Riverside County Board of Supervisors
Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Sam Alhadeff

Address: 41607 MARGARITA RD 103
(only if follow-up mail response requested)

City: Temecula **Zip:** 92591

Phone #: 951 719 3640

Date: 3/16 **Agenda #** 16.1

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda It

_____**Support** _____**Oppose** _____**Ne**
project the appeal

Note: If you are here for an agenda item that
for "Appeal", please state separately your posit
the appeal below:

_____**Support** _____**Oppose** _____

I give my 3 minutes to: _____

Riverside County Board of Supervisors
Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Grace Williams

Address: 23555 Meyer Drive
(only if follow-up mail response requested)

City: Riverside **Zip:** 92518

Phone #: 656-7000

Date: 3/16/10 **Agenda #** 16.1

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

_____**Support** _____**Oppose** _____**Neutral**

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

_____**Support** _____**Oppose** _____**Neutral**

I give my 3 minutes to: _____

Riverside County Board of Supervisors
Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: George Hague

Address: 26711 Ironwood Ave
(only if follow-up mail response requested)

City: Moreno Valley, Ca. **Zip:** 92555

Phone #:

Date: **Agenda #**

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

_____**Support** _____**Oppose** _____**Neutral**

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

16.1

X **Support** _____**Oppose** _____**Neutr**

I give my 3 minutes to: Jonathan Evans

6 Min's

Riverside County Board of Supervisors
Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: JONATHAN EVANS

Address:
(only if follow-up mail response requested)

City: **Zip:**

Phone #:

Date: 3/16/10 **Agenda #** 16.1

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

_____**Support** _____**Oppose** _____**Neutral**

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

X **Support** _____**Oppose** _____**Neutral**

I give my 3 minutes to:

CENTER for BIOLOGICAL DIVERSITY Because life is good.

protecting and restoring natural ecosystems and imperiled species through science, education, policy, and environmental law

via email and hand delivery

Riverside County Board of Supervisors
4080 Lemon ST, 5th Floor
Riverside, CA. 92501

March 15, 2010

RE: Item 16.1, March 16, 2010 Board of Supervisors Hearing: Comments on Appeal of the Alessandro Commerce Centre (EIR #510, Plot Plan #22925, TPM #35365)

Honorable Chairman and Board Members:

These comments are submitted on behalf of the Center for Biological Diversity ("Center") supporting the appeal of Alessandro Commerce Centre filed by the Center, San Bernardino Valley Audubon Society, and Sierra Club ("Conservation Groups") and urging the County to deny the Project and adopt an environmentally superior alternative.

Despite the diligent work by County staff, the Environmental Impact Report ("EIR") and Plot Plan do not meet the legal standards required under state and federal law, in particular the CEQA and the ESA, and should be denied until those deficiencies are rectified. As set forth more fully in comments submitted during environmental review there are many legal deficiencies regarding state and local laws that must be rectified in order to comply with the law. Below are issues outlined in previous comments that the County must resolve prior to approving the Project and EIR.

I THE EIR IGNORES VIABLE ALTERNATIVES TO REDUCE THE PROJECT'S IMPACTS

The EIR neglects to analyze and adopt alternatives that would reduce the Project's significant impacts. The EIR recognizes that the Project will result in a range of significant impacts to air quality, climate change, traffic, and water supply. (DEIR at 1-2, 1-3). In previous comments on the Project the Conservation Groups emphasized that the DEIR failed to address significant impacts to biological resources, water quality, aesthetics, and cumulative impacts. The alternatives analysis is the "core of the EIR." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal 3d 553, 564. Where feasible alternatives exist that would reduce a significant impact from a Project those alternatives must be adopted. Pub. Res. Code §§ 21002,

Jonathan Evans, Staff Attorney
351 California St., Ste. 600 • San Francisco, CA 94104
tel: (213) 598.1466 *fax:* (415) 436.9683 *email:* jevans@biologicaldiversity.org
www.BiologicalDiversity.org

16-1

analysis and failure to disclose significant impacts to biological resources the EIR must be rejected.

Importantly, in analyzing impacts on the SKR the EIR imposes an improper baseline by failing to consider the existing conditions on site in favor of hypothetical conditions based on the "release of the March Air Base Management Area for development." (DEIR at 4.4-16). This assertion is squarely contrary to CEQA's requirements to analyze the environmental baseline that normally consists of "the physical environmental conditions in the vicinity of the project, as they exist at the time… environmental analysis is commenced." Pub. Res. Code § 15125(a). This mandate is necessary to assure that environmental review considers "realized conditions on the ground instead of merely hypothetical conditions". *Communities for a Better Environment v. South Coast Air Quality Management District* (March 15, 2009, S161190) ___ CA.4th___. As referenced by the current land managers the March portion of the Sycamore Canyon-March Core Reserve still contains occupied SKR habitat and continues to be managed as an SKR preserve. The proper baseline for environmental analysis is not what might happen if the tradeout is fully implemented and the March portion of the Core Reserve is developed; it is the existing environment at the time of the project's Initial Study. This existing environment includes actual SKR populations in both Sycamore Canyon and March. Crucial connectivity exists between these populations through the project site that will be permanently and irrevocably impacted.

CONCLUSION

The Center respectfully reminds the Board of Supervisors that environmentally superior alternatives to this Project have been proposed in the EIR and must be adopted. Additionally, as drafted, the Project and associated EIR must be denied due to the existing legal violations and irreconcilable conflicts with the SKR HCP and CEQA.

Sincerely,

Jonathan Evans
Staff Attorney
Center for Biological Diversity

cc:

Adam Rush, Riverside County Planning Dept.
Carolyn Syms-Luna, Riverside County Habitat Conservation Authority
Jim Bartel, United States Fish and Wildlife Service

Below and attached you will find exhibits referenced in the correspondence and comments submitted by the Center regarding the Alessandro Commerce Centre Project. These documents relate to the need to fully analyze the Project's impacts to biological resources, including adjacent nature preserves, the federally endangered Stephens' kangaroo rat, and the Stephens' kangaroo rat Habitat Conservation Plan.

EXHIBITS
(enclosed on CD)

Center for Biological Diversity v. Bartel, Fourth Joint Motion to Extend Defendants' Time To Respond to Complaint By Thirty Days, Case No. 09 CV 1864 JAH POR, filed March 15, 2010.

Center for Biological Diversity letter to the Riverside County Habitat Conservation Agency, Re: California Public Records Act (CA Government Code §6250 et seq.) Request for Documents Regarding the Implementation of the Stephens' Kangaroo Rat Habitat Conservation Plan, March 11, 2010

Center for Biological Diversity email to the Riverside County Habitat Conservation Agency, RE: 2-23 SKR HCP meeting follow up questions, March 11, 2010, including email thread from March 2, 2010.

Riverside County Habitat Conservation Authority, Implementation Agreement, Riverside County Long Term Habitat Conservation Plan, 1996.

United States Fish and Wildlife Service, Biological Opinion Regarding a Proposed Land Use Strategy and Management of Stephens' Kangaroo Rats on March Air Force Base (1-6-91-F-33), 1991.

United States Fish and Wildlife Service, Intra-Service Section 7 Consultation on Fish and Wildlife Service Issuance of an Incidental Take Permit for the Long Term Stephens' kangaroo rat Habitat Conservation Plan (1-6-95-FW-27), 1996.

March 15th, 2010

To: Riverside County Board of Supervisors
4080 Lemon ST, 5th Floor
Riverside, CA. 92501

From: Friends of Riverside's Hills

Re: Item 16.1 Board of Supervisors 16th March 2010. Appeal of approval of plot plan no. 22925 / Environmental Impact Report no. 510

Friends of Riverside's Hills support this appeal and oppose approval of EIR 510 and of Plot Plan 22925. As we stated in our letter of 13th July 2009, we are seriously concerned over the absence of any meaningful analysis regarding the impacts to the future survival of the endangered species Stephens' kangaroo rat (SKR). I should add that Friends of Riverside's Hills is particularly concerned over the loss of critical wildlife linkages - which is exactly what results from the proposed project.

First, we would like to note that our letter of 13th July 2009 appears not to have been forwarded as part of the record following its submittal to the Riverside County Planning Director's Meeting of 13th July 2009. Thus it was stated in the Staff Report to the Planning Commission (dated 10 Aug 2009) that no letters in support or opposition to the project had been received. For this reason, we have appended a copy of the letter – the information contained therein is to be considered as part of our present submission.

Second, biological conclusions presented in this letter are based on my (L. Nunney) own expertise in population and conservation genetics and in ecology. I am a professor of Biology at the University of California Riverside and I have published on the genetics of SKR (cited in our previous letter). I studied ecology as a post-doctoral scholar at Princeton University before coming to Riverside, and since then I have taught ecology at both the upper and lower division level at the University of California Riverside and, more to the point, have been on the thesis committee of students studying a range of ecological problems – including the effect of light on the behavior of kangaroo rats and other nocturnal rodents in relation to owl predation (W. Longland, PhD) and the effect of fire on kangaroo rats (K. Taylor, MS). A relevant research publication that examines both ecological and genetic aspects of conservation biology would be Nunney and Campbell (1993) Assessing minimum viable population size: demography meets population genetics. (Trends in Ecology and Evolution 8: 234-239) which according to Google scholar has been cited in 208 different publications.

As noted in our previous letter, the EIR fails to consider the impact of the proposed development on the Federally endangered Stephens' kangaroo rat (SKR) population in Sycamore Canyon Park (SC) and the March Air Force Base Management Area (MAFB). SKR is still actively managed in both areas, by the City of Riverside and the Center for Natural Lands Management (CNLM) respectively.

The proposed development will sever the linkage between SC and MAFB. At present the two are separated by natural habitat on the project site and by Alessandro Boulevard (see figures 1-3).

Alessandro Blvd is an obvious barrier to movement, but not necessarily an impenetrable one – SKR are nocturnal and may cross the road during quiet times in the middle of the night. We do not know for certain because there has never been a study of this possibility; however, we do know that to maintain the

16.1

genetic integrity of the SC-MAFB population movement on the order of one successful crossing per month would be sufficient (based on a modification of the one-migrant-per-generation approximation).

