

Comment Letter AE

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PAGE 01/04

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

Via fax 760 340 5949

Additional Signatures
to letter that was
hand delivered

on May 25,
at 11:45 am



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.

AE-1

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.

AE-2

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.


AE-3

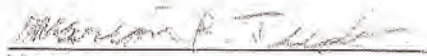
Sincerely,


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)

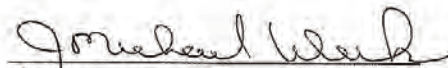

Name: Robert Bianco
Company: ANTHONY VINEYARDS INC.


Name: Mark F. Tuck
Company: Tuck Farms Inc.
M. Tuck, Son, 92236


Name: BRIAN CARIM
Company: DESERT FRESH, INC.
COACHELLA, CA 92236

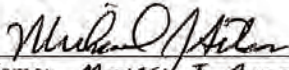

Name: Anthony B. Tuck
Company: DESERT FRESH, INC.
COACHELLA, CA 92236

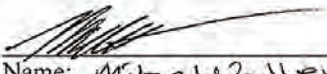

Name: Dan Belk
Company: Belk Farms, Thermal, Ca

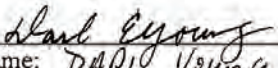

Name: Jon Michael Webb
Company: K+W Farms Inc

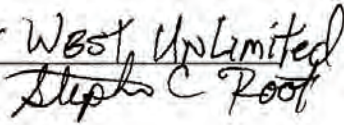
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(please print name and company name below each signature)

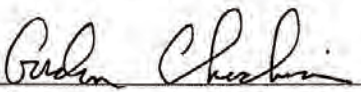

Name: MICHAEL J. AITON
Company: SUN LANDS INTERNATIONAL


Name: Mike Wallen
Company: STEVCO/LUCICH FARMS


Name: DARL Young
Company: Young & Sons & Cocopah Nurseries Inc.

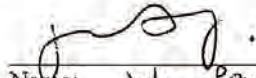

Name: EAST WEST Unlimited LLC -
Company: Stephen C Root


Name: Albert P. Keck
Company: Hadley, Inc.

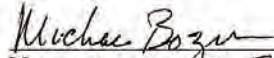
 Gordon Chuchien
Name:
Company: Chuchian Ranch

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

(please print name and company name below each signature)



Name: John Powell, Jr.
Company: Peter Rabbit Farms
Crown Hill Ranches, Inc.



Name: MICHAEL BOZICK
Company: IZ BAGDASARIAN INC



Name: GARY SCARBOROUGH
Company: BELMONT Produce

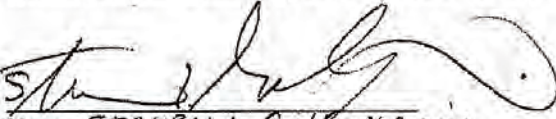
Name:
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Signatures to May 15, 2007 CVMSHCP letter to Ms. Barrows and Mr. Bartel.

(please print name and company name below each signature)


Name: STEVEN L. GIFFEN
Company: STEVCO

Name:
Company:

Name:
Company:

Name:
Company:

Name:
Company:

Name:
Company:

Comment Letter AF



WIND ENERGY PARTNERSHIP, L.P.

21515 Hawthorne Blvd., Suite 1059
Torrance, CA 90503
(310) 316-7337 Fax: (310) 316-7013
Email: SanGorgon@aol.com or WhitewaterWind@aol.com

May 23, 2007

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



Dear Mr. Sullivan,

The San Gorgonio Pass Wind Energy companies are pleased to comment on the Recirculated Draft Coachella Valley Multi-Species Habitat Conservation Plan ("MSHCP"). To date the Wind Energy companies in the pass have not actively participated in the plan because most were unaware of the MSHCP's existence. However due to increased media coverage, local concerns raised by neighboring communities and general industry comments, the industry has become aware of the MSHCP. The companies represented by this comment letter wish to guide the authors of the MSHCP to incorporate into the Plan some key components, so that the Plan will not negatively affect the wind industry, which is supported across the country at every level of government including through legislation enacted by the State of California.

We incorporate by reference AES SeaWest Windpower, Wind Energy Partnership, a CA LP, Steven H. Christensen Trust and Wintec Energy Ltd. 2006, written comments on the June 2006 Plan and Final EIR/EIS. In these additional comments, the represented San Gorgonio Pass companies:

- (a) outlines the make-up, history and future of the Riverside County Wind Resource Area,
- (b) offers its views regarding how this MSHCP may negatively affect the wind industry,
- (c) offers its views regarding additional concerns regarding the MSHCP,
- (d) offers suggested modifications to the plan to incorporate and help promote conservation, while maintaining Wind Energy's ability to develop land consistently with the MSHCP, and
- (e) urges the Coachella Valley Association of Governments to adopt our suggested modifications.

A. THE RIVERSIDE COUNTY WIND RESOURCE AREA

The Riverside County Wind Resource Area is comprised of a number of Wind Energy developers, land owners, maintenance companies, and companies that manage the day-to-day operations of each project.

AF-1

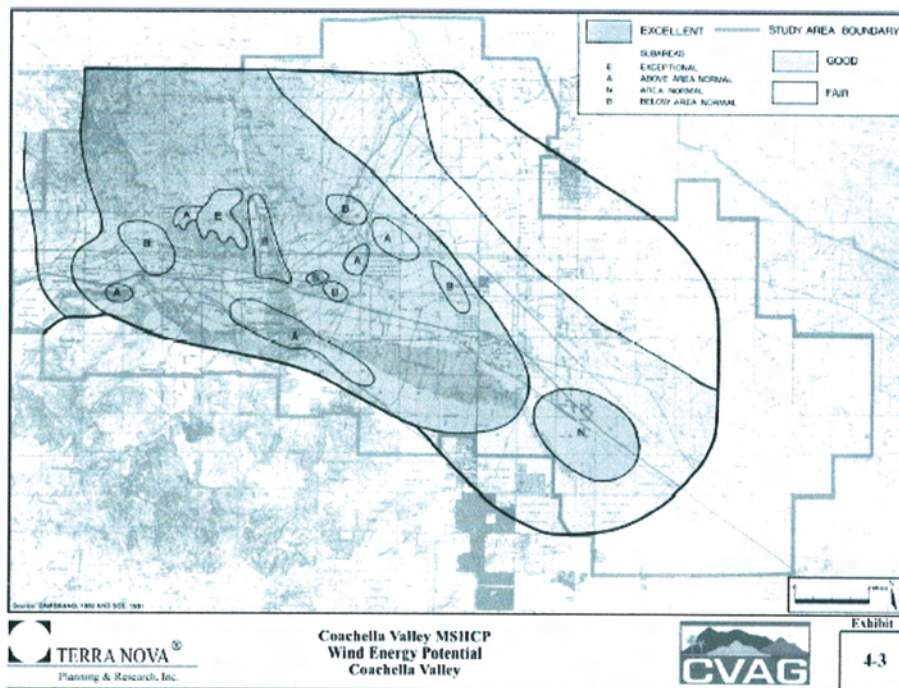
The replacement value of the current wind energy mix of 618 megawatts (MWs) in the pass is in excess of \$1.1 billion dollars. Currently an additional 195 MWs of wind energy is in the permitting stages within Riverside County (190 MWs) and the City of Palm Springs (5 MWs) with an additional 49 MW's planned for the City of Palm Springs and 12 MW's planned for the City of Desert Hot Springs in the near future. These new projects will approximately add more than four hundred and fifty million dollars of investment in Riverside County.

With close to \$1.6 Billion dollars of current and future investment at stake, as well as possible lands not yet identified or acquired for development within the Riverside County Wind Resource Area, the industry is very concerned with the proposed language of the MSHCP. We strongly urge the Coachella Valley Association of Governments to make the appropriate changes.

AF-1
Cont.

B. EFFECTS OF THE MSHCP ON WIND ENERGY – DEFICIENCIES IN THE DEIR/S

- i) The MSHCP does not accurately depict the wind energy potential in the Wind Resource Area. As a result, the MSHCP is based on a faulty description of the environmental setting and impacts of the preferred alternative. There are readily available wind energy resource maps produced by third party and government funded entities that clearly show the pass's wind resource area potential and do not match the Plan's assumptions¹.



Id. 4.4-7

¹ <http://www.nrel.org/> & <http://www.truewindsolutions.com/>

- ii) The MSHCP does not adequately analyze wind resources within the entire Plan Area, including due to the fact that it neglects to analyze wind resources in the San Jacinto National Monument. This is contrary to Public Law No. 106-351, which establishes the Monument.



Approximate Boundary of the Riverside County Wind Resource Area – Edom Hill Not Shown

- iv) The plan states *Id. 4.4-5* "No large scale solar or thermal energy resources have been developed in the Plan area at this time, nor is the Plan expected to constrain or inhibit such development, which typically occurs in conjunction with buildings and similar structures." Solar Energy and Battery storage is a complimentary power source and has been discussed for years to supplement wind energy, which is variable, when the costs of solar power become economical. As wind turbines disturb very little land, there are large swaths of open land that could be developed for Solar Energy and Battery storage and this had not been taken into account in the plan. CVAG assumes residential solar development with regards to development in conjunction with buildings and similar structures. The DEIR/S fails to assess Commercial Development of Solar Projects that use large amounts of land not in association with buildings or associated structures. Such land intensive solar development would be foreclosed in Conservation Areas. Therefore, the MSHCP would constrain or inhibit such development.

- v) The plan states *Id. 4.4-5* "impacts to energy resources would be less than significant. Over the past 20 years, the most economically developable wind resources in the Plan Area have been developed." Currently there is 256 MWs of new Wind Energy planned for the pass for development, an increase of over 41% of the current capacity of the pass. This amount of power could supply sufficient energy for approximately 120,000 homes.² This is a very significant increase in renewable energy. All currently proposed projects are on undeveloped sites, most within the MSHCP Conservation Areas.

- vi) The MSHCP fails to take into account replacement energy needed to offset the loss of Wind Resource Area. Coal, Oil, and/or Natural Gas Plant energy may be needed to offset the loss of Wind Energy on the grid. The increase in air pollutants including, but not

² 244,000 kW x 8,760 hours per year x 33% capacity factor (New Projects), divided by annual usage of 6,313 kW per home (Average CA home's electrical usage)

- | | | |
|-------|---|------------------------------------|
| | <p>limited to, Nitrogen Oxides, Sulfur Dioxide, and Carbon Dioxide has not been taken into account in the MSHCP.</p> | <p>↑
AF-5
Cont.</p> |
| vii) | <p>The MSHCP fails to take into account that Utility companies may need to purchase higher priced renewable energy from other renewable energy resources to offset the loss of wind energy production in the pass³. These higher prices paid for less efficient and less productive wind sites or more costly alternative energy such as Biomass or Solar will be passed on to the rate-payers.⁴</p> | <p>AF-6</p> |
| viii) | <p>The plan fails to take into account the loss of jobs associated with wind, which produces 4.9 jobs per MW of wind power.⁵ Many companies rely on the wind industry for their jobs, demand for goods and services, and economic activity created by commercial power plants.</p> | <p>AF-7</p> |
| ix) | <p>Wind Energy offsets natural gas usage in power generation at Natural Gas 'Peaker' plants.⁶ The loss of wind energy resources would yield an increase in natural gas prices causing gas bills to be higher for the citizens of Riverside County.</p> | <p>AF-8</p> |
| x) | <p>Excess costs of mitigation, delay, restrictions and constrained development may cause projects in the San Geronio Pass to become uncompetitive in the California Renewable Portfolio Standard market. Projects may not be built because the risks associated with the plan such as e.g. take permits or fee increases, may cause financing, turbine suppliers and developers to seek other cheaper, business friendly and unconstrained sites in other counties or states.</p> | <p>AF-9</p> |
| xi) | <p>The recirculated MSHCP eliminates take coverage for existing legal uses. MSHCP at p. ES-25. This may make it easier for certain stakeholders to challenge projects including wind energy projects.</p> | <p>AF-10</p> |
| xii) | <p>The MSHCP neither exempts those projects that have already received take authorization nor relieves federal agencies of the need to consult with the Service under section 7 of the Endangered Species Act in conjunction with proposed projects within the Plan Area.</p> | <p>AF-11</p> |
| xiii) | <p>One of the primary goals of the MSHCP is to streamline the development process. The MSHCP fails to do so. It will, in many cases, make the regulatory process more onerous for proponents of wind energy projects, and it may foreclose certain wind energy projects from going forward.</p> | <p>AF-12</p> |

C. ADDITIONAL CONCERNS REGARDING THE MSHCP

³ The Renewable Portfolio Standard requires utilities to provide 20% of the power from Renewable Energy Resources by 2010. There is a legislative push to require 33% by 2020.

⁴ Market research indicates Biomass and Solar installations cost more than Wind Energy installations
http://www.raeng.org.uk/news/publications/list/reports/Cost_Generation_Commentary.pdf,
http://www.detroneics.net/wind_solar.pdf.

⁵ National Renewable Energy Laboratory "Job and Economic Development Impact (JEDI) Model: A User-Friendly Tool to Calculate Economic Impacts from Wind Projects; Mar 2004"

⁶ It has been proven that when Wind Energy is being produced, natural gas plants that provide 40% of the State of California's mix of power can be turned off, thereby saving natural gas and reducing demand for the product therefore lowering the price of natural gas. Natural Gas plants are much easier to cycle on and off than more traditional energy producers such as Oil, Coal or Nuclear Energy.

We are concerned that the MSHCP and associated DEIR/S do not meet the legal requirements set forth in the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, Natural Community Conservation Planning Act, Cal. Fish & Game Code § 2800, National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.*, and California Environmental Quality Act, Cal. Pub. Res. Code § 21000 *et seq.* Our most significant concerns are discussed below.

1) THE PLAN CANNOT ACHIEVE ITS STATED OBJECTIVES

AF-13

One of the primary goals of the MSHCP is as follows:

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.

MSHCP at p.1-2. As drafted, the MSHCP cannot achieve this objective.

The MSHCP imposes burdensome requirements that will impede economic development in the Plan Area. The Plan's local development mitigation fees are substantial; the MSHCP includes fees of \$5730 per acre. MSHCP at p. 5-9. The stated purpose of these fees is to allow for land acquisition, monitoring, and management. MSHCP at p. 5-1. One justification for these significant fees on development is that payment allows property owners to proceed with economic development of their land and, in essence, provide off-site mitigation for the adverse impacts associated with such development. DEIR/S at 1-4 (stating that the MSHCP would "replace the current piecemeal approach to project approval and mitigation with a coordinated, comprehensive approach based on the basic conventions of biological reserve design" and "provide [] that project mitigation is directed toward those areas most critical to maintenance of ecosystem function and species viability").

AF-14

In addition to paying local development mitigation fees, land owners must – among other things – comply with required avoidance, minimization, and mitigation measures and land use adjacency guidelines. MSHCP at pp. 4-167 to 4-182. Furthermore, owners of land located within a predetermined Conservation Area must proceed through Joint Project Review process and, if they are located in the Santa Rosa and San Jacinto Mountains Conservation Area, the Habitat Evaluation and Acquisition Negotiation Strategy process. MSHCP at pp. 6-19 to 6-31. We are concerned that as currently structured, the MSHCP is not efficient and does not realize its goal of streamlining.

2) THE PLAN IS BASED ON FLAWED SCIENCE

The MSHCP is based on scientific information that is years (and, in some circumstances, over a decade) old. In addition, some of the conservation principles and studies that provide the basis for the MSHCP are untested or in dispute. The MSHCP was completed at a very high level of generalization and includes many inaccuracies.

AF-15

3) THE PLAN DOES NOT PROVIDE A SIMPLE MECHANISM FOR ADAPTION BASED ON LANDOWNER INPUT

The biological value of the MSHCP Conservation Areas was determined based on landscape level data. Where more accurate, up-to-date scientific information becomes available, it is appropriate and consistent with the MSHCP goals and objectives to allow landowners whose holdings include land in Conservation Areas to submit more detailed, up-to-date biological data and provide Permittees an opportunity to make a decision about the conservation values of such lands on the basis of that more

AF-16

detailed data. In fact, this sort of ground truthing is at the core of the scientific method. It comports with the adaptive management component of the larger Conservation Strategy.

AF-16
Cont.

The MSHCP does provide a mechanism for alteration of Conservation Areas other than MSHCP amendment; MSHCP at pp. 6-46 to 6-48. But the mechanism is inadequate for at least two reasons. First, it is available to Permittees, not to third parties seeking take authorization. Second, the mechanism requires the Permittees seeking to reduce a Conservation Area in one area to propose a concomitant increase in another area. Neither a Permittee nor a third party is necessarily in a position to identify both the land that should be removed from a Conservation Area and the land that should be added. When a Permittee or third party identifies an area that should be removed from a Conservation Area, it should be the obligation of the Coachella Valley Conservation Commission that administers the MSHCP to locate other land to be added to the Conservation Area.

AF-17

D. MODIFICATIONS PROPOSED

Wind energy projects in the MSHCP should be able to proceed without burdensome case-by-case analysis of biological impacts provided that such projects meet certain minimum standards. The following are proposed conditions that acknowledge the unique status of wind energy project in the Coachella Valley, and their compatibility with the overall environmental protection goals of the MSHCP. We propose establishing wind energy as a section 7 Covered Activity provided these conditions are met:

- 1) The operation, maintenance, repair, and retrofitting of wind energy equipment on existing disturbed areas including, but not limited to, roads, collection equipment, and transmission facilities needed to support the wind energy equipment, within MSHCP boundaries are activities that do not constitute habitat loss or disturbance and are, therefore, Covered Activities.
- 2) Construction, removal and replacement of wind energy equipment including but not limited to roads, collection equipment, and transmission facilities needed to support wind energy equipment, within the MSHCP boundaries resulting in net disturbed areas limited to not more than 15 percents of a Project site shall be Covered Activities deemed consistent with the MSHCP and exempt from the Joint Project Review Process.
- 3) Construction, removal and replacement of wind energy equipment including but not limited to roads, collection equipment, and transmission facilities needed to support wind energy equipment, within the MSHCP boundaries resulting in net disturbed areas in excess of 15 percents of a Project site shall be reviewed through the Joint Project Review process to determine the net effect of additional disturbance requiring additional take authorization, if any, under the MSHCP.
- 4) MSHCP fees that are applicable to future projects will be calculated based upon the net non-temporary disturbance from those projects.
- 5) In the event that project owners replace existing wind turbine structures, and there is a net disturbance after reasonable steps are taken to restore previously disturbed areas that are no longer needed to operate the reconfigured facility, then only the net increase of disturbance (including disturbances associated with ancillary facilities), if any, would constitute disturbance. Conversely, where such equipment replacements result in a net gain of undisturbed areas, then such gains shall result in a mitigation credit to the project

AF-18

developer that can be applied towards existing or future projects, or which can be transferred or assigned to other entities.

- 6) Recognizing the benefits of wind energy on habitat preservation, the following shall apply to the developer/owners existing and future wind energy activities, as may be approved by the County or other governmental entities:

- i. Where there is a net increase in disturbance that constitutes a "take", whether from operations, maintenance and repowering activities or from newly developed projects, donation of property in fee and/or dedication of a conservation easement of similar lands in perpetuity from within or outside the project boundary may be made by the project developer/owner in lieu of payment of any applicable MSHCP fees.
- ii. "Edge Effects" or other similar concepts shall not apply to the developer/owner wind energy activities. Wind energy activities located near Conservation Areas shall be deemed to have no impacts within such Conservation Areas.

AF-18
Cont.

Thank you for considering our views. We appreciate the opportunity to provide input during this MSHCP decision making process. Please contact me if I can provide further information on any of our comments.

Respectfully submitted,



Bradford W. Adams

On behalf of WIND ENERGY PARTNERSHIP, A CA LP, WHITEWATER ENERGY CORPORATION, CABAZON WIND ENERGY, LLC, WHITEWATER DEVELOPMENT CORPORATION, SAN GORGONIO FARMS, INC., WHITEWATER MAINTENANCE CORPORATION, SGF LTD., ENERGY DEVELOPMENT AND CONSTRUCTION CORPORATION, THE STEVEN H. CHRISTENSEN TRUST

Cc: Paul S. Weiland
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Comment Letter AG



May 29, 2007

VIA HAND DELIVERY

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



**Re: Recirculated Coachella Valley Multiple Species Habitat Conservation
Plan/Natural Community Conservation Plan and Environmental
Impact Report/Environmental Impact Statement**

Dear Ms. Barrows:

These comments on the Recirculated Coachella Valley MSHCP/NCCP and EIR/EIS are submitted on behalf of Wintec Energy, Ltd. Wintec joins in the comments submitted last week by Wind Energy Partnership, Ltd. Wintec also reiterates and incorporates by reference its written comments on previous versions of the MSHCP; those comments were submitted on March 7, 2005 and February 6, 2006, and are part of CVAG's record on the MSHCP.

Wintec objects to the new version of the MSHCP. In some respects the Plan is so unclear that we cannot tell what effect it will have on existing wind energy facilities and new wind energy development in the Coachella Valley. In other respects -- such as the deletion of take authorization for existing uses and for the operation of wind energy conversion systems (WECS) -- the Plan's effect would clearly be negative. In fact, the Plan appears, for reasons we cannot fathom, to be actively hostile to wind energy uses compared to other land uses. To the extent that the Plan will interfere with the future of wind energy in the Coachella Valley, we object both to the Plan and to the EIR/EIS. The EIR/EIS does not analyze any of the significant environmental effects that would be caused by the Plan's interference with wind energy development.

AG-1

Comments on the MSHCP

I. Section 7.3.1 lists Covered Activities in Conservation Areas. Following protests by property owners, the November 2005 Final Draft of the MSHCP included among Covered Activities "Operation and maintenance of existing legal private uses as of the date of Plan approval." The current version of the Plan *deletes* this category of Covered Activities. Thus

AG-2

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Ms. Katie Barrows
May 29, 2007
Page 2

under the Plan, new uses throughout the 1.2-million-acre Plan Area could take Covered Species with impunity, but long-existing uses would remain vulnerable to claims of unlawful take by the resource agencies. The Plan gives no explanation for this change, which places long-existing, lawful land uses at a significant disadvantage compared to new land uses.

AG-2
Cont.

2. Section 7.3.1 of the new version of the Plan now includes the following statement: "*The MSHCP Plan (sic) does not provide Take authorization for wind energy facility operation.*" It is impossible to reconcile this provision with any intent other than to discourage, if not eliminate, wind energy development in the Coachella Valley. As noted above, the Plan would provide take authorization for activities throughout the 1.2-million-acre Plan Area that have a proven record of killing Covered Species. For example, Covered Species have been killed, and will be killed under the Plan, by being crushed on roadways and eaten by domestic pets. Nevertheless, the Plan encourages road and home development even in prime habitat for Covered Species.

AG-3

Operation of wind energy conversion systems (WECS), on the other hand, has no history of killing Covered Species. Yet these uses are singled out under the Plan for a gap in take authorization. WECS operations will, therefore, remain vulnerable to claims by the resource agencies that they are engaged in unlawful take. The Plan provides absolutely no explanation why it immunizes proven species-killing activities while penalizing wind energy facilities.

3. The MSHCP's requirements for repowering of existing WECS are unclear and cumbersome, and therefore discourage repowering. "Repowering" is replacing older wind turbines with new wind turbines. Because the new wind turbines are larger and more sophisticated than the older turbines, repowering generally involves placing the new turbines on new concrete pads in new locations on the site, rather than reusing the concrete pads on which the old turbines were situated. Our understanding of section 7.1 is that outside Conservation Areas, repowering, at least if it meets the definition of a "new project[]" approved pursuant to county and city general plans," would be subject to local control and would constitute a Covered Activity. But in Conservation Areas, at least some repowering projects might be subject to the cumbersome "Joint Project Review Process." There is no reason to subject wind energy repowering to this process.

The new paragraph added to section 7.3.1 of the Plan, addressing wind energy facilities, provides:

AG-4

New ground disturbance associated with repowering or development of new wind energy facilities shall be treated as a Covered Activity similar to development projects permitted or approved by Local Permittees. Within each Permittee's jurisdiction, existing wind turbines may be replaced with new turbines. If old turbines are removed and the former impact area is restored to a natural condition, an equal new area may be disturbed without counting toward the calculation of net disturbance. The MSHCP Plan does not provide Take authorization for wind energy facility operation. For further

Ms. Katie Barrows
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clarification of and discussion related to wind power facilities,
see Section 6.6.1.1 of the Plan and the Implementation Manual.

Section 6.6.1.1 sets forth the lengthy "Joint Project Review Process within Conservation Areas." Section 6.6.1.1 states that the JPRP applies to "all projects under the Local Permittees' jurisdiction in a Conservation Area that would result in disturbance to Habitat, natural communities, Biological Corridors, or Essential Ecological Processes." Reading the wind energy paragraph of section 7.3.1 together with the first sentence of section 6.6.1.1, it appears that a repowering project that results in no *net* ground disturbance would not be subjected to the cumbersome JPRP. But even this is not clear. Is our understanding accurate?

