

## CALIFORNIA'S OPEN SPACE PROGRAMS

### I. Overview

As the most populous state in the nation and one of the most biologically diverse areas of the world, the State of California faces unique challenges in protecting its biological heritage.<sup>1</sup> As such, multiple open space protection programs operate in the state, many of which focus on wildlife, habitat, biodiversity, and natural resources. Major state entities that protect open space specifically for biodiversity conservation, among other purposes, include the Coastal Conservancy, Department of Parks and Recreation, Santa Monica Mountain Conservancy, and Wildlife Conservation Board.<sup>2</sup> In general, each state entity's authorizing legislative language provides agencies with discretion in conducting open space acquisition. Thus, the programs, each authorized under different sections of the state's laws, conduct distinctive decision-making processes in prioritizing open space for protection. The state's wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) will likely be utilized to some degree by each program.

### II. California's Open Space Programs

#### *California Coastal Conservancy*

The California Coastal Conservancy (CCC), established in 1976, does have authority to preserve land for biodiversity purposes, as stated in its authorizing legislation, "[t]he conservancy shall serve as a repository for lands whose reservation is required to meet the policies and objectives of the California Coastal Act of 1976... , a certified local coastal plan or program, or the San Francisco Bay Plan as implemented by the San Francisco Bay Conservation and Development Commission... Pursuant to that authority, the conservancy may accept dedication of fee title, easements, development rights, or other interests in lands, including interests required to provide public access to recreation and resources areas in the coastal zone."<sup>3</sup> Thus, CCC conducts multiple activities in line with the state's coastal legislation, including open space protection for the protection of significant coastal resources.<sup>4,5</sup> The CCC has preserved more than 100,000 acres of wetlands, dunes, wildlife habitat, recreational lands, farmland, and scenic open space.<sup>6</sup>

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<sup>1</sup> California Environmental Resources Evaluation System, *Evolution and Biodiversity in California*, at <http://ceres.ca.gov/ceres/calweb/biodiversity/evolution.html> (last visited June 22, 2005).

<sup>2</sup> Many state entities conduct open space protection in California. The entities discussed in this section (Coastal Conservancy, Department of Parks and Recreation, Santa Monica Mountain Conservancy, and Wildlife Conservation Board) were identified as major open space protection programs operating in the state using financial data collected by Defenders of Wildlife.

<sup>3</sup> CA. PUB. RES. CODE § 31104.1.

<sup>4</sup> Other CCC activities include construction of trails and other public access facilities, restoration and enhancement of wetlands and other wildlife habitat, restoration of public piers and urban waterfronts, preservation of farmland, and other various projects contributing to the state's coastal resources.

<sup>5</sup> CA. PUB. RES. CODE § 31000-31409.

<sup>6</sup> California Coastal Conservancy, *About the Conservancy*, at <http://www.coastalconservancy.ca.gov/About/about.htm> (last visited June 20, 2005).

The CCC is governed by a seven-member board of directors, appointed by the Governor and California Legislature, consisting of the chairperson of the California Coastal Commission, the Secretary of the Resources Agency, the Director of Finance, and four members of the public.<sup>7</sup> The CCC Board approves public land acquisition and grant allocation for the CCC. However, regional program and project managers, who come from multiple disciplinary backgrounds, make recommendations on projects and grants.<sup>8</sup>

*Program funding.* Funding for CCC open space protection and other activities is derived from multiple sources. State general obligation bonds (Propositions 12, 13, 40, 50 and 117) (*See Box A*) and state general funds compose the bulk of the agency's budget.<sup>9</sup> Other sources include the San Francisco Bay Area Conservancy Program Account,<sup>10</sup> the Whale Tail Coastal License Plate Fund, mitigation fees, and penalties.<sup>11,12</sup> Funding for the CCC activities varies from year to year. Over the life of the program, more than \$600 million has been authorized by the CCC Board.<sup>13</sup>

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<sup>7</sup> CA. PUB. RES. CODE § 31100.

<sup>8</sup> Telephone Interview with Dick Wayman, Communications Director, California Coastal Conservancy (June 7, 2005).

<sup>9</sup> California Coastal Conservancy, *supra* note 6.

