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September 14, 2009

Mr. John Rydzik, Regional Environmental Scientist
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825
Fax: (916) 978-6099

**RE: WESTERN RIVERSIDE COUNTY REGIONAL CONSERVATION
AUTHORITY'S COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT
STATEMENT FOR THE SOBOBA BAND OF LUISEÑO INDIANS' ("TRIBE")
HORSESHOE GRANDE FEE-TO-TRUST APPLICATION**

Dear Mr. Rydzik:

Thank you for the opportunity to review and comment on the draft environmental impact statement ("DEIS") for the Soboba Horseshoe Grande Fee-to-Trust Application ("Project"). The Western Riverside County Regional Conservation Authority ("RCA") is a joint powers authority created by the County of Riverside and the fourteen (14) cities¹ in western Riverside County.² The purpose of the RCA is to acquire, administer, operate, and maintain land in order to establish habitat reserves (the "Conservation Area") for the conservation and protection of species covered by the Western Riverside County Multiple Species Habitat Conservation Plan ("MSHCP" or "Plan") and to implement the MSHCP. The MSHCP preserves and protects 146 species by acquiring lands for the Conservation Area. The permits for the MSHCP were issued by the United States Fish and Wildlife Service and the California Department of Fish and Game in June 2004. The MSHCP is an integral component of the Riverside County Integrated Project ("RCIP")³ and therefore qualifies as a regional land use plan. The RCA offers the following comments.

¹ The newly incorporated cities of Wildomar and Menifee joined the RCA this year, so sixteen (16) cities, along with the County, are now members of the RCA.

² See <http://www.wrc-rca.org/>.

³ Because the County of Riverside is one of the largest and fastest growing counties in the United States, the County, the Riverside County Transportation Commission, the cities in western Riverside County, other interested public agencies and associated stakeholders created a comprehensive planning effort entitled the Riverside County Integrated Project, or RCIP, to address local environmental, transportation and land use needs with the goal of anticipating and shaping the pattern of growth within the County to maintain and enhance the quality of life for its residents. (see <http://www.rcip.org/>.)

We wish to make it clear that the RCA has no objection to the Project per se. RCA submits these comments instead to address the biological impacts of the Project and how it negatively impacts the MSHCP. As mentioned in Appendix H to the DEIS, the property on which the Project will be located is within the boundaries of the MSHCP. As shown in the maps attached to this letter, the Project is located within eight (8) Cells in the MSHCP Criteria Area. These Cells are important because a total of 310,000 acres of Cells exist in western Riverside County from which approximately 153,000 acres will eventually contribute to the "Conservation Area" or "Reserve." Normally, development projects within Cells would be required to pay a MSHCP fee (the "Local Development Mitigation Fee" or "LDMF"⁴) and potentially require the project applicant to dedicate some part of the project area to be conserved. Given that the Project fails to comply with MSHCP requirements and the DEIS fails to analyze any potential adverse impacts to the Plan, additional mitigation measures must be imposed to offset the Project's impacts to biological resources in western Riverside County.

While the National Environmental Policy Act of 1969 (42 U.S.C. §4321 et seq. ["NEPA"]) does not mandate particular results, it does require that federal agencies take a "hard look" at the environmental consequences of their actions. (Metcalfe v. Daley (9th Cir. 2000) 214 F.3d 1135, 1141.) Indeed, the U.S. Bureau of Indian Affairs's (the "BIA") own NEPA Handbook states:

The analysis of effects [of environmental consequences] should go beyond mere description of a change in the environment caused by a proposed action or alternative. It should include discussion of the ultimate long- and short-term significance of the change and a detailed cause and effect examination using the action elements of the proposal and the specific environmental parameters.

(30 BIAM Supplement 1, §6.3E(1)(g)(3).) Additionally, the Council on Environmental Quality has adopted regulations that the BIA must consider when preparing a DEIS. One of those regulations requires that the DEIS must analyze "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and *local* (and in the case of a reservation, Indian tribe) *land use plans*, policies and controls for the area concerned." (40 C.F.R. §1502.16(c)[*italics added*].) The MSHCP is a local land use plan that has been accepted by the County of Riverside and sixteen (16) cities. It is true that the DEIS mentions the MSHCP, but the BIA's own NEPA Handbook requires the BIA to offer a true "discussion of the ultimate long- and short-term significance of the change and a detailed cause and effect examination using the action elements of the proposal and the specific environmental parameters." (30 BIAM Supplement 1, §6.3E(1)(g)(3).) The DEIS offers no such discussion.

⁴ The LDMF is the MSHCP's primary funding source to purchase habitat lands for the Conservation Area.