AG-4
Cont.

As Wintec has previously explained, and as the Wind Energy Partnership comment letter suggests, there is no reason for any repowering project to be subjected to the Joint Project Review Process. Wind energy projects disturb at most 15% of the land area of the sites they occupy, because adequate spacing must be maintained between individual wind turbines so wind flow will not be disrupted between one turbine and the next. Wind energy sites are also fenced. Accordingly, by their nature wind energy sites are hospitable to animals and plants. For this reason alone, the MSHCP should encourage rather than discourage wind energy repowering in the Coachella Valley.

4. The only reference in MSHCP section 6.6.1.1 to wind energy is the following sentence: "The Implementation Manual should be consulted to determine the specifics of calculating impacts of new or repowered wind energy facilities." Despite the fact that both section 7.3.1 and section 6.6.1.1 refer to the Implementation Manual for crucial information regarding wind energy projects, we have not been able to discover an Implementation Manual. Has this document been created? Why is it not included among the public review documents on CVAG's website?

AG-5

5. Just as WECS repowering should not be subject to the JPRP, neither should *new* WECS developments, for the same reasons described above. Wind energy development is, by its nature, friendly to animals and plants in the Coachella Valley. (The raptor issues that have arisen in Northern California have not occurred in the Coachella Valley, and raptors are not among the Covered Species addressed in the MSHCP.) Thus even leaving aside the fact that clean energy development should be encouraged (a topic discussed below), the MSHCP should encourage rather than discourage wind energy development from a habitat standpoint.

AG-6

Comments on the MSHCP Regarding Wintec's Property

6. Wintec currently owns, or has an interest in, land that is located along, and to the north and south of, I-10, between Highway 62 and Indian Avenue. It is in the County and the City of Palm Springs. Attached find copies of Figures 4-12d, and 4-11d which illustrates the issue of concern to our adjacent land. Fortunately we are far from Desert Hot Springs and assume, although we will need clear and concise assurances in this regard, that the issues of expanding the Conservation Area if certain acreage requirements cannot ultimately be achieved, relate to the areas around Mission Creek and not to the sand transport path shown on the attached figures.

AG-7

Ms. Katie Barrows
May 29, 2007
Page 4

The proposed sand transport path, in question connects the Upper Mission Creek Conservation Area with the Whitewater Floodplain Conservation Area bisects two wind farms passes under I-10 and connects to the Whitewater Plain Conservation Area south of I-10. It is crossed in several places by underground power lines, a major transcontinental fiber-optic trunk and dirt roads. Wintec plans to cross this path in the future with buried power lines, water mains and someday probably buried pipelines. The area of Palm Springs included in this path is destined for industrial development and is presently zoned for energy-industrial uses. While it is possible for the path to remain if its location is defined precisely (the disclaimer on the Plan's figures gives little comfort with respect to the actual locations of the Conservation Areas) there must be a clear enforceable understanding that it can be crossed as described above and that there will be no edge effects asserted with respect to this path.

AG-7
Cont.

Comments on the EIR/EIS

7. The fundamental flaw in the EIR/EIS is that it does not recognize the Plan's adverse effects on wind energy projects in the Coachella Valley and, therefore, does not address the significant environmental impacts that will result from curtailing those projects.

AG-8

8. As others have noted, the statement at page 4.4-5 of the EIR/EIS that "[o]ver the past 20 years, the most economically developable wind resources in the Plan Area have been developed" is simply incorrect. As technology evolves and demand for clean, renewable energy resources increases, increased wind energy development in the Coachella Valley -- which is one of the best, if not the best, wind energy resource areas on the planet -- has become not only economic, but essential. This fact is reflected in the increased demand for WECS projects in the Coachella Valley.

AG-9

9. EIR/EIS section 4.4 concludes that "existing and future Development of regional wind resources are not significantly in conflict with or constrained by adoption and implementation of the proposed Plan." This conclusion is, as discussed above, incorrect, because the Plan is actively hostile to wind energy development. EIR/EIS p. 4.4-5. If the Plan is not revised as we request to make the EIR/EIS statement accurate, then the EIR/EIS must be revised. An accurate discussion of energy conservation, including "the effects of the [Plan] on energy resources," in compliance with Appendix F to the CEQA Guidelines, must be provided.

AG-10

10. The EIR/EIS includes a two-page discussion of the air quality effects of the Plan. EIR/EIS pp. 4.9-12 - 4.9-13. This analysis does not acknowledge that the Plan will allow substantial pollutant-generating development, which would otherwise be hindered by species issues, to proceed. By ignoring this obvious effect of the Plan, the EIR/EIS is able to draw the erroneous conclusion that the Plan would cause no significant air quality impact. This error must be corrected.

AG-11

11. The EIR/EIS compounds this error by refusing to acknowledge the air quality impacts of stifling wind energy generation in the Coachella Valley. When wind energy development is curtailed, unmet demand for energy will be met predominantly by fossil fuels. Use of fossil fuels

AG-12

Ms. Katie Barrows
May 29, 2007
Page 5

causes emissions of criteria pollutants and carbon dioxide, all of which cause significant environmental effects. All of these impacts must be discussed in the EIR/EIS.

Carbon dioxide is of particular interest. Last year the State of California passed Assembly Bill 32, which sets goals for reduction of greenhouse gas emissions in California. The existing wind turbines in the Coachella Valley eliminate 1,200,800 *tons* of CO₂ per year. The EIR/EIS must discuss the effect of reduced wind energy generation on the State's ability to meet its goals under AB 32.

AG-12
Cont.

Very truly yours,



Frederick W. Noble
President/CEO












Enclosure

Comment Letter AG included an attachment that has been reviewed and considered in the response to this comment letter. The attachment has been scanned and is on the CD that accompanies this document.

EXHIBIT A

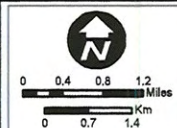
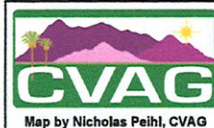
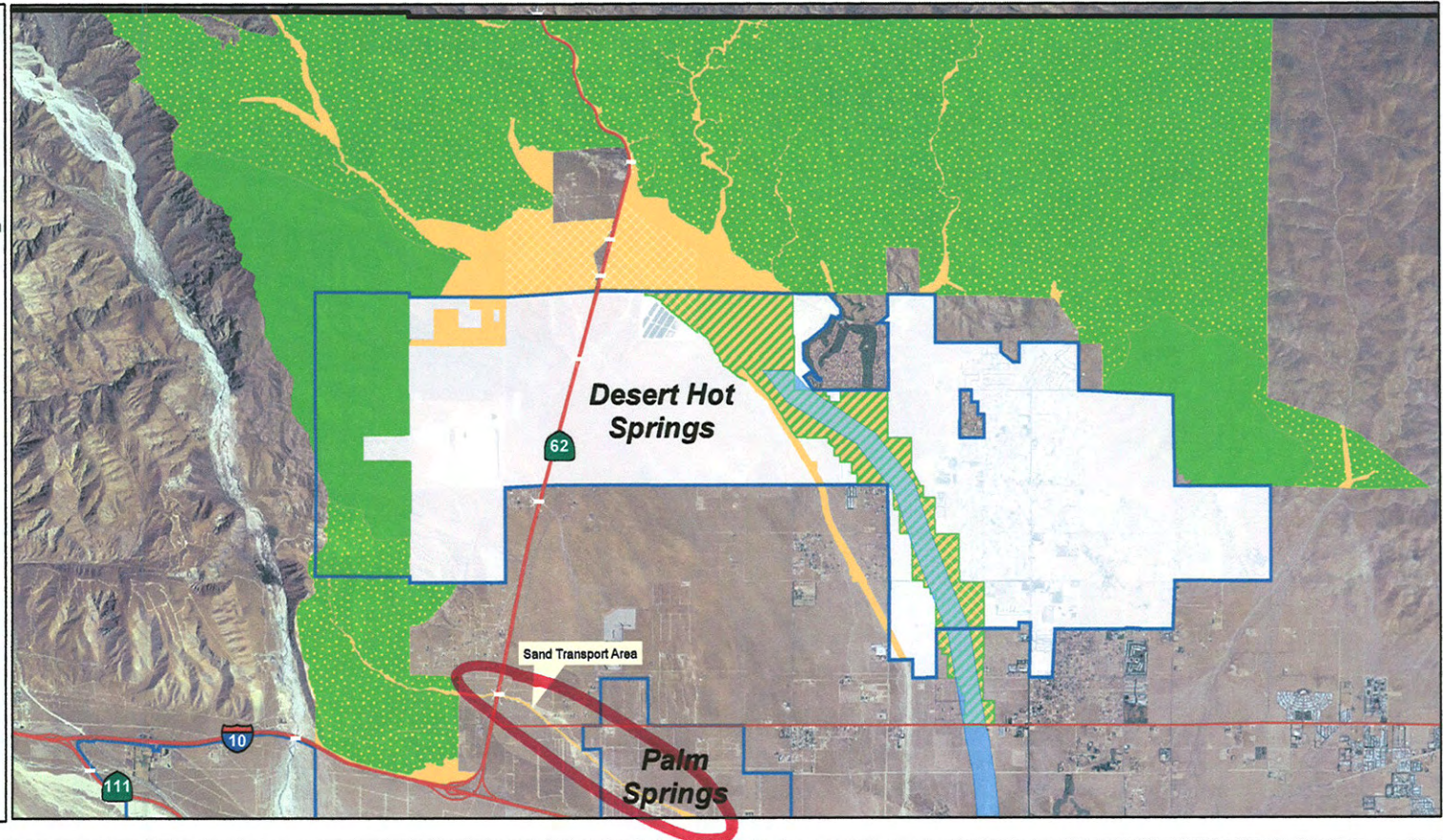
Recirculated Draft Coachella Valley Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan

Essential Ecological Processes & Biological Corridors

-  CVMSHCP Boundary
-  City Boundaries
-  Major Roads
-  Upper Mission Creek/Big Morongo Cyn
-  Morongo Wash Special Provisions Area
-  Morongo Wash Flood Control/Corridor
-  No Take Authorized
-  Bridge or Culvert
-  Corridors or Linkages
- Ecoprocess**
-  Sand Source
-  Sand Transport

2005 natural color mosaic courtesy of
National Agricultural Imagery Program.









DISCLAIMER: Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. CVAG and The County of Riverside make no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.



**Figure 4-12d: Upper Mission Creek/
Big Morongo Canyon Conservation Area**

Recirculated Draft Coachella Valley Multiple Species Habitat Conservation Plan and Natural Community Conservation Plan

Essential Ecological Processes & Biological Corridors

-  CVMSHCP Boundary
-  City Boundaries
-  Indian Reservations (Not a part)
-  Whitewater Floodplain Conservation Area
-  Bridge or Culvert
- Ecoprocesses**
-  Sand Transport
-  Corridors or Linkages
-  Major Roads

2005 natural color mosaic courtesy of National
Agricultural Imagery Program.

DISCLAIMER: Maps and data are to be used for
reference purposes only. Map features are
approximate, and are not necessarily accurate
to surveying or engineering standards. CVAG and
The County of Riverside make no warranty or
guarantee as to the content (the source is often
third party), accuracy, timeliness, or completeness
of any of the data provided, and assumes no legal
responsibility for the information contained on this
map. Any use of this product with respect to
accuracy and precision shall be the sole
responsibility of the user.

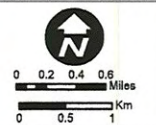
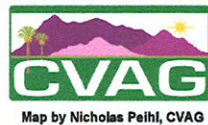
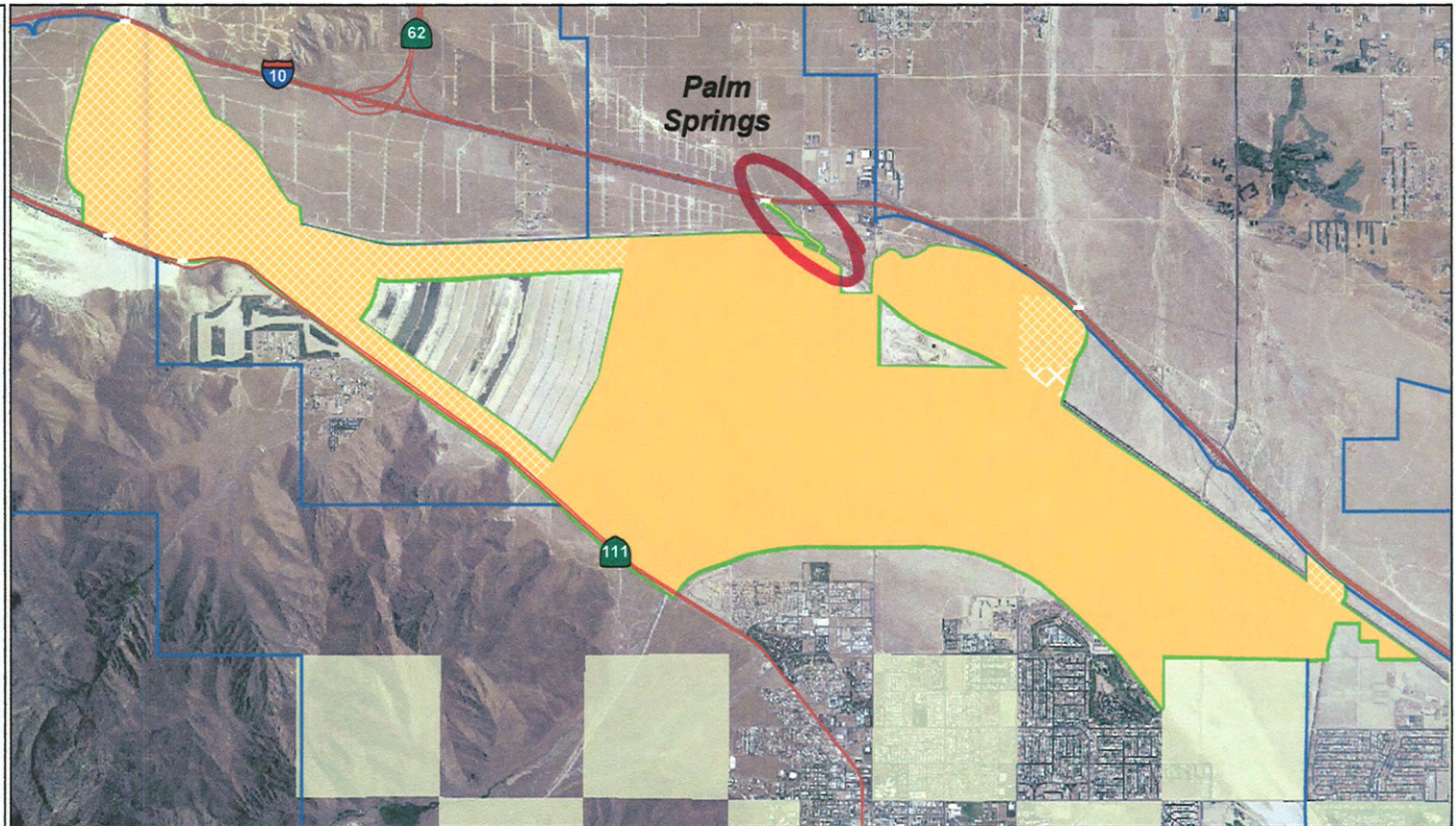


Figure 4-11d: Whitewater Floodplain Conservation Area

Comment Letter AH



WIND ENERGY PARTNERSHIP, L.P.

21515 Hawthorne Blvd., Suite 1059
Torrance, CA 90503
(310) 316-7337 Fax: (310) 316-7013
Email: SanGorgon@aol.com or WhitewaterWind@aol.com

May 29, 2007

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

Dear Mr. Sullivan,

The San Gorgonio Pass Wind Energy companies are pleased to comment on the Recirculated Draft Coachella Valley Multi-Species Habitat Conservation Plan ("MSHCP").

We incorporate by reference Wintec Energy Ltd.'s May 29, 2007 written comments on the MSHCP.

Thank you for considering our views. We appreciate the opportunity to provide input during this MSHCP decision making process. Please contact me if I can provide further information on any of our comments.



AH-1

Respectfully submitted,

Bradford W. Adams

On behalf of WIND ENERGY PARTNERSHIP, A CA LP,
WHITEWATER ENERGY CORPORATION, CABAZON WIND
ENERGY, LLC, WHITEWATER DEVELOPMENT CORPORATION,
SAN GORGONIO FARMS, INC., WHITEWATER MAINTENANCE
CORPORATION, SGF LTD., ENERGY DEVELOPMENT AND
CONSTRUCTION CORPORATION, THE STEVEN H.
CHRISTENSEN TRUST

Cc: Paul S. Weiland
Nossaman, Guthner, Knox & Elliott, LLP
18101 Von Karmon Avenue
Irvine, CA 92612-017

John J. Flynn III
Nossaman, Guthner, Knox & Elliott, LLP
18101 Von Karmon Avenue
Irvine, CA 92612-017



Comment Letter AI

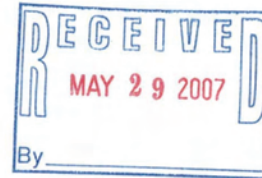
COACHELLA VALLEY DIVISION
74-130 COUNTRY CLUB DRIVE, SUITE 101
PALM DESERT, CA 92260

PHONE 760 601 3400
FAX 760 601 3437

WWW.SUNCAL.COM

May 23, 2007

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



Re: Recirculated Draft Coachella Valley Multi-Species Habitat Conservation Plan

Dear Ms. Barrows:

The purpose of this letter is to inform you that Exhibit L of the Memorandum of Understanding dated June 14, 2006, between the County of Riverside, Coachella Valley Conservation Commission, Coachella Valley Association of Governments, and the City of Indio Concerning the Implementation of the Coachella Valley Multiple Species Habitat Conservation Plan Regarding Citrus Ranch, has been slightly altered.

The golf course was redesigned to accommodate certain drainage and other concerns which resulted in the shifting of areas of take as previously laid out in Exhibit L. As the acreage of Take calculations were the same or less for each covered species and habitat, the project remains consistent with the Take allocated to the Citrus Ranch project in the above-referenced MOU and the Recirculated Draft CVMSHCP Conservation Goals and Objectives for the East Indio Conservation Area.

AI-1

Please see the attached Exhibit for your review and incorporation into the Recirculated CVMSHCP.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stan Brown'.

Stan Brown
Regional President, SunCal Companies

Enc.

Comment Letter AI included an attachment that has been reviewed and considered in the response to this comment letter. The attachment has been scanned and is on the CD that accompanies this document."

The map content is data from Riverside County GIS and CVAU.org. The imagery is from Photovergeer.com. The map is not intended to replace a survey by a Licensed California Surveyor. Stantec does not warrant the accuracy of this data. This map is for reference only and should not be used for construction.

Legend

- Temporary Disturbance
- Areas to be Removed from Conservation Area
- Possible Revegetation Area
- Citrus Ranch Project Boundary
- CVMSHCP Conservation Area

East Indio Hills Conservation Area



Areas in red will be removed from the conservation area.

Areas in dark green are temporary disturbance and will need to be restored and conserved.

Areas in yellow are possible areas for revegetation.

Geographic Information Systems



Stantec
70733 Fred Waring Drive Suite 100, Palm Desert, CA 92260 Phone 760 345 1844 Fax 760 345 1066 www.stantec.com

Cartographic Design By: Jake Walters Printed: 11:01 pm 04/17/2007 File: C:\407674076722\subs\GIS\Map\11070417_Exhibit_L.mxd

Like Exchange Areas Removed From Conservation Area - Exhibit "L"
Citrus Ranch Project, City of Indio

1 inch equals 1,800 feet



Comment Letter AJ

May 29 07 04:05p

Jon Gordon

760-892-8729

p.2

ROSENTHAL & ASSOCIATES

To: Coachella Valley Association of Governments by fax: 760-340-5949
US Fish and Wildlife Service – 760-431-9624

From: Jon Gordon – Director of Commercial Real Estate

RE: Re-circulated Draft CVMSHCP

I am writing on behalf of my client Leonard Coyle, who as you all know owns 100 acres in Thousand Palms. APN numbers 651230009/651030001. Mr. Coyle is 93 years old, 90% blind and in not particularly good health.

Mr. Coyle along with many other land owners fought hard to obtain the current zoning for their land in the 90's. This zoning would allow for Development under the R-1, R-3 Zoning. However, the Board of Supervisors acted in a cowardly way of changing the zoning in this area by amending the General Plan in 2003 which completely conflicts with the current zoning thus rendering the land valueless in comparison to what is was worth both before and after the 1990's re-zoning.

This ill fated CVMSHCP, which plan calls for the need of \$100's of millions of dollars to be implemented, is not 1/10 of the way funded. A federal law suit was filed against a similar plan in San Diego County and a Federal Judge ruled to block such a plan because you cannot have a plan that is open ended without the appropriate funds.

Mr. Coyle has received offers from environmental groups to purchase his property over the past year, but they made offers with no money in hand. In other words "Bogus Offers and Bogus Contract Proposals." Bad faith negotiations. Recently, Mr. Coyle had 5 additional offers from bon a fide developers who wanted to build affordable housing in Thousand Palms on his 100 acres. All of these companies were told by the various agencies including a high level source in the Riverside County Board of Supervisors office that "no way no how would anything ever be built on this property.

There is a serious problem here when it appears that County Government along with Environmental Groups act in collusion with one another. All to strip land owners of the fair market value of their properties. To spend millions of dollars on taxpayer money for an ill fated plan such as this is unconscionable and irresponsible. Katie Barrows fights for a plan that includes the Fringe Toad Lizard, which is not even an endangered species all while her husband is the chief biologist for the Fringe Toad Lizard. Nepotism, or is this everyone's imagination.

22880 FRED WARING DR STE 88 PALM DESERT, CA 92260
PHONE (760)773-0063 DIR (760)409-8122 FAX (760)406-4061 EMAIL: jgordond@earthlink.net

AJ-1

AJ-2

AJ-3

May 29 07 04:05p

Jon Gordon

760-992-8729

p.3

FOR ALL THESE REASONS AND MANY MORE WHICH WILL AND HAVE BEEN STATED BY MANY OTHERS IN THE COACHELLA VALLEY, THE CYMSHCP SHOULD BE STOPPED IMMEDIATELY UNTIL SUCH TIME AS A REALISTIC PLAN CAN BE WRITTEN BY MORE ESTABLISHED INDIVIDUALS WHO CAN FIND BALANCE BETWEEN THE ENVIRONMENT, DEVELOPMENT AND TREATING LAND OWNERS RESPONSIBLY.

AJ-4

Sincerely


Jon Gordon

Director of Commercial Real Estate

Cc Leonard Coyle

Comment Letter AK

05/30/2007 02:35 7603249121

HOME

PAGE 01

May 31, 2007

VIA FACSIMILE & E-MAIL

760 340 5949

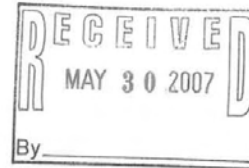
Katie Barrows

CVAG

Phone: 760 346 1127

Facsimile: 760 340 5949

Email: kbarrows@cvag.org



RE: REQUEST FOR REMOVAL OF LAND
PARCELS FROM CVMSHCP

Dear Katie,

I enjoyed speaking with you this morning. In response to that conversation, I am sending you the following list containing the Assessor Parcel Numbers of the land we hereby request be removed from the CVMSHCP:

ASSESSOR PARCEL NUMBERS	ACREAGE
660 290 012	28.72
660 300 001	42.97
660 300 002	14.72
660 300 003	27.60
660 300 004	5.76
660 300 005	6.35
660 300 006	29.16

AK-1

In prior conversations with Bill Havert, Bill said my proposal to remove the 1/4 mile frontage strip on both sides of Gene Autry Trail made sense, because removing and developing this 1/4 mile strip conforms with the objectives of the CVMSHCP in protecting species, particularly the fringe-towed lizard.

AK-2

Bill supported this modification and asked that I e-mail to you a map of the referenced 1/4-mile strip. I did so, at that time. I have attached a copy of the referenced map to this fax and have also again e-mailed it to you, concurrently herewith. The 1/4-mile strip is shown in white on both sides of Gene Autry,

AK-3

Bill supported such removal and development, because he said this 1/4-mile strip along both sides would prevent the lizard and other animals from entering onto Gene Autry, a future heavily-trafficked major 6-lane arterial.

05/30/2007 02:35 7603249121

HOME

PAGE 02

Katie Barrows
May 31, 2007
Page 2

Bill further stated that removal and development of this strip would be beneficial in meeting the important goal of containing sand west of Gene Autry and in the area northwest of the Whitewater Storm Channel where it can be directed into the wash by future levees, in order to facilitate water and wind transport of sand into the wash to replenish sand within the wash, the primary remaining habitat of the Fringe-toed Lizard.

