

April 20th, 2009

09-0082

Planning & Land Use Management Committee
c/o City Clerk Barbara Greaves, Legislative Assistant, PLUM
Room 395 City Hall
200 N. Spring St.
Los Angeles, Ca. 90012

Re: ENV-2005-9337-MND-REC & CF-09-0082

Mr. Reyes:

As I stated before this committee on February 3rd, 2009, I have flourished on the Semi-Tropic Spiritualists' Tract for twenty-one years. My one-bedroom, one-bath dwelling is Home and this is where I will live for the remainder of my life.

In his book "Material Dreams; Southern California Through The 1920s", author Kevin Starr was correct when he described the Semi-Tropic Spiritualists' Tract '(perhaps the most exotic subdivision of them all)'.


But life on the "Hill" hasn't been without its challenges.

In the spring of 2002 my husband, Carson Leistikow, was diagnosed with congestive heart disease. Six months later it was determined that he was also diabetic.

I served as his caretaker until I became ill with breast cancer.

I was prepared for the unpleasantness of chemotherapy: nausea, hair loss, fatigue, a weak immune system. But after five years of being cancer-free I am still confronted with a very delicate immune system.

Without knowing the full extent of grading pertaining to the 2400 Allesandro project and what health risks may be involved, who will claim responsibility for the elderly and the very young of the Semi-Tropic Spiritualists' Tract? Who will be held accountable for those with existing health issues? Who?



Cindy Ortiz
1940 Walcott Way
Los Angeles, Ca. 90039
323.664.2412

09-0082

April 20, 2009

Councilman Ed Reyes, Chair
Planning & Land Use Management Committee
c/o City Clerk Barbara Greaves, Legislative Assistant, PLUM
200 N. Spring St. Room 395
Los Angeles, Ca. 90012

Mr. Reyes,

I live by the Semi-Tropic Spiritualists' Tract at on Walcott Way. I am very concerned about the residential project at 2400 Allesandro. City Planning ENV-2005-9337-MND-REC & CF-09-0082.

I am concerned because I struggle to live with congestive heart failure. Breathing can be difficult. Everyday I have to consider the quality of air around me.

Because of the size of this development there will be serious environment impact. There will be dust and dirt pushed into the air from the grading, construction and traffic. This project is not a house being built next door. It is many houses. It is not a regular conforming lot. It is steep uneven fill. This project has grown from a few of simple residential houses to a huge, huge development.

Living next to a huge construction project is a serious concern for me. The result will not be good for me. Not good at all.

Sincerely,



Carson Leistikow
1940 Walcott Way
Los Angeles, Ca. 90039

April 20th, 2009

09-0082

Planning & Land Use Management Committee
c/o City Clerk Barbara Greaves, Legislative Assistant, PLUM
Room 395 City Hall
200 N. Spring St.
Los Angeles, Ca. 90012

Re: ENV-2005-9337-MND-REC & CF-09-0082
2400 Allesandro

Mr. Reyes:

My name is Louis H. McLean and I have lived on the Semi-Tropic Spiritualists' Tract since 1952.

I suffer from congestive heart disease and COPD (chronic obstructive pulmonary disease).

I am very concerned about possible health risks this project may present.

Sincerely,

Louis H. McLean

Louis H. McLean
1939 Modjeska
Los Angeles, Ca. 90039

WWII COMBAT VET

09-0082

Diane Edwardson

2630 Corralitas Drive, Los Angeles, CA 90039
phone: (323) 666-1392, cell: (213) 910-9826
diane.edwardson@earthlink.net

City Councilmember Reyes
200 N. Spring St.
Los Angeles, CA 90012

Re: CF 09-0082 in PLUM April 28, 2009
ENV 2005-9337-MND-REC
VTT 62900-SL-2A
APCE 2006-8787-ZC
2400 Allesandro St., 2005 & 2021 W. El Moran St.

April 20, 2009

Councilmember Reyes,

I urge you to reconsider our appeal and deny the approval of VTT 62900-SL. The updated MND is flawed and requires additional mitigations. Please see attached for further discussion for impacts of grading, tree loss and wildlife.

There is no public benefit to this plan as we will have to endure years of grading and construction and permanent loss of significant trees just to increase the density on the site.

Should you choose to allow this development proposal to move forward I would strongly urge you to add the following mitigations.

Since this property is less than 100' from the 2 Freeway, a major commuter route, the **mitigations for tree loss are inadequate and should exceed City Standards**. The City Planning Commission has been working on new standards for residential construction near freeways which include emphasis on planting and preserving lots of trees. This plan does the bare minimum which will not mitigate for the loss of significant and native trees.

No approvals should be granted until the uppermost slope between proposed Lot 16, El Moran, Peru & Modjeska Streets is evaluated for retention and drainage measures. See attached pages 3 - 6 for detail. And it should require additional environmental review if it requires the removal of the significant and native trees in the slope. The developer maintained trees in that portion of the slope would remain – the only tree that would remain in the entire 3 acres – so this is of extreme importance that it be vetted properly.

No evaluation of the trees in the street rights-of-way of Alvarado, El Moran, Modjeska Peru has occurred.

Nor has any discussion about the removal of Modjeska from future use as requested by the developer. His plan shows cutting into the Modjeska St right-of-way with drainage devices. There are 7 landlocked lots on this public right of way that could be built with a public staircase. **No trees shall be removed prior to the granting of Grading Permits by Dept. of Building & Safety.** The legacy of failed development in this area is decades long. We do not want to be left with a denuded and unsafe slope with unfinished retaining walls when a developer runs out of money.

CF 09-0082, VTT62900-SL, ENV-2005-9337-MND-REC, APCE 2006-8787-ZC, 2400 Allesandro
Edwardson April 20, 2009

The MND and biological resource report is boilerplate and inadequate for short and long term mitigations. Attached is evidence and discussion of local wildlife within 500' to 1000' radius of the proposed development.

The biological report FAILS to recognize what is a very well accepted fact that freeway underpasses are urban wildlife corridors. Since the Rosebud underpass only connects to one street, Corralitas Drive, it is not a busy underpass. Wildlife frequently use it, even in the daytime, once the commute hours are over. See attached study by Ng, Dole, 2004: "Use of Highway Undercrossings by Wildlife in Southern California."

The dense brush on the Semi Tropic Spiritualists' Tract lots in question absolutely provide habitat for urban wildlife beyond what CH2M Hill pulled off a list in a computer. Remarkably, we documented Gray Fox sightings in 2008 within 600' of the proposed development. In more than 30 years, neighbors had never seen a fox in the neighborhood. Clearly they hide well in the dense brush as evidenced by the den activity on the attached photos.

Special attention to fencing, as suggested by the SMMC in February 2009, such as no taller than 4-foot, 3-post rail fencing should be REQUIRED on Lot 16, as well as the lower portion of the property on Allesandro (say, within the CalTrans easement) to provide adequate cover for wildlife using the Rosebud Undercrossing. Native trees and landscaping should also be required in these areas. Similar fencing is in use on Glendale Blvd near Fletcher intersection for the newly constructed BUILT houses on Ivanhoe.

The MND fails to recognize the lots in question between are within the Rim of the Valley Trail Corridor. While the City placed an equestrian trail in the Community Plan map on a nearby street also within the Rim of the Valley Corridor, the corridor is much larger than a 12'-wide horse trail. The trail corridor implies native habitat protections. I am severely disappointed in the City's refusal to recognize and preserve exceptional habitat that would link to Elysian Park (about 300' away via Modjeska).

Our community is so divided and impacted by freeways that we absolutely need to go beyond the standard mitigations for areas not only near freeways, but also within the Rim of the Valley Trail Corridor.

Throughout the process CD13 supported the community's wish to have accessible and functional open space. This plan includes neither.

I urge you to either grant the appeal and deny the application for the zone change and subdivision. The complete rape of the hillside just to build 15 homes is not worth the price.

Sincerely,

Diane Edwardson

CF 09-0082, VTT62900-SL, ENV-2005-9337-MND-REC, APCE 2006-8787-ZC
2400 Allesandro St., 2005 & 2021 W. El Moran St., Semi Tropic Spiritualists' Tract
Grading Issues

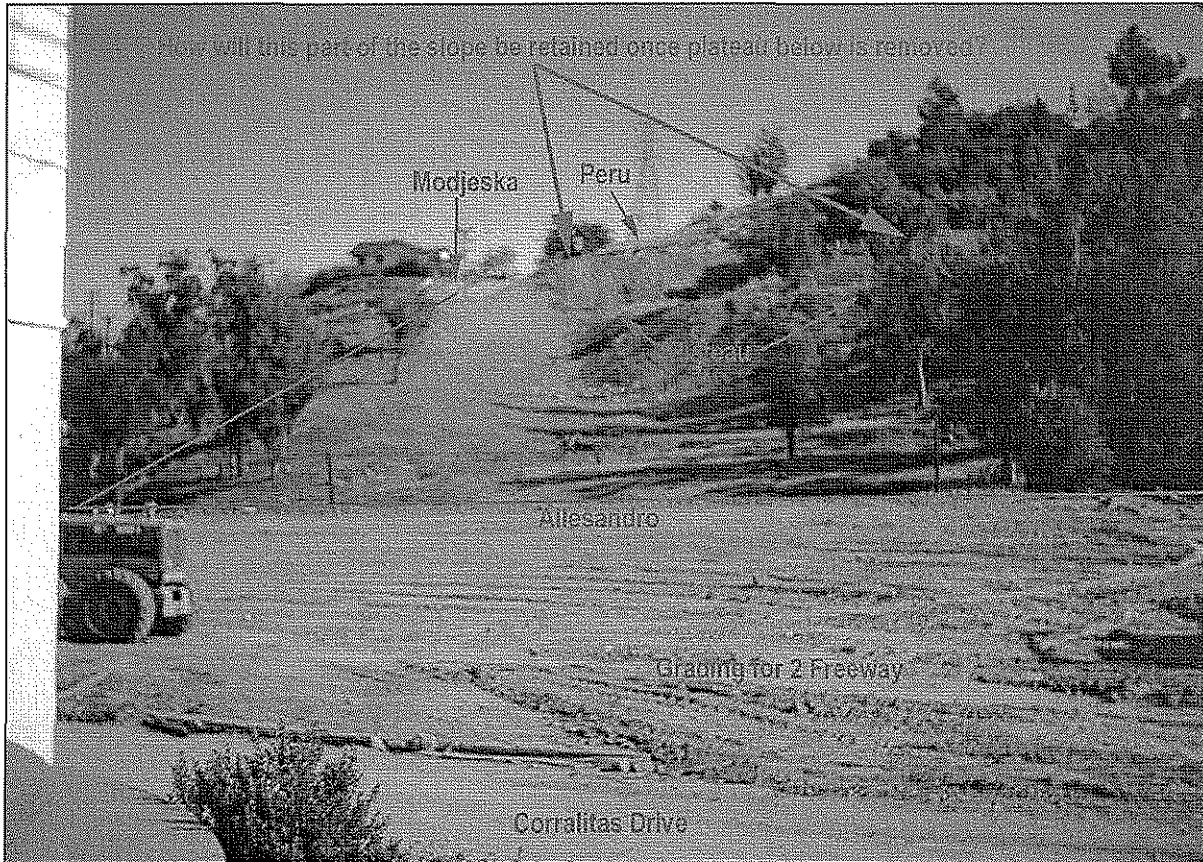


Photo: Kleven, 1960. Semi Tropic Spiritualists' Tract Lots as seen from Corralitas Drive during grading for the 2 Freeway.

Significant questions continue regarding the grading for the proposed 16-Lot Subdivision. Still unanswered is how the uppermost slopes on Lot 16 will be retained once the uncertified fill (the plateau and slope) below is removed.

The built portion of Modjeska and Peru and the closed off and degraded section of El Moran are directly above the slope in question. Part of the slope contains the unbuilt portion of El Moran.

The adjacent streets were cut in prior to 1927, when the area streets were paved. The streets appeared in the Baists' Atlas in 1911 (submitted in Edwardson written testimony 11-14-07.) Only Modjeska is partially improved with a curb and gutter directly adjacent to the property. There is no curb, gutter or sidewalk on Peru, El Moran or Alvarado adjacent to the property. This was pointed out in earlier my response to the first MND in 2006.

From the first discussions with the developer, the community expressed their displeasure with large retaining walls on the upper slopes. We do not want to see another Menlo Property, see photos from PLUM testimony submitted by Edwardson, Ortiz & Parisi on February 3, 2009. But there is no discussion of how the uppermost slopes will be retained.

Reviewing the attached section cuts, it would appear they treat the upper slope as if it were not supported by the plateau. Thus the MND is still deficient in adequately evaluating the effects from grading.

Grading, Drainage and Trees

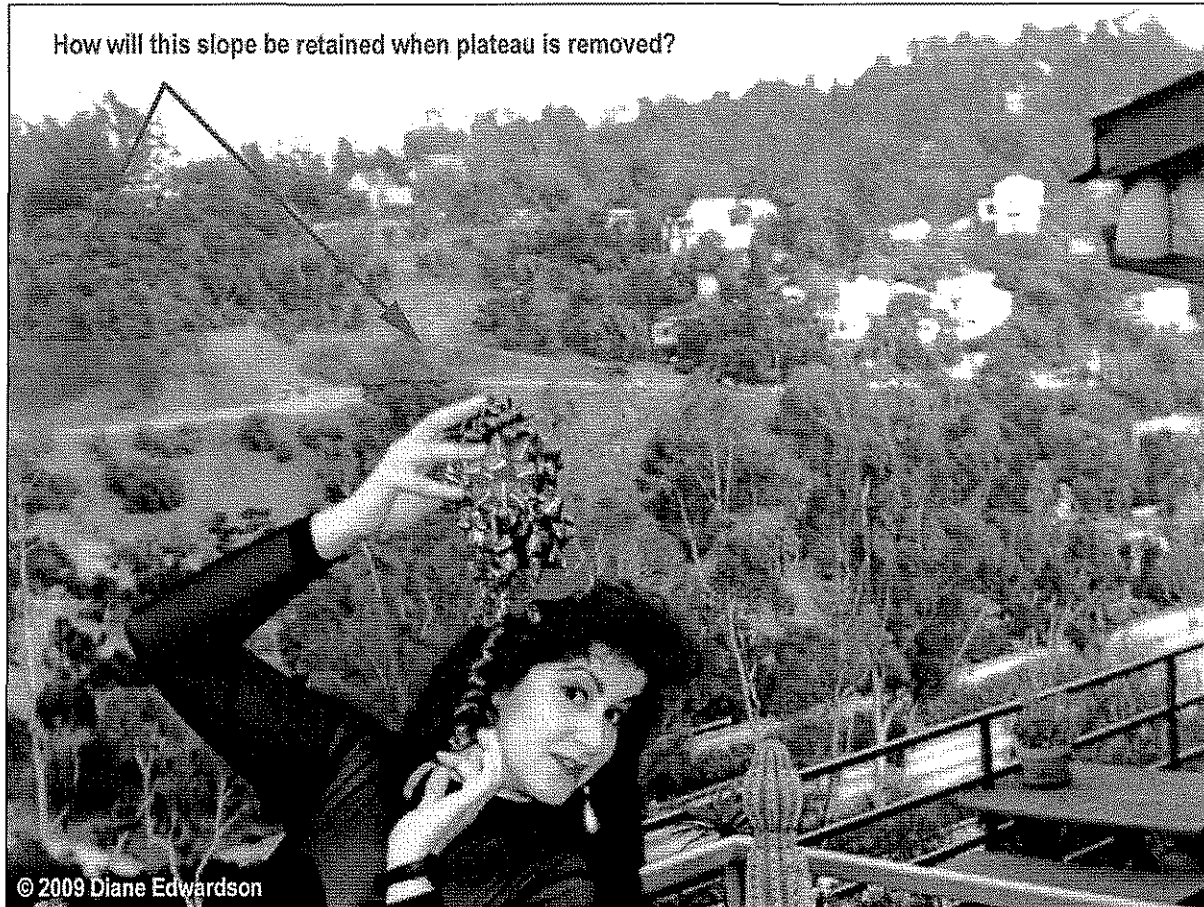


Photo: Diane Edwardson, May 1992. From Corralitas Drive.

