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**The Plight of the Eucalyptus Trees in San Francisco:
A Case Study on the Values and Considerations Involved in
a Decision that Requires Comparative Valuation of Species**

*Ashley Nance**

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Whether walking along the military barracks lining the Presidio or hiking out to a view of the Golden Gate at Land's End, one sight in San Francisco is certain to be seen in any remotely natural neighborhood: eucalyptus trees. From the first planting of eucalyptus seeds in 1853 and the eucalyptus "boom" of the 1870s, to the hundreds of thousands of trees that inhabit our neighborhoods today, the eucalyptus is an integral, if not iconic, part of San Francisco history.¹

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1. Richard Crawford, *Eucalyptus trees have deep roots in California's history*, SAN DIEGO UNION TRIBUNE, Aug. 31, 2008, http://www.utsandiego.com/uniontrib/20080831/news_1z1mc31wewere.html.

In recent years, however, due to its tendency to quickly spread and displace native plant communities, some environmentalists have begun to consider the eucalyptus a nuisance and lobby for its removal. The San Francisco Natural Areas Program ("NAP") responded in 2006, issuing its Significant Natural Resource Areas Management Plan ("SNRAMP," or "the Plan"). The Plan calls for the removal of thousands of eucalyptus trees from different areas of the city in an effort to preserve and restore the native plant communities of San Francisco.² Like any plan proposed in San Francisco, this was met with much opposition. Many environmentalists favored the Plan because of its ultimate goal to restore native and/or endangered species to the area. Others, however, opposed the SNRAMP in light of its plans to eliminate and reduce other species prominent in the San Francisco area in favor of "native" ones.

The questions raised by the plight of the eucalyptus trees are common to environmental regulations across the board: When, how, and why do we favor the existence of one species to the detriment of another? Other species in areas across the country are being placed in this native versus nonnative dichotomy. This note seeks to discern some tenable guidelines, factors, and considerations that come into play when making decisions involving the fate of different species within environmental regulations. I will attempt to do this through looking at the relevant provisions and case law pertaining to the California Environmental Quality Act and the Endangered Species Act. I will then look at how considerations carrying weight in those forums were used, or not used, in the SNRAMP process.

In many instances there are important scientific and ecological concerns that factor into decisions to protect one species at the expense of another. If a species is threatened or endangered, the agency charged with ensuring the survival of that species is required to eliminate all threats thereto, even if the threats are in the form of other non-endangered species. In a city or urban environment, concerns for the safety of the population weigh heavily on the valuation of a species. A species of tree that is a breeding ground for certain types of parasites, for example, would be undesirable in a densely populated neighborhood. Decisions between species for these legitimate public purposes need not necessarily weigh heavily on our conscience.

On other occasions, however, there is a great deal of emphasis on the distinction between native and nonnative species. When the invasive species at issue is nonnative and the species being attacked is native, the argument seems to take on a new purpose. The mere fact that a native

2. S.F. RECREATION & PARKS, SIGNIFICANT NATURAL RESOURCE AREAS MANAGEMENT PLAN, EXECUTIVE SUMMARY 3 (2006), *available at* http://sfrecpark.org/wp-content/uploads/SNRAMP_Final_Draft/SNRAMP_ExecSummary.pdf.

species is being threatened by a nonnative species is, in many cases, enough to justify the extermination of the nonnative species. Unlike the decisions for public purposes discussed above, decisions made to eliminate one species for the benefit of another on the basis of aesthetic or “native” preferences are not necessary in modern society. Humans should not alter the fate of a particular species in a given area simply to suit our personal whims and desires.

I. Introduction

A. The History of the Eucalyptus

It may be helpful to start with a brief overview of the history of the eucalyptus and how a tree that was once labeled the “wonder tree” of the 19th century” came to be known as “America’s largest weed.”³ Originating in Australia, the first successful planting of the eucalyptus occurred in a San Francisco nursery in 1853.⁴ The eucalyptus boom, however, didn’t occur until the 1870s, when merchants of all kinds saw the trees’ rapid and resilient growth rate as an efficient, low cost opportunity for timber.⁵ One Australian newspaper noted, “[t]he Americans are going to make an effort to rival Australia in turning the eucalyptus to profit. In California, there are already many plantations of this wood.”⁶ Once merchants such as shipbuilders and railroad companies learned of the flimsy, curling quality of the California species, unlike the eucalyptus in Australia, these efforts were abandoned and the thousands of eucalyptus trees planted left in place.⁷ The eucalyptus did better as a fuel crop in southern California a few years later, but this effort was also abandoned when more efficient sources of fuel became available.⁸ After all these failed attempts to use this rapidly growing, resilient species for industry, all the hopeful profiteers gave up and left the thousands of planted trees to grow.

Criticism and the realization that early planters of eucalyptus crops had bit off more than they could chew came in 1955, when the United Nations released a study stating that the eucalyptus had become useful only

3. Crawford, *supra* note 1.

4. *Id.*

5. *Id.*

6. *The Versatile Eucalyptus*, THE SYDNEY MAIL, Mar. 24, 1909 at 63, available at <http://news.google.com/newspapers?nid=1302&dat=19090324&id=fjIVAAAIBAJ&sjid=cJUDAAAIBAJ&pg=1701,4112612>.

7. Crawford, *supra* note 1.

8. *Id.*

as a windbreak for citrus groves.⁹ Environmentalists and ecologists worldwide had begun to shun the eucalyptus as a sort of bully species. The eucalyptus has been deemed a “nuisance” for several reasons: its ability to quickly spread, its tendency to crowd out and threaten other species, its peeling bark and falling leaves that litter the forest floor and pose a fire hazard, and its large and thirsty roots use up much of the ground moisture, starving other plants of water. Ecologists are particularly concerned, calling the tree “an invasive pest that kills native vegetation and threatens biodiversity.”¹⁰ These concerns pertaining to biodiversity are, for the most part, well founded. Non-native species, like the eucalyptus, can have detrimental effects on the environment for native plants, like competing with the native plants for nutrients and even altering the nutrient levels in the soil.¹¹

B. Points of Contention

While the trees may seem more of a nuisance than a pleasure, the eucalyptus has several redeeming qualities as well. For example, their resilience allows them to grow in severely dry regions that have been historically unable to maintain vegetation. This allows such areas, which would otherwise be dirt or dry grass, to have not only a more aesthetically pleasing appearance, but to create much needed shade and shelter for the region.¹² It has also been argued in favor of the eucalyptus that the species fights erosion due to the strength of its roots. The argument that pervades the discussion of the eucalyptus trees, however, is of a somewhat simpler tune: environmentalists against the removal of the eucalyptus argue that mankind has made its bed and so now must lay in it. In other words these environmentalists suggest that because man brought the eucalyptus tree to California, if only for self-serving purposes, he now must deal with its presence here—and such dealing is not done by killing the trees.

The question underlying these arguments, however, is the subject of this note: when, how, and why do we value one species over another? This question presents itself in several of the most prominent environmental

9. Crawford, *supra* note 1.

10. Crawford, *supra* note 1.

11. Tesha Rowland, *How the Eucalyptus Came to California*, SANTA BARBARA INDEPENDENT, Jan. 15, 2011, <http://www.independent.com/news/2011/jan/15/how-eucalyptus-came-california>.

12. See generally, Wambugu Kanyi, *Kenya: New Guidelines to Promote Eucalyptus Farming*, All Africa April 13, 2011, <http://allafrica.com/stories/201104140199.html> (noting the reasons cited for encouraging eucalyptus growth in Kenya).

disputes of our time,¹³ and it has not gone unaddressed by parties of the eucalyptus dispute. One argument advanced by environmentalists who are against the destruction of the eucalyptus trees is that no one should destroy a healthy tree due to his/her preference for another type of tree.¹⁴ The environmentalists that support the removal of the eucalyptus trees argue in the alternative that, in light of the harm the eucalyptus causes to other, native species, the failure to remove the eucalyptus is a decision that constitutes the removal of the other species.

Another important question underlies the above arguments: where one species is threatened by another species, should humans intervene to ensure the survival and/or growth of one species over the other? Certainly much of the federal and state legislation predicates this. Acts such as the Endangered Species Act and the California Environmental Quality Act are based upon the notion that a species which is diminishing in population is more valuable than one that is not. Through the use of terms like “significant” and “endangered,” these acts ask us to make decisions that allow one species to survive at the expense of another species. NAP repeatedly evokes many of the same sentiments associated with CEQA and the ESA to justify and reason its own conclusions within the SNRAMP.

