Appraisers Need Professional Help!

An Inverse Condemnation Case Study

Stephen Roach, MAI, SRA, AI-GRS, CDEI

Presenter



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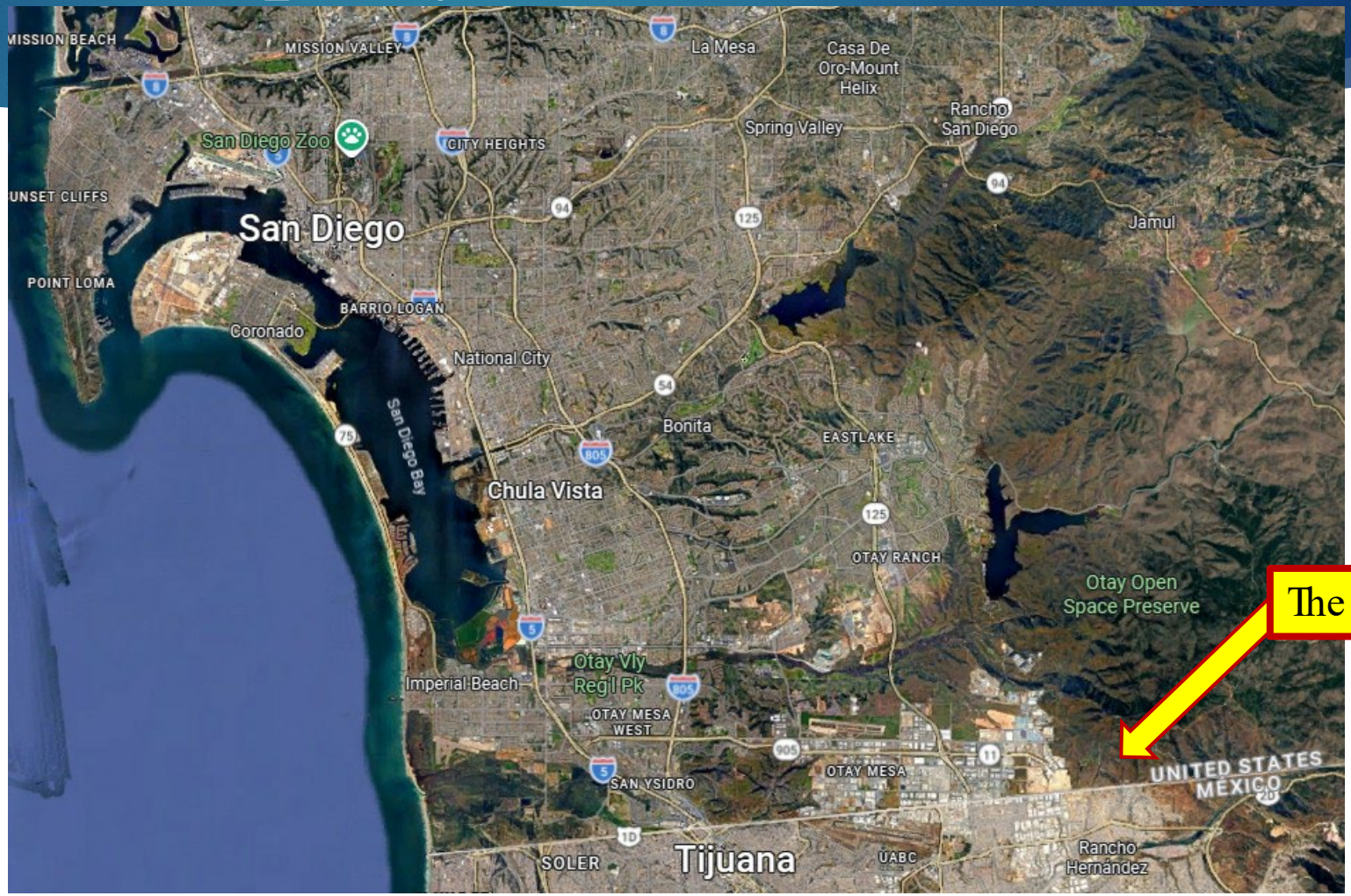
The Premise

- Market value and property impacts are based on highest and best use (HBU), which requires that the use is:
  - Physically possible
  - Legally permissible
  - Financially feasible
  - Maximally productive
- For many properties, these criteria are fully within the knowledge and professional experience of qualified appraisers
- However, other properties and issues are far beyond the scope of our credible knowledge
- How do we solve this problem?

The Presentation

- We will discuss a matter involving property along the USA/Mexico border in San Diego County
- Over the past 20+ years, there have been a number of cases involving direct condemnation actions for border barrier rights-of-way
- There have also been several inverse condemnation actions involving related plaintiffs
- This presentation is focused on the most recent inverse case litigated in the Court of Federal Claims (CFC)

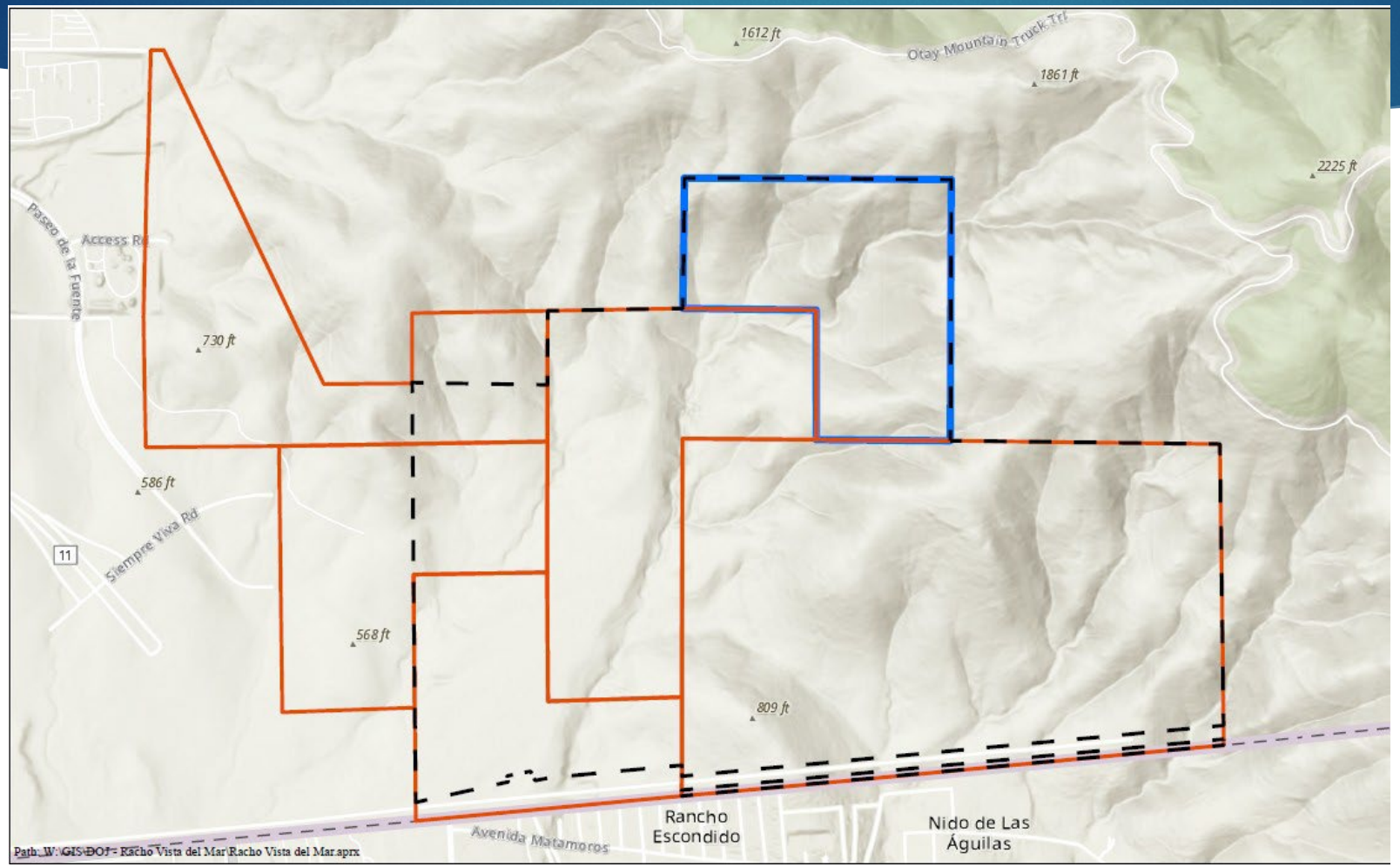
Where is the Property at Issue?