The turquoise shaded slope (in the photo above) is below the degraded El Moran St. and above the (uncertified fill) plateau to be removed along with the slope below.

The shaded slope also includes a substantial portion of the El Moran Street right-of-way.

Within the shaded slope and the El Moran Street right-of-way are a number of significant oak trees. While the tree report submitted by the developer identifies some of the oak trees within the El Moran right-of-way. There are 6-9 significant trees identified on the tree survey map but not identified by species or number in the key. Yet they are all Coast Live Oak & California Black Walnut.

There are no curbs, gutters or sidewalks on El Moran or Peru. The entire hillside above the project site drains directly into Lot 16. The significant protected trees are in the slope between El Moran and Lot 16. Clearly the drainage pattern of the hillside influenced their growth.

No trees should be removed prior to the granting of Grading Permits by Dept. of Building & Safety.

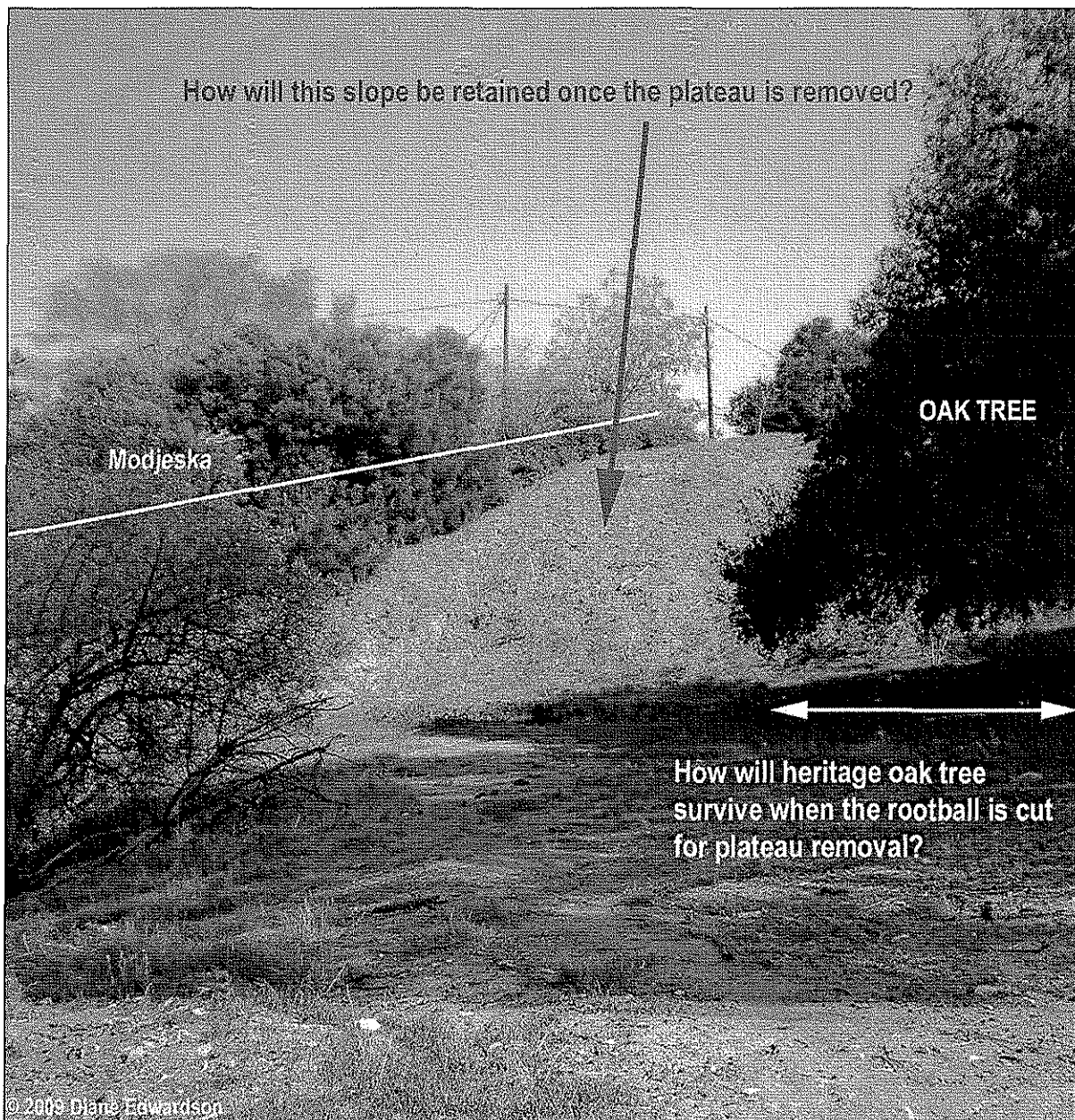


Photo: Diane Edwardson, November 5, 2007.

Grading: Photo above is taken standing on the plateau on proposed Lot 16, facing Modjeska. Once the uncertified fill is removed, how will this slope between proposed Lot 16 and Modjeska and Peru Streets be retained? It has a very steep grade and the underlying rock is the most unstable on the site according to the soils report filed in 2005 for an earlier version of this project by the same developer.

Heritage Oak Tree: Once the plateau is removed it will likely kill the Heritage Coast Live Oak overhanging the plateau as the rootball is equal to the tree canopy radius. Effects of the grading plan have not been evaluated with regard to loss of the heritage oaks in the upper slope adjacent to El Moran. Developer swore he wouldn't be touching those oak trees. The MND does not mitigate for the loss of these trees.

Urban Wildlife Habitat: Dense Vegetation & Gray Fox



Photo: Diane Edwardson, May 1, 2008.
Gray fox at 2636 Corralitas Drive.

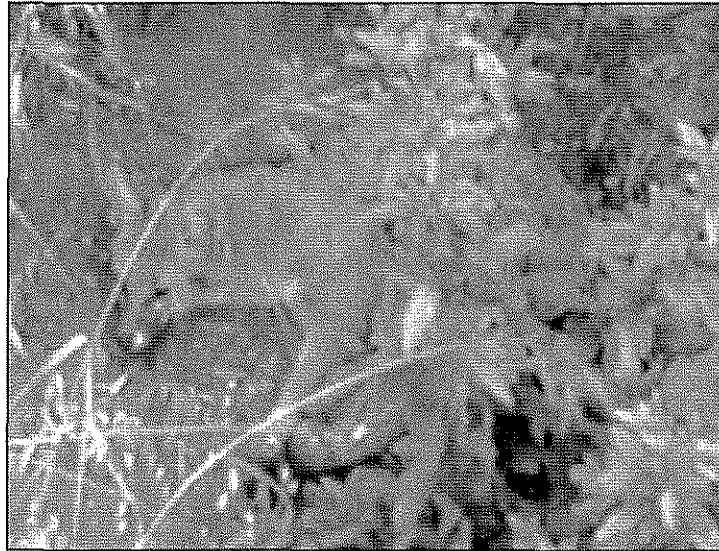


Photo: Gary Vlahakis, April 25, 2008. Gray fox at 2636 Corralitas Dr.

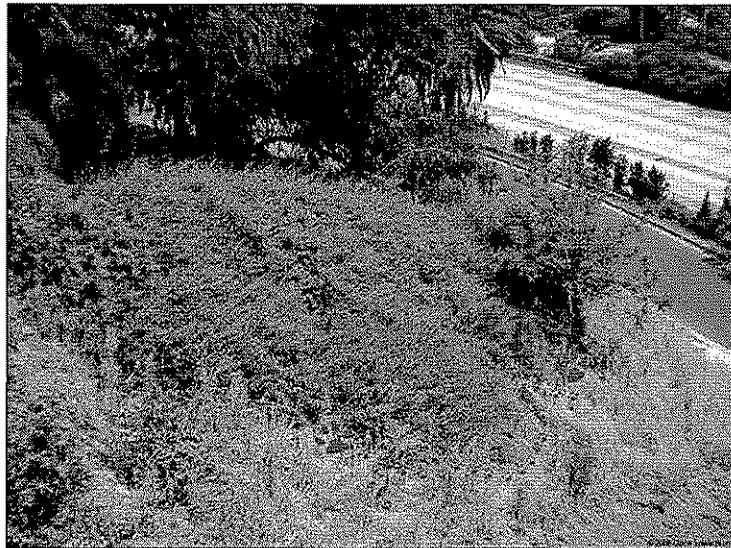
For about a month in 2008, a dozen Corralitas Drive neighbors had the good fortune of witnessing a gray fox at 2636 Corralitas Drive, **less than 600' from the proposed development site**. It literally just hung out at what appeared to be a mouth of a den at the edge of very dense vegetation - see photo below. At least 3 other neighbors witnessed a fox on different parts of the Corralitas, after dark, coming and going from 2636 Corralitas.

Foxes have been sighted in the Semi Tropic Spiritualists' Tract.

Judging by the choice of dense vegetation, it can be extrapolated that the biological survey for 2400 Allesandro failed to evaluate the dense vegetation as cover for wildlife dens. Fox, coyote, bobcat, raccoon, opossum, skunk, and other wildlife would find ample cover in the dense vegetation of the Semi Tropic Spiritualists' Tract.

The MND fails to make adequate mitigations for the loss of 3 acres of hillside habitat for wildlife, short or long term.

Right photo: Diane Edwardson, April 29, 2008. For about 4 weeks (April - May) a gray fox was routinely seen hanging out at the mouth of what appeared to be a den at 2636 Corralitas Drive. The red footprints mark the fox's routine pathway.



Allesandro & Rosebud Wildlife Crossing

The biological study is wrong to state that wildlife do not use the freeway underpass. In fact it is widely accepted that wildlife do use underpasses routinely. See attached study by Ng, Dole, 2004: "Use of Highway Undercrossings by Wildlife in Southern California."

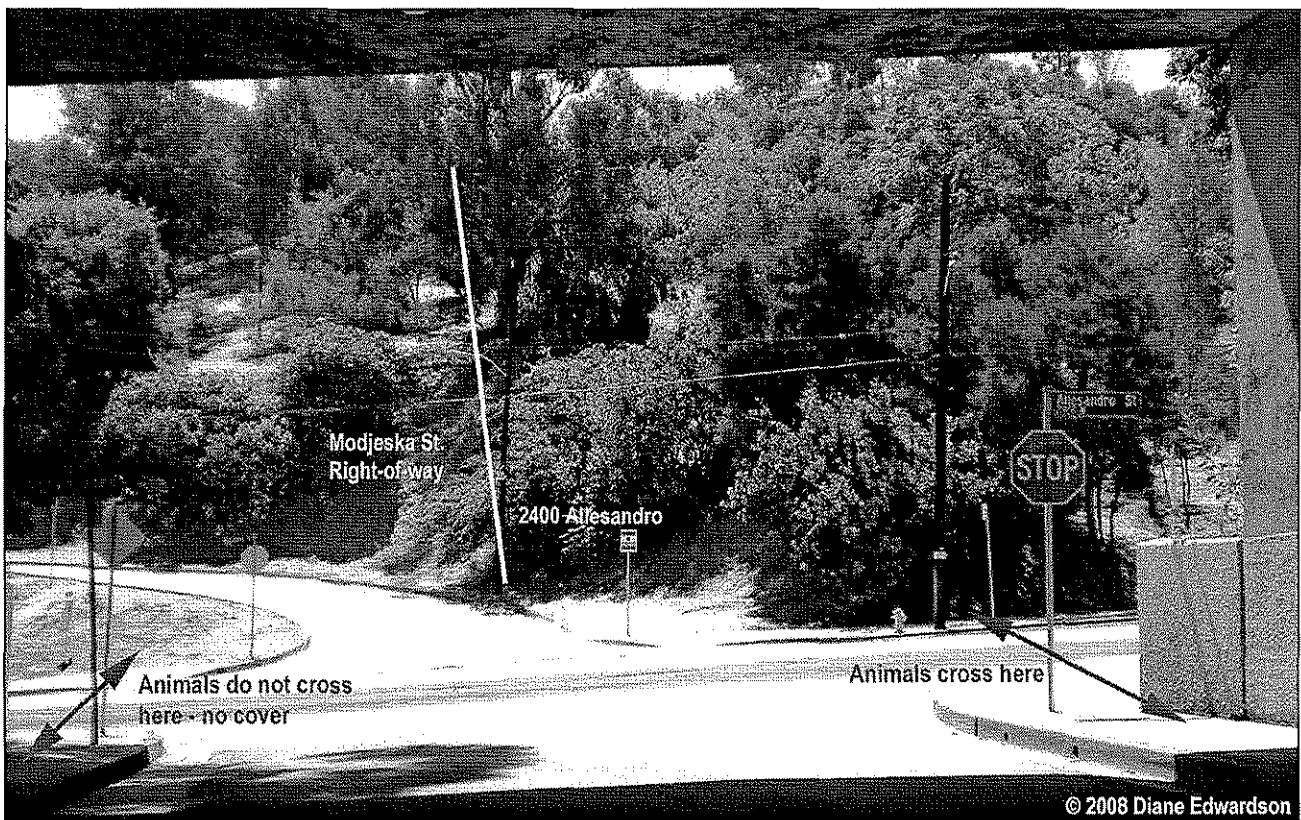
In broad daylight, I have followed coyotes on foot from the 18-Acre addition to Elysian Park (about 300' from the proposed development), through 2400 Allesandro, through the Rosebud undercrossing of the 2 Freeway, to the Corralitas Red Car Property all the way to Fletcher Drive where they cross to the Menlo Property at 2600 Riverside Drive and continue north toward Griffith Park.



© 2008 Diane Edwardson

Photo above: Edwardson, June 6, 2008 11:12 AM. Coyote looking to jump down from the 2 Freeway to cross Allesandro at Rosebud.

