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COUNTY OF SACRAMENTO, CALIFORNIA
& CITY OF ELK GROVE, CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILTON MIWOK RANCHERIA, *et al.*,

Plaintiffs,

vs.

KENNETH L. SALAZAR, *et al.*,

Defendants,

COUNTY OF SACRAMENTO,
CALIFORNIA and CITY OF ELK
GROVE, CALIFORNIA,

Proposed Interveners.

) Case No. C-07-02681-JF-PVT
)
) **DECLARATION OF SUSAN**
) **BURNS COCHRAN IN**
) **SUPPORT OF MOTION TO**
) **INTERVENE AND MOTION**
) **TO VACATE**
) **JUDGMENT/DISMISS**

) HEARING DATE: Sept. 18, 2009
) HEARING TIME: 9:00 a.m.
) JUDGE: Hon. Jeremy Fogel
) COURTROOM: 3

Case No. C-07-05706 (JF)

ME-WUK INDIAN COMMUNITY OF THE
WILTON RANCHERIA, *et al.*,

Plaintiffs,

vs.

KENNETH L. SALAZAR, *et al.*,

Defendants,

COUNTY OF SACRAMENTO,
CALIFORNIA and CITY OF ELK
GROVE, CALIFORNIA,

Proposed Intervenors

I, SUSAN BURNS COCHRAN, hereby declare under penalty of perjury as follows:

1. I am an attorney, licensed by the State Bar of California. I have been an attorney since 1988. I currently serve as the City Attorney for the City of Elk Grove, a position I have held since August 2007.

2. Prior to coming to the City of Elk Grove, I had worked exclusively as a municipal attorney since 1995. During that time, my primary focus has been on land use issues, including the identification and review of environmental impacts related to development and urbanization of agricultural lands.

**Relationship of the Rancheria Lands to the City of Elk Grove and
Potential Impacts Of The Lands' Development**

3. The City of Elk Grove (the "City") incorporated as a municipal corporation on July 1, 2000. The City is located approximately one mile from the lands proposed to be taken into trust for the Wilton Miwuk Rancheria. A map showing the location of the City's corporate limits and the proposed trust lands is attached hereto as Exhibit "A" and incorporated by this reference.

4. After incorporation in 2000, the City was required by state law to develop a "sphere of influence". Under California Government Code section 56076,

1 a sphere of influence is defined as “a plan for the probable physical boundaries and
2 service area of a local agency.” California Government Code section 56054 includes
3 a city in the definition of “local agency”. Case law has further described spheres of
4 influence as essential planning tools to be used to combat urban sprawl, provide
5 efficient urban development plans, and promote the preservation of prime
6 agricultural lands and other open space.

7 5. In the preparation of a sphere of influence, the City Council of the City
8 of Elk Grove (“City Council”) considered the areas that include the proposed
9 rancheria site. At that time, the City designated those areas as outside the normal
10 development pattern of the City. As a result, the City’s environmental analysis for
11 traffic and circulation, air quality, noise, loss of farmland and loss of habitat for
12 such species as the Swainson’s Hawk and the Giant Garter Snake assumed this area
13 would not urbanize.

14 6. In November 2003, the City finalized its General Plan, including the
15 required analysis under the California Environmental Quality Act (“CEQA”). The
16 circulation element of the General Plan assumes that no traffic impacts would
17 occur from the areas east of the City, including the proposed trust lands.

18 7. In addition to City actions, numerous other local agency
19 environmental reviews and associated planning efforts have assumed this area,
20 including the proposed trust lands, would not urbanize. For example, in December
21 2004, the Sacramento Council of Governments (SACOG) adopted the so-called
22 “Blueprint”, detailing areas of urbanization in the county, as shown on Exhibit “B”.
23 The Blueprint indicates no development will occur in this area. In addition,
24 SACOG’s regional traffic modeling and air quality attainment assume no
25 development in this area and the 2035 MTP assumes no development in this area,
26 meaning there has been no assessment of regional traffic impacts of potential tribal
27 projects, such as a casino, which might result from the proposed stipulation for
28 which no environmental review has been required.

1 8. Since 1986, the County of Sacramento and others have worked toward
2 the preparation of the South Sacramento Habitat Conservation Plan (the “HCP”).
3 The purpose of the HCP is to “consolidate environmental efforts to protect and
4 enhance wetlands (primarily vernal pools) and upland habitats to provide
5 ecologically viable conservation areas. It will also minimize regulatory hurdles and
6 streamline the permitting process for development projects” (Sacramento County
7 website, 2009).

