

August 28, 2007

Paul Maltzer  
Environmental Review Officer  
Habitat Reserve Program  
1650 Mission Street, Suite 400  
San Francisco, CA 94103-2479

RE: Case No. 2006.1505E-Habitat Reserve Program

Dear Mr. Maltzer:

Thank you for the opportunity to comment upon the San Francisco Public Utilities Commission's proposed Habitat Reserve Program (HRP). These comments are intended to be supplemental to those that we provided at the scoping meeting in Fremont on August 15, 2007.

The California Native Plant Society (CNPS) is a non-profit organization of more than 10,000 laypersons and professional botanists organized into 32 chapters. Our mission is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat through scientific activities, education, and conservation.

While the East Bay Chapter's chief concerns are impacts and associated mitigations for lands that lie within Alameda County, a portion of our chapter area, we also share broader concerns about the entire scope of the Water System Improvement Program (WSIP) and its impacts upon the native flora in the five counties covered by the WSIP. To that end, we suggest that our comments below be applied to native plant resources affected by the entire WSIP. It is our intention to share information with other CNPS chapters, and where possible, to coordinate responses to the HRP and WSIP as they move through the environmental review process.

### **General Considerations**

#### **The Big Picture**

In order to understand the role that the HRP plays in the overall scheme of the SFPUC's water projects, it is incumbent upon the public, and ultimately the decision-makers, to become familiar with a bewildering array of documents. In addition to the 5-volume PEIR for the WSIP, there are additional EIRs planned or underway for 22 individual projects, as well as the HRP. There are also Habitat Conservation Plans for both the Peninsula and Alameda watersheds. In addition, there is also an Alameda Watershed Management Plan that has been completed and an overall Watershed Management Plan contemplated for the entire water system from Hetch Hetchy Reservoir to the San Francisco Peninsula.

Adding to the complexity is the fact that some of these documents cover 5 counties and are at different stages in the environmental review process. The HRP under consideration is a proposed mitigation package for projects that are not yet fully designed and whose impacts can only be generally surmised. It is not yet clear how all of these documents and projects will interrelate, whether mitigations proposed for some or all of them will be adequate and be relevant in advance of actual impacts, and whether there will be potential conflicts among mitigations for different programs, specifically for the HCP and the HRP.

One excellent starting point would be to create an on-line booklet that provides clarification to these issues. We appreciate the PEIR briefing provided by the consultant and the planning department. Perhaps more of these purely informational meetings can be arranged to facilitate public participation and formal comment during the CEQA process.

### HRP Mitigation Categories

The HRP has been described as "a coordinated and consolidated approach to compensate for habitat impacts that would result from implementation of the WSIP...it would include preserving, enhancing, restoring, or creating various habitats." It's critical to make clear qualitative and quantitative distinctions among these four categories of mitigation. What are the defining characteristics for each?

Of the overall mitigation land acreage under these four categories the largest number should be reserved for preservation, where possible. It is far more difficult if not impossible to create the diversity in a mitigation setting than to preserve it in an existing one. Priority should be given to the most sensitive and rare habitat types. In addition, since some forms of rare and endangered wildlife can exist and even thrive in degraded and weedy habitat, it is important to set aside high quality plant habitat for its own sake.

Reference sites should be created for specific plant habitat losses. These reference sites should document the quality of habitat being lost and should be described in terms of plant community (either Holland, 1986 or Sawyer and Keeler-Wolf, 1995 classification systems), species list (including rare, threatened or endangered plants, and locally unusual plants from Dianne Lake's 2004 edition), and per cent cover of all native plant species. These reference sites should then be used to select mitigation lands with plant habitat equal to or superior than that being destroyed or damaged.

It's not clear what level of plant surveys have been conducted to date in the project sites. (Please note that we supplied you a plant list and letter from Dianne Lake in 2004 describing additional plant resources known in the Alameda Creek watershed as part of our scoping comments on the Alameda HCP.) Mention is made in the PEIR of driving through potential project areas to determine whether biological surveys must be done. Since much of the Sunol Valley/Alameda Creek watershed in the project area is undeveloped and undersurveyed, this type of survey is not adequate. In the case of plant species, several site visits should be scheduled throughout the growing season according

to appropriate botanical protocols in order to determine the plant resources of a given area. Specifically, these protocols include those developed by the California Department of Fish and Game, the California Native Plant Society, and the U.S. Fish and Wildlife Service. Consulting the California Natural Diversity Database (CNDDB) and the CNPS on-line inventory of Rare and Endangered Plants of California are first steps and are not substitutes for focused botanical surveys or floristics studies.

It's important and useful to produce a map of all previous mitigations throughout the water system. This map should indicate the date and type of mitigation for each previous project. Will previous mitigation sites be lost or used as mitigation for new projects?

