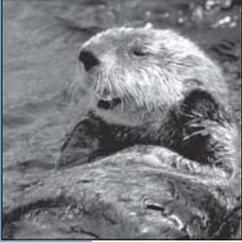


# CHAPTER 4

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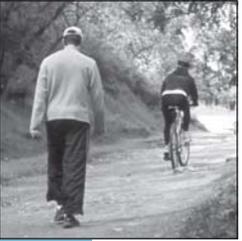


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## California's Ecological Richness

By Kim Delfino

With its unusual and diverse flora and fauna, California stands in stark contrast to other parts of the country. This incredible wealth of unique plants and animals led the late naturalist Elna Bakker to call our state “an island called California.”

From our rugged and majestic coastline to the expanse of the Central Valley to the peaks of the Sierra Nevada, California leads the country in its diversity of plants and animals, with nearly 5,000 plant species—nearly half of the United States total—and more than 800 species of native vertebrates—birds, mammals, reptiles, amphibians and fishes.

California's plants and animals exist in a lavish array of specialized habitats found nowhere else. The California Department of Fish and Game's Natural Diversity Database recognizes more than 500 distinct natural community types. These include different types of oak woodlands, grasslands, coniferous forest, desert communities, and chaparral shrublands.

*Continued on the following page.*

# CEQA Protects California's NATURAL HERITAGE

*“When you try to pick out anything by itself, you find it hitched to everything else in the universe.” – John Muir*

By William J. Yeates

In 1987, The Nature Conservancy commissioned a report by Jones and Stokes Associates entitled, “Sliding Toward Extinction: The State of California's Natural Heritage, 1987.” Prepared for the California Senate Committee on Natural Resources and Wildlife, this study highlighted an alarming trend caused by the increasing demands of California's population—California at an alarming rate is losing native species and their habitat forever. “Sliding Toward Extinction” pointed out:

Habitat loss and the disruption of species breeding and migration patterns have resulted from the cumulative effects of many independent activities carried out in various locations and at different times.

This report pointed out that “every individual” . . . “ultimately contributes to the loss” and so we all have a responsibility “to ensure that additional losses of natural diversity are minimized through land protection . . .”

CEQA's substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures helps us address the loss of habitat and disruption of native species that “Sliding Toward Extinction” exposed. CEQA places an affirmative duty on public agencies to show that their decision approving or carrying out projects follows a careful and meaningful evaluation of alternatives and mitigation measures.

Stated another way, CEQA requires public agencies to identify a project's potential significant change, and to identify ways to avoid that change, or to reduce the effect of that change on the existing environment.

All of the following strategies are included within CEQA's concept of mitigation: (1) avoiding the impact altogether; (2) minimizing the impact; (3) repairing, rehabilitating, or restoring the resource; (4) preserving the resource over time; and, (5) replacing or providing a substitute resource. All



of these strategies are being used today in order to prevent a “slide toward extinction.”

Because CEQA applies at the earliest possible time to public agency actions that may significantly change the existing natural environment, CEQA's

public review requirement invites the interested public to participate in a public decision-making process that seeks to reduce or avoid significant adverse changes to the existing environment. Rather than “slide toward extinction” CEQA provides real opportunities to reverse the trend highlighted by The Nature Conservancy’s 1987 report.



B. Peterson, USFWS

As “Sliding Toward Extinction” acknowledges, it is not necessarily one big project that destroys natural resources. It is the cumulative effect of many little changes that we all inflict on our natural communities that result in great change. Quoting from an article Professor Dan Selmi penned for the U.C. Davis Law Review, the Court of Appeal acknowledged:

One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources.<sup>1</sup>

CEQA is the only state law that requires public agencies to consider the cumulative effects of individual projects on the environment, so that these agencies don’t evaluate projects in isolation. CEQA’s cumulative impact analysis forces local agencies to consider the regional consequences of their actions. Public agencies are required to evaluate alternatives that avoid a project’s significant adverse cumulative impacts on natural resources.

CEQA gives the state’s wildlife and resources agencies the right to recommend mitigation strategies to protect California’s diminishing natural resources. CEQA’s mitigation requirement has spawned collaborative planning efforts that seek to set aside or protect specific landscapes, in order to reverse the trend of rapidly diminishing or fragmenting natural habitats. It is not uncommon today that local agencies require project proponents to contribute specified land, or funds for the acquisition of land, in order to mitigate the adverse effects new development projects have on existing and diminishing natural habitats.

What follows are but a few examples of the many creative solutions that are being employed in California.

*William J. Yeates is an attorney at law focusing on environmental and planning law, as well as zoning law and policies. Mr. Yeates’ practice emphasizes litigation and consultation in areas of land use, California Environmental Quality Act (CEQA), California Endangered Species Act (CESA), and election law.*

**Footnote:** <sup>1</sup>Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 720.

*Continued from the previous page.*

Among the most interesting of California’s many habitats is a type of seasonal wetland known as “vernal pools,” ponds that fill with winter rains and dry up slowly through the course of the spring. These unique and beautiful grasslands are home to creatures found nowhere else on earth, including the rare Riverside fairy shrimp and the Slender Orcutt grass.

The diversity of California’s terrestrial ecosystems is matched by the diversity of its aquatic ecosystems. The San Francisco Bay / Sacramento-San Joaquin Delta is the largest estuary on the West Coast. The Sacramento and Klamath Rivers are two of the most important rivers for salmon in the lower forty-eight states. California’s desert springs and creeks are home to endangered desert pupfish, which can live in waters twice as salty as the ocean and as hot as 113° Fahrenheit.

California faces an important challenge to protect and restore its natural legacy. In the coming decades, California will face increasing pressures from growth. If we are to preserve a “Wild California,” we must be willing to undertake this challenge and ensure that future generations will enjoy California’s biological treasures.

*Kim Delfino is the California Program Director of Defenders of Wildlife.*



Katherine Lambert

## A Vision of Many Californias

By Steve McCormick

California isn't easily imagined or defined. My vision of the state is a complex and colorful one, a blend of landscapes that I've known, explored, and—as a conservationist—worked to protect for many years. Instead of looking at the state as a single, well-defined political and geographic area, I see California's varied natural lands and waters as a tapestry of contrasting yet complementary habitats stitched together by the state's dramatic geology and topography.

There are many Californias. When I think of California in all its marvelous variety, I recall the salty essence of a snow-white fog bank drifting inland from the Pacific, the hot tan smell of a Central Valley grassland in July, and the cool bite of a fresh autumn wind rustling radiant red-gold aspen leaves as it rushes down a



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# Golf Course Threatens Bighorn Sheep Habitat

By Wayne Brechtel

The Peninsular bighorn sheep are a distinct population of bighorn that is listed as endangered under state and federal law. Their range is limited to the band of peninsular hills that extends from the U.S.-Mexico border to the north end of Palm Springs. Unfortunately, the rough, hillside terrain, with its spectacular views, is an increasingly popular venue

**The developer argued strenuously that the project site for a new 18-hole golf course above Palm Springs was not Peninsular bighorn habitat.**

for new, links style golf course developments, resulting in a collision between wildlife preservation and new commercial development.