Photo below: Edwardson June 6, 2008. Wildlife routinely use Rosebud undercrossing of 2 Freeway, going to and from 2400 Allesandro.



© 2008 Diane Edwardson

Allesandro & Rosebud Wildlife Crossing

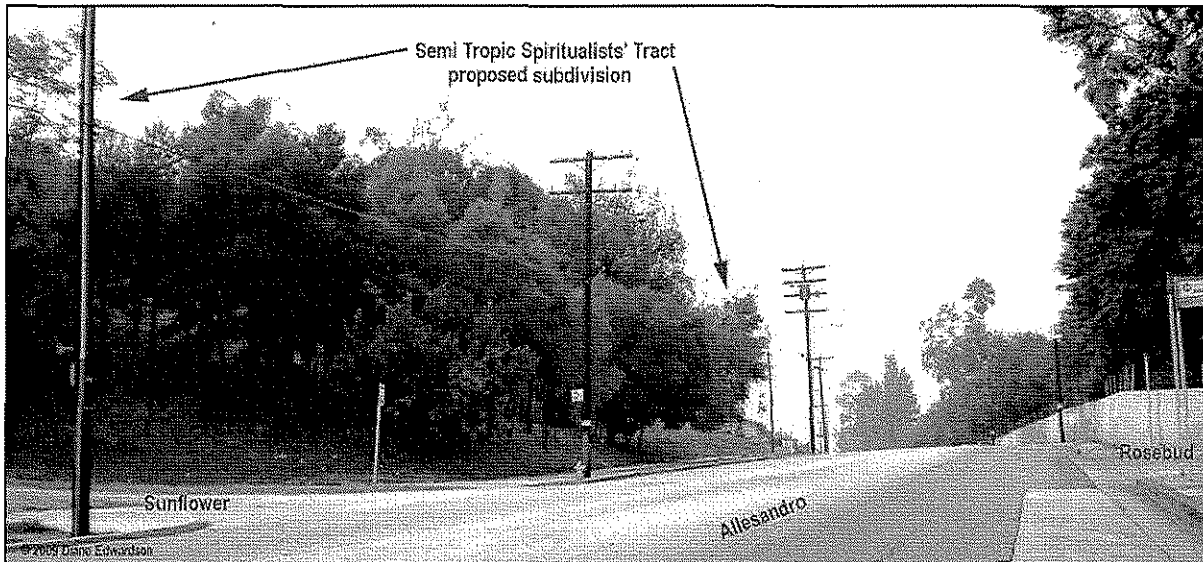


Photo: Diane Edwardson, November 1, 2007.

When wildlife crosses Allesandro, they use the cover of the trees and shrubs of 2400 Allesandro.

For 19 years, I have witnessed coyotes, raccoons, opossums, skunks and California tree rats use the Rosebud undercrossing of the 2 Freeway. They always cross to and from on the 2400 Allesandro side of Sunflower/Rosebud because of the dense vegetation providing cover.

The MND fails to make adequate mitigations for urban wildlife. If you approve this development, NO fencing except a 4-foot tall, 3-rail and post fencing should be allowed within the CalTrans easement that runs the length of the Allesandro portion of the property. The area should be planted with native plants and trees to provide cover for wildlife.

The MND fails to make short term mitigations for wildlife.

There is a plethora of studies relating to free-way underpasses being used by urban wildlife. See attached study by Ng, Dole, 2004: "Use of Highway Undercrossings by Wildlife in Southern California."

Additionally, there have been confirmed reports of bobcats in Elysian Park and unconfirmed reports on Rosebud Ave (within the Semi Tropic Spiritualists' Tract). There were 2 deer sightings around Rosebud and Allesandro last August and September. If a deer made it this far from Griffith Park, it used the Corralitas Red Car Property and the Rosebud Ave Undercrossing.



Photo: Edwardson. June 6, 2008. Coyote at Allesandro & Rosebud.

Birds of Prey

Red Tail Hawks routinely nest in the area's tall trees. They seem to alternate their nesting spots every few years. Corralitas Dr., Lake View Ave., Semi Tropic Spiritualists' Tract and Landa are all prime nesting spots since they topograpghy and the freeways provide steep uplift in air currents.

Kestrels, Red-Shouldered Hawks, Cooper's Hawks and Great Horned Owls have all nested in within 500' of 2400 Allesandro in the past few years. This year we suspect the Great Horned Owls of nesting on Corralitas due to the

high number of sightings since November. Last year, the Great Horned Owl sightings were concentrated in the Semi Tropic Spiritualists' Tract.

Clearly these birds are adapted to the urban hillside environment. However our neighborhood not only provides nesting sights, it's large open spaces provide hunting opportunities. The MND fails to provide adequate mitigations for loss of nesting and hunting habitat.



Photo: Diane Edwardson, June 14, 2005. Dept of Animal Services rescues Red Tail Hawk with broken leg below 2618 Corralitas Drive after a fall from the nest.

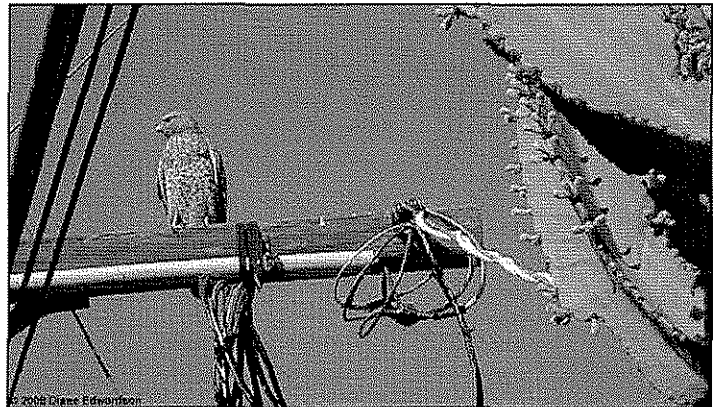


Photo: Edwardson, October 6, 2008. Juvenile Red-Shouldered Hawk at 2562 Corralitas Drive.



Photo: Gary Vlahakis, June 24, 2005. Fledgling Red Tail Hawk at 2630 Corralitas Drive.



Photo: Edwardson, June 12, 2005. Two Red Tail Hawk fledglings in nest at 2618 Corralitas Drive.

Reptiles



Photo: Jonathan Vandiveer, March 23, 2009. 5 1/2" Slender Salamanders found 2412 Riverside Place, within 1000' of proposed development.

Slender Salamanders have been found on the Corralitas Red Car Property, less than 500' of the proposed development, as have Gopher Snakes. There have been unconfirmed sightings of rattlesnakes on the southern end of the Corralitas Red Car Property in the past 8 years. Frogs and tadpoles are known to be seen on the Red Car Property in rainy years, last sightings in 2005 - well within 1000' radius of the proposed development.

When you consider the Red Car Property is much more arid than the Semi Tropic Spiritualists' Tract you would expect to see more salamanders there too.

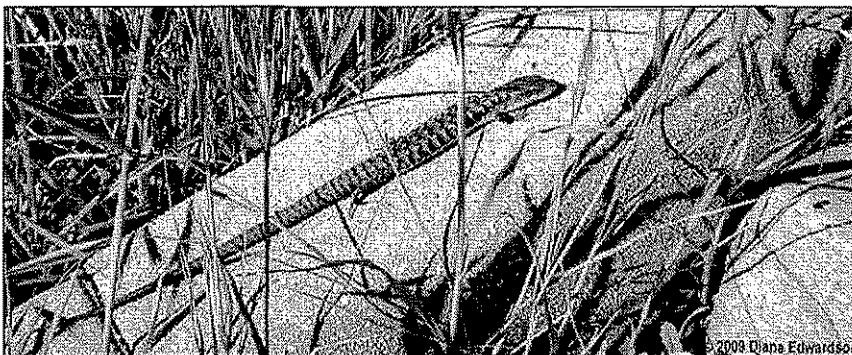
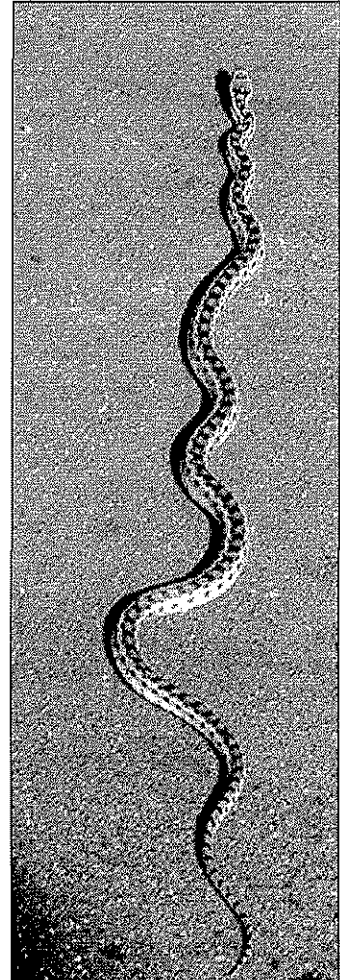


Photo ,above: Diane Edwardson, March 23, 2009. 11-inch Alligator Lizard on Corralitas Public Staircase.

Photo, right: Benjamin Harvey, March 18, 2009. 3-foot long Gopher Snake found on Corralitas Drive within 750' of proposed development.



Insects

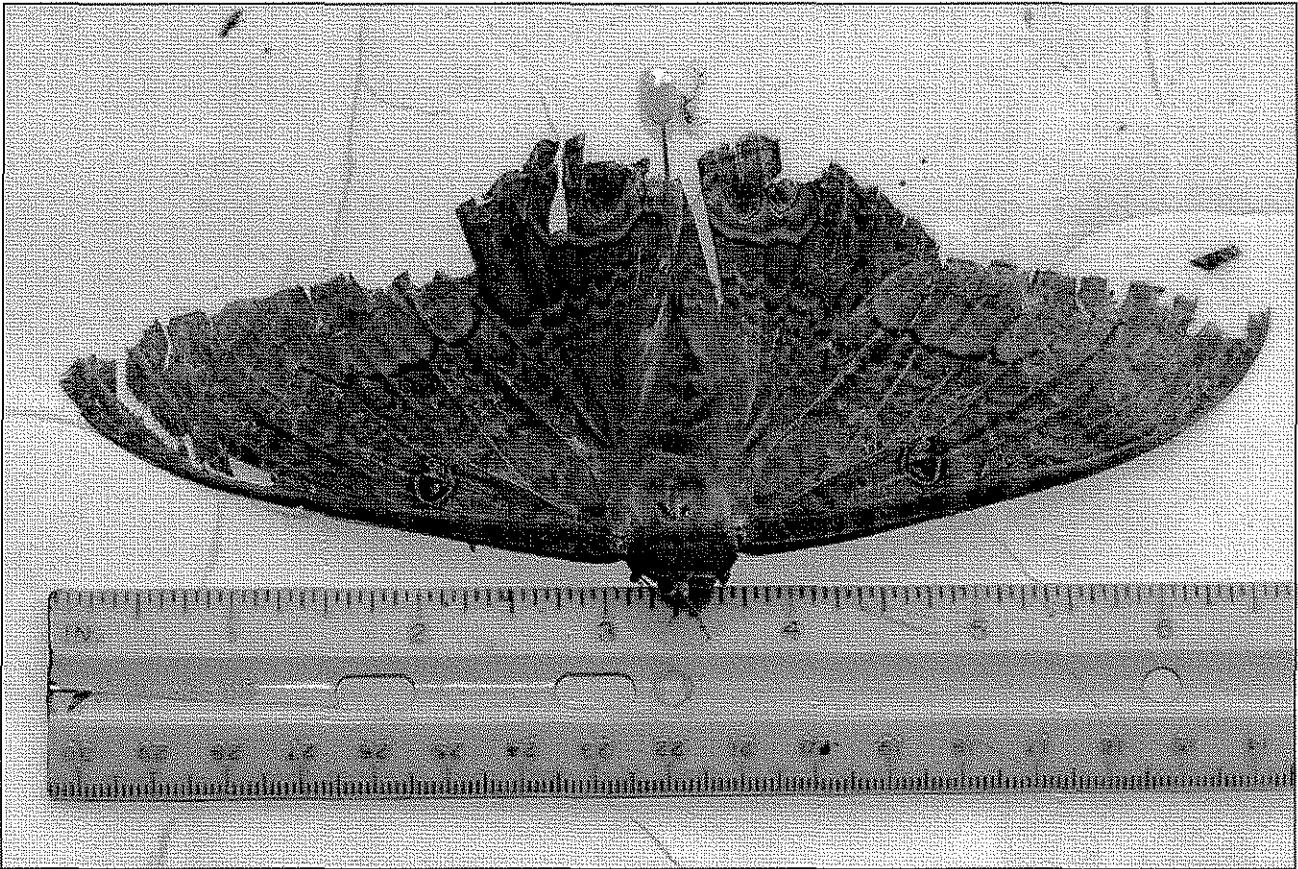


Photo: Jonathan Vandiveer, August 2008. Black Witch Moth found on porch on 2412 Riverside Place, nearly a 7-inch wingspan.

When a moth with 7-inch wingspan lands on your doorstep as it has within 600' to 1000' of the proposed development: at 2517 Corralitas and 2412 Riverside Pl., you take notice. I'm sure Black Witch Moths are not the only migratory species of insect, bat or bird that use the proposed development site.

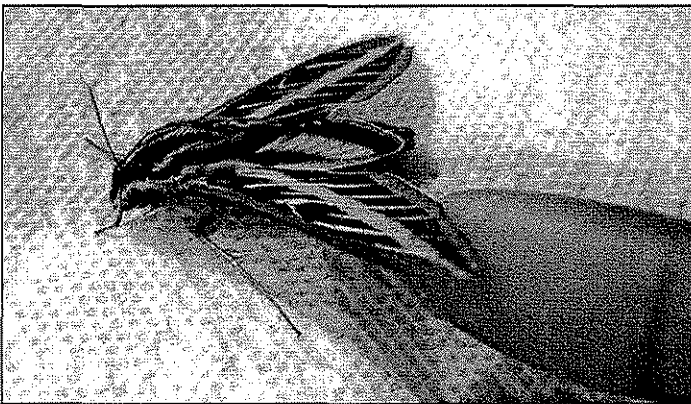


Photo: Shawnda Thomas Faveau, February 5, 2009. White-Lined Sphinx Moth at 2517 Corralitas Drive.