<sup>10</sup> The San Francisco Bay Area Conservancy Program Account was established in the San Francisco Bay Area Conservancy authorizing regulations, and is used exclusively for that program.

<sup>11</sup> The Whale Tail License Plate is an official state license plate issued by the California Department of Motor Vehicles. Proceeds from the sale of the plates are used to fund many CCC programs. California Coastal Conservancy, *Whale Tail License Plate*, at <http://www.coastal.ca.gov/publiced/plate/platefaq.html> (last visited June 20, 2005).

<sup>12</sup> Wayman, *supra* note 8.

<sup>13</sup> This figure includes all CCC activities, not just open space protection. The amount spent specifically on open space protection are not available. Wayman, *supra* note 8.

Most open space protection is conducted through grant allocation to other state agencies, county and municipal governments, nongovernmental organizations, and tribes. Grantees are not required to develop open space plans or provide matching funds, although both are looked upon favorably by the CCC Board in making grant allocation decisions.<sup>14</sup>

*Land protection strategies.* The CCC's authorizing legislative language does not prescribe a ranking system for open space protection grants. In most cases, CCC Regional Program Managers work within organized partnerships to identify priorities for their region,<sup>15</sup> which may include resource enhancement, public access, recreation/trails, and agricultural needs, among other issues. Once a project has been identified, Regional Program Managers can solicit proposals, work informally with groups to undertake projects, or act independently to respond to opportunities that may arise within the region. Some products that might be used in identifying projects include the California Coastal Trail Map and the CCC Strategic Plan, which outlines the agency's

***Box A. Statewide Funding Sources.***

*California open space programs are supported by multiple sources of funding. A selection of funding sources are described below:*

***Propositions 12 & 13***

In 2000, two major bond acts passed. The Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act, or Proposition 12, was approved with 63 percent of the vote. Proposition 12 authorizes \$2.1 billion in bonds for park projects and habitat acquisition. From these funds, the Department of Parks and Recreation receives \$545 million for state park development and improvement and \$820 million for grants to local and nonprofit agencies, with the remaining \$736 million divided among 12 other state departments for land acquisition and parks related projects. The Safe Drinking Water, Clean Water, Watershed Protection and Flood Protection Act, or Proposition 13, was approved with 65 percent of the vote. Proposition 13 authorizes \$1.97 billion in bonds to support safe drinking water, flood control, Bay-Delta restoration, watershed protection, and water quality and supply projects.

***Propositions 40 & 50***

In 2002, two additional major bond acts passed. The California Clean Air, Clean Water, Safe Neighborhood Parks, and Coastal Protection Act of 2002, or Proposition 40, was approved by 56 percent of the vote. Proposition 40 authorizes \$2.6 billion for the preservation of open space, beaches, coastline and farmland, the protection of water and air from contamination, and the support of safe neighborhood parks. Proposition 50, approved at 55 percent of the vote, authorizes \$3.44 billion for water projects, including coastal land protection and other land and water acquisitions.

***Habitat Conservation Fund***

Established in 1990, the Habitat Conservation Fund receives \$30 million per year from the cigarette tax and state general funds. In 1988, the Tobacco Tax Initiative, or Proposition 99, increased the price of cigarettes by 25 cents per pack and dedicated 5 percent of the revenues to state and local parks, recreation programs, and wildlife habitat projects. In 1990, the California Wildlife Protection Act, or Proposition 117, dedicated 10 percent of the revenues to the Habitat Conservation Fund.

*Sources:*

- Trust for Public Land, *Californians Invest in Open Space*, at [www.tpl.org/tier3\\_cd.cfm?content\\_item\\_id=7427&folder\\_id=186](http://www.tpl.org/tier3_cd.cfm?content_item_id=7427&folder_id=186) (Mar. 7, 2002).
- Trust for Public Land, *Funding Profile: California*, at [www.tpl.org/tier3\\_cdl.cfm?content\\_item\\_id=874&folder\\_id=706](http://www.tpl.org/tier3_cdl.cfm?content_item_id=874&folder_id=706) (last visited June 20, 2005).
- Trust for Public Land, *Conservation Ballot Measures -- 2002*, at [www.tpl.org/tier3\\_cdl.cfm?content\\_item\\_id=10784&folder\\_id=1666](http://www.tpl.org/tier3_cdl.cfm?content_item_id=10784&folder_id=1666) (2002).

