



The Endangered Delhi Sands Flower-Loving Fly

Part I

I think the difficulty in species conservation arises from cost and not intent. The pressure on land here is so intense. It's also hard to implement the Endangered Species Act because of the divide between the precision of the law and the imprecision of ecology. You make ecologists interpret the law, and lawyers interpret the natural world.

— Tom Olsen, President, Thomas Olsen Associates, Inc., Hemet, California

Introduction

By mid-October, the sun has retreated from its summer-long assault on Colton, California, an “Inland Empire” town about halfway between Los Angeles and the Mojave Desert. The temperature is only about 80°, but it feels *hot* as you kick dust around at the construction site of the new San Bernardino County Medical Center (“Hospital”). It could be the arid appearance of the sand dunes and the scrub vegetation on the land in front of you. More likely, though, it's the growing sense of frustration you are feeling in your discussions with representatives of San Bernardino County (“County”). You are an attorney with the regional counsel's office of the U.S. Department of the Interior (“Interior”). The County wants to renegotiate an agreement that it made with your client, the U.S. Fish and Wildlife Service (“Service”), less than two years ago.

You first became involved in May of 1993, after the County had contacted the Service with a potential problem. The 73-acre site (“Site”) where the County was planning to build the Hospital contained one and a half acres of the kind of sand dunes that were home to the Delhi Sands flower-loving fly (“Fly”). See Figure 1. The County had learned that the Fly had

Josh Eagle prepared this case study, under the editorial guidance of Barton H. (“Buzz”) Thompson, Jr., Robert E. Paradise Professor of Natural Resources Law, Stanford Law School, as a basis for classroom discussion rather than to illustrate either effective or ineffective handling of an environmental matter. Some or all of the characters or events may have been fictionalized for pedagogical purposes. Copyright © 1998 by the Board of Trustees of the Leland Stanford Jr. University. To request permission to use or reproduce case materials, write to Environmental and Natural Resources Law and Policy Program, Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305 or visit www.stanford.edu/group/law/library/casestudies/lawschool.shtml.

been proposed for listing under the Endangered Species Act of 1973 (“the Act”) and wanted to know how it could build the Hospital without violating the law.

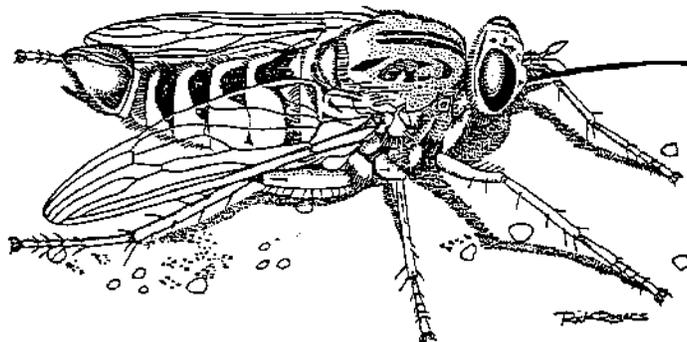


Figure 1. The Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*).

The end result of those discussions was an agreement under which construction could proceed on most of the Site. To avoid an illegal “take” of the Fly, the County had agreed not to pave 8.35 acres in the southeast corner of the Site. See Figure 2.

Under the terms of this written agreement, the County would create a “habitat enhancement area” (“Preserve”) on the 8.35 acres. In addition, the County would fence off and maintain one 100-foot wide “corridor” of land running west from the Preserve to Pepper Avenue along the southern edge of the Site. The County would also maintain a 30-foot wide corridor running north along the eastern side of Pepper Avenue. The Service’s theory was that this pair of corridors would allow Flies to travel to the northwestern corner of the Site. Once in the northwestern corner, Flies could potentially mix with another population of Flies off the site, if they could successfully fly across Pepper Avenue. This potential link, felt the Service, was crucial to the survival of the Fly population on the Site.

As you stand there staring out at the dunes, County officials are telling you that they need to widen Valley Boulevard to accommodate the increased traffic into and out of the Hospital. See Figure 3. Emergency vehicles must not be impeded by traffic congestion, they tell you. This is truly a matter of life and death.

The Valley Boulevard project would narrow the western half of the southern corridor from 100 to 18 feet, diminishing any potential for connectivity with nearby populations. The County’s consultant, Tom Olsen, tells you that there is no biological evidence that the species uses corridors. “It’s preposterous,” he says. Following the terms of the agreement, his firm has conducted two biological surveys of the Site for the County. The entomologists he hired have not seen one Fly using the corridors.

Your own biologists and independent entomologists have told you that in order for the Fly population on the Site to persist, it will need access to at least one other Fly population. The experts are not sure, however, how wide an effective Fly corridor needs to be. They opine only that 18 feet is not wide enough.