The City of Riverside recently approved a development on part of the Sycamore Canyon SKR reserve lands, but even if that approval stands any legal challenges that may occur, it still provides for a linkage across Alessandro Blvd (see Fig 3).

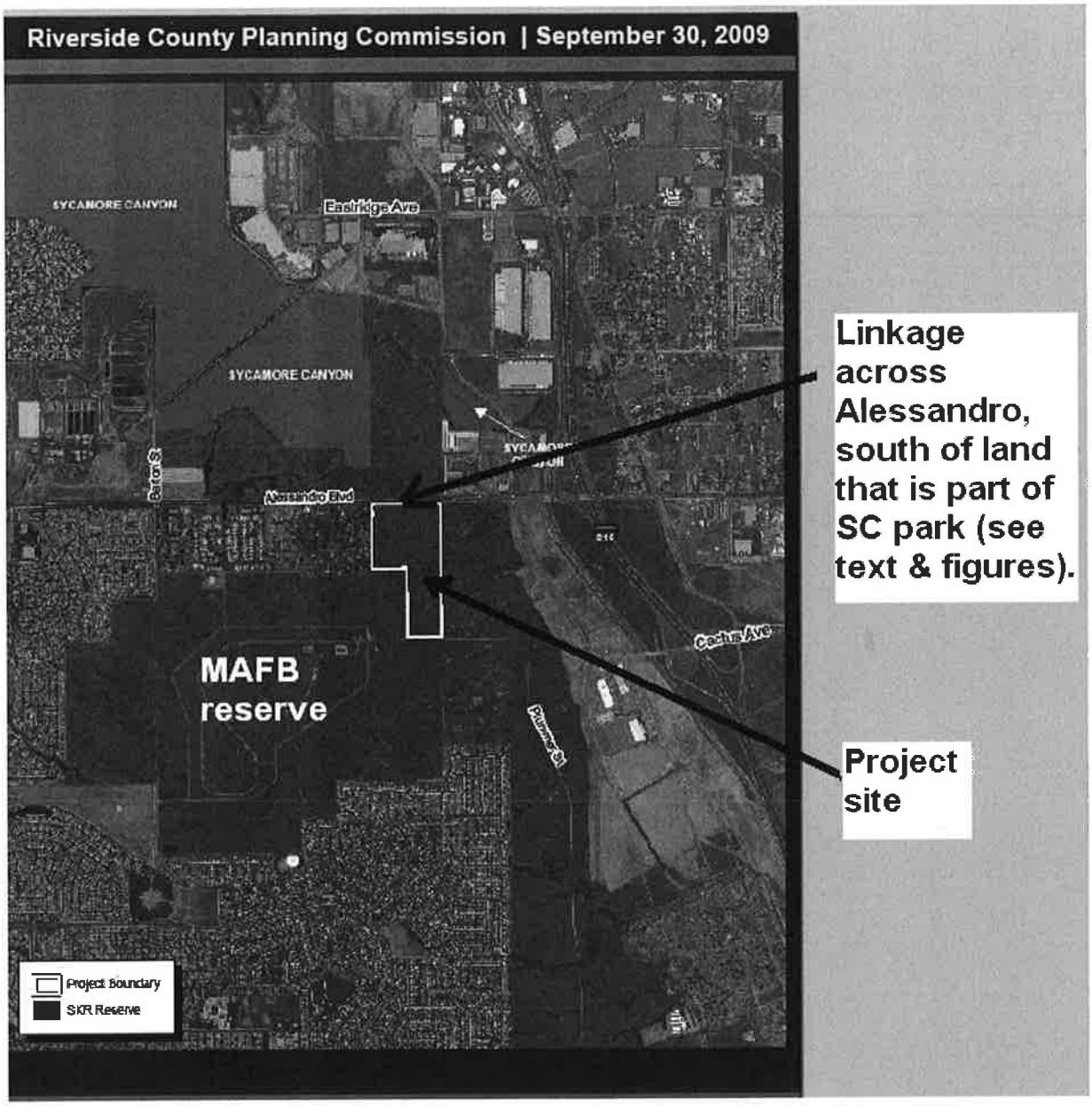

Figure 1 *showing the linkage site across Alessandro Blvd. The precise boundaries of the Sycamore Canyon (SC) reserve are contested (see Fig 2&3). However, of the two possible final configurations, both provide for linkage across Alessandro Blvd.*

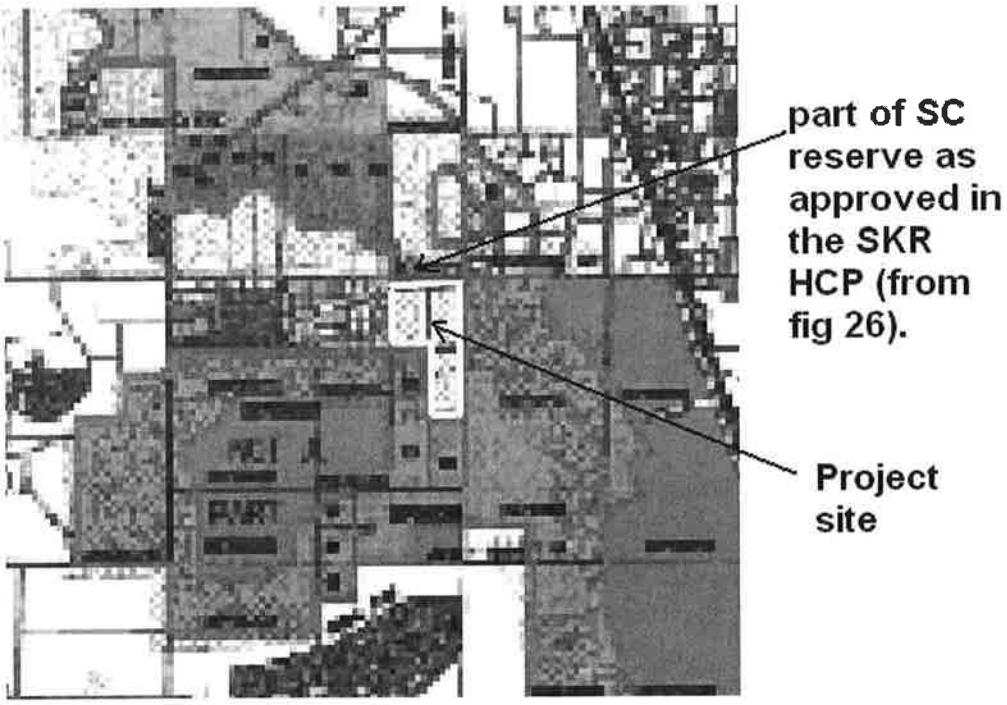

Figure 2. *Configuration approved in the SKR habitat conservation plan (HCP) of Sycamore Canyon (SC) and the MAFB reserve. Note the provision in the SC design for linkage across Alessandro Blvd through the project site to the MAFB reserve. At least part of the project land was to be purchased under a mitigation agreement with CalTrans to complete this linkage.*

Not only would the proposed project prevent any successful movement across Alessandro Blvd, it would also preclude any future improvement of the linkage by, for example, the construction of a living bridge (typically a bridge the width of a small road with vegetation growing on it). There is also an existing culvert under Alessandro Blvd that will be improved as a result of the recent approval of the commercial development to the north by the City of Riverside This culvert provides another potential movement corridor for SKR between SC and the project site; however the potential for such movement was never examined in the EIR. The position of the culvert is a few yards to the west of the white arrow shown on Fig 3.

As noted in our previous letter (appended), concerns over the linkage across Alessandro were well documented in the SKR HCP and its associated documents. Furthermore, conditions to mitigate the problem were included; however, there seems to a failure to follow these conditions. As a result the consequences of finally removing any possibility of retaining a linkage across Alessandro needs a full environmental review. This should have been an integral part of the present EIR, but it was not. As a result, clear and serious environmental impacts have not been considered – specifically, the impact of severing this linkage to the SKR population within MAFB and within SC, both of which face a higher risk of extinction as a result of this fragmentation, and the impact to the SKR HCP as a whole, since loss of any core reserve population is a clear threat to the persistence of the whole species.

P06-0416/0418/0419/0421; P07-0102/1028, Exhibit 7

Figure 2-14
Proposed Specific Plan Land Use Designations
Alessandro Business Park Project

Jones & Stokes

1-81

Figure 3*. Approved land use designation for the land immediately to the north of the Project Site in the City of Riverside. Note the linkage region (green) shown on the plan.*

Thank you for your attention.

Communicated for Friends of Riverside's Hills by
Len Nunney, Secretary
4477 Picacho Drive, Riverside, CA 92507
phone: (951) 781-7346

July 13th, 2009

To: Riverside County Planning Department
From: Friends of Riverside's Hills
Re: Item 4.3 Riverside County Planning Director's Meeting July 13th
Final Environmental Impact report for the Alessandro Commerce Center, Plot Plan 22925, TPM 35365, EIR510.

We oppose approval of EIR 510 and of Plot Plan 22925. We are seriously concerned over the absence of any meaningful analysis regarding the impacts to the future survival of the endangered species Stephens' kangaroo rat (SKR). I should add that Friends of Riverside's Hills is particularly concerned over the loss of critical wildlife linkages, which appears to be the threat posed by the proposed project. In addition, I am a professor of Biology at the University of California Riverside, was a member of the Western Riverside Multiple Species Habitat Conservation Plan Scientific Advisory Committee, have expertise in the conservation of small populations, and have worked with SKR in the past (see Metcalf et al, 2001, Evolution 55: 1233-1244) and currently I have two PhD students working on aspects of SKR conservation.

The project in question is located between the two portions of the Sycamore Canyon March Air Force Base (SC-MAFB) reserve (see Figure 26, Habitat Conservation Plan for the Stephens' kangaroo rat in Western Riverside County (HCP) available at http://www.skrplan.org/skr.html). The northern portion of this reserve is adjacent to the project site, across Alessandro Blvd. The southern portion of this reserve is directly adjacent to the project site.