In the late 1990s, this conflict manifested itself in the form of a 359 acre development known as Mountain Falls Golf Preserve (“Mountain Falls”), which included a new eighteen hole golf course within an undeveloped hillside canyon above Palm Springs known as Tachevah Canyon. Most of the property is owned by the City of Palm Springs, which had entered into an agreement to lease it to the Mountain Falls developer.

On December 16, 1998, over the strenuous objections of local residents, resource agencies, and the environmental community, the Palm Springs City Council approved the Mountain Falls project after a marathon session that went into the early hours of the morning. The local Sierra Club chapter responded with a lawsuit alleging various violations of law, including CEQA, marking the start of a three-year legal battle.



Bighorn sheep populations have declined precipitously since the 1850s. Hunting and habitat loss have decimated populations across North America.

Throughout the process, the developer argued strenuously that the project site was not Peninsular bighorn habitat, and that no bighorn had been seen on the property for decades.

**As everyone stood outside of the car, a Fish and Wildlife representative exclaimed that a group of bighorn sheep were sitting next to the flag designating the location of a proposed golf course hole.**

At the urging of the developer, a meeting at the project site was arranged to provide representatives from the Sierra Club, the City, the U.S. Fish and Wildlife Service, and the Department of Fish and Game with an opportunity to review the project proposal in more detail.



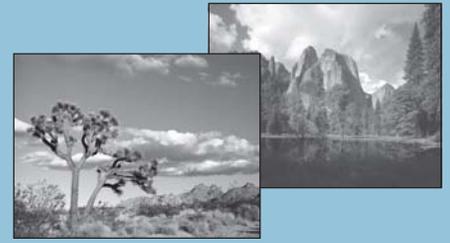
Wayne Brechtel  
Endangered bighorn sheep, photographed on the proposed site of a golf course. CEQA ensured that development plans were modified to protect the animal's habitat.

As everyone stood outside of the car getting ready to walk the site, a representative from the Fish and Wildlife Service exclaimed that a group of bighorn sheep were sitting next to the flag designating the location of a proposed golf course hole. Even the developer's attorney, after much anguish, had to admit that he saw the sheep.

The project approvals were set aside twice by the trial court for failure to adequately address significant impacts to the Peninsular bighorn sheep, and ultimately, the developer abandoned its plans to develop a golf course in the Tachevah Canyon. In May 2002, the project was converted into a limited condo development within the residential area outside of the canyon. Tachevah Canyon remains in its undeveloped, pristine condition today.

*Wayne Brechtel is a partner at Worden Williams APC and is an expert on environmental laws governing land use in California including CEQA, NEPA, the Federal Clean Water Act, and the Federal and State Endangered Species Acts. Mr. Brechtel represented the Tahquitz chapter of the Sierra Club in this case.*

*Continued from the previous page.*



12,000 foot escarpment on the east side of the Sierra Nevada. In my mind's eye I see California's scenic, rugged coastline and towering snow-capped mountains, scenes famous throughout the world.

I think of Yosemite Valley and Monterey Bay and our unique Channel Islands. I see teeming wildlife in rich sloughs and marshes and in temperate rain forests in the northwestern part of the state. I picture verdant groves of valley oaks and sycamores lining the mighty Sacramento River and its tributaries. I remember hiking in shimmering deserts and gazing in wonder at wildflower-ringed vernal pools blossoming in the Central Valley. My mind lingers on the uniquely Californian scene of golden savannas dotted with rare blue oaks. I recall craggy, wind-sculpted Monterey pines clinging to coastal cliffs pounded by the Pacific.

My memory produces more images: pronghorn antelope galloping across the Carrizo Plain, golden eagles soaring above the voluptuous hills of Mount Hamilton, and tule elk grazing on the peaceful Point Reyes Peninsula.

*Excerpt from a 1999 speech by Steve McCormick, Executive Director of The Nature Conservancy of California, at the Irvine Ranch Land Reserve.*

# Innovative Solutions for Habitat Protection in South Sacramento County

By Mike Eaton

The partnership between The Nature Conservancy, Sacramento County, and the Department of Fish and Game to protect Swainson's hawk habitat in south Sacramento County demonstrates the flexibility public agencies have in meeting CEQA's mitigation requirements. Additionally, because CEQA requires local agencies to look at the environment from a regional perspective and consider the cumulative effect of their decisions, CEQA's mitigation requirements encourage local, regional, and state agencies to work together to address the rapid decline of wildlife habitats in the face of rapid urbanization.

The National Audubon Society recognized the Cosumnes River floodplain as an Area of Critical Concern in the 1970's, because of the extensive wetland and riparian habitat areas within this floodplain. The Cosumnes River hosts one of the last remaining and largest valley oak riparian woodland stands in California's Great Central Valley.

Once stretching continuously along floodplain terraces in swaths from one to three mile wide, valley oak riparian habitat currently occupies less than 5 percent of its historic range—occurring only in sporadic patches along the Sacramento and San Joaquin Rivers. The Cosumnes watershed also contains one of the largest populations of the threatened giant garter snake. The watershed contributes critical habitat to help

sustain 50 to 7175 percent of the threatened Greater Sandhill cranes that winter in the area. Additionally, the watershed and surrounding agricultural lands provides one of two breeding centers in California for the threatened Swainson's hawk.

The Nature Conservancy, Cosumnes River Preserve



A student group hikes through the Cosumnes River Preserve. Once stretching continuously along floodplain terraces in swaths from one to three miles wide, valley oak riparian habitat currently occupies less than five percent of its historic range, occurring within patches along the Sacramento and San Joaquin Rivers.

In 1984, The Nature Conservancy began a conservation program to preserve and restore the wetland and riparian habitats within the Cosumnes River floodplain. Working with Sacramento County, Ducks Unlimited, U. S. Bureau of Land Management, California Departments of Fish and Game and Water Resources, and the State Lands Commission, The Nature Conservancy has protected over 45,000 acres of key Cosumnes River habitats.

Yet, rapid urbanization threatens to isolate these protected areas and reduce the floodplain's viability as a refuge for diminishing wildlife species. Sacramento County's

population is expected to grow to 2,858,427 and San Joaquin County's population is expected to triple in size by 2050. In the ten-year period from 1988 to 1998, 20,300 acres of farmland were converted to urban uses in Sacramento County.