### Selection of Mitigation Lands

In addition to providing reference sites to establish the quality of lands lost, the SFPUC should allow for examination of proposed mitigation sites by qualified botanists to determine their suitability as mitigations before conservation easements or acquisitions have been arranged. It appears from the maps provided in the scoping materials that some specific sites have already been selected or at least targeted. Given the very general nature of the types of treatments described (fencing, weed removal, etc.), it is not at all clear that specific plant habitat or in-kind mitigation will be secured.

### Conservation Easements and Acquisitions

There has been an explosion in the use of conservation easements as tools for keeping land from being developed or as mitigations for projects. The 2006 Tax law provided the following incentives (Save Mount Diablo, 2007):

*“It raises the maximum deduction a donor can take for donating a conservation easement from 30% of their adjusted gross income (AGI) in any year to 50%.*

*Allows qualified farmers and ranchers to deduct up to 100% of their AGI.*

*Increases the number of years over which a donor can take deductions from 5 years to 15 years.*

*Under prior law, an agricultural landowner earning \$50,000 a year who donated a conservation easement worth \$1 million could take a total of no more than \$90,000 in tax deductions. Under the new law, that landowner can take as much as \$800,000 in tax deductions. These tax benefits extend only through the end of 2007, but a bill to extend the act is being prepared for submission to Congress.”*

While it's clear that conservation easements can prove useful and attractive, they bring a host of complicated legal arrangements with them, including stewardship agreements in perpetuity, endowments, monitoring requirements, etc. However, despite the elaborate legal arrangements, enhanced plant protection is not always the result. There is no oversight and enforcement provided by the California Department of Fish and Game once

the easement has been created. Often these easements are valuable subsidies to the rancher and may prevent the overall loss of land to development but may do little or nothing to promote active conservation.

Although land acquisition is perhaps less popular among the ranching community, it may be a more viable option for authentic plant protection, especially when acquisitions become an organized part of a larger entity whose mission is preservation. We suggest exploring acquisition of potential mitigation lands with the East Bay Regional Park District who has large wilderness and parklands in the area.

### **Mitigation Specific to the Sunol Valley Projects**

On page 9 of the scoping literature, under Section 2.5.2 Sunol Valley Region, the ten proposed HRP projects in the region are briefly described. Eight of the ten are driven chiefly by wildlife protection. Rare and endangered plants are mentioned only under the preservation and enhancement of the 70 acres of serpentine grassland for protection of the California tiger salamander. Although plant communities are mentioned under each project, there is little specific information that indicates a thorough familiarity with what plant resources exist there.

It's not clear what is meant by enhancement though it is mentioned frequently as a planned activity. The plant resources of the Sheep Ranch project, where a conservation easement is being contemplated on 463 acres of land to provide enhancement of existing ponds for California red-legged frog and California tiger salamander, are described as "392 acres of grasslands and 71 acres of mixed woodland." Without knowing more about the native plant flora on site, it could be comprised of primarily weeds and annual grassland with scattered trees. It would be important to determine whether this large number of acres contains any high quality plant habitat before any deal is struck.

The San Antonio Reservoir and Watershed projects include restoration and creation of oak (Valley? Blue?) woodlands, coastal live oak restoration and creation as well as enhancement of scrub and sycamore woodlands. What kind of canopy cover and age stands are contemplated for the oak woodland creation projects since they will be replacing mature oak stands? There is also mention of enhancement of scrub and sycamore woodlands with no description of what enhancement might entail. It's impossible to ascertain the value of these mitigations without specific information.

There are similar projects described for the Alameda Creek and Watershed area. In addition, there is mention of grassland enhancement in the Alameda Creek watershed involving herbicide application to control purple and yellow star thistle. Controlling invasive weeds such as these requires a long-term and well-coordinated integrated pest management (IPM) plan, which may also include controlled burns in order to provide efficacy. At the scoping meeting, we mentioned the impacts of Transline, an herbicide used for YST control, on non-target native plants in the Composite and Legume families. Plant surveys would need to precede any herbicide use in order to determine what non-target species might exist. We suggest contacting Joe Di Tomaso at the University of

California at Davis who is the foremost expert on yellow star thistle control. We are appending a brief correspondence from him regarding YST and herbicides.

Under the Calaveras Creek and Watershed section removing coyote brush is mentioned as an action with no particular context. Without knowing the purpose of this, it's difficult to know to what the goal might be. Coyote brush (*Baccharis pilularis*) is a key shrub species of northern coastal scrub habitat and other plant communities. It provides rich habitat for invertebrates, acts as a nurse plant for oak seedlings, and provides valuable cover and nesting sites for some vertebrate species. It also provides a number of ecosystem services for humans, including erosion control and re-succession of weedy areas. It would be important to set the context in which removing coyote brush would serve as an enhancement.

#### Conclusion

We look forward to working with SFPUC and the San Francisco Planning Department on this array of projects. We hope to bring a closer focus on native plant resources to the WSIP and the HRP and a deeper understanding of their value in the region.

Best regards,

Laura Baker  
Conservation Committee Chair  
East Bay Chapter of the California Native Plant Society