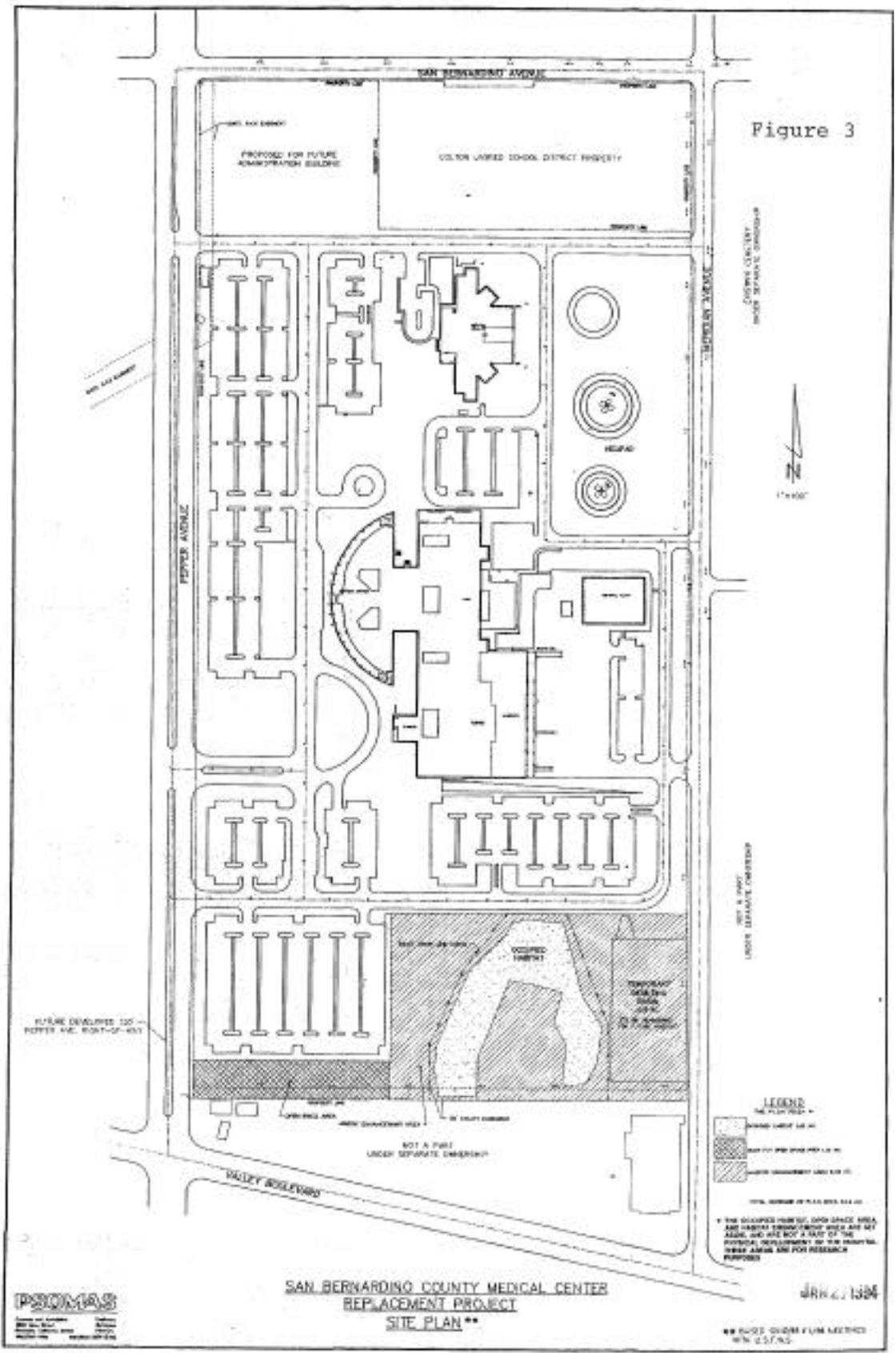


Figure 3

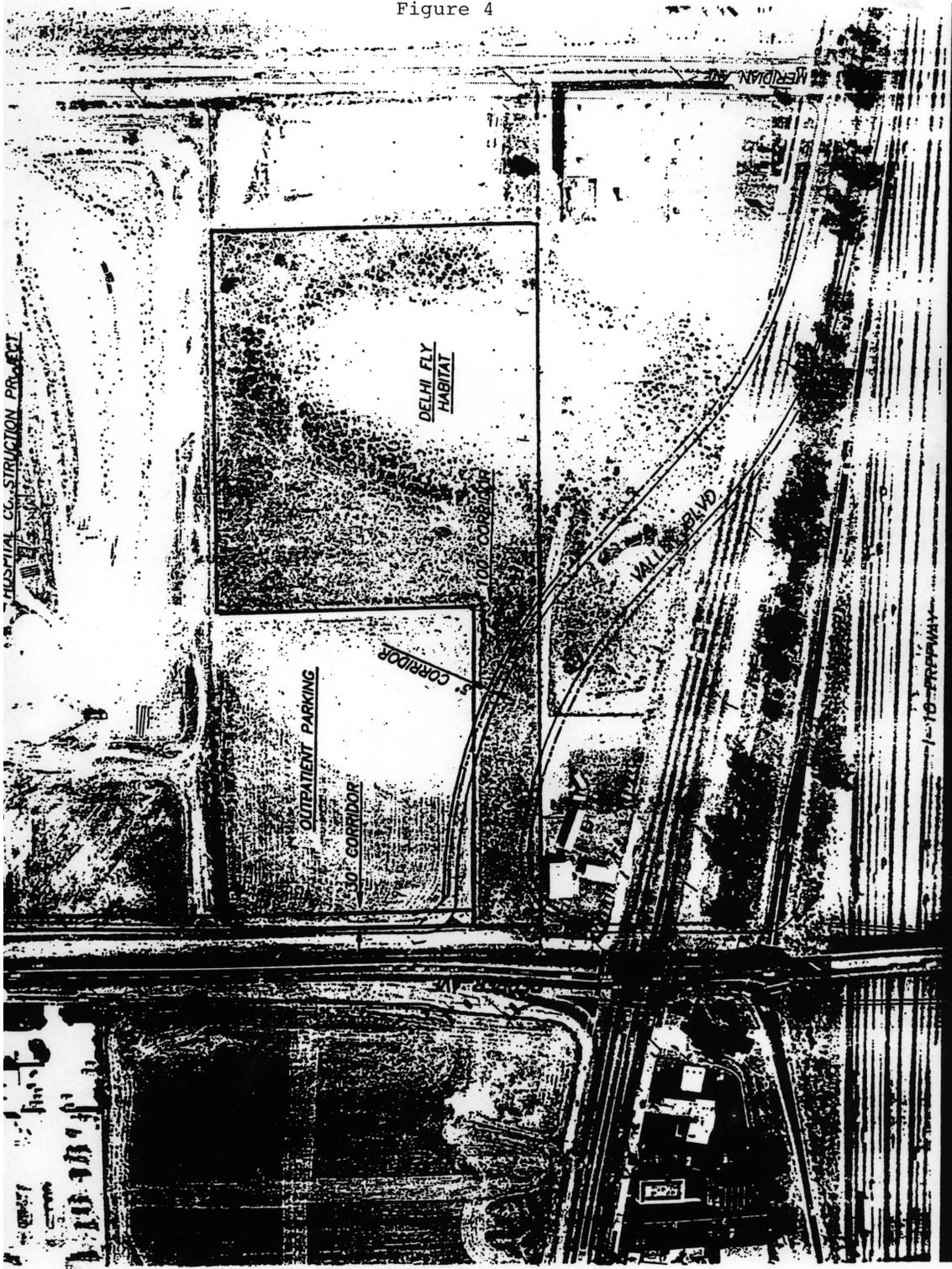
SAN BERNARDINO COUNTY MEDICAL CENTER
REPLACEMENT PROJECT
SITE PLAN**

JUN 27 1984

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PSONAS
 Planning & Surveying
 1000 N. G Street
 San Bernardino, CA 92410
 (714) 244-1100

Figure 4



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Kicking some more dust, you try to cool yourself down. You had worked very hard in 1993 to craft the original agreement, feeling a tremendous amount of pressure from the County, the public, the media, members of Congress and especially from your Interior bosses in Washington, D.C. Your bosses did not want to see the headline: “Fly Kills Hospital.” In order to reach an agreement, you had given up much of what the local Service office had thought necessary to protect the Fly. Can you give up more now?

Listing the Fly

It was during August of 1989 - Fly mating season - that University of California Riverside Professor Greg Ballmer first saw Flies near Colton. A fellow entomologist, Rick Rogers, had alerted Ballmer to the presence of *Rhaphiomidas* in some undeveloped areas close to Interstate 10, and Ballmer went to see them for himself.

Rhaphiomidas is a North American genus of 19 species and 5 subspecies that inhabit arid regions of the southwestern United States and northwestern Mexico. Historically, there were two *Rhaphiomidas* subspecies in Southern California. By 1989 one of these, *Rhaphiomidas terminatus terminatus*, or the El Segundo flower-loving fly, was presumed to be extinct. This fly had resided in the coastal dunes of southwestern Los Angeles County and had apparently succumbed to loss of habitat due in part to the construction of Los Angeles International Airport.

Ballmer had taken an interest in the other member of the species, *Rhaphiomidas terminatus abdominalis*: the Fly. The Fly takes the first part of its common name from the fact that it is known to occur only on fine, sandy soil in wholly or partially consolidated dunes. Like all terrestrial features, dunes exist in continually changing form and location. The process whereby a dune is remade and relocated, primarily by wind, is known as consolidation. In Southern California, the soil types where wholly or partially consolidated dunes exist are generally classified as the Delhi (DELL-high) series of soils.

The Fly is called “flower-loving” because as an adult it uses its long proboscis to suck nectar from flowers while hovering like a hummingbird. In the course of feeding, the Fly pollinates at least one plant species, the common buckwheat (*Eriogonum fasciculatum*).