C. The Native/Non-Native Distinction

While many of the conclusions within the SNRAMP may be justified through similar reasoning to that of other environmental legislation, there are many areas of the plan that seem to be nothing more than a list of aesthetic preferences, arguing that the eucalyptus should be removed in favor of more attractive, native species. One of the conservation goals of the plan is to “decrease the extent of invasive exotic species cover.”¹⁵ Similarly, one of the stated management concerns is “the effect of nonnative invasive species on the local native flora and fauna.”¹⁶ This distinction of native and nonnative species persists throughout the plan. Some environmentalists

13. Drake’s Bay Oyster Company controversy, *see, e.g.*, Julia Graeser, *Junk Science and Commercial Enterprise in Point Reyes Potential Wilderness Area: A Reflection on Agency Decision-making and Accountability in Our Most Pristine Lands*, 19 HASTINGS W.-NW. J. ENV’T L. & POL’Y 307 (2013). The controversial restoration of Hetch Hetchy, *see, e.g.*, Norimitsu Onishi, *Hetch Valley Measure Pits Bay Area Against Environmentalists: Putting the Bay Area’s Water Source to a Vote*, N.Y. TIMES, Sept. 9, 2012, <http://www.nytimes.com/2012/09/10/science/earth/hetch-hetchy-valley-measure-pits-bay-area-against-environmentalists.html>.

14. DEATH OF A MILLION TREES, <http://milliontrees.me>.

15. S.F. RECREATION & PARKS, SIGNIFICANT NATURAL RESOURCE AREAS MANAGEMENT PLAN, MANAGEMENT APPROACH 2-1 (2006), *available at* http://sfrecpark.org/wp-content/uploads/SNRAMP_Final_Draft/2_ManagementApproach.pdf.

16. *Id.* at 2-4.

have termed this process based on aesthetic preferences “plant fascism.”¹⁷ While NAP may, debatably, have a responsibility in ensuring that biodiversity remains in the Natural Areas of San Francisco,¹⁸ other organizations, who cannot arguably have any such duty, are opting to trash the eucalyptus in favor of more “native” species as well.¹⁹

The most recent debate is in the Mount Sutro Open Space Reserve, owned by the University of California at San Francisco and known by residents as “Sutro Forest.” In 2009, UCSF released plans to give Sutro Forest a face-lift, if you will. Similar to the SNRAMP, the plan proposes to cut more than half of the 45,000 eucalyptus trees in Sutro Forest and replace them with native plants and shrubs.²⁰ While the plan uses much of the same reasoning as the SNRAMP, residents “aren’t buying it.”²¹ The director of the grassroots volunteer organization dedicated to maintaining the reserve stated, “[t]he real bottom line to all of this is that you need management to ensure that we have a healthy forest.”²² Opponents argue, however, that the forest should be respected as it is, and that “its density is one of its beauties” due to the rarity of such forests in the City.²³ Thus, the issues in this battle are largely the same as those in the battle over the SNRAMP, with opponents of eucalyptus removal accusing the organizations responsible of “destroy[ing] an enchanted ‘cloud forest’ in furtherance of ‘plant fascism.’”²⁴

17. Peter Fimrite, UCSF, *Neighbors Tangle Over Eucalyptus*, S.F. CHRON., Mar. 1, 2013, <http://www.sfgate.com/science/article/UCSF-neighbors-tangle-over-eucalyptus-4322421.php>.

18. Natural Areas Program, S.F. RECREATION & PARKS, <http://sfrecpark.org/parks-open-spaces/natural-areas-program/> (last visited Feb 28, 2013). (“The mission of the program is . . . to preserve, restore, and enhance remnant natural areas.”).

19. Referring to the debate over the eucalyptus in UCSF’s Sutro Forest. See generally, SAVE MOUNT SUTRO FOREST, <http://sutroforest.com>.

20. Fimrite, *supra* note 17.

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

Alien Invaders are Among Us!

Who are the "aliens"?
 The aliens are **plants and animals that are not native to Florida**. They include hundreds of different plants and animals. Most non-native plants and animals are not a problem in Florida, just the invasive and nuisance species. **An invasive species is one that causes harm to our economy, ecology, or health.** Some invasive species are a nuisance to people and pets and negatively impact our quality of life.

How do they get here?
 Alien species in Florida come from all over the world. Many plants are brought to Florida intentionally and they accidentally escape cultivation. Some alien animals arrive as "stowaways" in cargo shipments. Unfortunately, many alien animals in Florida are imported for the pet trade and become established after they are intentionally released, which is against the law!

Should I be concerned?
Yes! Non-native plants and animals are a major threat to Florida's ecological balance. They compete with native species for food, space, and other resources and invasive animals eat native species. Control of invasive species costs Florida taxpayers tens of millions of dollars a year.

The alien war in Florida's State Parks
 One of the missions of the Florida Parks Service is to preserve and restore natural resources for us all to enjoy. To fulfill this mission, park biologists and volunteers spend countless hours controlling invasive species. By removing non-native species, the Florida Park Service is helping preserve... **the Real Florida.**

How can I help?

- Identify and remove invasive plants and animals in your yard.
- Landscape your yard with native plants.
- Don't buy an invasive species.
- Don't release an exotic pet.
- Learn more about Florida's alien invaders and educate others.

Invasive plants and animals compete with native species for food and space. Invasive animals eat native species.

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The eucalyptus isn't the only species that has fallen victim to this native/nonnative dichotomy. Parks and wildlife areas all over the country are warning their patrons about "alien invaders." One sign, in Wekiwa Springs State Park in Apopka, Florida, exclaims, "Alien Invaders are Among Us!" in large font on a sign warning about invasive species at the entrance to

25. Photo by author of a poster at the entrance to Wekiwa Springs State Park, Apopka, Florida, March 11, 2013.

the park.²⁶ The poster goes on to explain that “invasive animals eat native species,”²⁷ as though the diets of the listed species are based solely on the native/nonnative distinction. One of the invasive species at issue on this poster, and in about half of Florida, is the Cuban Tree Frog.²⁸ The University of Florida’s Wildlife Extension Program has issued a recommendation that anyone who finds a Cuban Tree Frog should “humanely euthanize it.”²⁹ Although the Cuban Tree Frog does prey on several “native” frog species, such as the American Green Tree Frog and the Squirrel Frog,³⁰ none of the species on which it preys are listed as endangered or threatened under the federal or analogous state statutes.³¹ Aside from the preying attributes of the Cuban Tree Frog, no other dangers or harms are associated with it. Moreover, in arguing for the removal of the Cuban Tree Frog, proponents play largely on statements relating to the frog’s nonnativity, such as, “The Cuban Tree Frog entered this country most likely by stowing away on cargo vessels bringing goods into Key West.”³² By using such phrasing to discuss the frog’s origins, the writer is evoking anti-immigration sentiments and suggesting that the Cuban Tree Frog doesn’t have as much of a right to be in the United States as say, the American Green Tree Frog. In light of this, it seems rather drastic to recommend euthanizing a particular species simply because it preys on a species that is considered somehow preferable to its own—especially when the preference is based solely on the fact that the preyed upon species are native and the preying species is not.

The focus of this note, then, is how, when, and why we value one species over another. Looking at CEQA and the ESA provides some insight into the justifications given by the legislature in the past. When these statutes aren’t used, however, organizations are quick to come up with other ways in which they think they are justifying such decisions. When it is decided that one species is more desirable than another, the question remains of whether it is appropriate for humans to intervene in order to save the desired species from desecration by the dominant species. As the

26. *Id.*

27. *Id.*

28. Beverly Hill, *Invasive Frogs in Florida: Cuban Tree Frogs*, NORTHWEST FLORIDA OUTDOOR ADVENTURE (Apr. 2, 2012), <http://www.northwestfloridaoutdooradventure.com/2012/04/02/invasive-frogs-in-florida-cuban-tree-frogs>.

29. *Id.*

30. *Id.*

31. Federal list of endangered or threatened amphibians, U.S. Fish & Wildlife Serv., http://ecos.fws.gov/tess_public/SpeciesReport.do?groups=D&listingType=L&mapstatus=1. Florida List of Imperiled Amphibians, Fla. Fish & Wildlife Conservation Comm’n., <http://myfwc.com/wildlifehabitats/imperiled/profiles/amphibians>.

