

Seena Max Samimi
ssamimi@jmbm.com
Direct: 310-785-5344

1900 Avenue of the Stars, 7th Floor
Los Angeles, California 90067-4308
(310) 203-8080 (310) 203-0567 Fax
www.jmbm.com

January 28, 2019

VIA ELECTRONIC MAIL

Ventura County Planning Commission
Hall of Administration
Resource Management Agency/Planning Division
Attn: Meighan Batinica
800 S. Victoria Ave., L#1740
Ventura, CA 93009-1740
meighan.batinica@ventura.org
shelley.sussman@ventura.org
Plan.Counter@ventura.org

**Re: Comment Letter to Proposed Amendments to the Ventura County
General Plan and Articles 2, 3, 4, 5, 9, and 18 of the Ventura County
Non-Coastal Zoning Ordinance, PL 16-0127**

Dear Honorable Planning Commissioners:

This office is counsel to the Ventura County Coalition of Labor, Agriculture, and Business ("CoLAB"), a non-profit membership organization formed in 2010 to support land based and industrial businesses including farming, ranching, oil, mining, and service, and to promote sensible and rational local government. CoLAB identifies and researches issues that impact businesses, and works with regulatory agencies, organizes stakeholders and proposes solutions to problems that impact Ventura County ("County"). CoLAB advocates for businesses through local regulation, providing expertise, research and educational campaigns to inform the public.

I. INTRODUCTION

CoLAB supports reasonable efforts to minimize impacts to wildlife movement within the County. However, many of the regulations in the proposed Amendments to the Ventura County General Plan and Articles 2, 3, 4, 5, 9, and 18 of the Ventura County Non-Coastal Zoning Ordinance, PL 16-0127 ("Ordinance") are legally flawed and scientifically unsupported, unwarranted, and unnecessary. If the required environmental review had been conducted pursuant to the California Environmental Quality Act ("CEQA"), the appropriate analysis and weighing of alternatives could have provided a scientifically sound and accurate basis upon which to protect wildlife movement and corridors. Due to the County's legally deficient

County of Ventura
Planning Commission Hearing
PL16-0127

Exhibit C - Letter Received from JMBM,
Seena Samimi

A Limited Liability

Angeles • San Francisco • Orange County

determination that the Ordinance is exempt from CEQA, the County's proposal is rife with potentially significant environmental impacts, unintended consequences, and negative effects to property owners throughout the County.

We write to urge the Planning Commission, and the County, to do two things in connection with the Ordinance: 1) conduct the mandated environmental review required by CEQA; and 2) modify the Ordinance to address the flawed scientific methodology, and legal issues with the County's proposal.

First, the County must conduct a proper environmental analysis of the Ordinance, as is required by CEQA and relevant local regulations. The County has instead relied on outdated studies from 2005 and 2006 that do not consider recent changes in the environment, community conditions, **or the tragic recent fires**. The Ordinance therefore lacks any scientific foundation—and therefore lacks a substantial evidentiary basis—for the regulations that it has proposed. The County's reliance on a "common sense" exemption to CEQA review is legally misinformed, and completely inadequate. Importantly, the County's Ordinance will have several significant impacts on the environment – none of which have been analyzed – including, but not limited to 1) fire hazards, 2) traffic and circulation impacts, 3) air quality impacts, 4) impacts to agriculture, 5) impacts to mineral resources, 6) greenhouse gas impacts, and 7) community character. The memorandum from Environmental Consultants ECorp Consulting Inc. ("ECorp"), which is attached hereto as **Exhibit 1**, provides a detailed analysis of the potential environmental impacts of the Ordinance, all of which will be discussed in further detail below. Of particular concern, however, is the potentially devastating impact of the contribution of the Ordinance to wildfires, due to proposed restrictions on brush clearance that have not been properly studied or analyzed with adequate environmental review – a tragic oversight, especially in the aftermath of the destructive Thomas, Hill, and Woolsey fires.

Second, as written, the Ordinance is both legally and scientifically flawed, and requires some common-sense modifications to rectify these issues. Legally, it constitutes a regulatory taking of private land that would require just compensation, violates the Equal Protection and Due Process rights of property owners throughout the County, and does not have a legally adequate amortization period. Scientifically, the County's methodology is flawed and incomplete, as addressed in Ecorp's memorandum attached hereto as **Exhibit 2**. As such, we urge the County to modify the Ordinance to focus on the real barriers to wildlife movement in the County. These include the major highways, the large connector roadway network, and scientifically based overlay zone maps that accomplish their stated objectives. Highways, the critical barriers to movement, are responsible for killing wildlife, and no amount of restrictions on properties will reduce this risk. Rather, the proposed Wildlife Corridor Overlay Zone places extreme restrictions on private property, including fencing, walls, lighting, and development regulations that will make it more difficult for families to secure their property from intruders, and prevent property owners from making full use of their land. The changes proposed herein and in **Exhibit 2**, could rectify many of these issues.

Prudent, informed, and smart regulations improving wildlife corridor connectivity is a shared goal among CoLAB and the County. However, what the County has done at this juncture with the Ordinance is not prudent, informed, or smart. Indeed, it will be impossible for the County to craft a prudent Ordinance without the requisite CEQA environmental review, in which the appropriate experts can review and analyze the potential environmental impacts of the regulations, so that they will be supported by science and an adequate analysis.

Section 2 of this letter summarizes the Ordinance, and identifies some of the key restrictions contained in the legislation. Section 3 discusses the legal standard under CEQA, and specifically, for the claimed exemptions to CEQA review. None of the County's claimed exemptions are applicable here, either because they fail to meet the requisite legal standard, or because there are applicable exceptions to the exemptions, or both. Section 4 addresses the various potentially significant environmental impacts of the Ordinance, showing why it is disqualified from any Categorical Exemption and unequivocally requires CEQA review. This section distills the analysis provided by ECorp in **Exhibit 1**, showing that despite the clear triggering of various thresholds of significance, the County has ignored its own guidelines and proceeded with its purported exemptions. Section 5 discusses the legal flaws with the Ordinance, as currently written, including analyses relating to regulatory takings, Equal Protection, Due Process, and inadequate amortization. Section 6 proposes scientifically-backed common sense modifications to the Ordinance such that it would better achieve its goals without imposing such a high burden on effected property owners. Section 7 concludes.

II. SUMMARY OF THE WILDLIFE CORRIDOR ORDINANCE

A. History of The Studies that Have Taken Place That Led to the Drafting of the Ordinance, Without Conducting a Proper Environmental Review

There were two linkage connections mapped by South Coast Wildlands ("SCW") that apply to the Ordinance: Sierra Madre-Castaic (primarily in the Los Padres National Forest), and Santa Monica-Sierra Madre (primarily in the southern half of the County). The reports for these two connections were finalized in 2005 and 2006, over 13 years ago. SCW anticipated that the resulting linkage plan documents would be used as planning-level tools and would not be regulatory in nature. As such, linkage documents were published with the following caveat: "Results and information in this report are advisory and intended to assist local jurisdictions, agencies, organizations, and property owner in making decisions regarding protection of ecological resources and habitat connectivity in the area."

The linkage designs that resulted from the modeling for the two connections were intended to provide a scientifically sound starting point for conservation implementation and evaluation. However, the modeling efforts to construct the linkages were flawed and outdated. (See **Exhibit 2**.) While many of these analytical techniques may have been appropriate at the time they were conducted, almost 15 years have passed since the corridor models were developed, with no updates to the models themselves. Variables in the permeability analysis such as road density

and land cover/use are sure to have changed since 2005 and 2006. New data sources would affect the preferences and distribution of species and thus the location and utility of these corridors.

Because no thorough environmental review of the proposed Ordinance has taken place, there has been no recent review of the methodology or adequacy of the scientific assumptions that the County has made in drafting its Ordinance. Put differently, though the Ordinance is meant to protect wildlife corridors and movement, there is no evidence that the County's proposal will do so. Indeed, ECorp's analysis contained in **Exhibit 2** identifies several problems with the County's methodology and analysis, demonstrating the need either for modifications to the Ordinance, or for a proper analysis by the County (which CEQA necessitates).

B. General Objectives of the Ordinance

The County already has a system in place whereby discretionary projects are subject to the CEQA process, in which impacts to wildlife movement corridors are evaluated and mitigated where appropriate. The County's current General Plan, Land Use Maps, Non-Coastal Zoning Ordinance (NCZO), Subdivision Ordinance, and Initial Study Assessment Guidelines (as they are written, and without the need for any modification) all provide opportunities for regulating impacts of discretionary actions to wildlife movement corridors.

However, the County currently has no mechanism to regulate impacts to wildlife movement corridors for non-discretionary, ministerial actions that do not trigger CEQA review. The Ordinance purports to impose such restrictions on ministerial actions, as well as expand the breadth of regulations in discretionary actions. Newly proposed regulatory language in the General Plan and NCZO will now ensure that wildlife corridor impact reviews and mitigation would be applied consistently between discretionary and ministerial/exempt actions.

In approving and implementing the proposed Ordinance, the County believes it will improve countywide habitat connectivity between protected resource areas such as the Santa Monica Mountains National Recreation Area and the Los Padres National Forest. Subordinate objectives to achieve this overarching goal through the proposed ordinance include:

1. Minimizing habitat fragmentation within designated habitat connectivity corridors.
2. Maintaining corridor widths or enhancing corridor "chokepoints" (constrictions) to facilitate species movement between natural areas.
3. Minimizing direct physical barriers to wildlife movement (e.g. buildings, high-fences, large roads).
4. Minimizing indirect barriers to wildlife movement (e.g., nighttime lighting, noise, vegetation degradation, predatory domestic animals (dogs, cats)).

Ultimately, the proposal of the Ordinance is that the relevant regulations be amended to add two new overlay zones to contribute to achieving these objectives, including:

1. Habitat Connectivity and Wildlife Corridor (HCWC) Overlay Zone
2. Critical Wildlife Passage Area (CWPA) Overlay Zone

C. Habitat Connectivity and Wildlife Corridor (HCWC) Overlay Zone

The purpose of the HCWC Zone is to preserve functional connectivity of regional habitat linkages by minimizing the impacts of barriers, habitat fragmentation, and corridor chokepoints. In total, approximately 520,000 acres are designated as HCWC within the County. The broad HCWC Overlay Zone, as maintained in the County GIS, imposes five major conditions on development and/or use, applicable to new construction, reconstruction, addition, modification, alteration, relocation, and replacement of structures, or alteration of a physical site, within all properties in the mapped HCWC Zone:

1. **Surface Water Feature Buffers.** Development of new structures, new uses of existing structures, or vegetation removal within 200 feet of a surface water feature (lake, pond, creek), as mapped by the National Wetlands Inventory, will require a discretionary Planned Development Permit from the County, triggering CEQA compliance.
2. **Outdoor Nighttime Lighting.** All outdoor lighting installed after the Ordinance is effective must be (a) fully shielded fixtures, (b) shall have maximum installation heights (varies), (c) shall be no more than 3,000 kelvin on the chromaticity scale, and (d) shall have a maximum brightness of 850 lumens per fixture. Other compliance criteria would be required for security lighting, parking area lighting, outdoor recreation area lighting, service station lighting, wireless communication facility lighting, and greenhouse lighting. Existing outdoor lighting that does not meet these compliance criteria will have just a 1-year period to be made compliant. If not made compliant, existing non-compliant lighting must be turned off between 10 pm and sunrise. Notably, the Ordinance imposes rules for outdoor lighting throughout the Overlay Zone that are even more strict than the recent Dark Sky ordinance adopted for the Ojai Valley, and will prevent people from enjoying their property at night. Lighting, including security lighting, will be restricted to 60 watt bulbs during curfew hours without a motion sensor. Lighting for driveways and walkways will be limited to 20 watt equivalent bulbs, a light level that will promote accidents for people in back yards, patios, and passageways. Landscape uplighting will be prohibited.
3. **Wildlife Crossing Structure Buffers.** Vegetation removal within 300 feet of a high-functioning wildlife crossing structure or within 100 feet of a moderately-functioning wildlife crossing structure will require a Planned Development Permit, triggering CEQA compliance.
4. **Invasive plant species.** Invasive plants not commercially grown for agricultural markets may not be planted in the HCWC Overlay Zone.
5. **Wildlife Impermeable Fencing.** Wildlife Impermeable Fencing ("WIF") is defined as including one or more of the following design features, (a) greater than 60 inches above ground level, (b) electrified, or (c) solid walls or fencing or wrought iron, plastic mesh,

woven wire, razor wire, chain link fencing. WIF on lots zoned as Open Space or Agricultural Exclusive, are essentially banned, and may only be permitted through either a ministerial or discretionary permitting process.

- a. WIF may be permitted via the ministerial permitting process if (a) new fencing will not enclose more than 10 percent of a lot gross area containing no existing WIF, (b) fencing will not enclose more than 10 percent of a lot gross area containing existing WIF, including new and existing WIF.
- b. If not exempt or otherwise available through a ministerial permit process, WIF may be permitted via the discretionary permitting process by applying for a Planned Development Permit, triggering CEQA compliance.

There are some limited exemptions to HCWC requirements:

- ❖ Restoration of lands to their prior condition following natural disasters
- ❖ Construction of any structure pursuant to Ordinance Section 8113-6
- ❖ Planting of crops or orchards for commercial sale
- ❖ Removal of crops or vegetation on important agricultural lands
- ❖ Wildlife Impermeable Fencing to enclose commercially grown agricultural crops or products.
- ❖ Vegetation removal as part of an approved restoration plan
- ❖ Removal of landscape vegetation
- ❖ Vegetation modification for fuel management
- ❖ Vegetation removal for public safety
- ❖ Lands subject to more restrictive standards under other permits
- ❖ Lands otherwise exempt by law

The Planning Director may authorize deviations during the processing of a discretionary permit or approval only if an applicant can provide facts to support that the deviation will be the functional equivalent of implementing HCWC standards or requirements.

D. Critical Wildlife Passage Area (CWPA) Overlay Zone

In addition to the HCWC Overlay Zones, the County has proposed an even more restrictive overlay zone in certain areas that it has deemed to be particularly "critical." The purpose of the CWPA Zones is to address habitat fragmentation by requiring that structures be sited in "compact development" patterns within individual lots, thereby preserving more space for species movement. In simpler terms, this means that property owners within the CWPA overlay zone will only be allowed to build on 50% of their property. These designated areas are not "choke points" or narrow areas of the corridors and it is unclear how they were chosen based on biological principles. (See **Exhibit 2.**)

Three CWPAs (totaling 9,311 acres) were identified on map exhibits by the County, all of which are contained within the County-designated HCWCs. These zones were unilaterally identified by the County (again, with no environmental review or scientific basis) because they purportedly

have the following characteristics: (a) are relatively intact and high value habitat areas, (b) are near water sources or ridgelines, (c) are near important road crossings points or structures, (d) are at risk from future development projects, or (e) are within corridors linking important habitat core areas. The CWPA Overlay Zone in the Ordinance applies to these three areas only:

1. **The Oak View CWPA** is 1,138 acres and is located on a ridgetop between Lake Casitas (to the west) and the City of Oakview (to the east). Urban development within this CWPA is minimal, with extensive agricultural development of roughly 82% and ranch lands with homes and animal keeping of approximately 18%.
2. **The Simi Hills CWPA** is 5,027 acres and is located in the mountainous region between Simi Valley (to the west) and Chatsworth/Canoga Park (to the east). Approximately 38% of this CWPA currently supports urban development. Active agriculture forms a very small portion of existing land use, while relatively undeveloped lands are approximately 60% of the land cover type.
3. **The Tierra Rejada CWPA** is 3,146 acres and is located in the mountainous region between Moorpark (to the west) and Simi Valley (to the east). Urban development within this CWPA is modest, with approximately 48% agricultural development and 45% of ranch lands with many family homes and agricultural related businesses. Importantly, without adoption of the mapped corridors through developed areas in the adjacent Cities of Simi Valley and Thousand Oaks, there will be no connection to the Santa Monica Mountains through the Tierra Rejada CWPA.

CWPA Compact Development Standards: Because the three CWPA Overlay Zones are subsets of the HCWC Overlay Zone, properties located within CWPAs are also subject to 100% of the HCWC regulations noted above. In addition to HCWC restrictions, CWPA-located properties greater than 2 acres in size must comply with “compact development standards” in the draft Ordinance, requiring no new development or uses on one-half of the lot acreage.

1. CWPA compact development standards would apply to:
 - a. Parcels of 2 or more acres in size, restricting 1) new structures or land uses that are not exempt, 2) additions to existing structures, and 3) installation of new or replacement WIF that forms an enclosed area on parcels zoned Open Space or Agricultural Exclusive, even if such fencing is used for livestock grazing.
 - b. Any addition to any existing structure or modification to any existing use on lots larger than 2 acres.
 - c. Lots zoned commercial (CO, C1, PPD) are exempt from all CWPA restrictions. In addition, lots zoned residential (RA, RE, RO, R1, R2, RPD, RHD) in the Simi Hills CWPA are not subject to CWPA restrictions.
2. WIF enclosures are severely restricted within a CWPA as compared to the HCWC Zone. There is no exemption allowing fencing on up to 10% of the lot without complying with the compact development siting standard. All such WIF would be subject to either the compact development standards or a discretionary action requiring CEQA review in compliance with Initial Study Assessment Guidelines.

3. Compact development requirements in the CWPA may be approved through either a ministerial or discretionary permitting process.
 - a. A zoning clearance through the ministerial permitting process may be used to approve a new structure that meets one or more of the following standards: (a) the compact development siting standard, (b) located within 100 feet of the centerline of a public road, (c) located entirely within 100 feet of an existing legally-established structure or (d) is located entirely within 100 feet of an agricultural access road that supports the production of commercially grown agricultural products.
 - b. If not exempt or otherwise permittable through the ministerial process, compact development in a CWPA may be permitted via the discretionary permitting process by applying for a PDP. County issuance of a PDP would be a discretionary action triggering CEQA compliance.

There are some exempted uses in the CWPA requirements, and the Planning Director may authorize deviations for non-exempt uses and structures during the processing of a discretionary permit or approval only if an applicant can provide facts to support that the deviation will be the functional equivalent of CWPA objectives.

III. CEQA LEGAL STANDARD

A. CEQA Generally Requires Analysis of Environmental Impacts on Projects

CEQA, found at Public Resources Code § 21000, *et seq.*, is based upon the principle that “the maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” (Pub. Res. Code § 21000(a).) In CEQA, the Legislature has established procedures designed to achieve these goals—principally, the Environmental Impact Report (“EIR”). These procedures provide both for the determination and for full public disclosure of the potential adverse effects on the environment of discretionary projects that governmental agencies propose to approve, and require a description of feasible alternatives to such proposed projects and feasible mitigation measures to lessen their environmental harm. (Pub. Res. Code § 21002.)

CEQA is not merely a procedural statute; it imposes clear and substantive responsibilities on agencies that propose to approve projects, requiring that public agencies not approve projects that harm the environment unless and until all feasible mitigation measures are employed to minimize that harm. (Pub. Res. Code §§ 21002, 21002.1(b).)

CEQA defines a project as “the whole of an action, which has a potential for resulting in either a direct physical change to the environment, or a reasonably foreseeable indirect physical change in the environment.” (CEQA Guidelines § 15378(a).) In this case, the "project" is the passage of the Ordinance. Adoption of a zoning ordinance is a project under CEQA. Enactment and amendment of zoning ordinances are specifically listed under examples of discretionary projects

in CEQA. (Public Resources Code Section 21080(a).) The Staff Report also acknowledges that the Ordinance is a project: "the proposed GP and NCZO amendments are considered a CEQA 'project'." (Staff Report at p. 32.)