The response provided in the EIR to concerns regarding the HCP of the Stephens' kangaroo rat are that "since adoption of the MSHCP, the SKR Reserve has been modified with the addition of the Potrero Site and the release of March Air Force Base Management Area for development" (4.4-15). The MAFB portion of the SC-MAFB reserve is still managed as an SKR reserve by the Center for Natural Lands Management. The proposed development will permanently isolate this reserve from the Sycamore Canyon portion of the reserve to the north, an action that has always recognized to put the Sycamore Canyon portion of the reserve in jeopardy. Specifically, under the initial proposal, Caltrans was to construct culverts under Alessandro Blvd so that a direct link could be maintained (see 5.C.1.e of the HCP). This proposal was abandoned due to cost, but it was recognized that was "problematical to the reserve due to the elimination of a direct connection between the Sycamore Canyon and MAFB SKR populations" (5.C.1.e, HCP). As mitigation for this action, Caltrans was required to perform the following tasks "1. Two privately held parcels of land south of Alessandro would be acquired and conserved as SKR habitat. An amount equal to ten percent of the purchase price would be set aside to finance "periodic, managed translocation of SKR….."" (5.E.1.b USFWS-Federal Highway Administration Biological Opinion, HCP). The only two parcels that provide connectivity across Alessandro Blvd. are shown clearly in Fig 26 (HCP) and are parcels involved in the proposed development. This issue was never considered in the EIR, either concerning why the project land was never purchased by Caltrans as required, or what, if any, alternative mitigation occurred. This is a serious omission since it appears that the property considered by EIR 510 was subject to a mitigation requirement that was never fulfilled.

The HCP incorporates the possibility that part or all of the MAFB land would be made available for private use, at which time the RCHCA would amend the HCP. We have found no such amendment documenting the additional mitigation provisions, as required under the agreement (5.C.1.e, HCP). Given the mitigation conditions imposed on the subject property, this issue needed to be addressed in the EIR510, but was not. The justification for the potential MAFB trade-out was because the "trading of the 2,200 acres …..has the potential for of securing a far greater amount of SKR habitat" (5.C.1.e, HCP). It appears that this trading out has been justified on the basis of acquiring land in the Potrero area that was not within the SKR HCP area and has been subject to a completely independent mitigation procedure that allowed the development of land (and take of SKR) not considered in the SKR HCP (http://www.epa.gov/EPA-IMPACT/1996/November/Day-25/pr-17161.html). As such using the Potrero land to offset the loss of MAFB is an egregious example double

dipping – using the land for two independent mitigation processes. It this appears that the MAFB trade-out does not conform to the requirements established under the SKR HCP.

The SKR HCP requires that at least 15,000 acres of occupied habitat be established within the HCP area. Even though the plan has been in force since 1996, we have been able to find no record of current data (or at least current when the acreage goal was supposedly reached) showing the more than 15,000 acres has ever been prepared. This is an essential minimum requirement needed to demonstrate that the SKR HCP is being implemented. In the absence of such information, the removal of MAFB from the SKR HCP and the abandonment of the essential linkage between MAFB and Sycamore Canyon is unjustified.

The lack of data on the status of SKR, both in terms of occupied habitat and in terms of population size, has been a continuing problem under the RCHCA (Riverside County Habitat Conservation Agency) management. Thus Diffendorfer and Deutschman (2006) in a report to the RCHCA stated that "Despite nearly 12 years of monitoring, there are still large gaps in our knowledge of the population dynamics of SKR" (see Executive Summary). They also noted the need for a detailed model of SKR population dynamics (see Recommendation for Additional Monitoring) to help managers to predict future population viability.

These comments raise two important issues with regard to the proposed project. We know from basic conservation theory that severing the linkage between MAFB and Sycamore Canyon will lower the viability of both populations. Perhaps this would not be important if neither reserve was critical to the viability of the SKR HCP. Unfortunately, the absence of a state-of-the-art model of SKR population dynamics makes it impossible to predict the future viability of the SKR HCP as currently constituted. Moreover, the original model (developed by Prof Michael Gilpin who was then at UCSD) used to predict long term viability has multiple flaws – flaws that tend to occur whenever work of this importance is performed using a model that has not been subject to traditional peer review. First, the model was designed to run on the very primitive personal computers available in the early 1990s. Second, the parameter estimates used were not from SKR. Third, working with one of my graduate students, we have found coding errors in the original program. These would not be of current concern if a new model had been developed and if demographic parameters had been estimated from monitoring data, but neither of these events has occurred. Thus we have no accurate estimates of the long-term viability of the SKR HCP under conditions that have prevailed over the recent past.

A related and very serious problem concerning the environmental impact of the proposed project on the viability of SKR concerns the potential for climate change. The original HCP takes no account of climate change. In particular, rainfall is a major factor driving SKR populations. Any local changes in rainfall will have a serious impact on the persistence of SKR populations and may require major alterations to the plan. In particular, if the more easterly reserve areas become significantly drier, they may no longer be able to support viable SKR populations, and place much greater value on those reserves, such as SC-MAFB, to the west. This issue has not been considered (or even mentioned) in the EIR.

In summary, we find that this project has raises such a large number of environmental problems that may be potentially significant that an Environmental Impact Report should be prepared. Furthermore, if the City wishes to exclude the project area from the HCP, then an environmental evaluation of the whole plan is in order. At the very least we need several years of SKR monitoring data from the various parts of the SC-MAFB reserve and from other reserves.

Thank you for your attention.

Communicated for Friends of Riverside's Hills by

Len Nunney, Secretary

4477 Picacho Drive, Riverside, CA 92507

phone: (951) 781-7346

Riverside County Board of Supervisors
Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: Grace Williams

Address: 23555 Meyer Drive
(only if follow-up mail response requested)

City: Riverside **Zip:** 92518

Phone #: (951)656-7000

Date: 2/9/10 **Agenda #** ~~16.2~~ 16.2

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

_____**Support** _____**Oppose** ✓ **Neutral**

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

_____**Support** _____**Oppose** _____**Neutral**

I give my 3 minutes to: _____

did not speak — item was cont.

Riverside County Board of Supervisors
Request to Speak

bmit request to Clerk of Board (right of podium), eakers are entitled to three (3) minutes, subject ard Rules listed on the reverse side of this form.

EAKER'S NAME: Sam Alhadeff

dress: 41607 MARGARITA RD 103
(only if follow-up mail response requested)

ty: Temecula **Zip:** 92591

hone #: 951-719-3640

ate: 2/9/10 **Agenda #** 16.2

LEASE STATE YOUR POSITION BELOW:

osition on "Regular" (non-appealed) Agenda Item:

____**Support** X **Oppose** _____**Neutral**
Appeal

lote: If you are here for an agenda item that is filed or "Appeal", please state separately your position on he appeal below:

_____**Support** _____**Oppose** _____**Neutral**

I give my 3 minutes to: _____

Riverside County Board of Supervisors
Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: ANDREW WALCKER

Address: IW CONSULTING ENGINEERS, INC. 3544 UNIVERSITY AVENUE
(only if follow-up mail response requested)

City: RIVERSIDE **Zip:** 92501

Phone #: 951-905-5300

Date: 2/9/2010 **Agenda #** 16.3

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

✓ **Support** _____ **Oppose** _____ **Neutral**

Note: If you are here for an agenda item that is filed for "Appeal", please state separately your position on the appeal below:

_____ **Support** _____ **Oppose** _____ **Neutral**

I give my 3 minutes to: _____

Riverside County Board of Supervisors
Request to Speak

Submit request to Clerk of Board (right of podium), Speakers are entitled to three (3) minutes, subject Board Rules listed on the reverse side of this form.

SPEAKER'S NAME: JONATHAN EVANS

Address: _____
(only if follow-up mail response requested)

City: _____ **Zip:** _____

Phone #: _____

Date: 2/9/10 **Agenda #** 16.2

PLEASE STATE YOUR POSITION BELOW:

Position on "Regular" (non-appealed) Agenda Item:

_____ **Support** _____ **Oppose** _____ **Neutral**

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X **Support** Appeal _____ **Oppose** _____ **Neutral**

I give my 3 minutes to: _____

did not speak — item was cont.

City of Riverside City Council

March 9, 2010

Item 1

Cases P060416 P060418 P060419 P060421 P070102 and P071028 Appeal Gary Edwards
On behalf of Western Realco

Staff

Ms. Ouellette will address the biological issues raised in the letters in opposition of this project. Thank you.

Ouellette

Honorable Mayor and City Council, my name is Michelle Ouellette from Best Best & Krieger and we represent the applicant. Staff asked me to address some of the biological issues that have been raised in this process. She's already touched on one of them. One issue that's come up time and time again is whether this property is in the SKR HCP core reserve. As you know there is certain processing that's in the core reserve with regard to develop. This property is not in the core reserve. Originally it was identified as property that was under negotiations for conservation easement and if the easement had been negotiated or fee title had been purchased, then at that point it will go into the core reserve. That did not occur. In 1998 then the wildlife agencies determined that the core reserve was complete. Acquisition of other property had occurred and therefore the core reserve was complete. This property was not necessary then for the SKR HCP. Additionally, as Patricia said your General Plan approved in 2007 identified that this property was outside the core reserve boundaries which tracks maps that have been prepared by the RCHCA. So approximately 12 years ago the agencies that control this decision found that this property was not in the core reserve and that's the baseline that the City is now operating on with regard to the EIR

Submitted by

3/16/10 Item 16

preparation. Second issue that's been raised concerns connectivity and that's the issue of connectivity both north and south across Alessandro from Sycamore Canyon to the SKR management area as well as east/west in between two portions of Sycamore Canyon Core Reserve. With regard to the north/west connection anyone who has been out to the property realizes that there is Alessandro Boulevard in between these two areas which is between a four and six lane road. It's highly doubtful that there's any connectivity or any consistent connectivity currently going across Alessandro given the fact that there's approximately 28,000 to 51,000 cars every day going up and down Alessandro in the project area. At one time, Caltrans' mitigation had the obligation to put under Alessandro tunnels to allow wildlife movement underneath Alessandro. Ultimately it was decided by the Wildlife agencies that was too expensive and they were asked to do other things. I think that there's a recognition that the connectivity is very limited if it exists at all. However I think what's important to note that as you can see from the map there is approximately 500 feet of frontage on Alessandro but not only will not be developed but it will be added to the core reserve of the wilderness park therefore being managed for permanent open space and species in perpetuity. Some of the comments have indicated well it's better not to develop this property at all, saving half of it doesn't make a difference. There is a huge difference between undeveloped properties that's not being managed for habitat issues or open space and properties that's now going to be put into a process where it can be managed to improve these areas including for the benefit of SKR and other species. So to the extent there is connectivity across Alessandro this project will not adversely impact it. It's important to note that the SKR HCP never identified this property as a linkage or a corridor area. Additionally when the Wildlife agencies in 1998 determined that this property was not necessary for the core reserve they also did not say well but for this linkage it should have been in there. So I think that that's all in the record to explain why at this point the

connectivity issue has not been adversely addressed by this project. Lastly, the project is conditioned to clean out storm drains underneath Alessandro. The point to do that is for hydrological purposes, however, it will have the benefit of also allowing movement underneath. Lastly, there have been issues with regard to the impacts of the project on the core reserve and on the Sycamore Canyon ecological preserve. The EIR, both the final and the draft, extensively discuss how the edge effects will be handled and mitigated basically to compliance with Western Riverside County MSHCP urban/wildland's interface. Any questions?