Further, NEPA regulations require the DEIS to contain the following analysis:

To better integrate environmental impact statements into State or local planning processes, statements *shall* discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned).⁵ Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

(40 C.F.R. §1506.2(d)[italics added].) However, the biological resource analysis in sections 3.4, 4.4 and 5.4 of the DEIS provides very limited analysis and proposes limited and incomplete measures to mitigate the impacts of the Project upon biological resources. The Biological Resources Assessment (“BRA”) in Appendix H simply mentions the location of the Project as being within the boundaries of the MSHCP. (DEIS, Appendix H, p. 13.) The BRA then proceeds to dismiss the MSHCP by stating that “The Tribe is not a signatory to the MSHCP.” (*Ibid.*) In fact, this statement highlights the fact that if the BIA approves the Project without further mitigation, the Tribe would be under no future obligation to honor the MSHCP.

The BRA is correct in stating that the Tribe is not a signatory to the federally-approved MSHCP. Nevertheless, as one of the most significant HCPs in the nation approved under Section 10(a) of the federal Endangered Species Act (16 U.S.C. §1531 et seq. [“ESA”]), the BIA certainly has an obligation to evaluate and analyze the impact that the Project will have on the primary means of protecting threatened and endangered species in western Riverside County. In fact, NEPA regulations require it. (40 C.F.R. §1506.2(d).) Because the DEIS wholly fails to analyze the Project’s impacts to the MSHCP, a court would likely hold that the DEIS fails to provide the requisite “hard look” required by NEPA. (*Metcalf v. Daley*, *supra*, 214 F.3d at p. 1141.)

Not only does the Project have major impacts to biological resources, the DEIS admits that many of the impacts have yet to be determined. (DEIS, §4.4, p 4-52.) The DEIS states that the Project site contains approximately 178 acres of coastal sage scrub habitat and approximately 68 acres of southern will scrub habitat. Although the DEIS describes these areas as disturbed, the DEIS admits that the habitat is suitable for Federally-listed species. (*Ibid.*) In addition, the Project could potentially impact the Western Burrowing Owl. (DEIS at p. 4.55.) This is a species that has been specifically covered within the MSHCP, but the DEIS failed to mention any impact on the MSHCP from potential impacts to the Burrowing Owl as a result of the Project. Further, the DEIS fails to present the final mitigation measures that will need to be included for the Project since the United States Fish and Wildlife Service has not yet completed its biological opinion. (DEIS at p. 5-7; see also p. 4-53 [impacts to San Bernardino Kangaroo rat are unknown].) We therefore request that the BIA analyze these impacts and propose appropriate mitigation measures (discussed further below) in the final EIS following the issuance of the biological opinion.

⁵ As the holder of a federal Incidental Take Permit issued by the U.S. Fish and Wildlife Service, the MSHCP qualifies as a federally sanctioned local plan.

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Additionally, there is no discussion about the MSHCP in Section 4.10 on Cumulative Impacts. Since the MSHCP covers all of western Riverside County, the DEIS should address these impacts because the lack of adherence to the MSHCP will have cumulative impacts to western Riverside County. Similarly, the failure to set aside land in conservation and to pay MSHCP fees to RCA should have been analyzed in relation to the indirect effects to the MSHCP and western Riverside County in Section 4.11.

We believe this lack of analysis of the MSHCP and lack of measures to mitigate for effects on biological resources to be a deficiency in the DEIS, and thus indicates that the BIA has failed to take the requisite "hard look" at the environmental consequences of the Project. (Metcalfe v. Daley, *supra*, 214 F.3d at p. 1141.)

It is therefore very important that the BIA condition the Project so that at a minimum, acreage be set aside to contribute to the Conservation Area. Without this condition, the habitat will be lost forever and potentially jeopardize the MSHCP assembly. In addition, a fee should be paid.

The RCA again thanks the BIA for the opportunity to review and comment on the DEIS. We look forward to working with you on these issues. In addition, the RCA requests to be put on the mailing list for any and all future notices regarding this Project.