<sup>14</sup> Telephone Interview with Neal Fishman, Legislative Liaison, California Coastal Conservancy (June 7, 2005).

<sup>15</sup> The four CCC regions are: North Coast, San Francisco Bay Area Conservancy, Central Coast, and South Coast.

priorities and goals for 2003-2008.<sup>16</sup> For every project under consideration, a CCC staff member will conduct a site visit and review the best available science (from other state agencies, nongovernmental organizations such as The Nature Conservancy, and other sources).<sup>17</sup> Preference is given to projects that enlarge or link existing protected areas.<sup>18</sup> If the need arises, CCC staff will consult with other groups to conduct an assessment of the project.<sup>19</sup>

The CCC Board approves all grants for open space protection and considers the following criteria in determining whether projects will be provided funding: promotion of the Conservancy's statutory programs and purposes; consistency with purposes of the funding source (e.g. the state bond acts); support and cooperation from the public and other organizations; location and benefits to coastal resources or the San Francisco Bay region; need (whether or not the desired project or result will occur with or without Conservancy participation); interest beyond the local level; urgency (whether an immediate threat to the resource from development or natural or economic conditions exists, whether it is a pressing need, or whether it is a fleeting opportunity); possibility of resolving more than one issue; leverage (contribution of funds or services by other entities); conflict resolution; innovation (for example, environmental or economic demonstration); readiness (ability of the grantee and others to start and finish the project in a timely manner); and return to the CCC (whether funds will be repaid to the CCC).<sup>20</sup>

### ***California Department of Parks and Recreation***

The California Department of Parks and Recreation (CA DPR), housed under the state's Resources Agency, has been in the business of open space protection since the 19th century, and has succeeded in protecting hundreds of thousands of acres since its inception. Land protection strategies, including open space acquisition, are driven by agency missions and goals, which relate to preserving the state's biodiversity, protecting natural and cultural resources, and providing recreational opportunities. Biologists and ecologists, as well as other interdisciplinary staff, work on the agency's acquisition programs.<sup>21</sup>

*Program funding.* CA DPR acquisition programs are funded by a variety of sources, including state bond acts (Propositions 12, 40, and 117), the Off-Highway Vehicle Trust Fund, federal funding, foundation donations, and fundraising contributions by conservation organizations (*See*

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<sup>16</sup> The plan outlines strategies to assist in the identification of significant properties, including: updates to map and database information on priority resource lands in consultation with government and nongovernmental partners; regular meetings with nongovernmental organizations, foundations, government agencies, and real estate brokers to determine lead agencies for priority acquisitions, avoidance of duplicating efforts and ensuring awareness of happenings within the real estate market; determination of the appropriate land protection tool (e.g. fee interest or easements) for potential acquisitions; and identification of the appropriate entity to acquire and manage lands of interest. California Coastal Conservancy, 2003 Strategic Plan (May 30, 2003) (draft plan, on file with author).

<sup>17</sup> Various types of biological information are used in developing land protection priorities. For example, the San Francisco Habitat Goals Project and various wetland inventories have been used to identify priority wetland areas for protection. Natural Community Conservation Plans (NCCPs) also provide biological information and habitat plans for communities. Wayman, *supra* note 8.

<sup>18</sup> California Coastal Conservancy, *supra* note 16.

<sup>19</sup> Wayman, *supra* note 8.

<sup>20</sup> California Coastal Conservancy, *supra* note 16.

<sup>21</sup> Telephone Interview with Warren Westrup, Chief, Office of Acquisition and Real Property Services, California Department of Parks and Recreation (June 2, 2005).