Other than what is captured in its name, precious little is known about the Fly. Making an entomologist’s life difficult, Flies appear above ground only during a two-week-long adult life span. See Exhibit A, Declaration of Christopher D. Nagano.

When he visited Colton in August of 1989, Ballmer managed to spot a few male Flies flying about in open spaces between vegetation. (Females tend not to move very much and are thus difficult to see.) Though excited by his find, Ballmer soon became concerned about the future of the Fly and several other rare insect species that had evolved to live in the harsh Delhi Sands. In addition to the Fly and four rare plant species, Delhi Sands habitat supports a number of animals of limited distribution including the legless lizard (*Anniella pulchra*), San Diego horned lizard (*Phrynosoma coronatum blainvillii*), Delhi Sands metalmark butterfly (*Apodemia mormo* new subspecies), Delhi Sands Jerusalem cricket (*Stenopelmatus* new

species), convergent apiocerid fly (*Apiocera convergens*), and the Delhi Sands sandroach (*Arenivaga* new species).

Ballmer did not want the Fly, nor these other species, to end up like the El Segundo fly, victims of lost habitat. Over the years, Delhi Sands habitat had been degraded or eliminated as the result of various human activities. Some areas had been converted to vineyards, which had eventually failed due to shifting sand and the soil's inability to hold water. Other areas had served as dumping grounds for manure from dairy farms. The untreated manure created perfect conditions for an invasion of exotic plant species that were able to out-compete native species.

In the late 1980's, the threats were different, but the results were the same. Owing to the proximity of several major highways, land was being developed for industrial uses such as warehouses and factories. Growing population in the County led to an increase in residential development.

According to Ballmer, "the habitat was pretty much gone, and what was left was going fast."

More than 97 percent of the Fly's original habitat had been rendered unsuitable for the Fly. Of the historic 40 square miles of Delhi Sands, about one square mile of fragmented dunes remained. There were less than ten remaining sites, all within an eight-mile radius, where the Fly could be found. Each of these sites was smaller than ten acres. Given that Fly density is estimated to be about 10 per acre, there were at most about 1000 Flies remaining in 1989.

In the fall of 1989, Ballmer began assembling the information required for a petition to list the Fly as an endangered species under both the federal and California Endangered Species Acts. He gathered as much documentation as he could find about the Fly, its habitat, and the land uses that were threatening to render the Fly extinct. He felt that the Fly was "a very impressive insect and part of California's natural heritage." He was further motivated by his belief that extinction was a far greater tragedy than death: extinction meant an end to an evolutionary trajectory and an end to possibility.

Ballmer filed his petitions with the Service and the California Department of Fish and Game in October of 1989. Fearing that California would refuse to list the Fly for political and economic reasons, Ballmer soon withdrew his petition to the state.

In December of 1990, the Service issued notice pursuant to Section 4 of the Act, 16 U.S.C. §1533(b)(3)(A), that sufficient information had been presented to indicate that listing the Fly as endangered might be warranted.

In November of 1992, pursuant to 16 U.S.C. §1533(b)(5), the Service proposed to list the Fly.

On September 23, 1993, the Service added the Fly to its list of endangered species, where it joined about 850 other species in the United States, including 15 other species in the

County. The “final rule” issued by the Service relied primarily on the fact that “extensive habitat loss and degradation” had reduced the range of the Fly “by over 97 percent.” See Exhibit B, Final Rule.

In a 1998 interview, Tom Olsen said that while there “really wasn’t much information available about the Fly or its habitat needs, since no one had ever really cared about the Fly,” the logic used by the Service was sound. The Service’s view was that since Fly habitat had declined by 97 percent, Fly population had probably declined by 97 percent. “Only five populations of [the Fly] exist,” said the final rule. “All [are] threatened by urban development activities.” Ballmer obviously agreed with the Service’s conclusion as well, although he disagreed with Olsen’s assessment that no one cared about the Fly.

“There were obviously people such as myself who cared,” he said in 1998. “But no one had yet undertaken the laborious chore of studying its biology.”

The Hospital and the County

Located about 25 miles east of Los Angeles (see Figure 4), San Bernardino County and the surrounding “Inland Empire” make up one of the fastest growing areas in California and the United States. According to John Husing, an economic analyst who has conducted in-depth studies of the region’s economy, “the Inland Empire has become Southern California’s metaphor for growth.” Federal forecasts show that the area will add 928,000 people between 1993 and 2005 – more than any other U.S. metropolitan area. A press release issued by SANBAG (San Bernardino Associated Governments) claims that the region has added “more than 80,000 jobs [between 1990 and 1998], four times that of second place San Diego.”

Along with new residents and businesses comes a need for infrastructure, including roads and services. In the early 1980’s, the County government had begun developing plans to construct a new medical center. The existing facility, located in the City of San Bernardino, was approaching fifty years of age, and there were concerns about its “seismic integrity.” The County wanted to build a state-of-the-art facility that would resist earthquakes up to 8.0 in magnitude.