32. Hill, *supra* note 28.

following research will show, the answers to these questions largely depend on the specific area in which that species is present. Moreover, when we are forced to make decisions between one species and another, those decisions should be based on scientific or ecological concerns, and not merely the notion of an aesthetically pleasing nostalgia.

II. CEQA

A. Overview

Speciesism, or the valuation of one species over another, often occurs within the law in situations requiring compliance with a statute. Statutes can either directly or indirectly effectuate speciesism. A species-specific animal ban, for example, directly effectuates speciesism by not allowing a certain species of animal to be owned in the area because the city or state has determined that the benefits of the presence of that animal are outweighed by the harms or risks that the animal poses. When words such as “significant,” “substantial,” and “adverse” are the words upon which action in compliance with an environmental statute is required, the end result can often lead to valuing one species over another. The California Environmental Quality Act (“CEQA”) indirectly effectuates speciesism by requiring the complying party to determine the meaning of “significant” as it applies to their actions in the environment.

CEQA was enacted in 1970 to create a protocol for environmental analysis that would be adhered to in every state and local agency’s decision-making process. It is analogous to the federal National Environmental Protection Act.³³ The purpose of CEQA is to force government officials to evaluate the effect of proposed actions on the environment, available mitigation measures, and alternatives thereto. This allows government officials, and more importantly, the public, to evaluate agency decisions in the context of their effect on the environment.³⁴

Compliance with CEQA entails a 3-step process. The first step is to conduct a preliminary review to determine whether or not CEQA applies. Where the government undertakes, finances, or approves a project, CEQA generally applies.³⁵ Secondly, if it is determined that CEQA applies, the agency must conduct an initial study to determine whether the proposed action is likely to have a significant effect on the environment.³⁶ A significant effect is statutorily defined as “a substantial or potentially substantial adverse change in the physical conditions existing within the

33. CAL. CODE REGS. tit. 14, §15002 (2013).

34. *Id.*

35. *Id.*

36. *Id.*

area affected by the project.”³⁷ Finally, if the agency determines that the proposed action is likely to significantly affect the environment, the agency must prepare an Environmental Impact Report (“EIR”).

B. Initial Study

In the beginning of the CEQA process, the word “significant” dictates whether the action even merits review in the form of an EIR. In this case, the question is whether the action as a whole is likely to have a significant effect on the environment. The initial study must consider all phases of the proposed action, including planning, implementation, and operation.³⁸ Significance in the context of CEQA can be aptly divided into two basic categories: quantitative significance and qualitative significance.³⁹ Quantitative significance denotes a threshold relying solely on numbers. Therefore, if a certain amount of trees are to be destroyed, the significance would depend on the amount. Qualitative significance refers to the type of effect at issue. Thus, if a certain species of tree is to be destroyed, the significance would depend on the species. Qualitative significance generally gives more discretion to define which effects are considered significant.⁴⁰

The most commonly used test to determine significance in the initial study phase of CEQA is the “fair argument” test, first set forth by the California Supreme Court in *No Oil, Inc. v. City of Los Angeles*.⁴¹ According to the Court, in order to accomplish the goals of CEQA, an EIR must be prepared “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.”⁴² Although the exact wording of the statute has changed since this decision was issued,⁴³ the tests used today are largely the same. In *Pocket Protectors v. City of Sacramento*, the city did not prepare an EIR in connection with its approval of a new 20-acre housing development.⁴⁴ Using the “fair argument

37. Cal. Farm Bureau Fed’n v. Cal. Wildlife Conservation Bd., 143 Cal. App. 4th 173, 185 (2006).

38. CAL. CODE REGS. tit. 14, §15603 (2013).

39. John Watts, *Reconciling Environmental Protection with the Need for Certainty: Significance Thresholds for CEQA*, 22 *ECOLOGY L.Q.* 213, 218 (1995).

40. *Id.*

41. *Id.*; *No Oil, Inc. v. City of L. A.*, 13 Cal. 3d 68 (1975).

42. *No Oil*, 13 Cal. 3d at 75.

43. Watts, *supra* note 39 at 232. (Prior to the 1993 amendments, CEQA required preparation of an EIR where there was “substantial evidence” that an action may have a significant effect on the environment; amendments changed language to “substantial evidence in light of the whole record.”).

44. *Pocket Protectors v. City of Sacramento*, 124 Cal. App. 4th 903 (2004).

standard,” the court stated that an EIR must be prepared where there is substantial evidence to support a fair argument, even if there is also substantial evidence that the proposed action will *not* significantly affect the environment.⁴⁵ The court also emphasized CEQA’s definition of substantial evidence—that is, “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”⁴⁶ In *Pocket Protectors*, the court ultimately held that the approval of the housing project was significant within the meaning of CEQA and that the plaintiffs had provided substantial evidence of the same.⁴⁷ These cases suggest that the phrase “may cause a significant effect on the environment”⁴⁸ is meant to be rather broadly construed and that most projects involving the environment in some way will require an EIR. The courts, then, at least in this step of the CEQA process, view the word “significant” as encompassing quantitative and qualitative significance. Thus, the removal of one Manzanita bush would be significant, but so would the removal of thousands of eucalyptus trees.

While the CEQA compliance process was fairly involved for NAP, much like anything that has room for public comment in San Francisco, most of the contentious points did not arise until the EIR phase. Given the extensive planned restoration and development of the natural areas, NAP quickly conceded that the SNRAMP would require consideration under CEQA in August of 2006.⁴⁹ The initial study phase, which can be contentious for some agencies, wasn’t at issue for NAP. Although NAP didn’t give any reason for why it determined an EIR was required, it’s fairly easy to see how they came to that determination so quickly. Because the entire focus of the SNRAMP was changing the environment, it was fairly obvious it would be an action likely to affect the environment, even if the effect isn’t necessarily negative. Moreover, it’s clear that the removal of the eucalyptus trees would give rise to a “fair argument” of significance under either the quantitative or the qualitative definitions. While various arguments have been advanced as to the qualitative significance of the eucalyptus, a fair argument can be made that any living thing is qualitatively significant. In the alternative, the sheer percentage of the eucalyptus trees slated for removal, 5% in the

45. *Id.* at 927.

46. *Id.* (internal quotations omitted).

47. *Id.*

48. CAL. CODE REGS. tit. 14, §15603(b)(1) (2013).

49. SNRAMP *Development Timeline*, S.F. RECREATION & PARKS, <http://sfrecpark.org/parks-open-spaces/natural-areas-program/significant-natural-resource-areas-management-plan> (last visited Jan. 17, 2013).

Natural Areas of San Francisco and 28% in Sharp Park,⁵⁰ was more than enough to make a fair argument for quantitative significance.

Briefly looking at the case law in this area, it is clear that the courts have applied the word “significant” rather broadly.⁵¹ In most instances, the action will be deemed to have the possibility of causing a significant effect. The rationale behind this is that the EIR is the stage where parties are free to argue the actual significance of the effects of a proposed action.⁵² Therefore, most courts simply err on the side of requiring an EIR. This has garnered much criticism, however, because while the EIR is the “heart” of the CEQA process, it is also the most cost intensive.⁵³

C. EIR

Lastly, in the EIR stage, a finding of significance requires that the agency provide a list of available alternatives to the action. The EIR must: “describe the proposed project and its environmental setting, state the objectives sought to be achieved, identify and analyze the significant effects on the environment, state how those impacts can be mitigated or avoided, and identify and analyze alternatives to the project.”⁵⁴ The agency or project proponent must prepare the EIR before an agency decision is made. The purpose of the EIR is to provide decision makers with information they can use in deciding whether or not to approve a project, not to inform them of the effects of a decision already made.⁵⁵ It is equally important that the public “be given an adequate opportunity to comment” on the proposed project before any decision is made.⁵⁶

Although there are strict requirements for when and how an EIR should be filed, the requirements of the EIR itself are less taxing. “An EIR that ‘satisfies’ CEQA ‘requirements’ may nonetheless demonstrate the project carries with it significant immitigable adverse effects.”⁵⁷ Therefore, while an EIR does make agencies accountable for the environmental effects

50. S.F. PLANNING DEP’T, DRAFT ENVIRONMENTAL IMPACT REPORT, SIGNIFICANT NATURAL RESOURCE AREAS MANAGEMENT PLAN 462 (2011), *available at* http://sfmea.sfplanning.org/2005.0912E_DEIR.pdf.