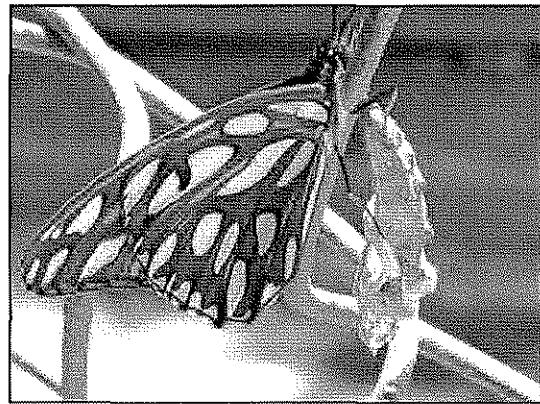


Photo: Shawnda Thomas Faveau, July 10, 2004. Gulf Fritillary at 2517 Corralitas Drive



CF 09-0082
APCE 2006-8787-ZC
VTT 62900-SL-2A
CD13

2400 Allesandro
Semi-Tropic Spiritualists'
Tract

Edwardson, Ortiz, Parisi
Appeal
2-3-08

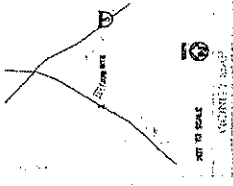
Overlay of tract map from
4-1-08 on satellite image

Red Line indicates how much additional uncertified fill would have to be removed from the slope above the development, beyond the last drainage bench indicated in the tract map. See pages 2-5 for section cuts.

All the trees, including the slope with Calif. black walnut woodland, **would also be removed, from Allesandro to the red line.**

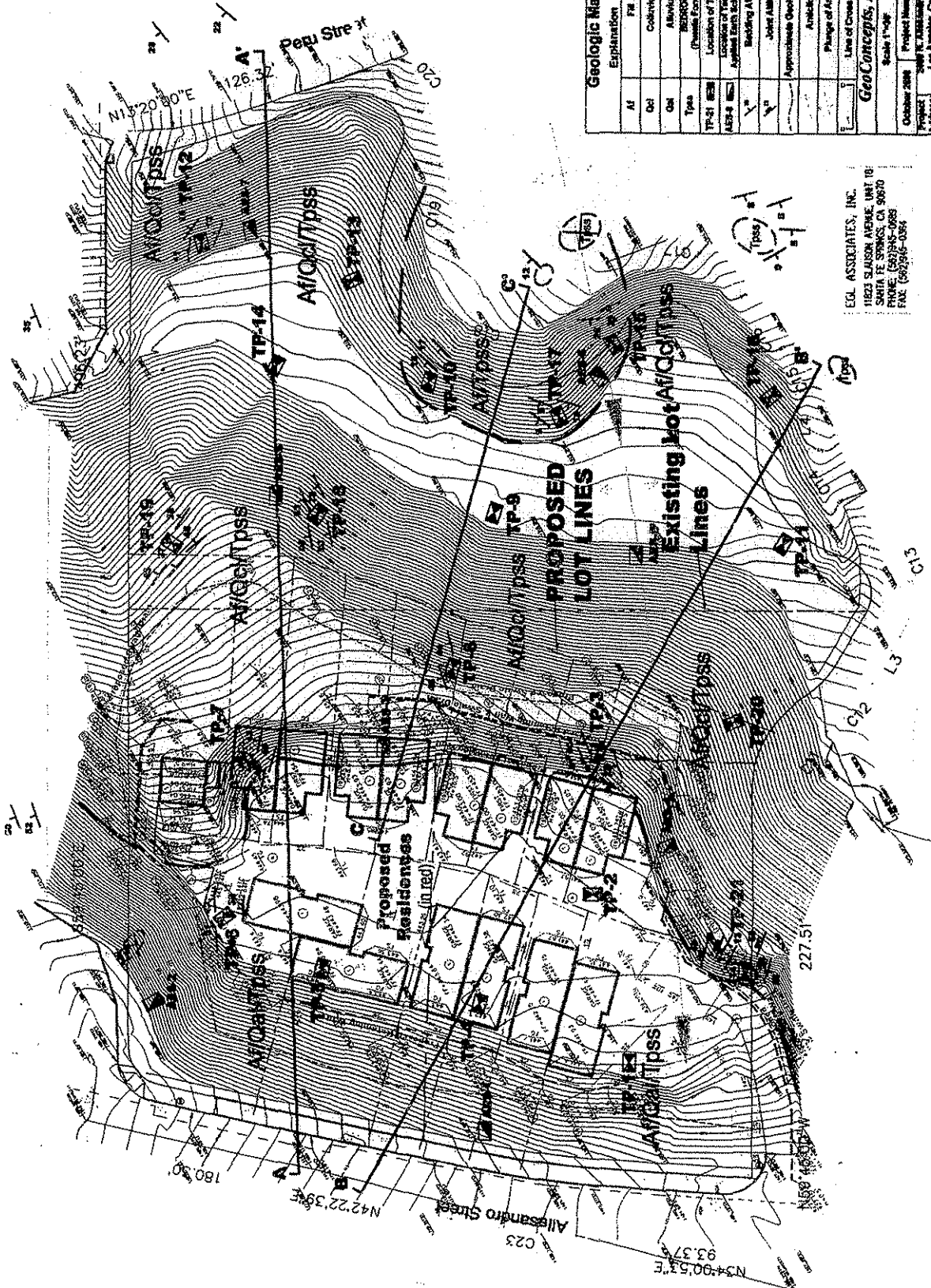
Red Line established using the developer's plan on file with the Grading Division (pages 2 - 5, attached section cuts). However, the plan does not indicate how the uppermost slope (to the right of the red line) would be stabilized.

SURVEY MAP NORTH



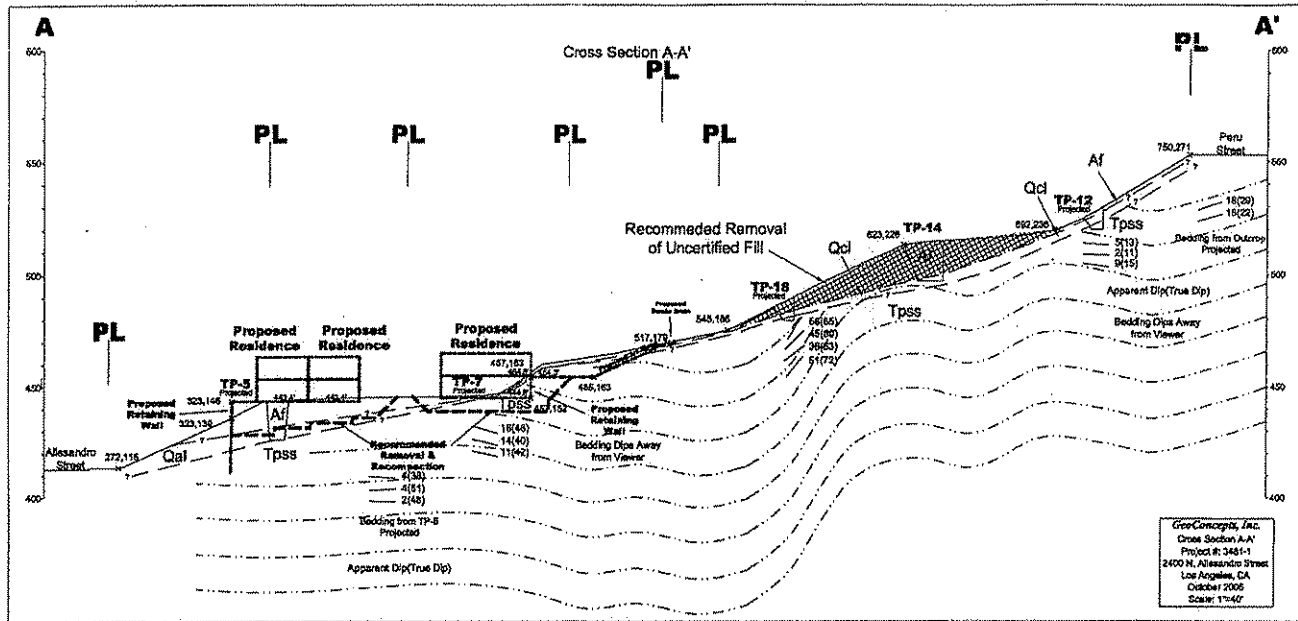
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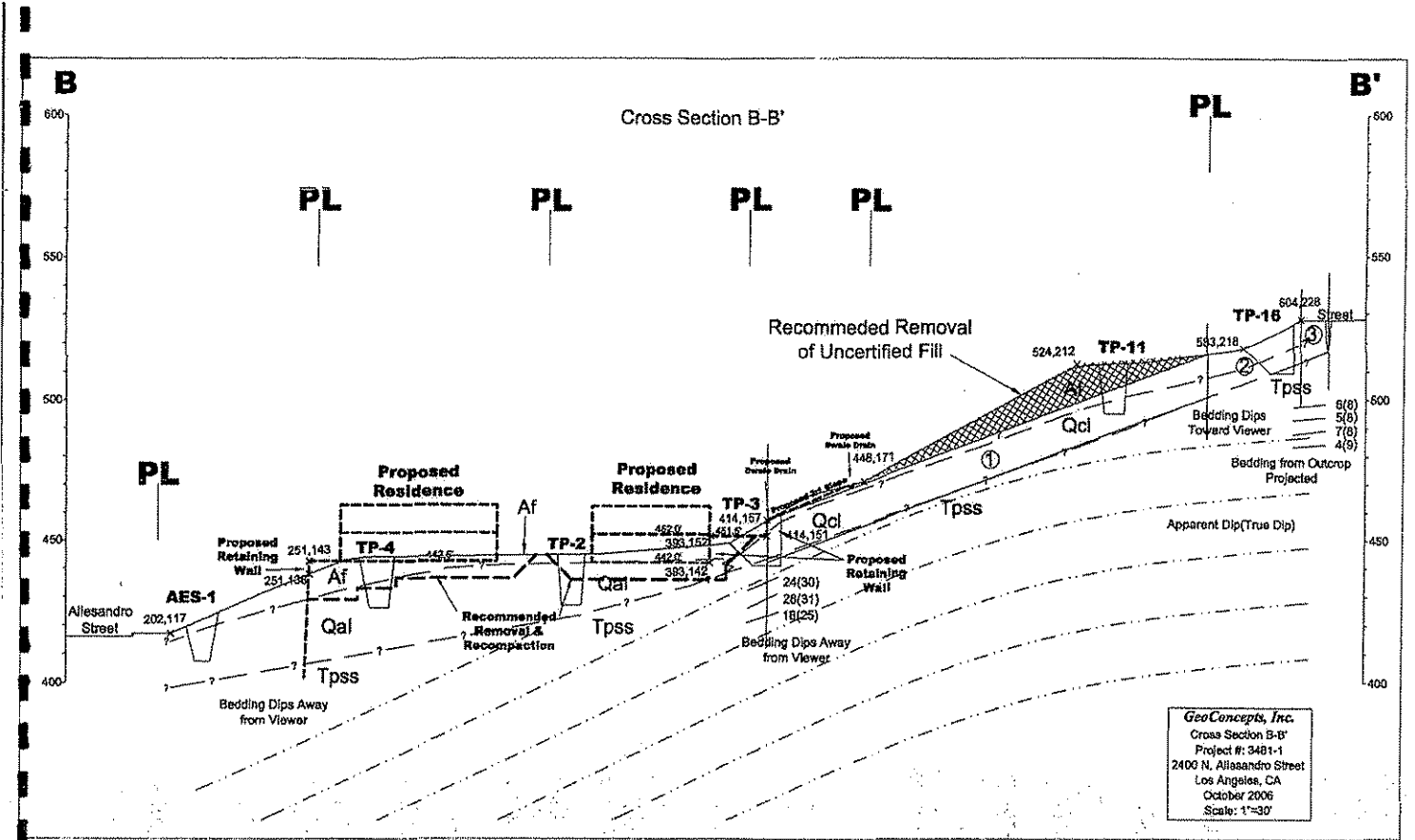


Geologic Map	
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EGL ASSOCIATES, INC.
 1123 S. LAUREL AVENUE, UNIT 10
 SANTA FE SPRINGS, CA 90703
 PHONE: (562) 946-0055
 FAX: (562) 946-0054

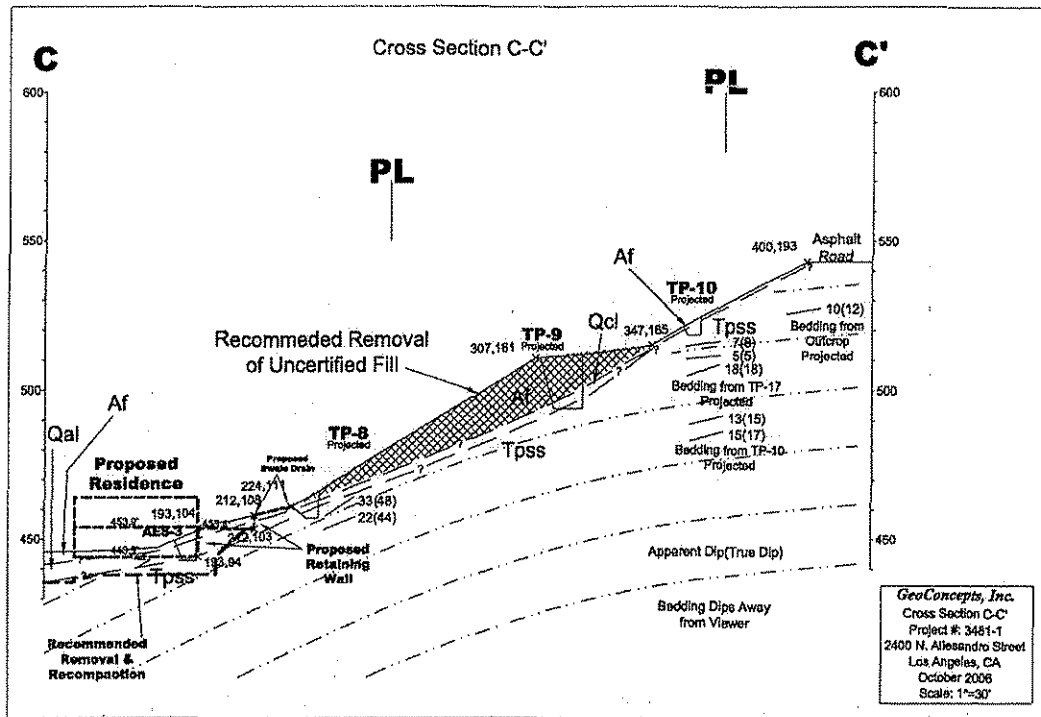


10108062007 52390



GeoConcepts, Inc.
Cross Section B-B'
Project #: 3481-1
2400 N. Alessandro Street
Los Angeles, CA
October 2006
Scale: 1"=30'

10108062007 52 390



1010806200752390



Use of highway undercrossings by wildlife in southern California

Sandra J. Ng^{a,b}, Jim W. Dole^a, Raymond M. Sauvajot^{b,*},
Seth P.D. Riley^b, Thomas J. Valone^c

^aDepartment of Biology, California State University, Northridge, CA 91330-8303, USA

^bNational Park Service, Santa Monica Mountains National Recreation Area, 401 West Hillcrest Drive, Thousand Oaks, CA 91360, USA

^cDepartment of Biology, St. Louis University, St. Louis, MO, USA

Received 13 June 2001; received in revised form 15 February 2003; accepted 20 March 2003

Abstract

Roads, especially large highways, can have significant impacts on wildlife movement and survival. This is especially true for wide-ranging species, such as mammalian carnivores. Some of these impacts may be mitigated if wildlife can find and utilize passageways under highways. To determine if underpasses and drainage culverts beneath highways are used by wildlife as movement corridors, we monitored 15 such passages near Los Angeles, California using remotely triggered cameras and gypsum track stations. We found that passages were used by a variety of species, including carnivores, mule deer, small mammals, and reptiles. Many types of undercrossings were utilized, indicating that passages beneath highways, even when not originally designed for wildlife, can provide important safe avenues for animals to cross roads. For mammals of conservation concern, including native carnivores and deer, passage dimensions, surrounding habitat, and the extent of human activity were assessed to determine if these factors influenced passage use by these species. Our results show that while many native mammals used passages beneath highways, the presence of suitable habitat on either side of the passage was a particularly important factor predicting use. For deer and coyotes, passage dimensions were also important and should be considered with the presence of suitable habitat when wildlife passages are planned or evaluated. To increase the likelihood of utilization and to help prevent animals from crossing road surfaces, we suggest that simple improvements such as habitat restoration near crossing points and animal-proof fencing that serves to funnel wildlife to passages, can facilitate animal movement between fragmented habitats that are bisected by roads.