City Councilmember

...I have just a couple of things that I think need to be I think restated and it was stated by Michelle Ouellette and it had to do with the core reserve and whether this was part of the core reserve or not, you had indicated that it was not part of the core reserve based on maps, can you expand a little bit on that as well it was I guess a decision that was made in 1998?

Ouellette

Certainly, Councilmember in the SKR HCP there's acronyms Habitat Conservation Plan that was approved in I believe 1996. There were two elements with regard to the requirement to conserve habitat in perpetuity. There was a completion requirement and an expansion requirement and the completion requirement was that there would be a certain number of occupied SKR acres that would be put into conservation either in fee or through a conservation easement. So once that was done then certain things could happen. Originally this property was designated as potential private property that was under negotiations for acquisition. Ultimately that was not, that did not occur and thus other property was purchased instead which was also occupied SKR property that the Wildlife agencies felt was adequate to be able to close out the completion of the SKR. So some original maps showed this area as potentially good habitat to acquire. It wasn't, other equal habitat was and therefore at the Wildlife Agency's satisfaction then the core reserve was

complete. And I think that that's the confusion. This occurred in 1998. RCHCA ultimately updated their maps later so the process in the HCP which I think has led to some confusion.

CENTER for BIOLOGICAL DIVERSITY
Because life is good.

protecting and restoring natural ecosystems and imperiled species through science, education, policy, and environmental law

via email and hand delivery

Riverside County Board of Supervisors
4080 Lemon ST, 5th Floor
Riverside, CA. 92501

February 5, 2009

RE: Item 16.2, February 9, 2010 Board of Supervisors Hearing: Comments on Appeal of the Alessandro Commerce Centre (EIR #510, Plot Plan #22925, TPM #35365)

Honorable Chairman and Board Members:

As discussed in previous comments to the Board on this Project the Center for Biological Diversity urges the Board of Supervisors to stay consideration of the Project until, as requested at the November 24, 2008 Board of Supervisors meeting, the Conservation Groups opposing the Project have had the opportunity to meet with the County staff, the Riverside County Habitat Conservation Authority ("RCHCA"), and federal officials at the U.S. Fish and Wildlife Service ("Service") regarding the Alessandro Commerce Centre ("Project"). A meeting has been scheduled for February 23, 2010 with the Conservation Groups (Center for Biological Diversity, San Bernardino Valley Audubon Society, Sierra Club, and Friends of Riverside's Hills) and the parties listed above in an attempt to resolve outstanding issues regarding the Project's conflict with the Stephens' Kangaroo Rat ("SKR") Habitat Conservation Plan and March SKR Preserve and would help alleviate the impact of pending federal litigation surrounding the adjacent March SKR Preserve. Proceeding with approval of the Project without resolution of these matters would violate the California Environmental Quality Act ("CEQA") and the Endangered Species Act ("ESA").

Despite the diligent work by County staff, the Environmental Impact Report ("EIR") and Plot Plan do not meet the legal standards required under state and federal law, in particular the CEQA and the ESA, and should be denied until those deficiencies are rectified. As set forth more fully in comments submitted during environmental review and included in the appeal packets there are many legal deficiencies regarding state and local laws that must be rectified in order to comply with the law. Below are issues outlined in previous comments that the County must resolve prior to approving the Project and EIR.

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site. The Project design made no attempt to limit destruction of habitat or fully disclose what those impacts would be to onsite resources. Part of this oversight is due to the inconsistent and improper description of impacted riparian and wetland resources, and the EIR's failure to properly depict impacts to Area 5. (FEIR Comment H-1). While the EIR appendices recognize that "Area 5... receives freshwater flows and meets the definition for riparian/riverine habitat totaling 0.12 acre". (DBESP at 17), it simultaneously attempts to dismiss the hydrological connection and jurisdictional nature of the area. The EIR fails to properly describe and analyze the total wetlands and riparian areas, including Area 5, and describe the proper jurisdictional delineation under the Clean Water Act §§ 401, 403, Porter Cologne Act (California Water Code § 13000 *et seq.*), and California Fish and Game Code §§ 1600, 1603. It further attempts to dismiss the riparian area in Area 5 in the text of the EIR by asserting that it does not provide suitable habitat for riparian/riverine planning species. (DEIR at 4.4-18). Moreover, the EIR masks the Project's true impacts with statements such as the following, "[p]er the hydrology report and master drainage plan for the Proposed Project, the Project will not substantially alter existing drainage patters of the site or area" FEIR at comment H-2. This is patently false.

In conducting this flawed analysis the EIR conducts an inadequate discussion of Basin Plan beneficial uses. (SARWQCB 1995). The EIR's cursory analysis with the requirements of the Santa Ana Regional Water Quality Control Board's requirements for the Basin Plan, and failure to adequately analyze impacts to beneficial uses runs contrary to CEQA. *See e.g* CEQA App. G § IX(a). As stated by the Regional Water Board, "all of the Project's direct and/or indirect impacts to waters of the state and to water quality standards have not been fully analyzed in the DEIR." (FEIR Comment H-4).

The EIR further fails to adequately describe the Project's Water Quality Management Plan ("WQMP") and features designed to mitigate the Project's potentially significant water quality impacts. The Riverside County WQMP contains specific requirements for Project WQMPs regarding the adoption and description of projects, Best Management Practices ("BMPs"), locations and details of water quality in receiving waters of the project, and the identification of hydrologic conditions of concern. (Riverside County 2006). However, the EIR fails to provide the necessary informed mandated in the WQMP in regards to adequate description of the Project and its impacts. The WQMP requires the Project proponent to "provide a narrative describing how each included BMP will be implemented." (WQMP at 11). Unfortunately, the WQMP provides no narrative for many site design BMPs related to permeable areas, protection of natural landscaping, or preserving natural drainage systems. (*See e.g.* WQMP 12, 15). In other cases the WQMP is misleading and improperly describes the Project (WQMP at 15("[t]he proposed riparian area will be conserved for the protection of the existing habiat and water quality.")).

The EIR fails to adopt feasible mitigation measures that would reduce the Project's impacts to wetlands and riparian areas. In an attempt to subvert the procedural requirements of CEQA the EIR fails to adopt feasible mitigation measures that would have substantially lessened significant environmental impacts resulting from the Project. CEQA's substantive mandate is clear, "each public agency shall mitigate or avoid the significant effects on the environment of projects that it caries out or approves whenever it is feasible to do so." Pub. Res. Code §

potentially significant impacts to biological resources relied upon in the MSHCP and EIR. The failure to require binding and effective mitigation, disclose the uncertainties associated with mitigation, and analyze the provision of other sources of mitigation and the environmental impacts of those mitigation measures violates CEQA. Furthermore, the EIR's cursory dismissal of any analysis of the Project's inconsistency with the SKR Habitat Conservation Plan masks the Project's significant impact to the species covered in that Plan.

In order to address several issues related to the cost, revenue sources, and plan benefits associated with the MSHCP the Western Riverside County Regional Conservation Authority contracted with the RAND Corporation to provide an independent and objective analysis. (RAND 2008). Entitled "Balancing Environment and Development: Costs, Revenues, and Benefits of the Western Riverside County Multiple Species Habitat Conservation Plan" the study revealed some troubling issues related to the ability of projected revenue to acquire lands relied upon by the MSHCP for mitigation and the ability of the MSHCP to achieve the reserve strategy relied upon by the US Fish and Wildlife Service in their Biological Opinion and CEQA analysis.

First, the RAND study revealed that the operating cost "exceeds the original forecast in MSHCP planning documents by $345 million (increasing from $937 million to $1,282 million)." (RAND 2008 at xxvi). This was due primarily to the failure to integrate costs into the original estimate. (RAND 2008 at xxvi). Second, the expected revenue sources do not correlate to the strategy for acquiring land outlined in the MSHCP, and the RAND study did not conclude that "existing local revenue streams will be sufficient to finance the local share of reserve assembly and operation costs." (RAND 2008 at xxvii). Notwithstanding these revenue shortages the RAND study further concluded that the "individual acreage goals cannot all be met using the USFWS CRD [conceptual reserve design]." (RAND 2008 at xxx). In other words, the reserve design relied upon by the US Fish and Wildlife Service and California Department of Fish and Game in determining that biological impacts would be mitigated below a level of significance cannot be achieved. The EIR's failure to disclose, analyze, and plan for the failure of the MSHCP to mitigate impacts does not meet CEQA's information mandate on disclosure to the decision makers and the public or the substantive mandate to adopt all feasible mitigation measures for potentially significant impacts.

III. THE EIR FAILS TO ADOPT ALL FEASIBLE MITIGATION MEASURES TO REDUCE THE PROJECT'S GREENHOUSE GAS IMPACTS.

The EIR properly recognized that the Project has a significant impact on global warming.[1] Because the Project's greenhouse gas emissions are significant, "the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified." *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors*, 91 Cal.App.4th 342, 360 (2001). Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d

1 Indeed, although not mentioned in the EIR, the Project's emissions greatly exceed the 10,000 ton GHG threshold for industrial sources adopted by SCAQMD and proposed by BAAQMD and BAAQMD's 1,100 ton proposed threshold for commercial projects.