AK-4

As you are aware, the future bridge will be constructed entirely within tribal reservation section 6, T4S, R5E, adjoining the area hereby requested for removal from the conservation area. Sand allowed to move west of Gene Autry Trail will be prevented from entering the wash by the existing development and planned future development of tribal section 6 extending along the entire west side of the bridge and storm channel, south one-mile to Vista Chino and Escena Golf Club.

AK-5

In addition, development of this prime major arterial frontage strip for commercial development has been a long-term goal and stated intent of the City of Palm Springs, and such development is critical to the economic future of the city.

AK-6

My family has held most of the subject land for more than 20 years, and has invested a huge amount of money and paid a lot of taxes in maintaining the above listed parcels of land for such a long time. If this land is not removed from the conservation area of the CVMSHCP it will unfairly take an extremely valuable asset from us, after so many years of time, expense and plans.

AK-7

Thank you for your kind consideration of this request.

Yours very truly,

Wes Brown
browncorp@gmail.com
760 324 0899
760 324 9121 (fax)

Comment Letter AL

Mr. John Wohlmuth, Executive Director
Coachella Valley Association Of Governments
73710 Fred Waring Drive, Suite 200
Palm Desert, California 92260

May 29, 2007



Dear Mr. Wohlmuth;

My wife and I own a small, five acre parcel adjacent to the Dos Palmas Preserve which we purchased in the early 1980's while living and working at the Rancho Dos Palmas ranch complex. We purchased the property with the hope that someday we would be able to afford to develop a small get-away property where we could enjoy the unique surroundings of the area and relax in seclusion. With power and water already available on the property, we felt fortunate to purchase the property for what we considered a bargain since these basic living requirements are not available to most remote parcels. We discovered in 2004 that, without our knowledge or consent, the property was included into the Coachella Valley Multiple Species Habitat Conservation Plan and encumbered with a Riverside County imposed Land Use Designation overlay OS-CH that was supposed to be reserved for government owned or existing conservation lands. I brought this to the attention of CVAG during the last CVMHCP comment period in January, 2005, and was contacted a short time later by staff of CVAG, Supervisor Roy Wilson's office and the Riverside County Planning office assuring me that that designation was mistakenly applied to that property and a correction would soon be done. Now, over two years later, I was again shocked to find out that the Riverside Planning office in Indio would not accept a application for a Certificate of Compliance for the property because it was designated as Open Space-Critical Habitat. I explained the issue and was told that a letter from CVAG would be required to submit the paperwork. After several phone calls it became apparent that no individual was going to provide me with the letter that I needed to proceed with what should have been a routine submission. I cannot help but think that this entire episode was simply a diversionary tactic and my property is a victim of government agencies using planning tools to prevent private property appreciation, sale, or development.

AL-1

I understand that long range planning for development is important, particularly in high-density or rapidly developing areas such as the western portion of the Coachella Valley. I do not believe however that private landowners in the currently undeveloped portions of the Valley should subsidize that growth. If a city or community grows and requires more services, and open space and additional environmental mitigation is a necessary requirement to establish that service, the community that benefits from that development should pay for that service, at the going rate, and at the time it is required. If specific properties are identified as critical to the establishment of a particular habitat, the collective benefiting agencies involved should purchase outright those properties rather than relying on alternative mechanisms of assuring the long range availability of that property. In its current form the CVMHCP simply changes the individuals who will profit from the implementation of the plan from the rural landowner to the current homeowners and builders within the sphere of influence of the Plan stakeholders.

AL-2

AL-3

The property with which I am concerned is Assessors Parcel Number 733130001-0 which is 5.00 acres located in the Northwest corner of Section 9, Township 8S, Range 11E. This parcel is immediately inside the Rancho Dos Palmas ACEC western boundary and runs 300 plus feet along the power line/ access road (east/west) that leads into the Dos Palmas area, and over 600 feet in a southerly direction toward the San Andreas Oasis.

AL-4

Figure 4-24d in the Draft Coachella Valley Multiple Species Habitat Conservation Plan shows this parcel as Level 2 Conservation Land. In section 2.4, Public and Private Conservation Lands, discussion of the meaning of Conservation Levels is implied to refer only to existing public and private conservation land, and all private land, (except deed restricted and non-profit conservation organization land), should be designated as Level 4, non-conservation land, (section 2.5, Non-conservation Lands). In addition, as previously mentioned, my property has also been encumbered with a Landuse Designation OS-CH; Open Space – Conservation Habitat. This designation is a result of the adoption by the Riverside County Board of Supervisors of a new General Plan on October, 2003. The Riverside County Integrated Projects, Land Use Designations Summary Table, (Table LU-3), defines Open Space - Conservation Habitat as: “applies to lands conserved and managed in accordance with adopted Habitat Conservation Plans”; adopted being the operative word. This discrepancy illuminates the intimate relationship that the developers of the CVMSHCP have had with the adoption of land use overlay designations adoptions by the Riverside County Planning Department. It is also interesting to note that the term “willing sellers” has been removed from the current version of the CVMSHCP, which was used in the original draft CVMSHCP to assure private landowners that the conservation plan was not a governmental land grab.

AL-5

Since this written comment is my only remaining opportunity to make an official request to CVAG with regards to the CVMSHCP, I would like to make the following request for the record:

AL-6

1. The boundaries of the Dos Palmas Conservation Area are redrawn to exclude my property. As my property is relatively small and does not provide significant habitat, and the Northwest corner of my property is the current boundary of the Dos Palmas Conservation Area, I believe this slight adjustment is a reasonable request.

The current CVMSHCP, Section 4.3.19, Dos Palmas Conservation Area, states that the Dos Palmas Conservation Area will expand to the to the South to connect with potential conservation land in Imperial County, and to the North, to connect with the Mecca Hills/Orocopia Mountains Conservation Area. No expansion to the West is discussed or proposed, indicating that authors of the plan did not see significant benefit to expanding the Dos Palmas Conservation Area to the West of its current boundaries. Thus it follows that the removal of a small, 5-acre parcel of land from the Western edge of the Conservation Area would also not have a significant impact on the goals of the Conservation Area.

AL-7

2. Remove the Land Use Designation OS-CH from my property, and any other private properties mistakenly mislabeled; as that designation was only applicable to properties under currently adopted conservation programs. The CVMSHCP is in the draft process and not officially adopted and by definition cannot be applied to those properties.

AL-8

3. Prevent the progress of the CVMSHCP until all mistakenly designated properties and any others in a similar situation are brought into alignment with the definitions and positions of the draft CVMSHCP.

AL-9

4. Designate all mistakenly land use encumbered properties as permanent revertants to their previous zoning designations to eliminate the possibility of retribution upon adoption of the CMSHCP.

AL-10

I appreciated this opportunity to comment on the Draft Coachella Valley Multiple Specie Habitat Conservation Plan and look forward to receiving a response to my concerns, questions, and requests.

Sincerely;



Rod Chamberlain
84327 Corte Santos
Coachella, CA. 92236
(760)702-1976



Deborah Chamberlain
84327 Corte Santos
Coachella, CA. 92236
(760) 265-9167

Comment Letter AM

To: Katy Burrows
From: Philip B Kerr
Subject: CVMSHCP



Dear Katy

I am writing to protest the implementation of the MSHCP.

I own three parcels in the plan boundaries totaling 23.99 acres in the county area of Desert Hot Springs.

a parcel one block from my parcels sold to Michael Glews Construction for two point six million dollars in March of 2006. The parcel was 2 acres.

My question is, does the Department of CVAG have enough dollars at this time to purchase my land at a comparable price? Please respond.

Philip B Kerr
PO Box 269
Desert Hot Springs Ca. 92240

760 6683415

AM-1

Comment Letter AN

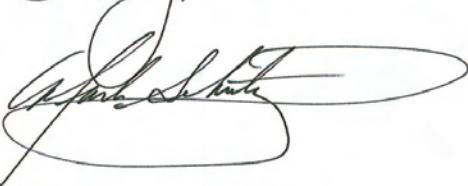
Mrs Katie Barrows,
c/o Coachella Valley Assoc. of Home
73-710 First Waring Dr. #200
Palm Desert, Ca. 92260

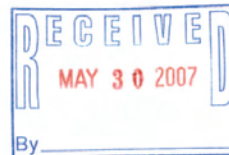
May 29, 2007

Dear Mrs Barrows,

My name is Mark Schulte and I have two properties in your Multi-Species Habitat Conservation Plan. In reviewing your plan I've become concerned because I don't think your funding sources will be adequate to finance the purchase of my properties in a timely manner. My properties are a substantial investment for me and my family so I would like assurance that a sale to CVAP of these properties would be handled promptly and that we would receive "fair market value." Please respond in a timely manner and thanks for your help in advance.

AN-1

Sincerely,




Mark Schulte
7223 Tolintina Way
Coachella, Ca. 92011
(760) 492-8555

Comment Letter AO

WILLIAM & LESLIE PUGET
P.O. Box 975
La Quinta, California 92247-0975

Via: Overnight Courier



May 28, 2007

Coachella Valley Association of Governments
73710 Fred Waring Drive
Suite 200
Palm Desert, California 92260-2516

RE: Coachella Valley Multiple Species Habitat Conservation Plan (the "Plan")

A portion of our principal residence has been included in the conservation area. We are very disturbed that after more than 20 years of ownership some group whom we've never met nor has ever been to our home could change the zoning of our property, thereby denying us its economic use and severely impacting its value.

AO-1

In more than two decades of ownership we have never seen any of the species that are to be protected by the plan. We do not believe any study of our property has been undertaken to determine if these species could dwell on our property, nor has any survey been completed, as we do have improvements in areas intended to be restricted by the Plan.

AO-2

The approval of this Plan would place an unfair burden on existing property owners adjacent to the mountains and impose only on them the obligation to obtain approvals from an outside agency and pay a mitigation fee when we build on useable areas of our land. If the Plan is truly beneficial to the community at large, then it seems only logical and equitable that any costs of the plan be shared by the entire community.

AO-3

While we endorse planned development and conservation, we believe it should be done carefully and thoughtfully, not by wholesale changes and heavy-handed regard for details. We remain OPPOSED to the Plan. If the objective of the plan is so important than we continue to believe the only proper and fair approach for all would be for the Plan to acquire property on the open market when it becomes available and then change the zoning. If that is not a fair suggestion, we would like to know why.

AO-4

We are requesting that our property of approximately 4 acres (parcel 658 170 003) be EXCLUDED from the Plan.

AO-5

Sincerely,


Leslie Puget

Comment Letter AP

05/25/2007 15:28 FAX 949 833 7878

N S K & E / DC

002/008

LAW OFFICES

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PAUL S. WELAND
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May 29, 2007

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AUSTIN, TEXAS 78701-2745
(512) 279-4977

REFER TO FILE NUMBER
260477-0001

VIA FACSIMILE AND U.S. MAIL

Katie Barrows
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260
Fax (760) 340-5949

Jim Bartel
Carlsbad Fish & Wildlife Office
6010 Hidden Valley Road
Carlsbad, CA 92011
Fax (760) 431-5902

Re: Recirculated Draft Coachella Valley Multiple Species Habitat
Conservation Plan

Dear Ms. Barrows & Mr. Bartel:

We represent DHS Development, which owns an approximately 78-acre parcel in the City of Desert Hot Springs ("City"). The parcel is bordered by a Post Office to the East, by a residential subdivision to the Northeast, by scattered residences to the West, and by undeveloped land to the Northwest and South. Big Morongo Wash runs along the western edge of the property.

As you know, in June 2006, the City voted against approval of the Coachella Valley Multiple Species Habitat Conservation Plan ("MSHCP"). In response, the Coachella Valley Association of Governments ("CVAG") removed the City as a Permittee and circulated the Revised Draft Coachella Valley Multiple Species Habitat Conservation Plan ("Revised MSHCP"). Nevertheless, CVAG inexplicably included portions of the City – including the entirety of DHS Development's 78-acre parcel – in both the Plan Area and one of the Conservation Areas in the Revised MSHCP.

The Revised MSHCP and Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/S") represent government over-reaching as they apply to the City and DHS Development. For the reasons stated below, we urge CVAG, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service to reconsider their legally indefensible attempt to regulate land and activities outside of their respective jurisdictions.

AP-1

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003/008

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

Katie Barrows, Director of Environmental Resources
May 29, 2007
Page 2

I. THE MSHCP IS FLAWED.

The purpose of the Habitat Conservation Planning provisions of the Endangered Species Act ("ESA") is to provide sufficient incentives to landowners to participate in the development of long-term conservation plans. See H.R. Conf. Rep. No. 97-835 at 30-31 (1982). In exchange for conservation measures, which may include the substantial commitment of financial and other resources, the proponents of a Habitat Conservation Plan ("HCP") that is approved under section 10(a) of the ESA will receive incidental take coverage for activities covered by the HCP. The decision to prepare an HCP – and concomitant commitment of resources – is voluntary. *Forest Conservation Council v. Rosboro Lumber Co.*, 50 F.3d 781, 783 (9th Cir. 1995).

One or more local governments may elect to prepare an HCP and obtain an incidental take permit then exercise their police powers to require landowners within their jurisdictions to comply with the HCP and permit. Even so, the initial decision to prepare the HCP is a voluntary decision. Neither the City nor DHS Development elected to participate in the Revised MSHCP. Therefore, CVAG cannot impose the requirements of the Revised MSHCP within the City.

Nevertheless, the Revised MSHCP includes the following language: "As a result of a decision of the City of Desert Hot Springs not to participate in the Plan, private lands within the city limits of Desert Hot Springs are not included in the Conservation Area, with the exception of those lands necessary to provide for flood control and associated habitat conservation along Morongo Wash." Revised MSHCP at 4-59. CVAG has failed to make any effort to justify its action to designate portions of the City as Conservation Areas, thereby disregarding the City's decision to opt out of the MSHCP.

The Revised MSHCP includes DHS Development's parcel in a Conservation Area. The DEIR/S indicates that land within the City that is also in a Conservation Area "would be placed in conservation under the MSHCP" provided the Revised MSHCP is adopted. MSHCP at 4.8-10 (emphasis added). Thus, circulation of the Revised MSHCP constitutes the first step in an effort by CVAG to ultimately secure title to the parcel owned by DHS Development. CVAG's action is inconsistent with the Habitat Conservation Planning provisions of the ESA and conflicts with other federal and state laws.

One of the primary objectives of the plan to "[i]mprove the future economic development in the Plan Area by providing an efficient, streamlined regulatory process..." MSHCP at 1-2; DEIR/S at 1-6. With respect to land within the City, the MSHCP turns this objective on its head. It complicates efforts of the City and landowners to promote economic development and imposes a regulatory process without any benefit. The MSHCP and DEIR/S make it clear that CVAG intends to take DHS Development's parcel of land and hundreds of additional acres of land within the City. But it does not specify how CVAG intends to do so without violating the law.

AP-2

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Katie Barrows, Director of Environmental Resources
May 29, 2007
Page 3

II. THE DEIR/S IS FLAWED.

The DEIR/S for the Revised MSHCP is deficient, *inter alia*, because it fails to account for adverse impacts to the City and its populous. Under CEQA, an EIR must address a proposed project's "significant effects on the environment." CEQA § 21100(b)(1). A significant effect on the environment is defined as "a substantial, or potentially substantial, adverse change in the environment." CEQA § 21068. The EIR must identify both direct and indirect significant effects. CEQA Guidelines § 15126.2(a). And the EIR should encompass both short-term and long-term effects. *Id.* NEPA imposes similar requirements with respect to EISs. *E.g.*, 42 U.S.C. § 4332(2)(C)(i); 40 C.F.R. § 1502.16(a) & (b).

AP-3

A. Land Use Impacts on Desert Hot Springs are Significant.

The DEIR/S concludes that "no significant adverse impacts to land use would occur" as a result of implementation of the Revised MSHCP. DEIR/S at 4.2-17. But the DEIR/S fails to disclose and analyze potentially significant effects on the City. Using the thresholds for significance set forth in the DEIR/S, it is plain that the Revised MSHCP would result in significant adverse impacts to land use.

The DEIR/S provides that the Revised MSHCP "would have a significant effect on land use and planning" if, among other things, it "conflict[s] with the objectives of ... local [] land use plans, policies, or controls" or "[p]hysically divide[s] an established community." DEIR/S at 4.2-6. The DEIR/S then concludes that "[n]o conflicts with local ... land use plans, policies or controls have been identified" and that the Revised MSHCP would not "physically divide an established community." *Id.* at 4.2-17.

But the Revised MSHCP conflicts with the City of Desert Hot Springs General Plan. Land identified in the City's General Plan Land Use Element as medium density and high density residential is included in the Upper Mission Creek/Big Morongo Canyon Conservation Area. Compare City of Desert Hot Springs General Plan Land Use Element at 11-10 with Revised MSHCP at 4-58 to 4-71. In fact, the DEIR/S discloses that more than 46 percent of the lands available for medium density residential development within the City would be placed in conservation under the Revised MSHCP. DEIR/S at 4.8-10. The DEIR/S also discloses that the Revised MSHCP would impact lands available for high density residential, commercial, and industrial development within the City. DEIR/S at 4.8-11. This conflict between the Revised MSHCP and the City's General Plan is significant and exceeds the significance threshold established by the DEIR/S.

AP-4

Furthermore, the Revised MSHCP physically divides the City of Desert Hot Springs. The DEIR/S discloses this fact: "the Upper Mission Creek/Big Morongo Canyon Conservation Area[] does adjoin the existing urbanized portion of Desert Hot Springs and would create a

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Katie Barrows, Director of Environmental Resources
May 29, 2007
Page 4

separation between it and future planned development." DEIR/S at 4.2-7. Thus, the Revised MSHCP would plainly divide areas of the City from one another.

B. Housing Impacts on Desert Hot Springs are Significant.

The DEIR/S also concludes that the Revised MSHCP would not "significantly constrain development potential within the Plan Area." DEIR/S at 4.8-29. The DEIR/S also asserts that "impacts to future development in the Plan Area would be less than significant for CEQA analysis purposes." *Id.* But the DEIR/S ignores impacts to residential development within the City.

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

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

The response to these arguments that might be advanced by CVAG and is included in the Revised MSHCP is that there are lands outside the Conservation Area and within the City available for residential development. DEIR/S at 4.8-10. But CVAG cannot override the City's General Plan and local land use authority by edict. And, in any event, this argument does not detract from the conclusion that the impacts to housing are significant.

AP-5

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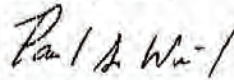
NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

Katie Barrows, Director of Environmental Resources
May 29, 2007
Page 5

CONCLUSION

We urge CVAG to respect the decision of the City not to participate in the Revised MSHCP and to remove the entirety of the City from the Revised MSHCP Conservation Areas.

Very truly yours,



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

cc: Kim Nicol, California Department of Fish and Game
Alex Bias, Mayor, City of Desert Hot Springs
Ann Marie Gallant, City Manager, City of Desert Hot Springs
Amir Victory, DHS Development
Hossein Safavi, DHS Development

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Comment Letter AQ

Christopher M. Hinojosa
P.O. Box 5939
La Quinta, California 92248

May 25, 2007

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

RE: Letter date March 21, 2007, about proposed CVMSHCP plan

Dear Mr. Wohlmuth:

Unless and until the proposed CVMSHCP can and will pay immediately upon the implementation of the plan myself and my family the 2.85 million dollars that I was offered for and my property was in escrow for (which fell out of escrow because of the proposed CVMSHCP) when I placed it on the real "fair market".

AQ-1

Sincerely,



Christopher M. Hinojosa
Coachella Valley Property Owner

Comment Letter AR



To John Wohlmuth
Executive Director C.V.A.G.
From Philip B. Kerr
Subject C.V. MSHCP

I am opposed to the MSHCP
down three parcels of land
totaling 23.99 acres within
the plan boundaries. My
land is also within the
proposed Morongo Wash special
provisions area, which I also
oppose. It is plain that the
Morongo Wash plan is a
back door scheme to get
land in P.H.S back into the
MSHCP.

AR-1

Philip B. Kerr
Philip B. Kerr
P.O. Box 269
D.H.S. CA. 92240
760-668-3415

05-29-2007 03:52 LEWAND 1-951-461-2562

Comment Letter AS

39431 DAPPLE COURT
MURRIETA, CALIFORNIA 92562
951-461-2140 OFFICE/MESSAGE
951-461-2562 FAX
LEWANDONE@MSN.COM

WILLIAM P. LEWAND
CONSTRUCTION ENGINEERING

Fax



To: MS. KATIE BARROWS/JOHN From: WILLIAM P. LEWAND
WOHLMUTH
Fax: (760) 340-5949 Pages: THREE (3)
Phone: (760) 346-1127 Date: MAY 29, 2007
Re: REMOVAL OF SCRIBE FROM
PROPOSED CONSERVATION ERES. CC:
SEGMENT No. 060 30007-B

☒ Urgent ☒ For Review ☐ Please Comment

ATTENTION: KATIE BARROWS/JOHN WOHLMUTH

• Comments:

PLEASE PROCESS IMMEDIATELY.

SINCERELY
WILLIAM P. LEWAND
William P. Lewand

05-29-2007 03:52 LEWAND 1-951-461-2562

PAGE:2

WILLIAM P. LEWAND
39431 DAPPLE COURT
MURRIETA, CALIFORNIA 92562
951-461-2140
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LEWANDNONE@MSN.COM

.....
WILLIAM P. LEWAND

MAY 29, 2007

COACHELLA VALLEY ASSOCIATION OF GOVERNMENTS
73-710 FRED WARING DRIVE, SUITE 200
PALM DESERT, CALIFORNIA 92260

RE: ASSESSMENT NUMBER 660300007-8
THE REMOVAL OF ACRAGE OWNED BY "WL PROPERTIES" POPOSED IN THE CONSERVATION
PLAN AREA

ATTENTION: MR. JOHN WOHLMUTH/KATIE BARROWS

LET ME BEGIN THIS CORRESPONDENCE BY INTRODUCING MY PARTNER, "MR. GEORGE WU"
AND MYSELF, "WILLIAM P. LEWAND." WE ARE THE OWNERS OF A PIECE OF PROPERTY ON
"GENE AUTRY TRAIL," PALM SPRINGS, CALIFORNIA. THIS PIECE OF PROPERTY IS 22.68ACRES
M/L IN POR S ½ OF SEC. 31 T3S R5E, (FOR A TOTAL DESCRIPTION, PLEASE SEE ASSESSORS MAPS.)

THE PROPERTY WAS PURCHASED UNDER THE NAME OF "WL PROPERTIES." MY PARTNER AND
MYSELF BOUGHT THIS PROPERTY IN EXCESS OF FIFTEEN, (15), YEARS AGO FOR OUR
RETIREMENT. BOTH OF US ARE IN OUR LATE SIXTIES AND NOW HAVE THIS PROPERTY UP FOR
SALE. THIS PIECE OF PROPERTY CONSTITUTES MY PARTNERS AND MY FAMILIES FUTURE, AND
OUR CAPABILITIES TO RETIRE. WITHOUT IT BEING SOLD FOR A SIGNIFICANT PROFIT WE WILL
NOT BE ABLE TO RETIRE AND CAUSE A MAJOR HARDSHIP ON OUR FAMILIES. MY WIFE,
PERSONALLY SUFFERS FROM "LUPUS", RHEUMATOID ARTHRITIS, ETC., ALL OF WHICH ARE
DEBILITATING DISEASES AND HAVE PUT HER IN BED AND NEEDING ASSISTANCE. SHE CAN NO
LONGER HELP BRING AN INCOME INTO THE FAMILY AND IS IN NEED OF CONSTANT MEDICAL
ATTENTION AND MINE. BECAUSE OF HAVING FOUR CHILDREN AND THEN THE ONSET OF
THESE ILLNESSES WE WERE NOT ABLE TO ESTABLISH A NORMAL AVENUE OF RETIREMENT
FUNDS, I.E. IRA OR KEOGH AND BASICALLY ARE LOOKING TO THIS SALE TO ALLOW US TO
HAVE RETIREMENT IN OUR FUTURE AND FUTURE MEDICAL CARE THAT IS REQUIRED BEING
ABLE TO BE PROVIDED FOR MY WIFE.

WE HAVE GONE TO YOUR WEBSITE "PRELIMINARY CONSERVATION REPORT." WE ENTERED
OUR APN NUMBER AND IT SHOWS AT THIS TIME THAT THE PROPERTY IS NOT IN THE
PROPOSED CONSERVATION AREA. IT SEEMS TO BE, AT THIS TIME, THAT THERE IS
CONFLICTING INFORMATION. PLEASE KEEP THIS LETTER ON FILE, AS THE HARDSHIP WOULD
BE VERY REAL. IT HAS BEEN AN EXTREME HARDSHIP ALREADY WITH LOSS OF INCOME, ETC.
AS LISTED ABOVE AND WE NEED YOU TO BE AWARE OF WHAT WE ARE GOING THROUGH.