In late 1993, Sacramento County updated its general plan, which allowed additional urban development in undeveloped areas of South County. In 1996, Sacramento County launched the development of a Habitat Conservation Plan (HCP) for the South County; and, California Department of Fish and Game (CDFG) began seeking more effective Swainson's hawk mitigation in response to the rapid loss of hawk habitat. To mitigate the impact of urbanization on Swainson's hawk habitat in South County, Sacramento County and developers proposed an "interim fee" as an alternative to either waiting for completion of the HCP or to project-by-project mitigation. Sacramento County and CDFG agreed upon a \$750 per acre interim mitigation fee for new development that would be used to acquire critical Swainson's hawk habitat.

The Nature Conservancy agreed to assist in implementing the Swainson's hawk mitigation fee program as a short-term solution to reduce the impacts of urban development adjacent to the Cosumnes

River Preserve. A three-party Memorandum of Understanding (TNC, Sac County, CDFG) provided that accumulated mitigation fees would be used to buy easements on lands outside of Sacramento County's Urban Services Boundary and within the Cosumnes River corridor.

When it incorporated in 2000, the City of Elk Grove inherited the County's fee program. The City of Elk Grove in south Sacramento County has been growing like grassfire, issuing, for example, close to 15,000 building permits in 2003 alone. By the middle of 2005, the City will have permitted much of the land within its current boundary to urbanization. The City's new general plan has designated a large area south of the City of Elk Grove within the Cosumnes River floodplain as an Urban Study Area to assess its future growth potential. The new city's study area lies outside the growth boundary adopted by the County in its 1993 general plan.

Elk Grove's action has left the impression with the landowners in this area and with developers that urban development will soon be coming to the Cosumnes River floodplain. Speculation over this expansion below the growth limit line has increased property values. Both Elk Grove and the County responded to rising land values by increasing the mitigation fee in 2003, to \$2,833 per acre within the County and \$4,682 within Elk

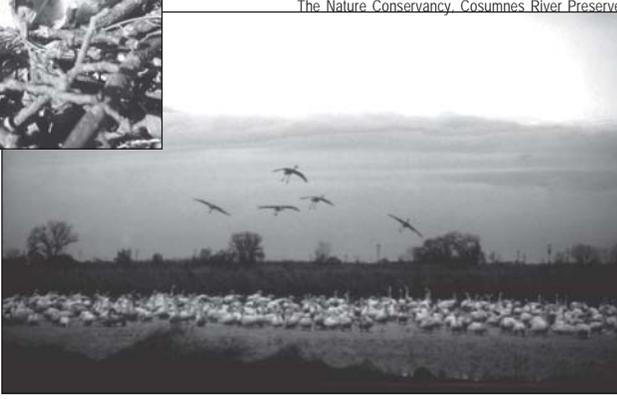
Grove. But, this fee increase was still not enough to compete with developers convinced that the City would be annexing land south of the former County growth line.

In the spring of 2004, The Nature Conservancy acknowledged that rapidly escalating property values were outpacing the Conservancy's ability to acquire available land. CDFG also pointed out that

Swainson's hawk foraging habitat was being lost throughout the City of Elk Grove. CDFG



Swainson's Hawk Technical Advisory Committee



The Nature Conservancy, Cosumnes River Preserve

The Cosumnes watershed and surrounding agricultural lands provide one of two breeding centers in California for endangered Swainson's hawk. Now for every acre of habitat lost to development, project proponents must provide an acre of hawk habitat.

wanted this cumulative loss addressed under CEQA.

In response to The Nature Conservancy and CDFG's concerns, the City revised its Swainson's hawk mitigation strategy by requiring project proponents to provide land instead of money to reduce the direct effects of new development on hawk foraging habitat. So now, for every acre of habitat taken, a new project proponent must provide an acre of hawk habitat.

This new one-for-one land mitigation strategy is admittedly a place-

holder, until the City of Elk Grove, Sacramento County, and the Sacramento County Local Agency Formation Commission determine the City's new boundaries. But, as these public agencies contemplate Elk Grove's growth areas, CEQA requires all these public agencies to evaluate the cumulative effect growth will have on those irreplaceable habitat areas that The Nature Conservancy and other agencies started acquiring and protecting back in 1986. CEQA's environmental review and mitigation mandate will require these agencies to work together on an outcome

that addresses these cumulative effects. Without CEQA the parochial interests of one entity could result in the situation where difficult planning and growth issues are simply swept under the rug.

Although the solutions have not been found, CEQA's substantive requirements will produce

a better outcome as it will require the affected local agencies to work with interested regional and state agencies. CEQA's information disclosure requirements will provide a forum for interested private organizations, like The Nature Conservancy, local landowners, and the building industry to talk with one another about solutions that will balance the interests of Elk Grove's growth with the conservation and protection of diminishing natural habitats.

*Mike Eaton is the Senior Project Director for the California Delta & San Joaquin Valley at the Nature Conservancy.*

# BAHIA MARSH: A TALE OF TWO DEVELOPMENTS

The city of Novato, in Marin County, is home to steep fog-swept hills, beautiful bay-front marshes and stunning wildlife. Sadly, these very qualities have brought an influx of developments that threaten the natural environment. Two starkly contrasting stories of proposed developments in an area of Novato called Bahia demonstrate the importance of robust environmental review under CEQA to protect Marin's natural environment.

## The Bahia Community

The first development, now referred to as the Bahia Community, was approved and built in the mid-1960s, several years before the enactment of CEQA. To construct the 288 unit development, workers dredged up the existing tidal marsh, creating the Bahia lagoon. Eighty homes with boat docks were constructed on the lagoon and a channel was dredged to provide boat access to the Petaluma River.



U.S. Geological Service - TerraServer-USA

In the mid 1960s, Marin County marshland was dredged to make way for the Bahia Lagoon and 288 housing units.

This man-made lagoon was an environmental disaster. Because of the lack of environmental review, there was no analysis of siltation rates in the area until the houses were already built. Each year, silt from upstream on the Petaluma River and the San Francisco Bay is deposited by tidal waters, inundating the surrounding marshlands, channel and lagoon.

To complicate the matter, the Bahia Homeowner's Association (HOA) had included a provision in its Codes, Covenants, and Restrictions guaranteeing boat access to the river. Early dredging efforts temporarily restored access, but the results were always short-lived. In addition, public concern about the adverse impacts of disposing of dredged material resulted in increased regulatory oversight and costly limitations on dredging.

The HOA has been trying for more than twenty years to solve the siltation problems to no avail. A number of HOA members sued their board of directors to force them to provide the promised boat access, but project proponents have been unsuccessful in obtaining the necessary permits for regional agencies.