Supervisors of Santa Barbara County, 197 Cal.App.3d 1167, 1181 (1988). No such showing has been made nor can it, given the many financial incentives and long-term savings resulting from on-site renewables.[3] Finally, contrary to the EIR's misleading assertion, a mitigation measure need not fully mitigate project impacts to be adopted, it need only function to lessen project impacts. Guidelines § 15126.4. Not only does the EIR provide no evidence that renewables could not generate all of the site's electricity demand, but such a demonstration is irrelevant to its adoption as a mitigation measure.

B. No Performance Standards Are Set for Purported "Energy Efficient Lighting"

While the EIR claims the Project will install "energy efficient lighting," no performance criteria are provided defining "energy efficient." Yet "efficiency" can cover a wide range of performance. For example, although LED lighting is more efficient than conventional efficient lighting and economical over the long term, the EIR does not commit to its use. (See, e.g., LA Times, Energy-Efficient LEF Bulbs to Light US Homes (Oct. 2, 2009). To comply with CEQA, the EIR must specify minimum efficiency standards or the type of lighting used (such as LED). Absent such specificity, the purported design feature is meaningless and violates CEQA's standards of adequacy.

C. Off-Site Mitigation

After all measures have been implemented to reduce emissions in the first instance, remaining emissions that cannot be eliminated may be mitigated through off-site measures. The CEQA GHG Guidelines finalized at the end of last year specifically contemplate off-site mitigation such as "community energy conservation projects." (Final Statement of Reasons for CEQA GHG Guidelines at 47.) CAPCOA also found that a potential cost-effective offset and verifiable offset could include an energy-efficient retrofit of existing building stock in the Project area to offset the remainder of the Project's emissions. (CAPCOA 2008 at 80.) Care should be taken to ensure that offsets purchased are real (additional), permanent, and verified. Offsetting GHG emissions in the project area can also yield corollary benefits, such as reductions in criteria pollutants.

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3 Several programs to assist in financing of solar were included in earlier comments. Additional information and programs include Solar Power Financing: Commercial and Industrial, http://www.socal-solar-energy.com/solar-power-financing-commercial.nxg (last visited Feb. 5, 2010); The California Solar Initiative, http://www.gosolarcalifornia.org/csi/index.html (last visited Feb. 5, 2010); Financial Incentives for Solar Energy, http://www.californiasolarcenter.org/incentives.html (last visited Feb. 5, 2010) Solar Financial Incentives, http://www.whcsolar.com/incentives, Solar Rebates, http://calseia.org/solar-rebates.html. Notably, in its CEQA & Climate Change White Paper, CAPCOA determined that roof-top solar was "feasible" mitigation.

EXHIBITS
(Included on CD)

Ambrose 2007, R. Ambrose, J. Callaway, S. Lee, An Evaluation of Compensatory Mitigation Projects Permitted Under Clean Water Act Section 401 by the California State Water Resources Control Board, 1991-2002.

BAAQMD, Proposed Thresholds of Significance (Dec. 2009).

CAPCOA, CEQA and Climate Change (Jan. 2008)

California Natural Resources Agency, Adopted CEQA Guidelines, Dec. 30, 2009.

California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97 (Dec. 2009).

CBD 2010a, Center for Biological Diversity, Aerial Photo, Adjacent water body

CBD 2010b, Center for Biological Diversity, Aerial Photo, Adjacent water body 2

EPA 2000, Environmental Protection Agency, Field Evaluation of Permeable Pavements for Stormwater Management, EPA-841-B-00-005B.

Green Resource Center 2004, Permeable Pavement

LA Times, Energy-Efficient LEF Bulbs to Light US Homes (Oct. 2, 2009).

RAND 2008, Dixon et al., Balancing Environment and Development Costs, Revenues, and Benefits of the Western Riverside County Multiple Species Habitat Conservation Plan, ISBN: 978-0-8330-4609-3.

Riverside County 2006, Riverside County Water Quality Management Plan for Urban Runoff, Santa Ana River Region, Santa Margarita River Region, 2006.

SARWQCB 1995, Santa Ana Regional Water Quality Control Board, Water Quality Control Plan, Santa Ana River Basin, Excerpt of Chapter 3.

SCAQMD, Interim GHG Threshold (Oct. 2008).

SCAQMD, BOARD MEETING DATE, December 5, 2008 AGENDA NO. 31, http://www.aqmd.gov/hb/2008/December/081231a.htm

WaterSmart, Infiltration devices, Practice Note 5.

Wible, Daniel Wible, Cahill Associates, Porous Pavement/Groundwater Recharge presentation.

Attachment A

Ecological Value of Riparian Areas and Wetlands

Riparian areas support a disproportionate share of the State's biodiversity and preservation of these vegetation communities is critical to the survival of rare, sensitive, threatened and endangered plants and wildlife. CDFG 2003.

> Over 225 species of birds, mammals, reptiles, and amphibians depend upon California's riparian habitats (Knopf et al. 1988, Saab et al. 1995, Dobkin et al. 1998). In addition, these beautiful examples of California's biodiversity can help reduce flood flows and flood damage, improve groundwater recharge, prevent damaging chemicals and other compounds from reaching open water, and reduce wind and erosion on adjacent lands. . . Unfortunately, human activities have destroyed or fragmented most of this valuable habitat over the past 150 years. No one has documented how much riparian habitat existed in California before 1850. However, a 1984 study estimated that riparian vegetation in the Central Valley and desert regions represented from two to five percent of the pre-1850 amount... Because they are both biologically rich and severely degraded, riparian areas have been identified as the most critical habitat for conserving neotropical migrant birds.

CDFG 2003. (emphasis added).

Wetlands and riparian habitats are truly among the rarest and most sensitive ecosystem types in California. These areas are critical for biodiversity, harboring high concentrations of threatened, endangered, and sensitive species. Krueper (1992) estimates that wetland and riparian habitat occupies less than 1% of the total land area in the western U.S., yet is critical for up to 80% of terrestrial vertebrate species. Riparian habitats are relatively rare in the California deserts, but extensively degraded. As noted above, more than 90% of the State's riparian areas and wetlands have already been lost, but while there are fewer acres of riparian habitat than other plant communities, riparian areas sustain a disproportionately high number of aquatic and terrestrial wildlife species (Faber et al. 1989). Riparian communities in the arid areas of the State are typically surrounded by far drier environments, and the water and riparian vegetation that they provide are vitally important to many species (Krueper 1992).

Terrestrial vertebrates in the State rely heavily on riparian habitats for various life stages, as noted above, the California Department of Fish and Game estimates that over 225 species of birds, mammals, reptiles, and amphibians depend upon California's riparian habitats. A recent study found that there are approximately 173 terrestrial vertebrates in the eastern United States alone that require riparian habitats for some lifehistory function (26 mammals, 27 birds, 50 reptiles, and 70 Amphibians) (Crawford 2007).

resources alone (Crawford 2007). Developing core terrestrial habitat estimates and buffer zone widths for wildlife populations is a critical first step in the conservation of many semiaquatic organisms and protecting biodiversity (Crawford 2007). Typically when buffer zones are determined to mitigate edge effects, they are based on criteria that protect aquatic resources alone and do not consider impacts to wildlife, semiaquatic species, and other terrestrial resources (Semlitsch & Bodie 1998; Semlitsch & Jensen 2001). For example, in Oregon, the minimum buffer strip required to protect water resources is 6.1 m, although a minimum buffer of 20 m is needed to protect certain salamander species (Vesely & McComb 2002).

Riparian forests have been found to reduce delivery of nonpoint-source pollution to streams and lakes in many types of watersheds (Vellidis et al. 2002, 2003a; Lowrance et al. 1983, 1984a, 1984b, 1985a, 1985b, 1997). Riparian forest ecosystems are excellent nutrient and herbicide sinks that reduce the pollutant discharge from surrounding agroecosystems (Peterjohn and Correll 1984). For example, studies from coastal plain agricultural watersheds reveal that riparian forest ecosystems are excellent nutrient sinks and buffer the discharge from surrounding agroecosystems (Lowrance 1984a). Riparian buffers are especially important on small streams where intense interaction between terrestrial and aquatic ecosystems occurs (Vellidis et al., 2003b), because first- and second-order streams comprise nearly three-quarters of the total stream length in the US (Leopold et al., 1964).

Attachment A Exhibits
(included on CD)

Bashore T. L., W. M. Tzilkowski, and E. D. Bellis. 1985. Analysis of deer-vehicle collision sites in Pennsylvania. Journal of Wildlife Management 49:769-74.

California Partners in Flight (CalPIF) & Riparian Habitat Joint Venture (RHJV). 2004. Version 2.0 .The riparian bird conservation plan: a strategy for reversing the decline of riparian associated birds in California. 170 pp. Available on the web at http://www.prbo.org/calpif/htmldocs/riparian.html

California Partners in Flight (CalPIF), The Draft Desert Bird Conservation Plan: A Strategy for Protecting and Managing Desert Habitats and Associated Birds in the Mojave and Colorado Deserts: A project of California Partners in Flight and PRBO Conservation Science, Version 1.0, 2006 available at http://www.prbo.org/calpif/htmldocs/desert.htm

Crawford J., Semilitsch R. 2007. Estimation of Core Terrestrial Habitat for Stream-Breeding Salamanders and Delineation of Riparian Buffers for Protection of Biodiversity. Conservation Biology 21: 152–158 (Abstract).

Dahl, T.E. 2006. Status and Trends of Wetlands in the Conterminous Untied States, 1998-2004. U.S. Department of Interior, Fish and Wildlife Service.

Forman R. T. T., L. E. Alexander. 1998. Roads and their major ecological effects. Annual Review of Ecology and Systematics 29:207-31.

Forman, R. T. T. 1999. Estimate of the area affected ecologically by the road system in the United States. Conservation Biology. Vol. 14, No. 1 (Feb., 2000), pp. 31-35

Lowrance, R.R., R.L. Todd, and L.E. Asmussen. "Waterborne nutrient budgets for the riparian zone of an agricultural watershed." Agric. Ecosys. Environ., 10:371-384. 1983

Lowrance, R., R.L. Todd, and L.E. Asmussen. "Nutrient cycling in an agricultural watershed: I. Phreatic movement." J. Environ. Qual., 13:22-27. 1984a.

Lowrance, R., R.A. Leonard, L.E. Asmussen, and R.L. Todd. "Nutrient budgets for agricultural watersheds in the southeastern coastal plains." Ecology, 66:287-296. 1985a.

