

9-27-12

OS Cresta mitigation and mitigation policy

Please consider the following points regarding the OS Cresta mitigation and mitigation on other OS lands:

Creating mitigation projects on OS property undermines and destroys the mission of OS as understood by the tax payers. The tax payers voted for OS for the purpose of preserving undeveloped land by means of protective easements.

Sale of compensatory mitigation to project proponents is an incentive for a private landowner to 1) put private land in a conservation easement in perpetuity 2) restore damaged habitat. When OS goes into the mitigation business private landowners will not put easements over their land in order to create mitigation projects because the the financial incentive is gone. This means that OS is stopping private land from being protected by conservation easements.

The OS land is already protected by an easement. OS has already committed to enhancement and monitoring. OS is eligible for grants and has numerous partners to help with restoration.

The private landowner had to BUY their land with their own PRIVATE money.

The private landowner has to PAY (using their own PRIVATE money) a land trust to put an easement over their property.

The private landowner has to set up an endowment (using their own PRIVATE money) to monitor the property in perpetuity.

The private landowner has to set up a legal fund (using their own PRIVATE money) which will take legal action against the landowner if the landowner violates terms of the easement.

The private landowner is legally bound to performance criteria. If the restoration is inadequate, the landowner must take corrective action.

The private landowner is legally bound by a contract with the enforcement agencies (DFG, Corps, FWS, NMFS) to restore habitat, preserve and monitor land and allow access to the easement holder and regulatory agencies.

OS is competing unfairly with the private sector because they used tax dollars to: purchase the land and pay OS staff to work on a mitigation project. The BOS is not doing an "arms length" transaction. The BOS is directing SCTA and OS to do a deal without giving the public sector an opportunity to compete for the business.

The BOS wants to use OS property to mitigate for public works projects. This destroys the possibility of private mitigation projects, which would protect and restore more land, because there is no demand. Project proponents like Caltrans, SCTA, Airport, SMART simply go, or will go, directly to OS. The mitigation is not even going out to bid. Private mitigation projects funded with private funds which restore and protect additional land are killed.

Because our economy is so stagnant, the only projects requiring mitigation now, or in the foreseeable future, are public works projects. The BOS / OS cannot expect that private mitigation projects can survive by mitigating private development projects. Furthermore, some private mitigation projects were created with the intention of only mitigating for public works projects.

The intent of mitigation is to replace habitat and habitat function that has been lost. This means that the habitat loss has to be truly replaced in perpetuity. OS states they intend to give their land to parks, cities, etc. The parks, DFG, cities are so strained financially that they cannot afford to take on the maintenance and monitoring of more land. With cities going bankrupt, parks closing and DFG budget cuts, how can OS expect that the intent of mitigation will be honored by transferring OS land to another entity!?

OS has gone into the mitigation business and they are not following their mission. Their activity is destroying the private sector mitigation business and resulting in a loss of additional private sector conservation easements. OS intends to hand off their responsibilities of monitoring and habitat restoration performance to another entity which may not fulfill the obligation for providing true compensatory mitigation in perpetuity. The OS legal commitments, funds and oversight are insufficient to provide responsible mitigation and the standards are inferior to those demanded of the private sector.

Thank you for your consideration of these comments.