Where is the Property at Issue?



Where is the Property at Issue?



The property is all of the outlined parcels

What Was the Issue?

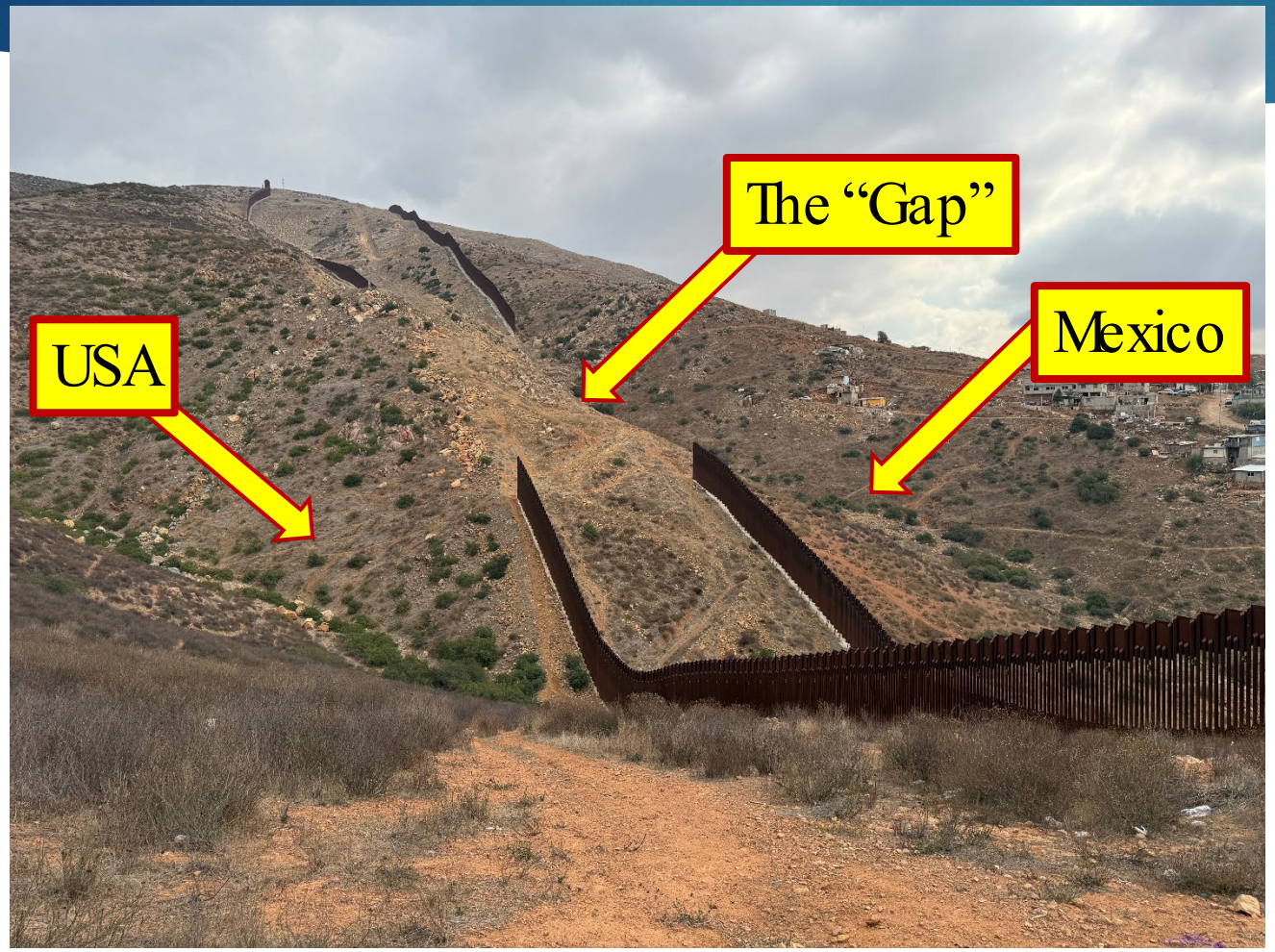
- The 791-acre property lies along the USA/Mexico border in East Otay Mesa
- The border historically had increasing levels of barriers, from a chain, to chain link fencing, to surplus landing mats, to metal mesh, and finally the current double bollard barrier
- During Trump 1, the bollard barrier was extended along the property, but it stopped at the southeast corner and then restarted further east
- The owners alleged this "gap" created a funnel effect, leading to increased migrant activity, followed by increased law enforcement activity
- Plaintiffs filed an inverse condemnation action in the Court of Federal Claims

The New Bollard Barrier



The gate leads to a gap between the primary and secondary barriers

The "Gap"



Viewing east at the border barrier system and the gap

The "Gap"



Evidence of pedestrian (?) activity is visible on the ground

The Plaintiff's Allegations

- Plaintiff's allegations included impacts on the highest and best use and value of the property caused by:
  - Migrant pedestrian activity
  - Border Patrol response (including agents on foot, on horses, on ATVs, in trucks and vans)
- Plaintiffs alleged that the highest and best use of biological mitigation was eliminated
- Before trial, the Court ruled that the migrant activity was out of the control of the USA and could not be considered

The Underlying Valuation Question

- In a typical direct condemnation matter, the ultimate issue to be determined is the impact on the value of the affected property from the government's taking
- In an inverse matter, a predicate question is whether the government's actions reached the level of a taking
- So, the court must first decide whether a taking occurred; ONLY IF that answer is yes would the value impact be determined

So, Was There a Taking?

- In determining the nature of the government's actions, the court took extensive testimony about:
  - the number of CBP agents in the area over time
  - CBP's means and methods, including use of sensitive technology
  - the numbers of detentions
  - the changing factors driven by policies of the Trump and Biden administrations
- A major issue was evidence from prior litigation about similar issues on the same property

What's the Professional (and Litigation) Standard?

- The ultimate obligation of an appraiser is to reach credible assignment results
- USPAP has a great definition of the term:

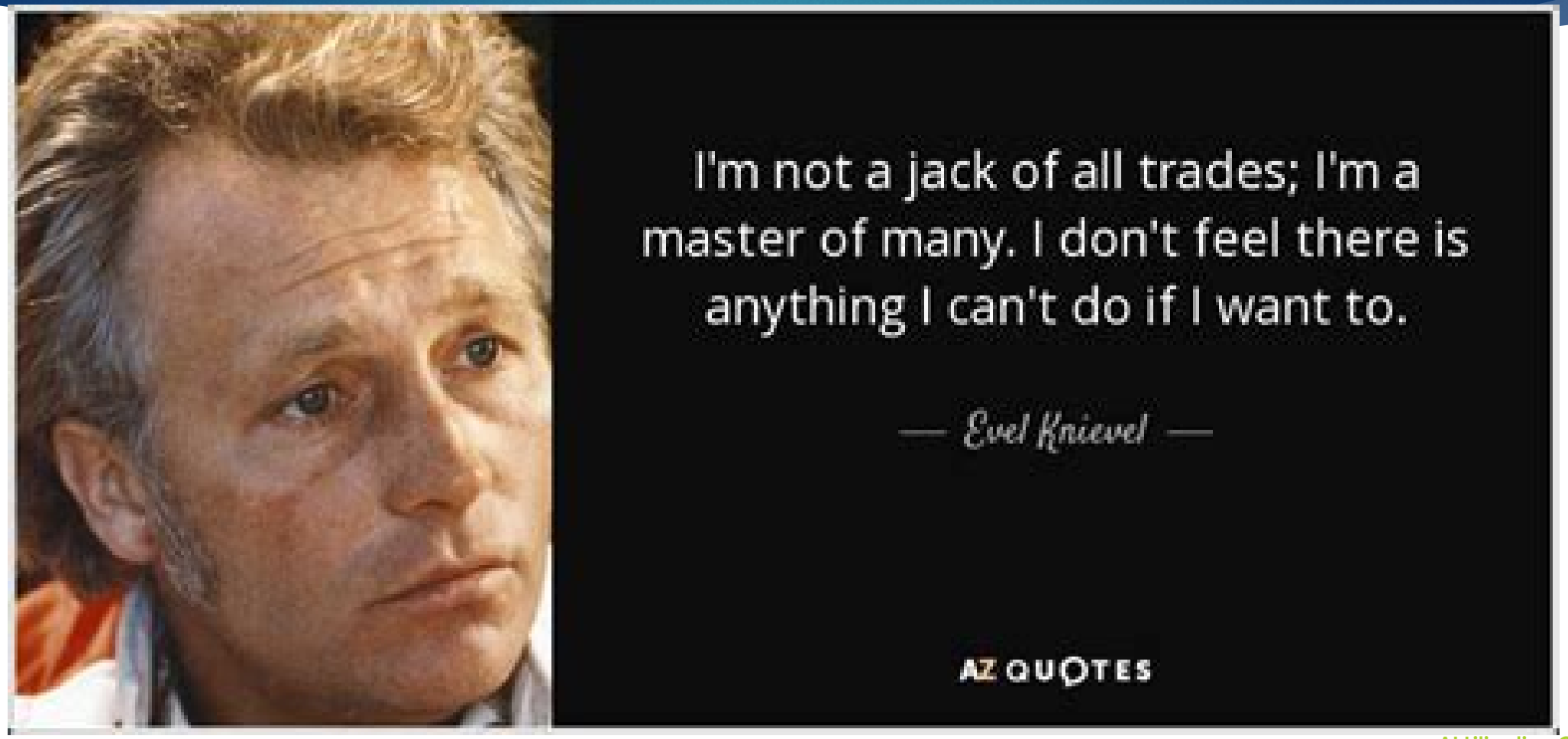
"CREDIBLE: worthy of belief."

- There's also a helpful comment to the definition: "Credible assignment results require support, by relevant evidence and logic, to the degree necessary for the intended use."

What's the Professional (and Litigation) Standard?

- Many assignments are complex due to issues that are beyond the experience or expertise of appraisers
- How can an appraiser reach credible assignment results when there are issues beyond their expertise?
- What happens if an appraiser uses their own best efforts to value such properties or impacts?
- Should we just act like Evel Knievel?

What's the Professional (and Litigation) Standard?



What's the Professional (and Litigation) Standard?

Also Evel Knievel



The Expert Work

- The USDOJ contacted me as a possible expert (I had testified in a 2008-2010 CFC case involving the same plaintiffs, much of the same property, and similar issues)
- I told them that I have appraised many properties with mitigation HBU, but my expertise does not include:
  - determining the suitability of a particular property for this use, or
  - determining whether this HBU was impaired by the alleged activities

Federal Rules of Evidence

- Rule 702:
  - "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
    - (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
    - (b) the testimony is based on sufficient facts or data;
    - (c) the testimony is the product of reliable principles and methods; and
    - (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case."

Note the word "and"

California Evidence Code

- Section 720:
  - (a) A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates. Against the objection of a party, such special knowledge, skill, experience, training, or education must be shown before the witness may testify as an expert.

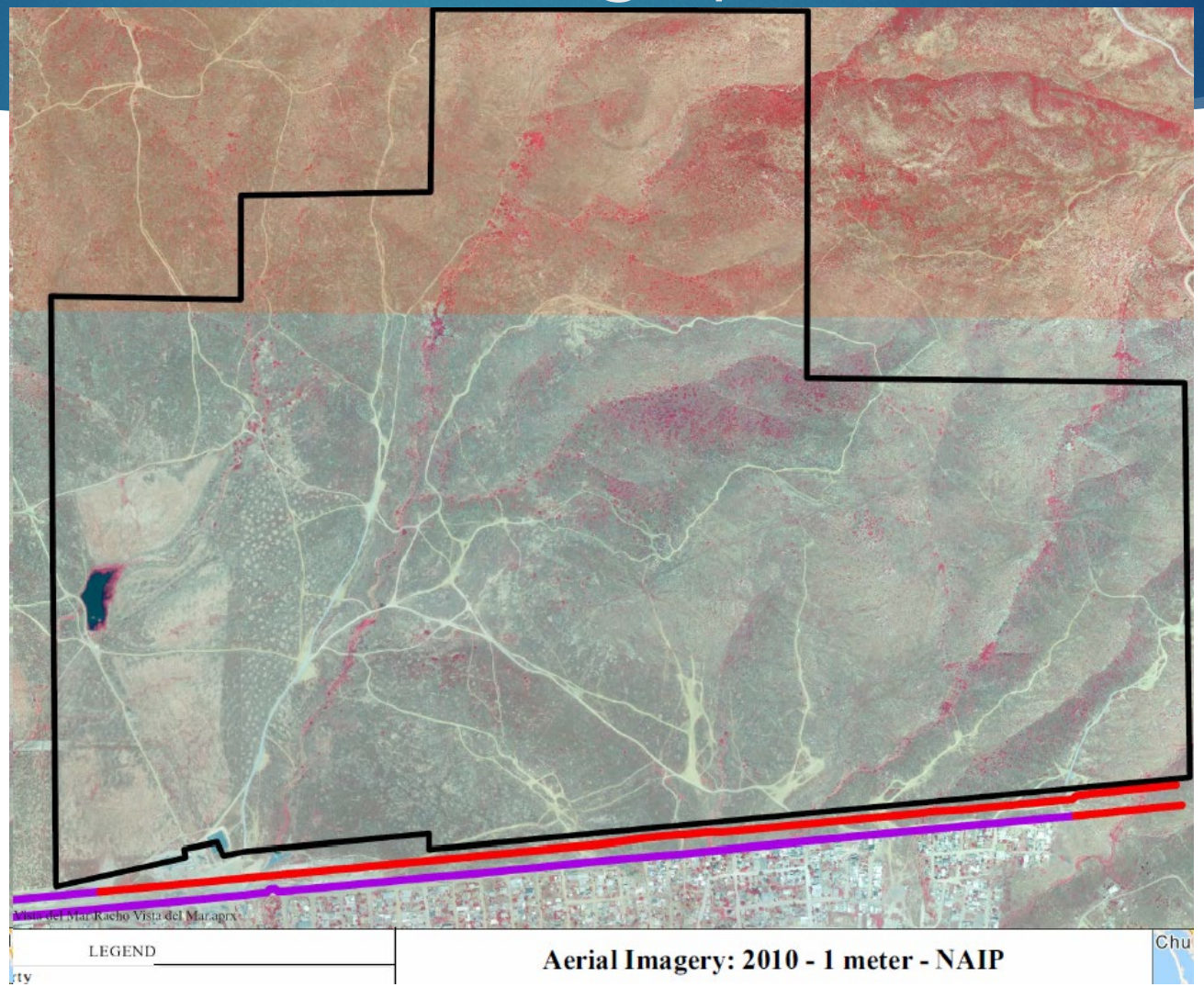
The Expert Work

- USDOJ counsel agreed that additional experts were needed to analyze the situation and to respond to plaintiff's claims
- So, the DOJ retained two additional experts:
  - an expert in evaluating properties for biological resources, including mitigation and banking
  - a GIS/remote sensing expert experienced in mitigation issues