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Keywords: Wildlife corridor; Mammals; Carnivores; Habitat fragmentation; Culverts

1. Introduction

As roads and human development have extended into once pristine natural areas, habitat fragmentation has become an ever-increasing threat to the survival of many species (Wilcox and Murphy, 1985; Harris and Gallagher, 1989; Saunders et al., 1991). Perhaps most threatened are large mammals, such as carnivores and ungulates, that regularly move over great distances. It has been suggested that the adverse effects of habitat fragmentation by roads might be mitigated by constructing wildlife, or conservation, corridors (Soulé, 1991) connecting otherwise isolated patches of habitat

on opposite sides of roadways (Saunders and Hobbs, 1991; Beier and Loe, 1992). It is thought that drainage culverts, tunnels and freeway underpasses, though created for other purposes, may already serve this function (Noss, 1987a; Harris and Gallagher, 1989; Edelman, 1991; Soulé and Gilpin, 1991; Rodriguez et al., 1996; Rosenburg et al., 1997). However, few quantitative data are available on the extent to which such passages are used by wildlife (Simberloff et al., 1992). Likewise, the characteristics that promote and discourage the use of potential crossing points by wildlife—e.g., passage dimensions, surrounding habitat type, presence of fences, and the extent of nearby human activity—are poorly understood (Foster and Humphrey, 1995; Yanes et al., 1995; Clevenger and Waltho 2000).

In California, especially in the southern coastal areas where urban sprawl has created a patchwork of developed and natural areas, determining the extent to which

* Corresponding author. Tel.: +1-805-370-2339.

E-mail address: ray_sauvajot@nps.gov (R.M. Sauvajot).

passages are used by wildlife has become a top conservation priority. In the vicinity of the Santa Monica Mountains National Recreation Area (SMMNRA) in western Los Angeles and eastern Ventura Counties, several relatively unspoiled natural regions, including three mountain ranges (Santa Monica, Santa Susana, San Gabriel), parts of two National Forests (Los Padres, Angeles) and the SMMNRA still support a rich diversity of vertebrate species. However, numerous multi-lane highways pass through the area, creating potential barriers between habitat patches. For this reason, it is widely acknowledged that habitat linkages are necessary to allow animals to cross major roadways between remaining patches of natural habitat (Lieberstein et al., 1987; Soulé, 1989; Santa Monica Mountains Conservancy, 1990; Edelman, 1991). In addition, information on wildlife movement relative to freeways in this area would be relevant for many other fragmented urban landscapes.

The purpose of this study was to obtain quantitative data on the extent to which passages beneath highways in this fragmented landscape are used by wildlife. Our specific objectives were: (1) to evaluate animal use of selected underpasses, tunnels, and drainage culverts that cross beneath three major highways; and (2) to assess characteristics of the passages most frequented by species of conservation concern, including native carnivores and mule deer, and domestic cats and dogs. As habitat fragmentation continues in areas occupied by native carnivores and deer, these species become increasingly threatened because they move over great

distances to find food and mates, and to disperse. Carnivores are especially threatened because of their low population densities and large home range requirements. Domestic carnivores such as cats and dogs, on the other hand, can have adverse effects on wildlife through direct predation (Churcher and Lawton, 1987; Soulé et al., 1988), harassment, and the spread of disease. Thus, knowledge of passage attributes that can facilitate desired movement by deer and carnivores as well as possible use by non-native carnivores is a top conservation concern and has important management value. In addition, the limited data now available on whether or not species of conservation concern even utilize existing passages to cross roadways is of great interest among conservationists and land and transportation planners.

2. Study area and methods

2.1. Study area

The study was conducted along three major highways located on the eastern edge of Ventura County, California, just west of the San Fernando Valley and adjacent to the Los Angeles metropolitan area (Fig. 1). The three highways—US Highway 101, State Route 23, and US Highway 118—border the Simi Hills on the south, west, and north, respectively. US 101 and 118 act as potential barriers to animal movements to and from surrounding wilder regions, the Santa Susana Mountains

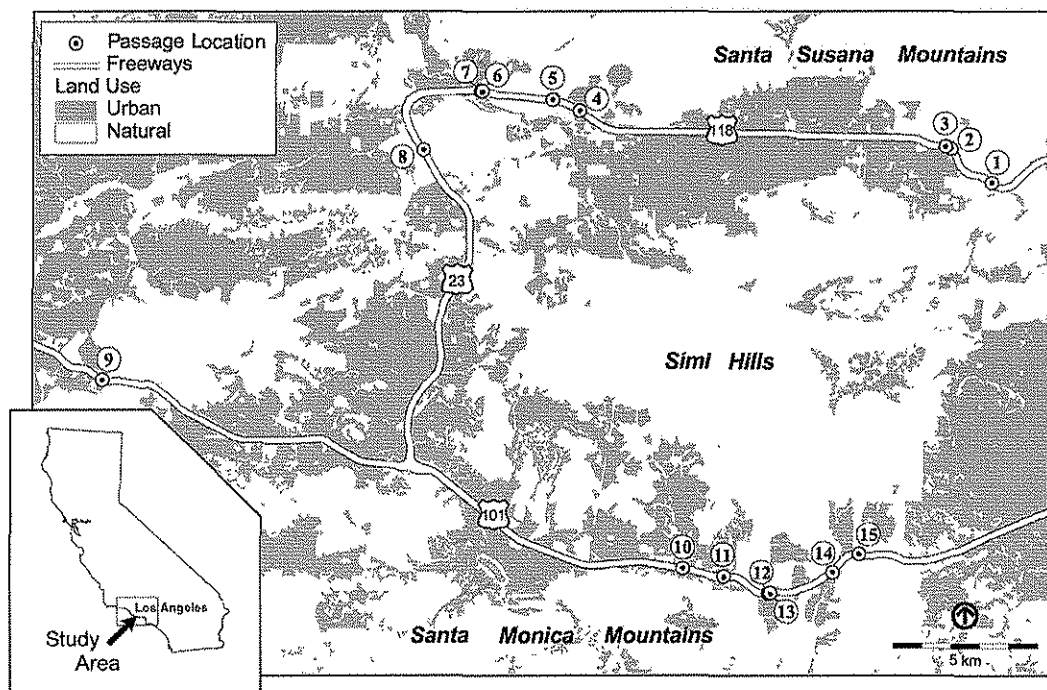


Fig. 1. Map showing natural habitat and urban development, highways and the 15 passages studies. Adjacent passages are indicated by a single point.

to the north and the Santa Monica Mountains to the south (Soulé, 1989; Santa Monica Mountains Conservancy, 1990; Edelman, 1991).

The region through which these highways pass is a complex of low hills and flat-bottomed valleys. The Simi Hills and the Santa Monica Mountains are a mixture of highly urbanized and relatively natural lands. In contrast, the Santa Susana Mountains consist of mostly intact natural landscapes, with urbanization encroaching along its fringes, and they link to the north and east to two extensive wild regions: the Los Padres National Forest in the western Transverse Mountain Range and the Angeles National Forest in the San Gabriel Mountains.

The natural areas support a diversity of biological communities, including chaparral vegetation (*Adenostoma fasciculatum*, *Ceanothus* spp., *Rhamnus ilicifolia*), coastal sage scrub (*Artemisia californica*, *Salvia leucophylla*, *Malosma laurina*), coast live oak (*Quercus agrifolia*) woodland, and riparian woodlands (*Salix lasiolepis*, *Platanus racemosa*).

2.2. Animal use

Along the three highways, 15 potential wildlife passages in the form of underpasses (surface roads or wide streams crossing under the highway), drainage culverts (square or pipe culverts) and livestock tunnels, were monitored (Fig. 1). Some of the potential crossing points had been previously identified as potential “wildlife corridors” (Santa Monica Mountains Conservancy, 1990; Edelman, 1991) but none was made specifically to facilitate wildlife movement. Other passages were identified from flood control maps provided by the Public Works agencies of Ventura and Los

Angeles Counties. Passage size varied considerably (Table 1). On average, square culverts were 97 m long, 4.2 m wide and 3.7 m high, pipe culverts were 176 m long, 2.6 m wide and 2.9 m high, and underpasses were 44 m long, 42 m wide and 5.2 m high.

Each passage was monitored for four consecutive days each month from 1 July 1999 through 30 June 2000, with the exception of passage 15. Passage 15 was filled with water during January and February at the height of the rainy season, and could not be monitored during that period. The order in which passages were sampled each month was determined randomly.

Two techniques were used to monitor animal use, remotely triggered cameras (Rappole et al., 1986; Carthew and Slater, 1991; York et al., 2001) and gypsum powder track stations (methods modified from Crooks and Soulé, 1999; Haas, 2000). Passive infrared trail monitoring units (TrailMaster TM550: Goodson and Associates, Inc., 10614 Widmer, Lenexa, KS 66215) were used at four passages (8, 12, 14, 15) where the probability of vandalism was judged to be minimal and where heavy water flow in the rainy season precluded monitoring animal tracks. Each unit consisted of an automatic flash camera triggered by the body heat or motion of an animal passing within 20 m and within a horizontal arc of 20° and a vertical arc of 4° of the infrared sensor. Sensors operated continuously, but were set to take only one photograph per minute. At each of the four passages with camera systems, at least three camera units were used to ensure adequate monitoring in the middle of the passage and at each entrance.

Where the probability of vandalism was judged high (passages 1–7, 9–11, 13), cameras were not used.

Table 1

Attributes of the 15 passages monitored in this study. Habitat type is the percentage of habitat within a 250-m semi-circle around both ends of each passage

Attributes	Tunnels, culverts and underpasses														
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Crossing type	□	⊕	∕	⊕	∕	□	□	⊕	□	∕	□	⊕	∕	□	⊕
<i>Dimensions</i>															
Length (m)	58.3	144.9	45.1	196.1	48.9	73.5	249.6	133.4	45.0	84.4	54.3	189.2	44.3	98.9	218.1
Width (m)	4.6	3.9	47.6	2.1	41.8	3.2	4.3	2.2	2.5	30.0	5.5	1.6	46.7	4.8	3.0
Height (m)	4.7	3.8	5.0	2.2	4.9	4.6	3.2	2.6	2.6	6.0	2.9	1.6	4.9	4.0	4.3
Cross-sect. area (m ²)	21.6	11.6	238.0	3.6	204.8	14.7	13.8	4.5	6.5	180.0	16.0	2.0	228.8	19.2	10.5
<i>Habitat type (%)</i>															
Natural	100	54	38	50	100	38	38	100	69	8	0	46	46	50	60
Landscaped	0	8	20	23	0	12	12	0	0	15	0	0	0	0	0
Developed	0	38	42	27	0	50	50	0	31	77	100	54	54	50	40
<i>Human activity</i>															
No. of crossings	120	46	331	0	38	49	2	0	0	482	17	0	491	0	0

Human activity includes all human crossings whether on foot, on horseback or by vehicle. Passage type: □ = square culvert/ tunnel; ⊕ = drainage culvert; ∕ = spanning bridge underpass.

Instead, passage use was monitored by placing three strips of agricultural gypsum powder across the floor of each passage to capture animal tracks. The strips of gypsum, each about 3 mm thick and 1 m wide, were laid across the entire width of each passage by sifting the powder through a mesh colander. We placed one strip in the middle of each passage and one at each entrance in order to detect both visits and crossings. As with the cameras, tracks in the gypsum were monitored for four days per month. Each day all tracks were identified (Murie, 1974), recorded and erased with a feather duster to prevent recount. We also recorded the direction of travel and, to further assist with species identification, the prints' length and width, and for canid and felid tracks, stride (the distance between two consecutive tracks) and straddle (the distance separating the outermost sides of the left and right track). To verify track identifications, one passage (8) was monitored simultaneously with both cameras and gypsum. All track identifications at this passage were in agreement with accompanying photographs.

From each set of tracks or photographs, we categorized the animal's use as: (1) a verified crossing, (2) a probable crossing, or (3) an assessment of the entrance only. When tracks or photographs of an animal were present at both ends of the passage and in the middle, the animal's use of the passage to traverse the width of the roadway was considered verified. When tracks or photographs were recorded at both end stations, but not in the middle, or at the middle station and at one of the ends, completion of the traverse was judged probable. In most such instances all tracks were in a single direction, suggesting that the animal had not turned back and that the missing tracks had been lost due to wind or human disturbance. When tracks or photographs were obtained at one end of a passage only, an animal was considered to have assessed the passage but not to have passed through it. Because our intent was to detect utilization and not to evaluate absolute levels of use by any particular species, we did not attempt to distinguish between individual animals. Hence, it is likely that some individuals were counted more than once.

2.3. Passage characteristics as predictors

For each passage, three dimensions (length, width, height), the nature of the surrounding habitat, and the amount of human activity were recorded as predictor variables for animal use (Table 1). From width and height, cross-sectional area of each passage was calculated. At each passage, photographs and tracks of humans, horses, bicycles, and other vehicles were also counted. Collectively, these served as a measure of human activity.

Habitat surrounding each passage was quantified by sampling within a 250-m semicircle around each

entrance. For this purpose, habitat was placed into three categories: (1) natural, which consisted of intact vegetation (both native and naturalized); (2) developed or urban areas; or (3) landscaped, which consisted of human-altered areas without buildings, e.g. golf courses and landfills. For passages along US 101 and State Route 23, habitat type was determined from Digital Orthophoto Quarter Quadrangles (DOQQ), from which aerial percent coverage of each habitat category was determined. Because DOQQ coverage did not extend to US 118, Satellite Pour l'Observation de la Terre (SPOT) images were used to obtain the percent cover for passages along this freeway. Because some landscapes were being altered during the study period, at each site percentages were verified in the field by estimating the predominant habitat type (i.e. natural, developed, or landscaped) at 15° intervals within a 250-m semicircle surrounding each passage entrance. An overall percentage of each habitat category at the passage was then calculated by dividing the total number of observed dominant habitat types by 24 (the total number of bearings). Where percentages of the DOQQ and SPOT images differed from those obtained from field verifications, the percentages obtained in the field were used to determine habitat cover at the passage.