PLEASE KEEP US INFORMED.

SINCERELY,

William P. Lewand
WILLIAM P. LEWAND

.....



AS-1

05-29-2007 03:52 LEWAND 1-951-461-2562

PAGE: 3
Page 1 of 1

WILLIAM AND KATHLEEN LEWAND

From: "George Wu" <georgew@sprintercm.com>
To: <lewandoneonone@msn.com>
Cc: <w3w3w3w3@yahoo.com>
Sent: Tuesday, May 29, 2007 3:12 PM
Subject: Emailing: db_search

Preliminary Conservation Report

Enter your APN (Assessor's Parcel Number) below.
Do not use "-" or other non-numeric characters.

Example 123456789 NOT 123-456-789

660 Get the conservation report for my parcel

Your parcel does not appear to be in a conservation area.
If no records are returned and you typed the number correctly your parcel is *not* in a conservation area.

This is a PRELIMINARY report and is for informational purposes only.
Property owners with parcels INSIDE CONSERVATION areas should contact CVAG for detailed information.

For more information, you can visit the CVAG and CVMSHCP websites.



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AS-1
Cont.

5/29/2007

Comment Letter AT



17th Floor | Four Embarcadero Center | San Francisco, CA 94111-4106
415-434-9100 office | 415-434-3947 fax | www.sheppardmullin.com

Writer's Direct Line: 415-774-2995
afoxworthy@sheppardmullin.com

May 24, 2007

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



Re: Lennar Desert Lakes LLC's Comment Letter to Recirculated Draft
Coachella Valley Multiple Species Habitat Conservation Plan
Assessor's Parcel Number 603-140-013, City of Coachella, California

Ms. Barrows:

On behalf of Lennar Desert Lakes LLC ("Desert Lakes"), I submit the following comments to the recirculated Draft Coachella Valley Multiple Species Conservation Plan ("MSHCP"). Desert Lakes submits these comments regarding land it controls, specifically Riverside County Assessor's Parcel No. 603-140-013 (the "Property"), Figure 1. In summary, the best scientific information available indicates that the Property is not needed to achieve MSHCP Conservation Goals. The Property is a narrow, isolated parcel at the southernmost tip of the East Indio Hills Conservation Area, unconnected to core habitat for any target species. Surveys of the Property have observed only one of the four species for which the MSHCP has identified conservation goals for the Property. As such, the removal of the Property would not compromise the preparers' ability to meet their obligations to provide Conservation of MSHCP Covered Species and Conserved Habitat to the extent required by federal and state law.

AT-1

Furthermore, the MSHCP preparers have incorrectly identified the entire 62-acre Property as Coachella Open Space, and based on that identification, have designated the Property to be conserved lands within the MSHCP's East Indio Hills Conservation Area. The City of Coachella General Plan identifies only the western portion of the Property as open space, while calling for roadway extension along the northern boundary of the Property, and residential and commercial development in the eastern portion of the Property. Accommodating the existing land use designations and transportation improvements planned for the Property in the City of Coachella General Plan would still allow the conservation of the majority of habitat identified as valuable by the MSHCP.

AT-2

As such, Desert Lakes asks that the MSHCP be revised to either exclude the Property from the Conservation Area, or that it be revised to accommodate planned transportation improvements and land use designations reflected in the Coachella General Plan.

SHEPPARD MULLIN RICHTER & HAMPTON LLP

May 24, 2007

Page 2

I. THE PROPERTY

Assessor's Parcel No. 603-140-013 is an approximately 62-acre parcel located along the northern boundary of the City of Coachella (City"), immediately to the northeast of the Coachella Valley Canal ("Canal"). The westernmost portion of the Property, identified in the MSHCP as being within the East Indio Hills Conservation Area, contains a segment of the Canal and associated protective dike. Figures 2, 3. This area contains predominantly ruderal habitat disturbed both by construction and maintenance activities on the Canal and protective dike and other human activities including homeless encampments and vehicle usage. It is bordered by active agricultural activities on the north and developed land or degraded habitat to the west. A small strip of vegetation on the Property is maintained solely by a leak from a 1.5-million-gallon water tank used in the adjacent agricultural activities.

On December 17, 1998, the United States Bureau of Land Management ("BLM") patented the Property, together with surrounding lands, to RAM Holdings, Inc. Patent No. 04-99-0013, recorded on January 29, 1999 as Document No. 035780 of the Official Records of the County of Riverside (the "Patent"), attached as Attachment 1. Pursuant to the patent, RAM Holdings, predecessor-in-interest to Desert Lakes, obtained all right, title and interest to the Property, subject to certain exceptions related to easements or rights-of-way granted to the federal government and utilities. Thus, the Property has been conveyed into private ownership free of any conservation-related encumbrances.¹

AT-3

In December 2000, the City of Coachella annexed the Property, together with surrounding lands, into its boundaries. The City's current Zoning Map and General Plan land use map designates all but the western edge of the Property (covered by the Canal and its northern protective dike) for residential and commercial development. Figure 4, information available at www.coachella.org/forms-guidelines.htm. The City's General Plan and zoning maps both designate the Property as a mix of low density residential (0-6 du per acre), commercial/entertainment use and open space. Only the westernmost 42 acres – including the Canal and protective dike – have been zoned as open space; the MSHCP misidentifies the entire 62 acres as Coachella Open Space. In addition, the Circulation Element of the City General Plan also calls for the extension of Avenue 46 along the northern boundary of the Property. This road is a planned collector to serve the expanding northern portion of the City. The County of Riverside has recorded an easement for the purpose of constructing this roadway, recorded as Instrument No. 32692 dated April 17, 1959 in the Official Records of the County. The MSHCP does not reflect the right-of-way for this road.

¹ BLM conveyed the Property into private ownership prior to the its adoption of the California Desert Conservation Plan Amendment ("CDCA Plan Amendment"), thus the use restrictions adopted in the CDCA Plan Amendment are not applicable to the Property. Bureau of Land Management. *Record of Decision for the California Desert Conservation Area Plan Amendment for the Coachella Valley*. December 27, 2002. See also p. 1-6 of the MSHCP for incorporation of CDCA Plan Amendment conservation restrictions.

SHEPARD MULLIN RICHTER & HAMPTON LLP

May 24, 2007

Page 3

II. COACHELLA VALLEY MSHCP

Generally, the objective of the MSHCP is to provide for both future economic development and special-status species protection and preservation consistent with the Federal and California Endangered Species Acts and other applicable laws, within the Coachella Valley. The MSHCP covers 1.1 million acres within the Coachella Valley, and calls for the incremental establishment of a 745,990-acre habitat Reserve (the MSHCP Reserve).

The MSHCP Reserve will be assembled through conservation activities on 557,100 acres of Existing Conservation Lands² and 143,960 acres of other public and private land within 21 subunits, or "Conservation Areas." For public and private lands within the 21 Conservation Areas, the MSHCP establishes Conservation Objectives to facilitate the assembly of the Reserve. Local governmental entities participating in the MSHCP are required to accommodate these Conservation Objectives when they approve private (or public) projects within the Conservation Areas. Once particular projects comply with local conditions of approval implementing the MSHCP Conservation Objectives – for example by preserving a portion of a given development project site as habitat/open space – the preserved areas are to be incorporated into the MSHCP Reserve System and will remain as habitat in perpetuity.

AT-4

III. DISCUSSION

A. The Property Should Not Be Included within an MSHCP Conservation Area Because It Is Not Needed to Satisfy the Conservation Goals of the MSHCP

The MSHCP preparers have included the Property within the East Indio Hills Conservation Area (herein the "East Indio Hills CA"), and as a result have attached certain habitat protections that are incompatible with planned development of the area.³ However, the best available information regarding the Property demonstrates that it does not provide valuable habitat needed for the conservation of species identified with the East Indio Hills CA.

At the outset, we note that the MSHCP appears to be inconsistent about what Conservation Objectives apply to the Property. Conservation Objective 2.c. only requires

AT-5

² These existing Conservation Lands are considered "already-conserved" by the MSHCP preparers based on land use designations and/or the status of ownership of the lands. The MSHCP defines these lands as public or private ownership and [currently] managed for Conservation and or open space values. Definitions, p. xxxiv. Because these areas are already being held or managed as open space or for conservation purposes, they have automatically been included in the Reserve System. The MSHCP contemplates that the public or private conservation entities that own various Existing Conserved Lands will continue to manage the lands pursuant to existing land management plans. MSHCP § 8.2.3.

³ The MSHCP requires protection of 56 of 62 acres of the Property identified as part of the East Indio Hills CA, or just over 90% of the Property within the CA.

SHEPPARD MULLIN BECHTOLD & HAMPTON LLP

May 24, 2007

Page 4

conservation of 56 acres of Le Conte's thrasher "Other Conserved Habitat" within the Property.⁴ However, Table 4-81a sets out Conservation Objectives for four species: Le Conte's Thrasher (conserve 56 acres of habitat), flat-tailed horn lizard (conserve five acres), Coachella Valley round-tailed ground squirrel (conserve five acres) and Palm Springs pocket mouse (conserve seven acres).⁵ Table 4-81a identifies the western portion of the Property as Other Conserved Habitat for these four species. Figure 4-20b, showing the East Indio Hills CA, identifies the western portion of the Property as Other Conserved Habitat for three species, Le Conte's thrasher, Coachella Valley round-tailed ground squirrel and Palm Springs pocket mouse. The actual Conservation Objectives applicable to the Property are unclear.

AT-5
Cont.

1. Geographic Considerations Regarding the Property

Regardless of which draft Conservation Objectives were meant to apply, habitat within the Property should not be considered Other Conserved Habitat for any of these species, and should not be included in the East Indio Hills CA. The MSHCP plainly states that areas within the East Indio Hills CA should be considered Other Conserved Habitat "to the extent connectivity can be maintained with populations on the Thousand Palms Conservation Area [or provides] migration and breeding Habitat for the riparian bird species, [which], given the scarcity of riparian Habitat in the desert ... is considered important." MSHCP § 4.3.15. In relation to the Thousand Palms Conservation Area, the Property is eight miles to the southeast on the opposite side of the East Indio Hills CA. The Property is at the extreme southeastern end of the East Indio Hills CA, at least eight miles away from Core Habitat for any of the four species associated with the Property, and is not contiguously connected to any Core Habitat for any species. Aerial imagery shows the two to be separated by disturbed, urban-edge habitat and mining activities, making connectivity between these areas tenuous at best. Figure 5. The only "riparian" feature with the Property is the Canal, which lacks riparian habitat because it is lined with concrete and is actively maintained. Given the above-stated considerations of the MSHCP (movement corridor or migration/breeding habitat), the Property is not suitable to be Other Conserved Habitat, and should be removed from the East Indio Hills CA.

AT-6

⁴ "Other Conserved Habitat" is not considered Core Habitat but still has some Conservation value. Definitions at p. xxxvii.

⁵ The MSHCP preparers identified 62 acres of Sonoran creosote brush scrub, a conserved natural community, within the Property. The Conservation Objectives for the East Indio Hills CA do not require conservation of creosote scrub within the Conservation Area, including the Property, and the MSHCP does not identify any Essential Ecological Processes within the Conservation Area necessary to sustain creosote scrub. We assume that this is not in error, but nevertheless comment that creosote scrub on the Property has been surveyed and has not been found to support species targeted for conservation under the MSHCP. We also note that creosote scrub is the most widespread natural community within the MSHCP Plan area (§ 10.3.1.3), and as such does not require conservation within the Property.

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2. Species-Specific Considerations Regarding the Property.

In addition to a general lack of connectivity to Core Habitat areas, the Property is not necessary to meet individual-species Goals of the MSHCP.

a. LeConte's Thrasher. The MSHCP Conservation Goals for LeConte's thrasher are listed below. Discussion follows regarding each Goal.

Goal 1: Ensure species persistence in the Plan Area by conserving large enough areas to support a self-sustaining population (or metapopulation), including required Habitat across a range of environmental conditions. Conserve Habitat, and associated Essential Ecological Processes, allowing evolutionary processes and natural population fluctuations to occur. Minimize fragmentation, human-caused disturbance, and edge effects to Core Habitat by conserving contiguous Habitat patches and effective Linkages between patches of Core Habitat.

No LeConte's thrashers or thrasher nests were detected on the Property during field surveys conducted throughout April and May 2005⁶ and follow-up studies conducted in April 2007. Updated CNDDDB review confirms no recent occurrences have been reported on the Property. According to the MSHCP, the Property does not support any Essential Ecological Processes for Habitat of the thrasher. MSHCP § 4.3.1.15.

The absence of LeConte's thrasher may be a result of the limited suitable nesting habitat (golden cholla cactus) and numerous site disturbances such as existing of homeless encampments within the 62-acre parcel. *Id.* Furthermore, according to the MSHCP, the thrasher is rarely found in areas consisting solely of creosote bush, the primary habitat type on the Property included within the East Indio Hills CA. MSHCP § 9.7.6.5. The MSHCP states that little is known about the distribution or abundance of LeConte's thrashers within the Plan area, and as a result, MSHCP preparers simply recommended conservation of potentially suitable habitat areas. MSHCP § 9.7.6.3. Such potentially suitable habitat "may be reasonabl[y] assume[d to be] desert dry wash woodland bordered by mixed woody or succulent scrub or Sonoran creosote hush scrub below toe of slope . . . [with] sandy substrates rarely composed of a large proportion of rock, . . . accumulated leaf litter . . . [and] topographic relief of greater than 10-20 meters." *Id.* at § 9.7.6.5. This type of habitat is not typical of the Property. Lastly, excluding the Property would not result in increased habitat fragmentation, since it represents a small portion of LeConte's thrasher Other Conserved Habitat (56 acres, or 0.042% of Other Conserved Habitat within the Reserve System), and it is located at the unconnected edge of Conservation Area.

Given the above, it is clear that habitat on the Property is not suitable for long-term conservation of thrashers, and excluding the Property from the East Indio Hills CA would not reduce the ability of the MSHCP to meet this Goal for the Conservation Area.

⁶ J.W. Cornett. *Desert Lakes Biological Assessment and Impacts Analysis*. August 2005, pp. 21-22.

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Goal 2: Ensure conservation of Le Conte's thrasher by maintaining the long-term persistence of self-sustaining populations and conserving Habitat quality through biological monitoring and Adaptive Management actions in the Plan Area.

As stated, no LeConte's thrashers or thrasher nests were detected on the Property during field surveys conducted throughout April and May 2005⁷ and follow-up studies conducted in April 2007. Updated CNDDDB review confirms no occurrences have been reported between 2005 and the present on the Property.

Given the admitted uncertainties surrounding habitat requirements for the species, its absence from the Property, and the lack of suitable habitat, the Property is not needed to meet the Conservation Goal 2 of the MSHCP and should not be included in the East Indio Hills CA.

AT-7
Cont.

b. Flat-tailed horn lizard. The MSHCP Conservation Goals for the flat-tailed horn lizard are listed below. Discussion follows regarding each Goal.

Goal 1: Protect Core Habitat areas that include occupied Habitat, and associated Essential Ecological Processes, allowing evolutionary processes and natural population fluctuations to occur. Minimize fragmentation, human-caused disturbance, and edge effects to Core Habitat by conserving contiguous Habitat patches and effective Linkages between patches of Core Habitat.

The Property contains no Core Habitat for the flat-tailed horn lizard, and is at least eight miles away from the closest Core Habitat, in the Thousand Palms Conservation Area. MSHCP § 9.6.3.

No fragmentation of existing lizard habitat would occur if the Property were excluded from the East Indio Hills CA because the Property represents a very small portion of predicted Other Conserved Habitat for the flat-tailed horn lizard (6 acres, or 0.061% of predicted Other Conserved Habitat within the Reserve System) (MSHCP Table 9-17). The Property is located at the unconnected, southeastern edge of the Conservation Area, further reducing the possibility of habitat fragmentation.

Given the above, it is clear that excluding the 6-acre portion of the Property included as lizard Other Conserved Habitat from the East Indio Hills CA would not reduce the ability of the MSHCP to meet this Goal for the Conservation Area.

AT-8

⁷ J.W. Cornett. *Desert Lakes Biological Assessment and Impacts Analysis*. August 2005, pp. 21-22.

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Goal 2: Protect Other Conserved Habitat, to provide sufficient area and variety of Habitat types to accommodate population fluctuations, allow for genetic diversity, and to conserve the range of environmental conditions within which this lizard is known to occur.

No flat-tailed horn lizards were detected on the Property during field surveys conducted throughout April and May 2005⁸ and follow-up studies conducted in April 2007. Updated CNDDDB review confirms no recent lizard occurrences have been reported on the Property. The absence of flat tailed horn lizards on the Property is likely the result of the compacted soils lacking blow sand and rocky terrain generally found on the Property. *Id.* In contrast, the MSHCP confirms that "the 'best' habitat [for flat-tailed horn lizards] consisted of hard packed sand or desert pavement overlain with fine blowsand." MSHCP § 9.3.6.5. Furthermore, the East Indio Hills CA represents the southernmost and easternmost limits of flat-tailed horned lizard geographic range, and according to the MSHCP, potential linkage between the Property and known populations at Thousand Palms Preserve has been studied and identified as not suitable for flat-tailed horn lizards. *Id.* Lastly, the Property represents a very small proportion of the potential Other Conserved Habitat identified in the MSHCP.

Given the above, it is clear that the Property is not suitable for long-term conservation of lizards, and the exclusion of the Property would not affect the MSHCP Goal of providing a suitable range of habitats to adequately allow for population fluctuations, genetic diversity and environmental conditions.

AT-8
Cont.

Goal 3: Protect Essential Ecological Processes, including sand source/transport systems, necessary to maintain Core Habitat and Other Conserved Habitat for this species.

The Property does not contain or protect Essential Ecological Processes for the species, thus exclusion of the Property would not affect achievement of this Goal. MSHCP § 4.3.15.

Goal 4: Maintain Biological Corridors and Linkages among all conserved populations.

As stated in the MSHCP, the Property is not part of a Biological Corridor or Linkage between existing populations, particularly since the Property is at the extreme edge of the East Indio Hills Conservation area and does not adjoin any other Conservation Area.

Goal 5: Ensure conservation of the flat-tailed horned lizard by maintaining the long-term persistence of self-sustaining populations and conserving Habitat quality through biological monitoring and Adaptive Management actions in the Plan Area.

As stated, no flat-horn tailed lizard populations have been observed during 2005 and 2007 surveys or in the CNDDDB. The Property retains limited, if any, habitat for the

⁸ J.W. Cornett, p. 20.

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species. The Property retains no Essential Ecological Processes for the lizard or its habitat. The Property is located at the edge of the species' geographic range, and lacks any connection to dispersal corridors to the Thousand Palms Reserve. The 6-acre portion of the Property identified in the Recirculated MSHCP as Other Conserved Habitat for the flat-tailed horn lizard is not necessary to meet the Conservation Goals for the area, and should be excluded.

AT-8
Cont.

c. Coachella Valley Round-Tailed Ground Squirrel. The MSHCP Conservation Goals for the Coachella Valley round-tailed ground squirrel are listed below. Discussion follows regarding each Goal.

Goal 1: Protect Core Habitat areas that include occupied Habitat, and associated Essential Ecological Processes, allowing evolutionary processes and natural population fluctuations to occur. Minimize fragmentation, human-caused disturbance, and edge effects to Core Habitat by conserving contiguous Habitat patches and effective Linkages between patches of Core Habitat.

The recirculated MSHCP identifies 6 acres of the Property as Coachella Valley round tailed ground squirrel Other Conserved Habitat. Exclusion of this 8 acres would not diminish the ability to achieve the Goal of protecting Core Habitat because the Property does not represent Core Habitat for the species, and does not protect Essential Ecological Processes vital to habitat for the squirrel. MSHCP § 9.8.2.

Furthermore, no fragmentation of squirrel habitat would occur if the Property were excluded, since the Property is located at the unconnected, southeastern edge of the Conservation Area and the Property represents a very small percentage of proposed Other Conserved Habitat for the squirrel (6 acres, or 0.006% of proposed Other Conserved Habitat within the Reserve System) (MSHCP, Table 9-30).

AT-9

Goal 2: Protect Other Conserved Habitat to provide sufficient area and variety of Habitat types to accommodate for population fluctuations, allow for and genetic diversity, and to conserve the range of environmental conditions within which this ground squirrel is known to occur.

Although six squirrel individuals were observed during surveys in 2005, the MSHCP indicates that development in the area of the Property has diminished the value of this area of the East Indio Hills CA for the squirrel. § 9.8.2.3. In addition, the Property represents a very small proportion of the potential Other Conserved Habitat for the squirrel, 0.006% of the total 14,200 acres to be included within the Reserve System. And because the Property is at the southernmost edge of the East Indio Hills CA, its exclusion would not exacerbate habitat fragmentation for the squirrel. The Property is not identified as a dispersal corridor or linkage to other habitat by the MSHCP. Given the above, the Property is not necessary for long-term conservation of the squirrel, and excluding the 8 acres identified in the MSHCP as squirrel habitat would not affect the

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MSHCP Goal of providing a suitable range and type of habitat to adequately allow for population fluctuations, genetic diversity and environmental conditions.

Goal 3: Protect Essential Ecological Processes, including sand source/transport systems, necessary to maintain Core Habitat and Other Conserved Habitat for this species.

The Property does not contain essential ecological processes for the species, thus exclusion of the Property would not affect achievement of this Goal.

Goal 4: Maintain Biological Corridors and Linkages among all conserved populations.

The MSHCP clearly states that areas within the East Indio Hills CA should be considered Other Conserved Habitat "to the extent connectivity can be maintained with populations on the Thousand Palms Conservation Area." MSHCP § 4.3.15. To this end, the Property is tenuously connected to the Thousand Palms Conservation Area, and is not itself part of a linkage or corridor because it is at the extreme southeastern edge of the Conservation Area. Aside from the East Indio Hills CA, no identified habitat for the squirrel exists for several miles in any direction from the Property. The exclusion of the 6 acres of the Property identified as Other Conserved Habitat would not diminish the Plan's ability to meet the Goal of maintaining Biological Corridors and Linkages among conserved populations.

Goal 5: Ensure conservation of the Coachella Valley round-tailed ground squirrel by maintaining the long-term persistence of self-sustaining populations and conserving Habitat quality through biological monitoring and Adaptive Management actions in the Plan Area.

Surveys of the Property indicate it is inhabited by ground squirrels. However, the Property is not a dispersal corridor and does not provide a link between self-sustaining populations of squirrels. The Property has been disturbed and is adjacent to areas that have been disturbed as noted by the MSHCP. The Property lacks proximity to Core Habitats, with the closest being at least eight-miles distant, and it does not protect Essential Ecological Processes for the squirrel or its habitat. Given these characteristics, the Property is clearly not suitable for long-term conservation of the squirrel and is not needed to achieve this Goal.

AT-9
Cont.

d. Palm Springs Pocket Mouse. The MSHCP Conservation Goals for the Palm Springs pocket Mouse are listed below. Discussion regarding each Goal follows, and indicates that the Property is not needed to meet the Conservation Goals for this species.

AT-10

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Goal 1: Protect Core Habitat areas that include occupied Habitat Conserve Habitat, and associated Essential Ecological Processes, allowing evolutionary processes and natural population fluctuations to occur. Minimize fragmentation, human-caused disturbance, and edge effects to Core Habitat by conserving contiguous Habitat patches and effective Linkages between patches of Core Habitat.

Exclusion of the 8-acre portion of the Property identified in the recirculated MSHCP as Palm Springs Pocket Mouse Other Conserved Habitat would not diminish the ability to achieve this Goal. The Property does not represent Core Habitat for the species, and does not protect Essential Ecological Processes vital to habitat for the Mouse. MSHCP § 9.8.3.

No fragmentation of mouse habitat would occur if the Property were excluded, since the Property represents a very small portion of proposed Other Conserved Habitat for the Palm Springs Pocket Mouse (8 acres, or 0.02% of proposed Other Conserved Habitat within the Reserve System) (Table 9-32), and it is located at the unconnected, southeastern edge of the Conservation Area. This Goal will still be met without the 8-acre portion of the Property being included in the East Indio Hills CA.

Goal 2: Protect Other Conserved Habitat, to provide sufficient area and variety of Habitat types to accommodate population fluctuations, allow for and genetic diversity, and to conserve the range of environmental conditions within which this pocket mouse is known to occur.

No Palm Springs pocket mouse individuals were detected on the Property during field surveys conducted throughout April and May 2005,⁹ and follow-up studies conducted in April 2007. Review of the CNDDB reveals no new occurrences between 2005 and the present for the Property. Data cited by the MSHCP preparers tends to confirm the scarcity in this area, finding 0.009 individual pocket mice per trapping night at the east end of the Indio Hills. § 9.8.3.5. Given the habitat limitations of the Property and its lack of proximity to Core areas, excluding from the Conservation Area the 8-acre portion of the Property identified as mouse Other Conserved Habitat would not affect the Plan's ability to achieve this Goal.