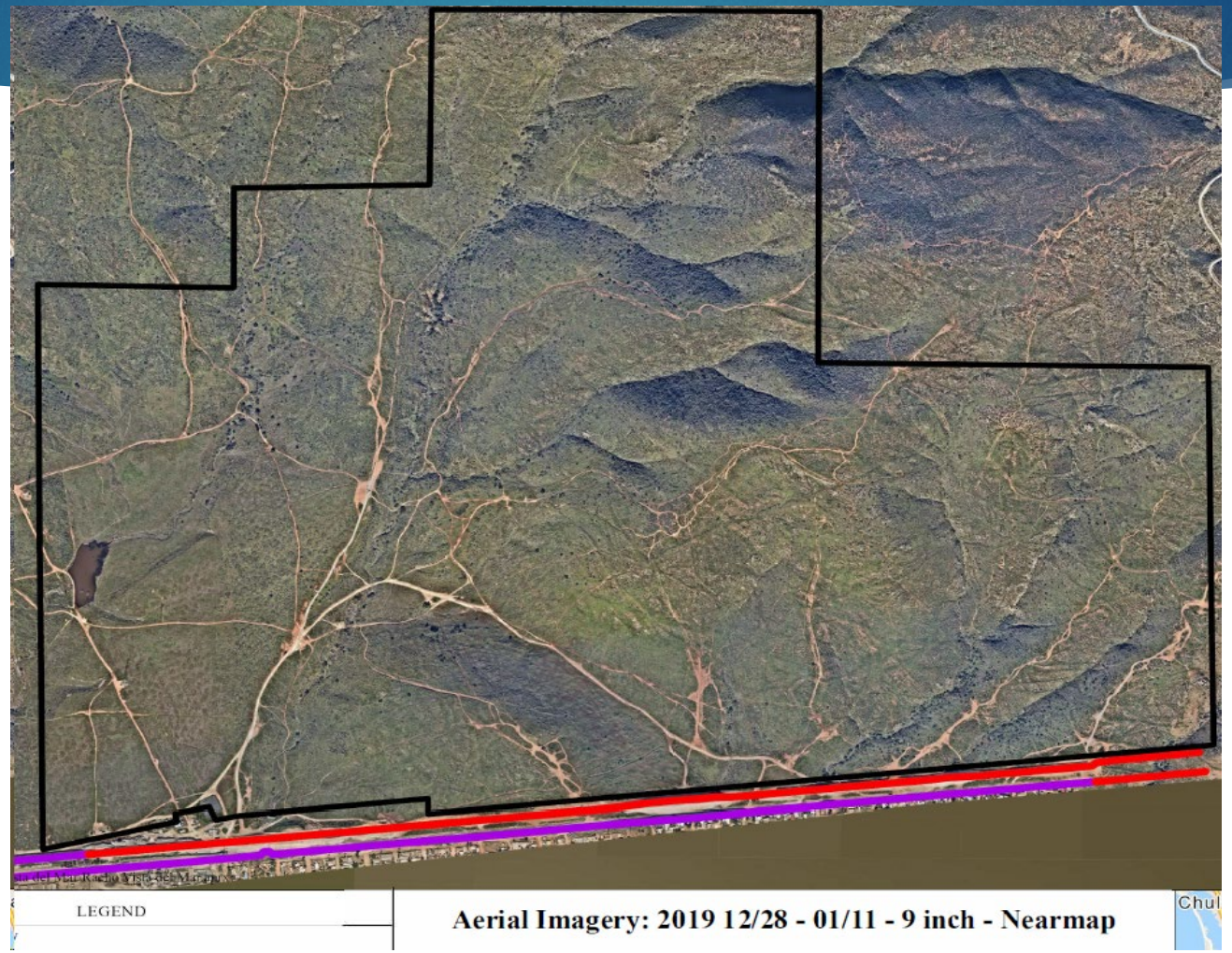
The Biology Expert – Stephanie Standerfer

- The potential biological value had to be determined to conclude whether these resources had been impacted
- The analysis was based on comparing date of value (Feb 2025 with gap) to a comparison condition (no gap). Stephanie evaluated:
  - species occurrence
  - the status of any official "mitigation" encumbrances
  - the property's status related to surrounding planned land and conservation uses

Property in 2010 – Pre "gap"



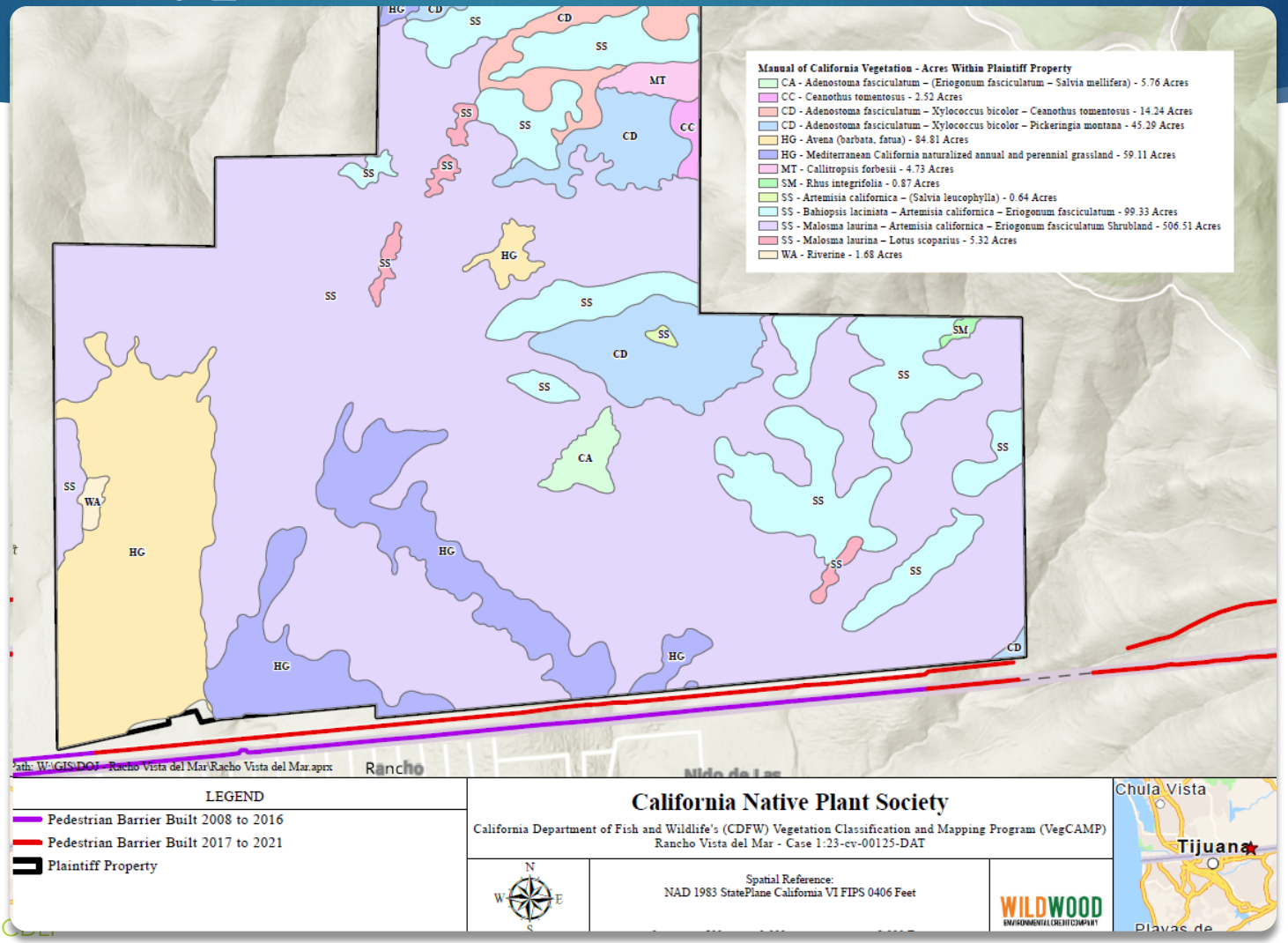
Property in 2019 – With "gap"