As Susan Ristow, a local activist working to protect Marin's



Because of inadequate environmental review, the Bahia community has suffered tremendous siltation problems. Now only a thin stream runs by these "waterfront" homes.

baylands explains, “This development shouldn’t have happened. The absence of environmental review has caused long-term adverse impacts on the environment and the community. Residents have had to spend millions of dollars trying to provide boat access for a few houses. If they continue to pursue plans for a lock and resumed dredging they may never see a resolution.”

### **The Bahia Master Plan**

The story of the Bahia Master Plan demonstrates how outcomes can be improved by CEQA. Here, Art Condiotti proposed to complete the originally envisioned project by constructing 424 luxury houses

**The Bahia Plan would have threatened one of the few remaining populations of endangered Clapper Rail, a ground-dwelling marshbird, native to the area.**

woodland. Moreover, the development would have adversely impacted approximately eight to ten acres of wetlands, threatening one of the few remaining populations of endangered Clapper Rail and 125 other species of migratory shorebirds and waterfowl. Finally, it would have significantly increased

**The Bahia Homeowner’s Association has been trying for twenty years to solve its siltation problems to no avail.**

**Thanks to impressive community support, preservationists were able to raise enough money to purchase the adjacent 632 acres of oak forest and marshland, previously slated for development.**

adjacent to the Bahia Community. This time, the CEQA-mandated environmental review ensured that community residents and local organizations were informed of the impacts of the proposed project and gave them the opportunity to voice their concerns.

The Environmental Impact Report illustrated the dangers of further development in Bahia. Condiotti planned to build along the ridgetop and hillsides of a rare Blue Oak

the amount of pollutant-laden runoff contaminating local wetlands before draining into the Petaluma River and the San Francisco Bay. Empowered by this information, citizens attended public meetings, wrote editorials, and submitted comment letters.

When, in spite of these efforts, the Novato City Council approved the Bahia Development in 2001, the community again responded. The Marin Audubon Society filed a lawsuit challenging the project

approval on CEQA grounds. At the same time, residents gathered signatures for a city-wide referendum. “Our ability to litigate under CEQA was important because it allowed us to show that we had genuine and justifiable concerns about the environmental review, and that we wouldn’t disappear until they were addressed,” says Barbara Salzman. “After the overwhelming success of the referendum, the developer called us and agreed to begin negotiations that eventually led to Marin Audubon’s purchase of the property.”

Thanks to impressive community support, preservationists were able to raise enough money to purchase the 632 acres of oak forest and marshland. By January 2003, the Marin Audubon Society had secured over \$15.8 million in funding from Marin County Open Space District, CALFED, Caltrans, California Coastal Conservancy, Wildlife Conservation Board, Marin Community Foundation, National Oceanic and Atmospheric Administration through the Bay Institute, and many private groups and individuals. Planning for restoration work has begun.

“Looking out over the development in Bahia makes me shudder at what planning must have been like before CEQA,” says Salzman. “Looking at the tidal marsh and upland property we purchased makes me incredibly thankful for the passage of this bedrock environmental law.”

*Written by PCLF staff.*

# CEQA and the Santa Monica Mountains

By Joseph T. Edmiston

It is so much fun to bash CEQA that even in this article meant to support it, I can't help speculate on all the forests destroyed for millions of pages of junk science produced under CEQA's rubric. (Putting Environmental Impact Reports on the Web will solve this problem.) And who can avoid noticing the Biostitute profession that has grown, streetwalker wise, around developer's carnal need to find "no significant impact" in their projects.

But when the Planning and Conservation League Foundation asked me to evaluate the impact of CEQA on protection of the Santa Monica Mountains, I had to back down from my cynicism and analyze the true facts. And the facts are these: CEQA is directly responsible for protecting roughly a third of all lands that have been preserved in the twenty-five year history of state efforts to preserve open space in the Santa Monica Mountains. That is no mean accomplishment and that fact alone should cause us to re-examine the critical approach that many, even in the environmental community, have taken toward CEQA.

I was a young Sierra Club activist in law school when the California Supreme Court's *Friends of Mammoth* decision came down in 1972. The court said, in essence, CEQA means what it says about evaluating environmental impacts and, yes, private projects permitted by government action fall within its

purview. Suffice it to say that CEQA, then, was seen exclusively as a way to kill projects, certainly not make them better!

Dozens of legislative amendments since then, hundreds of lower court rulings, and scores of appellate court decisions have solidified CEQA practice into a fairly predict-

**Projects mitigated to the maximum extent feasible do tend to get approved and that approval sticks in the courts.**

able body of law. It is this fact that has had the unintended (by both environmentalists and developers) consequence of making projects more approvable by making them more environmentally friendly. I don't think for a moment that when



Because of CEQA, this 7,000 acre contiguous habitat block in the Sierra Pelona Range will be preserved in mitigation of the Ritter Ranch development.

CBIA, the Realtors, or the Cal-Chamber pushed for "weakening" amendments in the late seventies and eighties they had any intention of making projects better. They wanted to make them unstoppable. Likewise, my old employer the Sierra Club and other environmen-

talists didn't want to see incrementally less harmful developments, they were looking to keep the holes in the strainer sufficiently small so that the fewest projects possible would emerge from the CEQA process.

What has happened in reality defies the expectations of both interest groups. Would you believe that some of the most competent professional planners I know work for law firms that regularly advise developers—it is

true. Oh yes, there are still those law firms out there who are notorious for advising clients to fight CEQA with every last dollar of their law firm's billings. But the members of the business community who are willing to take such advice is rapidly dwindling as the evidence piles up that CEQA is a vehicle for project approval—given a developer's willingness to accept its basic premise.

So what is that magic "get out of the Planning Commission" card that CEQA offers? At its most basic, it is that projects mitigated to the maximum extent feasible, certainly as close as possible down to the threshold of environmental significance, do tend to get approved and that approval sticks in the courts.

As CEQA works itself out in highly charged development arenas, such as the Santa Monica Mountains in the heart of the Los Angeles Metropolitan Area—probably the most

competitive real estate market this side of Lower Manhattan—CEQA is less a vehicle for environmental impact avoidance, or at least not exclusively so, as it is an engine for mitigation of impacts. Purists seem offended by this, but from an ecological standpoint I’ve never understood why. Take any given area of land, add a subdivision project (even a “green” one with a semblance of jobs/housing balance) and the net environmental impact, especially in a sensitive ecosystem like Mediterranean chaparral, is going to be far greater under any development scenario than if a mitigation strategy is employed.

