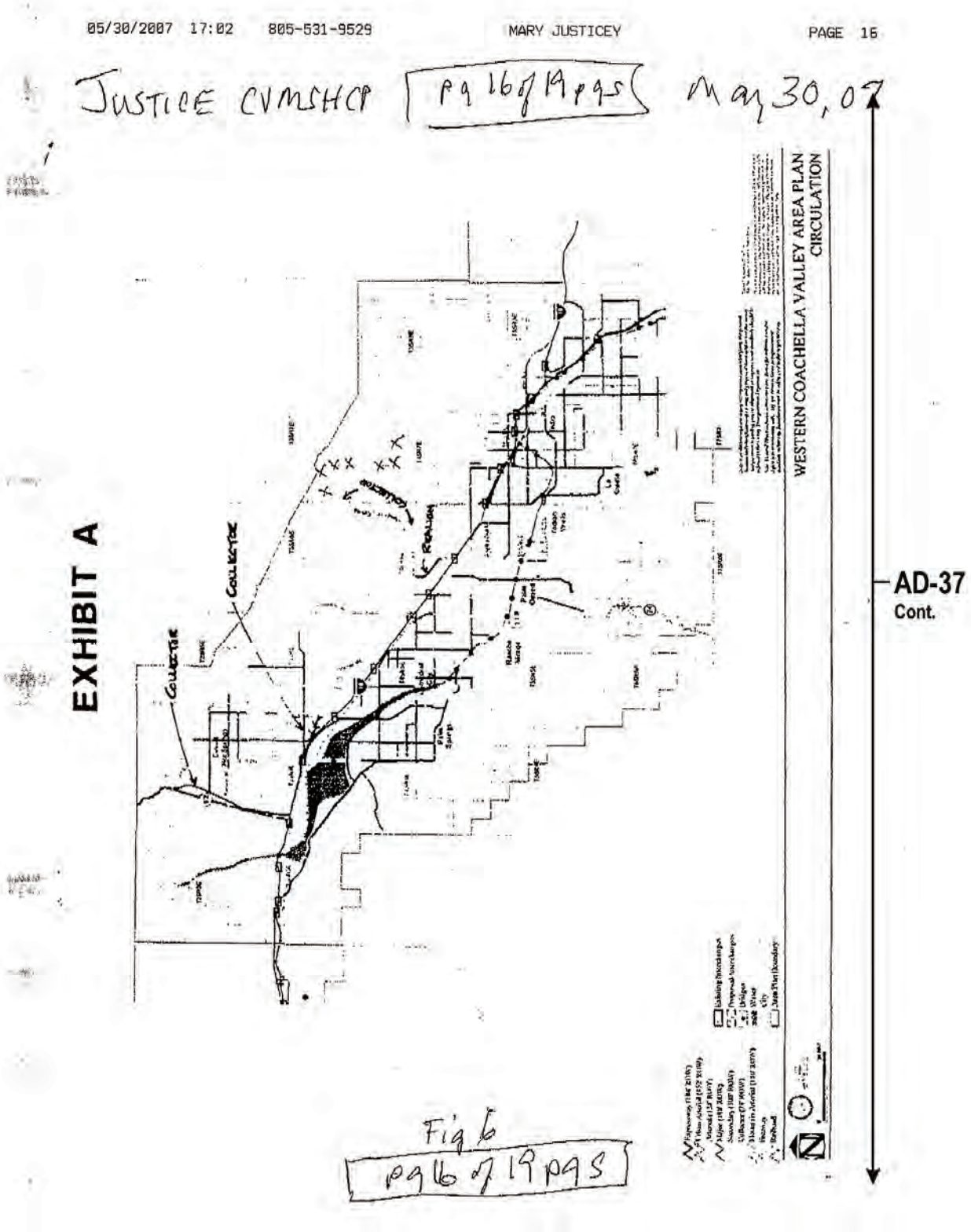
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EXHIBIT A
WESTERN COACHELLA VALLEY AREA PLAN
CIRCULATION
AD-37
Cont.
Fig 6
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Zoning Area: N/A
Supervisorial Districts: 3rd and 4th
Project Planner: Ed Studor/Sian Roman
(909) 955-6800

RCIP General Plan – Circulation Element
Eastern County Area Plans
Planning Commission: September 12, 2002
Agenda Item No.: Part of 4.3

RIVERSIDE COUNTY TRANSPORTATION DEPARTMENT
STAFF REPORT

Applicant:	County of Riverside
Request:	Revise Proposed RCIP General Plan Circulation Element For Eastern County Area Plans
Agency Responses:	None at this time.
Letters:	None at this time.

AD-37
Cont.

RECOMMENDATION:

TENTATIVELY APPROVE the proposed revisions to the RCIP General Plan Circulation Element as presented in attached Table 1.

BACKGROUND:

Subsequent to the release of the Public Hearing Draft of the New General Plan, Transportation staff has noted a few minor discrepancies in the Circulation Element exhibits. We have also been working with the Resource Agencies regarding the Coachella Valley MSHCP efforts in order to refine the circulation element to avoid or minimize adverse impacts to habitat resources. In addition, there have been a few requests relative the Circulation Element that have emerged from the public hearings. The purpose of this report is to identify recommended modifications to the Circulation Element for the Eastern County Area Plans as originally presented in the April 5, 2002 Public Hearing Draft. Table 1 presents these revisions on an Area Plan by Area Plan Basis. Following the table are a series of exhibits (A, B, and C) which depict the Area Plan Circulation Maps for the Western Coachella Valley, the Eastern Coachella Valley, and Desert Center with the proposed revisions noted. The overall Circulation Plan, Exhibit C-1 in the Circulation Element, Chapter 4, will also be revised to reflect these changes. All street names will be included in the final revision.