Also, Section 4.2 of the County's *Administrative Supplement to the State CEQA Guidelines* specifically lists enactment and amendment of zoning ordinances are "projects" subject to CEQA. Furthermore, recent case law makes it clear that a zoning ordinance is a project subject to CEQA if it may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2016) 4 Cal.App.5th 103)

Because the proposed Ordinance's purpose is to cause physical changes to the environment by changing how private and public land is managed, the adoption of the ordinance must be subjected to CEQA review.

Failure either to comply with the substantive requirements of CEQA or to carry out the full CEQA procedures so that complete information as to a project's impacts is developed and publicly disclosed constitutes a prejudicial abuse of discretion that requires invalidation of the public agency action regardless of whether full compliance would have produced a different result. (Pub. Res. Code § 21005.)

The CEQA Guidelines establish procedures for calculating the baseline environmental conditions, including a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time of the environmental analysis is commenced. (CEQA Guidelines § 15125(a).)

Agencies may not undertake actions that could potentially have a significant adverse effect on the environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA. (CEQA Guidelines § 15004(b)(2).) The "lead agency," the public agency that has the principal responsibility for carrying out the project (in this case, the County), is responsible for conducting an initial study to determine, in consultation with other relevant state and local agencies, whether an environmental impact report, a negative declaration, or a mitigated negative declaration will be prepared for a project. (Pub. Res. Code §§ 21067; 21080.1(a); 21083(a).)

"All phases of project planning, implementation, and operation" must be considered in the Initial Study for a project. (CEQA Guidelines § 15063(a)(1).) After an Initial Study, an EIR must be prepared "[i]f there is **substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment. . . .**" (Pub. Res. Code § 21080(d) [emphasis added].) That is, an EIR must be prepared "if a lead agency is presented with **a fair argument** that the project **may have** a significant effect on the environment **...even though it may also be presented with other substantial evidence that the project will not have a significant effect.**" (Guidelines § 15064(f)(1) [emphasis added].)

The CEQA Guidelines charge public agencies with the responsibility of avoiding or minimizing environmental damage where feasible. As part of this responsibility, public agencies are required to balance various public objectives, including economic, environmental, and social issues. CEQA review is integral to that process, informing decision-makers and the general public what significant environmental effects might result from a proposed project. In addition, the process identifies possible means of mitigating any significant effects and presents reasonable alternatives to the project.

B. CEQA Analysis Must be Prepared as Early as Feasible in the Planning Process

A basic tenet of CEQA is that environmental analysis should be prepared “as early as feasible in the planning process to enable environmental considerations to influence project program and design.” (CEQA Guidelines Section 15004(a).). Additionally, “environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively” (CEQA Guidelines Section 15004(c)).

Section 4.1 of the County’s *Administrative Supplement to the State CEQA Guidelines* states that “with all County-initiated projects environmental considerations should be incorporated into project conceptualization, design and planning at the earliest feasible time. All County agencies/departments governed by this Administrative Supplement shall not undertake a project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before the completion of CEQA compliance.”

Here, because the requisite CEQA analysis has been abandoned entirely, the County has lost its opportunity to start the process "as early as feasible in the planning process." Thus, to the extent the County eventually performs the legally required CEQA analysis, it will then need to go back and make modifications to the Ordinance "to enable environmental considerations to influence project program and design."

Significant or potentially-significant impacts arising from the Ordinance have not been adequately identified, analyzed or mitigated.

C. The Common Sense Exemption to CEQA Review

Prior to enacting the Ordinance, the County was required to comply with CEQA by studying and mitigating any significant or potentially-significant environmental impacts and evaluating a range of feasible project alternatives that could potentially avoid any impacts altogether.

The County, however, has simply dispensed with any CEQA review whatsoever, relying instead on the so-called “common sense exemption” set forth in 14 California Code of Regulations, § 15061(b)(3) (“CEQA Guidelines”), foregoing the entire CEQA process that is normally undertaken—and required—for a legislative action of this magnitude. The County did not undertake an Initial Study to determine, in consultation with other relevant state and local agencies, whether an environmental impact report, a negative declaration, or a mitigated negative declaration will be prepared for the project. As such, the County also did not undertake any of those three environmental analysis options under CEQA. An ordinance of this magnitude requires CEQA analysis, starting with an Initial Study, and leading to an appropriate environmental analysis.

Under the terms of the exemption, the evidence must support an agency determination that “**it can be seen with a certainty that there is no possibility that the activity in question may have a significant effect on the environment.**” (*Id.* [emphasis added].) Importantly, the decision to proceed under CEQA Guidelines § 15061(b)(3) must be supported by **substantial record evidence**, and the agency relying upon the exemption bears the burden of proving its applicability.

In spite of the potential environmental impacts relating to fire hazards, agricultural resources, mineral resources, vehicle traffic, air quality, and the like (addressed in further detail in the section below) the County unlawfully issued a Notice of Exemption under the common sense exemption – boldly ignoring the legal standard, which would require CEQA analysis even if there is a ***possibility of significant effect on the environment***.

The County’s action fails to acknowledge the significant environmental impacts that will arise from the passage and enforcement of the Ordinance, and fails to comply with the fundamental information and mitigation dictates of CEQA. The County cannot meet its burden of proving that there is ***no possibility*** of significant environmental impacts here. Indeed, the County failed to even conduct the necessary studies that would have analyzed whether or not such environmental impacts exist, and by definition, there is no substantial record evidence supporting the Notice of Exemption based upon CEQA Guidelines § 15061(b)(3). To add insult to injury, the County’s own Initial Study Assessment Guidelines, which set forth thresholds that would trigger environmental review under CEQA in dozens of different categories has been completely ignored. Even though those thresholds have been surpassed in numerous areas, the County has neglected its responsibility to conduct CEQA review.

The County’s blatant disregard of its responsibilities under CEQA cannot stand.

D. The County's Reliance on the Exemptions for Actions by Regulatory Agencies for Protection of Natural Resources and the Environment is Misplaced, due to the Applicability of Several Exceptions to the Exemptions

1. The County's Reliance on Two Exemptions for Protection of the Environment Ignores the Exceptions to the Exemptions

Acknowledging that the "common sense" exemption plainly does not meet the relevant legal standards for its application, the County also relies on two additional exemptions to avoid CEQA review:

1. CEQA Guidelines Section 15307: Actions by Regulatory Agencies for Protection of Natural Resources
2. CEQA Guidelines Section 15308: Actions by Regulatory Agencies for Protection of the Environment

Although these exemptions may initially appear to apply to the project, the CEQA Guidelines Section 15300.2 provides several exceptions to the exemptions that disqualify their use. Some of those exceptions apply here; therefore, the County cannot avoid the mandated CEQA review. CEQA Guidelines Section 15300.2, provides, in relevant part:

15300.2. Exceptions

...

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements which are required as mitigation by an adopted negative declaration or certified EIR.

...

Each of these exceptions to the exemptions are addressed in the sections below, in order of significance. Note that these exceptions to the exemptions also apply equally to the County's purported "common sense" exemption, though they are not needed to rebut that exemption, because the County has not been able to show that it meets the legal standard for it to apply.

2. **Exception to Exemption Based on Unusual Circumstances: Fires, Agricultural Resources, and Mineral Resources**

The standard of review for categorical exemptions and the unusual circumstances exception was articulated in the California Supreme Court's recent decision in *Berkeley Hillside Preservation v. City of Berkeley* (2016) 60 Cal.4th 1086. At the administrative level, a challenger must prove to the agency that 1) there are unusual circumstances, and 2) there is a reasonable possibility of a significant impact because of those circumstances. (*Id.*; *Respect Life South San Francisco v. City of South San Francisco* (2017) 15 Cal.App.5th 449.)

Here, there are 3 types of unusual circumstances that negate the applicability of the categorical exemptions: 1) fires, 2) agricultural resources, and 3) mineral resources.

The first unusual circumstance is the recent and ongoing problem of devastating fires throughout the region. Though the fire hazard is described in more detail in Section IV.A below, the underlying issues should be obvious to the public and decision makers here. The recent fires that have ravaged the entire region have changed the landscape of thousands of acres that are within the overlay zones, and thousands more that are in grave danger. With climate change promising to exacerbate the conditions that give rise to even more wildfire damage in the coming years, it is not only irresponsible, **but dangerous**, for the County to adopt the Ordinance with a categorical exemptions while utterly ignoring the potential effects of 1) the Ordinance on future fires, and 2) the effects of past fires on the Ordinance.¹ Any suggestion that this represents an effect merely of the environment is misplaced: as the California Supreme Court has stated, "when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency **must** analyze the potential impact of such hazards on future residents or users." (*Calif. Bldg. Industry Assn. v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal.4th 369, 377 (2015) [emphasis supplied].) Here, the County failed even to consider the degree to which the Ordinance may exacerbate recent and more severe fire conditions, in violation of CEQA's dictates. A proper environmental analysis through CEQA would allow the County to actually have at its disposal a scientifically based review of the regions devastated by the fires, and the fire-risk regions that will be effected by the Ordinance.

The second and third unusual circumstances are the fact that there is a large portion of the land affected by the overlay zones that include areas with agricultural and mining resources. Yet, the

¹ Exhibit 19, the 1-sentence comment from the Fire Chief, does not speak to this issue. It only states: "we believe there are sufficient accommodations and exemptions in the ordinance to allow the Ventura County Fire Department the ability to maintain vegetation management and fuel treatments in the proposed wildlife corridors." This does not address whether there is an increase to wildfire risks due to the Ordinance, or the fact that the effects of previous fires, and the potential for the Ordinance to exacerbate the risk of future fires, were not evaluated. Further, without any factual foundation, it cannot constitute substantial evidence for the purposes of CEQA. See CEQA Guidelines §15384.

effects to these resources were not evaluated at all through the CEQA process. These potential impacts to agricultural and mining resources (and the fact that the impacts exceed the thresholds of significance identified in the County's Assessment Guidelines) are addressed in more detail in Sections IV.B and IV.C below.

The unusual circumstances present here, and the potential for significant environmental impacts as a result of those circumstances, constitute an exception to the exemptions claimed by the County.

3. Exception to Exemption Based on Cumulative Impacts

When the "cumulative impact of successive projects of the same type in the same place, over time is significant," the exception does not apply. In this case, in addition to the overlay zones at issue in this Ordinance, there are also similar preservation projects in the vicinity that need to be analyzed in conjunction with each other. This relates closely with the fire hazard issue addressed in Section III.C.2 above, and Section IV.A below. The impacts of the past fires have not been analyzed at all in connection with this Ordinance. The future impacts of the Ordinance on wildfires has also been entirely ignored through the analysis that is currently in place. When this phenomenon is combined with the cumulative effects of other similar preservation zones, open spaces, and green belts in the area, which can prevent certain activities such as brush clearance, the problem is even further exacerbated. These cumulative impacts constitute an exception to the exemptions claimed by the County.

4. Exception to Exemption Based on Scenic Highways

A categorical exemption is prohibited in "a project which may result in damage to scenic resources...within a highway officially designated as a state scenic highway." In this case, highway 33 is a designated State scenic highway. The recent fires, and future fire risks that will be exacerbated by the Ordinance, can contribute to risks of mudslides and land-stability issues that can result in damage to a State designated scenic highway.

5. County's Procedural Maneuvering to Avoid CEQA Review is Ineffective, as the Project Triggers CEQA Review

The Ordinance was originally part of the General Plan Update, which would have necessarily required it to go through the EIR process. Indeed, the consultant hired to conduct the Habitat Connectivity and Wildlife Corridors Project was the same one hired to do the comprehensive General Plan Update analysis.

Notably, the Board of Supervisors then "elected to complete this project ahead of the GPU

schedule," and put the wildlife corridors program on a different scheduling path. This is confirmed in the Ventura County General Plan 2017 Annual Report at pages 15-16.² When the Board of Supervisors voted to take the Ordinance out of the General Plan process (attempting to claim several CEQA exemptions), it abandoned the original plan for the project to undergo CEQA review: "After obtaining comments from all groups, including affected County agencies, property owners, and stakeholders, staff will finalize the draft documents, **complete environmental review** and conduct adoption hearings before the Planning Commission and the Board of Supervisors." (*Id.* at p. 16 [emphasis supplied].) This procedural maneuvering by the County to remove the wildlife corridors project from the General Plan Update process is likely a direct effort to avoid CEQA review, for a project that plainly has potentially significant environmental impacts (as detailed in Section IV below).

Nonetheless, because of the many exceptions to the exemptions that are applicable here under CEQA Guidelines 15300.2(b), (c), and (d), the County's attempted procedural machinations are not enough to avoid CEQA review, as the project does not properly qualify for any of the exemptions cited. Thus, the County must prepare an initial study to determine whether any of the thresholds of significance are surpassed and the appropriate level of environmental review given the potential significance of any identified impacts.

IV. THE POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACTS OF THE ORDINANCE

ECorp has prepared a thorough analysis of the potentially significant environmental impacts that will result from the Ordinance, attached hereto as **Exhibit 1**.³ Importantly, in order to determine whether an impact is significant, the County has established guidelines that identify specific thresholds in over 35 categories.⁴ ("Assessment Guidelines.") Despite the thresholds being unequivocally surpassed in several different areas, the County has stubbornly opted to stand by its purported categorical exemptions.

Note that any one of these thresholds being met or exceeded would trigger CEQA review. Here, seven different categories independently do so.

² Available at

<http://bosagenda.countyofventura.org/sirepub/cache/2/21ccglfeoycsr0gxpmu20nip/108495601252019032635473.PDF>

³ To avoid constant citations to **Exhibit 1**, Section IV has followed the format of ECorp **Exhibit 1**, such that all factual references can be found in the relevant portions therein (unless citations to other recourses are provided).

⁴ Ventura County Initial Study Assessment Guidelines, found at https://docs.vcrma.org/images/pdf/planning/ceqa/current_ISAG.pdf

A. Fire Hazards

The entire region has been devastated by recent fires that have effected homes, businesses, communities, and even the very wildlife that the Ordinance is designed to protect. Yet, the Ordinance itself does not account for the fact that its provisions can lead to even more severe fires in the future, and tragically, preventing the ability of homeowners to protect their homes and properties.

Section 18 of the Assessment Guidelines states that projects located in High and Very High Fire Hazard Areas/Fire Hazard Severity Zones or Hazardous Watershed Fire Areas would have a significant fire hazard impact. Over 135,000 acres of the proposed corridors are within these areas. For this reason alone –that the project spans such a large area of the high fire hazard areas and would restrict vegetation clearing activities– the Ordinance must be subject to further CEQA review. To allow for vast areas of high fire hazard areas to be regulated without environmental review, would not only be irresponsible, it would be outright dangerous.

The County's Fire Protection District Hazard Abatement program calls for the clearing of brush, flammable vegetation, or combustible growth located within 100 feet of structures or buildings. The Ordinance would change the way vegetation is removed or managed in ways that could result in an increase in fire hazards and severity. Although the Assessment Guidelines focus on brush clearing within 100 feet of structures, limitations on brush clearing in unincorporated areas (except for within 100 feet of structures) could change the potential fire regime in this area, exacerbating fire hazards for both humans and wildlife. An uncontrolled wildfire, exacerbated by limitations in brush clearing, would have significant effects on wildlife and their habitat, even if the 100-foot buffer around structures caused no effects to structures or buildings.

The Ordinance also bans native vegetation removal within 200 feet of the edge of supposed water features from a map using antiquated and unreliable satellite imagery. Without field checking, the maps have no basis in reality and **the County admits that manmade agricultural ponds need to be removed from the maps.** (See **Exhibit 2.**) This will cause confusion for landowners, who will be unable to determine the extent of these areas on their properties, or who might be burdened by inaccurate maps or the failure of the County to curate the maps according to the conditions existing on the ground. The Ordinance requires that a property owner must hire a biologist to remove any relic and man-made water features from the map. This burden-shifting and cost-shifting to property-owners is totally unacceptable, especially because the County simply should have done its job right the first time around (through requisite CEQA analysis and on-the-ground studies). Such measures would be expensive, intrusive, and unrealistic. In light of the three devastating fires in 2017 and 2018, rules limiting brush clearance on private property shows the County's complete lack of consideration for the health and safety of county residents.

Rules limiting brush clearance will increase the fire danger in communities in the urban interface zones, of which there are many in Ventura County. The fire profile experienced in the Thomas, Hill, and Woolsey fires show a new pattern of erratic winds that drove flames and embers into

housing subdivisions in the cities of Ventura, Santa Paula, Thousand Oaks, Westlake, Simi Valley, and Malibu and the unincorporated communities of Bell Canyon and Oak Park. These three fires ultimately scorched over 383,000 acres and burned 3,190 structures in 3 counties. The fires devastated oak trees, orchards, wildlife habitat, stream courses, and landscapes on unincorporated lands across the County.

Aside from the impacts to homeowners and business owners, the lack of environmental review can also affect the very wildlife that the Ordinance purports to protect. The recent fires devastated wildlife populations and their habitat, including collared mountain lion P64 (cnn.com, 12/7/18). In fact, mountain lions that are injured by fire rarely survive in the wild.

Recently, at least one other GPS-tracked mountain lion (P-74) was presumed dead, along with probable losses of bobcats as a result of the Woolsey fire (Sacramento Bee 11/15/18), which burned a wide swath through Santa Monica Mountains areas encompassed by the proposed Wildlife Corridor Ordinance. This example demonstrates that an uncontrolled wildfire, exacerbated by more stringent and widespread limitations on brush clearing, could have significant effects on wildlife habitat and protected species.

Revisions to the 2018 CEQA Guidelines Appendix G, Environmental Checklist were adopted on December 28, 2018 by the State Office of Administrative Law. These revisions added 'Wildfire' as a discrete Checklist item. If projects, such as the proposed Ordinance, would be located in or near state responsibility areas or lands classified as very high fire hazard severity zones, the lead agency (County) must determine if the project would:

- (1) Substantially impair an adopted emergency response plan or an emergency evacuation plan;
- (2) Exacerbate wildfire risks due to slope, prevailing winds, and other factors, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire;
- (3) Require the installation of or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment; or,
- (4) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

Here, there is a significant risk relating to item numbers 2 and 4. The state has recognized that not only the loss of structures or human life is a potentially significant environmental effect, but also such effects as releases of pollutants from uncontrolled wildfire, and the potential effects of post-fire runoff, flooding, or landslides. The County should evaluate the potential effects of increased wildfire risk from changes in vegetation management, including modeling the potential from increased air pollutants from an uncontrolled wildfire. Post-fire impacts from flooding or

landslides should also be evaluated and disclosed. These impacts should also consider the cumulative effect of potential burn areas in addition to the areas burned in the recent Woolsey and other fires.

The impacts of climate change will exacerbate wildfire risks in the coming years, which only makes the abandonment of a CEQA analysis more dangerous. CEQA analysis is needed to address the fire hazard for two reasons: 1) the potential for increased fire hazards resulting changes in vegetation removal or management as a result of the Ordinance; and 2) the fact that the recent fires that devastated the entire region were not taken into account when adopting the Ordinance. Either of these issues is sufficient to trigger CEQA review. Here, we have both.

B. Impacts to Mineral Resources

Section 3a of the Assessment Guidelines addresses the significance thresholds for impacts to mineral resources. The Ordinance has the potential to interfere with existing mining operations or preclude extraction or access to identified mineral resources, therefore exceeding the following significance criteria:

- ❖ Any land use or project activity which is proposed to be located on or immediately adjacent to land zoned Mineral Resource Protection ("MRP") overlay zone, or adjacent to a principal access road to an existing aggregate Conditional Use Permit ("CUP"), and which has the potential to hamper or preclude extraction of or access to the aggregate resources, shall be considered to have a significant adverse impact on the environment.
- ❖ A project would have a cumulative impact on aggregate resources if when considered with other pending and recently approved projects in the area, hampers or precludes extraction or access to identified resources.