51. *See, e.g.*, *Citizens for Responsible and Open Gov’t v. City of Grand Terrace*, 160 Cal. App. 4th 1323 (2008); *Citizens for Responsible Equitable Env’tl. Dev. v. City of Chula Vista*, 197 Cal. App. 4th 327 (2011).

52. *Pocket Protectors*, 124 Cal. App. 4th at 929.

53. *See generally*, *Watts*, *supra* note 39 at 233.

54. *Cmtys. for a Better Env’t v. City of Richmond*, 184 Cal. App. 4th 70, 79 (2010).

55. *Save Tara v. City of W. Hollywood*, 45 Cal. 4th 116, 134 (2008).

56. *Communities for a Better Environment*, 184 Cal. App. 4th at 80.

57. *Save Tara*, 45 Cal. 4th at 141.

of their decisions and increase the transparency of the same, it does not ultimately require that any of those decisions be changed. This is not to say, however, that CEQA is only an “information-forcing” statute. Unlike NEPA, CEQA prohibits agencies from approving a project with significant environmental effects where feasible mitigation measures are available which would lessen or eliminate those effects.⁵⁸

While a court may not strike down an EIR simply because it disagrees with a finding of no significance, it can hold that the EIR is inadequate if those findings are not all clearly explained.⁵⁹ In *Protect the Historic Amador Waterways v. Amador Water Agency*, the court held an EIR to be insufficient when the agency failed to explain why a planned pipeline would have a “less than significant” effect.⁶⁰ Insufficiency findings such as this can be easily avoided with a simple explanation.⁶¹ Generally speaking, as long as a good faith effort to fully disclose is made on the part of the agency, the court will accept the EIR.⁶²

NAP prepared, and released for comment, the draft EIR for SNRAMP in August of 2011.⁶³ Because there are separate plans for each natural area within SNRAMP, the draft EIR analyzed all the separate aspects of each focal project within SNRAMP. It lists all possible impacts, along with the significance level of the impacts and any mitigation measures that can or will be taken to lessen these impacts.⁶⁴ The impacts are ranked in varying degrees depending on the severity of the impact.⁶⁵ The degrees of impact include: “significant and unavoidable impact,” “significant and unavoidable impact with mitigation,” “less than significant impact with mitigation,” “less than significant impact,” and “no impact.”⁶⁶ Possible or planned mitigation measures are given where indicated that they are available.

“Invasive tree and vegetation removal” is listed four times in the EIR and each time it is deemed to have a “less than significant” impact.⁶⁷ The total “invasive tree removal” proposed in the plan is 5% of invasive trees in

58. Todd Nelson, *Save Tara and the Modern State of the California Environmental Quality Act*, 45 LOY. L.A. L. REV. 289, 291 (2011).

59. *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099 (2004).

60. *Id.* at 1104.

61. Watts, *supra* note 39 at 234.

62. *Id.* at 234.

63. S.F. RECREATION & PARKS, *supra* note 49.

64. S.F. PLANNING DEP'T, *supra* note 50.

65. *Id.* at 3.

66. *Id.*

67. *Id.* at 11, 12.

the San Francisco Natural Areas and 28% at Sharp Park.⁶⁸ NAP goes on to further define each instance of the “less than significant” expected impact, stating that such activities “would not result in a substantial adverse change in the significance of historic landscapes or urban forests,”⁶⁹ and “would not result in a substantial adverse change in the significance of the Golden Gate Park Historic District contributing sites.”⁷⁰ “Historic landscapes” are defined by the EIR as areas: “1) associated with an event or series of events of historical note; or 2) represent the visual perception of a particular period of civilization, a way of life, or patterns of living.”⁷¹ “Urban forest,” on the other hand, is defined as “[a] significant stand of nonindigenous trees.”⁷² “Golden Gate Park Historic District contributing sites,” however, is not further defined.

Under such definitions, it is unclear whether or not NAP is examining the significance of the impact of the tree removal as intended by CEQA. The purpose of the EIR is to “identify the significant effects on the environment of a project,”⁷³ not necessarily just the effects on the specific habitat involved. To state that the removal of invasive trees and plants will not have a significant effect on the “historic landscape” does not mean that such removal will not have a significant effect on the environment. An analysis that only looks at the effects of decisions on the individual habitat directly involved is inconsistent with the purpose CEQA, to inform decision makers about the effects of proposed actions on the *environment*.⁷⁴

Also of note is the fact that the impact conclusions of the EIR dealing with the removal of invasive trees are not further explained. While NAP gives a few words to each impact conclusion stating what habitat or area will not be affected by the removal of the trees,⁷⁵ it doesn’t explain why this habitat will not be affected. Courts have held EIRs insufficient in the past where significance findings were unexplained.⁷⁶ In *Protect the Historic Amador Waterways v. Amador Water Agency*, the court held the EIR to be insufficient because the agency failed to explain why a planned pipeline would have a “less than significant effect.”⁷⁷

68. *Id.* at 462.

69. *Id.* at 11.

70. *Id.*

71. *Id.* at xi.

72. *Id.* at xii.

73. CAL. PUB. RES. CODE § 21002.1 (West 2013).

74. CAL. PUB. RES. CODE §§ 21002.1, 2100(a) (West 2013).

75. S.F. PLANNING DEP’T, *supra* note 50 at 11, 12.

76. *Protect the Historic Amador Waterways v. Amador Water Agency*, 116 Cal. App. 4th 1099 (2004).

77. *Id.* at 1104.

Although the EIR considers the removal of invasive tree species to have a less than significant impact, the chance that “special status plant species” or their habitats would be affected by actions prescribed by the plan is determined to have a significant effect, prompting mitigation measures developed by NAP.⁷⁸ The EIR defines “special status species” as species with “recognized rarity or vulnerability to habitat loss or population decline.”⁷⁹ While this term includes species listed as endangered or threatened under federal or state species legislation, the EIR notes that species that have been designated as “sensitive” or “species of special concern” by local resource agencies or conservation groups, such as the California Native Plant Society or Audubon Society, are included in this category as well.⁸⁰ This definition, then, covers a wide variety of species and grants broad discretion to local resource agencies, such as NAP, to include essentially any species it sees fit.

What’s more interesting is that nowhere in the Draft EIR is the category of “special status species” more fully explained—there are only two examples of conservation groups listed, and they are preceded by “e.g.”⁸¹ Therefore, it isn’t clear which conservation organizations or categories of concern NAP is using to label something a “special status species.” Taking the California Native Plant Society as an example, species on this society’s Inventory of Rare and Endangered Plants are organized into four different categories.⁸² One of the categories within this list includes plants that “cannot [be called] ‘rare’ from a statewide perspective, [but] are uncommon enough that their status should be monitored regularly.”⁸³ Under the definition of special status species provided by NAP in the Draft EIR, a species that falls under this category could be considered a special status species by NAP because it has been marked as “of concern” by the California Native Plant Society, even though it is admittedly not rare, much less endangered or threatened.

The EIR considers the possible effects of SNRAMP on these broadly defined “special status” species or their habitats “significant,” whereas the complete removal of invasive trees such as the eucalyptus is *not*. Although it is true that some species in this category fall under the federal and/or state endangered species legislation, there is ample room in the wording of the definition to include species not covered by any legislation at the discretion

78. S.F. PLANNING DEP’T, *supra* note 50 at 29.

79. S.F. PLANNING DEP’T, *supra* note 50 at xii.

80. S.F. PLANNING DEP’T, *supra* note 50 at xii and 85, n. 4.

81. S.F. PLANNING DEP’T, *supra* note 50 at 85, n. 4.

82. *California Rare Plant Ranking System*, CALIFORNIA NATIVE PLANT SOCIETY, www.cnps.org/cnps/rareplants/ranking.php.

83. *Id.*

of the local resources agency, such as the California larkspur.⁸⁴ It is unclear why an agency may deem certain species to be of “special concern” and worthy of mitigation measures or more protection under the EIR than an invasive species. Given the above stated percentages of planned eucalyptus removal, 5% in the Natural Areas and 28% in Sharp Park, the only answer readily available is that NAP has opted for a qualitative definition of significance here. NAP does not consider the eucalyptus to be as qualitatively significant as the “special status” species, and thus the removal of a far greater number of eucalypti is not significant in comparison to a far lesser chance of a “special status” species being disturbed.