Before analyzing animal use data, we first searched for confounding associations among the various passage attributes using correlation analysis. Passage use by each species was approximated to a normal distribution via an arcsine square-root transformation. Spearman's rank correlation was used to quantify the relationship between the use of passages by wildlife and predictor variables. Low number of observations precluded statistical analyses for mountain lions. Where logical, analyses were conducted on records of several species grouped into classes, e.g. (a) large carnivores (coyotes, bobcats, and mountain lions) and (b) mid-sized mammals (raccoons, opossums, and striped and spotted skunks). Because sample sizes were small and non-parametric tests were used, we adopted $\alpha=0.10$ as a measure of statistical significance.

3. Results

3.1. Animal use

During the year of study, 2723 detections were recorded as tracks and photos (Table 2). Of these records, 531 (19.5%) were of native large and mid-sized mammals, 1640 (60.2%) were of humans, 155 (5.7%) were of domestic animals, and 397 (14.6%) were of small mammals. Wild mammals known to have passed through one or more passages at least once included: deer mice (*Peromyscus* spp.), woodrats (*Neotoma* spp.), ground squirrels (*Spermophilus beecheyi*), cottontail rabbits

(*Sylvilagus auduboni*), opossums (*Didelphis virginianus*), striped skunks (*Mephitis mephitis*), spotted skunks (*Spilogale putorius*), raccoons (*Procyon lotor*), coyotes (*Canis latrans*), bobcats (*Lynx rufus*), mountain lions (*Puma concolor*), and mule deer (*Odocoileus hemionus*). For large and mid-sized mammals (excluding domestic species), we recorded 391 (73.6%) verified or probable crossings and 140 (26.4%) assessments of the entrance. For species of conservation interest, passage use varied between sites and species (Table 3). Raccoons were most

commonly detected using passages and used all sites except one. Coyotes, bobcats, and domestic dogs and cats each used about half of the 15 sites studied. Deer and mountain lions were only detected at a few sites.

3.2. Passage attributes as predictors of wildlife use

There were four significant correlations between the various passage attributes. Length was negatively correlated with cross-sectional area ($r_s = -0.639$, $P < 0.01$).

Table 2
Nature and frequency of use of culverts, tunnels and underpasses, all passages combined

Species	Crossings			Investigations	Total records	Verified and probable crossings (as % of total records)
	Verified	Probable	Total			
Human	1332	36	1368	59	1427	95.9
Bike	156	12	168	5	173	97.1
Vehicle	36	0	36	0	36	100.0
Horseback	4	0	4	0	4	100.0
Total human activity	1528	48	1576	64	1640	96.1
House cat	24	10	34	25	59	57.6
Dog	57	8	65	18	83	78.3
Cow	12	0	12	1	13	92.3
Total domestic animals	93	18	111	44	155	71.6
Mountain lion	1	0	1	0	1	100.0
Bobcat	31	5	36	17	53	67.9
Coyote	49	10	59	12	71	83.1
Deer	26	0	26	2	28	92.9
Total large mammals	107	15	122	31	153	79.7
Raccoon	127	80	207	58	265	78.1
Opossum	17	7	24	5	29	82.8
Striped skunk	12	11	23	11	34	67.6
Spotted skunk	0	5	5	2	7	71.4
Cottontail rabbit	1	9	10	33	43	23.3
Total mid-sized mammals	157	112	269	109	378	71.1
Total rodents	133	106	239	158	397	60.2

Table 3
Frequency of passage use by species, including verified and probable crossings

Species	Passages															Total Passages Used
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
Deer	2	0	0	0	9	0	0	0	0	0	0	0	15	0	0	3
Coyote	13	19	1	0	20	2	0	1	0	0	0	0	3	0	0	7
Bobcat	8	1	0	0	6	2	0	16	0	0	1	0	0	2	0	7
Mountain lion	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Raccoon	3	12	0	9	1	7	17	1	1	87	22	19	2	15	11	14
Opossum	0	1	5	0	0	7	2	1	5	1	0	2	0	0	0	8
Spotted skunk	0	0	0	0	0	0	0	0	0	0	0	5	0	0	0	1
Striped skunk	2	3	0	0	2	4	0	0	0	0	0	12	0	0	0	5
House cat	4	6	11	0	1	3	0	0	0	1	7	0	1	0	0	8
Domestic dog	9	4	36	0	7	3	0	1	0	0	1	0	4	0	0	8

Table 4

Spearman's rank correlation coefficient matrix for predictor variables and frequency of crossings through passages, probable and verified crossings combined

Species	Length	x.s.Area	Natural	Developed	Human activity
Coyote	-0.405	0.442	0.414	-0.454 *	0.553 **
Bobcat	-0.124	0.107	0.476 *	-0.462 *	-0.005
All large carnivores	-0.373	0.404	0.451 *	-0.442	0.372
Raccoon	0.523 **	-0.211	-0.559**	0.676 ***	-0.094
Opossum	-0.030	-0.176	-0.288	0.123	-0.055
Spotted skunk	0.247	-0.433	-0.094	0.281	-0.287
Striped skunk	0.068	-0.143	0.166	-0.117	0.122
All mid-sized mammals	0.447 *	-0.242	-0.665 ***	0.674 ***	-0.073
Deer	-0.523 **	0.551 **	0.367	-0.235	0.490 *
Rodents	-0.075	-0.291	0.528 **	-0.463 *	-0.114
Domestic dog	-0.571 **	0.619 **	0.172	-0.299	0.659 ***
House cat	-0.514 **	0.635 **	-0.318	0.154	0.765 ***

Statistically significant relationships are indicated with asterisks (* $P < 0.10$, ** $P < 0.05$, *** $P < 0.01$).

Human activity was negatively correlated with length ($r_s = -0.531$, $P < 0.05$) and positively correlated with cross-sectional area ($r_s = 0.806$, $P < 0.01$). Not surprisingly, human activity was largely restricted to shorter passages with large cross-sectional areas (underpasses and tunnels) and was rarely associated with culverts. Because culverts are typically long and underpasses much shorter, the strong negative correlation between length and cross-sectional area was expected.

Three larger carnivore species—mountain lions, bobcats and coyotes—traversed the passages. Coyote use showed a significant positive correlation with human activity (Table 4). However, for both bobcats and coyotes, we observed negative relationships ($0.05 < P < 0.10$) between passage use and percentage of developed habitat, suggesting a tendency by these animals to avoid passages surrounded largely by developed habitat (Table 4). Moreover, for bobcats the relationship between passage use and percentage of natural habitat was positive and statistically significant. The single record of a mountain lion precluded a statistical test. For all three native carnivore species combined, the relationship between passage use and extent of natural habitat was again positive ($0.05 < P < 0.10$).

Raccoon use of the passages was negatively correlated with extent of natural habitat and positively correlated with both extent of developed habitat and with passage length (Table 4). No statistically significant relationships were found between passage attributes and activity of opossums or either of the two skunk species, presumably the result of small sample sizes. For all mid-sized mammals (raccoons, opossums, and skunks) passage length and passage use were positively correlated ($0.05 < P < 0.10$).

Mule deer only used three large passages and never used small passages, such as culverts, even though some

small passages were large enough for their use. Mule deer use of passages was negatively correlated with passage length and positively correlated with cross-sectional area (Table 4). No statistically significant relationship was found between mule deer use of passages and habitat type. However, of the three sites used by deer, all were characterized by significant amounts of nearby natural habitat (Table 1).

For both domestic dogs and cats, the use of passages was negatively correlated with passage length and positively correlated with both cross-sectional area and the amount of human activity (Table 4). Corridor use by dogs and cats was not significantly related to habitat.

4. Discussion

Our data clearly demonstrate regular use of underpasses and drainage culverts beneath highways by wildlife, including species of conservation concern. We suggest that maintaining or modifying passages can be important for protecting native species in areas bisected by high-speed roadways. Although culverts are typically installed to accommodate water flow, installation of such passages solely for wildlife use may also be justified, particularly where no other passages exist and habitat is suitable. If this is done, consideration must be given to passage dimensions, especially if the passage is intended for use by deer. However, protecting suitable habitat in the vicinity of crossing points is especially important, particularly for larger carnivores and deer. In general, a culvert or underpass, regardless of its dimensions, is of little value as a wildlife corridor if it does not connect suitable habitat.

In this study, we demonstrated use of corridors by wildlife and not benefits associated with that use. Corridor use alone does not necessarily impart conservation

value, and some have suggested that corridors can even be detrimental to wildlife conservation efforts (Simberloff and Cox, 1987; Simberloff et al., 1992). However, because the species we monitored are susceptible to fragmentation impacts and because roadways within their habitats are significant sources of mortality (Ng, 2000; Riley et al., 2003), we believe that the ecological benefits of highway undercrossings will outweigh possible impacts in our study area.

A significant aspect of the corridor debate focuses on whether or not animals will actually use corridors, if they are provided (Simberloff and Cox, 1987; Noss, 1987b; Simberloff et al., 1992; Hess, 1994; Beier and Noss, 1998). Much recent empirical work has adopted an experimental approach and focused on small-bodied species (e.g. Dunning et al., 1995; Andreassen et al., 1996; Haddad, 1999; Haddad and Baum, 1999; Danielson and Hubbard, 2000). Our work, examining road undercrossing use by large-bodied species in natural landscapes, complements this literature by demonstrating that large and medium-sized carnivores, deer, and other species will regularly use passages beneath highways. Larger carnivores, specifically bobcats and coyotes, traversed passages of a wide variety of sizes, from the largest spanning bridge underpasses to the smaller pipe culverts (Table 3). Assuming that corridors do impart conservation value, these findings are important for conservation by clearly demonstrating wildlife use of underpasses.

Coyote use of passages was significantly and negatively correlated with development. At the same time, though, we also found coyotes most likely to use passages associated with high degrees of human activity. Indeed, we commonly recorded coyotes using passages that had trails or roads within them, and that were regularly frequented by people. However, encounters between humans and coyotes are probably limited, since coyotes are most likely to frequent the passages at times when humans are least likely to be there. In fragmented landscapes, coyotes are often seen in urban areas that are immediately adjacent to natural habitat (Atkinson and Shackleton, 1991; Rosmos, 1998; Sauvajot et al., 2000; Riley et al., 2003). Consequently, our findings probably reflect coyote prevalence on urban fringes and a willingness to use areas of human activity rather than an attraction to them.

We had one record of a mountain lion using passage 1. Although a single record does not allow us to make conclusions about habitat or dimensions, it documents the potential use of passages for facilitating movements of these animals. The numbers and movement patterns of mountain lions in the Los Angeles area are not well understood (but see Beier, 1993), and more information about the status and distribution of mountain lions in this region is critical to understand the effects of roads and habitat connectivity on this species.

Raccoons, opossums, and skunks are opportunistic species that live in a wide variety of habitats, including

in suburbs and cities (Rosatte et al., 1990; Riley et al., 1998). These species may benefit from human activities, both because of the addition of anthropogenic food sources and the increased availability of water. In our study, raccoons were detected at the passages more frequently than any other wild mammal species and were more common in passages surrounded by human development than in those adjoining wild land. The prevalence of raccoons was in part because they actually used the passages as foraging habitat and not necessarily as movement corridors. Many raccoons were encountered in culverts that contained water and sometimes entire families were photographed foraging in the water.

Consistent with other studies (Reed, 1981; Foster and Humphrey, 1995; Crooks and Jones, 1998; Haas, 2000), we found that passage dimensions significantly influenced passage use by deer. All mule deer crossings occurred at spanning bridge underpasses with large cross-sectional areas. Although we found no statistically significant correlation between deer use and habitat, deer were only encountered at passages surrounded largely by natural habitat. Crooks and Jones (1998) also found deer using underpasses with more natural habitat and less residential development.

We found house cats using underpasses and culverts in or near urbanization. Thus, while underpasses may be used by native carnivores, they can also provide access for house cats which in turn may have deleterious impacts on other native species. For example, in areas of high human density, domestic animals, particularly house cats, have been associated with the decline and extinction of bird and small mammal populations in fragmented habitats (Soulé et al., 1988; Bolger et al., 1997; Crooks and Soulé, 1999).

Overall, our results indicate that underpasses, culverts, and other cross-highway structures facilitate wildlife attempting to cross major roads. We believe that such structures, even if not originally designed for wildlife, can be important parts of regional conservation strategies. We also observed numerous instances of animals being killed while attempting to cross road surfaces (Ng, 2000; Riley et al., 2003). To increase the likelihood of passage use by wildlife and to keep animals off roadways, we recommend installing animal-proof fencing to funnel animals away from road surfaces and into crossing structures. Although our results demonstrate that existing passages will be used, more effective crossing structures could certainly be developed if wildlife movement was the primary design objective.

Acknowledgements

This study was generously supported by the Southwest Parks and Monuments Association; the Foundation for

the Preservation of the Santa Susana Mountains; and the University Corporation and Office of Graduate Research at California State University, Northridge. Logistic support, vehicles, and cameras were provided by the National Park Service, Santa Monica Mountains National Recreation Area (SMMNRA). Access to study passages was provided by the Rancho Simi Recreation and Parks District, California Department of Transportation (Caltrans), the Los Angeles and Ventura County Flood Control Districts, and the Simi Valley Landfill. We are extremely grateful for help provided by E. York, C. Haas, D. Jones, P. Schiffman, P. Wilson and by the many dedicated interns and volunteers of the National Park Service, SMMNRA: L. Lee, L. Kellogg, C. Thompson, M. Hanson, L. Bragg, L. Aschim, K. Asmus, J. Chraft, P. Roby, S. Breidenthal, A. Paden, and G. Pasrich. Finally, we acknowledge helpful comments on earlier drafts of this manuscript from two anonymous reviewers and from M. Schwartz.