During the mid-1980’s, the project was put on the back burner due to a sluggish local economy. When the economy and the County population began to grow, plans for the new medical center were revived.

In July of 1990, the County Board of Supervisors (“the Board”) began the process of selecting a site for the Hospital. As part of this process, the Board selected a firm to perform an Environmental Impact Report (“EIR”), as required under the California Environmental Quality Act (“CEQA”), for several potential sites.

One of the sites to be covered by the EIR was the so-called “Arden” site in the City of San Bernardino. The Board selected this site as its “preferred” site for several reasons. It was close to several major roadways. It had good soil conditions and no geological hazards. It was of sufficient size to allow for future expansion. The City of San Bernardino supported

the choice of the Arden site due to the economic benefits it would bring: construction jobs, hospital jobs, and new, hospital-related businesses.

At the public hearings on the EIR for the Arden site, significant neighborhood opposition was voiced. According to Randy Scott, Planning Manager for the County, this was a typical case of the NIMBY (Not in My Backyard) phenomenon. Neighborhood residents were concerned the Hospital would attract “the homeless, the indigent, and the criminal element that would be treated at the Hospital.” As the County’s public health facility, the Hospital would provide treatment to those who could not afford to pay for it. The neighborhood succeeded in killing the Arden site.

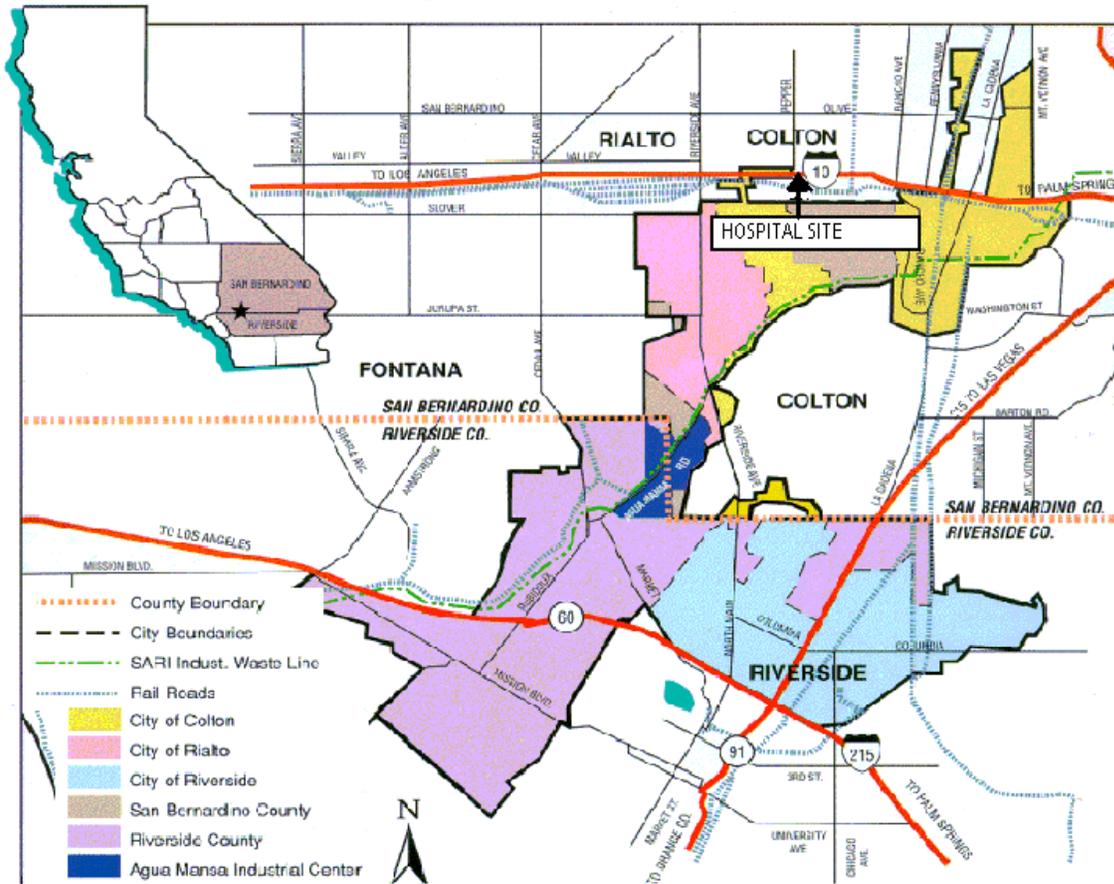


Figure 4. Relevant area in San Bernardino County.

Anxious to keep the Hospital, the City offered another site. This site, though, had multiple constraints, including a lack of road infrastructure and soil with “potential liquefaction” characteristics. For these reasons, it was rejected.

It was at that point that the Colton Site became a contender. It was close to Interstate 10 (“I 10”) and had good geological characteristics. It was centrally located in the County. The City of Colton, seeing the potential economic benefits, began lobbying for the Hospital.