A total of 154,683 acres of the proposed Santa Monica-Sierra Madre and Sierra Madre-Castaic Regional Wildlife Corridors are within state-designated Mineral Resources Zones ("MRZs"). Approximately 13,500 acres of the proposed wildlife corridors are within the County's Mineral Resource Protection zone (MRP). These areas correspond with the State Mineral Land Classification of Mineral Resource Zone 2 (MRZ-2), areas of identified mineral resource significance. An additional 82,404 acres of the proposed corridors overlay MRZ-3 areas, areas with known or inferred mineral resource deposits.

The Ordinance has the potential to hamper or preclude extraction or access to aggregate resources within or adjacent to land zoned in the MRP overlay zone and would have a significant impact according to the Assessment Guidelines. Indirect impacts to other resources would also occur if access to mineral resources was limited or precluded. For example, if access to local aggregate resources are limited or precluded, construction projects in the County would be forced to go outside of the region, potentially to Kern, Los Angeles, or San Bernardino counties or as far as Arizona or Nevada, to obtain aggregate materials. Indirect impact from trucking in aggregate from outside of the region include transportation impacts from increased vehicle miles

traveled, increases in air emissions (including potential health risks from diesel fuel emissions), increased greenhouse gas emissions, and increased noise from truck travel.

Similar to the effects on agricultural resources, the impacts on mineral resources are a black-and-white threshold issue. Why, if the overlay zones identified in the Ordinance obviously contain within them areas designated as MRZs, would the County ignore these thresholds? Why is the County refusing to conduct a CEQA analysis to determine the effects on these mineral resources? With thresholds of significance that are so plainly exceeded by the impacts of the Ordinance, there is no justification for the County's failure to act in accordance with CEQA and its own Assessment Guidelines.

C. Impacts to Agricultural Resources

Section 5b of the Assessment Guidelines addresses the significance thresholds for impacts to agricultural resources. Pursuant to the Assessment Guidelines, any land use or project that is not defined as Agriculture or Agricultural Operations in the zoning ordinances **must be evaluated for effects on adjacent classified farmland**. Analysis must be based on the distance between new non-agricultural structures or uses and any common lot boundary line adjacent to off-site classified farmland as defined in Section 5.a of the Assessment Guidelines.

Any project that is closer than the distances set forth in the Assessment Guidelines will be considered to have a potentially significant environmental effect on agricultural resources, unless justification exists for a waiver or deviation from these distances. Approximately 49,000 acres in the proposed corridors are zoned Agricultural Exclusive. Crop data accessed from the Ventura County Agricultural Commissioner reports show approximately 4,900 acres of planted commercial crops within the County mapped wildlife corridor, of which over 700 acres are in the Critical Wildlife Passage Areas. Analysis of the 2016 State of California Important Farmland Map shows that there are 13,458 acres classified as Prime, Statewide, Unique and Local farmland and 93,173 acres classified as grazing land.

Therefore, the thresholds have been surpassed, and CEQA environmental review is required. Should the County proceed without proper CEQA review, it will have blatantly disregarded the thresholds of its own Assessment Guidelines. CoLAB, in representing a significant group of the County's agricultural community, can confidently state that the agricultural community is legitimately concerned that the restrictions relating to fencing, lighting, and development restrictions will have a significant impact on their operations. Unless those restrictions are to be lifted, the County must conduct CEQA review to even begin to analyze the effects on agricultural resources.

D. Air Quality

According to Section 1 of the Assessment Guidelines, projects should assess potential air quality impacts using the guidelines from the Ventura County Air Pollution Control District ("APCD").

These guidelines establish emissions thresholds for federal and state pollutants of concern that, if exceeded, would result in a significant impact to the environment. Significant air emissions could result from both uncontrolled wildfire and increased trucking of mineral commodities from outside the region. Uncontrolled wildfire would release tons of reactive organic gases, nitrogen oxides, and particulate matter into the atmosphere.

Increased truck traffic and vehicle miles traveled due to the issues raised in Section IV.B, Mineral Resources, would result in emissions from diesel fuel combustion. The air quality emissions from adoption of the Ordinance must be quantified and the potential for significant impacts must be disclosed.

E. Greenhouse Gases

Section 24 of the Assessment Guidelines states that projects in the County must determine the project's potential for significant impacts related to climate change by:

1. Identifying and quantifying the greenhouse gas ("GHG") emissions from the project;
2. Assessing the significance of the impact on climate change; and,
3. If the impact is found to be significant, identify alternatives and/or mitigation measures that will reduce the impact below significance.

The County must quantify and evaluate the greenhouse gases that would occur from adoption of the Ordinance, in particular, the greenhouse gases that would be emitted from uncontrolled wildfire that could occur due to changes in vegetation management. Additionally, increased greenhouse gas emissions from truck traffic resulting from trucking in mineral resources from outside of the area must be considered.

F. Community Character

Community Character is addressed in Section 25 of the Assessment Guidelines. Restrictions to agricultural land uses would result in changes to community character of the rural areas of the County. The Ordinance exceeds the following thresholds in the Assessment Guidelines:

- ❖ A project that is inconsistent with any of the policies or development standards relating to community character of the Ventura County General Plan Goals, Policies and Programs or applicable Area Plan, is regarded as having a potentially significant environmental impact; and/or
- ❖ A project has the potential to have a significant impact on community character, if it either individually or cumulatively when combined with recently approved, current, and reasonably foreseeable probable future projects would introduce physical development that is incompatible with existing land uses, architectural form or style, site design/layout, or density/parcel sizes within the community in which the project site is located.

A wildlife corridor is fundamentally incompatible with agricultural and rural community character. Moreover, the CWPA Overlay Zone, which restricts property owners from using 50% of their property, is obviously "inconsistent with existing land uses [and] site design/layout" in the areas that are effected by the restriction.

G. Traffic and Circulation Impacts

Section 27.a(1) of the Assessment Guidelines specifically prohibits General Plan land use designation changes and zone changes that would individually or cumulatively cause significant impacts to the County's transportation system, unless feasible mitigation measures are adopted. The adoption of the Ordinance has the potential to limit or preclude access to mineral resources in the County. If this occurs, these resources will need to be trucked in from outside of the region, resulting in additional heavy truck traffic on County roads. This triggers CEQA review.

V. THE ORDINANCE IS LEGALLY FLAWED

Separate and apart from the lack of CEQA review, the Ordinance is facially void because it contravenes principles of equal protection and due process (under both the state and federal constitutions), violates vested property rights, and constitutes a regulatory taking of the distinct investment-backed expectations of those it effects. Each of these issues is addressed in further detail below.

Note that due to the legal flaws of the Ordinance, as currently drafted, there is no way that it will survive legal scrutiny if challenged in the courts. As such, CoLAB has proposed common-sense modifications to the Ordinance, which are addressed in Section VI below.

A. The Ordinance Violates Equal Protection and Substantive Due Process

The California Constitution provides that, "a person may not be deprived of life, liberty, or property without due process of law or denied equal protection of the laws." (Cal. Const. Art. 1, § 7(a).) The U.S. Constitution also prohibits the denial of equal protection through the fourteenth amendment. (United States Constitution, amend. XIV, § 1, and 42 USC § 1983.)

The County must have a rational basis for treating the property owners of the effected Overlay Zones differently than other unincorporated areas of the County. The rational basis test requires that the classification be a demonstrably effective means for furthering some actual valid government interest. (*E.g., City of Cleburne v. Cleburne Living Center* (1985) 473 U.S. 432, 440.)

The County, rather than conducting a CEQA analysis to properly analyze where, how big, and how intense the proposed overlay zones should be, decided to skip any scientific review, and proceed to drafting the proposed Ordinance, based on a more than a decade-old study, that was never meant to serve as the foundation for an Ordinance of this magnitude.

Exhibit 2 provides a detailed analysis from ECorp showing that the methodology was flawed, that the overlay zones were improperly mapped, and that the Ordinance improperly, and without a rational basis, includes properties that have not been shown to assist in attaining the goals of the Ordinance. This is addressed more thoroughly in Section VI below, which also explains proposed modifications.

There is no rational basis for treating the overlay zones differently than other similarly situated unincorporated areas of the County, because the appropriate analyses were never undertaken at all. By definition, this means that the Ordinance lacks a rational basis.

B. The Ordinance Constitutes a Regulatory Taking

Most disturbingly, the County will require property owners in three areas designated as Critical Wildlife Passage Areas (Tierra Rejada Valley, Oak View and Simi Hills) to draw a line their property and forbid them from building new structures (such as homes or barns) or establishing new uses on **half of their property**. The only limited exception to this would be if an applicant applied for a discretionary permit requiring an expensive environmental analysis.

The Bell Canyon and Box Canyon subdivisions are within the Simi Hills Critical Wildlife Passage Areas and will be subject to the extreme regulations controlling brush clearance as well as rebuilding after wildfires.

Under *Penn Central Transportation Company v. City of New York* (1978) 438 US 104, even if a governmental regulation does not cause a physical invasion or deprive a landowner of all economically beneficial use, it may nonetheless go too far in placing what should be a public burden on private shoulders.

Penn Central established an ad hoc, fact-based inquiry that addresses three factors to be used in determining whether this type of regulatory taking has occurred: (1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the nature of the governmental action. (*Id.* at 124.)

As to the first factor, the economic impact of these regulations will vary from property to property, but with a regulation as extreme as the deprivation of the use of 50% of one's land for structures and certain designated uses, the impacts are severe. This is more akin to a "conservation easement" (which would obviously require compensation) than to an overlay zone.

As to the second factor, the investment-backed expectations of the owners in the CWPA zones were, obviously, that they would be able to use the entirety of their properties for legal purposes. As to the agricultural land in these areas, the investment-backed expectations are particularly pronounced. Structures may be needed throughout these properties for agricultural purposes. The ability to build limited agricultural support structures without environmental permitting as

currently allowed in the Non-Coastal Zoning Ordinance is critical to the sustainable future of farming in Ventura County. In the residential context, the forced clustering of structures in 50% of the property, along with the fencing prohibitions and lighting regulations, deprives property owners of the right to enjoy their properties, as was the expectation when the properties were purchased.

As to the third factor, the government action in this case specifically calls out the proposed overlay zones for these overreaching regulations. There is an unexplained, irrational, arbitrary and capricious designation of these overlay zones without any scientific backing or CEQA review. County cannot point to a scientific analysis that was conducted in recent years (the basis for the study was made in 2006), that took into effect the recent fires, and that was based on scientific principles. As such, the government action has no scientific or legal foundation.

The three factors of the *Penn Central* test are therefore easily satisfied, and the Ordinance effectuates a regulatory taking upon those in the proposed overlay zones.

C. The Ordinance Does Not Provide for an Adequate Amortization Period

Property owners within the overlay zones will retain constitutionally-protected rights to maintain their current use. Legal nonconforming uses—*i.e.*, “grandfathered” uses—are lawful uses that were in place prior to the adoption of the current zoning ordinance. (*See Bauer v. City of San Diego*, 75 Cal.App.4th 1281, 1292-93 (1999).) Governmental entities may not apply newly-enacted zoning ordinances, such as the proposed Ordinance to shutter properties lawfully used at the time those ordinances became effective. (*See id.* at 1292; *see also Hansen Brothers Enters., Inc. v. Bd. of Supervisors*, 12 Cal.4th 533, 552 (1996); *Livingston Rock and Gravel Co. v. County of Los Angeles*, 43 Cal.2d 121, 127 (1954) (“The rights of the users of property as those rights existed under prevailing zoning conditions are well recognized and have always been protected.”).)

Even the County’s own zoning ordinances protect lawfully-established uses against changes in zoning regulations. NCZO § 8113-10.3(a) provides: If [a] use or structure affected [by a change in a zoning ordinance] is existing lawfully as a permitted or conditionally permitted use or structure, the existing use or structure is hereby deemed to be conforming without any further action.” Property owners and operators also have federally- and state-protected vested rights to maintain currently-lawful uses of their property. Under *Avco Community Developers, Inc. v. South Coast Regional Comm’n*, 17 Cal. 3d 785 (1976), a property owner that has incurred substantial liabilities establishing a lawful use of property obtains a vested right to continue the use despite a subsequent change in zoning law. (*See also, Halaco Engineering Co. v. South Central Coast Regional Comm’n*, 42 Cal.3d 52, 57 (1986) [recognizing vested rights to maintain non-conforming use without obtaining a permit]; *Calvert v. County of Yuba*, 145 Cal.App.4th 613, 623 (2006) [nonconforming uses provide the basis for vested rights as to such uses].)

A zoning ordinance that requires immediate discontinuance of a vested, nonconforming use existing when the ordinance was adopted is a deprivation of property without due process of law. (*Santa Barbara Patients' Collective Health Co-op. v. City of Santa Barbara*, 911 F. Supp. 2d 884, 893 (C.D. Cal. 2012); *McCaslin v. City of Monterey Park*, 163 Cal. App. 2d 339 346 (1958).) If the law effects an unreasonable interference with an existing use, or a planned use for which a substantial investment in development costs has been made, ***the ordinance may not be applied to that property unless compensation is paid.*** (See *Hansen Bros.*, 12 Cal. 4th at 551-52.) For this reason, “[z]oning ordinances and other land-use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses.” (See *id.* at 552; see also *Calvert*, 145 Cal. App. 4th at 623 [existing uses must be exempted or amortized over time to avoid unconstitutional deprivations of vested rights].)

An ordinance that provides an amortization period, rather than protecting or grandfathering existing uses, is constitutionally suspect because it ultimately results in the extinction of a vested property right. Thus, ordinances requiring amortization must be carefully designed so that the period provided is both (1) adequate to ensure that affected property owners may spread the loss of their present beneficial uses of property over time; and (2) flexible enough to account for individual circumstances. The Ordinance is neither.

The Ordinance only allows 1 year to come into compliance with lighting regulations. There are no data or economic studies analyzing or justifying this hyper-aggressive 1-year amortization period. What makes the 1-year amortization period truly unusual is that the NCZO already contains an amortization provision applicable to all nonconforming uses throughout the County. That provision is set forth in NCZO § 8113-5.4, which provides that nonconforming uses within structures such as houses: “shall be amortized...based on the square footage of the structure at the time the use is rendered nonconforming, as follows: Ten (10) years for one thousand (1,000) square feet, plus one and one-quarter (1.25) years for each additional one hundred (100) square feet over one thousand (1,000) square feet; maximum sixty (60) years.”

Thus, by contrast to the Ordinance's amortization period for lighting which provides ***1-year***, the County's normal (and much more typical) amortization period for nonconforming uses within structures is a ***minimum of 10 years, and up to 60 years***. Amortization periods for nonconforming uses generally run much longer than the 1-year period provided by the current draft Ordinance. There is no rationale that can justify a 10- to 60-year amortization period for other uses, including all of the conceivable nonconforming nuisance uses that may exist in the County, and only a 1-year amortization period for lighting.

Amortization periods must be justified by the public need for the deprivation of property interests they result in. Here the justification for wildlife protection relating to the lighting issue is minimal, compared to the security and safety that the lighting provides on the effected properties. What is more, recognizing that individual circumstances vary and that flexibility is required to ensure that the necessary amortization period is commensurate with individual investments, the NCZO currently contains a mechanism for a property owner to obtain an

administrative determination to lengthen an amortization period in individual cases. Thus, NCZO § 8113-5.4 allows the County's Planning Division to issue a continuation permit where continuation is "not detrimental to the public interest, health, safety, convenience, or welfare." In contrast, the Ordinance contains no similar mechanism for extending the strict 1-year amortization period.

VI. MODELING ERRORS AND PROPOSED MODIFICATIONS TO THE ORDINANCE

Because the Ordinance was based on studies and models that were done over 13 years ago, they are no longer accurate, and no longer reflect what is needed to create and protect valid wildlife corridors – the goal of the Ordinance. As such, ECorp has conducted a thorough analysis of the biological modeling, and has concluded that the current proposal for the Ordinance does not do what it seeks to do. (See **Exhibit 2**.)

Importantly, ECorp's analysis does not stop there. **Exhibit 2** provides useful, practical guidance for the County regarding how the Ordinance can be modified to better achieve its purpose, and concurrently, place a lower burden on property owners – which would help with the legal issues outlined in Section V above.

Though not a substitute for the thorough analysis provided in **Exhibit 2**, a summary of the proposed modifications to the Ordinance are as follows:

- 1) Several mapped areas, including the Bell Canyon residential neighborhood, fail to provide conservation value as they were incorrectly modeled and mapped to include interior areas of developed land while excluding undeveloped higher-conservation areas.
 - a) Remedy: Conduct more accurate vegetation, land use/cover, and road density mapping and exclude currently developed areas, golf courses, current and future agriculture and mining lands, and areas that do not support native habitats that provide no conservation value for species. While the Ordinance has exempted some developed areas and land uses within the mapped corridors, these areas will be unfairly treated and should be removed entirely from the overlay zone.
- 2) The Ordinance imposes a faulty 200' buffer onto a flawed and outdated Fish and Wildlife map with no biological studies to support the need for restrictions on brush clearance, structures, fencing and uses. The County General Plan currently requires a 100' setback that has been the standard for the approval of structures. Now thousands of existing legally permitted structures will become non-conforming uses with their future uncertain. In addition, surface water features that no longer exist are included in mapped areas and cause unnecessary regulation.
 - a) Remedy No. 1: Ensure features that no longer exist or are man-made water features, are not present on the map to prevent unnecessary regulation
 - b) Remedy No. 2: Updating the National Wetlands Inventory (NWI) data prior to the adoption of the Ordinance.

- c) Remedy No. 3: Substitute a more accurate set of stream layers that do not falsely identify man made water sources that are valuable water sources for wildlife.
- d) Remedy No. 4: Abandon the 200-foot setback from surface water features in the Ordinance and continue to require conformance with the County's General Plan 100-foot setback from surface water features.
- 3) Areas mapped and designated as "Critical Wildlife Passage Areas by the County are subject to "compact development" regulations on lots that provide minimal to no conservation value due to adjacent already-developed lots preventing functional corridors from being created.
 - a) Remedy: Perform on-the-ground surveys to identify the actual areas that support native habitats and that would create functional movement corridors.
- 4) Areas have been incorrectly classified as far as vegetation communities are concerned so that, among other problems, urban development areas are shown as "California sagebrush." These issues are widely distributed and cause the corridor analysis to be very inaccurate on a parcel level.
 - a) Remedy: Because the land use/cover data layer carries the highest weighting values in the model, it is critically important to redo this and map on the ground, along with using the most recent aerial imagery.
- 5) The road density data used as an input to the permeability model is clearly outdated as it relates to current conditions in 2019. The corridor models do not account for the roads that have been built since that time or existing roads that have been widened or paved since the model was developed back in the early 2000s.
 - a) Remedy: The models need to be run based on current road conditions as it is likely that the locations of corridors would adjust per current conditions. This could also lead to improved locations for wildlife crossing structures to better facilitate wildlife movement.
- 6) As to surface water features, property owners seeking reconsideration of those designations are responsible for all costs. Also, the decision is made by "the Planning Director or designee without a public hearing. The decision shall be final and not subject to administrative appeal." In addition to shifting the burden and cost to the property owner to have improperly designated features to be properly designated, the lack of administrative appeals deprives property owners of due process.
 - a) Remedy: Make the Planning Director decision appealable to the Planning Commission. Also, if the property owner is successful in its re-designation effort, the cost should be borne by the County.

Because correcting inaccuracies once the Ordinance has been implemented will be costly, the County must correct these issues and inaccuracies before ever implementing the Ordinance.

Needless to say, had the County conducted the required CEQA analysis, including an analysis of appropriate alternatives, these issues would have come to the forefront earlier in the process, with appropriate time for staff to implement the findings. Alas, because the County has abandoned CEQA entirely, the result was a flawed analysis that requires a re-assessment of the

relevant maps and overlay zones in order to 1) comply with the law, and 2) achieve the goals that it was originally designed to achieve.

