

Attachment A: Descriptions and citations for Category #1 and #2 lands
July 13, 2008

Category #1 — Areas where law or policy currently prohibits renewable development:

- **Designated federal Wilderness areas and wilderness study areas** – the former are designated by Congress, the latter by the Bureau of Land Management (BLM). In both areas, there are no roads and the "hand of man" is not visible. Wilderness areas' values of solitude, natural quiet, and "wildness" as well as their non-motorized recreation opportunities and scenery are all intended to be preserved forever. In wilderness study areas, those values are to be preserved until Congress determines otherwise. In general, roads, machines, power tools are prohibited.
- **California State Wilderness Areas** – Public Resources Code Section 5019.68 declares that state wildernesses, "are hereby recognized as areas where the earth and its community of life are untrammelled by man and where man himself is a visitor who does not remain." A state wilderness is further defined to mean an area of relatively undeveloped state "without permanent improvements or human habitation." Wilderness Act 5093.30-5093.40. These areas too are intended to be preserved in perpetuity.
- **Units of the National Park System** – established by Congress to conserve outstanding resources – both natural and historic – of importance to the nation. Management must preserve the values for which each unit was designated from degradation for the enjoyment of present and future generations. These units include, in addition to national parks, national monuments and national preserves managed by the National Park Service as well as national recreation areas and national historic parks.
- **USFS Inventoried Roadless Areas** – established by the US Forest Service to preserve roadless areas on the National Forests and the ecological services and social values that are associated with those areas. In general, road construction and logging prohibited.
- **National historic and scenic trails** – designated by Congress as parts of national trails system. National scenic trails are long-distance (over 100 miles each), and national historic trails commemorate major, nationally significant routes of historic (and pre-historic) travel in the US. Both must provide for significant outdoor recreation.
- **National wild, scenic and recreational rivers** – free flowing streams that are mostly inaccessible, scenic and primitive and that possess "outstandingly remarkable values" such as scenery, recreation, fish and wildlife, historic. Designated by Congress.
- **National Wildlife Refuges** - The U.S. Fish and Wildlife Service (FWS) manages the National Wildlife Refuge System. In accordance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. §§ 668dd-668ee), the Secretary may permit the use or grant an easement in, over, across, upon, through, or under any areas within the System, whenever determined that such uses are "compatible with the purposes for which these areas are established. These are to: (1) maintain biological integrity, diversity, and environmental health of the refuge system and (2) facilitate compatible wildlife-dependent recreation." There are a total of 51 National Wildlife Refuges and Wildlife Management Areas covering 2.3 million acres in CA, NV and the Klamath Basin of Oregon, but it appears that few of them would potentially be affected by RETI. See Map:
<http://www.fws.gov/cno/refuges/planning/index.cfm>
- **California State Parks** – California State Parks contain the largest and most diverse natural and cultural heritage holdings of any state agency in the nation. According to Public Resources Code section 5002, the State Park System consists of all parks, public camp grounds, monument sites, landmark sites, and sites of historical interest established or acquired by the State, or which are under its control. Further, section

5001.65 declares that commercial exploitation of resources in units of the state park system is prohibited.

- **DFG wildlife areas and ecological reserves** – uses of these Department of Fish and Game (DFG)- managed areas are restricted to those “compatible with wildlife values.” Energy development is not allowed on these lands (exception might be geothermal, drilled from outside the reserves). Some reserves have existing easements for transmission, and will possibly allow upgrades with mitigation (additional lands purchased). May also allow undergrounding if it can be done without disturbing surface soils.
- **BLM National Conservation Areas** - specifically: King Range National Conservation Area, Black Rock-High Rock National Conservation Area, and Headwaters Forest Reserve. Established by Congress to protect and preserve the unique, sensitive and/or important natural and historic resources of each designated area, such as scenery, habitat for significant numbers of endemic plant and animal species and/or archeological values.
- **Lands precluded from development in Habitat Conservation Plans**—these binding plans are required under the federal Endangered Species Act in order to obtain an “incidental take permit” when non-federal activities will result in the “take” of listed wildlife species. The purpose of the habitat conservation planning process is to ensure that there is adequate minimizing and mitigating of the “incidental take” of the species involved. While early plans were typically project specific, more recent plans are broad-based, landscape level plans utilized to achieve long-term biological and regulatory goals. Once the plan and the permit are approved, private property owners (and other non-federal actors) can proceed with actions that would otherwise result in the illegal take of species. Environmental analysis and public participation is required in developing these plans (except for plans with “minor effects” on listed, proposed or candidate species and their habitats). Participating landowners receive a “no surprises” commitment from the FWS, assuring them that, if “unforeseen circumstances” arise, they will not need to make additional commitments of money or land, or face additional restrictions.
- **Lands precluded from development under Natural Community Conservation Plans** – these plans are developed under California state law. Each plan “identifies and provides for the regional or area-wide protection of plants, animals, and their habitats while allowing compatible and appropriate economic activity.” CA Dep’t of Fish and Game. 2008. “The program seeks to anticipate and prevent the controversies and gridlock caused by species’ listings by focusing on the long-term stability of wildlife and plant communities and including key interests in the process.” Id. There are 32 active NCCPs covering more than 7 million acres of which 11 have been approved and permitted. Id.
- **Private Preserves of The Wildlands Conservancy** – private land areas that are owned and managed by TWC for public benefit and use. TWC manages six preserves in California: http://www.wildlandsconservancy.org/twc_preserve.html. These are not the same as lands managed under a conservation easement.
- **BLM national monuments** – established by presidents to protect and preserve the unique, sensitive and/or important natural and historic resources of each designated area, such as scenery, habitat for significant numbers of endemic plant and animal species and/or archeological values.
- **Existing conservation and mitigation banks under conservation easement approved by the state Department of Fish and Game, U.S. Fish and Wildlife Service or Army Corps of Engineers** – conservation areas generally protect