It is by environmental mitigation that CEQA’s real benefit is felt. We have seen that a far more efficient strategy—for the developer and the conservationist—is to encourage a project to meet its economic objectives so that it can also fund a more “pure” achievement of environmental objectives by way of a compensating mitigation project. To take the Santa Monica Mountains as one example, the numbers are impressive. Since



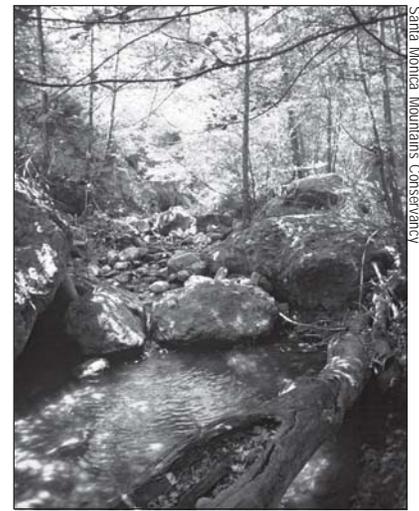
Hikers and bikers flock to open space lands in the Santa Monica Mountains. CEQA is directly responsible for preserving roughly a third of these lands.

1980 when the Legislature established the Santa Monica Mountains Conservancy, roughly three-quarters of a billion dollars has been spent by Federal, State, and local sources to protect this resource. Money well spent. Real nature will abide within touching distance of one-third of Californians probably forever. Yet of the roughly 80,000 acres saved since 1980, at least 20,000 of that total was obtained as CEQA driven developer dedications in mitigation of environmental impacts identified in the EIR process at no cost to the taxpayers.

Ten years before all of Ahmanson Ranch was acquired by the Santa Monica Mountains Conservancy for \$150 million, 10,000 acres of the key north-south wildlife corridor was preserved as a mitigating condition required by Ventura

**Through CEQA, over 20,000 acres in the Santa Monica Mountains have been protected at no cost to taxpayers.**

County as part of the CEQA process. Los Angeles County famously (and many environmentalists would say erroneously) approved the largest housing project in its history (20,000 units) at Newhall Ranch, but not before preserving 4,300 acres of prime undisturbed habitat as the result of a CEQA mitigation measure. A contiguous habitat block of 4,000 acres of the Sierra Pelona north of Santa Clarita has been dedicated, and 3,000 acres remain to be dedicated as a result of CEQA conditions on the Ritter Ranch project. The list goes on and on. From thousands of acres down to neighborhood habitat, CEQA has



CEQA mitigations were used to turn Coral Canyon, the last undeveloped canyon in LA County, into a state park with beach access and a state-of-the-art trailhead. The County had approved a plan to develop the canyon into luxury homes and a golf course.

worked to save land in perpetuity where the environmental impact report process has identified feasible mitigation opportunities.

Developers don’t like to see these figures in print because they represent lost

profits. Environmental activists don’t like to see these numbers because they don’t like figures that show development actually helping the environment. Legislators, taxpayers, and the great body of average citizens, however, should love these figures because they show a successful land use regulatory system that does more than churn out unread paper. Deer, bobcat, and yes, mountain lions, will pad their way through these lands forever.

*Joseph T. Edmiston, FAICP, is the Executive Director of the Santa Monica Mountains Conservancy.*

# Protecting POTRERO VALLEY

By Mary L. Hudson

When Lockheed Martin conveyed thirteen square miles of choice undeveloped Riverside County land into public ownership in late 2003, there were many winners. The Potrero Valley property, previously planned as the site of five small towns with 18,000 homes and two golf courses, is now to be operated as a huge nature preserve. The County's multispecies habitat conservation program gained a critical link between lowland and upland habitats. The valley's rich animal and plant life were spared. The public gained opportunities for hiking, birding, and horseback riding. And Lockheed received \$25.5 million in public funds.

Wildlife agencies had long recognized the extraordinary natural values of Potrero Valley, but Lockheed's \$100 million price tag put acquisition out of reach. The valley is traversed by a meandering stream system and dotted with seasonal ponds, unusual in this arid area. With woodlands, grasslands, shrub lands, and 316 acres of wetlands, the site hosts an array of animals including large species, such as bears and mountain lions, and many birds of prey and other avian species, including many that are listed or pre-listed under the Endangered Species Act. Nearly

2,000 acres are occupied by the Stephens kangaroo rat, a federally listed endangered species, and the site is considered to be prime area for recovery of this species. Positioned between dry "badlands" south of Beaumont and the slope of the San Jacinto Mountains, Potrero Valley provides seasonal passage



Lockheed Martin planned to build 18,000 houses and two golf courses on 13 square miles of Riverside County's Potrero Valley, paving over bear, mountain lion, and other endangered species habitat. Because of CEQA, the property will instead become part of the San Jacinto Wildlife Area, nearly doubling its size.

for migratory animals. Much of the property is in pristine condition, a small portion of it having been used by Lockheed for missile testing during the 1960s.

When the City of Beaumont approved Lockheed's development proposal, the Sierra Club sued on the basis that the approval did not meet CEQA standards. (*Sierra Club, Inc. v. City of Beaumont (Lockheed Corporation)*). The Court of Appeal agreed. The Court found that information and analysis of cumulative impacts on wildlife,

vegetation, and regional water supply were inadequate, as were the measures to mitigate impacts on wetlands, waterways, and many of the sensitive animal and plant species.

The Court's lengthy and detailed opinion showed the difficulty

Lockheed faced in trying to correct the deficiencies for a new round of CEQA review. As that effort proceeded, and the severity of the environmental problems grew more evident, interest in a public acquisition warmed. Federal, state, and county wildlife agencies got involved, pulled together funding from all three sources, and began negotiating with Lockheed. The Conservation Fund, a national nonprofit,

stepped in to broker the final deal, preserving for posterity this natural oasis in the midst of urban southern California. The property will become part of the California Dept. of Fish and Game's increasingly impressive San Jacinto Wildlife Area, nearly doubling its size.

*Mary L. Hudson is a sole practitioner in Sausalito, California and represented the Sierra Club in the Potrero Valley litigation. Ms. Hudson is former deputy chief counsel for the California Coastal Commission and immediate past President of the Pacific Marine Conservation Council.*

# Carnegie Foundation & the Tiger Salamander

In 1999, the Carnegie Foundation for the Advancement of Teaching—the third oldest foundation in the country and the only advanced study center for teachers in the world—announced its intention to construct a 21,000-square-foot think tank facility in the Stanford hills on a site leased from Stanford University. This was considered a win-win arrangement: the foundation would gain a shining new facility on land very generously leased at \$1 dollar a year for fifty-one years. The University would benefit from the Carnegie Foundation’s prestige and from the contributions of its visiting scholars.