Box A).<sup>22</sup> Annual funding from these sources varies. Between 2000 and 2005, annual expenditures on acquisition averaged approximately \$60.5 million. Acres protected averaged nearly 17,000 per year over the same time period.<sup>23</sup>

CA DPR also provides grants to various groups for open space protection under multiple funding sources, including the Habitat Conservation Fund, Land and Water Conservation Fund, the Recreational Trails Program, the state's General Fund, Environmental License Plate Fund, River Protection Sub-account, bond act funds, and other sources. Eligible applicants vary from program to program, and may include cities, counties, districts, some state agencies, and nonprofit land management organizations.<sup>24</sup> Matching requirements range from 20 to 50 percent.<sup>25</sup>

*Land protection strategies.* CA DPR uses multiple land protection tools to conserve open space, including fee acquisition, conservation easements, purchase of development rights, joint powers agreements, and leases. Because public access is a large part of the agency's mission, fee title is used in most cases.<sup>26</sup>

CA DPR's State Park System Plan outlines an acquisition planning approach that emphasizes eight areas of concentration consistent with agency goals: (1) Urban Parklands, (2) Unique Natural Resource Areas, (3) Sustainable Ecosystems, (4) Expanded Outdoor Recreation, (5) Cultural Landscapes and Corridors, (6) Trail Connections and Corridors, (7) In-holdings and Adjacent Properties, and (8) Significant Cultural resource Properties.<sup>27</sup> Within the Unique Natural Resource Area category, CA DPR seeks to protect lands that "possess unique natural resource attributes or features, such as rare or endangered plant or animal species; possess outstanding representative samples of certain habitat types; or contain areas of outstanding scenic beauty or unusual natural phenomena."<sup>28</sup> Project selection characteristics include: unique biological values, including adjacency or proximity to existing park units or existing protected properties containing rare or unique habitat types or species of concern; wetland and riparian areas; and under-represented resource areas, such as representative examples of landscapes and geologic features and significant fossil resources. Priority is given to: unique or rare habitat types not protected in the ecological region or rarely found in the state park system; habitats with a high concentration of listed species; strategically located properties; environmentally sensitive habitats; lands identified in regional habitat conservation plans; significant properties without existing protections; properties possessing paleontologic resources; properties possessing historic and prehistoric cultural values; lands with high-valued outdoor recreational opportunities; and

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<sup>22</sup> *Id.*

<sup>23</sup> California State Park Land Ownership Status, Acquisitions/Disposals (FY 2000-2005) (on file with author).

<sup>24</sup> Application requirements vary from program to program and may include open space planning, mapping, matches (from 20 to 50 percent), etc.

<sup>25</sup> California State Parks, *Grants and Local Services*, at [http://www.parks.ca.gov/default.asp?page\\_id=1008](http://www.parks.ca.gov/default.asp?page_id=1008) (last visited June 20, 2005).

<sup>26</sup> Westrup, *supra* note 21.

<sup>27</sup> Department of Parks and Recreation Acquisition Program, *State Park System Planning*, at [http://www.parks.ca.gov/default.asp?page\\_id=22846](http://www.parks.ca.gov/default.asp?page_id=22846) (last visited June 20, 2005).

<sup>28</sup> Department of Parks and Recreation Acquisition Program, *Unique Natural Resource Planning*, at [http://www.parks.ca.gov/default.asp?page\\_id=22848](http://www.parks.ca.gov/default.asp?page_id=22848) (last visited June 20, 2005).

areas possessing the potential for more formal outdoor interpretation of a natural resource message unique to the region.<sup>29</sup>

CA DPR compiles potential acquisitions into a priority database, which contains nearly 800 proposals that have been evaluated using the criteria described above. As of 2005, CA DPR was integrating the prioritization process and database with GIS.<sup>30</sup>

### ***Santa Monica Mountain Conservancy***

The Santa Monica Mountains Conservancy (SMMC) was established by the California State Legislature in 1980<sup>31</sup> to safeguard “the unique and valuable economic, environmental, agricultural, scientific, educational, and recreational resource...” provided by the “last large undeveloped area contiguous to the shoreline within the greater Los Angeles metropolitan region, comprised of Los Angeles and Ventura Counties.”<sup>32</sup> Housed under the California Resource Agency, the SMMC works within only a portion of the state, but is one of the foremost protectors of open space in California, having helped to preserve more than 55,000 acres of parkland in both wilderness and urban areas during its 25-year history.<sup>33</sup>