8 9. Under the current version of the HCP, the proposed Rancheria/trust
9 site is outside of the area of urbanization and as such is included within the total
10 acreage amounts allocated for retention as open space in order to provide habitat
11 for endangered and threatened species. These areas will serve as habitat mitigation
12 for development in areas of the County and in cities, such as Elk Grove identified
13 for urbanization within the HCP.

14 10. The City purchased land adjacent to the Rancheria site as Swainson’s
15 Hawk habitat. If development were to occur on the adjacent site, the value of that
16 land would be diminished for habitat and related foraging and nesting sites.

17 11. Development of the proposed Rancheria, including, for example, a
18 casino complex, will cause significant impacts on the City, including on its roads,
19 traffic congestion, public safety, and loss of habitat for threatened and endangered
20 species.

21 12. In May 2008—more than year before learning of the settlement in
22 these actions—the City filed an application with the Sacramento Local Agency
23 Formation Commission (“LAFCO”) to amend the City’s existing sphere of
24 influence, thereby expanding its land use and regulatory reach and signaling its
25 intention to eventually annex the additional lands to the City. The proposed sphere
26 of influence includes lands directly adjacent to the proposed Rancheria trust site.

27 13. The City is also in the process of negotiating a Memorandum of
28 Understanding with the County of Sacramento regarding land use in the adjacent

1 areas, which anticipates the creation of a greenbelt for environmental protection
2 that would include the Rancheria lands themselves. Having the Rancheria in the
3 middle of the greenbelt, but exempt from the environmental terms of the MOU,
4 could make the greenbelt less secure and more subject to other development
5 pressures.

6 **The City Had No Notice Of These Actions Until The Settlement Was**
7 **Approved, And Moved Promptly Thereafter To Protect Its Interests**

8 14. The City first learned of this litigation on or about the date the
9 settlement was approved by the Court through press reports. No notice of the
10 actions' pendency—formal or informal--was previously provided to the City.
11 Indeed, in a meeting with Little Fawn Boland, an attorney for the Me-Wuk Indian
12 Community of the Wilton Rancheria (the "Community"), she acknowledged to me
13 that the City had not been notified of the pendency of the lawsuit.

14 15. Since learning of the settlement, the City has undertaken numerous
15 actions to assert and protect its rights regarding the inclusion of rancheria lands
16 near the City:

- 17 a. Upon learning of the settlement, City staff immediately began
18 researching the facts and circumstances of the settlement and these
19 cases.
- 20 b. The City Council meets on the second and fourth Wednesday of each
21 month. Thus, the first meeting at which the settlement could be
22 addressed, consistent with State open meeting laws, was June 24,
23 2009. At that meeting the Council issued a statement expressing its
24 concern with the manner of the settlement, and urging the State of
25 California to intervene in these actions to challenge the settlement.
- 26 c. Two days later, on June 26, 2009, the City and County sent a joint
27 letter to Governor Schwarzenegger, asking that the State intervene in
28

1 the litigation and seeking a meeting with the Governor's legal affairs
2 secretary.

3 d. On July 1, 2009, the City retained the law firm of Nielsen, Merksamer,
4 Parrinello, Mueller & Naylor as special counsel to assist the City in
5 addressing this matter. The firm was recommended to me as a firm
6 with specialized knowledge in Indian law and Indian gaming.

7 e. On July 2, 2009, representatives of the City and representatives of the
8 County met with representatives of Governor Arnold Schwarzenegger.
9 The purpose of the meeting was to further inquire whether the State of
10 California intended to challenge the land use aspects of the
11 Stipulation, because it proposes to remove certain land from state and
12 local jurisdiction. The Governor's representatives indicated that they
13 also only recently learned of the Stipulation as well but were immersed
14 in budget discussions and had few resources to devote to this issue at
15 that time. They indicated that they would get back to the City and the
16 County after further consideration. No subsequent communication
17 from the Governor's office has been received.

18 e. After more than a week without a response from the Governor, the
19 City authorized its special counsel to research and consider direct
20 intervention by the City in the litigation to protect its interests. The
21 City urged the County to join it in the litigation.