VII. CONCLUSION

For the foregoing reasons, the County should conduct the legally required CEQA analysis prior to taking any further action with the Ordinance. To the extent that County decides to move forward with the Ordinance in spite of its lack of CEQA review, the County should adopt the modifications to the Ordinance listed in Section VI above. Note that even if the County does adopt these modifications, that would not absolve the County of its legal obligations or responsibilities under CEQA, and CoLAB reserves all rights in that regard.

Very truly yours,



BENJAMIN M. REZNIK
SEENA M. SAMIMI of
Jeffer Mangels Butler & Mitchell LLP

cc: Chris Stephens (via e-mail; Chris.Stephens@ventura.org)
Kim Prillhart (via e-mail; kim.prillhart@ventura.org)

MEMORANDUM

FROM: Tom Holm, AICP, Senior Environmental Planner
ECORP Consulting, Inc.

DATE: January 28, 2019

RE: Review of the Applicability of CEQA to the Proposed Ventura County Ordinance Code, Non-Coastal Zoning Ordinance to Regulate Development within the Regional Habitat Linkages and the Critical Wildlife Passage Overlay Zones

The purpose of this memorandum is to comment on the applicability of the California Environmental Quality Act (CEQA) to the proposed Ventura County (County) Ordinance Code, Non-Coastal Zoning Ordinance to Regulate Development within the Regional Habitat Linkages and the Critical Wildlife Passage Overlay Zones (Ordinance).

A basic tenet of CEQA is that environmental analysis should be prepared “as early as feasible in the planning process to enable environmental considerations to influence project program and design” (CEQA Guidelines Section 15004(a)). Additionally, “environmental document preparation and review should be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. These procedures, to the maximum extent feasible, are to run concurrently, not consecutively” (CEQA Guidelines Section 15004(c)). Section 4.1 of the County’s *Administrative Supplement to the State CEQA Guidelines* states that “with all County-initiated projects environmental considerations should be incorporated into project conceptualization, design and planning at the earliest feasible time. All County agencies/departments governed by this Administrative Supplement shall not undertake a project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before the completion of CEQA compliance”.

Adoption of a zoning ordinance is a project under CEQA; enactment and amendment of zoning ordinances are specifically listed under examples of discretionary projects in CEQA (Public Resources Code Section 21080(a)) and in the County’s *Administrative Supplement to the State CEQA Guidelines*. Section 4.2 also specifically lists enactment and amendment of zoning ordinances are “projects” subject to CEQA. Recent case law (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* 4 Cal.App.5th 103 (2016)) makes it clear that a zoning ordinance is a project subject to CEQA if it may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Because the proposed Ordinance’s purpose is to cause physical changes to the environment by changing how private and public land is managed, the adoption of the Ordinance must be subject to CEQA review.

The proposed Wildlife Corridor Ordinance has the potential for direct or indirect impacts to the environment in the following areas:

- **Fire Hazards (Section 18 of the Ventura County Guidelines)** – The potential for increased fire hazards resulting from changes in vegetation removal or management is an issue the Ordinance needs to address to comply with CEQA. According to the significance thresholds in the Ventura County Guidelines, projects located in High and Very High Fire Hazard Areas/Fire Hazard Severity Zones or Hazardous Watershed Fire Areas would have a significant fire hazard impact. Approximately 138,924 acres of the proposed corridors are within these areas. The County's Fire Protection District Hazard Abatement program calls for the clearing of brush, flammable vegetation, or combustible growth located within 100 feet of structures or buildings. The Ordinance would change the way vegetation is removed or managed and could result in an increase in fire hazard. Although the County Guidelines focus on brush clearing within 100 feet of structures, limitations on brush clearing in 172,056 unincorporated acres (except for within 100 feet of structures) could change the potential fire regime in this area, causing fire hazard for both humans and wildlife. An uncontrolled wildfire, exacerbated by limitations in brush clearing, would have significant effects on wildlife habitat, even if the 100-foot buffer around structures caused no effects to structures or buildings. It is the County's obligation to model the potential changes to wildfire behavior resulting from the proposed changes to vegetation management proposed in the Ordinance.

Revisions to the 2018 CEQA Guidelines Appendix G, Environmental Checklist were adopted on December 28, 2018 by the State Office of Administrative Law (OAL). These revisions added 'Wildfire' as a discrete Checklist item. If projects, such as the proposed Ordinance, would be located in or near state responsibility areas or lands classified as very high fire hazard severity zones, the lead agency (County) must determine if the project would:

- Substantially impair an adopted emergency response plan or an emergency evacuation plan;
- Exacerbate wildfire risks due to slope, prevailing winds, and other factors, and thereby expose project occupants to pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire;
- Require the installation of or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment; or,
- Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes.

Although these new questions have not yet been adopted into the Ventura County Guidelines, CEQA Guidelines Section 15064(b)(2) states that "compliance with the threshold does not relieve a

lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant". In this case, the state has recognized that not only the loss of structures or human life is a potentially significant environmental effect, but also such effects as releases of pollutants from uncontrolled wildfire, and the potential effects of post-fire runoff, flooding, or landslides. The County should evaluate the potential effects of increased wildfire risk from changes in vegetation management, including modeling the potential from increased air pollutants from an uncontrolled wildfire. Post-fire impacts from flooding or landslides should also be evaluated and disclosed. These impacts should also consider the cumulative effect of potential burn areas in addition to the areas burned in the recent Woolsey and other fires.

- **Mineral Resources – Aggregate (Section 3a of the Ventura County Initial Study Assessment Guidelines [Ventura County Guidelines])** – The proposed Ordinance has the potential to interfere with existing mining operations or preclude extraction or access to identified mineral resources, therefore exceeding the following significance criteria:
 - Any land use or project activity which is proposed to be located on or immediately adjacent to land zoned Mineral Resource Protection (MRP) overlay zone, or adjacent to a principal access road to an existing aggregate Conditional Use Permit (CUP), and which has the potential to hamper or preclude extraction of or access to the aggregate resources, shall be considered to have a significant adverse impact on the environment.
 - A project would have a cumulative impact on aggregate resources if when considered with other pending and recently approved projects in the area, hampers or precludes extraction or access to identified resources.

A total of 154,683 acres of the proposed Santa Monica-Sierra Madre and Sierra Madre-Castaic Regional Wildlife Corridors are within state-designated Mineral Resources Zones (MRZs). Approximately 13,500 acres of the proposed wildlife corridors are within the County's Mineral Resource Protection zone (MRP). These areas correspond with the State Mineral Land Classification of Mineral Resource Zone 2 (MRZ-2), areas of identified mineral resource significance. An additional 82,404 acres of the proposed corridors overlay MRZ-3 or MRZ-3a areas, areas with known or inferred mineral resource deposits.

The Ordinance has the potential to hamper or preclude extraction or access to aggregate resources within or adjacent to land zoned in the MRP overlay zone and would have a significant impact according to the Ventura County Guidelines. Indirect impacts to other resources would also occur if access to mineral resources was limited or precluded. For example, if access to local aggregate resources are limited or precluded, construction projects in Ventura County would be forced to go outside of the region, potentially to Kern, Los Angeles, or San Bernardino counties or as far as Arizona or Nevada, to obtain aggregate materials. Indirect impact from trucking in aggregate from outside of the region include transportation impacts from increased vehicle miles

traveled, increases in air emissions (including potential health risks from diesel fuel emissions), increased greenhouse gas emissions, and increased noise from truck travel.

- **Agricultural Resources – Land Use Incompatibility (Section 5b of the Ventura County Guidelines)** – According to the significance thresholds in the Ventura County Guidelines, any land use or project that is not defined as Agriculture or Agricultural Operations in the zoning ordinances must be evaluated for effects on adjacent classified farmland. Analysis must be based on the distance between new non-agricultural structures or uses and any common lot boundary line adjacent to off-site classified farmland as defined in Section 5.a of the Ventura County Guidelines. Any project that is closer than the distances set forth in the Ventura County Guidelines will be considered to have a potentially significant environmental effect on agricultural resources, unless justification exists for a waiver or deviation from these distances. Approximately 49,000 acres in the proposed corridors are zoned Agricultural Exclusive. Crop data accessed from the Ventura County Agricultural Commissioner reports show approximately 4,900 acres of planted commercial crops within the County mapped wildlife corridor, of which over 700 acres are in the Critical Wildlife Passage Areas. Analysis of the 2016 State of California Important Farmland Map shows that there are 13,458 acres classified as Prime, Statewide, Unique and Local Farmland, and 93,173 acres classified as grazing land. The County must evaluate how the Ordinance will limit the availability of land for agricultural uses and determine if this loss of availability will significantly affect agricultural resources in Ventura County.
- **Air Quality (Section 1 of the Ventura County Guidelines)** – According to the Ventura County Guidelines, projects should assess potential air quality impacts using the guidelines from the Ventura County Air Pollution Control District (APCD). These guidelines establish emissions thresholds for federal and state pollutants of concern that, if exceeded, would result in a significant impact to the environment. As discussed above under Fire Hazards and Mineral Resources, significant air emissions could result from both uncontrolled wildfire and increased trucking of mineral commodities from outside the region. Uncontrolled wildfire would release tons of reactive organic gases, nitrogen oxides, and particulate matter into the atmosphere. Increased truck traffic would result in emissions from diesel fuel combustion. The air quality emissions from adoption of the Ordinance must be quantified and the potential for significant impacts must be disclosed.
- **Greenhouse Gases (Section 24 of the Ventura County Guidelines)** – According to the Ventura County Guidelines, projects in Ventura County must determine the project's potential for significant impacts related to climate change by:
 - Identifying and quantifying the greenhouse gas (GHG) emissions from the project;
 - Assessing the significance of the impact on climate change; and,
 - If the impact is found to be significant, identify alternatives and/or mitigation measures that will reduce the impact below significance.

The County must quantify and evaluate the greenhouse gases that would occur from adoption of the Ordinance, in particular, the greenhouse gases that would be emitted from uncontrolled wildfire that could occur due to changes in vegetation management. Additionally, increased greenhouse gas emissions from truck traffic resulting from trucking in mineral resources from outside of the area must be considered.

- **Community Character (Section 25 of the Ventura County Guidelines)** – Restrictions to agricultural land uses would result in changes to community character of the rural areas of Ventura County. The ordinance could exceed these thresholds in the Ventura County Guidelines:
 - A project that is inconsistent with any of the policies or development standards relating to community character of the Ventura County General Plan Goals, Policies and Programs or applicable Area Plan, is regarded as having a potentially significant environmental impact; and/or
 - A project has the potential to have a significant impact on community character, if it either individually or cumulatively when combined with recently approved, current, and reasonably foreseeable probable future projects would introduce physical development that is incompatible with existing land uses, architectural form or style, site design/layout, or density/parcel sizes within the community in which the project site is located.

The restrictions in the Ordinance that relate to the wildlife corridors is fundamentally incompatible with agricultural and rural community character. The County must evaluate the compatibility of the wildlife corridor with the community character of the area.

- **Transportation & Circulation – Roads and Highways (Section 27a(1) of the Ventura County Guidelines)**. The Ventura County Guidelines specifically prohibit General Plan land use designation changes and zone changes that would individually or cumulatively cause significant impacts to the County's transportation system, unless feasible mitigation measures are adopted. As discussed previously under Mineral Resources, the adoption of the Ordinance has the potential to limit or preclude access to mineral resources in Ventura County. If this occurs, these resources will need to be trucked in from outside of the region, resulting in additional heavy truck traffic on County roads.



MEMORANDUM

FROM: Jeff Tupen, Senior Biologist
Mari Quillman, Principal Biological Resources Program Manager

DATE: January 28, 2019

RE: Critical Biological Review of the Proposed Ventura County Ordinance Code, Non-Coastal Zoning Ordinance to Regulate Development Within the Regional Habitat Linkages and Critical Habitat Passage Overlay Zones

EXECUTIVE SUMMARY

The purpose of this memorandum is to summarize the results of a review of the proposed *Ventura County (County) Ordinance Code, Non-Coastal Zoning Ordinance to Regulate Development Within the Regional Habitat Linkages and Critical Habitat Passage Overlay Zones* (Ordinance)¹ and the primary data sources used to derive landscape linkages referenced prominently in the Ordinance that was conducted by ECORP Consulting, Inc. (ECORP). The objective of this review was to assess the scientific basis of the regional linkage studies by South Coast Wildlands (SCW) and determine the analytical strengths and weaknesses of the study as the mapping project would apply to the draft ordinance.

SCW anticipated that the resulting Linkage Plan documents would be used as planning-level tools and would not be regulatory in nature. As such, Linkage documents were published with the following caveat: *"Results and information in this report are advisory and intended to assist local jurisdictions, agencies, organizations, and property owner in making decisions regarding protection of ecological resources and habitat connectivity in the area."*

There were two linkage connections mapped by SCW that apply to the draft ordinance: Sierra Madre-Castaic (primarily in the Los Padres National Forest), and Santa Monica-Sierra Madre (primarily in the more developed southern half of the County). The reports for these two connections were finalized in 2005 and 2006 respectively, over 13 years ago. Within the Santa Monica-Sierra Madre Connection, the document preparers found that the primary barriers to wildlife movement revolved around major roadways (Interstate 101, and 5, and State Routes 23, 118, 126, and 14).

The linkage designs that resulted from the modeling for the two connections were intended to provide a scientifically sound **starting point** for conservation implementation and evaluation.

¹ Full reference: *An Ordinance of the County of Ventura, State of California, Amending Division 8, Chapter 1, Articles 2, 3, 4, 5, and 9 of the Ventura County Ordinance Code, Non-coastal Zoning Ordinance to Regulate Development within the Regional Habitat Linkages and the Critical Wildlife Passage Overlay Zones.*

The modeling effort to construct the linkages used analytical techniques that ECORP reviewed for application to an ordinance that would apply restrictions to specific parcels. While many of these analytical techniques may have been sound and appropriate at the time they were conducted, almost 15 years have passed since the corridor models have been updated.

The key analysis in the SCML report modeled the permeability of lands to wildlife, ranking the effort needed to pass through areas. Variables that were used in the permeability analysis, such as road density and Land Cover/Use, have changed since 2005 and 2006. For example, the resulting modeled corridor was mapped through the fully developed residential neighborhood of Bell Canyon. This neighborhood was fully developed at the time of the modeling. The inaccuracy of the location of the mapped corridor shows a failure in the model considering there were suitable undeveloped lands that would accommodate wildlife movement to the west of Bell Canyon.

Although variables such as elevation and topography are not influenced by human activity, it is highly likely that more recent data sources would affect the preferences of species and thus the location of these corridors in the Habitat Connectivity and Wildlife Corridor (HCWC) Overlay Zone.

The locations of the County's proposed wildlife corridors or HCWC Overlay Zone, and the County's proposed Critical Wildlife Passage Areas (CWPA) are shown on Figure 1. Figure 2 shows the portions of the County HCWC that match the original SCW linkages and the areas added or removed by the County. The linkage areas originally mapped by SCW totaled 394,983 acres. These linkage areas were changed by the County by removing 352 acres of land and adding 25,691 acres so that the total area encompassed by the HCWC is now 420,311 acres. The main concerns and remedies identified from this review are as follows:

- Several mapped areas, including the Bell Canyon residential neighborhood, fail to provide conservation value as they were incorrectly modeled and mapped to include interior areas of developed land while excluding undeveloped higher-conservation areas.
- **Remedy:** Conduct more accurate vegetation, land use/cover, and road density mapping and exclude currently developed areas, golf courses, current and future agriculture and mining lands, and areas that do not support native habitats that provide no conservation value for species. While the ordinance has exempted some developed areas and land uses within the mapped corridors, these areas will be unfairly treated and should be removed entirely from the overlay zone.
- Surface water features that no longer exist are included in mapped areas, causing negative effects to property owners through unnecessary regulation. The Ordinance imposes a 200-foot buffer adjacent to surface waters that are mapped from outdated National Wetlands Inventory data that has not been verified as to current conditions or locations of surface water features. In addition, comprehensive biological studies have not been conducted to support the need for restrictions on brush clearance, structures, fencing, and uses adjacent to the surface water features, particularly related to those that no longer exist. The County General Plan currently requires a 100-foot setback from surface water features, which has been the standard for approval of

structures. The Ordinance will now cause a large number of existing, legally-permitted structures to become non-conforming uses with their futures uncertain.

- Remedy: Ensure features that no longer exist or are man-made water features are not present on the map to prevent unnecessary regulation.
 - Update and correct the National Wetlands Inventory (NWI) data prior to the adoption of the Ordinance, or
 - Substitute a more accurate set of stream layers that do not falsely identify man made water sources that are valuable water sources for wildlife.
 - Abandon the 200-foot setback from surface water features in the Ordinance and continue to require conformance with the County's General Plan 100-foot setback from surface water features.
- Areas mapped and designated as "Critical Wildlife Passage Areas" by the County are subject to "compact development" regulations on lots that provide minimal to no conservation value due to adjacent already-developed lots preventing functional corridors from being created.
- **Remedy:** Perform on-the-ground surveys to identify the actual areas that support native habitats and that would create functional movement corridors.
- Areas have been incorrectly classified as far as vegetation communities are concerned so that, among other problems, urban development and ornamentally landscaped areas are shown as "California sagebrush." These issues are widely distributed and cause the corridor analysis to be very inaccurate on a parcel level.
- **Remedy:** Because the land use/cover data layer carries the highest weighting values in the model, it is critically important to update this analysis and map on the ground, along with using the most recent aerial imagery.
- The road density data used as an input to the permeability model is clearly outdated as it relates to current conditions in 2019. The corridor models do not account for the roads that have been built since that time or existing roads that have been widened or paved since the model was developed back in the early 2000s.
- **Remedy:** The models need to be run based on current road conditions as it is likely that the locations of corridors would adjust per current conditions. This could also lead to improved locations for wildlife crossing structures to better facilitate wildlife movement.

Because the inaccuracies in the input of the vegetation communities in the model has resulted in corridors going through areas that should not be included in functional wildlife corridors, it is critically important to correct the inputs to the model to better define corridors that functionally connect the conserved lands at the desired endpoints for the corridors. Correcting inaccuracies once the Ordinance has been implemented will be very costly both in time and money, causing unnecessary negative effects to agricultural, residential and open space landowners. The County must correct these issues and

inaccuracies before considering implementation of the Ordinance. Based on our review, these inaccuracies will affect numerous landowners in the corridors encouraging multiple lawsuits.

Additionally, large-scale conservation efforts have historically been accomplished through mutually beneficial conservation easements with private landowners and/or a negotiated settlement or environmental mitigation within a development agreement. The County must be prepared to negotiate land-swaps or land sales with willing sellers and be prepared to offer fair market (or above) prices for important land areas so as not to infringe upon the Equal Protection and Due Process rights of property owners throughout the County.

SECTION 1 - REVIEW OF MISSING LINKAGES PROJECT AND RELEVANT VENTURA COUNTY LANDSCAPE LINKAGE PLANS

The purpose of this section of the memorandum is to describe the history and purpose of the South Coast Wildlands (SCW) Missing Linkages Project. Understanding the SCW Project is important because the County based their wildlife corridor locations on the work previously conducted by SCW. The information included in two of SCW's Ventura County Landscape Linkage documents are the primary data sources for the proposed Ordinance: Sierra Madre – Castaic Connection and Santa Monica – Sierra Madre Connection.

I. South Coast Missing Linkages Project

In November 2000, a coalition of conservation and research organizations launched a statewide interagency workshop entitled "Missing Linkages: Restoring Connectivity to the California Landscape". Land managers and conservation ecologists representing federal, state, and local agencies, academic institutions, and nongovernmental organizations collaborated to delineate habitat linkages critical for preserving the State's biodiversity. Private landowners were not included in this collaboration.

The SCW identified habitat fragmentation and conservation as a critical topic for southern California and they recognized that movement is essential to wildlife survival, especially in environments fragmented by human development.