By creating such a broad definition for “special status species,” NAP has left itself room to include any aesthetically pleasing or native species that it can find, so long as that species is listed as “of special concern” by a state or local organization. By including threatened and endangered species within this distinction, a reader is likely to assume that any time this term is used, an endangered or threatened species is at issue. Although the threatened and endangered species at issue are arguably more qualitatively significant than the eucalyptus,⁸⁵ the other species for which NAP has left room here are not. Because NAP hasn’t listed all the specific species that fall within this “special status species” distinction, it’s unclear whether species are included that are not threatened in any part of their range. With the definition of “special status species” given by NAP, it’s impossible to tell whether the species replacing the eucalypti are more valuable. Moreover, because essentially any species can be included that is “of concern,” the guidelines and standards by which NAP values the species are equally unclear. When making a decision to kill one species in the name of another, however, it should be completely clear that the species it is replaced by is somehow more valuable, either ecologically or in light of public policy concerns.

84. S.F. RECREATION & PARKS, SIGNIFICANT NATURAL RESOURCE AREAS MANAGEMENT PLAN, SITE-SPECIFIC CONDITIONS AND RECOMMENDATIONS, SHARP PARK 6.4-10 to 6.4-11 (2006), available at http://sfrecpark.org/wp-content/uploads/SNRAMP_Final_Draft/6_Site-Specific/64SharpPark.pdf. The California larkspur is recommended to replace the invasive species, such as the eucalyptus, that will be removed from the Sharp Park area; however, the California larkspur is not listed as endangered or threatened in either the state or federal endangered species statutes.

85. See discussion on endangered species *infra* pp. 443 and 449.

III. The Endangered Species Act

A. The Goals of the ESA

The Endangered Species Act (“ESA”) deals more directly with the valuation of certain species over others. There is also a state version of the law that is very similar, the California ESA, but for the purposes of this note the language of the federal ESA will be utilized for analysis.⁸⁶ After finding that certain species were becoming extinct as a result of man’s growth and development, Congress passed the Endangered Species Act to help mitigate the problem.⁸⁷ With its goal being to provide a means by which endangered and threatened species may be conserved, the Act sets out several restrictions and prescriptions regarding actions possibly involving endangered species and their habitats.⁸⁸ The ESA defines “endangered species,” as “any species which is in danger of extinction throughout all or a significant portion of its range.”⁸⁹ The ESA sets forth guidelines for establishing the endangered or threatened status of a species along with establishing its critical habitat.⁹⁰ Most importantly, however, the ESA forbids the “taking” of any such species.⁹¹ “Take” is defined by the ESA as: “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”⁹² Thus, the majority of guidelines in the ESA are negative restrictions instead of affirmative actions needing to be taken.

On its face the ESA may not seem to value one species over another. Because it protects only those species that are fewer in number and are in need of greater protection to thrive than those that are more abundant, it does not inherently value one species over another so much as put threatened or endangered species on equal footing with those that aren’t. Questions pertaining to species valuation do arise, however, when affirmative action needs to be taken to destroy, inhibit or harm a non-endangered species in order to protect an endangered species. There, it is

86. The parts of the ESA discussed here are mainly its goals and purposes. Given the sufficient similarity between the California and federal ESA on this score, it is only necessary to analyze one.

87. Endangered Species Act, 16 U.S.C. §1531(a) (West, Westlaw through P.L. 113-74 (excluding P.L. 113-66 and 113-73)).

88. *Id.* at § 1531(b).

89. *Id.* at § 1532(6).

90. *Id.* at § 1533.

91. *Id.* at § 1538.

92. *Id.* at § 1532(19).

not simply the case that a non-endangered species is not protected by the ESA, but that the species is actually harmed because of it.

B. Inaction as Action

The Ninth Circuit has held that inaction where one species poses a threat to an endangered or threatened species constitutes a taking within the meaning of the ESA.⁹³ In *Palila v. Hawaii Department of Land and Natural Resources* (Palila II), the habitat of an endangered bird, the Palila, had come into jeopardy because of feral sheep.⁹⁴ For several years preceding the case, the sheep had been maintained in the area, which happened to be the listed critical habitat of the Palila.⁹⁵ The feral sheep fed on the mamane trees, an essential part of the Palila's habitat.⁹⁶ The Ninth Circuit held that because the feral sheep were destroying the habitat of the Palila, any action short of eradicating all the feral sheep from the hill would constitute a taking.⁹⁷ Therefore, if the government of Hawaii did not act to remove the feral sheep from the hill where the critical habitat was, its inaction would constitute a taking under the meaning of the ESA.

While SNRAMP neither fulfills nor violates any particular requirements the ESA, NAP uses the listed status of certain species to bolster its conclusions throughout SNRAMP. One of the first listed conservation and restoration goals of SNRAMP is to "maintain viable populations of all special status species."⁹⁸ As defined earlier,⁹⁹ while "special status species" include federally protected endangered and threatened species, the term also includes several species that aren't federally protected. Thus, NAP could base an entire area plan on the protection of a "special status" species that is only listed as a species of special concern by a local organization. This leads to the conclusion, then, that in "maintaining viable populations" of these species, NAP is not necessarily acting in furtherance of the goals of the ESA.

C. Sharp Park

One example of an effort to protect a "special status" species that is not federally protected within SNRAMP is in the plan for the Sharp Park natural area. The Plan calls for the removal of eucalyptus trees which can be

93. *Palila v. Haw. Dep't of Land and Natural Res.*, 639 F.2d 495 (1981).

94. *Id.* at 496.

95. *Id.*

96. *Id.*

97. *Id.* at 498.

98. S.F. RECREATION & PARKS, *supra* note 15.

99. See EIR Section *supra* p. 443.

seen throughout the park. The Sharp Park plan, under the umbrella of SNRAMP, states that invasive vegetation covers more than 161 acres of the total land area within Sharp Park—and of that 161 acres, 150 acres are made up of “invasive forest,” or eucalyptus trees.¹⁰⁰ The Plan cites the “dense eucalyptus canopy” as a problem for other species trying to grow in the area due to the light that it blocks from reaching the ground.¹⁰¹ The Plan also states that the eucalyptus introduces chemicals to its surroundings that prevent establishment and survival of other species.¹⁰²

One interesting aspect of the eucalyptus removal recommended in the Sharp Park plan is its failure to mention the two federally endangered species that exist within Sharp Park: the California red-legged frog and the San Francisco garter snake. These two species and the golf course located within Sharp Park have been the point of much contention in the local community.¹⁰³ Although the US Fish and Wildlife Services did not include Sharp Park in the critical habitat listed for California red-legged frog,¹⁰⁴ and no critical habitat has been designated for the San Francisco garter snake, NAP includes the protection and maintenance of the species in two of its goals for the Sharp Park plan.¹⁰⁵ Much of the plan details the areas where the two species have been seen in recent years and areas in which they are known to reside within Sharp Park.¹⁰⁶ Yet for all of the focus that the plan places on enriching the habitat of the frog and garter snake, there is virtually no mention of them in the section of the plan pertaining to eucalyptus removal. Largely, this is because the areas in which the eucalyptus trees are to be removed are not the areas listed by NAP as habitat for the two species.¹⁰⁷ In light of this, it seems that the Plan focuses a great deal on a subject which the eucalypti removal isn't really going to help. While the eucalypti removal is necessary for the survival of some endangered species, such as the California gnatcatcher, the Plan focuses a great deal more on these high profile endangered species that won't benefit from the removal.

100. S.F. RECREATION & PARKS, *supra* note 84 at 6.4-5.

101. *Id.*

102. *Id.*

103. See generally, *Restore Sharp Park*, WILD EQUITY INSTITUTE, <http://wildequity.org/sections/5> (last visited Mar. 15, 2013).

104. *California Red-Legged Frog Critical Habitat*, U.S. FISH & WILDLIFE SERV. http://www.fws.gov/sacramento/es/Critical-Habitat/CA-Red-Legged-Frog/Current/es_critical-habitat-maps_ca-red-legged-frog.htm; *Endangered Species Facts, San Francisco Garter Snake*, U.S. ENVTL. PROT. AGENCY, <http://www.epa.gov/espp/factsheets/sf-garter-snake.pdf>.

105. S.F. RECREATION & PARKS, *supra* note 84 at 6.4-7 to 6.4-8.

106. *Id.* at 6.4-1 to 6.4-7.

107. *Id.* at 6.4-7 to 6.4-8, and 6.4-10.

The plan seems to be bolstering its conclusion that large-scale eucalyptus removal is necessary with high profile endangered species, instead of the lower profile species that the removal will really benefit.