Lowrance, R., R. Leonard, and J. Sheridan. "Managing riparian ecosystems to control nonpoint pollution." J. Soil and Water Cons., 40:87-91. 1985b.

Lowrance, R., G. Vellidis, R.D. Wauchope, P. Gay, and D.D. Bosch. "Herbicide transport in a riparian forest buffer system in the coastal plain of Georgia." Transactions of the ASAE, 40(4):1047-1057. 1997.

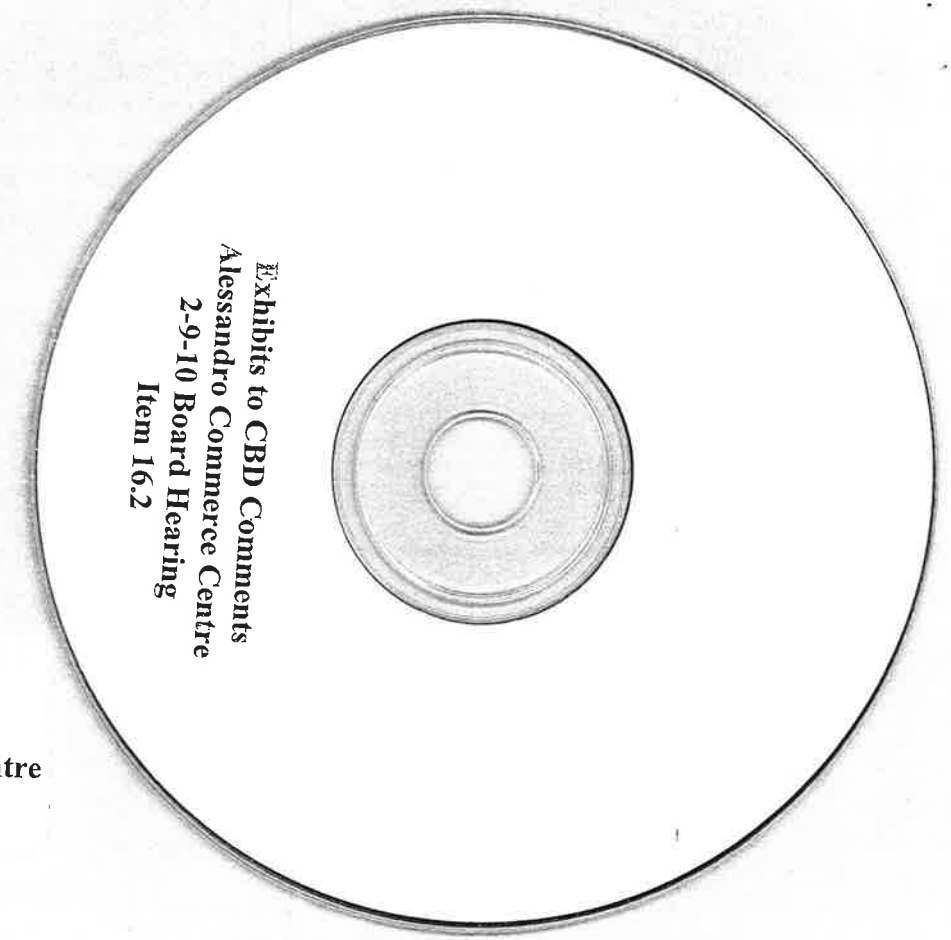
Reijnen R., R. Foppen, and H. Meeuswen. 1996. The effects of car traffic on the density of breeding birds in Dutch agricultural grasslands. Biological Conservation 75:255-60
Rich, T. D., et al 2004. Partners in Flight North American Landbird Conservation Plan. Cornell Lab of Ornithology. Ithaca, NY).

Semlitsch, R. D., and J. B. Jensen. 2001. Core habitat, not buffer zone. National Wetlands Newsletter 23:5–11.

Vellidis, G., R. Lowrance, P. Gay, and R.D. Wauchope. "Herbicide transport in a restored riparian forest buffer system." Transactions of the ASAE, 45(1):89-97. 2002.

Vellidis G., R. Lowrance, P. Gay, R.W. Hill, and R.K. Hubbard. "Nutrient transport in a restored riparian wetland." Journal of Environmental Quality, 32(2). 2003a.

Vesely, D. G., and W. C. McComb. 2002. Salamander abundance and amphibian species richness in riparian buffer strips in the Oregon coast range. Forest Science 48:291–297.



Alessandro Commerce Centre
2-9-10 Board Hearing
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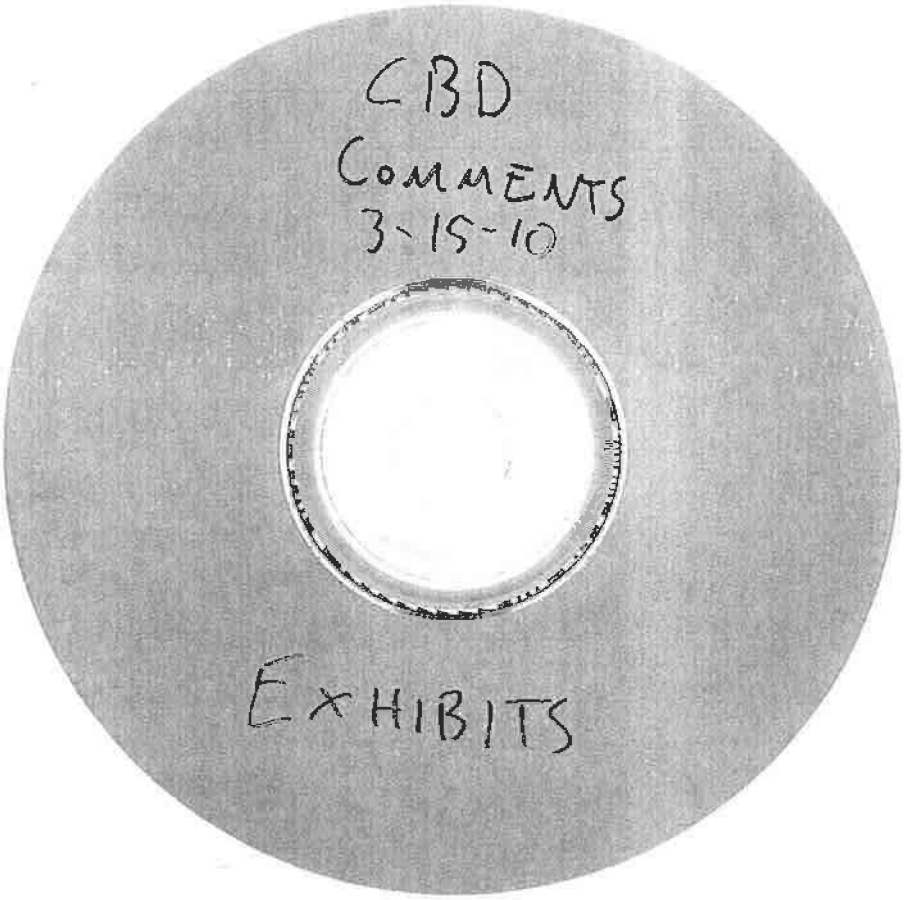
Submitted by Jonathan Evans
2-9-10 Item 16.2
(date)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COMMENTS
3-15-10
EXHIBITS

CENTER for BIOLOGICAL DIVERSITY
Because life is good.

protecting and restoring natural ecosystems and imperiled species through science, education, policy, and environmental law

via email and hand delivery

Riverside County Board of Supervisors
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I. THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE IMPACTS TO WATER RESOURCES AND SENSITIVE HABITAT

The EIR fails to adequately analyze, disclose, and mitigate the impacts to hydrology and water quality. The EIR recognizes that the Project will result in both short and long term impacts to water quality. (DEIR at 4.8-9). Due in part to an incomplete project description and incomplete description of the existing environment the EIR fails to account for the Project's impacts to water quality, water bodies, hydrology, and adjacent wetland and riparian wildlife areas. These issues were emphasized not only by the Conservation Groups, but Responsible Agencies like the Santa Ana Regional Water Quality Control Board ("Regional Water Board"), which noted that the EIR failed to properly analyze and mitigate direct and indirect impacts to onsite and offsite water bodies. (FEIR at Comment H-2).

CEQA requires that an EIR adequately describe the environment in the area that will be affected by the project. An EIR must include a description of the physical environmental conditions in the vicinity of the project at the time the environmental analysis is commenced with special emphasis placed on environmental resources that are rare or unique to that region and would be affected by the project. Guidelines § 15125 (a), (c). An "inadequate consideration and documentation" in an EIR "of existing environmental conditions renders it impossible for the FEIR to accurately assess the impacts the project will have on wildlife and wildlife habitat or to determine appropriate mitigation measures for those impacts." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal. App. 4th 713, 722 (internal citation omitted). Unfortunately the EIR fails this requirement.

As mentioned in previous comments the EIR fails to recognize the existence and importance of adjacent wetland and riparian habitat and natural resources within the March Stephens' Kangaroo Rat ("SKR") Preserve. This deficiency was emphasized by the Regional Water Board, which noted that the EIR failed to analyze and mitigate the impacts of the Project on the tributary to an open space resource managed by the Center for Natural Lands Management. (FEIR at Comment H-2). The EIR fails to complete even a cursory analysis of the significant wetland and riparian areas in the Project vicinity. Within the March SKR Preserve are substantial wetland and Riparian areas that were not addressed in the EIR. (CBD 2010a, CBD 2010b). As noted in Attachment A these remaining and limited wetland and riparian areas are of crucial importance to ecological resources in California.

The Project will impact adjacent wetlands and riparian areas by increasing non-point source pollution, contamination, altering hydrology, and increasing road effects. The EIR fails to adequately account for the Project's impacts to adjacent wetlands and riparian areas. In particular, the direct and indirect impacts to Area 4 and wetlands within the adjacent March SKR Preserve are not adequately analyzed. It is impossible to recognize the full impacts to adjacent wetlands and riparian areas because the EIR fails to describe their existence, leading to a flawed analysis.