This collaborative effort was intended to be used as a resource tool for regional land managers to guide how they could best help sustain biodiversity and functional ecosystem processes by using linkage designs, with the goal of providing a catalyst for directing funds and attention toward the protection of ecological connectivity for the South Coast Ecoregion. SCW anticipated that the resulting Linkage Plan documents would be used as planning-level tools and would not be regulatory in nature. As such, Linkage documents were published with the following caveat:

"Results and information in this report are advisory and intended to assist local jurisdictions, agencies, organizations, and property owner in making decisions regarding protection of ecological resources and habitat connectivity in the area."

Within the County of Ventura, two primary linkage corridors were modeled and designed in the Missing Linkages Project, including the Santa Monica-Sierra Madre Connection and the Sierra Madre-Castaic

Connection. Each of these Landscape Linkage Plans was prepared using the models and the evaluation methods detailed later in this memorandum.

II. Sierra Madre-Castaic Connection

The Sierra Madre-Castaic Connection document was finalized in 2005 and covers the north half of the County, primarily in the Los Padres National Forest. Very little development is present in the entire area and it is unclear why corridors need to be mapped through the U.S. Forest Service lands where large areas of designated wilderness already exist.

This connection, or linkage, was identified by the preparers back in 2005 as unique among the priority linkages identified within southern California in that most (75 percent of the 398,944-acre total area) of the land within this linkage was already protected. The preparers determined that the principal issue was not which lands represented gaps in protection between core areas as much as where and how to ensure adequate crossing structures at major roadways or other barriers. The endpoints selected for this analysis were roadless areas supporting medium to highly suitable habitat for each species near the far eastern and western extents of the study area, which would include the need for wildlife to cross major roadways. This gave the model broad latitude in interpreting functional corridors across the entire study area and it forced the model to cross the major roadways, which ultimately assisted in identifying key crossing locations.

The prioritization of Sierra Madre – Castaic Connection for conservation and the demarcation of lands requiring protection in the linkage were based on the best available conservation techniques and expertise of biologists working in the region at the time. The approach of SCW in their methodology was to provide a strong biological foundation and a quantifiable, repeatable conservation design that could be used as the basis for successful conservation actions.

The preparers of the plan found that existing conservation investments in this linkage are already extensive and include lands managed by several state and federal agencies. They also thought that incorporating relevant aspects of this plan into individual land management plans could provide an opportunity to jointly implement a regional conservation strategy. Additional conservation actions were recommended, including addressing road, stream, urban, and industrial barriers. Tools recommended by the preparers included road renovations, construction of wildlife crossings, watershed planning, habitat restoration, conservation easements, zoning, acquisition, and others.

The primary goal of the Sierra Madre – Castaic Connection document and the other SCW documents was to conserve landscape linkages to promote movement of wildlife between core areas over broad spatial and temporal scales and to work within this framework to develop a wide variety of restoration options for maintaining linkage function.

III. Santa Monica-Sierra Madre Connection

The Santa Monica-Sierra Madre Connection document was finalized in 2006. The preparers of the document indicated that the Santa Monica – Sierra Madre Connection was one of few remaining coastal

connections in the South Coast Ecoregion, stretching from the rugged Santa Monica Mountains at the coast to the gently sloping Simi Hills, and on to the jagged peaks of the Santa Susana Mountains and the Sierra Madre Ranges of Los Padres National Forest.

At the time the document was prepared, approximately 34 percent of the 125,613-acre linkage area was within public ownership or some other form of protected status. Many sensitive natural communities occur in this planning area, including valley foothill riparian, cottonwood willow riparian forest, coast live oak riparian forest, valley oak woodland, and walnut woodland. The SCW stated that this variety of habitats supports a diversity of organisms (aquatic and terrestrial), including many species listed as endangered, threatened, or sensitive by government agencies. The preparers found that significant conservation investments already exist in the region but thought that the resource values they support could be harmed by the loss of connections between them.

The linkage connects two large core areas that are largely conserved within the Los Padres National Forest and the Santa Monica Mountains National Recreation Area. The Sespe Wilderness Area is located just inside the boundary of the Los Padres National Forest and the California Wild Heritage Campaign has proposed additional Wilderness Areas in both Los Padres and Angeles National Forests, although gaps in protection were identified in the linkage document. The preparers of the linkage document stated the Santa Monica-Sierra Madre Connection is unique in that it is a chain of linkages that could be connected in the Santa Monica, Simi, Santa Susana, and Sierra Madre ranges.

Within the Santa Monica-Sierra Madre Connection, the document preparers found that the primary barriers to wildlife movement revolved around major roadways (Interstate 101, and 5, and State Routes 23, 118, 126, and 14). The preparers targeted endpoints for the linkages in protected areas where suitable habitats needed to be connected through currently unprotected lands. Since some of the land in the linkage was already protected and because of the complexity of ownerships in the Santa Monica Mountains, the endpoints for the linkage analysis for each species were in the Los Padres and Angeles National Forests, within Santa Monica Mountains National Recreation Area south of the 101 Freeway, and near the far northern and southern extents of the study area. This provided the model with a large area where it could identify potential functional corridors.

The preparers of the linkage document identified fragmentation of the natural landscapes as threats that could impede the natural processes needed to support wildlife movement through the Santa Monica - Sierra Madre Connection. Tools identified in the linkage document that would serve as a starting point for conserving the linkages included road renovation, construction of wildlife crossings, watershed planning, habitat restoration, conservation easements, zoning, acquisition, and others.

Conclusion: The linkage designs that resulted from the modeling for the Sierra Madre-Castaic Connection and the Santa Monica-Sierra Madre Connection were intended to provide a scientifically sound starting point for conservation implementation and evaluation. While these documents were identified as being resources that regional land managers could use to understand their role in sustaining biodiversity and ecosystem processes, transition to a regulatory document needs a higher analysis of the conservation value of these identified pathways between selected endpoints.

SECTION 2 – REVIEW OF THE ANALYTICAL TECHNIQUES USED TO IDENTIFY LANDSCAPE LINKAGES AND OVERVIEW OF DATA LAYERS USED IN THE MISSING LINKAGES DOCUMENTS

This section identifies and describes the analytical techniques and the data and informational sources that were used by SCW and the Missing Linkages Project to develop Landscape Linkage Areas (LLAs) throughout California. A Geographic Information System (GIS)-based analysis, termed Least-Cost Corridor (LCC) modeling was used to identify and map corridors that connected larger areas of relatively intact, high-value habitat with other such areas. Landscape Linkage Areas were, by design and intent, sufficiently sized, composed, and located to conceptually provide habitat for a wide range of species to both live-in and move-through the corridors.

Development of LLAs was a multi-step process that included:

1. Identification of Focal Species
2. Landscape Permeability Analysis
3. Least-Cost Corridor and Least Cost Union Design
4. Patch Size and Configuration Analysis
5. Linkage Width Adjustments
6. Field Verification and Recommendations

The following subsections describe these steps in greater detail.

1. Identification of Focal Species

Ecologists and species experts involved with the Missing Linkages Project effort identified a suite of plant and animal species selected from various taxonomic groups to represent a diversity of habitat requirements and movement needs, tailored to a geography of interest. In planning for the ecological needs of a list of “focal species,” species experts anticipated that connectivity needs for broad ecosystem function would also be met. That is, ecological needs for species other than, and including, focal species would be met.

Two categories of focal species were identified for use in LLA planning, including a subset that was used in the Landscape Permeability Analysis (described later in this section) and the full list was later used to evaluate and modify initially-generated corridors using LCC analysis. The subset of focal species used for permeability modeling was selected if:

- Researchers sufficiently understood movement needs and patterns of a species
- Data layers used in the analysis correlated with species movement
- Focal species occurred (current or past) in both core areas being linked and could reasonably be expected to move between core areas over some time period

- Time expected for a focal species to navigate the corridor was less than the time it would take for vegetation changes in the corridor due to climate change (i.e., could be long-term)

Focal species selection also anticipated that some species would be more likely to move-through the designed linkage while others may live-in the linkage, or both.

Twenty focal species were selected for use in the **Santa Monica-Sierra Madre Connection** document, including:

- 3 plants (bigberry manzanita, valley oak, California walnut)
- 4 invertebrates (harvester ant, Chalcedon checkered butterfly, damselflies, scorpion)
- 1 fish (southern steelhead trout)
- 3 reptiles/amphibians (western whiptail lizard, California kingsnake, western toad)
- 4 birds (acorn woodpecker, California thrasher, cactus wren, loggerhead shrike)
- 5 mammals (mountain lion, badger, mule deer, brush rabbit, desert woodrat)

A subset of three of these focal species (mule deer, badger, and mountain lion) was used in the permeability analysis for the reasons described previously.

Twelve focal species were selected for use in the **Sierra Madre-Castaic Connection** document, including:

- 2 invertebrates (bear sphinx moth, rain beetle)
- 4 reptiles/amphibians (two-striped garter snake, California mountain kingsnake, Monterey salamander, western pond turtle)
- 2 birds (acorn woodpecker, California spotted owl)
- 4 mammals (mountain lion, badger, mule deer, Pacific kangaroo rat)

A subset of five of these focal species (mule deer, badger, mountain lion, California spotted owl, and Pacific kangaroo rat) was used in the permeability analysis.

Conclusion: The approach to selecting focal species for use in developing the LCCs appeared to be sound and appropriate. Focal species used in the permeability analysis were locally common and sufficiently abundant to serve as good indicators of landscape permeability.

2. Landscape Permeability Analysis

Landscape Permeability Analysis is a GIS-based analytical technique that assigns a score to a land area that represents the suitability, or cost, of the area to provide habitat for a focal species. It is a widely used and accepted technique to evaluate the relative value of land areas to accommodate wildlife usage (e.g., live-in or move-through). Permeability is defined as the relative cost (or effort) to a particular species to move through lands between core habitat areas. Highly permeable areas are navigated at lower costs and

are therefore higher-value areas for species movement. Conversely, low-permeability areas are navigated at higher costs, or not at all, and are therefore lower-value areas for species movement. For example, deer may easily navigate an alfalfa field that a kangaroo rat may find impossible to navigate. LCCs developed for deer, therefore appear disparate to those of kangaroo rats. This is described in greater detail later in this section.

For the Missing Linkages Project work, four primary data layers were initially used to “score” the permeability of land areas at a 30-meter resolution (i.e., a 30m x 30m pixel or 900 square-meters). Four influential variables or data layers were scored (relative ranks) for each pixel evaluated within a study area, including:

- Road Density
- Land Cover/Use
- Elevation
- Topography

The rankings for each of the data layers varied between 1 (preferred) and 10 (avoided) based on the focal species’ preferences as determined from available literature and expert opinion regarding how movement is facilitated or hindered by natural and urban landscape characteristics. The following subsections describe each of the four data layers used in the analysis and in scoring land area pixels for assembly of LCCs, by focal species.

i. Road Density. Areas with greater road densities were considered less preferred than areas with lesser road densities. Raw scores for road density were calculated by dividing the abundance of roads per unit area. Relative scores (between 1 and 10) were then assigned to the range of raw scores, by pixel, for each focal species included in the analysis. In general, road densities greater than 6 km/km² were ranked as avoided for all focal species used in the LCC analyses. Densities less than 2 km/km² were ranked as preferred and densities between these values were generally ranked between 3 and 7 for the focal species. In the permeability analysis, road density was weighted between 0.10 to 0.30 out of a total of 1.0 for the focal species, with 0.1 assigned to the Pacific kangaroo rat and 0.3 assigned to the mountain lion. The weighting allowed the model to capture variation in influence of road density on focal species’ movements.

Road density data sources were not provided in either of the two linkage design plans that were reviewed. However, road density data sources were listed in another linkage plan prepared by SCW: *A Linkage Design for the Santa Ana – Palomar Mountains Connection* (Luke et al. 2004). In that document, road density sources were cited as the U.S. Bureau of the Census TIGER/Line 2000 data for Riverside, San Diego, and Orange counties. Updates to these available data layers were made manually by using 1-meter resolution imagery (from 2001), adding roads that were missing in the 2000 data and distinguishing between paved and unpaved surfaces. While not explicitly stated, we assume that similar data sources and post-processing techniques were used for developing relative road density scores within the two linkage reports of relevance here.

This is an anthropogenically-influenced variable in the calculation of landscape permeability. More roads are likely developed within land areas over time and it is unlikely that the density of roads decreases over time. The influence of road density on permeability over time is dynamic, with increased road developments decreasing permeability.

Conclusion: The road density data used as an input to the permeability model is clearly outdated as it relates to current conditions in 2019. The corridor models do not account for the roads that have been built since that time or existing roads that have been widened or paved since the model was developed back in the early 2000s. If the models were run again based on current conditions, it is likely that the locations of corridors would vary just based on road density and the SCW could also suggest revised locations for wildlife crossing structures.

ii. Land Cover/Use. Within the Santa Monica - Sierra Madre Connection document, forty-eight (48) land cover types (natural and unnatural) were used to score the relative preference of these land covers for mule deer, mountain lion, and badger by 30-meter pixel (Table 1). The cover type categories were based on the 1988 California Wildlife Habitat Relationship System developed by the California Interagency Wildlife Task Group, which was a consortium of private and public natural resource managers². This habitat classification system is over 30 years out of date.

Natural habitats included communities such as lodgepole pine, perennial grassland, and freshwater emergent wetland. "Urban" and "Agriculture" were used to characterize developed land areas. Aquatic areas were identified by cover categories including "riverine", "estuarine", "lacustrine", and "water".

Table 1. Land Cover Types Used to Characterize 30m Pixels in the Two SCW Linkage Documents		
Alpine/Dwarf shrub	Eastside pine	Palm oasis
Agriculture	Estuarine	Ponderosa pine
Annual grassland	Eucalyptus	Riverine
Alkali desert scrub	Freshwater emergent wetland	Red fir
Barren	Jeffrey pine	Subalpine conifer
Bitterbrush	Joshua tree	Saline emergent wetland
Blue oak/Foothill pine	Juniper	Sagebrush
Blue oak woodland	Lacustrine	Sierran mixed conifer
Coastal oak woodland	Lodgepole pine	Urban
Closed-cone pine/Cypress	Mixed chaparral	Valley oak woodland
Chamise/Redshank chaparral	Montane chaparral	Valley foothill riparian
Coastal scrub	Montane hardwood/Conifer	Water
Desert riparian	Montane hardwood	White fir
Desert scrub	Montane riparian	Wet meadow
Desert succulent shrub	Perennial grassland	Unknown shrub type
Desert wash	Pinyon/Juniper	Unknown conifer type

² Mayer, K.E. and W.F. Laudenslayer (eds.). 1988. A guide to wildlife habitats of California. 166 pp.

Land Cover/Use was the most heavily weighted variable in the permeability analysis. The weights ranged from 0.40 for the mountain lion to 0.75 for the spotted owl (out of a total of 1.0). The weighting allowed the model to capture variation in influence of Land Cover/Use on focal species' movements.

In summary, urban and agricultural land covers were ranked as highly avoided areas for all three of the focal species. Aquatic areas were similarly ranked as avoided for all three of the focal species, except for riverine habitat being highly preferred for mountain lions, presumably for navigating valley floors along drainage corridors. The remaining natural land cover types were scored as a range between preferred to avoided for all three of the focal species, depending upon whether or not the species were known to occur in those land cover types.

Within the Sierra Madre – Castaic Connection document, the same 48 land cover types were used to score land pixels (Table 1), with the same relative scores generated for mule deer, mountain lion, and badger. Urban, Agriculture, water, riverine, and estuarine land covers were scored as avoided for California spotted owl and Pacific kangaroo rat. The remaining natural land cover types were scored as a range between preferred to avoided for all five of the focal species used in the permeability analysis, depending upon whether or not the species were known to occur in those land cover types.

Data sources for land cover typing were not explicitly referenced in either the Santa Monica - Sierra Madre Connection document or the Sierra Madre – Castaic Connection document. However, land cover mapping data sources were listed in the Santa Ana – Palomar Mountains Connection plan noted previously for road density. In that document, land cover sources were cited as U.S. Forest Service CALVEG (Classification and Assessment with Landsat of Visible Ecological Groupings) and SANDAG Veg95 from San Diego and Riverside counties.

Like road density scoring, SCW manually updated land covers by using 1-meter resolution imagery from 2001, including current urban and agricultural development information from when the linkage plans were prepared. We assume that similar data sources (i.e., CALVEG) and post-processing techniques were used for developing relative land cover scores within the two linkage reports of relevance here. The most current CALVEG land classification update preceding the publication of the two relevant connection documents was 2002 and 2003³, which is over 15 years out of date.

The use of vegetation cover data that was based on aerial imagery rather than on-the-ground mapping of the vegetation communities across the study areas likely puts into question the accuracy of the corridor modeling. In fact, the vegetation cover data is likely the most inaccurate of the datasets used for the permeability modelling.

The inaccuracies undoubtedly skewed the modelling, which resulted in the placement of corridors in areas where the vegetation cover or land use is currently unsuitable for the species that are targeted in the model. Even more concerning is the County's application of an ordinance in 2019 that is based on wildlife movement corridors modeled using data that is over 15 years old. The changes in Land Cover/Use since

³ https://www.fs.usda.gov/Internet/FSE_MEDIA/fseprd600025.jpg

then and the inaccuracies in the vegetation mapping have resulted in many areas being included in the corridors that have little to no value to wildlife.

Land Cover/Use is also an anthropogenically-influenced variable in the calculation of landscape permeability. Over time, natural land covers may mature and remain static. Natural land covers may also be replaced by urban and agricultural land cover types, or they may be removed by wildfire. Many wildfires have occurred in the mapped corridors in Ventura County, which adds additional uncertainty about the validity of the Land Cover/Use variable used in the models.

The influence of vegetation composition on permeability over time is dynamic, with land development and land use conversion decreasing permeability. In addition, wildfire could potentially have a significant effect on landscape permeability as those species that utilize vegetation cover for protection or foraging during movement would likely avoid burned areas where they are more at risk of predation.

Conclusion: The Land Cover/Use data used as an input to the permeability model is clearly outdated as it relates to current conditions in 2019. The corridor models do not account for land that has since been developed or areas where vegetation changes have occurred as a result of wildfire or other alterations. If the models were run again based on current conditions, it is likely that the locations of corridors would vary just based on development and the SCW could also suggest revised locations for areas with higher conservational value.

iii. Elevation. Eleven elevational intervals were established within each of the connectivity documents that were reviewed. The SCW Linkage Document preparers evaluated the focal species' elevation preferences by ranking them between 1 (preferred) and 10 (avoided) based on available literature and expert opinion regarding how movement is facilitated or hindered by the natural and urban landscape characteristics. Elevation carried the lowest weight in the permeability analysis for each of the focal species with weights assigned between 0 and 0.10 out of a total of 1.0. A weight of 0.10 was only assigned to the Pacific kangaroo rat and the badger, while no weighting was assigned to the other three focal species. The weighting allowed the model to capture variation in influence of elevation on focal species' movements. The elevation intervals included the following (in feet):

- -260 to 0
- 0 to 500
- 500 to 750
- 750 to 1,000
- 1,000 to 3,000
- 3,000 to 5,000
- 5,000 to 7,000
- 7,000 to 8,000

- 8,000 to 9,000
- 9,000 to 11,500
- >11,500

Data sources for elevational scoring were not reported in either connection document reviewed here. The Santa Ana – Palomar Mountains Linkage document created an elevational model using a mosaic of U.S. Geological Survey 7.5-minute series quadrangles. We assume that similar data sources were used for developing relative elevational scores within the two linkage reports of relevance here.