References

- Andreassen, H.P., Halle, S., Ims, R.A., 1996. Optimal width of movement corridors for root voles: not too narrow and not too wide. *Journal of Applied Ecology* 33, 63–70.
- Atkinson, K.T., Shackleton, D.M., 1991. Coyote, *Canis latrans*, ecology in a rural urban environment. *The Canadian Field-Naturalist* 105, 49–54.
- Beier, P., 1993. Determining minimum habitat areas and habitat corridors for cougars. *Conservation Biology* 7, 94–108.
- Beier, P., Noss, R.F., 1998. Do habitat corridors really provide connectivity? *Conservation Biology* 12, 1241–1252.
- Beier, P., Loe, S., 1992. A checklist for evaluating impacts to wildlife movement corridors. *Wildlife Society Bulletin* 20, 434–440.
- Bolger, D.T., Alberts, A.C., Sauvajot, R.M., Potenza, P., McCalvin, C., Tran, D., Mazzoni, S., Soulé, M.E., 1997. Responses of rodents to habitat fragmentation in coastal southern California. *Ecological Applications* 7, 552–563.
- Carthew, S.M., Slater, E., 1991. Monitoring animal activity with automated photography. *Journal of Wildlife Management* 55, 689–692.
- Churcher, P.B., Lawton, J.H., 1987. Predation by domestic cats in an English village. *Journal of Zoology* 212, 439–455.
- Clevenger, A.P., Waltho, N., 2000. Factors influencing the effectiveness of wildlife underpasses in Banff National Park, Alberta, Canada. *Conservation Biology* 14, 47–56.
- Crooks, K.R., Jones, D., 1998. Monitoring Program for Carnivore Corridor Use in the Nature Reserve of Orange County. The Nature Reserve of Orange County (Unpublished Report).
- Crooks, K.R., Soulé, M.E., 1999. Mesopredator release and avifaunal extinctions in a fragmented system. *Nature* 400, 563–566.
- Danielson, B.J., Hubbard, M.W., 2000. The influence of corridors on the movement behavior of individual *Peromyscus polionotus* in experimental landscapes. *Landscape Ecology* 15, 323–331.
- Dunning Jr., J.B., Borgella, J.R., Clements, K., Meffe, G.K., 1995. Patch isolation, corridor effects, and colonization by a resident sparrow in a managed pine woodland. *Conservation Biology* 9, 542–550.
- Edelman, P., 1991. Critical Wildlife Corridor/habitat Linkage Areas between the Santa Susana Mountains, the Simi Hills and the Santa Monica Mountains. The Nature Conservancy (Report).
- Foster, M.L., Humphrey, S.R., 1995. Use of highway underpasses by Florida panthers and other wildlife. *Wildlife Society Bulletin* 23, 95–100.
- Haas, C.D., 2000. Distribution, Relative Abundance, and Roadway Underpass Responses of carnivores throughout the Puente-Chino Hills. MS Thesis, California State Polytechnic University, Pomona, CA. 110 pp.
- Haddad, N.M., 1999. Corridor and distance effects on interpatch movements: a landscape experiment with butterflies. *Ecological Applications* 9, 612–622.
- Haddad, N.M., Baum, K.A., 1999. An experimental test of corridor effects on butterfly densities. *Ecological Applications* 9, 623–633.
- Harris, L.D., Gallagher, P.B., 1989. New initiatives for wildlife conservation: the need for movement corridors. In: Mackintosh, G. (Ed.), *Preserving Communities and Corridors*. Defenders of Wildlife, Washington DC, pp. 11–34.
- Hess, G., 1994. Conservation corridors and contagious disease: a cautionary note. *Conservation Biology* 8, 256–262.
- Lieberstein, T., Nava, K., Crother, J., Galieti, J., Morgenstern, E., Robinson, M., Bathker, C., 1987. Wildlife corridor design: A case study for Los Angeles and Ventura Counties. In: Hardy, D.F., McIntire, E. (Eds.), Part III in the series: biogeography and the zoo. California State University, Northridge, CA.
- Murie, O.J., 1974. A field guide to animal tracks, second ed. Houghton Mifflin Company, Boston.
- Ng, S.J. 2000. Wildlife use of underpasses and culverts crossing beneath highways in southern California. M.S. Thesis. California State University, Northridge. Northridge, CA. 58 pp.
- Noss, R.F., 1987a. Protecting natural areas in a fragmented landscapes. *Natural Areas Journal* 7, 2–13.
- Noss, R.F., 1987b. Corridors in real landscapes: a reply to Simberloff and Cox. *Conservation Biology* 1, 159–164.
- Rappole, J.H., Navarro-Lopez, D., Tewes, M., Everett, D., 1986. Remote trip cameras as a means for surveying nocturnal felids. In: *Nocturnal mammals: techniques for study*. Pennsylvania State University School of Forestry Research, pp. 45–52 (paper 48. p157).
- Reed, D.F., 1981. Mule deer behavior at a highway underpass exit. *Journal of Wildlife Management* 45, 542–543.
- Riley, S.P.D., Sauvajot, R. M., Fuller, T.K., York, E.C., Bromley, C., Kamradt, D.A., Wayne, R.K., 2003. Effects of urbanization and habitat fragmentation on bobcats and coyotes in southern California. *Conservation Biology* 17, 566–576.
- Riley, S.P.D., Hadidian, J., Manski, D.A., 1998. Population density, survival, and rabies in raccoons in an urban national park. *Canadian Journal of Zoology* 76, 1153–1164.
- Rodriguez, A., Crema, G., Delibes, M., 1996. Use of non-wildlife passes across a high speed railway by terrestrial vertebrates. *Journal of Applied Ecology* 33, 1527–1540.
- Rosatte, R., Power, M.J., MacInnes, C.D., Lawson, K.F., 1990. Rabies control for urban foxes, skunks, and raccoons. In: Davis, L.R., Marsh, R.E. (Eds.), *Proceedings of the 14th Vertebrate Pest Conference*, Sacramento, CA, 6–8 March, 1990. University of California, Davis, pp. 160–167.
- Rosmos, J.S., 1998. Home Range, Habitat Use, and Movements of Coyotes in a Southern California Urban Environment. MS Thesis, Humboldt State University.
- Rosenburg, D.K., Noon, B.R., Meslow, E.C., 1997. Biological corridors: Form, function, and efficacy. *BioScience* 47, 677–687.
- Santa Monica Mountains Conservancy. 1990. Preserving the Critical Link: A Discussion of the Wildlife Corridor from the Santa Susana Mountains to the Santa Monica Mountains via the Simi Hills (Unpublished Report).
- Saunders, D.A., Hobbs, R.J., 1991. *Nature Conservation 2: The Role of Corridors*. Surrey Beatty, Chipping Norton, Australia.
- Saunders, D.A., Hobbs, R.J., Margules, C.R., 1991. Biological consequences of ecosystem fragmentation: a review. *Conservation Biology* 5, 18–32.

- Sauvajot, R.M., York, E.C., Fuller, T.K., Kim, H.S., Kamradt, D.A., Wayne, R.K., 2000. Distribution and status of carnivores in the Santa Monica Mountains, California: preliminary results from radio telemetry and remote survey cameras. In: Keeley, J.E., Baer-Keeley, M.B., Fotheringham, C.J. (Eds.), *Second interface between Ecology and Land Development in California*. US Geological Survey, Sacramento, CA, pp. 113–123.
- Simberloff, D., Cox, J., 1987. Consequences and costs of conservation corridors. *Conservation Biology* 1, 63–71.
- Simberloff, D., Farr, J.A., Cox, J., Mehlman, D.W., 1992. Movement corridors: Conservation bargains or poor investments? *Conservation Biology* 6, 493–504.
- Soulé, M.E., 1989. USDI-National Park Service Proposed Land Exchange: Wildlife Corridors. Envicom Corporation (Report. 18-332-101).
- Soulé, M.E., 1991. Theory and Strategy. In: Hudson, W.E. (Ed.), *Landscape Linkages and Biodiversity*. Island Press, Washington DC, pp. 91–104.
- Soulé, M.E., Gilpin, M.E., 1991. The theory of wildlife corridor capability. In: Saunders, D.A., Hobbs, R.J. (Eds.), *Nature conservation 2: the roles of corridors*. Surrey Beatty and Sons, Chipping Norton, NSW, Australia, pp. 3–8.
- Soulé, M.E., Bolger, D.T., Alberts, A.C., Sauvajot, R.M., Wright, J., Sorice, M., Hill, S., 1988. Reconstructed dynamics of rapid extinctions of chaparral-requiring birds in urban habitat islands. *Conservation Biology* 2, 75–92.
- Wilcox, B., Murphy, D., 1985. Conservation strategy: the effects of fragmentation on extinction. *American Naturalist* 125, 879–887.
- Yanes, M., Velasco, J.M., Suárez, F., 1995. Permeability of roads and railways to vertebrates: the importance of culverts. *Biological Conservation* 71, 217–222.
- York, E.C., Moruzzi, T.L., Fuller, T.K., Organ, J., Sauvajot, R.M., DeGraff, R.M., 2001. Description and evaluation of an inexpensive remote camera and triggering system for monitoring carnivores. *Wildlife Society Bulletin* 29, 1228–1237.

MAYER • BROWN

Mayer Brown LLP
350 South Grand Avenue
25th Floor
Los Angeles, California 90071-1503

Main Tel (713) 229-9500
Main Fax (213) 625-0248
www.mayerbrown.com

Philip R. Recht
Direct Tel (213) 229-9512
Direct Fax (213) 576-8140
precht@mayerbrown.com

April 17, 2009

Los Angeles City Council
Planning and Land Use Committee
200 North Spring Street
Los Angeles, CA 90012

Re: CPC 2009-0008 CA/Proposed Sign Ordinance

Dear Honorable Members of the PLUM Committee:

Our firm represents Summit Media LLC ("Summit"), an outdoor advertising company that operates conventional outdoor advertising signs (i.e., billboards) in the City of Los Angeles. Summit has a long and positive history doing business in the City, and supports efforts to enact a rational and evenhanded sign policy in the City.

Summit respectfully submits this letter to address two important concerns. First, the City Planning Commission ("CPC") failed to entertain public comment at its most recent hearing, in violation of the Brown Act. Second, the sign ordinance proposal fails to fully address the settlement agreements between the City and the largest outdoor advertising companies. Both of these issues are critical to the City's efforts to revise the sign ordinance, and must be addressed and resolved now.

I. Lack of Public Comment on the Amended Proposed Ordinance in Violation of the Brown Act. On March 26, 2009, the CPC held a public hearing to consider a number of new amendments to the draft sign ordinance. Even though the amendments were numerous and substantial, the CPC did not permit the public to speak either when considering the sign ordinance or during the general public comment period.

The CPC evidently believed that it could forego public comment because there had been time for comments on the draft ordinance at prior CPC meetings. This is incorrect and ignores the plain language of the Brown Act. Government Code Section 54954.3(a) states:

Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the

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opportunity to address the committee on the item . . . *unless the item has been substantially changed since the committee heard the item.* (Emphasis added.)

The draft sign ordinance *was* substantially changed at the March 26 CPC meeting, as acknowledged in the April 6, 2009 letter transmitting the proposed ordinance to the PLUM Committee. The CPC adopted nine separate amendments to the draft ordinance. The CPC also approved three recommendations to the City Council for related actions separate from the ordinance itself.

The nine amendments and three recommendations were substantial, and none of them was presented to the public prior to the March 26 meeting. They dealt with such important subjects as the standards for comprehensive sign programs, appeals of civil penalties, rights of private action, mandatory sign reduction in sign districts, requirements to establish sign districts, grandfathering of proposed sign districts, prohibiting roof signs, the impact of the ordinance's limitations on digital displays falling within the scope of the settlement agreements, and more. The recommendations also included a proposal that the City Council enact a regulation permitting the revocation of licenses of businesses that repeatedly violate the ordinance.

The amendments and recommendations substantially changed the draft ordinance. The public clearly had a right to comment on the amendments and recommendations and related issues at the hearing. Failure to permit public comment was a violation of the Brown Act and could result in the voiding of the CPC's March 26 vote. *See* Cal. Gov't Code 54960.1; *Galbiso v. Orosi Pub. Util. Dist.*, 167 Cal. App. 4th 1063, 1081-81 (2008) (similar actions by water board violated Brown Act). The PLUM Committee should send the ordinance back to the CPC for reconsideration and order the CPC to hear and consider public comment regarding, at minimum, the proposed amendments and recommendations.

II. Failure to Fully Address the Settlement Agreements with the Major Sign Companies. The draft sign ordinance still fails to solve the problems created by the City's settlement agreements with the four largest outdoor advertising companies operating in Los Angeles. The latest proposal ostensibly eliminates *future* digital conversions, including conversions of signs that would otherwise be allowed under the settlement agreements. However, it does not address or fix the existing situation—i.e., the scores of digital signs that the dominant sign companies already have erected under illegal and unfair contracts with the City. As such, the proposed ordinance ignores the problem that already has outraged the public—i.e., the existing stock of digital signs that, because they violate state and local laws, should never have been permitted by the City and erected in the first place. Compounding the problem, and in spite of the public outcry, the City continues to actively defend in court the settlement agreements and the special entitlements they created for the four preferred companies. These matters are discussed in detail below.

A. The Settlement Agreements and the Preferential Rights They Grant. Between 2005 and 2007, the City entered into settlement agreements with the four largest

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outdoor advertising companies operating in the City i.e., Clear Channel Outdoor, CBS Outdoor, Regency Outdoor, and Vista (now owned by Lamar). These companies own the vast majority of off-site signs in the City.¹ In these agreements, these companies were given exclusive, special privileges that made them immune to the City's planning, zoning and building codes and their attendant civil and criminal penalties. The City promised to issue permits to these companies to "modernize" hundreds of existing signs with digital faces and second faces despite the fact that such "modernizations" clearly violate numerous City and state laws, including the City's 2002 sign ordinance. The City also promised to issue upon demand an unlimited number of new permits for these companies' other existing signs even though those signs may never have been permitted under, or otherwise violated, City sign regulations. These rights were granted in complete disregard of the City's planning and zoning laws and without regard to enormous competitive advantage they provided the large companies over their smaller competitors. Indeed, the agreements expressly exempted the four favored companies from a broad swath of regulations that continue to apply to everyone else, including smaller competitors like Summit and the advertisers, landlords, and other persons with whom they do business.

1. Preferential "Modernization" Rights. The City's 2002 sign ordinance explicitly bans alterations (including "modernization") of existing signs and provides for enforcement against and removal of illegally modified signs. Exceptions may be allowed only by way of a site-specific variance. Obtaining a variance requires first proper notice to neighbors, public hearing, and certain findings.

Despite these laws, the settlement agreements grant Clear Channel Outdoor, CBS Outdoor, and Regency Outdoor the exclusive right collectively to "modernize" up to about 900 of their existing signs (25% of their inventory) by replacing static wood and vinyl signs with electronic, digital signs.² Each digital conversion costs about \$500,000 and is, in effect, the rebuilding of a sign. Digital signs generate many thousands more dollars in advertising revenue for the sign companies than traditional static signs. The major companies may use these 900 "modernization credits" to convert to digital any of their existing signs. They may undertake conversions without regard to where the signs are located and without notice to the neighbors and any opportunity for the public to be heard. The companies are granted explicit exemptions not only from the City's 2002 sign ordinance, but from any other City zoning or municipal code provision that might prohibit the conversions. Indeed, under the settlement agreements, the City

¹ It is estimated that Clear Channel Outdoor, CBS Outdoor, Regency Outdoor, and Vista operate over 90% of the pole signs in the City. The smaller companies like Summit collectively operate less than 10% of those signs. Vista operates the largest number of signs of any company. Its signs tend to be relatively small in size.