endangered and threatened species; mitigation areas are specifically for wetland restoration, creation and enhancement. Latter are undertaken to compensate for unavoidable wetland losses. All are protected by conservation easements either before or upon commencement of mitigation.

- **State Wetlands, as currently (May 1, 2008) defined by California** - California's wetland policy states "no net loss in the short-term and an increase in wetlands in the long-term." CA wetlands are defined as "...land where the water table is at near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentration of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some during each year and their location within, or adjacent to vegetated wetland or deepwater habitats." (14 CCR 13577) The EWG recognizes that the definition of CA state wetlands is currently in flux, and aims to recognize wetlands as currently defined in CA. See: http://ceres.ca.gov/ceres/calweb/wetlands/wetlands_management.html and for GIS maps: <http://gis.ca.gov/catalog/BrowseRecord.epl?id=1507>

Category #2 — Areas where existing restrictions are expected to limit potential renewable development:

- **BLM Areas of Critical Environmental Concern (ACECs)**– designated by BLM to protect and prevent irreparable damage to “important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.” Federal Land Policy and Management Act of 1976, § 103(a). Designation typically takes place during the land use planning process for a larger BLM-administered area and involves environmental review and public participation. 145 such areas have been designated by BLM on the 15.2 million acres that it administers in CA.
- **Designated critical habitats for federally listed endangered and threatened species** – species are put on the federal list by the USFWS following its determination that they are either in danger of extinction throughout all or a portion of their ranges (“endangered”) or likely to become endangered in the foreseeable future (“threatened”) according to criteria established by Congress, including impacts to habitat, overuse by humans, and disease or predation, 16 U.S.C. § 1533(a)(1), and more detailed regulatory criteria adopted by the agency, see 50 CFR § 424.14(b)(2). The designation process starts with a petition from either an agency or a member of the public and involves review and comment by the public, state and local governments and others. Designation is made solely on scientific grounds, without consideration of economic impacts. Designated critical habitats are areas “essential to the conservation of the species” and are based upon the “best scientific data available,” 16 U.S.C. § 1533(b)(2), but economic impacts are taken into account. Around 80 critical habitats have been finally designated in CA, including habitats for fish.
- **Special wildlife management areas in West Mojave** – the West Mojave Resource Management Plan – adopted following completion of an environmental impact statement and public participation – established Desert Wildlife Management Areas (DWMAs) and Mojave Ground Squirrel Conservation Areas (MGSCAs) with rigorous protections. In particular, the plan makes both kinds of areas subject to a 1% cap on surface disturbance. See West Mojave Final Environmental Impact Statement, Chapter

4, p. 4-21 (2d paragraph), p. 4-45 (3rd paragraph) (both cites to DWMAAs), and p. 4-153, Table 4-49 (1st box) (ground squirrel). The cap in the ground squirrel areas is applicable to federal land only, the cap in the former areas applies to lands managed by participating jurisdictions.

- **Lands purchased with private funds and donated to the federal government** – the principal concern here are some 272,000 acres of former railroad lands in the Mojave Desert purchased by The Wildlands Conservancy with private dollars and donated to BLM between 1999 and 2004. Another 315,000 acres that were donated are in parks or wilderness areas.
- **Proposed and Potential conservation reserves in HCPs and NCCPs** – see definitions of HCPs and NCCPs above. These lands are also termed “softline reserves” and can be defined as requiring conservation measures of less than 100%.
- **Lands specified as of May 1, 2008 in Proposed Wilderness bills** – 2 bills are currently pending: Boxer Statewide Wilderness Bill (S. 493), and the Riverside County Wilderness Bill (H.R. 3682). Areas qualify for wilderness designation if they have no roads, the “hand of man” is not visible, and they provide outstanding opportunities for visitors to experience solitude, natural quiet, and “wildness.” The majority of the areas proposed for wilderness designation in these bills lie in Category 1 areas. Areas proposed for wilderness designation in these bills that are not in Category 1 areas have been placed in Category 2 (see below.)