In summary, elevation preference for mountain lions was determined by the document preparers as not applicable, likely because this species is known to occur across all of the elevation ranges. For mule deer, the preferred elevation ranges were generally between 0 and 11,500 feet with a somewhat higher preference for the 500 to 7,000 feet elevations. Badger generally had a higher preference for the -260 to 7,000 feet with less preference above 7,000 feet. In general, the elevation rankings did not influence permeability for mountain lions and was of little permeability consequence to either badgers or mule deer. The document preparers ranked the preferred elevation range for the spotted owl as 1,000 to 9,000 feet and for the Pacific kangaroo rat, the preferred elevation range was generally between 0 and 7,000 feet. Low elevations (< 1000 ft) were scored as relatively impermeable to California spotted owls, while high elevations (generally > 9000 ft) were scored as relatively impermeable to both owls and Pacific kangaroo rat, likely reflecting the lack of suitable habitat at these fringe elevations.

Conclusion: Elevation is not an anthropogenically-influenced variable in the calculation of landscape permeability. It is fixed over time and space and thus, the influence of elevation on permeability over time is static. As such, newer data sources for elevation are unlikely to influence the arrangement of SCW-derived corridors. However, the elevation range preferences were ranked by species experts for each species at the time the Missing Linkages Project was undertaken and newer research on species' preferences could potentially affect those rankings. The locations of the corridors could potentially be modified somewhat if a new analysis is done that includes updated ranking for species' elevation preferences.

iv. Topographic Features. Four classes of topographic features were defined for this variable, including canyon bottoms, ridgelines, flats, and slopes. Species experts used professional judgement to score the permeability of each of these topographic variables for each focal species (i.e., see previous deer vs. kangaroo rat comment). The weights assigned to the topographic features for each focal species ranged from 0 for spotted owl to 0.30 for mountain lions (out of a total of 1.0). The weighting allowed the model to capture variation in influence of topography on focal species' movements.

For the Santa Monica – Sierra Madre Connection plan, canyon bottoms were scored as preferred for mountain lions and badger and in the middle between preferred and avoided for mule deer. Ridgetops were scored as preferred for mule deer and generally avoided for lions and badgers. Flats were scored as generally avoided for deer and preferred for lions and badgers. Slopes were scored as preferred for deer, avoided by badgers, and between preferred and avoided by mountain lions.

For the Sierra Madre – Castaic Connection plan, the same rankings for the topography were assigned to lions, badgers, and mule deer. In addition, canyon bottoms were scored as preferred by California spotted owl and Pacific kangaroo rat. Ridgetops were scored as avoided for spotted owls and preferred by kangaroo rats. Flats were scored between preferred and avoided for owls and were preferred by kangaroo rats. Slopes were scored as preferred for spotted owls and generally avoided by Pacific kangaroo rat.

Data sources for species experts to score these four topographic variables were not cited in either connection plan, but the Santa Ana – Palomar Mountains Linkage plan notes that the quadrangle-constructed elevation model was also used to identify topographic classes. We assume the same approach was used for the Santa Monica – Sierra Madre Connection and Sierra Madre – Castaic Connection plans.

Conclusion: This, like elevation, is not an anthropogenically-influenced variable in the calculation of landscape preference or permeability. It is fixed over time and space and thus, the influence of topography on permeability over time is static. As such, newer data sources are unlikely to influence the arrangement of SCW-derived corridors. However, the preference rankings made by the species' experts could potentially vary with more current information or research that may have been developed since the time the linkage documents were prepared. How new or different species information would affect the locations of the corridors would only be determined by rerunning the models.

3. Least-Cost Corridors and Least-Cost Unions

Derived scores for each data layer were multiplied by weighting factors assigned by species experts to represent the relative importance of each data layer in influencing movement of a focal species at each pixel level. Landscape permeability for each pixel was then calculated as:

$$\text{Permeability} = (\text{Road density score} \times a\%) + (\text{land cover} \times b\%) + (\text{elevation} \times c\%) + (\text{topography} \times d\%), \text{ where } a, b, c, d \text{ are weighting factors, and } a + b + c + d = 100\%.$$

Aggregations of these scored pixels were then interpreted to construct a LCC for each focal species. Each LCC then was interpreted to represent the most permeable corridor between core habitat areas for the focal species analyzed. Three LCCs and five LCCs were accordingly developed for the Santa Monica - Sierra Madre Connection document and the Sierra Madre – Castaic Connection document, respectively.

Following the development of individual LCCs within each plan, individual LCCs were merged to form a single Least-Cost Union corridor (LCU). Each LCU was interpreted to represent the “best” area to provide movement opportunities for combined focal species used in the permeability analysis, based on the data layers used in the analysis. One LCU was therefore developed within each of the two noted plans.

While an LCU represents the best zone available for movement based upon the data layers, it does not address whether suitable habitat is present in large enough patches to support viable populations of focal species or whether habitat patches are close enough for inter-patch dispersals. This was the objective of Patch Size and Configuration Analysis (see next section).

4. Patch Size and Configuration Analysis

Patch Size and Configuration Analysis (PSCA) is the process that was used to evaluate the LCU corridors for efficacy in providing value to all focal species and not simply to the subset used in the permeability analysis. PSCA addresses the size and distribution of habitat patches in the LCU. In circumstances where species experts determined that habitat patches and cores in an LCU were not sufficiently located or sized for function of the LCU, LCU boundaries were manually modified to improve LCU potential function. The presence of suitably sized and located habitat patches in an LCU are particularly important for species that may live in (rather than just move through) an LCU or for move-through species that may take several generations to navigate an LCU (e.g., woodrat).

Habitat suitability models were constructed for each focal species using relevant literature and the opinions of species experts. Spatial data layers used in the PSCA included vegetation, elevation, topographic features, slope, aspect, hydrogeography, and soils data layers that were available at the time the linkage documents were prepared. Suitability scores were generated and divided into five score classes from low to high. Data sources were not specified, but presumably included aerial imagery that was available at the time of the analysis. As stated previously and verified in the Concerns and Recommendations Section of this memorandum, the accuracy of the vegetation cover data used in the modelling was questionable and most certainly affected the suitability scores. In addition, the vegetation cover used in the generating the suitability scores is outdated now and undoubtedly does not reflect current conditions.

Patches of suitable habitat were updated by the constructed habitat suitability models and were characterized as “potential core areas” if they could support at least 50 individuals of a focal species, and “patches” if they could support at least one male and one female, but less than 50 individuals. These patch size determinations were likely completed using GIS and aerial imagery, though specific sources were not noted. The LCUs were manually modified to accommodate habitat core and patch areas if the LCUs did not already include these features. Minimum distances between habitat cores and patches in the LCU were targeted for twice the distance of documented species movements.

The product of this step was then a modified LCU that represented the most permeable route between habitat core areas for key focal species that provided live-in and move-through habitat suitability for all focal species.

Conclusion: While different species experts may have influenced the development of habitat suitability models differently, the habitat suitability modeling would likely change the arrangement of SCW-derived linkage corridors if it was based on current data layers. The locations and sizes of the habitat core and patch areas were based on inaccurate and old vegetation cover data. The models should be rerun based on current and accurate data that would allow species experts to more accurately identify where habitat core areas are located and ultimately identify corridors that are based on current conditions.

5. Linkage Width Adjustments

SCW notes in the linkage documents that constriction points in the modified LCUs were mitigated by manually fitting minimum 2-km widths for all corridors within the modified LCU. Unfortunately, this fitting process did not appear to consider the presence or suitability of habitat within modified LCUs. The product of this step was to produce a final Landscape Linkage (for each Connection Plan document) that was located, sized, and composed to best provide connectivity opportunities between core habitat areas for a broad range of species.

The fact that the presence or suitability of habitat was not considered in the fitting process within the modified LCUs brings into question the value of these corridors for wildlife movement. Areas within the LCUs that do not support suitable habitat core areas or habitat patches do not provide conservation value or movement opportunities for wildlife. Interestingly, the digital data provided to ECORP by SCW and by Ventura County do not show this manual fitting. Specifically, and contrary to the SCW manual fitting objective, there are land feature widths both narrower and wider than 2 km in the Ventura County overlay map layer.

Conclusion: The presence and suitability of habitat was not considered in the fitting process of the resulting mapped SCML corridors. The County Ordinance must be re-evaluated to take into account conservation value and movement opportunities.

6. Field Verification and Recommendations

Selected areas within the final SCW-derived Landscape Linkages were visited in the field by species experts involved in the design and development of the linkages. The actual extent of the ground-truthing conducted by the species experts was not noted in the Connection Documents. However, because roads were recognized as the most significant movement barriers for wildlife, the SCW surveyors drove or walked accessible sections of roadways that transected a linkage. Significant movement barriers (e.g., multi-lane highways with exclusion fencing) and potential movement opportunities (e.g., bridged river corridors, large culverts beneath roadways) were cataloged and described.

Since the time the corridor modeling was completed over 15 years ago and the Connection Documents were prepared in 2005 and 2006, there has undoubtedly been a significant change in the number of constructed or improved roads and barriers or opportunities for wildlife crossings in Ventura County.

The Connection Documents do not indicate that the Land Cover/Use data layers were visited by the SCW surveyors to verify if the various classifications (vegetation communities) were correct or were accurately depicted in the data.

Based on ECORP's comparisons of the vegetation data layer used as inputs for the model and current conditions on the ground, it is apparent that the vegetation community data used for the modeling was inaccurate and is now out of date. Many areas that may have been mapped as suitable habitat core areas in the past may be different than what currently exists, so the models need to be rerun using current and accurate vegetation layer data as well as current distributions of focal species. After the ground-truthing was completed, the SCW compiled recommendations and prioritized them in each Connection Document

to provide a work list for future conservation actions to improve wildlife movement between habitat core areas.

Conclusion: Mapped areas must be surveyed on the ground to determine what changes have occurred since the corridor modeling was completed over 15 years ago.

SECTION 3 – REVIEW OF PROPOSED VENTURA COUNTY WILDLIFE CORRIDOR HABITAT CONNECTIVITY ORDINANCE AND THE SELECTION OF CRITICAL WILDLIFE PASSAGE AREAS

Ventura County acknowledges that wildlife movement corridors are impacted by projects that it approves through discretionary actions, which require County permits or environmental review, or ministerial actions, which are actions that are not subject to County permits or environmental review. Impacts to wildlife movement corridors in Ventura County are evaluated and mitigated, where appropriate, through the CEQA process associated with discretionary County actions (e.g., development permit issuance). Ventura County's General Plan, Land Use Maps, Non-coastal Zoning Ordinance (NCZO), Subdivision Ordinance, and Initial Study Assessment Guidelines all provide opportunities for regulating discretionary action impacts to wildlife movement corridors (Ventura County, 2017).

The County states that it currently has no mechanism to regulate impacts to wildlife movement corridors for non-discretionary, ministerial actions that do not trigger CEQA review (Ventura County, 2017⁴). However, in our review, such projects are small with respect to the average parcel size in the mapped corridors. The County has proposed an Ordinance that would allow them to regulate impacts to wildlife movement corridors when associated with ministerial actions, mostly applying to structures.

Ventura County is proposing that its Ordinance Code be amended to add two new overlay zones to contribute to achieving these objectives, including:

- Habitat Connectivity and Wildlife Corridor (HCWC) Overlay Zone (proposed new Section 8104-7)
- Critical Wildlife Passage Area Overlay Zone (proposed new Section 8104-8)

I. Habitat Connectivity and Wildlife Corridors (HCWC) Overlay Zone

Ventura County created its Habitat Connectivity and Wildlife Corridor (HCWC) Overlay Zone by merging the two noted SCW connections. The County then added adjacent and infill land areas not mapped by SCW, including the Ventura River corridor, and clipped all of these areas to Ventura County (**Figure 1**). The County states that their purpose for creating the HCWC Zone is to preserve functional connectivity of regional habitat linkages mapped in the SCW reports by minimizing the impacts of perceived barriers,

⁴ County of Ventura, Resource Management Agency, Planning Division. 2017. Staff report to the Board of Supervisors for the January 24, 2017 BOS meeting. Subject: Direct staff regarding preferred regulatory options for addressing habitat connectivity and wildlife movement corridors within the non-coastal, unincorporated areas of Ventura County; All supervisorial districts.

habitat fragmentation, and corridor chokepoints. In total, approximately 420,311 acres are designated as HCWC within Ventura County (**Figure 1**). The broad HCWC Overlay Zone, as maintained in the County GIS, imposes five restriction types on development and/or use:

1. **Restrictions on Outdoor Nighttime Lighting.** All outdoor lighting installed after the Ordinance is effective will be (a) fully shielded fixtures, (b) shall have maximum installation heights (varies), (c) shall be no more than 3,000 kelvin on the chromaticity scale, and (d) shall have a maximum brightness of 850 lumens per fixture.

Other compliance criteria would be required for security lighting, parking area lighting, outdoor recreation area lighting, service station lighting, wireless communication facility lighting, and greenhouse lighting (collectively, compliance criteria). The most onerous restriction requires that driveway and pathway lighting be no more than 50 lumens (20 watts equivalent) creating potential safety issues for homeowners.

Existing outdoor lighting that does not meet these compliance criteria will have a 1-year period to be made compliant. If not made compliant, existing non-compliant lighting must be turned off between 10 pm and sunrise.

2. **Vegetation Modification Restrictions within Surface Water Feature Buffers.** A new surface water buffer of 200 feet will be required in the new Ordinance as compared to the 100-foot buffer that is currently required in the Ventura County General Plan. Development of new structures, new uses of existing structures, or native vegetation removal within 200 feet of a natural (i.e., not constructed) surface water feature (lake, pond, creek) will require a Planned Development Permit (PDP) from the County.

The County maintains an inventory of surface water features in its GIS, as mapped by the National Wetlands Inventory (NWI). *ECORP notes that a potential problem with the surface water features locations is that the NWI supposedly updates its surface water feature mapping database semi-annually. However, the data layer used by the County in the surface water features overlay has errors from NWI mapping done in 2006, as noted in Example 3 of the Concerns Section of this memorandum. Therefore, the accuracy of the data being used by the County is very questionable. Features that no longer exist or are mapped incorrectly in the NWI will result in a large number of property owners being subjected to regulations where no requirement for a 200-foot buffer should even exist. The County needs to check the accuracy of all NWI mapping throughout the County to ensure that features that no longer exist or are mapped incorrectly are removed from the surface water features buffer requirements. Rather than using inaccurate surface water feature data, the County needs to conduct biological studies to determine the actual locations and conservation values of surface water features throughout the County. Accurate mapping and identification of these conservation values is the only way to ensure that property owners aren't restricted from building structures or managing vegetation in areas where surface water features either don't exist or are considered disturbed and that they don't offer any value as wildlife corridors. In addition, more accurate mapping of the locations and conditions of surface water features will assist the County in actually identifying surface water features that are high functioning and will contribute to functional wildlife corridors.*

The Ordinance would require the County issuance of a Planned Development Permit for new land uses, structures, or additions to a structure within this buffer. Vegetation modification, including complete removal, mowing, thinning or chaining of trees and plant communities would be a discretionary action triggering an environmental analysis in compliance with Initial Study Assessment Guidelines. *ECORP notes that the establishment of a 200-foot buffer from surface water features will cause property owners who have legally-permitted structures under the standard of the 100-foot buffer required in the County's General Plan to become non-conforming. The result will be undue regulations related to modifications to the structures and in the management of vegetation around those structures, which ultimately will result in an unknown future for those structures and will subject them to a higher wildland fire danger.*

An annual exemption allows vegetation modification to be performed on 10 percent of the lot area within the stream buffer. Vegetation modification on previously cultivated agricultural land and livestock grazing are generally exempt.

Invasive plants may be removed from surface water feature buffers through County issuance of a Zoning Clearance, which requires owner submittal of a vegetation removal plan to the County. Structures and other improvements where under 50 percent are damaged by fire or other natural disasters may be conditionally rebuilt (in place) in surface water feature buffers.

3. **Vegetation modification restrictions within Wildlife Crossing Structure Buffers.** Vegetation removal within 200 feet of a wildlife crossing structure (WCS) will require a PDP from the County. The County maintains an inventory of WCSs in its GIS. County issuance of a PDP would be a discretionary action triggering applicant compliance with Initial Study Assessment Guidelines. Structures and other improvements damaged by fire may be conditionally rebuilt (in place) in WCS buffers.
4. **Restrictions on planting Invasive plant species.** Invasive plants not commercially grown for agricultural markets may not be planted in the HCWC Overlay Zone.
5. **Restrictions on Wildlife Impermeable Fencing.** Wildlife Impermeable Fencing (WIF) is defined as including one or more of the following design features, (a) greater than 60 inches above ground level, (b) electrified, or (c) solid walls or fencing or wrought iron, plastic mesh, woven wire, razor wire, or chain link fencing.

WIF may be permitted via the ministerial permitting process if (a) new fencing will not enclose more than 10 percent of a lot gross area containing no existing WIF, (b) fencing will not enclose more than 10 percent of a lot gross area containing existing WIF, including new and existing WIF. Lots of 10,000 square feet or less are exempt from fencing minimums.

If not exempt or otherwise permissible through the ministerial process, WIF may be permitted via the discretionary permitting process by applying for a PDP. County issuance of a PDP would be a discretionary action triggering applicant preparation of CEQA review in compliance with Initial Study Assessment Guidelines.

The five conditions stated above apply to new construction, reconstruction, addition, modification, alteration, relocation, and replacement of structures, or alteration of a physical site, within all properties in the mapped HCWC Zone.

Exemptions to HCWC requirements include:

- Restoration of lands to their prior condition following natural disasters.
- Construction of any structure pursuant to Ordinance Section 8113-6
- Planting of crops or orchards for commercial sale
- Removal of crops or vegetation on important agricultural lands
- Wildlife Impermeable Fencing to enclose commercially grown agricultural crops or products.
- Vegetation removal as part of an approved restoration plan
- Removal of landscape vegetation
- Vegetation modification for fuel management as required by the County Fire District or pursuant to a County Fire District adopted fuel management plan.
- Vegetation removal for public safety
- Lands subject to more restrictive standards under other permits
- Lands otherwise exempt by law

The Planning Director may authorize deviations during the processing of a discretionary permit or approval if an applicant can provide facts to support that the deviation will be the functional equivalent of implementing HCWC standards or requirements.

Conclusion: In order for these overlay zones and included restrictions to achieve the objectives of minimizing the impacts of perceived barriers, habitat fragmentation, and corridor chokepoints, when associated with ministerial actions, the areas must be re-mapped to take into account current conditions.

II. Critical Wildlife Passage Area (CWPA) Overlay Zone

The County has proposed three CWPAs all of which are entirely contained in the County-designated HCWCs. CWPAs are areas that Ventura County has identified as areas critical for facilitating wildlife movement in the HCWC Overlay Zone. The purpose of the CWPA Overlay Zones is to address habitat fragmentation by requiring that structures be sited in compact development patterns within individual lots, thereby preserving more space for species movement. The Planning Commission Staff Report for PL16-0127 (Staff Report) for the January 31, 2019 hearing reports contradictory acreage numbers for the three CWPAs. Table 4 in the staff report (page 30 of 42) appears to indicate a total of 10,353 acres within the three CWPAs but the acreages listed on the maps showing the CWPAs (Exhibits 5, 6, and 7) add up to 9,311 acres. Using the actual Geographic Information System (GIS) data from the County, the total

acreage of the CWPAs is 9,484.5 acres. The inconsistencies between the Staff Report text, exhibits, and the GIS data is a very concerning issue as it shows that the County has not fully vetted their wildlife corridor Ordinance and the associated impacts to landowners.