Sources Used for the Study

- San Diego County Multiple Species Conservation Program (MSCP) – local specific planned conservation
- California Native Plant Society – vegetation mapping
- California Natural Diversity Database (CNDDB) – species occurrence data
- USFWS Critical Habitat; Information for Planning and Consultation (IPaC)
- USFWS Carlsbad Fish and Wildlife Office (CFWO) – species occurrence data

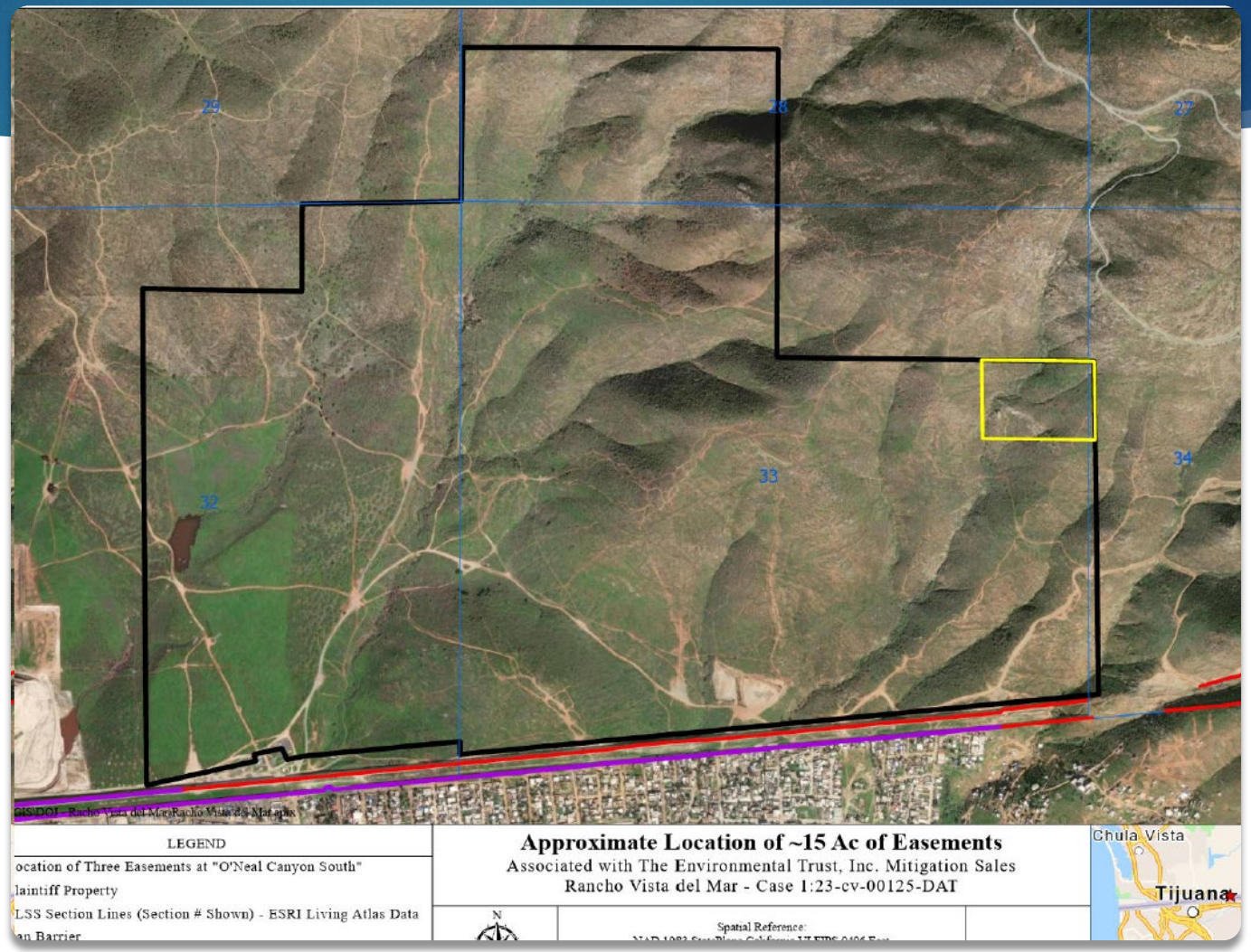
Vegetation Types



Were There Actual Mitigation Banks on the Property?

- If a property was to be used or already used for mitigation/conservation banking then there would be proof
  - Reviewed title reports for easements/encumbrances for conservation
  - Interviewed USFWS staff about existing mitigation/conservation banks
  - Consulted County of San Diego's Mitigation Bank list
    - Thorough list kept through MSCP implementation

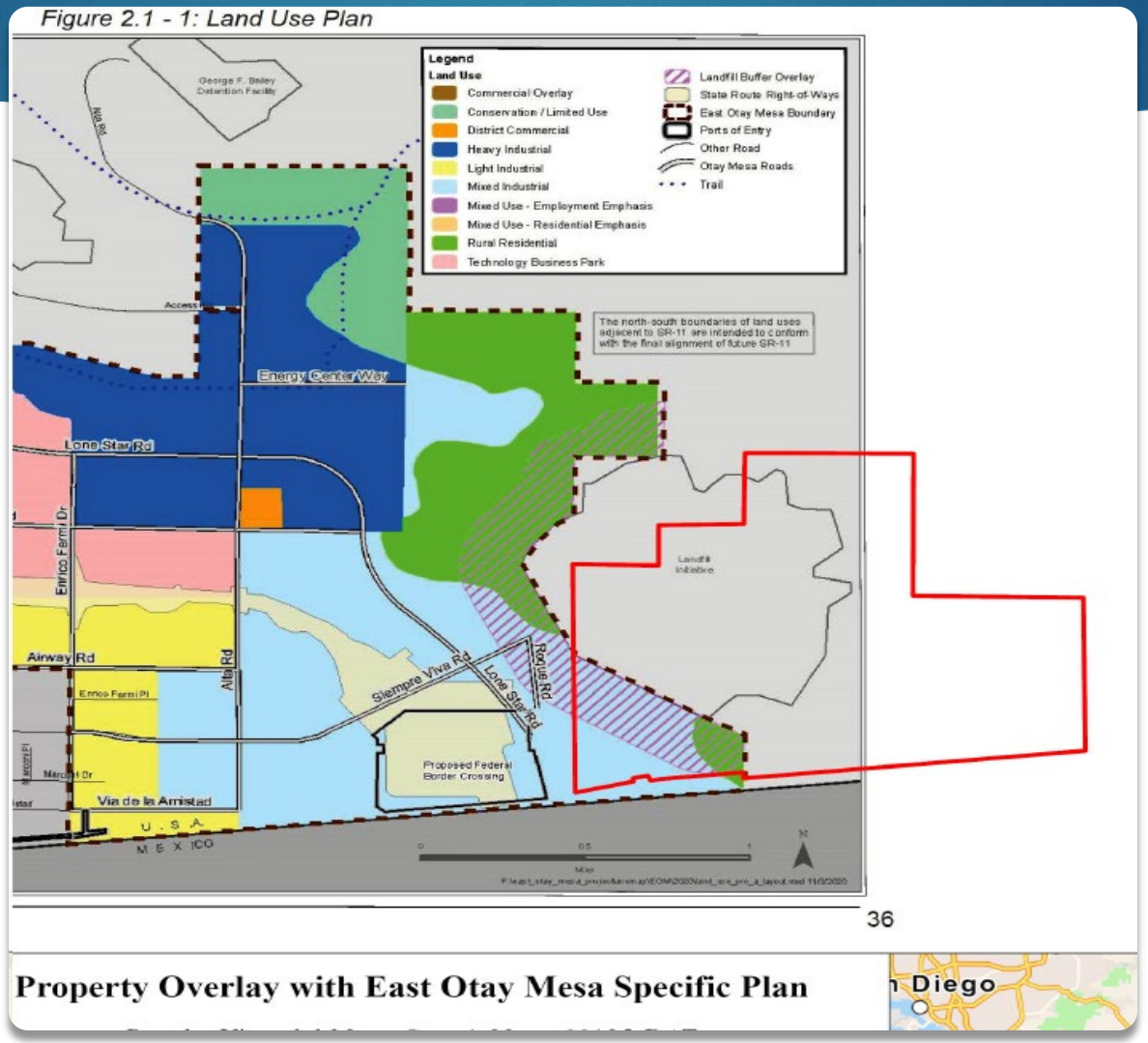
15-Acres Found to be in a Conservation Easement