Importantly, the EIR also fails to adequately analyze the direct impacts of the Project on the site. The Project results in the destruction of all riparian and wetland habitat on the Project

site. The Project design made no attempt to limit destruction of habitat or fully disclose what those impacts would be to onsite resources. Part of this oversight is due to the inconsistent and improper description of impacted riparian and wetland resources, and the EIR's failure to properly depict impacts to Area 5. (FEIR Comment H-1). While the EIR appendices recognize that "Area 5… receives freshwater flows and meets the definition for riparian/riverine habitat totaling 0.12 acre". (DBESP at 17), it simultaneously attempts to dismiss the hydrological connection and jurisdictional nature of the area. The EIR fails to properly describe and analyze the total wetlands and riparian areas, including Area 5, and describe the proper jurisdictional delineation under the Clean Water Act §§ 401, 403, Porter Cologne Act (California Water Code § 13000 *et seq*.), and California Fish and Game Code §§ 1600, 1603. It further attempts to dismiss the riparian area in Area 5 in the text of the EIR by asserting that it does not provide suitable habitat for riparian/riverine planning species. (DEIR at 4.4-18). Moreover, the EIR masks the Project's true impacts with statements such as the following, "[p]er the hydrology report and master drainage plan for the Proposed Project, the Project will not substantially alter existing drainage patters of the site or area" FEIR at comment H-2. This is patently false.

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21002.1(b) (emphasis added).. Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d 30, 41 (1990). Importantly, mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles*, 83 Cal.App.4th 1252, 1261 (2000).

The WQMP also calls for further description of why mitigation measures, in the form of BMPs, cannot be adopted. WQMP at 11 ("If a particular Site Design BMP concept is found to be not applicable, please provide a brief explanation as to why the concept cannot be implemented.") However, in failing to adopt feasible mitigation measures the EIR fails to describe why those BMPs and mitigation measures cannot be implemented. For example, there is no explanation as to why BMPs such as landscaped buffer areas, pipe or gravel infiltration, inclusion of permeable surfaces, the use of vegetated swales, dual drainage systems, or increasing landscaped areas were not implemented. (See e.g. WQMP at 12, 13, 14, and 17). Such mitigation measures are available and feasible. (EPA 2000, Green Resource Center 2004, WaterSmart). Moreover, many mitigation measures are only required "where feasible" leaving the public and decision makers with no assurances that mitigation measures will be enforced. (See e.g. WQMP 15, 16). These measures cannot be simply rejected without substantial evidence.

Instead of incorporating feasible binding site specific mitigation measures into the WQMP the EIR proposes to pay a fee into a mitigation fund. Compensatory mitigation projects seldom result in wetlands with optimal condition. (Ambrose 2007). The EIR's attempt to simply pay a mitigation fee with questionable value and avoid adopting feasible mitigation measures on site runs contrary to CEQA. Pub. Res. Code 21002.1(b).

In comments on the EIR, the Regional Water Board requests that the Project employ better mitigation and alternatives to avoid hydrological features. (FEIR Comment H). In dismissing these suggestions the EIR fails to provide substantial evidence as to why the Project cannot be designed to avoid sensitive natural areas. This flaw is also found the EIR's Determination of Biologically Equivalent or Superior Preservation. Instead of analyzing how the Project buildings, design, and siting can be reconfigured to reduce these significant impacts the EIR only analyzes how the road access and utility lines limit protection of the area. (FEIR Response to Comment H-2, DBESP). The EIR presumes the same size and design for the buildings and fails to analyze how alternative site plans or architectural designs could avoid sensitive riparian areas.

II. THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE IMPACTS TO BIOLOGICAL RESOURCES

The EIR relies upon the Western Riverside Habitat Conservation Plan ("MSHCP") and SKR Habitat Conservation Plan for mitigation of both direct and cumulative biological impacts related to this project. However, the EIR fails to disclose the uncertainty regarding the implementation of mitigation measures contemplated in MSHCP to provide for the mitigation of

potentially significant impacts to biological resources relied upon in the MSHCP and EIR. The failure to require binding and effective mitigation, disclose the uncertainties associated with mitigation, and analyze the provision of other sources of mitigation and the environmental impacts of those mitigation measures violates CEQA. Furthermore, the EIR's cursory dismissal of any analysis of the Project's inconsistency with the SKR Habitat Conservation Plan masks the Project's significant impact to the species covered in that Plan.

In order to address several issues related to the cost, revenue sources, and plan benefits associated with the MSHCP the Western Riverside County Regional Conservation Authority contracted with the RAND Corporation to provide an independent and objective analysis. (RAND 2008). Entitled "Balancing Environment and Development: Costs, Revenues, and Benefits of the Western Riverside County Multiple Species Habitat Conservation Plan" the study revealed some troubling issues related to the ability of projected revenue to acquire lands relied upon by the MSHCP for mitigation and the ability of the MSHCP to achieve the reserve strategy relied upon by the US Fish and Wildlife Service in their Biological Opinion and CEQA analysis.

First, the RAND study revealed that the operating cost "exceeds the original forecast in MSHCP planning documents by $345 million (increasing from $937 million to $1,282 million)." (RAND 2008 at xxvi). This was due primarily to the failure to integrate costs into the original estimate. (RAND 2008 at xxvi). Second, the expected revenue sources do not correlate to the strategy for acquiring land outlined in the MSHCP, and the RAND study did not conclude that "existing local revenue streams will be sufficient to finance the local share of reserve assembly and operation costs." (RAND 2008 at xxvii). Notwithstanding these revenue shortages the RAND study further concluded that the "individual acreage goals cannot all be met using the USFWS CRD [conceptual reserve design]." (RAND 2008 at xxx). In other words, the reserve design relied upon by the US Fish and Wildlife Service and California Department of Fish and Game in determining that biological impacts would be mitigated below a level of significance cannot be achieved. The EIR's failure to disclose, analyze, and plan for the failure of the MSHCP to mitigate impacts does not meet CEQA's information mandate on disclosure to the decision makers and the public or the substantive mandate to adopt all feasible mitigation measures for potentially significant impacts.

III. THE EIR FAILS TO ADOPT ALL FEASIBLE MITIGATION MEASURES TO REDUCE THE PROJECT'S GREENHOUSE GAS IMPACTS.

The EIR properly recognized that the Project has a significant impact on global warming.[1] Because the Project's greenhouse gas emissions are significant, "the EIR must propose and describe mitigation measures that will minimize the significant environmental effects that the EIR has identified." *Napa Citizens for Honest Gov't v. Napa County Bd. of Supervisors*, 91 Cal.App.4th 342, 360 (2001). Mitigation of a project's significant impacts is one of the "most important" functions of CEQA. *Sierra Club v. Gilroy City Council*, 222 Cal.App.3d

1 Indeed, although not mentioned in the EIR, the Project's emissions greatly exceed the 10,000 ton GHG threshold for industrial sources adopted by SCAQMD and proposed by BAAQMD and BAAQMD's 1,100 ton proposed threshold for commercial projects.

30, 41 (1990). Rather than take this obligation seriously, the EIR is vague with regard the measures it does adopt and improperly rejects many others.

The importance of a serious look at energy conservation was recognized in the California Resources Agency's recently finalized CEQA Greenhouse Gas Guidelines. The Guidelines strengthen Appendix F, which calls for a thorough analysis of the project's energy use and measures to reduce non-renewable energy consumption. (Resources Agency, CEQA Guideline Amendments & Final Statement of Reasons (Dec. 2009)). Appendix F also calls for a comparison of short-term gains versus long-term impacts by calculating energy costs over the lifetime of the project. The EIR failed to make such a comparison, which is logically part of any transparent assessment of mitigation for Project energy use.

A. There is No Credible Basis for the EIR's Rejection of On-Site Renewables to Mitigate Project Impacts

As the EIR recognizes, the Project is inconsistent with the California Solar Initiative, one of the strategies identified as critical for California to meet its greenhouse gas reduction targets. (DEIR at 4.16-11). Yet, in refusing to incorporate on-site renewables into the project, the EIR states only that on-site solar is not feasible because "buildings are not of sufficient size to make photovoltaic arrays economically feasible and capable of generating all of the Project's electrical demand." The Project contemplates 258,100 square foot and 409,400 square foot buildings. Structures of this large size are ideal for solar and, as set forth in earlier comments, can and have included roof-top solar. Indeed, roof-top solar on warehouses has become increasingly common.[2]

While the EIR nakedly asserts "economic infeasibility," economic feasibility is not measured by increased cost or lost profit, but upon whether the effect of the proposed mitigation is such that the project is rendered impractical." *Maintain Our Desert Env't v. Pluto Development, Inc.*, 124 Cal.App.4th 430, 449 (2004). A finding of infeasibility may only be made if there is evidence that "additional costs or lost profitability are sufficiently severe to render it impractical to proceed with the project." *Citizens of Goleta Valley v. Board of*

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2 *See, e.g.,* David Ehrlich, California's Largest Solar Roof To Power Up, http://earth2tech.com/2008/12/01/californias-largest-solar-roof-to-power-up/ (last visited Feb. 5, 2010), Keith Johnson, Rooftop Solar: ProLogis Turns Warehouses Into Clean Energy, http://blogs.wsj.com/environmentalcapital/2009/09/28/rooftop-solar-prologis-turns-warehouses-into-clean-energy/tab/article/ (last visited Feb. 5, 2010); New Bern solar project will harness the sun's energy from warehouse rooftop, http://progress-energy.com/aboutus/news/article.asp?id=23042; enXco Dedicates 1.8 MW (DC) Solar Project at Hall's Warehouse Corp., http://www.enxco.com/press_4309.php; Warehouse getting 33,000 solar panels: Calif. utility giant hopes to expand to 3.5 million panels on 150 rooftops, http://www.msnbc.msn.com/id/25703283/; Michael Rose, Warehouse's rooftop solar array now is Salem's largest: Energy tax credits and other incentives steer businesses toward renewable energy, http://www.statesmanjournal.com/article/20100201/NEWS/2010320/10; Matthieu Desiderio, How about producing solar electricity on your warehouse's roof?, http://en.transport-expertise.org/index.php/2008/05/29/how-about-producing-solar-electricity-on-your-warehouses-roof/. *See also* NY Times, Giant Retailers Look to Sun for Savings, Aug. 21, 2008), Big Box Stores Going Solar, http://www.blog.thesietch.org/2007/05/01/big-box-stores-going-solar/; Michael Graham Richard, Turning Big Box Stores into Solar Power Plants in California, http://www.treehugger.com/files/2008/03/big-box-stores-roofs-solar-power-california.php.