The first “special status species” issue raised by the plan states that rare habitat types, such as the California sagebrush, and sensitive plant species “are at risk of diminishing or going extinct within Sharp Park because of habitat loss and invasive species.”¹⁰⁸ The first invasive species listed in this context is the eucalyptus. The sensitive species referred to here is, for example, the California sagebrush. The California sagebrush is not itself endangered, however it does provide habitat for many small birds, including the federally threatened California gnatcatcher.¹⁰⁹ Naturally, then, the Plan for Sharp Park makes the recommendation that “to enhance the sensitive species habitat that persists in the urban forest understory and at the forest-grassland ecotone, invasive blue gum eucalyptus trees will be removed in select areas.”¹¹⁰ Citing again the issues of dense forest canopy and chemical introduction, the report recommends that 15,000 eucalyptus trees be removed from this specific area, out of a total of 54,000.¹¹¹ The areas where invasive vegetation is removed will then be “revegetate[d] using appropriate native plants.”¹¹² The recommendation then suggests the planting of a few “rare or uncommon” grassland plant species in the areas of removed vegetation as well—such as the California larkspur and the yellowtinge larkspur.¹¹³ Lastly, the recommendation raises the possible reintroduction of other sensitive species of the San Francisco peninsula, such as the San Francisco Spineflower and beach layia.¹¹⁴

In analyzing this recommended plan of action, it becomes apparent that the stated goal—protecting the listed endangered species—and ultimate result—planting different species than those listed—are not necessarily the same. The recommendation begins by stating that the eucalyptus is crowding out rare habitats and species such as the California sagebrush and therefore the eucalyptus trees must be removed, or at least thinned out, in order to accommodate such species. Once the eucalyptus trees and other invasive vegetation are removed, however, the recommendation becomes rather vague, stating that appropriate native plants will be put in this space. The recommendation then goes on to

108. *Id.* at 10.

109. U.S. DEP’T OF AGRIC., PLANT GUIDE, CALIFORNIA SAGEBRUSH 1, available at http://plants.usda.gov/plantguide/pdf/pg_arca11.pdf.

110. S.F. RECREATION & PARKS, *supra* note 84 at 6.4-10.

111. *Id.*

112. *Id.* at 6.4-11.

113. *Id.*

114. *Id.*

suggest *different* plants, never before discussed in the Sharp Park plan, to be replanted in the area as well.

If the goal of the eucalyptus removal was to allow the population of species such as the California sagebrush to increase, then one would assume that the California sagebrush is what would be planted once the eucalyptus trees are removed. NAP's reasoning is likely that the California sagebrush is not itself threatened or endangered, but will become less common if it continues to be forced out of the area by invasive trees, such as the eucalyptus. Under this view, then, after the removal of the eucalyptus, one doesn't need to plant more California sagebrush, simply other species that can successfully coexist with it and facilitate its growth and continued existence. It is also worth noting that the species the plan suggests to plant in place of the eucalyptus are endangered species as well. Although this particular plan may ultimately be seeking to protect the habitats of endangered species, that isn't entirely clear from the way the eucalyptus removal is prescribed within it. In a plan that calls for such large-scale eucalyptus removal, clarifying why such removal is necessary, and why the plants replacing the eucalypti are of greater value, is essential.

D. Human Intervention in Nature to Save Endangered Species

Regardless of the intentions of the plan, it brings us to another question underlying these speciesism debates: did the ESA intend for humans to *intervene* in nature, rather than just simply leave it alone, to ensure the survival and/or growth of endangered species? Some argue that humans do not, and should not, have that sort of power—to determine which species are prevented from becoming extinct.¹¹⁵ According to Professor John C. Kunich, “[a] brain capable of conceiving and believing such an exalted role for humans was, and remains, a weapon more powerful than all the armor, fangs, and stings of man’s companions combined.”¹¹⁶ Although species have been coming into existence, evolving, and going extinct since the dawn of time, Professor Kunich notes that it was the actions of man that led many of these species to the brink of extinction in the first place.¹¹⁷ “*Homo sapiens* has undeniably made a disproportionate impact on the rate of extinction of other species.”¹¹⁸

Others argue that this fault is precisely the reason that humans *should* intervene to save a species. Brent Plater of the Wild Equity institute argues

115. John Charles Kunich, *The Fallacy of Deathbed Conservation Under the Endangered Species Act*, 24 ENVTL. L. 501, 502 (1994).

116. *Id.*

117. *Id.*

118. *Id.* at 503.

that because the actions of humans brought these species to the brink of extinction, it should be the actions of humans that bring them back.¹¹⁹ Plater believes that humans have a moral duty to these species to ensure their continued existence.¹²⁰ Under this theory, then, taking affirmative steps to protect an endangered species from an invasive species is essentially compensating the endangered species for the affirmative steps that caused it to become endangered in the first place.

This theory is particularly applicable to the situation with the eucalyptus. While one might argue that the eucalyptus is a force of nature and not one of mankind, this isn't wholly true. The eucalyptus is a product of nature of course, just not one native to the San Francisco area.¹²¹ As a native of Australia and Tasmania, the eucalyptus was introduced to California as an ornamental, or decorative, tree in the 1850s.¹²² It then gained popularity as a source of timber and fuel for the ever-expanding railroads being built at the time due to its ability to grow persistently and quickly.¹²³ All this considered, it was actually the actions of man that brought this piece of nature to an area where it has become a threat to the native plant populations. The relationship between the eucalyptus and the endangered and threatened species in the Sharp Park area, then, is quite analogous to the relationship between the feral sheep and *Palila* in *Palila II*. Much like the sheep, the eucalyptus was introduced to northern California through the actions of man. Like the sheep, the eucalyptus is crowding out and overpowering the habitat for several endangered birds and other species. Therefore, the inaction of NAP would likely be considered a taking under the meaning of the ESA.

The implications of this conclusion in relation to speciesism are clear. Due to man's history and actions on the earth, several species have been brought to the brink of extinction. When faced with a choice between a species that is near extinction and a species that is not, and the two species cannot coexist in the area at issue, the threat of ceased existence will prove the endangered species more valuable. As Justice Douglas noted in his *Sierra Club v. Morton* dissent, "No living human can predict what vital miracles may be locked in [a teaspoon of earth] When a species is gone, it is gone forever, Nature's genetic chain, billions of years in the making, is

119. Author interview with Brent Plater, January 30, 2013.

120. *Id.*

121. Pete Holloran et al., *The Weed Workers' Handbook* 108-09 (Cynthia Harrington & Anne Hayes eds., Watershed Project & California Invasive Plant Council 1994), available at <http://www.cal-ipc.org/ip/management/wwh/pdf/19654.pdf>.

122. *Id.*

123. *Id.*

broken for all time.”¹²⁴ Just as a person with a severed arm is likely to receive treatment in an emergency room before someone who stepped on a nail, the species that are fewest or weakest in number deserve our priority in ensuring their survival. In the case of the eucalypti, this is even more true because not only was it man’s actions that brought the endangered species, the California Gnatcatcher, for example, to the brink of extinction in the first place, but it was man who brought the eucalyptus to the area in which the critical habitat of the Gnatcatcher exists. In such cases where the entirety of a species is at issue, the public purpose of preserving that species, and all other species connected to it, is a legitimate purpose by which to value that species at the expense of another.

IV. NAP and SNRAMP

A. The SNRAMP in Depth

While some examples of planned eucalyptus removal within SNRAMP can be justified, others require more examination. SNRAMP itself has several goals that seem to serve little more than aesthetic purposes. The conservation goals, aside from those concerned with “special status species,” are to “re-establish native community diversity, structure, and ecosystem function where degraded” and to “decrease the extent of invasive exotic species cover.”¹²⁵ Similarly, the management issues with which SNRAMP is concerned also relate to increasing native species and decreasing nonnative species.¹²⁶ One of the stated management concerns is “the effect of nonnative invasive species on the local native flora and fauna.”¹²⁷ This distinction of native and nonnative species persists throughout the plan.

The Buena Vista Natural Area specific plan within SNRAMP provides an example of this distinction. The goal for this area, which consists mainly of oak woodland, is “[t]o help protect the long-term viability of the oak woodland and increase biodiversity.”¹²⁸ The plan proposes to do this by reducing invasive species and preventing invasive trees from becoming

124. *Sierra Club v. Morton*, 405 U.S. 727, 750 n. 8 (1972) (Douglas, W., dissenting)(quoting *Conserve- Land, Water, and Life*, Nov. 1971, p. 4).