1. **Simi Hills CWPA** is located in the mountainous region between Simi Valley (to the west) and Chatsworth/Canoga Park (to the east) (**Figure 1**). This area includes the Bell canyon and Box Canyon residential subdivisions. Table 4 in the Staff Report indicates the acreage for this CWPA is 6,017 acres but Exhibit 6 in the Staff Report indicates the acreage as 5,027 acres. However, the GIS data provided by the County indicates the Simi Hills CWPA is approximately 5,104 acres in size. A relatively large area of this CWPA currently supports urban development (approximately 38 percent). Active agriculture forms a very small portion of existing land use (approximately 2 percent), while relatively undeveloped lands are the dominant land cover type (approximately 60 percent). The restriction on vegetation modification in the 200 foot' stream buffers on open space lots in and around these rural communities is a major fire hazard concern for residents, particularly those who lost their homes in the Woolsey Fire.
2. **Oak View CWPA** is located on a ridgetop between Lake Casitas (to the west) and the City of Oakview (to the east) (**Figure 1**). Table 4 in the Staff Report indicates the acreage for this CWPA is 1,228 acres but Exhibit 5 in the Staff Report indicates the acreage as 1,138 acres. However, the GIS data provided by the County shows that the calculated acreage of this CWPA is approximately 1,160 acres in size. Urban development within this CWPA is minimal (<1 percent), with relatively extensive agricultural development (approximately 82 percent) and ranch lands with homes and animal keeping (approximately 18 percent). The major concern for residents in the Oakview CWPA is the coverage of the 200-foot stream buffers on numerous properties. Some properties have no land outside of these large buffers. Almost all of the parcels have existing structures in the buffer areas. These will all become legal non-conforming structures and their long-term fate will be questionable, resulting in negative effects to landowners.
3. **Tierra Rejada CWPA** is located in the fertile valley and mountainous region between Moorpark (to the west) and Simi Valley (to the east) (**Figure 1**). Table 4 in the Staff Report indicates the acreage for this CWPA is 3,108 acres but Exhibit 7 in the Staff Report indicates the acreage as 3,146 acres. However, the GIS data provided by the County indicates the Tierra Rejada CWPA is 3,220 acres in size. Urban development within this CWPA is modest (approximately 8 percent), with large proportions of agricultural development (approximately 48 percent) and ranch lands with many family homes and agricultural related businesses (approximately 45 percent). Tierra Rejada has large areas within the 200-foot stream buffers that include many existing structures, as in the Oak View CWPA. In addition, the jurisdiction for this Ordinance is limited to the County unincorporated area. Without adoption of the mapped corridors through developed areas in the adjacent Cities of Simi Valley and Thousand Oaks, there will be no connection to the Santa Monica Mountains through the Tierra Rejada CWPA.

The three CWPA Overlay Zones are subsets of the HCWC Overlay Zone and properties located within CWPAs are also subject to the HCWC regulations noted above. In addition to HCWC restrictions, CWPA-

located properties greater than 2 acres in size must comply with “compact development standards” in the draft Ordinance, requiring no new development or uses on one-half of the lot acreage.

Regulated development within CWPA applies to parcels of 2 or more acres in size, restricting 1) new structures or land uses that are not exempt, 2) additions to existing structures, and 3) installation of new or replacement WIF that forms an enclosed area on parcels zoned Open Space or Agricultural Exclusive, even if such fencing is used for livestock grazing.

WIF enclosures are severely restricted within a CWPA as compared to the HCWC Zone. There is no exemption allowing fencing on up to 10% of the lot without complying with the compact development-siting standard. All such WIF would be subject to either the compact development standards or a discretionary action requiring CEQA review in compliance with Initial Study Assessment Guidelines.

Lots zoned commercial (CO, C1, PPD) are exempt from all CWPA restrictions. In addition, lots zoned residential (RA, RE, RO, R1, R2, RPD, RHD) in the Simi Hills CWPA are not subject to CWPA restrictions.

Compact development requirements in the CWPA may be approved through either a ministerial or discretionary permitting process.

A zoning clearance through the ministerial permitting process may be used to approve a new structure that meets one or more of the following standards: (a) the compact development siting standard, (b) located within 100 feet of the centerline of a public road, (c) located entirely within 100 feet of an existing legally-established structure or (d) is located entirely within 100 feet of an agricultural access road that supports the production of commercially grown agricultural products.

If not exempt or otherwise permissible through the ministerial process, compact development in a CWPA may be permitted via the discretionary permitting process by applying for a PDP. County issuance of a PDP would be a discretionary action triggering a CEQA review compliant with Initial Study Assessment Guidelines.

There are some exempted uses in the CWPA requirements, and the Planning Director may authorize deviations for non-exempt uses and structures during the processing of a discretionary permit or approval if an applicant can provide facts to support that the deviation will be the functional equivalent of CWPA objectives.

Conclusion: In order for these overlay zones and included restrictions to achieve the objectives of minimizing the impacts of perceived barriers, habitat fragmentation, and corridor chokepoints, when associated with ministerial actions, the areas must be re-mapped to take into account current conditions.

SECTION 4 – INCONSISTENCIES, CONCERNS, AND CONCLUSIONS AFTER REVIEW OF PROPOSED VENTURA COUNTY LANDSCAPE LINKAGE ORDINANCE

I. Inconsistencies Between SCW-Mapped and County-Mapped Linkages Areas

The SCW-designated Landscape Linkage Areas (within the two noted Connection documents) within Ventura County total 394,983 acres. Ventura County refined these Linkage Areas by removing 352 acres of developed lands and by adding 25,691 acres of “undeveloped” lands. The total land area currently identified within Ventura County as Landscape Linkages is therefore 420,311 acres, which is 25,328 acres greater in size than the SCW-designated Linkages.

With few exceptions, County removals were within areas of considerable existing development; thus, they would be of little to no value to wildlife for movement opportunities. These removed areas were generally located in the east Ojai Valley (urban), near Fillmore (agriculture and urban), at the margins of Simi Valley (urban), east Moorpark (urban and agriculture), northern Thousand Oaks (urban), and west Newbury Park (urban). However, this process was quite arbitrary as the residential developments of the Wood Ranch area of Simi Valley were added to the corridors by the County rather than removed.

The additions made by Ventura County to the SCW-designated Linkage Areas appear to fall into three coarse categories. These categories include 1) filling in “donut holes” within contiguous SCW-designated Linkages, 2) adding Linkage Area acreage in and around developed neighborhoods adjacent to SCW-designated Linkages, and 3) adding undeveloped lands where they occur in association with the Santa Clara River and Ventura River corridors.

The County also added lands along the Ventura River and Santa Clara River Corridors to apparently address habitat needs for southern steelhead trout. The Ventura River was added even though it wasn’t originally included within the planning area of SCW (SCW 2018, Ventura County 2019).

Conclusion: The County’s addition of areas to mitigate adverse consequences of edge effect and inclusion of previously left out land is not justified as the decisions appear to have been arbitrary and do not add conservation value. Without going through a similar and updated, scientifically-based evaluation of the conservation value of the added areas including modelling the permeability of the added areas, the additions do not achieve the objectives set forth by the County.

II. Concerns with Implementation of the Ordinance as Drafted

This section highlights examples where the proposed Ventura County Corridor Ordinance is not supported by data or may provide little to no conservation value to wildlife resources.

1. Precisely Mapped Areas Within the HCWC Zone Overlay that Provide No Conservation

Value. Figure 3 shows a high-density residential development in the Wood Ranch area located southeast of Bard Lake near the City of Thousand Oaks that is currently included within the proposed HCWC Overlay Zone. This area was not originally identified by SCW in its Santa Monica – Sierra Madre Connection plan, presumably because the residential development existed at the time of Connection Document preparation in 2006 and the area provided no wildlife conservation

value. The County has done nothing to measure the actual “conservation value” of lands within the HCWC. It appears that Ventura County mapped this area as part of the HCWC Overlay Zone for reasons that are not readily apparent. **Figure 3** also shows landscape linkage areas mapped originally by SCW at the western margin of the neighborhood that are densely developed and provide no conservation value.

Remedy: This developed area and others like it, all existing and future agricultural use and mining areas, and areas that do not support native vegetation that would be suitable for wildlife, should be removed from the HCWC Overlay Zone because they provide no conservation value. Regulation of lighting, fencing, landscape plants, potential crossing structures, and surface water features in the interior of densely developed areas would be unjustified because these areas provide essentially no wildlife corridor or conservation value to wildlife. The County needs to take it upon themselves to measure the actual conservation values on the ground without requiring land owners to conduct studies at their own expense. In addition, the County needs to revise their mapping in the HCWC Overlay Zone to eliminate areas that are developed, are in current or future agricultural and mining use areas, or that do not support natural vegetation communities that would support wildlife. Too many areas are mapped within the HCWC that do not support native vegetation or provide conservation value to wildlife.

2. **Imprecisely/Poorly Mapped HCWC Areas and Features.** **Figure 4** shows the Camarillo Springs Golf Course in the City of Camarillo within the Santa Monica – Sierra Madre Connection mapped by SCW. Here, efforts by SCW to exclude the golf course from suitable habitat were imprecise and a portion of the golf course is in the middle of the identified connection.

Remedy: Obviously, this and the previous example both show that the County needs to refine its HCWC Zone mapping to exclude developed areas, including golf courses and other modified areas that do not support native habitats. This also includes current and future agricultural and mining areas that are within the HCWC. The County also needs to do its own evaluation of “conservation value” or provide the funding to rerun the SWC’s models using accurate and current Land Cover/Use data layers, particularly those related to vegetation cover throughout the County. The appropriate locations for wildlife movement corridors in the County needs to be based on current conditions to ensure the corridors are actually functional for wildlife.

3. **Non-Existent Surface Water Feature.** **Figure 5** shows a 1.7-acre vacant lot located in the Bell Canyon area west of Canoga Park in the San Fernando Valley. The Bell Canyon area largely consists of low-density residential developments. The lot shown on the figure is within the Bell-Box Canyon CWSA Overlay Zone that would be designated by the draft Ventura County ordinance. As such, development in this area is subject to conditions associated with both the HCWC Overlay Zone and the CWSA Overlay Zone. **Figure 5** shows a drainage corridor mapped by NWI, which is essentially bisecting the vacant residential lot from east to west. The aerial signature of the drainage disappeared in 2006 (per Google Earth), suggesting the feature was potentially piped and buried at that time. The surface water feature no longer exists and the

HCWC Overlay Zone conditions would restrict new structures and vegetation management within 200 feet of the water feature margin, which would be an unnecessary management action with no conservation value. The County Ordinance would require that the landowner hire a biologist and submit this to the Planning Director as an appeal, an expensive process causing unnecessary negative effects to property owners. It is incumbent on the County to correct these surface water feature anomalies on the mapping prior to adopting the ordinance.

Remedy: Ventura County needs to review its entire set of overlay maps to ensure that surface water features, wildlife crossing structures, developed areas, existing and future agricultural and mining areas, vegetation communities, and habitats of conservation value are mapped correctly, with the most updated and advanced data. Features that no longer exist (like the drainage shown in **Figure 5**) should be removed from the HCWC and CWPA Overlay Zones to avoid unnecessary regulation and those that provide no conservation value. The NWI supposedly updates its surface water feature mapping database semi-annually. Obviously, the County is either not using the most current update of the NWI or the NWI is not adequately updated to include the feature used in this example. More than likely, other NWI features are not mapped correctly in the County's overlay maps and as a result, landowners will likely be held to unnecessary regulations under the ordinance. The County needs to update the NWI inventory and the onus should be on the County to verify that all surface water features are mapped correctly throughout the County.

4. **Incorrectly or Imprecisely Mapped Land Cover Types.** **Figure 6** compares the land cover mapping precision of SCW (**Figure 6a**) with more precise land use mapping (**Figure 6b**) used by an environmental consultant during recent project work on a single parcel located in eastern Ojai. As noted earlier in this document, SCW characterized land use within 30-meter pixels throughout a very broad assessment area, which explains part of the disparity seen in the **Figure 6** contrast.

Other land-uses and land cover types have also been incorrectly classified by the initial SCW land use characterization. For example, urban development shown in both panes of **Figure 6** was incorrectly characterized as *Artemisia californica* (California sagebrush) shrubland in the SCW effort.

As another example: Coast live oak woodland correctly mapped in **Figure 6b** was incorrectly mapped as *Artemisia californica* shrubland in **Figure 6a**. This error likely did not influence the SCW-derived permeability scores used in developing the broad landscape linkages, as both plant communities are permeable to wildlife. However, it is an example of the inaccuracies in the vegetation layer that was used in the Land Cover/Use layer, which carried the highest weighting values in the permeability model.

Remedy: Undoubtedly, there are many more areas mapped by SCW that do not match the actual on the ground vegetation communities that currently exist. The vegetation layer used in the model was likely the most inaccurate data layer. It is uncertain to what extent this type of classification error influenced the overall permeability score of a 30-meter pixel area but it

certainly puts the accuracy in question. Since the most functionality in wildlife movement corridors occurs where native habitat exists, it is critically important. The Land Use/Cover data layer carries the highest weighting values in the model, which indicates that it has the most influence on the outcome of the models. The County needs to rerun the SCW models using current Land Cover/Use data that has actually been mapped on the ground and not derived from aerial imagery.

III. Conclusions and Recommendations

- Based on limitations noted above in the data layers used for the SWC models, which include inaccurate vegetation and Land Use/Cover mapping and road density, the County needs to conduct more accurate vegetation, Land Use/Cover, and road density mapping and rerun the modeling of the corridors to find the best fit based on current conditions. In addition, the County needs to implement a scientifically-based suite of surveys to evaluate on-the-ground "Conservation Value" of lands within the proposed HCWC and CWA Overlay Zones. The onus and the costs for determining the measured conservation value of any properties within these overlay zones needs to be on the County and not on the landowners. Requiring landowners to set aside half of their properties for conservation when their lands don't support native habitats or are not located in an area that would even contribute to a functional corridor is unwarranted.
- The County needs to update the NWI overlay to reflect current conditions of surface water features, otherwise landowners could be regulated for these features when they no longer exist on the properties. In addition, the County needs to reduce the 200-foot buffer back to the 100-foot buffer to be consistent with the General Plan. Property owners that currently have structures or previously permitted land uses within the 200-foot buffer would be unduly regulated under the new Ordinance.
- The County also needs to revise its mapping overlay zones and particularly the HCWC Overlay Zone to exclude currently developed areas, golf courses, current and future agriculture and mining lands, and areas that do not support native habitats that provide no conservation value for species. Current mapping errors will subject land owners and developers to regulation that will provide no conservation value.
- The County needs to remove the compact development regulation triggered under the CWP Overlay Zone in areas where native habitats don't exist or where the properties are located in areas that would not contribute to a functional wildlife movement corridor. If the County does not remove the properties that have no conservation value or that do not support native habitat, then the result will be a patchwork of fragmented open space and development. This patchwork of fragmented open space would ultimately not contribute to functional wildlife movement corridors and it could further degrade wildlife conservation opportunities in the County.
- The inconsistencies between the Staff Report text, exhibits, and the GIS data related to the acreages encompassed by the CWPAs is a very concerning issue as it shows that the County has not fully vetted their wildlife corridor Ordinance and the associated impacts to landowners. The

County needs to step back and spend the time evaluating the Ordinance, correcting the mapping, and resolving the inconsistencies in their mapping of the HCWCs.

- To assemble and preserve functional wildlife linkages in Ventura County, the County needs to be prepared to negotiate land-swaps or land sales with willing sellers and be prepared to offer fair market (or above) prices for important land areas.
- Connection plans and linkage corridors developed by SCW were intended to be used as guidance documents and were not intended to be regulatory in nature. The two connection documents were produced in a transparent manner using established and accepted models and approaches, and the conclusions and recommendations were explicitly stated. The SCW Linkage Plan documents include mapping errors and data that does not reflect current conditions. Therefore, corrections to mapping errors (for example, using new or improved vegetation imagery or smaller pixel sizes) could potentially change the permeability conclusions reached by SCW. The value of such corrections needs to be determined by the County by conducting a new scientifically-based analysis to determine more meaningful conclusions on where the most appropriate locations for wildlife corridors are located in the County.
- The onus is on the County for all responsibility related to inaccuracies in the data layers used to develop the SCW models on which the Ordinance is based. Because the consequences of data and mapping inaccuracies could be very costly (in both time and money) to property owners and developers, the County must correct such inaccuracies before ever implementing an Ordinance such as the one being proposed.

The County's application of the SCW Linkage Documents, which were prepared in 2005 and 2006, to establish the locations of the HCWC Overlay Zone is flawed in that the data used to develop the corridors has been shown to be inaccurate and it is severely outdated for an Ordinance that is being proposed to be implemented in 2019. The onus is on the County for all responsibility related to inaccuracies in the data layers used to develop the SCW models on which the Ordinance is based. Because the consequences of data and mapping inaccuracies could be very costly (in both time and money) to property owners and developers, the County must correct such inaccuracies before ever implementing an Ordinance such as the one being proposed.

LIST OF FIGURES

Figure 1 – Ventura County Proposed Habitat Connectivity and Wildlife Corridor and Critical Wildlife Passage Areas

Figure 2 – Comparison of HCWC Overlay Zones by SCW and Ventura County

Figure 3 – Residential Housing Development Included in HCWC Overlay Zone by Ventura County but Not Considered Permeable by SCW

Figure 4 – Imprecise Mapping Used for Ventura County HCWC Overlay Zone

Figure 5 – Vacant Lot in CWPA Overlay Zone Showing Relict Water Feature and Adjacent Development

Figure 6 – Comparison of Low-Precision Land Cover Type Mapping (5a) Used by Ventura County with More Precise Mapping (5b)

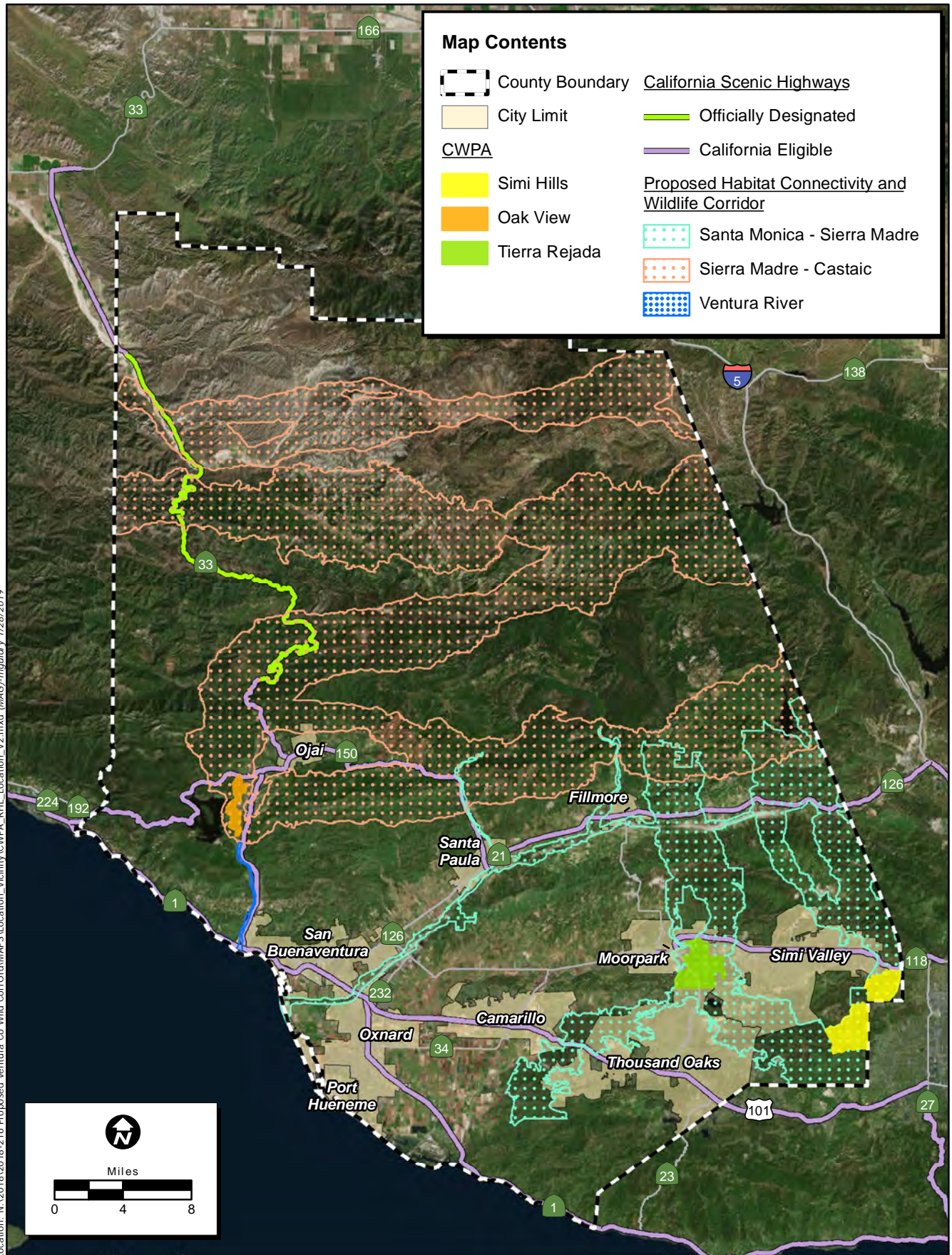









Figure 1. Ventura County Proposed Habitat Connectivity and Wildlife Corridor and Critical Wildlife Passage Areas