The SMMC consists of nine voting members, two ex officio members and six legislative members that represent state, regional, and local interests. In addition, a twenty-six member Advisory Committee meets regularly with the SMMC, providing a mechanism for public participation.<sup>34</sup> Biologists also work on the SMMC staff.<sup>35</sup>

*Program funding.* The SMMC is supported by three main sources of funding: state bond measures such as Propositions 12, 13, 40, and 50 (*See Box A*); Proposition A, a county bond measure that directs revenues from a half-cent sales tax to support multiple measures to protect area mountains, deserts, coastlines, and streams;<sup>36</sup> and a joint powers entity called the Mountains Recreation and Conservation Authority (MRCA), established by the SMMC in partnership with the Conejo and Rancho Simi Recreation and Park Districts, two Ventura County park districts, to preserve open space, watersheds, trails, and wildlife habitat.<sup>37</sup> SMMC’s annual funding averages \$16 to \$17 million annually, though it may be higher in some years due to larger-than-normal purchases. The SMMC has expended more than \$400 million since its inception in 1980.<sup>38</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> Westrup, *supra* note 21.

<sup>31</sup> Santa Monica Mountains Conservancy, *Who We Are and What We Do*, at <http://smmc.ca.gov/mission.html> (last visited June 20, 2005).

<sup>32</sup> CA. GOV’T. CODE § 33001.

<sup>33</sup> Santa Monica Mountains Conservancy, *supra* note 31.

<sup>34</sup> *Id.*

<sup>35</sup> Telephone Interview with Paul Edelman, Deputy Director for Natural Resources and Planning, Santa Monica Mountains Conservancy (June 9, 2005).

<sup>36</sup> The Nature Conservancy, *Our Land, Our Water, Our Way of Life*, at <http://www.nature.org/wherewework/northamerica/states/california/features/ballots.html> (last visited June 20, 2005).

<sup>37</sup> In addition, the MRCA manages and provides ranger services, fire protection, planning and natural resources expertise, and educational programs for almost 50,000 acres of public lands and parks under its or the Santa Monica Mountains Conservancy’s ownership. Mountains Recreation and Conservation Authority, *Frequently Asked Questions*, at <http://www.preserveopenspace.org/faqs.html> (last visited June 20, 2005).

<sup>38</sup> Edelman, *supra* note 35.

The SMMC does give grants from time to time depending on funding availability, but does not have a formal program or set of requirements to do so. An average of eight to nine percent of the agency's spending on protection goes to grants for land acquisition, and usually require a match. Recipients typically include county and municipal governments, conservation organizations, and joint powers authority partners.<sup>39</sup>

*Land protection strategies.* The majority of SMMC's land protection is conducted using fee title acquisition. A small portion of protection is conducted using conservation easements, although use of easements is increasing due to brush clearance obligations recently imposed on SMMC.<sup>40</sup> In 2000, the SMMC developed a comprehensive evaluation methodology to prioritize lands for protection. The methodology, a point scoring system that involved approximately 60 questions, was conducted once in 2000 and generated a prioritized list of lands to target for protection. Multiple types of data fed into the development of the methodology and the prioritization list, including aerial photos, trail maps, the California Natural Diversity Database,<sup>41</sup> and on-the-ground surveys. Biological data included: species locations and inventories; natural community and ecosystem delineations; information on wildlife utilization/critical wildlife habitat; information on biodiversity hot spots; hydrology, riparian habitat information and availability of perennial waters for wildlife; and information on ecosystem functions and processes. The methodology evaluates land based on twelve areas of criteria; of those twelve areas, six are directly related to biological resources, and the other six relate to trails, viewsheds, recreational opportunities, public access, and partnership potential, among other criteria. As of 2005, the SMMC had acquired approximately 25 parcels of land from the top of the prioritized list, and has continued acquisition decision-making mostly using best professional judgment.<sup>42</sup>