In early 1991, the County held a public hearing on the EIR for the Site. Scott recalled that “the EIR included a biological assessment and there was nothing in it about Flies.”

According to Scott, neither the Service nor any conservation group gave testimony or submitted comments about the potential biological impact of constructing the Hospital at the Site.

In August of 1991, the Board certified the EIR and designated a site in Colton as the location for the Hospital. In October of 1991, the Board approved the purchase of the majority of the Colton site. In July of 1992, the Board authorized acquisition of the final site parcels for the Hospital.

Between July of 1992 and September of 1993, the Board approved bids for quality control services, an inspector of record, seismic and geo-technical materials testing, insurance, management information systems, and site preparation package bids.

The estimated \$487 million cost of the Hospital was to be paid for with a combination of County, state and federal funds. The County would raise part of the necessary money by issuing bonds. Interest payments on the debt incurred by the County would be reduced through a state program that provided about a 50/50 mix of state and federal aid to help finance the construction of new public hospitals. The (Riverside) Press-Enterprise reported that the County would receive more than \$831 million through this program during the 30-year financing period.

The Hospital Site

The Site purchased by the County for the Hospital is located at the corner of Pepper Avenue and Valley Boulevard. See Figure 5. Access to the Hospital from I-10 is *via* the Pepper Avenue exit. The Site is bounded on the north by San Bernardino Avenue, on the east by Meridian Avenue, on the south by Valley Boulevard, and on the west by Pepper Avenue.

At the time of the listing, prior to construction of the Hospital, the Site consisted of what most people would consider a “waste area,” according to Ballmer. In an affidavit prepared for later litigation, Robert H. Gerdeman, County Project Manager for the Hospital, said that at the time of the listing, “homeless people were living on that portion of the Hospital site where the Fly was supposedly located. Trash and debris were everywhere. Also, the site was a popular place for riding all-terrain vehicles I observed teenagers riding through the dunes right up until the time of the Fly’s listing.”

The majority of the Site consisted of long-abandoned vineyards. Most of the area was covered by relatively dense vegetation; a small amount, where sand had been mined during the construction of I 10, contained so-called Riversidian Sage Scrub – less densely vegetated land containing “blowout” areas of wholly or partially consolidated dunes.

[Insert Map, Attachment A: very large file]

The County Learns About the Fly

A few months prior to publishing the proposed rule in November of 1992, the Service informed County officials of the impending listing of the Fly. According to Scott, County officials had “never heard a damn thing about the Fly” before this time.

Realizing that the listing of the Fly would probably impede construction of the Hospital, the County submitted comments to the Service opposing the listing. These comments did not attack the science behind the listing, but instead focused on the economic impacts that the listing would have. In addition, the County contacted the Service to begin discussions on how the potential conflict at the Hospital site might be resolved.

The Service and the County Attempt to Address the Conflict

In May of 1993, representatives of the Service and San Bernardino County held the first of several meetings aimed at resolving the situation. Present at some or all of these meetings were:

- Randy Scott, County Planning Manager
- John Giblin, Deputy County Administrative Officer
- Robert Gerdeman, County Project Manager for the Hospital
- Jeff Newman, the Service Branch Chief for Conservation Planning for San Bernardino, Riverside, Orange and Los Angeles Counties
- Linda Dawes, the Service biologist, Carlsbad, California
- Chris Nagano, the Service biologist, Carlsbad, California
- Tom Olsen, Consulting ecologist for the County
- J.B. Ruhl, Attorney/Consultant for the County
- Paul Mordy, Deputy County Counsel

The first meeting, according to many of those present, was characterized by a strong disagreement on the extent to which the Site actually contained Fly habitat. Some of the participants recalled that the disagreement quickly evolved into hostility coupled with the exchange of threats. In an interview, John Giblin recalled that “right off the bat this woman from Fish [the Service] started telling us that we’re screwed, they had us over a barrel, and that we had to do everything they said or else.” Robert Gerdeman stated in his affidavit that Service employees “were not concerned with causing additional cost or delay to the Hospital project.”

Giblin said that County representatives at this meeting responded to the Service’s appearance of intransigence by “threaten[ing] to declare war in the newspapers.”¹

¹ An interesting side-note is the matter of the “I-10 slowdown.” Giblin and Gerdeman (in a sworn affidavit) asserted that the Service employee Linda Dawes threatened at the May meeting to have traffic on I-10 slowed to 15 miles per hour during the Fly mating period. On the other hand, other the Service employees present at the meeting insisted that no one had made such a statement. Whether it was made or not, the statement was attributed to Dawes in many newspaper articles about the controversy, and especially in opinion pieces attacking the Act. After hovering, the alleged quote finally landed in the dissenting opinion in a case eventually filed by the County against the United States. See National Association of Home Builders, et al. v. Babbitt, 130 F.3d 1041, 1060 (D.C. Cir. 1997).