125. S.F. RECREATION & PARKS, *supra* note 15.

126. *Id.* at 2–2.

127. *Id.* at 2–4.

128. S.F. RECREATION & PARKS, SIGNIFICANT NATURAL RESOURCE AREAS MANAGEMENT PLAN, SITE-SPECIFIC CONDITIONS AND RECOMMENDATIONS, BUENA VISTA PARK 6.10-4 (2006), available at http://sfrecpark.org/wp-content/uploads/SNRAMP_Final_Draft/6_Site-Specific/610BuenaVista.pdf.

established in the area.¹²⁹ “In order to enhance the existing oak woodland, provide opportunities for enhanced wildlife habitat, and promote a multi-aged oak forest,” the plan recommends that approximately ten eucalyptus and acacia trees be removed.¹³⁰ The plan also recommends prohibiting the future growth of eucalyptus trees in the area.¹³¹

The Buena Vista Natural Area plan is interesting because, unlike the Sharp Park Natural Area plan discussed earlier, it says nothing about endangered or special status species that are threatened in the area due to the presence of the eucalyptus trees. The only purpose of the removal of eucalyptus and other nonnative invasive species here seems to be to replace them with native species and, more specifically, to allow more room for the oak woodland to thrive. This site-specific plan not only focuses on certain species considered more or less desirable, it goes so far as to articulate the aesthetic NAP is going for—a multiaged oak forest. With virtually no focus on special status species, and in light of the historical fanfare with which the concept is presented, it’s difficult to see the plan for a multiaged oak forest as anything more than aesthetically driven. In pursuance of this desired multiaged oak forest, NAP proposes to cut down eucalyptus and acacia trees in order to plant younger oak trees. This seems difficult to reconcile with the earlier reasoning of protecting an endangered species that has been brought to the brink of extinction as a result of man’s actions.

B. Area of Location in Determining Value

Depending on the area in which the eucalypti are located, certain attributes may weigh more heavily than others. The 1-month comment period after the draft EIR was released contained several citizen responses to SNRAMP that are helpful in evaluating the value of the eucalyptus in various locations. While NAP seems to argue throughout for the reestablishment of native species for their own sake, several citizens thought that the eucalyptus trees had more significant uses than native species. One of the concerns raised in the comment period was that any removal of plant material would increase erosion.¹³² Some also noted that the eucalyptus is better at controlling erosion than native plants.¹³³ The roots of

129. *Id.*

130. *Id.*

131. *Id.*

132. S.F. RECREATION & PARKS, SIGNIFICANT NATURAL RESOURCE AREAS MANAGEMENT PLAN, RESPONSE TO COMMENTS 2–14 (2006), *available at* http://sfrecpark.org/wp-content/uploads/SNRAMP_Final_Draft/SNRAMP_Response.to.Comments.pdf.

133. *Id.*

the eucalyptus have been proven to help protect against erosion.¹³⁴ In fact, the California Extension Service gave the eucalyptus to landowners early in the 20th century as a tool for erosion control.¹³⁵ As NAP points out, however, the erosion control value derived from the eucalyptus can, and will, be easily achieved by other means.¹³⁶ The final draft of SNRAMP prescribes “restoration projects that increase vegetative structure and diversity,” noting that plants with differing root depths will achieve long-term erosion protection.¹³⁷

On the other side of the spectrum, some comments showed concern that not enough of the eucalyptus trees were slated to be removed. These comments suggested that the value of the eucalyptus trees was greatly diminished by the fire hazard they create.¹³⁸ Due to the trees’ dry nature and peeling bark, the eucalyptus itself is highly susceptible to wildfires.¹³⁹ The “litter” from eucalyptus trees, including the leaves and excess bark, is yet another hazard.¹⁴⁰ Because eucalyptus trees are so dense, the canopy they create doesn’t allow light to reach the forest floor, resulting in an absence of any live green vegetation.¹⁴¹ This absence of vegetation, coupled with the dry “litter” dropped from the trees, creates a very flammable environment.¹⁴² H. H. Biswell, a professor of Forestry and Conservation has said of the trees: “I think the eucalyptus is the worst tree anywhere as far as fire hazard is concerned.”¹⁴³

The Berkeley-Oakland Hills have been a breeding ground for wildfires for the better part of the last two centuries. When the eucalyptus trees were first planted in the area, to conceal an ugly landscape due to dynamite testing, residents in the area initially thought that the living, resilient trees would help the frequent wildfires that were a result of the dry grass and landscape.¹⁴⁴ They soon realized, however, that the new eucalyptus groves did not help the situation. In 1990, after a winter freeze damaged or killed

134. William F. Brady, *Wildlife in the Third World: Current Efforts to Integrate Conservation with Development*, 5 B.C. THIRD WORLD L.J. 83, 90-91 (1984).

135. Eucalyptus Facts, http://www.eucalyptusfacts.org/?page_id=5 (last visited Jan. 24, 2013).

136. S.F. RECREATION & PARKS, *supra* note 132. Such as planting new vegetation with varying root depths.

137. *Id.*

138. *Id.* at 2–15.

139. ROBERT L. SANTOS, *THE EUCALYPTUS OF CALIFORNIA, SECTION THREE: PROBLEMS, CARES, ECONOMICS, AND SPECIES* (1997), available at http://www.library.csustan.edu/b_santos/section3.htm.

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

many of the eucalyptus trees, there was a public outcry for federal disaster funding to clear the debris before another wildfire could take hold.¹⁴⁵ Only a fraction of the funding requested was received, leaving many private citizens to pick up the tab for clearing their own land.¹⁴⁶ Ultimately, not enough of the debris was removed and the result was the Oakland firestorm of 1991.¹⁴⁷ Although it started as a brush and grass fire, many blamed its rapid growth rate and persistence on the eucalyptus trees and the remaining debris.¹⁴⁸ The fire was one of the worst in the history of the area, killing twenty-five people and destroying more than 1,600 acres of land, including 2,449 single-family dwellings and 437 apartment and condominium units.¹⁴⁹ NAP responded to the concerns raised about fire safety in areas near the eucalyptus by adding the creation of “fire protection zones” to the final draft of SNRAMP.¹⁵⁰ These fire protection zones provide for the removal and thinning of hazardous vegetation and brush piles within 30 feet of homes and other structures.¹⁵¹

The erosion control and fire hazard attributes of the eucalyptus can serve as valuable examples for the ways in which we determine the worth of a species in a certain area. Given the features of a specific area, one could have more weight than the other. For example, in drier areas, like Twin Peaks, the fire hazard factor would weigh heavily against having eucalyptus trees in the area. In a more wet area, like Sharp Park, fire hazard may not be as severe a concern. Also, in a coastal area like Sharp Park, the fact that the eucalyptus help to guard against erosion may have a great deal of weight. Thus, in an area like Sharp Park, NAP should opt to keep a good amount of the eucalyptus trees, only removing them where necessary to make way for vegetation that is endangered or serves as critical habitat to endangered or threatened species. It is also notable that there are other alternatives to preventing erosion that can be easily achieved, thus making the loss of the eucalyptus trees less detrimental to erosion control. Reasoned decisions such as this appear throughout SNRAMP, although it may not be clear from the statements of NAP, which often offer little reasoning.

145. *Id.*

146. *Id.*

147. NAT'L WILDLAND/URBAN INTERFACE FIRE PROTECTION INITIATIVE, THE OAKLAND/BERKELEY HILLS FIRE (1991), *available at* <http://www.calema.ca.gov/FireandRescue/Documents/After%20Action/NFPA%20Report%20on%20The%20Oakland%20Berkeley%20Hills%20Fire.pdf>.

148. *Id.* at 7.

149. *Id.* at 3.