Goal 3: Protect Essential Ecological Processes, including sand source/transport systems, necessary to maintain Core Habitat and Other Conserved Habitat for this species.

The Property does not contain essential ecological processes for the species, thus exclusion of the Property would not affect achievement of this Goal.

Goal 4: Maintain Biological Corridors and Linkages among all conserved populations.

The MSHCP clearly states that areas within the East Indio Hills CA should be considered Other Conserved Habitat "to the extent connectivity can be maintained with populations on the Thousand Palms Conservation Area." MSHCP § 4.3.15. To this end, the Property

AT-10
Cont.

⁹ J.W. Cornett, p. 23.

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does not present a linkage or corridor between Core Habitats or Other Conserved Habitats as it is as the extreme southeastern edge of the Conservation Area. This Goal will still be met with the exclusion of the 8 acres of the Property identified in the recirculated MSHCP as proposed Other Conserved Habitat.

Goal 5: Ensure conservation of the Palm Springs pocket mouse by maintaining the long-term persistence of self-sustaining populations and conserving Habitat quality through biological monitoring and Adaptive Management actions in the Plan Area.

As stated, no Palm Springs pocket mouse individuals were detected on the Property during field surveys or in review of the CNDDDB. Data cited by the MSHCP preparers tends to confirm the scarcity of mouse habitation in this area. Given the disturbed nature of the Property, the apparent scarcity of mice in the area and the lack of proximity to Core Habitat areas, the Property clearly is not suitable for long-term conservation of the mouse, and it is not needed to achieve this Goal.

AT-10
Cont.

B. The Property Should Not Be Included within the East Indio Hills Conservation Area Because It is Not Entirely Coachella Open Space As Presented in the MSHCP

Desert Lakes believes the MSHCP preparers included the Property within the East Indio Hills CA based on the assumption that the entire parcel has been designated as Open Space in the General Plan. See, e.g., MSHCP Figure 4-20d showing the entire Property as Coachella Open Space, and MSHCP Table 4-80, which shows that all City of Coachella portions of the East Indio Hills CA are already subject to conservation.

In fact, the Property is not entirely zoned or planned for open space, and is not otherwise restricted to conservation or open space use. The City of Coachella General Plan and zoning maps designate only the westernmost 42 acres (including the Canal and protective dike) as open space, the remaining approximately 20 acres is planned for residential and commercial development, and the northern boundary of the Property is planned for transportation infrastructure improvements according to the Circulation Element of the General Plan. The 1998 Patent to Desert Lakes' predecessor-in-interest from BLM clearly conveys the Property into private ownership, free from any specific conservation restrictions. Furthermore, the Property has never been identified by Desert Lakes or its predecessor-in-interest as being managed for conservation and/or open space values. The entire 62 acres cannot be identified as Coachella Open Space because it is privately held, not managed for conservation values and not consistent with existing City General Plan and zoning designations. The MSHCP should be corrected to remove the Property from the Conservation Area.

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C. To The Extent Any Conservation Is Required within the Property, It Should Be Focused on Already-Designated Open Space and Otherwise Be Consistent with the Coachella General Plan Uses For This Area

Although the Property is not needed to achieve the long-term conservation goals of the MSHCP Conservation Goals, to the extent the Property is covered by the MSHCP, it should reflect planned transportation infrastructure and land use designations of the Coachella General Plan. Accommodating these planned uses will not reduce the ability to achieve the MSHCP goals for this area.

The City's General Plan designates approximately 20 acres of planned residential and commercial development and 42 acres of open space within the 62 acres identified as Other Conserved Habitat in the MSHCP (the MSHCP mistakenly identified the entire 62 acres as Coachella Open Space). Figure 4. The Circulation Element of the City's General Plan also calls for construction of a collector road along the northern boundary of the Property. Accommodating these planned uses would not diminish habitat values in this area. First, except for the small portion of land needed for the extension of Avenue 46, the 42 acres currently designated as Coachella Open Space will remain as open space under existing City designations. Second, the Avenue 46 road extension could easily be designed to minimize impacts to habitat values of the surrounding open space and to allow for safe movement across the extension. Third, as shown on figure 4-20b, the 42-acre portion currently designated as open space contains all identified Other Conserved Habitat for the flat-tailed horn lizard,¹⁰ Coachella Valley round-tailed ground squirrel, Palms Springs pocket mouse; this area also represents more than two-thirds of the identified Other Conserved Habitat for the LeConte's thrasher. These areas would be conserved under the existing General Plan, and could be included in the MSHCP Reserve while still accommodating the City's General Plan uses. As such, The MSHCP could easily be revised to reflect uses of the Property consistent with the City's General Plan without negatively affecting the ability to achieve Conservation Goals for this area.

AT-12

IV. CONCLUSION

The MSHCP misidentified 62 acres at the western edge of the Property as open space land not to be developed. Based on that identification, this area has been identified as Other Conserved Lands at the southerly tip of the MSHCP East Indio Hills Conservation Area. The best scientific information available indicates that the Property does not contain habitat suitable to serve the long-term conservation goals of MSHCP Other Conserved Lands and is not needed to achieve the Conservation Goals for the East Indio Hills area. The parcel is narrow and at the southerly tip of the East Indio Hills Conservation Area, isolated from higher value habitat to the northwest. The removal of the Property would not compromise the preparers' ability to

AT-13

¹⁰ Figure 4-20b does not identify any flat-tailed horn lizard habitat within the Property, but MSHCP Table 40-81a identifies six acres of lizard Other Conserved Habitat as being within the City of Coachella. It is assumed that this six acres is coincident with the six and eight acres, respectively, of Other Conserved Habitat identified for the pocket mouse and the ground squirrel.

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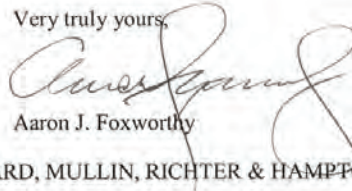
May 24, 2007

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meet its obligations to protect MSHCP Covered Species and their habitats to the extent required by Federal and state law. Lastly, the current transportation and land use designations for the Property could be accommodated by the MSHCP without compromising the Conservation Goals for this area, there is no reason not to revise the MSHCP to reflect uses identified in the Coachella General Plan for this area.

Desert Lakes respectfully asks that the MSHCP be revised to reflect the land use status of these lands and to accommodate the owner's plans for development of this very small portion of the MSHCP Conservation Area. Please contact me if you have any questions about the enclosed.

Very truly yours,



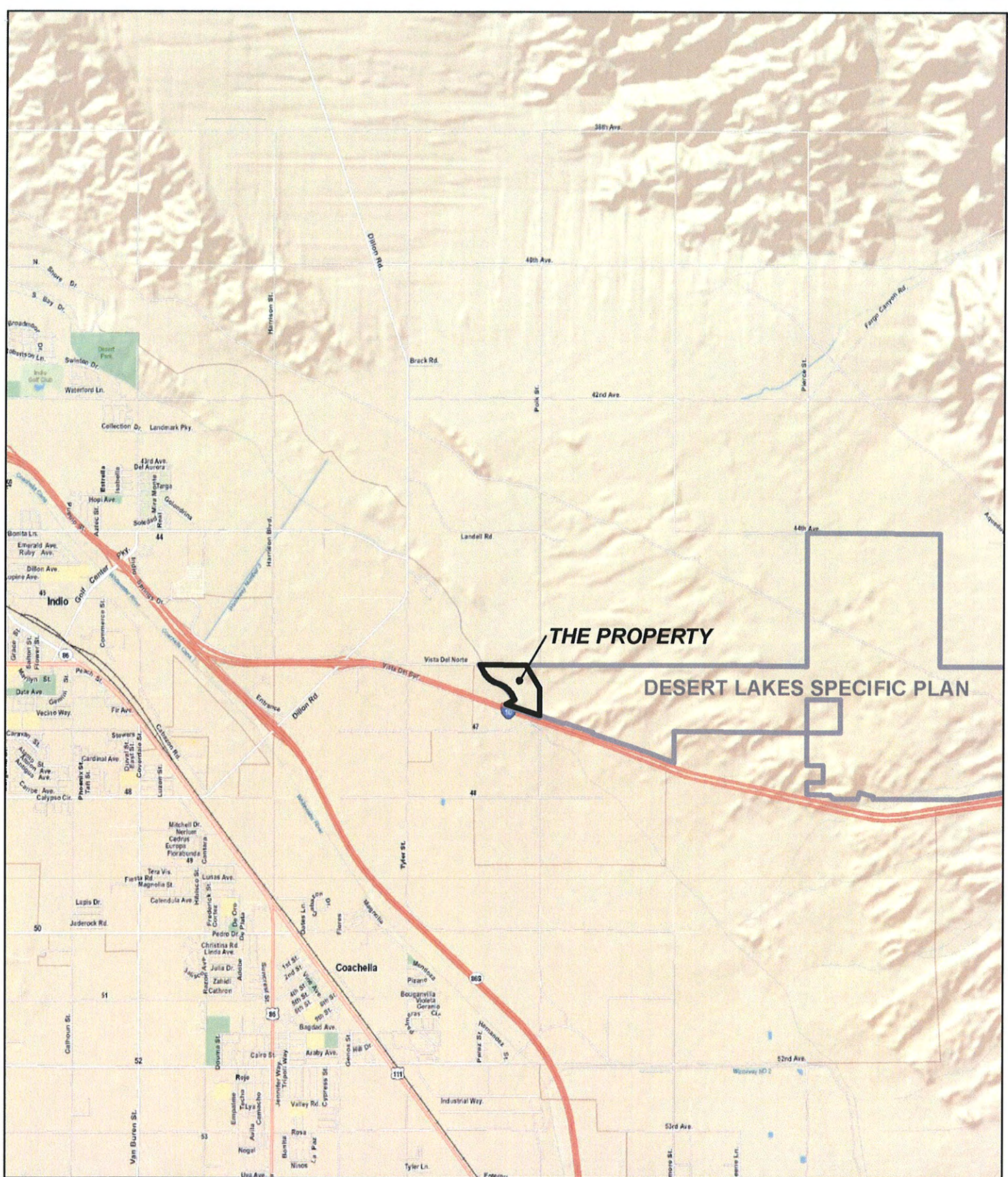
Aaron J. Foxworthy

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

AT-13
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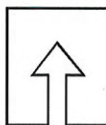
Comment Letter AT included an attachment that has been reviewed and considered in the response to this comment letter. The attachment has been scanned and is on the CD that accompanies this document.



M.J. Klinefelter
GIS & ENVIRONMENTAL CONSULTING

40935 COUNTY CENTER DR, STE D
TEMECULA, CALIFORNIA 92591
PH 951 296-9814 FAX 951 296-0462

FILE NAME:



DATE 5/23/2007

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TITLE

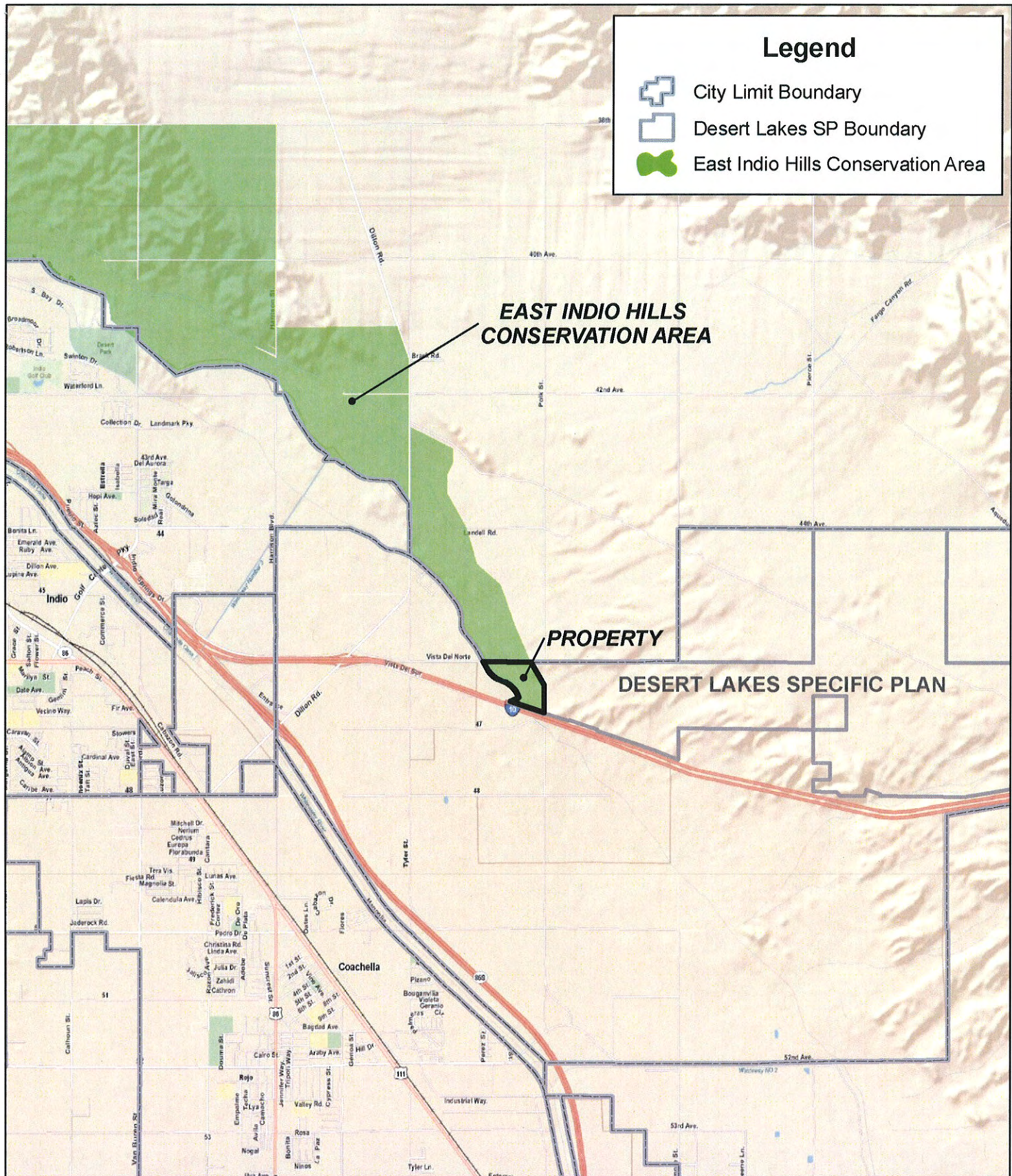
**PROPERTY
LOCATION**

PROJECT

DESERT LAKES
CITY OF COACHELLA, RIVERSIDE CO, CA

FIGURE

1



M.J. Klinefelter
GIS & ENVIRONMENTAL CONSULTING

40935 COUNTY CENTER DR, STE D
TEMECULA, CALIFORNIA 92591
PH 951 296-9814 FAX 951 296-0462

FILE NAME:



DATE 5/23/2007

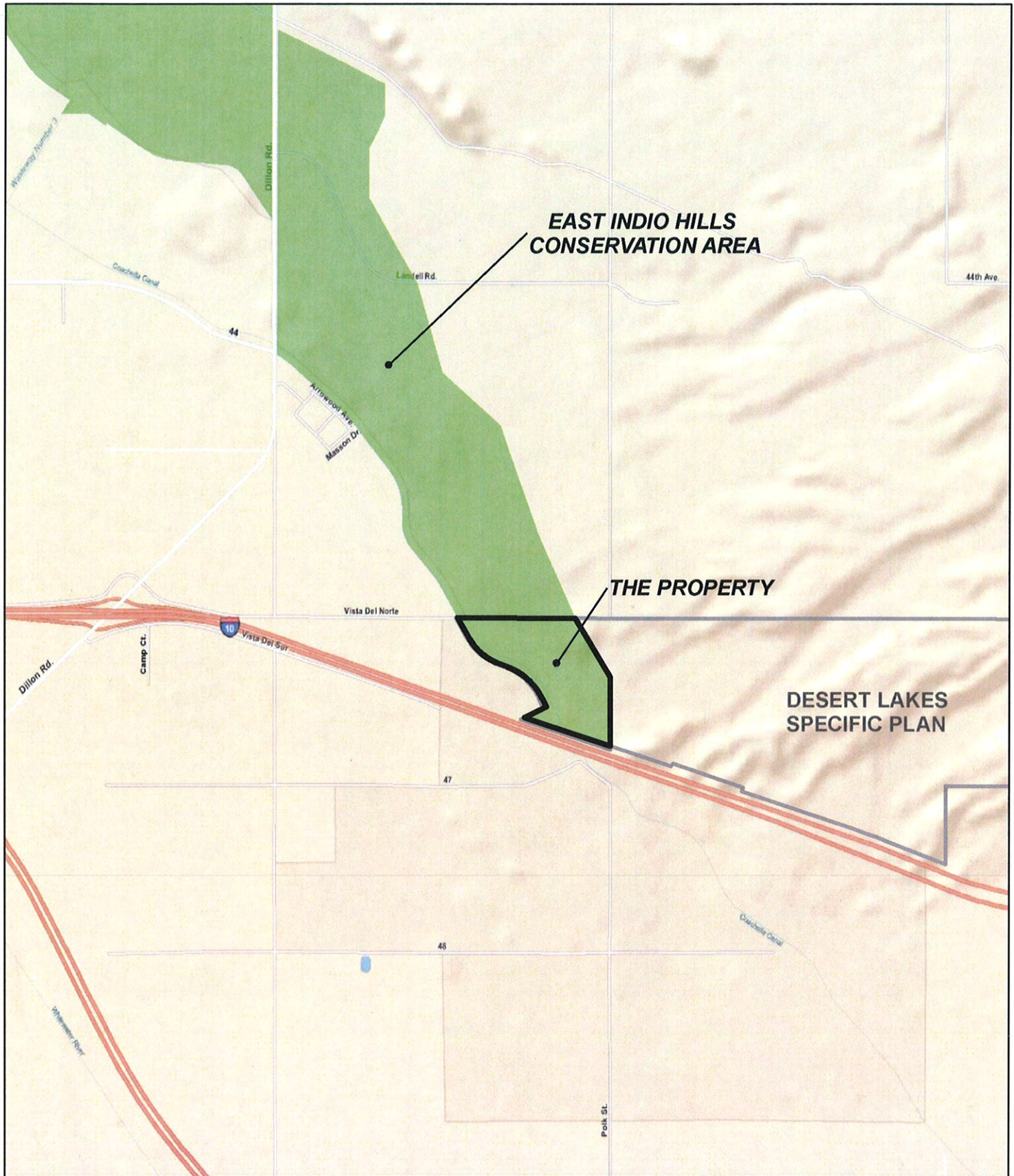
0 0.5 1 Miles

TITLE
**EAST INDIO HILLS
CONSERVATION AREA**

PROJECT
DESERT LAKES
CITY OF COACHELLA, RIVERSIDE CO, CA

FIGURE

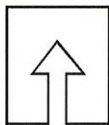
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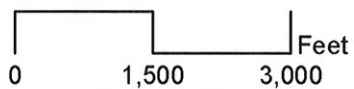
M.J. Klinefelter
GIS & ENVIRONMENTAL CONSULTING

40935 COUNTY CENTER DR, STE D
TEMECULA, CALIFORNIA 92591
PH 951 296-9814 FAX 951 296-0462

FILE NAME:



DATE 5/23/2007



TITLE

**WESTERN PORTION
DESERT LAKES**

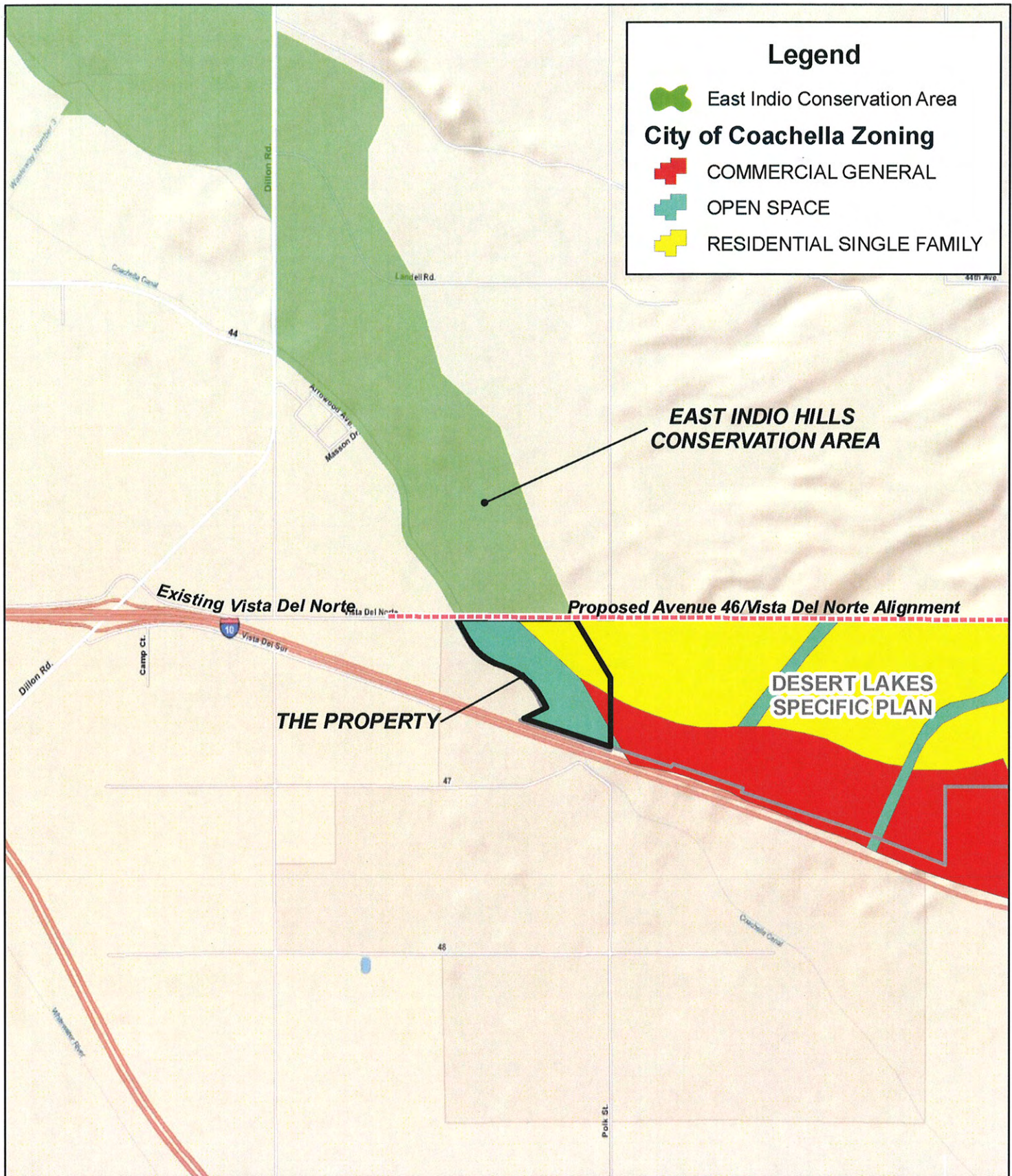
PROJECT

DESERT LAKES

CITY OF COACHELLA, RIVERSIDE CO, CA

FIGURE

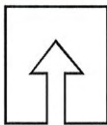
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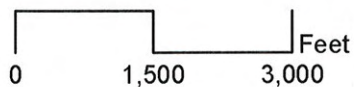
M.J. Klinefelter
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40935 COUNTY CENTER DR, STE D
TEMECULA, CALIFORNIA 92591
PH 951 296-9814 FAX 951 296-0462

FILE NAME:



DATE 5/23/2007



TITLE

COACHELLA ZONING

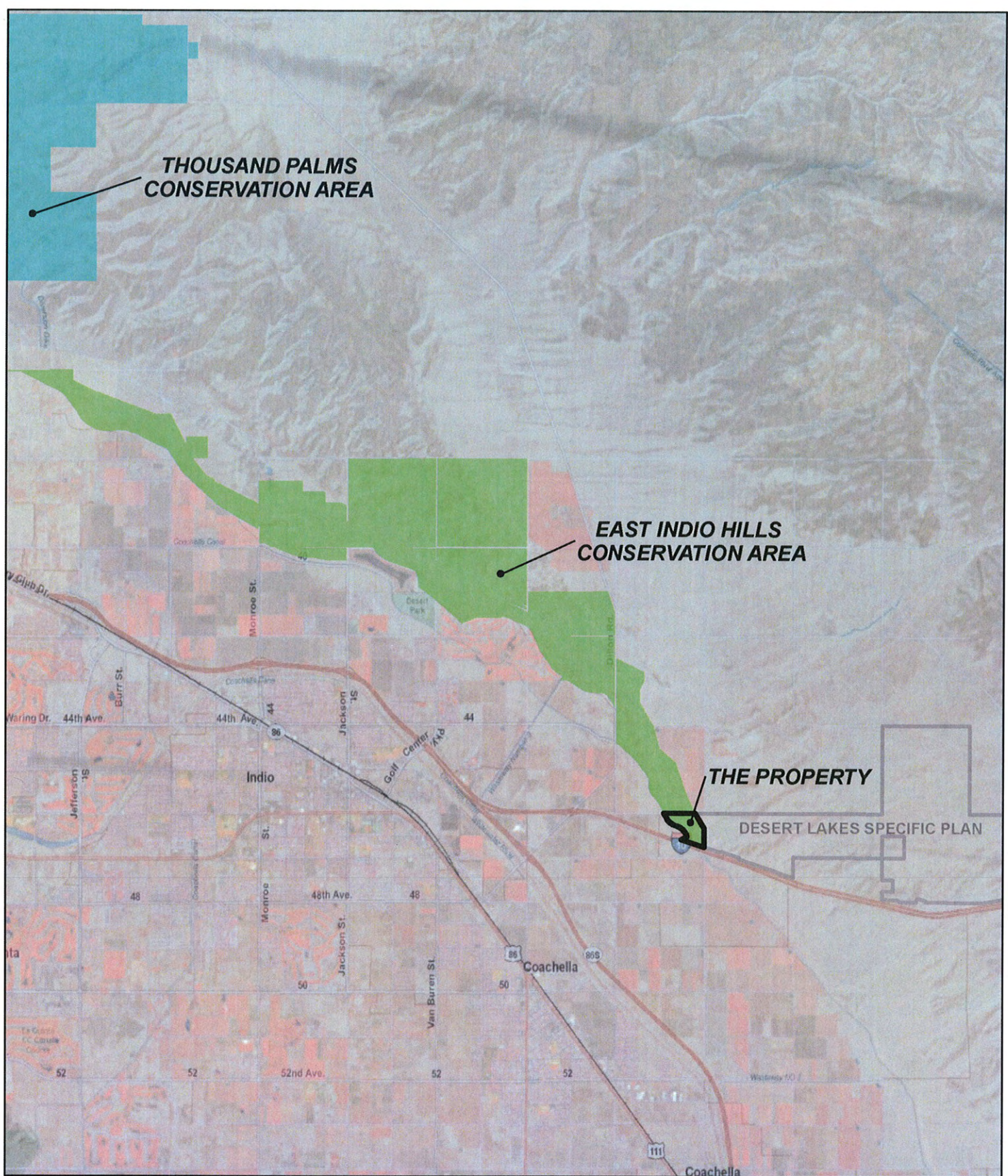
PROJECT

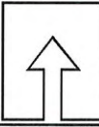
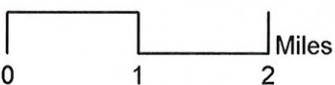
DESERT LAKES

CITY OF COACHELLA, RIVERSIDE CO, CA

FIGURE

4



M.J. Klinefelter GIS & ENVIRONMENTAL CONSULTING 40935 COUNTY CENTER DR, STE D TEMECULA, CALIFORNIA 92591 PH 951 296-9814 FAX 951 296-0462 FILE NAME:	 DATE 5/23/2007	 Miles	TITLE CONSERVATION AREAS PROJECT DESERT LAKES CITY OF COACHELLA, RIVERSIDE CO, CA	FIGURE 5
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Attachment 1

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:
STEWART TITLE OF CALIFORNIA, INC.,
Inland Empire Division-Commercial Dept.
OUR ORDER N: 5-11-144812
ESCROW NO: 27160-1

AND WHEN RECORDED MAIL TO:

RAM HOLDINGS, INC.