The initial Service position was that disturbing any part of the Site would likely result in a direct or indirect “take” of the Fly pursuant to 16 U.S.C. §§ 1538(a)(1) and 1532(18). The County’s position was that only one and a half acres of the Site was “potential” habitat and that construction of the hospital would not result in a take. The County called it “potential” habitat because although it was Delhi Sands soil-type, there was no evidence that Flies existed there.

The next few months saw little progress in the negotiations, in part because of a lack of communication between the parties. In responding to a request from the County that it speed up the process of evaluating one of the County’s proposals, the Acting Field Supervisor of the Service’ Carlsbad office replied that the Service was “reviewing [the County’s] proposal as quickly as possible In view of the urgency of your need,” he continued, “it is unfortunate that the County repeatedly cancelled meetings, and finally refused to schedule meetings with [the Service], despite numerous warnings that the occupied habitat on this site could present a problem if planning did not occur.”

The County was feeling some urgency because, as Scott said, delays “would effectively terminate the project because conditions for financing the Hospital required that the monies be spent in a specified timeframe.” Further, “[i]f the project was terminated, [it] would cause a public health crisis because the County’s existing healthcare facilities [were] outdated and inadequate.”

In August of 1993, the County hired two University of California Riverside entomologists to survey the Site for Flies. After scouring the entire Site for seven days between August 1 and September 4, the entomologists reported eight sightings within the one and a half-acre Delhi Sands area. It was unclear whether these were eight different Flies, because the Flies could not be marked for identification.

On October 18, 1993, the County submitted a written proposal to end the standoff. In this proposal, entitled the “Habitat Preservation, Habitat Enhancement, and Impact Avoidance Plan for the Delhi Sands Flower-Loving Fly at the San Bernardino County Hospital Replacement Site,” the County offered to, among other things, “move” the Hospital location at the site 250 feet north and create the Preserve.

In a letter dated October 19, 1993, the Service dismissed the proposal as insufficient to satisfy the Act, and noted the difficulty in trying to create a small preserve for the Fly. See Exhibit C, Correspondence re: Habitat Preservation, Habitat Enhancement, and Impact Avoidance Plan. The problem was this: the Fly needs wholly or partially consolidated dunes, habitat conditions created by wind-blown sand. Fly habitat in a small preserve would not last for very long, because sand in the preserve at the outset would soon be blown by the prevailing northerly winds out the south end. The construction of the Hospital and parking lots north of the Preserve would eliminate the replacement source of sand.

The County recognized the problem of creating a fixed preserve of shifting sand, and suggested that the problem could be solved by stabilizing the dunes. Stabilization could be achieved by planting native vegetation and by erecting wind barriers. These acts, said the

Service, were unacceptable, as they would “constitute[] an artificial modification of habitat which may adversely impact” the Fly.

In the next few months, according to Scott, there was a tremendous amount of public and political pressure put on the Service to resolve the problem. The County spoke with California congressmen and Senator Alan Cranston. Scott recalled that County representatives “probably” went to Washington to meet with members of Congress and high-level Department of Interior staff.

As promised, the County declared war on the Service and the Act in the newspapers. This was apparently an appetizing case for the media because of the kind of species being protected and the type of growth and development being tempered. Articles and editorials appeared in many national newspapers. NBC Nightly News broadcast a segment on the controversy in its “Fleecing of America” series.

Most of the reporting focused on the issue of whether the Act had “gone too far.” The editorials attacked the Act for “putting flies before people.” See Exhibit D, Newspaper Articles.

In December of 1993, the Service accepted a County proposal that was nearly identical to the earlier one. See Exhibit E, Habitat Preservation, Habitat Enhancement, and Impact Avoidance Plan. The differences between the plan rejected in September and the plan accepted in December were that, under the latter plan, the County agreed to (1) set aside an additional amount of land to serve as a Fly “corridor,” (2) engage in certain enhancement efforts in the preserve (the dune stabilization efforts which the Service had earlier called detrimental to the Fly), and (3) conduct certain studies, monitoring and educational programs regarding the Fly at the Site. The County also agreed to plant a 30-foot wide strip in natural vegetation up the western edge of the Site.

The 100-foot wide corridor would extend from the 8.35-acre preserve along the entire southern edge of the project site. The Service insisted that the corridor was essential because it could provide a link, in conjunction with the 30-foot wide strip along Pepper Avenue, to another stable Fly colony. (The location of this second Fly population can be seen in Figure 5: the sandy area west of Pepper Avenue and just south of San Bernardino Avenue.)

The plan approved by the Service was not a Habitat Conservation Plan (“HCP”) under Section 10 of the Act. Such plans are required before the Service will issue an Incidental Take Permit, which allows the take of a species incidental to undertaking an otherwise lawful activity. See 16 U.S.C. §1539. The plan submitted by the County and approved by the Service was a plan to avoid a take; because the Service determined that there would be no take under the plan, no permit was necessary.