22 f. Nielsen Merksamer reviewed the record and relevant case law, and
23 then prepared pleadings in intervention on behalf of the City. This
24 was promptly accomplished. The County also agreed to join the City
25 in intervention.

26 I declare under penalty of perjury under the laws of the State of California
27 that the foregoing is true and correct of my own personal knowledge except for
28 those matters stated on information and belief and, as to those matters, I believe

1 them to be true. If called as a witness, I could competently testify thereto.

2 Executed on August 4, 2009, at Elk Grove, California.

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SUSAN BURNS COCHRAN

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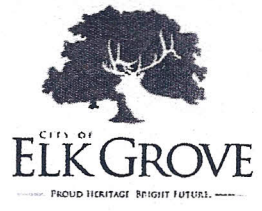
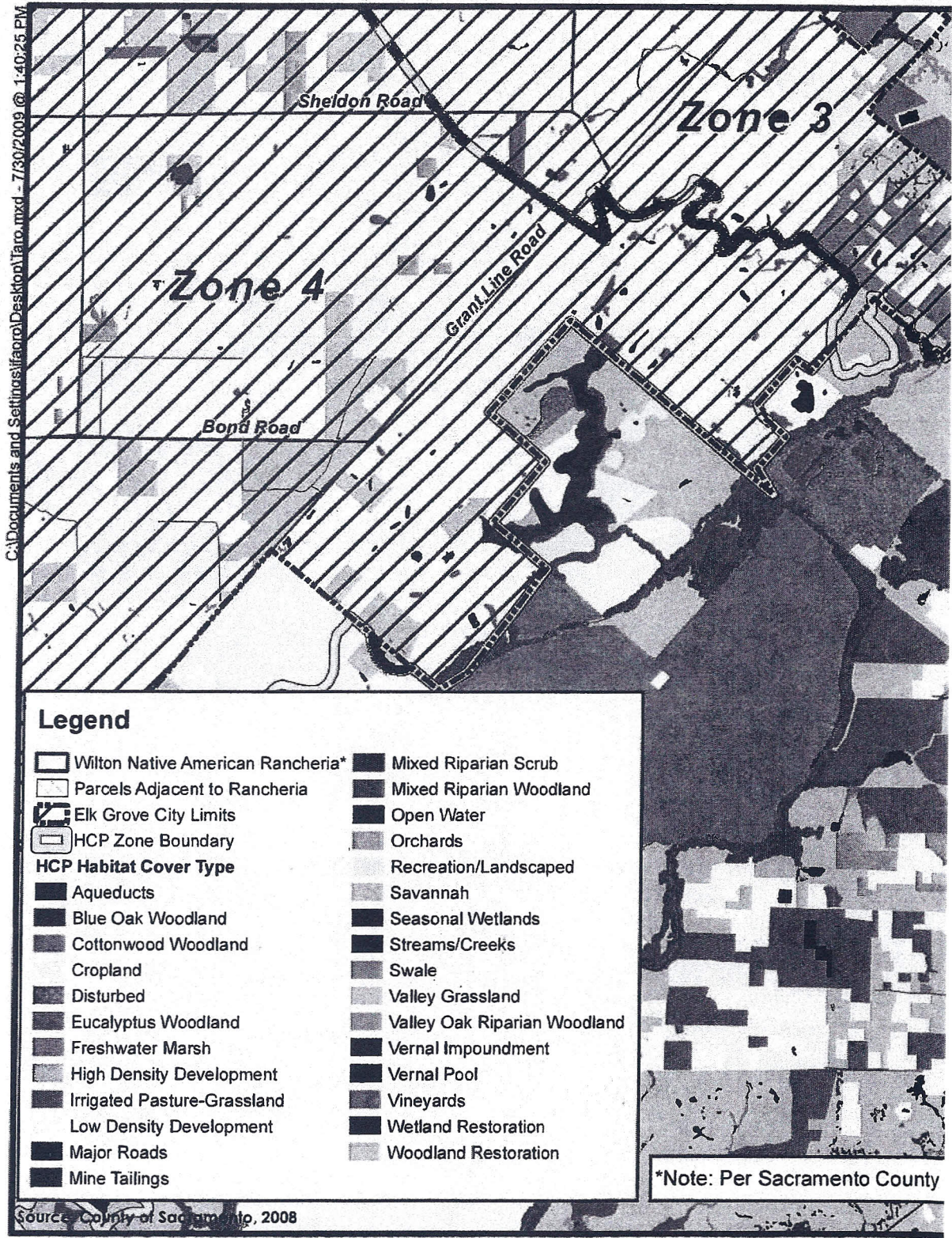
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1 I, Christopher E. Skinnell, the e-filer of this document, attest that
2 concurrence in the filing of this document has been obtained from the signatory.