### ***Wildlife Conservation Board***

The Wildlife Conservation Board (WCB) was created in 1947 as the land acquisition arm of the Department of Fish and Game (CA DFG). The Board's primary role is to authorize and allocate funds for wildlife conservation and related public recreation, including land acquisition, habitat restoration, and the development of wildlife-oriented public access facilities.<sup>43</sup> Since its creation, the WCB has authorized more than 960 projects to protect, enhance, or restore fish and wildlife habitat.<sup>44</sup> From 2000 to 2004 alone, the WCB protected 632,100 acres through fee acquisition, conservation easements, and grants to others for fee acquisition.<sup>45</sup>

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> The California Natural Diversity Database (CNDDDB) is a program that inventories the status and locations of rare plants and animals in California. CNDDDB staff work with partners to maintain current lists of rare species as well as maintain an ever-growing database of GIS-mapped locations for these species of concern. The CNDDDB is a "natural heritage program" and is part of a nationwide network of similar programs overseen by NatureServe. California Department of Fish and Game, *California Natural Diversity Database*, at <http://www.dfg.ca.gov/whdab/html/cnddb.html> (last visited June 20, 2005).

<sup>42</sup> Edelman, *supra* note 35.

<sup>43</sup> CA. FISH AND GAME CODE § 1300.

<sup>44</sup> Wildlife Conservation Board, *A Brief Overview*, at [http://www.wcb.ca.gov/Pages/wcb\\_brief\\_overviewnew.htm](http://www.wcb.ca.gov/Pages/wcb_brief_overviewnew.htm) (last visited June 20, 2005).

<sup>45</sup> Of the 632,100 acres, 244,400 acres were protected using conservation easements, 149,500 acres were protected using fee acquisition, and 238,200 acres were protected through grants to other groups for fee acquisition. See WILDLIFE CONSERVATION BOARD, PROTECTING CALIFORNIA'S NATURAL HERITAGE FOR FUTURE GENERATIONS (2005), available at <http://www.wcb.ca.gov/pdf/Reports/ProtectingCalifornia2004.pdf>.

The Board consists of the president of the President of the California Fish and Game Commission, the CA DFG Director, and the Director of the Department of Finance. The Board conducts all acquisition and allocation decision-making. The Board also works with a Legislative Advisory Committee, which consists of three members of the State Senate and three members of the State Assembly.<sup>46</sup> All acquisition activities are conducted in conjunction with the CA DFG. CA DFG staff provide recommendations and expertise on natural resource issues, as well as site evaluations on those projects under consideration by the WCB.<sup>47</sup>

The WCB currently operates several programs, including the following:

- (1) The WCB Land Acquisition Program, through which the WCB acquires land on behalf of the CA DFG, but can also distribute grants to governmental entities or nonprofit organizations;
- (2) The Public Access Program, which funds projects to provide access to wildlife including acquisition;
- (3) The Habitat Enhancement and Restoration Program, which provides funds for the enhancement and restoration of threatened and endangered species' habitats, forest land habitat, and salton sea restoration projects;
- (4) The Inland Wetlands Conservation Program, a 50 percent matching grants program that provides funds to local and state governmental agencies and nonprofit organizations for the acquisition, restoration, or enhancement of wetland habitat;
- (5) The California Riparian Habitat Conservation Program, which funds the preservation and restoration of riparian habitat;
- (6) The Natural Heritage Preservation Tax Credit Program, which provides private landowners with an opportunity to reduce their state tax liability when they conduct stewardship practices that preserve natural resources;
- (7) The Oak Woodlands Conservation Program, which provides funding to landowners, conservation organizations, and local governments for projects designed to conserve and restore the state's oak woodlands; and
- (8) The Rangeland, Grazing Land and Grasslands Protection Program, which uses conservation easements to protect rangeland, grazing land, and grasslands throughout the state.

Programs with a strong focus on open space acquisition for the purposes of biodiversity/wildlife/habitat conservation include (as listed above): (1) Land Acquisition Program; (4) Inland Wetlands Conservation Program; (5) California Riparian Habitat Conservation Program; and (7) Oak Woodlands Conservation Program. These programs will be the focus of this discussion. Each program is authorized separately under state law and conducts separate, but often similar, prioritization processes for land acquisition or grant allocation decision-making.<sup>48</sup>

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<sup>46</sup> CA. FISH AND GAME CODE §§ 1320-1324.