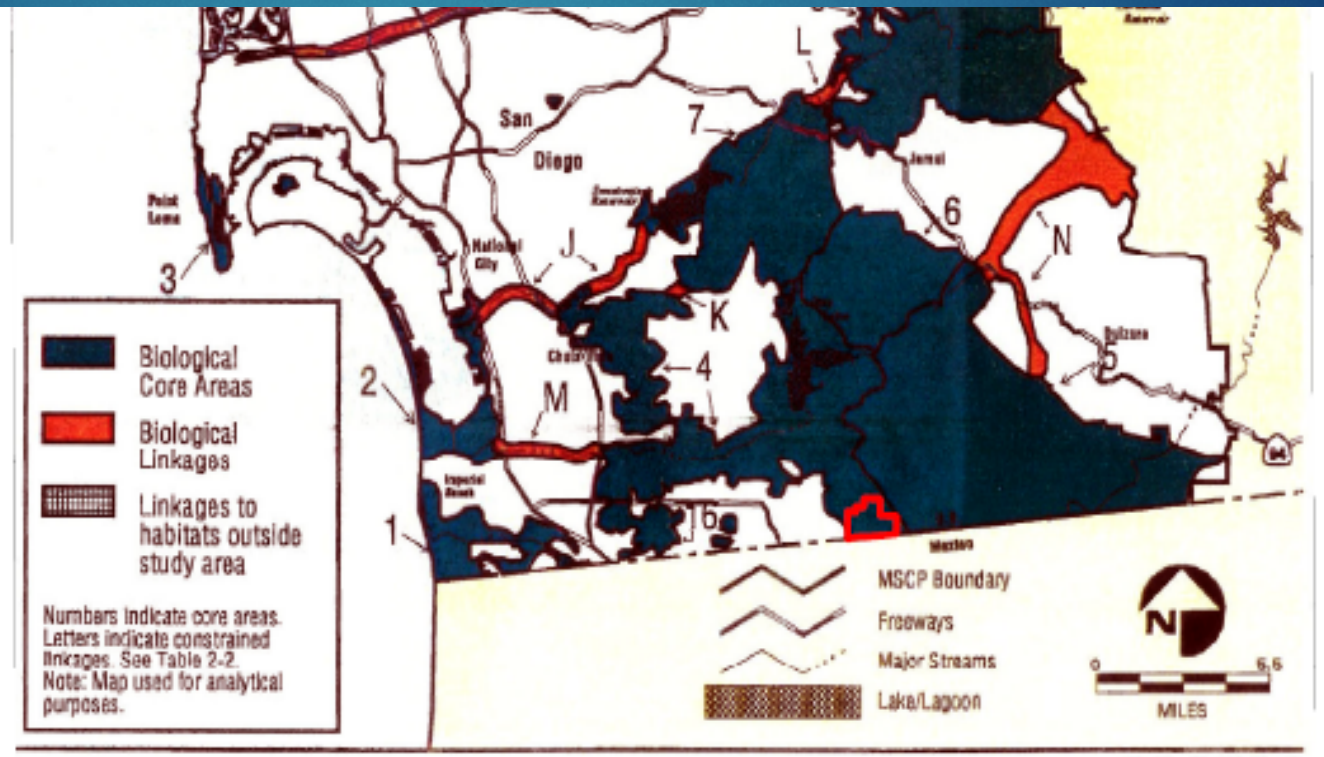
Property Uses Were Evaluated

- Plaintiffs argued that the conservation/mitigation value was changed due to the presence of the "gap"
- The biologist focused on the uses for the property before the gap and then after the gap (not just for conservation)
  - Documented allowable land uses per General Plan, Specific Plan, and zoning
    - General Plan and Specific Plan showed 1/3 of the property was set aside for a landfill
    - Documented how MSCP encumbered property

Proposed Landfill



MSCP Reserve and Property



Was There Damage?

- Historical (30 years) aerial photo imagery was used determine if the pattern of disturbance had changed
  - GIS expert conducted point intercept analysis to quantify changes
- Border Patrol agents reported using existing dirt roads and paths
- Border Patrol reported large masses of people were not traversing the site – using the border road on USA property
- No evidence of widespread camping/brush clearing/disturbances