P.O. Box 9817
Bakersfield, CA 93389
Attn: Dwight McHenry

035780

RECEIVED FOR RECORD
AT 8:00AM

JAN 29 1999

Recorded to Official Records
of Fresno County, California

Recorder

Page 5

14
A/R

SPACE ABOVE FOR RECORDER'S USE ONLY

"PATENT"

Title of Document

**THIS AREA FOR
RECORDER'S
USE ONLY**

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3.00 Additional Recording Fee Applies)

Form 1960-8
(July 1988)

The United States of America

Serial No. CACA 37374

To all to whom these presents shall come, Greetings:

WHEREAS,

RAM HOLDINGS INC., a Nevada corporation

is entitled to a land patent pursuant to Sec. 206 of the Act of October 21, 1976, as amended (43 U.S.C. 1716), for the following described lands:

San Bernardino Meridian, California

T. 5 S., R. 8 E.,
sec. 24;
sec. 26;
sec. 28, NE¼.

T. 5 S., R. 9 E.,
sec. 30, lots 1 to 4, inclusive, E½W½, and E½.

T. 6 S., R. 8 E.,
sec. 12, E½.

T. 6 S., R. 9 E.,
sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼,
E½SW¼, and SE¼.

Containing 2,948.39 acres.

NOW KNOW YE, that there is, therefore, granted by the **UNITED STATES** unto **RAM HOLDINGS INC., a Nevada corporation**, the lands described above; **TO HAVE AND TO HOLD** the said lands with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said **RAM HOLDINGS INC., a Nevada corporation**, and to its successors and assigns, forever.

EXCEPTING AND RESERVING TO THE UNITED STATES:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).
2. A right-of-way for a Federal Aid Highway under Serial No. CALA 0169912 as to portions of the SW¼ and S½SE¼ sec. 26, T. 5 S., R. 8 E., and S½S½ sec. 30., T. 5 S., R. 9 E., S.B.M. Act of August 27, 1958, as amended, 23 U.S.C. 107(d).

Patent Number 04-99-0013

Serial No. CACA 37374

3. A right of way for a Federal Aid Highway under Serial No. CALA 051842 as to portions of the S½S½ sec. 26 and NE¼ sec. 28, T. 5 S., R. 8 E. and S½S½ sec. 30, T. 5 S., R. 9 E., S.B.M. Sec. 17 of the Act of November 9, 1921 (42 Stat. 216).
4. A right of way for a Federal Aid Highway under Serial No. CARI 2008 as to a portion of the NE¼ sec. 28, R. 5 S., R. 8 E., S.B.M. Act of August 27, 1958, as amended, 23 U.S.C. 107(d)).
5. A right of way of the Bureau of Reclamation for a canal, pipeline and/or detention dike and basin across public land, effective January 13, 1953, under subsection P, Section 4, of the Act of December 5, 1924 (43 U.S.C. 417), more particularly described in an instrument recorded in this office under serial number CALA 098198, as to portions of the NE¼ sec. 28, T. 5 S., R. 8 E.
6. A right of way of the Bureau of Reclamation for a canal, pipeline and/or detention dike and basin across public land, effective April 28, 1950, under subsection P, Section 4, of the Act of December 5, 1924 (43 U.S.C. 417), more particularly described in an instrument recorded in this office under serial number CALA 081554, as to portions of the NE¼ sec. 28, T. 5 S., R. 8 E., and the W½E½ sec. 12, T. 6 S., R. 8 E., S.B.M.
7. The right to itself, its permittees, or licensees, to enter upon, occupy and use any part or all of said land, lying within 100 feet of the centerline of the 500KV transmission line right-of-way of the Eagle Crest Energy Company's Federal Energy Regulatory Commission Project N. 11080-003, BLM Serial No. CACA 24212-01 for the purposes set forth in and subject to the conditions and limitations of Section 24 of the Federal Power Act of June 10, 1920, as amended, as to portions of sec. 24, T. 5 S., R. 8 E., and 30, T. 5 S., R. 9 E., S.B.M.

This patent is issued subject to the express condition and with the express covenant as set forth in Sec. 13(c) and (d) of the Boulder Canyon Act of December 21, 1928 (the Act), 43 U.S.C. 617(c) and (d), either as it pertains to the right-of-way of the Southern California Edison Company for the Third Boulder Transmission Line, filed for on April 30, 1946, under serial number CALA 063162, and approved on March 10, 1949, under Sec.5(d) of the Act, 43 U.S.C. 617(d)(d), or as otherwise applicable, as to sec. 24, T. 5 S., R. 8 E. and sec. 30, T. 5 S., R. 9 E., S.B.M.

SUBJECT TO:

1. Those rights for a water tank, water pipeline, and access road granted to the City of Coachella, its successors or assigns, under right-of-way Serial No. CARI 02748, pursuant to the Act of February 15, 1901, as amended, 43 U.S.C. 959, as to a portion of the N½NE¼ sec. 28, T. 5 S., R. 8 E., S.B.M.

Patent Number 04-99-0013

San Joaquin Co. CA 90670

Serial No. CACA 37374

2. Those rights for power transmission line purposes granted to the Southern California Edison Co., its successors or assigns, under right-of-way Serial No. CACA 04163, pursuant to Title V of the Act of October 21, 1976, 43 U.S.C. 1761, as to a portion of the SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 24, T. 5 S., R. 8 E., and lot 1, S $\frac{1}{2}$ NE $\frac{1}{4}$ and E $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 30, T. 5 S., R. 9 E., S.B.M.
3. Those rights for power transmission line purposes granted to the Southern California Edison Co., its successors or assigns, under right-of-way Serial No. CACA 17905, pursuant to Title V of the Act of October 21, 1976, 43 U.S.C. 1761, as to a portion of the S $\frac{1}{2}$ sec. 24, T. 5 S., R. 8 E., and lot 1, S $\frac{1}{2}$ NE $\frac{1}{4}$, and E $\frac{1}{2}$ NW $\frac{1}{4}$ sec. 30, T. 5 S., R. 9 E., S.B.M.
4. Those rights for a 30" O.D. gas pipe line granted to Southern California Gas Co. and Southern Counties Gas Company of California, its successors or assigns under right-of-way Serial No. CALA 0110795, pursuant to the Act of February 25, 1920, 30 U.S.C. 186, as amended, as to a portion of the S $\frac{1}{2}$ sec. 24 T. 5 S., R. 8 E., and lot 1, N $\frac{1}{2}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 30, T. 5 S., R. 9 E., S.B.M.
5. Those rights for a 30" welded steel gas pipe line granted to Southern California Gas Co. and Southern Counties Gas Company of California, its successors or assigns under right-of-way Serial No. CALA 0107395, pursuant to the Act of February 25, 1920, as amended, 30 U.S.C. 186, as to a portion of the N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$, and S $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 24, T. 5 S., R. 8 E., and lot 1, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 30, T. 5 S., R. 9 E., S.B.M.
6. Those rights for a gas pipeline granted to Southern California Gas Co., its successors or assigns under right-of-way Serial No. CARI 01091, pursuant to Sec. 28 of the Act of February 25, 1920, 30 U.S.C. 185, as amended, as to portions of the N $\frac{1}{2}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, and NE $\frac{1}{4}$ NW $\frac{1}{4}$ sec. 24, T. 5 S., R. 8 E., S.B.M.
7. Those rights for an underground telephone cable granted to AT&T Communications of California, Inc., its successors or assigns, by right-of-way serial No. CACA 16385, pursuant to Title V of the Act of October 21, 1976, 43 U.S.C. 1761, as to a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 24, T. 5 S., R. 8 E., S.B.M.
8. Those rights for an overhead telephone line granted to Pacific Telephone Co., its successors or assigns, under right of way Serial No. CACA 16386, pursuant to Title V of the Act of October 21, 1976, 43 U.S.C. 1761, as to a portion of the NE $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 24, T. 5 S., R. 8 E., S.B.M.
9. Those rights for a fiber optic telecommunications line and ancillary facilities granted to U.S. Telecomm, Inc., its successors or assigns, under right of way Serial No. CACA 18888 pursuant to Title V of the Act of October 21, 1976, 43 U.S.C. 1761, as to a portion of the S $\frac{1}{2}$ S $\frac{1}{2}$ sec. 26 and SW $\frac{1}{4}$ NE $\frac{1}{4}$ sec. 28, T. 5 S., R. 8 E., S.B.M.

Patent Number 04-99-0013

San Joaquin CA 90670

Serial No. CACA 37374

10. Those rights for telephone line purposes granted to General Telephone Company of California, its successors or assigns, under right-of-way Serial No. CACA 2197, pursuant to the Act of March 4, 1911, 43 U.S.C. 961, renewed pursuant to Title V of the Act of October 21, 1976, 43 U.S.C. 1761, as to a portion of the W $\frac{1}{2}$ NE $\frac{1}{4}$ sec. 28, T. 5 S., R. 8 E. S.B.M.
11. Those rights for power transmission line purposes granted to Imperial Irrigation District, its successors or assigns, under right-of-way Serial No. CACA 17200, pursuant to Title V of the Act of October 21, 1976, (43 U.S.C. 1761), as to a portion of the NE $\frac{1}{4}$ sec. 28, T. 5 S., R. 8 E., S.B.M.
12. Those rights for power transmission line purposes granted to Imperial Irrigation District, its successors or assigns, under right-of-way Serial No. CARI 00141, pursuant to the Act of February 15, 1901, 43 U.S.C. 959, as conformed to Title V of the Act of October 21, 1976, 43 U.S.C. 1761, as to a portion of the NE $\frac{1}{4}$ and E $\frac{1}{2}$ SE $\frac{1}{4}$ sec. 12, T. 6 S., R. 8 E., S.B.M.
13. Those rights for power transmission line purposes granted to Imperial Irrigation District, its successors or assigns, under right-of-way Serial No. CARI 00174, pursuant to the Act of February 15, 1901, 43 U.S.C. 959, as to a portion of the NE $\frac{1}{4}$ sec. 12, T. 6 S., R. 8 E., S.B.M.
14. Those rights for power transmission line purposes granted to Imperial Irrigation District, its successors or assigns, under right-of-way Serial No. CACA 19166, pursuant to Title V of the Act of October 21, 1976, 43 U.S.C. 1761, as to a portion of the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ sec. 12, T. 6 S., R. 8 E., S.B.M.

IN

TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

[SEAL]

GIVEN under my hand, in Sacramento, California the SIXTEENTH day of DECEMBER in the year of our Lord one thousand nine hundred and NINETY-EIGHT and of the Independence of the United States the two hundred and TWENTY-THIRD.

By

David McInay
Chief, Branch of Lands
California State Office

Patent Number

04-99-0013

From: Origin ID: APCA (415)434-9100
 AARON FOXWORTHY, ESQ.
 SHEPPARD MULLIN RICHTER & HAMPTON
 4 EMBARCADERO CENTER
 17TH FLOOR
 SAN FRANCISCO, CA 94111



CLS022307/2/23

Ship Date: 24MAY07
 ActWgt: 1 LB
 System#: 5102088/INET2600
 Account#: S *****



Delivery Address Bar Code

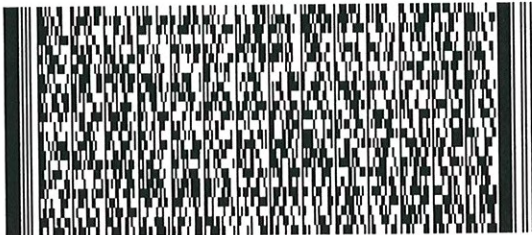


Ref # 0WBB-119362
 Invoice #
 PO #
 Dept #

SHIP TO: (415)774-2995

BILL SENDER

Ms. Katie Barrows
Coachella Valley Assn of Government
Director Environmental Services
73710 Fred Waring Drive, Ste 200
Palm Desert, CA 92260



PRIORITY OVERNIGHT

FRI

Deliver By:
 25MAY07

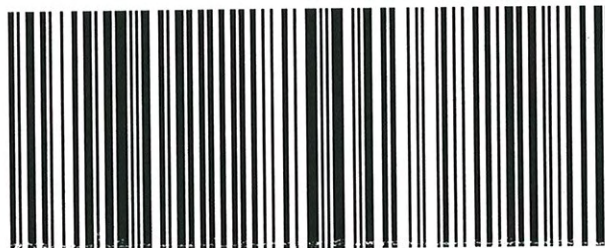
TRK# 7996 4675 6704

FORM
0201

ONT AM

92260 -CA-US

WM PSPA



Shipping Label: Your shipment is complete

1. Use the 'Print' feature from your browser to send this page to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g. jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

Comment Letter AU

May 3, 2007

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

Dear Mr. Wohlmuth,

I have submitted a letter of comments concerning the CVMSHCP in response to your letter of March 21, 2007.

As a follow up to that letter, I currently have the property, APN 648-220-020, which has been included in the conservation area, listed for sale. It has gone to escrow, but the buyers failed to close on the property and have forfeited their earnest money. We are currently in the process of cancelling that escrow so that other offers can be accepted.

If my little parcel is of such high priority and so vital to the Conservation plan that it must be included, then it should be purchased and at the fair market value.

Please consider this letter an offer to sell the property to the CVMSHCP, the Nature Conservancy or other appropriate conservation group of their choosing.

A statement of intent or promise to purchase the property "when funds become available" is of no interest or value to me; However I will finance all or part of the purchase price if such an arrangement would be helpful to the CVMSHCP in achieving their objectives.

AU-1

Sincerely,



Norman K. Sowards

3212 W. 3000th

Moore, Id. 83255

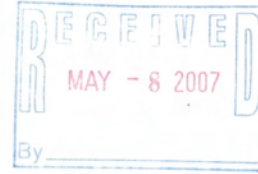
208-554-4007

NKSowards@msn.com

Comment Letter AV

May 3, 2007

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



Dear Mr Wohlmuth,

This letter is in response to your letter of March 21 notifying me that my property, APN 648-220-020 has been included in the proposed Conservation Area and notifying me of the comment period. Please consider this letter as my response to the solicitation of comments.

AV-1

In my opinion, the inclusion of my small parcel, which is in an already existing residential area surrounded by existing homes constitutes an abuse of the Endangered Species Protection Act and I am requesting it be excluded from the conservation area.

This inclusion basically constitutes the taking of my property. Is there any defense against this taking?

AV-2

Is there any procedure to appeal this wrongful classification and if so what is the appeal procedure?

AV-3

I look forward to your timely response before the matter is "cast in Concrete".

Norman K. Sowards
Land Owner

3212 W, 3000 N
Moore, ID. 83255
208-554-4007
NKSowards@msn.com

Comment Letter AW

May 29 07 02:24p rkey

713-462-1856

p.2

MARY SUE CHRISTENSEN KEY
CHRISTENSEN FAMILY
13807 RIVERTON MANOR
CYPRESS, TX 77429



May 21, 2007

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

Re: CVMSHCP
Riverside County, CA

Dear Planning Committee:

As property owners in the above referenced county, we are against the plan and do not wish to participate as a willing seller.

The plan is not properly funded to insure payment in a timely manner. This plan hurts property values and is it not fair to those unwilling to sell. The plan could wipeout families and jeopardize retirement security for many.

We have owned this property for over sixty years. We have paid property taxes for over sixty years. This plan will be a hardship to our family and our investment. We are a small family not a large corporation. Our mother is a widow and is relying on the investment to provide not only for her needs, but future generations of her family. The worry and strain this has caused her has been very great.

Please re-consider the extreme detrimental consequences this plan will have.

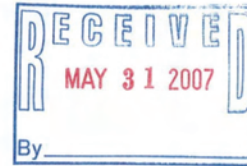
Sincerely,

Mary Sue Christensen Key
Steven H. Christensen Family

AW-1

Comment Letter AX

DESERT PACIFIC
WETLAND ALLIANCE
5101 Tyler AVENUE
Temple City CA 91780



May 24, 2007

Coachella Valley
Association of Governments
73-710 Fred Waring Drive
Palm Desert CA 92260

Subject: Comments On Multiple
Species Plan

Dear Association,

As applied to the Whitewater River Delta area the Coachella Valley Multiple Species Habitat Conservation Plan needs to be revised to exclude those properties that are used to sustain managed wetlands. As written, the plan would acquire some 600-700 acres of managed wetlands in the Mecca area yet the Plan makes no mention of preserving and maintaining these properties as seasonal wetlands, so it is logical to assume that CVMSHCP acquisition would leave these habitats dry during the annual wintering period since CVAG does not have the funds or personnel to manage and maintain these habitats for use by thousands of wild ducks, dozens of other bird species and numerous terrestrials.

The best interest of wildlife will not be served by CVMSHCP acquisition. To the contrary, current private ownership provides water and crucial management expertise to sustain these properties as viable multi use wetlands. Additionally, the landowners in question preserve undeveloped uplands, pay taxes, provide employment and support the local economy. Since wildlife is public property, then the owners of these habitats perform a public trust function as they provide for the needs of many wild species, especially for waterfowl whose habitats have been much destroyed and debased. Because the Salton Sea no longer provides waterfowl feed then it is all the more imperative that ownership status of the Mecca wetlands be preserved. It is also a reasonable assumption that present land uses serve to protect rare and endangered species. All of this at no cost to taxpayers. CVMPHCP acquisition here would not serve the best interest of wildlife or the public, so this element of the Plan should be deleted and the status quo maintained since it provides maximum benefits for both humans and wildlife.

AX-1

Respectfully

A handwritten signature in dark ink, appearing to read "Mike Maier".

Mike Maier
Consultant to DPWA

Comment Letter AY

Roy Don Moore
PO Box 186
Wrightwood, CA 92397-0186

April 8, 2007

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

Re: CVMSHCP
My Desert Hot Springs Property APN # 671170019-8

Dear Ms. Barrows,

I understand that my property, referenced above, is included in the proposed conservation area. I have spent hour upon hour attempting to read the plan and I am doing research on the supposed endangered or threatened species that it includes. I am very troubled that once again the rights of weeds and rodents are placed above the rights of human beings and I am aware of the billions of wasted dollars being spent on failed attempts to save species. Now, again we have a proposed conservation at hand.

Please don't misunderstand, I am a supporter of clean air and clean water, but our society's concern for the environment has gone way past making sure that we have less trash lying on the roadside or that we use less gasoline and have clean air and water. It is time that these endangered weeds (that if were in your back yard, you would pull up or spray a little round up on) aren't given more priority than the landowner who will ultimately lose tens of thousands of dollars each because of the inclusion of their privately owned property being in the proposed conservation area.

At this time there are already 14.3 million acres of designated wilderness already in California. Barbara Boxer is proposing that 2 million more acres of PUBLIC LAND be closed for use by the majority of the population. It seems that the Wilderness Advocates have an insatiable appetite for locking up public lands. Now, my own privately owned property in which I had been saving to use after I retire is now a part of all of the areas being closed. The plan assures everyone that there will be no imminent domain and that "FMV" will be offered if the land is purchased, but I can't

AY-1

be confident in believing what I am reading due to the facts of past incidents of people I've either known or heard about on the news.

When it comes to a private citizen owning a piece of property, then this shouldn't even come into the consideration for inclusion in the plan. This is not an acceptable policy for any type of affair. I see that the plan doesn't include any Indian Reservation land because it is rightfully their land. Well, this little 10 acre parcel of land is mine and I resent it being threatened and ultimately reduced in value by tens of thousands of dollars by a so called endangered weed commonly referred to as "loco weed" that is, to top it all off, poisonous. I know there are other species such as a cricket and a mouse to consider but, humans and their rights of ownership of property have to rank somewhere above the 27 or so on your list.

I have attached a list of the species included in this plan and my findings on each. I have also read that due to the increasing temperature that many species living in the low desert have migrated to cooler climates. Many of the species listed in your so-called attempt to save them are plentiful in other areas.

I understand I may keep my property, but for what, with the heavy restrictions I'm sure it will have once this plan is established. Closure of lands compromises the ability to protect and restore ecosystems and to fight wildfires. It even severely damages rural community economics that enjoy economic impacts of existing recreational visitors. We are heading for disaster when we limit the area in which people can get away from the cities and recreate. People will be packed in like sardines and it is a recipe for disaster.

Quit closing the public lands that are for the use and enjoyment of the people and do not include any privately owned lands – they're not yours. Can you produce a single shred of evidence that land closures have been successful in saving any one species? No. Many of the species listed in your plan are being represented in a light that is less than true. These lands being closed down due to the concern over a species may very well be deceitful as you will see what my research has produced. Many of your included species are common locally or found commonly in other regions.

I can't say you misrepresented the Big Horn Sheep, but there is absolutely nothing growing on my property to attract a sheep – he would be extinct if he was relying of what that property produces to survive there. So, the question comes to mind "What is your true agenda for closing so many millions of acres here in California?"

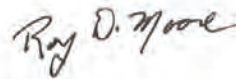
It seems that I actually should be writing to someone who is a more neutral party, after all you are the wife of Cameron Barrows. You and he are contributors to the Nature Conservancy which works with local realtors to acquire land through purchases and then sells to people who are more conservancy minded (as you see it). Well, it seems to me that this is a shady way of doing business, or the land would be purchased directly instead of through of a realtor who is hiding the true reasons for purchase of such land. I got many of those offers in the mail and now I know why.

AY-1
Cont.