<sup>47</sup> Wildlife Conservation Board, *Land Acquisition Program*, at [http://www.wcb.ca.gov/Pages/land\\_acquisition\\_program\\_new.htm](http://www.wcb.ca.gov/Pages/land_acquisition_program_new.htm) (last visited June 20, 2005).

<sup>48</sup> Telephone Interview with John Donnelly, Assistant Executive Director, Wildlife Conservation Board (June 16, 2005).



*Program funding.* The WCB, like other California agencies, operates from multiple funding sources. Funding is guaranteed annually from the Habitat Conservation Fund. Other funding sources have included Propositions 12, 13, 40, and 50 (*See Box A*), as well as the Wildlife Restoration Fund, the WCB's general funding source.<sup>49</sup> Annual expenditures on open space protection through easements, fee acquisition, and grants to other groups for easements and fee acquisition averaged \$1,108,576 between 2000 and 2004.<sup>50</sup>

Of the programs identified above, all provide grants for biodiversity conservation through the protection of open space, with the exception of the Land Acquisition program (which focuses on acquisition by the WCB itself). Eligible recipients may include nonprofit organizations, local government agencies, resource conservation districts, special districts, other state agencies, and federal agencies.<sup>51</sup> Usually, open space plans and matches are not required.<sup>52</sup> Approximately 46 percent (\$515,076) of the WCB's expenditures on open space acquisition went into grants between 2000 and 2004.<sup>53</sup>

*Land protection strategies.* WCB programs utilize acquisition, easements, and leases, as well as other land protection tools such as the purchase of development rights and grants to other entities for habitat protection.<sup>54</sup> Each program uses a separate process for prioritizing land interests and selecting grant recipients, but processes contain many of the same elements and priorities, which were set cooperatively with the CA DFG.<sup>55</sup> For example, project proposals for the Land Acquisition Program are evaluated by the CA DFG Lands Committee, a group of CA DFG representatives from all regions of the state. The Lands Committee reviews project proposals, prioritizes and ranks them, then submits them to the Board for consideration. The weighted biological portion of the review methodology is called the Ecological Value Score (EVS), which includes local and statewide ecological significance of the parcel; the viability of the habitat and the overall contribution of that particular property to CA DFG planning efforts; and the level of biodiversity. Other categories include administrative considerations, such as maintenance costs; restoration, enhancement, and overall development costs; the degree of public access; and the amount of CADFG control over the parcel.<sup>56</sup> Other WCB programs, such as the Inland Wetlands Conservation Program, Oak Woodlands Conservation Program, and California Riparian Habitat Conservation Program, use comprehensive application processes to evaluate and prioritize land protection projects.<sup>57</sup> Program application processes include information such as public access,

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<sup>49</sup> *Id.*

<sup>50</sup> Wildlife Conservation Board, *supra* note 45.

<sup>51</sup> Wildlife Conservation Board, *supra* note 44.

<sup>52</sup> Donnelly, *supra* note 49.

<sup>53</sup> Wildlife Conservation Board, *supra* note 45.

<sup>54</sup> See Wildlife Conservation Board, *supra* note 47; Wildlife Conservation Board, *Inland Wetlands Conservation Program*, at [http://www.wcb.ca.gov/Pages/inland\\_wetlands\\_conservation\\_programNew.htm](http://www.wcb.ca.gov/Pages/inland_wetlands_conservation_programNew.htm) (last visited June 20, 2005); Wildlife Conservation Board, *California Riparian Habitat Conservation Program*, at [http://www.wcb.ca.gov/Pages/california\\_riparian\\_habitat\\_conservation\\_programnew.htm](http://www.wcb.ca.gov/Pages/california_riparian_habitat_conservation_programnew.htm) (last visited June 20, 2005).

<sup>55</sup> Donnelly, *supra* note 49.