However, local environmental groups, including the Committee for Green Foothills, the Stanford Open Space Alliance, and the Loma Prieta Chapter of the Sierra

Club, did not agree. The proposed site was located on beautiful oak woodland in the Stanford foothills, land that has become increasingly valuable to the local community as open space. The development, they maintained, would establish a dangerous precedent for additional construction in the foothills. The City Councils of Palo Alto and Menlo Park, which have been dealing more and more with issues of urban growth, joined them in their objection to the Carnegie development plans.

The proposal also threatened the welfare of the California tiger salamander, a “species of special concern” under state law and a candidate for protection under the federal Endangered Species Act. A 1998 agreement between Stanford University, Santa Clara County, the State Department of Fish and Game, and the Federal Fish and Wildlife Service, had established a tiger salamander management zone to protect the

amphibians, limiting development within its boundaries. The Carnegie project lies within the management zone’s boundaries.

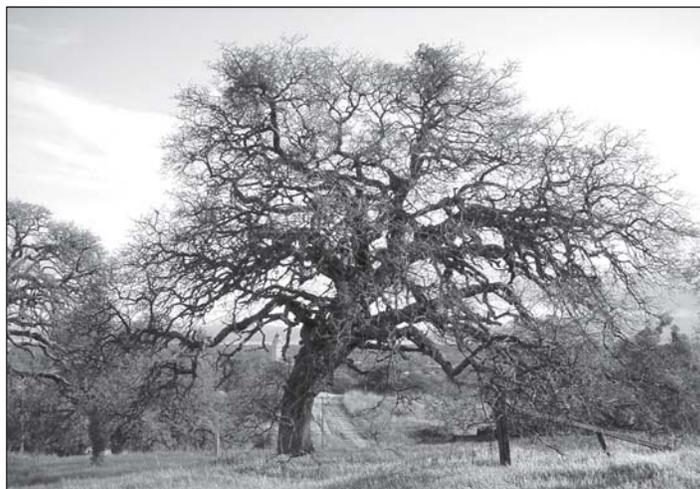
In November of 2000, the County Planning Commission approved the Environmental Impact Report for the Carnegie project on the grounds that specific mitigation measures for the tiger salamander would be adopted. The

Committee for Green Foothills appealed the decision to the county board, maintaining that the specified mitigations were unclear, untested, and failed to adequately provide for the imperiled salamander.

By October of 2001, when the Santa Clara County Board of Supervisors granted its final approval of the Carnegie complex, the project had changed significantly due to public

involvement in the CEQA process and the new Stanford Community Plan, passed by the city of Palo Alto in December of 2000. As a result, the developer was required to move the building site downhill, bringing it within the new Academic Growth Boundary, and to plant four mature oak trees to minimize the visual impact of the project. In addition, an undeveloped, 4.5 acre salamander conservation area was established at the lower end of the property. Finally, all other salamander mitigation requirements were clearly defined and enforceable.

Ultimately, Stanford University and the Carnegie Foundation got the think tank facility that they needed and wanted. Through hard work and their involvement in the CEQA process, the Committee for Green Foothills ensured that the concerns of the environment and of the community at large were addressed in the final Carnegie plan.



Mike Kahn / Kahrchous.net

A CEQA settlement moved the Carnegie Foundation’s think tank facility down the hill from this planned site in the Stanford Hills. It also ensured that clearly defined measures were taken to protect the threatened tiger salamander. Stanford’s Hoover Tower is visible in the background.

*Written by PCLF staff.*

# CEQA and California's Forests

By Tom Lippe and Matthew Vander Sluis

The last one hundred and fifty years of logging in California's forests has caused severe, well-documented damage to many environmental values and resources. The list of endangered or threatened wildlife species is long and getting longer. Coho salmon, steelhead, northern spotted owl and marbled murrelet will probably be joined by California spotted owl, and Pacific fisher. Many watersheds have suffered increases in erosion and sedimentation, bank failures, flooding and landsliding, and the loss of their fisheries. Excessive sedimentation from logging has filled gravel streambeds with silt, creating unlivable conditions for local wildlife. Current conservation policies that preserve islands of suitable habitat in a sea of logging have led to what the U.S. Forest Service has called a "prescription for extinction."

Few issues in California have been more controversial or engendered more passionate public debate than the damage to the state's environment from logging. The almost complete disappearance of the primeval old-growth redwood forests that once blanketed the north coast of California has been the focal point for much of that debate. Public concern is also growing regarding the steep increase in clearcutting in the Sierra Nevada and the accelerating conversion of oak woodlands to housing subdivisions and vineyards. A broad coalition of scientists, public agencies, concerned businesses, and commu-

nity groups are raising the alarm about the plight of the forests and the approval process for new logging.

With the overwhelming majority of California's forests owned by the State and private landholders, CEQA has been one of the most important methods to improve forest management practices statewide.



Current conservation policies that preserve islands of suitable habitat in a sea of logging have led to what the U.S. Forest Service has called a "prescription for extinction."

Logging on non-federal land is regulated by the California Board of Forestry and the California Department of Forestry and Fire Protection (CDF). According to the Z'berg-Nejedly Forest Practice Act, every time a logging company wishes to log a certain area they must have a Timber Harvest Plan (THP) approved by the Department

of Forestry. Each plan should also be analyzed by the Department of Forestry, the Department of Fish and Game, the appropriate California regional water quality control board, and the county planning agency. These agencies assess the plan's compliance with a number of important environmental laws including CEQA, the Forest Practice Act, the Clean Water Act, and the Federal and State Endangered Species Acts.

THPs were not subject to CEQA until 1976, when the California Court of Appeal ruled that timber harvest plans had to comply with CEQA. The following year the Legislature amended CEQA to provide a limited exemption from CEQA for "certified regulatory programs." The Secretary of Resources quickly certified CDF's program for approving timber harvest plans and the Board of Forestry's program for adopting forest practice rules as "certified regulatory programs" that were "functionally equivalent" to CEQA.

Unfortunately CDF has had a history of failing to live up to the substantive and procedural requirements of CEQA, and the courts have repeatedly found that CDF's implementation of the certified regulatory program does not measure up. Public agencies and private citizens have used their power to litigate under CEQA to mend some of the major flaws in CDF's approval of timber harvest plans.

Because of CEQA, in 1978, CDF was required to begin preparing written responses to significant environmental comments, greatly increasing government accountability.

In 1985, the courts ruled that CEQA's cumulative impact analysis requirements also apply to timber harvest plans. A single timber harvest plan usually represents part of a larger plan to log large contiguous areas or interlocking blocks of forest. Requiring the lead agency to look at the big picture is especially important in these situations because many forest-dwelling endangered species require large areas of undisturbed habitat. In the same case CEQA helped close another loophole by prohibiting CDF from relying on nonpublic documents to respond to significant environmental points.