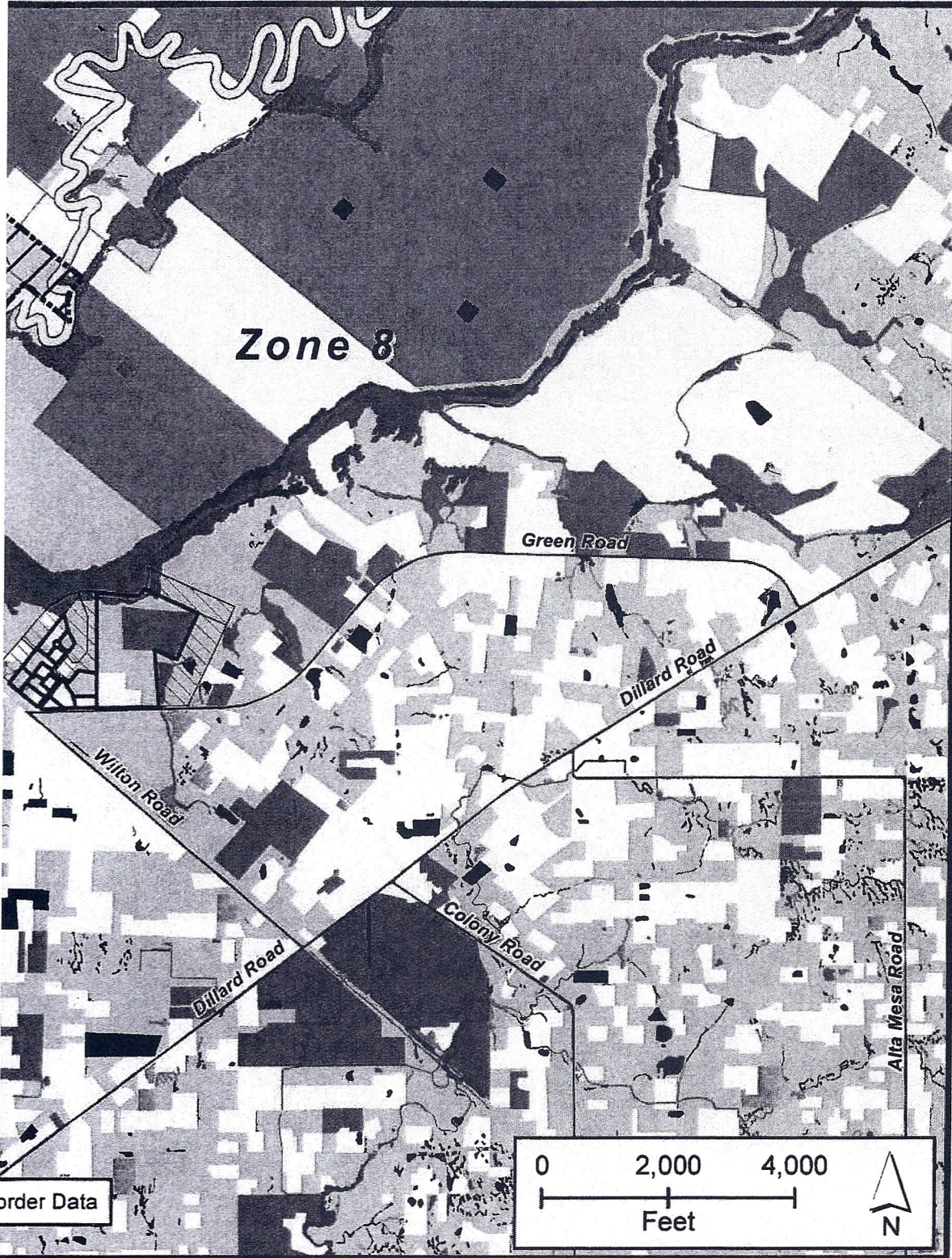
3 Dated: August 4, 2009

By: /s/Christopher E. Skinnell
Christopher E. Skinnell

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City of Elk Grove
Development Services



**HCP Habitat Cover Types
Wilton Native American Rancheria**