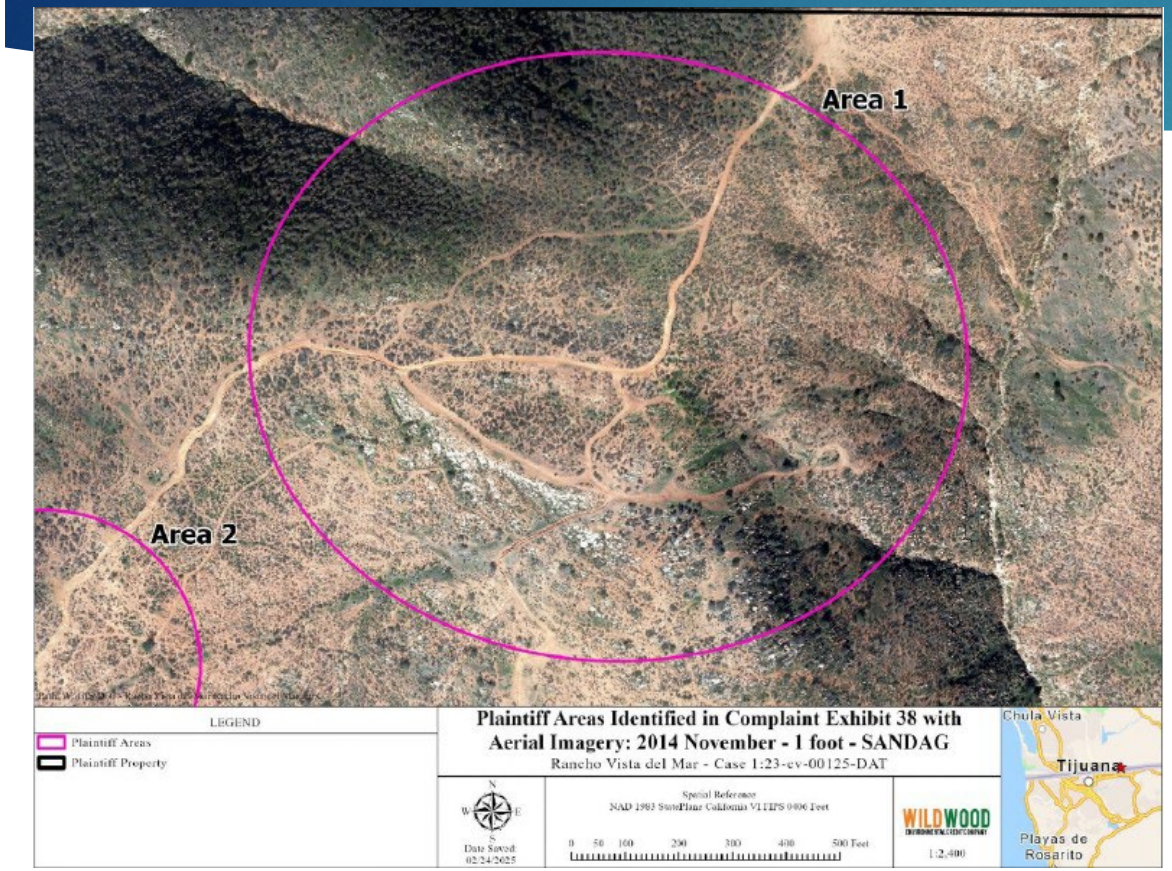
Conclusions Regarding Biology

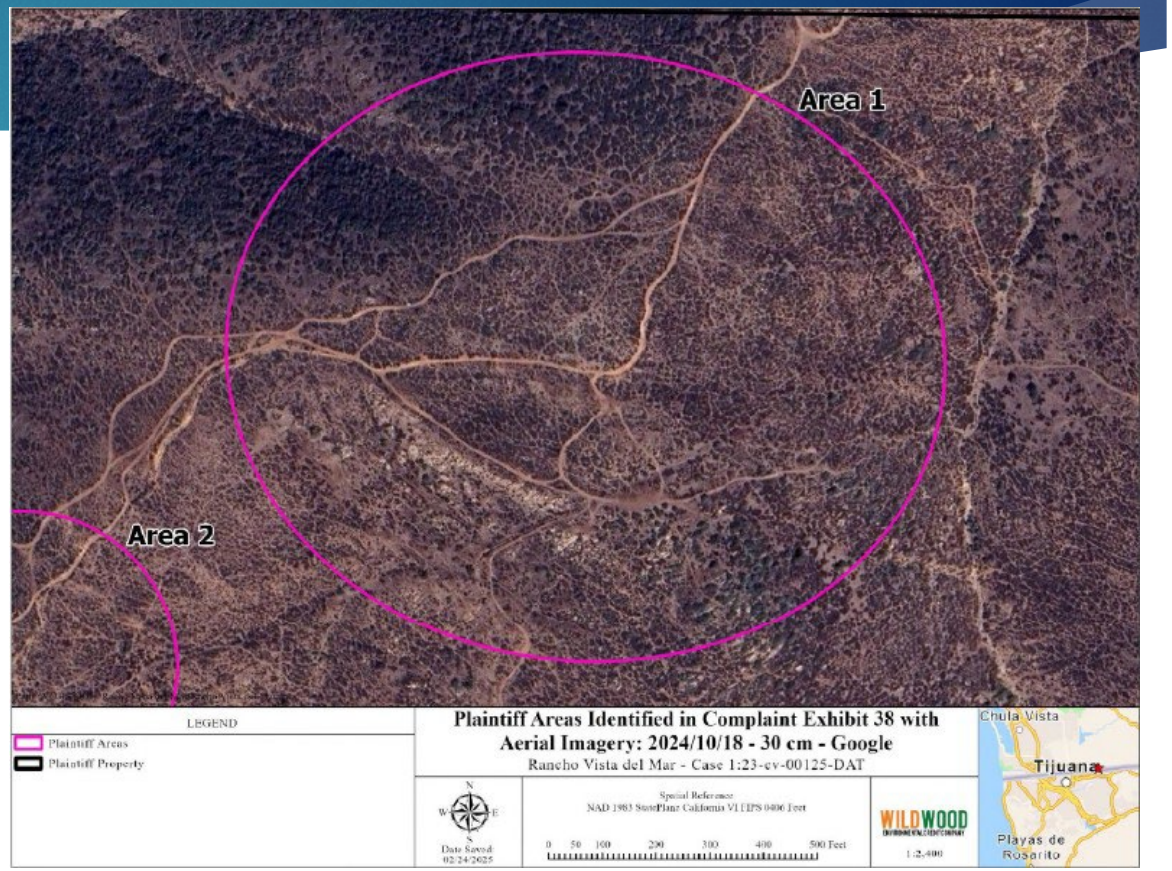
- Property had good biological value; many listed species on site
- Property key contributor to MSCP Reserve
- No evidence of widespread damage to the property over time
- No discernable difference from pre-gap to gap conditions
- No evidence that the on-site conditions impacted the ability to use the property for conservation/mitigation banking or other use

The GIS/ Remote Sensing Expert – Cliff Sunda

- GIS expert provided information needed to support the biology/mitigation evaluation
  - Identified and mapped known locations of various species
  - Identified and mapped habitat/vegetation communities
- See next slide for a comparison of property impacts in November 2014 vs. November 2024