In 1994, the courts found that CDF has authority under CEQA to require the submission of information that is necessary to identify poten-

tially significant environmental impacts, even where there is no specific forest practice rule requiring the submission of such information. This decision marked a major policy change for CDF, increasing both the quantity and quality of information available to decision makers.

In a 1997 Court decision applying CEQA to timber harvest plans, CDF was required to circulate its cumulative impact assessment to the public for review and comment. That same year, another appellate court ruled that, to comply with CEQA, timber harvest plans must consider a range of reasonable alternatives to the current logging proposal.

CEQA has also been instrumental in improving other aspects of forest management, including the conversion of oak woodlands and the management of our state forests. In 1999, CEQA was applied to the conversion of oak woodlands to

vineyards under local land use laws governing grading on steep slopes. This has significantly slowed the pace of environmental change in wine growing regions of the Napa Valley, preserving their viability as rural-agricultural areas.

Similarly, Jackson State Demonstration Forest, the largest state forest in California at 50,000 acres, is currently using CEQA to reassess its management plan. A judge recently threw out the existing plan in which one third of logging in the state forest was approved



Warren Allford

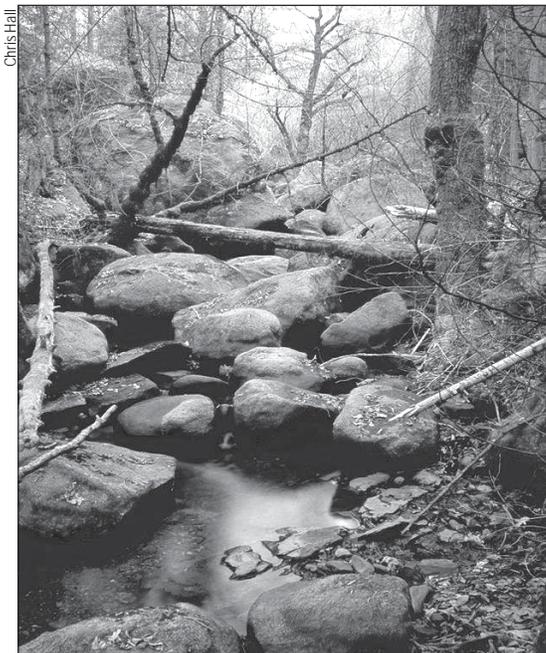
Upstream on the San Antonio Creek. CEQA continues to play a significant role in addressing the inadequacies of forestry certified regulatory programs.

for clearcutting or similarly harsh methods.

The need to strengthen our forestry management practices is clear. Every year, more species are listed as threatened or endangered. Every year, more public agencies admit that their approval and monitoring processes for logging are deeply flawed. As the substantial impacts from commercial logging become more widely known, concerned citizens are seeking new legal and legislative solutions. Despite the failures of the forestry certified regulatory programs, CEQA continues to play a significant role in strengthening protection for California's forests.

*Thomas N. Lippe is an environmental and land use attorney with offices in San Francisco, California. Mr. Lippe has represented numerous nonprofit environmental organizations and public agencies in environmental cases since 1987, including over forty cases involving timber harvesting.*

*Matthew Vander Sluis is a staff writer for the Planning and Conservation League Foundation.*



Chris Hall

Under the Upper San Antonio Creek Timber Harvest Plan, logging has occurred within thirty feet of this stream and within forty feet of a state park boundary.

# CEQA and Farmland Protection

By Ed Thompson

**California** is by far the number one agricultural producer and exporter in the United States. With 2002 production values exceeding \$25 billion, California produced more than Texas and Iowa combined—the nation’s second and third agricultural states. California is also the nation’s most populous state and the fastest growing. The American Farmland Trust’s groundbreaking “Farming on the Edge” report ranks three areas of California among the nation’s twenty most threatened farming regions: the Central Valley (1), Central California Coastal Valleys (15) and the Imperial Valley (17). Despite wider public awareness of the issue, conversion of agricultural land to urban development is still occurring at a rapid rate in California.

According to a May 2001 report by the Agricultural Issues Center of the University of California, the state lost approximately 500,000 acres of farmland to urban development between 1988 to 1998. As the report states, “Turning that much farmland into developed acres is roughly equivalent to creating three new cities the geographic size of Modesto each year.” Or to look at it another way, California has urbanized an agricultural land base over the last ten years equivalent to the size of Orange County.

Recognizing both the economic importance of agricultural lands and the open space and habitat benefits

of farm and ranch lands, many cities and counties in California have identified the importance of farmland as a regional and local asset

and have goals and policies for farmland preservation stated through their general plans. The loss of prime farmland is often stated as a significant impact when development occurs.

**California’s Central Valley, Central Coastal Valleys, and Inyo Valley are three of the nation’s twenty most threatened farming regions.**

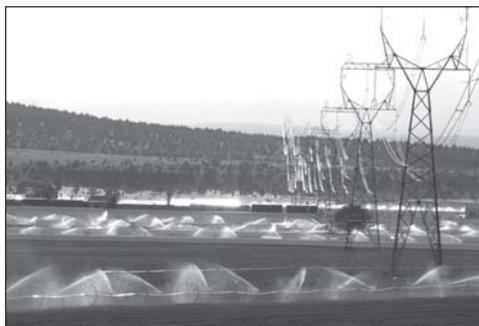
and have goals and policies for farmland preservation stated through their general plans. The loss of prime farmland is often stated as a significant impact when development occurs.

## The CEQA Guidelines

State CEQA *Guidelines* address farmland conversion impacts directly in two ways. First, cancellation of Williamson Act contracts

has been determined by case law or regulatory framework which would constitute a significant impact. The Williamson Act has a detailed definition of what constitutes “prime agricultural lands.”

Neither CEQA nor the CEQA *Guidelines* provide lead agencies with specific directions concerning the content of, or analytical approaches to be used in, assessing farmland conversion impacts as part of the environmental process. Some local jurisdictions, such as Santa Barbara County, however, have adopted their own CEQA guidelines with numerical thresholds for agricultural land conversion that, if exceeded by a proposed project, would trigger a finding of “significant environmental impact.”



for parcels exceeding 100 acres is an action considered to be “of statewide, regional, or area wide significance,” and thus subject to CEQA review. Second, Appendix G of the CEQA *Guidelines* states that a project that would “convert prime agricultural land to non-agricultural use or impair the agricultural productivity, would ‘nor-

## CEQA and Farmland Mitigation

A California Court of Appeals recently issued an unpublished opinion concluding that if the environmental impact of a project converting farmland to urban use can not be mitigated below a level of significance, other mitigation measures must still be adopted if they would substantially lessen the

environmental impact of the project. Adopting a statement of overriding consideration does not exempt the local agency from mitigating measures such as the payment of fees for conservation easements to limit future loss of farmland. The name of the case is *South County Citizens for Responsible Growth v. City of Elk Grove*, currently unpublished (3d Dist. Feb. 5, 2004). Since the opinion is currently unpublished it may not be relied upon by other local agencies. There is a request for publication currently pending with the California Supreme Court.