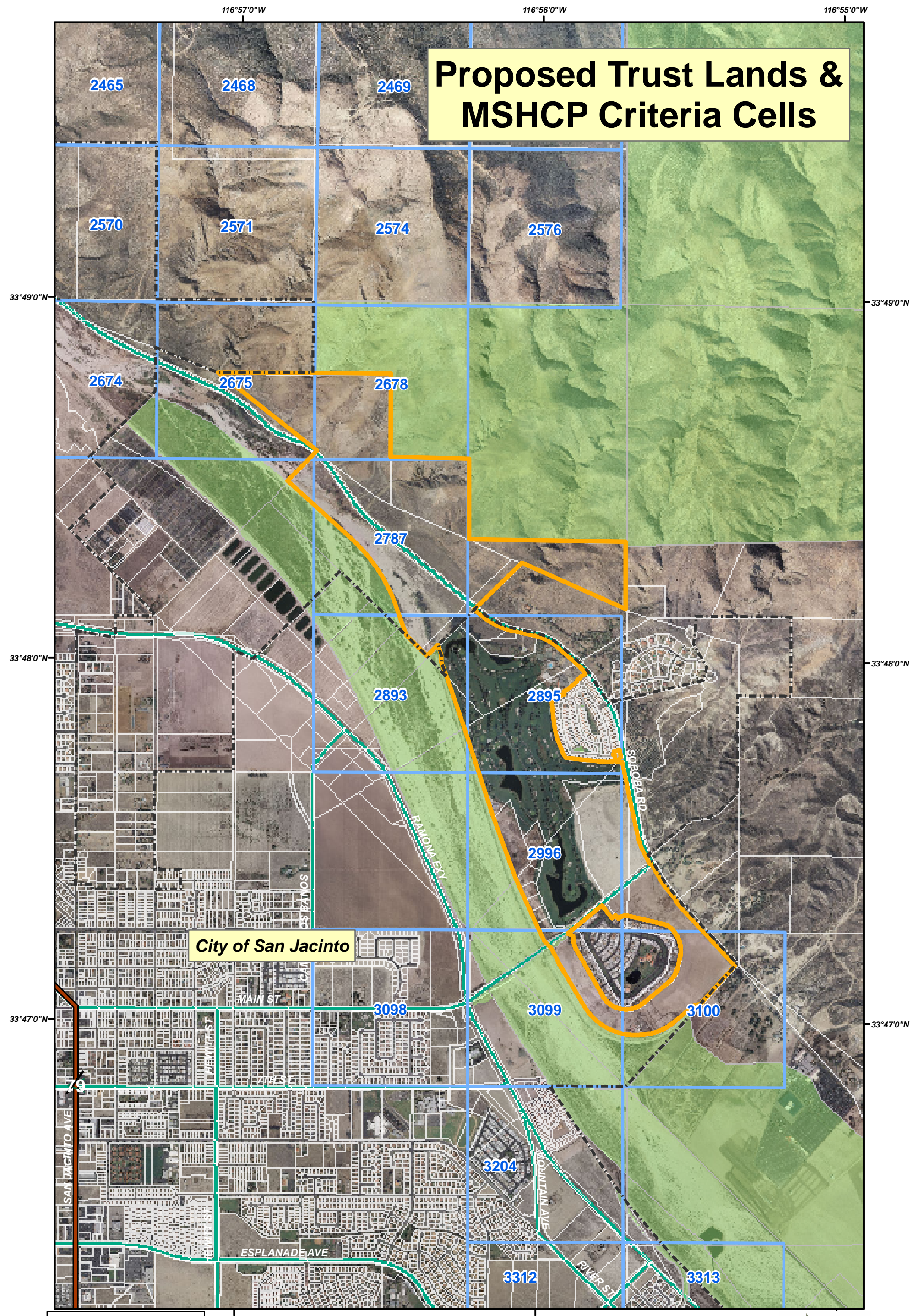
Sincerely,



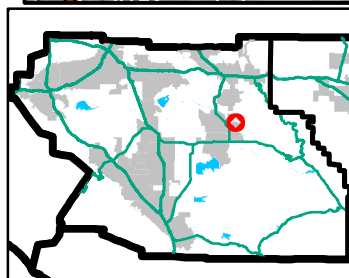
Charles V. Landry
Executive Director

cc: Michelle Ouellette, Best Best & Krieger LLP
Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service
Barry McClellan, City Manager, City of San Jacinto
David Huff, Deputy County Counsel, County of Riverside
Karl Johnson, Legal Counsel, Soboba Band of Lusieño Indians