I was watching the values closely during the real estate boom just a few months ago. This land was gaining value quickly and now this conservation plan has the potential to render it useless. What is the going rate for useless property these days? Fair Market Value, I'm sure.

↑
AY-1
Cont.

Respectfully Submitted,



Roy D. Moore

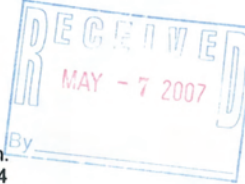
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cc: file

Comment Letter AZ

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

Teresa R. Nava
9959 Bonavista Ln.
Whittier, CA 90604
Parcel # 753320034



Sirs:

This is sent you in regard to the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP).

I currently own ten acres of land (parcel #753320034), in Coachella Valley. This land was handed down to me by my father. It was always the intent and his wish that this land would provide some security for myself and the future of his grandchildren (my children). Now I find that an attempt is being made to take this land away from us without benefit of fair and just compensation. It is not my wish to sell my land, however, if the laws are manipulated to where I have no choice but to sell my land, then a fair and just compensation is warranted.

You must realize this is an emotional issue for us, it is our future, our security, and an integral part of our family security and plans.

Once again for the benefit of clarity, I restate, that it is not my intention to sell my land, however, if forced to sell, I expect fair and just market value to be paid in full.

AZ-1

Respectfully,

Teresa R. Nava MAY 3, 2007
Teresa R. Nava

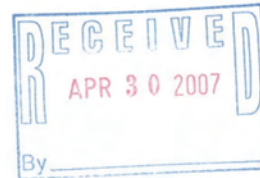
Comment Letter BA

F. Thomas Kieley, III
President
Ronald E. Starrs
Vice President
F. Gillar Boyd, Jr.
Secretary/Treasurer
William "Bill" Byrne
Patricia G. Oygard

David K. Luker
General Manager
Chief Engineer
Best, Best & Krieger
General Counsel
Krieger & Stewart
Consulting Engineers



Desert Water Agency
1200 Gene Autry Trail South
P.O. Box 1710
Palm Springs, CA 92263-1710
Telephone 760 323-4971
Fax 760 325-6505
www.dwa.org



April 26, 2007

Mr. John Wohlmuth, Director
Coachella Valley Association of Governments
73-710 Fred Waring Drive, Suite 200
Palm Desert, CA 92260

**RE: RE-CIRCULATED DRAFT COACHELLA VALLEY MULTI-SPECIES HABITAT
CONSERVATION PLAN - DESERT WATER AGENCY PROPERTIES**

Dear Mr. Wohlmuth:

The Agency received a notice, from the Coachella Valley Association of Governments, that the Agency's property lies in a proposed conservation area identified by the Multi-Species Habitat Conservation Plan.

In 2003 and 2004, the Agency participated in a review of the proposed Multi-Species Habitat Plan. At that time, the Agency chose not to participate as permittee of the Plan. This letter is to formally request that all Agency lands be removed from the proposed conservation areas of the Plan and to advise, officially, that the Agency will not be participating in the re-circulated draft Multi-Species Habitat Conservation Plan.

BA-1

The Agency will continue to be sensitive to environmental issues and the needs of our community. The Agency will also adhere strictly to the requirements of the California Environmental Quality Act as it pertains to the Agency's operations and future projects.

Sincerely,

DESERT WATER AGENCY

David K. Luker
General Manager-Chief Engineer

DKL/jlt
cc:

DWA Board of Directors
Michael T. Riddell, Best, Best & Krieger, P.O. Box 1028, Riverside, CA 92502-1028
Paul T. Seltzer, Esq., 1037 S. Palm Canyon Drive, Palm Springs, CA 92264

JUL 1 2007 SP0001

Comment Letter BB



April 16, 2007

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

Re: CVMSHCP

Dear Sirs,

I am a property owner whose property will be impacted by the CVMSHCP and I would like to state my opposition to this plan. I strongly object to the Plan failing to pay fair market value to property owners in the purchase of their land. We purchased this land as an investment for the future and we would be outraged by anything less than a fair compensation.

BB-1

I do not understand why you did not choose a more remote section, further east where there is not development activity in progress. I feel that the Plan ought to reduce the size of the Conservation Area, which would render the acquisition costs more affordable and perhaps lessen the requirement for unfunded state and federal acquisition components. The Plan should include a fully-funded land acquisition program prior to its adoption.

BB-2

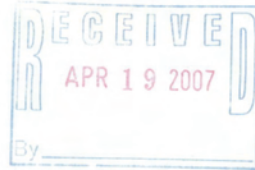
As it stands presently, this plan would case a regulatory taking of private property and many of us would be denied any economic use of our property, thus losing the value of our investment-backed expectations, constituting a taking of private property for public use without just compensation. This is not fair. I ask you to give serious consideration to the alternative plan suggested by the Property Owners Association of Riverside County. It represents a thoughtful and reasonable option and one that would best serve both the CVAG and the property owner's interests.

BB-3

Sincerely,

Robert Schimmick, Sr.

Comment Letter BC



April 15, 2007

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

RE: CVMSHCP

I am writing to inform you that I am not interested in participating in the Coachella Valley Multiple Species Habitat Conservation Plan, a local effort to protect sensitive species. Please remove me from your mailing list. Thanks.

BC-1

Best Regards,

Huguette C Richards

Huguette Richards
4383 Shortridge SE SE
Albany, OR 97322

Comment Letter BD

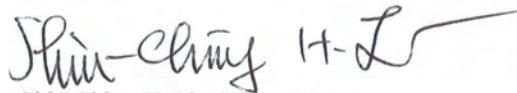
April 1, 2007

Dear Mr. John Wohlmuth,

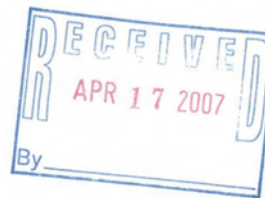
I recently received your letter dated March 21, 2007, regarding preserving open space in Coachella Valley. Thank you for this notification. My company's name is Pao Yu LLC. The property's parcel number is 709440026. The zoning is W2 and an open space. We oppose our property being a part of the conservation plan. We hope that our property can become part of a community development open space. If not, then the next best thing would be for our property to remain an open space with the same zoning as before. This is our comment on the matter. Thank you for your time and consideration.

BD-1

Sincerely,



Shiu Ching H. Lin (Manager)
Pao Yu LLC



Comment Letter BE

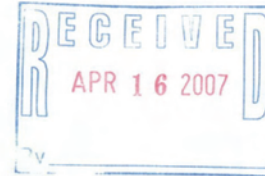


Katie -
Comment on
the plan?
Please consider and
place in comment
file

2775 S. Jones Blvd. Suite 100-A
Las Vegas, NV 89146
Phone: 702-942-2100
Fax: 702-795-3077

April 13, 2007

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



Re: Riverside County Parcel Numbers 745310001 and 756310002

Dear Mr. Wohlmuth:

On behalf of the property owners of the above-reference parcels – and I am one of the property owners – I respectfully request that our parcels be removed from the contemplated CVMSHCP. This request is made based on the following:

- ◆ Our parcels are adjacent to an existing operating sand-and-gravel operation which fronts Dillon Road and is not included in the contemplated CVMSHCP.
- ◆ Our parcels are currently zoned 10 acres with no waiting time necessary for a possible zone change application.
- ◆ The highest and best use of our property is most likely a sand-and-gravel operation.
- ◆ In the recent past, we have had several written offers to purchase our parcels from sand-and-gravel operators. We have been in agreement with the prospective purchasers regarding their offered prices for the parcels. Because of the pending status of the CVMSHCP, however, we have been unable to come to agreement on the terms of the purchases.

BE-1

Having bought these parcels some 30 years ago for investment purposes, we remain open to selling them and would like to have the specter of possibly being included in the CVMSHCP removed from them unless, of course, CVAG would like to enter into negotiations to purchase them.

I will be out of the office until May 2, after which time you can either call me at 702-942-2100 or e-mail me at mackrealty@viawest.net if you have any questions.

Thank you for your consideration of our request.

Sincerely yours,

A handwritten signature in blue ink that reads 'Cmack'.

Charles A. Mack

CAM/hs

Comment Letter BF



Katie



April 13, 2007

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

Attn: John Wohlmuth, Executive Director

RE: Riverside County Parcel Numbers 745310001 and 756310002

Dear Mr. Wohlmuth:

On behalf of the property owners of the above parcels and myself (one of the owners), I respectfully request that our parcels be removed from the contemplated CVMSHCP. This request is made based on the following:

1. Our parcels are adjacent to an existing operating sand-and-gravel operation which fronts Dillon Road and is not included in the contemplated CVMSHCP.
2. Our parcels are currently zoned 10 acres with no waiting time necessary for possible zone change application.
3. The highest and best use of our property is most likely a sand-and-gravel operation,
4. In the recent past, we have had several written offers to purchase our parcels from sand-and gravel operators. We have been in agreement with the prospective purchasers regarding their offered prices for the parcels; however, because of the pending status of the CVMSHCP, we have been unable to come to agreement on the terms of the purchases.
5. We feel that by keeping these parcels included in the contemplated CVMSHCP is causing an unnecessary financial burden on us, the property owners.

BF-1

Having bought these parcels some 30 years ago for investment purposes, we remain open to selling them and would like to have the specter of possibly of being included in the CVMSHCP removed from them unless, the CVAG would like to enter into negotiations to purchase them.

Page 2
CVAG
April 13, 2007

If you would like to discuss this further, please give Charles Mack (702-942-2100) or myself (310-755-6780) a call.
Thank you, for your time to consider this request.

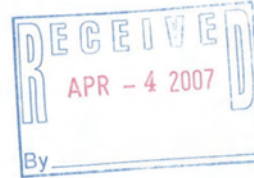
Sincerely yours,



Laurence Friedman

LF/ah

Comment Letter BG



COACHELLA VALLEY ASSOC.
OF GOVERNMENTS
73-710 FRED WARING DRIVE
STE. 200
PALM DESERT, CA. 92260

APRIL 3, 07

ATTN: JOHN WOHLMUTH

RE: THE COACHELLA VALLEY MULTIPLE SPECIES HABITAT
CONSERVATION PLAN (CVMSHCP)

ONCE AGAIN WE ARE WRITING IN OPPOSITION TO THE ABOVE PLAN TO
"CONSERVE" OPEN SPACE.

AS OWNERS OF HUNDREDS OF ACRES IN THE PROPOSED CONSERVATION AREA
WE ARE NOT IN FAVOR IF IT WOULD CHANGE OUR PROPERTY RIGHTS AND
ANY FUTURE DEVELOPMENT PLANS.


STEVEN HARRIS
59511 U.S. HWY 111
PALM SPRINGS, CA. 92262

(760) 408-1121

APN707-180-001

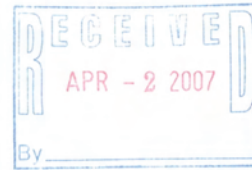

ROBIN HARRIS
22295 PARKMEAD
PALM SPRINGS, CA. 92262

(760) 864-9445
864-9480 FAX

APN 707-290-003

BG-1

Comment Letter BH



CVAG
73-710 Fred Waring Dr.
Suite 200
Palm Desert, Ca.92260

March 27, 2007

Re: CVMSHCP Conservation Area

Dear Sir,

We are the land owners of parcel #669-11-000-1 and 669-12-000-1
According to CVMSHCP proposed conservation area, our property is included in it.
We have invested in Coachella Valley that we believe the area have good potential
and we love the area, and we have plane to develop it when the time is right.

Not only CVMSHCP will stop developers coming into area but decrease the value of
properties there as well.

The land we have there is next to I-10, and it is a very good location for many use. I
don't understand why they include our property in the plan. As the property owners
and tax payer of Coachella Valley, we are **STRONGLY AGAINST** CVMSHCP'S
proposal, and we will fight against it every time this proposal comes up.

Thank you for hear our voice.

BH-1

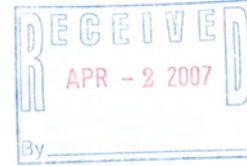
Sincerely,


Leslie Chou

Comment Letter BI

March 26, 2007

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



Re: My 5-acre parcel # 520-060-005

To Whom It Concerns:

I recently received your letter regarding the conservation plan for the desert area where I own property.

If you are interested in making an offer to purchase my 5-acre parcel of vacant land, Parcel # 520-060-005 in the Riverside County Whitewater area, please send your offer by mail for consideration.

BI-1

Thank you very much.

Sincerely,

Christie K. Chapman
82 Shasta Street
Chula Vista, CA 91910

* your letter attached

Comment Letter BI included an attachment that has been reviewed and considered in the response to this comment letter. The attachment has been scanned and is on the CD that accompanies this document.



COACHELLA VALLEY ASSOCIATION of GOVERNMENTS

Blythe • Cathedral City • Coachella • Desert Hot Springs • Indian Wells • Indio • La Quinta • Palm Desert • Palm Springs • Rancho Mirage
County of Riverside • Agua Caliente Band of Cahuilla Indians • Cabazon Band of Mission Indians • Torres Martinez Desert Cahuilla Indians

Copy

March 21, 2007

Dear Property Owner:

The Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP), a local effort to protect sensitive species, meet State and Federal laws and preserve open space, is now available. Written comments must be submitted no later than May 30, 2007 to CVAG, 73-710 Fred Waring Drive, Suite 200, Palm Desert, CA 92260. You may have received previous notices from the Coachella Valley Association of Governments (CVAG) about the CVMSHCP because the County of Riverside Assessor's Parcel Database indicates that you own property in a proposed Conservation Area.

The CVMSHCP aims to conserve over 240,000 acres of open space, 60,000 acres of which have already been purchased from willing sellers, and protect 27 plant and animal species. The Plan provides a regional vision for balanced growth, protecting open space while also expediting construction of key infrastructure including I-10 interchange projects, local road improvements, water management facilities, and Caltrans projects for the next 75 years.

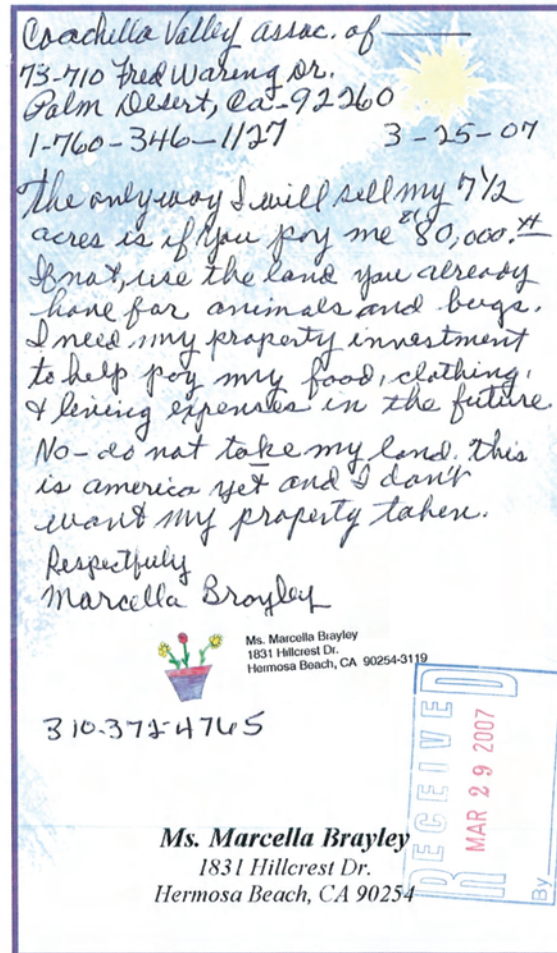
The CVMSHCP plan documents are available at CVAG, local libraries and city halls, and online at www.cvmshcp.org. If you would like further information about the CVMSHCP, CVAG staff will be available to answer your questions from 8:00 a.m. to 5:00 p.m. Monday through Friday at (760) 346-1127.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Wohlmuth".

John Wohlmuth
Executive Director

Comment Letter BJ



BJ-1

0948029

13

Comment Letter BK

IAN ROBERTSON
330 Wilshire Blvd.
Santa Monica, CA 90401



May 29, 2007

VIA HAND DELIVERY

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

**Re: Recirculated Coachella Valley Multiple Species Habitat Conservation
Plan/Natural Community Conservation Plan and Environmental
Impact Report/Environmental Impact Statement**

Dear Ms. Barrows:

I am the beneficiary of approximately 49 acres of land in Western Riverside County on the East side of Palm Drive south of Dillon Road (map attached).

The proposed MSHCP encroaches on almost half of this property. I do not object to the inclusion of the part of property that is in the wash, but I do object to the taking of additional lands to the east that are outside of the wash. There does not seem to be any compelling scientific or ecological reason to include this adjacent land. In addition, the so called "edge effect" aspects of the MSHCP may or may not have severe adverse impacts on my property.

Although I am strong supporter of the MSHCP Plan, I believe that boundaries must be drawn carefully. I hope that this problem can be resolved amicably.

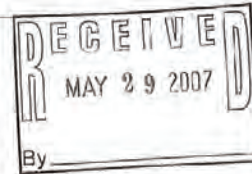
I join in the comments submitted by Wintec Energy, Ltd. on May 29, 2007.

BK-1

Yours very truly,

Ian Robertson
For Sundance Homes of California Defined Benefit Pension Plan

Comment Letter BL



Joseph A. Gibbs

Renell E. Burch

Rhona S. Kaufman

May 29, 2007

Ms. Katie Barrows
Director of Environmental Resources
CVAG
73-710 Fred Waring Drive, Suite 200
Palm Desert, California 92260

Mr. Jim Bartel, Field Supervisor
U.S. Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92009

Re: Notice of Availability of the Recirculated Draft Coachella Valley Multiple
Species Habitat Conservation Plan and Recirculated Draft Environmental Impact
Report/Environmental Impact Statement
Clients: Tim and Edra Blixseth

Dear Ms. Barrows and Mr. Bartel:

This letter provides comments on the Recirculated Coachella Valley Multiple Species Habitat Conservation Plan ("MSHCP" or "Plan") and Recirculated Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/S"). The MSHCP has erroneously included certain properties as actual or potential habitat for endangered species and species of special concern. In addition, there are other errors that affect the overall costs and economic analysis of the Plan. The MSHCP and DEIR/S cannot fulfill the intended goals, are unfair to property owners, and should not be adopted. While these comments are divided into subparts, the MSHCP and the DEIR/S are so inter-related that all comments provided herein should be viewed as comments on both the Plan and the environmental review documents.

BL-1

74-900 Highway 111, Suite 222, Indian Wells, California 92210
Phone (760) 779-1790 Fax (760) 779-1780 www.jagibbs.com jag@jagibbs.com

Introduction

These comments are submitted on behalf of Tim and Edra Blixseth, the owners of real property in Riverside County that is included within the MSHCP. The real property is located in the Valerie and Rabbit Peak Quadrangles and encompasses Sections 31, 6, 7, & 8 (referred to as "Desert Ranch")¹, Section 16 (referred to as "Blixseth Estate"), Section 22 (referred to as unnamed "Future School Site and Golf Course," planned to be donated to Coachella Valley Unified School District and Section 26 (referred to as "Obtainable Housing") (collectively "the Properties. The APNs for these parcels are as follows:

Section 6 - 755350001, 755350002, 755350003, 755350004, 755360001, 755360002, 755360003, 755360004, 755360005, 755360006, 755360007, 755360008, 755350005, 755350006, 755350007, 755350008, 755360009, 755360010, 755360011, 755360012, 755360013, 755350009.

Section 7 - 755060006, 755060007.

Section 8 - 755060008, 755060009.

Section 16 - 755200008, 755200009.

Section 22 - 755220003, 755220008.

Section 26 - 755290018, 755290021.

Section 31 - 751300006.

The consolidated land ownership of the Properties provides a significant opportunity for a comprehensive, planned regional development in this portion of Riverside County. The owners have been working with county, state, and federal officials to lay out a sound program for regional development that will provide for economic growth, meet emerging housing needs, sensibly develop infrastructure, and offer land donation for needed schools. The MSHCP boundaries will impede the ability of Riverside County and the owners to provide rational and planned land development for this part of the county. The specific comments provided in this letter amply demonstrate errors in the MSHCP and DEIR/S. However, the overriding problem with the MSHCP is that it will impede the visionary private investment that the region needs to continue to provide economic growth, sufficient housing, and rational infrastructure. The MSHCP should not be approved as long as it impedes the ability of the private and public sectors to attain rational, planned development.

The MSHCP identifies portions of the Properties as within planned conservation areas for Peninsular bighorn sheep (hereinafter "bighorn sheep") and the LeConte's thrasher. See

¹ In the comments submitted on behalf of the Blixseths on the prior draft CVMSHCP, Desert Ranch was described as constituting Sections 5, 6, and 31.

MSHCP Figures 4-26a and 4-26d(4). The MSHCP, effectively, prohibits development within designated conservation areas by requiring those lands to be acquired for conservation in the future and establishing a multitude of burdens on the local governments that prevent authorization of development within identified conservation areas.

The Blixseths submitted comments on the draft of the MSHCP that was circulated for public comment on November 4, 2004. Subsequent to those comments, the MSHCP was modified slightly to remove from the Conservation Area 86 agricultural acres in Section 6. The MSHCP recirculated for public comment now includes those modifications. While these modifications are improvements, they neither correct the many errors in the MSHCP identified in the Blixseths' prior comments, nor the errors identified in this comment letter. The Recirculated MSHCP recognized that changes might need to be made based on additional information. See E.S-4. "The Plan recognizes that there is inevitably an uncertainty factor in scientific information about biological systems." It notes that "Changes in management of the Conservation Areas, and minor boundary changes, could result from such increased knowledge." The information provided in these comments constitutes such "increased knowledge" that supports changes to the boundaries of the proposed Conservation Areas.

As described more fully in the enclosed documents, property specific information demonstrates that the MSHCP should not include the Properties identified here:

- Section 31 consists of undeveloped land including mountain slopes in the south-western corner and Martinez Peak on the northern border, and a wash system that drains (in part) Martinez Canyon. Property-specific surveys and thorough information about the property and both bighorn sheep and LeConte's thrasher reveals that the MSHCP is over-inclusive by designating for conservation the non-slope areas of Section 31.
- Section 6 is a largely flat property that has been in agricultural use for decades, as vineyards. The western edge of Section 6 abuts part of the Santa Rosa Mountains. Property-specific surveys and thorough information about the property and both bighorn sheep and LeConte's thrasher reveals that the MSHCP is over-inclusive, by designating for conservation the non-slope areas of Section 6. In particular, the previously disturbed and graded low elevation agricultural areas in Section 6 should not be designated for conservation.
- Sections 7 and 8 are bajadas emanating from the easternmost slopes of the Santa Rosa Mountains. The mouth of Sheep Canyon is located at Section 7, with desert washes and braided channels carrying runoff from the canyon and these bajadas. Property-specific surveys and thorough information about the property and both bighorn sheep and LeConte's thrasher reveals that the MSHCP is over-inclusive by designating for conservation the portion of these sections north of the wash.
- Section 16 is gently sloping terrain with virtually no vertical relief. It supports native and invasive exotic vegetation associated with bajadas emanating from the easternmost slopes of the Santa Rosa Mountains. Alamo Canyon empties about a mile to the southwest of Section 16, and Sheep Canyon empties about a mile to the northwest of Section 16, with desert washes and braided channels carrying runoff from these bajadas. Section 16

BL-1
Cont.

adjoins land to the north and northeast that is developed for agricultural uses. Property-specific surveys and thorough information about the property and both bighorn sheep and LeConte's thrasher reveals that the MSHCP is over-inclusive by designating for conservation the entirety of this section.

- Sections 22 and 26 are lower bajadas emanating from the easternmost slopes of the Santa Rosa Mountains. The old shoreline of ancient Lake Cahuilla is located on these two sections. Property-specific surveys and thorough information about the property and the LeConte's Thrasher reveals that the MSHCP is over-inclusive by designating for conservation the entirety of these sections.

BL-1
Cont.

I. The MSHCP is Based on Errors of Fact

A. Failure to Use Best Available Scientific Information

In addition to the property-specific information provided in these comments, it is clear that as a general matter the MSHCP is relying on outdated and inappropriate information. These comments provide but a few examples of the problems with the MSHCP.

1. Bighorn Sheep

A prime example of outdated and inaccurate data is specific to the bighorn sheep. The principal basis for MSHCP Conservation Areas for the bighorn sheep is the essential habitat boundary set forth in the Recovery Plan for the species. (MSHCP at 9-257 to 9-259.) Peer-reviewed empirical research published subsequent to the Recovery Plan but years before the release of the DEIR/S indicates that the extent of habitat identified in the Recovery Plan for the bighorn sheep could be substantially overstated. See, e.g., J. Turner et al., *Determination of Critical Habitat for the Endangered Nelson's Bighorn Sheep in Southern California*, 32 *Wildlife Society Bulletin* 427 (2004).