Creative and effective mitigation measures for conversion of important farmland to urban development and other uses have been implemented under CEQA. Potential mitigation measures include:

- Establishing policies and procedures for evaluating the impacts of a project on agriculture and applying these policies consistently to minimize the conversion of prime and important farmland;
- Requiring project proponents to evaluate alternatives and mitigation measures that would direct growth

reservation on farmland of equivalent quality as a condition of project approval;

- Requiring project proponents to pay a per-acre mitigation fee to be used for the acquisition of agricultural conservation easements or other long-term farmland protection tools on farmland in another location.



As a result of mitigation measures such as those listed above, significant gains have been made in preserving California's agricultural lands. For example:

- The California Energy Commission requires mitigation of farmland at a 1:1 ratio for development of new power plants in California with successful easement projects in San Joaquin and Tulare Counties.

projects are within the territory of the California Transportation Department's (Caltrans) Region 11. Caltrans is developing an overall program to mitigate for this loss of farmland by establishing conservation easements on viable agricultural parcels at an acreage ratio of 1:1.

- The Sierra Club has negotiated several comprehensive farmland mitigation settlement agreements in San Joaquin County that will ensure the availability of millions of dollars for farmland protection to be administered by the new Central Valley Land Trust.

The CEQA process has great potential to provide mitigation of farmland loss. Local organizations can use this tool to protect farmland during the Environmental Impact Report review process if they are aware of the range of potential mitigation practices. It could be especially effective when mitigation is used in conjunction with established local or regional farmland preservation programs. At the moment, however, many lead agencies are still hesitant to require or agree to mitigation and the additional development costs due to the perception that it will place them at a disadvantage when areas compete for economic development. There is a need to strengthen CEQA's farmland protection policies to prevent agencies from "overriding" significant impacts to this state's precious and valuable agricultural resources, while encouraging compact, efficient urban development.

*Ed Thompson is the California Director of the American Farmland Trust.*

**Between 1988 and 1998 California urbanized an agricultural land base equivalent to the size of Orange County.**

toward less productive agricultural land and minimize the loss of prime and important farmland through higher-efficiency urban land use;

- Requiring project proponents to place an agricultural conservation easement, Farmland Security Zone Contract or other form of long-term

- Several proposed highway projects in Imperial County, California, will result in hundreds of acres of farmland conversion, including the Brawley Bypass, State Route 111 Realignment, and the State Route 7 Expressway Extension projects. These highway

# Preserving Agriculture in Orange County

By Kevin K. Johnson and Jared P. Hanson

CEQA has been utilized recently to address the threat that development poses to California’s agricultural resources. In particular, areas with important agricultural heritages have been facing increased pressure to convert agricultural property to more economically prosperous uses, such as commercial, industrial, and residential development.

CEQA specifically includes agricultural property as a protected resource. Any significant, adverse impacts to agricultural resources, therefore, must be either avoided or mitigated, if feasible to do so. Potential negative impacts include the conversion of farmland to non-agricultural uses and inconsistency with applicable zoning and planning documents.

One of the areas in which CEQA has been applied to the conversion of agricultural property is in Orange County, within the sphere of influence of the City of Irvine. In 2000,

the Irvine Company sought to convert over 600 acres of prime farmland, the highest classification of agricultural soils, to industrial

**Areas with important agricultural heritages are facing increased pressure to convert land to more economically prosperous uses, such as commercial, industrial, and residential development.**

development. The project, called Spectrum 8, entailed eliminating all agricultural uses on the 730 acre site and replacing it with over 10,000,000 square feet of general

industrial and medical/science development.

The City of Irvine and the Irvine Company cooperated in preparing

an Environmental Impact Report (EIR) for the project, purporting to analyze the potential mitigation measures for the project’s obvious impacts to agricultural resources. Relying upon the circumspect analysis within the EIR, the City of Irvine concluded that no feasible measures existed to mitigate the elimination of agricultural resources. The City, therefore, approved the project pursuant to a Statement of Overriding Considerations without imposing any mitigation measures whatsoever.

Defend the Bay, a non-profit public benefit corporation dedicated to protecting Newport Bay and other public areas from environmental harm, filed suit under CEQA to challenge the EIR and the City’s decision to approve the project without mitigating the loss of prime farmland. (*Defend the Bay v. City of Irvine, et al.*,

Orange County Superior Court Case No. 01CC07568.)

After exhaustively analyzing the City’s and the Irvine Company’s



The Irvine Company’s Spectrum 8 proposal called for the conversion of over 600 acres of Prime Farmland into more than 10,000,000 square feet of general industrial development. The City of Irvine originally approved the project without imposing any mitigation measures whatsoever.

attempt to support the City's decision, the Court concluded that there was absolutely no evidence to support the City's rejection of certain possible mitigation measures. For instance, there was no evidence to support that preserving at least some of the project site for agricultural uses was infeasible. Alternatively, the City might have imposed an agricultural impact fee to mitigate for the elimination of agricultural acreage on the site.

The Court further concluded that the project was inconsistent with the

impacts could not be *fully* mitigated, it did impose mitigation measures that partially lessened the loss of agricultural lands within the City of Irvine.

The City established an Agricultural Legacy Program, which is intended to provide land for small-scale farming operations within the City of Irvine to preserve the historical role agriculture has played in the city. The City committed to preserving at least 300 acres of land within the City for permanent agricultural use. Finally, the City imposed upon the

**Despite overwhelming development pressures, the faithful application of CEQA by the public and the courts has preserved a substantial portion of the City of Irvine's historical agricultural lands and operations.**

City's General Plan, which had been updated only two years before approval of the Spectrum 8 project. Because of the trend toward urbanization and conversion of agricultural property, the General Plan provided for the preservation of agricultural land uses within the City.

The Court therefore held that the City had failed to comply with the requirements of CEQA, and ordered that the approval of the project be rescinded.

As a result, the City of Irvine and the Irvine Company were forced to return to the table and consider true mitigation measures to address the agricultural impacts. Although the City ultimately concluded that the

Irvine Company a fee of \$100,000 to fund the operation of the program.

Accordingly, despite overwhelming development pressures, the large-scale conversion of agricultural property within the City of Irvine has not resulted in the total elimination of the City's historical agricultural land and operations. The faithful application of CEQA by the public and the courts has preserved a substantial portion of these important resources.

*Kevin K. Johnson and Jared P. Hanson are attorneys at Johnson & Hanson, LLP. The firm represented Defend the Bay in this case.*