Proposed Trust Lands & MSHCP Criteria Cells



City of San Jacinto

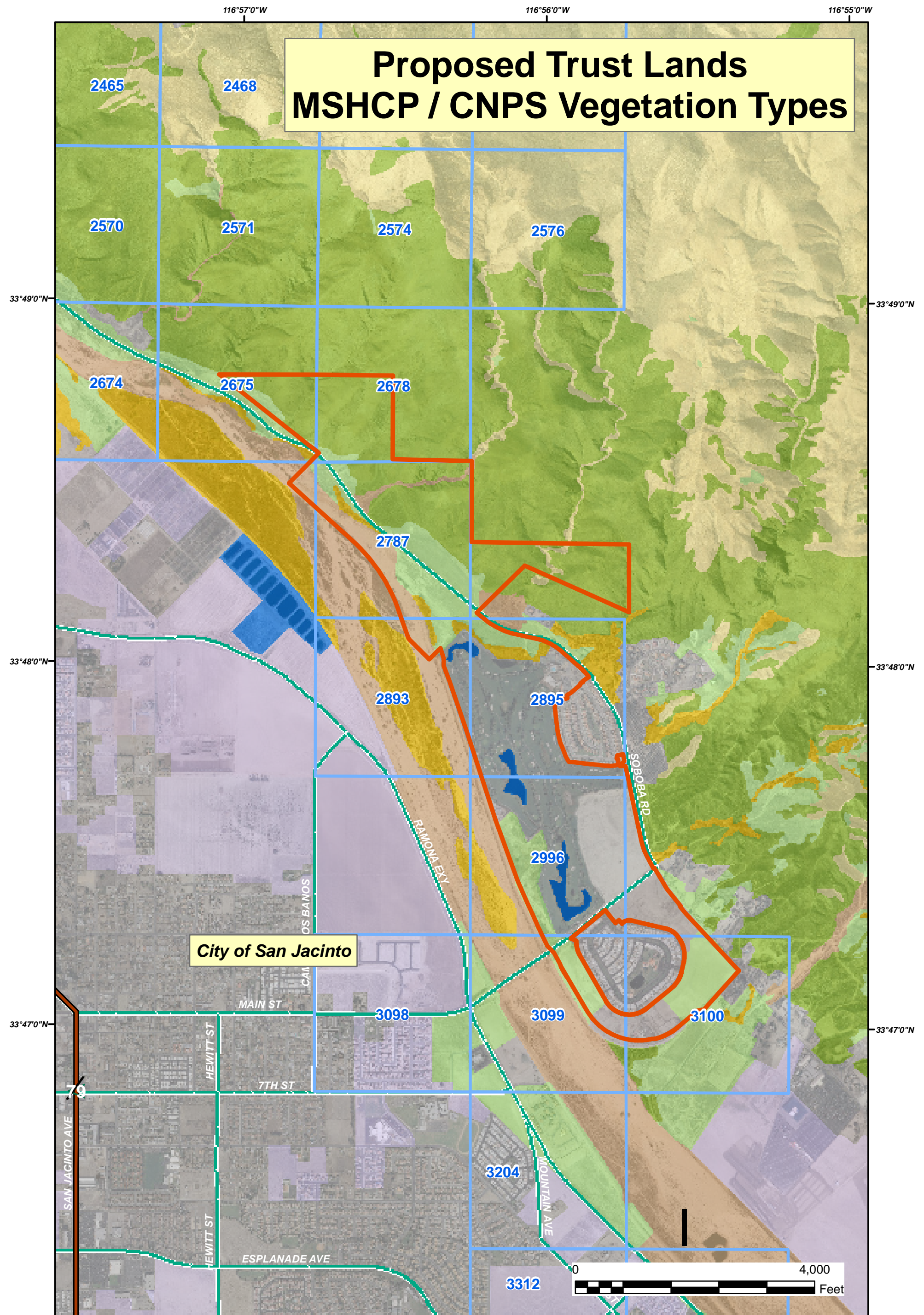


- HIGHWAYS
- CITIES
- Project Site
- Criteria Cells
- Public/Quasi-Public Conserved Land
- RCA MSHCP Conserved Land
- General Plan Roads

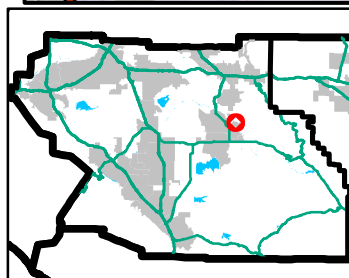


July 6, 2009

Proposed Trust Lands MSHCP / CNPS Vegetation Types



City of San Jacinto



- | | | |
|------------------------------------|---------------------------|-----------------------------------|
| Project Site | Desert Scrub | Playas and Vernal Pools |
| MSHCP/CNPS VEGETATION TYPES | Developed/Disturbed Land | Riparian Scrub, Woodland, Forest |
| Agricultural Land | Grassland | Riverside Alluvial Fan Sage Scrub |
| Chaparral | Meadows and Marshes | Water |
| Coastal Sage Scrub | Montane Coniferous Forest | Woodland and Forests |
| | No equivalent | |



July 6, 2009