ENVIRONMENTAL LAW’S LAND USE MANAGEMENT

DISCUSSION QUESTIONS FOR FEBRUARY 28, 2006

1. Environmental rules and regulations are often driven by scientific data. How do agencies determine when the "best scientific and commercial data available" has been obtained? Will they continue to search for data, and put off making decisions, until data which supports their policy objectives is obtained? Is there a danger in agency reliance on data developed by the industry under regulation, or on data developed by academic institutions dependant on government financing?

2. The Dept. of Defense appears to be attempting to frame the issue of compliance with environmental regulations as an issue of military readiness during a period of war. How can environmental groups and lobbyists best frame the issue of compliance with environmental regulations in order to gain public and congressional support?

3. Regarding the proposed regulatory changes that would allow the Secretary of the Interior to withdraw authorization only after determination of a “significant adverse effect…” based on consultation with DoD, is it a bad idea or a good idea to conduct the consultation privately? How does the current regulatory climate color your answer?

4. How can the Sikes Act and the ESA be integrated? What guidance does the legislation provide when considered as a whole?

5. Does an ongoing heightened threat risk such as that presented by the “War on Terror” provide sufficient justification to waive any environmental regulation deemed to inhibit national security interests? What is the tipping point? What about the War on Poverty or the War on Drugs?

6. Is it necessary to change critical habitat designation in order to address the concerns of DoD? If so, what are the best/most cost effective/most flexible policies that could be put into place? Or is critical habitat designation passé? Do buffer zones and other methods alleviate some of the need for critical habitat designation?

7. Is “readiness” actually affected by protective legislation? To what extent?