Fig 5
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TABLE 1

TRANSPORTATION DEPARTMENT PROPOSED REVISIONS TO DRAFT CIRCULATION ELEMENT

Area Plan Road Name	Limits	Revision
Western Coachella Valley	**See Exhibit A**	
Worsley Road	Indian Avenue to Mission Lakes	Reduce to Collector
20th Avenue	Little Morongo to Palm	Reduce to Collector
Varner Road	Little Morongo to Palm	Delete as a Major
1000 Palms Cyn Road	Ramon to Dillon	Reduce to Collector
1000 Palms Cyn Road	Extension from Dillon to Inspiration	Delete as a Secondary
26th Avenue	1000 Palms Cyn to Western Ave	Delete as a Secondary
Western/Inspiration Rd	1000 Palms Cyn to 30th Ave	Delete as a Secondary
30th Avenue	Western Ave to Dillon	Delete as a Secondary
Chase School Rd/Cook St	I-10 to Ramon Rd	Realign along planned flood berm
Rio Del Sol	Vista Chino to 20th	MSHCP Conflict
22nd Avenue	Rio Del Sol to Sky Ridge	MSHCP Conflict
Palo Verde	No recommended revisions	
Eastern Coachella Valley	**See Exhibit B**	
"E" Street (Kohl Ranch)	"C" Street/Tyler	Realign northerly to 64th Avenue
Desert Center	**See Exhibit C**	
Eagle Mountain Road	At I-10	Add Interchange Symbol

AD-37 Cont.

Fig. 7

NOTE: All street names to be labeled.

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must be hiding something. The map she does show indicates flood control channels and dikes. The DEIR/EIS still talks about the flood control project but blows off concerns that building these dikes that are eight miles long and big enough to drive a truck on top will disrupt the conservation area. Flood control measures are installed and paid for by developers. This is another case of "whoops, we made a mistake! Now that we've bought all the land that was supposed to be under water we don't need the flood control project." This year is soon to be the second wettest in history. The "blow-sand" flood area only had the usual problems in the usual places which are not in the area indicated on the ACE flood control map (see attachment). Some retention/flood control commitments by developers are in place already. Why can't landowners see them? If we had current information we might complain and cause trouble for the CVMSHCP, another big-budget make-work project. e "under water" as Georgia Celahar told me and potential buyers that my land would be "under water." Shouldn't she be personally liable for the loss of value to my land? If you look at the stack of documents involved in preparing this sham "flood project" you get an ill feeling about the taxpayer's money that was wasted. Then you realize this waste is small potatoes compared to supporting the army of USFWS who will manage, monitor and enforce rules on the 1.1 million acres of the CVMSHCP. AD-37

The maps in the CVMSHCP to which the draft EIR/EIS refer are at almost two years old. They are out of date and obsolete. The maps do not show that the various conservation groups, the BLM, et al, already own almost all the land north and east of me and they do not need my land or any other part of Thousand Palms.. The conservation goals do not need these particular lands. AD-38

The water table has dropped in Thousand Palms and does not and will not support the endangered plant species and will not provide shelter for many of the animal species for which the CVMSHCP is being undertaken. The fringe toed lizard has been shown to interbreed with similar lizards in Mojave and Joshua Tree. It exists in areas with a higher water table. If the lizards interbreed federal and state law does not consider them "separate species" under the Endangered Species Act. The CVMSHCP would establish preserves and habitat for them in the form of thousands of acres of "blowsand area" under the Endangered Species Act. Blowsand is not needed for the flat tailed horned lizard. No other species requires a "blowsand area." The so-called "Coachella Valley Fringe Toed Lizard" is a fraud and a hoax to facilitate land grabs in Thousand Palms. AD-39

My land is on the edge of the "preferred alternative." It is not included in Alternative One. Alternative One will better protect property rights. AD-40

The real goal of the CVMSHCP is to tie up the land for THIRTY YEARS. That is how long the CVMSHCP gives public entities to implement the plan. This would scare any landowner. This is also an indication that the money is not available to actually carry out the CVMSHCP. Alternative One will be less expensive to implement. AD-41

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There are actually two hearings being held here. One for CVAG and the County of Riverside and one for the federal part of the CVMSHCP. There will need to be two separate approvals/decisions when the process is complete. The Federal environmental review requires an economic impact analysis. This is very different from the "Fiscal Impact Analysis" for the CVMSHCP prepared by Terra Nova Planning & Research, Inc. in November, 2003. "The Fiscal Impact Analysis" only considers the economic effect on local government and agencies. It does not consider the effect on the larger economy, the local property owners or the private sector etc. In order to satisfy the requirements for a federal EIR/EIS the cost to the larger economy must be assessed in detail. In short a fiscal impact analysis is not the same as an economic analysis which is required for the federal EIR/EIS. AD-42

The draft EIR/EIS is deficient and violates both state CEQA rules and federal law and regulations. Alternative One is less oppressive of private owners and that fact would be established if a full and correct economic analysis had been completed. AD-43

Sincerely,

Mary Justice

Mary Justice, Thousand Palms Property Owner
(877) 692-8214

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