150. S.F. RECREATION & PARKS, *supra* note 132 at 2–14.

151. *Id.*

C. The Nostalgia of Golden Gate Park's Oak Woodlands

Some site-specific plans, however, do not contain the same logical reasoning found in other plans within SNRAMP. The plan for the Oak Woodlands Natural Area in Golden Gate Park,¹⁵² for example, does not appear to be reasoned by any of the aforementioned considerations. Rather, the reasons stated for removal are “to help improve the oak woodlands and protect these native forests from continued habitat loss.”¹⁵³ The plan for this region recommends the removal of 12 medium-sized eucalyptus trees, as well as the removal of an additional 50 other “invasive trees,” of which an unspecified portion are to be eucalyptus trees.¹⁵⁴ The plan also notes that trees that are removed now, and also those that die later, will be replaced with oak trees. Another reason the plan cites for the removal of the invasive trees is that they eventually “could lead to the localized extinction of sensitive species.”¹⁵⁵ The plan does not give any sort of time frame or specification of species for this prediction.¹⁵⁶ The Oak Woodlands Natural Area is not noted as being particularly dry or susceptible to fire hazards, although fire concerns are mentioned once, only briefly to say that they were considered during the creation of the plan.¹⁵⁷ Erosion is cited as a problem in the Oak Woodlands in several places, with NAP noting that “[m]ost soils throughout Golden Gate Park . . . are highly susceptible to wind and water erosion.”¹⁵⁸ Whiskey Hill is the area cited as having severe erosion, and consequently is one of the areas slated to have eucalyptus trees removed.¹⁵⁹ The plan reports that certain areas of the trail have eroded to depths between four and twelve inches.¹⁶⁰

The first thing that is noticeable about the plan for the Oak Woodlands Natural Area is the focus that NAP has placed on retaining and rebuilding an ‘oak woodland’ and the prevention of further future habitat loss the for the oak woodlands.¹⁶¹ The introduction to the plan reflects on the history of the oak

152. S.F. RECREATION & PARKS, SIGNIFICANT NATURAL RESOURCE AREAS MANAGEMENT PLAN, SITE-SPECIFIC CONDITIONS AND RECOMMENDATIONS, OAK WOODLANDS 6.15-8 (2006), available at http://sfrecpark.org/wp-content/uploads/SNRAMP_Final_Draft/6_Site-Specific/615OakWoodlands.pdf.

153. *Id.*

154. *Id.*

155. *Id.* at 6.15-7.

156. *Id.*

157. *Id.* at 6.15-2.

158. *Id.* at 6.15-1.

159. *Id.* at 6.15-2.

160. *Id.*

161. *Id.*

woodlands with a clear fondness and nostalgia.¹⁶² The plan explains that the oak trees have origins in the park that likely date back to the 1870s.¹⁶³ The plan also notes that most of the native vegetation has been removed from Golden Gate Park and these oak woodlands “are one of the few places a large stand of native trees persist within the Significant Natural Areas System.”¹⁶⁴

Given the conditions of the Oak Woodland Natural Area and the positive and negative effects of the trees described above, the plan’s suggestion for removal of eucalyptus trees seems counterintuitive. As stated earlier, the Oak Woodland Area is not noted as being specifically dry or susceptible to wildfires. There are no homes within thirty feet of this area, which is SNRAMP’s stated “fire protection zone.”¹⁶⁵ Therefore, while fire hazard is always a concern, it shouldn’t be especially heightened or heavily weighted in this case. Second, there are several mentions of concerns pertaining to the erosion of the area in the plan. In light of this, one would think that erosion control should be a primary goal of the site-specific plan. Where a eucalyptus tree is removed and new vegetation of varying root depths is used to replace it, it would seem more efficient to keep the eucalyptus tree and plant new vegetation in addition; thus, creating added protection instead of replacing the trees with other plants that provide only the same, if not a lesser, degree of protection. The fact that new vegetation will take time to become established and create “varying root depths” also merits consideration. For a period of time, then, the new vegetation will provide less protection against erosion before reaching the same level of protection currently attained by the eucalyptus trees.

D. The Native/Nonnative Distinction and Immigration Metaphors

More troublesome than these concerns, however, is NAP’s focus on the fact that the Oak Woodlands are “native.” Unlike the other considerations for the removal of a species from an area cited here—such as fire safety, endangered/threatened species and habitat conservation—the desire to create or recreate an area of “native vegetation” has little more than aesthetic or nostalgic value. Professor Jared Goldstein has written on this view of environmental regulations, calling it a “nationalist conception of nature.”¹⁶⁶ Likening the situation to the US’ policy and views on illegal immigration, Goldstein states that “[e]nvironmentalists . . . believe the that

162. *Id.* at 6.15-1.

163. *Id.*

164. *Id.*

165. S.F. RECREATION & PARKS, *supra* note 132 at 2-15.

166. Jared Goldstein, *Aliens in the Garden*, 80 U. COLO. L. REV. 685, 685 (2009).

America is being invaded . . . by foreign plants and animals.”¹⁶⁷ Goldstein believes that the fight against invasive species is a metaphor for the general beliefs and fears that Americans harbor towards immigration.¹⁶⁸ He states,

Once unwanted immigration is understood as an invasion, the solutions are obvious: build a fence to repel the invasion and order the military to fight the invaders. Once the introduction of unwanted species is understood as an invasion, the solutions are much the same: enforce strict border controls to keep harmful species out of the country, eradicate any successful invaders, and restore American species to their rightful places.¹⁶⁹

Goldstein also points out that federal law places all plants and animals into two categories: native and alien.¹⁷⁰ In further demonstrating and developing this metaphor, Goldstein cites the argument of California Speaker of the House Leland Yee opposing a plan seeking to eradicate the eucalyptus.¹⁷¹ Yee used pro-immigration sentiments, stating, “How many of us are ‘invasive exotics’ who have taken root in the San Francisco soil, have thrived and flourished here, and now contribute to the wonderful mix that constitutes present-day San Francisco?”¹⁷²

While Professor Goldstein may seem to be overanalyzing the situation, this article does serve to illustrate a valid point: Humans are quick to manipulate nature and other species to suit their tastes and desires. Many Americans have a very strong attachment to our historical roots and the nostalgic landscape painted by our forefathers. Similar to the anti-immigration sentiments expressed regarding the Cuban Tree Frog, the plan for the Oak Woodlands in Golden Gate Park is a perfect example of this nostalgia. The plan specifically cites that the history of the oak trees in that particular area dates back to 1870s, shortly after San Francisco had its population growth boom and began the history most of us know today. The eucalypti slated for removal in Golden Gate Park Oak Woodlands would not only be helpful for erosion control, a stated concern of the plan, but they also don’t pose a significantly greater fire hazard. With so much focus on the history of the trees in the Oak Woodlands, and so little focus on practical safety and ecological concerns, the plan for this area is little more than a harkening back to a “purer” time in San Francisco’s ecological history.

167. *Id.* at 686.

168. *Id.* at 687–88.

169. *Id.* at 688.

170. *Id.* at 689.

171. *Id.* at 733.

172. *Id.* at 733 (quoting Leland Yee).

V. Conclusion

Although many of us like to think that, when faced with a decision, we would treat different species with a similar level of care and respect, this is not always the case. As a part of our daily life we are faced with situations that often result in valuing one species more than another. Each time a hamburger is eaten instead of a dog, a dandelion is pulled from the garden instead of a rosebush, and a mule used for labor instead of a person, a distinctive choice is made that it is more appropriate to use one species in that situation as opposed to another. While SNRAMP's treatment of the eucalyptus trees is supported by logical and necessary reasoning in most areas, some areas of the plan demonstrate little more than an aesthetic preference for other species as opposed to the eucalyptus, or a nostalgia for what once was.

The value of a species should ultimately depend on the specific area in which that species is present. Where humans have caused the diminution of the species to the point of threatening its very existence, then humans are indebted to that species to ensure its future survival. As one Congressman noted in passing the Endangered Species Act, "Man and his technology has [sic] continued at an ever-increasing rate to disrupt the natural ecosystem . . . half of the recorded extinctions of mammals over the past 2,000 years have occurred in the most recent 50-year period."¹⁷³ It was on this reasoning that Congress determined man should make the sacrifices necessary to ensure the survival of endangered species and their genetic heritage.

If there are no extenuating circumstances, however, such as threats of extinction or hazard, the ultimate decision regarding which species stay and which species go should be left to nature. Although protection and encouragement of biodiversity is necessary to ensure that no ecosystem is obliterated, this by all means does not mean biodiversity should be forced upon an area where it is not now present and where it may not have been present for the preceding two centuries. A hiker who wishes to walk past more redwood trees on his daily trek through the Presidio should start hiking in an area where redwood trees are prevalent, not change the area spatially convenient for him to an area that is aesthetically convenient for him as well. Modern society requires us to make choices between species to achieve safety, health, and conservation goals. These are legitimate public purposes, and these decisions need not necessarily weigh heavily on our conscience. The choices we make to suit our personal tastes, however, should not come at the expense of another species.

173. *Tenn. Valley Authority v. Hill*, 437 U.S. 153, 176 (1978) (quoting statement of Assistant Secretary of the Interior 1973 House Hearings 202).