The GIS/ Remote Sensing Expert - Cliff



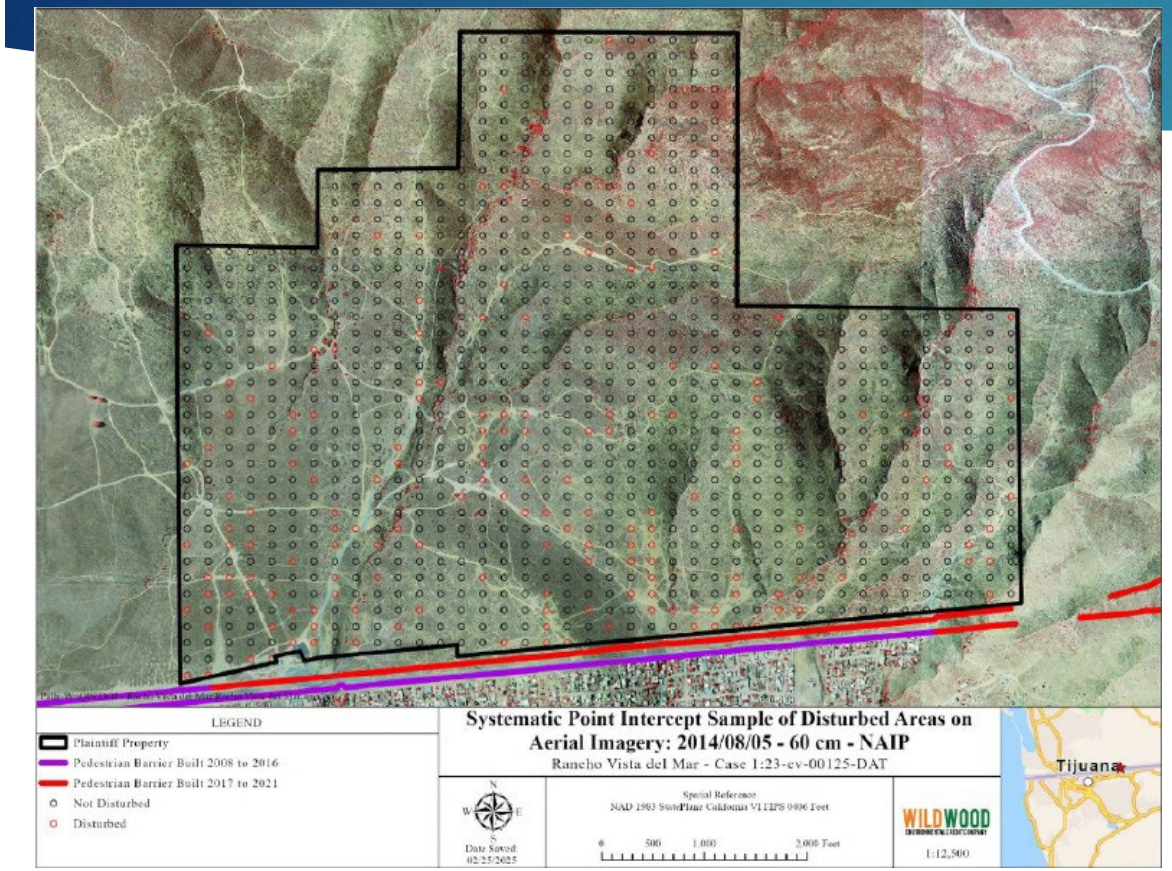


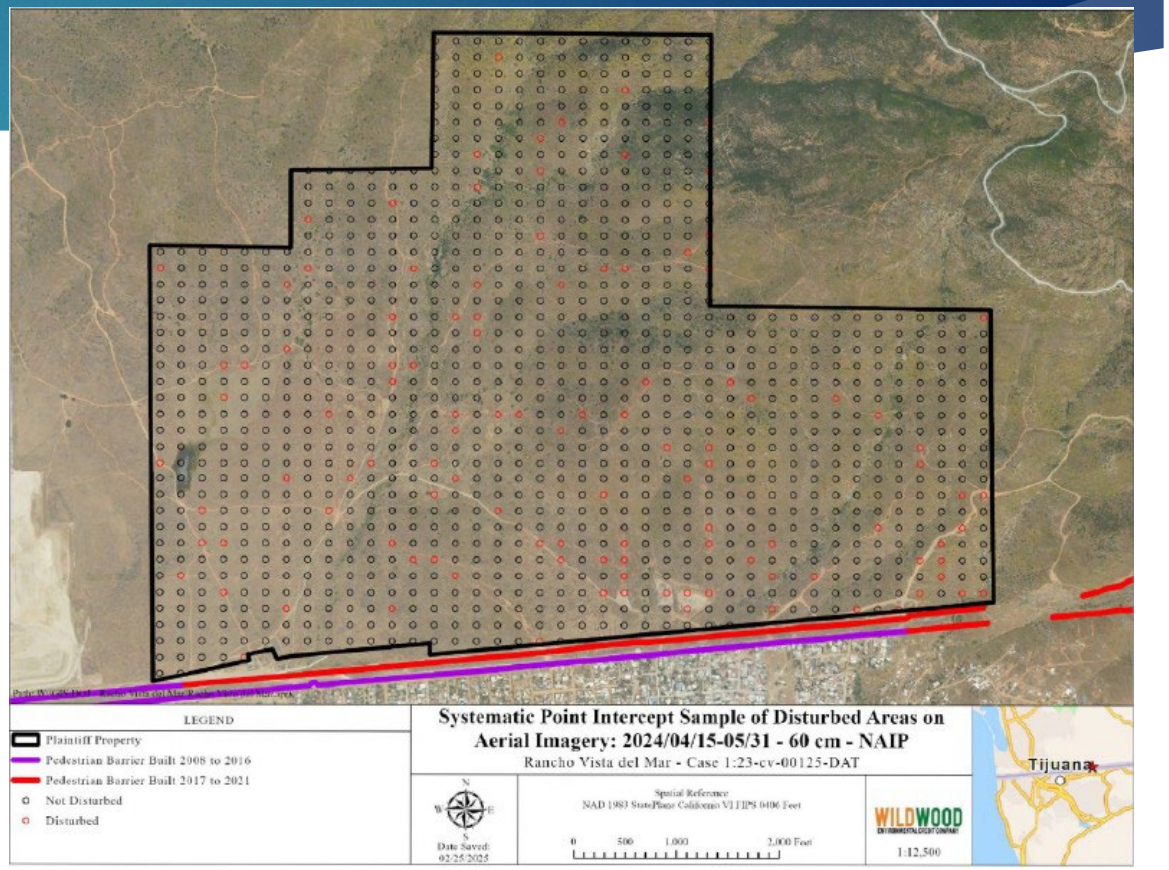
November 2014 vs. November 2024

The GIS/ Remote Sensing Expert - Cliff

- Next, Cliff analyzed the imagery using point intercept analysis to characterize and quantify the level of disturbance
  - Studied over 1,100 points on each of 19 aerial images spanning a 10-year period (a total of 21,489 individual points)
  - See next slide for 2014 and 2024 studies

The GIS/ Remote Sensing Expert - Cliff





Point intercept study 2014 vs. 2024

The Experts

- Expert reports were submitted in February 2025:
  - 3 experts for the USA
  - 6 experts for the plaintiffs (2 biologists, a lawyer, a broker, a border security expert, and the landowner)
- Depositions were taken in early 2026

The Closure of the Gap

- And then…Early in Trump 2, the primary barrier was completed, closing the gap
- This changed the analysis from an alleged permanent taking to a temporary one
- So, more expert reports and more depositions…

The Trial

- The case went to trial in Washington, DC in March 2026
- The plaintiff dropped most of their experts prior to trial, but added a rebuttal appraisal expert (who was deposed during the trial)
- The landowners claimed damages of over $130,000,000
- All 3 of the USA's experts testified
- The judge seemed far more interested in Stephanie and Cliff than Steve…
- In July 2026 the court issued its Decision and Order

The Decision

- "This case arises where land and law enforcement meet at the southern edge of the nation, and where the effects of federal action are measured not in abstraction, but across real terrain involving real people-landowners, many thousands of migrants, and those charged with protecting our borders."
- "To demonstrate liability, Rancho needed convincing evidence that the actions of the Border Patrol increased to such a degree that it affected a taking."
- "Here, Rancho's theory that construction of the 700-foot gap increased Border Patrol's operations to such a degree that it affected a temporary taking is belied by the evidence. Rancho relies primarily on apprehension data. But, as discussed above, apprehension figures provide little insight into the number of Border Patrol agents involved in any given response."

The Decision

- "Accordingly, the Court finds that apprehension figures alone do not establish that Border Patrol's operations increased to the extent alleged by Rancho."
- "Rancho likewise failed to provide evidence linking alleged damage to the property to increased Border Patrol activity. Rancho's expert on this point was unconvincing."
- "Although the Court concludes that the record is sufficient to establish a permanent physical taking based on the installation and operation of the sensors, Rancho did not litigate or prove damages on that theory. The Court cannot disregard the theory on which Rancho tried its case or construct an alternative measure of compensation on its behalf."
- "Based on the foregoing, the United States is liable for a taking, specifically through the placement of sensors on Rancho's property. However, Rancho has failed to carry its burden of proof as to just compensation."

Potential Subsidiary Experts

- Land planner
- Traffic engineer
- Civil engineer
- Structural engineer
- Hydrologist
- Geologist
- Biologist or botanist
- Business appraiser
- Machinery and equipment appraiser
- Economist/feasibility expert
- Cost estimator
- Contractor
- Architect or structural engineer
- Real estate developer or broker
- Farm, ranch, or grove specialist
- Archaeologist
- Contamination/environmental expert
- Acoustical expert/Psychoacoustician

What's My Burden as an Appraiser When Relying on the Work of Another?

- See USPAP Standards Rule 2-3(c):
- "When a signing appraiser has relied on work done by appraisers and others who do not sign the certification, the signing appraiser is responsible for the decision to rely on their work.
  - (i) The signing appraiser is required to have a reasonable basis for believing that those individuals performing the work are competent; and
  - (ii) The signing appraiser must have no reason to doubt that the work of those individuals is credible."

The Point of the Story

- Appraisers – are you an expert in all of the professions listed on a prior slide?
- Would you qualify to testify about those issues under Federal Rule 702 or California's § 720?
- Even if so, would a judge or jury believe your testimony on any of those issues? (Let's chat about Least Bell's vireos…)
- Would you have been able to reach credible assignment results without professional help?

Key Takeaways

1. Property takings cases often involve complex issues
2. Different kinds of "value" may need to be considered; hence different kinds of experts could be needed
3. Determining conservation value is complicated, as are a lot of things that are outside the core expertise of appraisers
4. So, I hate to break it to you, but…

YOU NEED PROFESSIONAL HELP!

Appraisers Need Professional Help!

An Inverse Condemnation Case Study

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