<sup>56</sup> *Id.*

<sup>57</sup> Guidelines and criteria for these programs were developed through a series of facilitated workshops attended by representatives from local and state agencies, the private sector, nonprofit organizations, academia, and other groups. Guidelines and criteria developed through the workshops were presented to Board for approval, which is a public process. *Id.*

existing habitat conditions and existing protections, monitoring strategies, local and historical significance, status of species and biodiversity, adjacency to existing protected lands, soil and hydrological information, as well as practical and administrative criteria such as project readiness and long term management.<sup>58</sup> Evaluation processes, guidelines, and criteria were developed by WCB to assemble information that helps to identify which projects they should fund under each program. CA DFG staff evaluate projects under each program using GIS-based assessments, on-the-ground inventories, and other tools. Information is gathered from project applicants, conservation organizations, and state agencies.<sup>59</sup>

### III. Protection in Perpetuity

Provisions for whether or not land protected under California's open space protection programs may be sold lie under both the authorizing legislation for the funds used to purchase land and the concerned agency's founding statutes. While the agencies discussed here are authorized to buy and sell land, many funding sources (e.g. Propositions 12, 13, 40, and 50) require legislative approval to do so. In addition, funds from the sale must be returned to the funding source. Sale of lands protected for conservation purposes is extremely rare to non-existent among the programs studied.<sup>60</sup>

Most of the studied programs have little funding to conduct extensive long-term management or stewardship of protected lands because funding sources typically do not include provisions that provide for monitoring, maintenance, or general stewardship.<sup>61,62</sup>

### IV. State Wildlife Action Plan

California's wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) is being developed under CA DFG's Habitat Conservation Division. The plan, also known as the Wildlife Diversity Project, includes overviews of vertebrate and invertebrate species in the state and bioregional assessments of wildlife stressors and identifies conservation actions to maintain wildlife diversity. Review of resource assessment needs, conservation planning, funding for wildlife conservation and management, wildlife conservation education,

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<sup>58</sup> See Wildlife Conservation Board, *Oak Woodlands Conservation Act of 2001 Program Application Package*, at <http://www.wcb.ca.gov/pdf/oakprogrammanualApplication.pdf> (last visited June 20, 2005); Wildlife Conservation Board, *Restoration Funding Application*, at <http://www.wcb.ca.gov/pdf/Restoration%20Funding%20Application-No%20Logo.pdf> (last visited June 20, 2005); Wildlife Conservation Board, *Riparian Restoration Project Application*, at <http://www.wcb.ca.gov/pdf/RestorationApplicationFormFEB2004.pdf> (last visited June 20, 2005).

<sup>59</sup> Donnelly, *supra* note 49.

<sup>60</sup> *Id.*; Edelman, *supra* note 35; Fishman, *supra* note 14; Wayman, *supra* note 8; Westrup, *supra* note 21.

<sup>61</sup> Exceptions to this statement include some monies which are allocated under the state's general fund and individual projects which include maintenance in their founding agreements. SMMC also receives some funding from Proposition A to conduct various maintenance activities, as well as funds specifically for the purpose of brush clearance on acquired lands adjacent to residences. Edelman, *supra* note 35; Westrup, *supra* note 21.

<sup>62</sup> *Id.*; Donnelly, *supra* note 49; Fishman, *supra* note 14; Wayman, *supra* note 8.

and major statewide stressors is also part of the project's development. Stakeholders across the state have reviewed the final product.<sup>63</sup>

While staff from the programs included in this review have been unfamiliar the wildlife action plan during its development, they did anticipate utilizing the finalized plan, along with other tools, in land protection decision-making processes.<sup>64</sup>

## **V. Summary**

Each California entity included in the study is authorized by broad legislative language to conduct open space protection within its discretion. One program, the Wildlife Conservation Board, has been specifically authorized by its establishing statutes to prioritize land for acquisition.<sup>65</sup> The programs conduct separate decision-making processes in prioritizing open space for protection. Each program will likely utilize the state's wildlife action plan to some degree.

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<sup>63</sup> Teaming With Wildlife, *California Comprehensive Wildlife Conservation Strategy*, at [http://www.teaming.com/state\\_cwcs/california\\_cwcs.htm](http://www.teaming.com/state_cwcs/california_cwcs.htm) (last updated Mar. 31, 2005).

<sup>64</sup> Donnelly, *supra* note 49; Edelman, *supra* note 35; Fishman, *supra* note 14; Wayman, *supra* note 8; Westrup, *supra* note 21.

<sup>65</sup> CA. FISH AND GAME CODE §§ 1345-1347.