Although it agreed to create and maintain the corridor as part of the agreement, the County believed the Service’s demand for a corridor was not based on any sound scientific evidence. In an interview, Olsen said that there is no biology indicating that the species utilizes corridors and that the literature indicates that Flies are “wind dispersed.” Giblin

pointed out that Flies from the Hospital Site would have to fly northwest against prevailing winds to link with the second population.

After concluding the 1993 agreement with the Service, the County implemented the agreement, fencing off and maintaining the preserve, conducting some restoration work, and funding a five-year study of the Fly at the site.

It was uncertain to those outside the Service whether these activities would contribute in a meaningful way to the continued existence of the Fly as a species. According to Olsen, there were two views within the ecology community. There were those who believed that every little bit would help. There were others who believed that unless Fly conservation was addressed on a larger geographic scale, the County's actions would be futile.

The County estimated its cost in adjusting to the listing of the Fly as somewhere between three and four million dollars. See Exhibit F, Affidavit of Chief County Engineer Kenneth A. Taylor. These costs included modifying plans for the Hospital, setting up the Preserve and conducting the studies. "This insect that spends most of its life underground living as a fat, clumsy maggot cost the county more than a half million dollars per fly," said Joe Baca, a member of the California Assembly. Baca was the author of a bill passed by the California Assembly directing the Service to remove the Fly from the endangered list. The bill was eventually defeated in the California Senate.

Local environmental groups, who in interviews with the media supported the actions taken by the Service, felt differently about whether protecting the Fly was worth the monetary cost: "People think of flies as things that buzz around your home and lay eggs in your meat and give you maggots. That may be true of the housefly, but there are hundreds of fly species doing a lot of useful things out there that allow the ecosystem to operate properly," said John Hopkins, director of Sierra Club's California Biodiversity Program.

Round 2: The Interchange Impinges on the Corridor

In October of 1995, the County informed the Service of its plans to redesign the Valley Boulevard/Pepper Avenue intersection near the Hospital.

According to Selby Douglas Graybeal, an administrative analyst for the County, the County evaluated between 35 and 40 different plans designed to improve traffic flow and to allow for ease of access to the Hospital. "Each feasible alternative," he said in a 1996 affidavit, "underwent a cost analysis, an engineering analysis, and a traffic analysis." In the end, a plan called Alternative D was selected as "the most cost effective and best option for improving this section of road." In 1996, Anthony Gray, chief of transportation design for the County, wrote that Alternative D was "by far the least expensive" option. Alternative D involved moving Valley Boulevard northward 95 meters. See Exhibit G, County Interoffice Memorandum re: Valley Boulevard/Pepper Avenue.

While Alternative D was acceptable to the County, the California Transportation Department, and the City of Colton, it was unacceptable to the Service because it would

reduce the potential effectiveness of the Fly corridor. See Figure 5. According to Newman, modifying the corridor by reducing its width would “eliminate . . . a critical part of the County’s efforts to avoid a take of the [Fly].” The Service suggested that the County maintain the width of the corridor, but relocate it north of its original location, in an area that the County had designated for parking spaces.

The County rejected this proposal. Olsen told the Service that the relocation of the corridor would “seriously encroach into the hospital parking area and [would] have disastrous effects on parking that is critical to hospital operations” by eliminating 178 spaces. “At the current time,” he wrote in November of 1995, “the hospital is approximately 700 parking spaces short of what is optimally needed for patrons and employees.”

In the same letter, Olsen told the Service that “[t]he County is committed to preservation of the species and to financially supporting the ongoing research on behalf of the Fly in accordance with their original agreement.” He suggested that “in addition to the standard twelve foot roadway maintenance strip, a six foot corridor be set aside and revegetated as per existing agreements.” See Exhibit I, Correspondence re: Valley Boulevard/Pepper Avenue.

Jerry Eaves, an elected County Supervisor, wrote a second letter to the Service in January of 1996 stating that although the County had originally agreed to the creation of the corridor, “we felt that [it] was of dubious merit In two years of monitoring activity on the fly’s behavior . . . no observations of [the Fly] have been made within the ‘corridor’.”

Ballmer’s view was that the corridor would play an important part in the recovery of the Fly. “Ultimately,” he wrote in 1993, “preservation of the Fly colony at the Hospital site will require linkage to at least one other stable colony.”

Case Study Exhibits

- Exhibit A: Declaration of the Service Biologist Christopher D. Nagano
- Exhibit B: Final Rule on Listing
- Exhibit C: Correspondence re: Habitat Preservation, Habitat Enhancement, and Impact Avoidance Plan
- Exhibit D: Newspaper Articles
- Exhibit E: Habitat Preservation, Habitat Enhancement, and Impact Avoidance Plan
- Exhibit F: Affidavit of Chief County Engineer Kenneth A. Taylor
- Exhibit G: County Interoffice Memo re: Valley Boulevard/Pepper Avenue
- Exhibit H: Declaration of the Service Branch Chief Jeffrey M. Newman
- Exhibit I: Correspondence re: Valley Boulevard/Pepper Avenue