Additionally, a number of parties challenged the final rule designating critical habitat for the bighorn sheep that resulted in a consent decree entered by the United States District Court for the Central District of California. (*Agua Caliente v. Kempthorne*, Case No. 05-187 (C.D. Cal. Aug. 11, 2006).) The consent decree requires the U.S. Fish and Wildlife Service to revise the existing rule. Furthermore, it is evidence that the critical habitat boundary (which mirrors the essential habitat boundary) is flawed. Because that boundary is the principal basis for conservation of the bighorn sheep in the MSHCP, it calls into question both the MSHCP and that portion of the DEIR/S that analyzes potentially significant effects of the MSHCP on biological resources.

BL-2

For bighorn sheep, it appears that rather than consider accurate data, the Plan was based on the simple "rule" that any slope greater than 20 percent, plus a zone ½ mile from any such slope should be designated for conservation, without regard to actual property attributes. Without agreeing that a ½ mile buffer is generally appropriate, the property-specific information provided with these comments demonstrates that for the Sections at issue, this ½ mile rule is inappropriate.

2. Examples of other Data Inaccuracies

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

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

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

As demonstrated, the biological data is outdated, incomplete, and frequently non-specific in important ways. Thus, the MSHCP description lacks the specificity required for the public and decision-makers to evaluate the accuracy and adequacy of the biological data upon which the Plan is based.

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

Furthermore, Coachella Valley Association of Governments (“CVAG”) and the U.S. Fish and Wildlife Service (“USFWS” or the “Service”) (collectively, the “Lead Agencies”) did not give due consideration to certain findings and recommendations set forth by the ISA. For

BL-3

instance, the ISA criticized the Administrative Review Draft of the Plan ("ARD") for failing to use a more scientifically defensible model to select sites to include in the MSHCP:

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

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

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

BL-3
Cont.

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

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

(MSHCP at A1-124.)

Apparently, the SAC increased the size of the Conservation Areas in the initial Conservation Alternative 2 to create the Conservation Areas included in the Preferred Alternative. But the MSHCP fails to address key questions, such as which "additional

information provided” the SAC considered, and why (or how) their analysis of the unspecified “additional information” lead the SAC to only increase the Conservation Area boundaries instead of redrawing them to conform with those that resulted from application of the SITES program.

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

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

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

Section 3.10 of Appendix I to the MSHCP indicates that records from the California Natural Diversity Data Base during 1992 to 1997 were relied upon so that any more recent records were evidently ignored. (MSHCP at A1-136.) In other words, the authors of the MSHCP failed to consider a decade of information available to them. Furthermore, it is impossible to discern the extent of data consulted. For example, it is unclear whether field data were collected for some or all of the Covered Species, and the geographic scope of survey efforts is not disclosed. Because the biological data relied upon are not disclosed, it is not possible for decision-makers and the public to assess the reliability of such data.

Finally, the delineation of the conservation area for many of the parcels at issue is not based on any modeled habitat, but arbitrarily follows property boundaries (section lines). For example, the Blixseths’ property in Sections 8, 16, 22, and 26 are all completely denoted as within the Southern San Jacinto and Santa Rosa Mountains Conservation Area, despite the fact that only a portion of each of these Sections contain modeled habitat. Under the principles for the MSHCP, which we challenged, at a minimum the conservation areas should follow the boundary of that modeled habitat, rather than include those portions of sections outside of the modeled habitat.

B. Independent Scientific Review Confirms that the Properties Should not be Within the Conservation Areas

As addressed in the Blixseths’ prior comments, the owners commissioned biological experts to conduct a site-specific assessment of the Properties for use or suitability as wildlife habitat, particularly for bighorn sheep and LeConte’s thrasher. Those studies, completed for 2005, have been updated in, and geographically expanded for, both 2006 and 2007. The expert’s

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reports are enclosed with this letter. They conclude that the property has not served as habitat for bighorn sheep or LeConte's thrasher and would not provide suitable habitat:

- Intensive on-the-ground surveys show that none of the sections at issue – 31, 6, 7, & 8, 16, 22 or 26 are being used by LeConte's thrasher. Therefore the modeled habitat for the LeConte's thrasher in these Sections should be removed.
- Section 31 does not contain any sign of recent or historic use by bighorn sheep. The non-slope areas of Section 31 have little habitat value for bighorn sheep and should be removed from the modeled habitat for the species.
- Section 6 is a largely flat property that has been in agricultural use for decades. The Section does not contain any sign of recent or historic use by bighorn sheep. The non-slope areas of Section 6 (and, in particular, the previously disturbed and graded low elevation agricultural areas in the Section) have little habitat value for bighorn sheep and should be removed from the modeled habitat for the species.
- Sections 7 and 8 do not contain any signs of recent bighorn sheep activity. The areas north of the braided wash system in these sections are not likely used by bighorn sheep and should be removed from the modeled habitat.
- Section 16 is gently sloping terrain with virtually no vertical relief. The Section does not contain any sign of recent or historic use by bighorn sheep. This Section has little habitat value for bighorn sheep and should be removed, in its entirety, from the modeled habitat for the species.

The MSHCP is based on multiple errors regarding the basis for the Properties within the Conservation Areas for bighorn sheep. The studies provided with this letter confirm that the Properties do not provide habitat for bighorn sheep. Site specific surveys revealed no signs of bighorn sheep presence or usage. Review of historic patterns of bighorn sheep in the general vicinity (Santa Rosa Mountains) demonstrates that they are not found in Sections 6-8, 22, 26, or 31.

The draft MSHCP recognizes that it has little information on Le Conte's thrasher ("[h]abitat needs and population numbers for this bird are poorly known," MSHCP, p. 9-169; "No data are available on population density in the Plan Area." MSHCP at 9-176. No Core Habitat was identified and no on the ground analysis was undertaken. MSHCP at 9-172. At multiple places, the MSHCP recognizes that property-specific information is lacking and, while relying upon modeling, the input to the model was low amounts and quality of data. Based on the property-specific information collected to date, the LeConte's thrasher overlay at Sections 6-8, 22, 26, and 31 should be adjusted.

Therefore, independent of any other errors regarding science and biology, the information specific to the Properties demonstrates that the MSHCP is in error by including those properties as conservation habitat for bighorn sheep and LeConte's thrasher.

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C. The Plan is Inconsistent with Local Land Use

In addition to the scientific errors, the MSHCP is based on erroneous information on land use and thus land values. Future development is expressly contemplated under the Riverside County Integrated Plan for the Properties at Sections 6-8, 22, 26, or 31. The MSHCP conservation areas at these properties should be removed.

Among the non-scientific errors of the MSHCP is its failure to comply with the objectives for accommodating future growth and preservation of open space under the Riverside County master plan. Although the MSHCP purports to be based on (among other Plans) the "Riverside County General Plan" the MSHCP fails to recognize that Riverside County has integrated the land use with the proposed community development aspects identified by the Consensus Planning Principles and Strategic Vision. As stated throughout the General Plan, the Riverside County Integrated Plan seeks to integrate and balance the need for community and economic development with permanent multi purpose open space preservation. The County of Riverside General Plan goes as far as to specifically identify the properties of the Eastern Coachella that make up Desert Ranch as an area where future growth will occur. The Plan recognizes the Desert Ranch properties as a future community center and thus, expressly exempted it from the 5 year limitations placed on Foundation Component amendments described in the Administrative Element of the Plan. (See ECVAP 2.1 County of Riverside General Plan.) The draft MSHCP fails to account for the planned utilization of this area itself and therefore dramatically impacts the need for future development to the area.

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These errors impact the validity of the MSHCP in general, because errors in the identified land use of property proposed for inclusion in the Conservation Areas affect the estimated costs of the program. Since the properties were not accurately identified, the costs for the Plan, (including buying conservation land) that are based on land use assumptions of Plan, cannot be valid. The MSHCP should not be approved until the costs are properly evaluated.

II. The MSHCP Fails to Meet the Intended Goals and Should Not be Approved in its Current Form

The MSHCP and Incidental Take Permit express lofty goals, of combining protection for wildlife and the environment with predictability for economic development. In theory, the process might have resulted in allowing growth and economic development while preserving important habitat. Instead, the MSHCP establishes new layers of bureaucracy, overrules city and county land use planning determinations, grossly underestimates the cost and economic impacts to the communities, and does not provide the necessary certainty to guide the future. The MSHCP should not be adopted. These comments identify only a few of the significant unresolved issues presented by this proposal.

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A. The Project Objectives Cannot Be Met

As described above, the MSHCP has been built upon faulty science; both the data and the scientific methods employed to arrive at the MSHCP are outdated and inaccurate. As a result, private property owners have no way of knowing the full extent of the MSHCP's impacts to their property. Property owners will discover the MSHCP's impacts to their property only after the

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fact when they try to develop their property. Then the burden will be on the property owners to provide updated and accurate science.

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

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

As is evident from this outline of the Joint Project Review Process, it will not meet the MSHCP objective of "improv[ing] future economic development in the Plan Area by providing an efficient, streamlined regulatory process." (DEIR/S at 1-6). This multi-agency review must occur whether or not there are any listed species or critical habitat on the project applicant's land. Each project applicant's plans undergo review by CVCC, the Local Permittee, and both CDFG and USFWS in addition to any CEQA/NEPA review otherwise required. Furthermore, there is no statutory or regulatory recourse for a project applicant to compel the various agencies to comply with the stated time limits.

As another example, under the MSHCP, landowners within the Santa Rosa and San Jacinto Mountains Conservation Area will not know until after the Plan is adopted whether their property will be included in the Reserve System:

The County and impacted cities will employ HANS in conjunction with the Joint Project Review Process in portions of the Santa Rosa and San Jacinto Mountains Conservation Area. A map of the area where the HANS Process will be used is shown in Section 4.3.21. HANS applies to property in the identified areas that may be needed for inclusion in the MSHCP Reserve System. HANS ensures that a determination will be made of what properties in this area are needed for the MSHCP Reserve System, that the owners of property needed for the MSHCP Conservation Area are compensated, and that owners of land not needed for the

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MSHCP Conservation Area shall receive Take Authorization for Covered Species through the Permits issued to the County and the Cities pursuant to the MSHCP.

(MSHCP at 6-21 (emphasis added).)

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

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

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B. Goals of Planning and "No Surprises" Will Not be Met

The Plan should not be approved without a binding federal "no surprises" rule. All of the MSHCP instruments – the Incidental Take Permit, the Implementing Agreement, and others – assume that the federal and state governments will not add more wildlife protection restrictions in the future. This concept is reflected in the federal "No Surprises" rule, under which the Fish and Wildlife Service can include terms in an Incidental Take Permit that assure the permittee that compliance with the terms of the permit will, in most circumstances, be sufficient for future compliance with the law. The federal "No Surprises" rule was temporarily suspended by litigation pending promulgation of the permit revocation rule. But since the No Surprises rule was not changed, litigation regarding the legality of the rule is pending and has resulted in uncertainty over this critical element of the MSHCP. Until the community knows it will have no surprises, the MSHCP should not be approved.

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C. There Is Insufficient Protection of Private Property

The MSHCP effects a taking of lands designated for conservation without adequately compensating the property owner. The MSHCP establishes a complex series of processes for land within designated conservation areas that has the effect of freezing the land while the local government tries to find funding to purchase the land for conservation. Although the MSHCP has been carefully crafted to appear to provide due process and avenues for development and compensation, the complex series of reviews, combined with excessively long procedures, will effectively condemn land in conservation zones.

The MSHCP recognizes that there may not be sufficient funds to compensate property owners, and establishes complex procedures designed to delay the duty to pay for land. For example, Section 6.6.1.2, Property Owner Initiated Habitat Evaluation and Acquisition Negotiation Strategy (HANS) (pp 6-21 to 6-30) describes an elaborate process to obtain compensation for land in the conservation areas. Where funds are not available to compensate

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landowner, the process involves different steps depending upon the value of the property at issue. For properties valued over \$300,000, the Plan provides a 4 year period suspending processing of development application, for review to either purchase the land or amend the Plan to allow the development. If not purchased after four years, a development application may be processed but the developer will pay a Local Development Mitigation Fee, and prior to issuing a grading permit there is another negotiation and approval of a development application that "precludes compliance with Conservation Objectives and Required Measures" results in suspension of Permits. While the words on paper seem to give the property owner a right to be compensated or to develop land, the various procedures add many years of delay. In short, the MSHCP takes property but does not provide prompt or adequate compensation for the taking.

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D. Local Land Use Planning Can Be Overruled by a New Bureaucracy

Administration of the MSHCP is given to the Coachella Valley Conservation Commission (CVCC), adding a layer of bureaucracy. The CVCC is not elected by the people. The MSHCP states (ES-18 and elsewhere) that its process "shall in no way limit the Local Permittees' land use authority." (Section 6.6.1.1, Joint Project Review Process within Conservation Areas, states that "CVCC shall have neither jurisdiction over land use decisions by Permittees, nor the authority to prevent a Permittee from approving a project.") The reality is that CVCC has the right to delay and control land use by exercising the authority it receives under the MSHCP. For example, Riverside County, a permittee under the Incidental Take Permit, cannot allow development without review of all terms by CVCC and federal and state wildlife agencies (90 days or more). If Riverside County fails to adopt terms proposed by CVCC, there is a prolonged review process. Ultimately, the County can lose its rights under the Incidental Take Permit and the MSHCP if it fails to accept CVCC conditions. In essence, land use, zoning and development in the future will be controlled by CVCC and the wildlife agencies. This structure is contrary to the letter and spirit of land use planning on our state.

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III. The DEIR/S Does Not Comply with CEQA or NEPA

A. Introduction

The Recirculated Draft Environmental Impact Report/Environmental Impact Statement ("DEIR/S") for the MSHCP fails to satisfy the legal requirements of the California Environmental Quality Act, Cal. Pub. Res. Code §§ 21000 *et. seq.* ("CEQA"), and National Environmental Policy Act, 42 U.S.C. § 4321 *et. seq.* ("NEPA"), and is therefore legally inadequate.

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

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

Similarly, NEPA is intended to provide a full and fair discussion of significant environmental impacts that informs decision-makers and the public. (40 C.F.R. § 1502.1.) Under NEPA an EIS should "provide 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. Nat'l Marine Fisheries Svc.* (9th Cir. 1995) 56 F.3d 1060, 1064 (citation omitted).) NEPA also requires that an EIS succinctly describe the environment and the area to be affected. (40 C.F.R. § 1502.15.)

The DEIR/S itself states that "[t]his joint EIR/EIS is an informational document intended to provide public decision makers, responsible or other interested agencies, and the general public with an assessment of the potential environmental impacts associated with implementation of the proposed MSHCP." (DEIR/S at 1-6.) It further restricts the scope of its analysis to an analysis of "the impacts of providing Take Authorization for the Covered Activities in the Plan." (*Id.* at 2-13.) That analysis must include assessment of direct, indirect, and cumulative impacts. (CEQA Guidelines §§ 15126.2(a) (regarding direct and indirect impacts), 15130 (regarding cumulative impacts).)

However, in this case, the DEIR/S fails to provide sufficient information to enable informed decision-making by the Lead Agencies. These comments address the major deficiencies.

B. The Project Description Lacks Required Specificity

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

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

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The project description in the DEIR/S fails adequately to discuss core components of the Plan, including, but not limited to, the Conservation Areas, Core Habitat Areas, Other Conserved Habitat, Essential Ecological Processes, Biological Corridors and Linkages, Land Use Adjacency Guidelines, and Adaptive Management activities. Each of these components must be discussed with the utmost specificity because each has potentially significant environmental impacts.

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

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

The Reserve System lies at the heart of the MSHCP. (DEIR/S at 2-9.) The MSHCP Reserve System will be assembled from 21 Conservation Areas. (*Id.*) As set out more fully above, however, the many flaws and errors in science used for the MSHCP mean that the action fails to meet CEQA and NEPA requirements. The DEIR/S asserts that "[a] comprehensive database of the best available scientific research and information was used over the course of the Plan's development." (DEIR/S at 2-3.) However, when evaluating this "comprehensive database," it is clear that the MSHCP fails to use the most accurate and best scientific data since the data is inaccurate and outdated. This is borne out by the sources from which the MSHCP was created.

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

The Lead Agencies' intent to update the vegetative and species data after the MSHCP is adopted, instead of before, is an improper deferral of an assessment of the environmental impacts to a later date contrary to CEQA Guidelines § 15146. The Lead Agencies' use of outdated

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information does not constitute a good faith effort at full disclosure in describing or evaluating the impacts of the MSHCP

C. The Environmental Setting in the DEIR/S is Inadequate

CEQA mandates that “[a]n EIR must include a description of the physical environmental conditions in the vicinity of the project ... from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (CEQA Guidelines § 15125(a) (emphasis added).) In brief, the baseline environmental setting in an EIR must be specific and accurate because “[k]nowledge of the regional setting is critical to the assessment of environmental impacts.” (CEQA Guidelines § 15125(b).)

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

1. Inadequate Description of Biological Resources In The Plan Area

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

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

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

2. Inadequate Description of Transportation, Traffic And Circulation In The Plan Area

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

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D. The DEIR/S Fails to Properly Analyze the Significant Effects on the Environment that Will Result from the MSHCP

An EIR must address a proposed project's “significant effects on the environment.” (CEQA § 21100(b)(1); *see also* CEQA Guidelines § 15126(a) (the EIR “shall identify and focus on the significant environmental effects of the proposed project.”).) A significant effect on the

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

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

These comments identify, briefly, the cursory and inaccurate coverage of certain significant effects in the DEIR/S. For the purposes of CEQA, the DEIR/S concludes that for each area analyzed the MSHCP will result in less than significant effects. This conclusion is incorrect with respect to a number of the areas analyzed.

1. Land Use

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

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

As described above, the conclusion of no conflicts with local land use policies clearly is in error for the Properties identified in this comment letter. There are other similar errors, such as the fact that the MSHCP conflicts with the City of Desert Hot Springs General Plan. As described above, the MSHCP establishes an impermissible overlay to direction local planning, increasing uncertainty and burdens on communities and property owners. These errors call into question the general conclusions of the DEIR/S.

2. Biological Resources

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

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habitat, and blocked ecological processes. (*Id.* at 4.7-2.) As addressed above, the many flaws in the biological and scientific information on which the DEIR/S relies makes it inappropriate to reach these conclusions about impacts to biological resources.

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

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3. Housing

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

For example, the DEIR/S indicates that over 161,000 acres of lands designated for residential development in the Plan Area are located in MSHCP Conservation Areas, which would constrain or foreclose residential development of such lands. (DEIR/S at 4.8-20 (Table 4-20).) In other words, almost 60 percent of all lands planned for residential development in the Plan Area are located in Conservation Areas. (*See id.*) Apparently due to the magnitude of the impact on lands designated for residential development, the DEIR/S includes the statement that "[i]t is important to note that each jurisdiction has the ability to modify its General Plan as development pressures arise..." (DEIR/S at 4.8-29.) The DEIR/S does not go so far as to acknowledge that the MSHCP is incompatible with the County and City General Plans, but it is plain that the MSHCP on the one hand and the General Plans on the other are incompatible. This is a significant adverse effect of the MSHCP that must be identified as such and is grounds for recirculation of the DEIR. (DEIR/S at 4.2-6 (indicating that conflict with a land use plan is a significant impact for the purpose of CEQA); CEQA Guidelines § 15088.5(a)(1) (indicating the recirculation is required when a new significant impact is identified).)

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The DEIR/S indicates that the MSHCP would have a significant effect for the purposes of CEQA if, *inter alia*, the MSHCP would "[c]ause a significant adverse socioeconomic effect on communities located within the project planning Area." (DEIR/S at 4.8-5.) There is simply no question that the MSHCP will have adverse socioeconomic effects by imposing unfounded limitations on land development. The DEIR/S needs to be revised to provide accurate descriptions of and conclusions about the effects of the MSHCP on the human environment.

E. The DEIR/S Fails to Adequately Analyze Cumulative and Growth-Inducing Impacts that Will Result from the MSHCP

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)(2); CEQA Guidelines 15130(b)(1).) Projects currently under environmental review unequivocally qualify as reasonably probable future projects to be considered in a cumulative impacts analysis. (*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal. App. 3d 61, 74, n.13.) In addition, projects anticipated beyond the near future should be analyzed for their cumulative effect if they are reasonably foreseeable. (*Bozung v. Local Agency Formation Comm’n* (1975) 13 Cal. 3d 263, 283-84).

The cumulative impacts concept recognizes that “[t]he full environmental impact of a proposed ... action cannot be gauged in a vacuum.” (*Whitman v. Board of Supervisors* (1997) 88 Cal. App. 3d 397, 408.) The requirement to conduct a cumulative impacts analysis of a project’s regional impacts is considered a “vital provision” of CEQA. (*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 DEIR/S does not meet these requirements.

In addition, CEQ interprets NEPA to require that an EIS include analysis of connected actions (40 C.F.R. § 1508.25(a)) and cumulative impacts (40 C.F.R. § 1508.7, 1508.8, 1508.23, 1508.25(a)(2) and (c)).

The level of analysis in the DEIR/S cumulative impacts analysis is superficial and therefore inadequate. An EIR must include objective measurements of a cumulative impact when such data are available or can be produced by further study and are necessary to ensure disclosure of the impact. (*See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 729.) Despite this requirement, the DEIR/S fails to analyze adequately a number of cumulative impacts including, but not limited to, indirect impacts to biological resources, land use, and transportation and circulation.

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

Likewise, the cumulative impacts analysis of transportation and circulation impacts is flawed. In analyzing cumulative transportation and circulation impacts, the DEIR/S states that “the long-term roadway network would essentially be the same with or without implementation

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of the proposed MSHCP.” (DEIR/S at 9-14.) If this claim were true, it would certainly simplify the obligation on CVAG to analyze cumulative transportation and circulation impacts. But no evidence is provided to support the claim.

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

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2. The Growth-Inducing Impacts Analysis Is Inadequate

The DEIR/S must consider the growth-inducing potential of the MSHCP in areas outside the Conservation Areas. CEQA requires that an EIR include a “detailed statement” setting forth the growth-inducing impacts of the proposed project. (See CEQA § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1337 (stating, *inter alia*, that “our decision in this case arises out of the realization that the sole reason to construct the road and sewer project is to provide a catalyst for further development in the immediate area”). Accord 40 C.F.R. § 1502.16 (indicating the growth inducing effects must also be considered under NEPA).) The statement must “[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment.” (CEQA Guidelines § 15126.2(d).) It must also discuss how a project may “encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively” or “remove obstacles to population growth.” (*Id.*)

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The DEIR/S includes less than one single page of analysis of growth-inducing impacts. (DEIR/S at 9-52.) One of the primary purposes of the MSHCP is to streamline the development process. (DEIR/S at 1-6.) As a result, the MSHCP “would streamline the development application review process throughout the Plan Area.” (*Id.* at 1-2.) The Lead Agencies acknowledge that “the Plan could be construed as facilitating substantial growth.” (DEIR/S at 4.8-25.) Yet, they have failed to provide meaningful analysis of growth inducing impacts.

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

F. The DEIR/S Fails to Analyze a Reasonable Range of Alternatives

Under CEQA, an EIR must analyze a reasonable range of alternatives to the project, or to the location of the project, that would feasibly attain most of the basic objectives while avoiding

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

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

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

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

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

The Lead Agencies understandably chose alternatives that were identical to the Proposed Action/Preferred Alternative in every respect except one in order to simplify the process of comparing alternatives. But this easy out for the Lead Agency undermines the purposes of CEQA and NEPA. There are further ways in which the Lead Agencies' alternatives set forth a binary choice for decision-makers thereby violating both CEQA and NEPA. For example, the

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DEIR/S failed to consider a range of permit terms. Other recently adopted large-scale multiple species habitat conservation plans have much shorter permit terms. (*E.g.*, East Contra Costa County Habitat Conservation Plan (which has a 30 year permit term).) The DEIR/S could have considered both longer and shorter permit terms. Likewise, while none of the alternatives considered the possibility of conservation outside the Plan Area to allow the Implementing Entity greater flexibility to attain the MSHCP's biological goals and objectives, the DEIR/S could have considered one or more alternatives that provide for such conservation to occur.

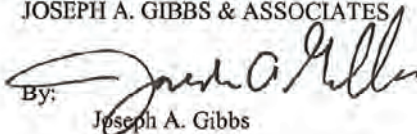
In light of the inadequate alternatives analysis, the true impact of the MSHCP cannot be understood. Without revision, the alternatives analysis section of the DEIR/S remains inadequate for the purposes of CEQA and NEPA.

Conclusion

The MSHCP should not be approved at this time. The site specific information about the Properties demonstrates that they should not be included within the conservation areas. The MSHCP and the EIR/S have multiple and significant flaws and thus need to be revised and recirculated before any final decisions are made.

Very truly yours,

JOSEPH A. GIBBS & ASSOCIATES

By: 
Joseph A. Gibbs

Enclosures

CC: Tim & Edra Blixseth (w/enclosures)

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