² Vista, which operates smaller sized billboards, was not granted such digital conversion rights in its settlement agreement. However, it was granted various other special rights that effectively exempt it from the City's 2002 sign ordinance.

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is explicitly prohibited from denying work approvals or new permits for the converted signs based on any such City law.³

About 100 digital signs have been erected by the large companies in the City since the settlement agreements took effect. Contrary to state and City laws, the City exempted the dominant sign companies from having to obtain a zoning variance for each digital conversion, and thus the people and businesses affected by the conversions were not given notice or provided with any opportunity to comment or object. Rather, the City granted new permits for each of these digital conversions, viewing itself as bound to do so under the settlement agreements. Meanwhile, all other companies and individuals in the City have to live with these "modernizations" and abide by the City laws without exception.

It is these digital conversions that sparked the public firestorm that has led to the City's effort to draft and enact a new sign ordinance. However, as discussed below, the new proposed ordinance does not address these existing signs.

2. Preferential Second Face Rights. The settlement agreements provide the large companies various other extraordinary benefits. For example, despite the 2002 sign ordinance's prohibition on new off-site signs or alterations to existing signs, the City agreed to issue permits to the large companies to add over 200 new off-site signs by putting second faces on the companies' existing single-face structures. No other company or individual has been granted permission by the City to add any such second face to an existing one-face structure in the City.

3. Preferential Permit and Grandfathering Rights. The settlement agreements also exempt the large companies from the City's billboard permitting requirements, granting blanket amnesty for virtually the entire stock of billboards owned by the large companies. As noted above, the settlement agreements obligate the City to provide new permits for each of the companies' signs that are converted to digital notwithstanding that the conversions each violate a host of City and state zoning laws.

In addition to issuing permits for digital conversion and new second face signs, the City agreed (contrary to its laws) to issue new permits for any of the large companies' other existing signs that were built before 1986 regardless whether those signs were lawfully erected, have

³ In a November 21, 2008 report concerning these large companies' digital signs, the General Manager of the City's Building and Safety Department (LADBS) acknowledged that the "settlement agreements specifically limit the scope of LADBS' review and approval only to 'structural and electrical safety'. Based on the legal settlement agreements, LADBS has no choice but issuing these permits once structural and electrical safety requirements are met."

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permits, comply with their permits, or otherwise violate City building and zoning ordinances. Existing signs erected after 1986 that comply with building and zoning requirements but for which permits do not exist are forgiven from these permit defects regardless whether a permit was ever sought or obtained by the companies. Post-1986 signs that have permits but that do not comply with their permits are allowed so long as the noncompliances are within certain limits. In spite of the affected neighbors and its own laws, the City agreed to issue new permits for all of these signs—making legal countless signs belonging to the dominant companies that were illegal when erected or modified over the years in a way that made them illegal.

No other sign company has been granted any similar permit rights. Rather, as discussed below, all such companies are subject to the City's rigorous new permit inspection and enforcement program.

4. The Apparent Permanent Nature of the Preferential Rights. The settlement agreements contain provisions that were intended to ensure that these special contractual rights would remain in place even when City laws changed over time. Indeed, the agreements anticipated and addressed the circumstance that we now face, namely that a new ordinance might conflict with the rights purportedly granted under the agreements. Specifically, the agreements include language that explicitly preserve the rights in spite of any conflicting law – present, past or future. For example, Section 5(B)(iv) of the settlement agreement between the City and CBS Outdoor and Clear Channel Outdoor states:

It is the intent of the parties that permits and work approvals for Modernizations will not be denied or withheld, and the use of Modernizations will not be restricted, *based on any other prohibition or restriction of the Los Angeles Municipal Code*, which, like those listed in Section 5.B.ii and 5.B.iii, is not directly and predominantly related to "Structural or Electrical Safety" . . . (Emphasis added).

In the same vein, Section 5(B)(iii) provides that, "with the exception of construction of new second faces pursuant to Section 5(B)(iv), *no Modernization or re-permitting for an existing structure shall be denied based on zoning regulations.*" (Emphasis added.)

The language above and other similar exemption provisions make no distinction between present and future zoning laws and, as such, appear to indicate that the rights granted under the settlement agreements cannot be affected by future laws. That necessarily would include the proposed sign ordinance now under consideration.⁴

B. The Lack of Policy Justification for, and the Clear Illegality of, the Settlement Agreements. None of the special rights granted by the settlement agreements to the

⁴ Neither CBS Outdoor nor Clear Channel Outdoor has conceded that their settlement agreements will be superseded by a new ordinance.

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major sign companies are available to any other individual or business in the City. There is nothing to justify the extraordinary, favorable set of rules that the large companies enjoy. The City has placed these companies above the law, literally untouchable by state and local law, with rights unavailable to any other citizen or business in the City. The City has never offered any policy rationale for this disparate treatment, most likely because there is no logical justification.

California law prohibits any city (including Los Angeles) from exempting any person or business (including the major sign companies) from building and zoning regulations. Clearly, the City may not contract away its police powers by promising to exempt the large companies from future zoning ordinances. In *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal. 3d 785 (1976), the California Supreme Court categorically stated that any "promise by the government that zoning laws thereafter enacted would not be applicable . . . would be invalid and unenforceable as contrary to public policy." See also *Trancas Prop. Owners Ass'n v. City of Malibu*, 138 Cal. App. 4th 172 (2006) ("[R]egulatory regimes such as zoning may not be deviated from solely on bilateral agreement.").

Equally, and as the City knows from a very similar recent experience, the City may not exempt any party from current zoning ordinances. In *League of Residential Neighborhood Advocates v. City of Los Angeles*, 498 F.3d 1052 (9th Cir. 2007), the City entered into a settlement agreement that allowed a congregation to operate a synagogue in a residential zone without first obtaining a conditional use permit as required by the City's zoning ordinance. Neighbors of the synagogue filed suit, alleging that the settlement agreement was void for violating state law and their right to due process. The U.S. Ninth Circuit Court of Appeals agreed, holding the settlement agreement to be invalid. The court reiterated that:

Municipalities may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of the public. Any such agreement to circumvent applicable zoning laws is invalid and unenforceable.

The illegality of the settlement agreements has not gone unnoticed, including by the PLUM Committee. On October 10, 2008, the PLUM Committee passed a motion that "the City Attorney's office provide an update on recent lawsuits against the City challenging the settlements, and explain the current case law, including *Trancas Property Owners Association v. City of Malibu*, which raises questions about whether the billboard settlements were an unlawful surrender of city police power."

In November 2008, the City Planning Commission President included the following language in the draft ICO in an attempt to limit the impact of the settlement agreements:

WHEREAS, in 2006 and 2007, the City entered into settlement agreements regarding several of said legal challenges. The settlement agreements, which authorized the significant alteration of existing signs, did not apply either the California Environmental Quality Act or the prohibitions on contracting away

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municipal zoning and police powers as more fully set forth in the case *Trancas Property Owners Association v. City of Malibu*.

Despite their patent unfairness and illegality, not to mention the public controversy they have stirred, the settlement agreements remain in full force and effect today.

C. The Proposed Ordinance's Failure to Fully Address the Settlement Agreement Issues. Given the public outcry over the settlement agreements, one would expect the new ordinance to squarely address the issues the agreements present. Yet, the new ordinance at most only seeks to prevent future digital conversions. It ignores the existing digital signs, as well as the other unfair benefits accorded under the agreements. In doing so, the proposed ordinance perpetuates the current situation. The preferred sign companies are still allowed to maintain and operate all of the digital signs that violated applicable laws when erected and should never have been allowed in the first place. The City will continue to allow the companies to operate their other inventory as well, notwithstanding permit violations and noncompliances. Neighbors of the signs that have been "modernized" or re-permitted continue to have their rights to be heard ignored.

1. The Failure of the Initial Version of the Proposed Ordinance to Address the Settlement Agreements at All. While the current version of the proposed ordinance at least attempts to address future digital conversions, neither the initial draft of the sign ordinance nor the initial Planning Department Recommendation Report made any mention whatsoever of the settlement agreements. Nothing in those documents indicated (1) whether the proposed ordinance was meant to apply equally to all companies and individuals alike, and (2) if not, how the City could justify, on a policy and legal basis, adopting a new ordinance that would perpetuate this egregious double standard.

Further, no mention was made in the initial Recommendation Report of an important related matter—the City's recently enacted sign inspection program and the inequalities it presents. Under that new program, the City will inspect all billboards and then take enforcement action to the extent the signs are not properly permitted or do not comply with relevant laws. However, as noted above, the major companies already have had their signs re-permitted and grandfathered under the settlement agreements; thus, they face no enforcement risk under this new program.⁵ Nothing in the initial Recommendation Report explained how the City can justify, on the one hand, requiring that the smaller companies and the rest of the public comply with existing and future zoning laws and face significant enforcement risks if they do not – while, on the other hand, exempting the large companies from the zoning and inspection laws and immunizing them from enforcement risk for permitting violations.

⁵ The settlement agreements were designed to protect the large companies from virtually any enforcement action arising out of an inspection. Indeed, the agreements explicitly provide that the large companies shall not be subject to any future inspection program (like the City's newly enacted program) unless they choose to do so.

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2. The Failure of the Current Proposal to Address Anything Other than Future Digital Conversions. Summit raised the issues noted above in various stakeholder meetings with officials of the City Planning Department and the City Attorney's Office. These officials repeatedly stated that the new ordinance was meant to apply to all companies alike. However, since the ordinance did not say so explicitly, Summit again raised these issues before the CPC at its public hearing on March 18. In response, one of the proposed amendments approved at the March 26 CPC meeting was to amend the ordinance to add a short statement indicating that the ordinance's prohibition on digital displays applies regardless of any contrary provisions in the settlement agreements. See Recommendation Report at page 2-5, new draft ordinance at C-48.

Summit supports a level playing field. The City must either prohibit all modernizations or allow all companies to equally modernize their existing signs. There simply cannot be dual set of laws. In the proposed ordinance, it appears that the City will not allow any future digital conversions for any company. If this is to be the case, the proposed ordinance does not go far enough. The proposed ordinance simply fails to address the existing digital signs. Unless this is changed, the large companies will retain the approximately 100 digital billboards in the City which were permitted and erected under unfair and unlawful agreements. Moreover, based on their illegal agreements, the dominant companies will wind up with a monopoly on digital signs in the City. Unless the City disavows the settlement agreements and exercises its legislative and regulatory powers to revoke the permits and to compel removal, these signs will remain operating and generating profits far into the future. The biggest, dominant companies will have obtained and kept illegal benefits. And the affected public will remain harmed without any recourse.

Similarly, the proposed ordinance does not address any of the other special rights granted under the settlement agreement. Nothing in the proposed ordinance forbids the large companies from adding new, second faces to more than 200 of their billboards. Nor does anything explain how City can justify continuing the bizarre double regulatory scheme which allows some companies continue to alter their signs and erect new faces while the smaller companies do not have the right to substantially alter even a single billboard, let alone add second sides.

Equally, nothing addresses the broad exemption granted to the large companies, and thereby to more than 90% of all billboards in the City, from the permit requirements and enforcement risks under the the City's new sign inspection ordinance. Nor does anything explain how a double standard on this issue can be justified.

This is a country of laws that all must respect, and the City must ensure that the right to erect and maintain signs is granted – or, if appropriate, restricted – equally. There simply must not be a few privileged companies that are above the law.

3. The Failure to Explain the City's Ongoing Defense of the Settlement Agreements in Court. Finally, nothing in any document related to the proposed sign ordinance

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explains how the City can justify spending taxpayer money to continue to defend the unlawful settlement agreements in court in concert with CBS Outdoor and Clear Channel Outdoor. Summit has been questioning the fairness of these agreements since 2007. When Summit was unable to informally resolve the level playing field problems created by the agreements, it filed suit in Superior Court. *Summit Media LLC vs. City of Los Angeles, CBS Outdoor Inc., and Clear Channel Outdoor Inc.*, Case No. BS116611. CBS, Clear Channel Outdoor, and the City have responded by vigorously litigating in defense of the settlement agreements, arguing that they are legal and that the major companies are entitled to all the benefits of the agreements.

Summit readily understands the self-interest that motivates the large companies to take this position. However, it is unclear why the City is equally determined to defend the agreements alongside CBS and Clear Channel, particularly when taxpayer resources are so limited and the public so universally (and correctly) blames the settlement agreements for the problems that have led to the ICO and the effort to craft a new sign ordinance. It also is unclear how the City can take the contradictory legal position that the settlement agreements must give way to a new sign ordinance – which, among other things, will forbid erection of digital signs – while arguing simultaneously in court that the City's current (2002) sign ordinance is superseded by the settlement agreements. If the law provides and the City agrees that no one is above the law and the City can never bargain away its police powers, then the settlement agreements are as illegal today as they will be after a new sign ordinance is enacted.

III. Conclusion. First, the PLUM Committee should send the ordinance back to the CPC for reconsideration and order the CPC to hear and consider public comment regarding, at minimum, the proposed amendments and recommendations. This is the only way to satisfy the requirements under the Brown Act.

Second, the PLUM Committee should take advantage of the opportunity presented by the proposed sign ordinance to right the numerous wrongs represented by the settlement agreements. Those agreements grant the four largest companies extraordinary rights to the detriment of their smaller competitors and the public both. The law could not be clearer—these settlement agreements are not only egregiously unfair but invalid and unenforceable as well. The people of Los Angeles deserve nothing less than for the City to find the quickest way to get out of these unlawful agreements without further delay. The City needs confront this major problem head on.

Summit urges the PLUM Committee to remedy the situation not simply in part, but in whole, by making clear that, going forward, any new City sign ordinance applies fully and equally to all companies notwithstanding any contrary provisions in the settlement agreements. The same clarification must be made with respect to the City's new sign inspection program—it must apply equally to all companies alike. Unless the City is prepared to address the existing unfairness by granting equal digital conversion, alteration, and permit grandfathering rights to the small companies without settlement agreements, the PLUM Committee should immediately explore the possibility of disavowing the settlement agreements and revoking the digital conversion and other permits already issued under the agreements. Indeed, unless the City finds

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a way to undo the countless permits that have been issued under the "modernization" or re-permitting provisions of the settlement agreements, the playing field will remain permanently tilted in favor of the large companies and more than 90% of the billboards in the City (including numerous unpermitted or illegally modified signs and 100% of the existing digital signs) will forever remain comfortably out of reach of the City's inspection and enforcement codes. The public and Summit have been fighting these agreements for more than two years. At the very least, the City should stop opposing Summit's efforts to invalidate the settlement agreements in court.

Only by directly and explicitly addressing these settlement agreements in their entirety will the City be able to right all the wrongs these agreements have created, and to enact a new sign ordinance that applies equally to everyone in Los Angeles.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip R. Recht", written in a cursive style.

Philip R. Recht