Supervisors of Santa Barbara County, 197 Cal.App.3d 1167, 1181 (1988). No such showing has been made nor can it, given the many financial incentives and long-term savings resulting from on-site renewables.[3] Finally, contrary to the EIR's misleading assertion, a mitigation measure need not fully mitigate project impacts to be adopted, it need only function to lessen project impacts. Guidelines § 15126.4. Not only does the EIR provide no evidence that renewables could not generate all of the site's electricity demand, but such a demonstration is irrelevant to its adoption as a mitigation measure.

B. No Performance Standards Are Set for Purported "Energy Efficient Lighting"

While the EIR claims the Project will install "energy efficient lighting," no performance criteria are provided defining "energy efficient." Yet "efficiency" can cover a wide range of performance. For example, although LED lighting is more efficient than conventional efficient lighting and economical over the long term, the EIR does not commit to its use. (See, e.g., LA Times, Energy-Efficient LEF Bulbs to Light US Homes (Oct. 2, 2009). To comply with CEQA, the EIR must specify minimum efficiency standards or the type of lighting used (such as LED). Absent such specificity, the purported design feature is meaningless and violates CEQA's standards of adequacy.

C. Off-Site Mitigation

After all measures have been implemented to reduce emissions in the first instance, remaining emissions that cannot be eliminated may be mitigated through off-site measures. The CEQA GHG Guidelines finalized at the end of last year specifically contemplate off-site mitigation such as "community energy conservation projects." (Final Statement of Reasons for CEQA GHG Guidelines at 47.) CAPCOA also found that a potential cost-effective offset and verifiable offset could include an energy-efficient retrofit of existing building stock in the Project area to offset the remainder of the Project's emissions. (CAPCOA 2008 at 80.) Care should be taken to ensure that offsets purchased are real (additional), permanent, and verified. Offsetting GHG emissions in the project area can also yield corollary benefits, such as reductions in criteria pollutants.

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3 Several programs to assist in financing of solar were included in earlier comments. Additional information and programs include Solar Power Financing: Commercial and Industrial, http://www.socal-solar-energy.com/solar-power-financing-commercial.nxg (last visited Feb. 5, 2010); The California Solar Initiative, http://www.gosolarcalifornia.org/csi/index.html (last visited Feb. 5, 2010); Financial Incentives for Solar Energy, http://www.californiasolarcenter.org/incentives.html (last visited Feb. 5, 2010) Solar Financial Incentives, http://www.whcsolar.com/incentives, Solar Rebates, http://calseia.org/solar-rebates.html. Notably, in its CEQA & Climate Change White Paper, CAPCOA determined that roof-top solar was "feasible" mitigation.

CONCLUSION

At a minimum, the Center urges the Board to stay approval of the Project until the Conservation Groups have had the opportunity to confer with the County and Service staff regarding the Project and the outcome of the federal litigation surrounding the March SKR Preserve. The Center also respectfully reminds the Board of Supervisors that, as drafted, the Project and associated EIR must be denied due to the existing legal violations and irreconcilable conflicts with the SKR HCP and CEQA.

Sincerely,

Jonathan Evans
Staff Attorney
Center for Biological Diversity

cc:

Adam Rush, Riverside County Planning Dept.
Carolyn Syms-Luna, Riverside County Habitat Conservation Authority
Jim Bartel, United States Fish and Wildlife Service

EXHIBITS
(Included on CD)

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EnXco Dedicates 1.8 MW (DC) Solar Project at Hall's Warehouse Corp., http://www.enxco.com/press_4309.php.

Warehouse getting 33,000 solar panels: Calif. utility giant hopes to expand to 3.5 million panels on 150 rooftops, http://www.msnbc.msn.com/id/25703283/.

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Solar Financial Incentives, http://www.whcsolar.com/incentives, Solar Rebates, http://calseia.org/solar-rebates.html

Attachment A

Ecological Value of Riparian Areas and Wetlands

Riparian areas support a disproportionate share of the State's biodiversity and preservation of these vegetation communities is critical to the survival of rare, sensitive, threatened and endangered plants and wildlife. CDFG 2003.

> Over 225 species of birds, mammals, reptiles, and amphibians depend upon California's riparian habitats (Knopf et al. 1988, Saab et al. 1995, Dobkin et al. 1998). In addition, these beautiful examples of California's biodiversity can help reduce flood flows and flood damage, improve groundwater recharge, prevent damaging chemicals and other compounds from reaching open water, and reduce wind and erosion on adjacent lands. . . Unfortunately, human activities have destroyed or fragmented most of this valuable habitat over the past 150 years. No one has documented how much riparian habitat existed in California before 1850. However, a 1984 study estimated that riparian vegetation in the Central Valley and desert regions represented from two to five percent of the pre-1850 amount… Because they are both biologically rich and severely degraded, riparian areas have been identified as the most critical habitat for conserving neotropical migrant birds.

CDFG 2003. (emphasis added).

Wetlands and riparian habitats are truly among the rarest and most sensitive ecosystem types in California. These areas are critical for biodiversity, harboring high concentrations of threatened, endangered, and sensitive species. Krueper (1992) estimates that wetland and riparian habitat occupies less than 1% of the total land area in the western U.S., yet is critical for up to 80% of terrestrial vertebrate species. Riparian habitats are relatively rare in the California deserts, but extensively degraded. As noted above, more than 90% of the State's riparian areas and wetlands have already been lost, but while there are fewer acres of riparian habitat than other plant communities, riparian areas sustain a disproportionately high number of aquatic and terrestrial wildlife species (Faber et al. 1989). Riparian communities in the arid areas of the State are typically surrounded by far drier environments, and the water and riparian vegetation that they provide are vitally important to many species (Krueper 1992).

Terrestrial vertebrates in the State rely heavily on riparian habitats for various life stages, as noted above, the California Department of Fish and Game estimates that over 225 species of birds, mammals, reptiles, and amphibians depend upon California's riparian habitats. A recent study found that there are approximately 173 terrestrial vertebrates in the eastern United States alone that require riparian habitats for some lifehistory function (26 mammals, 27 birds, 50 reptiles, and 70 Amphibians) (Crawford 2007).

Direct and Indirect Impacts to Wetlands and Riparian Areas

Nonpoint source pollution from activities such as urban runoff, agriculture, and habitat modification are considered the primary source of pollutants to waters of the US (USEPA 2002). Many wetlands that persist are significantly degraded through contamination by pollution from urban and agricultural runoff (Dahl 2006).

It is important to recognize that the destruction and modification of riparian and wetland habitat can have broad indirect effects within a watershed and analyze the impacts of those impacts.

> Artificial flow regulation with local or upstream dams and diversions, as well as channel alteration and containment with levees and channelization, can alter plant communities at watershed scales (Ohmart 1994, Hunter et al. 1999). Transportation departments may channelize or re-direct sheet flow to manage rainfall events, altering hydrologic input to desert wash habitats (The Nature Conservancy 2001). Vegetation, and therefore vegetation-dependent wildlife, can be dramatically affected by distant upstream water management practices (Ohmart 1994), so that restoration efforts at specific sites may depend ultimately on the cooperation of partners managing water in the wider landscape.

(CalPIF, The Draft Desert Bird Conservation Plan, 2006).

Specific types of development can have broad ranging effects. Roads are responsible for a suite of indirect effects that impact species dynamics, soil characteristics, water flow regimes, and vegetation cover (Bashore et al. 1985; Reijnen et al. 1996, Forman et al. 2003). The degree of indirect effect varies in relation to the distance from a road, extending to what is known as the "road effect zone" or the outer limit of significant ecological effect (Forman et al. 1997; Forman and Deblinger 1998, 1999). Forman and Deblinger (2000) found that the effects of all nine ecological factors studied extended more than 100 m from the road, with some extending outwards of 1 km of the road. The road-effect zone was asymmetric, had convoluted boundaries and a few long fingers and averaged approximately 600m in width.

Indirect effects often have such broad implications because the "road effect zone," or the outer limit of a significant ecological effect, extends much further than the actual road, route or trail (Forman 2000). Forman et al. (2003) state all roads not only have a physical footprint, but also a "virtual footprint" surrounding their actual location. This virtual footprint includes the "accumulated effect over time and space of all of the activities that roads induce or allow, as well as all of the ecological effects of those activities (Forman et al. 2003)." It is estimated that 19% of the land surface in the U.S. is directly affected by roads, while in total, 22% of the U.S may be ecologically altered by the road network (Forman 2000).

Mitigation for Impacts to Wetlands and Riparian Areas

To protect stream amphibians and other wildlife dependent on riparian areas and wetlands, land managers and policy makers must consider conserving more than aquatic

resources alone (Crawford 2007). Developing core terrestrial habitat estimates and buffer zone widths for wildlife populations is a critical first step in the conservation of many semiaquatic organisms and protecting biodiversity (Crawford 2007). Typically when buffer zones are determined to mitigate edge effects, they are based on criteria that protect aquatic resources alone and do not consider impacts to wildlife, semiaquatic species, and other terrestrial resources (Semlitsch & Bodie 1998; Semlitsch & Jensen 2001). For example, in Oregon, the minimum buffer strip required to protect water resources is 6.1 m, although a minimum buffer of 20 m is needed to protect certain salamander species (Vesely & McComb 2002).

Riparian forests have been found to reduce delivery of nonpoint-source pollution to streams and lakes in many types of watersheds (Vellidis et al. 2002, 2003a; Lowrance et al. 1983, 1984a, 1984b, 1985a, 1985b, 1997). Riparian forest ecosystems are excellent nutrient and herbicide sinks that reduce the pollutant discharge from surrounding agroecosystems (Peterjohn and Correll 1984). For example, studies from coastal plain agricultural watersheds reveal that riparian forest ecosystems are excellent nutrient sinks and buffer the discharge from surrounding agroecosystems (Lowrance 1984a). Riparian buffers are especially important on small streams where intense interaction between terrestrial and aquatic ecosystems occurs (Vellidis et al., 2003b), because first- and second-order streams comprise nearly three-quarters of the total stream length in the US (Leopold et al., 1964).

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Large map filed with item