Location: N:\2018\2018-216 Proposed Ventura Co Wild Corridor\Maps_Analysis\2018-12-14 RHL Boundary Discussion\RHL_County_vs_SCW_20190122.mxd (MAG-mgudr 1/25/2019)

Figure 2.
Comparison of HCWC Overlay
Zones by SCW and Ventura County

Map Features

-  County Boundary
-  City Limit
-  HCWC Filled in by Ventura County Only (25,691 ac.)
-  HCWC Mapped by SCW but Eliminated by Ventura County (352 ac.)
-  SCW and County 2019 (394,620 ac.)
- California Scenic Highways**
 -  Officially Designated
 -  California Eligible

Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community



Location: N:\2018\2018-216 Proposed Ventura Co Wild Corridor\Maps_and_Analysis\2018-12-14 RHL Boundary Discussion\RHL_Development_20190125.mxd (MAG.mxd) 1/28/2019

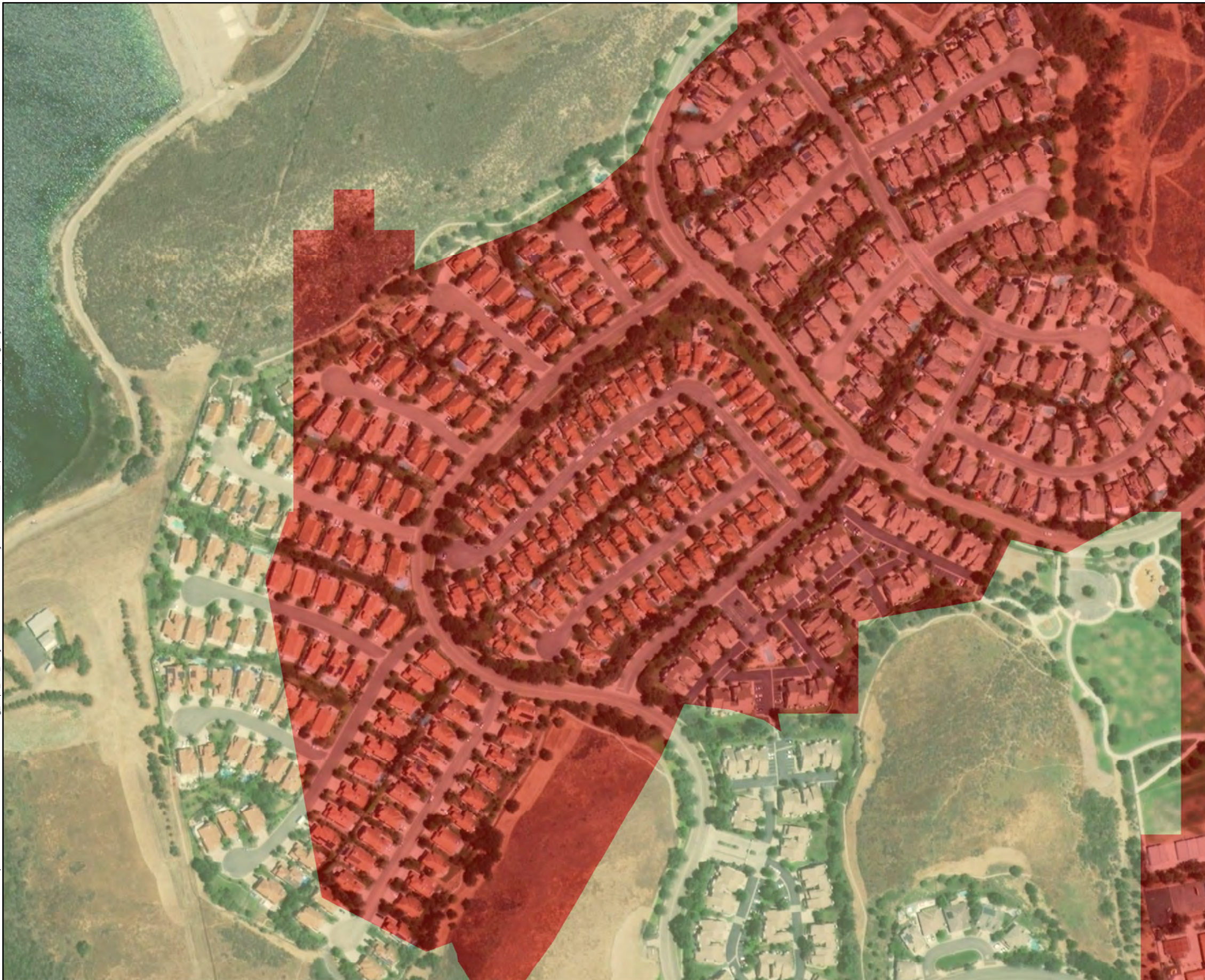


Figure 3. Residential Housing Development Included in HCWC Overlay Zone by Ventura County but Not Considered Permeable by SCW

Map Features

- HCWC Filled in by Ventura County Only
- HCWC Common to both SCW and Ventura County

Inset

Habitat Connectivity and Wildlife Corridor

- Santa Monica - Sierra Madre
- Sierra Madre - Castaic
- Ventura River

Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community


ECORP Consulting, Inc.
ENVIRONMENTAL CONSULTANTS

Location: N:\2018\2018-216 Proposed Ventura Co Wild Corridor\Maps_and_Analysis\2018-12-14 RHL Boundary Discussion\PHL_Golf_20180122.mxd (MAG) ngulday 1/28/2019






Figure 4.
Imprecise Mapping Used for
Ventura County HCWC Overlay Zone

Map Features

 Santa Monica - Sierra Madre Wildlife Corridor

Inset

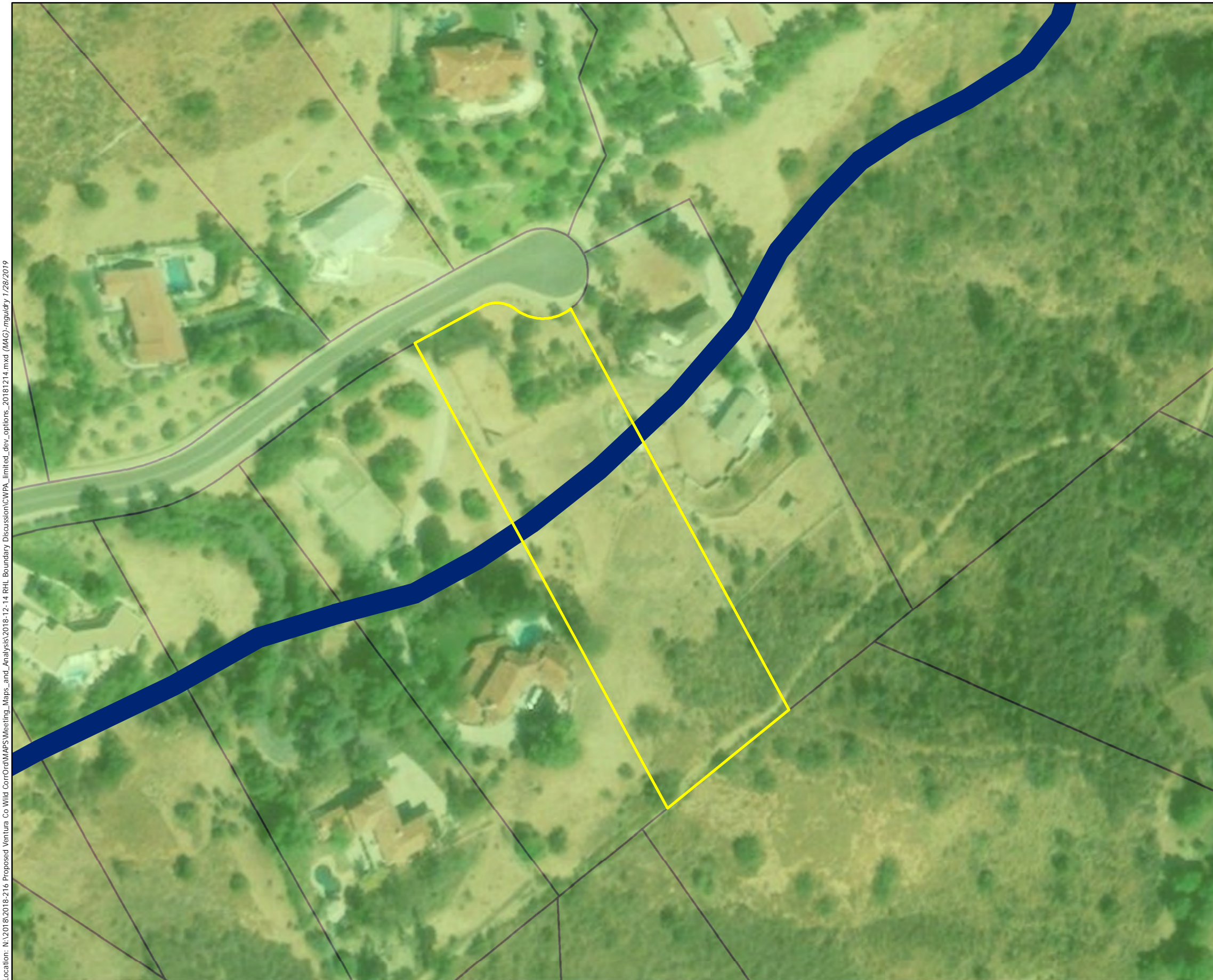
Habitat Connectivity and Wildlife Corridor

	Santa Monica - Sierra Madre		Sierra Madre - Castaic
			Ventura River

Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community



Location: N:\2018\2018-216 Proposed Ventura Co Wild Corridor\Maps_and_Analysis\2018-12-14 RHL Boundary Discussion\CWPA_limited_dev_options_20181214.mxd (MAG) nguidy 1/28/2019



**Figure 5. Vacant Lot In
CWPA Overlay Zone
Showing Relict Water Feature
and Adjacent Development**

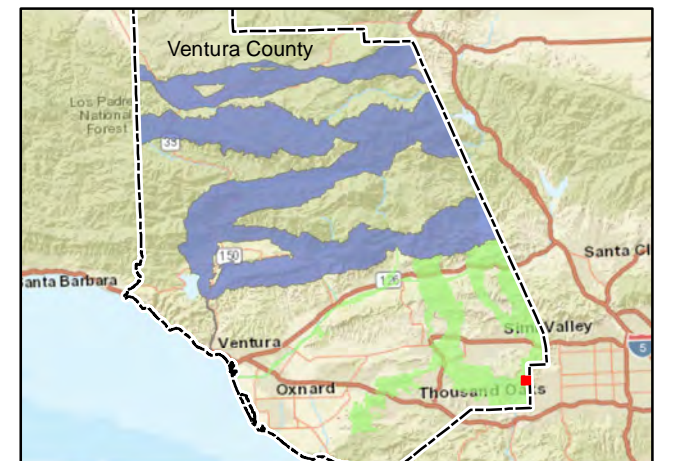
Map Features

-  Vacant 1.7 acre Lot
-  Simi Hills CWPA
-  NWI Drainage

Inset

- Habitat Connectivity and Wildlife Corridor
-  Santa Monica - Sierra Madre
 -  Sierra Madre - Castaic
 -  Ventura River

Service Layer Credits: Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, © OpenStreetMap contributors, and the GIS User Community



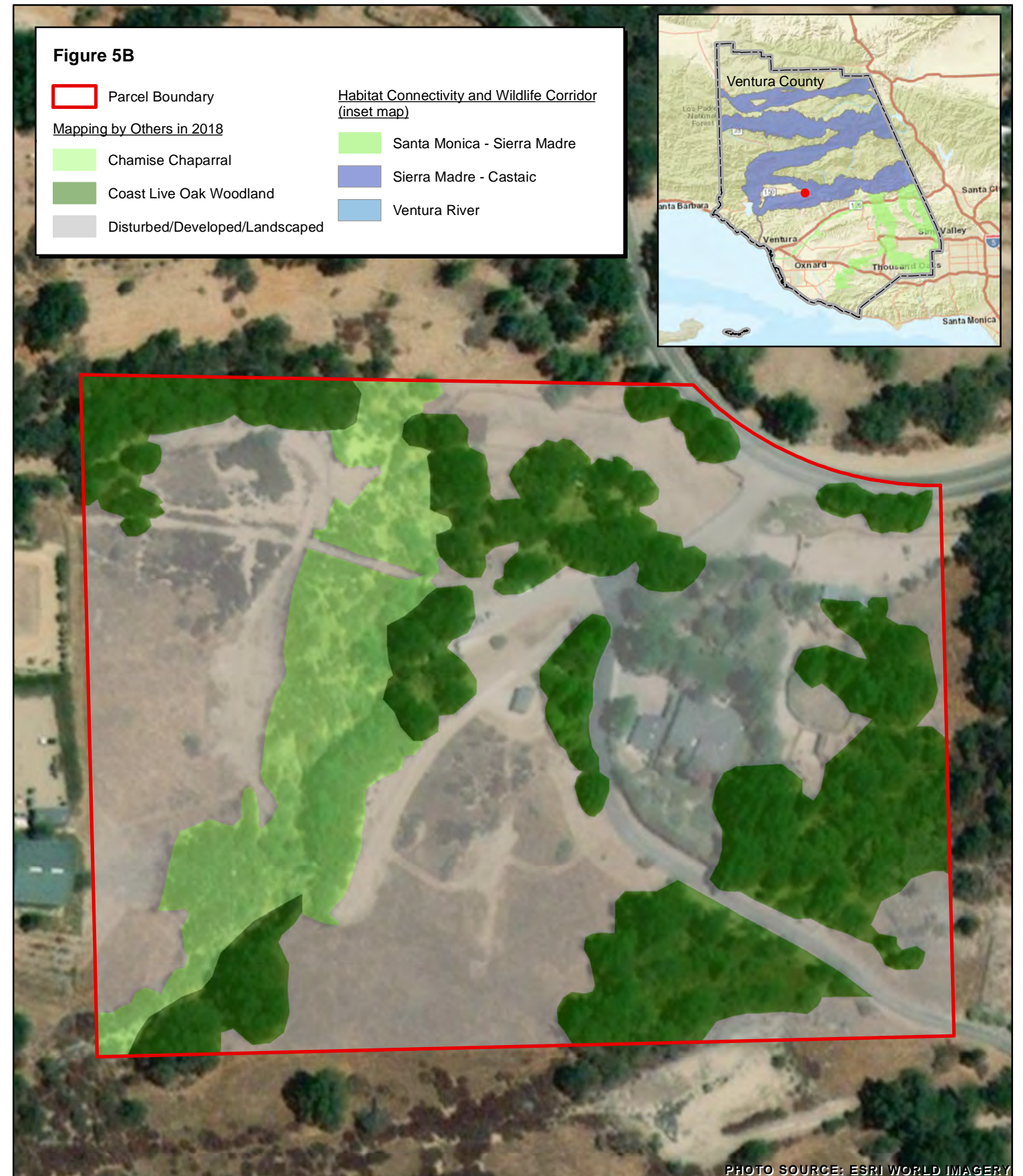
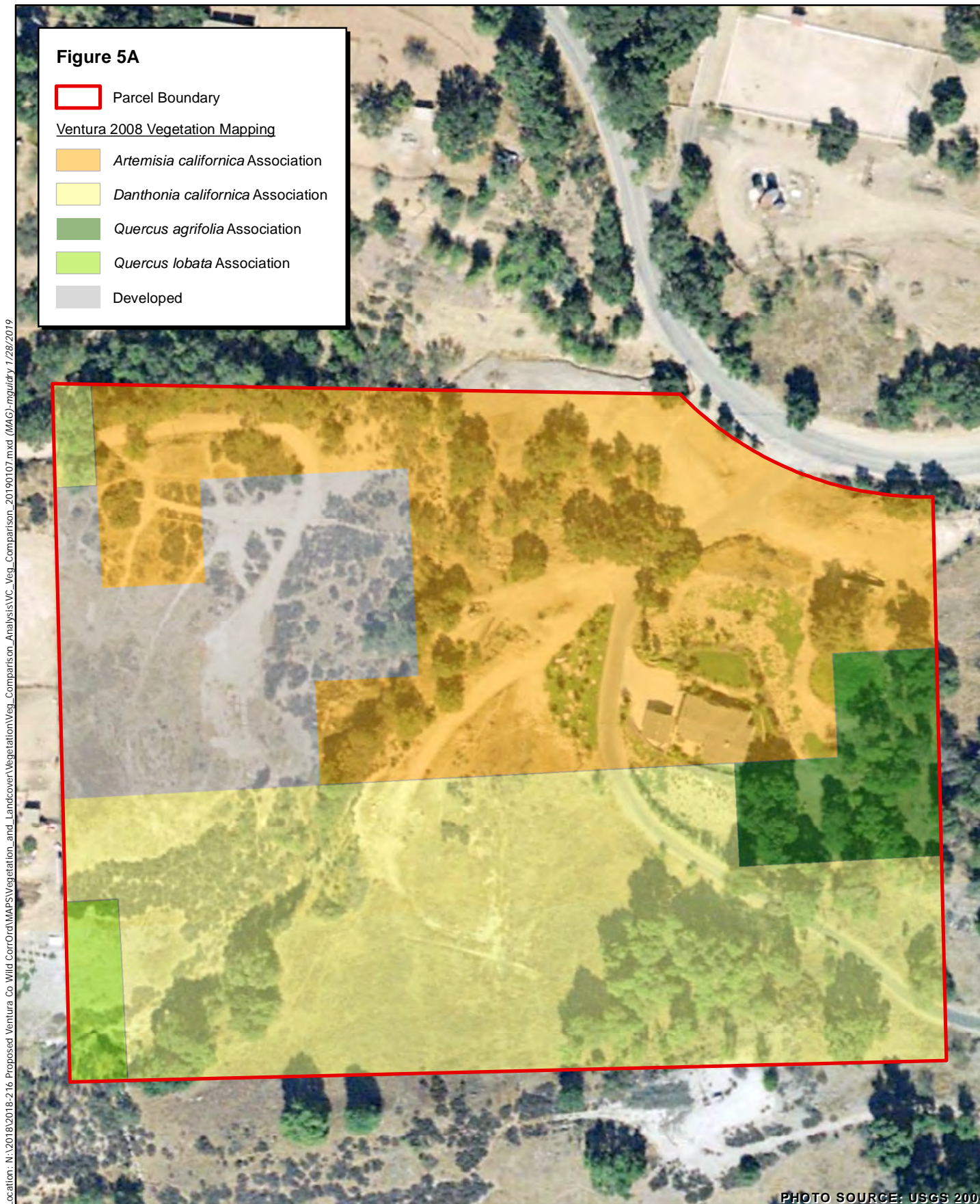


Figure 6. Comparison of Low-Precision Land Cover Type Mapping (5a) Used by Ventura County with More Precise Mapping (5b)